THE LAST BATTLE GROUND°

By Jemy Gatdula*

The Philippines is faced with several social issues that have gained an intensity not seen in the past. In so many ways, the issues have exposed the fact of a Philippines very divided as to its beliefs and values. Trying to combine a society composed of numerous islands, different languages, cultures, religions, races, and even political beliefs, the Philippines faces itself with presenting compromises but at the same time unsure of whether a uniform rule necessary for the citizens of a country could be applied.

Thus, the context for the heated debates on contraception, divorce, and same-sex marriage, all framed within the continuing argument on the proper role of religion in relation to affairs of state.

What is ironic is that in predominantly Catholic Philippines, all this debate will come within the purview of the Year of Faith. October 11th marks its beginning, the Catholic Church embarking on through 23 November 2013. That day commemorates two great anniversaries in church history. The first is the 50th anniversary of the opening of the Second Vatican Council and the second is the 20th anniversary of the promulgation of the *Catechism of the Catholic Church*. Pope Benedict XVI explains the need a Year of Faith: "Ever since the start of my ministry as Successor of Peter, I have spoken of the need to rediscover the journey of faith so as to shed ever clearer light on the joy and renewed enthusiasm of the encounter with Christ" (Apostolic Letter, *Porta Fidei*, 2).

In any event, in recent days, one can see in the public sphere increasing mention of the necessary role of religion in public life, as well as the referral to natural law as the basis for certain positions. Thus, Philippine Bishop (for Antipolo) Gabriel Reyes would declare in his Defense of the Stand of the Catholic Bishops' Conference of the Philippines on the House Bill 4244:

> "It is also good to point out that the church teaching regarding contraceptives is not based on

---

° Delivered at the 19th International Law and Religion Symposium, Brigham Young University, 7-9 October 2012. This presentation is based on the upcoming paper Philippine Social Issues and the Constitutional Response to Natural Law

* Jemy is a lawyer specializing in international economic law and the World Trade Organization, and an advocate for natural law. He is a lecturer on political though and international trade law at the University of Asia and the Pacific, and is a partner at the David & Gatdula Law Offices. On scholarship from the Cambridge Overseas Trust, he went to the University of Cambridge for his Master of Law degree (specializing in international law), which he received in 2000. He has acted as legal counsel for the Philippines in several international trade disputes and was the 2009 Bar Examiner for Political Law and Public International Law. He writes a weekly column for BusinessWorld. Contact: jemygatdula@yahoo.com. Blog at www.jemygatdula.blogspot.com; and Facebook and Twitter

> Faith or revelation, although it is confirmed by our Faith. This church teaching is based on natural law, which we know through natural reason. By studying through correct reasoning the nature of the human person, we arrive at this teaching regarding contraception. All human beings, Catholic or not, are obliged to act according to right reason. By the efforts of the Church to go against the RH Bill, the Church is not imposing her religious beliefs on others. She is trying to stop a bill which is against natural law, a law which all human beings, Catholic or not, should follow. The RH Bill, judged from the principles of natural law, is against the good of the human person and the common good. The Congregation for the Doctrine of the Faith in its "Doctrinal Note regarding the Participation of Catholics in Political Life" tells us that all citizens, including Catholics, have the right "to base their contribution to society and political life – through the legitimate means available to everyone in a democracy – on their particular understanding of the human person and the common good." In a democracy, any group of citizens has the right to campaign and lobby so that what they consider to be good for the country are enacted into law and what they deem to be harmful for the country are not enacted into law."

This statement would subsequently be criticized, notably by a respected constitutionalist and former law dean, as well as by another legal commentator tasked with the training of judges in relation to legal philosophy.1 In the end, the exchanges again merely reveal the deep divide within the country regarding the various issues facing it, as well as the proper conceptualization of Church and State separation. However, the exchange also revealed the need for further understanding of the role that natural law plays within the Philippine legal system.

This paper will try to explore, at least introductorily, how natural law worked within Philippine legal history, and how the same can play a role in resolving present and future social disputes.

A. Return of natural law

1 See Conversation with a Bishop, Fr. Joaquin Bernas, Philippine Daily Inquirer, 8 September 2012; also The Trouble with Natural Law, Fr. Ranhilio Aquino, Manila Standard Today, 24 September 2012

Natural law2 is an objective standard of right and wrong that any human being can arrive at through the independent use of right reason. Murder, theft, adultery, for example, are all objectively wrong, for which no circumstance can make right (acts done in self-defense or cultures that accept polygamous marriages are to be differentiated from murder or adultery). Such acts will always be wrong regardless of whether you are Muslim, Christian, agnostic, or atheist. Or American, Arab, Polynesian, or Asian. The objective standard of natural law is distinct, however, from the so-called subjective culpability (as well as the issue of conscience), which need not be taken up here.

As explained by Martin Rhonheimer:3 “Because man is by nature a reasonable being, there exists also a law of reason, which are acts ordered by his practical reason in which man distinguishes good and evil, feeling himself bound to do the good, based on the rational understanding of what is good for man. This function of practical reason, natural in man, constitutes therefore a natural law.”

As can be seen in the response to Bishop Reyes, the accusation was that the Church merely sought to “impose” Catholic doctrines on the rest of the country and make others follow their own concept of morality. In a “pluralistic society”, so it is said, we should respect each other’s beliefs and not impose our own beliefs on others. Such contentions, however, are unfortunately misleading.

It must be emphasized, that natural law is not an exclusive Catholic concept, owing a lot in fact to Aristotle. For him, there is an objective moral order which human reason can figure out. Our free will, on the other hand, allows us to recognize that order or ignore it in favor of our passions or emotion. For those who disagree that there is a natural law, they would have to logically disregard the existence of such objective moral order. Which would then result, as explained by Robert P. George, in accepting a world where there is no “built-in, objective reason for me to choose one goal over another”, the goals of Gandhi would now be of the same weight as the goals of Hitler. One Philippine legal commentator, Jorge Coquia, would even declare that: "Most who reject the validity of natural law claim themselves as 'liberal' or 'progressive'. But in its essence, it is a reaction and an easy road to totalitarianism". Even before St. Aquinas discussed the subject, Aristotle and Cicero had thought about it, then Hobbes and Kant and such other philosophers. The Maturidi, a school of Sunni theology, declares that "the human mind could know of the existence of God and the major forms of ‘good’ and ‘evil’ without the help of revelation." This is illustrated by its proscription on stealing, murder, and adultery.

The pluralism of society must be based on reason and coherence. While indeed we should all respect other’s beliefs, it has to be accepted that to do so would not make those beliefs necessarily correct. To those saying that "nobody has the right to impose one's morality on others," they have to recognize that every law imposes a morality. The only question is which one to impose. Any law that purports to be free of morals is still a law imposing its own kind of morals.

---

2 At least as defined by Javier Hervada

3 In his The Ethics of Procreation

Interestingly enough, a substantial number of Philippine academicians seem to have been entranced with John Rawls idea of “plurality” and “public reason”. However, the response here is that Rawls concept of plurality is so constructed ("unreasonably narrow" in fact, according to George) as to exclude religious arguments and heavily favor liberal advocacies such as abortion and same sex marriage. Furthermore, while Rawls' plurality does make a pitch for public reason, his concept of "public reason" (see Rachael Patterson's critique, as an example) is so, well, "unreasonable" or ambiguous, as such that it becomes impracticable. In any event, we must not also confuse plurality, as well as the need for tolerance and respect for others' belief into actually thinking that it will magically transform all of our individual beliefs to be all correct. To tolerate and respect the belief of others will not necessitate us agreeing to such others' belief.

A short word on “tolerance”: “The root meaning of the word [tolerance] suggests what the virtue involves. The Latin *tol-* is related to a group of words having to do with carrying a burden: German *dulden,* to be patient, to endure; Old English *tholian,* to suffer; Latin *tuli,* I have borne. When we tolerate we *bear with* someone or something; we *bear* the existence of a wrong. We do so because, given the circumstances, to protest would invite a greater wrong. There is a time for public correction, and a time for quiet endurance and, if the opportunity arises, private correction.” (Tolerance and reciprocity, Professor Anthony Esolen**,** Public Discourse)

In any event, as can be seen later, natural law has actually always played a constant, albeit unfortunately subdued, part in Philippine legal history. And therefore its history at large. Even more unfortunately, natural law is practically a forgotten part of our legal education. Most legal scholars here probably would rather have it conveniently ignored. Partly from a fondness for Oliver Wendell Holmes (as a substantial number of our law professors were brought up appreciating the contributions of Oliver Wendell Holmes in legal thinking, particularly his quite popular essay The Path of the Law) but more likely from the prevailing academic fashion of secularism, legal positivism, realism, or relativism, natural law has been pushed to the side. But to allow such would render baseless the Filipinos quests for independence against foreigners, the civil disobedience movement during the Marcos years, and the subsequent People Power Revolutions.

Holmes’ position on natural law demands review, particularly his assertion that "the life of the law has not been logic, it has been experience." For experience is but a tool to uncover the principles that we seek. Holmes himself would be found inadvertently contradicting his famous dictum in his other writings. And John Austin's definition of law, which most of us lawyers memorized by heart ("law is a rule of human conduct promulgated by competent authority ...") is incomplete. Otherwise, everybody should have unquestionably obeyed the Marcos, Estrada, or Arroyo governments. Or even Hitler. Finally, to criticize natural law by saying that there are no absolutes is a self-defeating argument because to say there are no absolutes is itself relying on an absolutism.

The prevailing rejection by most local lawyers of natural law is also ironic when one considers the heavy reliance that our legal tradition has on the same. The most recent significant example of which is the Supreme Court's ruling in Estrada vs. Escritor, which tolerated non-application of the law on the basis of "sincere religious belief." The ruling recognizes the "religious nature of Filipinos" and the "elevating influence of religion in society." As the Supreme Court declared: "man stands accountable to an authority higher than the State." More on this case will be discussed below.

Indeed, the foregoing ruling should be no surprise to Filipino lawyers considering that natural law strongly runs through the vein of the Constitution. While focus is on Articles II and III of the Constitution (i.e., the non-impairment clause, taken wrongly as separation of Church and State, for which more accurately non-discrimination against any religion was intended), it must also be remembered that the very first sentence of our Constitution actually contains a fervent appeal to an objective higher “judge”: “We, the sovereign Filipino people, imploring the aid of Almighty God …” The Constitution goes on to enumerate instances of adherence to natural law: from “truth”, the proscription against aggressive war, the preservation of the family, to taking care of the environment. The Constitution’s reliance on natural law, of course, is most strongly seen in the Bill of Rights.

Nevertheless, the difficulty regarding natural law has been illustrated by Murray Rothbard, as follows: "In the controversy over man’s nature, and over the broader and more controversial concept of 'natural law,' both sides have repeatedly proclaimed that natural law and theology are inextricably intertwined. As a result, many champions of natural law, in scientific or philosophic circles, have gravely weakened their case by implying that rational, philosophical methods alone cannot establish such law: that theological faith is necessary to maintain the concept. On the other hand, the opponents of natural law have gleefully agreed; since faith in the supernatural is deemed necessary to belief in natural law, the latter concept must be tossed out of scientific, secular discourse, and be consigned to the arcane sphere of the divine studies. In consequence, the idea of a natural law founded on reason and rational inquiry has been virtually lost. The believer in a rationally established natural law must, then, face the hostility of both camps: the one group sensing in this position an antagonism toward religion; and the other group suspecting that God and mysticism are being slipped in by the back door."

This would lead some natural law commentators to devise ways in viewing natural law in a manner that would not find it necessary to make reference to God. As Hugo Grotius’ famous formulation puts it, natural law “would maintain its objective validity even if we should assume the impossible, that there is no God or that he does not care for human affairs.” Robert George would put a modern twist on that, saying of natural law that it invokes “no authority beyond the authority of reason itself”. Natural law thinkers would therefore divide themselves on whether or not there is a need to rely on God: the Neo-Thomists would form a sophisticated revival of St. Thomas Aquinas’ thinking and the “new” natural law or the “analytical” natural law theory, which

emphasized practical knowledge over that of speculative knowledge, particularly as to nature.

In any event, the question is: if indeed natural law has played a continuous part in Philippine legal history, what natural law is being referred to? If mention was made of a "higher law" (as was the case in Estrada vs. Escritor), was such a reference to natural law or to divine law? If the former, would that take the form of the neo-Thomist strand of natural law thinking or that instead of the "new" or the "analytical" natural law as enunciated by Grisez and Finnis? If the latter, would that mean that it can be argued that such religious beliefs trump constitutional prerogatives? Or can it mean that such higher law would merely form part of the array of constitutional rights spread out in the Constitution?

B. Philippine constitutional law and natural law

The first constitution that can be referred to as a "Philippine" fundamental law is that of the Malolos Constitution (enacted 20 January 1899). A cursory glance at the key provisions in the Malolos Constitution4 shows the fact that the revolutionaries, as can be seen from the preamble, subscribes to the notion of Divine Law as being an active existing phenomenon, hence the use of the term 'Sovereign Legislator of the Universe' as opposed to the more passive idea connoted by terms such as 'Divine Providence' used in subsequent constitutions. Further, the constitution also recognizes the existence of fundamental or natural rights which belong to humans, whether they be enumerated by positive law or not. Finally, it appears that the founders subscribed to the notion of equality and freedom of religions.

Skipped over were the so-called Code of Kalantiaw and the Code of Maragtas for the reason that they have definitively proven by a scholarly research that both were the product of nationalist attempts at revisionism. Nevertheless, they do provide an interesting glimpse of the impressions of what such rules or codes may be at those times. And a reading of the provisions of the supposed 'codes' themselves would see a heavy emphasis placed on the sacredness of various religious provisions conforming to the animist Filipino belief systems of the period. Noteworthy are the penalties, which appear to resemble those of the barbaric times of the ancient world in its excessive use of capital punishment. It is fairly easy to state that there is no vestige of natural or divine law in force or even in mind during this time, except perhaps what may be deemed as the law of 'Bathala'.

---

4 The Malolos Constitution: "We, the Representatives of the Filipino people, lawfully covened, in order to establish justice, provide for common defense, promote the general welfare, and insure the benefits of liberty, imploring the aid of the Sovereign Legislator of the Universe for the attainment of these ends, have voted, decreed, and sanctioned the following:"
"Article 5. The State recognizes the freedom and equality of all religions, as well as the separation of the Church and the State."
"Article 28. The enumeration of the rights provided for in this title does not imply the denial of other rights not mentioned."

The 1935 Constitution would see in its preamble an invocation to a “Divine Providence” and the same would go for the Ferdinand Marcos’ 1973 constitution. The post-Marcos constitution (1987) would take a more overtly religious tone, as can be seen from the preamble, the Declaration of State Policies and Principles, the Bill of Rights, the Provisions on Social Justice, and the Section on the Family:

> “PREAMBLE
>
> We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.
>
> ARTICLE II
> DECLARATION OF PRINCIPLES AND STATE POLICIES PRINCIPLES
>
> Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.
>
> Section 6. The separation of Church and State shall be inviolable.
>
> Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.
>
> Section 10. The State shall promote social justice in all phases of national development.
>
> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

> Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.
>
> Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
>
> ARTICLE III
> BILL OF RIGHTS
>
> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."
>
> Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.
>
> Section 12 (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

The above cited provisions themselves demonstrate the rationale and the principles which underlie the constitutional principles in the Philippines, which are mainly centered on the freedom of will or volition of man in a democracy, something which at least one Philippine Supreme Court Justice (e.g., Malcolm) believes was granted to man by his Creator. This line of thought would go on to other provisions of the Constitution, such as Article XII (National Economy and Patrimony), Article XIII (Social Justice and Human Rights), Article XIV (Education, Science and Technology, Arts, Culture and Sports), and Article XV (The Family). As can be seen, "human dignity" receives a much more heightened emphasis in the 1987 Constitution than it does in the previous ones, and this is also clearly evident in the fact that the declaration of Principles and State Policies is very much longer in the 1987 version than its predecessors. Among other things, the recognition of the social functions of property and the existence of the family as a social institution inviolable and free from intervention by the State acknowledges that there are some institutions which existed and continue to exist prior to the state's recognition of them.

The thinking found in past and present Constitutions would find echo in the Civil Code as well5. As the Code Commission pointed out:

> "But, it may be asked, would not this proposed article obliterate the boundary line between morality and law? The answer is that, in the last analysis every good law draws its breadth of life from morals, from those principles which are written in words of fire in the conscience of Man. If this premise is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one can not feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes."6

The Code Commission Report elaborates on the rationale for the inclusion of Articles 19, 20, and 21 in the New Civil Code for what constitutes the Abuse of Right Doctrine. Evidently, and as can be easily seen, the Civil Code provisions are rooted firmly on a natural law grounding. This is even clearer from the reference to something fixed to 'ancient moorings', and thus clearly beyond the pale of positive law, and yet representing an attempt to enshrine natural law into a statute. Notably, there is also Article 1423: "Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof." Interestingly, however, it does not appear to explicitly state which obligations are natural, excepting those such obligations for support, the fundamental right and duty of parents to care for their children, etc.

In judicial declarations, the concepts of "higher law", "divine law, "natural law" would be repeatedly seen. Thus, in In re testate estate of Narciso A. Padilla, the Supreme Court would be discussing that ancient maxim roughly translated as 'according to the laws of nature, it is just that no one should be enriched by the detriment and injury of another'.

---

5 See "Art.19.Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."
"Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another shall indemnify the latter for the same."
"Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

6 Report of the Code Commission, Pages 40-41, as cited in page 33, Persons and Family Relations Law by Sta.Maria, Fifth Edition, 2010.

This appears to be the grounding principle for the Civil Code provisions regarding actions for relief against unjust enrichment.

In the Moncado case (1948), Justice Perfecto would be seen making this interesting discussion: “Reason is a fundamental characteristic of man. There is no greater miracle than when its first sparks scintillated in the mind of a child. What before had only the vegetative life of a plant or the animal life of a mollusk or frog, suddenly begins to wield the prodigious power of understanding and intelligent grasping of the meaning and relations of the things with which he is in direct or remote contact though his senses. The power of understanding brings forth the freedom of choice. This freedom develops the faculty of discrimination between good and evil. That discrimination is further developed into a sense of justice.” Justice Perfecto’s is probably the most eloquent to discuss principles of natural law at that time. Quite clearly he elucidates on his perspectives on natural law and its applicability to the case at bar and he does this with marked consistency even in later decisions which he has rendered.7

Other cases of note are Anastacio Laurel (1947), where Justice Hilado discussed the fact that the field of international law is not as defined as that of municipal law, and yet goes on to find that a war of aggression will find no support in either natural or positive law; Primitivo Ansay (1960), where the Supreme Court expounds on the interpretation of the above-cited provision in the New Civil Code, and definitively states that its basis is not, in fact, positive law as may be assumed, but is in fact based solely based on principles of equity and natural law; Philippine Commercial and Industrial Bank (1982), where the Supreme Court explained that the preferential provisions of the Labor Code are not grounded entirely on principles of State Policy, but rather also on such things as a universal sense of human justice, which furthermore partakes of the divine, a reference to higher law; De La Llana (1982), where Justice Fernando points out the interesting perspective that judicial decisions are essentially created out of two things: the knowledge of the law, and the judge’s own conscience, as God himself has given to him to understand. Following this reasoning, natural law plays an obvious part, although not necessarily overtly.

Interestingly, considering the quite less subtle referral to “God” in the 1987 Constitution, the heavier emphasis on natural law in Philippine jurisprudence comes mainly from the

---

7 See Basilio De Castro (1946; where Justice Perfecto establishes his perspective on the nature of rights fundamental, which he believes must always prevail over the procedural), Metropolitan Transportation Service (1948; where he asks as to whether the state should be suable and compares this to the old Divine Right of Kings, by which the Sovereign could do no wrong. Clearly rejecting such opinion, he shows instead that human personality should prevail. Although, it is curious to note that he says that monarchs are of ‘divine’ origin), En el asunto de ABELARDO SUBIDO (1948; where acknowledges that the constitution only recognizes what is already a fundamental and natural right and duty of parents towards the rearing of their children, and further in his opinion there are two Laws which may be violated, the Human and the Divine, which further establishes that he is of a very strong natural law orientation).

Post-war period and earlier. Afterwards sees a decline (at least in terms quantitative rather than qualitative) in the cognizance and application of natural law.

Certain cases of note are the Marquino case (1994), where the Supreme Court elaborates on the basis for the granting of vested property rights, and that these ultimately originate from natural law in reason, which is true even to the extent that they must be protected against the powers of the State itself, thus implying the rights are vested, but not by the State, and the Marcoleta case (2009), where Justice Carpio Morales makes the rather unfortunate opinion that, although there is a divine wisdom which establishes the perception of right and wrong in man, ultimately in the legal system, positive law must prevail. How controlling this opinion is must be seen in light of even more recent cases on the matter, which actually more extensively discusses the nature of natural law.

There is the case of Republic vs Sandiganbayan (2003), where Justice Puno's extensive discussion on natural law reveals the Thomistic character of his thinking, as well as a further enumeration of where natural law played a part in jurisprudence.8 There is also the Uniwide Sales Realty and Resources Corporation (2006), where the Supreme Court made reference to one of the few statutory provisions (i.e., as previously mentioned, the Civil Code) expressly referring to a natural law.

However, it is the most recent and most quoted case of Estrada vs. Escritor (2006), that makes the quite oft-repeated statement that man stands "accountable to an authority higher than the State." Justice Puno again maintains that man, as ever, will always subscribe to the principles of divine and natural law; and that at times these principles will sometimes clash with – and perhaps even override – those of the State. Nevertheless, as in Republic vs Sandiganbayan, it is the Dissenting Opinion that is of interest. In Estrada vs. Escritor, it is the dissent by Justice Ynares-Santiago:

> "With due respect, I am unable to agree with the finding of the majority that "in this particular case and under these particular circumstances, respondent Escritor's conjugal arrangement does not constitute disgraceful and immoral conduct" and its decision to dismiss the administrative complaint filed by petitioner against respondent Soledad S. Escritor.
>
> The issue in this case is simple. What is the meaning or standard of "disgraceful and immoral conduct" to be applied by the Supreme Court in disciplinary cases involving court personnel?

---

8 With which Justice Puno cites People v. Asas, People v. Agbot, Mobil Oil Philippines, Inc. v. Diocares, et al., Manila Memorial Park Cemetery, Inc. v. Court of Appeals, et al., Yu Con v. Ipil, et al., and Simon, Jr. et al. v. Commission on Human Rights

The degree of morality required of every employee or official in the public service has been consistently high. The rules are particularly strict when the respondent is a Judge or a court employee.[1] Even where the Court has viewed certain cases with human understanding and compassion, it has insisted that no untoward conduct involving public officers should be left without proper and commensurate sanction. The compassion is shown through relatively light penalties. Never, however, has this Court justified, condoned, or blessed the continuation of an adulterous or illicit relationship such as the one in this case, after the same has been brought to its attention.

Is it time to adopt a more liberal approach, a more "modern" view and a more permissive pragmatism which allow adulterous or illicit relations to continue provided the job performance of the court employee concerned is not affected and the place and order in the workplace are not compromised? When does private morality involving a court employee become a matter of public concern?

The Civil Service Law punishes public officers and employees for disgraceful and immoral conduct. Whether an act is immoral within the meaning of the statute is not to be determined by respondent’s concept of morality. The law provides the standard; the offense is complete if respondent intended to perform, and did in fact perform, the act which it condemns.

The ascertainment of what is moral or immoral calls for the discovery of contemporary community standards. For those in the service of the Government, provisions of law and court precedents also have to be considered. The task is elusive.

The layman’s definition of what is "moral" pertains to excellence of character or disposition. It relates to the distinction between right and wrong; virtue and vice; ethical praise or blame. Moral law refers to the body of requirements in conformity to which virtuous action consists. Applied to persons, it is conformity to the

> rules of morality, being virtuous with regards to moral conduct.
>
> That which is not consistent with or not conforming to moral law, opposed to or violating morality, and now, more often, morally evil or impure, is immoral. Immoral is the state of not being virtuous with regard to sexual conduct.
>
> The term begs the definition. Hence, anything contrary to the standards of moral conduct is immoral. A grossly immoral act must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.
>
> Anything plainly evil or dissolute is, of course, unchangingly immoral. However, at the fringes or boundary limits of what is morally acceptable and what is unacceptably wrong, the concept of immorality tends to shift according to circumstances of time, person, and place. When a case involving the concept of immorality comes to court, the applicable provisions of law and jurisprudence take center stage.
>
> Those who choose to tolerate the situation where a man and a woman separated from their legitimate spouses decide to live together in an "ideal" and yet unlawful union state – or more specifically, those who argue that respondent's cohabiting with a man married to another woman is not something which is willful, flagrant, or shameless – show a moral indifference to the opinion of the good and respectable members of the community in a manner prejudicial to the public service."

Justice Ynares-Santiago's seeming perspective is that there are several "standards" of morality to be applied when cases such as this are at issue: A 'modern' permissive, and flexible standard, and a permanent or timeless standard of morality. Unable to subscribe to the majority opinion which prefers modernity and liberality, preference is shown to refer to an unchanging morality, devoid of the moral relativism of cultures.

C. Political statements, natural or not

Inaugural speeches and other such political declarations do not necessarily constitute legally binding documents or contain a normative character. However, their value of being indicative of the people's values that the leaders are tasked to reflect would be of

import when judging or evaluating legislation or the merit of a judicial determination. Whether one goes to the extent of a Dworkian view of law or at least finding (or attempting to find) more apt descriptions of "public morals" as is normally found, particularly in the Civil Code, then a short discussion on such political statements are included here.

The acknowledged "Brains of the Philippine Revolution", lawyer Apolinario Mabini has in his Decalogue9 a powerful natural law influence, despite its frequent mention of God. In addition, it appears Mabini's perspective is that the ability to discern between good and evil is found in the conscience of Man, but is a product both of God's providing him discernment and imposing upon him an obligation, as well as the product of his own reason. Thus, the perfection humanity seems to require needs the application of reason for its attainment, as seen by the line (albeit admittedly melodramatic) desiring to make the Philippines a "Kingdom of Reason and Justice".

Interestingly, the Philippines' national hero, Jose Rizal, in his Prospectus for a 'Colegio Moderno', recommended that natural law be taught so as to "form and educate young men of good family and means in accordance with the demands of modern times and circumstances." Rizal's draft curriculum for what he believed would be the essential 'Modern College' included education on natural Law to be absolutely mandatory for everyone.10

Aguinaldo's inaugural address11 seems to have a significant natural law theme to it, particularly in light of the fact that the address itself is quite short and most of the paragraphs contain some form of reference to it. His mention of 'just and wise precepts' to which we owe 'blind obedience' seems to have some kind of connotation to laws higher than positive law. His mention of the strongest of solidarities and 'eternal truths' also carries the same interpretation, while the line regarding 'intelligence and hearts perfectly in accord' could be a reference to right reason and intellect, and consequently its ability to determine natural law.

Considering that Aguinaldo's presidency marks, in essence, the genesis of Philippine governmental and constitutional thinking, it is here quoted substantially:

> "I congratulate you upon having concluded your constitutional work. From this date, the Philippines will have a National Code to the just and wise precepts of which we, each and every one of us, owe blind obedience, and whose liberal and democratic guarantees also extend to all."

9 Mabini's Decalogue was obtained from Project Gutenberg's online eBook collection of historical works, Gutenberg.org.

10 *See Filipiniana.net* (Rizal, 1892), Rizal, J. (1892). *Prospectus of Colegio Moderno*. Retrieved September 19, 2012, from Filipiniana.net: http://www.filipiniana.net/publication/prospectus-of-colegio-moderno/12791881713246/1/0

11 All speeches obtained from the Website of the Official Gazette of the Government of the Philippines.

> “Hereafter, the Philippines will have a fundamental law, which will unite our people with the other nations by the strongest of solidarities; that is the solidarity of justice, of law, and of right, eternal truths, which are the basis of human dignity.”
>
> “Great is this day, glorious is this date; and this moment, when our beloved people rise to the apotheosis of independence, will be eternally memorable. The 23rd of January will be for the Philippines, hereafter a national feast, as is the Fourth of July for the American nation. And thus, in the same manner that God helped weak America in the last century, when she fought against powerful Albion (England), to regain her liberty and independence; He will also help us today in our identical goal, because the ways of Divine Justice are immutably the same in rectitude and wisdom.”
>
> “You have justly deserved the gratitude of the country and of the government, in that you showed the entire world, by your wisdom, sound sense, and prudence, that in this remote and heretofore unknown portion of the world, the principles of European and American civilization are known, and more than known; that intelligence and hearts here are perfectly in accord with those of the most civilized nations; and that notwithstanding the calumnious voice of our eternal detractors, there is here, finally, a national spirit, which unites and forges together all Filipino hearts into a single idea and single aspiration to live independent of any foreign yoke in the democratic shadow of the Philippine Republic.”
>
> “For this reason, on seeing consecrated in our constitutional work the eternal principles of authority, of liberty, of order and justice, which all civilized nations profess, as the most perfect guaranty of their actual solidarity, I feel strength, pride, and am sincerely impelled, from the bottom of my heart to shout—“

On the other hand, Manuel Quezon invokes the aid of God at both the beginning and at the end of his inaugural address, but not with the frequency that could be expected in a presidential speech. However, his speech invokes Him in a way that is reminiscent of

the idea of ‘Divine Providence’, as can be seen from the expression ‘unerring and guiding hand’, which connotes a higher law. Further, his suggestion that the administration of justice depends on the moral and intellectual standards of the men who dispense it could be a reference to right reason and intellect being a basis for the law. His second (wartime) speech does not focus too much on law, perhaps because of the exigencies of the time, but he still makes reference to higher principles or norms which are the basis for justice.

Jose Laurel’s inaugural address has a heavy emphasis on the dignity of the human person, and seems to lament that it has been allowed to ‘decay’, in his opinion. However, this is interesting in context, because he says this in his speech as part of his justification for what appears to be a eugenics program for Filipinos. Sergio Osmena (given upon Quezon’s death) has a very markedly religious bent, in fact basing his opposition to the present occupied laws of the Philippines on its supposed inconsonance with the Christian values the Philippines has had for centuries.

Manuel Roxas, given shortly after the end of the Second World War, is an interesting combination of both religious and natural law elements. For instance, there is significant mention of both God and Divine Providence in his speech. However, at the same time, he raises the interesting perspective that ‘Justice is absolute’, and thus consequently makes reference to a higher standard of morality than positive law. Further, his statement that there is ‘right as God gives us to see the right’ (obviously borrowed from Abraham Lincoln) can be seen as a reference to the idea of divine or eternal law in determining justice.

Elpidio Quirino’s is quite clearly religious in his elucidation of his principles of law, and it can be gleamed from the tone of his speech that his perspective of the law is that it is something which is granted by God to man, at least insofar as how he understands it. Christian culture and the dignity of the human person are also quite emphasized. On the other hand, Ramon Magsaysay’s inaugural address is not immediately clear; on the one hand, he does make reference to a principle which exists above positive law but at the same time frames it under a nation which is under the protection of God. Carlos P. Garcia’s rather sober address has aspects both of natural law and religion in his speech, which seems to be predicated on the notion that all law must be based on ‘the Rock of Ages’ and on a higher morality for it to endure. He invokes Divine Providence as well, but from the general tone of his speech, it is perhaps safe to say that such is more natural law oriented. Diosdado Macapagal’s, meanwhile, has an orientation that is towards religious but also seemingly reasoned in its perspective, and that mainly law must be dispensed together with God’s guidance.

Ferdinand Marcos is unique, both for obvious reasons but also by the sheer fact of the length of his tenure. His is the only president to have at least four inaugural speeches. Of the first two, Marcos makes constant (and actually increasing) reference to the role of God and of spirit and morality in general. But he also makes reference to essential humanity, which appears, at least in his discussion, to be something greater than the bounds of positive law. By his third speech, Marcos now makes a noticeable shift to

principles of “fundamental law”. Both timeless principles, true and fundamental law, and faith above all others have been invoked by Marcos in his desire for a ‘New Society’. Further, reference to authentic freedom not being given by worldly authorities reinforces the belief that Marcos has shifted to a natural law perspective.

Protestant Fidel V. Ramos makes reference to what can be seen a natural Law, he only does this via lifting a quotation from Rizal, whereas the rest of his speech quite clearly approaches the issue from a religious angle. Gloria Macapagal Arroyo’s first inaugural speech had a focus exclusively on a religious perspective. Her second is otherwise completely religious. The speech is noticeable in that, rather than calling certain acts as ‘illegal’, she referred to it as immoral, which evinces perhaps an unstated belief (or at least her speech writers did) in higher moral laws.

As surveyed, only three presidents pointedly did not make any reference to a “higher law”, whether it be “divine” or one akin to “natural law”. Joseph Estrada focused more on his personal struggles as allegory to that of the masses. Corazon Aquino did not as well. But this could be justified perhaps because her swearing in as president occurred during the uncertain days of the People Power revolution. Interestingly enough, her son, current president Benigno Aquino, III did the same: failing to evince or refer to any higher law and seemed more intent on extolling the virtues of his ‘tuwid na landas’ (literally the “straight path”), which is more a political slogan than anything else.

D. In fine --

This paper sought to find out how natural law worked within Philippine legal history, and how the same can play a role in resolving present and future social disputes. To do so, it had to look at its presence in judicial determinations and see such within the broader social and value context of the Philippines as seen through the views of its leaders.

That the Philippines refer to a “higher law” is not doubted. What is not clear, however, is the identity of such higher law. Did the cursory survey indicate a Philippine legal system more “fideistic” than is supposed? If so, such presents certain problems indeed, particularly as to how such could be worked into the fabric of the Constitution. It is also clear that natural law has been recognized consistently through the years. But how is such natural law to fit in properly with the other pronouncements and rulings that are definitively religious in character?

The initial reaction to this was to conclude that the Philippines is simply confused in its references to a higher law, mixing up “divine law” with that of natural law. Hence, the seeming easy interchangeability with which the judiciary (and to a certain extent our political leaders) have done on the two seemingly distinct concepts. But on closer look, particularly as to the reasoning that was done in the Estrada vs. Escritor case, what looked like confusion becomes actually something else.

That the Philippines involves natural law in its legal thinking becomes clear. So does its belief that a higher, "supernatural" law holding human beings accountable. However, rather than coming into a conclusion that the Philippines simplistically foregoes reason in exchange for a convenient ambiguity that could justify any decision by making references to a law that is more grounded on faith than anything else, the greater probability is that the Philippines takes it for granted that, assuming faith has a role to play in our legal system, such faith is accompanied by reason. Rather, therefore, than simply resorting to fideism, the Philippines seems to have recognized, quite "naturally" (no pun intended), that matters of faith are "reasonable". Taking that viewpoint, the propriety therefore not only of natural law reasoning but also of including matters of religious thought into judicial determinations, as well as legislation, becomes all the more appropriate.

This line of thinking is particularly interesting, considering that the Western democracies have only but recently (albeit again) entered a debate as to whether religious thinking is indeed rational and would make an appropriate basis for policy or judicial decisions. However, as Baylor University's Francis Beckwith (Professor of Philosophy and Church-State Studies*)* would complain:

> "… that when political conflicts between church and state arise that academic and media elites treat the church's point of view as if it were an irrational outlier to contemporary culture. As I have come to reluctantly realize, they simply do not know any better, since their education insulated them from views contrary to the unquestioned secular hegemony that was ubiquitous in their intellectual formation.' This means that we Christians – Protestants, Catholics, and Orthodox alike – cannot settle for mere cultural toleration (or just having the right to speak) without at the same time making the case that our faith, and all that it entails and presupposes, is aligned with reason."12

Or, as J. Budziszewski (Natural Born Lawyers, The Weekly Standard, December 20, 1999) would even more cogently put it:

> "Theologians typically distinguish 'general revelation,' corresponding to natural law, which God gives to all human beings through His creation, and 'special revelation,' corresponding to divine law, which He gives to believers through His word. Novak argues that natural law is not only compatible with divine law but presupposed by it; if you didn't have the general revelation, you wouldn't be able to understand the

12 Francis Beckwith, Faith, Reason, and Secular Hegemony, 13 April 2012

> special. Hall grasps that the relationship also works in the other direction, for the salvation story puts natural law in its context: If you didn't have the special revelation, then you would still have the general, but it would be a message of futility. Indeed, by itself, natural law is not good news (the literal meaning of the word 'gospel'), but bad news--a standard which in this fallen world we cannot keep, which serves primarily to allow us to measure our failures."

The significance of this becomes all the more apparent when one considers this paper's title. I called the Philippines the "last battleground". And the reason for that is twofold: the Philippines is the only country left in the Southeast Asian region that still does not have national legislation legally institutionalizing contraception13 and is the only remaining country on Earth (except perhaps for the Vatican) that still does not recognize divorce14. A lot of the credit has to go to the Catholic Church for courageously keeping to its teachings and the boundless faith of the millions of practicing Catholics, as well as other like-minded Christians and also of our brothers in the Muslim faith. However, if it is to stand its ground on these two issues, despite massive funding being given by international organizations, pharmaceutical companies, and liberal groups, a lot of it will depend on the Philippines being confident enough that its legal system is not based merely on a "leap of faith" but is properly anchored on reason as well.

But there is an even more significant aspect to all this: for a country of seven thousand islands, hundreds of dialects, varied cultures and religions, different races and even political beliefs, the one unifying thing that could be said of the Philippines is its belief that faith, with a commonality to be found first in natural law, is indeed reasonable. The other thing that must be considered is the Philippine demographic: Filipinos 30 years old and below comprise around 70% of the population (with those below 14 years at 35%, with the median age at 22.9 years old). Those at 65 years old comprise only about 4.1%. Whoever or whatever captures the soul of this demographic effectively captures the soul of the nation for many decades to come.

Viewed in that regard, to accept and institutionalize such belief that a reasonable faith has a proper role in public and political matters, even perhaps serving as a fundamental and universal normative framework, is perhaps the real last battleground.

---

13 See In Philippines, a War against Artificial Contraception, Asia Mag, 28 April 2011; also Low Rate Of AIDS Virus In Philippines Is a Puzzle, New York Times, 20 April 2003

14 PHL now only nation in the world without divorce; Malta gives in, Reuters, 29 May 2011