

Revisiting a Flag Salute Case: The Law of the State as Opposed to the Right of Minority

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ABSTRACT

The state as an agent responsible to secure social order is oftentimes given high regard by its citizens based on the premise that it can also guarantee protection of rights through the formulation of laws that set legal boundaries in safeguarding the interests of the people. The state is the actual reality of an ethical idea according to some philosophers, like Hegel, because it is created with a noble purpose of upholding the common good of its subjects, the essence of which is to secure happiness and safety for all. Conflicts may, however, arise in occasions where individual rights run counter with the policies of the land. This is the focus of this study; on the one hand, an intriguing exposition on the exercise of religious freedom of a minority group, and on the other, its conflict with the legal policies promoting a conceived general welfare for the country.

Keywords: *legal boundaries, individual rights, minority group, religious freedom, state*

INTRODUCTION

The *En Banc* decision made by the Supreme Court dated December 29, 1995 on the case of *Ebralinag v. the Division Superintendent of Schools in Cebu*¹ can be taken as a triumph of the right of a minority group opposing a possible tyranny from the rule of majority. It had overturned a prior decision made in 1993 which gave approval to public respondents' position on the said lawsuit.² In this case, all the petitioners were minor school children, and members of the sect, Jehovah's Witnesses (assisted by their parents) who were expelled from their classes by various school authorities in Cebu for refusing to salute the flag, sing the national anthem, and recite the patriotic pledge as required by R.A. No. 1265 of July 11, 1955 and by Department Order No. 8 dated July 21, 1955 issued by the Department of Education.³ The 1995 ruling made a decisive step in favoring the private respondents' petition for *certiorari*⁴ (the name given to certain appellate proceeding for re-examination of actions of a trial court for inferior appeals court) and prohibition leading to the annulment of the previous ruling for the expulsion of the petitioners. In the resolution made by the then Justice Kapunan,⁵ there is a clear observation that the latter decision put into question the rationale behind the rulings made in previous cases related to the issue at hand. As such, what made this case of high interest is the highlight it gave to one's right to exercise without restraint a religious profession under the condition that performance of such will not put in detriment the welfare of the many.

This paper also seeks to establish a philosophical analysis based on the ruling made by the Supreme Court. Understanding the complexity of the law requires a common ground in believing that the state is there to protect the rights of its citizens. A thorough scrutiny will further give justification to the validity of the claims presented in the entire context of the work borrowing positions from existing ideas of different thinkers and

1 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 1, <http://source.gosupra.com/docs/decision/22340>.

2 Eli E. Hertz. *Freedom of Religion*, <http://docslide.net/documents/freedom-of-religion>.

3 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 3, <http://source.gosupra.com/docs/decision/22340>.

4 *Certiorari* is the name given to certain appellate proceeding for re-examination of actions of a trial court for inferior appeals court. www.techjournal.com/glossary/legal

5 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 1, <http://source.gosupra.com/docs/decision/22340>.

lawmakers focusing on matters and issues related to the mentioned case. This particular part of the study revolves around the exposition of legal framework in relation to the decision made by the court. It also includes the reactions to the decision especially focused in finding justifications behind why there is a need to posit an opinion in concurrence with the arrived resolution. *First*, it will discuss the legal basis as to how religious freedom is considered as a fundamental right and the existing permissible limitation on its exercise as determined by the Constitution. *Second*, it describes the *legal tests* used as a relevant guide in framing the decision and contends its validity to the existing conditions needed to safeguard peace and order in the land. These tests will serve as a response to the challenges being posited by counterarguments in relation to the issue at hand. *Third*, this paper finds the need to examine and critically study the concept of *conscientious objection* because it serves as basis for justifying why a minority's right must be protected alongside one's freedom to exercise and profess a chosen religion through the guidance of conscience call.

The framework to be followed in the second section of the paper will be guided by philosophical ideas as a manner of establishing the validity of the position taken by the study. The entire content of this part is a thorough exposition of ideas of well-known philosophers and their stand in justifying the essence of religious practice and the corresponding right of the individual to protect one's autonomy to profess faith. In totality, finding a philosophical backbone of the position in favor of the minority's religious voice is a justification for the need to protect individual freedom in relation to one's religious practice.

Lastly, the third part of the paper is a critical analysis laying down the grounds why the state needs to consider an ethical stand in its performance of duty especially detrimental to its role in nation-building. This portion of the study highlights the sensitive responsibility of the state to act as a *parens patriae* (it means that the government, or any other authority, regarded as the legal protector of citizens unable to protect themselves) and it must be vigilant in safeguarding the right of its citizens especially the minority group i.e., religious sect, and this must be observed alongside its capacity of performing a delicate balance of protecting the interests of the many as well. This part of the paper also includes the concluding chapter of the entire exposition in the *Ebralinag case*.

The Legal Framework of the Court's Decision regarding the 1995 Ebralinag Case

The case is a celebrated one because it arouses interests among religious and legal practitioners due to the nature of conflict being presented as an opposition between a minority right and the majority's mandated observance of the law of the state. Here, there is a problematic situation arising out of a legal right as well to exercise one's religious freedom and the duty imposed by the state to its subjects regarding the need

to participate in the promotion of nationalism and patriotism which is highly relevant in nation-building. Taking the stand made by Justice Kapunan in his majority opinion, he said that “upholding religious freedom is a fundamental right and it deserves the highest priority and amplest protection among human rights.”⁶ In reference to the Philippine framework on the free exercise of religion, Article III, Section 5 of the Constitution 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.⁷

Based on what is constitutionally written, it is evident that *the establishment clause* and *the free exercise clause* are two guarantees of the right to religious liberty. Consistent with the constitutional rule of keeping the separation between the church and state inviolable,⁸ on the other hand, the *establishment clause* ensures “that political process is insulated from religion and religion from politics.”⁹ As such, the government should not take sides when it comes to matters of religiosity. More so, the *free exercise clause* is a guarantee on “the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one’s religion.”¹⁰ Based on the context laid down by the constitutional mandate on the free exercise clause, it will lead to an obvious interpretation that it is a protection of two discreet but related concepts—belief and action.¹¹ Interpreting it further, one’s right to his/her beliefs so long as it is within the confines of one’s imagination and thought¹² is entitled to absolute

6 Ibid.,3

7 <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-iii/>

8 Ibid.

9 *Pramil v. Teleron*, G.R. No. L-34584, 86 SCRA 413 (Nov. 20, 1978) (Munoz-Palma, J., dissenting).

10 *Estrada v. Escritor*, A.M. No. P-02-1651,408 SCRA 1, 134 (August 4, 2003).

11 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 6.

12 *Gerona v. Secretary of Education*, G.R. No. L-13954, 106 Phil. 2,9 (August 12, 1959).

protection of the law. In addition, this includes the right against compulsion “to reveal his thoughts or adherence to a religion or belief” that runs consistent with the constitutional prohibition against requiring religious tests for the exercise of a person’s political or civil rights.¹³ In the *Ebralinag case*, the reiteration of the constitutional provisions mentioned herein was given high regard favoring in one’s intention to believe and follow conscientiously the dictates of one’s religion or the church where the person is part of. As such, the right of the individual is given priority over the believed notion of a citizen’s duty to extend one’s obedience to the law of the land.

As mentioned earlier, the exposition made by Justice Kapunan in his *ponencia* (also known as the majority’s opinion) exhibits a clear boundary between a person’s exercise of religiosity and the state’s capacity to impose decrees carrying an underlying principle that they are intended for the public welfare and safety. This leads to a necessary action from the court to re-examine the decision made in *Gerona case* and withdrew the *expulsion* orders made by public respondents for the decision is violative of both the *free exercise of religion clause* and the *right of citizens to education* under the 1987 Constitution.¹⁴ For one, the religious convictions and beliefs of the members of this religious sect, the Jehovah’s Witnesses, are widely known for being strictly serious with their following of a biblical injunction found in Exodus 20:4,5 which prohibits the worshipping of any form of idols other than God himself.¹⁵ Their refusal to render obeisance to any form or symbol which smacks idolatry is based on their sincere belief coming from the mentioned biblical passage, as it may appear bizarre to others, it is firmly grounded from their religious belief¹⁶ that they wish to uphold against any form of contention. As such, the basic assumption underlying their universal refusal to perform salutation on the flags of the countries they are part of is because “such a flag salute constitutes an act violative of their religious devotion seen as forbidden by God’s law.”¹⁷

13 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 6.

14 *Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al.* G.R. Number 95770., 4, <http://source.gosupra.com/docs/decision/22340>.

15 *Ibid.*

16 *Ibid.*

17 *Ibid.*

The presentation of facts and legal matters in this issue could lead to a negative assessment as regards the veracity of the ruling made by the court in this case. This consideration on the commandment stated in Exodus 20:4,5 caught the interest of the philosopher named Martin Buber leading him to come up with his own rational opinion regarding the matter. He said that “the commandment *Thou shalt not make unto thee an image* means at the same time, *Thou canst make an image.*”¹⁸ This does not mean, however, that it is only limited to sculptured or painted images, included would be our fantasy and all the power of our imagination as well which may lead into acting with an inclination from such. Buber further emphasized that “the essence of religiosity in every religion is of highest certainty, a certainty that must be lived in concrete.”¹⁹ It means that religion must be experienced in living action with the promotion, of course, of the meaning given to it by the practitioners. Taking the issue seriously led this study to look for *legal tests* in support of the decision as a tool for further analysis and clarity, the very concern of the next topic in this paper. It will give the reader a better view as to how and why the judiciary took a very considerable journey in changing the decision made in the *Ebralinag Case* in 1993 which was of detriment to the petitioners, thus arriving at a more liberal and sound judgment in its eventual ruling made in 1995. Overcoming difficulty regarding the issues on flag salute cases is really challenging to both parties. It is aimed, however, to a disinterested and objective result at the end.

Other Flag Salute Cases Decided in Favor of the State

Looking at the history of the constitution of law regulating flag salute cases, it can be traced back to “1955 when the Republic Act No. 1265 made daily flag ceremonies compulsory in public and private schools. Parents, who were Jehovah’s Witness, asked the Secretary of Education to exempt their children from executing the formal pledge, singing of the national anthem, and reciting the patriotic pledge.”²⁰ These pleas were all denied resulting even into conflicts with the said law arriving at two cases: *Gerona v. Secretary of Education* and *Balbuna v. Secretary of Education*. It has to be noted that in both cases, the court upheld the compulsory flag salute and ruled in a negative way against these

18 Martin Buber, *The Way of Response*, ed. Nahum N. Glatzer (Schucken Books Inc., 1975), 38.

19 Ibid.

20 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto>, 13.

schoolchildren who were members of this religious sect—Jehovah’s Witnesses.²¹ In the case of *Gerona et al.*, Justice Montemayor justified the need to participate in a patriotic duty of saluting to the flag by stating that “men may differ and do differ in religious beliefs and creeds, government policies, the wisdom and legality of laws, even the correctness of judicial decisions and decrees; but in the field of love of country, reverence for the flag, national unity and patriotism, they can hardly afford to differ, for these are matters in which they are mutually and vitally interested, for to them, they mean national existence and survival as a nation or national extinction.”²² The court also emphasized that “the practice of religion could be circumscribed by reasonable and non-discriminatory laws, under the theory that all citizens may be required to give up a portion of their own right to benefit other people or the general welfare.”²³

The *Balbuna* case suffered the same fate when the court at the same time maintains that “the Filipino flag is not an image that requires religious veneration; rather it is a symbol of the Republic of the Philippines, of sovereignty, an emblem of freedom, liberty, and national unity.”²⁴ It is evident in both cases that flag salute is not seen as a religious ceremony but an act and profession of love for country, an allegiance and pledge of loyalty to the state where these schoolchildren belong, and that what the flag exactly stands for. As such, clarity of whether the decision of the court in these two cases would be negated by the rationality made in the court’s manner of deciding in the *Ebralinag* case in 1995 will be highlighted in the next section. Legal tests were used to determine the need to change the old rationale of the law to fit the changing conditions and demands of the present time.

On the Legal Tests Used in Determining the 1995 Decision for the Ebralinag Case

Echoing the decision of the Supreme Court, Justice Kapuno arrived at his statement that “there is no question in the imposition of state law to inculcate in the youth the value of patriotism and nationalism and to encourage their involvement in public and civic affairs. However, the government’s interest in molding the young into patriotic and civic spirited citizens is not totally free from a *balancing process* when it intrudes

21 Ibid.

22 http://www.lawphil.net/judjuris/juri1974/sep1974/gr_I_25246_1974.

23 Ibid

24 http://www.lawphil.net/judjuris/juri1974/sep1974/gr_I_25246_1974.

with another fundamental right specifically protected by the *free exercise clause*.²⁵ This particular case is a realization that there is a need to provide an exemption in favor of the religious beliefs of the Jehovah's Witnesses, thus opening the locks to possible exemption in order to get rid of discriminatory treatment in favor of this religious sect, which in turn could probably weaken the thrust of R.A. 1265.²⁶

In a separate opinion written by Justice Mendoza (concurring or in agreement with the later decision favoring the schoolchildren), he stated that "the value of the national flag as a symbol of unity is not in question in this case. The issue lies on whether it is permissible to compel children in public schools to salute the flag as a means of promoting nationhood considering that their refusal to do so is grounded on a religious belief."²⁷ He mentioned that:

Compulsory flag salute lies in a continuum, at one end of which is the obligation to pay taxes, and at the other, a compulsion to bow down before a graven image. Members of a religious sect cannot refuse to pay taxes, render military service, submit to vaccination or give their children elementary school education on the ground of conscience. But public school children may not be compelled to attend religious instructions or recite prayers or join bible reading before the opening of classes in such schools.²⁸

Explaining this further, Justice Mendoza said that in determining the validity of compulsory flag salute, we must determine which among those mentioned duties exerts a greater pull. For instance, the imposition of taxes is justified because unless support for the government can be exacted, the existence of state itself may well be endangered. In the case of compulsory vaccination of children, it can also be justified that there is a need for such extreme measure in situations where a disease might spread and it becomes essential to employ appropriate measure to control it.²⁹ In the context of intrusive public health interventions related to the prevention, control, and management of infectious

25 Ibid.

26 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 14.

27 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 8, <http://source.gosupra.com/docs/decision/22340>.

28 Ibid.

29 Ibid.

diseases, there seems to be a *prima facie* conflict between individual rights, on the one hand, and public welfare (safety), on the other.³⁰ But unlike the refusal to pay taxes or to submit to compulsory vaccination, one's refusal to salute the flag threatens no such dire consequences to the life or health of the State.³¹ As such, Justice Kapunan reaffirmed this stand by saying that "in the case at bench, the government has not shown that refusal to do acts of conformity exacted by the assailed orders, which respondents point out attained legislative cachet in the Administrative Code of 1987, would pose a *clear and present danger* so serious and imminent, that it would prompt legitimate state intervention."³²

The case also demands for an extra consideration in the reality of heterogeneous religious practices in a pluralistic society like what we have here in the Philippines. As Justice Kapunan stressed in his opinion on the issue, "that a suppression of an expression was made in connection with the freedom of religion and the respondents have not shown to our satisfaction that restriction was prompted by a *compelling interest* in public order which the state has a right to protect."³³ The court has the opportunity to apply the *compelling state interest test* when the act extends beyond speech and becomes conduct to determine whether or not an individual may invoke the *Free Exercise Clause* to carve out an exemption from a generally applicable law, as evident in the 2003 landmark decision of *Estrada v. Escritor* and the subsequent resolution on the merits of 2006.³⁴ There must be present conditions in order for the compelling state interest test to work—first, that "a law or government practice inhibits the free exercise of respondent's religious beliefs," and second, that there is "no doubt as to the sincerity and centrality of one's faith to claim the exemption based on the *Free Exercise Clause*."³⁵ In a situation where these conditions are satisfied, the burden will now be passed to the state to prove that the interest behind the regulation is so compelling that it should override the respondent's plea of religious freedom. "The state must prove that it has a *compelling state interest*

30 Kai-Lit, Phua, "Ethical Dilemmas in Protecting Individual Rights Versus Public Protection in the Case of Infectious Diseases," *Infectious Diseases: Research and Treatment* 6 (2013): 2.

31 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 8, <http://source.gosupra.com/docs/decision/22340>.

32 *Ibid.*, 6.

33 *Ibid.*, 7.

34 *Estrada v. Escritor*, A.M. No. P-02-1651, 492 SCRA 1, June 22, 2006.

35 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 8.

or it needs to prevent a substantive evil, whether immediate or delayed to regulate the conduct of the parties involved. More than undertaking a mere *balancing of interest*, the state bears the burden of showing the gravest abuses of religious liberty that will make the regulation necessary.”³⁶

While it is not really evident that the *Ebralinag case* bestowed the *compelling interest test* as enough measure to undermine the strong conviction of the private respondents to fight for what they believe as a right to profess their faith and religiosity, the state has, therefore, no right in the strict sense of the word to impose its ruling on a minority like that of the religious sect, Jehovah’s Witnesses. It is worth repeating that due to the absence of a demonstrable danger of a kind which the state is allowed to protect, applying extreme disciplinary methods undertaken by school authorities like compelling attendance in flag ceremonies is not really justifiable in social and legal matters. It must be reiterated that the mere absence of these students from the ceremony hardly constitutes a danger so grave and imminent as to warrant state’s intervention.³⁷ It is quite interesting that in relation to the justifications made, a third issue is also as important just like the previous ones and that is taking into consideration the role of conscience as a defense against non-performance of a legal duty.³⁸ As such, the next part of this paper will showcase the *right of conscientious objection* to legal duties.

The Right for Conscientious Objection to Legal Duties in Relation to Religious Freedom

In this particular *case of Ebralinag*, the very essence of the *free exercise clause* which is to “guarantee the liberty of the religious conscience and prohibits any degree of compulsion or burden, whether direct or indirect, in the practice of one’s religion,”³⁹ will lead to the necessity of establishing one’s right to object on the ground of conscience call. Based on the context laid down by the constitutional mandate, the right to conscientiously object to certain laws or regulations of the land can be justified in the manner morals and sound policy must require the state not to violate the right of the individual to follow the dictates of conscience, where conscience here is taken as “an individual’s inward

36 Ibid.

37 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 7, <http://source.gosupra.com/docs/decision/22340>.

38 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 8.

39 Estrada v. Escritor, A.M. No. P-02-1651,408 SCRA 1, 134, August 4, 2003.

conviction or what is morally right as opposed to something that can be taken as morally wrong.⁴⁰ It is clearly mentioned in an explanation made by Chief Justice Fernando stated as follows:

Undoubtedly that duty to the state exists within the domain of power, for government may enforce obedience to laws regardless of scruples. 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. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.⁴¹

The clear purpose of *conscientious objection* is to protect religious believers from discrimination when their beliefs and practices, which may not be in conformity with the society's dominant rules of conduct, conflict with an ostensibly neutral law.⁴² Upon closer analysis, this objection promoted the general welfare via the prevention of discrimination against those members of religious sects whose beliefs may otherwise be considered bizarre by the majority.⁴³ This concept is closely related but not necessarily identical with the exercise of religious freedom. Traditionally, this claim is based upon some religious trainings and beliefs. However, the United States Supreme Court has recognized non-religious claims of conscientious objection, so long as the claimants invoke a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God.⁴⁴

In the *Ebralinag case*, the extent to which the court recognizes that fine distinctions between the *right to conscience* and *right to religion* was not really established. It is

40 Ibid.

41 http://www.lawphil.net/judjuris/juri1974/sep1974/gr_I_25246_1974., 3.

42 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 9.

43 Ibid.

44 Ibid.

noteworthy, however, to realize that all successful claims of *conscientious objection* in jurisprudence relate to the right to freedom of religion and man's relationship to his Creator.⁴⁵

Analyzing further the need to value an individual's religious belief will lead this paper to conclude that there is a fundamental violation to impose an obligation which may run counter to one's subjective will. For instance, in the case of *Ebralinag et al.*, these schoolchildren's refusal to perform flag salute is a willed manifestation of their intention to fight for what they believe as proper based on their *conscience call*. Pushing their participation to the mandatory flag salute will create an obligation that may be totally alien to their very humanity, also can be deemed harmful to their total well-being. For instance, the German philosopher Hegel believed that obligatory duty could appear as a limitation; the individual has a duty to protect liberation as one may suffer from the oppression of an established rule.⁴⁶ Furthermore, "the individuals as citizens of this state are also private persons who have their interest as their end. Since this end is mediated by the general welfare which therefore appears to them as a means, this end can only be reached by the citizens, if they themselves determined their will, their willing and doing, in a general manner."⁴⁷ Expelling or banning the petitioners from Philippine schools will bring about the fear instituted by the court's ruling in *Gerona case*. Applying the iron hand of law to alter the religious belief of a small group will bring us into the possible tyranny of the majority. Such a case will hardly be conducive to inspire patriotism and love of country to young minds; instead, it created a dissent suffered by those who were involved in the *Ebralinag case*.

A Philosophical Review on Religiosity, Morality, and Autonomy

It is a famous saying in Hegelian thought that "*half a philosophy leads you away from God, whereas true philosophy leads you to Him.*"⁴⁸ He suggested that the objects of philosophy, in its truth, are likewise whole and the same as those of religion. In both, the object is nothing else but the establishment of truth.⁴⁹ The very formation of one's reason needs the recognition of God's presence in a man's life. It may be a little overarching to claim that religiosity is the essence of rationality; there is no discounted truth, however, as

45 Ibid.

46 Carl Fiedrich, *The Philosophy of Hegel* (Random House Inc., 1954), 263.

47 Ibid.

48 Ibid, 227.

49 Ibid.

regards the belief that faith is fundamental in giving meaning to one's existence. According to Hegel:

The lifting of spirit to God occurs in the innermost regions of the spirit upon the basis of thought; religion as the innermost affair of man has here its center and the root of its life. God in his very essence, thought and thinking, however his image and configuration be determined otherwise.⁵⁰

There is no fine line dividing religiosity and reason in this manner of argumentation. If it is indeed true that the creation of a good life can be further supplemented by faith, there is nothing wrong in believing that religion plays an important role in determining a good journey in living. Such is the case when Immanuel Kant and John Rawls theorize about the notion of a good life and the need to its confinement within the bounds of freedom.⁵¹ For instance, in an attempt to inculcate justice in the determination of the good life, they both agree that "by imposing on some the values of others, it will fail to respect persons as free and independent selves, capable of choosing their own purposes and ends. So, the freely choosing self and the neutral state go hand in hand."⁵² There is indeed a need to secure a delicate balance between the role of the state in adjudication and the right of an individual to impose his autonomy on the manner of determining a good life that may not run detrimental to others. This is highly important precisely because "we are free and independent selves that we need a framework of rights that is neutral among ends that refuses to take sides in moral and religious controversies, that leaves citizens free to choose their values for themselves."⁵³

Rawls took it to a point where justice for the minority must be taken as a protection against the possible infringement of the many. For instance, he made an attack to utilitarian principles of setting aside the relevance of the few when he mentioned that "the liberties of equal citizenship are insecure when founded upon teleological principles."⁵⁴ He further reiterated that it is easy how rights are being rested on utilitarian calculations for it may be beneficial to the public but the more it creates vulnerability as

50 Ibid., xxxix.

51 Michael Sandel, *Justice: What's the Right Thing to Do?* (D & M Publishers Inc., 2010), 216.

52 Ibid.

53 Ibid.

54 Taken from the Case of *Hillary Goodridge vs. Department of Public Health*, Supreme Judicial Court of Massachusetts, 440 mass. 329 (20030)

well. For instance, “if the only reason to respect my right to religious liberty is to promote the general happiness, what happens if someday a large majority despises my religion and wants to ban it?”⁵⁵ It is alarming that a defined good must be dictated by an established rule believed to be functional by the many, because the definition of which must not be devoid of personal experience and a way of life.

In an articulation made by Martin Buber in view of man’s relationship with the Divine, he stated that “the communion of man with God not only has its place in the world, but also its subject. God speaks to man in the things and beings that He sends him in life, man answers through his action in relation to just these things and beings.”⁵⁶ There is a pantheistic tone in the stand of Buber, but what is more important is his way of interpreting man’s response through action. Such is the case for the need to freely practice one’s religiosity to truly enjoy a possible religious ascent to the Divine. Religious practice for Buber is essential; it carries with it a certainty of meaning of existence which is accessible to whoever is practicing it.⁵⁷ Thus, the voice of religiosity “speaks in the guise of all world events, it speaks to the men of all generations, makes demands upon them, and summons them to accept their responsibility.”⁵⁸ Here in this very context, everybody’s participation in accepting the responsibility of professing religion is given high importance. As he further commends, “every religious utterance is a vain attempt to do justice to the meaning which has been attained. All religious expression is only an intimation of its attainment.”⁵⁹ The meaning, therefore, that an individual gets from his profession of faith is imbedded in one’s engagement in a religious practice; it reveals itself as one takes part in its revelation.⁶⁰

Taking the context of religiosity further made me revisit some of the most striking notes that Immanuel Kant personally contributed to the philosophical spirit of religion.

55 Michael Sandel, *Justice: What’s the Right Thing to Do?* (D & M Publishers Inc., 2010), 216.

56 Martin Buber, ed. Nahum N. Glatzer, *The Way of Response* (Schucken Books Inc., 1975), 71.

57 Ibid., p. 62.

58 Ibid., p. 39.

59 Ibid., p.62.

60 Ibid.

Taking logic as a tool for analysis, he firmly believed that “there is intelligibility in religious doctrines for so long as they are not self-contradictory, they are thinkable.”⁶¹ Accordingly, faith becomes a mode of *justified assent* as seen by Kant as engaging with our will, calling it at the same time a *free assent*. This is important for the practical function of faith, “since our commitment to morality does not simply depend on our affirmation of the postulates, but in our free act of faith through which we more completely bind ourselves to morality. Morality, thus inevitably leads to religion since we need the latter in order to sustain or fully realize our commitment to the former.”⁶²

Looking at the context of existing realities in social institutions at present, Kant is quite correct in his assumption that “most of our social institutions promote competition and fuel our self-oriented interests. By contrast, the proper function of the church is to promote the *duty sui generis* (a Latin phrase meaning “*of its his, her or their own kind; in a class by itself or unique*”),⁶³ not of human beings towards human beings, but of the human race towards itself.”⁶⁴ The formal establishment of religion thus offers at the same time a counterpoint to our more worldly institutions and their promotion of unsound sociability. This would lead to the next contention in this paper as to why the state needs to be ethical in its conduct of duty and how religion helps the former to attain a good end. Also, the succeeding section will establish the writer’s modest attempt to give justice to the position made in this paper by creating a good foundation aimed at a holistic conclusion free of biases and personal constraint. After all, in a conflict between rights and welfare, there is a need to conduct a careful scrutiny on the issues at hand in order to arrive at a more reasonable and beneficial end for the parties involved.

61 Lawrence Pasternack, “Kant’s Philosophy of Religion,” p. 12. An article from <https://plato.stanford.edu>.

62 Ibid.

63 A Latin phrase meaning “*of its his, her or their own kind; in a class by itself or unique*”, https://en.wikipedia.org/wiki/Sui_generis., p.1.

64 Lawrence Pasternack, “Kant’s Philosophy of Religion,” p. 30. An Article from <https://plato.stanford.edu>.

CONCLUSION

Let us analyze the ethical duty of the state as a *parens patriae*⁶⁵ to truly understand the issue being elucidated in this paper. The case at hand was a good exposition of the clash between individual liberty, on one hand, and the duty to uphold state's celebrated values of patriotism and nationalism, on the other. It puts the state and those who are in the adjudication system to carefully analyze the decision to be made in its proper consideration of the rights not to be violated. The history of the *flag salute cases* underwent a series of reconsiderations and thorough justifications just as to arrive at a better version of the decision rendered in the *Ebralinag Case* in 1995. In the Philippines alone, it took the Court almost thirty years to change its mind on the manner of ruling the compulsory flag salutes.⁶⁶ Unlike the *Gerona* case which emphasized the importance of instilling love for country and national unity, *Ebralinag* took a serious turn by pointing out that "religious freedom is a fundamental right entitled to the highest priority and the amplest protection among human rights."⁶⁷ Any restraint on the exercise of this freedom must be on the ground that it is a prevention of "a present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest."⁶⁸ Absence of such threat to public safety will make the expulsion of the petitioners from the schools not justified.

The *Ebralinag case* highlighted two most important issues, first of which is a *violation of a fundamental right of religious freedom*, and the second one is *the right to receive free education as stipulated in the 1987 Constitution that "it is the duty of the State to protect and promote the right of all citizens to quality education and to make such education accessible to all."*⁶⁹ In connection with the second issue, removing children from school would actually lead to a deprivation of learning that should teach them the very values being promoted at the flag salute. In arguing further, it is highly evident that petitioners only asked for an exemption from the flag ceremony, but not to the extent that

65 Latin for "parent of his or her country." https://www.law.cornell.edu/wex/parens_patriae

66 <http://plj.upd.edu.ph/wp-content/uploads/2016/05/89-03-drawing-the-line-on-the-religious-line-item-veto.>, 14.

67 *Ibid.* *Ebralinag*, citing *German v. Barangan*, 135 SCRA 514 (1986) (Enrique, C.J. separate opinion)

68 *Ibid.* *Ebralinag*, citing *German v. Barangan*, 135 SCRA 514 (1986) (Teehankee, J. dissenting)

69 Article XIV Section 1, 1987 Philippine Constitution, <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiv>.

it will lead to an exclusion from the public schools where they can study the Constitution of our land in the democratic way. Alongside with an attempt to understand the law is the possibility of inculcating virtues of patriotism and nationalism through subject matters relating to history, life of our heroes, and the rights and duties of citizens among others.⁷⁰ In a case of *Meyer vs. Nebraska*, let it be noted that “coerced unity and loyalty even to the country—assuming that such unity and loyalty can be attained through coercion—is not a goal that is constitutionally obtainable at the expense of religious liberty. A desirable end cannot be promoted by a prohibited means.”⁷¹ After all, “coerced loyalties only serve to inspire the opposite. The methods utilized to impose them breed resentment and dissent.”⁷²

The responsibility of the state as a *parens patriae* involves the need to inculcate good values among its subjects. Such responsibility can be viewed from Hegel’s philosophy explaining why civil society becomes the new family of the individual:

The family is the substantial whole which cares for the individual both as concerns his means and aptitudes. But civil society tears the individual from this context; in this the individual becomes a son of civil society. Civil society thus acquires the character of a general family, and as such has the duty and right (even contrary to the arbitrary will of parents) to educate him in so far as such education is related to his becoming good member of society.⁷³

According to Hegel, like a father who asked how he might best bring up his son, the state must answer that this is possible by making him the citizen of a state with a good law.⁷⁴ Justice Kapunan stated that “the responsibility of inculcating the values of patriotism, nationalism, good citizenship, and moral uprightness is a responsibility shared by the state with parents and other societal institutions such as religious sects and

70 Amolo, et al. vs. The Division Superintendent of Schools of Cebu and Antonio Sangutan G.R. No. 95887 (March 1, 1993).

71 Ibid.

72 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 6, <http://source.gosupra.com/docs/decision/22340>.

73 Carl Fiedrich, *The Philosophy of Hegel* (Random House Inc., 1954), 278.

74 Ibid., 268.

denominations. The manner in which such values are demonstrated in a plural society occurs in ways so variable that government cannot make claims to the exclusivity of its methods of inculcating patriotism so all-encompassing in scope as to leave no room for appropriate parental or religious influences.”⁷⁵ Provided that religious influences do not pose a clear and present danger of a substantive evil to society where one belongs and its institutions, expressions of diverse beliefs, no matter how upsetting they may seem to the majority, these are simply the price we need to pay for enjoying liberty in a democratic society.⁷⁶ Proper guidance of the state, with the help of parents can yield an obedient spirit from its children—its citizens. Such is the positive function of religion in which Spinoza believed that “it can make people pliable to civil law which at the same time can also bolster the existence of the state.”⁷⁷ This seems to be the crucial role that religion plays in promoting compliance with the law. On the other hand, there is a realization that “it is strictly impossible to control one’s beliefs completely. Since right is coextensive with power, lacking the power to control beliefs entails lacking the right to do so.”⁷⁸ There seems to be a parallel with the condition faced by parents where they cannot really control the formation of beliefs of their children. As such, as the state acts as the parent, there is a need to exercise full respect to the right of the children (citizens) in matters of belief-formation for “even if not fully controlled, this can be regulated through freedom of conscience.”⁷⁹ The state is the “actual reality of the ethical idea, it is the ethical spirit as the manifest of substantial will that is fully cognizant.”⁸⁰ So, there is really high expectation to nurture compassionate emotions among children—the people of the state. One of the challenges that the state must face is promoting justice and finding the proper balance between cultivating the positive emotions of individuals and providing institutional and legal support for everyone.⁸¹

75 Roel Ebralinag, et al. vs. the Division Superintendent of Schools of Cebu, et al. G.R. Number 95770., 7, <http://source.gosupra.com/docs/decision/22340>.

76 Ibid.

77 Justin Steinberg, “Spinoza’s Political Philosophy,” <https://plato.stanford.edu>, p. 12, <https://plato.stanford.edu>.

78 Ibid.

79 Ibid., p. 13.

80 Carl Fiedrich, *The Philosophy of Hegel* (Random House Inc., 1954), 280.

81 Gerlie C. Ogatis, “Cultivating Constructive Civic Emotions: Why Compassion Matters in Human Survival During the Covid-19 Pandemic,” *Mabini Review*, 8 (2019): 152.

In conclusion, one of the most striking features of the *Ebralinag* case is the promotion of religious diversity in public education. At present, “most of public-school educators agree that increasing student understanding on diverse religious perspectives is important as this will have positive social outcomes. It is often argued, for instance, that in helping students better understand the increasing diversity, including religious diversity, they will be better prepared to live in a peaceful, productive manner with those differing cultural and/or religious values.”⁸² However, while the highest regard must be afforded to their right to free exercise of their religion, “this should not be taken to mean that school authorities are powerless to discipline them” if they should commit breaches of the peace by actions that offend the sensibilities, both religious and patriotic, of other persons (*German vs. Barangan*).⁸³ Since the present day is posing a challenging role to the youth to take a responsible stand in promoting one’s right to religiosity and take part in nation-building, there is a need as well for the state and the school as one of its institutions to work hand in hand in helping the youth achieve their potentials. Patriotism is not an easy task; it is also taken to mean “the readiness to extraordinary sacrifices.”⁸⁴ If our state wants to achieve the support of the youth in nation-building, let the *Ebralinag* case serve as a reminder that “legitimate ends cannot be pursued by methods which violate fundamental freedoms when the ends may be achieved by rational ones.”

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83 *Amolo, et al. vs. The Division Superintendent of Schools of Cebu and Antonio Sangutan* G.R. No. 95887 (from the opinion of Griño-Aquino, J.) (March 1, 1993).

84 Carl Fiedrich, *The Philosophy of Hegel* (Random House Inc., 1954), 288.

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