

# **The Filipino Family as Described and Prescribed by Law: Preliminary Findings of a Study on Family Policy**

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*The family is recognized as the basic foundation of the Filipino nation, thus, policies which have direct and indirect implications to it, abound. Family policies are operationalized in the Philippine Constitution, Family Code, Child and Youth Welfare Code, laws on family planning, labor, social security, health, taxation, civil service and other issues of public concern. There are four classifications of special families specifically dealt with by the state. These are the low-income families, the families of veterans, Muslim families and the families of those in public service. Filipino families play a great role in Philippine society either as major instruments or beneficiaries of state policies. However, the efficiency of the instruments of the state coupled with the complexity and sanctity of family arrangements sometimes limit the state in pursuing its desired goals.*

## **Introduction**

The Constitution of 1987 states:

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.... ("State Policies," Article II, Section 12).

This is the first of eighteen sections, found in ten articles of the current basic law that bears on the Filipino family. Article XV with four sections is entirely devoted to it, its first provision explicitly recognizing "the Filipino family as the foundation of the nation" and proceeding to state its obligation to it as follows:

Accordingly, it (the State) shall strengthen its solidarity and actively promote its total development.

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The author is the first Rafael M. Salas Professor of Public Administration. The assistance of the CPA Library staff headed by Perla Patacsil in finding the laws and books cited here is gratefully acknowledged. Thanks are also due to Dr. Raul P. de Guzman and Judge Delilah V. Magtolis for critical comments on an earlier draft. All errors of fact and interpretation remain with the author.

Other articles, dealing with, among others, citizenship, social justice, the national economy and the executive department (the limited listing showing the variety of the areas) include provisions that support, constrain, uphold, interfere with, take into account, instruct—in fact, practically do everything but take over all the functions of—the Filipino family.

The Constitution of 1987 is a good place to start because it prepares us for the vast landscape that constitutes the area of intersection of the family and the State. The first task this study tried to do is precisely that: to map out as comprehensively as possible the policy area of the family.

Following Kamerman and Kahn (1978), “family policy” is defined broadly to cover laws with direct family objectives as well as those which impinge on the family, although they were not explicitly designed to do so. This would include the Family Code, the Child and Youth Welfare Code and laws on family planning, as well as policies on labor, social security, health, taxation, the civil service and other issues of public concern.

The last section of this inventory will discuss policies affecting specific families only: low-income families and families of veterans, Muslims and public servants.

The second objective is to describe and analyze the expected role of the family in society. This captures two related ideas: first, what Schorr (1968:143) said family policy must be: “consensus on a core of family goals toward the realization of which the nation deliberately shapes programs and policies;” and second, the core of State goals toward the realization of which the country shapes the family. The preliminary analysis undertaken here will attempt to show the mechanisms the State uses to advance its goals with the family as instrument, obstacle or beneficiary.

### *Methods and Limitations*

This study is a very modest one. Primarily the mapping of a policy area, it centers on the inventory and analysis of laws, rules and regulations. It touches on implementation and actual situations only if they have been analyzed in previous research. As such it is a necessary step but only a small and halting one on the road to a deeper analysis of this important area of policy.

The paper presents only preliminary findings of a one-year, one-woman study and is primarily approached in the context of policy and public administration. This is the author's first venture into the field of the family thus, her lack of training in law handicaps both the search for relevant provisions and interpreta-

tions of them. There are also data gaps and missing references which the final report on this topic hopes to fill.

Two other limitations may be noted. First, few comparisons with earlier laws on the same issues have yet been made so that the direction of changes is inadequately assessed. Second, laws that could impinge on the family but are completely silent on their bearing on it are not yet included. This would probably not be done comprehensively even for the final version, since including all such laws can involve a study of all laws, the family being such a pervasive institution.

Also, this paper, being the first for this project, has only focused primarily on the first aim — the mapping out of the policy area, thus being able to provide at least a rough description of what “family policy” covers in the Philippines. However, it will only suggest the lines of analysis encompassed in the second objective.

### **Policies Affecting the Generic Filipino Family**

The preliminary findings of the study are discussed in two parts. In this first one, the concept of the family, the family cycle, relations within the family, its responsibilities and the responsibilities of the State as embodied in current law, is presented. In the second section, the focus is on provisions applying only to specific kinds of families.

#### *The Concept of “Family”*

The standard sociological definition of a family is given by Burgess and Locke (Medina 1991:12):

a group of persons united by ties of marriage, blood or adoption; constituting a single household; interacting and communicating with each other in their respective social roles of husband and wife, mother and father, son and daughter, brother and sister; and creating and maintaining a common culture.

Existing policies generally reject the equation of family with household, i.e., “two or more persons...occupying a distinct dwelling unit and sharing common arrangements for the preparation of food” (de Guzman 1990:4). Although the Family Code recognizes the importance of living under one roof through eleven provisions regarding the family home, the authority of the spouses to fix the domicile, and that of the court to exempt one spouse from living with the other (EO 209, as amended, 1987, Arts. 69, 152-162), it defines “family” in terms of relations — “between husband and wife” and “among brothers and sisters,” as mentioned by Burgess and Locke, “between parents and children,” which they

imply and "among other ascendants and descendants," which they ignore (EO 209, as amended, 1987, Art. 150).

Other laws continue the same thought, if we define their meaning of family through who they consider as "dependents." Table 1 shows the different ways the laws identify family members. Note that (1) only PD 442, PD 1158 and RA 6713 limit the family to those living in the same household (in common with the list of beneficiaries of the family home in the Family Code); (2) All children, regardless of legitimacy, are included in the definition; (3) Emancipation from or dependence on family is ascribed to age (below 18 or 21, above 60), physical, mental or income incapacity and employment; and (4) The family of public officials for purposes of avoiding conflict of interest is more inclusive than other definitions.

### *The Two Ends of the Family Life Cycle*

Marriage and its break-up, the two ends of the family life cycle are discussed in this section.

*Marriage.* The Family Code regulates the institution of marriage by providing for its requisites and processes. Unlike in some states of America, it is specific that marriage can only take place between people of different genders. Parents participate in this first step in creating a new family through the mechanism of seeking consent for contracting parties between 18 and 21, and advice for those between 21 and 25 years of age. Unlike the Civil Code whose provisions on the family it replaced, the age requirements in the Family Code apply to both sexes equally.

**Table 1. The Concept of Family as Operationalized in Different Laws**

<i>Law</i>	<i>Who Constitute Family (through listing of dependents)</i>
Family (in EO 209)	Husband and wife brothers and sisters other ascendants and descendants
Family home (in EO 209)	Husband and wife their parents, ascendants, descendants brothers and sisters, whether relationship is legitimate or illegitimate who live in the family home and who depend upon the head of the family for legal support.
Social security	Legitimate spouse unmarried legitimate, or legitimated child under 21,

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(private) (RA1161)	parents wholly dependent upon member for regular support
Social security (GSIS) (PD1146)	Primary Beneficiaries: Legitimate spouse legitimate, legitimated, legally adopted, acknowledged natural and illegitimate children who are unmarried, not gainfully employed, not over 21 or if over 21 are physically and mentally incapacitated or incapable of self-support
Medicare (PD 1519)	Legal spouse unmarried and unemployed children under 21, including step, adopted, legitimated children 21 or above with disability acquired before age 21 parents 60 and older with income below ₱1,000 per month
Employee compensation & state insurance fund (PD442)	Legitimate spouse <i>living with the employee</i> unmarried and unemployed children under 21, including legitimate, legitimated, or legally adopted children over 21, incapable of self-support due to defect acquired during minority legitimate parents wholly dependent upon employee
Internal revenue (PD1158 Rules)	Dependents for tax exemption purposes: spouse legitimate, recognized natural and adopted children below 21 who are unmarried and not gainfully employed or incapable of self-support because mentally or physically defective  OR for unmarried man or woman who is household head: parents wholly dependent on taxpayer for support  OR: brothers and sisters  OR: legitimate, recognized, natural or adopted children living with and dependent upon head for chief support both siblings and children not more than 21, unmarried, not gainfully employed or incapable of self-support
Civil Service	Relatives within 3rd civil degree (spouse, parents, siblings, grandparents, 1st degree aunts, uncles and cousins)
1987 Constitution	Prohibitions on appointments: spouse and relatives within fourth civil degree of the President
RA 6713	family: spouse and unmarried children under 18, living in the household of employee  relatives: All within the 4th civil degree, including <i>inso</i> , <i>bilas</i> and <i>balae</i> (in-laws) (relatives as in civil service, above, plus 2nd degree ascendants, descendants and cousins and in-laws)

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The Family Code allows future spouses to fix property relations, allowing them, within prescribed limits, to have a regime of separation of property.

The Labor Code specifically provides that no woman may lose her job upon marriage or receive as a condition of her employment that she not get married (PD 148, 1973). However, PD 1910 (1984) provides that a woman who has been with the military for less than three years is automatically separated from the service upon marriage. Moreover, the Women's Auxiliary Corps reportedly subjects applicants to a "virginity test" to prove their marital status (Women 1989:65).

Despite the requirement of marriage, unions take place without it. The Family Code also regulates their property relations. For cohabitation of people free to marry each other, the property regime is similar to that provided for married couples. Even if one only cared for and maintained the household, her contribution is deemed equal to the man and therefore she equally owns any property acquired. However, when one partner has another spouse, common ownership only accrues to property acquired by the actual contribution of money, property or industry by each mate in the common-law marriage (EO 209, as amended, 1987, Arts. 147-148).

While the law does not prohibit marriage of Filipinos with other nationals, the practice of matching Filipino women for possible marriage with foreign nationals by mail-order or similar mechanisms is now forbidden (RA No. 6955, 1990). The aim of the measure is to protect Filipinas "from being exploited in utter disregard of human dignity in their pursuit of economic upliftment" (Sec. 1). This is a means to attack poverty at its consequence rather than at its roots.

*Dissolution.* The State regards marriage as an "inviolable social institution" (Constitution of 1987, Art. XV, Sec. 2) and "a special contract of permanent union" (EO 209, as amended, 1987, Art. 1). Nevertheless, marriages break up, and there are 68 articles in the Family Code (out of 257) that recognize this possibility and provide for its regulation.

Four situations legally terminate a marriage: (1) death of a spouse; (2) judicial declaration of nullity of marriage; (3) annulment; and (4) divorce (EO 209, as amended, 1987, Art. 99). The meaning of termination by death is not problematic so only the last three will be discussed. In addition, two judicial acts do not dissolve the legal bond but manifest nevertheless the breakdown of marital relations. Thus, rules governing separation of property and legal separation will also be tackled.

*Judicial declaration of nullity of marriage.* Marriages are void on three main grounds: (1) absence of the essential or formal requirements of the contract of marriage, such as the required age, license, authority of the solemnizer, capacity

for marriage of the contracting party; (2) incest and other prohibited relationships; and (3) psychological incapacity, even if such becomes manifest only after the solemnization of marriage. The last ground differs from the others in that: (a) It is new, not being found in the Civil Code; (b) Action or defense for the declaration of nullity of marriage on this ground prescribes ten years after the effectivity of the Family Code — no prescription time is given for all the others (EO 209, as amended, 1987, Art. 35-39).

The provision regarding "psychological incapacity" is adopted from Roman Catholic Canon Law where the party is presumed to have "insufficient consent at the time of the wedding," due to "Lack of True Discretion," or "that maturity of judgment necessary and sufficient to understand, choose, undertake, and fulfill the responsibilities of marriage" (Meily and Meily, as quoted in Medina 1991:181). According to a study, most petitioners are women who specify the husband's violent disposition, immorality, irresponsibility, cruelty and abnormal attachment to mother, among others, as their grounds (as cited in Medina 1991:181).

*Annulment.* Aside from marriages void from the beginning, others may be annulled for several causes existing at the time of the marriage, such as lack of parental consent for those between 18 and 21, unsound mind and consent of bride or groom based on fraud, force, intimidation or undue influence, as long as each did not freely cohabit with the other after they reached the proper age or the facts became known. Physical incapability to consummate the marriage and incurable affliction with sexually transmitted diseases are additional grounds for annulment (EO 209, as amended, 1987, Art. 45, 46).

*Divorce.* The last option may be availed of in the Philippines only in two instances: (a) if a Filipino was divorced by an alien spouse who is allowed by his or her country to remarry (EO 209, as amended, 1987, Art. 26); or (b) if the couple have been married under Muslim law.

The situation has not always been so. The United States allowed absolute divorce between Filipino Christians (and Muslims) in 1898, a situation continued by the Philippine legislature in 1917 and even liberalized during the Japanese occupation. However, in 1950, the Civil Code abolished absolute divorce and permitted only legal separation (Medina 1991:180).

Although divorce abroad is not recognized in the Philippines, many upper-class Filipinos resort to it because "it is better than living in sin" (Mendez *et al.*, 1984, cited in Medina 1991:181). On the other hand, among the poorer people, separation without judicial decree or abandonment/ desertion may be more common (Medina 1991:182).

*Judicial Separation of Property.* Judicial separation may be decreed on six grounds, three of which are based on judicial decisions, such as the sentencing of a spouse, loss of parental authority and abuse of power of administration of marriage settlements. The other three more directly affirm the presence of marital discord, such as the judicial declaration of the absence of a spouse, abandonment and separation for at least a year, with improbable chances of reconciliation (EO 209, 1987, Art. 134).

*Legal Separation.* Legal separation has been called relative divorce because it allows separation of bed and board but no remarriage. The Family Code allows ten grounds (EO 209, as amended, 1987, Art. 55). All of them are properly non-sexist, in contrast to the Civil Code where a husband may lodge a case of legal separation against his wife for even one act of adultery but a wife must prove concubinage on the part of her husband.

They also represent a liberalization of the grounds. The Civil Code included only three bases (adultery for the woman, concubinage for the man and one spouse's attempt on the life of the other), all of them direct attacks by one spouse on the other and on the institution of marriage itself. Meanwhile, the Family Code includes as grounds acts which though undesirable are not necessarily directed against the other, such as habitual alcoholism and drug addiction, imprisonment of more than six years (even if pardoned), violence against or corruption of an offspring. Also allowed is "moral pressure to compel the petitioner to change religious or political affiliation," which might even be broadly interpreted as barring any spouse to reform the other [EO 209, as amended, 1987, Art. 55(2)].

An exception to the liberalization of legal separation is the reference to the "innocent" and "guilty" spouse in the decree (EO 209, as amended, 1987, Art. 63). This contrasts with "no-fault" divorces which are already the norm in the United States. Such imputation of guilt or innocence is not in harmony with findings which suggest that neither spouse can be held to be completely without fault in any marital breakdown. Moreover, such a practice probably would make reconciliation harder, a need which is stronger for relative rather than absolute divorce.

### *Relations in the Family*

Husband and wife "are obliged to live together, observe mutual love, respect and fidelity and render mutual help and support" (EO 209, as amended, 1987, Art. 68). To their unemancipated children they exercise parental authority and from them they may expect respect, reverence and obedience (EO 209, as amended, 1987, Art. 211, 220). They are also expected to take care of the older members of their family.



*Husband-wife relations.* In general, the law now provides that relations between husband and wife should follow a regime of equality. For instance, either spouse may engage in any legitimate occupation without the consent of the other. Any objection can only be made "on valid, serious and moral grounds" which is up to the court to decide (EO 209, as amended, 1987, Arts. 73-74). The spouses are jointly responsible for: fixing the family domicile; supporting the family; and managing the household (EO 209, as amended, 1987, Arts. 69-71). The mother is equal to the father in being able to pass on her Filipino citizenship to her children [Constitution of 1973, Art. III, Sec. 2; also in Constitution of 1987, Art. IV, Sec. 1(2)]. Also, legitimate children have the right to bear the surnames of both parents [EO 209, as amended, 1987, Art. 174(1)].

However, a few provisions vitiate this equality. When there are disagreements over the administration and enjoyment of conjugal partnership and community property and the exercise of parental authority, the husband or father's decision is supposed to prevail, unless there is a judicial order to the contrary (EO 209, as amended, 1987, Arts. 96, 124, 211).

*Parent-Child Relations.* The Family Code devoted a whole title, consisting of five chapters (34 articles), to the issue of parental authority, in addition to two chapters in the Child and Youth Welfare Code dealing with parental authority and duties (EO 209, as amended, 1987, Title IX; PD 603, 1974, Title II, Chapters 1 and 3). Authority is expressed in the right of parents "to demand ... respect and obedience," and "to impose discipline" on their children (EO 209, as amended, Art. 220). Parents are also supposed "to represent the children in all matters affecting their interests" and "be civilly liable for the injuries and damages caused by their unemancipated children" [EO 209, as amended, Art. 220(7), 221].

But "authority" does not quite capture the whole gamut of parent-child relationship in the laws. First, parents are expected to do positive things — to be role models to their children, to shower upon them love, counsel, moral and spiritual guidance and protection, to teach them proper values. Second, the proviso that a child should participate ("whenever proper") in discussion of family affairs, particularly those concerning him, including the chance to present his side when facing discipline (PD 603, 1974, Art. 47), the admonition that parents should try to win a child's confidence so that he/she will consult with them (PD 603, 1974, Art. 48) and the specific mention of self-reliance as a value that parents should inculcate in their children [PD 603, 1974, Art. 46(4)] suggest a family that is not hierarchical.

Parental authority is jointly exercised by mother and father on both the person and property of their unemancipated children. However, where there is disagreement and unless there is a court order to the contrary, "the father's decision shall prevail" (EO 209, as amended, Art. 211, 225, 1987).

On the other hand, mothers are assumed to be more indispensable for nurturing. Thus, children under age *seven* are deemed to have chosen to stay with the mother upon dissolution of the marriage, unless judicially decided otherwise [EO 209, as amended, Art. 102 (6)]. [The Child and Youth Welfare Code provides that no child under *five* shall be separated from his mother "unless the court finds compelling reasons to do so" (PD 603, 1974, Art. 17).] Government policy also reportedly disqualifies a mother with a child below two years old from overseas training (Women 1989:67).

Substitute parental authority may be exercised by the surviving grandparent, oldest sibling over 21 years of age (18 under PD 603, 1974, Art. 19) and the child's actual custodian, in that order, in absence or default of parents. Accredited orphanages and children's homes may be entrusted parental authority in cases of abandoned, abused and neglected children. Meanwhile, schools and other institutions engaged in child care have special parental authority over minor children under their supervision, instruction or custody, such authority extending to all authorized activities, even those outside their premises (EO 209, 1987, as amended, Art. 216-218).

Solidarity within the family is indicated by a number of provisions: the parents' right to the company of their children (PD 603, 1974, Art. 43; EO 209, as amended, 1987, Art. 220), the children's right to a wholesome family life, their responsibility to extend to their siblings "love, thoughtfulness and helpfulness, and...to keep the family harmonious and united" and to cooperate with their parents in strengthening the family (PD 603, 1974, Arts. 3, 4). This is also shown in the requirement that no suit involving members of the same family can prosper unless "earnest efforts toward a compromise have ...failed" (EO 209, 1987, as amended, Art. 151).

In further support of the family, the factor of "relationship" is deemed an alternative circumstance in legally analyzing a crime. It may be aggravating or mitigating depending on the nature and effects of the crime and the situation surrounding its commission (Act 3815, 1932, Art. 15). For instance, acting in immediate vindication of a grave offense to members of one's family is a mitigating circumstance (Act 3815, 1932, Art. 13). This sometimes redounds to treating the family in the same way as the individual in question, as in laws where the situation of the families of public officials becomes as subject to public disclosure as the net worth of the officers themselves (RA 6713, 1989).

When an individual moves to threaten the oneness of the family, his penalty is different than for similar offenses committed against nonkin. Thus, parricide is the first crime identified under "destruction of life" and has the strongest penalty (Act 3815, 1932, Art. 246). In the same vein, a person who killed or seriously injured a spouse and/or partner caught in the act suffers only *destierro*; if injury

to the spouse is not serious, he or she may even be exempt from punishment (Act 3815, 1932, Art. 247). Thus, the "offending" spouse should be punished severely for breaking the solidarity of the home.

On the other hand, theft, swindling or malicious mischief committed by one family member against another is exempt from criminal and may only face civil liability (Act 3815, 1932, Art. 332). If one of the parents induced a minor to leave his home, that carries a lighter penalty than if the same crime was committed by another person (Act 3815, 1932, Art. 271). Intentional abortion is meted out a lower penalty if perpetrated by the pregnant woman herself. Abetting by her parents carries a higher penalty, but still not as heavy as abortion done by a physician or any other person (Act 3815, 1932, Arts. 256-59).

*Relations among Three Generations.* The Constitution of 1987 provides:

The family has the duty to care for its elderly members but the State may also do so through just programs of social security (Art. XV, Sec. 4).

As shown in Table 1, the State helps the family in such care on the assumption that they are fully dependent on only one child. Likewise, social security measures vary in the criteria for inclusion of parents in benefits. Tax exemption is allowed for parents only if the household head is unmarried and completely supports them and no other relative. This assumption of full dependence on one child, when other siblings are available, or support to parents only when one has no other dependents, may not reflect reality. A notable impression is that shared support by the children, even parental commuting from one child's home to another, is more common, as is support of dependent parents on top of maintaining one's own family; however, these contentions await empirical verification.

Perhaps the emphasis on supporting the elderly is also misplaced since benefits of the relationship between parents and mature children tend to go both ways (Medina 1991:220). Even in the United States until the late 'sixties,

It is chiefly the middle-aged parents who are giving to their children, but the reason that they give continues into their old age...An American parent is ambitious for his children and grandchildren, as they are for themselves. He is reluctant to take money from them if he believes that it interferes with their meeting their own needs (Schorr 1968:135).

More than caring for the elderly, however, the law also imposes responsibilities upon them. Thus, in the absence of parents, grandparents have the priority over other relations to exercise substitute parental authority (EO 209, as amended, 1987, Arts. 214, 216).

In addition, the elderly continue to take on important functions in the family. The 1980 census shows that more than a third of them head households. Other research shows the aged as major care givers and intimate companions of their grandchildren and as authority figures and consultants to major decisions in their children's families (Medina 1991:219-21). This is as the Child and Youth Welfare Code provided, which also admonished grandparents not to interfere in the parents' exercise of their authority (PD 603, 1974, Art. 18).

Filial loyalty is captured in the provision that no descendant can be compelled to testify against his parents and grandparents, except in a crime against him or her, or by one parent against the other (EO 209, as amended, 1987, Art. 215).

The increase of life expectancy and the increased number of the elderly, in the Philippines as in the world at large, have given birth to a growth industry — the retirement business. Attempting to take advantage of that, the Philippines has created the Philippine Retirement Authority which will provide homes and other amenities for retirees, particularly those coming from affluent countries (Medina 1991:228). Whether this will also become an option for the Filipino elderly and how it could change the way their children treat them remains to be seen.

### *Responsibilities of the Family*

The family has the responsibility to bear and rear children and to take care of its elderly members. The care of the aged has already been discussed above; this section will only deal with issues in child-bearing and child-rearing. Note that while these are responsibilities of members to each other, these are also the duties of the family to society because it is through them that the family fulfills its role as "the foundation of the nation" and "a basic social institution which public policy cherishes and protects" (EO 209, 1987, as amended, Sec. 149).

*Child-Bearing.* The responsibility for child-bearing begins with the promotion of the baby's health through adequate pre- and post-natal care (PD 603, 1974, Art. 11). The constitutional principle of protection of "the life of the unborn from conception" (Art. II, Sec. 12, 1987) suggests a pro-natalist stand. This is supported by the following:

- (1) Maternity leaves are granted to employed women. They may not be discharged due to pregnancy or be rejected upon return for work for fear of a subsequent pregnancy. These have different requirements and duration depending on where the woman works. (See Table 2.)

**Table 2. Maternity Leaves in Different Sectors**

	<i>Requirement</i>	<i>Duration</i>
Private employee	Married or not Only for first 4 deliveries	2 weeks before delivery, 4 weeks after, with full pay
Civil servant	Married only first four only	60 days

Sources: PD No. 148, 1973; PD 442, as amended, 1974

- (2) The Secretary of Labor requires establishments with more than 300 employees to establish nurseries in the workplace so that women can have access and give care to their babies while at work [RA 679, Sec. 8(d), 1952, as amended by PD 148, 1973, reiterated in PD 442, Art. 132(c), 1974]. (There is no such requirement for government agencies.)

Maternity leaves and nurseries do not seem to exhaust the possibilities implicit in the constitutional requirement of protecting working women "taking into account their *maternal* functions" (Constitution of 1987, Art. XIII, Sec. 14, underscoring supplied). Yet, nurseries, day care facilities and refrigerators for storing breast milk are found in very few private firms (Women 1989:66).

At the same time, other laws tend to move toward restricting the number of children. Such a population policy was promulgated as early as 1969, as follows:

Promotion of the broadest understanding of the adverse effects on family life and national welfare of unlimited population growth and provision of the means by which couples can safely, effectively and freely determine the proper size of their families (POPCOM, Statement on Population Policy and Program, 4 December 1969, as quoted in Concepcion and de Guzman 1971:4).

The main means chosen to effect this policy was family planning. However, because the population question affects many areas, "the Commission on Population was established to ensure that all policies ... take population phenomena into account" (Concepcion and de Guzman 1971:5).

Accordingly, the National Internal Revenue Code limited exemptions to only four children per taxpaying family. Similarly, maternity leaves were granted only for the first four deliveries after the effectivity of the law (PD 148, 1973).

Family planning quickly became an intersectoral concern. Already part of its traditional maternal and child health (MCH) services, it became a special

program of the Department of Health with the coming of population loans provided by multilateral agencies.

The UN Fund for Population Activities (UNFPA now UN Population Fund) also initiated a project with the Department of Labor in 1975 to 1977. When it ended, the Population/Family Planning Office (P/FPO) took over. P/FPO institutionalized family planning and welfare services in all establishments covered by the Labor Code. Among others, it developed incentive schemes to facilitate acceptance of family planning in these firms (PD No. 1410, 1978).

These were in line with earlier provisions in the Labor Code which required all establishments to have a clinic (operationalized in the Rules and Regulations to those firms with 300 or more employees) to provide free family planning services. In that law, incentive bonus schemes were directed not at firms but at female workers, to encourage them to undertake family planning [PD 442, as amended, Art. 134(a) and (b)].

Local governments also got into the act. It was incorporated into the public school curriculum as well (EO 233, 1969).

Partly as a consequence of the pro-natalism of the Constitution and the new administration, the intersectoral thrust is no longer as strong. Family planning is now reincorporated into MCH by the Department of Health, the agency bearing the major responsibility for the implementation of family planning under the Aquino administration.

*Child-rearing.* The Constitution of 1935 declared that the rearing of youth for civic efficiency is the natural right and duty of parents (Art. II, Sec. 4).

The Constitution of 1973 expanded it to include "the development of moral character" (also Art. II, Sec. 4); this was reiterated in the Constitution of 1987. In pursuance of this provision, the Family Code made further specifications:

Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for, and rearing them for civic consciousness and efficiency and the development of their moral, mental and physical well-being (EO 209, as amended, Art. 209, 1987).

Parents are admonished to give love and protection to their children, give them at least elementary education, develop their talents, accompany them to church, write them when they are away from home, allow them free choice of their career and spouse (but not "to stay out late at night to the detriment of [their] health, studies or morals"), cultivate their reading habit, discipline them, win their confidence (PD 603, 1974, and EO 209, 1987, as amended, *passim*).

Some of these are not free choices for the parents; criminal liability attaches not only to child abandonment, selling, exploitation, cruel punishment and pimping, but also to their tolerance of his handling a deadly weapon and driving without a valid license. The emphasis on education is seen not only in the requirement that they should enroll their children to complete elementary education but also in calling as crimes their inability to enroll the child, tolerance of truancy from school and failure to give him the education the family can afford (PD 603, 1974, Art. 59).

All members of a family must support each other, "support" comprising "everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family" (EO 209, as amended, 1987, Art. 194). Most of these are also embodied in the "rights of the child." These add to those material benefits, the rights of children to human dignity, universal brotherhood, wholesome family life and protection against exploitation and pernicious influences (PD 603, 1974, Art. 3).

Parents or guardians are also solely responsible for the employment of children below 14 years of age. As the Rules and Regulations implementing PD 148 states:

Children below 14 years of age may be allowed to work in any non-hazardous undertaking without the necessity of a prior authorization or work permit from the Department of Labor *where they will work directly under the exclusive supervision and control of their parents or natural guardians...*In such cases, the children shall not be considered as employees of the employer of their parents or guardians (italics supplied).

### *Responsibilities of the State to the Family*

The State has pledged to defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood.
- (2) The right of children to assistance, including proper care and nutrition and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.
- (3) The right of the family to a family living wage and income; and

- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them (Constitution of 1987, Art. XV, Sec. 3).

State support for these family responsibilities includes the establishment and maintenance of free public education up to high school. Elementary education is compulsory for all children of school age "without limiting the natural right of parents to rear their children" [Constitution of 1987, Art. XIV, Sec. 2(2), PD 603, 1974, Art. 71]. In addition, day care is required to be provided in each barangay with 100 or more families for children 2 to 5 to take care of the nutritional needs and social and mental development of children "when their parents are unable to do so" (PD 1567, Sec. 3, 1978).

The State also supports the training at the other end of the youth spectrum, the out-of-school youth aged 12 to 17, so that they may be channeled "to critical and other occupations" (RA 5462, 1969). The Manpower and Out-Of-School Youth Development Act aimed not only to "insure efficient and proper allocation, accelerated development and optimum utilization" of the nation's labor force but also ultimately to "develop civic efficiency and *strengthen family life*" (RA 5462, Sec. 2, 1969, underscoring supplied).

The teaching of religion to children in public elementary and high schools seems to be an attempt by the State to help parents develop the moral character of their children [Constitution of 1987, Art. XIV, Sec. 3(3)]. However, because this provision tests the principle of the separation of Church and State (also declared in the Constitution of 1987, Art. II, Sec. 6), it has become quite controversial. In the proceedings of the Constitutional Commission on this issue, a non-commissioner suggested that it is in effect a support to the most numerous church which may be the only one able to field the required instructors in all areas and at all levels.

A religious instruction provision was also inserted in the Constitution of 1973. Both that and the 1987 basic law require that parents agree in writing that religion be taught to their children. However, the current provision differs from the Constitution of 1973 (Art. XV, Sec. 8) in the following ways:

- (1) The new Constitution does not specify that the instruction will be at no cost to the parents, although both state that no additional cost will accrue to the government.
- (2) The Constitution of 1973 does not specify that teachers will be designated or approved by the respective religious authorities, as the 1987 one does.



- (3) Neither does the 1973 basic law specify that religious instruction be given space during regular class hours, as the 1987 Constitution does.

In the chapter entitled "Collaboration between the Home and the State" for "the healthy growth of children," the State was enjoined "whenever possible, in collaboration and cooperation with local government, (to) establish, with local governments, puericulture or health centers, juvenile courts, child welfare agencies, orphanages and children's recreation centers" (PD 603, 1974, Art. 133). However, even in the same chapter and throughout the other parts of the Welfare Code, other institutions were mentioned that could give aid to children. More generally, one of the child's rights is the care and protection of the state and an efficient and honest government (PD 603, 1974, Art. 3).

### **The State and Special Families**

Certain provisions of law bear on the relationship of the State with four kinds of families: the low-income families, the families of veterans, Muslim families and the families of those in public service.

#### *Low-Income Families*

Most government services are directed to people as individuals. However, the following are oriented to low-income families:

- (1) *Housing*. Social housing is the reason for being of the National Housing Authority and other agencies involved in housing production and the provision of home financing.
- (2) *Social services provided by the Department of Social Welfare and Development (DSWD)*. In the DSWD, "the State is committed to the care, protection and rehabilitation of individual, families and communities which have the least in life" (EO 292, 1987, Title XVI, Sec. 1). Under its "total family approach," services to individuals are regarded as entry points for its service to the whole family. Accordingly, the criteria for evaluation refer to the improvement of family life (Women 1989:105).

However, according to women's groups, the administration of the total family approach needs to be strengthened as it has not been able to address the needs of every family member as regards family life enrichment and shared parenting (Women 1989:110).

- (3) *Day Care.* Barangay Day Care Centers are targeted at pre-school children who are "suffering from malnutrition and lack of opportunities for their social development," thus children in poor families. Funded by local governments and the private sector, these centers are accredited by the Bureau of Family and Child Welfare of the DSWD (PD 1567, 1978).

Unfortunately, this service is inadequately funded and implemented. As of 1989, only 13,003 day care centers are operating in the 42,000 barangays (Women 1989:109).

### *Families of Veterans*

One of the General Provisions of the present Constitution concerns "immediate and adequate care, benefits and other forms of assistance" to veterans, their surviving spouses and orphans. Such assistance would include preferential consideration in the disposition of public agricultural lands and the utilization of natural resources (Art. XVI, Sec. 7).

The implementation of the first part of the provision has been lodged on the Philippine Veterans Affairs Office of the Department of National Defense (EO 292, 1987, Title VIII, Subtitle II, Chapter 5). In addition, a bonus of ten points in the civil service examination is allowed the widows of veterans or the wives of disabled ones (as well as the disabled veteran himself) (Rules on Personnel Actions..., 1975, Sec. 10).

No explicit veterans' preference is made in the corresponding Titles of the Administrative Code of 1987 for Agriculture and Environment and Natural Resources.

### *Muslim Families*

The Code of Muslim Personal Laws of the Philippines (PD 1083, 1977) which draws from Islamic law and *ada* (customary law) governs the conduct of Muslim families. For purposes of marriage and divorce, the couple must be both Muslim, or must be a male Muslim partner and his spouse married in accordance with Islamic law. The age requirements for marriage, the essential requisites of a marriage contract and prohibited marriages differ from those listed in the Family Code. Moreover, subsequent marriages of the husband is allowed as long as "he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases" (PD 1083, 1977, Art. 27). Absolute divorce is also allowed.

The respective duties of parents and children are similar to those embodied in the Family Code. Similarly, parental authority is granted to both mother and father with the latter's decision to prevail in disagreements. However, the rights and obligations of the wife, husband-wife relations and rules of inheritance differ markedly from the Family Code.

The Constitution of 1987 puts personal, family and property relations among the functions that autonomous regions, including Muslim Mindanao and the Cordilleras, would have legislative power over (Art. X, Sec. 20).

### *"Public" Families*

The type of family most often cited in the laws is that which has at least one member who is in government service. Two mentions are found in the Constitution itself. First, political dynasties are prohibited presumably as a means to "guarantee equal access to opportunities for public service" (1987, Art. II, Sec. 26). No law has as yet defined "political dynasties" but it probably refers to ascendants and descendants holding elective public office at the same time.

The second mention is specific to the spouse and relatives of the President within the fourth civil degree of consanguinity and affinity. They are prohibited from being appointed to high office during his or her tenure, such as ranking positions in Constitutional Commissions and cabinet offices down to public enterprises or bureaus (1987, Art. VII, Sec. 13). This is a specific and stricter form of the prohibition against nepotism which covers all public officials. According to the Administrative Code of 1987, ordinary officials may not appoint any relative within the third civil degree (EO 292, 1987).

In pursuance of the doctrine of public accountability, all public officials and employees are subjected to other requirements which involve their respective families and relatives. The Ethical Standards Act requires two kinds of disclosure: that of their relatives in government (within the fourth civil degree); and that of their net worth, business interests and financial connections and those of their spouses and unmarried children under 18 living in their households (RA 6713, Sec. 8).

To avoid conflict of interest, a public official must divest him/herself of business interests, provided that it is not to the spouse or relatives up to the fourth civil degree [Rules Implementing RA 6713, 1989, Rule IX, Sec. 2(c)]. This continues the desire of the State to protect itself from the family as front for corrupt officials, a provision that is also embodied in the Forfeiture Law (RA 1379, 1955).

In addition, the families, like the public servants, are enjoined to "lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form" [RA 6713, Sec. 4(h)]. In the same vein, it is punishable for an official to accept a party or entertainment given in his/her honor or that of his/her immediate relatives (PD 46, 1972).

On the other hand, it is only from a member of the family or an immediate relative and on the occasion of a family celebration that a public official may accept a gift [RA 6713, Sec. 1(f)].

As the family is involved in keeping public officials accountable, so is their behavior toward and within it regarded as part of the behavior they must exhibit as public servants. Thus, they could be administratively charged for crimes involving moral turpitude, including adultery, concubinage and bigamy (EO 292, 1989, Book V, Title I, Subtitle A).

### Analysis and Conclusions

The discussion above has cited over thirty laws, confirming the statement that family policy occupies a vast landscape. Hardly any issue in family relations is left unattended. At the same time, many areas of public policy are also touched upon, including agriculture and natural resources (in the veterans' preference provision), commerce (the regulation of the retirement business and mail-order brides), elections and governance (through prohibition of political dynasties, disclosure of relatives), decentralization (family law as a power of regional governments), not to mention the "obvious" areas of intersection like social security, child labor, minority relations, population and education.

The long catalogue of provisions almost defies a coherent analysis since it goes off in so many directions. Having discussed above the contours and boundaries of present family policy, the paper will now use that area as a case with which to show what alternative policy mechanisms the State can use to forward its goals and what its limitations are as it does so.

The goals of the family are to maintain its solidarity, advance its happiness and vouchsafe the future happiness of the children. Judging from the laws, these are also goals that the State wants for the family. In addition, the State has other goals that it wants to pursue, some with the family as its major instrument, obstacle, or beneficiary. Others may be pursued because the State is the instrument of other social forces, with the family as an available tool for the latter's goals. What the State chooses to do along these lines would be the expansion of Schorr's definition of "family policy" (*infra.* p. 2). The paper will now discuss the policy mechanisms chosen by the State to pursue the goals discussed above. (The

substantive issue is family policy, but the framework can be used in analyzing other policy areas. The discussion will proceed by policy mechanisms, not by policy goal.)

### *Policy Mechanisms For What the State Wants to Attain*

There are a number of goals the State wants to attain for or with the family. The following mechanisms have been used by the laws discussed above:

- (1) *The State accepts (one may even say "praises") the situation it desires.* Desiring the continuation of family as an institution, it has underscored its role as a basic social institution and the foundation of the nation. It allows families to exchange gifts, as an exception to the rule for public officials. To make family reconciliation easier, it punishes lightly minor offenses one member does against the other. Seeing the grandparents' role in family stability, it recognizes and affirms the role of elders.
- (2) *It declares the values it wants to foster.* In the twelve rights of the child, it paints a world that not only children but everyone should have—dignity, democracy, morality, economic well-being and peace. In discussing the elements of parental authority, it goes beyond authority and discipline to extol love, companionship and cooperation. Desirous of safeguarding its democracy, it wants families to participate in decisionmaking in their communities and children to have a right to speak in their households. Professing decentralization, it includes family relations among the powers of autonomous regions. It advocates simple living and declares the accountability of public officials.
- (3) *It rewards actions it wants its citizens to undertake.* It provides leaves, nurseries and breastmilk storage to encourage motherhood. It legislates preferential treatment for veterans. Moving toward gender equality, it allows mothers to pass on their Philippine citizenship to their children and to have more "say" in family matters than they used to have. And although it is against the principle of equality of the sexes just cited, as it holds the child's welfare paramount, it rewards mothers with the custody of their very young children in family disputes.
- (4) *It provides supports to enable other institutions of society to reach their goals.* Desiring to strengthen marriage, it puts in requirements—mature age, advice and consent of parents, etc.—that can increase the chances of its success. The policy on family planning can be regarded as another support for the same goal. Seeking to maintain the economic stability of the family, it makes provisions for preschool children (so the

parents can work) and for out-of-school youth. In aid of the development of the moral character of children, it establishes schools, infuses its curricula with value formation issues and allows religious instruction. Wishing to maintain the integrity of a diverse nation and the cultural uniqueness of its minorities, it not only accepts Muslim family law but provides for the instruments of the State to be sensitive to the demands of cultural minorities as regards family and personal relations.

- (5) *It creates organizations and mechanisms to deal with problems if the institution with the main responsibility for it cannot solve or tackle.* When the family fails, orphanages and child welfare institutions are encouraged to take the place of parents. When the family lacks the economic means, social housing and DSWD's total family approach comes in.

#### *Policy Mechanisms For What the State Wants to Discourage*

Some mechanisms are for values that are either phrased negatively or seek to make families not do something. These were exemplified in our findings as follows:

- (1) *The State prohibits certain activities.* Wanting no part in the total breakdown of a family, it prohibits absolute divorce, with two major exceptions. Wary of having unwitting women exploited by suitors working through commercial intermediaries, it bans the so-called "mail-order marriages." At home, it forbids stipulations that may affect the employment of women after marriage or pregnancy. Seeking to put a stop to the concentration of power in the hands of a few families, it declares itself against political dynasties.
- (2) *It punishes unwanted actions.* For breaking up the family, crimes by members against each other, such as parricide and adultery, receive high penalties. Similarly, acts involving moral turpitude are penalized administratively in addition to any criminal liability a person may meet. On the other hand, the prohibition and punishment of nepotism—which may strengthen family relationships—are aimed at another goal, the prevention of unfairness in the public service. The family as an obstacle to the attainment of State goals is often the assumption in dealing with public families.
- (3) *It may provide regulations which will decrease the chances of undertaking an unwanted activity.* Seeking to prevent conflict of interest, it requires disclosure of relatives and divestment of interests of public

officials. Property subject to forfeiture may not be passed on to other members of the family.

- (4) *It may pass on to other institutions the task of dealing with an act it dislikes or cannot openly advocate.* Aware of the exploitation of minors by industry and the negative effect of child labor on one's development, it has made parents responsible for working children, practically excusing the firms and the State from that responsibility. Afraid to contravene the separation of Church and State, it allows religious instruction in public schools, but leaves it to the parents' approval in writing, as though it erases the probable support to one religion that the availability of classes by itself represents. In both these cases, the possible use of the State as an instrument of other social forces for their own ends needs further study and verification.

#### *Limitations of the State*

The family writ in the laws—although its membership varies according to the function it performs (for social security, taxation, etc.)—generally takes the character of an extended one. It might be contended that family is so defined only to allow for the inclusion of all types of family arrangements. If so, this is one of the few instances of simple description embodied in the laws.

In most other cases, the laws prescribe and put forward the acts and values they want the family or its members to show. Some are clear and implementable—for instance, the criminality of parricide, the disclosure requirements of public officers; here, inability to enforce the law will be a matter affected by the political will and efficiency of instruments of the State. However, many others embody sentiments and desires about what a family ought to be or do, yet will have little chance of actually being followed and if not followed, of the offenders actually receiving sanctions. The paper offers here some reasons why that may be so:

- (1) *The law can only be followed by those who have the means to do them.* For instance, the right of the family to a living wage and income, its duty to keep children in school through the elementary grades, the prohibition of child labor except upon parental responsibility, a child's right to adequate material support i.e., "Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention and all the basic physical requirements of a healthy and vigorous life (PD 603, 1974, Art. 3[4]): these are not attainable by those who are poor.

In the same vein, poor barangays and local governments cannot provide day care services. Nor can minority churches provide religious instruction for all the areas where it has children in public schools. In passing laws that are to apply equally to everyone, the incapacity of some families and institutions to take on the responsibility because of their poverty is ignored.

- (2) *Some acts are private: they take place within the home or among family members and cannot be easily penetrated by those outside.* Only the most authoritarian state might develop the capacity to monitor families and enforce the law and maybe even it will fall down on the job. What agency can monitor if parents write to their absent children, or develop in them reading habits? How can the State see to it that parents encourage their children to have friends "with common interests of useful and salutary nature" (PD 603, 1974, Art. 52)? From the other end, some people refuse to have "that piece of paper" and live together without benefit of marriage; unable to prevent it, the State tolerates such unions by regulating their property relations.
- (3) *Some laws prescribe relationships that depend on how well people get along and have little to do with the level of their civic spirit or their sincere desire to follow the laws of the State.* How can love and affection among family members be legislated? How can the State insist on the continuation of an irreparable marriage? In fact, it retreats from an absolute stand by allowing for legal separation, judicial separation of property and the circumvention of the existing anti-divorce policy through annulment.

This does not apply to marital dissolution only. The care of the elderly even by children with few material resources occurs not primarily due to obedience to law, but to evince strong filial sentiment.

- (4) *Some laws are followed because of social, not legal, sanctions. By the same token, the State may be powerless to enforce provisions which go against the grain of social norms.* Most parents do not give up to other institutions their responsibility for the moral and spiritual guidance of their children not in fear of the laws, but because this is how they have been socialized. Close family ties account for the recognition of the "alternative circumstance" of relationship in the Revised Penal Code and are not a consequence of it. Parental even grandparental—authority has been undermined neither in law nor in the society. At the same time, the child's participation in family decisionmaking may become a reality not necessarily because the Child and Youth Welfare Code said so, but as part of the trend toward the growing liberalization of society.



On the other hand, it may be wrong to suggest that it is not possible for law to espouse emerging values, or to be the vanguard for a societal reprioritization of prevailing norms. For instance, its provisions on gender equality, despite some criticisms above, may be ahead of a change of the society toward shared parenting and abolition of the double standard. The provisions against nepotism, conflict of interest and political dynasties may presage a trend toward a decrease of unfairness in the polity while these acts continue to have some acceptance among significant numbers of people. Thus, a hypothesis on the reciprocal relationship of law and social ethics, rather than a unidirectional flow of influence might be better supported by deeper analysis.

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