

philippine studies

Ateneo de Manila University · Loyola Heights, Quezon City · 1108 Philippines

The FIDA Resolution

Jorge R. Coquia

Philippine Studies vol. 8, no. 4 (1960): 837–840

Copyright © Ateneo de Manila University

Philippine Studies is published by the Ateneo de Manila University. Contents may not be copied or sent via email or other means to multiple sites and posted to a listserv without the copyright holder's written permission. Users may download and print articles for individual, noncommercial use only. However, unless prior permission has been obtained, you may not download an entire issue of a journal, or download multiple copies of articles.

Please contact the publisher for any further use of this work at philstudies@admu.edu.ph.

<http://www.philippinestudies.net>
Fri June 30 13:30:20 2008

The FIDA Resolution

The *Federación Internacional de Abogadas* (FIDA) which recently convened in Manila (August 19-24, 1960) approved a resolution advocating a uniform divorce law for all states. According to the resolution, divorce will be allowable on eight grounds, namely, adultery or concubinage, desertion, incurable insanity, imprisonment, alcoholic addiction, corruption of children by either or both spouses, corruption of one spouse by the other, and cruelty and inhuman treatment. It is to be noted that the resolution was passed with the approval, and, in fact, through the cooperation of the Filipinas in the association.

Yet, since they represented the Philippines, these women lawyers should have informed the foreign delegates of the convention that the Philippines, by a law of Congress and a series of court decisions, has declared it to be public policy that absolute divorce has no place in this jurisdiction. They should have informed their colleagues that the same question has been fully discussed time and again not only inside but outside the halls of Congress and in the courts and that it has been agreed that the matter of absolute divorce has no place among the accepted mores, customs and family traditions of the Philippines, further, that absolute divorce is not in consonance with the moral and religious convictions of Filipinos.

A brief account of the history of divorce law in the Philippines may be in order. When the Philippines was under Spanish sovereignty, the divorce law in the Philippines was governed by *Las Siete Partidas*, canon law, and the provisions of the Council of Trent which were accepted as law by the civil authorities. (*Benedicto vs. De la Rama*, 3 Phil. 34(1908); *Ibáñez vs. Ortiz*, 5 Phil. 325(1905).) Relative divorce (*a mensa et thoro*) was only permitted on any of these grounds: (1) the desire of either one of the spouses to enter a religious order, provided that the other granted permission to do so; (2) adultery; or (3) the fact that either had become a heretic.

Upon the advent of the American regime, General Order No. 68 was promulgated on December 18, 1899. This Order did not expressly provide for divorce, hence, the law on divorce prevailing toward the end of the Spanish regime continued in force for some time during the American period. On March 11, 1917, Act No. 2710 was passed by the Philippine Legislature. This Act repealed the provisions of *Las Siete Partidas* and provided for absolute divorce (*a vinculo matrimonii*) on the grounds of adultery on the part of the wife or concubinage on the part of the husband (*Valdez vs. Tuazon*, 40 Phil. 943). While Act No. 2710 was in force, there were several attempts to introduce a more liberalized divorce law in the Philippines. Associate Justice Fisher of the Supreme Court, for instance, contended

that the existing law was inconsistent with the modern problems of the Filipino family. Thereafter two bills were proposed by Senators Camilo Osias and Benigno Aquino which sought to permit divorce without the filing of the necessary criminal action of adultery or concubinage. In 1928 Senator Camilo Osias also proposed a bill seeking to amend Section 19 of the Marriage Law (Act 3616) by providing that a Filipino couple who could not get a divorce under Philippine law because of its stringent provisions might obtain a valid absolute divorce abroad. These amendments were not approved.

Act No. 2710 continued in force until the Japanese occupation of the Philippines when the Japanese-sponsored Executive Order No. 141 was promulgated by the Philippine Executive Commission. This law permitted absolute divorce on ten grounds, namely (1) adultery on the part of the wife, or concubinage on the part of the husband; (2) attempt by one spouse against the life of the other; (3) a second or subsequent marriage by either spouse before the former marriage has been legally dissolved; (4) loathsome contagious disease; (5) incurable insanity; (6) impotence; (7) intentional or unjustified desertion for one year; (8) unexplained absence for three years; (9) repeated bodily harm that may endanger the life of either; and (10) slander by deed.

Executive Order No. 141 ceased to take effect upon liberation and Act No. 2710 was revived (*Velasco vs. Montemayor*, 43 O.G. 3218).

After Philippine Independence in 1946, a bill was filed to allow an action for divorce without the necessary criminal conviction. Another bill also proposed absence of more than 7 years as additional grounds for divorce. Both bills failed to pass.

The draft of the Code Commission that prepared the New Civil Code proposed a provision to allow divorce *a mensa et thoro* (legal separation) and *a vinculo matrimonii* (absolute divorce) as the petitioner may choose. (See draft report of the Code Committee.) In explaining the proposed draft, the Chairman of the Code Commission, Dr. Jorge Bocobo, pointed out that, contrary to some criticisms, the draft did not propose to liberalize divorce in deference to the wishes of President Manuel Roxas, who then subsequently requested the Commission to abstain from doing so. The draft proposal, however, became the subject of hotly contested debates. Eventually, the Catholic sentiment urging the total abrogation of absolute divorce prevailed. The present Civil Code only allows legal separation (*a mensa et thoro*) on the grounds of adultery on the part of the wife, or concubinage on the part of the husband, or an attempt by one spouse against the life of the other (Art. 97, New Civil Code). In virtue of this legal separation, the spouses are entitled to live separately, but the marriage bond is not severed (Art. 106, New Civil Code). These provisions of the Civil Code are in almost complete

harmony with church law, which affirms that marriage which is *ratum et consummatum* may not be dissolved by any human power, nor by any cause save death (see Canons 1118 & 1131 of the Code of Canon Law).

Thus, the law as expressed in the New Civil Code may certainly be considered public policy. It represents the will of the majority of the Filipino people. As a matter of fact, several other provisions of the Code emphasize close family ties and the indissolubility of marriage in consonance with the age-old traditions of the country. Thus the Civil Code provides that "in case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the validity of marriage, the *indissolubility of marriage bonds...*" (Art. 220. Italics supplied by the author.)

The Code also expressly states that marriage is not a mere contract but an inviolable social institution. It declares that "the family is a basic social institution which public policy cherishes and protects" (Art. 216). According to the Code Commission, this provision (Art. 216) expresses the declaration of policy and attitude of law towards the family. To this end, the Civil Code provides that no custom, practice or agreement which is destructive of the family shall be recognized or given effect (Art. 218); and, in case of doubt, all presumptions favor the solidarity of the family (Art. 210).

The Philippine courts have also expressed the same concept of the indissolubility of marriage under the civil law. Even at the time the Philippine law permitted absolute divorce, the courts frowned upon divorces obtained in foreign jurisdictions.

Thus in cases where a Filipino couple went to Paris for the sole purpose of securing divorce without intent of establishing permanent residence there (*Ramírez vs. Gmur*, 42 Phil. 855) or where the husband procured divorce in Reno, Nevada, as a mere device to circumvent a Philippine judgment to pay allotted sums to his wife (*Gorayeb vs. Hashim*, 50 Phil. 22) and where the husband left the Philippines, which was his domicile, just to get a divorce in another country, the courts held that divorces obtained elsewhere were not valid as far as Philippine law is concerned. In *Gonzales vs. Gonzales*, 58 Phil. 67, the Philippine Supreme Court significantly declared that "litigants can not compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of divorce of foreign courts in a manner which our Government believes is contrary to public order and good morals."

These rulings are in consonance with Art. 15 of the Civil Code which provides that all laws relating to family rights and duties, or to status, condition and capacity of persons, are binding upon citizens

of the Philippines, even though living abroad. It is also in accordance with Art. 17 of the Civil Code which provides that prohibitive laws concerning persons, their acts, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon, in a foreign country.

Even on the question of valid legislation, there is grave doubt as to whether the proposed uniform divorce law advocated by the FIDA may find acceptance among states. The very nature of marriage itself is that it is indissoluble and perpetual. As a sacrament, there is grave doubt as to whether the State may validly legislate for its dissolution. It is needless to state here the stand of the Church on the indissolubility of marriage as originally expressed in the Book of Genesis where the Lord created man and woman and united them in marriage so that "they shall be two in one flesh" (Genesis, 2). In Mark 10, 2-10, Luke 16, 18 and I Corinthians 7, 1-16 where the question of divorce is dealt with, the same statements, viz., that "everyone who puts away his wife and marries another commits adultery; and he who marries a woman who has been put away from her husband commits adultery" appear.

In explaining and buttressing the natural-law viewpoint on the question of divorce, a well-known author has written: "The possibility of breaking the marriage bond tends to weaken it; marriage would be treated with less seriousness if it were known to be dissoluble; human passion would not take long to burst the dike once a breach has been started. When the indissolubility of marriage has been given up, there will be no halting on the steep slope that leads to marriage instability, and the inevitable outcome will be freedom of passion and destruction of the family" (Leclercq, MARRIAGE AND THE FAMILY, p. 82).

The Filipino women lawyers of FIDA could have ably represented their country in this international convention by objecting to the resolution, citing all these historical antecedents, the statute law and the case law, all of which express a firm public policy against divorce in the Philippines.

JORGE R. COQUIA

Communism Seminar in Cebu

San Carlos University, Cebu City, was the scene of a seminar on Communism held from May 9-11, 1960, under the direction of