

## BIBLIOGRAPHIC DATA SHEET

1. CONTROL NUMBER  
PN-AAH-3052. SUBJECT CLASSIFICATION (695)  
PA00-0000-G732

## 3. TITLE AND SUBTITLE (240)

Law and population in the Philippines

## 4. PERSONAL AUTHORS (100)

## 5. CORPORATE AUTHORS (101)

Tufts Univ. Fletcher School of Law and Diplomacy.

## 6. DOCUMENT DATE (110)

1974

## 7. NUMBER OF PAGES (120)

156p.

## 8. ARC NUMBER (170)

## 9. REFERENCE ORGANIZATION (130)

Tufts

## 10. SUPPLEMENTARY NOTES (500)

(In Law and Population Book ser. no. 9)

## 11. ABSTRACT (950)

## 12. DESCRIPTORS (920)

Philippines  
Family planning  
LawPopulation law  
Human rights  
Population growth  
Legislation

## 13. PROJECT NUMBER (150)

## 14. CONTRACT NO.(140)

AID/csd-2810

15. CONTRACT  
TYPE (140)

GTS

## 16. TYPE OF DOCUMENT (160)

*PN-AAH-305*

# LAW AND POPULATION IN THE PHILIPPINES

Law and Population Programme  
Fletcher School of Law and Diplomacy  
Tufts University  
Administered with the cooperation of Harvard University  
1974

## LAW AND POPULATION BOOK SERIES

- 1/ *Population and Law*. Luke T. Lee and Arthur Larson (eds.) (Leyden: A. W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1971).
- 2/ *International Migration Law*. Richard O. Plender (Leyden: A. W. Sijthoff, 1972).
- 3/ *Population in the United Nations System: Developing the Legal Capacity and Programs of UN Agencies*. Daniel G. Partan (Leyden: A. W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1973).
- 4/ *World Population Crisis: The United States Response*. Phyllis T. Piotrow (New York: Praeger, 1973).
- 5/ *Human Rights and Population: From the Perspective of Law, Policy and Organization* (Medford, Massachusetts: Law and Population Programme, 1973).
- 6/ *The Abortion Experience*. Howard J. Osofsky and Joy D. Osofsky (eds.) (New York: Harper & Row, 1973).
- 7/ *The United Nations and Population: Major Resolutions and Instruments* (New York: United Nations Fund for Population Activities, 1974).
- 8/ *Le Droit et la Croissance de la Population en Roumaine*, Ioan Ceterchi, Victor D. Zlatescu, Ioan M. Copil, and Petre Anca, (Bucarest: Commission Nationale de Démographie de la République Socialiste de Roumaine, 1974).
- 9/ *Law and Population in the Philippines* (Medford, Mass.: Law and Population Programme, 1974).

This book is one in a continuing series published under the auspices of the Law and Population Programme, the Fletcher School of Law and Diplomacy (administered with the cooperation of Harvard University), Tufts University, Medford, Massachusetts. The Law and Population Programme and its field work are supported in part by the International Planned Parenthood Federation, the United Nations Fund for Population Activities, and the U.S. Agency for International Development, among others. The Programme is under the general direction of an International Advisory Committee on Population and Law. The conclusions and opinions of this book are the sole responsibility of the author, and do not necessarily reflect those of the Law and Population Programme, the Fletcher School, or any of the supporting agencies.

## **PREFACE**

The Law and Population Programme takes pride in devoting Number 9 of its Book Series to Law and Population in the Philippines. Published originally in the *Philippine Law Journal* (volume 48, number 3, July 1973), the volume marks the first of a series of special issues put out by law journals in the developing world dedicated to the study of the interrelationship between law and population. In so doing, the *Philippine Law Journal* anticipated the recommendations of the World Population Plan of Action adopted by the World Population Conference in Bucharest in August 1974, which specifically accord "high priority" to:

The review and analysis of national and international laws which bear directly or indirectly on population factors; and

Collection, analysis and dissemination of information concerning human rights in relation to population matters, and the preparation of studies designed to clarify, systematize and more effectively implement these human rights. [Paragraph 78(g) and (h)]

As Visiting Professor at the University of the Philippines College of Law in 1972, I had the privilege of working closely with all the authors who have contributed to this volume. All of us, along with the late Ambassador Melquiades J. Gamboa, Head of the Division of Research and Law Reform of the University of the Philippines Law Center, formed the original working team of the Philippine Law and Population Project, funded by the United Nations Fund for Population Activities. That the Project aimed not only at legal scholarship, but also actual legal reform in light of human rights, is amply documented by the materials appended at the end of this volume.

A related but separately funded project (by the Ford Foundation) was established in the City of Cagayan de Oro, Mindanao, by Mayor Reuben R. Canoy and myself, in cooperation with Xavier University. The "Model City Project" seeks to maximize and coordinate local government resources toward the implementation of the principle that family planning is a basic human right for all its citizenry.

To the success of these endeavors — the relating of law and human rights to population — is this volume dedicated.

Luke T. Lee  
Director  
Law and Population Programme

## **TABLE OF CONTENTS**

Preface . . . . .	v
<b>POPULATION AND LAW: THE FUNDAMENTAL RIGHTS ASPECTS IN THE PHILIPPINE SETTING</b>	
Irene R. Cortes . . . . .	1
<b>THE IMPACT OF LAW ON FERTILITY BEHAVIOR: PERSPECTIVES OF PHILIPPINE INFLUENTIALS</b>	
Rudolfo A. Bulatao and Luke T. Lee . . . . .	22
<b>POPULATION LAWS OF THE PHILIPPINES</b>	
Carmelo V. Sison . . . . .	54
<b>DOCUMENTS</b>	
Presidential Decree No. 79 (1972). . . . .	127
Presidential Decree No. 148 (1973). . . . .	133
General Order No. 18 (1972) . . . . .	136
Letter of Instruction No. 47 (1972). . . . .	137
Second Indorsement, April 28, 1969 . . . . .	138
Opinion No. 131, s. 1973 . . . . .	139
Opinion No. 141, s. 1973 . . . . .	141
Department of Labor Order No. 7 (1973) . . . . .	143
Presidential Decree No. 69 (1972). . . . .	149

# POPULATION AND LAW: THE FUNDAMENTAL RIGHTS ASPECTS IN THE PHILIPPINE SETTING\*

IRENE R. CORTES\*\*

The magnitude of today's population problem is well expressed in a declaration originally issued on Human Rights Day, December 10, 1966, by twelve heads of state, presented to then U.N. Secretary General U Thant, and signed the following year by eighteen other heads of state, including President Ferdinand E. Marcos. It reads in part:

"It took mankind all of recorded time until the middle of the last century to achieve a population of one billion. Yet it took less than a hundred years to add the second billion, and only thirty years to add the third. At today's rate of increase, there will be four billion people by 1975 and nearly seven billion by the year 2000. This unprecedented increase presents us with a situation unique in human affairs and a problem that grows more urgent with each passing day.

The numbers themselves are striking, but their implications are of far greater significance. Too rapid population growth seriously hampers efforts to raise living standards, to further education, to improve health and sanitation, to provide better housing and transportation, to forward cultural and recreational opportunities and in some countries to assure sufficient food. In short, the human aspiration common to men everywhere, to live a better life is being frustrated and jeopardized."<sup>1</sup>

What aggravates the problem even more is that the countries with rapid growth rates and which account for two-thirds of the world's population are the undeveloped countries, already stalked by poverty, hunger, disease, illiteracy, inadequate housing and other related problems. It is estimated that "by the year 2000 the now developing countries may well number some 5.4 billion, the economically advanced nations, some 1.6 billion. Thus, while the modernized nations will increase by some 600 million during the next 30 years, the developing nations could increase by about 3 billion, or five times as much."<sup>2</sup>

---

\* Fifth in the Albino Z. SyCip Lecture Series delivered at the College of Law, University of the Philippines, on June 30, 1973.

\*\* Professor and Dean, U.P. College of Law; Holder, Albino Z. SyCip Professor of Law Chair.

<sup>1</sup> STUDIES IN FAMILY PLANNING 1, no. 16 (January, 1967).

<sup>2</sup> Rapid Population Growth, 10 DEVELOPMENT DIGEST 3 (Jan., 1972).

This assessment of a global problem has particular relevance to the Philippine situation where a runaway population growth constitutes a major obstacle to every effort at reform and national development aimed at giving every individual not merely the bare necessities of living but a better life.<sup>3</sup>

### *The Fundamental Rights Issues*

Law has come but lately in the consideration of the population problem. Studies now simultaneously undertaken in at least 23 countries of the world, including the Philippines, look into all laws directly or indirectly bearing on population growth.<sup>4</sup> It is increasingly becoming apparent that laws on marriage, birth, the family, taxation, immigration, social security, health, food and drugs and penal laws, among others, influence population growth.

This paper will not deal with all laws bearing on the population problem. It will be confined to an inquiry into the fundamental rights aspect of law and population.

In the international field, there are declarations, covenants, resolutions and statements, which express an increasing concern over the population problem as it relates to human rights. Reference is made to these pronouncements because they indicate developments in the subject of this study. On the national level, the population problem will be viewed in relation to the constitution and the rights it guarantees to individuals.

The aspiration of mankind to secure human rights and fundamental freedoms for all, finds expression in such documents as the Universal Declaration of Human Rights, the Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the Teheran Proclamation on Human Rights, the U.N. Declaration of Social Development and Progress as well as in the Bill of Rights of various national constitutions.

The inevitable links between population growth and the implementation of the rights and freedoms proclaimed in the Universal Declaration of Human Rights were duly noted by then U.N. Secretary General U Thant when he received the Declaration on Population Growth signed by the thirty heads of state on December 11, 1967.

<sup>3</sup> See Sison, *Population Laws of the Philippines, infra.*

<sup>4</sup> Tufts University, Fletcher School of Law and Diplomacy, *Law and Population Programme Newsletter*, May, 1973, p. 1.

<sup>5</sup> *STUDIES IN FAMILY PLANNING* 2, No. 26 (Jan., 1968).

The Teheran International Conference on Human Rights in 1968<sup>6</sup> declared: "Parents have a basic human right to determine freely and responsibly the number and spacing of their children" and at its 25th plenary meeting adopted a resolution drawing attention to the connection between population growth and human rights, thus: "The present rapid rate of population growth in some areas of the world hampers the struggle against hunger and poverty and in particular reduces the possibilities of rapidly achieving adequate standards of living, including food, clothing, housing, medical care, social security, education and social services, thereby impairing the full realization of human rights."<sup>7</sup>

The present approach to the alarming population problem is through family planning. It is taken as the first step towards population control because:

"from a broad political standpoint it is the most acceptable one; since closely tied to maternal and child care it can be perceived as a health measure beyond dispute; and since voluntary it can be justified as a contribution to the effective personal freedom of individual couples. On both scores, the practice ties into accepted values and thus achieves political viability."<sup>8</sup>

The United Nations System through specialized agencies like the UNFPA, the WHO, UNICEF and the UNESCO extends assistance to population programs as requested by governments. It has proclaimed 1974 as population year.<sup>9</sup> Private organizations and foundations have likewise poured their resources and directed their efforts into family planning activities.<sup>10</sup>

In the earlier U.N. documents the legal underpinnings of population policies are discernible, but not explicitly stated. It is only in later pronouncements that the relation of law to family planning and population problems has been articulated.

Thus, while the Universal Declaration of Human Rights recognizes among others the right of privacy<sup>11</sup> the right to marry and

---

<sup>6</sup> Proclamation, par. 16, U.N. Doc. A/CONF. 32/41 (1968).

<sup>7</sup> Res. No. XVII dated May 12, 1968.

<sup>8</sup> Berelson, *Beyond Family Planning*, STUDIES IN FAMILY PLANNING 1, no. 38 (Feb., 1969).

<sup>9</sup> General Assembly Res. 2683 (XXV, dated December 11, 1970, 25 U.N.G.A.O.R. Supp. 28 at 55, U.N. Doc. A/8028 (1970). The Economic and Social Council adopted on June 2, 1972, Resolution 1672 (LII) entrusting preparations for the World Population year to the U.N. Fund for Population Activities.

<sup>10</sup> U.N. Fund for Population Activities, *Purposes, Principles, Programmes*, World Population Year, 1974 (Aug., 1973).

<sup>11</sup> Article 12 provides: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

to found a family.<sup>12</sup> and declares that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state,<sup>13</sup> no mention is made of family planning. However, General Assembly Resolution 2211 (XXI) of 17 December 1966 recognizes *inter alia* "the sovereignty of nations in formulating and promoting their own population policies, with due regard to the principle that the size of the family should be the free choice of the individual family."<sup>14</sup> The Teheran Conference on Human Rights categorically states "that couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect."

The General Assembly "Declaration on Social Progress and Development"<sup>15</sup> of 1969 recognizes that the implementation of the right to family planning requires that families be given access to information about and the means necessary for the exercise of the right.

While these declarations, statements and resolutions may not as yet constitute binding obligations on the part of the various member states of the U.N. System, they indicate the growing trend to consider family planning as a basic human right which includes not only the determination of the number and spacing of children but also the right to receive information about different family planning methods.

In some state constitutions the legal bases for this right already exist. But the rights to marry, to form a family, and to determine the number and spacing of children, are so basic in character that these would exist even without constitutional recognition. These rights in fact antedate constitutions, bills of rights and the U.N. System. The very survival of the human race depends on them.

### *The Population Problem and the Philippine Constitution*

The 1935 constitution had no specific provision bearing on the population problem. The authority to adopt policies and legis-

---

<sup>12</sup> Art. 16, par. 1 provides: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

<sup>13</sup> Art. 16, par. 3 provides "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

<sup>14</sup> 21 U.N. G.A.O.R. Supp. 16 at 42, U.N. Doc. A/6316 (1966).

<sup>15</sup> Gen. Assembly Res. 2542 (XXIV), Art. 22 (b), 24 U.N. G.A.O.R. Supp. 30 at 49, 52, A/7630 (1969).

lative measures relating to population was drawn from the inherent police power of the state or implied from the constitutional provision on social justice. Against any arbitrary interference with fundamental rights in the implementation of population policies, the individual could invoke the guarantee of due process, equal protection of laws and other constitutional guarantees which protect the right of privacy.

When the constitutional convention met in 1971, the urgency of the population problem was considered. The result of the deliberations is Article XV, section 10 of the 1973 constitution which provides:

"It shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare."<sup>16</sup>

The population policy enunciated is neither pro-natalist nor anti-natalist. It is sufficiently flexible to support measures encouraging birth, should the national welfare require an increase in population or measures aimed at checking population growth, should there be a too rapid increase.

But the responsibility imposed to maintain population levels most conducive to national welfare is unavoidable, because of the following principles declared in the constitution:

"The State shall strengthen the family as a basic social institution."<sup>17</sup>

"The State shall promote social justice to ensure the dignity, welfare, and security of all the people."<sup>18</sup>

"The State shall establish, maintain and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living."<sup>19</sup>

Whatever direction the state population policy takes, it is pertinent to ask how far the state can interfere with the individual rights.

Certain other provisions qualify and limit the power to adopt population measures. For example, the 1973 constitution recognizes "the natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character."<sup>20</sup>

---

<sup>16</sup> Previous drafts employed the phrase "optimum levels of population."

<sup>17</sup> Article II, sec. 4.

<sup>18</sup> Art. II, sec. 6.

<sup>19</sup> Art. II, sec. 7.

<sup>20</sup> Art. II, sec. 4.

The formulation and adoption of a population policy involve consideration of demographic, economic, political, religious, social, medical, educational, legal and other factors. When the Commission on Population was created, the President in an Executive Order declared that "the population problem must be recognized as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people."<sup>21</sup> Recognizing this, the population policy states that "for the purpose of furthering the national development, increasing the share of each Filipino in the fruits of economic progress and meeting the grave social and economic challenge of high rate of population, a national program of family planning *which respects religious beliefs* of the individuals involved shall be undertaken."<sup>22</sup>

After the declaration of martial law the Population Act of 1971 was amended by Presidential Decree No. 79.<sup>23</sup> The preamble of the decree declares that the population program is an integral and vital part of social reform and economic development and refers to the objective of martial law to bring about a society designed to improve the quality of life of each Filipino and give him an opportunity to realize his full potential and attain individual dignity.

The declared policy as amended states that the family planning program shall respect "*religious beliefs and values* of the individuals involved."<sup>24</sup>

The decree clearly states that one of the purposes and objectives of the Commission on Population is "to encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth control, such as abortion by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies."<sup>25</sup>

The national population policy thus defined recognizes: (1) the vital importance of family planning in bringing about social reform and economic development in order to achieve a transformed society designed to improve the quality of human life; (2) the

---

<sup>21</sup> Ex. O. No. 233, May 15, 1970, 66 O. G. 5187 (May 25, 1970).

<sup>22</sup> Rep. Act No. 6365 (1971), 68 O.G. 16 (Jan. 3, 1972). Italics supplied.

<sup>23</sup> Pres. Decree No. 79 issued on December 8, 1972, 69 O.G. 9896 (Dec. 18, 1972).

<sup>24</sup> Pres. Decree No. 79 (1972), sec. 2. Italics supplied.

<sup>25</sup> Sec. 4 (f).

need to respect religious beliefs and values of the individuals concerned; (3) the distinction between acceptable and unacceptable methods of birth control; and (4) the desirability of encouraging family planning and making available the acceptable methods of contraception to all who may want them.

Towards the implementation of this policy, General Order No. 18, dated December 8, 1972 "enjoins all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds, and business and industrial enterprises to promote the concept of family welfare, responsible parenthood, and family planning." In Letter of Instruction No. 47, the Department of Education and Culture is directed "to inform all schools of medicine, nursing, midwifery, allied medical professions, and social work to prepare, plan and implement the integration of family planning in their curricula and to require from their graduates sufficient instruction in family planning as a prerequisite to qualifying for the appropriate licensing examination."

To a man with a dozen or more mouths to feed, who knows not where the next meal will come or how to clothe his children; whose jerry-built shack leaks when it rains and rattles with every passing wind, fundamental rights may be strange and esoteric. To him the realities are poverty, hunger, ignorance and disease. For him the population measures will have come too late. It is for his children, hopefully, and for the coming generations that the family planning program addresses itself. It is to stem the on-rushing tide of a too rapidly increasing population that the global efforts at family planning are directed and the Philippine population programs are specifically undertaken. Because the population problem deals with humankind as well as with the power of sovereign states to adopt population policies, it is essential to consider how far the power of the state can go. There thus enters into the problem the inevitable balancing of the power to adopt measures for the promotion of the general welfare as against the right of the individual to be protected from unwarranted encroachment. Recurring issues of fundamental character must be investigated, not as idle academic exercise, but as matters which much sooner than expected will touch the life of every man and woman.

The emerging international standard in the treatment of the population problem emphasizes the human rights aspect of family planning particularly the freedom of choice. This would shield

the individual from interference in his choice of birth control methods as well as against any form of compulsory population measure, whether pro-natalist or anti-natalist.

The announced Philippine national population policy hews close to these standards and even more specifically underscores the importance of religious beliefs and individual values in the implementation of its population policy.

In a predominantly Catholic population what those "religious beliefs" are, needs no extended treatment. The official position of the Catholic Church on the question of birth control will not be developed here. Suffice it to say that in the adoption of policies and their implementation no state can ignore the strongly held views and beliefs of a majority of its people. At the same time the contrary views of even a small minority and their freedom of action can not be entirely suppressed. Where to draw the line is a perennial problem.

To go down to specifics.

While the idea of family planning by limiting and spacing the number of children may still have to be sold to the vast majority of the Philippine population, there are those who not only accept the idea but will act upon it by adopting the most effective methods of birth control. Having in mind the applicable laws as found in the constitution and statutes in this jurisdiction, how much choice in family planning methods does an individual have?

### *Right of Privacy and Population Control<sup>26</sup>*

The right of privacy which under the Philippine Constitution is protected by guarantees of due process, of the right against unreasonable searches and seizure, and against self-incrimination is unavoidably linked with family planning.

The question of whether or not to have children and their number and spacing, used to be a matter of purely private concern but they became of public moment upon the adoption of family planning as a state policy. Robert S. McNamara has pointed out that the population problem is a paradox:

"It is at one and the same time an issue that is intimately private — and inescapably public.

---

<sup>26</sup> This part is taken from a paper entitled "The Right of Privacy and Family Planning" read at the Tokyo meeting of the International Advisory Committee on Population and Law on October 31, 1972, in HUMAN RIGHTS AND POPULATION FROM THE PERSPECTIVES OF LAW, POLICY AND ORGANIZATION 36-40 (1973).

"It is an issue characterized by reticence and circumspection and yet in desperate need of realism and candor.

"It is an issue intolerant of government pressure and yet endangered by government procrastination."<sup>27</sup>

The accelerated pace of family planning activities of government agencies and private organizations is accompanied by more frequent intrusion into matters which not too long ago were considered out of bounds. Questionnaires in various population and family planning surveys amply show this. The personal data obtained in family planning clinics likewise call for information which normally a person would withhold. The respondents in family planning surveys and acceptors of family planning methods offered in government or private clinics waive, knowingly or unknowingly, part of their privacy. Computerization of the data obtained makes the intrusion more sophisticated.

But the more significant legal problems of privacy as it relates to family planning spring from the interplay of the asserted right of the individual to decide whether or not to have children and the exercise of the state power by the adoption and implementation of population policies through measures affecting marriage, the family and child bearing.

The universality of man's striving for privacy is acknowledged both in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights. The latter provides:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."<sup>28</sup>

The sovereign power to formulate and implement population policies undoubtedly exists, but it touches upon one of the most sensitive of human relationships. As one court has put it: "If the right of privacy means anything it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion, into matters so fundamentally affecting a person as a decision whether to bear or beget children."<sup>29</sup>

---

<sup>27</sup> *The Population Explosion*, 19 FREE WORLD 4, 40, no. 3, (1970).

<sup>28</sup> Adopted by Gen. Assembly Res. 2200 A (XXII) of 16 December, 1966, Art. 17, secs. 1 and 2, in UNITED NATIONS, HUMAN RIGHTS, A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS 11 (1967).

<sup>29</sup> *Eisenstadt v. Baird*, 31 L. Ed. 2d 349, 362 (1972).

Does this mean that individuals are free to choose any birth control method whether by contraceptive drugs or devices, sterilization, or abortion? On the other hand can they choose to have as many children as they may want? To what extent can a state interfere in this decision?

### *Contraceptive Drugs or Devices*

Not too long ago it was a crime in many jurisdictions to deal in or use contraceptives. The relaxation of restrictive laws on the importation, distribution, use or advertisement of contraceptive drugs and devices is of relatively recent development. In the statute books of some states, penal provisions on the use of contraceptives still remain.<sup>30</sup>

Philippine laws prohibited the importation of "articles, instruments, drugs and substances designed, intended or adopted for preventing human conception or producing unlawful abortion, any printed matter which advertises or describes or gives directly or indirectly information where, how and by whom human conception is prevented or unlawful abortion produced"<sup>31</sup> and their transmission through the mails.<sup>32</sup> The enactment of Republic Act No. 4729 in 1966 regulating the sale of contraceptives according to the Secretary of Justice<sup>33</sup> impliedly repealed the anti-contraceptive provisions of these laws. The stepped-up family planning activities undertaken by the government as well as private organizations in this country requiring the importation and distribution of contraceptive drugs and devices would have been immobilized were it not for

---

<sup>30</sup> Lee, Law and Family Planning, 2 STUDIES IN FAMILY PLANNING 83 (April, 1971). WOLF, ANTI-CONTRACEPTION LAWS IN SUB-SARARAN FRANCOPHONE AFRICA: SOURCES AND RAMIFICATIONS (Law and Population Monograph Series No. 15, 1973).

<sup>31</sup> TARIFF & CUSTOMS CODE, sec. 102(d).

<sup>32</sup> REV. ADM. CODE, sec. 1954 provides: "*Absolutely nonmailable matter.*— No matter belonging to any of the following classes, whether sealed as first-class matter or not, shall be imported into the Philippines through the mails, or be deposited in or carried by the mails of the Philippines, or be delivered to its addressee by any officer or employee of the Bureau of Posts:

... (c) Articles, instruments, drugs and substances designed, intended, or adapted for preventing conception or producing abortion, or for any indecent or immoral use, or which are advertised or described in a manner calculated to lead another to use or apply them for preventing conception or producing abortion, or for any indecent or immoral purpose.

(d) Written or printed matter and photographs, engravings, lithographs, and other representations of an obscene, lewd, lascivious, filthy, indecent, or libelous character, including all such matter which advertises or describes or gives, directly or indirectly, information where, how, from whom, or by what means any article, instrument, drug, or substance enumerated in the preceding subsection hereof may be obtained or made, of where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced.

<sup>33</sup> Secretary of Justice Opinion dated April 28, 1969.

this implied repeal. After the declaration of martial law, a presidential decree amending the Tariff and Customs Code, deleted the prohibition against the importation of contraceptives and retained only the prohibition relating to abortion.<sup>34</sup>

In the United States, various state anti-contraceptive laws have lost their efficacy because of court decisions upholding the right not only to the use or distribution of contraceptives but to the employment of an even more radical birth control method, namely, abortion under certain conditions.

In a decision of far-reaching significance the U.S. Federal Supreme Court in the case of *Griswold v. Connecticut*<sup>35</sup> held unconstitutional a statute penalizing the use of contraceptives. Griswold, the Executive Director of the Planned Parenthood League of Connecticut, and Buxton, its medical officer, a licensed physician and professor in the Yale Medical School were found guilty as accessories for having given information, instruction and medical advice to married persons regarding contraception. The married persons who received the advice were not themselves parties in the case but the defendants who had given the advice were declared to have standing to raise the constitutional rights of the married people.

The Supreme Court through Mr. Justice Douglas held that the Connecticut anti-contraceptive statute when applied to a married couple, violated the right of marital privacy, a right older than the Bill of Rights and protected by several fundamental constitutional guarantees.

The right of privacy was later invoked by unmarried women in abortion cases as an independent constitutional right.<sup>36</sup> It should, however, be borne in mind that even constitutional rights are not absolute, and courts have in a number of cases held that they must yield to compelling state interests.<sup>37</sup>

### *Sterilization*

In some countries<sup>38</sup> voluntary sterilization as a contraceptive method is legally permitted and is increasingly utilized in family

---

<sup>34</sup> Pres. Dec. No. 34, issued on October 27, 1972, sec. 102 provides:

*Importations.*—The importation into the Philippines of the following articles are prohibited:

d. Articles, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or describes or gives directly or indirectly information where, how or by whom unlawful abortion is produced.

<sup>35</sup> 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1625 (1965).

<sup>36</sup> *People v. Belous*, 80 Cal. Rptr. 354, 458 P. 2d 124 (1969).

<sup>37</sup> *Roe v. Wade*, 41 L.W. 4213, 4226, 93 S. Ct. 705 (Jan. 22, 1973).

<sup>38</sup> India, United Kingdom and states of the United States of America.

planning. In others, it is considered a crime coming under laws penalizing castration or mutilation although in practice the penal provisions are rarely applied.<sup>39</sup> The constitutional questions arising from compulsory sterilization are not unfamiliar in this jurisdiction. The trenchant remark of Justice Holmes in *Buck v. Bell*<sup>40</sup> a eugenic sterilization case, is well-known: "Three generations of imbeciles is enough." Coercive sterilization may not be regarded with favor<sup>41</sup> and the Nazis demonstrated to what lengths it can be carried,<sup>42</sup> but awareness of the mounting gravity of the population problem is producing changed attitudes, and as Stepan and Kellogg point out, developments involving voluntary sterilization as a method of family planning have "far outstripped the slow legislative process."<sup>43</sup>

This is true in the Philippines. Even with serious doubts about its legal permissibility and before any official statement was issued on the question of whether or not sterilization performed with consent is covered by the penal code provision punishing intentional mutilation,<sup>44</sup> an increasing number were reportedly resorting to sterilization as a contraceptive method and medical clinics were established offering sterilization service.<sup>45</sup> Subsequently, the Commission on Population obtained an opinion of the Secretary of Justice to the effect that surgical sterilization through tubal ligation or vasectomy is not mutilation punishable by law. When the subject knowingly consents to it, the surgeon commits no crime.<sup>46</sup>

Sterilization with consent involves an individual's constitutional right to the control of his/her person. While one has no absolute right to be, at all times and in all circumstances wholly free from restraint,<sup>47</sup> the decision to undergo voluntary contraceptive sterilization would come within the protection of the right of privacy.

---

<sup>39</sup> STEPAN & KELLOGG, *THE WORLD'S LAWS ON VOLUNTARY STERILIZATION FOR FAMILY PLANNING PURPOSES* 15 (1973).

<sup>40</sup> 274 U.S. 200, 207, 47 S.Ct. 584, 71 L.Ed. 1000 (1927).

<sup>41</sup> *Skinner v. Oklahoma*, 316 U.S. 535, 86 L.Ed. 1655, 62 S.Ct. 1110 (1942).

<sup>42</sup> 20 INTERNATIONAL MILITARY TRIBUNAL, *TRIAL OF THE MAJOR WAR CRIMINALS*, 547 (1948). See also HARRIS, *TYRANNY ON TRIAL; THE EVIDENCE AT NUREMBERG* 431 (1954).

<sup>43</sup> STEPAN & KELLOGG, *supra*, note 39 at 1.

<sup>44</sup> REV. PENAL CODE, art. 262 provides: The penalty of *reclusión temporal* to *reclusión perpetua* shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

<sup>45</sup> According to the Population Commission, there are 19 hospitals offering sterilization services as of November, 1973.

<sup>46</sup> Secretary of Justice Opinion No. 131, dated September 17, 1973.

<sup>47</sup> *Jacobson v. Massachusetts*, 197 U.S. 11, 49 L. Ed. 643, 25 S. Ct. 358 (1905).

However, some compelling subordinating interest could supervene to justify state interference. Thus, the interest of a spouse may not be completely ignored particularly where the results of the sterilization are irreversible, although new techniques have reportedly been developed using sterilant substances with temporary effects. The state in the protection of the family as the basic unit of society could regulate sterilization, even with consent. Such regulation may be directed to ensure that the person seeking sterilization is fully aware of its consequences. This is particularly important where young persons are concerned.

While the problem in most states is a too rapid rate of increase, there are states where the population growth is found insufficient. The latter would understandably encourage child bearing and have more restrictive rules on birth control.

### *Abortion*

The Revised Penal Code prohibits and punishes induced abortions whether intentional or unintentional, with or without consent.<sup>48</sup> The mildest penalty is six months in the case of a woman who commits it to conceal her dishonor, and the more severe, running up to twenty years are imposed on those who cause an abortion using violence on the person of the pregnant woman. The penalties in their maximum periods are to be imposed on a physician or midwife who, taking advantage of scientific knowledge or skill, causes or assists in causing abortions.<sup>49</sup>

The Population Act of 1971, as amended, explicitly provides that abortion is an unacceptable method of birth control.<sup>50</sup> It also directs that religious beliefs and values of the individual concerned should be respected. Considering the predominantly Catholic composition of Philippine population, the latest Papal Encyclical against "voluntary abortion procured even for therapeutic reasons,"<sup>51</sup> has special significance.

---

<sup>48</sup> Arts. 256-258.

<sup>49</sup> Art. 259.

<sup>50</sup> Pres. Dec. No. 79 (1972), sec. 4 (i).

<sup>51</sup> *Humanae Vitae*, art. 14 provides: In conformity with these landmarks in the human and Christian vision of marriage, We must once again declare that the direct interruption of the generative process already begun, and, above all, directly willed and procured abortion, even if for therapeutic reasons, are to be absolutely excluded as licit means of regulating birth.

Equally to be excluded, as the teaching authority of the Church has frequently declared, is direct sterilization, whether perpetual or temporary, whether of the man or of the woman. Similarly excluded is every action which, either in anticipation of the conjugal act, or in its accomplishment, or in the development of its

However, despite the broad statutory prohibition against induced abortions and the absence of clear provision permitting them for therapeutic reasons, it does not follow that therapeutic abortions are necessarily criminal acts. In this jurisdiction there is no law or judicial rule directly supporting therapeutic abortion. But Mr. Justice J. B. L. Reyes in *Geluz v. Court of Appeals* said:<sup>52</sup> "It is unquestionable that the appellant's act in provoking the abortion of appellee's wife, *without medical necessity to warrant it*, was a criminal and morally reprehensible act, that cannot be too severely condemned; and the consent of the woman or that of her husband does not excuse it."

The implication can be drawn that abortion may be warranted as a medical necessity under Article 11 of the Revised Penal Code which provides that no criminal liability is incurred by:

"4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

"First, that the evil sought to be avoided actually exists;

"Second, that the injury feared be greater than that done to avoid it.

"Third, that there be no other practical and less harmful means of preventing it."

In making the difficult decision of whether or not to terminate a pregnancy for medical reasons, the physician will have to take into account the life and/or health of the pregnant woman as against that of the unborn foetus. The cited provision may only be invoked if there is no other practical or less harmful way of avoiding what the physician has adjudged to be the greater injury. He would have the burden of proving that all the requisites to justify his action are present.

---

natural consequences, proposes, whether as an end or as a means, to render procreation impossible.

To justify conjugal acts made intentionally infecund, one cannot invoke as valid reasons the lesser evil, or the fact that such acts would constitute a whole together with the fecund acts already performed or to follow later, and hence would share in one and the same moral goodness. In truth, if it is sometimes licit to tolerate a lesser evil in order to avoid a greater evil or to promote a greater good, it is not licit, even for the gravest reasons to do evil so that good may follow therefrom; that is, to make into the object of a positive act of the will something which is intrinsically disorder, and hence unworthy of the human person, even when the intention is to safeguard or promote individual, family or social well-being. Consequently, it is an error to think that a conjugal act which is deliberately made infecund and so is intrinsically dishonest could be made honest and right by the ensemble of a fecund conjugal life.

<sup>52</sup> G.R. No. L-16439, July 20, 1961, 2 SCRA 801, 805 (1961).

The above provision would not apply to abortion as a means of birth control. As Mr. Justice J. B. L. Reyes said in the case mentioned, the abortion, the third obtained by the woman in the case to get rid of an unwanted child, was a criminal and morally reprehensible act. The court ordered a copy of the decision to be furnished the Department of Justice as well as the Board of Medical Examiners for their information and investigation.

Abortion laws in other states vary.<sup>53</sup> Thus, in Japan, the Criminal Code penalizes abortion, the most severe penalty being forced labor for not less than six months nor more than seven years. But the Eugenic Protection Law of 1948, as amended, permits an authorized physician to perform an operation for interruption of pregnancy with the consent of the woman or the spouse in enumerated cases. The operation may be validly performed on a "mother whose health may be affected seriously by continuation of pregnancy or by delivery, from the physical or *economic viewpoint*."<sup>54</sup>

In Korea, the Criminal Code penalizes abortion. There is no provision permitting it for medical reasons but there are court decisions which "legalize abortion" for medical reasons and because of their Confucian tradition of a father's absolute power over his child, the actual practice of abortion for reasons other than medical continue.<sup>55</sup>

In Thailand, abortion is also a crime but exceptions are made in favor of women whose health may be endangered or who have been the victims of rape.<sup>56</sup>

Indian Law permitting therapeutic abortions is in the process of being liberalized reportedly to include contraceptive failures.<sup>57</sup>

Pakistanian law penalizes acts which cause miscarriage or injuries to the unborn child, but recognizes certain exceptions.<sup>58</sup>

The Belgian law which penalizes abortions excludes those done for therapeutic reasons. Despite the large Catholic majority of its population and its restrictive laws, abortion is widely practiced.<sup>59</sup>

---

<sup>53</sup> The discussion here is based on LEE & LARSON (EDS.), *POPULATION AND LAW; A STUDY OF THE RELATIONS BETWEEN POPULATION PROBLEMS AND LAW* (1971).

<sup>54</sup> Lee, *Japan*, in LEE & LARSON, *supra* at 15.

<sup>55</sup> Lee, *Korea* in LEE & LARSON, *supra* at 47.

<sup>56</sup> Fawcett, *Thailand*, in LEE & LARSON, *supra* at 79.

<sup>57</sup> Singh, *India*, in LEE & LARSON, *supra* at 110-111.

<sup>58</sup> Rahman & Lee, *Pakistan*, in LEE & LARSON, *supra* at 138-139.

<sup>59</sup> "La Famille Heureuse", *Belgium*, in LEE & LARSON, *supra* at 166.

Romania liberalized its laws on induced abortions, but when birth rates drastically dropped from 24.2 per 1000 population in 1956 to 14.3 in 1966 the liberal abortion policy was abruptly reversed and more restrictive rules were put into force.<sup>60</sup>

The abortion laws in the United States differed from state to state, some more liberal than others. In January 1973, the Supreme Court squarely met the fiercely controversial issue of whether a woman has a constitutional right to terminate a pregnancy. In a number of cases simultaneously filed to challenge the constitutionality of the Texas criminal abortion laws, which penalized the acts of procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life, the Court gave due course to *Roe v. Wade*,<sup>61</sup> a class action presented by a woman who was pregnant and single.

In a landmark 7-2 decision, the United States Supreme Court struck down the Texas law for "sweeping too broadly" and thus violating a woman's right of privacy.

The Court speaking through Mr. Justice Blackmun declared "that the right of privacy, however based is broad enough to cover the abortion decision, the right nonetheless is not absolute and is subject to some limitations, and that at some point the state interests as to protection of health, medical standards, and prenatal life become dominant."

The court pointed out that while the state cannot override the right, it has legitimate interest in protecting both the pregnant woman's health and the potentiality of human life, each of which grows and reaches a "compelling" point at various stages of the woman's approach to term. In the weighing of these competing interests the Federal Supreme Court established what the New York Times described as "an unusually detailed timetable for the relative legal rights of pregnant women and the states that would control their acts."<sup>62</sup> According to the court:

(a) For the first three months of pregnancy the decision to have an abortion lies with the woman and her doctor;

(b) After the first three months of pregnancy and before the stage of viability, the state, in promoting its interest in

---

<sup>60</sup> David & Wright, *Abortion Legislation: The Romanian Experience*, 2 STUDIES IN FAMILY PLANNING 1 (October, 1971).

<sup>61</sup> *Supra*, note 37.

<sup>62</sup> Weaver, "High Court Rules Abortions Legal the First 3 Months," N.Y. Times, January 23, 1973, p. 1.

the health of the mother, may if it chooses, regulate the abortion procedure in ways that are reasonable to maternal health;

(c) Subsequent to viability which is placed at the last ten weeks of pregnancy, the period during which the foetus is judged to be capable of surviving if born, any state may prohibit abortions, if it wishes, except where they may be necessary to preserve the life or health of the mother.

The decision has not terminated the intense controversy over the abortion issue. To women in the liberation movement the decision has not gone far enough, their objective being abortion on demand. To others the decision has gone too far.

John Cardinal Krol, Archbishop of Philadelphia and President of the National Conference of Catholic Bishops said that there is no rational justification for allowing unrestricted abortion up to the third month, that "the child in the womb has the right to life, to the life he already possesses and this is a right no court has the authority to deny." Another Roman Catholic Cardinal (Cardinal Cooke) denounced the decision as a tragic utilitarian judgment on who shall live and who shall have life and who shall die, reminding the American people that judicial decisions are not necessarily moral decisions.<sup>63</sup>

The United States Supreme Court rejected the claim that the protection of the due process clause extends to pre-natal life but avoided the question of when life begins. (The Catholic Church holds that life begins from the moment of conception.)

As in the United States the fundamental guarantees of due process and other rights on which personal privacy rests are found in the Philippine constitution. But would a challenge to our even stricter penal laws on abortion be decided along the lines of *Roe v. Wade*? In that case, the Court dealt with separate and distinct interests — that of the pregnant woman on the one hand and on the other, the state interest in preserving and protecting her health, and in protecting the potentiality of human life in the foetus.

The judicial balancing of interests is not done in a vacuum. Cultural, social, religious, as well as legal considerations come into play. A Philippine court dealing with such a challenge would take into account certain values existing in Philippine society.

---

<sup>63</sup> "Statements by 2 Cardinals", N.Y. Times, January 23, 1973, p. 20.

The 1973 constitution declares that the state shall strengthen the family as a basic social institution and recognizes in the parents a natural right and duty in the rearing of the youth not only for civic efficiency but also for the development of moral character. In dealing with the abortion issue, the moral aspect would be as relevant as the woman's health or her right to personal privacy. As noted earlier, the announced national population policy states that family planning programs shall respect the religious beliefs and values of individuals concerned and excludes abortion among the legally permissible means of family planning.

The termination of a pregnancy is not the exclusive concern of the woman. Should a conflict arise between husband and wife on whether a pregnancy should be terminated, assuming that an abortion may legally be had, how should the conflict be resolved?

In *Roe v. Wade*,<sup>64</sup> the petitioner was an unmarried woman. The detailed rules set down by the U.S. Supreme Court as to the availability of abortion, dealt only with the competing rights of the pregnant woman and of the state in protecting maternal health as well as the unborn foetus.

But the Philippine Supreme Court in *Geluz v. Court of Appeals*<sup>65</sup> has indicated that the husband in an appropriate case may have basis to recover from the person causing the abortion: (1) moral damages arising from the illegal arrest of the normal development of the foetus for the distress and anguish attendant to its loss, and the disappointment of his parental expectations and (2) exemplary damages, should the circumstances warrant.

The more important question however is independent of statutory basis for recovery: Are a husband's constitutional rights violated when his wife procures abortion without his consent? It has been held that the right "to marry, establish a home and bring up children" is an essential part of the liberty guaranteed by the constitution,<sup>66</sup> that the right to have off-spring is "basic to the perpetuation of the race."<sup>67</sup> The husband who objects to an abortion may assert that like the right to privacy, his right to marry and to have children, both essential to his happiness, antedate the constitution and the Bill of Rights.<sup>68</sup>

---

<sup>64</sup> *Supra*, note 37. See also *Doe v. Bolton*, 93 S. Ct. 739 (1973).

<sup>65</sup> *Supra*, note 52.

<sup>66</sup> *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A.L.R. 1446 (1923).

<sup>67</sup> *Skinner v. Oklahoma*, *supra*, note 41 at 536.

<sup>68</sup> *Griswold v. Connecticut*, *supra*, note 35 at 486.

Another consideration in the abortion problem is the unborn foetus. Under the Civil Code while legal personality commences at birth, provisional personality is accorded the unborn foetus provided it be born later with the conditions specified, namely:

“For civil purposes the foetus is considered born if it is alive at the time it is completely delivered from the mother’s womb. However, if the foetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within twenty-four hours after its complete delivery from the maternal womb.”<sup>69</sup>

In the *Geluz v. Court of Appeals* case, the Supreme Court held that the Civil Code provision fixing a minimum award of P3,000 for the death of a person, does not extend to an unborn foetus since it is not endowed with personality. Under the system of our Civil Code “*la criatura abortiva no alcanza la categoria de persona natural y en consecuencia es un ser no nacido a la vida del derecho*”<sup>70</sup> therefore incapable of having rights and obligations. As a consequence, damages could not be recovered for injury to it, nor could the right to sue for damages derivatively accrue to its parents or heirs because Article 40 of the Civil Code, endowing the conceived child with provisional personality, attaches the condition that it should be born alive. It does not follow, however, that since an action for damages arising from injury or death does not accrue to the foetus, that it is protected from neither. The penal laws punishing abortion and the Population Act excluding it from acceptable methods of family planning ensure that the foetus shall have a chance to be born alive. Parenthetically, it may be of interest to note that in *Roe v. Wade*, the United States Supreme Court, held that the unborn foetus is not a person within the due process of law clause of the 14th amendment of the Federal Constitution.

Not the least of the interests involved in abortion cases is the interest of the state in promoting the general welfare. It has an interest in protecting the health of the pregnant woman, it has an important and legitimate interest in the potential human life of the foetus, it has an interest in protecting the family and in the preservation of the race. On these bases it has power to enact measures prohibiting or regulating the interruption of pregnancy, depending on various social, cultural and religious and other values.

---

<sup>69</sup> Art. 41.

<sup>70</sup> 1 CASSO-CAWERA, DICCIONARIO DE DERECHO PRIVADO 49.

## *Compulsory Population Measures*

The present approach to the population problem is non-coercive. Family planning as a human right is recognized as pertaining to the family,<sup>71</sup> but the ultimate decision will have to be made by individuals. But should voluntary methods fail and the population problem become more pressing, may a state impose compulsory methods of fertility control?

Various proposals dealing with the population problem suggest involuntary control methods, including mass use of fertility control agents or sterilants, substances yet unknown but believed available after five to fifteen years of research, to be added in water supplies or food; marketable licenses to have children; compulsory sterilization of men with three children, or induced abortion for illegitimate pregnancies.<sup>72</sup>

No state has resorted to compulsory methods. Japan considered them. An attempt to adopt them in India aroused a storm of questions in Parliament and was withdrawn. Since then no other state has seriously considered the idea.<sup>73</sup>

But those who have gone deeply into the population problem have not discounted the possibility of compulsory methods being imposed, should non-coercive ones fail and the national survival be threatened by overpopulation.

The measures at present employed by governments either give incentives to limit the number of births or disincentives to discourage them. For example, in this jurisdiction the income tax law was amended to limit to four children the exemption a parent may claim<sup>74</sup> and the law on maternity leaves has been amended to allow maternity leaves with pay in private employment only up

---

<sup>71</sup> Teheran Proclamation on Human Rights, par. 16.

<sup>72</sup> Berelson, *supra*, note 8 at 2.

<sup>73</sup> *Ibid.*, p. 4-5.

<sup>74</sup> Pres. Decree No. 69, issued on November 24, 1972, sec. 23 (c) provides:

*Amount of personal exemptions allowable to individuals.*—For the purpose of the tax provided for in this Title, there shall be allowed in the nature of a deductions from the amount of net income the following personal exemptions: (c) Additional exemption for dependents—The sum of one thousand pesos for each legitimate, recognized natural, or adopted child, wholly dependent, upon and living with the taxpayer if such dependents are not more than twenty-one years of age, unmarried, and not gainfully employed or incapable of self-support because mentally or physically defective. The additional exemption under this subsection shall be allowed only if the person making the return is the head of the family: Provided, however, That the total number of dependents for which additional exemptions may be claimed shall not exceed four dependents.

to the first four deliveries.<sup>75</sup> Since there is no constitutional guarantee either to tax exemptions or to maternity leaves with pay, no fundamental right is involved in their amendment or even withdrawal. But, it has been pointed out that there is an element of coercion in these measures which militate against the individual liberty of choice. The final question is whether a deprivation of liberty without due process of law is involved.

### *Conclusion*

There are no easy solutions to the population problem. No one would suggest increasing the death rate. While emigration from one state to another may ease the population pressures in one state it will not lighten the global problem. Despite advances in this space age, transporting the earth's excess population to the moon or some other planet holds no hope in the foreseeable future.

The population problem is the problem of every man and woman. In the final analysis it is the individual will and conscience that will determine whether to limit birth and what methods to employ in bringing about the limitation.

But on this there can be no disagreement: the problem becomes more urgent with each passing day. It is a problem that none can afford to ignore. Since it touches upon individual rights antedating even constitutional guarantees, the population problem must be met with the least encroachment on those fundamental rights.

---

<sup>75</sup> Pres. Decree No. 148, issued on March 13, 1973, sec. 8 (c).

<sup>76</sup> The migration of highly trained manpower from developing countries to the highly developed ones, or brain-drain as it is more popularly called, creates its own problems.

# THE IMPACT OF LAW ON FERTILITY BEHAVIOR: PERSPECTIVES OF PHILIPPINE INFLUENTIALS<sup>1</sup>

RODOLFO A. BULATAO<sup>2</sup>  
AND  
LUKE T. LEE<sup>3</sup>

The degree to which individual fertility behavior is responsive to national policies and programs is one of the crucial issues facing the developing countries. The world-wide concern about rapid population growth has generated a host of programs designed to encourage a reduction in fertility rates. These programs have enjoyed varying degrees of success. The laws which regulate fertility, proscribe certain types of sexual behavior, offer incentives and disincentives for fertility, and provide a framework for particular approaches to fertility control have served as an important component of these programs. This paper explores the impact of a few of these types of laws in the Philippines, from the point of view of a selected group of 105 influentials, including government officials, religious leaders, lawyers, doctors and others.

If we regard law as an instrument of social engineering, we must deal with the critical issue of the relation of law to custom, particularly, the degree to which the law exerts an independent influence on customs or merely ratifies changes in social relations and patterns. For some anthropologists law and custom are practically identical. Thus, Hartland contends: "Primitive law is in truth the totality of the customs of the tribe."<sup>4</sup> From this extreme perspective no degrees of freedom can be assigned to the law. Most other views, however, are less extreme. Hoebel, for instance, associates legality only with the application or threat of sanctions by some social body.<sup>5</sup> Following Austin, he identifies law with the commands of

---

<sup>1</sup> This research was conducted by the Social Research Laboratory, Department of Sociology, University of the Philippines, with the Law and Population Programme, Fletcher School of Law and Diplomacy (Administered with the cooperation of Harvard University), Tufts University. Interviews were conducted in May and June, 1972. The attitudes and opinions described are specific to that period.

<sup>2</sup> Assistant Professor of Sociology, University of the Philippines.

<sup>3</sup> Visiting Professor, College of Law, University of the Philippines; Director, Law and Population Programme, Fletcher School of Law and Diplomacy.

<sup>4</sup> *PRIMITIVE LAW*, 5 (1924).

<sup>5</sup> *THE LAW OF PRIMITIVE MAN* (1954).

the sovereign, and therefore gives it far more room for independent variation and influence.<sup>6</sup> But this greater sphere of influence may be illusory, for as MacIver and Page remind us: "A law which attacks a widespread custom, even though a majority support it, both lacks a ground of support that is essential to its effective operation and creates a force of resistance that endangers its authority."<sup>7</sup> There is no simple separation then between law and custom. It is clear that law cannot be simply coercive, but must draw on public acceptance and cultivate other grounds for its legitimacy. While coercion is the ultimate resource available to the legal system, other resources, such as education, symbolism and the appeal to reason add to the effectiveness of the law. The particular form which legitimacy takes in a society can be crucial, for traditional and charismatic forms of legitimacy may require far less in terms of explicit public support for particular laws but far more implicit trust in the lawmakers than the "legal-rational" type of legitimacy. It may be misleading to believe that the latter type of legitimacy, since it is associated with relatively more modern societies, creates a more open and receptive climate for social change. Huntington, in fact, argues the reverse:

Modernization requires authority for change. Fundamental changes in society and politics come from the purposeful actions of men. Hence, authority must reside in men, not in unchanging law. In addition, men must have the power to effect change and hence authority must be concentrated in some determinate individual or group of men. Fundamental and unchanging law may serve to diffuse authority throughout society and thus to preserve the existing social order. But it cannot serve as authority for change except for lesser changes which can be passed off as restoration.<sup>8</sup>

From Huntington's perspective, law in a changing society is more likely to be the bulwark of the established order than the instrument for overturning it.

The question of how great an effect the law can have on fertility behavior is an aspect of this broader question of the impact of law on social patterns and processes. Can the law be a positive force in the attempt to reshape the demographic behavior of peoples from the top, or is it merely an obstacle course for reformers? Many of the developing countries have inherited, in a

---

<sup>6</sup> THE LAW OF JURISPRUDENCE DETERMINED (1954).

<sup>7</sup> SOCIETY: AN INTRODUCTORY ANALYSIS, 179 (1950).

<sup>8</sup> POLITICAL ORDER IN CHANGING SOCIETY, 101 (1968).

wholesale manner, the laws of their erstwhile colonial masters, laws often at variance with traditional practices and current needs. This creates special problems of compliance, without which legal reforms are futile, if not actually harmful, through breeding contempt for the law. Compliance hinges upon diverse factors, such as the innate merits of the law, its timeliness, its enforceability, its congruence with particular cultural patterns, and the force of the traditional respect for authority. For each particular set of laws these factors come together in different combinations, so that the actual impact of law on fertility behavior is variable from country to country, from time to time, and according to specific subject matter.<sup>9</sup>

### *Method*

Four sets of laws relating to fertility were chosen for consideration in this study: the law making abortion illegal, which is part of the Revised Penal Code; the regulations on the sale of contraceptives, part of the Pharmacy Law; various benefits guaranteed by law that may affect the cost or the motivation for having a baby (maternity benefits, tax exemptions for dependents, social security, medicare); and the law creating the Population Commission.<sup>10</sup> Structured interviews were conducted in May and June 1972 with 105 respondents regarding their reactions to and evaluations of these four sets of laws, particularly on their enforcement, their impact on fertility, and possible changes in the law.

Respondents were chosen to fall into five major categories: (1) individuals with a legal background, working as judges, "fiscals" (prosecutors), police and in similar capacities; (2) doctors and paramedical personnel, especially those connected with a family planning organization; (3) policy-makers, such as legislators, city mayors and high government officials; (4) religious leaders; and (5) "ordinary" people, housewives, students, and such. In selecting respondents an attempt was made to cover the major governmental and non-governmental entities involved in population control. About two-thirds of the interviews were conducted in Greater Manila. The remaining interviews were split between two municipalities of Camarines Sur, Naga City and Iriga, which were chosen to provide some contrasts with attitudes in the metropolitan area.

---

<sup>9</sup> *Law and Family Planning*, 2 STUDIES IN FAMILY PLANNING 81-98 (1971).

<sup>10</sup> For a fuller discussion of these and related laws, see Sison, *Population Laws of the Philippines*, *infra*.

When the originally selected respondent was unavailable, for one reason or another, efforts were made to interview his deputy or a related official. Table 1 provides a profile of the sample.

Table 1. Sample Profile: Percentage Distributions by Place of Residence, Occupational Class, Education, Sex, Age and Marital Status.

Characteristic	Percent <sup>a</sup>	Characteristic	Percent <sup>a</sup>
<i>Place of Residence</i>		<i>Sex</i>	
Greater Manila	63	Male	60
Camarines Sur	37	Female	40
<i>Occupational Class</i>		<i>Age</i>	
Lawyer	24	Below 20	1
Doctor/Nurse	27	20-29	11
Policy-maker	13	30-39	16
Other <sup>b</sup>	36	40-49	28
<i>Education</i>		50-59	27
Less than college	4	Above 59	17
Completed college	29	No response	1
M.D./Ll.D.	51	<i>Marital Status</i>	
Postgraduate degree	16	Never married	15
No response	1	Married	85

<sup>a</sup> Based on a total sample size of 105.

<sup>b</sup> E.g., religious leaders (four in all), teachers, housewives, students.

In the succeeding pages each of the four sets of laws will be discussed in turn from the viewpoint of these respondents followed by general observations on the possible role of law in fertility control in the Philippines.

### *Abortion*

The Revised Penal Code considers induced abortion a felony, with penalties ranging from imprisonment for two years, four months and one day, up to imprisonment for 20 years. The Code distinguishes intentional abortion from unintentional abortion, which is the unintended consequence of physical assault. Both intentional and unintentional abortions are felonies. The law provides no exceptions: abortion is illegal under any and all circumstances. Some respondents argued nevertheless that abortion to save the life of the mother was permitted *de facto*. One fiscal claimed that "it is legal to have an abortion if the mother's

life is endangered, although the wordings of the law may not state so." There are varying interpretations on this point.

Opinion on this law is divided, but twice as many respondents consider this a good law rather than a bad law. Approval is stronger in Camarines Sur than in Manila (72 percent against 53 percent) and among lawyers than among other occupational groups (76 vs. 55 percent). The major reason for approval is religious or moral, as a few comments indicate:

- We are a Catholic country and it is against our morals to kill.  
[a lawyer]
- Abortion is killing an innocent fetus, which is worse than murder.
- It's a sin against God. [a midwife]
- Our people do not accept the idea.
- It must have been a good law. We should give credit to the wisdom and intelligence of our law-makers. Who is man to thwart the will of God? [a policeman]

The prohibition of abortion is seen to follow divine law, from natural law, or from Philippine traditions. These respondents equate abortion with murder, and often speak of the "civil rights" of the fetus. They believe the government should enforce morality in this area. Two respondents go so far as to equate the government and its instrumentalities with the will of God. Another respondent describes the abortion law as "one of the best laws in our country." To determine how the respondent's religiosity affects approval of the law, the former was measured through a direct question: How religious would you say you are? Nineteen percent said they were "very religious," 52 percent were "quite religious," and 28 percent were "slightly religious" or "not religious at all."<sup>11</sup> Of the first group 75 percent considered the abortion law a good law, but in the second group approval dropped to 62 percent and in the third group to 48 percent.<sup>12</sup>

A secondary reason sometimes given for disapproving of abortion is that contraception is preferable:

- [The abortion law is a good law] because it's already there. People should use caution, such as pills and contraceptives, to avoid the performance of abortion.

---

<sup>11</sup> Percentages do not add up to 100 because one respondent failed to respond.

<sup>12</sup> Because 89 percent of the sample was Catholic, it was not feasible to test differences by religion.

- It depends on how you look at it. Progressive countries say that making abortion illegal exposes mothers to danger instead of protecting them, but personally I consider it a good law because I believe that abortion should not be performed due to the presence of contraception.

For some respondents the symbolic value of the law may have more significance than its actual enforcement. For example, one judge felt that the appropriate punishment for abortion was not an important issue, but merely "a matter of opinion." What was important for her was the principle: "as long as the people know that the state prohibits abortion — that we go on the principle that we are against abortion."

Arguments favoring abortion are of several types. The most moderate is the argument that the law should permit exceptions, primarily to save the mother's life. Another type of objection is that the law is unenforceable, at least partly because society has changed and the mores no longer have as firm a grip on individuals:

- [The law] is no longer effective because of the idea of population control. Besides there are many abortions going on. It cannot be stopped. Better to legalize it, more lives will be saved. [a judge]
- [The law] does not take into consideration the reasons and circumstances that prompt people to practice abortion.
- The abortion law is outmoded — two-thirds of the world population today are for abortion. The law needs to be revised considering the population growth rate. Abortion is necessary.
- It is just not in consonance with the trend of the times. It is outmoded. The law is a remnant of the Spanish law wherein they tried to venerate the sacredness of life. But that is not the modern concept. Our principle should be socio-economic, that the number of children would be equated with the economic conditions of society.

Another objection, given especially by those who qualified their answers about whether it was a good or a bad law, had to do with the severity of the penalties:

- It is not really a bad law, but it requires further study and revision and change. There is a need for change as the times change, making it a more reasonable and liberal law. The provisions are limited and the penalty is strict. It requires further study.
- It's neither a good law nor a bad law. It's not a good law since it is too harsh on penalties. It's not a bad law since we have to

**Table 2. Appraisal of Abortion Law, by Residence, Occupation and Religiosity of Respondent (percent making each appraisal).**

Appraisal	Residence		Occupation				Religiosity <sup>a</sup>			Combined
	Greater Manila	Camarines Sur	Lawyer	Doctor, Nurse	Policy- maker	Other	Very Rel.	Quite Rel.	Slightly, Not Rel.	
Good law	53	72	76	54	64	53	75	62	48	60
Bad law	32	23	12	39	21	34	15	29	38	29
Depends	15	5	12	7	14	13	10	9	14	11
<b>Total (N)</b>	100 ( 66)	100 ( 39)	100 ( 25)	100 ( 28)	99 ( 14)	100 ( 38)	100 ( 20)	100 ( 55)	100 ( 29)	100 (105)

<sup>a</sup> Excluding one respondent whose religiosity was not ascertained.

consider our cultural background and some of our good traditions, like the honor of women.

- Abortion is usually done in secret. If the punishment were less severe, probably there would be more people who would be apprehended. Severity promotes more secrecy.

That the government should not enforce morality, that it should not interfere in private behavior that does no harm to anyone else, is an argument mentioned only by one respondent.

What is the extent of violation of the abortion law? Most of the respondents could not even guess. Those who tried to estimate the number of illegal abortions in the Greater Manila area came up with figures ranging from 50 a year up to 300,000 a year. Police statistics are not much of a guide, since very few cases come to their attention (in Quezon City, no more than five to eight a year). Estimates might be made from the number of hospital beds used for abortion cases, but this also requires making several crucial assumptions. An informal estimate based on the number of deaths due to illegal abortions gives two to five abortions a day, or between 700 and 2000 a year.

Just as there is wide variation in the estimates of number of abortions, so are there variations in respondents' views on how easy or difficult it is to obtain an abortion. Forty-one percent consider it "easy," but 47 percent consider it "hard" to get an abortion. In Camarines Sur it is much harder than in Manila (82 percent said "hard" against 31 percent in Manila). As many emphasize, it is a matter of the connections you have. Some respondents qualified their answers: it is easy for the affluent to get an abortion, but difficult for anyone else. One respondent made a different distinction: a medically safe abortion is hard to obtain, but if one is less choosy about the conditions under which the abortion is performed there is no difficulty. As noted above, very few abortion cases come to the attention of the police. Cases which were known to the respondents had either happened "a long time ago" or had come out of textbooks. The exception to this pattern was provided by two lawyers who had handled matters involving cases of unintentional abortion. Most of these cases involved quarrelling couples, with the expectant mother suffering some injury as a result. On the other hand, "intentional" abortions involve very little legal risk, either for the woman or for the abortionist. Fully 63 percent of the respondents are in agreement that the woman has only a small chance of being

prosecuted, and 55 percent say the same for the abortionist. Lawyers see the risk as even smaller than non-lawyers do (82 and 75 percent think the woman and the abortionist respectively run little legal risk). The principal reason for the absence of legal risk is that abortion is a private, victimless crime, and neither party has any motivation to expose it. Moreover, if the abortionist is a licensed physician, he may disguise the nature of the abortion by giving a number of medical reasons for its performance, even to the extent of asserting that he was merely completing the abortion.

Table 3. Estimates of the Effectiveness of the Abortion Law.

Questions	Possible Responses	Percent
1. If a woman wanted an abortion, do you think it would be very hard, hard, easy or very easy for her to get one?	Very hard	26
	Hard	21
	Easy	30
	Very easy	11
	Easy for rich, hard for poor	7
	Don't know/No response (DK/NR)	6
2. How great is the danger to the woman of being convicted for an illegal abortion?	Very great	15
	Great	17
	Small	18
	Very small	45
	DK/NR	5
3. How great is the danger to the doctor or midwife of being convicted for performing an illegal abortion?	Very great	20
	Great	20
	Small	18
	Very small	37
	DK/NR	5
4. The fact that abortion is illegal — would you say this fact reduces the number of abortions that take place:	Substantially	26
	Moderately	23
	Slightly	24
	Not at all	25
	DK/NR	3
5. If abortion were legalized, would you expect the number of abortions to go up:	Substantially	46
	Moderately	25
	Slightly	18
	Not at all	7
	DK/NR	5

Someone wanting an abortion would ordinarily begin by making inquiries of friends and acquaintances. Abortions are said to be common in several areas, such as along Rizal Avenue and Quezon Boulevard in downtown Manila, in Tondo and Pasay City. Small clinics do occasionally perform illegal abortions, though larger, reputable hospitals would not. The catheter method is judged to be the most common. The danger to the woman is considerable. Whether the law has any impact at all on controlling the number of abortions is not clear. About half the respondents feel that the illegality of the operation is a weak or totally ineffective deterrent. Between the law and the decision of the individuals to obtain or not to obtain an abortion, thinks one social worker, "there might be no relation at all." On the other hand, 71 percent of the sample feel that legalization would lead to a moderate or substantial increase in the number of abortions. "People who had fears before," said one, "will now feel that the act is justified." The increase will be substantial, says another, "because we Filipinos are by nature law-abiding people." The opinions of the minority, who argue that legalization will bring little change, are diverse: abortions will not increase much, they say, because

- as a people, we have a value against abortion. [a priest]
- of the presence of family planning and also the Catholic religion. Abortion is the resort when there is no family planning.
- the freedom that can be obtained is not necessarily utilized as a matter of course, because basically the mother would always like to have her child.... There will only be an increase in the number of reported cases.
- it will even go down, since it is customary on our part that when we are free to do it, we will not do it. [a hospital administrator]

It is possible that those who decide they want abortions are not prevented by the present law from having them, but the number who so decide would be increased by legalization. If this interpretation is accurate, the deterrent effect of the abortion law is indirect, through discouraging people from seeking abortions, but not restricting those who decide they want one.

Surprisingly, a large number of respondents (42 percent) feel that it is still possible to enforce the current abortion law. Some of them offer specific measures, such as self-policing by doctors and medical associations, or the creation of a special unit in the

National Bureau of Investigation (NBI) to go after abortionists. But most of these respondents offer no more than moral homilies about the need for greater dedication in the police, or the need to attack the problem with real "sincerity." One says, for instance:

- People who would enforce it should be more interested. They must really believe in the law and be interested in implementing it.

Interestingly, it is the less religious who stress dedication. The more religious are inclined to offer specific remedies. Those who think the law is unenforceable give such explanations as these:

- It's a very impractical law. People needing an abortion will resort to it.
- In most cases [the law-enforcement agents] are lukewarm. The crime is committed so secretly and clandestinely. Also in most cases it involves prominent persons, so that investigative work is frustrated there and then.
- People faced with an extreme necessity will always find ways to undergo abortion without having to account for it under the law.
- [Strict enforcement] would mean prying into private lives, would mean intensive investigation, and this is impractical.
- There are problems of prosecution. All parties concerned have no motive to keep the crime open. These are carefully done and in secret.
- There is the difficulty of producing evidence. Besides, is there any law in this country which is strictly enforced?

Doctors and lawyers are slightly more likely to be skeptical about enforcement, as are Camarines Sur residents.

On the question of legalizing abortion, it has already been indicated that several respondents estimate that this would have considerable effect on the number of abortions. Most are against legalization of abortion in general, but when asked about abortion under specific contingencies tend to approve of it when the woman's health is endangered (86 percent approve), when there is a strong chance that the baby will be defective (66 percent), and when the pregnancy is the result of rape (51 percent). There are relatively consistent differentials in approval favoring Manila over Camarines Sur, and the less religious over the more religious. If it is to be legalized, 60 percent would leave the decision about whether or not to allow an abortion to the woman and her private

doctor, individually or together. The rest would require a board of doctors to make the decision, with the occasional suggested addition of a clergyman, a social worker, or even an official of the Department of Justice. Most are skeptical of the prospects of legalization, because "the Philippines is a predominantly Catholic country." One legislator explains that "there are some *Catholicos cerrados* among our senators." Besides, he goes on, "some people are afraid of the Catholic Pope." One doctor takes the long view:

— We are still religiously bound to certain values. Abortion is immoral. But maybe 30 years from now if the country still is harassed by overpopulation and socio-economic problems, then probably we will legalize abortion.

It is clear that the abortion law falls into the class of laws labelled "repressive," defined as criminal because it "offends strong and defined states of the collective conscience."<sup>13</sup> Thus, the advocates of this law cite divine law or natural law in condemning abortion. Repressive law, for Durkheim, is characteristic of homogeneous societies with pervasive and widely shared traditions. It is from these traditions that repressive law derives its force. That law of this type appears relatively ineffective is not surprising. As Sutherland says: "When the mores are adequate, laws are unnecessary; when the mores are inadequate, the laws are ineffective."<sup>14</sup> The risk of prosecution for illegal abortion is slight, with the police hampered by problems of collecting evidence. In the opinion of most respondents, the law does not prevent any substantial number of abortions.

Nevertheless, if their estimates are anywhere near being accurate, the number of induced abortions in Greater Manila is not high. This may be a simple matter of lack of information, which the law at least is somewhat effective in choking off. It may, on the other hand, be a matter of the force of the mores, of popular sentiment being so strongly against abortion that it restrains those who would otherwise not be restrained by the law. The prospects for legal change are not favorable, considering that the respondents already represent the modern, urban, highly educated sector. There may be enough support to legalize exceptions to the law, where the health of the mother or the possibility of a defective baby is concerned. The prospects for subsidized abor-

---

<sup>13</sup> DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY*, 80 (1933).

<sup>14</sup> *PRINCIPLES OF CRIMINOLOGY*, 11 (7th Ed., 1966).

tions, which might have more significant impact on fertility rates than a simply permissive law, are almost nil.

### *Regulations on Contraceptives*

The Pharmacy Law requires that contraceptives be dispensed only with a doctor's prescription, and that the pharmacist keep a careful record of the customer's name, the prescribing doctor, the date of purchase, the quantity purchased, and so on. There is some disagreement about the status of this law. The record-keeping provisions, according to at least 12 lawyers and fiscals, have been repealed *de facto* by the Population Commission Law. One respondent claimed that these regulations were part of the Food and Drug Act and not the Pharmacy Law. (One lawyer in the Department of Health candidly admits: "I don't even know this law and I don't think we are following it.") At any rate, physician's prescriptions are still required for contraceptives, and it is respondents' reactions to this regulation that shall be considered.

Most respondents approve of this regulation: 84 percent think it is a "good law." Religiosity does not affect these judgments, but place of residence does. In Camarines Sur the figure is somewhat higher (97 percent), and in Manila somewhat lower (81 percent). Predominantly these respondents see the regulation as protecting the health of the woman:

- [The law] protects both the consumer from the danger of complications of unprescribed contraceptives, and protects the pharmacist from any responsibility. [a pharmacist]
- [It's a good law] because there are spurious contraceptives being sold which contain nothing but sugar; because different pills are suited to different people; and because doctors should be the ones to prescribe contraceptives.

A smaller number base their approval of the law on moral grounds: it keeps contraceptives out of the hands of the unmarried (specifically mentioned by 11 percent) and it discourages "moral abuse" and moral laxity (mentioned by an additional 13 percent). Three such responses, from an educator, a sociologist, and a lawyer, respectively, are as follows:

- These are things that have to be controlled since indiscriminate use might lead to dangerous practices among the young, like indiscriminate cohabitation.
- The methods of family planning should not be utilized by people who are having illicit sex relations. These contraceptives should only be for the married and not the unmarried couples. This

Table 4. Percent<sup>a</sup> Favoring Legalization of Abortions Performed under Different Contingencies, by Residence, Occupation and Religiosity of Respondent.

Contingencies	Residence		Occupation				Religiosity <sup>a</sup>			Combined
	Greater Manila	Camarines Sur	Lawyer	Doctor, Nurse	Policy-maker	Other	Very Rel.	Quite Rel.	Slightly, Not Rel.	
— If the woman's own health is endangered by the pregnancy	89	82	96	82	86	84	85	82	97	87
— If she became pregnant as a result of rape	62	32	52	46	57	51	45	44	68	51
— If there is a strong chance of serious defect in the baby	70	59	60	61	71	71	55	60	83	66
— If the family has a very low income and cannot afford any more children	25	16	29	11	31	22	25	13	39	22
— If she is not married and does not want to marry the man	11	13	8	7	23	14	16	3	26	12
— If she is married and does not want more children	19	13	25	11	29	11	20	6	33	17
— If pregnancy is a case of incest	35	13	26	27	23	25	31	18	35	26

<sup>a</sup> Percent of respondents giving valid answers. Not more than 4 respondents failed to respond to any particular item.

law takes care of this. It will be difficult for these unmarried couples to get them.

- If [the sale of contraceptives is] not recorded, it will encourage unmarried people to cohabit with each other and have internal (sic) relationships. If recorded, they will have a fear.

Those who object to the law or give it only qualified approval feel that prescriptions are unnecessary, at least for "non-medical" contraceptives. That the law should be selective is in fact mentioned by some who generally approve of the law. Contraceptives like condoms and jellies do not affect the woman's health, and should not require prescriptions, while pills and IUD's could have deleterious effects and should not be dispensed unless prescribed. (One doctor feels the pill need not be prescribed. He would draw the line at prostaglandins, because of their possible use as abortifacients.) A broader objection to the law is based on how it may limit access to contraceptives. One police doctor says:

- Contraceptives should be readily available to whoever needs them. Contraception is not immoral — there is no killing involved — so it should be encouraged rather than abortion.

In a similar vein, a nurse-professor thinks that "contraception should be made available to anyone who does not want to have a baby." There are also those who argue that morals and hence contraception are private matters. Two such comments from middle-aged, single males in important government positions:

- [The law] peers into the privacy of people who want contraception.
- Contraceptives [should be] easily accessible to those in need, for example, unmarried men and women who want to experience the act of love without benefit of marriage. Only dangerous drugs should have prescriptions and advice from doctors. We are only human beings and even an unmarried man like me at times wants to experience the act of love. The sexual act is a part of life.

How effective is the law? As Table 5 indicates, there is no consensus about how frequently it is violated. One respondent says: "The fact that there are people who peddle these things without control shows that it is violated frequently." Whatever the actual frequency, no one has ever been prosecuted for illegally dispensing contraceptives. No respondent knew of a single such case. The law has not been enforced "for the past 50 years," said one doctor, "and I don't see how they can enforce it now."

His negative attitude is not shared by others, who feel that the law can indeed be enforced, with stricter surveillance of drug-stores and regular inspection of their records, a more sincere effort on the part of the police, a public education program and similar measures. More than half the respondents (60 percent) feel this way while only slightly over a third (35 percent) feel enforcement is impossible. Some of the reasons given by the latter group:

- Society has become tolerant. Although all drugs need a physician's prescription, pharmacists don't always follow this. For example, Cortal is dispensed without prescription.
- What organization or who can control this, since even penicillin can be bought without prescription directly from drugstores, let alone contraceptives, unless we really have inspectors in big drug-stores.
- Although if we want to we can by some strict enforcement methods, who would want to stick to the regulations when it is better for us that it is not strictly enforced?

With the requirement of a prescription being unenforced, one might infer that this regulation would have little practical effect. But here again there is a wide divergence of opinion among the respondents. Table 5 presents responses to three questions: Does

Table 5. Estimates of the Effectiveness of Contraceptive Regulations.

Questions	Possible Responses	Percent
1. In your estimation, are the regulations regarding contraceptives violated:	Very frequently	27
	Frequently	31
	Occasionally	22
	Seldom	13
	Don't know/No response (DK/NR)	7
2. It may be possible that because of these regulations some people who want contraceptives cannot get them. Do you think this is true for:	Many people	20
	Some people	34
	Few people	21
	Hardly anyone	22
	DK/NR	3
3. If these regulations were to be lifted, do you think the number of babies born every year could be reduced:	Substantially	28
	Moderately	27
	Slightly	29
	Not at all	16
	DK/NR	1

4. If the regulations concerning contraceptives were lifted, would the number of abortions be reduced:	Substantially	33
	Moderately	30
	Slightly	22
	Not at all	12
	DK/NR	3

---

the regulation prevent people from getting contraceptives? Would lifting the regulation reduce fertility? Would lifting the regulation reduce abortions? Of all the respondents, 54 percent feel the regulation makes the purchase of contraceptives difficult for some or many people, while 43 percent feel purchase is difficult for few or none. In answering the first question, some respondents may have been considering other factors that limit access besides the regulation, such as availability and cost. For instance, the distribution of contraceptives through family planning clinics undoubtedly improves access. Nevertheless, the spread of responses is unexpected, and indicates that informal, interpersonal sanctions may be much more important than strict enforcement of the law. The latter two questions are speculative, and the spread of responses to them is similar. If the regulation were lifted, 55 percent expect a moderate-to-substantial reduction in births, and 63 percent expect a moderate-to-substantial reduction in abortions. On the other hand, 45 percent feel there would be little or no effect on births, and 34 percent that there would be little or no effect on abortions. Perhaps those who see a reduction in births or abortions are considering the symbolic effects of repeal, as removing a moral bulwark or as indicating government encouragement of freer use of contraceptives. More people may become willing to admit the use of contraceptives, and therefore more sources of information would be available for potential users.

A large number of respondents (42 percent) are in favor of leaving the regulation unchanged, and an additional 5 percent actually want to make the law stricter. On the other side, 43 percent favor modifying the regulation, and 9 percent more think there should be no regulation at all. The modification suggested is almost always to permit over-the-counter sales of most contraceptives, excluding "potent drugs." A sampling of medical opinions:

- Contraceptives are medically safe and can be sold like patent medicines.
- Only dangerous drugs should be restricted. The more common methods are not dangerous.
- [The regulations should be modified so that] people will not feel guilty about using contraceptives.

**Table 6. Favorability Toward Contraceptives for the Unmarried, by Residence, Occupation and Religiosity of Respondent (percent favoring and opposing).**

Contraceptives for the Unmarried	Residence		Occupation				Religiosity			Combined
	Greater Manila	Camarines Sur	Lawyer	Doctor, Nurse	Policy- Maker	Other	Very Rel.	Quite Rel.	Slightly, Not Rel.	
Favor	60	26	68	44	29	40	32	42	64	47
Against	40	74	32	56	71	60	69	59	36	54
Total	100	100	100	100	100	100	101	101	100	101
(N)	( 62)	( 39)	( 25)	( 27)	( 14)	( 35)	( 19)	( 53)	( 28)	(101)
(NR/DK)	( 4)			( 1)		( 3)	( 1)	( 2)	( 1)	( 4)

— Non-medical methods should be made available over the counter for anyone, and those using more potent preparations like pills should be advised to undertake some sort of examination and be warned, giving them personal responsibility. . . . While the law is there, it is not being implemented the way we would like it to be implemented. Why not be realistic?

If access to contraceptives is to be liberalized, a crucial question is whether the unmarried should be granted equal access with the married. As already indicated, some respondents see the "protection" of the unmarried as a main function of the law. Table 6 shows a bare majority opposing allowing the unmarried to buy contraceptives, though Manilans and the less religious are more likely to be in favor. Some respondents qualified their responses. One argued that having contraceptives available does not mean using them. Since the moral question is use rather than availability, availability should not be restricted. Another would forbid the sale of contraceptives to the unmarried, except for prostitutes. (Since prostitution is illegal, it may be impossible to write this exception into law, but if it were so incorporated, there could be some unusual effects.) Still another felt that marriage should not be the criterion but age. The minimum age for purchasing contraceptives should be 18 or 21, well beyond puberty.

Providing information about contraceptives is important in making them more accessible to people. A large number of programs have started in the last few years, including training of motivators, the use of the mass media, house-to-house campaigns and lecture series, and involving the cooperation of doctors and paramedical personnel, social workers, educators, community development workers, and others. The respondents were asked about specific methods of providing contraceptive information that could be enacted into law. A majority (64 percent) approved of advertisements for specific contraceptives. Ninety-one percent agreed that women, immediately after childbirth or an abortion, should be required to learn about contraception. As to making family planning part of the school curriculum, 99 percent approved it for the college level, 84 percent for the high school level, and 41 percent for the grade school level.

#### *Laws on Economic Benefits and Minimum Marriage Age*

Several disparate laws provide benefits, mostly economic, which may, though they were not designed to, influence the fertility

behavior of recipients. The Woman and Child Labor Law provides maternity leaves with some proportion of one's regular pay; the Tax Code provides exemptions for dependents; Social Security and Medicare provide for old age and could possibly reduce the need to depend on one's children after retirement.<sup>15</sup> A careful, comparative study or a field experiment could be devoted to the effect of each class of benefits on fertility, but here we restrict ourselves to the opinions of our sample.

What effect these laws, taken collectively, have appears to be in some dispute. Of the respondents, 12 percent think these benefits have "great effect" on fertility, 25 percent think they have "medium effect," 33 percent think they have "little effect," and 27 percent say they have no effect at all. Among those directing different family planning organizations, who are presumably in direct contact with the problem, the full range of opinions can be found. Legislators, on the other hand, seem generally pessimistic about the effects of these benefits on fertility. Respondents were asked to consider some specific reforms in child benefits and to estimate how much effect they would have. On none of the six reforms investigated was there any clear consensus (Table 7). The idea of a child subsidy, for the first three children only, was rated slightly but not significantly more likely to have an impact than the others, with 51 percent assessing its potential effects at moderate-to-substantial. An important consideration is whether these reforms are feasible at all, considering their expense and the vagaries of the legislative process. The predominant view is that chances for such laws range from poor to very poor. This is the opinion of 58 percent regarding the child subsidy; 54 percent regarding eliminating the income tax exemption for the fourth and later children; 64 percent regarding doubling or tripling Social Security benefits and making them universal; 59 percent regarding eliminating maternity benefits for children after the third; and 59 percent regarding raising the minimum legal age for marriage to 21. Thus, asking for estimates of the impact of these laws may have been too hypothetical a question for many respondents.

In broader terms, respondents were asked whether modifying benefits was a good or a bad way to attempt to control population. Although 69 percent considered it a good way, in the sense that it was a positive measure rather than a coercive one, their approval is somewhat lukewarm, because of doubt about the effectiveness

---

<sup>15</sup> Cf. Sison, *infra*. Various decrees, letters of instruction and departmental orders have since modified these provisions.

of such benefits. Legislation of this type, said several, is good but will not have substantial effect. One respondent expressed her approval because of the need for legal consistency:

- Without modifications in the law, family planning will not succeed. There are contradictions in policy, i.e., many laws are pro-natalist. A program will not succeed with such contradictory policies.

Another objected to such laws on Constitutional grounds:

- [These reforms] are not realistic and are violative of Constitutional protection of law — equal protection for all. Since if you give a subsidy for the first three children, what about the fourth child and the next?

In a somewhat similar vein, another respondent asks:

- Why punish families with more children? Children are not solely the responsibility of the parents but of society.

Finally, two respondents questioned the motivational assumptions of the systems of benefits:

- Pregnancies are products of emotions and lack of knowledge to control fertility. Economic incentives will not affect fertility. The government cannot attend to giving the people the minimum necessities, such as free delivery. How can it provide for subsidies?
- Education of people is what is important. [It makes] them aware that having less children is more advantageous and makes them aware that they can control the number of children they can have. These laws or any other law and economic benefits are never taken into consideration when people bear children. Besides, more often than not children come even if the couple does not plan to.

As part of an over-all rationalization of population policies, modifications of benefits associated by law with family size would be an important step. However, the danger of generating organized opposition, as well as basic and possibly constitutional questions of equity and equal protection, should be considered and weighed in the balance against the not more than moderate effect the reforms may be expected to have, especially if they have to be diluted in the political process.

### *Population Policy*

Executive Order 171 of 1969 created the Population Commission to study population problems and recommend policies and

Table 7. Estimates of Effect on Fertility of Proposed Laws on Economic Benefits and Minimum Marriage Age, by Residence, Occupation and Religiosity of Respondent (percent expecting moderate-to-substantial impact)

Proposed Laws	Residence		Occupation				Religiosity			Combined
	Greater Manila	Camarines Sur	Lawyer	Doctor, Nurse	Policy-maker	Other	Very Rel.	Quite Rel.	Slightly, Not Rel.	
— Providing a child subsidy for the first three children only	45	66	52	56	54	51	42	60	44	53
— Eliminating the income tax exemption for any children after the third	42	53	40	52	31	51	53	49	37	46
— Doubling or tripling social security benefits and making them universal	44	58	42	48	46	57	47	56	37	50
— Increasing the maternity benefits for the first three children but eliminating them for later children	45	58	44	48	39	60	47	58	37	50
— Raising the minimum legal age for marriage to 21 for boys and girls	37	55	36	48	36	49	35	46	48	44

programs to the government. This commission was put on a statutory basis by Republic Act No. 6365, an important section of which reads:

SECTION 2. *Declaration of Policy.*—The Congress of the Philippines hereby declares that for the purpose of furthering the national development, increasing the share of each Filipino in the fruits of economic progress and *meeting the grave social and economic challenge of a high rate of population growth, a national program of family planning which respects the religious beliefs of the individuals involved shall be undertaken.* The Congress of the Philippines further declares that the national population policy and program will include the following elements: quantitative goals will be established and adopted; a broad understanding of the effects of alternative rates of population growth on family national welfare will be promoted; *family planning will be made part of a broad educational program; safe and effective means will be provided to couples desiring to space or limit family size;* mortality and morbidity rates will be further reduced; policies and programs guiding and regulating labor force participation, internal migration, and spatial distribution of population will be adopted; and contact with international agencies and private organizations concerned with population problems will be established and maintained on a regular basis. (Italics supplied)

The italicized portions were read to the respondents, many of whom were familiar with the law as legislators, as members or staff of the Population Commission, or through their connection with family planning agencies. No one disagrees with this policy. The only distinction among the respondents on this issue is between those who strongly approve (82 percent) and those who merely approve (17 percent). However, from some of their comments it seems that at least a few believe that economic growth will solve the population problem, and direct action to reduce fertility is not essential.

Where implementation is concerned, 62 percent think the policy has been effectively carried out to date, and only 28 percent rate the implementation as ineffective. It may be too early to make any reliable evaluation. The program, says one, "is still being tested and we cannot really judge it now. But based on the trend it is effective." At least one legislator agrees, and thinks that no new legislation should be introduced for a while. There are few suggestions for specific additional legislation. What is needed, most

Table 8. Attitudes Toward Law and Population Policy, by Residence, Occupation and Religiosity of Respondent.

Attitudes	Residence		Occupation				Religiosity			Combined
	Greater Manila	Camarines Sur	Lawyer	Doctor, Nurse	Policy-maker	Other	Very Rel.	Quite Rel.	Slightly, Not Rel.	
— Percent approving of family planning	94	92	83	100	100	92	95	94	90	93
— Percent who strongly approve of the Population Commission Law <sup>a</sup>	83	82	84	93	79	76	85	84	79	83
— Percent agreeing with Teheran Declaration that family planning is a basic human right	92	95	88	93	100	94	90	95	93	93
— Percent who think that law has a role in solving population problems <sup>b</sup>	89	93	83	92	92	94	94	86	96	90

<sup>a</sup> The rest approve, but not strongly. Nobody disapproves.

<sup>b</sup> Fourteen respondents did not respond to this question.

think, is implementation of policies and continuation of programs already started. Some respondents mention more funds, more equipment, wider educational programs. One specific suggestion is to allow paramedical personnel to dispense contraceptives, in order to increase the available manpower and relieve doctors of some responsibilities.

In terms of the rationale for population policy, the Philippines is a signatory to the Teheran Declaration (of the United Nations Conference on Human Rights), which states that parents have a "basic human right to determine freely and responsibly the number and the spacing of their children." Table 8 indicates that most respondents support this declaration. Those who disagree feel that the society's right to determine its optimum population takes priority over the individual's right to control the number of children he has.

- I believe in the policy of limiting family size, and this right is against such policy. [a family planning official]
- A child is not a creature solely of the parents. Children should be the responsibility of society. It should be the state which should determine the number the state can support.
- "Responsibly" — modify the word [the word is important]. If all persons are educated and maybe, know the implications of high population — but suppose they are irresponsible. . . .

Is this legal right adequately safeguarded in the Philippines? The majority (69 percent) say yes, interpreting it as the right to have as *many* children as you want. One respondent says:

- Nobody, not even the Government or our laws, dictates to couples how many children they should have.

Another respondent thinks:

- Nobody really cares how many children people have.

There is no need therefore for further measures to safeguard this right, since already "we leave the parents very freely to determine number of children." One respondent remarks that the stress should not be on right but on responsibility. Not enough emphasis is placed on parents' considering the relevant personal and social factors when they make decisions about having children. A minority of the respondents (25 percent) think the right is not safeguarded. They interpret it as the right to have as *few* children as you want. Some of their reasons are:

- We're still influenced or constrained by cultural and religious factors and we are constrained to practice it as a right. In the rural areas [insofar as having babies is concerned] it's the *bahala na* system [letting happen what will happen].
- Some people are not even aware that they have a choice.
- There is still an existing fear due to superstitious beliefs about the effect of contraceptives and this pressure prohibits the parents to fully practice this human right.

People lack information about family planning, and access to facilities is still limited. Some are not aware of the fact that they can limit their families, or are dissuaded by cultural and religious factors from doing so. For these minority respondents, the right to determine how many children one will have is not being exercised if one leaves it to God or to fate.

### *Conclusion: The Role of Law in Population Programs*

The results of this survey may be interpreted from a variety of perspectives. For those simultaneously committed to family planning and legal reform the critical question seems to be: what leverage has the study uncovered for introducing new laws or particular amendments to existing laws regarding the regulation of fertility? For those interested in enforcing current statutes, the opinions of this group of influentials will be significant for different reasons. This latest section attempts to review the evidence on the impact of the different laws on fertility behavior, and the effects that law in general can leave.

The results of interviews on each of the four sets of laws can be briefly summarized.

*Abortion Law.* Despite the complete prohibition of abortion under the present law — allowing for no exceptions whether to save the mother's life, to prevent the birth of a defective baby, or for pregnancies caused by rape or incest — a majority of respondents (60 percent) consider it a good law. This is perhaps reflected in the reluctance to introduce any legal reform in this area: neither of two proposed revisions of the Criminal Code contains any modification or liberalization of the present abortion law.<sup>16</sup> The draconian and restrictive nature of the abortion law should be contrasted,

---

<sup>16</sup> See proposed Penal Code of the Philippines, Official Draft, Division of Research and Law Reform, U.P. Law Center, December 29, 1966; Seventh Congress of the Republic of the Philippines, Third Session, House of Representatives (introduced by Congressman Caram, Jr. and the Committee on Revision of Laws), H. No. 1855.

however, with the lack of prosecution in recent years — either of the woman or of the abortionist. Frequent resort to abortion without prosecution has thus been cited as evidence of the ineffectiveness of the law.

Notwithstanding the absence of prosecution, the abortion law may be deemed to have some effect in discouraging abortions. Thus 47 percent of the respondents consider it “hard” or “very hard” to obtain an abortion, and 7 percent more judged that while it was easy for the rich, it was difficult for the poor. In addition, 71 percent foresaw a moderate-to-substantial increase in abortions should they be legalized. It was argued that the abortion law restricted the flow of information and discouraged people from seeking abortions, but did not deter those who had made up their minds. It is difficult to separate this effect from the effect of the mores, particularly since actual prosecutions are so rare. The marginal impact of the abortion law on fertility, when the effect of popular condemnation is controlled, may in fact be minimal, and legalization in the absence of shifts in public opinion may similarly have little effect.

This is not to argue that legalization should not take place on other grounds, such as the danger to maternal health and the social and economic consequences attendant upon resort to illegal abortion. It is worth noting again that despite their approval of the abortion law most respondents were in favor of various exceptions. Fully 87 percent supported legalization of abortions for women whose health (and not simply life) would be endangered by pregnancy, and the majority also favored legalization of abortion if pregnancy were the result of rape or if there were a strong chance of the birth of a defective baby.

*Regulations on contraceptives.* Most respondents regard as “good” the law requiring prescriptions by physicians for the dispensing of contraceptives, despite its apparent deficiencies—the failure to distinguish between “medical” and “non-medical” contraceptives, widespread violations of the law, and the large number of people presumably adversely affected. How many are actually affected is questionable, and the law may really have negligible impact. It is never enforced, and its legal status is in doubt. While 54 percent feel the purchase of contraceptives is difficult at least for some people, this does not seem to be due to the specific regulation. Nevertheless 47 percent of the respondents are for maintaining the regulation or making it stricter, and 52 percent

are against allowing the unmarried to buy contraceptives. Close to half do advocate a liberalized law that would sanction "over-the-counter" sales of most contraceptives. As with the abortion law, the desire to regulate the purchase of contraceptives may reflect the cultural dominance of a particular moral code. It also reflects, however, some concern about health, though in this regard a distinction should be made between "medical" and "non-medical" contraceptives. As with abortion, the regulation of contraceptives has an important symbolic value.

The overwhelming majority of the respondents are in favor of making contraceptive information available to all who desire it. Thus, 64 percent would allow contraceptive advertisements in the mass media, and 90 percent would favor a compulsory post-partum program in family planning for all women. Despite the strong Catholic influence in the Philippines, 98 and 84 percent of the respondents would make family planning and sex education a mandatory part of college and high school education, respectively. In this regard, the respondents' views approach the standards laid down at the International Conference on Human Rights in Teheran, which include specifically the right to adequate education and information on family planning.

*Laws on economic benefits.* Speaking generally, two-thirds of the respondents consider the granting or withholding of economic benefits associated with the number of children in a family a good way to influence family size. Such measures are or at least appear non-coercive, and can be presented in terms of positive inducements rather than restrictions. There is no consensus on the likely impact of these laws, however, and it may be preferable to evaluate the proposals as part of an integrated program rather than individually. Many respondents clearly doubt the feasibility of these reform measures, and find it difficult to empathize in situations they consider too hypothetical and remote in the light of actual economic conditions. While constitutional issues like the compatibility of these economic benefits with the Equal Protection Clause must be left to the courts to decide, it may be worth conducting experiments to see whether the granting or withholding of such benefits contingent upon the number of children would, in fact, produce the desired effects.

As part of an over-all rationalization of population policies, modification of benefits associated with family size should be an important step. However, the danger of generating organized

opposition should be considered, and weighed in the balance against the possible slight effect the reforms may be expected to have, especially if they have to be moderated in the political process.

*Population policy law.* Of the various laws surveyed, the population policy law affects individuals only indirectly, through the implementing laws adopted pursuant to it. It would be up to the Department of Education, for example, to implement the policy of integrating family planning into the education program, to the Department of Health to see that "safe and effective means will be provided to couples desiring to space or limit family size." It is interesting to note that 61 percent of the respondents already consider the population policy law as having been "effectively" carried out, as against only 28 percent who rate the implementation as ineffective. It is noteworthy further that no one disapproves of the law creating the Population Commission. Similarly most respondents support the Teheran Proclamation that parents have a "basic human right to determine freely and responsibly the number and the spacing of their children." There is some confusion as to whether the right is to have as many or as few as one desires. This may be clarified by spelling out the right as including the right to adequate education and information (Teheran Resolution) as well as the right to the "means" necessary to practice family planning (1969 U.N. Declaration on Social Progress and Development).

Each of these four sets of laws then has variable impact and variable potential for affecting fertility behavior. As to law in general, the majority of respondents support the idea that law is an important element in any population program. According to 78 percent, law can play a role in solving population problems. Only 9 percent disagree. Such consensus is not surprising, particularly since this question was asked after specific laws had been discussed, but the important question is how large this role is and what it would consist of. The specific role law is assigned is variable.

- Legalize divorce, and legal reform to give individuals more freedom, such as the abortion law.
- Make birth control part of the education curriculum and provide for free contraceptives. [a doctor]
- Law should provide economic incentives to small families.
- Pass laws which will allow people to limit the number of children. E.g., abolish the abortion and pharmacy laws. [a doctor]
- All laws which are contrary to the population policy should be amended.

Most of these suggestions repeat themes that were touched on with regard to specific laws. There were a few respondents, however, who took a different tack when asked about the role of law in general, and proposed that the solution to population problems was economic growth:

- To solve the population problem the government should stabilize the economy and intensify food production. Improved economic conditions can support a big population.
- The government can help in the solution of population problems indirectly only by solving the problem of mass poverty (that is, providing more opportunities). [a doctor]
- The law should give incentives for students to go into agriculture instead of white-collar jobs. This way agricultural production will help solve the population problem. Idle lands should be utilized. [a lawyer]

A few others think law is important simply because most people respect it.

- Law directly affects the solution of population problems because no matter how good or bad our laws are people abide by them. People are compelled to follow.
- Filipinos are law-abiding.

The minority who think law is an ineffective instrument in population control usually consider education of much more consequence. Some of these respondents are completely skeptical about attempting any legal reform:

- Education not law can solve population problems. [a lawyer]
- We cannot legislate human nature. [a lawyer]
- Law and freedom seem to be contradictory since law and the increase of options do not go together. The main purpose of family planning is to increase individual freedom. Law plays little role in solving the population problems since family planning is a personal matter. There are many circumstances wherein it is best not to pass a law, as in the case of population control.
- Laws are effective in the city, but in the rural areas who cares about them? Besides they do not even know the law.
- No amount of legislation will change our cultural patterns. Education to change attitudes is what is needed.
- I am a Filipino and I know how Filipinos treat laws. Whether you make a good law or a bad law, it does not matter. We have so many good laws, but. . . [a doctor]

These opinions are varied and divergent, and only further research can determine which are the most accurate. It may be signi-

ficant that no one denies that law can play a negative role, that it can serve to obstruct a population control program. Many respondents agree that cultural and religious barriers to liberalization of abortion law and contraceptive regulations are still strong, and a number of respondents are themselves opposed to such reform. Where such value conflicts exist, law may be unable to play a strong positive role Parsons says:

The prominence of and the integrity of a legal system as a mechanism of social control are partly a function of a certain type of social equilibrium. Law flourishes particularly in a society in which the most fundamental questions of social values are not currently at issue or under agitation. If there is sufficiently acute value conflict, law is likely to go by the board. Similarly, it flourishes in a society in which the enforcement problem is not too seriously acute. This is particularly true where there are strong informal forces reinforcing conformity with at least the main lines of the legally institutionalized tradition.<sup>17</sup>

The most law can do when major disagreement on values exists is to be permissive. This may be accomplished by failing to enforce the law, although this method leaves it legitimate to exercise some repression occasionally. Perhaps the path that legal reform can take can be envisioned as a cycle, with repressive laws based on the traditional moral consensus gradually giving way to unenforced or permissive laws that permit individuals to innovate and permit knowledge of innovations to spread. The symbolic importance of repealing a repressive law may itself be considerable. When a consensus on some innovation has been reached, it may be time for the law to become compulsory again, this time enforcing a different set of behaviors in order to consolidate and institutionalize the gains that have been made. While this cycle may apply most clearly to abortion and contraceptive regulations, such laws as the Population Commission law may also require a permissive phase, in which experimentation with a variety of campaign methods can take place before they are fully and widely implemented.

This three-stage cyclical model returns us to the question of the relative impact of law and custom. For convenience, the three stages can be labelled the traditional-repressive stage, the permissive or non-enforcement stage, and the reformatory-compulsory stage (which, as society changes, may be seen as repressive again, though at a different level). At each stage, some variance between law and custom is possible, but presumably

---

<sup>17</sup> *The Law and Social Control*, in W.M. EVANS (Ed.), *LAW AND SOCIOLOGY*, 71 (1962).

this latitude is greatest at the permissive stage. An assimilation-contrast effect may be presumed to operate, in the sense that law which is not too different from existing custom is tolerated but law which is too much at variance is rejected. Moderate differences, at the same time, set up a feedback relationship that pulls law and custom closer together. The critical questions, then, are how far out of step law can be while yet retaining some anchorage in existing custom, and what the appropriate timing is for progressing from one stage to another. These questions and conceptions are suggested by a brief overview of influentials' opinions on population law, but further specification of parameters and much more empirical research is necessary to flesh them out.

#### REFERENCES

- Dror, Yehezkel, *Law and Social Change*, in VILHELM AUBERT (Ed.), *SOCIOLOGY OF LAW*, 90-99. Baltimore, Penguin Books, 1969.
- DURKHEIM, EMILE. *THE DIVISION OF LABOR IN SOCIETY*. Trans. by George Simpson. Glencoe, Ill., The Free Press, 1933.
- FRIED, MORTON H. *THE EVOLUTION OF POLITICAL SOCIETY*. New York, Random House, 1967.
- HARTLAND, SIDNEY E. *PRIMITIVE LAW*. London, Methuen, 1924.
- HOEPEL, ADAMSON E. *THE LAW OF THE PRIMITIVE MAN*. Cambridge, Mass., Harvard Univ. Press, 1954.
- HUNTINGTON, SAMUEL. *POLITICAL ORDER IN CHANGING SOCIETIES*. New Haven, Yale Univ. Press, 1968.
- Lee Luke T., *Law and Family Planning*, 2 *STUDIES IN FAMILY PLANNING*, 81-98 (April, 1971).
- MACIVER, ROBERT, AND PAGE, CHARLES H. *SOCIETY: AN INTRODUCTORY ANALYSIS*. London, MacMillan, 1950.
- Parsons, Talcott, *The Law and Social Control*, in WILLIAM M. EVAN (Ed.), *LAW AND SOCIOLOGY*, 56-72. N.Y., Free Press of Glencoe, 1962.
- SISON, CARMELO V. *POPULATION LAWS OF THE PHILIPPINES*. Quezon City, University of the Philippines Law Center, 1972. Mimeographed.
- SCHUR, EDWIN M. *CRIMES WITHOUT VICTIMS*. Edglewood Cliffs, N.J., Prentice-Hall, 1965.
- \_\_\_\_\_. *LAW AND SOCIETY: A SOCIOLOGICAL REVIEW*. New York, Random House, 1968.
- SUTHERLAND, EDWIN AND CRESSEY, DONALD. *PRINCIPLES OF CRIMINOLOGY*. 7th Ed. Philadelphia, Lippincott, 1966.

# POPULATION LAWS OF THE PHILIPPINES\*

by

CARMELO V. SISON\*\*

## I. BACKGROUND

### A. *Character of the Population Problem*

The Philippines, an archipelago of 7,100 islands with a land area of 114,830 square miles is 57th in territorial size but 15th in population among the countries in the world. It contains 1 per cent of the world's population and 0.2 per cent of the world's total land area. In the Western Hemisphere, only Brazil, Mexico and the United States surpass the Philippines in population size. Its population in 1960 was 27.1 million. As of May, 1970, the population was estimated to be 36,684,480 with an increase of 9.5 million. The people-to-land ratio is 123 persons per square kilometer, a ratio considerably above the Asian average.<sup>1</sup> However, the population is very unevenly distributed, with major concentrations on the larger islands, and in urban areas.

The current rate of population growth in the Philippines is 3 per cent a year. This high rate of growth is a recent phenomenon as most of the country's population history has been characterized by slight increases over long periods of time punctuated by periods of sharp decline.<sup>2</sup> When Ferdinand Magellan landed in 1521, thus paving the way for the Spanish colonization of the islands, it was estimated that half a million people, mostly Malays, lived in the Philippines. From 1591 to the end of the eighteenth century, the population gradually grew from about 664,000 to 1,600,000. During this period, war, disease and violence kept the population increase in check. A century later, when the first census under the American regime was taken in 1903, about 7.5 million people were reported. After World War II, from 1948 to 1960, the population increased over 40 per

---

\* This is a revision of a paper submitted to the Law and Population Programme, Fletcher School of Law and Diplomacy, Tufts University in May, 1970.

\*\* Assistant Professor, College of Law, University of the Philippines.

<sup>1</sup> UNIVERSITY OF THE PHILIPPINES POPULATION INSTITUTE, PHILIPPINE POPULATION: PROFILES, PROSPECTS, PROBLEMS, 11 (1970).

<sup>2</sup> Concepcion, *The Population of the Philippines*, in FIRST CONFERENCE ON POPULATION, 1955, 185 (1966).

cent, from 19.2 million to 27 million.<sup>3</sup> Table I shows the population and intercensal rate of growth of the Philippines from 1799 to 1960.

Table I. — POPULATION OF THE PHILIPPINES  
1799 — 1960

Year	Population	Average annual rate of increase over previous date (per cent)	Source of Data
1799 <sup>1</sup>	1,502,574	—	Buzeta
1800 <sup>1</sup>	1,561,251	3.9	Zuñiga
1812 <sup>1</sup>	1,933,331	1.79727	Cedulas
1819 <sup>1</sup>	2,106,230	1.23119	Cedulas
1829 <sup>1</sup>	2,593,287	2.10204	Church
1840 <sup>1</sup>	3,096,031	1.62391	Local officials
1850 <sup>1</sup>	3,857,424	2.22312	Buzeta
1858 <sup>1</sup>	4,290,381	1.33859	Bowring
1870 <sup>1</sup>	4,712,006	0.78419	Guia official
1877 <sup>1</sup>	5,567,685	2.41243	Census
1887 <sup>1</sup>	5,984,727	0.72492	Census
1896 <sup>1</sup>	6,261,339	0.50329	Plehn <sup>2</sup>
1903	7,635,426	2.87489	Census
1918	10,314,310	1.89735	Census
1939	16,000,303	2.21955	Census
1948	19,234,182	1.90601	Census
1960	27,087,685	3.05710	Census

<sup>1</sup> Excludes non-Christian population

<sup>2</sup> Professor Plehn's estimate based on census records.

SOURCE: II, CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, 2.

The estimate and projection of the population by the University of the Philippines Population Institute is shown in Table II, below.

It has been observed that while it took a little more than 90 years from the first census to the 1960 census to have a 386 per cent increase in the population, it will only take 20 years to have a 100 per cent increase.<sup>4</sup>

<sup>3</sup> *Ibid.* at 186.

<sup>4</sup> *Ibid.* at 23.

Table II. — POPULATION AND INTERCENSAL RATE  
OF GROWTH OF THE PHILIPPINES  
1877 — 1980

Year	Population (thousand)	Intercensal Rate of Growth (Per cent)	Source
1877	5,568	0.8	Census under Spanish Adm.
1887	5,985	1.6	Census under Spanish Adm.
1903	7,635	1.9	Census under American Adm.
1918	10,314	2.2	Census under American Adm.
1939	16,000	1.9	Census under American Adm.
1948	19,234	3.1	Census under Phil. Adm.
1960	27,088	3.4	Census under Phil. Adm.
1965	31,846		
1970	37,671	3.4	Projections of Dr. F.W.
1975	44,776	3.5	Lorimer High Assumption
1980	53,415	3.5	

SOURCE: Concepcion, *Population Growth Implications in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES, 23.

Since 1903, the population has been growing younger. The median age has changed from 20.2 years in 1903 to 16.8 years in 1960 and 18.4 in 1970.<sup>5</sup> Table III is a comparative table of the population distribution by age group in the 1960, 1948 and 1939 censuses.

Table III. — POPULATION DISTRIBUTION BY AGE  
GROUP: 1960, 1948 and 1939

Age group	Total	1 9 6 0 Per Cent	Cumulative
Total	27,087,685	100.0%	
Under 5 years	4,275,541	16.9	16.9
5 to 9 years	4,572,415	16.1	33.0
10 to 14 years	4,369,398	12.7	45.7
15 to 19 years	3,435,427	10.4	56.1
20 to 24 years	2,814,306	9.1	65.2
25 to 34 years	2,458,623	13.0	78.2
35 to 44 years	3,509,800	9.3	87.5
45 to 54 years	2,527,452	6.4	93.9

<sup>5</sup> UNIVERSITY OF THE PHILIPPINES POPULATION INSTITUTE, THE FILIPINO YOUTH, 1 (1972).

55 to 64 years	1,742,782	3.4	97.3
65 years and over	738,902	2.7	100.0

Age group	Total	1 9 4 8 Per Cent	Cumulative
Total	19,234,182	100.0%	
Under 5 years	2,991,654	15.6	15.6
5 to 9 years	2,941,567	15.3	30.9
10 to 14 years	2,560,113	13.3	44.2
15 to 19 years	2,064,304	10.7	54.9
20 to 24 years	1,767,494	9.2	64.1
25 to 34 years	2,614,972	13.6	77.7
35 to 44 years	1,883,718	9.8	87.5
45 to 54 years	1,127,214	5.9	93.4
55 to 64 years	676,008	3.5	96.9
65 years and over	606,636	3.2	100.0
Age unknown	502	*	

\* Less than .01 per cent

Age group	Total	1 9 3 9 Per Cent	Cumulative
Total	16,000,303	100.0%	
Under 5 years	2,602,746	16.3	16.3
5 to 9 years	2,493,678	15.6	31.9
10 to 14 years	1,784,618	11.2	43.1
15 to 19 years	1,657,112	10.4	53.5
20 to 24 years	1,523,997	9.5	63.0
25 to 34 years	2,260,886	14.1	77.1
35 to 44 years	1,475,147	9.2	86.3
45 to 54 years	983,629	6.1	92.4
55 to 64 years	662,760	4.1	96.5
65 years and over	553,782	3.5	100.0
Age unknown	1,948	*	

\* Less than .01 per cent.

SOURCE: 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, xiii.

At present, 47 per cent of the population are under 15 years. Persons aged 18 belong to the "older half" of the population. Persons 65 years or more comprise only 3 per cent of the population.<sup>6</sup>

The population growth rate of 3 per cent from 1948 to 1960 is considered high compared with previous rates in the country or with population growth in most countries. This is attributed to a relatively high fertility rate, a decline in the mortality rate and an increasing life expectancy.

In 1960, 5.8 million of the 13.4 million females in the population were in the child bearing years—15 to 41. Women between 20

<sup>6</sup> *Supra*, note 1 at 21.

and 30 numbered 2.2 million. Between ages 15 to 44, 3 out of every 4 women were already married. Forty-seven per cent of all brides in 1960 were 20 years old or younger.<sup>7</sup> The median marriage age was 19.3 years.<sup>8</sup> The statistics on the marital status of persons in 1960 are shown in Table IV. Those who married below twenty years had on the average 2 more children than those who married later. The average Filipino couple is now estimated to raise 7 children. The present birth rate is 45.0 per thousand while the death rate is 11.0 per thousand.<sup>9</sup>

The decline in the death rate is due largely to improved medical, health and sanitation facilities, the introduction of modern drugs, and better nutrition. Table V shows the total deaths from all causes and the crude death rates of the Philippines from 1920 to 1963.

### B. *Cultural, Social and Economic Elements.*

The population of the Philippines reflects an admixture of both Eastern and Western cultural traits which have been assimilated into its original Malay culture. This is due mainly to its centuries of interaction with the countries of Asia and its colonization by Western powers, namely, Spain, whose rule extended for more than three centuries (1565-1898) and the United States, whose regime spanned 50 years (1898-1946). The colonizers contributed heavily to Philippine religion, law and politics. The institutions in these fields now obtaining in the Philippines, most historians and sociologists agree, are mainly derived from the West.

Aside from the Spanish legal system, Spain introduced Catholicism, which supplanted primitive and disorganized animism then prevalent in the Islands. In the 1960 census, 22,686,096 or 83.8 per cent of the population were reported to be Catholics.<sup>10</sup> Spain also organized scattered communities called *barangays* into municipalities, provinces and cities, and instituted centralized control of both Church and State over the inhabitants.

The United States, on the other hand, sought and succeeded in transplanting some of her own social and political institutions, before withdrawing her sovereignty in 1946. She instilled into the body politic the ideals of a republican democracy and the

---

<sup>7</sup> Concepcion, *op. cit.*, *supra*, note 2 at 190-191.

<sup>8</sup> Concepcion & Hendershot, *Prospects of a Fertility Decline in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES; PROCEEDINGS OF THE SECOND CONFERENCE ON POPULATION, November 27-29, 1967, 367 (1969).

<sup>9</sup> *Supra*, note 1 at 27, 58.

<sup>10</sup> 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, xxiii.

Table IV. MARITAL STATUS OF PERSONS 10 YEARS OLD AND OVER BY SEX AND AGE FOR THE PHILIPPINES: 1960

Sex and age	Total 10 years old and over	Never married	Married	Widowed	Separated or Divorced	Not Reported
Both sexes	18,145,872	8,323,157	8,918,738	822,412	81,175	390
10 to 14 years	3,435,427	3,426,272	8,093	562	386	114
15 to 19 years	2,814,306	2,591,265	217,837	1,874	3,236	94
20 to 24 years	2,458,623	1,342,630	1,093,292	10,763	11,870	68
25 to 29 years	1,953,349	454,043	1,464,822	21,074	13,394	16
30 to 34 years	1,556,451	178,906	1,335,038	31,379	11,111	17
35 to 39 years	1,428,474	102,108	1,267,930	48,115	10,308	13
40 to 44 years	1,098,978	64,407	962,836	63,728	7,999	8
45 to 49 years	1,032,683	52,796	889,844	82,903	7,126	14
50 to 54 years	710,099	37,524	576,811	90,629	5,123	7
55 to 59 years	487,930	22,986	383,148	78,340	3,450	6
60 to 64 years	430,904	19,103	303,353	105,383	3,057	8
65 years and over	738,648	31,117	415,734	287,662	4,110	25
Male	9,054,265	4,346,663	4,435,609	242,830	28,988	175
10 to 14 years	1,765,992	1,761,351	4,044	297	244	56
15 to 19 years	1,384,759	1,343,195	40,041	542	937	44
20 to 24 years	1,194,182	782,347	404,568	3,491	3,739	37
25 to 29 years	952,368	258,364	681,740	7,547	4,711	6
30 to 34 years	764,978	87,012	664,209	10,085	3,667	5
35 to 39 years	702,568	43,104	641,106	14,751	3,601	6

Table IV—Continued

Sex and age	Total 10 years old and over	Never married	Married	Widowed	Separated or Divorced	Not Reported
40 to 44 years	546,393	22,496	503,087	18,028	2,778	4
45 to 49 years	524,638	16,938	482,199	22,934	2,561	6
50 to 54 years	365,354	10,856	327,860	24,676	1,961	1
55 to 59 years	252,394	6,691	222,329	21,942	1,431	1
60 to 64 years	231,786	5,606	194,659	30,175	1,342	4
65 years and over	368,853	8,703	269,767	88,362	2,016	5
Female	9,091,607	3,976,494	4,483,129	579,582	52,187	215
10 to 14 years	1,669,435	1,664,921	4,049	265	142	58
15 to 19 years	1,429,547	1,248,070	177,796	1,332	2,299	50
20 to 24 years	1,264,441	560,283	688,724	7,272	8,131	31
25 to 29 years	1,000,981	195,679	783,082	13,527	8,683	10
30 to 34 years	791,472	91,894	670,829	21,294	7,444	12
35 to 39 years	725,906	59,004	626,824	33,364	6,707	7
40 to 44 years	552,585	41,911	459,749	45,700	5,221	4
45 to 49 years	508,045	35,858	407,645	59,969	4,565	8
50 to 54 years	344,745	26,668	248,951	65,953	3,167	6
55 to 59 years	235,536	16,295	160,819	56,398	2,019	5
60 to 64 years	199,118	13,497	108,694	75,208	1,715	4
65 years and over	369,795	22,414	145,967	199,300	2,094	20

SOURCE: 2 CENSUS OF THE PHILIPPINES: 1960 SUMMARY REPORT, 9.

Table V—LIVE BIRTHS, TOTAL DEATHS: 1920-1970

Year	Births		Total Deaths	
	Number	Crude Rate*	Number	Crude Rate*
1921 - 1925	378,471	34.2	209,376	18.9
1926 - 1930	419,145	33.5	231,827	18.5
1931 - 1935	451,186	32.1	235,423	16.8
1936 - 1940	513,765	32.5	260,463	16.5
1941 - 1945	***	—	***	—
1946	533,283	28.9	278,546	15.1
1947	572,226	30.5	238,527	12.7
1948	602,415	31.5	234,467	12.7
1949	609,138	30.9	231,151	11.8
1950	642,472	31.6	226,505	11.1
1951	637,264	30.4	237,937	11.4
1952	648,725	30.0	241,020	11.1
1953	661,939	29.7	239,988	10.8
1954	702,662	30.5	217,650	9.5
1955	734,761	30.9	219,798	9.0
1956	757,794	30.9	219,719	9.0
1957	748,331	29.6	241,469	9.5
1958	766,562	29.4	218,186	8.4
1959	809,086	30.0	197,423	7.3
1960	810,904	29.6	212,688	6.6
1961	782,857	27.6	213,587	7.5
1962	832,204	28.4	213,439	7.3
1963	851,459	28.2	215,743	7.1
1964	880,871	28.2	214,904	6.9
1965	871,715	27.0	241,305	7.5
1966	908,826	27.1	240,865	7.2
1967	911,872	26.3	241,548	7.0
1968	961,646	26.8	253,841	7.1
1969	1,015,784	27.3	255,785	6.9
1970	1,008,504	27.4	248,251	6.7

\* per 1,000 population.

\*\*\* no data available.

SOURCE: Department of Health, Disease Intelligence Center, 1970 Philippine Health Statistics.

concept of separation of church and state; moreover, she established a public school system based on the American model with English as the medium of instruction. The educational system produced a relatively high rate of literacy, and an orientation towards the United States rather than to Asia or Spain. The American administrators also promoted a system of local self-government. By 1907 the Philippines had the first popularly-elected legislature in Southeast Asia.<sup>11</sup> Besides the public school system, and a system of infrastructure, modern public health measures and facilities were introduced, resulting in a sharp decline in the death rate. The population increase created a corresponding pressure on the economy and this problem has persisted to the present. Rapid population increase has been identified as one of the major causes of pressure on the agricultural resources of the nation, fragmentation of landholdings and the increase of tenancy, destructive farming methods, migration, urbanization, unemployment, pressure in the educational system and other public service.<sup>12</sup> Graphically presented, in order to maintain current levels of services and facilities, which are still painfully inadequate, it has been estimated that provision must be made (for the period 1965 to 1975) for almost 8.5 million additional jobs, 12,000 more hospital beds, 9,000 primary schools, 3,500 new churches, 4,700 restaurants and cafeterias, 1,900 more barber shops, 850 new cockpits, more than 20,000 automobiles, 1.3 million extra carabaos, and over 1.5 million cavans of rice.<sup>13</sup>

The Philippines is a predominantly rural country. In 1956, 59.0 per cent of employed persons were in agriculture. In 1965, 56.7 per cent were so engaged, producing 32.9 per cent of the national income, while 10.9 per cent were in manufacturing, producing 19.3 per cent of the national income. Major export crops are coconut products, sugar, abaca, fiber, tobacco and pineapple. These, combined, constitute 60 per cent of total export values.<sup>14</sup>

---

<sup>11</sup> Carroll, *The Filipino Heritage*, in PHILIPPINE INSTITUTIONS, 2 (1970).

<sup>12</sup> Carroll, *The Family in Time of Change*, in PHILIPPINE INSTITUTIONS, 12. See also Madigan, *Problems of Growth—The Future of Population of the Philippines*, 16 PHILIPPINE STUDIES 3-31 (1968); Concepcion, *Population Growth Implications in the Seventies*, *op. cit.*, *supra*, note 8 at 3-11; CORPUZ, *THE PHILIPPINES*, 9, 130-131 (1965).

<sup>13</sup> Regudo & Murphy, *The Philippine Population in the Seventies*, *op. cit.*, *supra*, note 8 at 21.

<sup>14</sup> Carroll, *The Economy: Rising Expectations, Limited Fulfillment*, in PHILIPPINE INSTITUTIONS, 21 citing BCS SURVEY OF HOUSEHOLD BULLETIN, series no. 3 (June, 1958) and no. 19 (October, 1965); 11 STATISTICAL REPORT 2 (1957); and *A Basic Report on the Economy of the Philippines*, in AGENCY FOR INTERNATIONAL DEVELOPMENT, INVESTMENT IN SOUTHEAST ASIA 6-7 (1966).

Only about 15 per cent of the population is urban but, compared to some of her neighbors in Southeast Asia, the Philippines is more urbanized. The urban population is unevenly distributed, and its greatest concentration is around the Metropolitan Manila area, where one-third of the urban population live.<sup>15</sup> In terms of social and economic patterns and values, urban residents are employed in manufacturing and service industries, have a higher standard of living and are geographically and socially mobile. In contrast, rural residents are tied to an agricultural economy, live at subsistence levels and maintain a traditional way of life.<sup>16</sup>

A bilateral kinship system obtains in the Philippines. Socially, the child is related equally to his father's and mother's kin. The family includes relatives by consanguinity as far as the second and third cousin. It is further extended through the incorporation, by ritual, of friends into the kinship group, when they stand as godparents at the baptism of children, or as sponsors in weddings.<sup>17</sup> The sponsors in baptism of a child become *compadres* of the father and the mother and are regarded in many respects as members of their family. Family obligations are thus widely spread: a Filipino looks to many people for aid and support, and as many will seek his help and influence.

In traditional Philippine society, children are highly valued. They are regarded as gifts of God, as constituting the family's wealth and as security for old age, since they are expected to care for their parents in their old age. The child grows in an atmosphere of love and protection and maintains strong familial ties not only with his nuclear family but also with other relatives, including friends who by ritual are considered part of the kinship group. Because of the Philippines' predominantly Christian orientation, marriage has remained strictly monogamous, a structure which the law recognizes and mandates. However, temporary consensual unions are not unknown, and the keeping of a mistress or *querida* has been noted in both urban and rural areas. It has been pointed out that the entire history of the Filipino people — from the pre-Spanish period of warring *barangays* through the centuries of foreign colonial subjugation — has been marked by

---

<sup>15</sup> Hendershot, *The Challenge to Urbanization in the Seventies*, in PHILIPPINE POPULATION IN THE SEVENTIES, 252. See also Concepcion, *110 Millions by the Year 2001*, 18 PHILIPPINE SOCIOLOGICAL REV. 215-218 (1970).

<sup>16</sup> GROSSHOLTZ, POLITICS IN THE PHILIPPINES 81 (1964).

<sup>17</sup> Carroll, *supra*, note 12 at 10. See also Eggan, *Philippine Social Structure*, in GUTHRIE (ED.), SIX PERSPECTIVES ON THE PHILIPPINES 25-27 (1968); CORPUZ, *supra*, note 12 at 22-23; and AGONCILLO, A SHORT HISTORY OF THE PHILIPPINES, 11, 21 (1969).

a climate of insecurity, and the Filipino has had no source of security except his nuclear family and extended kinship group.<sup>18</sup> Hence, the Filipino family has become the strongest unit of society, evoking the profound loyalties of its members and influencing all facets of social and political activity.

The Philippine legal system is a combination of the Roman (civil law) and the common law systems. Spain extended her laws to the Philippines and these were enforced in the Islands until the inception of American rule, following the Treaty of Paris in December, 1898. The political laws of the Philippines, (which were of Spanish origin) were abrogated upon the establishment of American sovereignty. But such municipal laws as affected private rights of persons and property and provided for the punishment of crime were considered as continuing in force. The Spanish Civil Code, the Penal Code and the Code of Commerce, for instance, remained operative during the American occupation. However, all Spanish laws, customs and rights of property inconsistent with the United States Constitution and with American principles and institutions were superseded.<sup>19</sup>

The legal system thus has a nucleus of Spanish law which was later expanded with Anglo-American law and jurisprudence. The Roman (Spanish) element has since remained static; but laws enacted under American influence have steadily grown even after the attainment of Philippine independence. Importations from Anglo-American law are evident in public administration, trade and commerce, social welfare and procedure. Much of the legislation enacted after the attainment of Philippine independence is of American origin: labor relations, social insurance, taxation, banking and currency.<sup>20</sup>

On August 30, 1950, four years after Philippine independence, the New Civil Code, Republic Act No. 386, went into effect. This replaced the Spanish Civil Code of 1889, which was extended to the Philippines on December 7, 1889. The New Civil Code, which is the basic law governing family and property relations in the Philippines was based mainly on the Spanish Civil Code of 1889. The old Code was revised in order to make it conform to the

---

<sup>18</sup>Ramirez, *The Paradox of the Filipino Family*, *FOOKIEN TIMES YEARBOOK*, 1971, 303.

<sup>19</sup>Alvarez Sanchez v. U.S., 216 U.S. 167, 54 L.Ed. 432, 30 S.Ct. 361 (1910); *In re Shoop*, 41 Phil. 213 (1920); See also GAMBOA, *INTRODUCTION TO PHILIPPINE LAW* 72 (7th Ed., 1969).

<sup>20</sup>Fernandez, *Sixty Years of Philippine Law*, 35 *PHIL. L. J.* 1396 (1960).

"customs, traditions and idiosyncracies of the Filipino people." Two of the fundamental principles adopted in the New Civil Code were the liberalization of women's rights,<sup>21</sup> and the consolidation of the family.<sup>22</sup>

Prior to 1932, the criminal law of the Philippines was principally the Spanish Penal Code of 1870. In 1927, this Code was revised by a Committee of five criminal law experts, whose draft was enacted by the Philippine legislature on December 8, 1930 (Act No. 3815), as the Revised Penal Code. It took effect on

---

<sup>21</sup> PHILIPPINES (REPUBLIC) CODE COMMISSION, REPORT ON THE PROPOSED CIVIL CODE 13 (1948). According to the Code Commission, the following articles in the New Civil Code liberalize the rights of women: Art. 39 declaring a woman, at least 21 years of age, qualified for all acts of civil life, except in cases specified by law; Art. 97 allowing legal separation on the ground of concubinage on the part of the husband or adultery on the part of the wife; Art. 112 allowing a wife to administer the conjugal partnership if so agreed upon in the marriage settlements; Arts. 212-215 providing for a system of complete separation of property whereby the wife absolutely owns and administers her own property and earnings; Art. 115 providing that the wife manages the affairs of the household; Art. 117 allowing a wife to exercise a profession or occupation or engage in business; Art. 130 increasing the amount which may be given by future spouses to each other by way of donation; Art. 101 providing that only obligations contracted by the husband for the benefit of the family are enforceable against the conjugal partnership; Art. 166 prohibiting alienation by the husband of real property of the conjugal partnership without the consent of the wife; Arts. 167, 173, 178 and 191 protecting the wife against abuses of the husband in the management of the conjugal partnership; Art. 311 vesting parental authority over children jointly upon the father and mother; Art. 363 providing that a mother shall not be separated from her child under 7 years of age except for compelling reasons; Arts. 283 and 289 liberalizing the investigation of paternity; Art. 1047 allowing a wife to repudiate an inheritance without her husband's consent; Art. 114 subjecting to less restrictions a wife's acceptance of a donation; and Art. 1327 omitting the provision that married women cannot give consent to a contract in cases provided by law.

<sup>22</sup> *Ibid.* at 17. The following articles in the New Civil Code are aimed at the consolidation of the family: Arts. 216-222 establishing the family as a basic social institution which public policy cherishes and protects; Arts. 223-251 providing for the judicial or extrajudicial constitution of a family home; Arts. 252-254 providing for the establishment of a family council; Art. 52 providing that marriage is an inviolable social institution not subject to stipulations except in specified cases; Art. 98 imposing upon the Court the duty to take steps toward the reconciliation of the spouses before granting legal separation; Art. 116 authorizing the Court, upon petition, to take such measures as may be proper when one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other; Art. 312 providing that grandparents shall be consulted in all important family questions; Arts. 101 and 88 designed to prevent collusion in proceedings for annulment of marriage or legal separation; Art. 313 prohibiting the renunciation or transfer of parental authority except in cases of guardianship or adoption approved by the Court, or emancipation by concession; Arts. 26 and 2219 providing for the recovery of damages in case of meddling with or disturbance of the private life and family relations of the aggrieved party; Art. 2219 likewise providing for recovery of moral damages by the parents of a female who is seduced, abducted, raped or abused; Art. 62 obliging males above twenty but below twenty-five, and females above eighteen but below twenty-three years of age, to ask their parents or guardian for advice upon their intended marriage; and Arts. 198-211 allowing a system of absolute community of property between husband and wife.

January 1, 1932, repealing the Spanish Penal Code of 1870 and related special penal laws which were passed by the legislative body during the American regime.<sup>23</sup> Laws bearing on family planning and population which are chiefly found in the Civil Code and in the Revised Penal Code are rooted in the civil law tradition. As can be seen in succeeding discussions, these are largely pro-natalist in orientation. The extent to which they have contributed to the rapid population growth has not been the object of intensive study. What perhaps can be stated as a generalization is that the norms found therein certainly encourage the existence of large families, and these were in effect during periods of population increase.

### C. *Brief History of Government Policies and Actions*

It was only in the late sixties that the Government exhibited concern over the rapid population growth of the Philippines. In 1967, the President signed the United Nations Human Rights Day Declaration on Population<sup>24</sup> which acknowledged the population problem as a principal element in long-range national planning. In 1968, the Philippines was a signatory to the Teheran Proclamation on Human Rights declaring family planning as a basic human right.<sup>25</sup> Previously, in 1964, a Population Institute was established in the University of the Philippines to provide a comprehensive analysis of characteristics and trends of the population and to train demographers. Official government participation in population control activities commenced with the creation in 1968 of a Project Office for Maternal and Child Health pursuant to an agreement entered into by the National Economic Council and the United States Agency for International Development. In February, 1969, the President, recognizing *inter alia* that the growth rate of the Philippine population is adversely affecting economic and social development, issued Executive Order No. 174,<sup>26</sup> creating the Population Commission to undertake and disseminate studies on the population problem in all its aspects and to formulate policy and program recommendations for the Government. By Executive Order No. 233, issued on

---

<sup>23</sup> GAMBOA *op. cit.*, *supra*, note 19 at 401.

<sup>24</sup> STUDIES IN FAMILY PLANNING 1, no. 16 (Jan., 1967).

<sup>25</sup> Res. XVIII on Human Rights Aspects of Family Planning, U.N. CONFERENCE ON HUMAN RIGHTS, TEHERAN, 1968, 14-15, U.N. Doc. A/CONF. 32/41 (1968), reprinted in 63 A.J.I.L. 678 (1969).

<sup>26</sup> 65 O.G. 2296 (March, 1969).

May 15, 1970,<sup>27</sup> both the composition and some of the functions of the Commission on Population were expanded. The Commission was then composed of Department Secretaries and heads of private and religious agencies,<sup>28</sup> concerned with population and family planning.

To place the family planning program on a permanent and sustained basis, the Congress of the Philippines enacted Republic Act No. 6365<sup>29</sup> which established a policy on population, provided a statutory basis for the Population Commission and defined its functions.

On September 21, 1972, the President of the Philippines placed the country under martial law.<sup>30</sup> By virtue of his martial law proclamation and as commander-in-chief of the Armed Forces, he presently governs the nation and directs the operation of the entire government, including all its agencies and instrumentalities.<sup>31</sup> While still under martial law, the Filipino people, through the Citizens' Assemblies created by Presidential Decree No. 86, ratified a Constitution on January 17, 1973.<sup>32</sup> This Constitution declared as a policy that "[i]t shall be the responsibility of the State to achieve and maintain population levels most conducive to the national welfare."<sup>33</sup> Proclamation No. 1104, issued by

---

<sup>27</sup> 66 O.G. 5187 (May, 1970).

<sup>28</sup> The members were:

1. Secretary of Education
2. Secretary of Health
3. Secretary of Social Welfare
4. Chairman of the National Economic Council
5. Presidential Assistant on Community Development
6. Chairman of the National Manpower & Youth Council
7. Commissioner on National Integration
8. Director of Bureau of Census and Statistics
9. Director of the Philippine Press Institute
10. Director of the U.P. Population Institute
11. Representative of the Asian Social Institute - Institute of Social Order
12. President of the Philippine Rural Reconstruction Movement.
13. President of the Philippine Medical Association
14. President of the Philippine Nurses Association
15. President of the National League of Puericulture Center
16. President of the Family Planning Organization of the Philippines
17. President of the Catholic Bishops Conference of the Philippines
18. Chairman of the Philippine National Youth Welfare Coordinating Council
19. Executive Secretary of National Council of Churches
20. Executive Director of Institute of Maternal and Child Health
21. Executive Director of the Association of Philippine Medical Colleges

<sup>29</sup> Approved, August 16, 1971.

<sup>30</sup> Proc. No. 1081, s. 1972, 68 O.G. 7624 (Sept. 1972).

<sup>31</sup> Gen. Order No. 1, dated September 22, 1972, 68 O.G. 7777 (Oct., 1972).

<sup>32</sup> Proc. No. 1102, s. 1973, 69 O.G. 592 (Jan., 1973).

<sup>33</sup> Art. XV, sec. 10.

the President on the same day, declared the continuation of martial law.

Presidential Decree No. 79<sup>34</sup> revised the Population Act of 1971. Section 2 of this Decree states:

*"Sec. 2. Declaration of Policy.—*The Government of the Philippines hereby declares that for the purpose of furthering the national development, increasing the share of each Filipino in the fruits of economic progress and meeting the grave social and economic challenge of high rate of population growth a national program of family planning involving both public and private sectors which respect the religious beliefs and values of the individuals involved shall be undertaken."

The powers of the Population Commission are vested in a Board of Commissioners composed of the Secretary of Education and Culture, Secretary of Health, Secretary of Social Welfare, Dean of the University of the Philippines Population Institute, Director-General of the National Economic Development Authority, and two other members from the private sector who possess the necessary expertise.<sup>35</sup>

The purposes and objectives for which the Population Commission has been established are as follows:

- a) to formulate and adopt coherent, integrated and comprehensive long-term plans, programs and recommendations on population as it relates to economic and social development, considered with and implementing the population policy which shall be submitted to and approved by the President;
- b) to make comprehensive studies of demographic data and expected demographic trends and propose policies that affect specific and quantitative population goals;
- c) to organize and implement programs that will promote a broad understanding of the adverse effects on family life and national welfare of unlimited population growth;
- d) to propose policies and programs that will guide and regulate labor force participation, internal migration and spatial distribution of population consistent with national development;
- e) to make family planning a part of a broad education program;
- f) to encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth con-

---

<sup>34</sup> Issued on December 8, 1972, 68 O.G. 9896 (Dec., 1972).

<sup>35</sup> Pres. Decree No. 79 (1972), sec. 6.

trol such as abortion, by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies;

g) to establish and maintain contact with international public and private organizations concerned with population problems;

h) to provide family planning services as a part of overall health care;

i) to make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.<sup>36</sup>

As defined in the Decree, the specific powers and duties of the Commission include:

a) to employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines desirous of spacing, limiting or preventing pregnancies: *Provided*, That the above mentioned health workers, except physicians, for the purpose of providing, dispensing and administering acceptable methods of contraception, have been trained and authorized by the POPCOM in consultation with the appropriate licensing bodies;

b) to undertake such action projects as may be necessary to promote the attainment of this Decree and to enter, in behalf of the Republic of the Philippines, into such contracts, agreements or arrangements with government or private agencies as will be necessarily contributory or desirable in the implementation thereof;

c) to undertake, promote and publish information, studies and investigations of Philippine population in all its aspects;

d) to utilize clinics, pharmacies as well as other commercial channels of distribution for the distribution of family planning information and contraceptives;

e) to call upon and utilize any department, bureau, office, agency or instrumentality of the Government for such assistance as it may require in the performance of its functions.

The President has, likewise, by General Order No. 18, dated December 8, 1972, enjoined all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds,

---

<sup>36</sup> *Ibid.*, sec. 4.

TABLE VI. Estimated number of Philippine family planning acceptors by month & year (1966-1972).

Month	Total	Y e a r						
		1966	1967	1968	1969	1970	1971	1972
A. Frequencies								
All months	1,382,337	8,498	23,470	42,821	85,185	191,662	408,805	621,896
January	93,510	627	2,570	3,087	5,794	10,148	25,888	45,396
February	100,480	632	2,218	3,379	5,709	10,300	28,574	49,663
March	112,953	681	2,201	3,195	6,531	12,406	35,307	52,632
April	104,418	493	1,801	3,003	6,162	12,515	29,737	50,702
May	109,331	512	2,082	2,866	6,450	13,396	30,993	53,032
June	107,727	684	1,682	2,877	6,736	13,470	30,582	51,696
July	103,199	690	1,770	3,511	6,370	15,414	33,555	46,889
August	118,947	771	1,829	2,649	7,313	17,313	36,475	52,364
September	125,997	827	1,968	3,063	7,836	19,275	39,523	53,505
October	133,559	1,003	1,961	4,476	8,770	22,349	39,236	55,764
November	133,061	808	1,680	4,962	9,242	21,253	38,592	56,524
December	134,155	765	1,708	5,753	8,272	23,590	40,343	53,724
B. Percentages								
All months	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
January	6.8	7.4	10.9	7.2	6.8	5.3	6.3	7.3
February	7.3	7.4	9.4	7.9	6.7	5.4	7.0	8.0
March	8.2	8.0	9.3	7.5	7.7	6.5	8.6	8.5
April	7.5	5.9	7.7	7.0	7.2	6.5	7.3	8.2
May	7.9	6.0	8.9	6.7	7.6	7.0	7.6	8.5
June	7.8	8.0	7.2	6.7	7.9	7.0	7.5	8.3
July	7.8	8.1	7.5	8.2	7.5	8.0	8.2	7.5
August	8.6	9.1	7.8	6.2	8.6	9.2	8.9	8.4
September	9.1	9.7	8.4	7.2	9.2	10.0	9.7	8.6
October	9.7	11.9	8.4	10.5	10.3	11.7	9.6	9.0
November	9.6	9.5	7.2	11.6	10.8	11.0	9.4	9.1
December	9.7	9.0	7.3	13.3	9.7	12.4	9.9	8.6

SOURCE: POPULATION COMMISSION, Annual Report on Family Planning Acceptors at Philippine Program Clinics, January—December, 1972 (1973).

and business and industrial enterprises to promote the concept of family welfare, responsible parenthood, and family planning.<sup>37</sup>

In 1970, the Commission administered 28 projects through some 32 government and private agencies, among which were the Department of Health, the Family Planning Organization of the Philippines, the Institute of Maternal and Child Health, the Province of Laguna, the Province of Nueva Ecija, the University of the Philippines Population Institute, the Presidential Economic Staff, the Department of National Defense, the Social Communications Center, the National Media Production Center, the Responsible Parenthood Council and the Asian Social Institute.<sup>38</sup> As of December, 1972, family planning program clinics totalled 1,786. By the end of 1972, the family planning program had 26 member organizations offering nationwide family planning services.<sup>39</sup>

Table VI shows the monthly distribution of acceptors from 1966 to 1972. The pill has been the most popular contraceptive method as shown by statistics for a period of seven years. Since 1970 percentages of IUD and rhythm acceptors have declined. Table VII presents the number of family planning acceptors by method from 1964 to 1972.

The Commission has reported that, as of November 1973, 19 hospitals had administered 3,487 sterilization services, of which 839 were vasectomies, 1,675 were tubal ligations, and 973 were other similar services.

Table VII. Estimated number of Philippine family planning acceptors by method and year (1964-65 — 1972).

Year	Total	M e t h o d				
		Pills	IUD	Rhythm	Condom	Others
<b>A. Frequencies</b>						
All years	1,384,625	782,769	247,924	182,617	109,245	62,070
1964-65	2,288	309	448	392	a	1,139
1966	8,498	3,049	1,815	886	a	2,748
1967	23,470	9,276	8,745	1,846	a	3,603
1968	42,821	22,580	12,334	3,983	a	3,924
1969	85,185	43,275	15,127	17,588	a	9,195
1970	191,662	102,041	41,408	31,413	a	16,800
1971	408,805	245,602	80,537	55,151	16,628	10,887
1972	621,896	356,637	87,510	71,358	92,617	13,774

a—Included in Others.

<sup>37</sup> Dated December 8, 1972, 68 O.G. 9883 (Dec., 1972).

<sup>38</sup> POPULATION PROGRAM FY 1972-73, p. 3-4 (1970).

<sup>39</sup> POPULATION COMMISSION, ANNUAL REPORT ON FAMILY PLANNING ACCEPTORS AT PHILIPPINE PROGRAM CLINICS, January—December 1972.

Table VII (continued)

B. Percentages						
All years	100.0	56.5	17.9	13.2	7.9	4.5
1964-65	100.0	13.5	19.6	17.1	a	49.8
1966	100.0	35.9	21.4	10.4	a	32.3
1967	100.0	39.5	37.3	7.9	a	15.3
1968	100.0	52.8	28.8	9.3	a	9.1
1969	100.0	50.8	17.8	20.6	a	10.8
1970	100.0	53.2	21.6	16.4	a	8.8
1971	100.0	60.0	19.7	13.5	4.1	2.7
1972	100.0	57.3	14.1	11.5	14.9	2.2

SOURCE: POPULATION COMMISSION, ANNUAL REPORT ON FAMILY PLANNING ACCEPTORS AT PHILIPPINE PROGRAM CLINICS, January—December, 1972 (1973).

## II. LAWS DEALING DIRECTLY WITH BIRTH

### A. *Birth Control and Dispensation of Abortive Drugs*

1. Importation, manufacture, sale or dispensation of contraceptives, and drugs producing abortion.

Section 102(d) of the Customs and Tariff Code<sup>40</sup> prohibits the importation into the Philippines of the following items:

Articles, instruments, drugs, and substances designed, intended, or adapted for producing unlawful abortion, any printed matter which advertises or describes or gives directly or indirectly information where, how and by whom unlawful abortion is produced.

This provision was partly taken from Section 1954 (c) and (d) of the Revised Administrative Code<sup>41</sup> dealing with absolutely non-mailable matter, and Section 305 of the United States Tariff Act of 1930. The importation of these prohibited articles would result in their forfeiture to the Government pursuant to Section 2530(f) of the same Code. Before the amendment of Section 102 of the Code by Presidential Decree No. 23, articles, instruments or drugs for preventing conception were included among the articles of prohibited importation. However, the later enactment of Republic Act No. 4729 on June 18, 1966, according to an opinion rendered by the Secretary of Justice, repealed, by necessary

<sup>40</sup> Rep. Act. No. 1937 (1957).

<sup>41</sup> Act No. 2711 (1917).

implication, the provisions of the Tariff and Customs Code, as well as other laws and regulations which prohibit the entry of contraceptives into the Philippines.<sup>42</sup>

This subsequent law makes it unlawful for any person, partnership or corporation to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.<sup>43</sup> The question as to the continued applicability of Section 102(d) of the Customs and Tariff Code arose because of the family planning programs being undertaken by various private organizations, requiring the importation of contraceptives. Earlier, the Commissioner of Customs and the Secretary of Finance (officers concerned with the enforcement of the Customs and Tariff Code) affirmatively ruled that a repeal had indeed taken place. The Secretary of Justice, as Chief Legal Adviser of the Government, stated that the later law had the effect of making contraceptives legitimate articles of commerce provided that they are handled by qualified persons; and that there is an irreconcilable conflict between the two statutes since one seeks to prohibit the importation of an article because its use is considered injurious to public health and morals, while the other allows the sale or distribution thereof to the public because its use or distribution is no longer deemed detrimental *per se* to public health and morals.

The Pharmacy Law,<sup>44</sup> passed later, similarly prohibits the delivery or sale to any person without a proper prescription by a duly licensed physician of any drug or chemical product or device capable of preventing conception. Under the same condition, it prohibits the delivery or sale of drugs or devices capable of inducing abortion. It also requires a pharmacist in charge of a drug store or pharmacy after filling a prescription containing abortive or anticonceptional substances or devices to record in a

---

<sup>42</sup> Opinion dated April 28, 1969.

<sup>43</sup> A "contraceptive drug" is defined as "any medicine, drug, chemical or potion which is used exclusively for the purpose of preventing fertilization of the female ovum", while "contraceptive device" is "any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception." (Sec. 2) The penalty for violating this law is a fine of not more than five hundred pesos or imprisonment of not less than six months nor more than one year or both such fine or imprisonment in the discretion of the court. (Sec. 3).

<sup>44</sup> Rep. Act. No. 5921 (1969).

separate register book for abortives and anticonceptionals, the following data:

- (a) number and date of the prescription;
- (b) name and address of the physician;
- (c) name, quantity and manufacturer of the drug;
- (d) name and address of the purchaser;
- (e) date of filling the prescription; and
- (f) signature of the pharmacist filling the prescription.<sup>45</sup>

A violation of this provision entails a fine of not less than one hundred pesos but not exceeding five hundred pesos, or imprisonment of not less than thirty days but not more than four months, in the discretion of the court.<sup>46</sup> Under the Revised Penal Code, on the other hand, any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer the penalty of *arresto mayor* and a fine not exceeding ₱1,000.00.<sup>47</sup> Thus it would seem that the sale or delivery of abortives by pharmacists is allowed both by the Pharmacy Law and the Revised Penal Code provided it is done upon proper prescription by a qualified physician.

The Pharmacy Law also provides that aiding or abetting the commission of criminal abortion or sex crimes through illegal compounding, dispensing or sale of abortive or sex drugs is sufficient ground for reprimand of a pharmacist or for suspension or revocation of his certificate of registration.<sup>48</sup> Any pharmacist who continues to engage in the practice of pharmacy after his certificate of registration has been lawfully suspended or revoked shall, upon conviction, be sentenced to the same penalty as that provided for the sale of abortive or contraceptive drugs without prescription.

## 2. Dissemination of Birth Control Information

The Postal Law, which is contained in the Revised Administrative Code,<sup>49</sup> classifies as absolutely non-mailable matter, contraceptive drugs or devices, including all printed matters or photographs which give information on abortion and contraception.

---

<sup>45</sup> Sec. 37.

<sup>46</sup> Sec. 41.

<sup>47</sup> REV. PENAL CODE, Art 259, par. 2. *Arresto mayor* is imprisonment ranging from 1 month and 1 day to six months.

<sup>48</sup> Sec. 13.

<sup>49</sup> Act No. 2711 (1917), chapter 52.

Absolutely non-mailable matter which is deposited in any post office for transmission or delivery by mail shall be forfeited to the Government.<sup>50</sup> Section 1954 of the Revised Administrative Code specifically provides:

"No matter belonging to any of the following classes, whether sealed as first-class matter or not, shall be imported into the Philippines through the mails, or be deposited in or carried by the mails of the Philippines, or be delivered to its addressee by any officer or employee of the Bureau of Posts:

x x x

"(c) Articles, instruments, drugs and substances designed, intended or adapted for preventing conception or producing abortion, or for any indecent or immoral use, or which are advertised or described in a manner calculated to lead another to use or apply them for preventing conception or producing abortion, or for any indecent or immoral purpose.

"(d) Written or printed matter and photographs, engravings, lithographs, and other representations of an obscene, lewd, lascivious, filthy, indecent, or libelous character, including all such matter which advertises or describes or gives directly or indirectly, information where, how, from whom, or by what means any article, instrument, drug, or substance enumerated in the preceding subsection hereof may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced."

x x x x

The commission of any act covered by this prohibition is punished by a fine of not more than three hundred pesos or by imprisonment for not more than six months or both.<sup>51</sup>

From the provisions of the Postal Law the impression generated is that information on contraception and abortion is considered by public policy as a species of obscene publications. Obscene publications in general are, however, dealt with in the Revised Penal Code, but nowhere is the publication of information on contraception or abortion specifically penalized. Article 201 reads:

"The penalty of *prision correccional*<sup>52</sup> in its minimum period, or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon:

---

<sup>50</sup> Sec. 1956.

<sup>51</sup> REV. ADM. CODE, sec. 2757.

"1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

"2. The authors of obscene literature, published with their knowledge in any form, and the editors publishing such literature;

"3. Those who in theaters, fairs, cinematographs, or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts, or shows; and

"4. Those who shall sell, give away, or exhibit prints, engravings, sculptures, or literature which are offensive to morals."

By judicial interpretation, the word "obscene" as used in this article means something offensive to chastity, decency or delicacy. The test is whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands such a publication may fall, and also whether or not its publication or act shocks the ordinary and common sense of men as an indecency.<sup>53</sup> Information on birth control or abortion with the obvious purpose of educating the reader would not, under the present state of the law, be prohibited under this provision, unless, of course, a showing is made that it is being used as subterfuge for the dissemination of hardcore pornography. It would also seem to follow that, under the opinion of the Secretary of Justice, that portion of the Postal Law relating to contraceptives has been impliedly repealed by Republic Act No. 4729. By the same token, the portion relating to abortion may be taken to have been repealed by the Pharmacy Law, inasmuch as the delivery and sale of abortives are prohibited only if without a proper prescription by a physician. Be this as it may, the President, by Letter of Instruction No. 47-A<sup>54</sup> dated December 8, 1972, has directed the Secretary of the Department of Public Information and the Postmaster General to help implement the programs of the Commission on Population by disseminating information on family planning.

## B. *Abortion*

Abortion constitutes a class of felonies under the Revised Penal Code.<sup>55</sup> While it is not defined in the Code, commentators are of the opinion that it is the willful killing of the foetus in the uterus, or

---

<sup>52</sup> *Prision correccional* in its minimum period is imprisonment ranging from six months and 1 day to 2 years and 4 months (Art. 76).

<sup>53</sup> *U.S. v. Kottinger*, 45 Phil. 852 (1923).

<sup>54</sup> 68 O.G. 9885 (Dec., 1972).

<sup>55</sup> Act No. 3815 (1930), arts. 256-259.

the violent expulsion of the foetus from the maternal womb which results in the death of the foetus.<sup>56</sup> The Penal Code has classified abortion into several kinds, according as to whether it is intentional<sup>57</sup> or unintentional,<sup>58</sup> or whether it is practiced by the woman herself, her parents,<sup>59</sup> a physician or a midwife.<sup>60</sup>

In intentional abortion, the severity of the penalty is graduated depending on whether the person who caused it acted with violence (actual physical force) or with or without the consent of the woman. If the offender who intentionally caused an abortion used any violence on the person of the pregnant woman, he shall suffer the penalty of *reclusion temporal*;<sup>61</sup> if he acted without using violence but without the consent of the woman, he shall suffer the penalty of *prision mayor*<sup>62</sup> and if he acted without using violence with the consent of the woman,<sup>63</sup> the penalty shall be that of *prision correccional* in its medium and maximum periods.<sup>64</sup>

Unintentional abortion is committed if violence is inflicted on a pregnant woman, resulting in an abortion, but the offender did not intend to cause the abortion.<sup>65</sup> This crime carries with it the penalty of *prision correccional* in its minimum and medium periods.<sup>66</sup> Thus a person who struck a woman—three months pregnant—on her hip with a bottle, causing hemorrhage and miscarriage, was held guilty of unintentional abortion.<sup>67</sup>

A woman who practices abortion upon herself or consents that any other person should do so shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>68</sup> Her liability is, however, mitigated if her purpose is to conceal her dishonor, in which case, the law provides that she shall only suffer

---

<sup>56</sup> CARRARA, cited in G.B. GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES 510 (4th ed., 1946.)

<sup>57</sup> Art. 256.

<sup>58</sup> Art. 257.

<sup>59</sup> Art. 258.

<sup>60</sup> Art. 259.

<sup>61</sup> *Reclusion temporal* is imprisonment ranging from 12 years and 1 day to 20 years, (Art. 76).

<sup>62</sup> *Prision Mayor* is imprisonment ranging from 6 years and 1 day to 12 years.

<sup>63</sup> Art. 256.

<sup>64</sup> Art. 76. *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>65</sup> Art. 257.

<sup>66</sup> *Prision correccional* in its minimum and medium periods is imprisonment ranging from 6 months and 1 day to 4 years and 2 months.

<sup>67</sup> U.S. v. Jeffrey, 15 Phil. 391 (1910).

<sup>68</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years, (Art. 76).

the penalty of *prision correccional* in its minimum and medium periods.<sup>69</sup> Should the abortion be committed by the parents of the pregnant woman or either of them, and they act with her consent, they shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>70</sup>

The penalties provided for intentional abortion are imposed in their maximum period on physicians or midwives who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same. The law is silent on the specific manner in which abortion is caused or assistance is rendered thereto (for instance by an operation or by the prescription or administration of abortives). The reason for the imposition of the maximum penalty in this case, according to some commentators, is that physicians or midwives incur a heavier guilt in making use of their knowledge for the destruction of human life, whereas it should be used only for preservation.<sup>71</sup> Whether or not there has been a criminal conviction, a physician who has performed an abortion may lose his license to practice medicine, under paragraph 8, section 24, of Republic Act No. 2382. The performance of or aiding in, any criminal abortion is a ground for reprimand, suspension or revocation of his registration certificate under this law.

Under the Revised Population Act, abortion is considered an unacceptable method of birth control. Section 4(f) of the law enjoins the Commission to "encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth control such as abortion . . ." Section 4(i) directs it to "make available all acceptable methods of contraception except abortion to all Filipino citizens . . ."

### C. Sterilization

Sterilization as such is not denominated as a crime in the Penal Code. The Code, however, penalizes mutilation, commonly known as castration, which may result in sterilization. A penalty

---

<sup>69</sup> Art. 76. *Prision correccional* in its minimum and medium periods is imprisonment ranging from 6 months and 1 day to 4 years and 2 months.

<sup>70</sup> Art. 258. *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>71</sup> ALBERT, REVISED PENAL CODE 582 (1948), cited in 2 REYES, REVISED PENAL CODE; CRIMINAL LAW 420 (9th ed., 1971).

ranging from *reclusion temporal* to *reclusion perpetua*<sup>72</sup> is imposed on any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ of reproduction.<sup>73</sup> This crime consists in the amputation of whatever organ is necessary for reproduction. It is named first among the class of physical injuries, and ranks gravest in the order of severity of punishment. As observed by commentators on the Penal Code: "The law could not fail to punish with the utmost severity such a crime, which, although not destroying life, deprives a person of means to transmit it."<sup>74</sup> There has been no Supreme Court decision as yet on the question of whether a vasectomy or salpinxectomy voluntarily procured comes within the purview of this article of the Code. There is therefore some doubt as to whether these are punishable. In the first place, the article appears to assume that the mutilation was done intentionally and against the will or without the consent of the party mutilated, like all other kinds of physical injuries defined in the Penal Code. Second, if the law wished to penalize consented mutilation, it could have said so, as it did in intentionally consented abortion. Third, the notion of mutilation, as commonly understood in the Penal Code, involves normally the removal of the sex glands — i.e., ovaries of the female or the testicles of the male. This does not occur in these two sterilization operations.

The Secretary of Justice in an opinion<sup>75</sup> maintains that surgical sterilization for both sexes (tubal ligation and vasectomy) cannot be regarded as mutilation within the contemplation of Article 262 of the Penal Code because (1) mutilation involves the lopping or clipping off of some part of the body<sup>76</sup> which is not involved in these operations; (2) there can be no offense committed where the subject consents knowingly to the operation in the same manner that no offense is committed by a surgeon who intentionally removes, for instance, an eye or a kidney from a person who consents thereto for the purpose of transplanting it to another; and (3) national policy expressed in the Revised Population Act would be thwarted if these two methods are considered illegal.

---

<sup>72</sup> *Reclusion temporal* to *reclusion perpetua* is imprisonment ranging from 12 years and 1 day to 30 years.

<sup>73</sup> Art. 262.

<sup>74</sup> 3 VIADA, CODIGO PENAL 70 cited in 2 REYES, *op. cit.*, *supra*, note 71 at 562.

<sup>75</sup> Opinion No. 131, S. 1973.

<sup>76</sup> U.S. v. Bogel, 7 Phil. 285 (1907).

#### D. *Infanticide*

Infanticide has been defined as the killing of any child less than three days of age, whether by a parent or grandparent, any other relative of the child, or a stranger.<sup>77</sup> The father or mother or legitimate grandparent who commits infanticide shall suffer the same penalty as that imposed for parricide<sup>78</sup> which is *reclusion perpetua* to death.<sup>79</sup> If the offender is not so related to the child, the penalty corresponding to murder shall be imposed<sup>80</sup> which is *reclusion temporal* in its maximum period to death.<sup>81</sup> However, should the mother of the child commit the crime for the purpose of concealing her dishonor, she shall suffer the penalty of *prision correccional* in its medium and maximum periods.<sup>82</sup> The penalty of *prision mayor* shall be imposed on the maternal grandparents or either of them if they perpetrated the crime for the same purpose.<sup>83</sup> The reason for mitigating the offense, as stated by a commentator<sup>84</sup> is as follows:

"We understand that the responsibility of the mother is mitigated when, right after giving birth to a baby born out of an illicit relationship, without time to reflect, excited and obfuscated solely by the fear of her dishonor being made public, she desires to erase the traces of her mistake. Within that same day, we understand that obfuscation, but on the day following, or on the third day, when that disgraced child has been taken by the mother on her lap, when the warmth of maternal love from the mother's breast has been communicated to it, when it has been given a kiss on its innocent cheek, honor cannot overcome filial love, a love which has no equal on earth."

### III. LAW ON FAMILY PLANNING EDUCATION AND SERVICES

Republic Act No. 6365 (otherwise known as the Population Act of 1971 prior to its amendment by Presidential Decree No.

---

<sup>77</sup> 2 REYES, *op. cit.*, *supra*, note 71 at 411.

<sup>78</sup> REV. PENAL CODE, Art. 255.

<sup>79</sup> *Reclusion Perpetua* is life imprisonment.

<sup>80</sup> REV. PENAL CODE, Art. 255.

<sup>81</sup> *Reclusion temporal* in its maximum period is imprisonment of 17 years, 4 months and one day.

<sup>82</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and one day to 6 years.

<sup>83</sup> REV. PENAL CODE, Art. 255.

<sup>84</sup> VIADA, cited in 2 REYES, *op. cit.*, *supra*, note 71 at 412.

79) did not specify in detail how family planning education and services should be carried out. It broadly stated that the Commission shall "put up family planning clinics in cooperation with the Department of Health"; undertake such action projects as are necessary; and "disseminate technical and scientific information relating to medical, social, economic and cultural phenomena as these affect or are affected by population." The Population Commission has, since its creation, pursued the policy of promoting "the broadest understanding by the people of the adverse effects on family life and national welfare of unlimited population growth and to provide the means by which couples can effectively determine the proper size of their families." To this end, the Government, through its instrumentalities, undertakes and encourages the giving of information and services for couples who wish to space or limit their child-bearing activities. The cooperation of private agencies has been enlisted in establishing a sustained intensive and co-ordinated program of public information using all media and a variety of techniques.<sup>85</sup> The Revised Population Act makes it an objective of the Commission "to make family planning a part of a broad educational program."<sup>86</sup> By Letter of Instruction No. 47<sup>87</sup> the President has instructed the Secretary of Education and Culture to inform all schools of medicine, nursing, midwifery, allied medical professions and social work to prepare, plan and implement the integration of family planning in their curricula and to require from their graduates sufficient instruction in family planning as a prerequisite to qualifying for appropriate licensing examination.

In line with the Commission's objective, the Secretary of Education and Culture has directed that a youth civic action program be integrated in the curriculum of all public and private schools, colleges and universities throughout the country.<sup>88</sup> Participation in a youth civic action program shall be required for graduation beginning school year 1973-74. For secondary school and college students, the program involves, among others, a lecture on population education and the preparation of posters for population education.

---

<sup>85</sup> Population Program F.Y. 1972-76, p. 3-4.

<sup>86</sup> Rep. Act. No. 6365 (1971), as amended, sec. 4.

<sup>87</sup> Dated December 8, 1972, 68 O.G. 9885 (Dec., 1972).

<sup>88</sup> Department Order No. 53, dated December 29, 1972.

## IV. FAMILY LAW AFFECTING POPULATION

### A. *Minimum Marriage Age*

Under the Civil Code, the minimum marriage age is sixteen for the male and fourteen for the female. Article 54 of the Civil Code provides:

“Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in articles 80 to 84 may contract marriage.”

### B. *Polygamy and Bigamy*

Polygamous or bigamous marriages are expressly declared void from the beginning by Article 80 of the Civil Code. In addition, Article 83 states:

“Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

“(1) The first marriage was annulled or dissolved; or

“(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.”

The Revised Penal Code imposes the penalty of *prision mayor*<sup>89</sup> on any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.<sup>90</sup>

### C. *General Marriage Laws*

Marriage is considered by the Civil Code not as a mere contract but as an inviolable social institution. Hence, its nature, consequences and incidents are governed by law and not subject

---

<sup>89</sup> Imprisonment ranging from 6 years and 1 day to 12 years.

<sup>90</sup> Art. 349.

to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.<sup>91</sup> No marriage can be solemnized unless the following requisites are complied with: (1) legal capacity of the contracting parties, (2) their consent freely given, (3) authority of the person solemnizing the marriage, and (4) a marriage license, except in a marriage of exceptional character.<sup>92</sup> Any person who has reached the minimum age can contract marriage, provided he is not under any of the legal impediments mentioned in Articles 80 to 84 of the Code.<sup>93</sup> The marriage license shall be issued by the local civil registrar if each of the contracting parties swears to an application in writing that he or she has the necessary qualifications for contracting marriage.<sup>94</sup> If the male is less than twenty years of age or the female less than eighteen years, the party concerned is required to exhibit to the local civil registrar the written consent to the marriage of his or her father or mother or guardian or person having charge of him or her.<sup>95</sup> In this case, if the marriage was nevertheless solemnized without the consent of the parent or guardian, the marriage may be annulled, unless after attaining the age of 20 or 18 years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife.<sup>96</sup> Males above 20 but under 25 years of age, or females above 18 but under 25 years of age, are obliged to ask their parents or guardians for advice on the intended marriage. If they do not obtain such advice or if it be unfavorable, the marriage shall not take place till after three months following the completion of the publication of the application for the marriage license.<sup>97</sup>

The following marriages are incestuous, and hence void, whether the relationship between the parties be legitimate or illegitimate: (1) between ascendants and descendants of any degree; (2) between brothers and sisters, whether of the full or half blood; and (3) between collateral relatives by blood within the fourth

---

<sup>91</sup> Art. 52.

<sup>92</sup> Art. 53.

<sup>93</sup> Art. 54. In general, the impediments mentioned in Arts. 80 to 84 refer to those (1) where there is a lack of any of the essential requisites of marriage, i.e., age [Art. 80]; (2) bigamous or polygamous marriages (Art. 83); (3) incestuous marriages or quasi-incestuous marriages [Arts. 81-82].

<sup>94</sup> Art. 59.

<sup>95</sup> Art. 61.

<sup>96</sup> Art. 85.

<sup>97</sup> Art. 62.

degree.<sup>98</sup> The Civil Code also declares void from the beginning marriages (1) between stepfathers and stepdaughters, and stepmothers and stepsons; (2) between the adopting father or mother and the adopted, between the latter and the surviving spouse of the former, and between the former and the surviving spouse of the latter; and (3) between the legitimate children of the adopter and the adopted.<sup>99</sup> Under the Revised Penal Code, the penalty of *prision correccional* in its medium and maximum periods<sup>100</sup> is imposed upon any person who shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment. If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by *arresto mayor* in its maximum period.<sup>101</sup>

#### D. *Annulment of Marriage*

Marriage may be annulled for any of the following causes existing at the time of the marriage:<sup>102</sup>

(1) If the party in whose behalf it is sought to have the marriage annulled was between the ages of 16 and 20 years if male, or between the ages of 14 and 18 years if female, and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party, unless after attaining the ages of 20 or 18 years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife. The action for annulment may be brought either (a) by the party whose parent or guardian did not give his consent, within 4 years after attaining the age of twenty or eighteen years, as the case may be, or (b) by such parent or guardian himself, before the minor party for whose account it is brought reaches the age of 20 or 18 years.<sup>103</sup>

(2) If in a second marriage, the former husband or wife believed to be dead was in fact living and the marriage with such former husband or wife was then in force. The absent spouse who

---

<sup>98</sup> Art. 81.

<sup>99</sup> Art. 82.

<sup>100</sup> *Prision correccional* in its medium and maximum periods is imprisonment ranging from 2 years, 4 months and 1 day to 6 years.

<sup>101</sup> Art. 350. *Arresto mayor* in its maximum period is imprisonment ranging from 4 months and 1 day to 6 months.

<sup>102</sup> Art. 85.

<sup>103</sup> Art. 87(1).

has reappeared may bring the action at any time during his or her lifetime or either spouse of the subsequent marriage may do so at any time during the lifetime of the other.<sup>104</sup>

(3) If either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife. Insanity must exist at the time of the marriage and not before or after.<sup>105</sup> If the sane spouse knew that the other was insane at the time of the marriage, he cannot bring the action for annulment.<sup>106</sup> The action may be instituted by the sane spouse or relative or guardian of the insane party at any time before the death of either party.<sup>107</sup>

(4) If the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be. The only cases of fraud allowed in this instance are: (a) misrepresentation as to the identity of one of the contracting parties: (b) non-disclosure of a previous conviction of the other party of a crime involving moral turpitude where the penalty imposed was imprisonment for two years or more; and (c) concealment by the wife of the fact that at the time of the marriage, she was pregnant by another man other than her husband. No other misrepresentation as to character, rank, fortune, or chastity is considered such fraud as to constitute ground for the annulment of marriage.<sup>108</sup> The action for annulment based on fraud must be brought within four years after the discovery of the fraud.<sup>109</sup>

(5) If the consent of either party was obtained by force or intimidation, unless the violence or threat having disappeared, such party afterwards freely cohabited with the other. There is violence if serious or irresistible force is employed; intimidation, when there exists a reasonable and well-grounded fear of imminent and grave evil upon the person or property of the contracting party or his immediate relative.<sup>110</sup> The action must be instituted by the injured party within four years from the time the force or intimidation ceased.<sup>111</sup>

---

<sup>104</sup> Art. 87(2).

<sup>105</sup> *Katipunan v. Tenorio*, C.A.-G.R. No. 43442, September 29, 1937; 38 O.G. 172 (January, 1940).

<sup>106</sup> Art. 87(3).

<sup>107</sup> Art. 87(3).

<sup>108</sup> Art. 86.

<sup>109</sup> Art. 85(4).

<sup>110</sup> Art. 1335.

<sup>111</sup> Art. 85(5).

(6) If either party was physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. Physical incapacity refers to impotency and not sterility; it is the physical inability to have sexual intercourse.<sup>112</sup> The presumption of law is in favor of potency.<sup>113</sup> The action for annulment on the ground of impotence is available to the "injured party" at any time within eight years after the marriage.<sup>114</sup>

As earlier intimated, marriage is considered by law as an inviolable social institution, hence courts are strict and cautious in granting annulments.<sup>115</sup> Marriage may be annulled only by judgment of a competent court and on the grounds provided by law. Once declared, the nullity relates back to the beginning of the marriage. No judgment annulling a marriage can be promulgated on a stipulation of facts or by confession of judgment. The Rules of Court require that the material facts alleged in the complaint should be proved.<sup>116</sup> If the defendant makes no appearance in court, the judge shall order the prosecuting attorney to investigate whether collusion between the parties exists.<sup>117</sup> Annulment of marriage dissolves the marital bonds, and in the words of the Supreme Court, "abolishes the legal character of the society formed by the putative spouses."<sup>118</sup> However, it cannot destroy the juridical consequences which the marital union produced during its continuance.<sup>119</sup> Thus, under the Civil Code, children conceived or born of voidable marriages before the decree of annulment are considered legitimate.<sup>120</sup>

#### E. *Divorce*

The Civil Code does not sanction absolute divorce. However, it permits relative divorce or, as the concept is called in the Civil Code, legal separation. During the Spanish regime, the law on divorce in the Philippines was found in the *Siete Partidas*,<sup>121</sup> which allowed only relative divorce. Absolute divorce was decreed, however, during the American occupation, by Act No. 2710, which was passed on March 11, 1917. The Supreme Court in the case of

---

<sup>112</sup> *Menciano v. San Jose*, 89 Phil. 63 (1951).

<sup>113</sup> *Jimenez v. Cañizares*, G.R. No. 12790, August 31, 1960, 60 O.G. 4938 (Aug., 1964).

<sup>114</sup> Art. 87(6).

<sup>115</sup> *Roque v. Encarnacion*, 95 Phil. 643 (1954).

<sup>116</sup> Rule 9, Sec. 1.

<sup>117</sup> Arts. 88 and 101.

<sup>118</sup> *Sy Joe Mong v. Sy Quia*, 16 Phil. 137 (1910).

<sup>119</sup> *Ibid*

<sup>120</sup> Art. 49(2).

<sup>121</sup> Fourth *Partida*, Title 10, Laws 1 and 2 cited in *Benedicto v. de la Rama*, 8 Phil. 34, 40 (1905).

*Valdez v. Tuazon*<sup>122</sup> ruled that Act No. 2710 abolished relative divorce and established a regime of absolute divorce. During the Japanese occupation, a new divorce law, Executive Order No. 141, purported to repeal Act No. 2710 and to increase the grounds for absolute divorce. This Executive Order was abrogated by proclamation of the Commander-in-Chief of the United States Army of Liberation, declaring all laws passed during the Japanese occupation null and void. Thus, Act No. 2710 was revived. When the Civil Code took effect on August 30, 1950, it provided only for legal separation, or separation from bed and board, and eliminated absolute divorce from Philippine Law. Foreign divorces obtained by citizens of the Philippines are not recognized, according to Article 15 of the Code, which provides that "laws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." Article 17 stipulates that "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country." Divorces among Filipino Moslems residing in non-Christian provinces are recognized by law; by legal provision, these were allowed to be governed by Moslem customs and practices.<sup>123</sup>

Legal separation is not easily obtained under the Civil Code. The only grounds for legal separation are: (1) adultery on the part of the wife and concubinage on the part of the husband as defined in the Penal Code; and (2) an attempt by one spouse against the life of the other.<sup>124</sup> Under the Revised Penal Code, adultery is committed by a married woman who has sexual intercourse with a man not her husband.<sup>125</sup> Concubinage, on the other hand, is committed by a husband who (a) keeps a mistress in the conjugal dwelling or (b) cohabits with her in any other place, or (c) has sexual intercourse with a woman who is not his wife under scandalous circumstances.<sup>126</sup> In every petition for legal separation, the Court is duty-bound to take steps, before granting the legal separation,

---

<sup>122</sup> 40 Phil. 943 (1920).

<sup>123</sup> Rep. Act No. 394, approved June 17, 1949. This recognition was for a period of 20 years from the date of approval of the Act. This was extended to 30 years by Rep. Act No. 6268, approved June 19, 1971.

<sup>124</sup> Art. 97.

<sup>125</sup> Art. 333.

<sup>126</sup> REV. PENAL CODE, Art. 334.

toward the reconciliation of the spouses, and must be fully satisfied that such reconciliation is highly improbable.<sup>127</sup> A person is not entitled to legal separation unless he has resided in the Philippines for one year prior to the filing of the petition for separation, except when the cause for legal separation had taken place within Philippine territory.<sup>128</sup> The action must be commenced within one year from the date the plaintiff became cognizant of the cause and within five years from the date when such cause occurred.<sup>129</sup> In no case shall an action for legal separation be tried before six months shall have elapsed since the filing of the petition.<sup>130</sup>

Legal separation may be claimed only by the innocent spouse. Where both spouses are offenders, it cannot be claimed by either of them. It will not be granted where there is condonation of, or consent by the innocent spouse to, the adultery or concubinage. Collusion between the parties to obtain legal separation shall cause the dismissal of the petition.<sup>131</sup> Neither shall a decree of legal separation be issued upon a stipulation of facts or by confession of judgment. In case of non-appearance of the defendant, the court shall order the prosecuting attorney to inquire whether or not a collusion between the parties exists. If there is no collusion, the prosecuting attorney shall intervene for the state in order to insure that the evidence for the plaintiff is not fabricated.<sup>132</sup> If the spouses are reconciled before the granting of the decree of legal separation, the proceedings shall be stopped; reconciliation after the rendition of the decree of legal separation rescinds it.<sup>133</sup> The decree of legal separation has the following effects:

(1) The spouses are entitled to live separately from each other, but the marriage bonds are not severed;

(2) The conjugal partnership of gains, or the absolute conjugal community of property, as the case may be, is dissolved and liquidated but the offending spouse has no right to any share of the profits earned by the partnership or the community, such share to go to the children of both, and the children of the guilty spouse had by a prior marriage;

(3) The innocent spouse shall have custody of the minor children unless otherwise directed by the court;

---

<sup>127</sup> CIVIL CODE, art. 98.

<sup>128</sup> CIVIL CODE, art. 99.

<sup>129</sup> CIVIL CODE, art. 102.

<sup>130</sup> CIVIL CODE, art. 103.

<sup>131</sup> CIVIL CODE, art. 100.

<sup>132</sup> CIVIL CODE, art. 101.

<sup>133</sup> CIVIL CODE, art. 108.

(4) The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession and the provisions in favor of the offending spouse made in the will of the innocent one are revoked by operation of law;<sup>134</sup>

(5) The innocent spouse may revoke the donations by reason of marriage made by him or by her to the offending spouse.<sup>135</sup>

#### F. *Paternity and Filiation*<sup>136</sup>

Under the Civil Code, children are classified as either legitimate or illegitimate. Legitimate children are those born in wedlock or within a competent time afterwards; the illegitimate are those born out of wedlock. Illegitimate children in turn are divided into (1) the natural, and (2) those not natural. The natural children belong to three categories: natural proper, natural by legal fiction, and natural by presumption. Natural children proper are those born out of wedlock of parents who, at the time of the conception of such children, were not disqualified to marry each other.<sup>137</sup> Natural children whose parents were not disqualified from marrying each other at the time they were conceived, and who have been recognized by their parents before or after the celebration of the marriage or have been judicially declared as natural, are considered legitimated by the subsequent marriage of their parents.<sup>138</sup> In virtue of the subsequent marriage of their parents, illegitimate children of this class are by fiction of law considered legitimate.<sup>139</sup> Natural children by legal fiction are those conceived or born of a void marriage, or conceived of a voidable marriage after the decree of annulment.<sup>140</sup> Natural children by presumption are those recognized by only one of the parents, who had legal capacity to contract marriage at the time of conception.<sup>141</sup> Illegitimate children who are not natural are those who do not fall under any of the categories of natural children stated above.

A child is presumed legitimate if born in lawful wedlock after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses. This presumption of legitimacy

---

<sup>134</sup> CIVIL CODE, art. 106.

<sup>135</sup> CIVIL CODE, art. 107.

<sup>136</sup> The discussion on Paternity and Filiation is substantially taken from GAMBOA, *op. cit.*, *supra*, note 19 at 121-123.

<sup>137</sup> CIVIL CODE, art. 269.

<sup>138</sup> CIVIL CODE, arts. 269-275.

<sup>139</sup> CIVIL CODE, art. 272.

<sup>140</sup> CIVIL CODE, art. 89.

<sup>141</sup> CIVIL CODE, art. 277.

can be overturned only if it was physically impossible for the husband to have access to his wife within the first one hundred and twenty days (the period of conception) of the three hundred which preceded the birth of the child. Physical impossibility of access might occur if the husband was (a) impotent, or (b) living separately from his wife as when he had been confined in prison or residing abroad or, (c) seriously ill during the stated period.<sup>142</sup>

Legitimate children are entitled (a) to bear the surnames of their parents, (b) to receive support from them, from their ascendants, and in proper cases from their brothers and sisters, and (c) to inherit from their parents and relatives.<sup>143</sup> Natural children who have been legitimated by the subsequent marriage of the parents are entitled to the same rights as legitimate children. Other illegitimate children who are not or cannot be legitimated enjoy lesser successional and other civil rights.<sup>144</sup>

## V. LAWS ON ECONOMIC FACTORS RELATED TO FAMILY

### A. *Maternity Benefits*

The Woman and Child Labor Law<sup>145</sup> extends maternity protection to women in private employment under the following forms:

- (1) Maternity leave with pay;
- (2) Vacation leave without pay in addition to the maternity leave, for illness arising from the pregnancy, delivery or miscarriage;
- (3) Prohibition against discharge for prolonged absence on the ground of such illness; and
- (4) Nursing as well as nursery privileges.<sup>146</sup>

Maternity protection under this law is extended to any woman employee who may be pregnant, whether married or unmarried, for the first four deliveries.<sup>147</sup> In case of expected normal delivery, any woman employed who has rendered an aggregate service of at least 6 months for the last twelve months is entitled to a leave period of two weeks prior thereto and four weeks thereafter. During

---

<sup>142</sup> CIVIL CODE, art. 255; RULES OF COURT (1964); Rule 131, Sec. 4(a).

<sup>143</sup> CIVIL CODE, art. 264.

<sup>144</sup> CIVIL CODE, arts. 272, 282, 287 and 895.

<sup>145</sup> Rep. Act No. 679 (1952), as amended by Pres. Decree No. 148 dated March 13, 1973.

<sup>146</sup> Sec. 8.

<sup>147</sup> Revised Rules and Regulations implementing Rep. Act No. 679 hereinafter referred to as WCL RULES, Sec. 7.

such leave period, she is entitled to full pay.<sup>148</sup> Maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the woman unfit for work unless she has earned unused leave credits from which such extended leave may be charged.<sup>149</sup> Prolonged absence on account of illness incident to pregnancy, delivery or miscarriage is not a valid ground for discharge.<sup>150</sup> It is unlawful for any employer to discharge any woman employed by him for the purpose of preventing such woman from enjoying maternity benefits or on account of her pregnancy or while on leave or in confinement due to her pregnancy; or to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.<sup>151</sup> Formerly, the law imposed a duty on an employer to allow any woman employee who was nursing a child at least half an hour twice a day during her working hours to nurse her child.<sup>152</sup> It was also the duty of every employer having at least 15 women in his employ to establish an adequate nursery near the place of work where they may leave their children, said nursery to be under the supervision of either a registered nurse or a qualified midwife.<sup>153</sup> The law as amended by Presidential Decree No. 148 now authorizes the Secretary of Labor to issue regulations requiring employers to establish nurseries in their work places for the benefit of women employees.<sup>154</sup> Establishments which are required by law to maintain a clinic or infirmary now have a duty to provide free family planning services to their employees. This includes, but is not limited to, the application or use of contraceptive and/or intra-uterine devices.<sup>155</sup> In coordination with the other agencies of the Government engaged in the promotion of family planning, the Department of Labor shall develop and prescribe incentive bonus schemes to encourage family planning among the married workers in any establishment or enterprise.<sup>156</sup>

Under Department of Labor Order No. 7, series of 1973,<sup>157</sup> employers who habitually employ more than 300 workers shall provide free family planning services to their employees and their

---

<sup>148</sup> Rep. Act No. 679 (1952) as amended, sec. 8(a).

<sup>149</sup> Sec. 8(b).

<sup>150</sup> Rep. Act No. 679, as amended, Sec. 8(a).

<sup>151</sup> Rep. Act No. 679, as amended, sec. 12(a).

<sup>152</sup> Rep. Act No. 679, (1952) as amended, sec. 8(b).

<sup>153</sup> Rep. Act No. 679, (1952) as amended, sec. 8(c).

<sup>154</sup> Sec. 8(d).

<sup>155</sup> Sec. 8(e).

<sup>156</sup> Sec. 8(f).

<sup>157</sup> 3 ALEC REPORT 7 (Dec., 1973).

spouses, which shall include the application or use of contraceptive or intra-uterine drugs or devices. Firms falling within this category shall maintain in their infirmary a family planning clinic, and the physicians and dentists who take charge of the clinical services of the workers as required by the Free Emergency Medical and Dental Treatment Act<sup>158</sup> shall be trained in family planning in a duly recognized family planning training center. In establishments with more than 200 but less than 300 workers family planning services shall be administered by retained or full-time physicians. If the number of workers is 30 or more but less than 200, the services shall be under the charge of a nurse duly certified by the POPCOM or its designated representatives. The Department Order enjoins and encourages business firms to experiment with the giving of bonuses and awards to successful contraceptors. They are expected to calculate the savings in finances and man-hours, accruing because of successful employee participation in family planning activities. Savings may take the form of unused maternity leaves, medical care which is forgone by reason of non-pregnancy and non-delivery, medical, educational and other dependency benefits not utilized as a result of reduced childbearing. A portion of these savings may be utilized in incentives and bonuses for successful participation in family planning such as: (a) Pension plans, insurance benefits, savings deposits or other social security measures for employees who participated effectively in the family planning program; (b) Bonuses in terms of leaves and time-off for contraceptive acceptance or for successfully avoiding pregnancy; (c) Cash, leave, or promotion credit bonuses to female employees who do not utilize maternity leaves for a certain number of years; (d) Cash, commodity or benefit bonuses to employee-motivators for recruitment of acceptors and for successfully encouraging continuation on contraception; (e) Group bonuses to divisions and departments for exceeding certain levels of contraceptive acceptance or for accumulating certain numbers of aggregate years of non-pregnancy among employees; (f) Prizes and awards on a competitive basis to individuals, couples, or divisions for excellence in recruitment of acceptors, for continuation of practice for reduction of fertility, or for effectiveness of contraceptive methods accepted. Any bonus plan adopted will be reviewed by the firm's consultative and advisory committee on family planning to insure that the interests of labor are served, and that enrollment in bonus programs is voluntary and ethically acceptable to all concerned.

---

<sup>158</sup> Rep. Act No. 1054 (1954).

Married women who are permanently or temporarily appointed in the service of the Government, or in any of its branches, subdivisions or agencies, or instrumentalities, including the corporations and enterprises owned or controlled by the Government, in addition to the vacation and sick leave which they enjoy, are entitled in case of pregnancy to a maternity leave of sixty days subject to the following conditions:

(a) Permanent and regular employees who have rendered two or more years of continuous service are entitled to maternity leave with full pay;

(b) Permanent and regular employees who have rendered less than two years of continuous service shall be entitled to half pay;

(c) Temporary employees who have rendered two or more years of continuous service shall be entitled to maternity leave with half pay;

(d) Temporary employees who have rendered less than two years of continuous service are entitled to a number of days of maternity leave with pay based on the ratio of thirty days of maternity leave to two years of continuous service; and

(e) Temporary employees, who passed civil service examinations given before the date of the application for maternity leave but the result of which examinations were released after such date of application, are entitled to the maternity leave granted to regular employees as of the date when said examinations were given.<sup>159</sup>

The proper department head or chief of bureau or office is enjoined to avoid the assignment of strenuous and fatiguing work to married women under their charge who are in the state of pregnancy.<sup>160</sup>

#### B. *Child Care and Allowances*

The Philippines does not have any law dealing explicitly or directly with child allowances. It must be stated, however, that under the Civil Code, the father and the mother have, with respect to their unemancipated children, the duty to support them, to have them in their company, to educate and instruct them in keeping with their means, and to represent them in all actions which redound

---

<sup>159</sup> Com. Act No. 647 (1941) as amended, sec. 1.

<sup>160</sup> Com. Act No. 647 (1941) as amended, sec. 2.

to their benefit.<sup>161</sup> Consequently, every child is entitled under the the same Code to parental care, to receive at least elementary education, to be given moral and civil training by the parents and to live in an atmosphere conducive to his physical demands, moral and intellectual development.<sup>162</sup> For the purpose of promoting the full growth of the faculties of every child, the Code states that the Government will establish whenever possible:

1. Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian;
2. Puericulture and similar centers;
3. Councils for the Protection of Children; and
4. Juvenile courts.<sup>163</sup>

The Council for the Protection of Children, which was designed by the Civil Code to look after the welfare of children in the municipality, is invested with the following functions:

1. Foster the education of every child in the municipality;
2. Encourage the cultivation of the duties of parents;
3. Protect and assist abandoned or mistreated children, and orphans;
4. Take steps to prevent juvenile delinquency;
5. Adopt measures for the health of children;
6. Promote the opening and maintenance of playgrounds;
7. Coordinate the activities of organizations devoted to the welfare of children, and secure their cooperation.<sup>164</sup>

From all indications, the provision authorizing the establishment of the Council is a dead-letter law.

Juvenile and Domestic Relations Courts have been established in the Cities of Manila, Baguio, Naga, Iriga, Calocan, Dumaguete, and Quezon, and in the Provinces of Iloilo and Cebu.<sup>165</sup> These courts have jurisdiction over cases involving custody of children, guardianship, adoption, paternity and acknowledgment of natural children, annulment of marriages, legal separation of spouses, actions for support and proceedings affecting dependent or neglected children and other cases affecting deprivation of parental

---

<sup>161</sup> Art. 316.

<sup>162</sup> Art. 356.

<sup>163</sup> Art. 359.

<sup>164</sup> Art. 360.

<sup>165</sup> R.p. Act Nos. 1401 (1955), 6512 (1972), 6591 (1972), 5502 (1969), 5797 (1969), 4836 (1966), 4834 (1966), and 6586 (1972).

authority. They also have jurisdiction over criminal cases where the accused is 16 years of age or under at the time of the trial. In each court, there is established a social service and counseling division which prepares social case studies, performs probation, counseling and other social services in connection with cases filed with the court. A child is considered to be dependent or neglected if 16 years of age or under and (1) is destitute or dependent upon the public for support or (2) is homeless or abandoned or has no proper parental care or guardianship.

The Department of Social Welfare created by the Social Welfare Act of 1968<sup>166</sup> to replace the former Social Welfare Administration has been entrusted with the duty of developing and implementing a comprehensive social welfare program consisting among others of:

1. Preventive and remedial programs and services for individuals, families and communities; and
2. Protective, remedial and developmental welfare services for children and youth.<sup>167</sup>

Specifically, the Department:

1. Undertakes research programs and studies on matters pertaining to family life, the welfare needs of children and youth, the aged, the disabled and other individuals or groups with special needs;
2. Initiates and administers pilot social welfare projects designed to suit local settings, problems and situations for possible implementation on a nation-wide basis;
3. Accredits institutions and organizations, public and private, engaged in social welfare activity including licensing of child caring and child placement institutions, and provides consultative services relating thereto;
4. Establishes, administers and maintains such facilities as child caring institutions and others, whenever it may be deemed necessary to carry out the objectives of the Act.<sup>168</sup>

Under the Department, the Bureau of Family and Child Welfare has, among others, the function of formulating policies and

---

<sup>166</sup> Rep. Act No. 5416 (1968).

<sup>167</sup> Rep. Act No. 5416 (1968), sec. 3.

<sup>168</sup> Rep. Act No. 5416 (1968), sec. 3.

procedures, developing programs and standards, advising and assisting in the implementation of (a) social welfare services which will promote the social development of families, prevent family disorganization and develop population awareness, social consciousness, and civic responsibility; and (b) programs for the care, protection, training, rehabilitation and development of children such as the abused, abandoned, neglected and handicapped.<sup>169</sup>

The Department of Health, on the other hand, has enjoined all health personnel to integrate family planning activities in their respective services.<sup>170</sup> It has created the National Family Planning Office (formerly named National Comprehensive MCH Family Planning Project Office) which is charged primarily with the responsibility of over-all planning, administration, coordination and evaluation of the Family Planning Program of the Department. Its specific objectives are:

1. To integrate family planning services as part and parcel of the total family health program of the Rural Health-Family Planning Centers under the Department of Health. The basic health services provide opportunities and occasions for community education/information on family planning.
2. To provide family planning information, education and motivation during the pre-natal and post-natal periods and to make available family planning services to all eligible women who desire to limit-space their pregnancies during the pre-and inter-conceptual periods.
3. To improve maternal and child care through spacing of child-births.
4. To lower maternal and infant morbidity and mortality.
5. To lower the birth rate in order to attain a balance in our national economy between the demands of an increasing population and available resources.

The family planning program of the Department includes the establishment of family planning clinics in its eleven regions all over the country which would provide available contraceptives, acceptable methods to regulate fertility, free of charge, and marital and marriage guidance and counselling. The Department likewise coordinates with the Commission on Population in some activities vital to the effective implementation of the program, such as the utilization of paramedicals (with the approval of licensing authorities) in areas where services of physicians are not available, and

---

<sup>169</sup> Integrated Reorganization Plan, Pres. Decree No. 1, dated September 24, 1972.

<sup>170</sup> Department Circular No. 16, dated January 16, 1970.

of indigenous midwives as motivators in some areas of the country.<sup>171</sup>

### C. *Laws on Descent and Distribution of Property.*<sup>172</sup>

Succession under the Civil Code is a mode of acquisition by virtue of which the property, rights and obligations of a decedent are transmitted to another or others either by his will or by operation of law.<sup>173</sup> Succession may be: (1) testamentary; (2) legal or intestate; or (3) mixed.<sup>174</sup> Testamentary succession is that which results from the designation of an heir, made in a will executed in the form prescribed by law.<sup>175</sup> Legal or intestate succession is that which occurs by operation of law, while mixed succession is that effected partly by will and partly by operation of law.<sup>176</sup>

That part of the testator's property which he cannot dispose of by will, because the law has reserved it for compulsory heirs, is known as the legitime. The compulsory heirs for whom it is reserved by law are:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;
2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
3. The widow or widower;
4. Acknowledged natural children, and natural children by legal fiction; and
5. Other illegitimate children, e.g., adulterous children.<sup>177</sup>

If there are legitimate children and descendants, the legitimate parents and ascendants are excluded. But the widow or widower, the acknowledged natural children, the natural children by legal fiction and the other illegitimate children are not excluded even if there are legitimate children and descendants, or legitimate parents and ascendants; neither do they exclude each other. Thus the widow or widower and the illegitimate children share in the inheritance concurrently with the legitimate children or with the

---

<sup>171</sup> Department of Health, National Family Planning Office, Rules and Regulations.

<sup>172</sup> The discussion on the laws on descent is taken largely from GAMBOA, *op. cit.*, *supra*, note 19.

<sup>173</sup> Art. 774.

<sup>174</sup> Art. 778.

<sup>175</sup> Art. 779.

<sup>176</sup> Art. 780.

<sup>177</sup> Art. 887.

legitimate parents in every case, but their shares are taken from the free portion of the estate.

The legitime of the legitimate children and descendants consists of one-half of the entire estate of the father and of the mother. The other half, referred to as the free portion, may be disposed of by the testator freely, subject to the rights of the widow or widower and the illegitimate children.<sup>178</sup>

The legitime of legitimate parents or ascendants consists of one-half of the hereditary estate of their children and descendants, the other half likewise being free but subject to the rights of the illegitimate children and surviving spouse of the testator.<sup>179</sup>

The legitimate parents or ascendants of a testator are entitled to a legitime only in default of the latter's legitimate children and descendants.

The legitime of the widow or widower of the testator varies according to the classes and number of other compulsory heirs who survive with her or him. Where the only survivor is the spouse of the testator, his or her legitime generally consists of one-half of the estate and the other half is at the free disposal of the testator.<sup>180</sup> If only one legitimate child of the deceased survives with the widow or widower, the latter's legitime is one-fourth of the estate; if there are two or more legitimate children, the surviving spouse is entitled to a legitime equal to that of each of the legitimate children.<sup>181</sup> The general principle obtaining in the case of the surviving spouse is that he or she participates as a concurrent heir in all cases.<sup>182</sup> This is true also with respect to acknowledged natural children, natural children by legal fiction, and other illegitimate children.<sup>183</sup>

A compulsory heir may be deprived of his legitime by means of disinheritance for causes expressly provided by law.<sup>184</sup> The legal causes for the disinheritance of children and descendants, legitimate as well as illegitimate, are:

1. Conviction of an attempt against the life of the testator, his or her spouse, descendants or ascendants;

---

<sup>178</sup> Art. 888.

<sup>179</sup> Art. 889.

<sup>180</sup> Art. 900.

<sup>181</sup> Art. 892.

<sup>182</sup> See CIVIL CODE, arts. 893-894, 897-900.

<sup>183</sup> See CIVIL CODE, arts. 895-896, 901-903.

<sup>184</sup> Art. 915.

2. False accusation against the testator of a crime for which the law prescribes imprisonment for six years or more;
3. Conviction of adultery or concubinage with the spouse of the testator;
4. Causing the testator to make a will, or to change one already made, by fraud, violence, intimidation, or undue influence;
5. Refusal to support the testator without justifiable cause;
6. Maltreatment of the testator by word or deed;
7. Leading a dishonorable or disgraceful life; and
8. Conviction of a crime which carries with it the penalty of civil interdiction.<sup>185</sup>

Intestate succession takes place when a person dies without a will, or with a void or inefficacious will, or if no one succeeds under his will. If a will is valid but it disposes of only part of the testator's property, intestate succession takes place with respect to the rest of the property not covered by the will.<sup>186</sup> In these cases, since there are no testamentary heirs, the law determines who are to succeed to the inheritance of the deceased. Among those called by the law to succeed by intestacy are the relatives of the deceased, both legitimate and illegitimate, his surviving spouse and the State, according to a specified order. The relative nearest in degree excludes the more distant ones, except where the right of representation takes place. Relatives in the same degree inherit in equal shares except in the cases of brothers and sisters of the full blood and of the half-blood. The share of the brother or sister of the half-blood is one-half that of the brother or sister of the full blood.

The order of intestate succession is briefly summarized as follows: first, legitimate children and their descendants; second, legitimate parents and ascendants; third, illegitimate children and their descendants; fourth, the surviving spouse, without prejudice to the rights of brothers and sisters; fifth, collateral relatives within the fifth degree; and sixth, the State.

The above-listed classes of heirs inherit successively and exclusively — that is, one class succeeds only when there are no classes above it; and it excludes all other classes below it except that the surviving spouse and the illegitimate children are always entitled to their share as concurring heirs.

<sup>185</sup> Art. 919.

<sup>186</sup> CIVIL CODE, art. 960; *De Castro v. Billion*, 82 Phil. 69 (1948); *Ramos v. Marquez*, 10 Phil. 722 (1908); *Ignacio v. Martinez*, 33 Phil. 576 (1916).

#### D. *Immigration*

Under the Immigration Act of 1940,<sup>187</sup> aliens are classified into immigrants and non-immigrants. As defined in the law, an immigrant is any alien arriving from any place outside of the Philippines other than a non-immigrant.<sup>188</sup>

Immigrants are divided into quota immigrants and non-quota immigrants. For quota immigrants only 50 are allowed to enter for any nationality in any given year. These are further subdivided into (a) the preference quota, granted to fathers and mothers of Filipino citizens who are 21 years or over and to the wives, husbands and unmarried children under 21 of aliens lawfully admitted into the Philippines for permanent residence and residing therein;<sup>189</sup> and (b) the non-preference quota, granted to those who do not qualify for the preference quota.

Under Section 13 of the Act the following are non-quota immigrants: (a) The wife or the husband or the unmarried child under 21 years of age of a Philippine citizen, if accompanying or coming to join such citizen; (b) A child of alien parents born during the temporary visit abroad of the mother who had previously been admitted lawfully into the Philippines for permanent residence, if the child is accompanying or coming to join a parent and applies for admission within five years from the date of its birth; (c) A child born subsequent to the issuance of the immigration visa to the accompanying parent, the visa not having expired; (d) A woman who was a citizen of the Philippines and who lost her citizenship because of her marriage to an alien or by reason of the loss of the Philippine citizenship by her husband, and her unmarried child under 21 years of age, if accompanying or coming to join her; (e) a person who had previously been admitted lawfully into the Philippines for permanent residence and is returning from a temporary visit abroad to an unrelinquished residence in the Philippines;<sup>190</sup> (g) A natural born citizen of the Philippines who has acquired a foreign citizenship abroad and is returning to the Philippines for permanent residence, as well as his spouse and minor unmarried children.<sup>191</sup>

A non-immigrant may be: (1) A temporary visitor coming for business or for pleasure or for reasons of health; (2) A person

---

<sup>187</sup> Com. Act No. 613 (1940).

<sup>188</sup> Sec. 50(j).

<sup>189</sup> Com. Act No. 613 (1940), sec. 19.

<sup>190</sup> As amended by Rep. Act No. 503 (1950).

<sup>191</sup> As amended by Rep. Act No. 4376 (1965).

in transit to a destination outside the Philippines; (3) A seaman serving as such on a vessel arriving at a port of the Philippines seeking to enter temporarily and solely in the pursuit of his calling as seaman; (4) An alien entitled to enter the Philippines solely to carry on trade between the Philippines and the foreign state of which he is a national under, and in pursuance of, the provisions of a treaty of commerce and navigation, and his wife and unmarried children under 21 years of age, if accompanying or coming to join him;<sup>192</sup> (5) A student, having means sufficient for his education and support in the Philippines who is at least eighteen years of age and who seeks to enter the Philippines temporarily and solely for the purpose of taking up a course of study higher than high school at a university, seminary, academy, college or school approved for such alien students by the Commissioner of Immigration;<sup>193</sup> (6) An alien coming to pre-arranged employment, for whom the issuance of a visa has been authorized, and his wife and unmarried children under 21 years of age, if accompanying him or coming to join him within 6 months from the date of his admission into the Philippines as a non-immigrant. By administrative regulation, the following are also considered non-immigrants: (1) Tourists and temporary visitors not belonging to the restricted nationals coming without visas for a stay of 21 days;<sup>194</sup> (2) Refugees for religious, political, or racial reasons;<sup>195</sup> (3) Special temporary visitors, pursuant to Article XI of the Military Bases Agreement of March 14, 1949 *viz*, (a) Members of the families of United States Armed Forces personnel coming to the Philippines to join the head of family during his tour of duty therein;<sup>196</sup> (b) United States nationals employed by or under a contract with the United States together with their family;<sup>197</sup> (c) Technical personnel of other nationalities (not being persons excluded by the laws of the Philippines) in connection with the construction, maintenance or operation of the United States bases in the Philippines; (4) Special non-immigrants under Section 47(a) of the Immigration Act of 1940 for aliens who are not government employees, and as foreign government officials under Section 9(e) for aliens who are in the government service, pro-

---

<sup>192</sup> As amended by Rep. Act Nos. 503 (1950) and 1393 (1955).

<sup>193</sup> As amended by Rep. Act Nos. 503 (1950) and 1393 (1955).

<sup>194</sup> Ex. Order No. 408, s. 1960, as amended by Ex. Order No. 186, s. 1969 in relation to Sec. 47(a)(2).

<sup>195</sup> Com. Act No. 613 (1940), sec. 47(b).

<sup>196</sup> D.F.A. VISA REGULATIONS, Part C. Sec. 10(a) hereinafter cited as VISA REGS.

<sup>197</sup> VISA REGS., Part C, Sec. 10(b).

ceeding to the Philippines as scholars, trainees, participants, or fellows under certain auspices *e.g.*, SEATO, UNESCO, NEC/AID; (5) Special non-immigrants under Section 47(a) par 2 of the Act, for aliens, their spouse and unmarried children under 21 years of age coming for employment under the Investment Incentives Act.<sup>198</sup>

Excluded from entry into the Philippines are: (1) Idiots or insane persons and persons who have been insane; (2) Persons afflicted with a loathsome or dangerous contagious disease, or epilepsy; (3) Persons who have been convicted of a crime involving moral turpitude; (4) Prostitutes, or procurers, or persons coming for any immoral purpose; (5) Persons likely to become a public charge; (6) Paupers, vagrants, and beggars; (7) Persons who practice polygamy or who believe in or advocate the practice of polygamy. (8) Persons who believe in or advocate the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieve in or are opposed to organized government, or who advocate the assault or assassination of public officials because of their office, or who advocate or teach principles, theories, or ideas contrary to the Constitution of the Philippines, or advocate or teach the unlawful destruction of property, or who are members of or affiliated with any organization entertaining or teaching such doctrines; (9) Persons over fifteen years of age, physically capable of reading, who cannot read printed matter in ordinary use in any language selected by the alien; (10) Persons who are members of a family accompanying an excluded alien; (11) Persons accompanying an excluded person who is helpless from mental or physical disability or infancy; (12) Children under 15 years of age, unaccompanied by or not coming to a parent; (13) Stow-aways; (14) Persons coming to perform unskilled manual labor in the pursuance of a promise or offer of employment, express or implied;<sup>199</sup> (15) Persons who have been excluded or deported from the Philippines;<sup>200</sup> (16) Persons who have been removed from the Philippines at the expense of the Government of the Philippines, as indigent aliens; and (17) Persons not properly documented for admission. However, the Commissioner of Immigration is authorized to exercise his discretion to permit any alien properly documented who is subject to exclusion if he is

---

<sup>198</sup> Rep. Act No. 5186 (1967).

<sup>199</sup> As amended by Rep. Act No. 503 (1950).

<sup>200</sup> As amended by Rep. Act No. 503 (1950).

lawfully resident in the Philippines and returning from a temporary visit abroad, or applying for temporary admission.

## E. *Taxation*

### 1. *Income Taxes*

The following personal exemptions<sup>201</sup> are allowed in the nature of a deduction from the amount of the net income:

(1) ₱1,800 if the person making the return is single, or married but legally separated from his spouse;

(2) ₱3,000 if the person making the return is a married man or woman or the head of a family. This shall be made only once from the aggregate income of both spouses when not legally separated. The "head of a family" includes an unmarried person with (a) one or both parents or (b) one or more brothers or sisters or (c) one or more legitimate, recognized natural or adopted children living with and dependent upon him for their chief support where such brothers, sisters or children are not more than 21 years of age, unmarried, and not gainfully employed or where such children are incapable of self-support because mentally or physically defective.

(3) ₱1,000 for each legitimate, recognized natural or adopted child wholly dependent upon and living with the taxpayer who is head of a family, if such dependent is not more than 21 years, unmarried and not gainfully employed or incapable of self-support because mentally or physically defective. The total number of dependents for which additional exemptions may be claimed shall not exceed four.

A taxpayer who marries or has additional dependents during the taxable year is entitled to these exemptions in full. If he dies at any time during the taxable year, his estate may claim the full exemption for himself and his dependents; should his spouse or any of his dependents die or become 21 years old during the year the taxpayer may still claim the same deductions as if the former died or as if such dependents became 21 years old at the close of the year.

---

<sup>201</sup> Com. Act No. 466 (1939) as amended, sec. 23, hereinafter referred to as TAX CODE, as amended by Pres. Decree No. 69, dated October 19, 1972.

## 2. Estate and Inheritance Taxes

An estate tax is imposed on the privilege of a decedent to transmit property at death, based on the entire net estate, regardless of the number of heirs and their relation to the decedent. Formerly, an inheritance tax was imposed on the privilege of the heirs to receive property. This was repealed by Presidential Decree No. 69.

There is levied, upon the transfer of the net estate of every decedent, whether a resident or non-resident of the Philippines, a tax equal to the sum of the following percentages of the value of the net estate:<sup>202</sup>

IF THE NET ESTATE IS			THE TAX SHALL BE		
Over	But Not Over		Plus	Of Excess Over	
—	P	EXEMPT	—	—	P
	10,000	EXEMPT			10,000
P 10,000	50,000	3%	—		50,000
50,000	75,000	P 1,200	4%		75,000
75,000	100,000	2,200	5%		100,000
100,000	150,000	3,450	10%		150,000
150,000	200,000	8,450	15%		200,000
200,000	300,000	15,950	20%		300,000
300,000	400,000	35,950	25%		400,000
400,000	500,000	60,950	30%		500,000
500,000	625,000	90,950	35%		625,000
625,000	750,000	134,700	40%		750,000
750,000	875,000	184,700	45%		875,000
875,000	1,000,000	240,950	50%		1,000,000
1,000,000	2,000,000	303,450	53%		2,000,000
2,000,000	3,000,000	833,450	56%		3,000,000
3,000,000		1,393,450	60%		

## 3. Gift Tax

There is levied on the transfer (in trust or otherwise) by any person (resident or non-resident) of property (real or personal, tangible or intangible) by gift (direct or indirect), a donor's tax computed on the basis of the total net gifts made during the calendar year in accordance with the following schedule:

IF THE NET GIFT IS			THE TAX SHALL BE		
Over	But Not Over		Plus	Of Excess Over	
—	P	EXEMPT	—	—	P
	1,000	EXEMPT			1,000
P 1,000	50,000	1.5%	—		50,000
50,000	75,000	P 735	2.5%		75,000
75,000	100,000	1,360	3%		100,000
100,000	150,000	2,110	6%		

<sup>202</sup> TAX CODE, sec. 85.

150,000	200,000	5,110	9%	150,000
200,000	300,000	9,610	12%	200,000
300,000	400,000	21,610	15%	300,000
400,000	500,000	36,610	18%	400,000
500,000	625,000	54,610	21%	500,000
625,000	750,000	80,860	24%	625,000
750,000	875,000	110,860	28%	750,000
875,000	1,000,000	145,860	32%	875,000
1,000,000	2,000,000	185,860	36%	1,000,000
2,000,000	3,000,000	545,860	38%	2,000,000
3,000,000		925,860	40%	3,000,000

The donee's tax has likewise been abolished by Presidential Decree No. 69.

#### F. *Government Service Insurance System*

Membership in the Government Service Insurance System is compulsory for all appointive officers and employees in government, including government owned and controlled corporations; regular employees of the Philippine National Red Cross; officers and enlisted men of the Armed Forces; and all elective officials receiving compensation as defined in the Government Service Insurance System Act.<sup>203</sup> Temporary employees are covered for purposes of term insurance for P2,750 if appointed for not less than two months.

The benefits under the GSIS Act include:

1. life insurance benefits, equivalent to the annual compensation of the employee, plus optional insurance taken; and
2. retirement benefits, as follows:

(a) *Amount of annuity.* — Upon retirement after faithful and satisfactory service, a member shall automatically be entitled to a life annuity guaranteed for at least five years and thereafter as long as he lives. The amount of the monthly annuity at the age of 57 years shall be thirty pesos, plus, for each year of service after June 16, 1951, two per centum of the average monthly salary received by him during the last three years of service, plus, for each year of service rendered prior to June 16, 1951, one and two-tenths per centum of said average monthly salary. However, this amount shall be adjusted actuarially if he retires at an age other than 57 years. The maximum amount of

<sup>203</sup> Com. Act No. 186 (1936) as amended, hereinafter cited as GSIS Act.

monthly annuity at age 57 shall not in any case exceed three-fourths of said average monthly salary.

In lieu of this annuity, he may, prior to his retirement, elect one of the following equivalent benefits:

- 1) Monthly annuity during his lifetime;
- 2) Monthly annuity during the joint-lives of the employee and his or her spouse guaranteed for at least 5 years, which annuity, however, shall, upon the death of either and after the 5-year guaranteed period, be reduced to one-half and be paid to the survivor;
- 3) For those who are at least 63 years of age, lump-sum payment of the present value of annuity for the first 5 years, and for those who are at least 60 but below 63 years of age, lump-sum payment of the present value of the annuity for the first 3 years, with the balance of the 5-year guaranteed annuity payable in lump-sum upon reaching 63 years of age, and annuity after the guaranteed period to be paid monthly; or
- 4) Such other benefits as may be approved by the System.

(b) *Survivors' benefit.* — Upon death before he becomes eligible for retirement, his beneficiaries as recorded in the application for retirement annuity filed with the System shall be paid his own premiums with interest at 3% per annum, compounded monthly. If he has served at least 5 years and his death is not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, or vicious or immoral habits, his beneficiaries shall also be paid by the employer his one month's salary for every year of service, based on the highest rate he received.

If on his death he is eligible for retirement, then the automatic retirement annuity or the annuity previously chosen by him shall be paid accordingly.

(c) *Disability benefit.* — If he has served less than 5 years and has become permanently and totally disabled, he shall be paid his own contributions with interest at 3% per annum, compounded monthly. If he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums, without interest. Should his disability be not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, or vicious or immoral habits, he shall also be paid by the employer one month's salary for every year of

service, based on the highest rate received. If he has served at least 15 years he shall be retired and be entitled to the benefit provided under paragraph (a).

(d) Upon dismissal for cause or on voluntary separation, he shall be entitled only to his own premiums and voluntary deposits if any, plus interest at three *per centum per annum*, compounded monthly.<sup>204</sup>

*Conditions for retirement.* — (a) On completion of 30 years of total service and attainment of age 57, a member has the option to retire. In all cases of retirement under the GSIS Act, the last three years of service before retirement must be continuous, and he must have made contributions for at least 5 years. In the case of those who are at least 57 years of age, a period of service shorter than 30 years may be allowed, provided that each year's decrease in service shall be compensated by a one-half year increase in age over 57 years. A younger age of retirement may be permitted provided that each year's decrease below 57 years shall be compensated by one year increase in service over 30 years. If an employee is a laborer or one whose work is mostly manual, the ages mentioned above may be decreased by not more than 5 years at the discretion of the System. In all cases no one shall be entitled to retirement benefits if his age is below 52 years or his total service is less than fifteen years.

(b) Notwithstanding the provisions of the preceding paragraph, a member may be allowed to retire after rendering a total service of 30 years, regardless of age, the retiring employee to receive a monthly annuity for life.

(c) Retirement is also allowed any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least 20 years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums without interest, be only a gratuity equivalent to one month's salary for every year of the first 20 years of service, plus 1½ months' salary for every year of service over 20 but below 30 years and two months' salary for every year of service over 30 years

---

<sup>204</sup> GSIS Act, sec. 11(a)-(d).

based on the highest rate received in case of employees, and on the rates of pay as provided by law in case of elected officials. Officials and employees retired under the GSIS Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.<sup>205</sup>

(d) Retirement shall be automatic and compulsory at the age of 65 years with lump sum payment of the present value of annuity for the first 5 years, and future annuity to be paid monthly, and other benefits given to a compulsorily retired member as provided for by law,<sup>206</sup> if he has completed 15 years of service and if he has not been separated from the service during the last three years of service prior to retirement; otherwise he shall be allowed to continue in the service until he shall have completed the required length of service, unless he is otherwise eligible for disability retirement. If a member exercises the option to retire at age 63 years, he shall likewise be entitled to all the benefits provided for in this paragraph. If the option is exercised at age 60 or over but below 63 years, the retiree shall be entitled to a lump sum payment of the present value of annuity for the first 3 years, with the balance of the 5 year guaranteed annuity payable in lump sum upon reaching the age of 63 years, and future annuity to be paid monthly, in addition to other benefits provided for by law.<sup>207</sup>

### G. *Social Security*

A Social Security System is established by the Social Security Act<sup>208</sup> to provide protection against the hazards of disability, sickness, old age and death.<sup>209</sup> The benefits provided under this Act are concurrent with other benefits received by the employee for the same injury or illness under other laws, such as the Workmen's Compensation Law, the Government Service Insurance Act, and the Civil Code.<sup>210</sup> Membership in the System is compulsory for all private employers not exempt from the Act and their employees not over 60 years old,<sup>211</sup> including agricultural workers who

---

<sup>205</sup> GSIS Act, sec. 12(a)-(c).

<sup>206</sup> Rep. Act No. 660 (1951), as amended.

<sup>207</sup> Rep. Act No. 660 (1951), as amended.

<sup>208</sup> Rep. Act No. 1161 (1954), as amended.

<sup>209</sup> Rep. Act No. 1151 (1954), sec. 2.

<sup>210</sup> *Rural Transit Employees Assn. v. Bachrach Trans. Co.*, G.R. No. 21441, December 15, 1967, 21 SCRA 1263 (1967), *Valencia v. Manila Yacht Club*, G.R. No. 27346, June 30, 1969, 28 SCRA 72 (1969).

<sup>211</sup> Rep. Act No. 1161 (1954), sec. 9.

(a) are paid regular daily wages or base pay or (b) work for their employer for an uninterrupted period of at least 6 months within a 12-month period, whether they are paid regular daily wages or not.<sup>212</sup>

Excluded are the following:

1) Agricultural labor when performed by a share or leasehold tenant or worker who is not paid any regular daily wage or base pay and who does not work for an uninterrupted period of at least six months in a year;

2) Domestic service in a private home;

3) Employment purely casual and not for the purposes of occupation or business of the employer;

4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one years in the employ of his parents;

5) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines;

6) Service performed in the employ of the Philippine Government or an instrumentality or agency thereof;

7) Service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes therein;

8) Services performed in the employ of a foreign government or international organization, or their wholly owned instrumentality;

9) Service performed by a student nurse in the employ of a hospital or nurses' training school, and service performed as a medical intern in the employ of a hospital; and

10) Such other services performed by temporary employees which may be excluded by regulation of the Commission.<sup>213</sup>

Social Security benefits are paid from a special fund created by the Act from the following sources: contribution of covered employees;<sup>214</sup> contribution of covered employers; and contribution of the Government.<sup>215</sup> The following benefits are provided for in the Social Security Act:

---

<sup>212</sup> S.S.C. Res. No. 1466, s. 1963.

<sup>213</sup> Rep. Act No. 1161 (1954) as amended, sec. 8(j).

<sup>214</sup> Rep. Act No. 1161 (1954), sec. 18.

<sup>215</sup> Rep. Act No. 1161 (1954), sec. 19.

1. *Retirement Benefits.* — A covered employee who (1) has paid at least 120 monthly contributions to the System, has reached the age of 60 years and is separated from employment or if still employed is receiving less than ₱250 monthly compensation or (2) has paid at least 120 monthly contributions and has reached 65 years or (3) has paid at least 35 monthly contributions and has become permanently totally disabled shall be entitled for as long as he lives to a monthly pension computed as follows: 45% of the first ₱120 of the average monthly salary credit or fraction thereof, plus 25% of the next ₱300 of the average monthly salary credit or fraction thereof; 9% of each succeeding ₱100 average monthly salary credit or fraction thereof; 1/10 of 1% of the average monthly salary credit for each monthly contribution in excess of 120 and paid as of the last day of the second quarter preceding the quarter of the retirement. The minimum monthly pension is forty-five pesos.<sup>216</sup>

2. *Death and Disability Benefits.* — Upon the employee's death, his beneficiaries shall be entitled to a basic lump sum amount, plus 5/12 of 1% of the basic lump sum amount for each monthly contribution in excess of 12 monthly contributions provided either of the following conditions is present: 1) he shall have paid 18 monthly contributions within the 36 calendar month period ending on the last day of the second quarter preceding the quarter of death; 2) his payment ratio is not less than 80%. If none of these conditions is present, the death or disability benefit shall be the above amount multiplied by 1 1/4 times his payment ratio. The death or disability benefit shall not be less than the total contributions paid by him and his employer in his behalf nor less than ₱500.<sup>217</sup> In case of permanent total disability, if such disability occurs before he has paid 36 monthly contributions, the employee shall be entitled to the basic lump sum amount provided either of the above conditions is present.

Death benefits pertain to the beneficiary designated as such by the covered employee from among the following: the legitimate spouse; the legitimate, legitimated, acknowledged natural children and natural children by legal fiction, and other illegitimate children, and their legitimate descendants; and the legitimate parents.

---

<sup>216</sup> Sec. 12, as amended by Pres. Decree No. 77 dated April 23, 1973.

<sup>217</sup> Sec. 13, as amended by Pres. Decree No. 24, dated October 19, 1972.

In the absence of any of the foregoing, any other person designated by him.<sup>218</sup>

If the disability is partial but permanent, the amount of benefit shall be such percentage of the benefit described in the preceding paragraph as the Commission may determine, with due regard to the degree of disability.<sup>219</sup>

3. *Sickness benefits.* — A covered employee who has paid at least 12 monthly contributions and who, on account of sickness or bodily injury, is confined for more than 5 days in a hospital, or elsewhere with the Social Security Commission's approval shall for each day of confinement be paid by his employer or by the SSS, if such person is unemployed, an allowance equivalent to 70% the average daily salary credit under the following conditions: (1) the total amount shall not be less than ₱2.50 nor exceed ₱12 nor paid for a period longer than 120 days in one calendar year; (2) no employee shall be paid any sickness benefit for more than 240 days on account of the same confinement; and (3) the employee shall notify his employer, or if unemployed, the System, within 5 days after the start of such confinement, unless such confinement is in a hospital or the employee became sick or was injured while working or within the premises of the employer. One hundred per cent of the daily benefits shall be reimbursed by the System to the employer.<sup>220</sup>

The allowance shall begin only after all current sick leaves of absence with full pay, if any, to the credit of the employee shall have been exhausted.<sup>221</sup>

#### H. *Workmen's Compensation*<sup>222</sup>

The Workmen's Compensation Act<sup>223</sup> requires the payment of compensation to employees or laborers or their dependents in cases of death, disability or illness arising out of or in the course of their employment. It applies to all employees in industrial, commercial and agricultural establishments and in religious, charitable and educational institutions<sup>224</sup> and to officials, employees and laborers in the service of the National Government and its

---

<sup>218</sup> Rep. Act No. 1161 (1954), sec. 8(k), as amended by Pres. Decree No. 177, dated April 23, 1973.

<sup>219</sup> Rep. Act No. 1161 (1954), sec. 13(b).

<sup>220</sup> Sec. 14, as amended by Pres. Decree No. 24, dated October 19, 1972.

<sup>221</sup> Rep. Act No. 1161 (1954), sec. 14(a), as amended by Pres. Decrees Nos. 24 and 177.

<sup>222</sup> Tabulations in this section are taken from QUIASON & FERNANDEZ, LABOR & SOCIAL LEGISLATION 160-264 (1971).

<sup>223</sup> Act No. 3428 (1928), as amended.

<sup>224</sup> Sec. 1.

political subdivisions and instrumentalities.<sup>225</sup> Benefits under the the Act may be divided into two general classes: (1) Indemnity benefits in the form of cash payments, and (2) Medical benefits in the form of medical services, hospitalization, medicine and other matters related to the treatment of the compensable injury or disease.

Indemnity benefits consist of (a) disability benefits for disabilities which may be total, partial, temporary, or permanent; and (b) death benefits.

Permanent partial disabilities are in turn classified into:

(1) Schedule injuries if included in the statutory list to which specific payments are assigned, and

(2) Non-schedule injuries.

(a) *Disability benefits* may be tabulated as follows:<sup>226</sup>

<i>Disability</i>	<i>Average Weekly Wages</i>	<i>Compensation</i>	<i>Minimum</i>	<i>Maximum</i>	<i>Duration</i>
Total temporary	₱14.00 and over	60 per cent of average weekly wages	₱14 a week	₱6,000	During disability
	Under ₱14.00	Entire average weekly wages		₱6,000	
Total Permanent	₱14.00 and over	60 per cent of average weekly wages	₱14 a week	₱6,000	
	Under ₱14.00		₱14 a week	₱6,000	
Partial temporary		50 per cent of of the difference between average weekly wage before and after disability		₱18 a week	208 weeks subject to adjustment
Partial permanent (Schedule injury)		50 per cent of average weekly wages		₱6,000	As stated

<sup>225</sup> Sec. 3.

<sup>226</sup> Sec. 14.

The list of schedule injuries with the period of compensation is as follows:<sup>227</sup>

<i>Loss of member or use thereof*</i>	<i>Period of Compensation (in weeks)</i>
Thumb	40
First finger	30
Second finger	25
Third finger	20
Fourth finger	10
Half of thumb or other finger***	Half of corresponding period
Big toe	25
Any other toe	10
Half a toe**	Half of corresponding period
Hand***	160
Arm	208
Foot	130
Leg	190
Eye	100
Sense of hearing**** (both ears)	208
Sense of hearing**** (one ear)	44
Both ears	84
One ear	40

- \* Loss of use must be permanent.
- \*\* Loss of first joint; if more than one joint is lost, loss is of entire member.
- \*\*\* Compensation for loss of more than one finger shall not exceed compensation for hand.
- \*\*\*\* Loss must be complete and permanent.

All other cases of disability not mentioned in the Act are classified as non-schedule injury. The compensation shall be 50% of the difference between the average weekly wages of the injured person and his subsequent earning capacity in the same or some other employment, payable while the partial disability lasts; but subject to reconsideration of the degree of impairment by the Workmen's Compensation Commission at the request of an interested party.<sup>228</sup> In case of an injury producing a serious disfigurement of the face or head, the Commission may, at the request of an interested party, determine and award such compensation as may seem fair and proper in view of the nature of the disfigurement, but which shall not exceed six thousand pesos.<sup>229</sup>

<sup>227</sup> Sec. 17.  
<sup>228</sup> Sec. 18.  
<sup>229</sup> *Ibid.*

(b) *Death benefits* shall be paid to the following in the order of priority set forth below. Those in a higher category exclude all others. In order that death benefits may accrue to the deceased employee's dependent, it must occur within two years from the date of the compensable illness or injury which caused the death.<sup>230</sup>

<i>Dependent</i>	<i>Degree of Dependency</i>	<i>Compensation</i>
Widow or widower only		45 per cent
Widow or widower with one or two children		50 per cent
Widow or widower with three or more children		60 per cent
One or two children only		40 per cent
Three or more children		50 per cent
Father, mother or grandparent	Total	40 per cent
Father and mother or two or more grandparents	Total	Equal sharing of 40 per cent
Father, mother, or grandparent	Partial	25 per cent
More than one parent or grandparent	Partial	Equal sharing of 25 per cent
Brother, sister or grandchild only		25 per cent
For each additional brother, sister or grandchild		Additional 5 per cent up to maximum of 40 per cent
No dependents		
Workmen's Compensation Fund		P1,000.00

The Act prescribes the following requisites of dependency and period of compensation.<sup>231</sup>

<sup>230</sup> Sec. 8.

<sup>231</sup> Secs. 9 & 10.

<i>Dependent</i>	<i>Requisites</i>	<i>Period of Compensation</i>
Widow	Living with deceased, or actually dependent, wholly or partly	Until death or re-marriage
Widower	Incapable of supporting self and actually dependent	During incapacity
Son or daughter	Under 18 and single or incapable of self-support and single	Up to 18 years of age, or until marriage, or during incapacity
Parent or grandparent	Actual dependency	During actual dependency
Grandchild, brother or sister	Under 18, or incapable of self-support and totally dependent	Up to 18 years of age, or until able to support self

In all the above cases, the maximum period of compensation is 208 weeks (four years).

In the event of successive compensable events, the compensation provided for any of these is not exclusive of that provided in the others. However, the following rules shall be observed:

(1) In case partial disability sets in after a period of total disability, such period of total disability shall be deducted from the total period of two hundred and eight weeks and the amount of the compensation paid shall not in any case be in excess of the total sum of six thousand pesos.<sup>232</sup>

(2) In the event that the total disability begins after a period of partial disability, the amount of compensation due for the latter and for any other disability shall not exceed the maximum amount of six thousand pesos.<sup>233</sup>

(3) In the event of death occurring after a period of total or partial disability, the period of disability shall be deducted from the respective total periods established in section ten of the Act.<sup>234</sup>

*Additional compensation.* — The employer is required to pay an additional 50% of the compensation due as a penalty for tortious conduct in the following cases:

<sup>232</sup> Sec. 16.

<sup>233</sup> Sec. 14.

<sup>234</sup> Sec. 12.

(1) Where the injury or illness results from the failure of the employer to comply with any law, or order, rule or regulation of the Workmen's Compensation Commission; or of the Industrial Safety Bureau (now merged with the Bureau of Labor Standards);

(2) Where the employer has violated the provisions of Republic Act No. 679 as amended;

(3) Where the employer has failed to install and maintain safety appliances; and

(4) Where he has failed to take other precautions for the prevention of accident or occupational disease.<sup>235</sup>

*Medical Benefits.* — The employer or insurance carrier shall provide the employee with such services, appliances and supplies as (1) the nature of his disability and process of his recovery may require; and (2) will promote his early restoration to the maximum level of his physical capacity.<sup>236</sup>

*Services.* — Include attendance and treatment (medical, surgical, dental, hospital and nursing); proper fitting and training in the use of appliances; and the necessary training for purposes or rehabilitation.<sup>237</sup>

*Appliances.* — Include crutches, artificial members and other devices of the same kind and the replacements or repair of such artificial members or such devices, unless the replacement or repair is made necessary by the lack of proper care by the employee.<sup>238</sup>

*Supplies.* — Refer to medicines as well as medical, surgical and dental supplies. Medical benefits shall be provided immediately after an employee has suffered an injury or contracted sickness and during the subsequent period of disability.<sup>239</sup> Such benefits shall continue to be provided as long as the injury, illness or disease has not been cured or arrested.<sup>240</sup>

#### I. *Medicare*

The Philippine Medical Care Act of 1969,<sup>241</sup> seeks to provide gradually total medical care for the people by adopting a comprehensive and coordinated medical care program.<sup>242</sup> The Philippine

<sup>235</sup> Sec. 4-A.

<sup>236</sup> Sec. 13. See *Republic v. Workmen's Compensation Commission*, G.R. No. 29703, February 25, 1971, 37 SCRA 619 (1971).

<sup>237</sup> Sec. 13.

<sup>238</sup> Sec. 13.

<sup>239</sup> *Ibid.*

<sup>240</sup> *Itogon-Suyoc Mines v. Dulay*, G.R. No. 18974, September 30, 1963, 9 SCRA 199 (1963).

<sup>241</sup> Rep. Act No. 6111 (1969).

<sup>242</sup> Sec. 2.

Medical Care Plan consists of two basic programs: Program I — for the members of the Social Security System and the Government Service Insurance System; and Program II — for those not in either of the above systems. Coverage under the Act is automatic for any person compulsorily covered by the Social Security System (SSS) under Republic Act No. 1161 or by the Government Service Insurance System (GSIS) under Commonwealth Act No. 186, as amended, except members of the Armed Forces of the Philippines. The SSS and the GSIS shall set up their respective medical care funds and shall administer the same in accordance with the Philippine Medical Care Act and the policies and implementing rules and regulations of the Philippine Medical Care established under the Act. Within five years from the approval of the Act, the SSS and the GSIS shall respectively adopt a supplementary plan designed to take over the medical care needs of the legal dependents of their members from Program I for which the SSS and the GSIS may require additional premiums.<sup>243</sup>

The beneficiaries under Program I are entitled to the following benefits: (a) hospitalization expense benefit, (b) surgical expense benefit and (c) medical expense benefit.

*Hospitalization Expense Benefit.* — Under such rules or regulations as the SSS and the GSIS may prescribe, subject to approval by the Philippine Medical Care Commission, an employee who is confined in a hospital on account of sickness or bodily injury requiring hospitalization is entitled to confinement not exceeding 45 days annually to (a) room and board expense benefit for each day of confinement in a hospital not exceeding ₱12.00 a day and (b) special charge expense benefit, charges necessary for the care of the employee, such as laboratory examination fees, drugs, X-ray, and the like, not to exceed ₱150.00.<sup>244</sup>

*Surgical Expense Benefit.* — An employee who has undergone surgical operation in a hospital is entitled to a surgical expense benefit as may be determined by the SSS or GSIS, taking into account the nature and complexity of the procedure as follows:

(a) Surgeon's fees not to exceed ₱50 for a minor operation, ₱150 for a medium operation, and ₱350 for a major operation.

(b) Anesthesiologist's fees not to exceed ₱25 for a minor operation, ₱50 for a medium operation, and ₱150 for a major operation.

---

<sup>243</sup> Sec. 10.

<sup>244</sup> Sec. 13, as amended by Pres. Decree No. 273, dated August 14, 1973.

(c) Operating room fees not to exceed P25 for a minor operation, P40 for a medium operation, and P60 for a major operation.<sup>245</sup>

*Medical Expense Benefit.* — An employee who has received necessary professional medical treatment by a medical practitioner while confined is entitled to a medical expense benefit of P5.00 for each daily visit. The maximum benefit shall not, however, exceed P100 for a single period of confinement or for any one sickness or injury. Specialists who are certified by the Philippine Medical Association are entitled to collect P10.00 for each daily visit.<sup>246</sup>

The benefits provided under the Act are payable directly to the hospital, the medical practitioner and the retail drug store, if any, under such rules, regulations and/or conditions as the SSS or GSIS may prescribe, subject to the approval of the Commission. When the charges and fees agreed upon between the employee and the hospital or medical practitioner are in excess of the amount of the benefits provided for under the Act, the employee is liable only for the payment of that portion of such fees and charges as are in excess of the benefits payable under the Act.<sup>247</sup>

No employee shall be entitled to the benefits granted under the Act unless he shall have paid at least three monthly contributions during the last twelve months prior to the first day of the single period of confinement. In case of sickness in which surgery may be deferred at the election of the employee in such cases as herniotomy, hemorrhoidectomy, tonsillectomy, adenoidectomy and the like, the required monthly contributions paid immediately prior to the operation shall be at least for twelve consecutive monthly installments.

The benefits granted under the Act do not cover any expense for: (a) Cosmetic surgery or treatment; (b) Dental service, except major dental surgery or operation which needs hospitalization; (c) Optometric service or surgery; (d) Services related to the case of psychiatric illness or of diseases traceable to such illness; and (e) Services which are purely diagnostic.<sup>248</sup>

Under Program II, hospitalization, out-patient and domiciliary care are provided for. For purposes of hospitalization, private hospitals and clinics duly licensed by the Bureau of Medical Services

---

<sup>245</sup> Sec. 14, as amended by Pres. Decree No. 273, dated August 14, 1973.

<sup>246</sup> Sec. 15.

<sup>247</sup> Sec. 18.

<sup>248</sup> Sec. 20.

shall set aside at least twenty per cent (20%) of their total bed capacity as service beds to be subsidized at the rate of ₱10.00 per bed per day to be paid by the month not later than the tenth day of the following month, from any special fund appropriated for this purpose. These service beds shall remain such only when payments of these monthly subsidies do not become delinquent for more than three consecutive months.

Hospital loans shall be given priority by government financing institutions, especially in the rural areas where there are no existing government or private hospitals, at a maximum rate of six per cent (6%) *per annum* on a long term basis. Until such time as the Commission can otherwise provide therefor, the major aspect of out-patient and domiciliary care shall be carried out initially by existing government hospitals, rural health units and other government clinics.<sup>249</sup>

To be entitled to the benefits under Program II, every resident shall be registered and issued a medical care card upon payment to the respective provincial, city, or municipal treasurer concerned of the required yearly assessments to be fixed by the Commission. The yearly assessments shall be payable on or before January 20 of each year to be collected by the City or Municipal Treasurer concerned, and shall respectively be held by them in trust for the City Medical Care Council or the Municipal Medical Care Council, as agents of the latter.<sup>250</sup>

#### J. Land Tenure

The Code of Agrarian Reforms of the Philippines, formerly known as the Agricultural Land Reform Code, declares the following, among others, as the policy of the State:

(1) To establish cooperative-cultivatorship among those who live and work on the land as tillers, owner-cultivatorship and the economic family-size farm as the basis of Philippine agriculture and, as a consequence, divert landlord capital in agriculture to industrial development;

(2) To achieve a dignified existence for the small farmers free from pernicious institutional restraints and practices;

(3) To create a truly viable social and economic structure in agriculture conducive to greater productivity and higher farm incomes through a cooperative system of production, processing, marketing, distribution, credit, and services;

---

<sup>249</sup> Sec. 27.

<sup>250</sup> Sec. 28.

(4) To apply all labor laws equally and without discrimination to both industrial and agricultural wage earners;

(5) To provide a more vigorous and systematic land resettlement program and public land distribution;

(6) To make the small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society;

(7) To give first priority to measures for the adequate and timely financing of the Agrarian Reform Program pursuant to House Joint Resolution Numbered Two, otherwise known as the Magna Carta of Social Justice and Economic Freedom; existing laws; executive and administrative orders; and rules and regulations to the contrary notwithstanding;

(8) To involve local governments in the implementation of the Agrarian Reform Program; and

(9) To evolve a system of land use and classification.<sup>251</sup>

Pursuant to this policy, the Code established:

(1) An agricultural leasehold system to replace all existing share tenancy systems in agriculture;

(2) A system of crediting rental as amortization payment on purchase price;

(3) A declaration of rights for agricultural labor;

(4) A machinery for the acquisition and equitable distribution of agricultural land;

(5) An institution (the Land Bank) to finance the acquisition and distribution of agricultural land;

(6) A machinery (the Agricultural Credit Administration) to extend credit and similar assistance to agricultural lessees, amortizing owners-cultivator, owners-cultivator, and cooperatives;

(7) A machinery (the Agricultural Productivity Commission) to provide marketing, management, and other technical assistance and/or services to agricultural lessees, amortizing owners-cultivator, owners-cultivator, and cooperatives;

(8) A machinery for cooperative development;

(9) A department (the Department of Agrarian Reforms) for formulating and implementing projects of agrarian reform;

(10) An expanded program of land capability survey, classification and registration;

---

<sup>251</sup> Rep. Act No. 3844 (1964), as amended by Rep. Act No. 6389 (1971) and Pres. Decree No. 251, dated July 27, 1973, sec. 2.

(11) A judicial system (the Court of Agrarian Relations) to decide issues arising under the Code and other related laws and regulations; and

(12) A machinery (the Office of Agrarian Counsel) to provide legal assistance to agricultural lessees, amortizing owners-cultivator and owners-cultivator.<sup>252</sup>

Agricultural share tenancy throughout the country has been declared contrary to public policy and automatically converted to agricultural leasehold.<sup>253</sup>

Shortly after the declaration of martial law, the President proclaimed the entire country a land reform area<sup>254</sup> and decreed the emancipation of all tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease-tenancy whether classified as landed estate or not. The tenant farmer is deemed owner of a portion of land constituting a family-size farm of five hectares if not irrigated and three hectares if irrigated. In all cases, the landowner may retain an area of not more than seven hectares if he is cultivating such area or will cultivate it.<sup>255</sup> With respect to agricultural lands of the public domain it has been made an essential condition in every application for or grant thereof under the Public Land Act<sup>256</sup> that the applicant or his transferee shall enter and work upon, improve and cultivate the land himself in the periods prescribed for the various modes of concession under the said law. The employment or use of share tenants for purposes of complying with the requirements of the Public Land Act regarding entry, occupation, improvement or cultivation constitutes a ground for the denial of the application, cancellation of the grant and forfeiture of improvements on the land in favor of the government.<sup>257</sup>

The land reform program was conceived and adopted without the population problem in mind, but principally to contain agrarian unrest. It would seem that requiring the farmer-tiller to cultivate personally a family-size farm, where present methods of farming are not mechanized could be an effective incentive for the raising of large families. Considering that a majority of the population is rural, this may, in the long run, hinder the population program.

---

<sup>252</sup> Sec. 3.

<sup>253</sup> Sec. 4, 1st par.

<sup>254</sup> Pres. Decree No. 2 dated September 26, 1972.

<sup>255</sup> Pres. Decree No. 27, dated October 21, 1972.

<sup>256</sup> Com. Act No. 141 (1936).

<sup>257</sup> Pres. Decree No. 152, dated March 13, 1973.

## K. Zoning and Housing

The National Planning Commission, created by Executive Order No. 367 (1950) from several predecessor agencies, has been charged with the responsibility of urban and land use planning. It is empowered to prepare and adopt general plans, zoning regulations and subdivision regulations, all of which were to be effective unless overruled by a  $\frac{3}{4}$  vote of the appropriate local legislative body. In 1949, the Commission promulgated a set of model subdivision regulations to be adopted by local governments.<sup>258</sup> Approval by the National Director of Planning of a subdivision plot is made a condition for the recording of a subdivision plot in the office of the Register of Deeds and for the sale of subdivision lots.<sup>259</sup> The power to enact zoning and subdivision regulations has now been expressly conferred by the Local Autonomy Act of 1959<sup>260</sup> on municipalities and cities. Formerly, zoning ordinances adopted by local governments were upheld by the Supreme Court in several cases.<sup>261</sup> They were sustained for being within the grant of power to local governments to provide for the health, sanitation, abatement of nuisance and the general welfare. These cases in the main dealt with ordinances regulating obnoxious industrial uses in specified areas. Several Supreme Court decisions have held that regulations adopted by the Commission required affirmative enactment by local governments through ordinance; other rulings are to the effect that such regulations are void as an unconstitutional delegation of legislative power.<sup>262</sup> The Commission has prepared development plans for 194 municipalities, but only 60 have adopted these. Fifty-nine municipalities out of 1,134 have enacted subdivision regulations but none have zoning ordinances. Only 12 cities out of 65 have subdivision regulations while 8 have zoning ordinances.<sup>263</sup> The Commission has become an advisory agency for planning local regulations for the local governments. It has been noted that the latter do not often adopt plans prepared by the Commission nor implement them.<sup>264</sup>

---

<sup>258</sup> 45 O.G. 2417 (March, 1946).

<sup>259</sup> Ex. Order No. 986, s. 1946.

<sup>260</sup> Rep. Act No. 2264 (1959).

<sup>261</sup> *People v. Cruz*, 54 Phil. 24 (1929); *Seng Kee & Co. v. Earnshaw*, 56 Phil. 204 (1931); *Tan Chat v. Mun. of Iloilo*, 60 Phil. 465 (1934); *People v. de Guzman*, 90 Phil. 132 (1951).

<sup>262</sup> *University of the East v. City of Manila*, 96 Phil. 316 (1954), *Unson v. Lacson*, 100 Phil. 695 (1957), *Javillonar v. National Planning Commission*, 100 Phil. 485 (1956), *Manzano v. Lacson*, G.R. No. 11051, June 30, 1958, 55 O.G. 4443, (1958).

<sup>263</sup> See Magavern, *Physical Planning Law in the Philippines: The Need for Legislation*, 43 PHIL. L.J. 571 (1968).

<sup>264</sup> *Ibid.* at 585.

The People's Homesite and Housing Corporation is the principal national housing agency. It was created by Executive Order in 1947<sup>265</sup> by consolidating the National Housing Commission and the People's Homesite Corporation. The People's Homesite Corporation was organized by the National Development Corporation, a government controlled corporation, to promote home building and home ownership, and to establish model communities and cooperative associations. The National Housing Corporation, on the other hand, was empowered to expropriate and redistribute land, to build and provide housing and to regulate building and sanitary conditions in slum areas.<sup>266</sup> Under Republic Act No. 222, it was granted the power to guarantee home mortgages within certain limits. Later, the Home Financing Commission was, however, created to perform this function. Under the Land Reform Code of 1963 (now Code of Agrarian Reforms), the expropriation of urban lands has been transferred to the Philippine Homesite and Housing Corporation.<sup>267</sup>

The Home Financing Commission was established to operate a mortgage insurance program,<sup>268</sup> and has insured mortgages on about 4,000 houses. Among its functions are to promote housing by the aided self-help method whereby families with some outside aid build their own houses with their own labor; to provide technical guidance to such families; to own and let out at nominal rental any simple equipment or tools needed for self-building of houses; to insure loans to such families on first liens on house and land and with such other security and conditions as the Commission may determine providing at least for ultimate recovery of principals; and to do such other activities as are relevant or significant to such a program of aided self-help for housing.<sup>269</sup> Several government agencies, such as the Government Service Insurance System (GSIS), Social Security System (SSS), and the Development Bank of the Philippines (DBP) are also authorized to make mortgage loans, but these loans have principally benefited the wealthier sectors of the population. The total of government financed housing has been 70,000 units.<sup>270</sup>

---

<sup>265</sup> Ex. Order No. 93 (1947).

<sup>266</sup> Com. Act No. 648 (1941).

<sup>267</sup> Rep. Act No. 3844 (1963), sec. 73.

<sup>268</sup> Rep. Act No. 580 (1950) as amended by Rep. Act No. 1557 (1956).

<sup>269</sup> Sec. 4(e).

<sup>270</sup> De Vera, *The Philippine Housing Situation* (1967) cited in Magavern, *op. cit.*, *supra*, note 244 at 587.

## VI. GENERAL OBSERVATIONS

Family planning activities in the Philippines have been legitimized and considerably expanded with the enactment of two important pieces of legislation — Republic Act No. 4729, which regulates the sale and dispensation of contraceptives in the Philippines, and Republic Act No. 6365, as revised by Presidential Decree No. 79, creating the Commission on Population. This latter law authorizes the Commission to undertake either directly or through other agencies or instrumentalities the provision of education and services to couples wishing to limit their child-bearing activities. Other Presidential Decrees dealing with maternity leaves, the exemption from income taxation only up to the fourth dependent, etc. have reinforced the current population program. The enactment of these laws indicates that the policy of the Government toward family planning activities has radically changed from one of indifference, or in some aspects, prohibition, to outright encouragement. Surveys conducted by the Population Institute of the University of the Philippines show that in various parts of the Philippines, women desire moderate-sized families, and would not want to have more children than they already have. They also approve in general of the idea of family planning and are interested in learning more. In the Greater Manila Area, where the most urbanized sector of the population lives, it appears that even without an information campaign, a sizeable number of women will avail themselves of family planning services when they are easily accessible. It has also been reported that the women overwhelmingly selected contraceptive methods which are highly effective.<sup>271</sup> Surprisingly, religious beliefs did not prevent a majority of Catholics in the survey from selecting the oral pill or IUD as a method of contraception.<sup>272</sup> Whether or not the religious element would adversely affect family planning activities among those in the rural areas, who constitute the bulk of the population, has not been conclusively established. An early substantial fertility decline, perhaps even with the present government support of family planning activities, is not expected. Even if there should be a fertility reduction within the next few years, the outlook is pessimistic as to the alleviation of the problems ensuing from the present high population growth.<sup>273</sup> In 1966, the University of the Philippines Law Center submitted to the Congress a proposed Penal

---

<sup>271</sup> Concepcion, *Fertility Decline in the 70's in PHILIPPINE POPULATION IN THE SEVENTIES*, 393.

<sup>272</sup> *Ibid.* at 392.

<sup>273</sup> *Ibid.* at 395.

Code of the Philippines to supersede the present Revised Penal Code. It was filed in the House of Representatives as House Bill No. 16370 on May 3, 1967; however, it was not acted upon by the House. No changes were proposed on the Articles on infanticide, the different classes of abortion, and mutilation. In 1972, the House approved H. No. 1855, a bill which sought to replace the Revised Penal Code with a new body of criminal laws, to be known as the Code of Crimes. Although in Article 159, abortion committed to save the life of the mother or to remove a grave and imminent danger to her health is expressly not penalized, yet, infanticide and the different kinds of abortion before mentioned in the old Code with a few other additions are punished.<sup>274</sup> In fact the prescription, selling and advertising of abortive drugs, substances, objects, instruments, or methods are likewise punished.<sup>275</sup>

Even under the present Penal Code, the view has been expressed that therapeutic abortion (i.e., interruption of pregnancy by a surgeon to save the life or preserve the health of the mother) is justified under paragraph 4 of Article 11 of the Revised Penal Code which provides:

ART. 11. *Justifying circumstances.* — The following do not incur any criminal liability:

x x x x x

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

On the other hand, the contrary opinion has also been advanced that in the light of present medical knowledge there is hardly any situation where this justifying circumstance (with reference to therapeutic abortion) can apply.<sup>276</sup> A multi-faceted long-range program, including the enactment of laws which would not only remove existing legal obstacles to a more vigorous prosecution of family planning activities but would also encourage a small-size family, could provide a lasting solution to the problems of rapid population growth.

---

<sup>274</sup> See Arts. 153-158.

<sup>275</sup> Art. 160.

<sup>276</sup> ZARRAGA, LEGAL MEDICINE 100. (1971).

## VII. POSSIBLE IMPROVEMENTS IN LAWS AFFECTING POPULATION

The laws on family planning in the Philippines are on the whole strongly pro-natalist. Recent legislative enactments regulating the use and dispensation of contraceptives and the establishment of a population commission which would undertake family planning services are at most stop-gap measures designed to cope with the problem of rapid population growth. In the consideration of law as a means of social control for the population problem, what is needed in the Philippines is a systematic examination of the laws bearing on family planning and population control, with the end in view of producing a coherent and consistent public policy on the subject. The subjects of marriage, the establishment of drug companies exclusively devoted to the production of contraceptive drugs and devices, social security, medicare, housing and child care and allowances, have not been fully explored and previously considered possible areas of reform. Before this task is undertaken, it is imperative that accurate vital statistics should be on hand. It would seem that because of the predominance of Catholics among the population, public opinion would be heavily against either the express legalization of abortion or sterilization, two practices which, as the experience of Japan shows, were responsible for a rapid decline in the birth rate. Sterilization operations, however, have been ruled by the Secretary of Justice as not constituting the crime of mutilation.<sup>277</sup> As the laws on contraception have been liberalized both by legislation and administrative interpretation, family planning services and information programs have been prosecuted with more vigor. The experience derived from this activity would be enlightening in the determination of what specific laws could be enacted for law reform. Except for those dealing with abortion or sterilization relevant legal provisions which have become obstacles to a successful family planning program could be repealed. New provisions which would support the program could be proposed for enactment. It is essential that, with the necessary supporting sociological and economic data, a systematic effort be made toward legal reform in the field of family planning and population control.

---

<sup>277</sup> Opinion No. 131, dated September 17, 1973.

## REVISING THE POPULATION ACT OF NINETEEN HUNDRED AND SEVENTY-ONE

SECTION 1. This decree shall be known as the Revised Population Act of the Philippines.

SEC. 2. *Declaration of Policy.*—The Government of the Philippines hereby declares that for the purpose of furthering the national development, increasing the share of each Filipino in the fruits of economic progress and meeting the grave social and economic challenge of high rate of population growth, a national program of family planning involving both public and private sectors which respect the religious beliefs and values of the individuals involved shall be undertaken.

SEC. 3. *Commission on Population: Creation.*—There is hereby created an agency under the Office of the President, a Commission on Population hereinafter referred to as POPCOM, to carry out the purposes and objectives of this Decree.

SEC. 4. *Purposes and Objectives.*—The POPCOM shall have the following purposes and objectives:

(a) To formulate and adopt coherent, integrated and comprehensive long term plans, programs and recommendations on population as it relates to economic and social development-consistent with and implementing the population policy which shall be submitted to and approved by the President;

(b) To make comprehensive studies of demographic data and expected demographic trends and propose policies that affect specific and quantitative population goals;

(c) To organize and implement programs that will promote a broad understanding of the adverse effects on family life and national welfare of unlimited population growth;

(d) To propose policies and programs that will guide and regulate labor force participation, internal migration and spatial distribution of population consistent with national development;

(e) To make family planning a part of a broad educational program;

(f) To encourage all persons to adopt safe and effective means of planning and realizing desired family size so as to discourage and prevent resort to unacceptable practice of birth control such as abortion by making available all acceptable methods of contraception to all persons desirous of spacing, limiting or preventing pregnancies;

# DOCUMENTS

MALACANANG  
RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES  
MANILA

## PRESIDENTIAL DECREE No. 79 REVISING THE POPULATION ACT OF NINETEEN HUNDRED AND SEVENTY-ONE

WHEREAS, Republic Act 6365, entitled "An Act Establishing a National Policy on Population, creating the Commission on Population and for other purposes" and enacted into law on August 15, 1971;

WHEREAS, in order to effectively implement the population program, vital amendments to R. A. 6365, are necessary;

WHEREAS, the population program is an integral and vital part of social reform and economic development;

WHEREAS, one of the objectives of Proclamation No. 1081 is to effect social, economic and political reforms, and thus bring about the transformation of a new society in our country, a society designed to improve the quality of life of each Filipino;

WHEREAS, family planning and responsible parenthood assure greater opportunity for each Filipino to reach his full potential and to attain his individual dignity;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested in me by the Constitution of the Philippines as Commander-in-Chief of all Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972 as amended, and in order to effect desired changes and reforms in the social, economic, and political structures of our society, do hereby adopt, approve and make as part of the law of the land, the attached measure.

Changes and modifications in this Revised Population Act shall be made from time to time, as necessity requires, to be correspondingly announced by me or by my duly authorized representative.

This decree shall take effect immediately.

Done in the City of Manila, this 8th day of December, in the year of Our Lord Nineteen Hundred and Seventy-two.

(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR  
Executive Secretary

(g) To establish and maintain contact with international public and private organizations concerned with population problems;

(h) To provide family planning services as a part of overall health care;

(i) To make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.

**SEC. 5. *Duties and Functions of the POPCOM.***—The POPCOM shall have the following duties and powers:

(a) To employ physicians, nurses, midwives to provide, dispense and administer all acceptable methods of contraception to all citizens of the Philippines desirous of spacing, limiting or preventing pregnancies: *Provided, That,* the above mentioned health workers, except physicians, for the purpose of providing, dispensing and administering acceptable methods of contraception, have been trained and authorized by the POPCOM in consultation with the appropriate licensing bodies;

(b) To undertake such action projects as may be necessary to promote the attainment of this Decree and to enter, in behalf of the Republic of the Philippines, into such contracts, agreements or arrangements with government or private agencies as will be necessary, contributory or desirable in the implementation thereof;

(c) To undertake, promote and publish information, studies and investigations on Philippine population in all its aspects;

(d) To utilize clinics, pharmacies as well as other commercial channels of distribution for the distribution of family planning information and contraceptives;

(e) To call upon and utilize any department, bureau, office, agency or instrumentality of the Government for such assistance as it may require in the performance of its functions.

**SEC. 6. *Board of Commissioners.***—All functions and powers of the POPCOM shall be vested in, and exercised by a Board of Commissioners hereinafter referred to as the Board, composed of: Secretary of Education and Culture, Secretary of Health, Secretary of Social Welfare, Dean of the University of the Philippines Population Institute and the Director-General of the National Economic Development Authority.

**SEC. 7. *Powers and Duties of the Board.***—The Board shall have the following powers and duties:

(a) To adopt and prescribe policies, rules, regulations and procedures for the government of the POPCOM and to modify, amend or repeal the same;

(b) To receive, evaluate, modify and approve project proposals on population matters from whatever source and to coordinate and evaluate their implementation in accordance with the approved plans and programs;

(c) To approve the annual and/or supplemental budget of POPCOM as may be submitted to it by the Executive Director from time to time; and

(d) To perform such other duties as may be assigned to it by the President of the Philippines.

**SEC. 8. *Chairman of the Board, Powers and Duties.***—The Board shall elect a Chairman from among its members. The Chairman shall have the following powers and duties:

(a) To call and preside over the meetings of the Board;

(b) To disburse, administer and obligate appropriations of the POPCOM, subject to the Approval of the Board;

(c) To appoint, determine the qualifications, fix the number and salaries of such personnel as may be necessary for the proper discharge of the duties and functions of the POPCOM, and, with the approval of the Board, to remove, suspend, or otherwise discipline for just cause, any subordinate employee of the POPCOM;

(d) To submit not later than July 31st of each year an annual report, through the Board, to the President of the Philippines, providing copies thereof to the two Houses of Congress;

(e) To accept on behalf of POPCOM, gifts, grants or donations and administer, obligate and disburse the same in accordance with the provisions of this Decree;

(f) To perform such other duties as may be assigned to him by the Board from time to time;

(g) To constitute continuing or ad-hoc committees consisting of members of the Board or such other experts as are deemed necessary to conduct studies for the POPCOM or to assist in the discharge of its functions.

**SEC. 9. *Meetings.***—The Board shall meet at least once every four months or oftener at the call of the Chairman. Three members of the Board shall constitute a quorum and no action of such quorum shall be treated as a valid decision of the Board unless it carries

a unanimous vote of the three members present and constituting the quorum. Members of the Board who are government officials shall serve without additional compensation, however, they shall be allowed commutable travelling, representation and other necessary allowances.

SEC. 10. *Executive Director, Powers and Duties.*—The POPCOM shall have an Executive Director to be appointed by the Chairman, subject to the approval of the Board. The Executive Director shall have the following powers, duties and responsibilities:

- (a) To act as action officer of the POPCOM;
- (b) To sit in all meetings of the Board and participate in its deliberations but will not have the right to vote;
- (c) To be responsible for the operation of the office staff and of the national population program and for making decisions on day-to-day basis subject to the direction and supervision of the Chairman;
- (d) To prepare periodic review of program progress;
- (e) To submit annual and/or such supplemental budget estimates to the Board of Commissioners;
- (f) To recommend policies and programs to the Board; and
- (g) To perform such other duties as may be assigned to him by the Board from time to time.

SEC. 11. *Personnel.*—The POPCOM shall have such personnel as may be necessary for the performance of its basic functions and such other personnel as may be assigned or detailed from other agencies of the Government. All positions, except technical and professional staff and such other positions as the Board may declare to be highly technical, policy determining or primarily confidential, shall be subject to Civil Service rules and regulations and coverage of the plans of the Wage and Position Classification Office: *Provided, That*, all personnel shall be entitled to the benefits and privileges normally accorded to government employees, such as retirement, GSIS insurance, leave and similar matters: *Provided, further, That*, in the appointment and promotion of employees, merit and efficiency shall serve as basis, and no political test or qualification shall be prescribed and considered for such appointments or promotions: *Provided, finally, That* the POPCOM shall be the final authority on appeals on personnel matters concerning its professional and technical personnel.

SEC. 12. *Donations.*—The POPCOM shall be authorized to receive grants, donations or gifts, in whatever form and from

whatever sources: *Provided, That*, said grants, gifts, or donations shall be administered, obligated and disbursed in accordance with the terms thereof, or in the absence of such terms, in such manner as a majority of the Board may in its discretion determine: *Provided, finally, That*, said grants, gifts, donations shall be subject only to such limitations as the grantor, giver or donor may impose as accepted by the POPCOM.

SEC. 13. *Appropriations.*—The sum of fifteen million pesos is hereby appropriated annually out of any funds in the National Treasury not otherwise appropriated, as operating funds of the POPCOM starting in the fiscal year nineteen hundred and seventy four: *Provided, That*, out of this sum shall be disbursed the equivalent of the amount of three hundred fifty thousand dollars as annual contributions of the Republic of the Philippines to the United Nations Fund for Population Activities; *Provided, further, That*, at least seventy-five percent of said amount of \$350,000 shall be used annually to finance population projects in the Philippines pursuant to this Act which are approved by the United Nations for Population Activities; and *Provided, finally, That*, said amount may be increased or decreased in the succeeding years by POPCOM in accordance with its financial position. This appropriation shall hereafter be included in the annual General Appropriations Act.

SEC. 14. *Repeal.*—Any and all Acts, Statutes, Rules, Regulations or parts thereof inconsistent herewith are hereby repealed.

SEC. 15. *Separability.*—If for any reason, any part of this Act is declared unconstitutional or invalid, no other provision of this Act shall be affected thereby.

SEC. 16. *Effectivity.*—This Decree shall take effect immediately.

Done in the City of Manila, this 8th day of December, in the year of Our Lord nineteen hundred and seventy-two.

(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines

By the President:  
(Sgd.) ALEJANDRO MELCHOR  
Executive Secretary

MALACAÑANG  
RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES  
MANILA

PRESIDENTIAL DECREE No. 148  
AMENDING FURTHER CERTAIN SECTIONS OF REPUBLIC  
ACT NUMBERED SIX HUNDRED SEVENTY-NINE,  
AS AMENDED, COMMONLY KNOWN AS THE  
WOMAN AND CHILD LABOR LAW.

WHEREAS, under Section 9, Article II of the New Constitution, the State shall among other policies, afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers;

WHEREAS, there is an urgent need to translate these policies into meaningful reality consistent with the demands of national development particularly insofar as the employment of women and minors is concerned;

WHEREAS, to effect those objectives, it is necessary to amend further Republic Act No. 679, commonly known as the Woman and Child Labor Law;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested in me under the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, General Order No. 1, dated September 22, 1972 as amended, do hereby amend certain sections or provisions of R.A. No. 679, as amended, to wit:

SECTION 1. Section one of the Republic Act Numbered Six Hundred and seventy-nine, as amended, is further amended to read as follows:

"Section 1. *Minimum Employable Age.*—No child below 14 years of age shall be employed by any employer, except where the child works directly under the sole responsibility of his parent or guardian, involving activities which are not hazardous in nature and which do not in any way interfere with his schooling."

SEC. 2. Section two of the same Act is repealed, and in lieu thereof, a new section is inserted to read as follows:

*Eligibility for Employment.*—Any person between 16 and 18 years of age may be employed in any non-hazardous occupation determined by the Secretary of Labor. The employer shall not discriminate against any such person in respect to terms or conditions of employment on account of his age."

Section 3 of the same Act is repealed and in lieu thereof a new Section is inserted to read as follows:

*Sec. 3. Additional coverage.*—Any woman who is permitted or allowed to work, with or without compensation in any nightclubs, cocktail lounges, bars, massage clinics, or in any similar places, shall be considered as employees of such establishment for purposes of this and other existing labor and social legislations."

SEC. 4. Section 7 of the same Act is further amended by amending paragraph (b) to read as follows:

"(b) No woman, regardless of age, shall be allowed to work, with or without compensation, in any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day, except for activities which may be allowed by the Secretary of Labor through implementing rules and regulations."

SEC. 5. Section 8 of the same Act is further amended to read as follows:

*"Sec. 8. Maternity Leave Benefits.*—

(a) Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least six months for the last twelve months, maternity leave of at least two weeks prior to the expected date of delivery and another four weeks after normal delivery or abortion, with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks.

(b) The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion, or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged.

(c) The maternity leave provided in the preceding paragraph shall be paid by the employer only for the first four deliveries by a woman employee after the effectivity of this Decree.

(d) The Secretary of Labor may by regulation require an employer to establish a nursery in his workplace for the benefit of his woman employees.

(e) Establishments which are required by law to maintain a clinic or infirmary shall provide free family planning services to their employees which shall include, but not limited to, [sic] the application or use of contraceptive and/or intra-uterine devices.

(f) In coordination with the other agencies of the Government engaged in the promotion of family planning, the Department of Labor shall develop and prescribe incentive bonus schemes to encourage family planning among the married workers in any establishment or enterprise."

SEC. 6. Section 9 of the same Act is further amended by amending paragraph (b) and by adding thereto paragraph (c) to read as follows:

"(b) It shall be the duty of every employer to give his employees not less than sixty minutes time-off for their regular meals, unless otherwise prescribed by the Secretary of Labor."

"(c) The Secretary of Labor shall also establish standards that will insure the health and safety of women employees."

SEC. 7. Section 10 of the same Act is hereby repealed.

SEC 8. Section 12 of the same Act as amended, is further amended by amending paragraph (c) to read as follows:

"(c) It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated; or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."

SEC. 9. Repealing Clause.—All laws, decrees, orders and regulations or parts thereof, which are contrary to or inconsistent with this Decree are hereby repealed.

SEC. 10. Effectivity.—This Decree shall take effect immediately.

Done in the City of Manila, this 13th day of March, nineteen hundred and seventy-three.

(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines

By the President:  
(Sgd.) ALEJANDRO MELCHOR  
Executive Secretary

**MALACAÑANG**  
**RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES**  
**MANILA**

**GENERAL ORDER NO. 18**

WHEREAS, martial law has been declared under Proclamation No. 1081, dated September 21, 1972, and is now in effect throughout the entire country;

WHEREAS, one of the objectives of Proclamation No. 1081 is to effect social, economic and political reforms, and thus bring out [sic] the transformation of a new society in our country, a society designed to improve the quality of each Filipino;

WHEREAS, family planning and responsible parenthood assure greater opportunity for each Filipino to reach his full potential and to attain his individual dignity;

WHEREAS, every citizen of the Philippines should participate to bring about these changes;

NOW THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of the Armed Forces of the Philippines, pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972 as amended, do hereby enjoin all citizens of the Philippines, all universities, colleges and schools, government offices, mass media, civic and voluntary organizations, religious organizations of all creeds, and business and industrial enterprises to promote the concept of family welfare, responsible parenthood, and family planning.

Done in the City of Manila this 8th day of December, in the year of Our Lord nineteen hundred and seventy-two.

(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR  
Executive Secretary

**MALACANANG  
RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES  
MANILA**

**December 8, 1972**

**LETTER OF INSTRUCTION No. 47**

**To: The Department of Education and Culture**

Pursuant to General Order No. 1 and in order to facilitate the implementation of the population program, you are hereby directed to inform all schools of medicine, nursing, midwifery, allied medical professions, and social work to prepare, plan and implement the integration of family planning in their curricula and to require from their graduates sufficient instruction in family planning as a prerequisite to qualifying for the appropriate licensing examination.

**(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines**

---

**MALACANANG  
RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES  
MANILA**

**December 8, 1972**

**LETTER OF INSTRUCTION No. 47-A**

**To: (1) The Secretary of the Department of Public Information  
(2) The Postmaster General**

Pursuant to General Order No. 1 and in order to achieve the objectives of the population program, you are hereby directed to help implement the programs of the Commission on Population, Office of the President, by disseminating information on family planning.

**(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines**

## 2nd Indorsement

April 28, 1969

Respectfully returned to the Secretary of Health, Manila.

The basic letter requests opinion on the effect of Republic Act No. 4729, entitled "AN ACT TO REGULATE THE SALE, DISPENSATION, AND/OR DISTRIBUTION OF CONTRACEPTIVE DRUGS AND DEVICES" on laws (e.g., Section 102 (d) of the Tariff and Customs Code) which prohibit the importation into the Philippines of articles, instruments, drugs and substances designed or intended for preventing human conception.

The question has arisen in view of the current family planning programs being undertaken by various sectors and organizations, such as the Population Planning program being promoted by the USAID-NEC-DEPT. OF HEALTH in accordance with the Project Agreement as revised on June 28, 1968. It appears that the Commissioner of Customs and the Secretary of Finance have earlier ruled that Republic Act No. 4729 has impliedly repealed Section 102(d) of the Tariff and Customs Code.

Republic Act No. 4729 prohibits the sale, dispensation or distribution of any contraceptive drug or device "unless such sale, dispensation or distribution is by a duly licensed drugstore or pharmaceutical company and with the prescription of a qualified medical practitioner." The law was intended to "regulate the indiscriminate dispensation of contraceptive drugs and devices" which "poses a serious threat to the health and safety of the individual, unless under the close supervision of a qualified medical practitioner" and to discourage "the commission of immoral acts." (See Explanatory Note to S. No. 401.)

It is believed that Republic Act No. 4729 has the effect of making contraceptives legitimate articles of commerce, provided that they are handled by qualified persons; and that, consequently, it has repealed by necessary implication the provisions of the Tariff and Customs Code as well as other laws and regulations banning their entry into the Philippines. Indeed, there is irreconcilable conflict or repugnancy between two statutes where one seeks to prohibit importation of an article or merchandise because its use is considered injurious to public health and morals, and another allows the sale or distribution thereof to the public because its use

is no longer deemed detrimental *per se* to public health or morals as long as the sale or dispensation is restricted and only upon prescription by a qualified medical practitioner. Even if there are contraceptives of local manufacture, a fact of which this Office is not aware, it is incongruous and illogical to assume that the legislature would allow their use under certain restrictions, while continuing the ban on imported contraceptives, inasmuch as Republic Act No. 4729 is definitely not a legislation intended to protect locally manufactured contraceptives against foreign competition.

Accordingly, this Office concurs in the ruling that with the enactment of Republic Act No. 4729, allowing the use of contraceptive drugs and devices under certain conditions, the same have ceased to be articles of prohibited importation.

(Sgd.) JUAN PONCE ENRILE  
Secretary of Justice

---

OPINION NO. 131, s. 1973  
September 17, 1973

Dr. Conrado Ll. Lorenzo, Jr.  
Executive Director  
Commission on Population  
ABI Bldg., 136 Ayala Avenue  
Makati, Rizal

S i r :

With reference to your request for opinion as to whether or not surgical sterilization for both sexes (tubal ligation and vasectomy) would constitute a violation of Article 262 of the Revised Penal Code, the following are my comments:

1. The cited provision reads:

"ART. 226. *Mutilation*.—The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

"Any other mutilation shall be punished by *prision mayor* in its medium and maximum periods."

In the case of *U.S. v. Bogel, et al.*, 7 Phil. 285 (1907), the Supreme Court, in holding that the putting out of an eye is not mutilation under Article 415 of the Spanish Penal Code which penalized intentional mutilation, stated: "Viada, in his commentary on Article 415, which penalizes intentional mutilations points out that by mutilation (*mutilacion*) is understood, according to the *Diccionario de la Lengua Española*, the *lopping or clipping off (cerenamiento)* of some part of the body." As this provision of the Spanish Penal Code was the source (sic) of the above-quoted provision of the Revised Penal Code, it is in the sense expounded by Viada that the prohibition in the latter provision should be understood.

You state that tubal ligation and vasectomy "do not involve lopping or clipping off of the organs of reproduction of both sexes." I understand that these two methods of surgical sterilization are effected by the closing of a pair of small tubes in either the man or the woman so that the sperm and ovum cannot meet; it does not involve the removal of reproductive glands or organs as is the case in castration, with which it is sometimes confused. (Encyclopedia Americana, "Sterilization, Human", Vol. 25, p. 629; an article written by the Executive Director of the Human Betterment Association of America, Inc.) Such being the case, I do not think that these methods of contraception could be regarded as mutilation within the contemplation of Article 262, *supra*.

2. As I see it, there can be no offense committed where the subject *consents knowingly* to the operation — in the same manner as no offense is committed by the surgeon who intentionally removes, for instance, an eye or a kidney from a person, who consents thereto, for the purpose of transplanting it upon another. The only difference is that in surgical sterilization, the purpose is not transplantation but family planning and population control, motives which are not contrary to law or public policy.

3. Furthermore, it bears emphasis that the new Constitution makes it "the responsibility of the State to achieve and maintain population levels most conducive to the national welfare" (Art. XV, sec. 10). Likewise, Presidential Decree No. 79 declares the national policy of "*undertaking a national program of family planning involving both public and private sectors,*" which is implemented by section 4 thereof, listing the following among the purposes and objectives of the Commission on Population:

"(f) To encourage all persons to adopt safe and effective means of planning and realizing the desired family size so as to discourage

and prevent resort to unacceptable practice of birth control such as abortion by *making available all acceptable method of contraception to all persons desirous of spacing, limiting, or preventing pregnancies.*"

"(1) *To make available all acceptable methods of contraception, except abortion, to all Filipino citizens desirous of spacing, limiting or preventing pregnancies.*"

The above-stated declared national policy would be thwarted if I were to consider as illegal the two acceptable methods of contraception in question which, as you state, are "widely practiced", and are being funded by international organizations because they are "safe and effective means of family planning."

In resumé, I am of the opinion that sterilization for both sexes by tubal ligation and vasectomy are not mutilations within the contemplation of Article 262 of the Revised Penal Code and are acceptable methods of contraception as long as the subject's consent thereto is given intelligently with full knowledge that they are irreversible.

Very truly yours,  
(Sgd.) VICENTE ABAD SANTOS  
Secretary of Justice

---

OPINION NO. 141, s. 1973  
October 3, 1973

Mrs. Loreto Paras-Sulit  
Secretary General  
The Philippine National Red Cross (PNRC)  
860 United Nations Avenue, Manila

M a d a m :

This is with reference to your request for opinion on "whether the PNRC may, under its existing policies and practices, opt to continue extending to its women employees maternity leave with pay regardless of the number of deliveries, without violating Sec. 8(c) of Presidential Decree No. 148 considering the fact that our [the PNRC] employees will thus be enjoying benefits under more favorable terms than those provided under the Decree.

The cited provision of P.D. No. 148 — which, it is noted, is an amendment of R.A. No. 679, commonly known as the Woman and Child Labor Law — reads:

**"SECTION 8. *Maternity leave benefits.*—**

**"(c) The maternity leave provided in the preceding paragraph shall be paid by the employer *only for the first four deliveries by a woman employee after the effectivity of this Decree.*" (Italicized supplied.)**

Section 1 of the Rules and Regulations implementing the said Decree, promulgated by the Department of Labor, enumerates the subjects of their coverage as follows:

**"Section 1. *General Statement of Coverage.*—These rules and regulations shall apply to all employers whether operating for profit or not, including education, religious and charitable institutions except to the Government and to government-owned or controlled corporations and to employers of household helpers and persons in their personal service insofar as such workers are concerned."**

Although the PNRC is a charitable institution, I do not think that it falls within the category of charitable institutions envisaged in the above-mentioned rules and regulations which as I see it refer only to institutions strictly private in character. As has been previously stated by this Office, the PNRC, a public corporation created by Republic Act No. 95, as amended, is a "charitable organization operated as an agency of the Republic of the Philippines." (Op., Secretary of Justice, No. 122, s. 1947.) As an agency of the state, it is covered by the Government Service Insurance Act for retirement-insurance purposes (see section 4, Com. Act No. 186, as amended), and not by the Social Security Act (R.A. No. 1164, as amended): and as to the working hours of its employees, by the pertinent provisions (sections 562-566) of the Revised Administrative Code. (See Op., Secretary of Justice, No. 102, s. 1954.) I understand also that the PNRC has been observing the provisions of Commonwealth Act No. 647, as amended, which is the law governing maternity leave privileges of women in the government service, as well as its implementing rules and regulations, incorporated in the Revised Civil Service Rules. Such being the case, and since, as already stated, P.D. No. 148 is an amendment of R.A. No. 679 — and not Commonwealth Act No. 647 — the PNRC women employees do not fall within the purview of the said Decree and its implementing rules and regulations.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS  
Secretary of Justice

Republic of the Philippines  
DEPARTMENT OF LABOR  
Manila

DEPARTMENT ORDER No. 7  
(Series of 1973)

**Re: FAMILY PLANNING PROGRAM PARTICIPATION**

Pursuant to the authority vested in me by Section 10 of the Rules and Regulations Implementing Presidential Decree No. 148, further amending R.A. No. 670, as amended, commonly known as The Woman and Child Labor Law, the following requirements and pertinent rules are hereby promulgated:

*A. Delegation of Responsibilities*

Under the general guidance of the Department of Labor, through the Bureau of Women and Minors, the following specific areas of responsibility are assigned with regard to the provision on family planning services:

*Management should:*

1. Arrange for the training of existing or new clinic personnel to insure that they are competent to promote family planning;
2. Provide clinical services including follow-up and treatment of normal minor side effects;
3. Where clinical services in the establishments are not available, inadequate, or not well administered, provide referral to competent private or public nearby facilities;
4. Integrate family planning into existing services and education programs including applied nutrition, community development, extension classes, and education undertaken by management;
5. Provide time off for workers to attend lectures and in going to the clinics;
6. Provide lecture halls, projectors, visual aids, and printed materials for motivational meetings;
7. Schedule informational sessions and clinical services to insure that all workers get the opportunity to be exposed to the program;
8. Develop or procure through government channels appropriate informational and educational materials on family planning;

9. Insure that government forms and reporting procedures are followed so that the involvement of the organization in the national program is achieved;
10. Whenever practicable, to encourage the use of contraceptive within surrounding communities which are adjacent to the industrial establishments.

*Labor should:*

1. Provide moral support for the program including support for information programs;
2. Insure that employees attend information sessions that are set up by management, go to the clinics as scheduled, report medical complications as discovered, and follow scientific instructions;
3. Train shop stewards and/or their wives to act as motivators and communicators to enhance the image of family planning;
4. Help organize employees into groups to reenforce continuation such as mother's clubs or workers family planning groups;
5. Help to insure that workers follow contraceptive methods which are appropriate to their own situation, and that reluctant acceptors are counselled and encouraged to use more suitable methods;
6. Integrate family planning education into normal activities of community development, social action and education undertaken by trade unions;
7. Provide funds for study grant to selected trade union officers to attend family planning training sessions or courses.

*Both Labor and Management should:*

Organize consultative and advisory committees in each establishment with representation from labor and management with the responsibility to continually re-assess the status of the program to determine the awareness, acceptance and continued practice of family planning, and to renegotiate provision of informational and motivational activities.

The foregoing areas of responsibility shall apply to all managers and labor organizations regardless of the number of employees or union members, except that only firms which employ in excess of 300 workers will be required to maintain their own clinical contra-

ceptive delivery services. In the establishment and maintenance of these services, the following requirements and rules shall apply:

1. *More than 300 workers* —

Employers who habitually employ more than three hundred (300) workers in any locality shall provide free family planning services to their employees and their spouses which shall include, but not be limited to the application or use of contraceptive or intrauterine devices. (Sec. 10, Rules and Regulations Implementing Presidential Decree No. 148)

For an effective compliance of this requirement, establishments falling within the aforesaid category, shall maintain in their infirmary, a Family Planning Clinic. The physician and the dentist who take charge of the clinical service of the workers as required by R.A. No. 1954, otherwise known as the Free Emergency Medical and Dental Treatment Act shall be given a training on family planning in a duly recognized family planning training center of the POPCOM, or in one of its designated agencies, and in addition to their duties as envisioned by said Act, shall take charge of the family planning service of the establishment.

Services that may be rendered by the Family Planning Clinic may include among others, the use of:

1. Oral contraceptive pills
2. Intrauterine devices (IUD)
3. Rhythm method
4. Foams
5. Condoms
6. Injectibles

2. *For 300 workers or less* —

Family planning services in establishments employing more than two hundred but not more than 300 workers, shall be the responsibility of a retained or full-time physician, whereas, if the number of workers is not less than thirty nor more than 200, the family planning service may be under the charge of a nurse, after certification by the POPCOM or its designated representative pursuant to Presidential Decree No. 79, Sec. 5(a).

For this purpose, there shall be no need to employ additional medical personnel for family planning services, inasmuch as the employment of a physician and a nurse for these sizes of establishments is a pre-requisite of R.A. No. 1054. What is required of them is to undergo training and certification on family planning offered by either the POPCOM or one of its accredited agencies, and thereafter to take charge of the family planning services of these establishments, in addition to those duties envisioned by R.A. No. 1054.

#### *B. Consultative and Advisory Bodies*

Within the Department of Labor, a family planning advisory council shall be organized under the Bureau of Women and Minors. The council shall take charge of the formulation and evaluation of policies and shall render whatever advisory and consultative services available. The council shall be composed of three members, one representing each of the following — labor, management, Department of Labor, and the representative of the Department of Labor shall be the chairman.

There shall be one family planning advisory council at each regional office to be similarly constituted and the Regional Director of the Department of Labor shall be the chairman. Regional family planning advisory council will be responsible for insuring that the services and programs offered in paragraph A above are complied with and are carried out in an expeditious manner by management and labor. Regional advisory councils shall bring to the attention of the national advisory council suggestions for modifications of policies. They shall also report any and all violations or cases of non-compliance with the rules, guidelines and regulations of the law and of subsequent modification.

#### *C. Incentive Bonus Plans and Programs*

##### *1. Bonuses for contraceptive acceptance or continuation*

In order to promote the acceptance of and continuation on effective contraception, firms and their consultative and advisory committees are encouraged to experiment with the giving of bonuses and awards to successful contraceptors.

In general, firms will be expected to calculate the savings in finance and man hours which will accrue by virtue of successful employee participation in family planning activities. These savings

may take the form of unused maternity leaves; of medical care which is foregone by virtue of non-pregnancy and non-delivery; of medical, educational and other dependency benefits which are not utilized as a result of reduced childbearing; of time which is saved by virtue of increase work efficiency of non-pregnant female workers and of male workers with fewer dependents. Once such calculation has been made, a portion of savings which has accrued may be utilized in the form of incentives and bonuses for successful participation in family planning. These bonuses may take any of the following forms among others:

1. Pension plans, insurance benefits, savings deposits or other social security measure for employee who participated effectively in the family planning program;
2. Bonuses in terms of leaves and time-off for contraceptive acceptance or for successfully avoiding pregnancy;
3. Cash, leave, or promotion credit bonuses to female employees who do not utilize maternity leave for a certain number of years;
4. Cash, commodity or benefit bonuses to employee-motivators for recruitment of acceptors and for successfully encouraging continuation on contraception;
5. Group bonuses to divisions and departments for exceeding certain levels of contraceptive acceptance or for accumulating certain numbers of aggregate years of non-pregnancy among employees;
6. Prizes and awards on a competitive basis to individuals, couples, or divisions for excellence in recruitment of acceptors, for continuation of practice for reduction of fertility, or for effectiveness of contraceptive methods accepted.

Any bonus plan which is adopted should be carefully reviewed by the firm's consultative and advisory committee to insure that the interests of labor are served, that enrollment in bonus programs is voluntary, that there is no coercion to accept contraception, and that such programs are ethically acceptable to all concerned.

The family planning advisory council of the Bureau of Women and Minors shall be responsible for providing consultative services to firms in design and testing of appropriate bonus programs.

. . . . .

**D. *Periodic Survey* —**

To determine the impact and/or effectiveness of the bonus plans a follow-up survey should be undertaken by the Bureau of Women and Minors after six (6) months, and every year thereafter.

A complete report to the Secretary of Labor shall be submitted after the end of every survey made, to re-assess the situation with a view of improving, revising and/or adopting other means, methods or procedure more effective to carry out the purpose envisioned by R.A. No. 679, as amended commonly know as The Woman and Child Labor Law.

September 28, 1973.

Recommended by:

(SGD.) LUCINA C. ALDAY

Director

Bureau of Women & Minors

APPROVED:

BLAS F. OPLE

Secretary

MALACASANG  
RESIDENCE OF THE PRESIDENT OF THE PHILIPPINES  
MANILA

PRESIDENTIAL DECREE No. 69  
AMENDING CERTAIN SECTIONS OF THE NATIONAL  
INTERNAL REVENUE CODE

WHEREAS, prior to the promulgation of Proclamation No. 1081 dated September 21, 1972, there were pending in Congress certain priority measures vital to the national development programs of the Government, one of which was the Omnibus Tax Bill for 1972.

WHEREAS, the Omnibus Tax Bill for 1972 is designed to institute basic reforms in our antiquated tax system by simplifying tax incentive policies, increasing the financial resources of the government, making it a more effective tool for redistribution of income and wealth and keeping it in step with modernization;

WHEREAS, there are provisions of the National Internal Revenue Code which need to be revised but were not included in the said bill;

WHEREAS, it is imperative to adopt these proposed measures to make the tax system more responsive to the requirements of a developing economy, foremost of which is the speedy restructuring of the social, economic and political institutions of the country;

NOW, THEREFORE, I, FERDINAND E. MARCOS, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, in order to transform the tax system into an effective tool for the implementation of the desired changes and reforms in our society, do hereby order and decree that the said amendments to the National Internal Revenue Code be adopted, as it is hereby adopted, and made part of the law of the land;

. . . . .

SEC. 2. Certain sections of Title II of the same Code, as amended, are hereby further amended to read as follows:

. . . . .

SEC. 23. *Amount of personal exemptions allowable to individuals.*  
—For the purpose of the tax provided for in this Title, there shall

be allowed in the nature of a deduction from the amount of net income the following personal exemptions:

(a) *Personal exemption of single individuals.*—The sum of one thousand eight hundred pesos, if the person making the return is a single person or a married person legally separated from his or her spouse.

(b) *Personal exemptions of married persons or head of family.*—The sum of three thousand pesos, if the person making the return is a married man or a married woman or the head of a family: *Provided*, That only one exemption of three thousand pesos shall be made from the aggregate income of both husband and wife when not legally separated. For the purpose of this section, the term "head of family" includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognized natural, or adopted children living with and dependent upon him or her for their chief support where such brothers, sisters, or children are not more than twenty-one years of age, unmarried, and not gainfully employed, or where such children are incapable of self-support because mentally or physically defective.

(c) *Additional exemption for dependents.*—The sum of one thousand pesos of each legitimate, recognized natural, or adopted child, wholly dependent upon and living with the taxpayer if such dependents are not more than twenty-one years of age, unmarried, and not gainfully employed or incapable of self-support because mentally or physically defective. The additional exemption under this subsection shall be allowed only if the person making the return is the head of the family. *Provided, however*, That the total number of dependents for which additional exemptions may be claimed shall not exceed four dependents.

(d) *Change of status.*—If the taxpayer married or should have additional dependents as defined in subsection (c) above during the taxable year the taxpayer may claim the corresponding personal exemptions in full for such year.

If the taxpayer should die during the taxable year, his estate may still claim the personal and additional deductions for himself and his dependents as if he died at the close of such year.

If the spouse or any of the dependents should die or become twenty-one years old during the taxable year, the taxpayer may still claim the same exemptions as if they died, or as if such dependents became twenty-one years old at the close of such year.

(e) *Personal exemptions allowable to a nonresident alien individual.*—A nonresident alien individual engaged in trade or business in the Philippines shall be entitled to personal exemption in an amount equal to the exemptions allowed by the income tax law in the country of which he is a subject or citizen to citizens of the Philippines not residing in such country, but not to exceed the amount fixed in this section as exemption for citizens or residents of the

. . . . .

Philippines: *Provided*, That said nonresident alien file a true and accurate return of the total income received by him from all sources in the Philippines, as required by this Title.

**SEC. 12. *Effective date.***—Except as otherwise provided specifically, and except the tax on the income of non-resident citizens under the amendment to Section 21 which shall apply to income beginning January one, nineteen hundred and seventy-two, the provisions of this Decree takes [sic] effect on January one, nineteen hundred and three.

Done in the City of Manila, this 24th day of November in the year of our Lord, nineteen hundred and seventy-two.

(Sgd.) FERDINAND E. MARCOS  
President  
Republic of the Philippines

By the President:

(Sgd.) ALEJANDRO MELCHOR  
Executive Secretary

## Law and Population Book Series

- 1/ *Law and Family Planning*, by Luke T. Lee (1971).
- 2/ *Brief Survey of U.S. Population Law*, by Harriet F. Pilpel (1971).
- 3/ *Law and Population Growth in Eastern Europe*, by Peter B. Maggs (1972).
- 4/ *Legal Aspects of Family Planning in Indonesia*, by the Committee on Legal Aspects of the Indonesian Planned Parenthood Association (1972).
- 5/ *Law and Population Classification Plan*, by Morris L. Cohen (1972).
- 6/ *Law, Human Rights and Population: A Strategy for Action*, by Luke T. Lee (1972).
- 7/ *Population in the UN System: Developing the Legal Capacity and Programs of UN Agencies*, by Daniel G. Partan (a summary of a book, see item 3 above.) (1972).
- 8/ *The World's Laws on Voluntary Sterilization For Family Planning Purposes*, by Jan Stepan and Edmund H. Kellogg (1973).
- 9/ *Law and Population Growth in Singapore*, by Peter Hall (1973).
- 10/ *Law and Population Growth in Jamaica*, by Robert C. Rosen (1973).
- 11/ *Law and Population Growth in the United Kingdom*, by Diana M. Kloss and Bertram L. Raisbeck (1973).
- 12/ *Law and Population Growth in France*, by Jacques Doublet and Hubert de Villedary (1973).
- 13/ *Medical Considerations for Legalizing Voluntary Sterilization*, by F. I. D. Konotey-Ahulu, M.D. (1973).
- 14/ *Brief Survey of Abortion Laws of Five Largest Countries*, by Luke T. Lee (1973).
- 15/ *Anti-Contraception Laws in Sub-Saharan Francophone Africa: Sources and Ramifications*, by Bernard Wolf (1973).
- 16/ *International Status of Abortion Legalization*, by Luke T. Lee (1973).
- 17/ *The World's Laws on Contraceptives*, by Jan Stepan and Edmund H. Kellogg (1973).
- 18/ *Population and the Role of Law in the Americas*, Proceedings of a Seminar of the Human Rights Committee at the 18th Conference of the Inter-American Bar Association (1974).
- 19/ *Legal Aspects of Menstrual Regulation*, by Luke T. Lee and John M. Paxman (1974).
- 20/ *Symposium on Law and Population: Text of Recommendations*, Tunis, June 17-21, 1974.
- 21/ *Law and Population Growth in Iran*, by Parviz Saney (1974).
- 22/ *Law and Population Growth in Kenya*, by U. U. Uche (1974).
- 23/ *Law and Population in Mexico*, by Geraldo Cornejo, Alan Keller, Susana Lerner and Leandro Azuara (1975).