DEFINING THE UNDEFINABLE: TREATING ATHEISM, AGNOSTICISM, AND SECULAR HUMANISM AS RELIGION FOR CONSCIENTIOUS OBJECTION, TAX EXEMPTION, AND PARTY-LIST REGISTRATION PURPOSES*

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ABSTRACT

Religion is undefined in the Constitution and in the statutes. Definitions of religion that can be found in cases decided by the Philippine Supreme Court, aside from being mere obiter dicta, are highly theistic. In *Aglipay v. Ruiz*, the Court defined religion as "a profession of faith to an active power that binds and elevates man to his Creator." In *American Bible Society v. City of Manila,* religion was defined as "having reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character, and obedience to His Will."

Mere reliance on these theistic definitions of religion would make the protection afforded by the Establishment and Free Exercise Clauses of the Constitution, also known as the Religion Clauses, inaccessible to those whose beliefs can hardly be characterized as theistic. The only way, then, for atheists, agnostics, and secular humanists (hereinafter collectively referred to as nonbelievers) to access the protection of the Religion Clauses is to have their beliefs in matters that deny, or are oblivious to, or that have nothing to do with the existence of God be considered religious as well. This would necessitate the expansion of the definition of religion to include the "beliefs" of those who reject the existence of a Supreme Being, those who are oblivious to the same, and those who have intense faith in something else. These beliefs have to be "sincerely held" and "meaningful" in compliance with the *Seeger* test. Only then would

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nonbelievers be able to invoke the Free Exercise Clause, and legitimately register conscientious objection to seek exemption from compliance with a legal duty.

This Note also proposes that atheism, agnosticism, and secular humanism be considered as religions for the purpose of real property tax exemption. Real properties used actually, directly, and exclusively for religious purpose are exempt from real property tax. Atheistic, agnostic, and secular humanist organizations in the Philippines would only be able to avail of this tax exemption if their use of their real properties were treated by the local governments as "religious." This Note recommends the adoption of Judge Richard Posner's formulation in Reed v. Great Lakes Companies of religion as "taking a position on divinity." Adoption of this definition would be in conformity with the purpose of the Establishment Clause, which forbids state endorsement of a particular belief. The tax exemption should be available not only to those who believe in the existence of God but also to those who believe otherwise or in something else.

The necessary consequence of characterizing atheistic, agnostic, and secular humanist organizations as religious groups is that they become part of the religious sector. Since the religious sector is excluded from the party-list system, the Commission on Elections should deny registration of these organizations as party-list groups.

"Render unto Caesar the things
that are Caesar's, and unto God
the things that are God's."
—Matthew 22:21

INTRODUCTION

The words *religion* and *religious* appear 13 times in the 1987 Constitution. The provision[1] prohibiting the establishment by the State of an official religion and ensuring the free exercise of religion, otherwise known as the Establishment and Free Exercise Clauses, respectively, does not define the word religion. The provision[2] granting tax exemption on properties used actually, directly, and exclusively for *religious purposes* does not

[1] CONST. art. III, § 5.
[2] Art. VI, § 28 (3).

define the word *religious*. The provision[3] excluding the *religious sector* from party-list elections is likewise silent as to its meaning.

The word *religion* can also be found in the provision[4] prohibiting the appropriation of public money or property for the use, benefit, or support of any *system of religion*. The same word appears in the provision[5] allowing religion to be taught in public elementary and high school under certain circumstances.

The secular policy of forbidding the requirement of *religious tests* for the exercise of civil or political rights[6] omits any description of what constitutes a religious test. Similarly, the provision[7] directing the Commission on Elections (COMELEC) not to register *religious denominations and sects* as political parties, organizations, and coalitions neither enumerates any characteristics nor provides any description that may serve as a guide to a reader of the Constitution.

Of course, it is not only the fundamental law of the land that mentions the words *religion* and *religious*.

The Revised Penal Code (RPC) uses the word *religion* four times, and the word *religious* 16 times. There is an entire section[8] in the RPC devoted to crimes against *religious worship*. The crimes of interruption of *religious worship*[9] and offending the *religious feelings*[10] are defined under the said section. Commission of a crime in a place dedicated to *religious worship* is an aggravating circumstance.[11] The fact that the victim is a *religious* engaged in legitimate religious vocation or calling and that this fact is personally known by the offender qualifies the crime of rape.[12] Compelling a person to perform any *religious act* or preventing him from exercising such right qualifies the crime of grave coercion.[13] The RPC, however, does not attempt to operationalize the words the contours of which this Note seeks to define.

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[3] Art. VI, § 5 (2).
[4] Art. VI, § 29 (2).
[5] Art. XIV, § 3 (3).
[6] Art. III, § 5.
[7] Art. IX-C, § 2 (5).
[8] REV. PEN. CODE, title II, § 4.
[9] REV. PEN. CODE. art. 132.
[10] Art. 133.
[11] Art. 14, ¶ 5.
[12] Art. 266-B.
[13] Art. 286.

The New Civil Code (NCC) speaks of *religion* nine times. The NCC makes a person who violates the freedom of *religion* of another liable to the latter for damages.[14] The word *religious* appears in the NCC seven times. In the NCC, a person who has been vexed or humiliated on account of his *religious beliefs* has a cause of action for damages, prevention, and other relief.[15] The NCC states that capacity to act is not limited on account of *religious belief*.[16]

The Family Code uses the words *religion* and *religious* seven times. A minister of a *religious sect* can be a solemnizing officer in a marriage ceremony.[17] Compelling a spouse to change *religious affiliation*, through physical violence or moral pressure, is a ground for legal separation.[18] The Labor Code, on the other hand, states that the employer shall respect the preference of employees as to their weekly rest day when such preference is based on *religious grounds*.[19]

The National Internal Revenue Code (NIRC) uses the word *religious* six times. The NIRC exempts non-stock corporations or associations organized and operated exclusively for *religious* purposes from income tax.[20] Gifts in favor of a *religious institution* are exempt from donor's tax.[21]

It is therefore not difficult to imagine that a tweak in the interpretation of a constitutional clause dealing with religion can create ripples across the entire Philippine legal system. The omission of the framers of the Constitution, deliberate or otherwise, in defining religion is understandable. Casting too wide a net might be particularly disastrous in light of the Establishment and Free Exercise Clauses because anyone can claim his belief is religious and seek exemption from the laws, while too narrow a definition might unnecessarily discriminate against minor and unconventional religions. The risks of over-inclusion or under-inclusion inherent in any definitional exercise are all the more apparent in this case, where terms like *religion* and *religious* appear not just in the Constitution but in the criminal, civil, family, labor, and tax codes, as well as other statutes and special laws.

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[14] CIVIL CODE, art. 32.
[15] Art. 26, ¶ 4.
[16] Art. 39.
[17] FAM. CODE, art. 7.
[18] Art. 55, ¶ 2.
[19] LAB. CODE, art. 91.
[20] TAX CODE, § 30 (E).
[21] § 101 (A) (3).

This Note attempts to spell out the precise contours of the meaning of religion, both as a constitutional and statutory term.

A search for the meaning of religion within the ambit of the Free Exercise Clause necessarily affects the interpretation of certain statutory provisions. A constitutional interpretation that treats absence of belief in the existence of God as religious belief may entitle atheist and agnostic physicians, under specific circumstances, to invoke conscientious objection under the Reproductive Health Law.[22] They may legally refuse to render medical services if doing so violates their conscience traceable to a specific *religious belief.* And even though it may seem ironic, given such an interpretation, the atheists and agnostics may claim that their *religious feelings* have been offended, and file the corresponding criminal charges under Article 133 of the RPC.

In the same vein, if the constitutional provision[23] granting tax exemption on properties used actually, directly, and exclusively for *religious purposes* would be interpreted in such a way that it can be invoked even by atheistic, agnostic, or secular humanist organizations, then its counterpart provision[24] in the Local Government Code will have to be interpreted and applied in the same manner.

Once atheists, agnostics, and secular humanists are declared capable of making conscientious objections based on religious grounds, an interesting question arises: in the event that these individuals decide to form an organization, would such organization be qualified to run as a party-list group, given that the religious sector is prohibited[25] from participating in the party-list elections? This Note answers this question in the negative. Such nonbeliever organizations cannot be treated as religious groups only when it benefits them but not when it disenfranchises them. Hence, if they can avail of tax exemption because they are treated as religious groups, they must likewise be prohibited from participating in the party-list elections, because they belong to the religious sector.

Part I of this Note explores the meaning of religion under the Establishment and Free Exercise Clauses. Part II deals with the question of whether or not atheists, agnostics, and secular humanists are capable of

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[22] Rep. Act No. 10354 (2012). The Responsible Parenthood and Reproductive Health Act of 2012.

[23] CONST. art. VI, § 28 (3).

[24] LOC. GOV. CODE, § 234.

[25] CONST. art. VI, § 5 (2).

interposing conscientious objections based on religious grounds to exempt themselves from complying with a legal duty. Part III examines the eligibility of atheistic, agnostic, and secular humanist organizations to claim real estate tax exemption granted to religious groups. Part IV presents the arguments in support of prohibiting atheistic, agnostic, and secular humanist organizations from participating in the party-list elections.

This Note submits that (1) atheists and agnostics can make a proper conscientious objection rooted in religious belief; (2) atheistic, agnostic, and secular humanist organizations can claim or are entitled to real property tax exemption just like any other religious organization; and (3) atheistic, agnostic, and secular humanist organizations cannot register as party-list groups and seek seats in Congress. These submissions ultimately and inevitably grapple with the question: *what is religion?*

Shakespeare once said that a rose by any other name would smell as sweet.[26] The same, however, cannot be said of religion. As far as our laws are concerned, defining terms is not going to be as simple as smelling roses.

I. DEFINITION OF RELIGION

Religion has been defined by jurisprudence brick by brick, one case at a time. It is in this light that this Note does not aim to come up with an "all-purpose" definition of religion. An "all-purpose" definition of religion is a recipe for legal disaster. It would fail to account for the specific intent enclosed within a constitutional or statutory provision. For instance, a definition of religion for purposes of conscientious objection under the Free Exercise Clause is individual-centric or purely personal,[27] while a definition of religion for purposes of tax exemption and party-list registration is group-centric. These definitions are not automatically interchangeable, because a group-centric definition for tax purposes might not implicate the same constitutional analysis that an individual-centric definition of religion for conscientious objection would entail.

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[26] WILLIAM SHAKESPEARE, ROMEO AND JULIET, Act II, Scene II.

[27] For example, under the Reproductive Health Law, it will be absurd that *all* physicians who identify as Catholic can claim conscientious objector exemption from the duty to refer patients to another medical service provider *en masse* on the basis of mere membership in the Roman Catholic Church. The author submits that the exemption has to be individually invoked.

The word *religion*, as a legal term, can be imbued with meanings that, at first blush, seem to contradict the conventional understanding of the word. The aim of this Note is to define the word *religion*, as used in the Constitution and in the statutes, in such a way that it embraces concepts that linguistically or philosophically mean the absence or contradiction of it. In particular, atheism, agnosticism, and secular humanism, which espouse the absence or even absolute rejection of religion, shall be placed within the coverage of the definition of the term for conscientious objection and tax exemption purposes.

Thus, this Note argues that *atheism,* which is defined as "a philosophical or religious position characterized by disbelief in the existence of a god or any gods,"[28] and *agnosticism*, which espouses "the view that any ultimate reality (such as God) is unknown and probably unknowable"[29] and "the belief in either the existence or the nonexistence of God or a god,"[30] can and should be subsumed within the legal definition of religion. Furthermore, the "humanistic philosophy viewed as a nontheistic religion antagonistic to traditional religion,"[31] otherwise known as *secular humanism*, can and should be placed within the coverage of the legal definition of religion.

It is envisioned that an expansion of the definition of religion would ultimately make both those who believe and those who do not equal, at least before the eyes of the law.

A. The Need to Define Religion for Various Purposes

1. Conscientious Objection

The need for guidance from the courts and legislature on what constitutes religion or religious belief becomes paramount in light of the slow yet steady evolution and emergence of alternative belief systems in the Philippines. Can an atheist healthcare provider be exempted from the duty of immediately referring a patient to another accessible healthcare provider based on her "religious belief? Can an obstetrician-gynecologist, who is a self-identified agnostic, invoke the Free Exercise Clause to justify her refusal

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[28] Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/atheism (last accessed March 2, 2017).

[29] Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/agnostic (last accessed March 2, 2017).

[30] *Id.*

[31] Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/secular%20humanism (last accessed March 2, 2017).

to give professional advice to a patient who is asking for alternative to natural family planning (NFP)[32], which is the pregnancy avoidance scheme strongly recommended by the Philippine Catholic Church? What if the conscientious objector expressly declares that his objection is not religious, but rather is something that has been formed "by reading in the fields of history and sociology?"[33] Can the Court automatically dismiss the objection as not religious, and therefore outside the protection of the Free Exercise Clause?

2. Real Property Tax Exemption

What constitutes a religious purpose is also relevant for real property tax purposes. Under Section 234 of Republic Act No. 7160 or the Local Government Code, all lands, buildings, and improvements actually, directly, and exclusively used for religious purposes are exempt from real property tax. This express grant of tax exemption is lifted from Section 28(3), Article VI of the 1987 Constitution.

There are now established organizations of individuals who identify themselves as nonreligious or nonbelievers. *Filipino Freethinkers* describes itself as "an organization of atheists and freethinkers in the Philippines working for a secular Filipino society by promoting reason and science."[34] It claims to be "the largest and most active group of nonbelievers and progressive believers in the Philippines."[35] The group meets every other week "for a few hours of friendly—and usually rowdy—discussion"[36] and has a well-maintained website. There are other organizations of similar nature: the Philippine Atheists and Agnostics Society (PATAS)[37] which has its headquarters in Quezon City, and the Humanist Alliance Philippines, International (HAPI), an organization

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[32] Catholic Bishops Conference of the Philippines (CBCP), *CBCP Online Resource Portal for Family and Life, available at* http://cbcpforlife.com/?p=2136 (last accessed April 15, 2017). The CBCP, in its website, does not equate NFP to calendar or rhythm method which it characterized as often inaccurate. NFP seems to refer to sexual abstention.

[33] Welsh v. United States, 398 U.S. 341 (1970). This is the exact phrase that was used by Elliot Welsh in invoking exemption from military draft.

[34] Filipino Freethinkers official website, *at* http://filipinofreethinkers.org/ (last accessed Oct, 10, 2016).

[35] *Id.*

[36] *Id.*

[37] The Philippine Atheists and Agnostics Society, *at* http://atheistnexus.org/group/ philatheistagnosticssoc (last accessed Oct. 10, 2016).

registered with Securities and Exchange Commission (SEC) and which has a main office in Cebu City.[38]

If any of these groups rents a place to be used as its headquarters, can the lessor apply for the exemption from payment of real property tax on the basis that the real property is used actually, directly, and exclusively for religious purposes? If the local government classifies the activity of *Filipino Freethinkers* as religious and subsequently declares that its real property is tax-exempt, can the organization protest and insist on paying the tax because it does not want to be classified as a "religious" organization?[39]

The population of the irreligious in the Philippines is estimated to be around 11 million or 11% of the population.[40]

3. Party-list Registration

Whether a group is religious or not is also important in election law. Section 6 of Republic Act No. 7941[41] disqualifies any religious sect or denomination, organization, or association organized for religious purposes from being registered as a party-list group. Section 5(2), Article VI of the 1987 Constitution excludes the religious sector from the party-list system.

A liberal interpretation of the Religion Clauses would treat atheists, agnostics, and secular humanists as capable of invoking conscientious objection because the same is rooted in "religious belief." Moreover, nonbeliever organizations, once treated as religious groups, could be exempt from real property tax. The unintended consequence of this treatment is the

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[38] Humanist Alliance Philippines, International official website *at* https://hapihumanist.org (last accessed March 2, 2017).

[39] Bob Smietana, *Atheists Reject Tax Break From Federal Government To Protest Religious Exemption,* HUFFINGTON POST, Aug. 21, 2013, *available at* http://www.huffingtonpost.com/2013/ 08/21/atheists-reject-tax-break_n_3791314.html. In the United States, *Freedom from Religion Foundation,* an atheist organization, protested the tax break granted in its favor by the federal government. It asserted that it is not a church.

[40] Lealy Galang and Alma Rhenz Fernando, *On being godless and good: Irreligious Pinoys speak out,* RAPPLER, June 4, 2015, *available at* http://www.rappler.com/move-ph/95240-secular-humanism-philippines-religion. The article states that "[d]espite the Philippines' reputation as a Catholic country, however, there are more and more Filipinos coming out of the closet — as atheists. The population of the irreligious in the Philippines is around 11 million or 11%, a study by the Dentsu Communication Institute in Japan showed." The figure is verified in the OMICS international site *at* http://research.omicsgroup.org/index.php/Irreligion_by_ country#cite_note-4 (last accessed Oct. 10, 2016).

[41] The Party-List System Act of 1995.

automatic disqualification of nonbeliever organizations like The Filipino Freethinkers, PATAS, and HAPI from participating in the party-list system.

B. The Development of Jurisprudence on the Definition of Religion

1. The Origins of the Religion Clauses

The 1898 Treaty of Paris between the United States (US) and Spain introduced religious freedom in the Philippines. It declared that "the inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion."[42]

Article 5, Title III of the 1899 Malolos Constitution declares that "[t]he State recognizes the freedom and equality of all religions, as well as the separation of the Church and the State." This separation clause put an end to the union of the Catholic Church and the State that existed during the Spanish colonial period. The proposal to separate the Church and the State won by a whisker, with 26 in favor and 25 against.[43] President Emilio Aguinaldo, however, suspended the effectivity of the separation clause upon advice of Apolinario Mabini, on the ground that the First Philippine Republic "could ill afford the divisive effect" of the separation clause, when it was trying to unite the people against the onslaught of invading Americans.[44]

The Religion Clauses of the US Federal Constitution entered the Philippine legal system on April 7, 1900 through the Instructions of the President of the United States to the Philippine Commission. The Instructions directed all the departments of the Philippine Government to enforce the Religion Clauses which contained the words: "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.[45] The United States Congress reaffirmed the constitutional guarantee on religious freedom through the Philippine Bill of 1902. The Philippine Autonomy Act of 1916, otherwise known as the Jones Law, reproduced

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[42] VICENTE SINCO, PHILIPPINE POLITICAL LAW: PRINCIPLES AND CONCEPTS 670 (1962).

[43] JORGE COQUIA, CHURCH AND STATE LAW AND RELATIONS 54 (2007).

[44] Raul Pangalangan, *Transplanted Constitutionalism: The Philippine Debate on the Secular State and the Rule of Law,* 82 PHIL. L.J. 2 (2008).

[45] Coquia, *supra* note 43.

verbatim the said Religion Clauses[46] and added the clarifying clause: "No religious test shall be required for the exercise of civil or political rights."

The phraseology of the Religion Clauses in the First Amendment of the U.S. Federal Constitution as cited in the Jones Law was reproduced verbatim in the 1935 Philippine Constitution. The delegates to the 1934 Constitutional Convention retained the said phraseology in order to adopt the "historical background, nature, extent and limitations" of the said clauses.[47] The same phraseology[48] used in the 1935 and 1973 Constitutions was accepted without discussion by the 1986 Constitutional Commission.[49]

2. Theism as the Original Intent

Theism always involves the belief that God is continuously active in the world. It is in this sense that it differs from Deism. Proponents of Deism believe that God, after having made the world at the beginning of time, left it to continue on its own. [50]

The Founding Fathers equated religion with theism.[51] George Mason and James Madison defined religion as "the duty which we owe to our Creator, and the manner of discharging it."[52] Benjamin Franklin considered belief in "the Deity" as "one of the essentials of every religion."[53] Thomas Jefferson had a more expansive view. He said that within the mantle of protection of the Religious Clauses are "the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination."[54]

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[46] *Id.*

[47] Estrada v. Escritor, A.M. No. P-02-1651, 408 SCRA 1, Aug. 4, 2003.

[48] "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that 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."

[49] JOAQUIN BERNAS, S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS 182 (1995).

[50] Huw Parri Owen, *Theism,* in 8 THE ENCYCLOPEDIA OF PHILOSOPHY 97, 97-98 (P. Edwards, 1972 ed.).

[51] George C. Freeman III, *The Misguided Search for the Constitutional Definition of "Religion,"* 71 GEO. L.J. 1520 (1983), *citing* Anson Phelps Stokes, CHURCH AND STATE IN THE UNITED STATES 290-517 (1950); Leo Pfeiffer, CHURCH, STATE, AND FREEDOM 71-149 (rev. ed. 1967).

[52] *Id.*

[53] Benjamin Franklin, Benjamin Franklin on Religion, In Profile of Genius: Poor Richard Pamphlets 14 (N. Goodman Ed. 1938) (Pamphlet Ix).

[54] Thomas Jefferson, AUTOBIOGRAPHY IN THE WRITINGS OF THOMAS JEFFERSON 66-67 (Library ed. 1903).

Even if the Founding Founders were undeniably theists, this historical fact alone should not bind a contemporary reading of the Constitution in arriving at a definition of religion. There is no clear evidence that the framers wished to extend constitutional protection to theists alone.[55]

3. Jurisprudence Veered Away from the Original Intent

The United States Supreme Court had the first occasion to define religion in the year 1890.[56] In the case of *Davis v. Beason,*[57] the Court characterized religion as having "reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to His will." This definition was later on cited with approval by the Philippine Supreme Court in the 1957 case of *American Bible Society v. City of Manila.*[58]

This theistic definition of religion was expanded in the 1944 case of *United States v. Ballard.*[59] Religious belief was defined to embrace "the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths."[60]

The existence of religions based on nontheistic beliefs was recognized in the 1961 case of *Torcaso v. Watkins*:

> [N]either a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and *neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.*[61]

In footnote number 11 of *Torcaso*, the Court noted that "[a]mong religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

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[55] *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1060 (1978).
[56] Freeman, *supra* note 51, at 1524.
[57] 133 U.S. 342 (1890).
[58] G.R. No. L-9637, Apr. 30, 1957.
[59] 322 U.S. 86 (1944).
[60] *Id.*
[61] 367 U.S. 488 (1961). (Emphasis supplied.)

It was, however, only in 1965 that a paradigm shift in defining religion took place. The Court in *United States v. Seeger*[62] departed from the tradition of defining religion on the basis of the content of one's belief. This time, the Court used "psychological analogy"[63] to define religion. Construing the meaning of the phrase "religious training and belief" on the basis of which a conscientious objector can exempt himself from military combat under a statute,[64] the Court held that:

> Within that phrase (religious training and belief) would come all sincere religious beliefs which are based upon a power or being, or upon a faith, *to which all else is subordinate or upon which all else is ultimately dependent.* The test might be stated in these words: *a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition.*[65]

Under the *Seeger* definition, one who does not believe in God can possess "religious belief" sufficient to qualify him as a legitimate conscientious objector provided that (1) he has a *sincere and meaningful* belief, and (2) such belief occupies in his life a place parallel to that filled by the God of those admittedly qualifying for the exemption. In other words, a person who does not believe in God can have beliefs that are analogous to those possessed by people who do believe in God. Hence, belief in God is immaterial in classifying a certain belief as religious or not for purposes of conscientious objection.

It is clear that the US Supreme Court has abandoned "the narrow, theistic view of religion" in Free Exercise analysis.[66] It was imperative for the Court to modify the definition of religion in such a way "that goes beyond the closely bound limits of theism, and accounts for the multiplying forms of recognizably legitimate religious exercise" to satisfy the demands of religious liberty.[67] The Court had to open its eyes to the spectrums of beliefs that are equally legitimate and deserving of constitutional protection.

4. Textual and Historical Analysis of Religion Clauses

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[62] United States v. Seeger [hereinafter "Seeger"], 380 U.S. 163 (1965).

[63] J. Morris Clark, *Guidelines for the Free Exercise Clause*, 83 HARV. L. REV. 327, 365 (1969).

[64] Pub. Act No. 759 (1940), § 6 (j). Universal Military Training and Service Act of 1940.

[65] *Seeger,* 380 U.S. at 176. (Emphasis and explanation in parenthesis supplied.)

[66] LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 1180 (1988).

[67] *Id.*

A textual analysis of the Religion Clauses reveals the glaring exclusion of the word *conscience.*

Records of the debates over the wording of the Religion Clauses show that the Founding Fathers debated ten different versions thereof, seven of which contained a specific provision protecting the rights of conscience.[68] In the end, the Founding Fathers dropped the word *conscience* or any reference to it in the final wording.

The Religion Clauses can be divided into two parts: the Free Exercise Clause and the Establishment Clause. The Free Exercise Clause protects the "free exercise of religion, not the free exercise of conscience."[69] This is the reason conscientious objection has to be rooted in "religious" belief. Otherwise, it is not protected by the Free Exercise Clause. On the other hand, the Establishment Clause can be a source of protection for the nonbelievers. Justice Harlan, in his concurring opinion in *Welsh v. United States,*[70] opined that the Establishment Clause requires the State to treat the believer and the nonbeliever equally.

C. The Religion Clauses of the 1987 Constitution

The Religion Clauses are found in Section 5, Article III of the 1987 Constitution which 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 discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Justice Isagani Cruz, in his commentary on the Religion Clauses, noted that "religion also includes rejection of religion, a refusal to believe in

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[68] One version of such Religion Clauses containing a provision on conscience is: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." 1 ANNALS OF CONG. 766 (J. Gales ed. 1789).

[69] Freeman, *supra* note 51, at 1522.

[70] 398 US 333 (1970) (Harlan, *J., concurring.*). "[I]t not only accords a preference to the "religious," but also disadvantages adherents of religions that do not worship a Supreme Being. The constitutional infirmity cannot be cured, moreover, even by an impermissible construction that eliminates the theistic requirement and simply draws the line between religious and nonreligious. This, in my view, offends the Establishment Clause [. . .]."

a hereafter or in the supremacy of a supernatural person with powers over life and death."[71] He further explained that:

> One man's religion may instruct him that there is a God while another's may tell him there is no God; and both of them, under the Constitution, are entitled to their respective beliefs. In other words, religion embraces matters of faith and dogma, as well as doubt, agnosticism and atheism.[72]

Chief Justice Enrique Fernando, in his commentary on the Bill of Rights, opined that religious freedom may be invoked by an atheist or a skeptic.[73] To him, religious freedom is "liberty of belief or nonbelief;" it refers to the liberty to worship or not a Supreme Being.[74] What is sought to be protected is religious freedom in the sense of "belief or nonbelief," its expression by word, and its translation into acts.[75] The largest autonomy is conceded to one's individual expression of belief or disbelief. He may give utterance to any notion that for him has a persuasive quality.[76]

Father Joaquin Bernas, S.J., a prominent commentator on the Bill of Rights and one of the framers of the 1987 Constitution, claimed that the more traditional interpreters of the Constitution would prefer that the protection under the Religion Clauses be reserved exclusively to theistic religions.[77] According to him, the "non-theistic religions" would be protected under the Freedom of Expression Clause whenever a religious expression is involved. The Due Process Clause and the Equal Protection Clause, on the other hand, would protect non-theistic religions whenever a religious action is involved. He also said that the 1973 and the 1987 Constitutions have left to jurisprudential development the matter of whether or not non-theism or atheism should be treated as religion.[78]

How the Freedom of Speech and Due Process Clauses would be sufficient to afford the same level of constitutional protection granted under the Religion Clauses to non-theistic religions is a different story. These two

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[71] ISAGANI CRUZ, CONSTITUTIONAL LAW 164 (1995).

[72] *Id.*

[73] ENRIQUE FERNANDO, THE BILL OF RIGHTS 566 (1977).

[74] *Id.*

[75] *Id.* at 576.

[76] *Id.* at 577.

[77] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 330 (2009).

[78] *Id.*

clauses have different corpuses of jurisprudence that may be incompatible with those found in the Religion Clauses.

D. Definition of Religion in Philippine Jurisprudence

The framers of the 1987 Constitution, just like the framers of the United States Federal Constitution, deemed it prudent not to provide a definition of religion. The Philippine Supreme Court, on the other hand, has yet to decide on an actual case or controversy that would force its hand to define religion. At best, the definitions of religion that can be found in case law are mere obiter dicta.

In *Aglipay v. Ruiz*,[79] religion was defined as "a profession of faith to an active power that binds and elevates man to his Creator." In this case, Aglipay, the Supreme Head of the Philippine Independent Church, sought the issuance of a writ of prohibition to prevent the Director of Posts from issuing and selling postage stamps commemorative of the "Thirty-third International Eucharistic Congress," an event organized by the Roman Catholic Church. The original design of the stamps had a chalice in the center with a grape vine and stalks of wheat as border. The design was later changed to a map of the Philippines and the location of the City of Manila, with the inscription: "Seat XXXIII International Eucharistic Congress, Feb. 3-7, 1937." The Court sanctioned the use of public funds in the issuance and sales of the stamps. The Court reasoned that it is enough that the primary purpose of the government is a legitimate and secular one. The incidental effect of supporting a particular religion should not preclude the government from pursuing the said primary purpose.

The Court's pronouncement in *Aglipay* on the definition of religion is an obiter dictum. There was no issue in the case on whether or not an activity is religious. The Court itself readily assumed the religious character of the Eucharistic Congress.

In *American Bible Society v. City of Manila*,[80] religion was defined as "having reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character and obedience to His Will."[81] The Court held that to license or tax the business of distributing and selling bibles of the plaintiff Society would "impair its

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[79] G.R. No. L-45459, 61 Phil. 201, Mar. 13, 1937.

[80] G.R. No. L-9637, 101 Phil. 386, Apr. 30, 1957.

[81] The Court cited an 1890 U.S. case, Davis v. Beason, 133 U.S. 342 (1890), as the source of the definition.

right to the free exercise and enjoyment of its religious profession and worship, as well as its rights of dissemination of religious beliefs." Just like in *Aglipay,* the Court could have disposed of the case without defining religion.

It is unsurprising that the definitions of religion given in *Aglipay* and *American Bible Society* are highly theistic. Even the Preamble of the 1987 Constitution implores the aid of "Almighty God." If these definitions would have the force of *stare decisis*, invocation of the Free Exercise Clause by atheists and agnostics for purposes of conscientious objection would be summarily dismissed. Fortunately, these theistic definitions of religion are mere obiter dicta.

E. Religion under the International Covenant on Civil and Political Rights (ICCPR)

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) states that "[e]veryone shall have the right to freedom of thought, conscience and religion," and "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The Human Rights Committee (HRC), in its General Comment 22,[82] explains that Article 18 protects "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief." The HRC likewise explains that the terms "belief" and "religion" are to be broadly construed, clarifying that "Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions."

General Comment 22 is an international religious freedom instrument that puts atheism, agnosticism, and secular humanism on par with religions.[83] The ICCPR expands the freedom of religion as it was first embodied in Article 18 of the Universal Declaration of Human Rights

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[82] Alan Payne, *Redefining Atheism in America: What the United States Could Learn from Europe's Protection of Atheists*, 27 EMORY INT'L L. REV. 689 (2013). General Comments are not legally binding, but are very influential, as they reflect the Committee's understanding of the ICCPR. *Id., citing* Richard D. Glick, *Environmental Justice in the United States: Implications of the International Covenant on Civil and Political Rights,* 19 HARV. ENVTL. L. REV. 69, 96 (1995). "While the Human Rights Committee's interpretations of the Political Covenant in the form of 'General Comments' are not definitive interpretations of the Political Covenant, they are the operative definitions that the Committee uses to carry out its functions as Political Covenant control organ and are therefore influential with regard to the behavior of states."

[83] *Id.* at 690.

(UDHR), which was criticized "for giving greater freedom to religions than to atheism."[84]

The rights set out in Article 18 of the ICCPR are "non-derogable and are viewed as having the nature of peremptory norms of international law."[85] Peremptory norms or *jus cogens* norms are those "that command peremptory authority, superseding conflicting treaties and custom."[86] *Jus cogens* norms are considered peremptory in the sense that they are "mandatory, do not admit derogation, and can be modified only by general international norms of equivalent authority."[87]

II. DEFINING RELIGION FOR CONSCIENTIOUS OBJECTION PURPOSES

Registering conscientious objection founded on religious belief will have legal consequences.

In *Imbong v. Ochoa,*[88] the petitioner challenged the constitutionality of a provision in the Reproductive Health Law (RH Law)[89] that imposes the duty on a medical practitioner, who is a conscientious objector, to immediately refer a person seeking health care and services to another accessible healthcare provider. The Court struck down the said provision for being violative of an individual's "religious belief and conviction."

The Court found that the duty to refer as an opt-out mechanism is a "false compromise," because "it makes pro-life health providers complicit in the performance of an act that they find morally repugnant or offensive. "They cannot, in conscience," the Court declared, "do indirectly what they cannot do directly. One may not be the principal, but he is equally guilty if he abets the offensive act by indirect participation."

Hence, Section 23(3) of the RH Law, which mandates that a conscientious objector should, at least, refer a patient to another medical practitioner, was declared unconstitutional for being violative of "the principle of non-coercion" enshrined in the constitutional right to the free exercise of religion.

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[84] *Id.*

[85] *Id.* at 687.

[86] Vinuya v. Executive Secretary, G.R. No. 162230, 732 SCRA 595, Apr. 28, 2010.

[87] *Id.*

[88] G.R. No. 204819, 721 SCRA 146, Apr. 8, 2014.

[89] Rep. Act No. 10354 (2012).

Determining which beliefs are within the realm of conscience or religion is important in making a proper claim of conscientious objection.

In *Ebralinag v. Division Superintendent of Schools of Cebu*,[90] school children, who were all minors, were expelled from public and private schools for refusing, on account of their religious beliefs, to salute the flag, sing the national anthem, and recite the Patriotic Pledge as required by Republic Act No. 1265.[91] The school children were members of Jehovah's Witnesses. The Jehovah's Witnesses believe that saluting the flag, singing the national anthem, and reciting the patriotic pledge are "acts of worship" or "religious devotion," which they "cannot conscientiously give to anyone or anything except God." The Court set aside the expulsion orders and ruled that "an exemption may be accorded to the Jehovah's Witnesses with regard to the observance of the flag ceremony out of respect for their religious beliefs, however 'bizarre' those beliefs may seem to others."[92]

The Industrial Peace Act,[93] as amended by Republic Act No. 3350, granted members of "any religious sects" that prohibit affiliation of their members with any labor organization exemption from the coverage of closed-shop agreements. A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs.[94] The Industrial Peace Act, as worded, makes mere membership in such religious sects, without need of an individual invocation of conscientious objection based on religious belief, sufficient to qualify one for exemption from the mandatory membership in labor unions.

The constitutionality of the Industrial Peace Act was upheld in *Victoriano v. Elizalde Rope Workers' Union*.[95] A member of the Iglesia ni Cristo (INC)—which prohibits the affiliation of its members with any labor organization—was exempted from the operation of a closed-shop agreement. In ruling in favor of Victoriano, an INC member, the Court held that the free exercise of religious profession or belief is superior to the contract rights represented by closed-shop agreements. Exempting members

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[90] G.R. No. 95770, 219 SCRA 256, Mar. 1, 1993.

[91] An Act Making Flag Ceremony Compulsory In All Educational Institutions.

[92] *Id.*

[93] Rep. Act No. 875 (1953). An Act to Promote Industrial Peace and for Other Purposes.

[94] Manila Mandarin Employees Union v. NLRC, G.R. No. 76989, 154 SCRA 368, Sept. 29, 1987.

[95] G.R. No. L-25246, 59 SCRA 54, Sept. 12, 1974.

of said religious sects from the coverage of union security agreements is a reasonable means of achieving the legitimate state purposes of "insuring freedom of belief and religion, and of promoting the general welfare by preventing discrimination against members of religious sects which prohibit their members from joining labor unions." The Court cited with approval the purpose of the amendatory law, Republic Act No. 3350:

> It would be unthinkable indeed to refuse employing a person who, on account of his religious beliefs and convictions, cannot accept membership in a labor organization although he possesses all the qualifications for the job. This is tantamount to punishing such person for believing in a doctrine he has a right under the law to believe in. The law would not allow discrimination to flourish to the detriment of those whose religion discards membership in any labor organization. Likewise, the law would not commend the deprivation of their right to work and pursue a modest means of livelihood, without in any manner violating their religious faith and/or belief.[96]

Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, however, does not include the amendatory clause found in Republic Act No. 3350, which granted exemptions from the coverage of closed-shop agreement to members of said religious sects. Nevertheless, it has been correctly argued that "even if the New Labor Code removes the statutory rights of conscientious objector, [his] freedom of worship is still guaranteed by the [1973] Constitution."[97]

The INC members can have the best of both worlds. In *Kapatiran sa Meat and Canning Division v. Ferrer-Calleja,*[98] members of the INC refused to affiliate with any labor union. They were allowed to do so on the strength of *Victoriano* ruling. However, three years later, the same INC members formed and registered their own labor union, the New Employees and Workers United Labor Organization (NEW ULO). NEW ULO filed a petition for certification election. The sole and exclusive bargaining agent, TUPAS, moved to dismiss the petition on the ground that NEW ULO was composed mostly of members of the INC who previously refused to affiliate with any labor union. The Court ruled in favor of the INC members and held that its decision in *Victoriano,* which upheld the right of INC members not to join a labor union for being contrary to their religious beliefs, does

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[96] *Id.*

[97] Cesar L. Villanueva, *The Conscientious Objector under the New Labor Code*, 25 ATENEO L.J. 27 (1980).

[98] G.R. No. 82914, 162 SCRA 367, June 20, 1988.

not bar members of that sect from forming their own union. "Recognition of the tenets of the sect," the Court held, "should not infringe on the basic right of self-organization granted by the constitution to workers, regardless of religious affiliation."

In *Reyes v. Trajano,*[99] INC employees were allowed to vote in a certification election even if their religious beliefs do not allow them to form, join or assist labor organizations. The exercise of their right to self-organization was recognized in its negative aspect. The INC employees voted "No Union." The Court declared their votes valid. "Logically, the right *NOT* to join, affiliate with or assist any union, and to *disaffiliate* or *resign* from a labor organization," the Court reasoned, "is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein."

Republic Act No. 1425, otherwise known as the Rizal Law,[100] exempts students from reading the original or unexpurgated editions of the *Noli Me Tangere* and *El Filibusterismo* or their English translation for reasons of religious belief. All the students have to do is to state the "reasons of religious belief" in a sworn statement to claim the exemption.[101] Specific passages of Jose Rizal's novels were deemed offensive by the Catholic Church. The Church spokesmen said that to compel Catholics to read the novels in their unexpurgated or uncensored versions would amount to "forcing heresy on them and violating their freedom of conscience."[102]

A. The Clash of Legitimate State Interests and Religious Freedom

An overinclusive definition of "religion" or "religious belief" would frustrate legitimate state purposes. A great number of people would qualify as conscientious objectors and, hence, be exempt from the duties imposed under the statutes. An underinclusive definition, on the other hand, would violate constitutional rights under the Religion Clauses of individuals who do not belong to established religious organizations or who do not profess orthodox religious beliefs. Any court that would attempt to define "religion"

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[99] G.R. No. 84433, 209 SCRA 484, June 2, 1992.

[100] The law enacted in 1956 was vigorously opposed by the Roman Catholic educational institutions. *See* Rachel Miranda, *Drawing the Line on the Religious Line-Item Veto: How Imbong v. Ochoa Failed to Accommodate the Rights of Third Parties When Healthcare Providers Conscientiously Object*, 89 PHIL. L.J. 528 n.209 (2015).

[101] Rep. Act No. 1425 (1965), § 1.

[102] Ambeth Ocampo, *The fight over the Rizal Law*, PHIL. DAILY INQUIRER, May 4, 2007, *available at* http://opinion.inquirer.net/inquireropinion/columns/view/20070504-63978/ The_fight_over_the_Rizal_Law.

or "religious belief" would have to perform a delicate constitutional balancing act.

Torcaso demonstrates that limiting religious belief to theism would exclude followers of Buddhism, Taoism, Ethical Culture, Secular Humanism and others from the scope of the Free Exercise Clause. Individuals who source their conscientious objections from these non-theistic belief systems would be convicted under the penal laws. The Court would be favoring one group of religions (theistic) over another group (non-theistic) if religion, for constitutional purposes, were to be equated with theism alone. In such a case, an establishment of theistic religions with judicial fiat would be effectively institutionalized.

On the other hand, construing *any* belief that one feels strongly about as religious would be equally disastrous. People can hold intense convictions on just about anything. Hence, beliefs that rest solely upon "considerations of policy, pragmatism, or expediency"[103] must be dismissed as nonreligious. Otherwise, the law imposing a duty such as the Reproductive Health Law or the Labor Code[104] would be rendered ineffective.

1. "Absence of Essence" of Religion

A quality or collection of qualities common to all things of a certain kind that distinguishes things of that kind from everything else is said to be the "essence" of a thing.[105] It has been claimed that the very attempt to define religion is itself misconceived since "there simply is no essence of religion, no single characteristic or set of characteristics that all religions have in common that makes them religious."[106] Wittgenstein demonstrated that the search for essences, which he attributed to "our craving for generality" and "the contemptuous attitude towards particular case," is misguided.[107] It is most likely that no one essence of religion can be found.

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[103] Welsh v. United States, 398 U.S. 343 (1940).

[104] The closed-shop agreement is a union security clause which mandates membership in labor unions in proper cases. LAB. CODE, art. 254 (e): "Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement."

[105] Freeman, *supra* note 51, at 1549.

[106] *Id.* at 1548.

[107] *Id., citing* LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS, § 67 (G.E.M. Anscombe trans. 1953).

Rather, there can be "many characters which may alternately be equally important to religion."[108]

The difficulty, or even the near impossibility, of coming up with a constitutionally sound definition of religion, or even of defining its characteristics and spelling out its contours, should not bar the courts from the task. "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws."[109] If the definition of religion would be the singular *ratio* of a future case, the court should not shirk its duty.

2. Defining Religion in Functional Terms

The United States Supreme Court began to recognize the inherent difficulty in defining religion on the basis of the content of one's belief. Thus, it started to define religion in functional terms. For example, *Seeger* defined religious belief as "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption [. . .]" No reference as to the content of the belief was made.

In *United States v. Sun Myung Moon,*[110] religion was defined as "the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine." The "divine" might be "any object that is godlike, whether it is or is not a specific deity." Here, no reference to specific content of the belief was made. Only "feelings, acts, and experiences" mattered in this version of definition of religion.

In *Africa v. Pennsylvania,*[111] religion was defined as something that "addresses fundamental and ultimate questions having to do with deep and imponderable matters."

These functional definitions of religion ignore the content of an individual's beliefs and focus instead on the role those beliefs play in the individual's life. In this manner, courts would not be engaged in "excessive

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[108] WILLIAM JAMES, THE VARIETIES OF RELIGIOUS EXPERIENCE 26 (1920).

[109] CIVIL CODE, art. 9.

[110] 718 F.2d 1210, 1227 (2nd Cir. 1983), *citing* W. JAMES, THE VARIETIES OF RELIGIOUS EXPERIENCE 31 (1910).

[111] 662 F.2d 1025 (3rd Cir. 1981).

judicial inquiry" into religious beliefs which may, in and of itself, constrain religious liberty.[112]

Furthermore, as held in *Thomas v. Review Board,*[113] beliefs can be held to be religious even if they are not "acceptable, logical, consistent, or comprehensible"[114] or "not articulated with the clarity and precision that a more sophisticated person might employ"[115] as long as they are sincerely held.

B. Conscientious Objection

1. When is an Objection Considered Conscientious?

There are two schools of thought grappling to capture the essence of conscientious objection. Michael Walzer and John Rawls could not agree on a uniform definition. For Walzer, it is an act arising from a "shared moral knowledge," while Rawls argues that it is borne out of highly personal—as opposed to shared—convictions.[116]

Walzer looks at conscientious objection as arising from "a shared moral knowledge," in the sense that "the individual's understanding of god or the higher law is always acquired within a group."[117] The Walzerian conscientious objector treats his obligation to either a god or a higher law as an obligation to both the group and its members. The universal moral principles are the moral compass of a Walzerian conscientious objector rather than the laws of the state.[118] He objects in the name of a universal obligation, and not out of a completely personal moral conviction.

Rawls rejects Walzer's approach. To him, an act of conscientious objection is "one motivated by personal factors, which generally cannot be justified on universal grounds."[119] A Rawlsian conscientious objector is one who seeks exemption from compliance with a legal duty that is irreconcilable with or diametrically opposed to his religious, moral, or personal values. He does not primarily seek the repeal of the law. His main

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[112] Tribe, *supra* note 66, at 1181.

[113] 450 U.S. 707 (1981).

[114] *Id.* at 714.

[115] *Id.* at 715.

[116] Avi Sagi & Ron Shapira, *Civil Disobedience and Conscientious Objection*, 36 ISR. L. REV. 183 (2002).

[117] *Id.* at 184.

[118] *Id.*

[119] *Id.*

concern is the preservation of his own innocence and moral integrity. Thus, he does not openly and publicly display his objection. His act of refusal is often carried out in private. He merely seeks an exemption for himself.[120]

This Note adopts John Rawls's conception of a private conscientious objector for the following reasons:

Firstly, a Walzerian conscientious objector is more of a political objector. Under the *Yoder*[121] standards, an objection which is rooted on political, philosophical or personal reason is not religious objection. His objection is thus based on "purely secular considerations." A Rawlsian conscientious objector, on the other hand, satisfies the *Yoder* standards because his objection is within the vicinity of what may be termed "religious" belief or "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption."

Secondly, the State cannot afford accommodating an e*n masse* application for exemption from compliance with a legal duty. The Walzerian objection is raised in solidarity with a group. A success by Walzerian conscientious objectors would mean a defeat of the legitimate state interests protected by statutes. Rawls' approach strikes the delicate balance between accommodating individual conscience and protecting state interests. A private conscientious objector does not seek the repeal of law or its massive violation.

Lastly, there is a distinction between civil disobedience and conscientious objection. Walzerian conscientious objection mimics civil disobedience. Civil disobedience has been defined as "an act contrary to law done for political reasons, with the aim of directly bringing about a change in the law or government policy, or to express dissent and disassociation from a particular law or government policy."[122] Civil disobedience entails a violation of law committed publicly in concert with other citizens. Participants in civil disobedience aim to effect social and political change. This is not what the Free Exercise Clause protects. This is not the kind of conscientious objection which this Note proposes to be recognized when invoked by nonbelievers.

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[120] *Id.* at 185.

[121] Wisconsin v. Yoder, 406 U.S. 205 (1972).

[122] Sagi & Shapira, *supra* note 116, at 182-183.

2. Why Recognize Conscientious Objection?

Imagine a conscientious objector going to active military combat. Compelling him to render military service in a war zone can have dire consequences, not only for himself but also for the military unit where he belongs. The conscientious objector cannot be expected to operate and move at his optimum. Worse, he can drag down the movement and efficiency of his unit.[123]

Furthermore, a "deeply sincere" conscientious objector cannot and will not obey orders from superiors. This can detrimentally affect the success of the military mission.[124] Moreover, his reluctance or open disobedience can have a negative impact on the morale and discipline of the unit.[125] There is also the possibility that other members of the unit will harm the conscientious objector for his refusal to train or fight. Violence against conscientious objectors by their fellow soldiers was rampant in earlier military conflicts.[126]

The same policy considerations are present when it comes to forcing medical practitioners to perform procedures or services that they deem are offensive to their conscience. It is not in the best interests of the patients that the physicians attending to their medical needs are performing such services under compulsion by the State. This is probably one of the reasons the RH Law only imposed on them the duty to refer a patient to another physician or medical service provider. This is similar to requiring discharged military conscientious objectors to perform alternative civilian work.[127] In *Imbong,* the proponents of the RH Law argued that the duty to refer is:

> [A] carefully balanced compromise between the interests of the religious objector, on one hand, who is allowed to keep silent but is required to refer and that of the citizen who needs access to information and who has the right to expect that the health care professional in front of her will act professionally.[128]

This reasoning, however, was rejected by the Court. The Court

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[123] Joseph B. Mackey, *Reclaiming the In-Service Conscientious Objection Program: Proposals for Creating a Meaningful Limitation to the Claim of Conscientious Objection*, 2008 ARMY LAW 31, 40 (2008).

[124] *Id.*

[125] *Id.*

[126] *Id.* at 42.

[127] *Id.* at 43.

[128] Imbong v. Ochoa, 721 SCRA at 323.

declared that imposing the duty to refer on the conscientious objectors violates their religious freedom.

C. Conscientious Objection Based on Religious Claim

The rationale behind legal recognition of conscientious objection was provided by Chief Justice Hughes in *United States v. Macintosh*:

> When one's belief collides with the power of the state, the latter is supreme within its sphere, and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens.[129]

Chief Justice Enrique Fernando echoed this rationale in his concurring opinion in *Victoriano.* He reiterated the "primacy of religious freedom in the forum of conscience even as against the command of the State." He recognized the "reservation of that supreme obligation," which, as a matter of principle, would unquestionably be made by many conscientious and law-abiding citizens.

1. Strict Scrutiny Test

The Philippine Supreme Court recognized the conscientious objection of medical practitioners even in a facial challenge.[130] In *Imbong,* the Court held that a conscientious objection based on a claim to religious freedom would warrant an exemption from obligations under the Reproductive Health Law. The only way for the government to defeat the grant of religious exemption is to demonstrate a "more compelling state interest" in the accomplishment of an important secular objective. The court used the *strict scrutiny test* in evaluating whether the plea of prospective conscientious objectors was warranted under the RH Law.

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[129] 283 U.S. 605 (1931).

[130] The Court expanded the scope of facial challenge to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. It said that under its expanded jurisdiction, it is mandated to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Chief Justice Reynato Puno, in *Escritor v. Estrada,*[131] justified the use of the strict scrutiny test in evaluating conscientious objection claims. He said that compelling state interest, a subtest under the strict scrutiny test, is appropriate for Free Exercise challenges, because it reflects the constitutional mandate of "preserving religious liberty to the fullest extent possible in a pluralistic society." The compelling state interest test espouses the principle that free exercise of religion is a fundamental right and that laws burdening it should be subject to strict scrutiny. The compelling state interest follows a three-step process:

> 1. If the plaintiff can show that a law or government practice inhibits the free exercise of his religious beliefs, the burden shifts to the government to demonstrate that the law or practice is necessary to the accomplishment of some *important (or compelling) secular objective* and that it is the *least restrictive means* of achieving that objective.
>
> 2. If the plaintiff meets this burden and the government does not, the plaintiff is entitled to exemption from the law or practice at issue.
>
> 3. In order to be protected, the claimant's beliefs must be *sincere,* but they need not necessarily be consistent, coherent, clearly articulated, or congruent with those of the claimant's religious denomination. *Only beliefs rooted in religion are protected by the Free Exercise Clause; secular beliefs, however sincere and conscientious, do not suffice.*[132]

2. Philippine Cases Involving Conscientious Objection

To date, no case involving a nonbeliever invoking the Free Exercise Clause has ever reached the Philippine Supreme Court. The cases decided by the Court implicating the Free Exercise Clause all involved members of traditional or organized religions. *Victoriano* involved a member of the INC, while *Ebralinag* involved members of Jehovah's witnesses.

In *Victoriano,*[133] the Court ruled in favor of a member of the INC who sought exemption from the coverage of a closed-shop agreement on the ground that his religion forbids him to affiliate with any labor union.

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[131] A.M. No. P-02-1651, 492 SCRA 1, Aug. 4, 2003.

[132] *Id.* at 63-64. (Numbering and emphasis supplied.)

[133] 59 SCRA at 54.

In *Ebralinag*,[134] the Court ruled in favor of high school and elementary school students, all minors, assisted by their parents, who belong to the religious group known as Jehovah's Witnesses. The students were expelled for refusing to salute the Philippine flag and to recite the Patriotic Pledge, on account of their religious beliefs.

These cases cannot serve as guide on how a future case of a nonbeliever invoking the Free Exercise Clause shall be decided. The preliminary question of whether or not conduct is religiously motivated or whether or not a belief is religious was not at issue in these cases. The Free Exercise Clause was applied right away, because membership in organized religion seems to raise the presumption that the petitioners in the aforementioned cases were acting in accordance with their religious beliefs.

The petitioners in these cases only had to allege that their respective religious affiliations forbid certain conduct in order to trigger the operation of the Free Exercise Clause. The same remedy is not available to nonbelievers. Most likely, nonbelievers are not affiliated, or if they are, the organizations they are affiliated with are not considered "religious organizations."[135] The automaticity of the application of the Free Exercise Clause on cases involving members of the Jehovah's Witnesses and INC seeking exemption from fulfillment of state-imposed obligations is therefore not readily applicable and accessible to nonbelievers.

D. When Is Religious Belief Religious Enough?

Not all beliefs are religious and not all religious beliefs are religious enough to qualify an individual as a conscientious objector. Under the Free Exercise Clause, a belief is constitutionally protected only if it is religious, subject to qualifications. Otherwise, its protection may be found either in the Free Speech Clause or the Due Process Clause.

1. Political, Sociological, or Philosophical Views

Beliefs must be rooted in religion to be protected by the Free Exercise Clause. Secular beliefs, however sincere and conscientious, would not suffice.[136]

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[134] 219 SCRA at 256.

[135] Such as The Filipino Freethinkers, Philippine Atheists and Agnostics Society (PATAS), and Humanist Alliance of the Philippines, International (HAPI).

[136] United States v. Kauten, 133 F.2d 703 (2d Cir. 1943).

Other views which may be classified as essentially political, sociological, or philosophical are outside the protection of the Religion Clauses. In *Wisconsin v. Yoder,*[137] it was held that a way of life, to have the protection of the Religion Clauses, must be rooted in religious belief. Those that are based on "purely secular considerations" do not deserve constitutional protection. The Court acquitted members of the Old Order Amish religion and the Conservative Amish Mennonite Church who refused to send their children to schools after the eighth grade on the grounds of religious freedom. The Court, speaking through Chief Justice Burger, elucidated on what constitutes beliefs that are purely secular vis-à-vis religious ones:

> Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, *much as Thoreau rejected the social values of his time* and isolated himself at Walden Pond, their claims would not rest on a religious basis. *Thoreau's choice was philosophical and personal, rather than religious, and such belief does not rise to the demands of the Religion Clauses.*[138]

2. Sincere and Meaningful Belief

The test of religious belief is whether it is "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption."[139]

This test was used in order to acquit Seeger who was convicted for having refused to submit to induction in the armed forces. In his application for conscientious objector exemption, he stated that his "skepticism or disbelief in the existence of God" did "not necessarily mean lack of faith in anything whatsoever." He said that his was a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." More importantly, he cited Plato, Aristotle and Spinoza in

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[137] 406 U.S. 205 (1972). The Amish view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. They believed that their own salvation would be in danger if they send their children to high school. The State stipulated that Amish's religious beliefs were sincere.

[138] *Id.* at 216. (Emphasis supplied.)

[139] *Seeger,* 380 U.S. at 163.

support of his ethical belief in intellectual and moral integrity "without belief in God, except in the remotest sense."

The District Court for the Southern District of New York, even after finding that his belief was "sincere, honest, and made in good faith," still convicted him because his belief was not based upon a belief in a relation to Supreme Being." The Supreme Court overturned the District Court and found that it was enough for Seeger's faith to be sincere and meaningful. Belief in relation to a Supreme Being was unnecessary.

i. Proof of Sincerity and Insincerity

For members of Jehovah's Witnesses who refuse to salute the flag, mere invocation of religion might be sufficient to exempt them from complying with the flag law. The extent of their rights and duties has already been settled in *Ebralinag.* For non-members of established organized religions whose beliefs are unorthodox or otherwise legally uncategorized yet, mere invocation of conscientious objection based on religious belief would certainly not be enough.

A nonbeliever who thinks dispensing medical advice on reproductive health is against his concept of morality might have to prove the *sincerity* and *meaningfulness* of his belief. A nonbeliever who refuses to join a labor union in a bargaining unit with a closed-shop agreement may find difficulty seeking exemption from its operation, unlike in the case of a member of the INC.

a. Extrinsic Evidence

When religious exemption is at issue, a person's word cannot be taken at face value.[140] Whenever extrinsic evidence showing that religion is just being used as a completely "fraudulent cloak,"[141] such evidence can and should be used by the State to convict the false conscientious objector.

In *United States v. Kuch,*[142] members of the Neo-American Church known as Boo Hoos, with a three-eyed toad as the church seal and "Victory over Horseshit" as the church motto, were denied religious exemption from federal drug regulations. Kuch, an ordained minister of the Boo Hoos, faced a seven-count indictment for unlawfully obtaining and transferring

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[140] Tribe, *supra* note 66, at 1246.

[141] *Id.*

[142] 288 F.Supp. 439, 445 (D.D.C. 1968).

marijuana and for the unlawful sale, delivery and possession of LSD, a psychedelic drug. Extrinsic evidence established that the religious character of the organization was only being used as a "tactical pretense" to evade criminal liability.

In *United States v. Ballard*,[143] state prosecutors presented evidence that defendants composed template testimonials from fictitious persons claiming to have been healed.[144] They even failed to call their system as "religion" until they were placed on trial.[145] The respondents in this case were charged with mail fraud prosecution. They solicited money from certain individuals after having represented themselves as "divine messengers." The case was remanded to the Circuit Court of Appeals for a determination of whether the invoked religious beliefs were sincerely held, but not whether they are true or false. The Court said that questions concerning the "truth or falsity" of respondents' religious beliefs or doctrines were properly withheld from the jury.

On the other hand, the use of peyote, a hallucinogenic substance, in religious ceremonies was upheld as central in the religious life of Native Americans. In *People v. Woody*,[146] the Supreme Court of California recognized that the Native American Church, a religious assembly of American Indians, is entitled under the Free Exercise Clause to the use of peyote in its religious ceremonies. The Court held that "[a]lthough peyote serves as a sacramental symbol similar to bread and wine in certain Christian churches, it is more than a sacrament. Peyote constitutes in itself an object of worship; prayers are directed to it much as prayers are devoted to the Holy Ghost."[147]

b. Psychological Analysis

Conscientious beliefs that are either theistic or non-theistic are said to be related to the development of the "superego."[148] Psychoanalysts are,

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[143] 322 U.S. 78 (1944).

[144] Record, 322 U.S., Vol. 4, at 1519-20, 1542, *cited in* LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 1246 (1988).

[145] Tribe, *supra* note 66, at 1246.

[146] 6r Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

[147] *Id.*

[148] Sigmund Freud defined the *superego* as the "ethical component of the personality and provides the moral standards by which the ego operates. The *superego's* criticisms, prohibitions, and inhibitions form a person's conscience, and its positive aspirations and ideals represent one's idealized self-image, or "ego ideal," *available at* https://www.britannica.com/ topic/superego (last accessed Feb. 10, 2017).

however, not prepared to testify in courts that "strongly-held beliefs of persons with strong superegos" should be considered religious.[149]

There are various schools of thought on the origins and functions of religious beliefs. Psychological analysis cannot serve as a basis for a legal definition of religious belief entitled to constitutional protection, because a definitive theory is still elusive. [150]

Narrow self-interest and religious belief, however, may coincide as motives for a person seeking religious exemption. The determination of the most dominant motive of the person claiming religious exemption is a complex psychological task.[151] Even the individual himself may not be completely certain of his reasons.[152]

c. Tradeoff Analysis

In military conscription cases during wartime, imprisonment might be preferable over active military combat to self-interested individuals. This is the reason a significant number of those who did not qualify for the statutory exemption under the mandatory military draft law chose to go to jail rather than serve.[153]

Tradeoff analysis can be used in the context of a nonbeliever government employee who would risk imprisonment and termination from employment should he refuse to provide reproductive health care services, and further refuse to refer the patient to another accessible healthcare provider. In such a case, a strong presumption that the government employee's belief is sincere and strongly-held is raised. The stakes in raising conscientious objection are unusually high. The same analysis can apply to a nonbeliever minimum wage earner who refuses to join a labor union in a bargaining unit with closed-shop agreement. The risk of termination from employment is simply too high for a minimum wage earner to concoct the excuse of religious belief. A strong presumption should arise in favor of conscientious objectors when this kind of willingness to trade off an overwhelming benefit in favor of the preservation of one's conscience becomes manifest.

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[149] Clark, *supra* note 63, at 342-43.
[150] *Id* at 343.
[151] *Id.*
[152] *Id.*
[153] *Id.* at 355.

ii. Proof of Meaningfulness or Centrality of Belief

Aside from sincerity, the Court may look into the centrality of the belief.[154] A belief sincerely held is not necessarily meaningful. Hence, under the *Seeger* definition, a belief, to be religious, has to be both sincere and meaningful. It is submitted that a belief is meaningful to the individual when it is central to his faith. For the purposes of this Note, meaningfulness is therefore equated to the "centrality" of one's faith. The extent to which a law burdens the exercise of religion is often stated in terms of centrality of the invoked belief to the believer or nonbeliever's faith.[155]

An invoked belief which is essential to the "very survival" of the religion or is an integral part of the "core values" of an individual can be said to be central to that individual's faith. In contrast, beliefs that are at the bottom of the hierarchy of religious tenets of a church or belief systems of an individual can be deemed to be *not central* to his faith. A higher degree of consideration is extended to beliefs that are central to a particular faith in comparison with those that are not. The centrality of a particular belief is directly related to the importance of a specific practice to the belief system.[156]

Whenever a law burdens these kinds of beliefs that are not central to one's faith, the burden is said to be *de minimis*. The compelling state interest of the State which the law seeks to achieve supersedes the profession of a "minor" belief.

The refusal to work on Saturdays by a member of Seventh-Day Adventist Church was found to be a "cardinal principle" of such member's religious faith. In *Sherbert v. Verner*,[157] the Court held that the denial of unemployment compensation benefits to Sherbert because of her refusal to accept employment requiring her to work on Saturday, which was contrary to her religious beliefs as a member of Seventh-Day Adventist Church, abridged her right to the free exercise of her religion.

The refusal of the parents to send their children to school beyond eighth grade was also held central to the Amish faith. The Amish deemphasize material success, reject competitive spirit, and insulate

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[154] Estrada v. Escritor, 492 SCRA at 1.

[155] Tribe, *supra* note 66, at 1247.

[156] Florin Hilbay, *The Constitutional Status of Disbelief*, 84 PHIL. L.J. 599 (2010).

[157] 374 U.S. 398 (1963).

themselves from the modern world. "This concept of life aloof from the world and its values," the Court declared, "is *central* to their faith."[158]

The Philippine Supreme Court adopted the "centrality of belief" standard in *Escritor,*[159] when it ordered the Solicitor General to intervene in the case and to examine the "sincerity and centrality" of Soledad Escritor's claimed religious belief and practice. The Solicitor General, however, categorically conceded the sincerity and centrality of Escritor's claimed religious belief and practice "beyond serious doubt." The Solicitor General's concession is unfortunate, given that it was neither readily apparent nor established that a conjugal arrangement of Escritor with a married man—a clear case of adultery—is *central* to the Jehovah's Witnesses faith. There is no rational nexus between committing adultery and becoming a good and compliant Jehovah's Witness. Being an adulterer is not a membership requirement of the Jehovah's Witnesses. It is also not a means to get "a ticket to heaven."[160]

3. Militant Absolute Disbelievers or Those Who Have Total Lack of Belief

An interesting question can be raised on whether or not a "militant absolute disbeliever" has Free Exercise rights. A militant absolute disbeliever can be described as someone who harbors no "religious" belief whatsoever. His convictions emanate from "personal philosophical conceptions arising out of his nature and temperament, and which is, to some extent, political."[161] He can be said as someone whose convictions or beliefs are purely based on secular considerations, like Thoreau who rejected the social values of his time and isolated himself at Walden Pond, and whose choice was philosophical and personal, rather than religious.[162]

A militant absolute disbeliever either has to adhere to one of the variations on the theme of universal, humanistic Goodness or else his "views" would not qualify for exemption in any event.[163]

Possession of belief is a prerequisite of the Free Exercise Clause. A person has to believe in something, and this belief must be intense enough to be considered as religious, before even the question of whether or not he

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[158] Wisconsin v. Yoder, 406 U.S. at 205.

[159] 492 SCRA 1.

[160] Hilbay, *supra* note 156, at 600.

[161] United States v. Kauten, 133 F.2d at 703.

[162] Wisconsin v. Yoder, 406 U.S. at 205.

[163] Robert Rabin, *When Is a Religious Belief Religious: United States v. Seeger and The Scope of the Free Exercise,* 51 CORNELL L. REV. 231, 244 (1966).

can exempt himself from a legal duty as a conscientious objector can arise. Total lack of belief is not within the mantle of protection of the Free Exercise Clause.

For purposes of conscientious objection, there are five categories of individuals:

1. Those who believe in the existence of a Deity (theists);
2. Those who do not believe in the existence of a Deity (atheists);
3. Those who believe that the existence or non-existence of a Deity is unknown or probably unknowable (agnostics);
4. Those who believe in matters other than the existence or non-existence of a Deity i.e. those who believe in something else (Buddhists, Taoists, Ethical Culturists, Secular Humanists and others); and
5. Those who profess total lack of belief in anything (militant absolute disbelievers).

Only the individuals belonging to the first four categories can invoke the Free Exercise Clause, subject to the *Seeger* requirements. The militant absolute disbelievers belonging to the fifth category are outside its protection. They cannot be conscientious objectors.

Furthermore, a traditional secular atheist must be distinguished from a religious atheist. The former rejects claims about God and the transcendent as either incoherent or false. The latter believes in the transcendent, and very likely in gods, but rejects the idea of a God who is a Supreme Being.[164] To the latter belong the followers of Buddhism, Taoism, Ethical Culture, Secular Humanism and others referred to in the famous footnote number 11 in *Torcaso*. They are called non-theistic religions.

The Founding Fathers themselves might have been unwilling to include traditional atheism within the meaning of religion. This is because they were neither unfamiliar with nor accepting of the views of traditional atheists.[165] It has been argued that the Free Exercise Clause does not protect the atheist except by guaranteeing him the right not to be compelled to practice and support a religion.[166]

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[164] Freeman, *supra* note 51, n.44.
[165] *Id.* at 1521.
[166] *Id.* at 1523.

In the Philippines, however, the question of whether or not non-theistic religions would be covered by the Religion Clauses has been left to jurisprudential development[167] as far as the 1987 Constitution is concerned.

E. Availability of Conscientious Objector Exemption to Nonbelievers

Individuals who profess total absence of belief in the existence of a Supreme Being or God are capable of holding beliefs, which, under the *Seeger* definition may be considered religious. They are the atheists, agnostics, and secular humanists. They may generally claim to hold convictions that are allegedly purely driven by reason, logic, or science. But at some point, they will have to hold "beliefs." The cases of *Seeger* and *Welsh* illustrate this paradox. Both Seeger and Welsh expressly stated in their military admission forms that they held no belief whatsoever in the existence of God. They may even be called atheists by modern standards and yet the US Supreme Court acquitted them for refusing to render military service in a time of war when a compelling state interest existed beyond doubt. The Free Exercise Clause became the source of their protection even if they themselves might deny that they are religious persons. They have fundamental rights under the Religion Clauses even if they reject religion.

What *Seeger* and *Welsh* had were beliefs, which the Court found "sincere and meaningful." These beliefs occupied in their lives "a place parallel to that filled by the God" of those admittedly qualified for the exemption under the law from which they too seek exemption. These are religious beliefs. And these are kinds of beliefs which the Constitution protects.

This proposed definition does not take into account the content of one's belief. It does not matter whether or not one believes in the existence of God. Rather, it inquires into the psychological effect that such belief has on its possessor. When the belief is one that addresses itself to an "ultimate concern," which, by definition, "cannot be superseded," "must be unconditional," and "made without qualification or reservation," then it is religious. As held in *United States v. Kauten,*[168] religious belief categorically requires the believer to disregard elementary self-interest and "to accept martyrdom in preference to transgressing its tenets."

When nonbelievers like atheists, agnostics, and secular humanists, invoke this kind of belief in refusing to refer a patient to another accessible

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[167] Bernas, *supra* note 77, at 330.

[168] 133 F.2d at 703.

healthcare provider after having refused to render the medical service sought, the Free Exercise Clause is and should be there to protect them.

When a nonbeliever refuses to join a labor union and invokes a sincerely held belief against a union security clause, in the absence of extrinsic evidence of fraud, the Free Exercise Clause should be available to protect him in the same way that a member of the INC was protected by the Court in *Victoriano*.

A nonbeliever who refuses to salute the flag, sing the national anthem, and recite the patriotic pledge, must not be expelled from school, if the refusal is rooted in a sincerely held belief. The same exemption granted to members of Jehovah's Witnesses in *Ebralinag* must be extended to nonbelievers. Otherwise, a grave and patent violation of the Establishment Clause in favor of Jehovah's Witnesses would be committed by the State, and the Free Exercise rights of nonbelievers would be abridged.

Conscientious objection can be made in many other instances. There is a rich corpus of American jurisprudence on the subject during World War II when people were militarily conscripted. Our Constitution does not preclude the possibility of calling out its citizens to defend the country. Section 4, Article II of the 1987 Constitution is clear: "The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, *all citizens may be required, under conditions provided by law, to render personal military or civil service.*" (Emphasis supplied.) The primacy of religious freedom in the forum of conscience, according to Chief Justice Enrique Fernando in his concurring opinion in *Victoriano*, can even be made against the command of the State.

The beliefs which nonbelievers may invoke to qualify for religious exemption may be as varied and bizarre as the ones made by those who belong to minority and majority religions. It is not for the Court to decide whether these beliefs are "acceptable, logical, consistent, or comprehensible" or "not articulated with the clarity and precision that a more sophisticated person might employ."[169] If the Court had no qualms in passing no judgment on the belief of Jehovah's Witnesses that saluting the flag is tantamount to worshipping it, neither should it make judgment on the wisdom of the belief sincerely held by a nonbeliever under the same circumstances. If the Court accepted that non-membership in any labor

[169] Thomas v. Review Board, 450 U.S. 707 (1981).

union forms part of the religious belief system of the INC, it should also not question a nonbeliever under similar circumstances.

F. Addressing Frivolous or Sham Conscientious Objection Claims

The hesitation to extend to nonbelievers the right to conscientiously object must be nipped in the bud. Just because a right can be potentially abused does not mean that the right should be denied. After all, the same degree of hesitation is hardly existent when the identical right is granted to traditional believers who constitute the supermajority in this deeply religious country.

More importantly, frivolous or sham conscientious objection claims can easily be detected. For example, evidence of active and open membership in an organized religion can refute claims of being a nonbeliever in the first place. This shifts the burden of evidence to the claimant of exemption. It would then be difficult, though not impossible, for such claimant to present contrary evidence or argue that he is an atheist who "publicly" worships God for cultural or psychological reasons only. Such argument can mean that the claimant can compartmentalize his personal beliefs from his external acts or his performance of social roles. This can lead to the conclusion that the claimant therefore has no qualms acting against his beliefs. In such a case, the claimant's beliefs can be said to be neither "sincere" nor "deeply-held" and hence fail the *Seeger* standard.

Previous and subsequent compliance with the legal duty from which the claimant seeks exemption can weaken the conscientious objector claim. If the claimant had no qualms complying with the legal obligation previous and subsequent to a particular event or transaction, his claim for exemption can be said to be grounded on beliefs other than religious ones.

For example, a claimant who had been a member or officer of a labor union in his previous employment immediately preceding his current employment may have to provide a compelling explanation as to why he is suddenly not willing to be a member of a labor union at such point in time. Under the same logic, a physician who had performed a reproductive health procedure on one patient cannot later on conveniently claim to be a conscientious objector for having refused to perform the same procedure on another patient on non-medical grounds. Evidence of having performed a reproductive health procedure subsequent to the complained refusal to perform the identical service to a particular patient weakens the claim for exemption based on "ethical or religious beliefs."

Inconsistency of the claim for exemption with past and subsequent actions of the claimant is proof that the objection is not even conscientious.

A selective or arbitrary refusal to comply with a legal duty may be taken as evidence of "non-centrality" of the invoked belief to the claimant's faith, pursuant to the *Escritor* standards.

Evidence that the refusal to comply with a legal duty was done because of grounds other than religious can defeat the claim of exemption. For example, if the objection to render military service is primarily political or personal, evidence proving the same may be presented by the prosecutor to rebut the affirmative defense of conscientious objection. Pieces of evidence can be in the form of correspondence by the serviceman to his superiors showing that the reluctance to be deployed stemmed from reasons that are hardly religious or conscientious. Such evidence may also include a testimony from someone who overheard the serviceman claiming exemption saying his actual reason for refusal to be assigned to engage in active military combat and such actual reason is neither religious nor conscientious.

In *People v. Lagman,*[170] the defense of the accused that he "has a father to support, has no military learnings, and does not wish to kill or be killed" was found flimsy by the Court.

In *People v. Sosa,*[171] the defense of the accused that he is "fatherless and has a mother and a brother eight years old to support" was likewise rejected by the Court. Both Lagman and Sosa were found guilty of violating Section 60 of Commonwealth Act No. 1, known as the National Defense Law, for having refused to register in the military service at the time when such registration was required by the State from its citizens. Neither one of them raised conscientious objection to fighting in a war.

The point is, the State, through the prosecutor, can rebut the insincere invocation of the defense of conscientious objection in many ways. The possibility that some frivolous or sham conscientious objection can exempt individuals from performing their legal duty does not justify a policy of blanket denial of claims made by people who just happen to not have beliefs that are espoused by traditional and established religions.

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[170] G.R. No. L-45892, 66 Phil. 13, July 13, 1938.
[171] G.R. No. L-45893, *Id.*

Making the right to conscientiously object inaccessible to nonbelievers based on fear that it will open the floodgates to frivolous and sham claimants is both unwarranted and unfair.

The State can prove the "insincerity" and "non-centrality" of the invoked belief of the nonbeliever. The Supreme Court itself in one case[172] ordered the Solicitor General to intervene "to examine the sincerity and centrality of respondent's claimed religious belief and practice."

III. DEFINING RELIGION FOR CONSCIENTIOUS OBJECTION PURPOSES

Taxpayers qualified for exemptions would normally want to avail and take advantage of the same. In the United States, however, an atheist organization called Freedom from Religion Foundation which was classified by the Internal Revenue Service (IRS) as tax-exempt has been insisting that it should be allowed to pay tax. The Freedom from Religion Foundation protested being categorized as a "religious" organization. The Justice Department backed the IRS and even filed a brief in court arguing that the head of the foundation should be treated as a minister for tax purposes, and is entitled to tax-free housing. The view of the Justice Department was that affiliations like Buddhism and Taoism do not espouse beliefs in a supreme deity and yet, for tax purposes, they are considered religious organizations qualified for tax exemptions. The Freedom from Religion Foundation should be no different.[173]

The ambiguity of the status of atheist organizations as taxpayers was illustrated in *American Atheists, Inc. v. Douglas Shulman.*[174] The plaintiff atheist organizations American Atheists, Inc., Atheists of Northern Indiana, Inc., and Atheist Archives of Kentucky, Inc. sought to enjoin the Commissioner of the IRS from enforcing certain provisions[175] of the Internal Revenue Code which allegedly give preferential tax treatment to churches. The

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[172] Estrada v. Escritor, 492 SCRA at 82. "[...] The Solicitor General is ordered to intervene in the case where it will be given the opportunity (a) to examine the sincerity and centrality of respondent's claimed religious belief and practice; (b) to present evidence on the states compelling interest to override respondents religious belief and practice; and (c) to show that the means the state adopts in pursuing its interest is the least restrictive to respondents religious freedom."

[173] Cheryl K. Chumley, *Atheists incensed after IRS grants them tax exemption as religious group*, THE WASHINGTON TIMES, Aug. 21, 2013 *available at* http://www.washingtontimes.com/news/ 2013/aug/21/atheists-incensed-after-irs-grants-them-tax-exempt/ (last accessed Feb. 6, 2017).

[174] 21 F.Supp.3d 856 (E.D. Ky. 2014).

[175] U.S. TAX CODE, § 501 (c) (3).

plaintiffs alleged that churches are not being required by the IRS to apply for recognition of their tax-exempt status while charitable, scientific, educational organizations have to file application for the same. Churches are also not required to file the annual information return, while other tax-exempt organizations are still required to do so. The plaintiffs invoked the Equal Protection Clause in challenging the said tax provisions. The District Judge ruled that the atheist organizations cannot establish an Equal Protection Claim:

> If the Atheists are arguing that they are a church or a religious organization and the IRS has discriminatorily applied the above-referenced provisions of the I.R.C., then the Atheists' assertion is *pure speculation* because *they have not actually sought classification as a church or a religious organization.*
>
> If, on the other hand, the Atheists are arguing that they are not a church or a religious organization and the IRS is discriminating by only applying the challenged I.R.C. provisions to churches or religious organizations, then the Atheists have not stated a claim under the Equal Protection clause. More specifically, the Atheists cannot establish that they have been treated disparately as compared to similarly-situated organizations.[176]

A. Justification for the Tax Exemption in Favor of Religion

In *Walz v. Tax Commission of the City of New York*,[177] the plaintiff questioned the grant of an exemption to church property. He argued that the tax exemption indirectly requires him "to make a contribution to religious bodies, and thereby violates provisions prohibiting Establishment of religion." The Court, through Chief Justice Warren Burger, disagreed, thus:

> *The grant of a tax exemption is not sponsorship,* since the government does not transfer part of its revenue to churches, but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees "on the public payroll." *There is no genuine nexus between tax exemption and Establishment of religion.* As Mr. Justice Holmes commented in a related context, "a page of history is worth a volume of logic." The exemption creates only a minimal and remote involvement

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[176] *Id.* (Emphasis supplied.)
[177] 397 U.S. 664 (1970).

> between church and state, and far less than taxation of churches. It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other.[178]

The grant of tax exemptions to religious organizations has long been justified along secular lines. It has been said that these exemptions represent the recognition by the State of the contributions by the churches in carrying out activities for which the State should have otherwise been financially responsible.[179]

The danger of this particular justification was pointed out by Chief Justice Burger in *Walz*: "It [is] unnecessary to justify the tax exemption on the social welfare services or 'good works' that some churches perform for parishioners and others—family counseling, aid to the elderly and the infirm, and to children."[180] The nature of social services that churches render may vary. Churches may serve urban or rural, poor or rich constituencies. Assessing the extent of services that churches render in order to determine their eligibility for tax exemptions "would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize."

It is clear that the use of a "social welfare yardstick" would breach the "excessive government entanglement with religion" prong of the *Lemon test,*[181] and hence, would not pass constitutional muster. The tax exemptions written in statutes must be read simply as "sparing the exercise of religion from the burden of property taxation levied on private profit institutions."[182]

1. Qualms About Constitutionalizing Tax Exemption of Religious Properties

It was a religious person—a nun—who questioned the grant of tax exemption on church properties. Sister Mary Christine O. Tan, the first Filipino provincial superior of the Religious of the Good Shepherd (RGS), and

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[178] *Id.* at 675. (Citations omitted.)

[179] Boris Bittker, *Churches, Taxes and the Constitution*, 78 YALE L.J., 1286 (1969).

[180] *Walz*, 397 U.S. at 674.

[181] The *Lemon* test, enunciated in *Lemon v. Kurtzmann,* 403 U.S. 602 (1971), is employed in determining the constitutionality of statutes concerning religion. It has three prongs: *First,* the statute must have a secular legislative purpose; *second,* its principal or primary effect must be one that neither advances nor inhibits religion, and *finally,* the statute must not foster "an excessive government entanglement with religion."

[182] *Walz*, 397 U.S. at 673.

chair of the Association of Major Religious Superiors of Women in the Philippines after the imposition of martial rule in 1972,[183] expressed her discomfort over the constitutional grant of tax exemption in favor of religious organizations during the deliberations of the 1986 Constitutional Commission:

> SR. TAN. I am bewildered that churches owned by some religious who are very wealthy would be tax exempt. I cannot understand why the poor laborer would pay taxes on land but the religious does not pay taxes. I am bewildered about that. I am just talking about the Catholic Church, of course. Also, at this period of our national recovery, I think we should all be paying because we are bankrupt.
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> * * *
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> MR. AZCUNA. I will just comment on that, Madam President. The main reason this was taken from the 1935 Constitution is that the power to tax is the power to destroy. If we want to promote the separation of Church and State and prevent the State from destroying the Church, we have to exempt the Church from taxation. That is the philosophy behind it.
>
> SR. TAN. I think it is a very weak reason.
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> MR. AZCUNA. Yes, that is the philosophy because the power to tax can really destroy.
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> SR. TAN. Thank you. [184]

Furthermore, Florin Hilbay argues that the constitutionalized tax exemption compels nonbelievers to support the cause of religion.[185] Devotion to God is not a legitimate basis for State subsidy. "What the exemption connotes," Hilbay explains, "is that everyone has to pay taxes for possessing real property, but those religious corporations that construct very expensive buildings for the veneration of their gods are constitutionally excused and are thus not made to contribute to the functioning of government."[186]

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[183] Ma. Ceres P. Doyo, *Religious of the Good Shepherd: weaving compassion*, PHIL. DAILY INQUIRER, Oct. 3, 2012 *available at* http://opinion.inquirer.net/38004/religious-of-the-good-shepherd-weaving-compassion (last accessed Feb. 15, 2017).

[184] II RECORD CONST. COMM'N 36 (July 22, 1986).

[185] Florin Hilbay, *The Establishment Clause: An Antiestablishment View* in UNPLUGGING THE CONSTITUTION 160 (2009).

[186] *Id.*

The wisdom behind the tax exemption on church properties is a proper subject for constitutional amendment purposes. It is not, however, the primary concern of this Note. Independent of the wisdom of the exemption (or the absence thereof), it is submitted that the same exemption must be available to organizations of both believers and nonbelievers.

2. Taxing Religious Activity: The American Bible Society case

In *American Bible Society v. City of Manila,*[187] the Court had the occasion to strike down as unconstitutional the application of an ordinance that imposes permit and license fees on the activity of a religious organization. The plaintiff American Bible Society is a non-stock, non-profit, religious, missionary corporation duly registered and doing business in the Philippines. It has been distributing and selling bibles throughout the Philippines. The City of Manila found that the plaintiff was "conducting the business of general merchandise" without the necessary Mayor's permit and municipal license in violation of city ordinance. The Court held that imposing permit and license fees on American Bible Society for distributing and selling bibles and other religious literature would "impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs," thus:

> *The constitutional guaranty of the free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information.* Any restraints of such right can only be justified like other restraints of freedom of expression on the grounds that there is a clear and present danger of any substantive evil which the State has the right to prevent. In the case at bar the license fee herein involved is imposed upon appellant for its distribution and sale of bibles and other religious literature.[188]

The Collector of Internal Revenue, on the other hand, exempted the plaintiff from income tax, as provided in the NIRC.[189] The Court noted that

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[187] G.R. No. L-9637, 101 Phil. 386, Apr. 30, 1957.

[188] *Id.* (Citations omitted. Emphasis supplied.)

[189] Com. Act No. 466 (1939), § 27. "*Exemptions from Tax on Corporations.* — The following organizations shall not be taxed under this Title in respect to income received by them as such —

* * *

"(e) Corporations or associations organized and operated exclusively for *religious,* charitable, [...] or educational purposes, [...]: Provided, however, That the income of whatever kind and character from any of its properties, real or personal, or from any activity

such exemption clearly indicates that the act of distributing and selling bibles is purely religious and hence, must not be burdened by taxation.

B. The Constitutional Grant of Tax Exemptions on Church Properties

Unlike the Philippines, the United States did not enshrine the grant of tax exemption to properties of religious denominations and sects in its Federal Constitution. Because of this, the grant of tax exemptions through state laws inevitably faced constitutional challenges. These constitutional noises, however, were unheard of in the Philippines since the grant of such tax exemptions in the 1935 Constitution:

> Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used *exclusively* for religious, charitable, or educational purposes shall be exempt from taxation.[190]

The framers of the 1935 Constitution granted these tax exemptions to ensure religious liberty.[191] In the 1973 Constitution, mosques and non-profit cemeteries were included under the exemption, and the requirement of actual and direct use of the property was introduced. Section 17(3) of Article VIII of the 1973 Constitution states:

> Charitable institutions, churches, parsonages or convents appurtenant thereto, *mosques, and non-profit cemeteries,* and all lands, buildings, and improvements *actually, directly, and exclusively* used for religious or charitable purposes shall be exempt from taxation.[192]

Only property taxes are covered under the said tax exemption.[193] Former Chief Justice Hilario G. Davide, Jr., a member of the 1986 Constitutional Commission, explained that what is exempted is not the institution itself, but the lands, buildings and improvements actually, directly, and exclusively used for religious, charitable, or educational purposes.[194]

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conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under this Code [...]"

[190] CONST. (1935), art. VI, § 14(3). (Emphasis supplied.)

[191] Bernas, *supra* note 77, at 808.

[192] *Id* at 781. The word "educational" was inserted in the same provision, which can now be found in Section 28(3) of the 1987 Constitution. (Emphasis supplied.)

[193] Comm'r of Internal Revenue v. Court of Appeals, G.R. No. 124043, 298 SCRA 83, Oct. 14, 1998.

[194] Lung Center of the Philippines v. Quezon City, G.R. No. 144104, 433 SCRA 119, June 29, 2004.

Since it is the local governments that assess and collect real property taxes, the Local Government Code has an identical provision.[195] Tax exemptions are interpreted *strictissimi juris* against the taxpayer. Hence, jurisprudence on the matter harped on the necessity of satisfying the criterion of "actual, direct, and exclusive use" of the property for religious purpose to qualify for the exemption.

1. Actual, Direct, and Exclusive Use

In *Lung Center of the Philippines v. Quezon City,* the Court explained what the phrase "actually, directly, and exclusively" means:

> *[E]xclusive* is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and exclusively is defined, in a manner to exclude; as enjoying a privilege exclusively. If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation. *The words dominant use or principal use cannot be substituted for the words used exclusively without doing violence to the Constitutions and the law. Solely is synonymous with exclusively.*
>
> What is meant by actual, direct and exclusive use of the property for [charitable] purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized. *It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.* [196]

The Court held that the portions of the Lung Center of the Philippines that are being leased to private entities for business enterprises are not exempt from real property taxes. On the other hand, portions of the land occupied by the hospital itself and portions thereof used for its patients, whether paying or non-paying, are exempt from real property taxes.

2. Religious Purpose

If a certain atheistic or agnostic organization would file an application for tax exemption of real property it owns or leases, it would have to state that the said property is being used for "religious" purposes. What makes a purpose religious is a legal, and ultimately, constitutional question.

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[195] LOCAL GOV'T CODE, § 234.

[196] 433 SCRA at 137-138. (Citations omitted. Emphasis supplied.)

It is easy to characterize prayer meetings, masses, bible studies, and the like as activities being conducted for religious purposes. However, while yoga and meditation are undoubtedly Hindu and Buddhist rituals,[197] both are now being practiced in recreational spaces devoid of their religious undertones.

3. Classification of Real Property, Assessment Levels, and Rates of Real Property Tax

To arrive at the taxable or assessed value of the real property, its fair market value is multiplied with the assessment level which is specific for each class of real property. In an equation form, this translates to: Taxable (or Assessed) Value = Fair Market Value x Assessment Level. The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the Sangguniang Panlalawigan, Sangguniang Panlungsod or Sangguniang Bayan of a municipality within the Metropolitan Manila Area.[198] The Local Government Code sets the following maximum values of assessment levels that local government units can fix by ordinance, on different classes of real property:[199]

On Lands:

CLASS	ASSESSMENT LEVELS
Residential	20%
Agricultural	40%
Commercial	50%
Industrial	50%
Mineral	50%
Timberland	20%

(b) On Buildings and Other Structures:

(1) Residential

Fair Market Value

OVER	NOT OVER	ASSESSMENT LEVELS
	P 175,000.00	0%
P 175,000.00	300,000.00	10%

[197] Stuart Ray Sarbacker, *Samadhi: The Numinous and Cessative in Indo-Tibetan Yoga.* SUNY Series in Religious Studies. Albany: State University of New York Press, 1-2 (2005).

[198] LOCAL GOV'T CODE, § 218.

[199] § 218.

300,000.00	500,000.00	20%
500,000.00	750,000.00	25%
750,000.00	1,000,000.00	30%
1,000,000.00	2,000,000.00	35%
2,000,000.00	5,000,000.00	40%
5,000,000.00	10,000.000.00	50%
10,000,000.00		60%

(2) [...]

(3) Commercial / Industrial

Fair Market Value

OVER	NOT OVER	ASSESSMENT LEVELS
	P 300,000.00	30%
P 300,000.00	500,000.00	35%
500,000.00	750,000.00	40%
750,000.00	1,000,000.00	50%
1,000,000.00	2,000,000.00	60%
2,000,000.00	5,000,000.00	70%
5,000,000.00	10,000.000.00	75%
10,000,000.00		80%

* * *

(d) On Special Classes:
The assessment levels for all lands, buildings, machineries and other improvements:

ACTUAL USE	ASSESSMENT LEVELS
Cultural	15%
Scientific	15%
Hospital	15%

The maximum basic real property tax rate that a province can impose is 1% of the assessed value of real property.[200] A city or a municipality within the Metropolitan Manila Area, on the other hand, can impose a rate not exceeding 2% of the assessed value of real property.[201] An additional 1% tax on real property, accruing to the Special Education Fund (SEF), is likewise imposed by the said local government units.[202]

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[200] § 233(a).
[201] § 233(b).
[202] §§ 272, 309.

Based on the above table of assessment levels, a commercial building with a fair market value of 2 million pesos will have an assessment level of 70%. The assessed value of the property would therefore be equal to PHP 1,400,000.00. If this building is located in a city in Metro Manila—Quezon City, for example—the applicable tax rate is 3%,[203] inclusive of SEF. The annual real property tax payable would be PHP 42,000.00. A commercial land in Quezon City with a fair market value of 2 million pesos will have an assessment level of 50%. The annual real property tax due on said land is equal to PHP 30,000.00. These amounts could vary depending on the classification that the local government would give to the real property.

These amounts represent the probable real property taxes payable that atheist, agnostic, and secular humanist organizations might be liable for, should they acquire or lease real property to be used as their headquarters or offices, absent a tax exemption. They represent the amounts of tax the State imposes on the exercise of their nonbelief. Failure to pay the said taxes could result in the property being levied upon by the local government and subsequently sold in a public auction.[204]

C. Application of the Tax Exemption on Atheistic, Agnostic, and Secular Humanist Organizations

Can nonbeliever organizations like Filipino Freethinkers, PATAS, and HAPI seek exemption from real property tax? Should local governments grant tax exemption on real property of these organizations?

To be entitled to the tax exemption, the atheist organization or group of nonbelievers should prove that (a) it is a religious institution; and (b) its real properties are *actually, directly,* and *exclusively* used for religious purposes.[205]

If these nonbeliever organizations would apply for real property tax exemption, the local governments, under the status quo, would most

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[203] Guide for Quezon City Real Property Tax Payers, *at* http://quezoncity.gov.ph/index.php/component/content/article/101/2193-how-to-compute-your-new-tax-due-for-2017 (last accessed April 15, 2017).

[204] LOCAL GOV'T CODE, §§ 258, 260.

[205] Lung Center of the Philippines v. Quezon City, 433 SCRA at 119. The author adopted the parameters set in the case for a charitable organization's qualification for real property tax exemption and applied the same in the case of an atheist organization.

probably deny the same. They would justify the denial of the application on the following grounds:

1. The Filipino Thinkers, PATAS, and HAPI are not religious institutions.

In its website, The Filipino Freethinkers declares that it is the "largest and most active organization for *freethought* in the Philippines." It then explains that freethought is a way of thinking "*unconstrained by dogma, authority, and tradition.* To a freethinker, no idea is sacred; all truth claims are subject to skepticism, rational inquiry, and empirical testing." The organization aims to "promote reason, science, and *secularism* as a means of improving every Filipino's quality of life."[206]

The Philippine Atheists and Agnostics Society (PATAS), on the other hand, identifies itself as a "social organization for the public understanding of atheism and agnosticism in our country." It is a "trailblazer of critical thinking, free thought and scientific inquiry in the Philippines" which stands for "reason, science and the secularization of our nation."[207]

Humanist Alliance Philippines, International (HAPI) states in its website[208] that it is a secular humanist organization dedicated to promoting "a progressive philosophy suggesting that human beings, given the right education, can be ethical and morally upright even without divine interference."

Based on the declarations made by these three organizations in their official websites, it is obvious that they do not identify themselves as religious institutions. Though these self-identifications are not binding on courts with respect to the legal nature of these organizations, it is clear that all of them are organized and engaged for purposes other than religious. In fact, it can even be said that they are organized for purposes opposite to that of religious ones.

Under the *Torcaso* definition of religion which includes non-theistic belief systems such as that of Buddhism, Taoism, Ethical Culture, Secular Humanism and others,[209] the Filipino Freethinkers, PATAS, and HAPI would not qualify as religious institutions. By *ejusdem generis*, atheism is excluded under this definition.

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[206] *See supra* note 34.
[207] *See supra* note 37.
[208] *See supra* note 38.
[209] *See supra* note 61.

In *Yoder,* it was held that beliefs based purely on secular considerations do not enjoy the protection of Religion Clauses. Consequently "a way of thinking unconstrained by dogma, authority, and tradition" espoused by The Filipino Freethinkers is secular, and is therefore not protected under the Religion Clauses. Similarly, it is beyond doubt that an organization that stands for "reason, science and the secularization of our nation" is a secular—and not a religious—institution.

It would be inaccurate, however, to make a sweeping statement that all atheist, agnostic, and secular humanist organizations cannot be considered as religious institutions. There is no single strain of atheism. The distinction between an absolute atheism and religious atheism (which includes "Buddhism, Taoism, Ethical Culture, Secular Humanism and others") is therefore useful for tax exemption purposes. An organization founded on the latter can claim to be a religious institution for the sole purpose of availing of the exemption from real property tax.

2. Activities of Filipino Freethinkers, PATAS, and HAPI have no religious purpose.

Filipino Freethinkers conducts meeting every other week "for a few hours of friendly and usually rowdy—discussion."[210] The topics of these discussions are as varied as "the ethics behind the latest scientific discoveries, the consequences of certain current events, suggestions for improving our society on both small and grand scales, etc." These are precisely the activities to which *Yoder* pertains and which are aptly classified as secular activities. The same can be said of the activities of PATAS and HAPI. These activities are usually and conveniently done in coffee shops and restaurants.

These objections by the local governments would be legitimate if the definition of religion, at least for real property tax exemption purposes, would be limited to theistic and traditional religions.

D. The *Kaufman* and *Reed* Cases: Atheism as Religion for First Amendment Purposes

It is, however, possible to treat atheism as religion.

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[210] *See supra* note 34.

In *Kaufman v. McCaughtry*,[211] James Kaufman filed a suit against prison officials for violating his right to practice his religion when they refused to allow him to form an inmate group "to study and discuss atheism." Kaufman envisioned that his group would work "to stimulate and promote Freedom of Thought and inquiry concerning religious beliefs, creeds, dogmas, tenets, rituals and practices and to educate and provide information concerning religious beliefs, creeds, dogmas, tenets, rituals, and practices." The District Court dismissed the suit. The Appeals Court reversed the District Court's ruling. "The problem with the district court's analysis," the Appeals Court said, "is that the court failed to recognize that Kaufman was trying to start a "religious" group [...] Atheism is Kaufman's religion, and the group that he wanted to start was religious in nature even though it expressly rejects a belief in a supreme being."

The Appeals Court held that reference to religion, for First Amendment[212] purposes, includes what is often called "nonreligion." The touchstone of Establishment Clause analysis mandates government neutrality between religion and religion, and between religion and *nonreligion.* A state cannot pass laws or impose requirements which aid all religions as against nonbelievers. Neither can it aid those religions that espouse belief in the existence of God as against those religions founded on the nonexistence of the latter. Since atheism is a "school of thought" that "takes position on religion, the existence and importance of a supreme being, and a code of ethics," atheism, then, is Kaufman's religion for purposes of the First Amendment claims he was raising. The Court explained this paradigm shift of treating atheism as religion, thus:

> At one time it was thought that this right [referring to the right to choose one's own creed] merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.[213]

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[211] 419 F.3d 678 (7th Cir. 2005).

[212] U.S. CONST. amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [...]"

[213] *Id.* (Explanation supplied.)

In *Reed v. Great Lakes Companies,*[214] the Seventh Circuit Court of Appeals, speaking through Judge Richard Posner,[215] held that "religion" includes antipathy to religion. Melvin Reed, the executive housekeeper of Holiday Inn, accompanied his manager to a meeting at which they would receive Bibles from the Gideons. To the manager's surprise, the Gideons, besides delivering the Bibles, did some Bible reading and praying. Reed was offended by the religious character of the meeting and left in the middle of it. The manager chastised Reed and told him: "Don't do that again, you embarrassed me." Reed retorted: "You can't compel me to a religious event." The manager then told Reed that he would do what he was told to do. Reed snapped back, "Oh, hell no, you won't, not when it comes to my spirituality." The manager fired Reed for insubordination. Judge Posner held that Reed *might be* entitled to an accommodation if attending a meeting at which the Gideons might pray or read from the Bible would offend his religious or antireligious sensibilities. An atheist (which Reed may or may not have been) cannot be fired because his employer dislikes atheists. Hostility to religion counts as a form of religion. "If we think of religion as taking a position on divinity, Judge Posner said, "then atheism is indeed a form of religion."[216]

It must be noted, however, that the United States Supreme Court has not yet passed upon the question of whether or not atheism qualifies as a religion.[217] The Court of Appeals for the Seventh Circuit has answered the question in the affirmative both in the *Kaufman* and *Reed* cases.[218]

E. Atheism, Agnosticism, and Secular Humanism as Religion for Tax Exemption Purposes

This Note submits that *for tax exemption purposes*, atheism, agnosticism, and secular humanism should be included within the scope of the definition of religion. Consequently, organizations built upon them should be granted the same tax exemptions enjoyed by traditional and established religious organizations.

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[214] 330 F.3d 931 (7th Cir. 2003).

[215] *Published Judicial Opinions of Judge Richard Posner, available at* http://www.law.uchicago.edu/files/cv/posner-july-28-2015.pdf (last accessed Feb. 16, 2017).

[216] The manager, however, was acquitted of intentional religious discrimination. Reed failed to present evidence that the manager expected to encounter prayers and Bible reading at the meeting. He also never expressed his religious views to the manager so that the latter might be apprised of them and act accordingly.

[217] Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (2006).

[218] *Id.*

1. Religion is Taking a Position on Divinity.

Religion and atheism are two sides of the same coin. Judge Richard Posner's postulate in *Reed* that if religion entails taking a position on divinity would imply that atheism, which posits that there is no God, is a religion. A religion need not be based on a belief in the existence of a supreme being nor must it be a mainstream faith.[219]

The view that atheism and agnosticism are part and parcel of religious freedom had long been espoused by prominent commentators on the Religious Clauses of the Philippine Constitution. Chief Justice Enrique Fernando[220] suggests that religious freedom may be invoked by an atheist or a skeptic. He defines religious freedom as "liberty of belief or nonbelief." Similarly, Justice Isagani Cruz submits that religion also includes rejection of religion. To him, religion embraces matters of faith and dogma, as well as doubt, agnosticism and atheism."[221]

2. Establishment Clause Requires Treatment of Nonbelief as Religion.

The United States Supreme Court ruled that posting copies of the Ten Commandments in the courthouses violates the First Amendment's Establishment Clause. In *McCreary County v. American Civil Liberties Union of Kentucky,*[222] the Court framed the issue as implicating government neutrality between religion and nonreligion:

> The touchstone for our analysis is the principle that the "First Amendment mandates *governmental neutrality between religion and religion, and between religion and nonreligion." When the government acts with the ostensible and predominant purpose* of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government's ostensible object is to take sides. Manifesting a purpose to favor one faith over another, or adherence to religion generally, clashes with the "understanding, reached ... after decades of religious war, that liberty and social stability demand a religious tolerance that respects the religious views of all citizens ..." *By showing a purpose to favor religion, the government "sends the ...*

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[219] *Id.*

[220] *See supra* note 73.

[221] *See supra* note 71.

[222] 545 U.S. 844 (2005).

> *message to ... nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members...'* "[223]

The Court in *McCreary* noted that the principle of neutrality "has provided a good sense of direction: the government may not favor one religion over another, *or religion over irreligion*, religious choice being the prerogative of individuals under the Free Exercise Clause." It likewise declared that the Establishment Clause requires "governmental neutrality in matters of religion, including neutrality in statements acknowledging religion."

If the Establishment Clause requires neutrality when it comes to statements acknowledging religion, with more reason that it should require observance of such neutrality when it comes to state actions. Granting tax exemption in favor of religion and denying the same from irreligion is not just an eloquent statement of, but also an overt act of state partiality.

Allowing the posting of Ten Commandments in the courthouses and denying tax exemption to organizations of nonbelievers, when such exemption is available to organizations of believers, achieve the same effect: state endorsement of religion. The latter act, however, is worse. It financially handicaps the nonbelievers. It empowers religion but undermines nonreligion. It comforts those who believe but afflicts those who do not. It elevates the constitutional status of the believers but demotes that of the nonbelievers.

If atheism, agnosticism, and secular humanism would be treated as outside the scope of the definition of religion, *at least for tax exemption purposes*, then the State would be taking the side of adherents of religion against the non-adherents. It becomes a biased arbitrator in the contest between the heretic and the dogmatic.

Furthermore, in *Kaufman*, the Court held that the state cannot pass laws or impose requirements which aid all religions as against nonbelievers. Neither can the State aid those religions that espouse belief in the existence of God as against those religions founded on the nonexistence of the latter.

If local governments would refuse to extend the real property tax exemption granted to religious organizations to the likes of the Filipino Freethinkers, PATAS, and HAPI, then they would be offending the

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[223] *Id.* (Citations omitted. Emphasis supplied.)

Establishment Clause. Such a tax classification must be struck down as unconstitutional. Imposing taxes on these organizations while granting exemptions to religious organizations is a clear act of the State taking sides, establishing religions at the expense of nonreligions.

It is therefore submitted that for tax exemption purposes, nonbelief must be considered as religion. A contrary view would mean that the State would endorse theism. A contrary view would also mean that beliefs that veer away from or flatly reject the existence of a deity are relegated to a lower constitutional status. Religion includes antipathy to religion. Freedom to accept religion includes freedom to reject it wholesale.

3. Taxation Would Unduly Burden Atheistic, Agnostic, and Secular Humanist Organizations.

The Philippine Supreme Court held that imposing permit and license fees on American Bible Society for distributing and selling bibles and other religious literature would "impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs."[224] The same effect is achieved when local governments assess and impose real property taxes on atheistic, agnostic, and secular humanist organizations. It would be more expensive to maintain and manage an atheistic or agnostic organization than a religious organization, since the former does not enjoy financial accommodation the State extends to the latter. Nonbelief may not be killed by impoverishing its possessor, but it makes possession of such nonbelief burdensome.

Commissioner Azcuna, during the deliberations of the Constitutional Commission, defended the constitutional grant of tax exemption to churches by arguing that the power to tax is the power to destroy.[225] He said that to prevent the State from the destroying the Church, the Church must be exempt from taxation.[226] Borrowing Commissioner Azcuna's logic, the same power to destroy should not be wielded against organizations of nonbelievers who count as an ultraminority group[227] in the country.

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[224] American Bible Society v. City of Manila, 101 Phil. at 386.

[225] II RECORD CONST. COMM'N 36 (July 22, 1986).

[226] *Id.*

[227] Researchers at the National Opinion Research Center (NORC) at the University of Chicago found that the Philippines, among the thirty countries surveyed, has the highest percentage of its population that expressed strong belief in God. Eighty-four percent (84%) of Filipinos profess belief in the existence of God. Less than 1% claim to be atheists. *See*

One atheist said that "[t]he biggest issue that atheists and other liberal thinkers in the Philippines have, I think—[is] having to live with a huge communication barrier, whether you're discussing the political or the personal. It's like living on completely different planes from the people around you. It's possible that you may never, ever meet and see eye to eye."[228] In the Philippines where more than 80% of the people identify as Roman Catholic, nonbelievers are usually perceived negatively.[229]

Forming and maintaining an atheistic or agnostic organization in the Philippines, then, would be a formidable task. It would be prudent and in keeping with the promotion of religious liberty that the State should not add burden to the exercise of nonbelief through financial inequity.

4. Organizations of Nonbelievers Should Have Tax Parity with Organizations of Believers.

One of the many and legitimate objections against constitutionalizing tax exemptions on church properties is that it forces nonbelievers to subsidize churches.[230] It is "compelled contribution by nonbelievers to the cause of religion."[231] This objection would be, in a way, and although tangentially, addressed by the proposed treatment of atheism, agnosticism, and secular humanism as religion. Under Section 28(3), Article VI of the Constitution, the activities of these organizations would be considered as being conducted *actually, directly, and exclusively* for religious purposes. The nonbelievers would finally be beneficiaries of the same tax exemption.

IV. DEFINING RELIGION FOR PARTY-LIST REGISTRATION PURPOSES

The party-list system is an innovation of the 1987 Constitution. It is a mechanism of proportional representation in the election of

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Jeanna Bryner, *Older People Hold Stronger Belief in God,* LIVE SCIENCE, Apr. 28, 2012, *available at* http://www.livescience.com/19971-belief-god-atheism-age.html.

[228] Cate de Leon, *How to be an Atheist in the Philippines*, PHILIPPINE STAR, Dec. 22, 2012, *available at* http://www.philstar.com/supreme/2012/12/22/888644/how-be-atheist-philippines.

[229] Lealy Galang and Alma Rhenz Fernando, *On being godless and good: Irreligious Pinoys speak out,* RAPPLER, June 4, 2015, *available at* http://www.rappler.com/move-ph/95240-secular-humanism-philippines-religion.

[230] Hilbay, *supra* note 185, at 160.

[231] *Id.*

representatives to the House of Representatives from national, regional, and sectoral parties or organizations or coalitions thereof registered with the COMELEC.[232] Through the party-list system, small political parties and the marginalized and underrepresented sectors are given the opportunity to have representation in the legislative branch, which is traditionally dominated by established political parties with well-oiled political machinery.[233] It aims to "enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations, and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives."[234]

Not all political or sectoral parties, however, can participate in the party-list elections. Section 6 of Republic Act No. 7941, otherwise known as the Party-list System Act, enumerates the grounds for disqualification of any national, regional or sectoral party, organization or coalition in the party-list elections:

> *(1) It is a religious sect or denomination, organization or association, organized for religious purposes;*
> (2) It advocates violence or unlawful means to seek its goal;
> (3) It is a foreign party or organization;
> (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
> (5) It violates or fails to comply with laws, rules or regulations relating to elections;
> (6) It declares untruthful statements in its petition;
> (7) It has ceased to exist for at least one (1) year; or
> (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. (Emphasis supplied.)

In *Atong Paglaum v. Commission on Elections*,[235] the Court ruled that those who "lack well-defined political constituencies" can organize themselves into sectoral parties "in advocacy of the special interests and

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[232] Rep. Act No. 7491 (1995), § 3 (a). "Party-List System Act".

[233] COMELEC Primer on the Party-List System of Representation in the House of Representatives, as mandated by Republic Act No. 7941 *at* http://www.chanrobles.com/republicactno7941primer.htm#.WKhThBJ95-U (last accessed Feb. 12, 2017).

[234] Rep. Act No. 7941 (1995), § 2.

[235] G.R. No. 203766, 694 SCRA 477, Apr. 2, 2013.

concerns of their respective sectors," and subsequently run as party-list groups. Individuals belonging to "marginalized and underrepresented sectors" both in "economic or ideological status" may form organizations and participate in the party-list elections.

Section 5 of Republic Act No. 7941 states that any organized group of persons may register as a party, organization, or coalition for purposes of the party-list system. A verified petition must be filed with the COMELEC stating the group's desire to participate in the party-list system as a national, regional, or sectoral party or organization or a coalition of such parties or organizations. The sectors "shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals." The phrase "shall include" denotes that the inclusion of the mentioned sectors is mandatory. It does not, however, preclude the inclusion of other sectors that are similarly situated. While the enumeration is not exclusive, it however demonstrates that not all sectors can be represented under the party-list system.[236]

A. The Prohibition Against the Religious Sector

The religious sector is prohibited from participating in the party-list system. Hence, Section 5, Paragraph 2 of Article VI of the 1987 Constitution provides, thus:

> The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, *except the religious sector.* (Emphasis supplied.)

Furthermore, Section 2, Paragraph 5 of Article IX-C of the Constitution forbids the COMELEC from registering religious denominations and sects as political parties, organizations, or coalitions:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
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> * * *

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[236] Ang Bagong Bayani-OFW Labor Party v. Commission on Elections, G.R. No. 147589, 359 SCRA 698, June 26, 2001.

> 5. Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. *Religious denominations and sects shall not be registered.* Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration. (Emphasis supplied.)

Two categories of religious groups are the subject of the disqualification: "(1) the out-and-out religious sect, and (2) an association which, though not formally a sect, is organized for religious purposes."[237] Since religious sects would not directly seek party-list registration because of the clear prohibition against them, it is the second category of party-list organization that the COMELEC should guard against.[238]

1. The Scope of the Prohibition

The scope of the proscription against the participation of the religious sector in the party-list system can be gleaned from the following records of the deliberations of the 1986 Constitutional Commission:

> MR. OPLE. [...] In the event that a certain religious sect with nationwide and even international networks of members and supporters, in order to circumvent this prohibition, decides to form its own political party in emulation of those parties I had mentioned earlier as deriving their inspiration and philosophies from well-established religious faiths, will that also not fall within this prohibition?
>
> MR. MONSOD. If the evidence shows that the intention is to go around the prohibition, then certainly the Comelec can pierce through the legal fiction.[239]

A similar exchange between Commissioners Villacorta and Rigos further clarifies the extent of the prohibition against the participation of the religious sector in the party-list system:

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[237] Florin Hilbay, *Religious participation in the party-list*, PHIL. DAILY INQUIRER, June 6, 2012, *available at* http://opinion.inquirer.net/30167/religious-participation-in-the-party-list.

[238] *Id.*

[239] I RECORD CONST. COMM'N 31 (July 16, 1986).

> MR. VILLACORTA. When the Commissioner proposed "EXCEPT RELIGIOUS GROUPS," he is not, of course, prohibiting priests, imams or pastors who may be elected by, say, the indigenous community sector to represent their group.
>
> REV. RIGOS. Not at all, but I am objecting to anybody who represents the Iglesia ni Kristo, the Catholic Church, the Protestant Church et cetera.[240]

Commissioner Monsod emphasized that the prohibition is on any religious organization registering as a political party. It is not a prohibition against a priest running as a candidate. What is prohibited is the registration of a religious sect as a political party.[241] Members of a religious group may be nominated as representative of a marginalized and underrepresented sector.

The rationale behind the disqualification of religious sector is that the government acts for secular purposes and primarily has secular effects. The government cannot have a "partner in legislation who may be driven by the dictates of faith which may not be capable of rational evaluation."[242] The presence of a religious organization in Congress would violate the Non-Establishment Clause, because such organization is no longer just a "private community of believers,"[243] but an officially sanctioned and subsidized group. The separation of Church and State entails prohibiting "agents of the Church from becoming agents of the State."[244]

2. Party-List Registration

An organization or political party acquires juridical personality through its registration with COMELEC. As long as the organization remains unregistered, it is a mere aggrupation of individuals exercising their right of association that cannot enjoy the benefits flowing from possession of juridical personality.[245] Only registered national, regional, and sectoral parties or organizations shall be elected through the party-list system.[246]

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[240] II RECORD CONST. COMM'N 45 (Aug. 1, 1986).

[241] Ang Bagong Bayani v. COMELEC, 359 SCRA 729, n.58, June 26, 2001.

[242] Atong Paglaum, Inc. v. COMELEC, G.R. No. 203766, 694 SCRA 477, Apr. 2, 2013.

[243] Hilbay, *supra* note 238.

[244] *Id.*

[245] Bernas, *supra* note 77, at 1090-1091.

[246] CONST. art. VI, § 5 (1).

It is the COMELEC that has the power and the function to register political parties, organizations, or coalitions.[247] This power to register and ascertain the eligibility of groups to participate in the elections is purely administrative in character.[248] The power of the COMELEC to register includes the power to de-register.[249]

3. The BUHAY Party-List Case

Evangelical groups in the Philippines have openly fielded party-list groups, "barely disguised as their fronts."[250]

In its website,[251] BUhay HAyaan Yumabong (Let Life Prosper) or BUHAY Party-list boasts of its pro-life and pro-poor representation in Congress. BUHAY proclaims that the sanctity of life is its flagship advocacy. It believes that the Philippines was created by God to be a model nation for the whole world.[252] It publicly professes faith by declaring that God is our Creator, who gave life to all of us. It preaches that it is God alone who can decree the beginning and end of our lives.[253]

In the 2007 national elections, BUHAY obtained the highest number of votes cast for a party-list group with a total votes of 1,169,234 out of 15,950,900.[254] It again became the number one party-list group in the 2013 elections after garnering the highest number of votes.[255] It was, however, relegated to the ninth rank in the 2016 elections.

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[247] Art. IX-C, § 2 (5).

[248] Magdalo Para Sa Pagbabago v. Commission on Elections, G.R. No. 190793, 673 SCRA 651, June 19, 2012.

[249] I RECORD CONST. COMM'N 31 (July 16, 1986).

[250] Pangalangan, *supra* note 44, at 15.

[251] BUHAY Party-list Official Website *at* http://buhaypartylist.com/ (last accessed Feb 12, 2017).

[252] Direct translation of "Maka-BANSA - Naniniwala kami na ang Pilipinas ay binuo ng Panginoong Diyos upang maging isang modelo sa buong mundo." *at* http://buhaypartylist.com/principles/ (last accessed Feb 12, 2017).

[253] Direct translation of "Maka-DIYOS: Ang Panginoong Diyos ang siyang lumikha at nagbigay-buhay sa ating lahat. Siya rin lamang ang maaaring magtakda ng simula at wakas ng bawat isa sa atin." *at* http://buhaypartylist.com/principles/ (last accessed Feb 12, 2017).

[254] Barangay Ass'n for Nat'l Advancement and Transparency (BANAT) v. Commission on Elections, G.R. No. 179271, 586 SCRA 210, 238, Apr. 21, 2009.

[255] Official Tally of Votes for the 2013 Party-list Race, RAPPLER, June 26, 2013, *available at* http://www.rappler.com/nation/politics/elections-2013/features/rich-media/29634-official-election-results-2013-party-list-race.

BUHAY is known for its staunch opposition against abortion and the death penalty. It is proud to claim that ever since the RH Bill was enacted into law on December 21, 2007, it has been "involved in repealing the law and monitoring its implementation to ensure that no family is being coerced to practice birth control." It then goes on to proclaim that "[l]ife is a sacred gift from God. It is only Him who should take it. Instead of pouring resources for the promotion of birth control and distribution of contraceptives, a greater number of people will benefit from improved healthcare services that should be accessible both in rural and urban areas in the country."[256] BUHAY party-list's representative, former Manila Mayor Lito Atienza, opposes the plan of the Department of Health (DOH) to distribute condoms in schools. He exhorted the students to "fight AIDS with self-control."[257]

In *Layug v. Commission on Elections*,[258] Rolando Layug questioned the qualification of BUHAY as a legitimate party-list organization. He filed a petition to disqualify BUHAY from participating in the May 10, 2010 elections. Layug also sought the disqualification of Brother Mike Velarde from being BUHAY's nominee. Velarde is the founder and "Servant Leader" of El Shaddai, which has an estimated following of seven million.[259] El Shaddai is a Catholic charismatic renewal group.[260]

Layug argued that BUHAY Party-list is a mere extension of the El Shaddai, which is a religious sect. As such, it is disqualified from being a party-list group under Section 5, Paragraph 2, Article VI of the 1987 Constitution, as well as Section 6, Paragraph 1 of Republic Act No. 7941, otherwise known as the *Party-List System Act*.[261] The COMELEC Second Division ruled that:

> [T]he name of respondent Velarde as nominee does not automatically convert respondent BUHAY into a religious organization simply because he happens to be a spiritual leader. To find otherwise would not only be illogical, but more

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[256] BUHAY Party-list Official Website *at* http://buhaypartylist.com/campaign/?category=pro_life&yeard=2016 (last accessed Feb 12, 2017).

[257] Ivy Saunar, *Rep. Atienza: 'Fight AIDS with self-control'*, CNN PHILIPPINES, Dec. 3, 2016 *available at* http://cnnphilippines.com/news/2016/12/03/Rep-Atienza-Fight-AIDS-with-self-control.html.

[258] G.R. No. 192984, 667 SCRA 135, Feb. 28, 2012.

[259] *Rising Prophet*, *at* http://edition.cnn.com/ASIANOW/asiaweek/96/0920/feat11.html (last accessed Feb. 12, 2017).

[260] *See* KATHARINE L. WIEGELE, INVESTING IN MIRACLES: EL SHADDAI AND THE TRANSFORMATION OF POPULAR CATHOLICISM IN THE PHILIPPINES (2007).

[261] Rep. Act No. 7941 (1995).

> importantly, it would amount to an infringement on the right of respondent Velarde, a qualified citizen, to run for public office or be endorsed as nominee of party-list organizations.[262]

The Supreme Court, however, was not able to issue a judgment on the merits of the case. The Resolution of the COMELEC Second Division denying Layug's petition for lack of substantial evidence became final and executory.[263] Layug's petition before the Supreme Court seeking to declare BUHAY as a religious group, and to consequently disqualify it from participating in the party-list elections was dismissed largely on procedural grounds.

4. "Religious Purpose" as the Litmus Test to Detect Circumvention of the Prohibition

It is easy to imagine that should established religious denominations and sects such as *"Iglesia ni Kristo, the Catholic Church, the Protestant Church, et cetera"*[264] apply for registration as party-list groups, COMELEC would deny the same outright. They obviously belong to the religious sector. Similarly, organizations affiliated with religious denominations and sects such as Couples for Christ or El Shaddai are easily categorized as those belonging to the religious sector. Their links to the Catholic Church are public. Their leaders answer to the Catholic Church hierarchy. These links are factual matters that are easy to allege and establish in a petition for disqualification. Most importantly, the *raison d'être* of these organizations are religious in nature, which are matters of public knowledge.

The difficulty lies in piercing the secular veil.

The secular veil shrouds the personality of political or sectoral parties that are formed by religious denominations and sects or their leaders as a scheme to circumvent the prohibition against the religious sector from participating in the party-list system. Commissioner Ople, during the

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[262] *Comelec to proclaim Buhay partylist,* July 23, 2010, at http://balita.ph/2010/07/23/comelec-to-proclaim-buhay-partylist/ (last accessed Feb. 15, 2017).

[263] Layug v. Commission on Elections, G.R. No. 192984, 667 SCRA 135, Feb. 28, 2012. Petitioner Rolando D. Layug was found by the Supreme Court to be a phantom petitioner. The address he indicated in his petition is fictitious. He was deemed to have received on June 23, 2010 a copy of the COMELEC Second Division Resolution dated June 15, 2010. No motion for reconsideration was filed within the reglementary period. Consequently, the said Resolution became final and executory.

[264] *See supra* note 135.

deliberations of the 1986 Constitutional Commission, had the foresight to allow piercing this secular veil:

> MR. OPLE. [...] In the event that a certain religious sect with nationwide and even international networks of members and supporters, in order to circumvent this prohibition, decides to form its own political party in emulation of those parties I had mentioned earlier as deriving their inspiration and philosophies from well-established religious faiths, will that also not fall within this prohibition?
>
> MR. MONSOD. If the evidence shows that the intention is to go around the prohibition, then certainly the Comelec *can pierce through the legal fiction.*[265]

Piercing the secular veil of a political or sectoral party is a matter of evidence. But what exactly do pieces of evidence in a party-list disqualification proceeding before the COMELEC prove? It must be borne in mind that the prohibitory clause of the Constitution against the religious sector participating in the party-list elections is not violated when a religious leader or a religious person (like a priest) runs as a nominee of an otherwise qualified party-list organization. Rather, it is the religious denominations and sects that shall not be registered as political parties.[266] The mere fact that a priest is the nominee of the party-list group does not make such party-list group a religious one. The intent of the framers on this matter is crystal clear.

In *Layug v. Commission on Elections,*[267] the COMELEC Second Division capitalized on the nominee-party-list group dichotomy in ruling that BUHAY is not a religious organization, despite having a famous spiritual leader as its nominee. It ruled that the mere fact that Velarde is the nominee of the party-list group does not *ipso facto* makes the said party a religious one. In that sense, the nominee has a separate and distinct personality from that of the party. The religious background of the nominee is personal to him; his religiousness does not lend the party a religious character.

What then should pieces of evidence in a proceeding before the COMELEC prove in order to disqualify a religious organization which

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[265] *See supra* note 240. (Emphasis supplied.)

[266] CONST. art IX-C, § 2 (5).

[267] 667 SCRA at 135.

purports to be a secular one? The answer may be found in Section 6 of Rep. Act No. 7941 which provides, thus:

> Section 6. *Refusal and/or Cancellation of Registration.*—The COMELEC may, motu propio or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
>
> (1) It is a religious sect or denomination, organization or association, *organized for religious purposes;*

Hence, in a COMELEC proceeding to disqualify or to deny the application for party-list registration of an organization or association for belonging to the religious sector, the petitioner should present evidence that would establish the ultimate fact that said organization or association was *organized for religious purposes.* The COMELEC in a registration or disqualification proceeding may look into the following:

> 1. The history of advocacy of the organization in hot button topics for the religious, to ensure that it is not hiding behind a false purpose;
> 2. The activities of the officers and nominees of the organization, to determine whether there is a clear nexus between the avowed purpose of the organization and the credentials of the officers and nominees;
> 3. The association of the officers and nominees of the organization with sects and denominations, to determine whether their activities are inextricably intertwined with those of the church or sect they belong to; and,
> 4. The source of funding of their past activities, to ascertain if they are simply acting as secular fronts of organized religion.[268]

The determination of what constitutes a religious purpose would again, as in the case of real property tax exemption, require a referral to the definition of religion under the Religion Clauses of the Constitution. As discussed in the first portions of this Note, Philippine jurisprudence has not adequately and definitively provided a definition of religion. Resort to definitions of religion provided by the United States Supreme Court in the *Torcaso* and *Yoder* cases would be advisable, if not necessary. *Torcaso* expanded the definition of religion to include "those that do not teach belief in the existence of God such as Buddhism, Taoism, Ethical Culture, Secular

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[268] Hilbay, *supra* note 238. (Numbering supplied.)

Humanism and others," while *Yoder* excludes from the scope of Religion Clauses those that are "based purely on secular considerations."

Absolute reliance on the Philippine cases *Aglipay* and *American Bible Society* which define religion as "a profession of faith to an active power that binds and elevates man to his Creator" or as "having reference to one's views of his relations to His Creator and to the obligations they impose of reverence to His being and character and obedience to His Will," respectively, would be highly irresponsible, if not a glaring violation of the Establishment Clause.

It is prudent at this point to recall that Judge Richard Posner's formulation of religion as "taking a position on divinity" in *Reed v. Great Lakes Companies* was adopted in Part III of this Note. Atheism takes a position on divinity and is therefore a religion.

B. Atheistic, Agnostic, and Secular Humanist Organizations are Disqualified From The Party-List System.

Atheistic, agnostic, and secular humanist organizations (hereinafter referred to as nonbeliever organizations) must be treated as religious organizations even for party-list elections purposes. To treat them otherwise would violate the Establishment Clause.

If representatives of organizations like The Filipino Freethinkers, PATAS, and HAPI would be able to enter the halls of Congress and be counted as among its members, these "nonbelievers" would enjoy a political right denied to "believers". This would amount to active state endorsement of atheism, agnosticism, and secular humanism in flagrant violation of the Establishment Clause. To hold that the prohibition against the religious sector from participating in the party-list elections does not apply to nonbeliever organizations would place the latter at a more privileged position than that occupied by the religious organizations. This is not what this Note seeks to advance.

1. Records of the Deliberations of the 1986 Constitutional Commission Do Not Evince a Clear Intent of the Framers to Allow Atheistic and Agnostic Organizations to Participate in the Party-list System.

The issue of whether or not "atheistic and agnostic organizations or groups dedicated to the abolition of religion" are disqualified from

participating in the party-list elections was taken up by Commissioners Bishop Teodoro Bacani and Lino Brocka in the following exchange:

> BISHOP BACANI.. Instead of "religious sects, or" the amendment by substitution would say: CHURCHES, RELIGIOUS DENOMINATIONS, SECTS AND THEIR EQUIVALENT AS WELL AS ATHEISTIC OR AGNOSTIC GROUPS OR GROUPS DEDICATED TO THE ABOLITION OF RELIGION. Thus, the provision would read: CHURCHES, RELIGIOUS DENOMINATIONS, SECTS AND THEIR EQUIVALENT AS WELL AS ATHEISTIC OR AGNOSTIC GROUPS OR GROUPS DEDICATED TO THE ABOLITION OF RELIGION, those which seek to achieve their goals through violence OR refuse to uphold this Constitution, shall not be registered."
>
> The reason I proposed this amendment is that otherwise, the last mentioned groups **would have more rights under our Constitution than religious sects.** For example, atheistic or agnostic groups or groups dedicated to the abolition of religion would, if they could be accredited as political parties, **have more of the law in their favor than religious sects.**
>
> MR. BROCKA: I think it is carrying it a little too far. I just want to be clarified on atheistic and agnostic groups. **As far as I know, these are not organized groups.** So may I ask Bishop Bacani for an example of an organized atheistic or agnostic groups?
>
> BISHOP BACANI: Yes. First, the strictly communist group would be atheistic. A real communist group that adheres to the teachings of Marx and Lenin in their strictness would be an atheistic group.
>
> MR. BROCKA: What about an agnostic group? **I do not know of an organized agnostic group.**
>
> BISHOP BACANI: **Right now we may not have it here in the Philippines.** But in Europe, for example, there have been associations, apart from the communist party of atheists, and **it is not unforeseeable that there will be an association of agnostic groups.** At any rate, if the Gentleman does not want the word AGNOSTIC, "ATHEISTIC AND THOSE WHO ARE DEDICATED TO THE ABOLITION OF RELIGION" would be enough, and they exist.

> MR. BROCKA: I just feel that coming up with atheistic and agnostic groups is getting a little too far already. [269]

Three things can be gleaned from the foregoing exchange:

Firstly, Commissioner Brocka's opposition to Commissioner Bishop Bacani's proposal stemmed from the fact that he could not conceive of any organized atheistic or agnostic groups existing in the Philippines at the time they were drafting the Constitution. The likes of The Filipino Freethinkers, PATAS, and HAPI were not yet in existence then. Had they been in existence at the time of the drafting of the Constitution, it would have been possible for Commissioner Brocka to understand from where Commissioner Bishop Bacani's concern was coming.

Secondly, Commissioner Bishop Bacani had the foresight to anticipate the emergence of atheistic and agnostic organizations in the Philippines. His proposal was intended to address a possibility in the future where atheists and agnostics would form organizations of their own. His fear was that such organizations would seek accreditation from COMELEC as party-list groups.

And lastly, Commissioner Bishop Bacani's concern is legitimate. According to him, to allow atheistic and agnostic groups to be accredited as party-list groups would make them enjoy "more rights under our Constitution than religious sects." If COMELEC would be allowed to register them as party-list groups, they would "have more of the law in their favor than religious sects."

It was agreed that the proposal of Commissioner Bishop Bacani to include the phrase "atheistic and agnostic organizations or groups dedicated to the abolition of religion" among the groups that should not be registered by the COMELEC for party-list elections would be set aside for a later deliberation. The plan to discuss the said matter at a later proceeding is clear in the following exchange between Commissioners Bishop Bacani and Foz:

> BISHOP BACANI: May I ask this: Will the sponsor be willing to include in this Constitution that atheistic groups, agnostic groups and groups dedicated to the abolition of religion shall not be accredited and registered?

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[269] I RECORD CONST. COMM'N 31 (July 16, 1986). (Emphasis supplied.)

> MR. FOZ: **We have not considered an idea like that, but we would be willing to discuss the matter at the proper time.**
>
> BISHOP BACANI: Yes, because if the Committee will not include such groups, then **we will be putting religious sects in a lesser and disadvantageous position in relation to atheistic groups, agnostic groups or groups dedicated to the abolition of religion.** So, it would seem that we would have to include those groups in order to have parity.
>
> MR. FOZ: **Groups like those which the Commissioner has mentioned would partake of — although these are antireligion — a kind of religion in that sense, I would suppose.**
>
> BISHOP BACANI: **Yes. They would not claim to be; they would claim that there is no religion at all.** They may be ideological groups. I would just like to point that out. There may be some amendments in that regard that may have to be introduced when the proper time comes. Thank you. [270]

There are two salient points that can be gathered from the foregoing exchange between Commissioners Bishop Bacani and Foz:

One, the proposal to include "atheistic groups, agnostic groups or groups dedicated to the abolition of religion" among those that should be disqualified from the party-list system was merely shelved. It was not shut down. There was also no formal vote taken on the proposal. It cannot be inferred that the Constitutional Commission rejected the Bacani proposal.

Two, there was at least an understanding between Commissioners Bishop Bacani and Foz that "atheistic groups, agnostic groups or groups dedicated to the abolition of religion" would partake of "a kind of religion" although they are "antireligion." These groups should be treated as religious, even if, as Commissioner Bishop Bacani said, "they would not claim to be." Commissioner Bishop Bacani himself agreed with Commissioner Foz's characterization of these groups as partaking of "a kind of religion."

The Commissioners, however, had agreed upon a single sentence: "Religious denominations and sects shall not be registered."[271] This sentence is now enshrined in Section 2, Paragraph 5 of Article IX-C of the 1987 Constitution. The phrase "atheistic groups, agnostic groups or groups

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[270] *Id.*

[271] Bernas, *supra* note 49, at 637.

dedicated to the abolition of religion" did not find its way to the text of the Constitution.

2. The absence of the phrase "atheistic groups, agnostic groups and groups dedicated to the abolition of religion" in the text of the Constitution cannot be interpreted in such a way that the 1986 Constitutional Commission authorized the COMELEC to register them as party-list groups.

It was clear that there was an agreement that the Bacani proposal would be taken up again. This, however, did not happen, whether through inadvertence or failure to raise the matter again before the wording of the provision was put to a vote.

That there was an agreement that the Bacani proposal would be taken up again precludes the automatic application of the rule *expressio unius est exclusio alterius*. Perhaps, it is precisely because of the awareness of this rule that Commissioner Foz suggested that the matter will be discussed at a proper time. Even Commissioner Monsod suggested that the matter will be discussed separately:

> THE PRESIDENT: Commissioner Monsod is recognized.
>
> MR. MONSOD: Madam President, may we ask the proponent that **we take the amendment by piece**, rather than by a whole phrase because it seems that there are two parts to it. The first part is an amplification of a religious sect and the **second part is an extension to atheistic or groups dedicated to the abolition of religion, if I understand it correctly.**
>
> BISHOP BACANI: Yes.
>
> MR. MONSOD: Is it possible to take it in two parts, Madam President?
>
> BISHOP BACANI: I propose an amplification of sects to churches and religious denominations because the word "sects" is actually very restrictive.
>
> SUSPENSION OF SESSION[272]

[272] I RECORD CONST. COMM'N 31 (July 16, 1986). (Emphasis supplied.)

It has been said that "the process of drafting and adopting a constitution is rife with compromise, deferral, and suppression of meaning."[273] To view the act of drafting a constitution as a completely "careful, deliberative, and rational process" would be unrealistic. The framers were "as involved in the suppression of issues and meaning as they were in elucidating either."[274] Thus, it is submitted that the failure to take up the Bacani proposal once again as agreed upon by the Commissioners cannot be interpreted to mean that the proposal to include atheistic and agnostic organizations among those prohibited to register as party-list groups was rejected. The automatic operation of the *expressio unius est exclusio alterius* rule would be unwarranted in this case.

3. Even if there had been an intent to exclude atheistic and agnostic organizations from the coverage of the provision prohibiting the registration of religious denominations and sects as party-list groups, such intent would not be binding upon the Court.

The intent of the framers of the Constitution is only persuasive. It is not binding upon the Court.[275] Examination of the intent of the framers is only one of the various modes of constitutional interpretation. The intent of the framers can merely serve as "a stage set, a background against which the constitutional decision sets off its meaning."[276]

If the original intent of the framers would always be controlling, then we would be stuck with theism as the only religion that the Religion Clauses recognize and protect. It has been pointed out in Part I of this Note that theism was the original intent of the Framers of the U.S. Federal Constitution as far as the Free Exercise and Establishment Clauses are concerned. The Founding Fathers equated theism with religion. Jurisprudence, however, veered away from the original intent, and began to expand the definition of religion to include beliefs that do not answer affirmatively to the question of the existence of God.

The same approach of veering away from original intent, for justifiable grounds, must be employed in construing the constitutional provisions that exclude the religious sector from the party-list system and prohibit the COMELEC from registering religious denominations and sects as party-list groups. Assuming but never conceding that the intent of the

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[273] Pierre Schlag, *Framers Intent: The Illegitimate Uses of History,* 8 U. PUGET SOUND L. REV. 307-308 (1984-1985).

[274] *Id.*

[275] Valmonte v. Belmonte, G.R. No. 74930, 170 SCRA 256, Feb. 13, 1989.

[276] *See supra* note 274, at 287.

1986 Constitutional Commission was to allow atheistic and agnostic organizations to participate in the party-list elections, this intent, however, must not bind the Court. Otherwise, the structure of the Constitution built upon state neutrality on matters of faith and religion would collapse.

4. The constitutional provisions prohibiting the entry of religious sector into the party-list system must be read in conjunction with the Religion Clauses.

The Constitution has to be interpreted as a single, coherent document, not a mere amalgamation of separate, distinct, and isolated provisions. It must be read in such a way that the secular policies enshrined in it and the neutral stances that the State must assume in matters of faith and belief are preserved and kept coherent.

It is a well-established rule in constitutional construction that one provision of the Constitution is not to be separated from all the others and to be considered in isolation.[277] All the provisions bearing upon a particular subject are "to be brought into view and to be so interpreted as to effectuate the great purposes of the Constitution."[278] Sections bearing on a particular subject should be "considered and interpreted together as to effectuate the whole purpose of the Constitution."[279] One section is not to be allowed to defeat another. The Court must harmonize the seemingly conflicting provisions, whenever practicable. It must lean in favor of a construction which "will render every word operative, rather than one which may make the words idle and nugatory."[280]

Section 2, Paragraph 5 of Article IX-C of the Constitution which states that *"[r]eligious denominations and sects shall not be registered"* by the COMELEC must be read in conjunction with Section 5, Paragraph 2 of Article VI of the Constitution which excludes the *"religious sector"* from the party-list system. These two provisions, in turn, have to be harmonized with the Religion Clauses of the Constitution found in Section 5 of the Bill of Rights which state that *"[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."* The weight of jurisprudence interpreting

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[277] Civil Liberties Union v. Executive Secretary, G.R. No. 83896, 194 SCRA 317, Feb. 22, 1991.

[278] *Id.* at 330, *citing* Old Wayne Mutual Life Ass'n v. McDonough, 204 U.S. 8 (1907) *and* Wallace v. Payne, 197 Cal 539 (1925).

[279] *Id., citing* Grantz v. Grauman 320 SW 2d 364 (Ky. Ct. of Appeals 1957) *and* Runyon v. Smith, 308 Ky 73, 212 SW 2d 521.

[280] *Id.* at 331, *citing* THOMAS M. COLLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS VOL. I 128 (1871).

and applying the Religion Clauses has to be made to bear upon the said pertinent provisions excluding the religious sector from the party-list system.

Hence, if atheism, agnosticism, and secular humanism would be treated as religions under the Establishment Clause, they should likewise be treated as religions under the provisions on party-list registration. If atheistic, agnostic, and secular humanist groups would be treated as religious groups whose properties can be exempt from real property tax under Paragraph 3, Section 28 of Article VI of the Constitution, then they should likewise be treated as religious groups under the provisions on party-list registration.

5. There must be parity between traditional religious groups and atheistic and agnostic groups.

The demand of Commissioner Bishop Bacani for parity between "religious" groups and atheistic and agnostic groups with respect to party-list system representation is legitimate. If traditional religious organizations are prohibited to register as party-list groups, and yet atheistic and agnostic organizations are allowed, the pendulum of the State would swing favorably to the side of the latter. The ideal of a secular State impervious to direct religious lobby shatters.

In the quest to free the State from the influence of established religious institutions, the State is made vulnerable to the onslaught of ideas rife with anti-religious animus. The representatives of nonbeliever organizations would be able to directly address the Congress and advocate for their legislative agenda as sitting members of the lawmaking body. They could become members of the legislative branch of the government. The religious denominations and sects, on the other hand, are denied access to the same political offices. It is in this light that Commissioner Bishop Bacani's analogy for this arrangement, although crude, deserves attention:

> BISHOP BACANI: Pardon me for causing this confusion.
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> Let me first give the fundamental reason why I was objecting to this phrase. **If we put a provision saying that women are not allowed to be registered, while at the same time criminals are also not allowed to be registered, the women will certainly feel offended.** So, religious denominations, sects or groups dedicated to the abolition of religion shall not be registered; those which seek to achieve their goals through

> violence or refuse to uphold this Constitution shall also not be registered.[281]

The legislative agenda of atheistic and agnostic party-list groups consist of policies that challenge religious dogma and teachings. The Filipino Freethinkers, for example, openly defended the passage of the RH Bill into law.[282] It threw its support behind the anti-discrimination bill[283] and divorce bill[284] in Congress. While these advocacies can be said to forward secular policies, they are, however, advanced by atheistic and agnostic groups with anti-religious animus. This cannot be allowed under the Establishment Clause.

El Shaddai, for example, cannot be allowed accreditation as a party-list group even if it makes a representation that it would propose pieces of legislation devoid of religious considerations. The law presumes that a religious institution will not shed its religious character in forwarding its legislative agenda once given a seat in Congress. It cannot be expected to deny its own nature. The same presumption must be applied to atheistic, agnostic, and secular humanist organizations. The benefit of the doubt cannot be given to one group and withheld from the other. Groups whose members openly profess "beliefs" in the non-existence of God cannot have more rights than those who believe otherwise.

The separation of Church and State shall be inviolable.[285] It is pursuant to this constitutional principle that religious organizations cannot establish direct political presence in Congress. This is the reason why the proposal of Commissioner Bishop Bacani to allow religious sects and denominations to run as party-list groups was overwhelmingly rejected by the Constitutional Commission.[286] Commissioner de los Reyes was on point to juxtapose this particular proposal of Commissioner Bishop Bacani with the principle of the inviolable separation of Church and State:

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[281] I RECORD CONST. COMM'N 31 (July 16, 1986). (Emphasis supplied.)

[282] *See supra* note 34.

[283] *Id. at* http://filipinofreethinkers.org/?s=antidiscrimination+bill&x=0&y=0 (last accessed 15 February 2017).

[284] *Id. at* http://filipinofreethinkers.org/?s=divorce&x=0&y=0 (last accessed 15 February 2017).

[285] CONST. art. II, § 6.

[286] I RECORD CONST. COMM'N 31 (July 16, 1986). "VOTING: THE PRESIDENT: As many as are in favor of the proposed amendment of Commissioner Bacani to delete on line 24 the words religious sects, or, please raise their hand. (Few Members raised their hand.) As many as are against, please raise their hand. (Several Members raised their hand.) The results show 4 votes in favor and 22 against; the amendment is lost."

> MR. DE LOS REYES: I have nothing against any religious group or sect, but I believe that we should not allow any religious group or sect to be registered as a political party. Just imagine if we register the Iglesia ni Kristo as a political party or the Catholic Church as a political party or the Philippine Independent Church as a political party.
>
> I think there is the traditional separation of church and state so that there will be no state religion; **so that there will be no instance where the dominance of a particular religious group will control the government and impose its religion.** We will go back to those days when there is no separation of church and state. That is against what I have learned that **we should give unto Caesar what belongs to Caesar and to God what belongs to God.**[287]

It is but in the spirit of constitutional fairness that we look favorably at Commissioner Bishop Bacani when, in a subsequent discussion, he invoked parity between religious denominations and sects on hand, and atheistic and agnostic organizations on the other, in order to justify the exclusion of the latter from the party-list system.[288] He was invoking *parity* mindful of the principle of the inviolable separation of Church and State. The good bishop was merely asking that organizations whose teachings are diametrically opposed to the teachings of his Church not be given an unjustified political advantage.

In light of the separation principle, groups whose members hold beliefs that are diametrically opposed to those who are members of the Church cannot themselves be part of the State. The principle of the inviolable separation of Church and State will only be upheld if atheists, agnostics, and secular humanists are prohibited from becoming agents of the State via the party-list system. Otherwise, the fence that divides the provinces of Caesar and of God would collapse.

CONCLUSION

This Note imagines a future case wherein an atheist or an agnostic makes a claim of conscientious objection to excuse himself from complying with a legal duty. That atheist or agnostic may refuse to comply with the duty to refer a patient to another medical service provider imposed by the

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[287] *Id.* (Emphasis supplied.)

[288] *Id.*

Reproductive Health Law. He may refuse to salute the flag. He may refuse to join a labor union despite the existence of a closed-shop agreement. He may also refuse to render military service in case of war. As long as his conscientious objection is rooted in a belief which is meaningful and sincerely held, the State has no choice but to grant him exemption, absent compelling state interest and alternative means of compliance.

It is not the point of this Note to undermine established religions by elevating the status of atheism, agnosticism, and secular humanism to the same pride of place that established religions occupy in the Philippine legal system. By arguing that nonbelievers can claim the protections found in the Free Exercise Clause and hence, may exercise their right to conscientious objection, this Note merely seeks that the infidel be equal to the devout, at least before the eyes of the law.

Since there is no jurisprudence yet in the Philippines that squarely puts at issue the right of nonbelievers to conscientious objection, this Note proposes that the Court adopt the holding in the *United States v. Seeger.* A meaningful and sincerely held belief that does not answer affirmatively to the question of the existence of a Supreme Being must be considered a religious belief within the mantle of protection of the Free Exercise Clause.

It is not the conscience alone of the infidels that must be given equal treatment. Their pockets must likewise be given the same allowance granted to religious organizations. Employing the Establishment Clause analysis, and adopting the pronouncements in *Kaufman v. McCaughtry* and *Reed v. Great Lakes Companies,* this Note submits that atheistic, agnostic, and secular humanist organizations are entitled to avail of the tax exemption on real property enjoyed by religious organizations. Otherwise, the State would be privileging religion over nonreligion. A clear pronouncement from the Court on the matter is necessary since local governments may in the future assess real property taxes against these organizations. Again, this Note imagines a scenario where an atheistic or agnostic organization insists on availing the tax exemption by claiming that what they do with their property is for a "religious" purpose.

Since the grant of real property tax exemption in favor of the religious organizations is enshrined in the Constitution, it can be removed only through a constitutional amendment. Atheistic and agnostic organizations might abhor this financial accommodation extended to religious sects and denominations at the moment, but as long as the provision exists in the Constitution, these organizations might deem it wise to seek legal parity with the religious organizations, at least on financial

terms. Nonbelievers are an ultraminority in the Philippines. The power to tax is the power to destroy. The State, in exempting these organizations from real property taxes, would not be wielding its power to destroy.

It would be a mistake to conclude that Commissioner Brocka, during the proceedings of the 1986 Constitutional Commission, was able to successfully block the proposal of Commissioner Bishop Bacani to disqualify atheistic and agnostic organizations from the party-list system. A careful reading of the records of the Constitutional Commission would lead to a different conclusion.

The issue of whether or not nonbeliever organizations can participate in the party-list elections was initially set aside. There was a clear agreement to discuss the issue at a later time. This later discussion, however, did not materialize. There was also no formal vote taken on the matter. At the very least, it can be said that there was no clear constitutional intent to allow the registration of atheistic and agnostic organizations as party-list groups. The provisions excluding the religious sector from the party-list system, and prohibiting the registration of religious denominations and sects as party-list groups then become readily susceptible to other modes of constitutional interpretation. These provisions have to be harmonized with the Religion Clauses, especially the Establishment Clause. If these groups of nonbelievers would be treated as religious groups only when it benefits them but not when it disenfranchises them, a violation of the Establishment Clause is glaringly apparent.

Atheists, agnostics, and secular humanists should not have more rights in law than theists just because the former believe in something else. For in the end, this Note seeks merely the equality of the religious and the nonreligious, the faithful and the infidel, and the devout and the heretic, at least in the eyes of the law.

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