

THE CONSTITUTIONAL FOUNDATION OF THE SABBATH: A DISCOURSE ON THE IMPERATIVE FOR RELIGIOUS LIBERTY*

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*Remember the sabbath day, to keep it holy.
Six days shalt thou labour, and do all thy work,
But the seventh day is the sabbath of the Lord
thy God: in it thou shalt not do any work, thou,
nor thy son, nor thy daughter, thy manservant, nor
thy maidservant, nor thy cattle, nor thy stranger
that is within thy gates. For in six days the Lord
made heaven and earth, the sea, and all that in them
is, and rested the seventh day: wherefore the Lord
blessed the sabbath day, and hallowed it.*

- Exodus 20:8-11¹

*I have possess'd your grace of what I purpose;
And by our holy Sabbath have I sworn.*

- William Shakespeare²

*Freedom of religion has a higher dignity under the
Constitution than municipal or personal convenience.*

- Justice Francis William Murphy³

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¹ The Book of Exodus, from the Old Testament of the Christian Holy Bible.

² A line by Shylock in his conversation with the Duke, from Act IV, Scene 1 of Merchant of Venice.

³ Concurring in the U.S. Supreme Court case of *Martin v. City of Struthers*, 319 U.S. 141 (1943).

I. INTRODUCTION: THE TENSE DYNAMIC BETWEEN SECULARISM AND RELIGIOSITY

The dynamic between state and religion continues to be a difficult and sensitive topic in contemporary public debate. A citizen with the civic duty to obey laws and regulations can, as oftentimes, be also a follower of a certain religious faith. Such dual capacity may give rise to a dilemma where she must choose between following, on the one hand “The Law” administered and enforced by the State apparatus in the tradition of Rousseau’s “social contract”, and on the other hand “The Canon” embodying the code of moral conduct that a believer should follow in her lifelong quest to reconnect to her God. An attempt to arrive at a viable solution must necessarily consider how the institution of law figures in this tense equation.

One particular issue interwoven along the lines of this Church-and-State conundrum concerns the moral obligation of observing the Sabbath as the holy day of rest. A particular group of Christians⁴ professing a sincere belief in the Bible finds in one of its books the moral injunction that on one day of the week, they must depart from the usual week’s activities and rest, that is, both physically and spiritually.⁵ Believers who hold the belief that Saturday is the holy day of rest—in other words, the Sabbath—are accordingly referred to as Sabbath-keepers or Sabbatarians. The central aspect of how a Sabbath-keeper exercises her faith is done by observing rest on the Sabbath, which means that their core belief enjoins them on that day to keep away from anything secular, and to move towards the spiritual. She cultivates her relationship with her God by stopping work, study, and play during that day, and by setting her sights on praising and worshipping her Almighty Deity.

Well and good if the Sabbath believer does not encounter any problem with regard to its observance. However, what if there are contending factors to consider that may conflict with the observance of the Sabbath, a focal aspect of their belief system supposedly considered a sacred religious right? How will the principles of our present laws on religious freedom and liberty deal with the

⁴ Christians are members of the religious faith following the teachings of Jesus Christ. Even though the large umbrella of believers are divided into countless subgroups of sects and denominations, they continue to comprise the religious majority in the world up to today.

⁵ The Holy Bible, Exodus 20:8-11.

situation where one has to balance politico-civil and religious duties? The fundamental law on religious liberty⁶ and the classic Church-State debate can now be put to the test by a highly contentious case in point deemed worthy of scholarly discourse: the Sabbath issue of the Seventh-day Adventist ("SDA") Church ("the Church").⁷ Their case provides the most pertinent problematique on the legal issue on Sabbath.

In this work, I will attempt to find a viable solution to the issue confronting the SDA Church in keeping their faith and at the same time complying with their socio-civic duties which may potentially impair their ability to observe their Sabbath doctrine. First, I will give a background of the Church's core beliefs and their principal Sabbath doctrine. Second, I will lay the constitutional and legal foundation upon which the right to religious liberty of the Church shall be based. Third, I will refer to jurisprudence, both in the U.S. and in our local jurisdiction, that will serve as guideposts towards finding the solution to the Sabbath problem. Fourth, I will tackle the emerging issues with the State, at work, and in school where a potent clash between diametrically opposed constitutional rights may friction. Afterwards, I will give some recommendations that purport to resolve the Sabbath issue.

It is with this hope of bringing some new insight and shedding further light on the matter of the Sabbath that this work is premised on. Thus, I am not intending to propose any final solution or panacea to this highly debatable problematique. Rather, my approach merely stems from such modest aim of addressing a socio-legal issue on the Sabbath. Necessarily, I will at times delve on some religious material in this work so as to arrive at a fuller understanding of the Church's sincere belief and the basis of their right to religious freedom. At the end of the day, the academic value and legal analysis (which the Church may refer to if and when desired) sought to be generated represent the prime objective of this work.

⁶ The 1987 Constitution of the Philippines boldly enunciates the absolutist guiding principle on religious liberty: that the "free exercise of religious profession and worship, without discrimination or preference, shall forever be allowed." (*Emphasis supplied*)

⁷ When I use the term "the Church", I am referring to the members of the Seventh-day Adventist Church comprising the global organization sharing the standard core belief under the umbrella jurisdiction of the General Conference headquarters, in contrast to other breakaway subgroups and other Sabbatarian movements.

II. CASE IN POINT: THE SEVENTH-DAY ADVENTIST CHURCH

A proverbial clash between Sabbath-keepers' religious liberty and other parties' rights (say, state police power, employers' right to property, or academic institutions' right to academic freedom) may arise when the right to observe their Sabbath as their day of rest is invoked. Perceptively, invoking it may in turn have an impact—often adverse—on their employment, education, or other societal, in contrast to their religious, obligations. This problem continues to recur here and even abroad; the fact of the matter is that the present corpus of laws and jurisprudence lacks any definitive legal guideline that will resolve this matter once and for all.

Accordingly, this work seeks to attain the delicate balance of these competing rights by situating the issue in the context of the Seventh-day Adventist Church. History has shown that time and again they have faced this moral dilemma. To fully understand the moral-ethical basis of their belief and the underlying legal premise of their right to religious freedom,⁸ it is indispensable to comprehensively discuss some theological concepts and doctrines (in contrast to a purely legal, social, or economic discourse which may not precisely express the point). For that reason, an exhaustive and encompassing discussion of the SDA Church's beliefs is in order.

As one of its defining doctrines, the Church holds the much cherished belief that Saturday is the Sabbath day of rest. They view the Sabbath as God's memorial of creation. They eagerly look forward to the advent or coming of Jesus Christ.⁹ The Church possesses a sense of religious duty and moral imperative: whenever Saturday is observed, they do it in order to worship and please God as the Supreme Rewarder. In the same token, if ever the necessity for Sabbath observance is violated, they do so against God as well, as the Supreme Punisher at the proper time of reckoning. In other words, the institution of the Sabbath is a

⁸ I am using the terms *religious freedom* and *religious liberty* interchangeably, as both referring to the dual clauses enshrined in the Constitution: free exercise and non-establishment. However, I am giving more emphasis and orientation to the free exercise clause since it is that right which approximates more the right to observe the Sabbath day of rest of the SDA Church.

⁹ This is known as the Advent or the Second Coming—thus the term “Adventism”. Believers anticipate that someday upon the occurrence of this event, the faithful will be rewarded with an eternal afterlife.

sacrament between divine and human. Thus, the Church views its demand or obligatoriness as superior to any human handiwork.

Besides emphasizing the injunctive observance of Saturday, the Church further believes in the sanctity and genuineness of the Bible, the duty to evangelize or proselytize, church fellowship, simple living, and a healthy lifestyle. So, why are they called *Seventh-day Adventists*? The Church explains the reason behind the selection of its name and the theological underpinning of their religious mission:

The name Seventh-day Adventist includes vital belief for us as a Church. 'Adventist' reflects our passionate conviction in the nearness of the soon return ('advent') of Jesus. 'Seventh-day' refers to the Biblical Sabbath which from Creation has always been the seventh day of the week, or Saturday.

The mission of the Seventh-day Adventist Church is to proclaim to all peoples the everlasting gospel in the context of the Three Angels' messages of Revelation 14:6-12, leading them to accept Jesus as their personal Savior and to unite with His church, and nurturing them in preparation for His soon return.

In harmony with the prophecies of the Scriptures, we see as the climax of God's plan the restoration of all His creation to full harmony with His perfect will and righteousness.¹⁰

From the foregoing text, one can glean the Church's noble theme of bringing people to restoration and promote the right kind of living. Given this Church's general background, a narration of its mission statement together with a reflection on how it has shaped its belief system today is invaluable for a contextual understanding of the notion of the Sabbath.

A. MISSION STATEMENT AND VIEW ON RELIGIOUS LIBERTY

The Church's present state on Philippine soil shows the established church that it has evolved into. Its firm rooting in evangelization and

¹⁰ NESTOR RILLOMA & JOSE SARSOZA, JR. EDS., 100 YEARS BACK TO THE FUTURE: CELEBRATING GOD'S GOODNESS 7 (2005). The book narrates an insightful account of the history of the SDA Church in the Philippines.

proselytization, which to a large part includes belief in the biblical Sabbath, paved the way for the Church to grow and invite others to accept the faith. In so doing, the Church lives true to its mission statement of spreading its message, which it strives to accomplish through “preaching, teaching, healing, and discipling.”¹¹

Particularly on the matter of religious liberty, the Church has released an official statement. These were issued by the PARL (Public Affairs and Religious Liberty), a division in the General Conference headquarters. On the SDA official website it was posted:

For more than a century Seventh-day Adventists have been **active promoters of religious freedom**. We recognize the need to champion freedom of conscience and religion as a fundamental human right, in harmony with the instruments of the United Nations.

The Seventh-day Adventist Church has a presence in 209 countries. With some exceptions, however, Adventists constitute a religious minority, and have at times been subject to restrictions and discrimination. Consequently, they have felt it necessary to stand up for human rights.

As loyal citizens, **Adventists believe they have the right to freedom of religion**, subject to the equal rights of others. This implies the **freedom to meet for instruction and worship, to worship on the seventh day of the week (Saturday)**, and to disseminate religious views by public preaching, or through the media. This freedom further includes the right to change one's religion, as well as to respectfully invite others to do so. Every person has a right to demand consideration whenever conscience does not allow the performance of certain public duties, such as requiring the bearing of arms. Whenever churches are given access to public media, Adventists should in all fairness be included.

We will continue to cooperate and network with others to defend the religious liberty of all people, including those with whom we may disagree.¹² (*Emphases supplied*)

The Church has also issued a statement on religious minorities. One may notice that the SDA Church itself is a minority religion in the Philippines. A

¹¹ Available at <http://adventist.org/beliefs/statements/main-stat1.html> (last visited 28 October 2010).

¹² Available at <http://adventist.org/beliefs/statements/main-stat19.html> (last visited 28 October 2010).

dedicated portion on its official website entitled "Religious Minorities and Religious Freedom: A Statement of Commitment and Concern," provides that:

Throughout history religious minorities have often been subject to discrimination and outright persecution. Today religious intolerance and prejudice are again on the rise. Notwithstanding the affirmation of the freedom of everyone to hold and disseminate religious views and to change one's religion--an affirmation sustained in the United Nations instruments and documents comprising an "International Bill of Rights"--many countries deny this right to their citizens.

International instruments condemn discrimination against minorities, but tragically, some nations have published lists of religious groups described as potentially dangerous sects. Anti-sect commissions have been set up, investigative personnel have been trained, and restrictive laws passed. Hundreds of thousands of innocent believers are now under official suspicion and are treated as second-class citizens. All this violates religious freedom, which is the most basic and essential of the fundamental rights of humankind. Seventh-day Adventists believe in obeying the laws of the land as long as they do not conflict with the laws of God. However, we oppose any law, policy, or activity which discriminates against religious minorities.

The Seventh-day Adventist Church stands for religious freedom for everyone, as well as for the separation of church and state. Scripture teaches that the God who gave life also gave freedom of choice. God only accepts homage that is freely given. Seventh-day Adventists further believe that the law must be applied evenly and without capricious favor. We submit that no religious group should be judged because some adherents may appear to be extremists. Religious freedom is limited when aggressive or violent behavior violates the human rights of others.

In support of Article 18 of the United Nations Universal Declaration of Human Rights and other international instruments, and in harmony with its beliefs and its history, **the Seventh-day Adventist Church is fully committed to promote, defend, and protect religious freedom for everyone, everywhere.** To that end, we will continue to cooperate with the United Nations Human Rights Commission and other international agencies and religious organizations to encourage every nation to implement the fundamental right of religious freedom. In addition, we will continue to

promote dialogue and better understanding between governmental authorities and people who belong to religious minorities.¹³ (*Emphasis supplied*)

From these statements, it can be gleaned that the SDA Church, albeit considered a religious minority, invites all without exception to respect religious freedom without any discrimination. The right to religious freedom and expression certainly hinges on being allowed to follow the dictates of one's conscience without being denied, harassed, or limited in doing so. The Church takes a clear stand that religious liberty is an uncompromising imperative that can be ardently justified both legally and morally. And one particular facet of religious liberty is the imperative to respect the notion of the Sabbath, given its extreme significance, as far as SDA members are concerned. A more in-depth look at the Adventist belief system and philosophy will enlighten towards a better understanding of the basis of the Sabbath doctrine.

B. CORE BELIEFS AND VALUES

A comprehensive document published by the Church is the "28 Fundamental Beliefs."¹⁴ It encapsulates its unique set of particular values, beliefs, and views considered as its trademark as a sincere Christian denomination. It is the one-stop-shop manual of SDA principles and beliefs. As the central basis of its belief, it was declared in its official website that "Seventh-day Adventists accept the Bible as their only creed and hold certain fundamental beliefs to be the teaching of the Holy Scriptures. These beliefs, as set forth here, constitute the church's understanding and expression of the teaching of Scripture."¹⁵ The SDA Church espouses 28 fundamental views in a seminal work, *Seventh-day Adventists Believe*.

The Church espouses a disciplined code of conduct. Aside from the strict observance of Saturday as their holy day of rest, the Church prescribes the kind of diet, dress and adornment, social activities, and other aspects of a Christian lifestyle. These matters are modeled after the example of Jesus Christ's life as was

¹³ Available at <http://adventist.org/beliefs/statements/main-stat45.html> (last visited 28 October 2010).

¹⁴ The basic tenets and guiding principles of the Adventist Church can be found on its official website, www.adventist.org. The webpage also includes a portion which lays down the Church's official stand on a range of moral and ethical issues confronting contemporary society.

¹⁵ Available at <http://www.adventist.org/beliefs/fundamental/index.html> (last visited 28 October 2010).

recorded in the Bible. The particularistic type of living that characterizes the Seventh-day Adventist sends out a message to all that life on this earth is beholden to the duty to obey the moral laws and injunctions specially provided by divine instruction. One of these laws concern the day of rest and worship that a member must at all times obey.

To get a deeper grasp of the Sabbath as a religious right, the 20th point enumerated deals with Saturday as their holy day of rest through a specifically theological approach, as stated in this wise:

The beneficent Creator, after the six days of Creation, rested on the seventh day and instituted the Sabbath for all people as a memorial of Creation. The fourth commandment of God's unchangeable law requires the observance of this seventh-day Sabbath as the day of rest, worship, and ministry in harmony with the teaching and practice of Jesus, the Lord of the Sabbath. The Sabbath is a day of delightful communion with God and one another. It is a symbol of our redemption in Christ, a sign of our sanctification, a token of our allegiance, and a foretaste of our eternal future in God's kingdom. The Sabbath is God's perpetual sign of His eternal covenant between Him and His people. Joyful observance of this holy time from evening to evening, sunset to sunset, is a celebration of God's creative and redemptive acts.¹⁶

The foregoing account also explains the shared meaning of the Sabbath to the SDA Church members *en masse*. There are seven features enumerated which portray such meaning:

1. A perpetual memorial of Creation;
2. A symbol of redemption;
3. A sign of sanctification;
4. A sign of loyalty;
5. A time of fellowship;
6. A sign of righteousness by faith; and
7. A symbol of resting in Christ.¹⁷

¹⁶ MINISTERIAL ASSOCIATION, GENERAL CONFERENCE OF SDAs, SEVENTH-DAY ADVENTISTS BELIEVE...A BIBLICAL EXPOSITION OF FUNDAMENTAL DOCTRINES 281 (2005). It cites the following texts of the Bible as the moral justification for the Sabbath belief: Genesis 2:1-3; Exodus 20:8-11; Luke 4:16; Isaiah 56:5, 6; 58:13, 14; Matthew 12:1-12; Exodus 31:13-17; Ezekiel 20:12, 20; Deuteronomy 5:12-15; Hebrews 4:1-11; Leviticus 23:32; and Mark 1:32.

¹⁷ *Id.* at 287-91.

Gathering from the selection of its name and the embodiment of its Holy Sabbath in its list of fundamental beliefs, the observance of Saturday assumes a vital importance in the religious life of its members. Finally a thorough approach to appreciating the legal right of SDAs to observe the Sabbath day of rest completes the picture by laying the groundwork for an understanding why such special right to religious liberty is proactively invoked even before and at present.

C. PRIMAL SANCTITY OF SATURDAY AS THE SABBATH DAY OF REST

The Church accords primal and overriding importance to the Sabbath, which is Saturday or the seventh day of the week, as one of its trademark beliefs. Given its paramount significance to a person's moral obligation and duty, the Church holds Sabbath-keeping as the ultimate test that defines the true SDA believer.

On the observance of the Sabbath, their Ministerial Association further elucidated on the moral-religious basis of their belief to day of rest as a primary tenet of their faith. The Church enjoins to members to think of the Sabbath as "a day of special communion with God." During the day, one is invited to celebrate activities commemorating the Creation and man's redemption. To be able to do so, it is deemed important "to avoid anything that tends to diminish its sacred atmosphere." The Bible mandates believers to **cease doing secular work** during Sabbath. It also proscribes members to refrain from any work done to earn a living and other business.¹⁸

So when, technically, is the Sabbath day? Simply, the Sabbath period is understood to run from Friday sunset until Saturday sunset.¹⁹ The Ministerial Association of the General Conference further lays down a guideline in observing the timelines. Basically, Sabbath starts at sunset on Friday evening, and lasts until sunset on Saturday evening. During this special day of rest, the Church enunciates a prescribed mode of activity: "it is well for family members or groups of believers to gather together...to sing, pray, and read God's word, thus inviting the Spirit of Christ as a welcome guest. Similarly, they should mark its close by uniting in

¹⁸ *Supra* note 27, at 296.

¹⁹ This may be viewed as akin to the Sabbath observed by Orthodox Jews, where present-day Christianity originated from.

worship toward the close of the Sabbath on Saturday evening, requesting God's presence and guidance through the ensuing week."²⁰

Moreover, Samuele Bacchiocchi, a leading Adventist theological scholar, observed that: "The Biblical notion of the "holy Sabbath," [is] understood as a time to cease from secular activities in order to experience the blessings of creation-redemption by worshipping God and by acting generously toward needy people...."²¹ On the origin of the Sabbath from Biblical creation, he further points out the expressed textual basis found in the Bible as authority: "[t]he theological reason given for the command to observe the seventh day Sabbath "to the Lord your God" (Ex. 20:10) is "for in six days the Lord made heaven and earth, the sea, and all that is in them and rested the seventh day; therefore the Lord blessed the Sabbath day and hallowed it" (Ex. 20:11)" To "keep the Sabbath holy" can be done by:

- (1) following the divine example given at creation,
- (2) recognizing the divine Creator, and
- (3) participating in rest and divine blessings for mankind."²²

As can be easily seen, the Bible is considered the authority on the Sabbath requirement. Indeed, "[o]utside the biblical sources which should settle the matter, one finds widespread recognition of the creation origin of the Sabbath in both Jewish and Christian tradition history."²³ The story of Christian creation, as the grand event which paved the way for the observance of the Sabbath for man to emulate, starts off the first recorded historical account in the Bible. It also bears emphasis that the observance of the Sabbath involves the intricate relationship between man and God, between human and divine. Thus a believer follows the Saturday requirement as a moral obligation to "the Lord God," and not from any human, no matter the authority conferred. Thus also, this explains the uncompromising attitude of the Church in asserting religious liberty rights to observe the Sabbath.

²⁰ *Id.*, at 296-97.

²¹ SAMUELE BACCHIOCCHI, FROM SABBATH TO SUNDAY: A HISTORICAL INVESTIGATION OF THE RISE OF SUNDAY OBSERVANCE IN EARLY CHRISTIANITY 9 (1977).

²² SAMUELE BACCHIOCCHI, THE SABBATH UNDER CROSSFIRE: A BIBLICAL ANALYSIS OF RECENT SABBATH/SUNDAY DEVELOPMENTS 62 (1998).

²³ *Id.* at 65

The Church has also provided some guidelines for Sabbath observance. It asserts that the Sabbath is a “safeguard of [one’s] relationship with [her] God”, and further proceeds to explain that for a Seventh-day Adventist:

The Sabbath encompasses our entire relationship with God. It is an indication of God’s action on our behalf in the past, present, and future. The Sabbath protects man’s friendship with God and provides the time essential for the development of that relationship. The Sabbath clarifies the relationship between God and the human family, for it points to God as Creator at a time when human beings would like to usurp God’s position in the universe.

In this age of materialism, the Sabbath points men and women to the spiritual and to the personal. The consequences for forgetting the Sabbath day to keep it holy are serious. It will lead to the distortion and eventual destruction of a person’s relationship with God.

When the Sabbath is kept, it is a witness to the rest that comes from trusting God alone as our sustainer, as the basis of our salvation, and as the ground of our hope in the future. As such, the Sabbath is a delight because we have entered God’s rest and have accepted the invitation to fellowship with Him.

When God asks us to remember the Sabbath day He does so because He wants us to remember Him.²⁴

As I had provided in this work’s quotable epigram, the moral injunction simply stated is thus: remember the Sabbath day. “Remembering” in this sense entails an uncompromising stand, admitting of only rare exceptions²⁵ provided also in the Bible alone. Lastly, Bacchiocchi gave the theological philosophy and the cognitive appreciation behind the Church’s observance of Saturday as the Sabbath

²⁴ Available at <http://www.adventist.org/beliefs/other-documents/other-doc6.html> (last visited 28 October 2010).

²⁵ The principle is that the observance of Saturday is an imperative, and thus members of the Church endeavor to do everything within their means to comply with the moral command. However, as Jesus Christ himself has pointed out in the Bible in response to the hypocrisy of some Jewish leaders, “The Sabbath is made for man, and not man for the Sabbath.” (The Bible, Matthew 12:12, Luke 6:9) He further went on to give an example that shows the principle of this exception: when one’s donkey fell on a pit, will he not pull it out to save it? Thus it is perfectly allowable to do “good,” or “the right thing,” on the Sabbath day. This is interpreted by the Church to mean that an exception may be carved out for the purpose of doing an urgent justifiable act on Saturday. However one cannot conveniently invoke the exception so as to justify doing an

day of rest. He noted that "the Sabbath does enable the Savior to bring perfect rest to our lives by offering us the opportunity to experience the rest of creation, the rest of divine presence, the rest of belonging, the rest from competition, the rest from social tensions, the rest of redemption and the rest of service...."²⁶

The lofty ideals of the Church that help bring about a realization of God's express command cannot be denied. Its Sabbath-keeping must be considered one of the most well regarded expressions of religious worship that constitute a declaration that she is living true to her avowed faith. In other words, respecting the Sabbath is a concrete application of the constitutional right to religious liberty.

Having discussed the moral and ethical foundation of why observance of the Sabbath is jealously guarded by SDAs, the question now is: can Sabbath-keepers enjoy their right to observe their holy day of rest? Is there any basis enshrined in the Philippine Constitution or state laws for this particular religious right? Is there any guiding jurisprudence in Philippine jurisdiction, and even persuasively that of the U.S., which can serve as a legal foundation for invoking the Sabbath? Succinctly put, can SDAs legally justify their right to observe the Sabbath? These questions call for an answer which can be found in no other authority than *the law* itself. I will now proceed to discuss the legal bases which lay the foundation of the religious right to the observance of the Sabbath as an imperative for the notion of religious liberty.

III. LEGAL FRAMEWORK: THE RIGHT TO FREEDOM OF RELIGION

Basically, freedom of religion or religious liberty means a person's right to choose a set of beliefs that normally concerns the relationship between that person and her Deity. This often includes a moral code of conduct that regulates fitness for divine reward and punishment for misdeed.²⁷ Choosing one's religion or moral belief system is inextricably linked to one's freedom of choice. As a certain religion so chosen necessarily involves the deep, personal beliefs that define an

action normally considered as either "work" or "play." The Church has made it clear that the observance of a Saturday as the Sabbath is a strict and well defined principle for the guidance of its members.

²⁶ SAMUELE BACCHIOCCHI, *DIVINE REST FOR HUMAN RESTLESSNESS: A THEOLOGICAL STUDY OF THE GOOD NEWS OF THE SABBATH FOR TODAY* 226 (1980).

²⁷ In religious parlance, a mistake, error, or wrongdoing is called "sin." The transgression of the Holy Sabbath is considered a serious sin because it offends one of the Ten Commandments, or the moral law, given in the Bible.

individual, this area automatically treads on sensitive matter.²⁸ If the pervasive ambit of the law permeates the realm of religion, the believer then encounters a conflict between his moral-spiritual and civil-political interests.

Freedom of religion or religious liberty is universally regarded by modern civilized nations as a human right which cannot be derogated in much the same way that, needless to say, there is no dispute in matters of opinion. Anyone can freely select what perspective to take: the domain of thinking and intentionality cannot be intruded by any State action so long as it does not translate into action deemed detrimental to society. In a democratic, pluralistic society extant in today's freedom-loving polities, religious liberty means a welcome diversity which must be tolerated and allowed to flourish in the traditional sense of Rawlsian libertarianism.²⁹

Respecting the right of SDA members to observe the Sabbath is a concrete example of implementing due respect to freedom of religion. To situate the right to day of rest in the mapping of the law, there are three legal regimes or frameworks upon which religious liberty stands: international law, Philippine constitutional law, and Philippine statutory law. A discourse on how the right to observe the Sabbath can be justified and thus protected by the law necessitates an examination of how these frameworks operate in terms of their effectivity and jurisdiction.

²⁸ The sensitivity of matters dealing with religion is discussed above in the Introduction "The Tense Dynamic between Secularism and Religiosity." This is most especially true to the issue of observing the Sabbath as Sabbath-keepers jealously protect their right to day of rest in keeping with the principle of religious liberty particularly for religious minorities like the SDA Church.

²⁹ A further elucidation of John Rawls's view on liberty and religion goes: "In developing a specifically political form of liberalism, Rawls responds to the complaint that a liberal political outlook is simply the political department of a comprehensively liberal philosophy of life—secular, skeptical, dismissive of the idea of a moral order antecedent to human will—and therefore hostile to citizens of faith. Rawls disagrees: he believes that **there are different routes, none preferred, that citizens may take to endorsing common political principles**: "In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty; a nonreligious doctrine will express itself otherwise." What we learn from the "history of religion and philosophy" is that "there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by a political conception of

A. INTERNATIONAL LAW REGIME

International law sets forth the blanket principle of freedom of religion and religious liberty that States implement within their national bounds. The Universal Declaration of Human Rights (UDHR) provides in art. 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This Declaration is generally observed and accepted by today’s community of nations as it lays down the general precept and humanitarian values to be adopted by States so as to afford every human being the “right to freedom of thought, conscience and religion”, as well as the “right to manifest his religion or belief in teaching, practice, worship and observance.” These two universal human rights can readily—both textually and substantially—include the right of SDAs to freely exercise their religion by observing the core principle of the Sabbath. They may also manifest the selfsame right by asserting it vis-à-vis others who are enjoined to respect that right.

The protection accorded to the Sabbath as a component of religious liberty guaranteed by the corpus of international law does not end in general precepts. Further, treaty law has embodied in particular freedom of religion as a principle which practically all nations have accepted as normative and binding. The International Convention on Civil and Political Rights (ICCPR), art. 18, states: “(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Same with the UDHR provision, the ICCPR further extends protection to freedom of religion. Intuitively, this means an Adventist member whose right to day of rest is violated by either a public or private party, can invoke the ICCPR as the source of that right.

justice.”” (*Emphasis supplied*) See JOHN RAWLS, A BRIEF INQUIRY INTO THE MEANING OF SIN AND FAITH 22 (2009).

Moreover, there is a particular instrument that seeks to protect religious liberty under which the Sabbath is covered. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proclaimed by the United Nations General Assembly of 25 November 1981, art. 6 thereof, states that: "In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms: x x x (h) **To observe days of rest** and to celebrate holidays and ceremonies **in accordance with the precepts of one's religion or belief...**" (*Emphasis mine*) Subsequently article 7 thereof requires State-parties to adopt municipal legislation for the purpose of respecting religious freedom: "The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice."

Tackling directly the imperative for a day of rest, our present international labor standards provide for such. International Labor Convention (ILO) No. 106³⁰ or the Convention concerning Weekly Rest in Commerce and Offices, was adopted in Geneva to provide for the proper working time and rest period for workers.

Article 6

1. All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an **uninterrupted weekly rest period comprising not less than 24 hours** in the course of each period of seven days.
2. The weekly rest period shall, wherever possible, be granted simultaneously to all the persons concerned in each establishment.
3. The weekly rest period shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district.

³⁰ ILO No. 106 came into force on 4 March 1959. The Philippines joined the ILO in 1948, and has since been an active member in supporting its policies and programs. See <http://www.ilo.org/manila/aboutus/lang--en/index.htm>.

4. The traditions and customs of religious minorities shall, as far as possible, be respected. (*Emphases supplied*)

From these foregoing international instruments one can gather the special and definite protection sought to be accorded to freedom of religion, and the right to day of rest for that matter. The weekly rest period is not merely a recognition of the physical need to take some time off from work, say, for the purpose of inuring to the benefit of an employer by enhancing worker productivity towards work efficiency. Rather, there is an express acknowledgement and recognition of the "traditions and customs of cultural minorities." The SDA Sabbath doctrine falls squarely under this caption; thus, it is well considered a fundamental human right under international law. Such universality of religious liberty as a basic human right can also be attributed to the selfsame universality and ubiquity of religion, in whatever legitimate form it may take and regardless of the socio-cultural and temporal context it may operate in.

B. CONSTITUTIONAL FOUNDATION

Same as the body of international law dealing with religious rights, religious freedom clauses are ordinarily found in the constitutions of modern libertarian states, particularly that of the Philippines and that of the United States (to which Philippine law gives persuasive jurisdiction). Such constitutional regime enshrining the freedom of belief and worship proves that the founding fathers of our constitution did consider the right emanating from provisions on religious clauses as occupying a protected and jealously guarded position. The intended protection also stems from the very nature of religion that can capably incite one's moral passions and intimate individuality.

The Philippine Constitution, being the highest law of the land, treats freedom of religion as a civil liberty such that any action that derogates or apparently violates the right will face *strict scrutiny* for it to pass constitutional validity. This scope of protection can even be stretched so as to reach the granting of special protection. Thus it ranks relatively higher whenever a hierarchy of constitutionally protected rights must be made. Such special protection can be gleaned from some examples laid by jurisprudence touching on the application of the principles of religious liberty, which I shall discuss further. A closer look at the

religious freedom clauses of the U.S. Constitution and that found in the Philippine Bill of Rights will show the development of legal protection accorded to right to exercise one's religion.

The First Amendment of the U.S. Constitution

The U.S. Constitution's First Amendment of 1791 on Religion, Speech, Press, Assembly, and Petition provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment, a revered, centuries-tested legal instrument as the supreme law in American jurisdiction, contains the fundamental guarantees of the doctrines of separation of Church and State (the non-establishment clause) and religious freedom and worship (free exercise clause).

Made applicable to the States through the Fourteenth Amendment, the religious freedom clause of the U.S. Constitution has set the historical antecedent that other States' constitutions subsequently promulgated. As a "mother" provision, it has found its way enshrined later on in the Philippine Bill of Rights. For the same reason, Philippine cases are interpreted and decided *in pari materia* with American law. Naturally, Philippine cases on religious freedom more often than not cite American law and cases in resolving issues locally situated as being of persuasive force to local application.

The Philippine Bill of Rights

Meanwhile the 1987 Philippine Constitution in its Declaration of Principles categorically provides in art. II, §6: "The separation of Church and State shall be inviolable." This provision is used as a legal guarantee against any excessive entanglement between Church and State which, historically speaking, has lead to myriad abuses of civil and religious liberties. Moreover the Philippine Bill of Rights,³¹ in art. III, §5, states: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without

³¹ In Philippine political law, the Bill of Rights enshrined fundamental guarantees that are self-executory, i.e. there is no further need for implementing legislation or rules to give the law force and effect.

discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.” This religious freedom clause, Filipino-style, has preserved exactly the same verbatim Bill of Rights of the past Philippine Constitutions, namely art. IV, §7 of the 1935 Constitution of the Philippine Commonwealth, and art. IV, §8 of the 1973 Constitution promulgated under martial law.

Throughout the entire legal history of Philippine constitutions, the consistent view of the able women and men who drafted them underscores the unwavering respect granted to religion as a civil liberty which the State cannot infringe. With the clear and categorical protection accorded to the exercise of religion as a civil liberty in the Philippine setting, only the application of religious freedom clauses and principles of religious liberty with its proper interpretation (often derived from U.S. cases) remain as the big challenge. To aid in the application of the foregoing legal bases, statutory laws further illumine the legal basis of SDAs’ right to observe the Sabbath.

C. STATUTORY BASIS

After a discussion of the basic principles of religious liberty provided by international law and its guarantee enshrined in the Philippine Constitution, the contextualization of the right underlying as legal justification for the Sabbath can be found in the statutory regime governing the matter. As a preliminary note, laws and statutes passed by legislators, and even orders and rules issued by executive officials in the exercise of their delegated subsidiary legislation, are often the product of intensive deliberation and balancing of interests of their constituencies representing various religious affiliations.

The statutory regime of freedom of religion also recognizes the constitutional precept that the freedom to worship and choose one’s religious affiliation are of vital importance to society in terms of allowing citizens the opportunity to live their lives to the full. When the principles of religious freedom are applied through specific laws and issuances, the individual can then feel and benefit from the realization that she is protected by the law in her right to exercise her faith. This can be seen in the rest day provision of Philippine labor law and other government issuances evidencing respect of the Sabbath.

Rest Day Provisions in Labor Law

Workers are entitled to observe a rest day; employers are enjoined to grant them. There are particular provisions in Republic Act No. 442 or the Labor Code of the Philippines which recognize that workers must be allowed one day per week to rest and use time off work for recreational purposes.³² As a matter of fact, it is not only Philippine law which affords respect for the Sabbath. Weekly rest day provisions are also legislated in a number of other countries like the Netherlands, Israel, the United Kingdom, and the United States.³³ For the local setting, the Philippine Labor Code, Book Three, Title I, Chapter II on Weekly Rest Periods, art. 91 thereof provides that:

Right to weekly rest day. – (a) It shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days.

(b) The employer shall determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor and Employment may provide. **However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds. (Emphasis supplied)**

Not insignificantly, this rest day almost always coincides with the religious Sabbath of a worker on which, being true to belief, she has the moral duty to observe. Thus Saturday and Sunday are the days of the weekend that policies of employers consider as appropriate to allow the labor force stop work and enjoy some needed rest. Aside from having economic benefits for enhanced productivity for the workweek ahead by engaging in recreational and meaningful activities, the rationale for the weekly rest day also means that workers can freely exercise the right at least once a week. This legal setup is perfectly conducive for SDA workers who attend church services on a Saturday. Thus, our statutory law necessarily touches upon the Sabbath as a demandable right of workers.

³² This was also in keeping with the Philippines' obligations to the ILO Convention as a member-signatory.

³³ See <http://csda-adventistchurch.to/news.html>. The webpage gives an interesting account of global developments with regard to Sunday Law deregulation and Sabbath accommodation.

The rest day provision of the Labor Code admits of certain enumerated exceptions,³⁴ i.e. when a worker may be compelled to work even on a rest day. Still, notwithstanding the stated exceptions, SDA workers have within their reach the conceptual backing to muster sufficient and substantial legal justification to be granted their day of rest. At first members of the Church who are ordered to work on their Sabbath must rather ask for remedial work to be made on another day. This means, if there are other workers who may work on Saturday, then the right of the SDA member may be preserved. Alternatively they may opt to assert that a sincere belief of their avowed religious sacrament as uncompromising.³⁵

Further, the rationale for the hierarchy of competing constitutional rights gives an established preference in favor of religion over proprietary interests which may possibly constitute a counter-exception to the rest day rule's exception.³⁶ However, this does not necessarily mean that they are better situated or that other religious groups are discriminated against. The issue in question concerns the plight of Adventists when confronted with a possible breach of their constitutional and statutory right to observe the Sabbath day of rest. Obviously, other religious sects and denominations are free to assert their right to day of rest in much the same way Adventists must be equally entitled to. The point to be made is that the protection for rest day labor law must be protected, no matter who the beneficiary may be.

³⁴ The Philippine Labor Code, Art. 92 provides a well defined exception when an employer may require work on any day including a rest day: The employer may require his employees to work on any day:

- a. In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;

- b. In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;

- c. In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

- d. To prevent loss or damage to perishable goods;

- e. Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and

- f. Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor and Employment.

³⁵ The point being, the sacrament of Sabbath is viewed by Adventists as a sacred relation between no less than God and human. Thus, compared to a mundane relation between human and human (i.e., employer and employee), the Church chooses to follow the controlling dictates of faith. This shall never be tantamount to fundamentalism or fanaticism so long as the proper legal basis (and thus, its rationality as dictated by moral premises) is laid down.

³⁶ More of this shall be discussed below on employers' and employees' rights.

Other Issuances Accommodating the Sabbath

There are other special laws, orders, policies, or directives that recognize Sabbath as a legally recognized day of rest. These issuances again lend credence to support the Church's entitlement to allow them due observance of their Sabbath and extend respect to their religious liberty to worship their God. One example is the recent issuance of the Department of Education (DepEd). The Department Secretary has issued an administrative order for all employees of the department which expressly mandates that any member of the SDA Church within their ranks cannot be forced to work on a Saturday in keeping with their belief. The unqualified recognition of SDAs' right to "keep" their Sabbath and not to be assigned work on a Saturday marks a crucial turning point in favor of showing the imperative to afford respect due to a sincere observance of Sabbath-keeping. The department directive is a positive development for SDAs who are advocating religious liberty within any organization that they work at.

Whether or not other government departments or instrumentality will follow suit remains to be seen in the future. In any event, that SDAs at present can confidently look up to the recognition made by the Philippine government (with the Department Secretary acting as the President's alter ego) is certainly a welcome step that can favorably be invoked to invite other government officials and functionaries to allow the selfsame respect.

IV. JURISPRUDENTIAL GUIDEPPOSTS: RIGHT TO DAY OF REST AS APPLIED

Now after a discussion of the legal framework on the Sabbath and religious liberty, how the law figures in jurisprudence will give a more graphic representation of the rest day justification. As of this writing there has already been a wide catena of cases dealing with the religious freedom clauses both in U.S. and Philippine jurisdictions. In principle, Philippine case law borrows heavily from the doctrinal pronouncements and interpretations of U.S. courts. Having a look at the wide array of cases either decided for or against the side of religious accommodation, the combined tension and sensitivity of dealing with the right to freedom of religion is readily apparent. Thus, for an objective approach to be possible, a broad perspective must be taken to arrive at understanding the legal

raison d'être of the Church's day of rest belief. In the final analysis the continuing search for a legal solution of the Sabbath problem must be kept in mind.

A. UNITED STATES JURISPRUDENCE

The U.S. Supreme Court in numerous occasions has decided cases directly dealing with the issue of freedom of religion and religious liberty. Owing to the pluralistic libertarian brand that characterizes American society, these cases are resolved under the guiding bastion of religious accommodation and tolerance of freedom of choice and belief. Even though many aspects of the debate on religious tolerance hinge on sensitive matters touching on an individual's core beliefs, the *ratio decidendi* of such cases are hard put to public scrutiny. It also ignites further debate on whether the State must remain secular or accommodating to religious considerations, which comes as a recurring recognition of the tense dynamic between secularism and religiosity.

One case stands out as the most applicable one to the Sabbath issue of the SDA Church. It is still good law; it sets the precedent for issues concerning day of rest: the 1963 case of *Sherbert v. Verner* (*Warren Court*).³⁷ What makes it even more on all fours to the Adventist Church's advocacy of the Sabbath is that the appellant in *Sherbert* is herself a member of the SDA Church in the U.S. Thus the case's very *lis mota* involves the invocation of Saturday as the Sabbath day of rest. The U.S. Supreme Court through the pen of Justice Brennan can be said to have already encountered, delved on, and resolved the issue of Sabbath-keeping as juxtaposed to another competing right.

1. SHERBERT V. VERNER

Sherbert deals squarely on the right of SDAs to freely exercise their right to observe Saturday as the Sabbath. In a nutshell, it involves an SDA member's application for unemployment compensation as a dismissed textile factory worker because of labor regulatory measures imposed by her employer requiring her to work on Saturday. The U.S. Supreme Court held that Sherbert's right to freedom of worship must be respected. Not reversed hitherto by the highest Court, this

³⁷ 374 U.S. 398 (1963).

case is the single most persuasive holding that will support SDA members' cause to invite due respect for their observance of the Saturday Sabbath.

It is crystal clear that the holding of the Court is categorical and direct in favor of religious liberty. However, other parties apparently frowned upon the liberal ruling. Specifically, advocates of secularism and of the non-establishment guarantee took the holding as an affront to other civil liberties (e.g. employer's property right, as here) that so happened to conflict with a Sabbath-keeper's right to day of rest. Yet, the *Sherbert* ruling remains grounded on a sound rationale and remains good law hitherto:

In the decades following *Sherbert*, free exercise jurisprudence consisted largely of similar challenges, but in 1990, the Court reversed course again and sharply restricted the scope of the clause's reach with respect to laws of general applicability. In *Employment Division v. Smith*, the Court ruled that the clause "does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" In so doing, the Court declined to overrule the prior cases that had granted religious exemptions to general laws, instead attempting to distinguish them on the ground that they had involved a type of "hybrid situation" in which the free exercise right was combined with some other constitutional claim.³⁸ (*Emphasis supplied, citations omitted*)

This case has evolved since then without its normative moral force being diluted. However, with regard to the transformation of *Sherbert* and its progeny, and the concept of an "individualized process" for allocating governmental benefits and burdens as being not generally applicable, Duncan contemplates a possible problem in interpreting this landmark case. He argued that:

The transfigured *Sherbert* is best understood as creating a categorical rule that takes a case out of the general rule of *Smith* and creates a safe harbor for religious liberty when government adopts an individualized process for allocating governmental burdens or benefits. An "individualized process" is one in which government officials make an "individualized . . . assessment of the reasons for the relevant conduct" and thus of a person's

³⁸ Note, Harvard Law Review Association, *The Best of a Bad Lot: Compromise and Hybrid Religious Exemptions*, 123 Harv. L. Rev. 1494, 1494-95 (2010). See footnote 1: "The Court also distinguished *Sherbert* and its progeny as having involved an existing mechanism for making individual exceptions, which the state could not constitutionally use to grant exemptions for secular but not religious reasons."

eligibility for a government benefit or exemption from a governmental burden.

In *Sherbert*, an otherwise eligible applicant for unemployment compensation would be disqualified if he or she had failed without “good cause” to accept “suitable work....” Thus, government officials reviewing applications for unemployment benefits were required to decide in each individual case whether an applicant’s reasons for terminating or refusing employment satisfied the “good cause,” “suitability,” or “fault” standards for eligibility.

Religious liberty is particularly vulnerable under these kinds of ad hoc, “individualized” schemes for allocating the ubiquitous burdens and benefits of life in the modern Regulatory-Welfare State. As Chief Justice Burger said about Thomas in his opinion in *Bowen v. Roy*, “to consider a religiously motivated resignation to be ‘without good cause’ tends to exhibit hostility, not neutrality, towards religion.” Moreover, ad hoc processes also risk denominational discrimination, because subjective determinations may be more likely to find “good cause” in familiar religions and “fault” in unfamiliar or minority faiths.³⁹ (*Citations omitted*)

As the SDA faith is well considered a religious minority, the individualization of the process of allotting entitlements and benefits does violence to the respect ought to be bestowed using the often overlooked rational persuasiveness of *Sherbert*. As such, invoking the case must be guarded vigilantly so that its true intendment and efficacy will be enjoyed in favor of religious freedom, liberty, accommodation, and tolerance.

Another potential problem in assessing the legal and moral influence of *Sherbert* touches on the notion of equal liberty and the problem of indeterminacy. Lund explains his take on the case:

Sherbert is a core case for Equal Liberty; Eisgruber and Sager [arguing for the State of South Carolina] frequently return to it as a prime example of what Equal Liberty requires. *Sherbert* involved a Seventh Day Adventist who was fired for not working on Saturday, her Sabbath. South Carolina prohibited workers from being fired for taking off Sundays, but offered no protection to people whose Sabbath was Saturday. Eisgruber and

³⁹ Richard Duncan, *Free Exercise and Individualized Exemptions: Herein of Smith, Sherbert, Hogwarts, and Religious Liberty*, 83 NEB. L. REV. 1178, 1186-87 (2005).

Sager consistently treat *Sherbert* as a simple case of outright discrimination in favor of Sunday observers and against Saturday observers, calling it "a classic instance of a failure of equal regard" and "a paradigm of the failure of equal regard." Of course, if Equal Liberty controls for size, then *Sherbert* should have been a clear victory for South Carolina. After all, it is a simple fact that there are far more Sunday observers than Saturday observers. Thus, if the Sabbatarians are only entitled to the regard of an equivalently small mainstream group, it makes perfect sense that South Carolina would still choose to only accommodate Sunday observers—for the simple reason that there are far more of them demanding accommodation. Clearly Eisgruber and Sager did not intend for South Carolina to be able to defend their action like this, and so it seems doubtful that Equal Liberty's counterfactual controls for size in this way.

But ultimately, regardless of whether Equal Liberty controls for size, it faces serious issues. If Equal Liberty does not control for size, its circularity seems to ensure that no exemption will ever be denied. If Equal Liberty does control for size, it means that the most attractive components of the theory simply disappear. The purpose of the counterfactual inquiry is to defend against the "substantial risk that governmental actors, even while bearing no animus toward minority religious believers, will ignore, undervalue, or implicitly denigrate their deep, religiously motivated concerns." But if Equal Liberty only gives small religious groups the regard given to other equivalently small groups, then it provides fairly little protection at all against that risk.⁴⁰ (*Citations omitted*)

Therefore, exemption in favor of a Sabbath observer can best be viewed as a special protection in order for the right of day of rest to be appreciated fully. This does not mean that all events and opportunities lie in favor of Sabbath-keepers, as may be apparent from a qualification of "Equal Liberty" and according special protection to their right. It is rather the opposite: as a religious minority, they are severely burdened to assert and convince public opinion that their belief is sincere and wanting accommodation in our civic affairs. Likewise, the Church is required to open a willing stance were their right to day of rest be accommodated. It may be deemed open to remedial efforts so as to make up for whatever consideration is due them, so long as they are able to observe their Sabbath. In so doing, a *quid pro quo* approach is more realistic and egalitarian.

⁴⁰ Christopher Lund, *Exploring Free Exercise Doctrine: Equal Liberty and Religious Exemptions*, 77 TENN. L. REV. 351, 367-68 (2010).

The issue on the protection of the right to equal opportunity and reasonable classification guarantees against discrimination now arises. As a counter-argument to Sabbath-keepers' right to day of rest, like unemployment compensation in the case of *Sherbert*, those arguing against granting protection to Sabbath-keeping posit that any discrimination implicit in affecting the right of a believer to her day of rest is merely incidental and does not violate the equal protection clause. A note on this sort of persuasion thus states:

Constitutional objections to a denial of benefits to sabbatarians have been rather cursorily dismissed by the courts. In light of the Sunday Law Cases, there would appear to be no interference with the free exercise of religion; claimant has not been forced to violate her sabbath. And while the Sunday laws put sabbatarians to a choice between economic welfare and their observances by the threat of criminal sanctions, the present claimant is threatened with no more than the denial of temporary compensation - seemingly a weaker case. Nor does her equal protection argument, that she is denied benefits solely because she belongs to a minority religious group, seem much stronger. So long as discrimination is merely incidental to a legitimate legislative classification, and is not an easily avoidable consequence, it should not be held a denial of equal protection. Limiting unemployment compensation to those who are idle at least partially as the result of the failure of the economy to furnish sufficient jobs would seem to be a sufficiently reasonable classification to justify incidental discrimination against sabbatarians⁴¹. (*Citations omitted*)

On its face, giving special protection to the Church would seem that there is a violation of the well regarded right of equal protection. A deeper analysis of the rationale and the nature of the purported exemption in their favor, however, mitigates the unfounded fear of unbridled discrimination. In the first place there is a fine distinction between the cause of the majority (society *en masse*) and the cause of such religious minority (the Church). Protecting the majority remains the status quo should there be no action and the law in question will not consider other individuals of a different persuasion. What has to be proven if ever is why and how a sincere and established religious minority that stands to be injured or aggrieved were the law to be indiscriminately applied. Hence protecting and

⁴¹ Note, Harvard Law Review Association, *Unemployment Compensation. Sabbatarian's Refusal of Saturday Work Renders Him Unavailable for Work and Constitutes Failure to Accept Suitable Work without Good Cause. Sherbert v. Verner* (S. C. 1962), 76 HARV. L. REV. 4, 854, 857 (1963).

respecting the Church's Sabbath and their right to day of rest will release the burden off them, whilst the majority does not face any perceived disincentive to distinguish the minority's special case. The libertarian concept of fairness is not compromised by giving special protection to a religious minority that stands to suffer discrimination itself should hardly anything be ever done.

Even though other cases have not directly touched upon the Sabbath day of rest being Saturday as did *Sherbert*, they also shed some considerable light on Sabbath-keeping and how the law is taken to mean by U.S. courts. They provide additional insight towards a better understand of the right to observe Sabbath. I will now discuss other cases which can possibly enlighten issue on the Sabbath's legal justification.

2. OTHER U.S. CASES ON RELIGIOUS LIBERTY

On a side note, the following cases may not directly (like *Sherbert*) address an SDA's right to observe Saturday as day of rest. Still they add considerable force and vigor to command respect and deference to allow Sabbath-keepers to worship according to their religious conviction. In other words these cases highlight the distinctive accord given to religious liberty and the courts' recognition that freedom of religion is a cherished right in our constitutional order. Again the assumption is that the desired goal is to resolve the issue which if so will inure to the benefit of a potentially aggrieved religious minority. Yet at the same time the broad right of the majority neither to be discriminated against nor withheld equal protection must not be compromised in the course of giving any special protection.

a. *Minersville v. Gobitis*⁴²

Here, two children belonging to the Gobitis family were expelled from the public schools of Minersville for refusing to salute the American flag during regular school ceremonies. The Gobitis's family were members of the Jehovah's Witnesses,⁴³ a Christian sect which enjoins their members not to pledge allegiance to anyone or anything other than their God. Ultimately the U.S. Supreme Court

⁴² 310 U.S. 586 (1940).

⁴³ They are also considered a religious minority worldwide, as do the SDA Church.

ruled in favor of *Gobitis*. Justice Frankfurter delivering the opinion of the Court wrote: "A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties." Thus, "the process may be utilized so long as men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully respected." Here the Court upheld their right to religious liberty by not allowing state compulsory education laws to incidentally trample upon their personal conscience.

On its jurisprudential value to the issue of the Sabbath, *Gobitis* adds to the collective recognition of respecting a believer's faith in keeping with the religious freedom principle of the free exercise clause. Relating this ruling to a Sabbath-keeper's right to day of rest, the act of refusing to salute the flag compares innately similar to the act of refusing to work on a Saturday as the Sabbath day of rest. Thus, *Gobitis* may be so interpreted to augment the persuasive force of the Sabbath argument in favor of Sabbath-keepers.

b. *Wisconsin v. Yoder*⁴⁴

In this case, members of the Amish religion were held liable for violating Wisconsin's law requiring compulsory school attendance for children below 16. They argued that their community provides informal vocational education to their children in accordance with the Amish faith. In the end the U.S. Supreme Court sustained their claim that the Wisconsin law violated their religious freedom rights. The Court noted that enforcement of the compulsory education law would "gravely endanger if not destroy the free exercise of their religious beliefs." Besides, the Amish had shown sincerity in following their religion. Thus it was "incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. That it has the "power as *parens patriae* to extend the benefit of secondary education to children regardless of the wishes of their parents cannot be sustained against a free exercise claim of the nature revealed...."

⁴⁴ 406 U.S. 205 (1972).

This is another case held in favor of recognizing the legal rationale of the right to observe Sabbath. The element of sincerity considered in favor of Yoder can be used as a standard to see who the genuine and good-standing believers are. It functions as a quality control mechanism that segregates the sincere from those who may be perfunctorily professing their faith. It is conceded that religious freedom, as any other right, becomes prone to abuse when there is no benchmark used to determine who deserves to avail of the right. Applied to the issue of right to day of rest, Sabbath-keepers have the burden to prove that they are sincere in their belief by showing membership in good-standing and consistency in observing the Sabbath ordinance. Thus it necessarily upgrades the quality of the sincere members of the Church and gives a legitimizing factor to the right when it is invoked before the courts and other offices.

*c. Lemon v. Kurtzman*⁴⁵

In *Lemon*, the U.S. Supreme Court considered two statutes by Pennsylvania and Rhode Island which provided aid to religious (predominantly Catholic) schools. School teachers were teaching secular, not religious, topics. The Court held that providing direct aid to private religious schools violated the Establishment Clause of the First Amendment by way of the Fourteenth Amendment of the U.S. Constitution. The primary contribution of this case which was used to strike down the school provision laws is what is now known as "The Lemon Test":

The Supreme Court unanimously found that providing direct aid to private religious schools violated the Establishment Clause. By aggregating factors considered in *Engel* and *Walz*, the Court fashioned a three-part test, now commonly known as the Lemon test, to determine whether the government has violated the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'" If a government action fails any of the three prongs, it is unconstitutional⁴⁶. (*Citations omitted*)

⁴⁵ 403 U.S. 602 (1971).

⁴⁶ Josh Blackman, *This Lemon Comes as a Lemon: The Lemon Test and the Pursuit of a Statute's Secular Purpose*, 20 GEO. MASON U. CIV. RTS. L.J. 351, 356 (2010).

To reiterate, the Lemon Test provides three conditions to determine whether there is a violation of the non-establishment clause:

- (1) the law must have a secular legislative purpose;
- (2) it must neither advance nor inhibit religion; and
- (3) it must not foster excessive entanglement with religion.

Even though this case harps more on the establishment prong of the religious freedom twin clauses, these conditions may also apply to the case of the SDA Church's right to the Sabbath. The point being is that principles on religious liberty are all based on the primary consideration, simply put, that one's religion must be respected in a way that is fair, equitable, and just. The Lemon test can be used to assess a particular law or issuance which may affect a believer's right to observe Sabbath, say when an employment law requires her to work on a Saturday, or a school policy mandates, without any due consideration to religious minorities, a classroom session or an examination on a Saturday. The law may be deemed to have a non-secular legislative purpose when the religious majority is favored and the right to day of rest of a religious minority is denigrated. Equal opportunities must be given to all, regardless of religious belief. Otherwise, having a sectarian legislative purpose, which most often advances or inhibits religion and fosters its excessive entanglement, will negate the accommodation sought after of those needing it the most.

One may argue that the choice is made by the Sabbath-keeper, and that no one forces the believer not to participate in a secular activity on a Saturday. However, sincerity of belief, willingness to take alternatives which must preserve the sanctity of the Sabbath, and the overall societal goodwill of allowing religious minorities to pursue their moral convictions lean toward the accommodative stance that the Church morally deserves. A proper standard by way of a reliable test can be utilized to achieve the said purpose. Precisely giving special protection by fiat of law to a sincere religious minority would fill in that perceived void in the law.

d. The U.S. Sunday Law Cases

There are a number of cases in the past where U.S. courts were faced with the dilemma of whether they have to invalidate laws prohibiting any work on

Sunday, the traditional rest day of Roman Catholicism as the majority sect in the Christian religion. These cases come into contact, often violent, with the Sabbath of the SDA Church, which in contrast is Saturday. The contesting rights of different days of rest of different Christian religions provide an interesting take on how religious freedom clauses are applied in such contending moral-legal interests.

One particular instance was during the late 19th century when Sunday Laws were strictly enforced much to the detriment of SDA believers. A specific tussle with the enforcement of Sunday Laws was experienced by the family of Ellen White. The fact of intolerance to and persecution of religious minorities at that time was telling:

By the early 1880s some Americans had come to see Seventh-day Adventists as “problems” in the drive to protect “the Lord’s day” [i.e., Sunday]. The conflict began to heat up in 1882 when local California authorities arrested W.C. White, the youngest son of James and Ellen, for operating the Pacific Press on Sunday. By 1885 Adventists were being arrested in Arkansas, and by 1888 the problem had spread to Tennessee and other states. In the next few years some Adventist ministers served on chain gangs with common criminals. Their crime: Sunday desecration.⁴⁷

I am morally convinced that that period must have been a difficult period for the Church. But the members’ sincerity and resolve to assert their right had withstood the test. How the U.S. Sunday Laws further enhanced their mettle to deal with the law used against them is highly illustrative of the uncompromising importance given to the Sabbath. These Sunday law cases, comparing American and Canadian jurisdictions, have been analyzed in this wise:

A comparison of *Robertson v. The Queen* with the American Sunday Closing Law Cases is striking not only because of the similarity of the results in the cases, but also because of the similarity in doctrinal approach. One can take the view that this unity in method and result indicates that American constitutionalism is having a very great impact on the Supreme Court of Canada. This impact would be remarkable in view of the great structural differences in the constitutionalisms of the two countries. A more intriguing, although unprovable, conclusion would be to say simply that, in an area such as Sunday legislation, commonly shared social attitudes are more important than constitutional principles.

⁴⁷ GEORGE KNIGHT, A BRIEF HISTORY OF SEVENTH-DAY ADVENTISTS, 2ND ED. 87 (2004).

A further observation that can be drawn from this short study is that judicial analysis in both countries rejects an interpretation conceding religious motivation for Sunday legislation at the precise point at which acceptance would require invalidation of the legislation. In Canada we are told purpose and effect must be distinguished. The purpose of the Lord's Day Act is concededly religious, but we are assured the effect is entirely secular. In the United States, rejection of a theory of religious motivation begins at an earlier stage and both purpose and effect are held to be predominantly secular. The similarity in result reached suggests that the prevailing judicial tests for measuring whether Sunday legislation offends religious freedom are rather clearly expeditious.⁴⁸

That the result for both jurisdictions came rather expeditiously shows that even though the debate itself may be grueling, the values and social norms that come into play are clear and unequivocal. By saying "judicial analysis in both countries rejects an interpretation conceding religious motivation for Sunday legislation," Barron argues that having Sunday as the day of rest to be respected denies invalidation. Even if religious motivation is discounted in the case of Sunday Laws, that Saturday stands to be respected with a religious flavor does not always mean that such interpretation of the law accommodates Sabbath-keeping must be invalidated. The focus should be more on allowing the Sabbath-keeper to avail of opportunities as a citizen, and incidentally being able to exercise her religious profession. Such approach of religious liberty and accommodation will be more advantageous in the long run when a religious minority's view is respected, which will necessarily trickle down to the majority's benefit as well.

There is another cogent example of the legal struggle of the Church in the past. In 1885 five Adventists were arrested in Arkansas. Convicted by the court, they chose to accept jail terms instead of fines as a means of focusing public attention on the situation.⁴⁹ In 1886 an Adventist press began publishing a new monthly, *The American Sentinel*, to champion the cause of religious liberty. In July of 1889 Adventist leaders in Battle Creek founded the National Religious Liberty Association. Despite such efforts, over the next ten years more than a hundred of their fellow believers were to be prosecuted for violation of Sunday laws. At one

⁴⁸ Jerome Barron, *Sunday in North America*, 79 HARV. L. REV. 1, 42 (1965).

⁴⁹ I suppose this was a way for the early church to proselytize their belief. In any case, their motive does not detract from the probity of their legal right to their conscience and their Sabbath.

point, eighteen Seventh-day Adventists served together at forced labor on a Tennessee chain gang.⁵⁰

Later on the U.S. Sunday laws were struck down for constitutional infirmity under the First Amendment. The Church was redeemed of their right to religious liberty. The believers were jailed for the sake of their tenacious stand for their faith. In this scenario, one can readily see that a religious minority like the SDA Church either continues to deal with the status quo, or worse its right to observe the Sabbath may not be respected. It does not stand to gain from invoking its right to day of rest. Thus it cannot be argued that any member of the Church may invoke this right for her own convenience, pleasure, or whim. Adding to the standard of requiring sincere belief, societal relations between the state and the believer and private matters between an individual and a believer cannot be considered as impaired or made troublesome with the respect accorded to the Sabbath.

Later in this work, the doctrinal value of U.S. pronouncements in *Sherbert* and other cases resolving religious issues can be used to assess the constitutionality of an action affecting an SDA's right to day of rest. In the meantime, I will now zero in on religious liberty cases in Philippine jurisdiction.

B. PHILIPPINE JURISPRUDENCE

Similar to the U.S. jurisdiction, Philippine courts also had the opportunity to deal with some cases on religious freedom. Albeit no case yet has reached the Supreme Court directly tackling the issue on the right of a Seventh-day Adventist to observe Saturday as their day of rest, the following cases can be provide a profound contribution to the Sabbath issue. This must be considered in the light of the guiding decisions that the U.S. has set as a persuasive legal basis that Philippine courts may have chosen to follow.

U.P. Law Dean Raul Pangalangan has commented on the U.S. decisions' application to the local setting. He has aptly described the phenomenon as "transplanted constitutionalism" in this wise:

⁵⁰ Termed as "Adventist Chain Gangs," many SDA members were persecuted for their observance of Saturday as day of rest during the period when Sunday laws were imposed. See DAVE FIEDLER, HINDSIGHT: SEVENTH-DAY ADVENTIST HISTORY IN ESSAYS AND EXTRACTS 90-91 (1996).

The Philippines borrowed American doctrine on the separation of Church and State, and codified the Free Exercise and Establishment clauses into its Constitution. Yet, this hundred-year old constitutional experiment has yielded different results, because these doctrines, born out of a religiously pluralistic community, were being applied to a nation that is predominantly Roman Catholic, whose hierarchy has close ties to a feudal-minded elite, and which historically has played a decisive role in its secular politics.⁵¹

Thus, one must consider such inherent difficulty of applying U.S. legal principles to our setting. Having that in mind, the application of U.S. cases for the purpose of guiding Philippine jurisprudence must be approached with this caveat.

Another possible issue on how the conflict between church and state is approached by different jurisdictions like that of the U.S. and the Philippines is the variation of values imbued in each society. Levine on this point concludes that:

Freedom of religion is a concept that has evolved in each nation to reflect its particular cultural and societal ideals. Each nation's ideologies have been tailored by the cultural model its citizens believe they can associate with. Such ideologies have also developed based on the country's evolving cultures. Laws regarding the freedom of religion are merely an organic reflection of what the people of each country feels is most important to their national identity.

Many in the United States strongly feel there should be a social freedom and ideology that people should be able to hold and express their own beliefs. Such a concept is not commonly shared by the people of foreign nations. What must be noted is that there is no right or wrong; one cannot find answers for its nation within another culture, nor can one view another nation's policies as flawed. Systems of government simply follow what is best for their people, forming laws that fit snugly into the nation's social schema.

⁵¹ Raul Pangalangan, *Transplanted Constitutionalism: The Philippine Debate on the Secular State and the Rule of Law*, 82 P.L.J. 3, 1, 1 (2008), citing The CIA World Factbook page on the Philippines, available at <https://www.cia.gov/cia/library/publications/the-world-factbook/geos/rp/html> (last visited 1 May 2008). The breakdown is as follows: Roman Catholic, 80.9 %; Muslim, 5%; Evangelical, 2.8%; Iglesia ni Kristo, 2.3%; Aglipayan, 2%; other Christians, 4.5% (to which the SDA Church belongs); others, 1.8%; unspecified, 0.6%; none, 0.1%. This was based on a 2000 census which I last visited 1 April 2011. See also Florin Hilbay, *The Establishment Clause: An Anti-Establishment View*, 82 P.L.J. 24, 25 (2008). At the moment, the Philippine population in 2010 is estimated at 94 million.

Much like a religion, a government can function only if its people have faith in its laws.⁵²

Having considered these limitations in cross-border application of judicial pronouncements and principles set by case law, still some landmark Philippine cases can help in the endeavor to find the legal justification recognizing the Sabbath as day of rest. While I discuss the cases, I will also intersperse my reflection on how these cases made an impact to the Sabbath issue at hand.

1. *Estrada v. Escritor*⁵³

This is an administrative case where an employee of a Regional Trial Court of Las Piñas City was charged for immorality, a ground to dismiss a government employee. She cohabited and bore a child from someone not her legal husband. She invoked her membership in the Jehovah's Witnesses denomination. She reasoned that her behavior did not violate her religious beliefs when she had executed a document called "Declaration of Pledging Faithfulness" where she can enter into a relationship as if she was married.

The Philippine Supreme Court through then Chief Justice Reynato Puno as *ponente* ruled that since she was a sincere member of their denomination, and it is not considered immoral to engage in their marital arrangement, the administrative charge was dismissed. The theory of "benevolent neutrality" allowed those following their religious conviction to carve an exception from legal injunctions and policies. The Court noted that "[r]ecognizing the religious nature of the Filipinos and the elevating influence of religion in society, however, the Philippine constitution's religion clauses prescribe not a strict but a benevolent neutrality. Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits."

In this case, the case was remanded to the Office of the Court Administrator, and the Solicitor General was ordered to intervene to:

⁵² Mark Levine, *The Modern Crusade: An Investigation of the International Conflict Between Church and State*, 40 CAL. W. INT'L L.J. 33, 53-54 (2009).

⁵³ A.M. No. P-02-1651, August 4, 2003. Resolution on June 22, 2006.

- (a) Examine the sincerity and centrality of respondent's claimed religious belief and practice;
- (b) Present evidence on the state's "compelling interest" to override respondent's religious belief and practice; and
- (c) Show that the means the state adopts in pursuing its interest is the least restrictive to respondent's religious freedom.

However, upon a motion for reconsideration, the right to religious freedom of the woman was upheld by using the doctrine of "benevolent neutrality" as its basis.⁵⁴ This case has been consistently viewed as the single case that heavily favors religious freedom and liberty. The Court has carved out an accommodative exception in favor of the woman who professed her sincere belief. Thus such approach can be used in giving due respect to doing work, study, or play during Saturday in the case of Seventh-day Adventists. Their right to observe their day of rest can be seen as a sincere observation of their belief. And these concessions were proven to be legally justifiable by jurisprudential fiat of the Philippine Supreme Court.

2. *Gerona v. Secretary of Education*⁵⁵

This is the counterpart of the *Gobitis* case in the U.S., as localized in the Philippines. Students who were members of the Jehovah's Witnesses sect refused to salute the flag, sing the national anthem, and recite the patriotic pledge in contradiction to an order of the Department of Education. The Philippine Supreme Court ruled against Gerona, ratiocinating that: "After all, the determination of whether a certain ritual is or is not a religious ceremony must rest with the courts. It cannot be left to a religious group or sect, much less to a follower of said group or sect." The Court noted that were it to be ruled otherwise, "there would be confusion and misunderstanding for there might be as many interpretations and meaning to be given to a certain ritual or ceremony as there are religious groups or sects or followers, all depending upon the meaning which they, though in all sincerity and good faith, may want to give to such ritual or ceremony." The Court also found that there was nothing objectionable, even

⁵⁴ JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 345 (2009).

⁵⁵ 106 Phil. 2 (1959).

from a religious point of view, of saluting the flag, singing the anthem, or reciting the pledge.

However, the distinguished constitutionalist Father Bernas took some points of exception from this case. He noted that:

...but what made the compulsion objectionable was the fact that it touched upon conscience. It was a question of weighing freedom of conscience against the dubious patriotic value of a compulsory flag ceremony....And when the flag salute is made a test for determining whether a child has a right to enjoy the benefit of a free public education, the question that must be answered is whether the test is legitimate. The Court defends the legitimacy of the test by saying that it is not a religious test because flag ceremony is a purely civic ceremony. Thus, the argument goes back to whether the Court is competent to decide whether a given ceremony is religious or not. If it is competent, what norm may the Court use and who will determine the norm?"⁵⁶

The ruling of the Supreme Court may be deemed on its face disadvantageous to the cause of religious liberty. However, as Bernas had ably pointed out, the Court may have possibly arrogated to its jurisdiction the competence to determine what is religious and what is not. That the State must be secularist is not an all-encompassing principle which then does violence to certain valid principles underlying religious freedom. How the Court should have decided was through the use of the lens of the believer, the sincere individual, whose conscience was at issue. The overall effect to the larger society must also be considered, but not to the far extent of trampling religious minority rights merely because they comprise a lesser number in society.

3. *Ebralinag v. Division Superintendent of Schools of Cebu*⁵⁷

The proponents of religious liberty did not have to wait long for their movement to be vindicated. The Court in this case reversed *Gerona*, and upheld the right to freedom of religious worship and profession by allowing them to refuse saluting the Philippine flag. Here the Supreme Court held (and rightly so) that: "upholding religious freedom as a fundamental right deserving the "highest

⁵⁶ *Supra* note 77, at 342.

priority and amplest protection among human rights,” this Court...re-examined our over two decades-old decision in *Gerona* and reversed expulsion orders made by the public respondents therein as violative of both the free exercise of religion clause and the right of citizens to education under the 1987 Constitution.” The highest Court ruled that “freedom of religion requires that protesting members be exempted from the operation of the law.”⁵⁸ Accordingly, such exemption is a hallmark of accommodation that the Court further observed:

The responsibility of inculcating the values of patriotism, nationalism, good citizenship, and moral uprightness is a responsibility shared by the State with parents and other societal institutions such as religious sects and denominations. The manner in which such values are demonstrated in a plural society occurs in ways so variable that government cannot make claims to the exclusivity of its methods of inculcating patriotism so all-encompassing in scope as to leave no room for appropriate parental or religious influences. Provided that those influences do not pose a clear and present danger of a substantive evil to society and its institutions, expressions of diverse beliefs, no matter how upsetting they may seem to the majority, are the price we pay for the freedoms we enjoy.

It must be noted that this decision is still good law as of the time of this writing.

At the end of the day, I argue that the interplay of these cases towards a theme on religious liberty leans in favor of giving respect to the right to freedom of religion. The substantial arguments favoring the established superiority of religious liberty in the hierarchy of constitutional values are more sound and sustainable in a democratic, freedom-loving society which embraces and accommodates its minority. Yet the U.S. and Philippine cases consistently show that the welfare of the majority and the secularist interest of the public must be factored in to come up with a reasonable resolution of competing constitutional rights. Thus courts are hard pressed to balance the often secular rights (like property interests) of the majority and the religious liberty rights of the minority (like the Sabbath imperative of the SDA Church). Decisions on religious freedom must seek the harmonization of various, often competing, particularistic legal interests. I will now proceed to tackle some issues that straddle the debate on religious liberty.

⁵⁷ 219 SCRA 256 (1993).

⁵⁸ *Supra* note 77, at 342.

V. EMERGING ISSUES: POTENTIAL CONFLICT BETWEEN COMPETING CONSTITUTIONAL RIGHTS

Now that the U.S. and Philippine cases on religious freedom have established the principle to be used in acknowledging and respecting the Church's right to observe Saturday as day of rest, the complex issues to be resolved should then be capable of reasonable (rather than merely religious-cum-moral) resolution. Between the right to religious freedom of SDAs in observing Sabbath and the right of employers to property, educational institutions to academic freedom, and the state to police power, relevant constitutional laws must be juxtaposed so as to harmonize these contesting constitutionally guaranteed rights. For the purpose of emphasis, they are as follows:

Article II- Declaration of State Policies and Principles

Section 6. The separation of Church and State shall be inviolable.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

Section 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

Article III- Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

With such fundamental legal precepts refreshed in mind, the question now is: when is an action, either by a public or a private party, considered constitutional in the face of a potential conflict with an SDA's right to observe the Sabbath as their day of rest? The plausible answer can only come from a delicate balancing act:

Thus, the judicial task in free exercise cases is one of balancing the secular interest of the state with the interest of religion. How is this balancing act to

be performed? On the basis of an analysis of existing cases, one author suggests a formula: "A thorough-going balancing test would measure three elements of the competing governmental interest: first, the importance of the secular value underlying the governmental regulation; second, the degree of proximity and necessity that the chosen regulatory means bear to the underlying value; and third, the impact that an exemption for religious reasons would have on the over-all regulatory program. This assessment of the state's interest would have to be balanced against the claim for religious liberty, which would require calculation of two factors: first, the sincerity and importance of the religious practice for which special protection is claimed; and second, the degree to which the governmental regulation interferes with that practice."⁵⁹

As can be gleaned in the cases of *Gerona* and *Ebralinag* in the foregoing discussion, "what the cases do illustrate is that there is a need for a delicate balancing of legitimate interest of the state in the education of the young and the equally legitimate interest of parents in the religious upbringing of their children."⁶⁰ Thus as earlier stated there is a need to balance state and individual interests so as to afford the proper respect to relevant public and private rights and obligations. Now when is an action deemed constitutionally valid?

A. YARDSTICK FOR TESTING THE CONSTITUTIONALITY OF AN ACTION

To measure whether or not a particular law, policy, or measure meets the constitutional demands to protect and respect religious freedom in general and right to day of rest in particular, one has to consider the two specific aspects of religious liberty:

- (a) Right to believe, which is absolute, and
- (b) Right to act according to one's beliefs, which is subject to regulation."⁶¹

The case of *Estrada v. Escritor* as discussed above gives a very important standard implicit in what is termed the "compelling State interest test":

⁵⁹ *Supra* note 77, at 331, citing Gianella, *Religious Liberty, Non-establishment, and Doctrinal Development: Part I, The Religious Liberty Guarantee*, 80 HARV. L. REV. 1381, 1390 (1967).

⁶⁰ *Id.*, at 343.

⁶¹ ANTONIO NACHURA, OUTLINE REVIEWER IN POLITICAL LAW 162 (2009).

Recognizing the religious nature of the Filipinos and the elevating influence of religion in society, the constitution's religion clauses prescribe not a strict but a benevolent neutrality. Benevolent neutrality recognizes that government must pursue its secular goals and interests, but at the same time, strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interest. In applying the test, the first inquiry is **whether respondent's right to religious freedom has been burdened**. There is no doubt that between keeping her employment and abandoning her religious belief and practice and family on the one hand, and giving up her employment and keeping her religious belief and practice and family on the other, puts a burden on her free exercise of religion. The second step is **to ascertain respondent's sincerity in her religious belief**. Respondent appears to be sincere in her religious belief and practice, and is not merely using the "Declaration of Pledging Faithfulness" to avoid punishment for immorality.⁶² (*Emphases supplied*)

Thus, the constitutional test for state action is two-fold:

1. Whether right to religious freedom is burdened, and
2. Whether sincerity in religious belief is ascertained.

The above rationale for challenging state action for being violative of the free exercise clause also applies to the case of a Seventh-day Adventist, that is, whether the right to observe the Sabbath is burdened, and whether sincerity in such belief is ascertained. Applied accordingly, the first inquiry is: was the right to observe Sabbath violated? The second inquiry follows: was the one invoking the observance of the Sabbath sincere in her belief? If the answer for both these questions are in the affirmative, then the compelling state interest test requires that such action be invalidated. The test aptly gives due respect to the cherished religious liberty which the courts should act as a sentinel providing special protection.

Such test that was used to determine the constitutional validity of any state action has also been discussed in the case of *Iglesia ni Kristo v. Gironella*.⁶³ This

⁶² *Supra* note 85, at 163.

⁶³ 106 SCRA 1 (1981).

involves the actuation of a judge who referred to the business of the members of the petitioners as "gimmickry." The Court admonished the respondent judge for violating the free exercise clause of the members of the *Iglesia*. The Court went further: "Freedom of religion implies respect for every creed. No one, much less a public official, is privileged to characterize the actuation of its adherents in a derogatory sense." Another case, *Iglesia ni Kristo v. Court of Appeals*⁶⁴, concerned the ban by the Board of Review for Moving Pictures and Television on the ground that the *Iglesia*'s television program attacks and discredits other religions which was expressly prohibited by law. The Supreme Court gave a guideline for testing State action whether they are constitutional or not, which states the standard for police power of the State:

The Court iterates the rule that the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, i.e. serious detriment to the more overriding interest of public health, public morals, or public welfare.... For sure, we shall continue to subject any act pinching the space for the free exercise of religion to a heightened scrutiny but we shall not leave its rational exercise to the irrationality of man. For when religion divides and its exercise destroys, the State should not stand still.⁶⁵

To extend the argument further, I also argue that the test for state acts may also be applied by analogy to private actions since the object of protection is not associated with the doer of the act, but more of the receiver of the protection. In other words, the rights of SDA members are the focal point of concern. However, the guarantees in the Bill of Rights can be invoked primarily against the State. Only when private actors do so as agents of the government can the protection of rights be used as a test to validate private action using state constitutional tests.

B. THE STATE'S PLENARY POLICE POWER VS. THE CHURCH'S RELIGIOUS FREEDOM

The State possesses the monopoly to exercise police power, the most essential of sovereign functions. Police power has been defined as the "power of

⁶⁴ G.R. No. 119673, July 26, 1996.

⁶⁵ See *supra* note 77, at 338.

promoting public welfare by restraining and regulating the use of liberty and property. [It is] the most pervasive, the least limitable, and the most demanding of the three [fundamental] powers, [together with eminent domain and taxation].⁶⁶

A case in point is *People v. Fabillar*⁶⁷ which involved a law granting the power to the Director of the National Library to assess and decide whether or not a particular belief of an applicant for a license to solemnize a marriage operates within Philippine jurisdiction and is “in good repute.” It was challenged as violative of the free exercise of religion as it gives a blanket authority to the Director to determine who will be granted a license based on religious grounds. Bernas notes in this case, considering the State’s inherent police power, that “the Court defended the statute as merely an instance of the exercise of police power. The power given by the statute, according to the Court, was not a power to inquire into the organization or doctrine of a particular religion but merely a power to distinguish between legitimate religions and mere marriage agencies posing as religion and exploiting the public.” However, he goes on to give a concession with regard to “good repute” as the standard used: “With such a vague standard, it is so easy for a bureaucratic functionary to measure good reputation in terms of locally accepted standards of religious orthodoxy.”⁶⁸

However, like all powers, police power is subject to limitations. The tests for valid exercise involve: (a) lawful subject (or the public interest in general, and not of that of a particular class), and (b) lawful means (such as reasonably necessary to accomplish the public purpose, and not unduly oppressive).⁶⁹ As such, when the state justifies not granting a member of the SDA Church the protection of her religious right to Free Exercise, it may not be rationalized under means that are lawful as necessarily, it will impinge or oppress unduly the rights of the SDA faithful. Police power must give way to the religious freedom concerns of SDAs who are sincere in their belief, and the exercise of observing their rest day does not run counter to the State’s duty to promote general welfare.

⁶⁶ *Supra* note 35, at 48.

⁶⁷ 68 Phil. 584 (1939).

⁶⁸ *Supra* note 77, at 334.

⁶⁹ *Id.* at 51-52.

C. LABOR ISSUE: THE STANDARD OF UNDUE HARDSHIP TO THE EMPLOYER

With regard to any issue on employment, say when an SDA member is forced to require by a company policy or a particular labor law, Birnbach makes this conclusion:

Accommodation of a religious employee requires a balancing of interests....[C]ourts often inject the interests of the religious employee's coworkers into the balance. Although it is understandable that...courts are uneasy about allowing a religious employee to be accommodated at the expense of her coworkers, incorporating notions of fairness has led to uncertainty of expectations about what sorts of accommodations are required. Therefore, it seems beneficial to employ an adjudicative framework that takes into account severe discriminatory treatment on coworkers yet still provides adequate protection for the religious observer's needs. It may be argued that this framework obviates any protection from serious, although not severe, discriminatory treatment for the nonreligious employee.... Differential treatment of religion-observing employees not only affords them equal access to employment but also encourages integration and interaction between religious groups in the workplace, a value that should be paramount in our religiously diverse society.⁷⁰

On the same point, Lupu comments in this wise:

[The] free exercise clause, as construed by courts for the past quarter-century, has imposed a stringent requirement of justification upon the state for harm that it inflicts upon religiously motivated action. As the law now stands, a prima facie case of a violation of the clause exists whenever government policy creates a burden on a sincerely held religious conviction. If such a case is made, the government will prevail only if it proves that a favorable response to these claims and others like them would substantially undermine government interests of unusual importance. This constitutional standard can be quite protective of religion, although courts have not always employed the standard with full rigor.

One question upon which little attention has been focused, however, is the character of government activity necessary to constitute a 'burden.' Before courts ever reach the rigorous standard of review

⁷⁰ Rachel Birnbach, *Love Thy Neighbor: Should Religious Accommodations that Negatively Affect Coworkers' Shift Preferences Constitute an Undue Hardship on The Employer Under Title VII?*, 78 FORDHAM L. REV. 1331, 1377 (2009).

appropriate to free exercise cases, they must be satisfied that the harm complained of falls within the boundaries of the clause. These boundaries could be constructed quite narrowly; for example, the ambit of the clause might be limited to criminal prohibitions on actions required by religious belief, and government-created compulsions to take actions forbidden by religious norms. At the other extreme, the scope of free exercise could be understood in the broadest possible sense, encompassing any government action that increases the expense, discomfort, or difficulty of religious life. Deciding what constitutes a burden on the free exercise of religion—that is, deciding where rights under the clause begin—will inevitably have profound consequences for other aspects of free exercise doctrine, and thus for the regime of religious liberty itself.⁷¹

Therefore, in the workplace, differential treatment in favor of religious minorities (according to Birnbach) will be reconsidered if and only if there is undue hardship on the employer. Any degree less than undue on the part of the employer must be held to be interpreted as construed in favor of the SDA worker. Likewise, as Lupu aptly remarks, there is a *prima facie* evidence of a constitutional violation of religious freedom rights when a burden is imposed on the sincere right to observe Saturday as day of rest. This means it is incumbent upon the employer to prove that such burden is not undue and the SDA worker continues to enjoy her right to day of rest despite the facially infringing company policy.

Actually, one government agency has taken a huge stride in accommodating the Sabbath belief of SDA members. The Church welcomes the issuance of Department Order No. 3, Series 2010 of the Department of Education (DepEd), entitled “Respecting the Constitutional Right of DepEd Personnel to Free Exercise of Religion.” Signed by Secretary Jesli A. Lapus on 8 January 2010, it advises undersecretaries, assistant secretaries, bureau directors, and all other DepEd personnel to ensure that “such constitutional rights of DepEd personnel are respected in the course of the regular operations of the Department.” Instrumental to the issuance of this administrative order is Representative Daryl Grace J. Abayon.⁷²

⁷¹ Ira Lupu, *Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion*, 102 HARV. L. REV. 933, 933-35 (1989).

⁷² Partylist Representative, Aangat Tayo. She is also a member of the SDA Church. As of this writing, she carries on the legacy of fighting for religious liberty in the Philippine public sphere, together with her husband, former Congressman Harlin C. Abayon.

The said department order is categorical in providing an accommodative stance to Seventh-day Adventist employees of DepEd. It expressly provides that: "specifically, in the case of DepEd personnel belonging to the Seventh-day Adventist Church, they should not be required to attend seminars, examinations, trainings and other professional development activities held on Saturdays since that day is their Day of Rest or Church Day in accordance with their religious beliefs."

Aside from an executive order's sound justification for the Sabbath's legal basis, employee rights can likewise be justified by the nature of the employer-employee relationship as a contractual tie which is imbued with public interest—thus, subject to the concomitant impact of other societal interests, like religion.⁷³ Religious conviction can actually be a "justifiable basis for classification for special treatment."⁷⁴ In the case of *Victoriano v. Elizalde Rope Workers Union*⁷⁵, the issue centers on a law which removes within the coverage of the closed shop agreement any employee who belongs to any religious denomination with a belief prohibiting membership in any labor union. A succinct summary of the Court's disposition is below:

It may not be amiss to point out here that the **free exercise of religious profession or belief is superior to contract rights. In case of conflict, therefore, the latter must yield to the former....** Religious freedom, although not unlimited, is a fundamental personal right and liberty, and has a **preferred position in the hierarchy of values.** Contractual rights, therefore, must yield to freedom of religion. It is only where unavoidably necessary to prevent an immediate and grave danger to security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger. (*Emphases supplied*)⁷⁶

Such preference accorded to freedom of religion adds to the normative value that the Sabbath may be grounded on. The SDA Church's persuasion to argue that Saturday is a constitutionally and statutorily

⁷³ The New Civil Code of the Philippines provides in art. 1700: "The relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good x x x"

⁷⁴ *Supra* note 77, at 337.

⁷⁵ 59 SCRA 54 (1974).

⁷⁶ *Supra* note 77, at 337.

defensible position as exhibited in the field of employment. Now, I will tackle the issue in the light of another contentious area: the dynamic between religion and academic freedom.

D. ACADEMIC ISSUE: INSTITUTIONAL AUTONOMY VIS-À-VIS RELIGIOUS TOLERANCE

Students, especially of tertiary level, belonging to the SDA Church often face problems on taking classes or examinations on Saturday. Sometimes there are students who are forced to take them, in violation of their religious beliefs, so that they may continue in school or graduate.

To redress the perennial debacle, one good example is the law sponsored by former Representative Harlin C. Abayon (First District, Northern Samar, 12th Philippine Congress) made possible also through his joint effort with Bienvenido V. Tejano, another prominent Adventist statesman.⁷⁷ This is found in Republic Act No. 8981, or the “Professional Regulation Commission Modernization Act of 2000” signed by former President Joseph E. Estrada on 5 December 2000. Section 7 of the said law on the powers, functions, and responsibilities of the Commission, provides an accommodative administration of professional examinations for Sabbath-keepers, in this wise:

*(d) To administer and conduct the licensure examinations of the various regulatory boards in accordance with the rules and regulations promulgated by the Commission; determine and fix the places and dates of examinations; use publicly or privately owned buildings and facilities for examination purposes; conduct more than one (1) licensure examination: **Provided, That, when there are two (2) or more examinations given in a year, at least one (1) examinations shall be held on weekdays (Monday to Friday): *Provided, further, That, if only one (1) examination is given in a year, this shall be held only on weekdays.*** x x x (*Emphasis supplied*)*

The law thus mandates that professional licensure examinations conducted by the Professional Regulation Commission (PRC) are to be offered on a non-Saturday. If two examinations are offered in a year, one of which must be

⁷⁷ Congressman Abayon is also an active member of the SDA Church and a staunch advocate of religious liberty, especially with regard to according respect to the right of observing a holy day of rest, in the Philippine legislature.

given on a non-Saturday. In so doing, SDAs will have the chance to take the licensure examinations in a year. This shows a good degree of favorable accommodation to the right of religious freedom and worship of SDAs in the country.

Many members of the SDA Church had not been able to take examinations in the past because there are instances when it is only given during Saturdays (e.g. the Certified Public Accountant professional examinations). Sometimes, due to the genuine sincerity of their belief, they have to wait for years for an opportune timing when an examination does not fall on their Sabbath. Thus, Adventists had been denied the opportunity to take it despite their avowed and sincere belief to day of rest. With the passage of the accommodative law, its members can now have at least the opportunity to take professional licensure examinations, and integrate into meaningful endeavors of social participation.

Actually, the DepEd order as mentioned above giving due respect to the Sabbath belief of SDA workers in the department was also extended to students. Department Order No. 105, Series 2010 of the Department of Education entitled “Reiterating the Constitutional Right of DepEd Personnel and **Students** to Free Exercise of Religion.” (*Emphasis mine*) Issued by the new Department of Education Secretary Br. Armin A. Luistro (FSC) on 14 October 2010, it mandates undersecretaries, assistant secretaries, bureau directors, and other DepEd personnel to respect “the right of a man to worship God in his own view [as] guaranteed by the Bill of Rights under article II, § 5 of the 1987 Constitution....” The department order further notes that:

[I]n some public elementary and secondary schools, there is a practice of conducting special or make-up classes for the suspension of class during typhoons or for any other reasons every Saturday for a particular duration of time. Hence, there are some complaints of discrimination and non-compliance with the provisions of DepEd Memorandum No. 3, s. 2010 in relation to the exercise of the right to religious worship by teachers. Likewise, there are complaints that said DepEd Memorandum excludes affected students from its coverage.

Accordingly, by virtue of the said Order, all concerned are hereby informed and advised of the following:

- a. DepEd personnel and students belonging to any religious group, where Saturday is their day of rest or “church day,” should not be required to attend seminars, examinations, special classes, trainings and other school activities on Saturdays;
- b. **There should be no diminution or deduction in the salaries (in the case of teachers) or no effect in the grades (in the case of students) for those teachers and students who incur absences on Saturdays due to the exercise of their right to religious worship; and**
- c. An arrangement should be made by the concerned teacher/personnel with the school head for the performance of functions or by the concerned students with the teacher for the completion of school requirements, without prejudice to their right to free exercise of religion.
(Emphasis supplied)

There is another positive development in favor of respecting the day of rest of students within Philippine jurisdiction. Hon. Patricia B. Licuanan, Chairperson of the Commission on Higher Education (“CHED”) has issued on 15 November 2010 a commission-wide memorandum on the subject of “remedial work for teachers, personnel and students to be excused due to compliance with religious obligations.” The express accommodation can be readily gleaned from the clear wording of the issuance, as below:

Our fundamental Law explicitly provides under Section 5 of the Bill of Rights that “The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.” In this regard, the Commission is obligated to ensure that all higher education institutions (“HEI”) render proper respect and compliance to this constitutional right, while at the same time acknowledging the exercise of their academic freedom also guaranteed under the Constitution.

The Commission therefore clarifies that in implementing the aforementioned policy, HEIs shall be enjoined to: (1) **excuse students from attendance/participation in school or related activities if such schedule conflicts with the exercise of their religious obligations, and** (2) **allow faculty, personnel and staff to forego attendance during academic and related work and activities scheduled on days which would conflict with the exercise of their religious freedom.** Instead, the affected students, faculty, personnel and staff may be allowed to do

remedial work to compensate for absences, within the bounds of school rules and regulations without their grades being affected, or with no diminution in their salaries or leave credits or performance evaluation/assessment, **provided they submit a certification or proof of attendance/participation duly signed by their pastor**, priest, minister or religious leader for periods of absence from classes, work or school activities.
(Emphases supplied)

It is hoped that other government agencies will follow suit, towards an enhanced protection of the constitutional guarantee of religious freedom for the SDA Church. For example, the University of the Philippines as a non-sectarian, public educational institution, often the ground zero where human liberties are expressed and sought, can follow the model set by the CHED in according due respect to the religious freedom of Seventh-day Adventists.

The academe can well be a fertile soil for the Sabbath issue to be entertained, threshed out, and resolved. A proactive statement and pertinent political participation of the Church continue to be indispensable in bringing about true change to the societal majority's view on religion, especially with regard to an oft-misunderstood issue of the Sabbath.

So far, the issues that were presented would reach no other conclusion but to allow SDAs the right to their day of rest. Of course, the interests of the State in exercising police power, of employers to property and reasonable returns, and of schools to academic freedom, must in all cases be considered. But in the light of the naturally burdensome impact of any action against an SDA's right to day of rest, all quarters must be taken to accommodate and respect such right. Such special protection is given recognition by law and jurisprudence, in the U.S. and in the Philippines. The remaining challenge then is to how to go about implementing this special form of protection of the day of rest right.

VI. RECOMMENDATIONS: THE IMPERATIVE TO BALANCE SECULAR AND RELIGIOUS INTERESTS

A. THE IMPERATIVE FOR RELIGIOUS TOLERANCE AND LIBERTY

Thomas Jefferson, an astute political philosopher on church and state, aptly used the metaphor of “wall of separation between Church and State.”⁷⁸

In our view, the idea that you must be able to define religion in order to defend religious liberty rests on a mistaken understanding of religious freedom, and more narrowly, of the normative thrust of the Religion Clauses of the Constitution. We have argued elsewhere that their purpose is not to protect religion per se, but to protect Americans from a certain kind of governmental malfeasance that proceeds against the backdrop of a religious and religiously diverse society. In a religiously diverse society, government can find itself captive of a perspective that encourages it—out of hostility, indifference, or misunderstanding—to take action that unjustly prefers or disfavors some persons, viewpoints, identities, or practices. What is critical from the vantage of religious freedom is not that religion or religiosity be the victim of this injustice, but rather that it is the cultural and political ramifications of religious diversity and governmental capture that give rise to the injustice.⁷⁹ (*Citations omitted*)

Applying the principle of Jefferson’s take on religious liberty, diversity, and justice, there must be a proper forum to accommodate requests for exemption on Saturdays by SDAs who have shown sincerity in their religious beliefs. One possible option is to establish an office catering to religious liberty concerns. This approach may be multi-sectoral. For example, employees who have a problem with such may air their grievance at a desk instituted in the Department of Labor and Employment. For students, an office in the Department of Education may serve the same function. For other administrative agencies, the Office of the President may include a desk to handle these matters. When such concerns are accommodated, the right to religious freedom and worship of SDAs are given sufficient protection.

⁷⁸ For an extensive discussion on the use of metaphors to describe the divide between religious and governmental affairs, see Julie Oseid, *The Power of Metaphor: Thomas Jefferson’s “Wall of Separation between Church & State”*, 7 J. ASS’N LEGAL WRITING DIRECTORS, 123 (2010).

⁷⁹ Christopher Eisgruber, *Does It Matter What Religion Is?*, 84 NOTRE DAME L. REV. 807, 811 (2009).

B. INSERTING PROVISOS IN LEGISLATION FOR ACCOMMODATION

Providing a clause in national and local legislation where the consideration of SDAs is pertinent would be welcome. This does not mean that the Non-Establishment Clause guarantee would be violated because lawmakers intend to protect a particular religious belief. The balance between Free Exercise and Non-Establishment is not compromised by providing a security measure that would protect the right of SDAs potentially prone to violation by unscrupulous employers and school administrators. Thus, there is an apparent danger that without the proposed clause, SDAs stand to suffer and limit the exercise of their sincere beliefs. Besides, it would be invoked only if need be. Once a law has been passed addressing the matter, legal problems on the Sabbath can be decided by our courts of justice with dispatch and probity.

The SDA Church is not alien to the advancement of the civil rights movement and to lobby for religious freedom. London notes that “mixed forces motivated some...Adventists to participate in civil rights politics. These determinants included community awareness or community-oriented consciousness; the example of early Adventist founders and pioneers; liberationist interpretations of the Bible; as well as intellectual and theological justifications.”⁸⁰ Dudley gives this observation regarding the SDA Church’s defense of their rights:

To summarize, more orthodox Adventists are more likely to be conservative politically except when factors of religious liberty, pacifism, and ethnic experience lead them to believe that liberal political positions are more in harmony with their faith or personal interests. Indeed, a recurring theme in this entire study is that the Adventist involvement in the political arena is selective and that such selectivity is based on what seems to be the church’s best interests.⁸¹

Meanwhile, Kaupner posits the notion that “[s]cripture makes it clear that God’s people have an obligation to pursue justice.” As such, churches and “[a]dherents of particular faiths and individual churches frequently take strong positions on public issues including...vigorous advocacy of legal and constitutional

⁸⁰ SAMUEL LONDON, JR., SEVENTH-DAY ADVENTISTS AND THE CIVIL RIGHTS MOVEMENT 154-55 (2009).

positions. Of course, churches as much as secular bodies and private citizens have that right.”⁸² He continues to opine that “[s]cripture, American history, the principle of separation of church and state, and decisions by the United States Supreme Court do not bar religious groups from pressing their views on moral issues that have become political issues.”⁸³ Therefore, the members of the Church, particularly those with considerable clout in the political arena, are better off with lobbying for a declarative legislation that directly gives due respect to the observance of Saturday as their day of rest. That its followers find morally sound to seek elective positions in order to advance their position belongs to an entirely different politico-religious issue that can be discussed lengthily in another work.

C. POSSIBLE AREAS FOR COMPROMISE

Probably the best way to arrive at a plausible solution for both diametrically positioned parties is compromise. Lawson gave an interesting insight on the SDA Church’s openness for discussion and compromise:

Jehovah’s Witnesses have demonstrated a remarkable commitment to principle and to their radical apocalyptic throughout their history. This commitment was bolstered by their organizational isolation, intense indoctrination of converts, rigid internal discipline, and considerable persecution. Seventh-day Adventists, on the other hand, have shown considerable willingness to compromise their positions whenever external threats or opportunities to gain acceptance have made this auspicious. Their expediency is correlated with their greater ideological diversity and organizational openness and their diminishing concern for indoctrinating converts. These flowed from their experience of upward mobility, which led them to relax the urgency of their apocalyptic and to claim an increasing stake in society.⁸⁴

Same as the CHED memorandum issued, there must be a middle ground for compromise like allowing the opportunity to do remedial work (which may come earlier or later, depending on the circumstances of a case), and the provision

⁸¹ R. Dudley, et al., *Religiosity and Public Issues among Seventh-Day Adventists*, 33 R. OF RELIG. RES. 4, 330, 344 (1992).

⁸² PAUL KAUPNER, RELIGION AND THE CONSTITUTION 226 (1964), *citing* Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970).

⁸³ *Id.* at 228.

⁸⁴ Ronald Lawson, *Accounting for the Differing Trajectories of Seventh-Day Adventists and Jehovah’s Witnesses*, 56 SOCIO. OF RELIG. 4, 351, 375 (1995).

of giving proof to show sincerity of belief (certification duly signed by the church pastor).

It must not be feared by some sectors (especially of the secular kind) that once SDA members are accommodated in their belief to day of rest, a Pandora's Box of sorts will ensue. The fear is premised on the fact that simply anyone can invoke her right to a day of rest despite the hardships and costs of accommodations to involved parties. However, the view must be taken that Adventists are sincere believers with regard to their day or rest belief. It can easily be seen in their history as a church and the doctrinal documents that embody the core values defining their belief. It cannot be seen as a mere convenient subterfuge or a farcical leverage to be invoked whenever they like it. The discussion here involves the fundamental relationship between the believer and the Divine that even transcends the temporal vicissitudes of man-made systems and institutions.

D. PROSPECTS OF AN OPPORTUNITY FOR A DEFINITIVE RULING FROM THE SUPREME COURT

So far, there has been no direct resolution of the issue on how and what standards the right of religious freedom of SDAs to observe Saturday as the Sabbath day of rest must be protected. Thus, it is a welcome development to the corpus of Philippine constitutional jurisprudence for a case dealing with the matter to be resolved by no less the highest court of the land.

As a religious minority, the SDA Church must be given an opportunity to participate actively in the larger society so as to be able to contribute to positive development and galvanize its moral fiber. For such purpose, the social impact of the law can be seen as a grand catalyst for according respect and accommodation to religious freedom, particularly the right to day of rest. As Justice Frank Murphy, a champion of civil liberties in the U.S. Supreme Court, once said, "The law knows no finer hour than when it cuts through formal concepts and transitory emotions to protect unpopular citizens against discrimination and persecution."⁸⁵

⁸⁵ Dissenting opinion, *Falbo v. United States*, 320 U.S. 549, 64 S. Ct. 346, 88 L. Ed. 305 (1944).

VII. CONCLUSION: TOWARDS A HARMONIOUS IMPERATIVE FOR RELIGIOUS LIBERTY

The legitimate right of Seventh-Day Adventists to observe Sabbath on Saturday as the day of rest has a persuasive legal foundation. This springs from the Constitution's mandate to respect and protect the right to religious freedom and worship. The zeal of our Founding Fathers to ensure that religion, as man's only refuge at hope vis-à-vis life's existential questions, be forever allowed will turn into an utter failure were religious freedom be abrogated. Needless to say, understanding and allowing believers in spending their day of rest as their conscience dictates would approximate the true intendment of the law.

Any impact, positive or otherwise, on persons affected by implementing respect for SDA's day of rest must be seen in a light guided by precepts of accommodation and equity. When a situation arises such that there is a conflict between the right to religious freedom to day of rest and other stakeholders' right to property, police power, or academic freedom, accommodation is the first step to assess and determine if measures can be taken to allow the SDA believer to take alternatives while still giving her the opportunity to observe the Sabbath. Should accommodation prove too difficult to reconcile competing interests, the believer must be entitled to an equitable opportunity to avail of other ways to achieve her needs and aspirations while still being able to rest on Saturday. In other words, the objective is to harmonize clashing rights. The social problematique I have presented in this work with respect to the imperative for public respect towards the Sabbath institution is a realm which the law may address and possibly resolve. Using the law to promote positive social change is indeed welcome in a community which intends to favorably reconcile its politico-social and religious-moral values.

At the end of the day, it remains a genuine challenge for the religious majority of Filipinos to give institutional respect to accommodate and respect SDAs with their right to observe day of rest. However, that such challenge is difficult or seemingly insurmountable is no reason to step back and let possible conflicts take whatever course. The law, firmly grounded on moral and ethical precepts, can be used as a vital tool to assert SDA members' right to day of rest without fear or favor. With an approach directed by respect and altruism, SDAs as

a religious minority can now participate in and contribute to society whilst being able to fully comply with their sacrament of remembering their Sabbath Day.

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