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## **Does Religious Instruction Need A Constitutional Amendment?**

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# Does Religious Instruction Need a Constitutional Amendment?

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CONCHITA GONZALEZ-VIRATA

When the Spaniards came to settle in the Philippines the religious sentiments of the Filipinos were purified by their conversion and intensified in fervor and devotion. If we should thank Spain for anything it should be for having brought to us the greatest gift within the reach of any man, race or people on this earth—the priceless gift of the true Faith.

The strong religious sentiments of our people find expression in various important official statements and policies. For example the Constitution recognizes the preferential position of religion by exempting churches and buildings devoted to religious purposes from taxation. Moreover the Constitution provides for optional religious instruction in the public schools. The provision reads as follows:

**Optional religious instruction shall be maintained in the Public Schools as now authorized by law.**

It is this manifestation that is the subject of this study. Unfortunately, the above quoted provision of the Constitution is susceptible of different interpretations or, should we say, misinterpretations. When the first Congress of

the Commonwealth passed Bill No. 3307 which undertook to make some changes in Sec. 928 of the Administrative Code in order to carry out more effectively the provision of the Constitution, the same was vetoed by President Quezon on the ground that Sections 927 and 928 had been raised to the level of a Constitutional provision and might not be amended or changed without violating the Constitution.

#### AS NOW AUTHORIZED BY LAW

That was in 1938. More recently in 1950, shortly after the New Civil Code took effect, the opinion of the Secretary of Justice was sought on the effect of Art. 359, par. 1 of the New Civil Code. The opinion was given. It is very long but its decisive character in this question justifies quotation in full.

#### 3RD INDORSEMENT

NOVEMBER 29, 1950

Respectfully returned to the Honorable, the Secretary of Education, Manila.

Opinion is requested on whether or not Article 359(1) of the Civil Code of the Philippines may be deemed to have amended sections 927 and 928 of the Revised Administrative Code.

The aforementioned provision of the Civil Code runs thus:

Art. 359. The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible:

(1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian; x x x.

On the other hand, the cited provisions of the Revised Administrative Code are as follows:

SEC. 927. *Discussion of religious doctrines to be*

*eschewed.*—No teacher or other persons engaged in any public school, whether maintained from (insular) national, provincial, or municipal funds shall teach or criticize the doctrines of any church, religious sect, or denomination, or shall attempt to influence the pupils for or against any church or religious sect. If any teacher shall intentionally violate this section he or she shall, after due hearing, be dismissed from the public service.

SEC. 928. *Provisions for religious instruction by local priest or minister.*—It shall be lawful, however, for the priest or minister of any church established in the town where a public school is situated, either in person or by a designated teacher of religion, to teach religion for one-half hour three times a week, in the school building, to those public school pupils whose parents or guardians desire it and express their desire therefor in writing filed with the principal teacher of the school to be forwarded to the division superintendent, who shall fix the hours and rooms for such teaching. But no public school teachers shall either conduct religious exercise or teach religion or act as a designated religious teacher in the school building under the foregoing authority, and no pupils shall be required by any public school teacher to attend and receive the religious instruction herein permitted. Should the opportunity thus given to teach religion be used by the priest, minister, or religious teacher for the purpose of arousing disloyalty to the United States, or of discouraging the attendance of pupils at such public school, or creating a disturbance of public order, or of interfering with the discipline of the school, the division superintendent, subject to the approval of the Director of Education, may, after due investigation and hearing, forbid such offending priest, minister or religious teacher from entering the public school building thereafter.

Seemingly, there is an irreconcilable inconsistency between these provisions because of the use of the phrase "taught as a part of the curriculum" in the provisions of the Civil Code. However, when the pertinent provisions of the Constitution of the Philippines are taken into consideration, the conclusion is inescapable that such an inconsistency was never intended by the law-making body in enacting the later provision.

The Constitution of the Philippines authorizes religious instruction in the public schools in the following wise:

Optional religious instruction shall be maintained in the public schools as now authorized by law.  
(Section 5, Art. XIV, Constitution of the Philippines.)

The law referred to in the above constitutional provision authorizing religious instruction in the public schools at the time the Constitution was approved may be found in the aforementioned sections of the Revised Administrative Code. "The legal presumption is, of course, that when the Constitutional Assembly approved section 5, Art. XIII (now Art. XIV), of the Constitution, it was cognizant of the then existing law regarding religious instruction and the manner in which it was enforced by the Bureau of Education. Aside from this presumption, an examination of the records of the proceedings of the Constitutional Convention shows that the makers of the Constitution were fully informed of the law and existing regulations regarding optional religious instruction in the public schools when they approved section 5 of Article XIII of the Constitution." (Address of the late President M. L. Quezon before the National Assembly supporting his veto of Bill No. 3307 thereof, entitled "AN ACT TO CARRY OUT MORE EFFECTIVELY THE PROVISIONS CONTAINED IN SEC. 928 OF THE REVISED ADMINISTRATIVE CODE AND IN SEC. 5, ART. XIII OF THE CONSTITUTION REGARDING OPTIONAL RELIGIOUS INSTRUCTION.") Therefore, the mandate of the Constitution is clear that religious instruction may be taught in the public schools only in the manner prescribed by the said provisions of the Administrative Code, the letter and spirit of said provisions having been made a part of the Constitution by reference. Any other system of religious instruction in public schools would run counter to this constitutional mandate. Clearly, if any other manner is to be adopted it can only be done by amending the above constitutional provision.

When the provision of the Civil Code under consideration was passed, Congress, the members of which are in duty bound to support the Constitution, must be presumed to have taken care to observe the requirements thereof and to have intended no violation of its provision. "The court is bound to assume that in the passage of

any law, the legislature acted with full knowledge of all constitutional restrictions and intelligently, honestly, and discriminately decided that they were acting within their constitutional limits and powers." (*Laughlin v. Portland*, 90 A. 318.) It must, consequently, be presumed that this Civil Code provision was enacted by Congress with full contemplation of, and without intending to go against, the aforesaid constitutional provision and the pertinent provisions of the Administrative Code. This being so, there is only one way left to interpreting Article 359(1) of the Civil Code, and that is, to harmonize it with Sections 927 and 928 of the Revised Administrative Code.

The word "curriculum" has been defined "as the whole body of courses offered in an educational institution or by a department thereof—the usual sense." (*Webster's Unabridged International Dictionary*.) Thus when a subject is said to be a part of the school curriculum, the ordinary sense to be attached thereto is that the subject is one of those offered in the school or in a branch thereof. It does not, therefore, have to be a subject which every student must be required to study; it is merely a subject taught in the school and which any student may take if he chooses to. It follows that the phrase "taught as part of the curriculum at the option of the parent or guardian" in the provision in question simply means that religion will be taught in the public schools to students whose parents or guardians desire it.

Certainly, said phrase cannot be taken to mean that religion will be part of the required course of study in the public schools and that the option of the parents or guardians would be limited to the choice of the kind of religion to be taught their respective children. Aside from violating the aforementioned provisions of the Administrative Code and, ultimately, the provision of the Constitution previously adverted to, such a construction would be a flagrant denial of the religious freedom secured to every citizen by the Constitution. (See Sec. 71, Art. III, Constitution of the Philippines.) For it cannot be denied that religious freedom means not only freedom to believe but also freedom not to believe. Moreover, if the teaching of religion is made a part of the required course of study in public schools, the final power and responsibility for conducting classes will be, in the last resort, in the hands of the Government. This would inevitably result in a mixture of religion with

Government and a disturbance of the doctrine of the separation of Church and State. (See Address of Pres. M. L. Quezon, *supra*.)

As to whether or not public school teachers may be allowed to teach religion in their respective public schools, suffice it to say that the Revised Administrative Code expressly prohibits such a practice and for reasons already stated such prohibition cannot be disregarded. The same may be said with respect to the hours in which religion may be taught which, under said Code (Sec. 928) cannot be more than one-half hour three times a week, to be fixed by the division superintendent.

In fine, Article 359(1) of the Civil Code must be taken to be merely a reiteration of sections 927 and 928 of the Revised Administrative Code which still prevail in their totality. In view thereof, the undersigned is of the opinion that the query should be answered in the negative.

(Sgd.) JOSE P. BENGZON  
*Secretary of Justice*

The most controversial feature of the Constitutional provision therefore is the clause "as now authorized by law." To one school of thought it means the incorporation *in toto* into the Constitution of Sections 927 and 928 of the Administrative Code; to the opposing school of thought it means nothing more or less than the conservation of a right which at the time the people were already enjoying, namely religious instruction in public schools to children whose parents or guardians authorize it.

#### ROAD TO ATHEISM

If the opinion expressed by President Quezon which was adopted in full by the Secretary of Justice is to prevail, then we have no doubt that secularism will sooner or later reign supreme in our fair isles. In this interpretation Section 927 instead of being impartial towards all religions has only succeeded in being an enemy of all religion and therefore a welcome ally of atheism.

It is well to keep in mind that separation of church and state does not in our political philosophy mean com-

plete indifference. Separation means distinction; it means that both are mutually free and neither may control the other. Each has its own sphere of operation. The church is concerned with the eternal end of man; while the state is concerned with the temporal end of man. It does not mean hostility or opposition, but rather cooperation in promoting the welfare of man. Complete indifference to religion when translated into action produces anarchy, nihilism. In governments which profess absolute neutrality towards religion, the actual policy has been one of hostility. Examples of this are France, Mexico, Russia, and some South American countries. The State cannot avoid taking an attitude towards religion. In practice that attitude will either be for or against it, never impartial or indifferent.

Section 928 may seem to safeguard the place of religion in the state but in reality and experience it leads to atheism. It is very easy to defeat the desire of parents to have their children given religious instruction in the public school. First of all the absence of an established church in the town where a public school is situated deprives the children of an opportunity for religious instruction. Secondly the discretion given to the division superintendent to fix the hours and rooms for such instruction has very commonly resulted in arrangements of time and place that render effective teaching of religion almost impossible. Even where this arrangement is not a manifestation of hostility to religion it is simply the defeat of religion in a loaded schedule when forced to compete with subjects which, in the secularistic mentality that dominates the system, are far more important. Moreover since the pupils themselves may not be compelled by their public school teacher to attend the instruction, despite the wishes of the parents, the children are given an independence on the scene which inevitably results in scanty and irregular attendance unless the religion teacher is able to work miracles of personal magnetism. If the poor catechists arrive a little late (or if a teacher dismisses class a little early) they find their pupils scattered to a dozen more



attractive pursuits. In this way Sections 927 and 928 as interpreted by President Quezon and after him by Secretary Bengzon prepare the ground for a complete secularistic or Godless education and in consequence for an atheistic state.

#### EDUCATION INCLUDES CHARACTER

How is this so? Education does not mean instruction alone but must necessarily include character training. The child's intellect must not only be fed with information on various subjects of human learning but his will must also be trained to keep his emotions under control. The education that he shall receive must therefore seek to develop not merely his physical and mental faculties but his moral faculties as well.

Since education consists essentially in preparing man for what he must be and for what he must do here below in order to attain the sublime end for which he was created, it is clear that there can be no true education which is not wholly directed to man's last end and that in the present order of Providence, since God has revealed Himself to us in the Person of His only Begotten Son, Who alone is the way, the truth and the life, 'there can be no ideally perfect education which is not Christian education'.<sup>1</sup>

#### OPTIONAL

Another controversial aspect of the Constitutional provision is the interpretation of the word "optional." Now, the word "option" means the right or power of choice. The question then arises, to whom is this right or power of choice granted? Is the government given the choice to teach or not teach religion in the public schools irrespective of the written request of the parents for religious instruction? Or are the parents given the right to demand or not to demand religious instruction for their children studying in such public schools? Nowhere in the laws above cited is it explicitly stated, nor may it be in any manner inferred, that the Government has been granted the

choice to allow or not to allow the teaching of religion in public schools. On the contrary, it is quite clear that the choice of having or not having religion taught to the children resides in the parents or guardians of such children. Sec. 928 of the Administrative Code, cited above, says: "It shall be lawful . . . for the priest to teach religion to public school pupils whose parents or guardians desire it, and express their desire therefor in writing filed with the principal teacher . . ." And once this option is exercised by the parents in favor of religious instruction, the Government is bound to permit it.

That this is the correct interpretation is further bolstered by another provision of the Constitution. Art.2, Sec. 4 of the Constitution says: "The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government." This provision acknowledges the fundamental principle that the education of the children is the primary concern of the parents and not of the State.

#### RIGHTS OF PARENTS

Parents have an inescapable and positive duty, and therefore a corresponding right, to educate their offspring. This is so, for the following reasons:

1) Parents are by nature endowed with the aptitude and inclination required in the important task of bringing up their children. Their desire to look after them and to provide untiringly for their support, education and general welfare springs from a love that is spontaneous in nature, of great intensity, wholly disinterested and almost impossible of suppression.

The Municipal laws of all well-regulated states have taken care to enforce this duty; though Providence has done it more effectually than any laws, by implanting in the breast of every parent the natural urge, or insufferable degree of affection, which not even the deformity of person or mind, not even the wickedness, ingratitude

and rebellion of children can totally suppress or extinguish.<sup>2</sup>

2) Parents are free causes of their child's coming into existence. This child shall naturally upon reaching maturity be required to fulfill the purpose for which it has been created, and therefore it must, before that time, acquire the right to receive the full preparation (which is nothing else but education) necessary for the realization of that purpose; however, being still of tender age, it is helpless and unable to exercise that right for itself.

Since He that gives life must give the means to insure that life, it is therefore meet that both the duty and the right to see that the child gets the necessary education to which it is entitled, be lodged in the parents.

The blessing of offspring is not completed by the mere begetting of them, but something else must be added, namely, the proper education of the offspring. For the most wise God would have failed to make sufficient provision for children that had been born and so for the whole human race if he had not given to those to whom He had entrusted the power and right to beget them the duty also and the right to educate them. For no one can fail to see that children are incapable of providing wholly for themselves, even in matters pertaining to their natural life, and much less in those pertaining to the supernatural, but require for many years to be helped, instructed, and educated by others.<sup>3</sup>

3) A child is the prolongation or extension of the personality of his parents.

The child is naturally something of the parent . . . so by natural right the child before reaching the use of reason is under his parent's care. Hence it would be contrary to natural justice if the child before the use of reason were removed from the care of its parents or if any disposition were made concerning him against the will of the parents.<sup>4</sup> Nature intends not merely the generation of the offspring but also its development and advance to the perfection of man considered as man, that is, to the state of virtue.<sup>5</sup>

And because both the duty and the right to instruct and train their young stem from the very essence of parenthood, the right is a natural and inalienable right which no power on earth can either destroy or wrest from them.

### DUTY OF STATE

The duty and the corresponding right of the State to educate the child is merely secondary to that of the parents. It is implied in the purpose for which Civil Society has been created. Man being impelled to live in society by natural fitness, inclination, and need, can only reach the zenith of physical, intellectual and moral development and perfection of which he is capable, in such society or state. God in willing such a nature for man has, therefore, necessarily willed the State. Hence, the State has been brought into existence for a definite limited purpose, namely, to help man perfect himself as man.

In the plan of the Creator, Society is a natural means which man can and must use to reach his destined end. Society is for man and not vice versa . . . By means of an organic union with society and by mutual collaboration the attainment of earthly happiness is placed within the reach of all . . . It is society which affords the opportunities for the development of all the individual and social gifts bestowed on human nature.<sup>6</sup>

This duty and right of the State is therefore not a positive one. It is negative in character. It consists in the state's merely seeing to it, that the children are educated in the rights and duties of citizenship but not in its giving the education to them, itself. The state is bound to foster and whenever necessary to supplement the efforts of parents in educating their children by appropriate legislation or by some other means within its power. It cannot in any way hinder the parents in the exercise of their God-given right to educate their young nor obstruct their attempts to comply with such right and duty.

A beautiful acknowledgment of the primary right and positive duty of parents to educate their children over

and above the secondary right and negative duty of the State is contained in the Irish Constitution. In this magnificent document we read the following:

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

2. Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State.

3. a) The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

b) The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard however, for the rights of parents, especially in the manner of religious and moral formation.

5. In exceptional cases, where the parents, for physical or moral reasons, fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavor to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.<sup>7</sup>

Even a superficial knowledge of the operation of the present system of religious instruction in the Philippines viewed in the light of these principles makes it clear that due provision has not in fact been made for the right of the parents to fulfil their obligation of providing religious and moral education for their children. The present provision sounds magnanimous and sufficient but

upon closer scrutiny and as interpreted by President Quezon and Secretary Bengzon, and especially in view of the application it has received in practice, has turned out to be little more than an empty gesture.

It is moreover an empty gesture that is destined to remain such unless by some spontaneous and unlikely wave of benevolence the personnel of the public schools should *choose* to implement the law in a manner that will in effect carry out the legitimate desires of the parents. But they need not do so. Obstruction and support are equally *legal*. And even if support should win the day the parents would still be too dependent upon the moods of the administrators which could change overnight from favor to disfavor.

There is therefore no hope under the present legislation for a certain and constant remedy which will lift this important issue above the personal attitudes of superintendents and other school personnel. Since this is true, the only solution seems to be to seek a constitutional amendment. What that amendment would be is something that long and careful thought would have to decide. Practically it need not do much more than the present legislation *seems* to do and *professes* to do, namely to provide an efficacious instrument for religious instruction for those children whose parents request it. Such an amendment would not make the state the agent of the Church nor in any way impose religion upon those children whose parents did not request it. But it would remove from the power of children and school authorities alike the means of frustrating the clear wishes of the parents.

<sup>1</sup> Pius XI, *Christian Education of Youth*, 4.

<sup>2</sup> Blackstone, *Comm.* Chap. 16, p. 447.

<sup>3</sup> Pius XI, *Christian Marriage*, 6.

<sup>4</sup> St. Thomas, *Summa Theol.* II-II, Q. 10, a. 12.

<sup>5</sup> St. Thomas *Summa Theol.* III, Q. 41, a. 1.

<sup>6</sup> Pius XI, *Atheistic Communism*, pp. 152-153.

<sup>7</sup> Osgniach, *The Christian State*, Ch. X, pp. 283-292.