

judicial absolutism."²⁴⁸ However, it is important that the Court be reasonably pro-active, and constantly vigilant. As the embodiment of the people's collective sense of justice and the guardian of the Constitution, the Court must not, nay, should not, hesitate to be involved in the political, economic, or social life of the nation.

History should remind us that the dark days of the dictatorship were brought on by a lot of factors, some of them perhaps beyond the control of the courts. But a critical characteristic of the martial law period is how the Court sought refuge in the political question doctrine and the theory of separation of powers in order to avoid having to rule on cases of extreme political and social importance.

Indeed, to an extent only history will eventually judge; the tragedy that befell this country in its years of suffering and captivity cannot be told for posterity without recognizing the Court's failure to discharge "its most important role as protector of the civil and political rights of our people."²⁴⁹

God, Family, and Country: The Philippine Debate on the Legalization of Divorce

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248. *IBP v. Zamora*, 141284 (Sept. 30, 2000) (Vitug, J., sep. op.).

249. *Id.* at 37 (Puno, J., sep. op.).

INTRODUCTION

On July 9, 2001, Representative Bellaflor Angara-Castillo filed House Bill No. 878, the latest in a long series of divorce bills currently pending in Congress. House Bill No. 878 mirrors Senate Bill No. 782, filed on June 30, 2001 by Senator Rodolfo Biazon. Both bills complement House Bill No. 6993, filed on March 8, 1999 by Representative Manuel Ortega. The purpose of each bill is to "legalize divorce" and to achieve this, each requires the amendment of certain provisions of the Family Code of the Philippines.¹ In essence, the bills would legalize absolute divorce (*a vinculo matrimonii*), based on grounds similar to those currently recognized by law as bases for decrees of judicial separation (relative divorce or *divorce a mensa et thoro*, i.e., separation from bed and board).² Both proposals provide for fault-based grounds for divorce. However, the bills go further by allowing divorce "upon a showing that there is an irremediable breakdown of the marriage relationship due to irreconcilable marital differences;" thus allowing "no-fault" divorce. In addition, an important change proposed in the bills is that once a married couple has obtained a divorce decree, they will be allowed to remarry since the marriage bond will be dissolved. Under the current provisions of the Family Code, couples who obtain a decree of separation *a mensa et thoro* are only allowed to live separately from each other. This decree does not sever the marriage bond.³ As Senator Biazon and Representatives Angara-Castillo and Ortega state in the Explanatory Notes of their respective proposed legislation, "[t]his bill thus seeks to give spouses who are shackled by an irretrievably broken marriage the freedom to remarry and possibly succeed in attaining a stable and fulfilling family life."

There have long been proposals to legalize absolute divorce in the Philippines.⁴ Senate Bill No. 782, House Bill No. 6993, and House Bill No. 878 are merely the latest bills filed for this purpose. Although Article 26 of the Family Code recognizes divorces obtained outside the Philippines by the foreign spouse of a Filipino citizen — thus allowing the Filipino spouse to remarry — it does not recognize such divorces obtained by and among

1. The Family Code of the Philippines, Executive Order No. 209 (1987).
2. Initially, House Bill No. 6993 sought the amendment of the Family Code by substituting legal separation with absolute divorce. However, on May 19, 1999, Rep. Ortega introduced a substitute draft bill retaining the provisions for legal separation and adding new articles in the Family Code governing absolute divorce.
3. The Family Code, art. 63, ¶ 1 (1987).
4. As early as 1995, Senator Anna Dominique Coseteng filed a resolution in the Philippine Senate calling for public hearings on the proposed "Divorce Code of the Philippines." *Senate Urged To Consider Divorce Law*, MANILA CHRONICLE, Oct. 26, 1995.

Filipino spouses or those obtained by Filipinos married to foreigners. Moreover, while Article 36 of the Family Code allows marriages to be declared null and void due to the psychological incapacity of one of the spouses to comply with essential marital obligations, recent decisions of the Philippine Supreme Court have curtailed the ability of spouses to freely avail of this remedy.

One important reason for the absence of legislation allowing absolute divorce is the continued influence of the Catholic Church on Philippine politics and civil legislation. Church doctrine prohibits divorce, although annulments of marriages are allowed under certain grounds.⁵ And in a country where roughly 80% to 85% out of a population of over 78 million are Roman Catholic, the need to cultivate an image of Catholic piety is often a prerequisite for election to public office. As further evidence of the Church's influence, government officials often equate the need to maintain Catholic moral standards with the requirements for sound legislation. For instance, then Vice-President Gloria Macapagal-Arroyo voiced her opposition to House Bill No. 6993, stating that "I am against it, the government is against it, and the church is against it."⁶ And Senator Blas Ople was quoted as stating that "[t]he people here [in the Senate] are strongly Catholic so I don't think that [House Bill No. 6993] will pass here in the Senate."⁷ More recently, President Macapagal-Arroyo, a devout Catholic, joined the Archbishop of Manila Cardinal Jaime L. Sin in voicing her opposition to Senate Bill No. 782, stating that "we should resist divorce because it will weaken the Filipino family" and that divorce is "a plague visited on children of divorcees."⁸ Rather than being one of many interest groups competing for the attention of the State, the influence of the Church as an institution is assiduously courted by members of government.

In contrast, countries with histories of Catholic influence — such as Spain, France, Italy, and the Republic of Ireland — have all passed legislation allowing absolute divorce. And almost all modern societies, democratic or otherwise, allow absolute divorce.

5. As used in this essay, the term "divorce" or "absolute divorce" means the termination of the marriage bond in cases where a valid marriage existed, i.e., all the requisites for a valid marriage were present, such as consent freely given, proper age, etc. "Annulment" refers to a finding that there was a defect in the marriage that existed at the time of the marriage, such as vitiated consent, which gives rise to the dissolution of the marriage. Currently, the Family Code allows annulment based on grounds relating to vitiated consent, such as fraud or the use of force. See The Family Code, E.O. No. 209, art. 45.
6. Isabel C. de Leon, *VP Airs Strong Opposition To Divorce Bill*, MANILA BULL., Feb. 4, 2000, at 15 (italics supplied).
7. Rocky Nazareno, *Congressmen Know Little Of Morality, Says Tataad*, PHIL. DAILY INQUIRER, Feb. 3, 2000, at 5.
8. *Arroyo Joins Cardinal In Opposition To Philippines Divorce Bill*, at <http://sg.news.yahoo.com/010706/1/18vud.html> (last visited on Sept. 24, 2001).

The filing of the divorce bills in Congress has sparked a debate on whether or not Philippine law should allow absolute divorce. The debate has run a gamut of issues from purely religious and/or moral ones, to those relating to the constitutionality of allowing absolute divorce, the protection of family life, and the effects of divorce on children. At the forefront of the movement against the passage of these bills is the Catholic Church. Cardinal Sin has called on the Filipino people to "fight these enemies of the Filipino family." He also denounced House Bill No. 6993 as "contrary to our Catholic faith"⁹ and, apropos of Senate Bill No. 782, stated that "[d]ivorce is immoral. It is un-Filipino. It is absurd."¹⁰ This has led some to doubt that any divorce bill will ever become law, with legislators fearing loss of support from the Church hierarchy.¹¹

This essay will attempt to explore why, up to the present day, absolute divorce is prohibited in the Philippines. The discussion herein will be in light of both the prominent place of the Catholic Church in Philippine society and the family-centered orientation of Filipino culture. It will be shown that, in many ways, the Philippines is still very much a traditional society insofar as marriage and family laws are concerned, albeit with the trappings of modernity.

The first part will give a summary of the history of the regulation and termination of marriages in the West, concentrating to a certain degree on the United States (which introduced the concept of the separation of church and state in the Philippines), and Catholic countries such as France, Spain, and Ireland. The factors leading to the eventual liberalization of divorce statutes in these countries will be discussed.

The second part will summarize the role the Catholic Church has played in Philippine history and society. The influence exercised by the Church on Philippine political and social life from the period of Spanish colonization up to the present will be shown, including the Church's role in the drafting of the 1987 Philippine Constitution. This part concludes with an outline of the history of marriage and family laws in the Philippines from the late nineteenth century to the present. The Philippine policy vis-à-vis the marriage and the family will also be discussed.

The third part will then consider whether Philippine society and government has reached the level of "modernity" that would allow for the passage of a bill allowing and recognizing divorce. The Philippine social and cultural factors will be viewed in the light of what are considered the hallmarks of a "modern" society. In addition, the role of morality in formulation of

9. *Sin Opposes Bills On Abortion, Divorce, Same-Sex Unions*, PHIL. STAR, OCT. 5, 1999, at 2.

10. *Aroyo Joins Cardinal In Opposition To Philippines Divorce Bill*, *supra* note 8.

11. See *Sin Opposes Bills On Abortion*, *supra* note 9, with regard to opposition to House Bill No. 6993.

policy will be briefly discussed. Essentially, the dilemma facing the Philippines is the ability to thrive as a "modern" society in the face of a tradition of strong sectarian influence.

Although this essay will be dealing with issues relating to marriage and divorce, it does not purport to be a comprehensive history of the evolution of marriage and divorce laws throughout the different countries discussed herein. Further, although the histories of both the Catholic Church in the Philippines and the Philippines as a country are intertwined, this essay will by no means offer a comprehensive discussion on these two topics nor will it delve into the issue of separation of Church and State. And neither will this essay offer an in-depth discussion on Philippine culture in relation to family life and the role of women.

I. THE EVOLUTION OF DIVORCE LEGISLATION IN THE WEST

A. Historical and Religious Context

Any discussion on the marriage laws in Western Europe must begin with the doctrine of marital indissolubility under the tenets of the Catholic Church as well as the effects of the Protestant Reformation. Up until the twelfth century, there were still conflicting opinions within the Church regarding the absolute indissolubility of *Christian Marriages*,¹² although a general consensus regarding absolute indissolubility had formed by the ninth century.¹³ Ironically, secular laws, principally led by the laws decreed by Charlemagne, had taken the lead in codifying marital indissolubility in the eighth century¹⁴ and up until the period of the Protestant Reformation, divorce was absent from Western European codes.¹⁵ The Council of Trent¹⁶ finally codified the doctrine in 1563, when it declared marriage a sacrament and declared as erroneous the belief that marriages could be dissolved by reason of heresy, *irksome cohabitation*, or the absence of one of the spouses.¹⁷ The Council also condemned as an *anathema*

12. The qualification of a marriage as "Christian" is important vis-à-vis the so-called "Pauline Privilege," under which a Christian married to a non-Christian is allowed to re-marry if the non-Christian spouse "abandons his rights." IX. *Dissolution of Marriage*, at http://www.cin.org/users/james/ebooks/nullity/null_9.htm (last visited Apr. 2, 2000).

13. RODERICK PHILLIPS, *PUTTING ASUNDER: A HISTORY OF DIVORCE IN WESTERN SOCIETY* 24 (1988).

14. *Id.*

15. *Id.* at 40.

16. Ecumenical council established in 1542 under the papacy of Pope Paul III and was tasked with, among other duties, defending and re-explaining traditional teachings challenged by Protestant Reformers. *Age of Catholic Defenders (1500-1648)*, at <http://www.cin.org/kc29-6.html> (last visited on Apr. 2, 2000).

17. PHILLIPS, *supra* note 13, at 34-35 (1988).

any person who claimed that divorce should be allowed on account of adultery committed by one spouse.¹⁸

The Protestant Reformation changed the views regarding divorce in large parts of Western Europe. Martin Luther himself denounced the Catholic Church's stand on marital indissolubility and recognized three grounds for divorce, namely, a *bodily or natural deficiency* that prevented sexual intercourse, adultery, and desertion.¹⁹ It should be noted, however, that while Lutheran doctrine allowed divorce under the three circumstances listed above, divorce was only counseled as a last alternative. Reformers who were Lutheran adherents still stressed the integrity of marriage,²⁰ which explains why most Lutherans rejected divorce by mutual consent or unilateral divorce in cases of temperamental and emotional incompatibility.²¹ Further, while divorce legislation based on the Lutheran model was passed in Protestant Germany and Scandinavia,²² divorces were rare occurrences.²³

Another Reformer who influenced the renunciation of Catholic doctrines on marriage was John Calvin. Although, like Luther, Calvin believed that marriage was too important and sacred to be dissolved at the will of the spouses, divorces based on adultery and desertion were allowed under Geneva's marriage ordinances.²⁴ And, as in the case of Lutheran principles, divorces were only granted as a last resort, with punishment of matrimonial offenders as a more common occurrence.²⁵

With regard to the Church of England, while it broke with Rome as a consequence of Henry VIII's efforts to have his marriage to Catherine of Aragon annulled, it did not break with the Catholic Church's doctrine of marital indissolubility.²⁶ Despite the efforts of some prominent Anglican theologians to at least have adultery recognized as a ground for divorce, the Church of England steadfastly remained the only reformed church in Europe that held to the tenet that marriage is indissoluble.²⁷

18. *Id.* at 35-36.

19. *See id.* at 45-48.

20. *Id.* at 48-49.

21. *Id.* at 45.

22. *Id.* at 50.

23. *Id.* For example, the divorce rate in Norway averaged about one per year in the first 13 years after the passage of the 1582 Articles of Marriage.

24. *Id.* at 53-56.

25. *Id.* at 58.

26. *Id.* at 71-77.

27. *See id.* at 77-84.

Overall, the Reformation clearly altered the face of Western Europe insofar as divorce was concerned. Only France, Spain, Portugal, and Italy remained under the sway of the Catholic Church. Thus, they retained the prohibition against divorce dictated by Catholic doctrine. In the countries where Reformers had triumphed (save England), divorce was slowly permitted, although the grounds were usually limited to either adultery or desertion; divorces were only granted when all efforts to ensure the survival of the marriage had failed. And although both the Catholic Church and the Reformers held the institution of marriage in high esteem, the latter believed that in cases where all efforts at reconciliation had failed, it was far better to grant a divorce so as to preserve the sanctity of marriage as an institution, thereby providing a means of reinforcing Christian values. The alternative was to compel spouses to stay married, and risk the commission of even greater sins, such as fornication.²⁸

B. Divorce in England and the United States

As discussed above, the Anglican Church did not hew itself from the Catholic doctrine of marital indissolubility, although there were those who advocated legalizing divorce in certain cases.²⁹ For some time even after the separation from Rome, the doctrine of marital indissolubility was accepted in the secular government as well.³⁰

In 1670, however, Parliament took the issue of divorce into its own hands and passed a private bill dissolving the marriage of Lord Roos due to adultery committed by his wife and, at the same time, the allowing him to remarry.³¹ Thus, the secular government saw it fit to sidestep the stand of the Anglican Church on marital indissolubility and assume the role of a divorce court. But, although over the next two centuries Parliament passed several divorce bills, civil courts were not given the power to grant divorces until 1857. Further, until 1837, all marriages in England had to be celebrated according to religious rites.³²

The New England colonies, though, were more liberal insofar as divorce was concerned, and had early on secularized marriage and its regulation by the civil government.³³ In Massachusetts, for instance, divorces were allowed from

28. *See generally id.* at 90-94.

29. One prominent advocate in favor of divorce was Thomas Cranmer, the Archbishop of Canterbury from 1532 to 1553. *See id.* at 79-81.

30. *Id.* at 129.

31. *Id.* at 132.

32. *Id.* at 222. For a brief period during the reign of Oliver Cromwell, civil marriages before justices of the peace were mandatory. *Id.* at 130.

33. *Id.* at 134-35. In New England, for example, only civil magistrates were allowed to solemnize marriages for a time.

1639 onwards for adultery and desertion, although divorces were granted due to "cruel usage of the husband."³⁴ Further evidence of the growing secularization of divorce was the fact that in Massachusetts, divorces could be obtained from civil courts.³⁵

In the middle colonies, such as New York and Pennsylvania, divorces were more restrictive in that they could only be granted by executive fiat or when consistent with British law and practice at the time.³⁶ But when allowed, they were granted by secular authorities. With regard to the Southern colonies, such as Maryland, Virginia, and South Carolina, divorce was generally not allowed, although over time, all the Southern colonies — save South Carolina — passed legislation allowing divorce.³⁷

Note that in none of the colonies were ecclesiastical courts ever created, thus all cases involving marital issues were heard by civil courts.³⁸ And, unlike England, most of the colonies/states, allowed marriages to be celebrated civilly.³⁹

The fact that almost all of the colonies eventually allowed divorce shortly after independence indicates the popularity at that time of the notion relating marriage to voluntarism. That is, marriage was viewed as a union of the heart, created through the pledges of mutual affection and the voluntary commitment of one to another, a relationship freely chosen and independent of the interests or claims of others.⁴⁰ It was even argued that freedom to divorce was an expression of republican liberty;⁴¹ that since voluntarism was the impetus for entering into a marriage, once the causes impelling one to marry disappeared, the union should be dissolved as well.⁴²

However, the trend in the United States, from the time of its independence up until the mid-twentieth century, was to restrict divorces to those based on the commission by one spouse of a matrimonial offense. Divorce remained fault-based,⁴³ although some states were more liberal than

34. *Id.* at 137.

35. *Id.* at 138.

36. *Id.* at 141-42.

37. *Id.* at 143. South Carolina began allowing divorces in 1868, although the law was repealed in 1895. It was only in 1949 that the state again legalized divorce.

38. *Id.* at 207.

39. *Id.*

40. BARBARA DAFOE WHITEHEAD, *THE DIVORCE CULTURE* 15 (1997).

41. *Id.*

42. *Id.*

43. Sarah E. Fette, Comment, *Learning From Our Mistakes: The Aftermath of the American Divorce Revolution as a Lesson in Law to the Republic of Ireland*, 7 *IND. INT'L & COMP. L. REV.* 391, 392 (1997).

others in terms of the grounds for divorce and jurisdictional requirements for divorce actions.⁴⁴

The grounds for divorce, however, expanded over the course of the nineteenth and early twentieth centuries. Rhode Island, for instance, became one of the first states to have a so-called *omnibus clause* that allowed divorce where there was gross misbehavior and wickedness in either spouse.⁴⁵ And by the mid-nineteenth century, omnibus clauses were sprouting in the Midwestern and Western states.⁴⁶

Further, divorce proceedings became the province of the judiciary rather than of the legislature. By the end of the Civil War, thirty-three out of the then existing thirty-seven states had prohibited legislative divorces.⁴⁷ The grounds for divorce, though, necessarily varied from state to state and, as noted above, some states were more liberal than others,⁴⁸ leading to the phenomenon of *migratory divorce*.⁴⁹

Another trend was the gradually rising divorce rate throughout the United States. By the end of the nineteenth century, the divorce rate in the United States had surpassed all of Europe's,⁵⁰ rising from a rate of 0.2 per 1,000 of the entire population in 1860, to 0.9 in 1910.⁵¹ But after peaking in the years immediately after the Second World War,⁵² the divorce rate remained more or less stable during the 1950s and early 1960s at around 2.5 per 1,000 population.⁵³

The mid-1960s, however, witnessed the beginning of a new era in divorce legislation. By this time, most courts were neither willing nor able to diligently inquire into the grounds for divorce alleged by one spouse, in effect converting

44. PHILLIPS, *supra* note 13, at 454-455. California was the first state to recognize "mental cruelty" as a ground for divorce. *Id.*

45. *Id.* at 443.

46. *Id.* at 454.

47. *Id.* at 456.

48. For instance, from 1787 to 1967 the sole ground for divorce under New York law was adultery. *See id.* at 568-69.

49. *Id.* at 531-33. Migratory divorce referred to the practice of married couples obtaining divorces in states with liberal residency requirements, like Nevada or even in other countries such as France and Mexico.

50. *Id.* at 439. In fact, by 1910, the total number of divorces in the United States (83,045) was over four times the total of 20,329 in England, Scotland, France, Belgium, the Netherlands, Switzerland, Norway, Denmark, and Sweden. *Id.* at 463.

51. *Id.* at 463.

52. *Id.* at 553.

53. *Id.* at 560.

through practice fault-based divorce into no-fault mutual consent divorce.⁵⁴ The system of fault-based divorce "had degenerated into a formal recitation of perjured testimony, leaving acrimony in its wake, and supposedly engendering disrespect for the legal system."⁵⁵ This led to calls to reform the old fault-based system as "no social interest was served by forbidding the legal termination of a dead marriage and the remarriage of the parties to others."⁵⁶ And in 1969, California passed the first divorce legislation in the United States that completely eliminated fault grounds and made divorce available based on "irreconcilable differences" between the spouses.⁵⁷ By 1985, each state had included non-fault divorce in their respective divorce legislation.⁵⁸ It was during this time that the divorce rate rose from 3.51 per 1,000 population in 1970 to 4.96 by 1985.⁵⁹ The *divorce revolution* has reached such high levels that, at present, two persons getting married for the first time have about a fifty-fifty chance of staying married.⁶⁰

The liberalization of divorce legislation during this time reflected American attitudes toward marriage. This shift has been described as follows:

The American story about marriage, as told in the law and in much popular literature, goes something like this: marriage is a relationship that exists primarily for the fulfillment of the individual spouses. If it ceases to perform this function, no one is to blame and either spouse may terminate it at will. . . . Other stories, of course, are still vigorous in American culture But, by and large, they are not the ones that have been incorporated into the law. In the continuing cultural conversation about marriage and family life, American law has weighed in heavily on the side of individual self-fulfillment. It tells us that if a marriage no longer suits our needs...we can choose to sever the relationship.⁶¹

Subjectively, therefore, marriage was viewed as an aspect of a person's emotional well-being and as a possible source of stunted growth and personal unhappiness, particularly among women.⁶²

54. MARY ANNE GLENDON, ABORTION AND DIVORCE IN WESTERN LAW 76-77 (1987) [hereinafter GLENDON, ABORTION AND DIVORCE].

55. *Id.* at 79.

56. MARY ANNE GLENDON, THE TRANSFORMATION OF FAMILY LAW: STATE, LAW AND FAMILY IN THE UNITED STATES AND EUROPE 191 (1989) [hereinafter GLENDON, TRANSFORMATION OF FAMILY LAW].

57. *Id.* at 188-189; Robert M. Gordon, Note, *The Limit of Limits on Divorce*, 107 YALE L.J. 1435, 1438 (1998) [hereinafter Gordon, *Limit of Limits*]; see also Fette, *supra* note 43, at 394.

58. GLENDON, TRANSFORMATION OF FAMILY LAW, *supra* note 56, at 189; PHILLIPS, *supra* note 13, at 569.

59. GLENDON, TRANSFORMATION OF FAMILY LAW, *supra* note 56, at 193.

60. Fette, *supra* note 43, at 395.

61. GLENDON, ABORTION AND DIVORCE, *supra* note 54, at 108.

62. See WHITEHEAD, *supra* note 40, at 46, 50-51.

The change in attitude likewise echoed the expanded role of individual choice in the formation and termination of marriage.⁶³ In terms of entering into a state of matrimony, the decline of linking marriage to concerns over social rank and economic security made one free to choose one's partner, and equally free to choose to leave that partner.⁶⁴ It is no coincidence that the increasing rate of divorce coincides with the rise of prosperity in the United States and the increased role of women in the economy beginning at the turn of the twentieth century, continuing through most of the century.⁶⁵ A study of divorces during the early twentieth century revealed that economic considerations had become a prominent factor in divorces, suggesting that economic expectations and marital satisfaction were becoming highly correlated.⁶⁶ And obviously, the ability of women to obtain employment meant less dependence on husbands in terms of financial support, thus removing a disincentive to terminate an otherwise unhappy marriage.

It is also important to note that, unlike countries in Western Europe, such as France, Italy, and Ireland, the United States had very little history of sectarian influence in marriage and divorce. Marriage laws were secularized early on in United States' history; thus social and economic conditions exerted more influence in shaping the course of divorce legislation.

This is not to say that Americans embraced divorce with open arms. As early as 1852, Horace Greeley, the influential editor of the *New York Tribune*, had this to say about divorce:

Marriage indissoluble may be an imperfect test of honorable and pure affection — as all things human are imperfect — but it is the best that man can devise, and its overthrow would result in a general profligacy and corruption such as this country has never known, and few of our people can adequately imagine.⁶⁷

At the turn of the twentieth century, the liberal divorce laws in states such as South Dakota were condemned as offending conventional morality and aroused fears that the increase in divorce levels would lead to more promiscuous behavior.⁶⁸

63. GLENDON, TRANSFORMATION OF FAMILY LAW, *supra* note 56, at 194; see also PHILLIPS, *supra* note 13, at 565.

64. GLENDON, TRANSFORMATION OF FAMILY LAW, *supra* note 56, at 194-95.

65. See PHILLIPS, *supra* note 13, at 592-93, 594-95, 614-15. Employment rates in the United States for married women with children below school age rose from 19% in 1959 to 43% by 1979, and 50.2% in 1980 for all married women. *Id.* at 621.

66. WHITEHEAD, *supra* note 40, at 21-22.

67. PHILLIPS, *supra* note 13, at 456-57.

68. WHITEHEAD, *supra* note 40, at 17-18.

Over the course of the twentieth century, however, the social stigma attached to divorce lessened. While it is difficult to cite any hard evidence on this point, the argument has been put forward that:

[I]t is reasonable to assume that widespread divorce and the increased proportion of divorce and formerly divorced men and women in the population creates familiarity with the phenomenon . . . In this way the increased divorce rate had an effect on the normative context of divorce and contributed to its own increase by reducing the deterrent posed by social stigma.⁶⁹

A host of secular factors thus contributed to the evolution of divorce legislation in the United States. We now examine the experience of Western countries where, like the Philippines, sectarian concerns have influenced the course of marriage laws.

C. Divorce in France, Spain, and Ireland

1. France

For centuries, France adhered to the Catholic Church's doctrine of marital indissolubility, with the Council of Trent's doctrines of marriage passed into French law by royal decree in 1580.⁷⁰ Marital separations by judicial decree were allowed based on matrimonial offenses committed by the husband. Initially, jurisdiction over these cases rested with ecclesiastic courts, but, over time, secular courts began claiming jurisdiction inasmuch as the separations involved issues relating to property rights.⁷¹

Prior to the French Revolution, government and civil administration in France were intertwined with the Catholic Church, with ecclesiastical laws co-existing with laws enacted by the monarchy and the Church exercising functions which eventually came to be associated with the state, such as keeping registers of baptisms, marriages, and burials.⁷² However, this co-existence was never fully supported by the monarchy; insofar as marriages were concerned, by the late eighteenth century, control over marriage and matrimonial law had been wrested by the monarchy from the Church.⁷³

The French Revolution brought on not only the downfall of the monarchy, but the passage of France's first divorce law as well. On September 20, 1792, the Legislative Assembly enacted a law specifying that marriages were dissoluble and set forth both fault-based grounds and incompatibility of

69. PHILLIPS, *supra* note 13, at 617.

70. *Id.* at 159.

71. *Id.*

72. *Id.* at 192-93.

73. *Id.* at 205.

temperament as bases for divorce.⁷⁴ The freedom to terminate marriages was considered a logical offshoot of the overall freedom the French Revolution hoped to bring to the French people,⁷⁵ and reflected the emphasis on individualism the Revolution had brought about. The family was no longer considered as "a corporative unit to which the interests of the individual members had to be subordinated, but more as a union of individuals whose separate interests were considered important in themselves."⁷⁶

A veritable flood of divorces followed the passage of the law, with an estimated 20,000 obtained in the nine largest cities in France from 1792 to 1803, with Paris alone accounting for roughly 13,200 divorces.⁷⁷ This can be seen as a result not only of the emphasis on individualism brought about by the Revolution, but also as an effect of the decline of the traditional family economy in French urban centers.⁷⁸ Husbands and wives no longer worked together as a productive unit; in some cities, such as Rouen, only a handful of divorced couples had complementary occupations — a hallmark of the traditional family economy.⁷⁹ The fact that women initiated roughly 71% of divorce cases under this law⁸⁰ can be taken as evidence that most women had little or no economic constraints tying them to their husbands.

In 1803, however, the *Code Napoleon* was passed. Among others, the Code restricted the grounds for divorce, removing divorce by reason of incompatibility of temperament and reducing the fault-based grounds from seven to three.⁸¹ The restrictions were indicative of the backlash against the perceived ease with which divorces could be obtained under the 1792 law.⁸² Under the terms of the new law, the number of divorces dropped dramatically.⁸³

74. *Id.* at 178. Note that the ground of "incompatibility of temperament" presages the no-fault ground of "irreconcilable differences" in California's 1969 Divorce law.

75. *Id.* at 180.

76. *Id.*

77. *Id.* at 257. The Paris divorce rate during this time was roughly 1 out of every 4 marriages. In 1803, the Code Napoleon repealed the existing divorce law and restricted the grounds for divorce. See *infra* note 78 and accompanying text.

78. *Id.* at 373.

79. *Id.*

80. *Id.* at 262.

81. *Id.* at 185, 275.

82. *Id.* at 275.

83. In Rouen, the average number of divorces per annum dropped from 67 to 6; in Lyon, from 87 to 7.

With the return of the Bourbon monarchs in 1816, divorce was abolished "in the interest of religion, of morality, of the monarchy, of families,"⁸⁴ and, for nearly 70 years, French spouses were prohibited from obtaining divorces. Although there were brief flirtations with divorce legislation during the reign of Louis Napoleon, the emperor decided not to pursue this goal lest he alienate the Catholic Church.⁸⁵ In 1884, however, a new divorce law came into effect, largely through the efforts of Alfred Naquet.⁸⁶ Taken in context, the new law was part of an overall plan of secularization implemented by the Third Republic during the 1880s, which included reducing the Catholic Church's influence in education.⁸⁷ The re-emergence of divorce can also be seen within the context of the rapid modernization of French society brought about by the economic fruits of the Industrial Revolution. Likewise, the rise of liberal and socialist thought during the nineteenth century, with their emphasis on individual freedom and economic revolution, respectively, were contributing factors.⁸⁸ However, divorce remained fault-based with only three grounds, although in practice, courts were lenient in interpreting them.⁸⁹

The next phase in the history of French divorce came in the 1970s with the reform of the divorce law of 1884. Unlike the no-fault statutes that took hold in the United States, the French reforms were more circumspect. The fault-based grounds for divorce were retained and divorce by mutual consent allowed.⁹⁰ Unilateral divorce was allowed on the basis of "prolonged disruption of the life in common," but only if accompanied by *de facto* separation of at least six years. The economic costs to the petitioner could be high,⁹¹ with provisions in place for the protection of dependent wives and children.⁹² Thus, while the number of divorces per 1,000 persons in France has risen since 1975, the rise has been nowhere as precipitous as that experienced in the United States.⁹³

84. *Id.* at 189.

85. *Id.* at 423.

86. *Id.* at 423-24.

87. *Id.* at 425.

88. *See id.* at 486-87.

89. GLENDON, TRANSFORMATION OF FAMILY LAW, *supra* note 56, at 160.

90. *Id.* at 163-65, 168-70.

91. Under French law, while support obligations are terminated upon the granting of the divorce, one spouse may be required to compensate the other for any "disparity which the disruption of the marriage creates in the conditions of their respective lives." Further, the petitioner in a unilateral divorce case must shoulder all the costs of the proceedings and shall continue to be bound by the duty of support. *Id.* at 84-85.

92. *See id.* at 166-168, 172-73.

93. PHILLIPS, *supra* note 13, at 560.

This less-than-radical change in the law was undertaken by design. Although France, like much of the Western world, has been swept by the rise of individualism, its legal system has retained principles of individual responsibility, the interaction of law with the social context, and the belief that law can help shape society and the individuals who compose it.⁹⁴ Thus, in drafting the law, care was taken to ensure that it reflected the view of French society that unilateral divorce on demand is unacceptable, and that children always, and marriage sometimes, involve lasting economic responsibility.⁹⁵

France, therefore, has gone from a society dominated by the Catholic Church to one that, while retaining a veneer of Catholicism in terms of the affiliation of its population, has become completely secular, legally and institutionally. Yet, at the same time, its policy vis-à-vis divorce has not gone to the extreme that American laws have reached. While there is no doubt that France has been affected by the wave of liberalism and the rise of individualism that swept over the Western world, it has retained the spirit of Rousseau insofar as its laws are still viewed as a means of transforming self-centered individuals into citizens.⁹⁶ Thus, while unilateral divorce is allowed, obtaining one is difficult. Also, while divorce *per se* is accepted, provisions are made for the care of dependent spouses and children. In other words, divorce is not taken lightly.

2. Spain

The history of divorce in Spain is relatively brief. Much like its colony, the Philippines, Spain remained dominated by the Catholic Church until well into the nineteenth century. The Spanish Constitution of 1876 established Roman Catholicism as the official state religion⁹⁷ and, save for a brief five-year interlude from 1870 until 1875, control of marriage remained with the ecclesiastical authorities.⁹⁸ In fact, not only was divorce absolutely prohibited, legal separation — separation *a mensa et thoro* — was only allowed beginning in 1889.⁹⁹

Spain briefly dallied with divorce under the Republican government that came into power in 1931. Seeking to reduce the influence of the Catholic Church, a new constitution was enacted which, among other matters, separated the Church and State. Said constitution "declared marriage to be

94. GLENDON, ABORTION AND DIVORCE, *supra* note 54, at 131.

95. *Id.*

96. *See generally id.* at 126-29.

97. Article 21 of the Spanish Constitution of 1876 specified Roman Catholicism as the official state religion of Spain, and this covered the Philippines as well.

98. PHILLIPS, *supra* note 13, at 433.

99. *Id.*

founded on the equality of rights of both sexes and specified that it might be dissolved "for mutual discord or at the request of either of the spouses."¹⁰⁰ By February 1932, the *Cortes* approved a divorce bill enumerating thirteen specific grounds for unilateral divorce and allowing divorce by mutual consent.¹⁰¹ But despite the liberality of the law, the statistics from 1932 to 1933 (prior to the Spanish Civil War) indicate that the per annum number of divorces was one of the lowest in Europe at that time¹⁰² and that most of the parties were from urban areas.¹⁰³ This was indicative of the fact that in the 1930s, Spain was still primarily a rural and agricultural country, a factor that contributed to the absence or low levels of divorce. Further, it has been noted that people from the rural areas tended to be more religious¹⁰⁴ and were less willing to go against Church doctrine.

The assumption of power of the Fascist government headed by General Franco ended Spain's seven-year experiment with divorce. Not only was Franco's *Falange Española* movement supported by the Catholic Church, Franco himself was purportedly a member of the conservative Catholic group *Opus Dei*.¹⁰⁵ Thus, in September 1939, the 1932 divorce law was repealed in order to return "the traditional value, which is the Catholic one," to Spanish law.¹⁰⁶

Aside from the influence of the Catholic Church, the fascist movement drew heavily from what it considered *traditional* institutions, and thus deemed it necessary to re-impose the traditional ban on divorce. As part of their drive to protect traditional institutions, the family was to be defended as the foundation of the State.¹⁰⁷

After the demise of Franco and his Fascist government in 1975, the movement for a liberalization of Spanish marriage laws gained impetus. A new constitution was enacted in 1978 prohibiting the establishment of a state religion. The new constitution likewise allowed the government to "regulate the forms of matrimony, the . . . causes for separation and dissolution and their effects."¹⁰⁸ Thus, following the liberalizing trend in other European countries,

100. *Id.* at 538.

101. *Id.* at 539.

102. *Id.* at 540. The rate was roughly 2,832 divorces per annum.

103. *Id.* Roughly half of all divorce petitions were filed in Barcelona and Madrid.

104. *Id.*

105. *Id.* at 541.

106. *Id.*

107. *Id.*

108. SPAIN CONST. art. 32, ¶ 2.

in 1981 Spain enacted legislation allowing both fault-based and no-fault divorce.¹⁰⁹

The relative speed at which the 1981 divorce law followed the demise of the Franco regime seems to indicate that over the thirty-odd years that Franco ruled Spain, a creeping liberalism had seeped into the fabric of Spanish society, waiting for a chance to assert itself. It could also reflect a backlash against the regime and the symbols and traditional values associated with it, such as the Catholic Church and its doctrine of marital indissolubility. However, while Spain's divorce legislation reflects the rise of individualism insofar as marriage is concerned, the notion of individual responsibility in family relations remains a cornerstone of Spanish policy, particularly the notion of continued support for children by their parents.¹¹⁰

3. The Republic of Ireland

Up until 1995, the Republic of Ireland and Malta remained the only two European countries that prohibited divorce.¹¹¹ In November of that year, a proposal to remove the ban on divorce found in the Irish constitution passed by a very narrow margin,¹¹² paving the way for Ireland's Parliament to enact divorce legislation.

Prior to 1995, the Catholic Church played a very influential role in family and social policies in Ireland. Much like Spain and the Philippines, Catholicism was deeply ingrained in Irish history. It has been noted that "the Catholic Church offered hope and guidance to the Irish people" during the harsh years of British occupation, earning the Church and the clergy a great deal of loyalty among the Irish people.¹¹³ And as a counterpoint to British rule, the Catholic faith helped to define what it meant to be Irish. Thus,

[C]atholicism and the identity of the Irish State became intertwined. Catholicism came to serve as a "central cohesive force" for a dispossessed and alienated people. A critical outgrowth of this was the belief in Ireland that "Catholic moral teaching should inform civil legislation." To understand Irish law and policy, one must recognize that Irish Catholics can easily replace personal conscience with Catholic teaching and public morality.¹¹⁴

109. PHILLIPS, *supra* note 13, at 577-78.

110. See SPAIN CONST. art. 39, ¶¶ 1-3.

111. Christopher Price, Comment, *Finding Fault with Irish Divorce Law*, 19 LOY. L.A. INT'L & COMP. L.J. 669 (1997).

112. Voters in favor of the proposal accounted for approximately 50.3% to 50.6% of the total votes cast, with only 9,124 votes separating the yeas from the nays. See Jennifer A. Carter, *Breaking the Bonds and Splitting the Assets: Women and Divorce in Ireland*, 15 B.U. INT'L L.J. 511 (1997) [hereinafter Carter, *Breaking the Bonds*]; Price, *supra* note 111, at 669 (1997).

113. Price, *supra* note 111, at 671.

114. Carter, *Breaking the Bonds*, *supra* note 112, at 516.

This historical connection between the Irish people and the Catholic Church is reflected in the preamble of the Irish Constitution, which acknowledges "all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial."¹¹⁵ And although the Irish Constitution recognizes the freedom of religion¹¹⁶ and declares that the state has no official religion,¹¹⁷ the provisions of Article 41, relating to family and marriage, are said to have been "heavily influenced and some would say 'wholly inspired' by Christian and specifically Catholic beliefs."¹¹⁸ Specifically, the family is the "natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law"¹¹⁹ and will therefore be protected as "the necessary basis of social order and as indispensable to the welfare of the Nation and the State."¹²⁰ Protecting the family entails protecting marriage, and this principle is likewise enshrined in the Constitution.¹²¹

Over the latter portion of the twentieth century, however, the government made concessions towards the "loosening of the strict moral code and the traditional view of women and family roles."¹²² For instance, in a clear break with the doctrines of the Catholic Church, the sale of contraceptives was gradually allowed, first to married couples in 1979, and in 1992 to single persons aged seventeen years and over.¹²³ And in the realm of family law, the government acknowledged that the law should "accommodate and reflect

115. Demographically, as of 1991 3,228,327 persons out of a total population of 3,525,719, or 91.56% of the total, were of the Roman Catholic faith. See *Population Classified by Religion and Sex*, at <http://www.cso.ie/principalstats/cenrel1.html#rel> (last visited Apr. 5, 2001).

116. IR. CONST. art. 44, ¶ 2, cl. 1.

117. *Id.* art. 44, ¶ 2, cl. 2.

118. Carter, *Breaking the Bonds*, *supra* note 112, at 518; see also Laura A. Marshall, Note, *What God Has United Man Will Now Divide: Divorce Referendum Changes Law of 60 Years*, 26 GA. J. INT'L & COMP. L. 505, 510 (1997) ("Observers are correct in examining Irish political actions with a presumption of Catholic influence. In 1937, the Catholic Church effectively institutionalized social policies and fundamental rights such as the permanence of marriage and protection of the family in the amended Irish Constitution.") [hereinafter Marshall, *What God Has United*].

119. IR. CONST. art. 41, ¶ 1, cl. 1.

120. *Id.* art. 41, ¶ 1, cl. 2.

121. *Id.* art. 41, ¶ 3, cl. 1.

122. Marshall, *What God Has United*, *supra* note 118, at 515.

123. *Id.*

changing patterns of family life and increasingly diverse value systems,"¹²⁴ with greater emphasis on individual rights, particularly the right to privacy.¹²⁵

By 1986, the government felt that it had sufficient support to officially sanction a referendum addressing the removal of the constitutional prohibition against divorce. A general feeling that Ireland was too Catholic and that it should strive to be a more secular state was reflected in polls leading to the referendum, which indicated that 57% of the voters would support the removal of the ban.¹²⁶ However, the Catholic Church rallied support against the proposal and the latter was defeated by a two-to-one margin.¹²⁷

Despite the setback, the Irish government pressed on with legislation designed to broaden and improve existing remedies available to spouses,¹²⁸ including expanding the grounds for judicial separation,¹²⁹ and loosening the requirements for recognition by Irish courts of divorces obtained abroad.¹³⁰ The Status of Children Act of 1987 equalized the treatment of husbands and wives in desertion cases and removed legitimacy as a factor in determining support.¹³¹

During the interim, other factors served to erode the influence of the Catholic Church, including several scandals involving members of the clergy.¹³² The increased exposure to Western European and American culture may have also served to loosen the grip of Catholicism on the lives of the Irish.¹³³

By 1995, the government was ready to put the divorce prohibition to a referendum again. All six parties represented in Parliament supported the proposal,¹³⁴ evidence of the growing independence of politics from Catholic influence. Irish President Mary Robinson was strongly in favor of the proposal, stating the need to free Ireland from Christian influence and to detach doctrine

124. *Id.*, quoting WILLIAM DUNCAN, FAMILY LAW AND SOCIAL POLICY, IN LAW & SOCIAL POLICY: SOME CURRENT PROBLEMS IN IRISH LAW 126 (1987).

125. *Id.*

126. Carter, *Breaking the Bonds*, *supra* note 112, at 521.

127. *Id.*; Fette, *supra* note 43, at 397; Price, *supra* note 111, at 673.

128. Under the Matrimonial and Marriage Causes Act of 1870, separation *a mensa et thoro* was available under the following grounds: adultery, cruelty, desertion, or failure to comply with a decree for restitution of conjugal rights.

129. Carter, *Breaking the Bonds*, *supra* note 112, at 519.

130. Fette, *supra* note 43, at 399-400.

131. Marshall, *What God Has United*, *supra* note 118, at 515-16.

132. Price, *supra* note 111, at 673-74.

133. *Id.* at 674.

134. *Id.* at 676.

from law.¹³⁵ The opposition included the Catholic Church, as well as those who feared the rise in social costs, such as welfare payments, which could be triggered by allowing divorce.¹³⁶

Despite initially strong poll results showing support for the proposal, the vote itself came down the wire and the proposal passed by the narrowest of margins. The closeness of the vote indicated to the government that Ireland was still evenly divided among those who remained faithful to its traditional Catholic heritage and those who accepted the modern notion of individualism.¹³⁷ Thus, not only was the proposal conservatively worded, the legislation implementing it was worded broadly enough to ensure that courts had sufficient leeway in determining the proper terms of the divorce settlement.

As it stands, under the Family Law (Divorce) Act of 1996, divorces can be granted without any showing of fault, the petitioning spouse having to prove only that the spouses have lived apart for four out of the immediately preceding five years and that there is no reasonable possibility of reconciliation.¹³⁸ While the statute is definitely a no-fault divorce law, the intent of the Irish Parliament was to make sure that: *first*, divorces will not be granted for those couples merely having marital difficulty;¹³⁹ and *second*, when divorce is granted, provision is made for a clear workable plan of support for dependent spouses and children.¹⁴⁰ In addition, the four-year separation period is clearly a disincentive, at least insofar as women are concerned, considering that as of 1996, women accounted for only 36.6% of the total workforce, and that as of 1997, only 41.1% of married women had employment outside the home.¹⁴¹

Therefore, Ireland appears to have broken free from its history of Catholic influence insofar as marriage and divorce are concerned. However, the statements of its politicians and the seeming ambivalence of the people in general, as reflected by the narrow margin of victory and the conservative wording of the new divorce law, indicate that while the individualism of spouses may have been recognized, this recognition does not entail relinquishing responsibility over the people left behind in the aftermath of a

135. *Id.* at 677-78.

136. *Id.* at 680.

137. Fette, *supra* note 43, at 402.

138. IR. FAMILY LAW (DIVORCE) ACT, No. 33, § 5 (1996).

139. Carter, *Breaking the Bonds*, *supra* note 112, at 525-26. Bertie Ahern, the Prime Minister at the time of the referendum and leader of the Fianna Fail party, was of the position that "the right to remarriage should never be an easy option." Fette, *supra* note 43, at 402.

140. Marshall, *What God Has United*, *supra* note 118, at 518.

141. Carter, *Breaking the Bonds*, *supra* note 112, at 526.

divorce. Thus, the strain of liberalism only goes so far, much as in the case of France and Spain.

D. Attributes of Modernity Vis-à-vis Marriage and Divorce Laws

At the outset, it bears emphasis that the initial separation between the Catholic Church and the Protestant Reformers, at least insofar as marital indissolubility was concerned, was based on scriptural interpretation rather than any change in the way the Reformers viewed the role of man in society. Martin Luther was initially undecided on the matter and even wrote that "[f]or my part I so greatly detest divorce that I should prefer bigamy to it; but whether it is allowable, I do not venture to decide."¹⁴²

Even after he set forth the grounds under which divorce would be acceptable, they were all fault-based and related to the inability of the spouse concerned to comply with certain marital obligations, specifically, fidelity and other conjugal duties, such as cohabitation.¹⁴³ Divorce was also viewed as a remedy of last resort — to be granted only when reconciliation was absolutely impossible.¹⁴⁴

Not only was divorce discouraged, up until the nineteenth century it was rarely availed of.¹⁴⁵ In Massachusetts, for instance, in the period from 1636 to 1734, only 78 petitions for divorce were brought.¹⁴⁶ Connecticut also had a very low rate of divorce petitions, with an average of one per annum from 1655 to 1699, increasing to about 2.5 per annum from 1700 to 1750.¹⁴⁷

The fact that divorce was discouraged can be tied to the fact that in the sixteenth and seventeenth centuries, the family was still the linchpin of Western society.¹⁴⁸ Marital discord caused a great deal of anxiety inasmuch as the husband and wife were expected to be exemplars to their children.¹⁴⁹ Even today, arguments against divorce often invoke the sanctity of the family as a reason for either limiting or prohibiting divorce.

The family was also important in the context of the sixteenth to the eighteenth centuries insofar as economic issues were concerned. As has been noted, "[t]he family economy is one of the most important concepts for an

142. PHILLIPS, *supra* note 13, at 45, quoting MARTIN LUTHER, *BABYLONIAN CAPTIVITY* 105-106.

143. See *supra* note 19 and accompanying text.

144. See *supra* notes 20-22 and accompanying text.

145. Note that until 1857 only parliamentary divorces were available in England.

146. PHILLIPS, *supra* note 13, at 249.

147. *Id.* at 251.

148. *Id.* at 96-97.

149. *Id.* at 97-98.

understanding of the family in traditional society."¹⁵⁰ During the pre-industrial era, families operated as economic units, with all the members expected to work, although specific tasks were allocated according to gender and age.¹⁵¹ And even in the early stages of industrialization (and before the advent of child labor laws), factory owners often employed entire families.¹⁵² In terms of specific activities, they ran a gamut from the archetypical family farm to fishing and even domestic textile production.¹⁵³

The economic interdependence that the family economy entailed, in addition to the fact that this was typically not a wage, but a subsistence economy, meant that members of the family, particularly the husband and the wife, could not easily pick up and leave for greener pastures. They were "locked into their family's economy"¹⁵⁴ and "the loss of either party in a marriage would almost certainly wreck the entire fabric of the family economy."¹⁵⁵ This obviously would affect the willingness of spouses to avail of the remedy of divorce, if it were available. In the case of the husband, for instance, once he left the economic base, all he had to offer in economic terms was his labor.¹⁵⁶ In a Pre-Industrial economy — particularly in the rural areas — that was probably not going to get him very far or very much, although he was more geographically mobile or could join the military.¹⁵⁷

For the wife, living at a time when women had few employment opportunities other than those offered by the family economy, the options outside the family were even bleaker. Even if she could find outside employment, "[t]he wages she could expect to earn . . . would barely support her alone and would certainly not support children as well."¹⁵⁸ Aside from employment, habitation was also a great concern for the wife, particularly in the countryside, where most dwelling places were family dwellings. This problem was exacerbated by the fact that, prior to the nineteenth century, married women in most Western countries could not own property; legal title for whatever property they had at the time of marriage was transferred to the husband.¹⁵⁹

¹⁵⁰ *Id.* at 364-65.

¹⁵¹ *Id.* at 365.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 366.

¹⁵⁵ *Id.* at 367.

¹⁵⁶ *Id.* at 370.

¹⁵⁷ *Id.* at 372.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 374-75.

There were also community pressures that militated against marital dissolution. In traditional societies, the entire community was sometimes involved in both the courtship and the actual wedding of a couple, and likewise intervened during times of marital crises.¹⁶⁰

With the onset of the age of industrialization, and the rising urbanization that came about as a result, the disadvantages were mitigated. The emergence of a wage economy and a growing labor market in the cities meant that financial support was no longer dependent upon the family's ability to work and stay together. The advent of long-distance transportation (e.g., railroad systems) gave people a sense of geographical mobility as well. "The critical implication of this development was that individual family members, by gaining an individual income, won an increasing degree of *potential* independence."¹⁶¹ Family ties were loosened for both the spouses and the children. The latter were able to obtain employment and leave the family home at an earlier age regardless of their parents' (often the father's) wishes, gaining what has been referred to as "precocious independence."¹⁶² For the husband and wife, "[t]he spread of wage labor, the labor market, and easier geographical mobility, all gave [them] greater opportunities to consider breaking up their marriages, deserting, or amicably separating."¹⁶³

At the same time, however, the declining dependence on the family economy led to a change in the role of women. While the family economy required wives to contribute to the overall effort to survive, albeit in gender-specific roles, the wage economy allowed more women to stay at home, resulting in the rise of single-income families. Most women in the workforce were young and unmarried.¹⁶⁴ Nevertheless, the possibility of employment outside the home and independent of the husband did exist in the event a wife did decide to strike out on her own. In fact, by the late nineteenth century, most countries, including 33 states in the United States, had given married women control over their property and income.¹⁶⁵ Industrialization and urbanization thus led to a change in the "ideal type" — from an economy where family members were economically interdependent, to one where "individuals could work and earn as individuals."¹⁶⁶ As Emile Durkheim noted,

¹⁶⁰ *Id.* at 386.

¹⁶¹ *Id.* at 376 [italics supplied].

¹⁶² *Id.* at 377.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 378.

¹⁶⁵ *Id.* at 595-96.

¹⁶⁶ *Id.* at 381.

families were becoming "just a number of individuals united by binds of mutual affection."¹⁶⁷

There is no doubt that this period of rapid industrialization and the rise of economic independence had some relation to the rise in divorce rates in the United States during the latter half of the nineteenth century into the mid-twentieth century.¹⁶⁸ France likewise saw a rapid increase in the total number of divorces during this time, rising from 4,227 in 1885 to 14,261 in 1910.¹⁶⁹ And this was despite the fact that, as noted earlier, married women tended to stay at home.¹⁷⁰ One factor that explains this is that the rise of overall economic standards led to a rise in women's economic expectations vis-à-vis marriage.¹⁷¹ And, as will be discussed below, the expanding grounds for divorce in the nineteenth and twentieth centuries were probably fed by and led to greater marital expectations.

The nineteenth century was also the time when the grounds for fault-based divorce in the United States were broadened, with states adding new grounds such as drunkenness, cruelty, imprisonment of one spouse for a certain number of years, and impotence.¹⁷² This expansion has been seen as indicative of the kind of behavior men and women are not expected to tolerate.¹⁷³ Also, this reflected the so-called "contractual" view of marriage originating in the eighteenth century. Under this theory, since marriage was essentially a consensual act, it was akin to a freely entered contract; like a contract, it could be terminated when either or both spouses could no longer fulfill the requirements it entailed.¹⁷⁴

Nevertheless, up to the mid-twentieth century, Western society and its laws still adhered to the image of the family as its bedrock, with an emphasis on family solidarity rather than on the interests and needs of individual members.¹⁷⁵ The latter half of the last century, however, witnessed the demise of the old family laws and the rise of "individualistic, egalitarian, and secularizing trends that have been gaining power in Western legal systems since

167. EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 377 (George Simpson trans., 1964 ed.).

168. See *supra* notes 48-49 and accompanying text.

169. PHILLIPS, *supra* note 13, at 462.

170. It should be noted, though, that in the twentieth century the number of employed married women rose dramatically from 5% in 1890 to 30% by 1960. *Id.* at 615.

171. See *supra* note 130 and accompanying text.

172. PHILLIPS, *supra* note 13, at 439-61.

173. *Id.* at 596.

174. See generally *id.* at 215-17.

175. GLENDON, *TRANSFORMATION OF FAMILY LAW*, *supra* note 56, at 291.

the late eighteenth century."¹⁷⁶ It has been noted that "[f]amily law now treats marriage as primarily the concern of the individuals involved. In this respect, the law mirrors the heightened intensity and instability of relationships held together more by emotional than economic ties."¹⁷⁷ There was thus an increased emphasis on a couple's emotional relationship rather than on their economic or even parental roles.¹⁷⁸

The Western legal system, insofar as family law is concerned, grew to emphasize the individual over the family. Social welfare programs, originally developed under "the premise that individuals should receive public assistance only when their families...were unable to care for them,"¹⁷⁹ are now geared towards assuring individuals a minimum standard of living.¹⁸⁰ "The adult family member is increasingly treated as self-sufficient (or potentially so) through his or her own employment and entitled, if unable to work, to be provided by the state with minimum decent subsistence."¹⁸¹

The greater emphasis on the individual needs of husbands and wives no doubt contributed to the rise of no-fault divorce clauses throughout the United States and Western Europe, as well as the increase in divorce rates.¹⁸² And with divorce no longer associated with the commission of matrimonial offenses (and its connotations of wrongdoing by one spouse), it became less stigmatized, no longer a matter to be swept under the rug, as it were.¹⁸³ This is actually ironic, considering that the advocates of no-fault divorce did not intend to imply that in a *no-fault* divorce one couple was completely blameless; it was simply felt that the enumerated grounds for divorce, while increasing in number, did not fully reflect the "infinite variety of ways" spouses could do harm to one another.¹⁸⁴

Another factor is the decline of normative legislation and the reluctance of Western legal systems to incorporate within them or to try to impose specific value systems, particularly in the United States. Values have become "a matter

176. *Id.* at 292.

177. *Id.* at 293.

178. PHILLIPS, *supra* note 13, at 623.

179. GLENDON, *TRANSFORMATION OF FAMILY LAW*, *supra* note 56, at 306.

180. *Id.* It should be noted, however, that the Welfare Reform Act of 1996 passed by the United States Congress actually included disincentives for women to remain single parents.

181. GLENDON, *TRANSFORMATION OF FAMILY LAW*, *supra* note 56, at 296.

182. See *supra* notes 59-60 and accompanying text.

183. PHILLIPS, *supra* note 13, at 626. Phillips notes that "[h]aving been divorced did not prevent Ronald Reagan from being elected governor of California and later, in 1980, president of the United States...."

184. GLENDON, *ABORTION AND DIVORCE*, *supra* note 54, at 79.

of subjective taste or preference"¹⁸⁵ and American family law mirrors "a new level of concern with American society's increasing heterogeneity, which has made courts reluctant to impose values other than tolerance, equality, and individual liberty."¹⁸⁶

But it should be noted that in the United States, there is a growing movement criticizing the *divorce revolution* which no-fault divorce has engendered. It has been observed that:

When the divorce revolution began, no one could have predicted where it would lead, how it would change the shape and content of family relationships, or whether it would deliver on its promises of improving marriage and family life, especially for women. Thirty years later we have acquired a substantial body of social learning experience and empirical evidence on the impact of divorce on women and men, on children, and on the larger society. And this body of evidence tells us that the cultural case for divorce has been based on misleading claims, false promises, and bankrupt ideas.¹⁸⁷

Far from helping women achieve economic equality, the no-fault divorce regime has been criticized as having adverse economic consequences for women (and dependent children), and for failing to take into account the uncomfortable reality that women are relatively economically disadvantaged vis-à-vis men.¹⁸⁸ This failure of the no-fault regime can be viewed as the direct result of the individualist perception that both spouses are or can be self-sufficient. It is this perceived shortcoming of the United States' divorce system that led countries such as France, Spain, and Ireland to attempt to balance notions of responsibility for the welfare of dependent spouses and children with respect for the right of one spouse as an individual to terminate an unsatisfying marriage.

With regard to countries such as Spain and Ireland, a consideration of equal importance in their finally legalizing absolute divorce is the declining influence of the Catholic Church in the formulation of government policy vis-à-vis family law. While the close vote in Ireland's divorce referendum indicates that the Church still has some influence among the general population, the fact that the government actively supported and campaigned in favor of allowing divorce shows the degree of independence it had gained from the Church as an institution. The proximity, access, and exposure to more liberal Western countries had a role in secularizing the attitudes of both the government and the general population, but this had to overcome the dominating presence of the Church in these two countries. The association of the Church in Spain

185. GLENDON, *TRANSFORMATION OF FAMILY LAW*, *supra* note 56, at 297.

186. Bruce C. Hafen, *Individualism and Autonomy in Family Law: The Waning of Belonging*, 1 *BYU L. REV.* 1, 5 (1991).

187. WHITEHEAD, *supra* note 40, at 182-83.

188. See Fette, *supra* note 43, at 412-13.

with the fascist Franco regime and scandals involving Irish clergymen most likely affected the ability of the Church as an institution to take the moral high ground in the debate against divorce.

But more than these two factors, it was the acceptance of the belief that whatever values law espouses should be divorced from a specific ideology. As a result, it was acknowledged that the legal system should recognize that marriage is, in essence, a partnership of two individuals and not an institution with a life of its own.

II. THE PHILIPPINES

A. Four Hundred Years In A Convent: The Spanish Period

The involvement of the Catholic Church in the Philippines can be traced to the earliest days of Spanish colonization. Along with the *conquistadores* came the clergy; the areas in the Philippines occupied by the Spaniards were subdivided among the Augustinians, the Franciscans, the Dominicans, the Recollects, and the Jesuits.¹⁸⁹ Less than 50 years after the first organized colonies in the Philippines were formed,¹⁹⁰ roughly 500,000 natives had been converted to Catholicism¹⁹¹ and eventually the vast majority of the population was converted to the Catholic faith.¹⁹² The Church exerted a strong influence in temporal affairs as well:

Under Spanish rule, church and state were united, with the state providing financial and other forms of support to the Catholic Church. The governor-general, as Vice Royal Patron, meddled in church affairs while the church bureaucracy performed political functions at all levels of the civil administration. In fact, the ecclesiastical bureaucrats have been regarded as the "real vital organs of the Philippine governmental system" under Spain.¹⁹³

With Spanish civil administrators rarely straying beyond the confines of the capital, Manila, and the main towns in each province,¹⁹⁴ oftentimes the only

189. STANLEY KARNOW, *IN OUR IMAGE: AMERICA'S EMPIRE IN THE PHILIPPINES* 51 (1989).

190. Although Ferdinand Magellan had discovered the Philippines in 1521, no formal colonization effort took place until 1565 when an expedition led by Miguel Lopez de Legaspi occupied what is now the main southern city of Cebu. *Spanish Colony 1565-1898*, at <http://www.ualberta.ca/~vmitchel/fw2.html> (last visited Mar. 29, 2000) [hereinafter the *Spanish Colony*].

191. NICHOLAS P. CUSHNER, S.J., *SPAIN IN THE PHILIPPINES* 97 (1971).

192. *Id.* at 98.

193. BONIFACIO S. SALAMANCA, *THE PHILIPPINE REACTION TO AMERICAN RULE: 1901-1913* 6 (1984).

194. KARNOW, *supra* note 189, at 49.

concrete symbol of Spanish authority was the village or parish friar.¹⁹⁵ And effectively, "the masters of the country were the Catholic monastic orders."¹⁹⁶

The friar orders were also active in the field of education. At the rural level, parish priests were responsible for the primary education of the natives, although this was usually limited to instruction on basic catechism and the lives of the saints.¹⁹⁷ For the elite, universities and colleges were established, such as the University of Santo Tomas, founded in 1601 by the Dominicans, and the Jesuit-run Ateneo de Manila University.

The friars also assumed secular and governmental roles. The scope of the powers exercised by these men of the cloth was quite staggering: collecting taxes, auditing the parish budget, conducting the census, managing health and public-works projects, screening recruits for military service, exercising supervisory powers over the local police, and censoring publications and plays deemed politically or morally reprehensible.¹⁹⁸ In addition to these "official" functions, the friars were also

in confidential relations with the *alcaldes* on all matters of personal or public import connected with the government, police, order and welfare of their districts, influencing the annual elections in them of the native district authorities — the arbiters and conciliators of public and private differences — intercessors in those with the *alcaldes* of government, and interpreters and advisers of the intent and execution of public orders.¹⁹⁹

Furthermore, over the course of the period of Spanish occupation, the religious orders amassed large estates, which were leased out to managers who, in turn, hired natives to till the fields.²⁰⁰ These landholdings were so extensive that by 1896, the year the Philippine Revolution began, the Dominicans, Augustinians, and Recollects owned a total of 460,146 acres of land throughout the Philippines, including half of the agricultural lands in the provinces of Cavite, Laguna, Manila, Bulacan, and Morong (now Rizal).²⁰¹

This concentration of power in the hands of the Spanish friars resulted in the perception of the priest as a man of great prestige and influence.²⁰² Unfortunately for the friars, by the mid-nineteenth century, this feeling of

195. SALAMANCA, *supra* note 193, at 99.

196. KARNOW, *supra* note 189, at 49.

197. *Id.* at 52.

198. *Id.*

199. CUSHNER, *supra* note 191, at 99. "Alcaldes" refer to the position of *alcalde mayor* who acted as civil governor of a province and who was appointed by the Spanish Governor-General. SALAMANCA, *supra* note 191, at 5.

200. KARNOW, *supra* note 189, at 51.

201. SALAMANCA, *supra* note 193, at 7-8.

202. CUSHNER, *supra* note 191, at 99.

reverence and respect had turned into resentment.²⁰³ Two factors that led to this change of heart were the concentration of wealth in the hands of the religious orders²⁰⁴ as well as the friars' zealous opposition to the ordination of native or *criollo* priests and their designation as parish priests in lieu of the friars. The friars were thus forced to protect their turf, as it were, and while over the short-term they succeeded in staving off this perceived encroachment on their prerogatives, the seeds of resistance against the friars — and eventually the Spanish government — had been planted.²⁰⁵

B. Fifty Years In Hollywood: The American Period

In 1900, two years after the United States of America assumed control over the Philippines under the terms of the Treaty of Paris, President William McKinley established the Second Philippine Commission headed by William Howard Taft. The Commission had legislative and executive authority over the Philippines, with the end-goal of establishing a civilian government.²⁰⁶ In particular, the Taft Commission was mandated to establish rules of government in the country "for the sake of the inhabitants' liberty and happiness, however much they may conflict with the customs and laws of the procedure with which the Filipinos were familiar."²⁰⁷ Among the rules of government that the Taft Commission established was that:

[N]o law shall be made respecting the establishment of religion or prohibiting the free exercise thereof and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed...that no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the Islands; that, upon the other hand, no minister of religion shall be interfered with or molested in following his calling.²⁰⁸

The rule of separation of Church and State having been imposed, the Catholic Church ceased to be the official state religion²⁰⁹ and all special

203. SALAMANCA, *supra* note 193, at 8-9.

204. CUSHNER, *supra* note 191, at 212; RENATO CONSTANTINO, A HISTORY OF THE PHILIPPINES: FROM THE SPANISH COLONIZATION TO THE SECOND WORLD WAR 158-59 (1975).

205. See generally KARNOW, *supra* note 189, at 64-67; CUSHNER, *supra* note 191, at 210-29.

206. *American Colony and Philippine Commonwealth: 1901-1941*, at <http://www.ualberta.ca/~vmitchel/fw5.html> (last visited Mar. 29, 2000).

207. A. Caesar Espiritu, *Constitutional Development in the Philippines*, in CONSTITUTIONALISM AND RIGHTS: THE INFLUENCE OF THE UNITED STATE CONSTITUTION ABROAD 260, 261-262 (Louis Henkin & Albert J. Rosenthal eds., 1990), quoting President McKinley's *Instructions to the Philippine Commission*. Article 5 of the 1899 Constitution adopted by the First Philippine Republic likewise adopted the rule of separation of church and state.

208. JORGE R. COQUIA, LEGAL STATUS OF THE CHURCH IN THE PHILIPPINES 13 (1950), quoting President McKinley's *Instructions to the Philippine Commission*.

209. See *supra* note 97.

privileges granted to it were abolished.²¹⁰ As part of the American campaign to establish secularized institutions, the "rural fiefdoms" of the religious orders were targeted.²¹¹ In 1904 the American government acquired all the friar estates from the Vatican for \$7.2 million and sold them back to Filipinos.²¹² With the establishment of civilian administration and the creation of the civil service, the role of the religious orders in government ceased.²¹³

A centralized public school system was also adopted, under the control of the colonial government, which removed the religious orders from their role as primary educators. Religious subjects, however, were still taught after regular school hours.²¹⁴

The principle of separation of Church and State was carried over in the 1935 Philippine Constitution.²¹⁵ Statements of government officials also reflected the emerging secularization of the Philippine government. As stated by Manuel L. Quezon, the first President of the Philippine Commonwealth:

As an individual, I worship God in accordance with my own religious belief...But as head of the State I can have no more to do with the Catholic Church than I can with the Protestant denominations, the Aglipayans, the Mohammedans or any other religious organizations or sects in the Philippines.²¹⁶

This is not to say, however, that the Catholic Church — or any organized religion for that matter — lost its luster in the eyes of the population. As the Philippine Supreme Court noted in 1937:

Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated...The elevating influence of religion in human society is recognized here as elsewhere.²¹⁷

210. COQUIA, *supra* note 208, at 32, quoting § 5 of the Philippine Bill of 1902.

211. KARNOW, *supra* note 189, at 199.

212. *American Colony and Philippine Commonwealth: 1901-1941*, at <http://www.ualberta.ca/vmitchel/fw5.html> (last visited Mar. 29, 2000). Although it was intended that the tenant framers would purchase the lands, few could afford to do so and the bulk of the friar estates fell into the hands of the new landholding elite which emerged after the establishment of American rule.

213. In fact, § 2175 of the Revised Administrative Code of 1917 contained a prohibition on ecclesiastics from being elected into municipal offices.

214. KARNOW, *supra* note 189, at 201.

215. See 1935 PHIL. CONST. art. III, § 1(7).

216. Quoted in COQUIA, *supra* note 208, at 25.

217. *Aglipay v. Ruiz*, 64 Phil. 201 (1937).

In addition, the Revised Penal Code, enacted during the period of American occupation,²¹⁸ contained provisions that punished acts offensive to the feelings of the faithful.²¹⁹ Courts were (and still are), in effect, placed in a position to decide what are to be considered religious practices to be protected under the law.²²⁰ Though prosecutions involving these provisions are rare, these provisions continue to remain in force.

Further reflecting the influence of Catholic doctrine are the provisions punishing persons who intentionally cause abortions,²²¹ and women who practice abortions on themselves or who consent that another person should do so.²²² Physicians and midwives who participate or assist in abortions suffer the maximum term of imprisonment imposed under the law.²²³

On the political front, the Church was influential in the struggle of the colonial and Philippine Commonwealth governments against the emerging socialist and communist movements. While it may be unfair to characterize this opposition as being pro-fascist, it did reflect the fact that during the Spanish Civil War in the 1930s, the Catholic Church did side with the *Falange Española* movement of General Franco.²²⁴

Nevertheless, the American period did bring about the formal separation of Church and State in that the concept of a state religion was abolished, religious orders were no longer entitled to any economic privileges, and the role of the Catholic Church in civil administration and public education was eliminated. Thus, the *ex officio* influence exerted by the Church on governmental affairs ceased to exist.

C. *The Republic of the Philippines*

The official separation of Church and State has continuously been observed since the Philippines gained independence in 1946. That is not to say that the influence of the Catholic Church in government policy ceased to exist. On the contrary, while the Church no longer plays an active role in civil administration, its traditions and teachings continue to affect the daily lives of Filipinos. Towns still celebrate the feast days of their respective patron saints,

218. The Spanish Penal Code of 1870 was extended by Royal Decree to the Philippines in 1887. See COQUIA, *supra* note 208, at 31 n. 14. This code remained in force until 1932, when the Revised Penal Code came into force.

219. See An Act Revising the Penal Code [REVISED PENAL CODE] arts. 132-133.

220. See generally COQUIA, *supra* note 206, at 33-36.

221. REVISED PENAL CODE, art. 256.

222. *Id.* art. 258.

223. *Id.* art. 259.

224. WILLIAM J. POMEROY, *THE PHILIPPINES: COLONIALISM, COLLABORATION, AND RESISTANCE!* 97 (1992).

and one can find religious shrines in places as varied as the dashboard of a taxicab and in the lobby of the Securities and Exchange Commission building.

A leading case on the non-establishment clause, *Garces v. Estenzo*,²²⁵ involved the constitutionality of a *barangay* resolution reviving the traditional monthly celebration of the town's patron saint. The resolution was upheld by the Supreme Court, which ruled that, while the feast day may have religious origins and undertones, it was essentially a socio-religious affair ingrained in the tradition of rural communities. Implying that there was a valid secular purpose, the Court found that the *fiesta* was merely designed to relieve "the monotony and drudgery of the lives of the masses."²²⁶

In addition to affecting the everyday lives of the people, the Catholic Church continues to play a role as an indirect power broker among politicians. One of the Philippines' leading nationalists during the early post-war era, Claro M. Recto decried this practice, stating:

It is to be deplored that in recent years the most numerous Church in this country, not satisfied with the hold it has on the fealty of four-fifths of the nation as no government has ever enjoyed or will enjoy here, has made use of its privileged position by demanding from candidates to public office, particularly the elective ones, certain religious tests and pledges of allegiance.

... Although this religious establishment did not fare as it had expected in the last three elections, there is no doubt that its incursions into the political field should not be taken lightly. If these inroads are not curbed now, the day is not far off when we shall see the halls of congress being used to proselytize the nation and the people legislated into one religious faith. An established church, which is another name for union of Church and State, consecrated by appropriate constitutional amendment, would be the tragic result.²²⁷

This setting was most likely the result of the ban on, among others, ecclesiastics from being elected into public office found in Section 2175 of the Revised Administrative Code of 1917. In the 1978 case of *Pamil v. Teleron*,²²⁸ which involved the validity of the election of a Catholic priest as mayor of a municipality, a divided Supreme Court was forced to uphold the constitutionality of the prohibition, falling one vote short of the eight then required to have a provision of law declared unconstitutional. While the five justices who voted to uphold the prohibition were a minority, their ruling carried the day. It is interesting to note that separate opinions of these five

²²⁵. 104 SCRA 510 (1981).

²²⁶. *Id.*

²²⁷. Claro M. Recto, Remarks on the Occasion of the Conferment upon him of the Degree of Doctor of Humanities, *honoris causa* by the Central Philippine University (Feb. 19, 1960).

²²⁸. 86 SCRA 413 (1978).

justices harked back to the history of the Church's involvement in the civil affairs during the Spanish period, to wit:

The view herein enunciated by Justice Fernando and Teehankee [who led the seven justices in favor of finding the prohibition unconstitutional] will again usher in the era of religious intolerance and oppression which characterized the Spanish regime of about 400 years in the Philippines. It will resurrect in our political life that diabolic arrangement which permits the "encroachment of Church upon the jurisdiction of the government, and the exercise of political power by the religious, in short, the union of the State and the Church — which historically spawned abuses on the part of the friars that contributed to the regressiveness, the social and political backwardness of the Filipinos during the Spanish Era."²²⁹

But not all instances of Church involvement in secular affairs can be considered in a negative light. The Catholic Church played a crucial role in both the opposition against and eventual overthrow of former President Ferdinand Marcos. Both at the top tier of the Church hierarchy, represented by the Catholic Bishops' Conference of the Philippines (CBCP), and at the grass-roots level, the Catholic Church was a decisive force in mobilizing and organizing the movement against the Marcos government.²³⁰ Cardinal Sin personally played a key role in convincing opposition leader Salvador Laurel to step aside and allow Corazon Aquino to run for the presidency against President Marcos in the 1986 elections,²³¹ and the Church actively campaigned on her behalf.²³² It should be noted, though, that the Vatican was uneasy about the active role played by Cardinal Sin and the CBCP in the political struggle against the Marcos regime.²³³

After Corazon Aquino assumed the presidency in February 1986, one of her first official acts was to create a Constitutional Commission to draft a new charter. President Aquino, who has been described as "intensely pious,"²³⁴ included as members of the commission Bishop Teodoro C. Bacani, constitutional law expert Fr. Joaquin G. Bernas, S.J., Sister Christine O. Tan, and a member of the conservative Catholic group *Opus Dei*, Bernardo M. Villegas.

Although the new constitution reiterated both the separation of church and state²³⁵ and retained the non-establishment and free exercise clauses,²³⁶ the

²²⁹. *Id.* (Makasiar, J., concurring).

²³⁰. See POMEROY, *supra* note 224, at 300-307. In fact, several priests joined the communist New People's Army in their armed resistance to the Marcos government. *Id.*

²³¹. KARNOW, *supra* note 189, at 411.

²³². *Id.* at 55.

²³³. E.J. Dionne, Jr., *Manila After Marcos: Vatican View; Church Activism Raises Question Of Pope's Stand*, N.Y. TIMES, Feb. 27, 1986, at A17.

²³⁴. *Id.*

²³⁵. See PHIL. CONST. art. II, § 6.

Catholic Church helped direct the thrust of the new constitution in terms of family law and reproductive rights. The aggressive sponsorship by Mr. Villegas of the protection of the life of the unborn "from conception"²³⁷ effectively closed the door to any legislation relating to abortion rights. In the words of Mr. Villegas, "[w]hat is being affirmed in this formulation is the moral right as well as the constitutional right of the unborn child to life."²³⁸ And the word "conception" was understood as referring to the moment of fertilization.²³⁹

With regard to the family, while the constitution "recognizes the sanctity of family life and [the State] shall protect and strengthen the family as a basic autonomous social institution,"²⁴⁰ this was not intended as a prohibition against divorce legislation.²⁴¹ However, the sponsorship speech of Commissioner Nieva made no bones about the sectarian basis for this provision, to wit:

Thus, Pope John Paul II has rightly said that the future of humanity passes by way of the family. From this it follows that the family possesses, as given by the Author [*sic*] of nature Himself [*sic*], certain inherent and inalienable rights which are intrinsic to its very existence and perpetuity.²⁴²

In the wake of the 1987 Constitution, the Catholic Church has continued its involvement in political activities. During the 1987 congressional elections, Cardinal Sin issued a pastoral letter exhorting Catholics to vote against, among others, candidates who advocate divorce and abortion.²⁴³ He was quoted as stating that the Church and State, while separate, are "like the two rails of the track, the church should not be too far distant from the government or there will be a derailment."²⁴⁴

The Catholic Church was also active in the campaign against the election of former President Fidel V. Ramos, a Protestant, in the 1992 presidential elections.²⁴⁵ And during President Ramos' administration, the Church also

236. See PHIL. CONST. art. III, § 5.

237. See *id.* § 12.

238. JOAQUIN G. BERNAS, S.J., *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 118 (1995), quoting the sponsorship speech of Bernardo M. Villegas for art. II, § 12 of the 1987 Constitution.

239. *Id.* at 119.

240. PHIL. CONST. art. II, § 12; art. XV, § 2.

241. RECORDS OF THE 1986 CONSTITUTIONAL COMMISSION 41 (1986).

242. *Id.* at 36. Under the Irish Constitution, the family is likewise considered as having "inalienable and imprescriptible rights." See *supra* note 185 and accompanying text.

243. Mark Fineman, *Reject Communists, Cardinal Sin Urges: Prelate Advises Filipinos On How To Vote*, L.A. TIMES, Apr. 23, 1987, at 8.

244. *Id.*

245. Edward Luce, *When Condom Use Becomes A Cardinal Sin: Edward Luce Meets Manila's Controversial Archbishop*, FINANCIAL TIMES (London), Sept. 23, 1995, at 3.

conducted active campaigns against the government's family planning program, which included encouraging the use of condoms.²⁴⁶ Even up to the present, the Catholic Church still makes headlines with its statements condemning condom advertisements and proposed legislations relating to population control.²⁴⁷

Furthermore, the Church also played a key role in organizing the mass movement that led to the resignation of former President Joseph Estrada.

Thus, the Catholic Church has a long history of involvement in Philippine government and politics. From officially sanctioned participation under the Spanish colonial government to the *de facto* influence exercised by the Church through election campaigns and policy statements, the Church has in no small measure — and for good or for ill — helped shape the course of Philippine history and government policy.

D. The Current State of Philippine Family Laws

Divorce is not unknown in Philippine legal history. During the American period, Act No. 2710 authorized divorce based on adultery on the part of wife and concubinage on the part of the husband.²⁴⁸ This act was superceded by Executive Order No. 141,²⁴⁹ passed during the Japanese Occupation, which also authorized absolute divorce. However, both enactments were repealed in 1949 by the New Civil Code of the Philippines,²⁵⁰ which contained no provisions concerning absolute divorce. The Civil Code only allowed separation *a mensa et thoro* on two grounds: adultery on the part of the wife or concubinage on the part of the husband; and an attempt by one spouse against the life of the other.²⁵¹

By the early 1980s, though, there was already a movement to revise the family and marriage laws embodied in the Civil Code. A revision committee was formed and the work of this body eventually became adopted as the Family Code. However, in terms of dissolution of marriages, the new law barely broke with the traditions embodied in the Civil Code. Consistent with the mandate of the 1987 Constitution that "[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State,"²⁵² Article 1 of the Family Code defines marriage as "a special contract

246. *Id.*

247. *Bishops Come Down Hard On Condom Ads*, at http://www.inquirer.net/issues/mar2000/mar17/news/news_6.htm (last visited Mar. 31, 2000).

248. Act No. 2710 (1917).

249. Executive Order No. 141 (1943).

250. An Act to Ordain and Institute the Civil Code of the Philippines [Civil Code].

251. *Id.* art. 97.

252. PHIL. CONST. art. XV, § 2.

of permanent union . . . entered into in accordance with law for the establishment of conjugal and family life . . . and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation." The above-quoted constitutional provision, however, was clearly not intended to serve as a prohibition against Congress passing statutes allowing divorce.²⁵³

The permanence of marriage is exemplified by the fact that validly contracted marriages are still not dissoluble. The spouses are only allowed to obtain a separation *a mensa et thoro* based on any of ten grounds enumerate in the Family Code²⁵⁴ and are not allowed to remarry.²⁵⁵ And, in all marital cases, a state prosecutor represents the state to ensure that there is neither collusion nor fabrication of evidence.²⁵⁶

The Family Code did, however, introduce a new concept insofar as impediments to marriage are concerned: psychological incapacity. Under Article 36 of the Family Code, "[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." This provision of law was based on Canon Law, specifically Canon 1095, par. 3, of the New Code of Canon Law,²⁵⁷ and was intended to replace a proposed provision allowing absolute divorce.²⁵⁸ It was further meant to solve the problem of how to deal with Church-annulled marriages that remained valid under the Civil Code and to "serve as an additional remedy for burdened spouses."²⁵⁹

Given that Article 36 only defined the effect of psychological incapacity and not its causes, courts were forced to determine the existence of this disability on a case-to-case basis.²⁶⁰ And this appears to have been the intention of the committee that drafted the law.²⁶¹ Needless to say, this has caused a great deal of confusion and inconsistency among the courts, leading to a perception that the remedy offered by Article 36 was being abused.²⁶² In *Republic v. Court*

253. BERNAS, *supra* note 238, at 1132.

254. See The Family Code, art. 55.

255. See *supra* note 3 and accompanying text.

256. See The Family Code, arts. 48 & 60.

257. Jonathan O. Temporal, Note, *Republic v. Court of Appeals and Molina: Providing Definite Standards for the Interpretation and Application of Article 36 of the Family Code*, 42 ATENEO L. J. 381 (1998).

258. *Id.* at 382.

259. *Id.*

260. MELENCIO S. STA. MARIA, PERSONS AND FAMILY RELATIONS LAW 186 (3d ed. 1998).

261. *Id.*

262. Temporal, *supra* note 257, at 384.

of Appeals and Roridel Olaviano Molina,²⁶³ the Supreme Court finally laid down guidelines to be followed by judges in deciding cases involving psychological incapacity. At the outset, the Court ruled out any possibility of Article 36 being used as a *faux* no-fault divorce clause, stating that "[m]ere showing of 'irreconcilable differences' and 'conflicting personalities' in no wise [sic] constitutes psychological incapacity."²⁶⁴

The Court then proceeded to require all Article 36 cases to be proven by the plaintiff with the use of expert evidence, such as qualified psychiatrists and clinical psychologists.²⁶⁵ Considering the costs involved in obtaining such assistance, this requirement necessarily limits the availability of Article 36 to the middle and upper classes.²⁶⁶

The role of the State in marital cases was further reinforced, with the Court virtually amending the provisions of the Family Code when it required that "[n]o decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be to the petition."²⁶⁷

Finally, the Court ruled that interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines be given great respect by courts in deciding Article 36 cases. Reinforcing the already formidable presence of the Church in Philippine family law and glibly overlooking the non-establishment clause, the Court noted that:

[s]ince the purpose of including [Article 36] in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal.

... Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.²⁶⁸

263. 268 SCRA 198 (1997). Note that the Office of the Solicitor General, on behalf of the State, brought the appeal, demonstrating the degree of control to Philippine Government can exercise over the continuation or cessation of marital relations between husband and wife.

264. *Molina*, 268 SCRA at 207.

265. *Id.* at 210-211.

266. As of October 1998, 5.75 million out of 14.37 million families belong to lowest 40% income group. Highlights of the 1998 Annual Poverty Indicators Survey, at <http://www.census.gov.ph/data/sectordata/dataapis.html> (last updated July 28, 1999).

267. *Molina*, 268 SCRA at 213.

268. *Id.* at 212-13.

Therefore, at present Philippine family law is still chained to the traditional doctrines of the Catholic Church. Marriage remains indissoluble and the State, through its active intervention in marital cases, effectively acts as marriage regulator. In this sense, the Philippines resembles Ireland before 1995. One major distinction, however, is the unwillingness of the government to break its ties with the Catholic Church. In Ireland, the government spearheaded the campaign for the removal of the constitutional ban on divorce. In the Philippines, elected officials still feel compelled to remain beholden to the Church, if only to avoid being campaigned against in the pulpits during elections. As pointed out by one columnist, "the conventional view is that it's political *hara-kiri* to pick a fight with the church on the matter of divorce and sexuality."²⁶⁹

But is this — for lack of a better term — fear of the influence of the Catholic Church justified? Does the current legal regime prohibiting divorce actually reflect what is taking place within Philippine society?

III. THE PHILIPPINES: CAUGHT BETWEEN THE TRADITIONAL AND THE MODERN

Where then does the Philippines fall? As discussed in the preceding section, Philippine family and marriage laws are very rooted on the doctrines of the Catholic Church, with its emphasis on the family as a basic social institution and marriage as essentially inviolate. Respect for the family is rooted in Philippine culture as well. Far from emphasizing the individual, "[t]he interests of the individual in Philippine society are secondary to those of the family."²⁷⁰

Note that the term "family" is not limited to one's parents and siblings, for "[c]hildren, always invited to celebrations attended by real and fictive relatives, learn to feel comfortable at an early age in the warm fold of parents, brothers, sisters, uncles, aunts, cousins, and ritual kinfolk."²⁷¹ And through godparents in baptisms and marriages, kinship alliances are formed.²⁷² Family ties are perpetual in that they "are not broken by marriage, distance or residence, or by a change in social status of a family member. If a Filipino gets married and has substantial income, he is obliged to continue supporting his brothers and sisters."²⁷³

At its best, this familial outlook is altruistic in that "[e]ven the poorest scrape aid to their more indigent kin, and no house is so humble that it lacks a

269. Nelson Navarro, *Kiss Divorce Goodbye*, MANILA STANDARD, Mar. 15, 1999, at 14.

270. ANDRES & PILAR B. ILADA-ANDRES, UNDERSTANDING THE FILIPINO 39 (1987).

271. KARNOW, *supra* note 189, at 20.

272. *Id.*

273. ANDRES, *supra* note 270, at 40.

spot for an unfortunate relative."²⁷⁴ Yet in terms of forging larger social ties, it has been noted that:

The prevailing family structure emphasizes loyalty and support of the family, not of any higher level of social organization. In the barrio, political organizations and group activities are organized in terms of kinship and by common economic and ritual interests. One or more families form the core of these group activities, the leadership usually being provided by the dominant family or families. Wealth and the size of a man's family and kinship group are the primary determinants of leadership. The resulting familial orientation is centripetal, making for highly segmented communities and an almost complete lack of legal self-government. It is understandable, therefore, why government and municipal programs have found so little real support in the typical barrio.²⁷⁵

This system of familial and ritual kinship has also been cited as a factor which contribute to the high degree of social rigidity in the Philippines. That is, the family is a tribe with the father as chief and other family members occupying niches in the pyramidal family structure.²⁷⁶ In terms of economic effects, this "calcified" social structure is most acutely felt in the rural areas, where large plantations have belonged to the same family for generations, and their tenants can likewise trace their occupancy back to their forefathers.²⁷⁷

Not only is Filipino culture family-centered, it is patriarchal as well.²⁷⁸ Women are still considered as "the weaker sex"²⁷⁹ and "society continues to regard the home as women's principal domain and motherhood as their reason for being."²⁸⁰ This is reflected in employment statistics as well, with only 49% of women above the age of fifteen considered as economically active, as compared to 86% for men.²⁸¹ Overall, women only constitute 37% of the total workforce.²⁸² A more chilling statistic is the fact that more than half of abuse

274. KARNOW, *supra* note 189, at 20.

275. ANDRES, *supra* note 270, at 38-39.

276. KARNOW, *supra* note 189, at 21-22.

277. *Id.* at 22.

278. Mercedes Lactao Fabros, et al., *From Sanas to Dapat: Negotiating Entitlement in Reproductive Decision-Making in the Philippines*, in NEGOTIATING REPRODUCTIVE RIGHTS: WOMEN'S PERSPECTIVES ACROSS COUNTRIES AND CULTURES 224 (Rosalind P. Petchesky & Karen Judd eds., 1998).

279. ANDRES, *supra* note 270, at 49.

280. Fabros, et al., *supra* note 278, at 224.

281. *Indicators on Income and Economic Activity*, at <http://www.un.org/Depts/unsd/social/inc-eco.htm> (last visited Apr. 7, 2000). The percentage of economically active women has remained roughly constant over the past four years.

282. *Economic Activity by Sex, 1995*, at <http://www.un.org/Depts/unsd/gender/5-1asi.htm> (last visited Apr. 7, 2000).

cases against women involve wife battery,²⁸³ with many women unable to abandon such a situation due to, among other reasons, lack of economic opportunities outside marriage.²⁸⁴

The male-centered orientation of Philippine society is further reflected in the penal system. Not only is it easier for a wife to be found guilty of being sexually unfaithful,²⁸⁵ the wife's infidelity is punished with a higher penalty than a husband's extra-marital dalliances.²⁸⁶

To be sure, Philippine family law has taken strides to equalize the authority of husbands and wives vis-à-vis the management of conjugal assets, with the Family Code mandating joint administration thereof.²⁸⁷ However, in case of disagreement, the husband's decision will prevail, although the wife is allowed to seek judicial remedies, such as injunctions, against the implementation of the husband's decision.²⁸⁸

On the face of it, however, Philippine society does not seem any different from nineteenth century Western society, yet divorce was allowed and actually took place then. The distinction is that the growth of individualism in the West progressed from merely being the subject of theoretical discussion to actually being reflected in legislation, and over time came to be accepted by the general population as a given. The Philippines, while superficially emulating the liberal democracies of the West, the United States in particular, insofar as its governmental and legal structures are concerned, has yet to develop a culture of individualism and the self-sufficiency that liberal democracy requires. As one observer has noted:

[v]ote-selling, vote-buying, voting for *pogi*, are signs of a pidgin democracy. We adapted the idea of casting a ballot as a practice of democracy, but in our importation we did not bring in the idea of its sanctity, which is related to the sanctity of the individual self. How could we? We already had our own idea of self. Thus, the ballot

283. Jude O. Marfil & Rey Requejo, *Divorce Will Save Battered Wives*, MANILA STANDARD, Mar. 18, 1999, at 1.

284. Fabros, et al., *supra* note 278, at 242 ("Finally, a critical element in their ability to resist violence is the ability to support themselves").

285. For a woman to be found guilty a single act of intercourse is sufficient, regardless of when or where committed. Men, on the other hand, must have had sexual intercourse under certain conditions, proof of which are essential for a conviction. See REVISED PENAL CODE, arts. 333-334.

286. The penalty for adultery is imprisonment ranging from a minimum of 2 years, 4 months, and 1 day to 6 years; concubinage is punished with imprisonment ranging from 6 months and 1 day to 4 years 2 months and 1 day. See REVISED PENAL CODE, arts. 333-334.

287. The Family Code, arts. 96, 124.

288. *Id.*

has no sanctity. It is treated as a commodity — to be utilized to obtain or maintain good relationships with others.²⁸⁹

In economic terms, the agricultural sector is still the largest source of employment, with 11.3 million Filipinos (out of a total workforce of 28.8 million) employed in this sector.²⁹⁰ However, while many are employed, underemployment stands roughly at 6 million, or 21% of the total workforce.²⁹¹ In terms of the existence of a wage economy, only half of the total workforce are employed as wage-and-salary-workers, the other half are either self-employed or unpaid family workers.²⁹² In terms of economic opportunities, therefore, married Filipinos appear to have the same dilemma faced by their counterparts in pre-industrial Western Europe. Even in urban areas, employment opportunities are limited and most jobs for men are low-skilled and low-paying, with women supplementing the men's income with income generated from activities related to their perceived role as homemakers, e.g., selling food products, sewing dresses, or doing laundry for hire.²⁹³

It should be noted, though, that the economic participation rate for women in the Philippines is roughly the same as it is in the Republic of Ireland.²⁹⁴ However, one factor which differentiates the Philippines from most Western countries is the absence of a comprehensive social welfare program that provides unemployment and health benefits. While the Philippines does have mandatory social security and medicare programs, the benefits are extended to the employed Filipinos who contribute to these programs; they do not provide benefits for unemployed women or unmarried women with dependents.

At the same time, the influence of the Catholic Church is so prevalent that legislation relating to the family and marriage is still skewed towards Catholic values. Any attempt to secularize this aspect of the legal system is instantly opposed by the Church; the mere threat of being blacklisted by the Catholic Church is considered political suicide. Yet the veneer of piety which politicians exude when proclaiming their fealty to the tenets of the Church

289. EDILBERTO N. ALEGRE, *Demokrasi: Pinoy-Style*, in PINOY NA PINOY!: ESSAYS ON NATIONAL CULTURE 269, 272 (1994).

290. *Employed Persons By Major Industry Group: January 1999 to January 2000*, at <http://www.census.gov.ph/data/sectordata/lfo00105.htm> (last visited Apr. 7, 2000). This figure includes fishermen and hunters.

291. *Employed Persons Wanting More Hours of Work By Class of Worker and By Major Industry Group: January 1999 to January 2000*, at <http://www.census.gov.ph/data/sectordata/lfo00111.htm> (last visited Apr. 7, 2000).

292. *Results of the January 2000 Labor Force Survey in the Philippines*, at <http://www.census.gov.ph/data/sectordata/lfo00102.htm> (last visited Apr. 7, 2000).

293. Fabros, et al., *supra* note 278, at 230-31.

294. See *supra* note 141 and accompanying text.

often masks outright hypocrisy. Former President Joseph Estrada made public his intent to veto any divorce bill passed by the Philippine Congress, yet is a self-professed womanizer who has fathered several children out of wedlock.²⁹⁵ And in one of the greatest ironies, the youngest daughter of former President Aquino, who is herself an extremely devout Catholic, has a child out of wedlock with a married actor who is himself estranged from his wife.²⁹⁶

Nevertheless, the filing of Senate Bill No. 782, House Bill No. 6993, and House Bill No. 878 has generated heated debate once more. As noted earlier, the Catholic Church is spearheading the movement against the bill,²⁹⁷ with the debate basically centering on the importance of marriage as an institution versus the reality of modern-day marriages. Anti-divorce advocates point to the example of the United States' soaring divorce rate and the growing movement for reform of divorce laws as proof that Filipinos should not tread down the path of divorce.²⁹⁸ Others have decried divorce as "making a mockery of marriage as an inviolable social institution, and destroying its permanency [sic]."²⁹⁹ Underlying this criticism of divorce appears to be the norm that legislation should promote a particular set of values, be pro-marriage and pro-family as it were.

Pro-divorce newspapers note that "in case the conservatives haven't noticed, Filipinos have been circumventing the law for a long time, simply abandoning their partners to shack up with other people or shirking marriage in the first place. Divorce as a *de facto* institution is now very much a part of our lives."³⁰⁰ Women's advocacy groups have also come out in favor of allowing divorce, particularly as means to escape an abusive husband,³⁰¹ noting that battered wives "want and need a divorce law in order to start anew."³⁰² Others have commented on the fact that the Church itself effectively sanctions divorce through annulment proceedings, with 166 annulments granted during the period from 1993 to 1995.³⁰³ The sponsor of House Bill No. 6993 has reminded the Catholic Church that under the separation of Church and State,

295. Anna Marie Panintuan, *The Divorce Bill*, PHIL. STAR, Mar. 12, 1999, at 9.

296. *Unwed Pregnancy Hurts Aquino*, THE TORONTO STAR, Dec. 17, 1994, at A17.

297. See *supra* notes 10-11 and accompanying text.

298. Bernardo M. Villegas, *Legalizing Divorce Will Destroy Society*, MANILA BULL., June 6, 1999, at 10.

299. Jose C. Sison, *Violating an Inviolable Social Institution*, PHIL. STAR, May 19, 1999, at 11.

300. *Fate of the divorce bill*, MANILA STANDARD, Aug. 9, 1999, at 14.

301. Diana G. Mendoza, *Women's Group Stresses Need for a Divorce Law*, MANILA TIMES, Nov. 14, 1999, at 3.

302. *Breaking The Ties That Bind*, at <http://www.winmagazine.org/issues/issue27/win27c.htm> (last visited Sept. 24, 2001).

303. *Divorce, Catholic Style*, PHIL. STAR, May 28, 1996, at 8.

the Church has no right to impose its doctrines on Filipinos of different faiths, as well as on Catholics "who do their own thing."³⁰⁴ And as Senator Biazon succinctly put it, "[u]nity in the family cannot be legislated."³⁰⁵

As a society, however, is the Philippines at the stage where divorce can be accepted? Many Filipinos have already been exposed to Western culture either directly through traveling or working abroad, or indirectly through movies and television programs. But while Filipinos may have adopted Western styles of dress and have taken a shine to the Internet, interpersonal relations are still family-centered. Familial relations and obligations still play an integral part in how society works and in how individuals view their roles within society. The respect for the individual underlying Western legal systems has yet to make any headway in Philippine family and marriage laws. It has been stated that:

Most families stay together regardless of how the husband and wife feel about each other due to the cultural and religious forces which pull them together. The first social pressure derives from the system of *marriage arrangement*. In many Philippine rural areas, marriage follows a group decision by the parents and relatives of the bride and groom. Unlike in the Western culture, marriage is seen not so much as the joining in matrimony of a devoted and love-struck boy and girl; rather it is an inter-family alliance deliberately entered into for sound economic or other reasons.³⁰⁶

At the State level, the active intervention of the Solicitor General in marital cases, as mandated by the Supreme Court, exhibits the controlling view that the government takes an active interest in making sure that spouses stay together. The family is thus considered a foundation of society. In economic terms, many Filipinos are still struggling in traditional rural economies³⁰⁷ and spouses, particularly women, have very few opportunities for economic advancement. And the long history of the Catholic Church's involvement in government and politics has obviously affected Philippine law and society, especially since the Church's views on family complement the Filipinos' sense of familial responsibility. Philippine family law thus appears to be characterized by a "patriarchal" approach to the law, where law strives to realize certain ethical and religious ideals, or what Weber would term as "substantive" law.³⁰⁸

In the end, the case of divorce in the Philippines will have to be one where the government must take the lead and eventually the people will follow. However, politicians are still hamstrung by the influence of the Church in electoral politics. Nonetheless, they should take heart in the fact that the two

304. Diana G. Mendoza, *Women's Group Stresses Need for a Divorce Law*, MANILA TIMES, Nov. 14, 1999, at 3.

305. Rey E. Requejo, *Senator Rodolfo Biazon: Divorce Bill Protects Disadvantaged Spouses*, MANILA STANDARD, July 28, 2001, at 16.

306. ANDRES, *supra* note 270, at 92-93.

307. *Id.* at 94.

308. See generally ANTHONY KRONMAN, MAX WEBER 76-78 (1983).

Presidents have been elected despite the opposition of the Church hierarchy to their candidacies. Much like in Ireland, the government must overcome the hurdle posed by the fear of a Catholic backlash. Once that is done, objective debates on the viability of divorce legislation can begin.

CONCLUSION

At present, the Philippines is a society which enjoys the trappings of modernity and liberal democracy, but like the emperor and his new clothes, there is nothing of substance underneath the surface. The Filipino people still live in a male-dominated, family-centered culture that lays a heavy emphasis on respecting family ties and on duties owed to family members, and this is reinforced by the family-oriented thrust of Philippine law. The Catholic Church still heavily influences politics and government and, as a result, family and marriage laws reflect values espoused by the Church. The economy, while modernizing, is still predominantly an agricultural one insofar as employment opportunities are concerned. Therefore underneath the veneer of modern society, the Philippines still reflects the traditional systems of pre- and early-industrial Western societies. Moral consensus, at least as perceived by the government, or in the case of divorce, by the President, still underlies Philippine family law. The role of the family vis-à-vis society in general is institutionalized and, to a certain degree, idealized. Both culturally and legally, husbands and wives are not free to "do their own thing." The Catholic Church may want to take heart in the fact that even if the pending divorce bills become law, social and economic conditions in the Philippines are such that very few spouses will likely seek to divorce.

This is not to say that modern Western societies have completely disregarded values associated with particular religious beliefs. More precisely, the people of these societies have not abandoned religious beliefs. For example, in a poll conducted in May 2000 by the *New York Times*, 49% of respondents stated that they were as religious as their parents, while 21% believed they were more religious.³⁰⁹ However, while people remain religious, the institutions governing them have been secularized. Governments in the West do not feel bound to adopt the values of a particular religious group merely because a large portion of the population belongs to that group. And the interests of religious groups are just a few of the many interests Western governments take into consideration in enacting legislation or enforcing policy. Thus, "deep inside, Americans are exploring a new frontier. Though they still believe in God, uphold the family and love their country, they increasingly decide which God

309. *Spirituality: With or Without Prayer*, at <http://www.nytimes.com/library/magazine/home/20000507mag-spirituality.html> (last visited May 9, 2000).

best suits their temperament; which family structure works for them; and whether their country's government is worthy of their trust."³¹⁰

In a society such as the United States, therefore, one's faith, and the willingness to follow its tenets, is left to the individual. So for American Catholics, divorce is a matter of individual choice. Each Catholic is faced with the dilemma of remaining faithful to the Church and its teachings in the face of having at one's disposal the ability to legally free one's self from an unhappy marriage. In this way, Western society can be considered modern and religious. Modern in the sense that societal institutions and structures are no longer based on any particular religion's beliefs or tailored to cater to such beliefs, yet at the same time the people within the society can remain true to their own personal religious beliefs. While institutions do not conform to any particular creed (often to the chagrin of a large segment of the population), people are not thereby compelled to become secular. In terms of marriage and divorce, while modern Western legal systems allow husbands and wives to divorce, they are not compelled to do so even when grounds for divorce exist.

Not so in the Philippines. At least as far as divorce is concerned, individual choice is subordinated to the Catholic "family values" that the state has adopted as a matter of policy. Rather than reflecting the notion of individual autonomy that pervades modern Western marriage law, Philippine family law imposes a particular set of values on the country's non-Muslim population. As further evidence of Philippine family law's substantive-rational leanings, in *Molina* the Supreme Court has institutionalized the use of Church doctrine as an interpretative tool in psychological incapacity cases. It is in this sense that Philippine society remains traditional, with individual autonomy in the area of marriage (or rather the termination thereof) considered subservient to the state's perceived interest in pursuing a vision of matrimonial indissolubility based on Catholic Church doctrine.

310. Alan Wolfe, *The Pursuit of Autonomy?*, at <http://www.nytimes.com/library/magazine/home/20000507mag-introduction.html> (last visited May 9, 2000).