Marriage Policy in the Philippines:
A Case Study in Agenda Setting

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Abstract

This thesis asks why there is no legal provision for divorce in the Philippines despite obvious public interest in change in this area of policy. It draws on the public policy theories of Sabatier (1988), Kingdon (1995) and Lukes (1974) in seeking to understand this situation. In so doing it gives attention to questions about the influence of relevant policy actors, the core belief systems behind competing policy positions, the relation of the Catholic Church in this policy issue, the power of the Church compared with groups advocating for the re-establishment of divorce, and the implications of this for the prevailing policy. Law reform initiatives to re-establish divorce have been kept off the government agenda as a consequence of the sustained exercise of influence by the Catholic Church on the government. This often hidden and indirect exercise of power has organized the divorce issue out of politics in the Philippines. The lessons drawn here provide a deeper understanding of why some issues and not others come to be issues that are given attention by governments.

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Chapter One: Introduction

This thesis asks why there is no legal provision for divorce in the Philippines despite obvious public interest in reviewing and changing this area of policy. The Philippines prides itself as being a republican State with a form of government patterned from the founder of the democratic ideals which it espouses, the United States. As many understand it, the promise of this approach to democratic government is to provide people with the power to change their environment and condition, if not directly then through a representative to speak on their behalf and to promote their interests. In the Philippines, senators and representatives are elected to do just that, to be the voice of the people and to be the champion of policies put forward by supporters. Since 1987 a number of bills to remove the legal prohibition on divorce have been put forward to be considered by the Philippine Congress. This is against a background of an increasing number of cases of marriage separations and marriage annulments, but not divorce. However, none of the efforts to review the policy have resulted in serious examination by Congress of divorce law and there has, consequently, been no change to the law.

The Philippines will soon be the only country in the world outside of the Vatican which continues to prohibit divorce.

> The Philippines remains as one of the last three remaining countries in the world that has no divorce law. Divorce was abolished when the New Civil Code (Republic Act No. 386) took effect in 1950 and no legal provision allowing for divorce has been (re)enacted since. The other known country, which similarly has no divorce legislation, is Malta and the Vatican in Europe. Interestingly, all three States are predominantly Catholic, a religion historically known not only to have a dogmatic position against divorce but also to actively influence the government's policy. This number, however, could soon be reduced further if and when Malta finally accedes to proposals to adopt a divorce law. Leading government figures in Malta has recently given the signal to open the debates for and against it. If Malta succeeds in adopting a divorce law despite opposition by its Catholic Church, then the number of States that allow divorce would be nearly total (Rodis, 2009).

How does one explain such policy stability within this policy area in the Philippines? This thesis examines this question and in doing so it draws on the public policy theories of Sabatier (1988), Kingdon (1995) and Lukes (1974). These perspectives are conceptual aids in approaching questions about political struggle in this area of policy debate in the Philippines and draw attention to questions about the relevant policy actors in the Philippine marriage policy area; the core belief systems behind the competing policy positions; the relation of the Catholic Church in this policy issue;

the power configuration of the Church and the various groups under its wing compared with those groups advocating for the re-establishment of divorce; and the implications of this for the prevailing policy.

Background to the research

Today, a person in the Philippines wishing to end his or her marriage faces a formidable barrier in making that choice because divorce is prohibited. Without legal sanctions for divorce many married individuals are forced to remain in unhappy marriages, experiencing hardships such as cruelty at the hands of spouses. Some find themselves starting a new family with a new partner without the benefit of marriage, thus suffering not only the stigma of being in 'immoral relationships', confused familial ties, and also a complicated inheritance system ('Petition of Socorro Ladrera,' 1987). Others find that the inability to divorce has confused their familial ties. While either spouse may have lived with another partner, marriages still subsist. Despite these complaints against a marriage relations system with no divorce provision and the strong public clamour for its re-adoption, the Philippine Congress, as the policy-making branch of government, has not raised this public issue onto the government's decision agenda.

Provision for the dissolution of marriage has consistently been a part of the Philippine's legal system throughout most of its earlier history. The country's experience with divorce law can be described as quite a peculiar one. As cited in the Explanatory Note of a recent divorce bill filed in Congress, divorce was widely

practised among many indigenous inhabitants such as the Tagbanwas, Gadangs, Sagadas, Igorots, Manobos, Bila-ans, and Moslems in the past. It was also sanctioned during the American Commonwealth Regime under the Divorce Law of 1917 or Act No. 2710. Similarly, it was available during the Japanese Occupation Period by virtue of the 1943 Executive Order Numbered 141 (Tolentino, 1947). However, since the abolition of divorce in 1950, the majority of Filipinos are unable to leave unhappy and dysfunctional marriages. This rule, however, is not without exception, because it does not equally apply to all Filipinos. This unequal application of the law is aptly captured in a comment by Cohen (1989, p.49) who observes that:

> When it comes to divorce in the Philippines, the Filipino Muslims do it, the rich do it, even communist rebels do it. But no one else can, for the country remains one of the last Roman Catholic outposts to resist the legalization of divorce. The rich slink off to the US or Hongkong, the New People's Army guerillas consult their own tribunals and Muslims turn to Shariah courts. Everyone else stays legally married.

In the years since the Philippines made divorce illegal, it has become a topic that is commonly discussed only with hushed voices. Indeed, it has remained a private matter for a very long time, and marriage law reform to re-establish divorce has been kept off the government agenda. Efforts to have this issue taken seriously by government have not been successful, and despite having been tabled on the agenda, it has failed to reach any point closer to a decision status. How can this be explained? How can a legal provision with a long history of application in a country disappear from the public agenda? What are the power dynamics behind this issue and how is power manifested in debate over this issue? What role has public attention done to

bring this issue back into the limelight? What is the role of governmental structures and governmental actors in making some outcomes possible and other outcomes unlikely? These are some of the issues that this dissertation will tackle.

My curiosity and interest in power dynamics in relation to agenda setting and alternative policy specification, and the scope for democratic participation, began when I was a 'volunteer worker' in the Committee Affairs Bureau of the Senate of the Philippines in 1992. I was a young graduate then of political science and very much interested to learn about the workings of legislation. One task of the Bureau relates to committee work in organizing, facilitating and reporting committee hearings and meetings of the various Senate committees. This activity entailed the rendering of a summary report in the form of 'Highlights of the Meeting' based on what transpired as recorded from the transcripts of the meeting. I would initially find these reports fairly representative of what actually transpired in the meetings. The Committee Secretary in charge of the particular committee actually endeavours to see to it that what was heard in the hearing and/or meeting is reflected not only in the transcript but in the 'Highlights' as well. This is to be made available to the Committee chairperson, its members, and concerned participants or resource persons in a form of a summary report. Any discrepancies between the 'minutes of the meeting' and the report were to be rectified accordingly. For most in the Bureau, it was not only 'democratic' but it satisfied the requirement of the Senate as a legislative institution.

However, I have always been intrigued about whether it was all there was about meaningful democratic participation, at least within the sphere of legislative inquiry, hearings and submissions. Something was missing. There are some things that are not

accounted for. I asked: What about the voices of the people, the groups, and the individuals who ought to have been in the committee deliberation but were not there because of some reason yet unknown, and whose opinions have not been heard? Has the requirement of democracy and the Senate institution actually been met in the absence of such 'fair representation' of these groups and individuals? What factors, if any, prevented marginalized sectors from participating in these activities and to make their voices heard? These questions later on have led me to embark on a long journey of study to search for answers and explanations to things that I have seen in the Philippines.

Brief history of Philippines and marriage dissolution/ divorce policy

The Philippines is an archipelago which consists of 7,107 islands. It is a diverse and complex country not only in terms of its geography, but also in linguistic, ethnic, cultural, and socio-economic terms (Timberman, 1991). In this island nation, different languages are spoken and different cultural heritages can be observed. Its society consists of Malays, Chinese, Spanish and Americans. Perhaps, one peculiar trait of this society is captured in this description, as follows:

> Any description of Philippine society and politics must begin with an explanation of the central role of the family. The extended family is the most important social and economic unit in the Philippines, as it is in other predominantly traditional agrarian societies. It is the primary vehicle for socialization of the young; the source of

> emotional and financial support for its members; and the chief claimant of loyalty (Timberman, 1991, p. 16).

The Philippines is one of two countries in Asia and the Asia-Pacific region with Roman Catholicism as the dominant religion. It has been estimated that about 81 per cent of Filipinos identify themselves as belonging to the Roman Catholic Church. The Church is known to be very influential in the government's decision-making (Moreno, 2006).

In the long history of divorce policy in the Philippines, starting from the Spanish colonial period, it can be said that the government's position on the matter is one of ambivalence and ambiguity. Depending on the configurations of influence and political actors, the policy on whether to allow for absolute divorce (with the right to remarry) seem to be determined by who is in power. During the Spanish regime, when the Catholic clergy was at the height of its prestige and power, the law on divorce under the *Siete Partidas* only allowed relative divorce (otherwise known as legal separation without right to remarry). When the United States took sovereignty over the Philippines, these civil law provisions were among those suspended by the American Governor-General Weyler on 29 December 1899 (Tolentino, 1947). Under US rule, Spanish laws enforced locally that were inconsistent with the US Constitution and American principles and institutions were replaced (Feliciano, 1994). On 11 March 1917, Act No. 2710, then known as the Divorce Law, was formally enacted by the Philippine Legislature. It had the effect of formally repealing the provisions of the *Siete Partidas* and provided the first legal basis for the marriage

dissolution policy that was applicable in cases involving adultery on the part of the wife or concubinage on the part of the husband.

When the Japanese occupied the country, a new and more liberal divorce law was promulgated, known as Executive Order No. 141 (of 1943), effectively repealing Act 2710. This law, also recognizing the right of married spouses to divorce, expanded the grounds for absolute divorce petitions: 1) adultery on the part of the wife and concubinage on the part of the husband; 2) the attempt by one spouse on the life of the other; 3) a second or subsequent marriage by either spouse before the first marriage was legally dissolved; 4) a 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 violence of such a nature that the spouses could not continue living together without endangering the lives of both or of one of them; and 10) slander by deed or gross insult to such an extent that further living together was impracticable (Feliciano, 1994).

Upon liberation of the Philippines from Japan with the help of American military forces, General Douglas MacArthur, as Commander-In-Chief of the Philippine-American Army of Liberation, proclaimed that ‘all laws of any other government in the Philippines than that of the Commonwealth of the Philippines, were null and void and without legal effect in areas of the Philippines free from enemy occupation’ (Tolentino, 1947). Under this proclamation of 23 October 1944, (Japanese) Executive Order No. 141 was overridden by Act 2710. This law containing the provisions of absolute divorce prevailed until 1950 when the New Civil Code of the Philippines took effect.

It has been noted that the Church lost its influence over the marriage policy issue when the Americans came and abolished the *Siete Partidas*. It tried to revive its preferred policy of 'marriage indissolubility' but was unsuccessful in preventing the enactment of Act 2710 in 1917. Church allies in Congress were unable to defeat those who advocated for the establishment of a divorce policy (Albano, 2001). Thus, the Catholic Church made a remarkable comeback in this policy area in the mid-twentieth century as evidenced by its resulting dominance over this policy issue, which was brought about by its success in putting back in place the 'marriage indissolubility policy' of prohibiting divorce in 1950. This resurgence of their dominant status was partially brought about by the end of American colonial rule. The United States is known to have a strong tradition of Protestantism and divorce has been legal in that country due to its protestant leanings (Mancina, 2008). Mack and Blankenhorn (2001) have pointed out that 'in Christian countries the leniency towards divorce has been proportional to the degree of Protestantism' (p. 521). Thus, soon after the Americans left, the Church renewed its influential status in the Philippines in the area of divorce and marriage policy. Evidence for its growing influence can be seen in its overwhelming influence in the enactment of the New Civil Code which was adopted in 1950.

As noted earlier, prior to 1950, Philippine law provided for divorce; however in 1950 a new civil code was enacted which abolished these legal provisions. This came about when then President Manuel Roxas organized the Civil Code Commission on 20 March 1947 composed of several legal luminaries. The Commission was headed by Jorge Bocobo and was tasked to place all civil laws into a single civil code. The

preparation of the proposed civil code began on 8 May 1947, and the draft was completed on 15 December 1947.

Much to the chagrin of the Church, the Commission saw it fit to retain the provisions allowing for absolute divorce found in earlier laws. The Church, however, vowed to exercise its influence by seeking amendments thereto once the draft was submitted to Congress for its consideration. The Integrated Bar of the Philippines notes that the Manila Times newspaper reported on 1 April 1949 that:

> Catholic bishops from all over the country broadly hinted in their urgent wires that flooded the halls of Congress that unless their pleas (for the scrapping of Title IV Book I of the proposed civil code regulating divorce) were heeded, re-electionists would encounter their nemesis in November (Integrated Bar of the Philippines, 1978).

Meanwhile, some sectors, apparently unsatisfied with the work of the Commission, leveled various criticisms against it, arguing that their draft code was not well thought out, rushed, and mostly just copied from various civil laws of different countries. Thus, the Commission became engaged in defending their method, arguing that there was nothing neither unusual nor anomalous about using other jurisdictions' patterns in drafting a civil code. And while they were busy defending their work and their method, Congress heeded the Church's advice; it removed the provisions on divorce. Apparently keen on attracting not only the public's attention but also to garner the Catholic votes in the ensuing national elections in November 1949, Congress enacted the New Civil Code on 18 June 1949 which took effect in 1950, thereby effectively

abolishing absolute divorce. Since then marriage and family law have become a policy area the Church closely monitors.

The tight hold on marriage and divorce policy in the Philippines by the Church was further strengthened in 1987 when the then newly installed government of President Corazon Aquino took over the reins of power from President Ferdinand Marcos. Aquino had the backing of the Catholic Church and subsequently signed into law the Family Code on 17 July 1987 and a new Philippine Constitution was ratified by the people with overwhelming support from the Catholic Church. This law introduced, among other things, the (Church) Canon Law concept of void marriages. Thus, under Article 36 of the Family Code, a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated and could not comply with the essential marital obligations of marriage would be considered void *ab initio* even if such incapacity became manifest only after solemnization of the marriage. Desiring to harmonize the civil laws with the Catholic faith, the Family Code Committee adopted the provision of the Church Canon Law, which can now be found in Article 36 of the Family Code (Ruiz-Austria, 2000). This legal provision soon became a substitute remedy for dissolving marriages. As stated by Feliciano (1994), 'because divorce is strongly opposed by the Catholic Church, the Committee decided to draw from the Canon Law itself' (p. 557). According to one Committee member, this (also) solved the problem of church-annulled marriages that still exist under the civil law. In later sections of this thesis, an explanation for the change in the position of the Church, from one which absolutely prohibits dissolving marriages (New Civil Code) to another which allows for it under certain circumstances (Family Code), will be spelt out. Since then (1987), marriage dissolution policy remained stable and has not

been amended. Subsequent attempts to amend the marriage dissolution policy were unsuccessful. Bills dealing with the marriage policy introduced in Congress suffered similar fates: all were killed at the committee level, and most were not discussed at all.

Timeline of marriage dissolution policy in the Philippines

Early 16th Century: In pre-Spanish period, absolute divorce is widely practiced among many ancestral tribes in the Philippines.

1521-1898: Spanish law *Siete Partidas* only allowed relative divorce (or legal separation without right to re-marry.

1899: American Governor-General Weyler suspended the *Siete Partidas*.

1917: The Philippine Legislature, functioning under the 1916 Philippine Autonomy Act (or Jones Law), enacted Act No. 2710. This law provided the legal basis for the granting of absolute divorce. It repealed the *Siete Partidas* (or the Spanish law that only allows relative divorce or legal separation but without right to re-marry). It can be invoked in cases involving adultery on the part of the wife or concubinage on the part of the husband.

1943: The Japanese Executive Order No. 141 was promulgated. Also allowing divorce, this more liberal law expanded the grounds for which the legal remedy may be invoked.

1950: The New Civil Code of 1950 took effect. This law effectively abolished divorce and prohibited the civil dissolution of marriage. It was passed by the First Congress of the Philippines on 18 June 1949.

1987: The Family Code was signed into law by President Corazon Aquino. Among its provision is Article 36 which incorporates Canon 1095 of the 1983 New Code of Canon Law. This embodies the concept that certain individuals may have incapacity to assume the obligations of marriage on grounds of a psychological nature which may exist prior to marriage, and which renders the marriage void. This reflects the change in the position of the Church regarding the absolute indissolubility of marriage on the basis of new findings in psychology regarding the link between marriage breakdown and premarital causes.

1988: Senator Aquilino Pimentel, Jr. filed a bill (S.B. No. 320) seeking to recognize marriage dissolutions by religious sects or denominations. The bill was never discussed.

1992: Senator Leticia Ramos-Shahani filed a bill (S.B. No. 754) seeking to provide recognition of divorce obtained abroad by Filipinos. This bill was never discussed.

1995: Senator Nikki Coseteng filed a resolution (P.S. Res. No. 179) to inquire into the propriety of enacting a Divorce Code. This resolution was never discussed.

1998: Senator Teofisto Guingona filed a bill (S.B. No. 461) seeking to delete the provision on legal separation, to integrate it as grounds for annulment of marriage. This bill, disguised as an amendatory bill, is actually a bill seeking to provide for divorce. One year after its referral to two Senate Committees, a committee hearing was conducted but the bill was not reported out.

1999: Representative Manuel Ortega filed a bill (H.B. No. 6993) seeking for the legalization of divorce.

2001: Senator Rodolfo Biazon filed a bill (S.B. No. 782) seeking to legalize divorce. The bill was never discussed. Also, Representative Bellaflor Angara-Castillo filed a divorce bill (H.B. No. 878).

2005: Representative Liza Masa filed a divorce bill (H.B. No. 4016) seeking to introduce divorce in the Philippines.

2008: Representative Masa re-filed a new divorce bill (H.B. No. 3461).

Purpose, significance and the research questions

Policy stability in this policy area has endured for almost six decades now and this can perhaps be considered as one of the more durable policies in the Philippines. The country has not had an absolute divorce law since 1950. Various calls for reform in this policy area have not succeeded despite public advocacy for change. Why is this so? Far from suggesting consent, this situation may reflect the use of power by a dominant political actor. Thus, whether the situation has been arrived at by choice or whether it has been shaped by power relations is the primary concern of this study. The resistance to even discuss bills aimed at replacing the law put in place in 1950 and updated in 1987 is quite intriguing, considering the global trend to liberalize laws on the matter – to establish divorce as a way out of a failed marriage.

This thesis, therefore, aims to document the history of divorce policy in the Philippines, particularly its exclusion from the decisional agenda of the government. A key objective in documenting this history is to obtain a clearer understanding of the agenda setting process in the Philippines through the instance of marriage and divorce policy. This thesis will also seek to provide an account of the competition and struggle between groups of policy actors, the anti-marital law reform and the pro-marital law reform coalitions, the impact of different core belief systems, and, instances of policy learning in the area overtime. It will seek to do so by reference to the first hand experiences of those who had been involved in the deliberation (or non-deliberation) of divorce bills filed in the Senate after the promulgation of the Family Code.

The specific objectives are to address the questions:

1. What is the extent for meaningful democratic participation in decision-making in the Philippines?
2. How is the agenda set in the area of marriage policy?
3. Who participates in the formulation of policy and, importantly, who decides who may participate in policy formulation?
4. What is the actual extent of the Church's influence on the divorce policy issue?
5. Which advocacy coalitions are involved? Who are their members? What are the beliefs that unite them, the resources they deploy to pursue their ends and the venues within which they seek to influence policy?
6. What is the role of governmental structures and governmental actors in making some outcomes possible and other outcomes unlikely?
7. What are the mechanisms of power that organizes this issue out of politics?

Methodology

This research is a case study of the policy-making process in the Philippine context. It is a theoretically-informed examination of why there has been a lack of change in Philippine marital laws. As such, it allows the examination of more general principles by providing a unique example of a real situation of policy stability and change, enabling a clearer understanding of ideas than could be achieved simply by presenting abstract theories (Cohen, Manion & Morrison, 2007). The case study is one of several ways of doing social science research, and is the preferred strategy when 'how' or 'why' questions are being posed, when the investigator has little control over events,

and when the focus is on a contemporary phenomenon within some real-life context (Yin, 2003, p. 1). Such is an accurate description of what this research is about.

Thus, this research employs the following methods of data collection and analysis:

1. Comprehensive literature review.

This serves as the foundation upon which the research process will be based. Through this, the researcher was able to survey what has been written regarding agenda setting and issues of power and to relate them to the institutional context of policy making in the Philippines.

2. Analysis of official documents such as the Rules of the Senate, and its Committee minutes and reports.

This was undertaken in order to gather the background information into the number of times a legislative bill has been filed therein and the history of the said bills. These records allowed an examination of what exactly what happened to the bills from the time of filing, and how they had been officially disposed of by the Committees.

3. Semi-structured interviews with key informants who had been involved in the decision process of previous bills to reform the marriage laws in the Philippines. The interviews were carried out in November-December 2008.

To learn about firsthand accounts of what transpired at the committee level, I interviewed the Chairman, two members, and the secretary of the Senate Committee on Constitutional Amendments, Revision of Codes and Laws; and two members of the Senate Committee on Youth, Women and Family Relations. I also interviewed representatives of organizations who are lobbying for and against marital law reform

to learn about the nature of their participation in the policy issue. I interviewed them in their offices in Metro Manila, Philippines. The interviews were focused on exploring perceptions about the extent for meaningful democratic participation over these bills, within the context of the Senate. These interviews investigated how the agenda is set in the area of marriage law, the interest group dynamics, who participates in policy formulation, and who decides who may participate.

I endeavoured to speak to Senators who had played a role in the life of the divorce bills filed therein, such as the bill authors, committee chairpersons and committee members. I interviewed three Senate committee members, one of whom responded to my prepared questions in writing. Despite being an employee of the Senate, I encountered a myriad of 'gatekeepers' guarding access to these policy makers. The degree of difficulty of getting access to Senators is informative, not only about the problems of accessing elected legislators in the Philippines, but also the sensitivity of the issue of marriage and divorce law. In my encounter with two of these Senators, their uneasiness to discuss the issue was clearly evident.

The consent of the Ethics Committee of Waikato University was sought and was acquired before the interviews were conducted. This requirement ensures that: 1) confidentiality of the research is observed at all times, 2) informed consent of the prospective informants is properly secured, and 3) no harm is committed against any parties. These goals were carefully observed before, during and after the interviews were conducted. This means that research protocols were keenly observed even during data analysis, the write up process, and the storage of the interview data. The

interview schedules (See Appendix 1) form part of this study and the insights gained from the interviews are integrated within the thesis.

Together with a review of related literature, a review of official documents, media reports and interviews with key informants from the competing interest groups, the chair and members of the Senate committees that were presented with divorce bills, and the committee staff, this thesis will evaluate the dynamics of power and the role of advocacy coalitions behind this policy issue (advocacy coalitions being a coalition of like-minded interest groups and policy advocates) and examine how these affect the generation of the policy agenda and how it mobilized government-church-public interaction on the issue.

Layout of the study

Chapter One will provide an introduction of the issue through a brief background of the history of marriage laws in the Philippines; the significance of the research; the research questions; and the research methodology.

Chapter Two will introduce the concept of power as explained by Dahl (1957), Bachrach and Baratz (1962), and Lukes (1974) to explain the various ways power is exercised in the issue of divorce policy in the Philippines. Also, the 'multiple streams model' of Kingdon (1995) and the Advocacy Coalition Framework of Sabatier (1988) will be presented here to explain the agenda setting process and the role of subsystem actors/advocacy coalitions in policy change and policy stability.

Chapter Three will provide a theoretically-informed review of events, subsystem actors and their strategies to provide a clear understanding policy change and stability in marriage dissolution policy up to 1950.

Chapter Four will provide an account of policy change and stability in marriage dissolution policy in the post-1950 period to identify not just participants and events but also the various factors that has successfully kept marriage law reforms off the agenda.

Chapter Five will reflect on the insights into the policy process in the Philippines gained from this study and identify prospects for change in the Philippine marriage dissolution policy. Also, conclusions will be drawn and opportunities for further research will be identified.

Chapter Two: A Theoretical Framework for the Analysis of Power, Politics and Marriage Law in the Philippines

What, then, does the history of marriage law tell us about the nature of public policy process in the Philippines? And, what is the nature of power manifested in this policy issue?

Political science discussions on agenda setting include analysis of pressure and influence; indeed, these are questions of power. Who has it? And, how is it exercised? It has been asserted that any consideration of how the public policy process works has to address questions of who dominates, such that, omitting this in any articulation of the process would imply that there are no dominant entities in the state (Hill, 1997). Anyone who raises questions about who dominates directly inquires about the nature and scope of power, its meanings and how to understand it. Gaventa (2006) expounding on the diverse and contentious definitions of power expressed that:

> Some see power as held by actors, some of whom are powerful while others are relatively powerless. Others see it as more pervasive, embodied in a web of relationships and discourses which affect everyone, but which no single actor holds. Some see power as a 'zero-sum' concept – to gain power for one set of actors mean that others

> must give up some power. Since rarely do the powerful give up their power easily, this often involves conflict and 'power struggles'. Others see power as more fluid and accumulative. Power is not a finite source; it can be used, shared or created by actors and their networks in many multiple ways. Some see power as a 'negative' trait – to hold power is to exercise control over others. Others see power to be about capacity and agency to be wielded for positive action. (pp. 23-24).

Power and agenda setting

The study of agenda setting concerns how policy makers recognize a problem and involves the examination of the means through which the government come to choose which problems they pay attention to and the role of policy actors in promoting an issue as the problem that captures that attention (Howlett and Ramesh, 1995). Agenda setting is in many respects shaped by the ideology held by those who work to translate an issue into a preferred policy proposal (Hill, 1997). All may agree what the issue is but disagree as to what the problem is and what policy must be pursued (Parsons, 1995). This brings to fore the biased nature of problem definitions as one which is loaded with much interpretative component, attached by actors to issues, and based on ideology and values that determines the selection of an issue. Kingdon (1995, p. 94) points out that 'the data do not speak for themselves. Interpretations of the data transform them from statements of conditions to statements of policy problems.' Therefore, since problem definitions are not objective statements, and that the interpretation of issues is largely the product of the particular background, personal

views and beliefs of policy actors; then the construction of issues may be manipulated and may be based on the values of the dominant political actor.

The function of problem definition as propounded by Rochefort and Cobb (1994) is 'to explain, to describe, to recommend, and above all, to persuade' (p. 15). Stone (2002) argues that it comprises the strategic representation of situations, which is crucial because political actors deliberately fashion portrayals to promote their favoured course of actions (p. 133). The language within which a problem is framed, and the context in which it is communicated, can determine how it will be perceived. Thus, issues are accordingly shaped to win the most number of people to one's side and gain the required advantage over one's competitors. There may, however, be a 'clash of frames', the resolution of which will be largely determined by 'the abilities and resources of competing actors than to the elegance or purity of the ideas they hold' (Howlett and Ramesh, 2003, p. 121). Thus, even in the early stages of the policy process, competition among contending actors in the political arena are actively jockeying for an advantageous position to place their pet issues on the government's agenda.

The configurations of interest groups or coalitions of such groups is, therefore, a major factor in the influence which new issues can have on established agendas, as are events which may force issues on to the policy agenda (Parsons, 1995). The capacity of the challenger to overcome the resources wielded by the dominant actor in a political subsystem can determine whether issues are elevated onto the policy-making agenda. Inversely, the sustained capacity of the dominant actor largely determines that only safe issues reach the decision-making agenda. This approach to

issues of power has the potential to direct us on a theoretically-informed examination of why there has been lack of change in Philippine marital laws since 1950 when the Church successfully prevailed in decision to prohibit divorce.

The three faces of power

In 1974, Steven Lukes wrote about power as having three dimensions or faces. He explained that the first face of power which is based on the pluralist approach, for example Dahl (1961), assumes that public policy was the result of free competition between ideas and interests. This pluralist view sees that power is openly and evenly contested. The second face, according to Lukes, is based on the theory put forward by Bachrach and Baratz (1970), which pointed out that power, may be hidden, and may be exercised covertly through subtle processes that determines which issues and actors get on the agenda and which issues and actors are kept off. The third face, which Lukes himself developed, argues that power operates at a deeper level than that considered by Bachrach and Baratz and is implied by Crenson in his 1971 research (Parsons, 1995). In this chapter, I shall re-trace these three faces of power briefly, to illustrate that each dimension conveys different assumptions about the nature and scope of participation and non-participation.

The first face of power

The first face of power or the one-dimensional approach to power is consistent with pluralist views and was typical of the position developed by Robert Dahl (1957) and Nelson Polsby (1963). This view tackled the controversy about control over the state

and concerns about the nature of power itself (Hill, 1997). Dahl (1957) posited the idea that 'A has power over B to the extent that he can get B to do something that B would not otherwise do' (p.203). To this, Polsby (1963) added that power may be understood by examining 'who participates, who gains and loses, and who prevails in decision-making' (p55). Both Dahl (1957) and Polsby (1963) and earlier American pluralists' view of democracy saw power as being widely distributed and that the political system was organized in such a way that the policy process was essentially driven by public demands and opinions (Parsons, 1995). This view assumes that: 1) grievances are purported to be recognized and acted upon; 2) participation is assumed to occur within decision-making arenas, which are in turn assumed to be open to virtually any organized group (Gaventa, 1980). Thus, Polsby noted that: 1) 'people participate in those areas they care about the most. Their values, eloquently expressed by their participation, cannot, it seems to me, be more effectively objectified' (1959, p.235); and 2) 'in the decision-making of fragmented government the claims of small intense minorities are usually attended to' (1963, p.55). In his study of New Haven and taking a similar view, Dahl (1961) argued that:

> In the United States the political system does not constitute a homogenous class with well-defined class interests. In New Haven, in fact, the political system is easily penetrated by anyone whose interests and concerns attract him to the distinctive political culture of the stratum… The independence, penetrability and heterogeneity of the various segments of the political stratum all but guarantee that any dissatisfied group will find a spokesman (p. 91, 93).

Moreover, Polsby (1963) points out that, 'the pluralists want to find about leadership's role' (p.119), and that this leadership is presumed to be diverse and fluid. Therefore, this statement assumes that given the openness of the decision-making process, leaders may be studied as representative spokespeople for a mass, and not as elites; and that it is the conflict amongst various leaders that ensures the responsiveness of the political game to all groups or classes (Gaventa, 1980). As Dahl (1961) lays it, 'to a remarkable degree, the existence of democratic ceremonials that give rise to the rules of combat has insured that few social elements have been neglected for long by one party or the other' (p.114).

The mechanisms of power in the one-dimensional approach may be understood by examining who prevails in bargaining over the resolution of key issues, why and how. It, therefore, not only involves identifying the political resources of the political actors which they bring to the bargaining table but also how well they use resources.

Under the one-dimensional approach, non-participation or inaction is not problematic given that the people are assumed to act upon recognized grievances for themselves or through their chosen representatives in an open system. Therefore, policy is democratically arrived at, through the mediation of conflicting interests in an open political arena such that political silence or non-participation would have to be taken as evidence of consensus regardless of the extent of deprivation. Critics of this approach, point out the biases of its assumptions, as follows: 1) the study of non-participation in pluralism neglects the study of power; and because of this, 2) it dismisses inaction or non-participation as something that can be explained away through culture, relation of low socio-economic status to low participation or other

circumstances or defects of the non-participants themselves rather than examining the possibility that power may be involved in preventing people from participating, and issues from arising. Critics further point out: its assumption that to change the non-participant (victim), through education or socio-cultural integration, will also change the patterns of non-participation is also an anomaly because increased participation, will not address power constraints (Gaventa, 1980).

The second face of power

As explained earlier, political participation in a liberal democracy under the one-dimensional approach to power is open to all and power is contestable by any individual or group who are willing and able to participate in the game of politics. The fallacy of this view, however, was exposed by Schattschneider who argued that: 'It is not necessarily true that people with the greatest needs participate in politics most actively – whosoever decides what the game is about will also decide who gets in the game' (Schattschneider, 1960, p. 105). This account, considered realistic by many, shows that there is a 'bias' operating within political organizations in favour of some and against others. This concept was later developed by Bachrach and Baratz and became known as the 'second face of power', by which power is exercised not only upon participants in the policy making process but also towards the exclusion of certain participants and issues altogether (in Gaventa, 1980, p. 9). Basically what Schattschneider and Bachrach and Baratz were pointing out was that: some issues are organized into politics while other issues are organized out, and that if issues may be prevented from arising, so too may actors be prevented from acting. This new approach addressed the definition of power. The one-dimensional view argued that power resided in the capacity of A to make B do something which B would otherwise

not choose to do; power in this sense involved the control of behaviour. On the other hand, the two-dimensional view argued that the former failed to consider the extent to which those with power can actually exclude issues, problems and participants from the decision-making process. Thus, non-participation 'reflects the suppression of the options and alternatives that reflect the needs of the nonparticipants (Schattschneider, 1960, p. 105). For Bachrach and Baratz, politics goes beyond what Lasswell defined in 1936 as the study of 'who gets what when and how' and must also include an examination of who gets left out – when and how – and how the two are interrelated. Bachrach and Baratz (1970) point out that, political organizations, like all organizations, develop a 'mobilization of bias', which is

> 'a set of predominant values, beliefs, rituals and institutional procedures ('rules of the game') that operate systematically and consistently to the benefit of certain persons and groups at the expense of others. Those who benefit are placed in a preferred position to defend and promote their vested interests' (p. 43).

Therefore, while the mechanism of power under the one-dimensional view is straightforward as involving political resources, such as votes, jobs, influence, that can be brought by political actors to the bargaining table, and how well these resources are wielded through personal efficacy, political experience, organizational strength and so on, the two-dimensional view adds to these resources those of a mobilization of bias. This additional resource not only may be wielded upon decision-making in political arenas, but is sustained through non-decision-making. Thus, power is not simply the control of observable behaviour and decisions but also consisted, as Bachrach and Baratz argued, in the non-observable or hidden realm of 'non-decisions':

> A non-decision, as we define it, is a decision that results in suppression or thwarting of a latent or manifest challenge to the values or interests of the decision maker. To be more clearly explicit, non-decision-making is a means by which demands for change in the existing allocation of benefits and privileges in the community can be suffocated before they are even voiced; or kept covert; or killed before they gain access to the relevant decision-making arena; or failing all these things, maimed or destroyed in the decision-implementing stage of the policy process (Bachrach and Baratz, 1970, p. 7).

In other words, non-decisions involve the constriction or containment of decision-making so as to limit the agenda therein on 'safe issues by manipulating the dominant community values, myths, and political institutions and procedures' (Bachrach and Baratz, 1963, p. 632). There are two kinds of non-decision-making, the first involve identifiable actions which prevent issues from entering the decision-making arenas. This type of nondecision, according to Bachrach and Baratz, may take the form of 1) force; 2) threat of sanctions; 3) the 'invocation of an existing bias of the political subsystem to squelch a threatening demand or incipient issue'; and which may include the manipulation of symbols, such as, in Philippine culture, the symbol of the 'broken-family' or of the importance of not being 'disrespectful to authorities'; 4) 'reshaping or strengthening the mobilization of bias' through the creation of new barriers or new symbols against the challengers efforts to widen the scope of conflict. The second type of non-decision-making, explains Gaventa (1980), has to do with: 1) institutional inaction or the unforeseen sum effect of incremental decisions, and

2) ‘rule of anticipated reactions’, ‘situations where B confronted by A who has greater power resources decides not to make a demand upon A, for fear that the latter will invoke sanctions against him’ (p. 15). In both cases, ‘the power process involves a non-event rather an observable non-decision’ (Gaventa, 1980, p. 15).

These concepts suggest that policy makers, with power to control what can be included in the agenda, have a capacity to keep issues off the agenda; and that they do this overtly and covertly through non-decisions that involve both identifiable and unidentifiable actions.

Just like all social science frameworks, the two-dimensional approach has been critiqued. Criticism of the notion that agendas may be shaped by non-decisional power has been in terms of the empirical basis of studying non-events. The critics argue that non-events, non-issues or non-decisions are methodologically problematic. For them, the problem lies in how one examines empirically non-decisions that did not seem to exist. Crenson confronted this criticism and argued that inaction by decision-makers can be studied by analyzing the way in which an issue penetrates the political process in one community and fails to emerge in another. He considered the issue of air pollution and demonstrated that where there are cities which do not want to breathe polluted air - as nobody would realistically want to, and despite these cities having comparable levels of air pollution, one city have been active in addressing the issue whilst the other have not. In this 1971 study, Crenson made a good case for non-decision-making on the basis of empirical evidence. He concluded that ‘the reason for the non-issue status of pollution in the American city of Gary was that it was a city dominated by a big polluter, US Steel’ (Parsons, 1995, p. 139). The exercise of power

by US Steel to keep the issue of air pollution off the agenda was outside the range of observable political phenomena. Crenson (1971) observed that the power of the organization was sufficient for it to remain outside the political arena and yet affect the scope and direction of decision-making; and so he argued that the pluralist account of policy-making is wrong in failing to recognize that although policy-making may be open and fragmented, 'non-decision-making' manifested a high degree of unity (p. 179). Thus, what is not visibly done is seen as more important than what is visibly seen to be done. The visible and comprehensible face of pluralism obscures a hidden and incomprehensible process where issues are shut out of the political process:

> Community political power may consist of something other than the ability to influence the resolution of local political issues; there is also the ability to prevent some topics from ever becoming issues and to obstruct the growth of emergent issues … power need not be exercised in order to be effective. The mere reputation for power, unsupported by acts of power, can be sufficient to restrict the scope of local decision-making. Even people and groups who do not actively participate in a community's political deliberations may influence their content. Likewise, the 'victims' of political power may remain politically invisible – indeed, invisibility may constitute their response to the power of non-decision making … The operation of political power, therefore, is not always revealed in observable political action … To put it simply, there is more to local politics than meets the eye (Crenson, 1971, p. 177-178).

Parsons (1995), thus, stresses that 'power rests as much in the ability to command inaction as to command action' (p. 139).

The third face of power

Lukes, in positing the three-dimensional view of power, argues that the means by which A exercises power goes substantially beyond those allowed within the first two preceding approaches. He suggests that 'A exercises power over B when A affects B in a manner contrary to B's interests' (Lukes, 1974, p. 34). He, however, considers Crenson's account as being on the border between the second and his own view of power. First, Lukes argued that 'A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants'. He asked: 'is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires?' (Lukes, 1974, p. 23). Lukes advanced the notion that: 'not only might A exercise power over B by preventing B from effectively raising those issues, but also through affecting B's conceptions of the issues altogether' (Gaventa, 1980, p. 12). As Lukes clearly pointed out, 'the most effective and insidious use of power is to prevent such conflict from arising in the first place. Secondly, this 'can occur in the absence of actual, observable conflict, which may have been successfully averted', though there must be latent conflict, which consists, Lukes argued, 'in a contradiction between the interests of those exercising power and the *real interests* of those they exclude' (1974, p. 24-25). Thirdly, the study of power must not be limited to the individualistic and behavioural confines of the first two views. Lukes argued that the analysis of power

must allow for the 'consideration of the many ways in which potential issues are kept out of politics, whether through the operation of social forces and institutional practices or through individuals' decisions' (Lukes, 1974, p. 24).

The mechanisms of power under the three-dimensional view may involve

> 'specifying the means through which power influences, shapes or determines conceptions of the necessities, possibilities, and strategies of challenge in situations of latent conflict, which may include the examination of social myths, language, and symbols, and how these are shaped or manipulated in power processes' (Gaventa, 1980, p. 15).

Thus, the analysis of power may encompass the study of: 1) communication of information, 2) the means by which legitimations are developed around the dominant, and instilled as beliefs of roles in the dominated, or 3) the social construction of meanings that serve to get B to act and believe in a manner attributable to A's manipulation. These exercises of power may result in the quiescence of the populace - a sense that the claim to govern by the dominant group was legitimate.

Kingdon's multiple streams model

Kingdon's model of agenda setting is based on a large scale qualitative research project in the period of 1976-1979, consisting of 247 lengthy and detailed interviews with congressional staff, executive branch political appointees, upper level civil servants and presidential staff, and 23 case studies in the health and transportation policy fields (Kingdon, 1995). He explains that the process of agenda setting involves

the narrowing of the number of possible problem issues and policy alternatives to the manageable few that reach the list of items given serious attention by government. Focusing on the institutional and decision agenda, the theory tries to answer questions including the following: How does an idea's time come when it does? How do problems come to officials' attention? How is the government agenda set? And how are the alternatives generated and chosen by government officials? Before Kingdon's *Agendas, Alternatives, and Public Policies*, few researchers had successfully answered these questions in a satisfactory and empirical manner, and supported by a robust theory.

It is based on the 'Garbage Can Model' formulated by Cohen, March and Olsen in 1972 which theorised that the decision making processes of government organizations could be characterised as 'organized anarchy'. This type of organisation, according to Cohen, et. al. (1972), is identified by its three inherent properties, namely: 1) problematic preference, 2) unclear technology, and 3) fluid participation. Kingdon (1995) finds the similarity between this approach to organisational decision-making in the American federal government and posits that, although the federal government was not an exact kind of organized anarchy, the general logic underlying the organization was the same:

> 'Separate streams run through the organization, each with a life of its own. These streams are coupled at critical junctures, and that coupling produces the greatest agenda change.' (p.87).

His theory later became known as 'Multiple Streams Model'[1], and can be sketched as having the following elements:

A) Three independent streams:

- Problem Stream
- Policy Stream
- Political Stream

B) Policy windows (as in 'window of opportunity');

C) Coupling mechanisms, and

D) Policy Entrepreneur/s.

The problem stream refers to the perception of problems as public problems requiring government action and government efforts to address them; people come to see a condition as a problem with reference to their conception of some desired state of affairs (Kingdon, 1995). However, Kingdon argues, that not every problem draws sufficient attention from the public and government as to be placed on the institutional agenda; and that even problems perceived as such by the public and government functionaries and put onto the institutional agenda do not necessarily acquire a standing in the decision agenda and get to be resolved upon by the government.

According to Kingdon, distinct from the problem stream is the policy stream, this being a collection of loosely organised policy communities where specialists, both from within and without government, design and draft policy alternatives. Each has their pet ideas or policy preferences and these float around within the community

[1] It is mostly referred to as Multiple Streams Model in this essay, but it is also herein referred to by its other names, when appropriate.

(Kingdon, 1995). The generation of policy alternatives involves a selection process. As long as the proposed policy is not outweighed by constraints, it stands a good chance of getting moved up higher on the agenda. Kingdon (1995) likened it to a 'policy primeval soup'; initially, many ideas, insights, proposals 'float around, bumping into one another, encountering new ideas, and forming combinations and recombination' (P.200). He posits that it is difficult to pinpoint where a specific idea comes from; policy alternatives are independent from the specific problems they could address; indeed, they may be depicted as solutions looking for problems, existing independently.

However, as pointed out earlier, a well-formed problem stream and policy stream are not sufficient to be able to raise issues onto the level of decision agenda to get resolved promptly by the government. In order to assure timely government action (decision), the third stream or the politics stream needs to be involved. The politics stream involves various things that give shape and colour to the prevailing political landscape which has the potential to dictate policy direction (Kingdon, 1995). According to Kingdon, these range from election results, change in administration, shifts in partisan or ideological distributions in Congress, fervour within interest groups' pressure campaigns, public opinion, overall national mood, or a combination of one or more of these factors. Changes in political streams have a powerful impact on agenda setting; public mood and the transitions of administration have a strong influence on the institutional agenda; different administrations with different ideologies at a given period have different priorities in their institutional agenda (Kingdon, 1995).

An indispensable prerequisite for a problem to be placed on the decision agenda is the convergence of the three streams through a mechanism referred to as 'coupling'. Kingdon (1995) points out that:

> The separate streams come together at critical times. A problem is recognized, a solution is available, the political climate makes the time right for change, and the constraints do not prohibit action (p.88).

He notes that coupling is by no means a random process. Rather it is actively sought to be engaged by 'policy entrepreneurs' who are advocates who devise proposals and 'then wait for problems to come along to which they can attach their solutions, or for a development in the political stream like a change of administration that makes their proposals more likely to be adopted' (Kingdon, 1995, p.88). He succinctly captures the impact of policy entrepreneurs, thus:

> The appearance of entrepreneurs when windows are open, as well as their more enduring activities of trying to push their problems and proposals into prominence, are central to our story. They bring several key resources into the fray: their claims to a hearing, their political connections and negotiating skills, and their sheer persistence. An item's chances for moving up on an agenda are enhanced considerably by the presence of a skillful entrepreneur, and dampened considerably if no entrepreneur takes on the cause, pushes it, and makes the critical couplings when policy windows open (Kingdon, 1995, p.205).

The ‘lucky break’ that paves the way for proposals to be tabled on the agenda for decision is called a ‘policy window’, which is akin to a window of opportunity (as in when the conditions to push a given subject higher on the policy agenda are right) that when it opens, policy entrepreneurs must be able to exploit the chance to engage the coupling mechanism - to join their pet solution to the hot problem or the favourable political condition within the short time that such window is open. One must wait for the next opportunity when such window closes without a successful coupling.

The preceding description of the model suggests that, ‘the effects of the streams are interactive’ (Zahariadis, 2003, p.8), and that a combination of all three streams increases the likelihood that the desired outcome will be produced. It is also important to note that: 1) the three streams are independent of each other, but not absolutely; 2) each stream has a life of their own and runs their own course; and 3) ‘each of the actors and processes can operate either as an impetus or as a constraint’ (Kingdon, 1995, p.87). Therefore, in order to successfully promote their favourite solutions or policy proposals, the policy entrepreneurs should be prepared, ready in hand well before an opportunity window opens. Once a window opens, they can take the opportunity to couple the streams so as to raise an issue onto the decision agenda.

Some critics doubt whether Kingdon’s Multiple Streams Model has explanatory application internationally because it is based on the politics of a plural, liberal democratic country, the United States. Although, the model has since been tested and applied in France and Britain successfully (Zahariadis, 2003), those arguments of critics are not easily overthrown.

Sabatier's Advocacy Coalition Framework

It has been said that the Advocacy Coalition Framework (ACF) was developed out of a search for a better theory than the then prevailing stages heuristic model. The theory is based mostly on lessons on policy formulation and the role of technical information in public policy (Sabatier, 1999). Thus, it can be described as having the following tenets:

1) it underscores the important role played by technical information regarding the policy problem in many administrative agency decisions, with it policy makers are able to render an informed decision;

2) it highlights the requirement of a decade-long time perspective in order to better understand the process of policy change, such a time frame will not only help provide a clearer picture of at least one complete policy cycle (formulation-implementation-reformulation) but will also show the analyst the different strategies policy actors pursue over time (adjustment, adaptation, reinvention);

3) it gives a higher significance to policy subsystems and the role of policy learning as the more useful unit of analysis for understanding policy change than any governmental organisation or program;

4) it argues that our conception of policy subsystems should include not only 'iron triangles', i.e., administrative agencies, legislative committees, and interest groups within a single government level, but should also include journalists, researchers, and policy analysts (because they perform critical roles in the generation, dissemination,

and evaluation of policy ideas), as well as, other actors at all levels of government who are active in policy formulation and implementation; and

5) it propounds the importance of being able to map the 'belief systems' and policies together on the same frame in order to assess the influence of different actors over time (Sabatier, 1999).

The Advocacy Coalition Framework seeks to accommodate two sets of exogenous variables, namely: 1) quite stable variables, and 2) more dynamic variables. Relatively stable parameters are those factors in a policy setting that are extremely difficult to change and so are seldom subject of coalition strategies, and include a political system's:

a) constitutional structure (including statutory enactments and institutional rules and regulations)
b) sociocultural values, and
c) natural resources (Sabatier, 1999).

Other variables considered to be a major ingredient for policy change are more prone to coalition strategising, and include: 1) changes in socio-economic conditions; 2) changes in the systemic governing coalition; and 3) policy decisions and impacts from other subsystems (Parsons, 1995).

The framework focuses more on the belief systems of coalitions, within which can be found not only interest group leaders and members, journalists and researchers, but more importantly agency officials and legislators. Actors within the coalition are

bound together based on their beliefs. By strategising and working together, using guidance instruments, they serve not only as catalysts for policy change but actually push for the realisation of their desired policies. They resolve conflicts in strategies through the mediation of a third group of actors called policy brokers whose role is to facilitate compromise and thus reduce the intensification of conflicts that could harm their collective goal. For Sabatier, analysis, ideas and information are basically a part of the political stream and a major force for change; and separating the agenda setting phase from the wider policy-making process is not helpful in explaining how change takes place (Parsons, 1995).

A framework for the analysis of stability and change in marriage dissolution policy in the Philippines

Steven Lukes' notion of the three faces of power highlights the differences between the 'pluralist', non-decisionist and his own view on how the distribution of power shapes the issues and agendas of public policy. He emphasizes that power can be wielded through direct and indirect means. His three-dimensional approach illuminates the different resources that political actors wield. These range from the straightforward political resources – such as votes, jobs, personnel and influence – to the indirect ones – such as the mobilization of bias, non-decisions, and dominant ideology. These concepts bring out, not only the many ways that power is exercised to bring about desired results, but also explains the reason for inaction and non-participation. The exercise of direct and indirect power by the powerful and dominant

can prevent issues from arising and actors from participating. These constraints can, thus, explain the apparent acquiescence of people towards the claims of the dominant.

On the other hand, John Kingdon's streams metaphor is concerned with how the agenda is set, how issues come to be issues and how they come to the attention of policy makers. His arguments highlight what makes governments pay attention to some issues but not others. This model suggests that policy-making is not rational; solutions search for problems, and thus, organizations do not rationally relate problems and solutions. It claims that problems, policies and politics are independent, each with a life of its own, and their coming together can bring policy change. This emphasizes the strategic importance of problem definition to gain more people to one's side of the argument, which then narrows the possible policy specifications to only those which is favoured by a sectional interest. This agenda setting model also asserts the importance of politics - the political make up of the government, national mood, and organized political forces – factors, which can determine an issue's degree of probability of reaching the top of the decision agenda. Kingdon also puts emphasis on windows of opportunity, which are actively sought by policy entrepreneurs in order to engage the coupling mechanism.

Sabatier's framework puts forward the idea the importance of mapping the belief systems of interest groups and the role of policy learning to analyse their policy strategies.

Thus, the theoretical frameworks briefly discussed above lead us to ask particular questions around the:

- exercise of power, both directly and indirectly;
- impact of politics and windows of opportunity;
- importance of subsystems with multiple actors;
- need for a longer time perspective;
- importance of core belief systems;
- role of policy learning; and
- institutional parameters within which actors/coalitions interact, especially the constitutional structure and socio-cultural values.

In subsequent chapters, these concepts will inform the review of change and stability of marriage dissolution policy in the Philippines. These periods refer to the pre-adoption of the 1950 New Civil Code and the post-1950 when the Church sought to amend its position regarding the issue brought about by new findings in the field of psychology which it adopted.

Chapter Three: Policy Change and Stability in Marriage Dissolution Policy Up To 1950

Marriage dissolution, as an item on the policy agenda in the Philippines, was prominent during the years of 1917, 1943 and the period immediately leading to the adoption of the New Civil Code in 1950. The policy issue had been debated and reviewed at least three times, during these three periods. As noted in Chapter One, divorce as a means of dissolving marriage had been traditionally practiced among many ancestral tribes in the Philippines. This practice was widely stopped, but not entirely[2], when the Spanish law *Siete Partidas* (1521-1898) was promulgated. In 1899, when the Americans came, the law prohibiting divorce was suspended. When the American military forces defeated Spain, they appointed a Governor-General empowered to issue rules and laws. Spanish laws that were deemed inconsistent with American laws and values were removed or replaced. One of these was the Spanish law prohibiting divorce which was not in accord with American values that allows for divorce, as well as the American value which gives primacy to individual freedom and liberty. Hence, the Spanish law under the *Siete Partidas* was suspended. Although the prohibition against divorce had been removed, the Fourth Philippine Legislature realized the need to have a formal enactment thereof.

[2] In the Philippine Muslim community, divorce was never abolished.

1917 Philippine Legislature formally enacted a divorce law.

The debate in the Philippines between those who were advocating for the establishment of the legal recognition of divorce and those who were advocating against it became public in 1917. Although the battle between these two groups pre-dates this period, especially after the 1899 suspension of the law prohibiting divorce, this time the debate was not just about its suspension. This time, the competition was over the definitive enactment of a policy on divorce. Also, this time the pro-divorce establishment group held the upper hand given the evident bias of the occupying American forces against an absolute prohibition on divorce. The anti-divorce establishment group, in turn, relied on their allies in the Legislature. The policy battle is thus drawn in 1917, not only along political party lines and interest group dynamics but also along the lines marked by the presence of a foreign sovereign force which had earlier made its preference clear.

Albano (2001) points out that the 1917 law was enacted only after ‘a long and bitter fight’ (p. 286) between the pro-divorce establishment grouping and the anti-divorce establishment grouping in the Fourth Philippine Legislature. It will be noted that this legislative body was operating under the sovereign control of the United States when it discussed and considered the passage of Act No. 2710, the law allowing for absolute divorce. Prior to the 1917 enactment, the Catholic Church protested against the suspension by the Americans of the provisions disallowing divorce under the *Siete Partidas* (Albano, 2001). In both instances, the anti-divorce establishment group was unsuccessful in persuading the legislature to put into place its preferred policy of prohibiting divorce. In the period between 1899 and 1917, their protests fell on deaf

ears, and in 1917 they lost in their struggle to put their policy in place. Part of the reason was the largely non-deliberative or almost dictatorial position of the American Governor General who had earlier made clear his preference to remove the prohibition against divorce by discontinuing the operation of the Spanish civil law, the *Siete Partidas*, by executive fiat. Despite this, however, the anti-divorce establishment group was able to lobby members of the Fourth Philippine Legislature during the deliberation of Act No. 2710 and their strongest allies came from the House of Representatives led by the then Speaker Sergio Osmeña. In this period, the proponents for the establishment of a divorce law, led in the Senate by no less than the then Senate President Quezon, were successful in putting in place their preferred policy of allowing divorce. This policy came to be known as Act No. 2710 or the law that allows for Filipinos to obtain divorce.

As noted earlier, this success was largely influenced by the presence of the Americans, who favored the establishment of divorce law, as was the case in the United States. Viewed from Lukes' perspective, this can be considered as a direct exercise of power through the use of straightforward political resources, particularly 'political influence'. The mere fact that the Americans were in the Philippines as an occupying regime which unilaterally decides policy for the country it is occupying without regard to the processes of problem definition within the country, the preferred policy solutions that emerge within that country, and the political mood of the country, indicates a direct exercise of power. Because the policy preference of the American Governor General was already made clear, the act of the Philippine Legislature in enacting Act No. 2710 can be understood to be quiescence to the wishes of the occupying regime.

If we add to these perspectives the tenets of Sabatier's Advocacy Coalition Framework, we can gain a more comprehensive view of the process of policy change.

Longer time perspective and belief systems

In order to better understand policy change, the ACF asserts that a longer time perspective is needed, not only to provide a clearer picture of a policy cycle, but also to see the strategies that policy actors pursue over time. With regard to the Philippine marriage dissolution policy, a longer time perspective also enables us to see the belief systems of the advocacy coalitions, which serve as the basis for their competing policy positions. Thus, the debate involving the issue of divorce is not unique to the Philippines nor is it time bound; its origins are known to have occurred in ancient times, and it has been ongoing. For instance, Ireland, Chile and Brazil have all recently had bitter national debates around this issue. Although divorce law has since been enacted in these countries, the debates highlight the beliefs which divide society on this issue between those who hold liberal views and those who hold conservative views. For the latter, the Catholic Church is known to be a long standing proponent. Kitchin (2002) states that: 'The influence of the Church upon divorce legislation begins with Constantine, who, at the beginning of the fourth century, inaugurated the alliance between Church and State' (p.31). He points out further that:

> The doctrine of indissolubility was ingrafted on the law, not by the wise men who at any time swayed the civil affairs of Rome, but by the Roman Church as a religious tenet (pp.44-45).

These debates about marriage and divorce endure in the Philippines to the beginning of the 20th Century and even up to present times.

Basic attribute of the problem area

Divorce law represents an issue that can be looked at in two distinct ways. One may view it as a solution to problems brought about by failed marriages which society must address by providing for a legal means for affected parties to do so. Another view may see it as a problem in itself which the state and society must safeguard against by prohibiting it. Ontologically, those who subscribe to the latter view may be considered as conservatives, while those who share the former view may be thought of as liberals. This dichotomy represents the 'basic attribute of the problem area' in the context of this thesis. As described by the ACF, the characteristics of the problem area affects the range of institutional or policy options. These policy options, in turn, determine the choice of which 'good causal models of the factors affecting a problem' will be used by policy advocates in developing their arguments for their preferred policy solutions (Sabatier and Jenkins-Smith, 1988).

Deep core beliefs

Indeed, the bedrock of the debate rests on two contending views. One is the libertarian view, based on John Stuart Mill's philosophy, which suggests that the law should not be in the business of enforcing morals as such, and that respect for liberty requires that legal restraints on the individual's freedom of action should only be considered where it can be shown that the exercise of that freedom will result in harm to others (Duncan, 1993). On the opposing side is the moralist view, which posits that society

has a right to protect certain core moral values, and that conduct may therefore be subject to legal control where reasonable people judge that conduct to be outrageous and intolerable (Duncan, 1993).

Policy core beliefs

The libertarians prefer that legal restraints, such as the prohibition of divorce, should not be imposed upon mature and competent adults merely for their own good; arguing that an important aspect of liberty is that it entitles the individual to be the judge of his or her best interests, and that while society has a moral right to take measures to protect marriage and the stability of family life, this aim is not rationally pursued by imposing a blanket prohibition on divorce. On the other hand, the moralists argue that the principle of the indissolubility of marriage is itself the moral principle which should be enforced by law. These arguments represent the 'deep core beliefs' of the two competing camps in the context of this study. This is part of what Sabatier and Jenkins-Smith describe as the normative and fundamental beliefs that span policy subsystems and are very resistant to change.

Thus, the libertarian regards individual liberty as a prior value, and that if the state fails to discharge the burden of demonstrating a solid justification for restraining it, then the individual's liberty must prevail; while the moralist holds the view that the existence of a widely shared and deeply felt moral principle is itself the justification for its enforcement regardless of the utility of the principle (Duncan, 2003). These positions symbolize the policy core beliefs involved in the policy area of divorce. As a notion of the ACF, these beliefs encompass the fundamental policy positions and

strategies for attaining core values, and which are not readily susceptible to change (Parsons, 1995).

Secondary beliefs

Thus, in terms of policy preference, in the context of marriage and family laws, the moralists, believing in the indissolubility of marriage, tend to choose the policy of 'no to divorce'. At the other end of the political spectrum, the libertarians, believing in the primacy of liberty and individual choice, tend to choose the policy of 'yes to divorce'. These competing policy preferences that substantively relate to a subcomponent of the divorce policy subsystem depict the 'secondary beliefs' of the contending 'advocacy coalitions' actively participating therein. Wellstead et al. (2006) point out those secondary aspects of beliefs 'are the instrumental decisions that are necessary to implement the policy core' (p. 5). Being on the 'lowest tier' of a policy subsystem's beliefs system, it is considered to be the area 'most susceptible to change in response to new information and events' (Weible and Sabatier, 2007, p. 128). In this regard, both the Church and the pro-divorce establishment camps made certain alterations to their respective positions which relate to their secondary beliefs. This point will be discussed later on.

In the Philippines, the moralist view on divorce is represented by the Church and its allies. The liberal view on divorce is represented by groups like the 1950 Civil Code Commission, Gabriela Women's Party and various private individuals and politicians who, in one way or the other, have supported a divorce (re) establishment initiative. Unlike the latter, however, the Catholic Church and the groups and individuals under its wing are a formidable coalition.

1950

In 1942 the Philippines fell to the Japanese. The following year, a more liberal divorce law, Executive Order No. 141, was promulgated. As noted earlier, this law expanded the grounds for divorce by writing additional cases or situations by which divorce could be invoked. This law (Executive Order No. 141), also recognizing the right of married spouses to divorce, expanded the grounds for absolute divorce petitions, to include not only adultery on the part of the wife and concubinage on the part of the husband, as in Act No. 2710. Executive Order No. 141. Grounds for divorce, while closely prescribed, were extended to the attempt by one spouse on the life of the other; a subsequent marriage before the first marriage was legally dissolved; loathsome contagious disease; incurable insanity; impotence; desertion or unexplained absence; repeated bodily violence; and slander by deed or gross insult (Feliciano, 1994). Again, like in 1917, this was as a consequence of a direct exercise of power; this time by the occupying Japanese Imperial forces.

In the post-war period of the history of divorce policy in the Philippines, after the Americans and the Japanese left and Philippine independence was recognized, the relative strength of the two main competing camps in this policy area began to tilt in favor of those who were against the provision of a divorce law.

On 4 July 1946 the United States finally recognized the independence of the country. For the first time since pre-Spanish rule, the country was on its own, Filipinos were formally able to exercise their own sovereignty free from direct foreign control. Hardly had this newly found independence reached its first anniversary when the

Project of Civil Code was called on 20 March 1947, which thereby provided a new opportunity for policy change.

The period beginning at the end of the Second World War saw the re-establishment of democracy in the Philippines and the recognition by the United States of its independence. The re-establishment of the country as a democratic republic after the War also brought into full operation the 1935 Constitution without foreign intervention. As amended in 1940, the Constitution provided the basic structure of the Philippine government, with a bicameral Congress composed of a Senate and a House of Representatives and an elected President serving a four-year term for a maximum of two consecutive terms. This form of government emulated that of the USA and lends the institutional backdrop for a fragmented form of governance. However, despite the similarity with the American presidential-bicameral government, government in the Philippines tended not to be as fragmented as in the United States (Timberman, 1991). The main difference lay in the nature of the dominant political parties in the two countries which divides the political spectrum into two clearly defined sets (Timberman, 1991). In the United States, the dominant political parties, the Republicans and the Democrats, may be said to represent opposing schools of thought, conservatism and liberalism, which help to define for their members' specific issues and positions consistent with their beliefs. This political cleavage is not found in the Philippines. Although there were two dominant political parties regularly alternating in power between 1946 and 1970, the Nacionalistas and the Liberals, these parties, unlike in the United States, were merely shifting coalitions of the elite families, which comprise Philippine democracy, whose wealth and power is derived from ownership of vast tracts of land and important industry sectors. These two

Philippine political parties did not differ ideologically in any significant way and lacked a clear sense of direction (Timberman, 1991).

Prior to the 1970s, the two parties were 'essentially identical' (Timberman, 1991, p.39) in terms of class and professional origins. Most members of these two parties came from the landed class. Thus, the concentration of the national wealth in a handful of families resulted in their dominance in politics and government, brought about by their ability to control the votes of the tenants on their lands and employees in their factories. This monopoly of wealth and ownership of important industries, including the mass media industry, also enabled them to purchase the loyalty of the politicians whom they financed (and who may also have come from within the family), government officials and military officers, and to manipulate the media (Timberman, 1991). However, despite the political parties' lack of clearly-delineated ideological identities, the individual members of Philippine society and the politicians therein are not precluded from embracing either liberal or conservative values or beliefs, in fact, it is presumed to be the case.

Another peculiar characteristic of Philippine traditional politics is that the majority of the population, due to persisting economic inequality and the absence of 'effective mass organizations', has little influence on the determination of government priorities and policies (Timberman, 1991). This, on the other hand, is in sharp contrast to the influence exercised by the Catholic Church. Particularly after the Americans left, the influence of the Church became remarkable once again, as in the time of the Spaniards, whose rule was prominently marked by the theocratic nature of its governance rendered by church and state union (Abueva, 1988 *in De Guzman &*

Reforma). Constantino (as cited in Abueva, 1988, p. 27) states that during the period of Spanish rule, this union directly meant active participation by the Catholic friars in the colonial administration of the Philippines.

As noted earlier, one of the most controversial orders of business for the government of President Manuel Roxas at the end of the War was the convening of the (second) Civil Code Commission[3]. This body was given the task, following the Japanese occupation, to organize, modernize and compile all of the country's civil laws into a single code; their job was known as The Project of Civil Code (Albano, 2001). Its draft findings and recommendation were submitted to Congress in 1949 for consideration.

Much to the disappointment of the Church, the Commission retained the provisions allowing for absolute divorce found in Act No. 2710 (Albano, 2001). Albano also pointed out that the Commission was aware of the Catholic Church's opposition to the policy; hence, as a matter of strategy, they decided not to incorporate a very liberal draft of the law which would expand the grounds by which divorce could be invoked. This, perhaps, explains why they proposed to limit the grounds for divorce to: 1) adultery on the part of the wife and 2) concubinage on the part of the husband. As Albano (2001) noted, the Commission 'merely reproduced the provisions of Act 2710 and even added more restrictions to the granting of divorce by the civil courts, one of which was that no judgment for divorce shall be granted based on stipulation of facts or on confession of judgment' (p.286). This means that facts must be established

[3] The first Civil Code Commission, headed by Chief Justice Ramon Avancena, was convened by President Manuel Quezon in 1940. Its work, however, was interrupted by the Japanese invasion of the Philippines

during trial and that judgment on the case is to be based on the facts so established in court.

As noted earlier, this marks the modification of the secondary beliefs of the broader belief system of the pro-divorce establishment advocacy coalition, as conceptualized in the ACF. This change was seen as easier to achieve because it could serve a higher purpose: as a strategy to realize the group's core beliefs. Thus, aside from adding more restrictions to divorce, the Commission also revived the concept of relative divorce (or legal separation) to rectify the decision of the Supreme Court in the case of Valdez vs. Tuason, 40 Phil 943[4], and as a measure to appease the Catholic Church who might complain of being discriminated against by the operation of an absolute divorce policy (Albano, 2001). The decision in this case was considered controversial when it interpreted that, since the law then prevailing merely provides for the allowance of an absolute divorce, the concept of relative divorce (or legal separation) as understood under the *Siete Partidas* was deemed to have been amended. To make matters worst, this was portrayed to be discriminatory against a Catholic person who was supposedly assumed to be against absolute divorce and who may merely choose to be legally separated. Thus, in the version of the Code Commission, the provision for legal separation (or relative divorce) was explicitly provided.

The Catholic Church, however, was not swayed by the reconciliatory gestures of the Commission, rather it vowed to seek amendments thereto in Congress (Integrated Bar of the Philippines, 1978). The Manila Times newspaper reported on 1 April 1949 that:

[4] This case, Albano (2001) pointed out, held that Act 2710 implicitly 'abrogated the relative divorce under the Partidas' *because as CJ Avancena pointed out in his dissenting opinion in the case* 'it is illogical to deny relative divorce, when absolute divorce is allowed. The more includes the less' (Albano, 2001, p.287).

‘Catholic bishops from all over the country broadly hinted in their urgent wires that flooded the halls of Congress that unless their pleas (for the scrapping of Title IV Book I of the proposed civil code regulating divorce) were heeded, re-electionists would encounter their nemesis in November’ (Integrated Bar of the Philippines, 1978).

Meanwhile, the anti-divorce establishment group led by the Catholic Church, apparently unsatisfied with the work of the Commission, leveled various criticisms against it, arguing that their draft code was not well thought out, rushed, and mostly just copied from various civil laws of different countries. Thus, the Commission became engaged in defending their method, arguing that there was nothing neither unusual nor anomalous about using other jurisdictions’ patterns in drafting a civil code. Indeed, while they were busy defending their work and their method, the Catholic Church was able to convince Congress to heed its advice to delete, as they did delete, the provisions on absolute divorce drafted by the Commission. This was accomplished by exerting their growing influence on the members of Congress who, at the time, were careful not to antagonize the Catholic Church as it was an election year and many of its members were running for re-election. With the national elections of November 1949 in mind, Congress enacted the New Civil Code on 18 June 1949, which took effect in 1950, and thereby effectively abolishing absolute divorce. Since then marriage and its dissolution was to be a closely watched policy issue of the Church.

Similar to the 1917 contest both the pro-divorce establishment group headed by the Catholic Church and the anti-divorce establishment group, were able to participate in

the policy-making arena of Congress. Both groupings participated by seeking to influence the outcome of the deliberation thereon. The views of the pro-divorce establishment group were well represented by an official entity created by the government, the Civil Code Commission, which was not lacking in support from members of Congress. On the other hand, the views of the anti-divorce establishment group, who vehemently protested against the proposals of the Civil Code Commission, were recognized and acted upon by their allies in that same Congress.

This time, however, the anti-divorce establishment group had gained the upper hand in this struggle to place their preferred policy on the agenda. The threat to foil the re-election bid of many members of Congress can be seen to have worked to force most of them to comply with the preferred position of the Catholic Church to remove the provisions for divorce. Soon it came to pass that the policy changed from one which allowed divorce to one which once again placed a blanket prohibition thereon, a regime that was to last up to the present times.

Explaining policy change

Early Philippine policy making (circa 1916-1949) in the divorce 'policy subsystem' may be presented in a number of ways. Viewed enthusiastically, it may be possible to see it as 'pluralistic', in the sense that no single dominant 'subsystem actor' has emerged to totally dominate this policy area in a fragmented structure of governance, which, as described by Dahl and other pluralists, is viable for public penetration and participation. Perhaps, this tentative view is highlighted by the number of instances

(more than one) when the issue penetrated the agenda of government decision makers. The first having occurred in 1917 when the bicameral Philippine Legislature, operating under The Philippine Autonomy Act of 1916 (also known as Jones Law), enacted Act No. 2710 allowed absolute divorce. Albano (2001) describes the proceedings as a 'long and bitter fight in the Legislature in which the proponents were led by Senate President Quezon and Senator Palma, and the opponents by Speaker Osmeña (p. 286).

Note, however, that seen against the shadow of American rule and the increasing position/role of the Church as an influential policy actor, any semblance of pluralism of this policy system, in this period, will fall on the very premise for which it rests. It has been pointed out that the pluralist or one-dimensional approach to policy making leans on the assumption that public policy is the result of free and open struggle between interests, ideas and different groups. Under the one-dimensional approach, 'power was seen as widely distributed and the political system so organized that the policy process was essentially driven by public demands and opinions' (Parsons, 1995, p. 134). Thus, the policy deliberations conducted in 1917 may well be considered as fitting the description of a pluralistic policy-making process when viewed under the one-dimensional approach to power. This explanation, however, is subject to serious questioning given that pluralist ideas were not developed to explain policy change in countries under foreign rule. Rather they were designed to explain policy change in liberal democracies with an active interest group sector. Thus, the presence of an occupying regime in the Philippines which has made its policy preference clear will belie such a claim of pluralism. This is so, notwithstanding that first, the grievance surrounding the divorce issue was recognized and acted upon

where it was calendared for consideration within the order of business of the Fourth Philippine Legislature, and hence the deliberation thereon by members of the bicameral body was made possible. Second, the decision-making arena, the Legislature, may be regarded as open for the participation of any organized groups through the representation of members therein for both interests under the competing banners of pro-divorce establishment and the anti-divorce establishment. Records of the deliberation on this policy issue show that those advocating for divorce were represented by Senate President Manuel Quezon and Senator Rafael Palma, while those against divorce were represented by Speaker Sergio Osmeña, Sr. (Albano, 2001). And third, the 1917 pro-divorce establishment group's efficacy in the bargaining process over the resolution of the issue may be assumed as a visible and effective use of its political resources. Among those resources available to them was the prevailing domination of the United States over the Philippines. It can be remembered that divorce is allowed, recognized and practised in the former. Why then should the Philippines, where it exercises its imposed sovereignty, be different? Indeed, the ideological persuasion of the Americans on the matter, leaning more toward the liberal position favoring divorce, more likely than not, may have tilted the scale in favor of the adoption of an absolute divorce regime. Although this, somehow, illustrates the argument made under pluralism, which accepts that, although power and influence was not equally distributed, the political system is open to debate and all can influence the policy process. Viewed from another angle, however, this very same factor can be explained differently.

It has been stated earlier that what distinguishes the 1917 contest from the 1950 contest over the divorce issue was the presence of the Americans exercising

sovereignty over the Philippines. The mere presence of the Americans under such circumstances even without taking any overt action to influence the result can be considered sufficient to inhibit the efforts by those seeking to prohibit divorce. Often, power need not be actively exercised in order to be effective (Crenson, 1971). Much like the presence of U.S. Steel in the American City of Gary is held responsible for the retardation of its air pollution issue (Crenson, 1971), the presence of the Americans in the Philippines may well have been responsible for the retardation of the anti-divorce lobby as carried by its spokesmen in the Legislature resulting in their loss over those speaking for the adoption of a divorce law. Thus, once this advantage was removed, the latter's strength seem to have deteriorated.

The pluralistic indicators of the policy process in this subsystem was not to last. For once it is subjected under the lens provided by Lukes' (1974) 'three-dimensional view of power approach', the many ways in which issues are kept out of politics or constricted in such a way that only safe issues are allowed into the governmental agenda will be illuminated. Also, as will be gleaned in the discussion later of the three faces of power, the Church, in one sweeping victory, becomes the singular reckoning force in the marriage and divorce policy subsystem to the detriment of its competitors and the disintegration of any pluralist depiction of the said policy subsystem. This dominance was ushered in by its victory in the Project of Civil Code.

The efficient wielding of political tools was the key to the success of the Church lobby. The Church's organizational strength, especially, has played an important role in that endeavor. The Church's organizational strength, seen in its capacity to

mobilize support and its experience in the political arena, played a largely important role in this policy area.

Chapter Four: Policy Change and Stability in Marriage Dissolution Policy Post 1950

Unlike the periods of 1917, 1943 and the period leading to the adoption of the 1950 New Civil Code, the prominence of marriage dissolution as an issue on the policy agenda has diminished following the adoption of the New Civil Code which abolished the legal provisions on divorce. Some 37 years would pass before the Philippines would see again a law that provides a remedy for dissolving a marriage. In public policy terms, there had been policy stability on this issue beginning in 1950 and this lasts up to the present. This Chapter looks into the factors which gave stability to this policy issue and provides an analysis of the modification of marriage law in 1987, which shifted the rule from absolute indissolubility of marriage to a rule which allows for a certain exception. This rule was to become the 'psychological incapacity rule', which provides the legal remedy to dissolve a marriage where either or both spouses suffer from psychological incapacity to perform the essential obligations of marriage. This rule was nowhere to be found in the earlier laws on marriage, but is an innovation based on what was later on discovered in the field of psychology. How this learning affects policy will be considered in this Chapter.

As noted earlier, the policy position on the dissolubility of marriages settled in favor of that which was preferred by the Catholic Church in 1950 when the Philippines adopted the New Civil Code which prohibited divorce. In effect, it resulted in a

regime where the dissolution of marriage was absolutely prohibited. People in marriages that broke down were left without a remedy to get out of the legal relationship and remained trapped. How this condition was understood and framed can be considered in terms of Kingdon's suggestion that the development of a shared understanding of the nature of problems is a critical factor in understanding why issues come on to a government's agenda.

He suggests the development of an understanding of problems is a process that can be seen independently of the development of policy and the broader political mood. This points to the way government attention at any one time is directed to some policy issues and not to others. On the divorce policy issue, the government did not see the condition as problematic or they adopted a position that it did not exist. The stance would last until 1987 when there were further developments in this issue area. Two events in 1983, in Rome and in the Philippines, contributed to this. In January 1983, in Rome, the New Code of Canon Law was promulgated. In the same year in the Philippines, the government opposition figure, Benigno Aquino, was assassinated on August 1983. These two events had an important impact on subsequent policy developments in the area of marriage policy in the Philippines.

The advent of Canon 1095: new ideas in the policy stream

On the 25th of January 1983, the Supreme Pontiff of the Roman Catholic Church, Pope John Paul II, promulgated the revised Code of Canon Law, which was to take effect on the 27th November 1983. The Pope declared:

> ‘So that all may more easily be informed and have a thorough knowledge of these norms before they have juridical binding force, I declare and order that they will have the force of law beginning from the first day of Advent of this year, 1983’ (Libreria Editrice Vaticana, 2009).

This new Code contained Canon 1095 which embodied the idea that certain individuals may be unable to assume the essential obligations of marriage due to causes which are of a psychological nature. This new Church policy would form the basis for the adoption of a new civil law provision recognizing that, in certain circumstances, marriage can be dissolved. It was a policy stance which was different from that which the Church and its allies in the then House of Representatives (Fourth Philippine Legislature) as led by Senator Osmeña and in Catholic women’s groups had argued for during the deliberations for the 1950 Civil Code. It was a new policy idea which the Pope himself, when he provided a period for reflection thereon before it ‘will have the force of law’, recognized to be something that may not be readily accepted by the Church community.

This highlights the existence of ‘policy communities’, which, according to Kingdon, may be fragmented or closely knit, consisting of ‘specialists in a given policy area’, and concentrating on generating proposals. ‘They each have their pet ideas or axes to grind; they float their ideas up and the ideas bubble around in these policy communities’ (Kingdon, 1995, p.87). Kingdon argues that what makes some policy ideas survive and progress through the policy process, while others fall apart, is determined by several factors. He points out that among these criteria are: 1) they must be congruent with the values of the specialists; 2) they must be implementation-

ready, with all details thoroughly sorted out; 3) they must be considered to have the capacity to achieve targets; 4) they must be shown to be capable of anticipating future constraints, including constraints of public opinion. The new Canon embodies the notion posited by Kingdon that policy making does not consist of neat stages but can be described as rather random in nature, in that, 'solutions search for problems and the outcomes are a function of the mix of problems, participants and resources' (Parsons, 1995, p. 193). The new Canon 1095, presented by the policy community consisting of the Catholic clergy led by Archbishop Jaime Sin with the help of very powerful people in government who belong to groups identified with the Church position of prohibiting divorce, was deliberately selected as the solution to the problem of marriage breakdown. Although this, in effect, recognized that marriage may be dissolved, in this case, under circumstances of a psychological nature, the doctrine of marriage indissolubility, espoused by the Church and which represents its deep core belief, was left unaffected given that in cases of marriage annulments on the ground of psychological incapacity, the marriage is considered void from the very beginning as if it did not exist.

Thus, this development contributed to the opening of the window of opportunity at that time with the potential for policy change. However, this same window was quickly closed due to events in the political stream which diverted the peoples' attention towards the assassination of Senator Aquino.

Benigno Aquino's assassination: political and policy implications

On 21 August 1983, Benigno Aquino, the leading oppositionist against the Marcos regime, was assassinated in the Philippines upon his return from exile. The murder was blamed on President Marcos and galvanized a powerful sentiment against his government. This led, according to Timberman (1991) to 'the erosion of Marcos' credibility, the decline of the government's legitimacy and effectiveness, the faltering of the economy, and the rise of traditional and radical opposition' (p. 125). Consequently, this affected the momentum of the policy community aligned with the Church which intended to place Canon 1095 into the government's agenda, such that this policy solution only surfaced again after Marcos was ousted in 1986 and a new government had been formed. Indeed, it was a time marked by both crisis in the economy and crisis in the political sphere. This clearly points out that policy communities can be affected by the events in the political sphere. As noted earlier, the Church community had the New Code of Canon Law, particularly Canon 1095, ready to be placed on the government's policy agenda as early as 1983, but the required change in policy occurred only when the political tensions created by the 1983-86 crises finally settled. A new opportunity to place the policy issue on the agenda occurred when President Corazon Aquino assumed the presidency. These points support the claim by Kingdon (1995) that policy communities may be affected by political events but are not driven by them; 'the forces that drive the political stream and the forces that drive the policy stream are quite different: each has a life of its own, independent of the other' (p. 118). As it is, the policy community led by the Catholic Church has consistently held and advocated for its belief in the

indissolubility of marriage since the Spanish period through the 20th Century, and this remained unaffected despite changes in the Philippine political dynamics.

Thus, a new 'window of opportunity' opened in favour of the new policy of the Catholic Church and the various groups allied with its policy position, embodied in Canon 1095, in the area of marriage and its dissolution in 1986, when a new government replaced that of Marcos.

President Aquino's assumption of power: a window of opportunity?

The politics stream involves various things that give shape and colour to the prevailing political landscape which has the potential to dictate policy direction. These range from: election results, change in administration, shifts in partisan or ideological distributions in Congress, fervour within interest groups' pressure campaigns, public opinion, overall national mood, or a combination of these factors.

In the aftermath of the events in the Philippines during the 1983-1986 period, President Corazon Aquino took the reins of government in late February 1986. Given the revolutionary character of this government, it soon came to pass that a temporary Freedom Constitution had to be established that gave the revolutionary President virtually unlimited powers. These powers included the power to issue and promulgate presidential proclamations and executive orders, which have the force and effect of law. These circumstances highlight the change in the political stream that opened the window of opportunity, accounted for, not only by the national mood but also by the

nature of the organized political forces in government, and the perspective of those in power.

President Aquino was considered nothing less than a moral force by the Church hierarchy, whose relationship with the new government was characterized by many as one of critical solidarity. Indeed, the assumption to power of the Aquino government ushered in a new government looking to make an impact. Soon after coming to power, the Family Code Committee was formed to draft the Family Code, which Aquino subsequently signed and promulgated.

Policy entrepreneurs

'Policy entrepreneurs' are indentified by Kingdon (1995) as 'people who are willing to invest resources of various kinds in hopes of future return in the form of policies they favour' (Kingdon, 1984, p. 151). According to Kingdon's (1995) model, a prerequisite for a policy addressed in the decision agenda is the convergence of the three streams, referred to as coupling. In describing this, he points out that: 'The separate streams come together at critical times. A problem is recognized, a solution is available, the political climate makes the time right for change, and the constraints do not prohibit action' (Kingdon 1995, p.88). He notes, however, that coupling is not a random or accidental process but is actively sought by 'policy entrepreneurs' who are advocates who devise proposals and 'then wait for problems to come along to which they can attach their solutions, or for a development in the political stream like a change of administration that makes their proposals more likely to be adopted'

(Kingdon, 1995, p.88). In this way, policy proposals are prepared and tabled at times when policy windows open. Policy entrepreneurs are described as seeking to exploit the chance to engage the coupling mechanism - to join their preferred solutions to the hot problem or the favourable political condition within the short time that such a window is open. One must wait for the next opportunity when such windows close without a successful coupling. This 'suggests the effects of the streams are interactive' (Zahariadis, 2003, p.8), and that a combination of all three streams increases the likelihood that the desired outcome will be produced.

In the marriage policy area, Jaime Cardinal Sin played the crucial role of being the policy entrepreneur responsible for the survival and success of getting the ideas in Canon 1095 adopted by the government. He was very active politically and was seen as an important leader of civilian movements. His influence was such that even President Marcos, of whom he was critical, would seek his approval on important issues. Within the Church organizational hierarchy, the Archbishop of Manila, Jaime Cardinal Sin, enjoyed pre-eminence given its close geographical proximity to the seat of governmental power in the Capital (Moreno, 2006). Distinct from this characterization, however, is the undisputed fact that the Manila Archbishop was instrumental in putting in place the Aquino government. He was, after all, the one who called on the people to go to EDSA to support the mutineers of the Marcos regime, led by Defense Minister Juan Ponce Enrile and General Fidel Ramos. This, in turn, made him very influential with the President who was known to regularly consult the Archbishop, even on state matters (Moreno, 2006). Thus, Archbishop Sin is considered to be the policy entrepreneur who promoted to the President, then exercising both executive and legislative powers, the policy idea contained under

Canon 1095. As a policy entrepreneur, he utilized his reputation and skill as a moral leader and adviser to President Corazon Aquino to integrate Canon 1095 into Philippine marriage and family law.

The successful coupling of the policy and problem streams and their timely convergence with the politics streams, which provided the window of opportunity for policy change, resulted in the promulgation of Executive Order Numbered 209, otherwise known as the Family Code of the Philippines on the 6th of July 1987 by the newly-installed President Corazon Aquino. This new law provided, among other things, that:

> 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.

The role of policy learning in policy change

It is important to note that according to Sabatier's (1988) Advocacy Coalition Framework, learning has a great impact on policy. Thus, it is often the case that policy changes occur when there is new knowledge or discovery to back up a particular claim. This learning may or may not be embraced by advocacy groups depending on how it strengthens or weakens their policy beliefs. And, although this may affect the group's belief systems, so long as the modification is limited to their secondary

beliefs, the group can readily accept it. Thus, provided the relatively stable parameters, such as the group's deep core beliefs, remain stable, changes in their secondary beliefs can be tolerated.

It will be remembered that on this policy issue, the policy cleavage was between those who embrace a liberal view on the issue and those who take a moralist stand. As noted earlier, the liberalists believe in the primacy of liberty and tend to choose the policy of 'yes to divorce' and that marriage is not indissoluble. Thus, so long as this belief is not altered completely, the groups or coalition remains strong and stable, and that minor changes in specific policy preferences can be accommodated.

On the side of the liberals, the Civil Code Commission was willing to adjust its position, as it in fact did in the Project of Civil Code, by not liberalizing the divorce law the way (Japanese) Executive Order 141 had, by expanding from only two to as much as ten the grounds by which divorce can be invoked. The Commission even went as far as adding more restrictions in their Project, as noted by Albano (2001), 'one of which was that no judgment for divorce shall be granted based on stipulation of facts or on confession of judgment' (p. 287). This means that facts must be established during trial and that judgment on the case is to be based on the facts so established in court. Thus, it will be noted here that so long as the end objective is to make divorce the policy, minor questions regarding the means on how to achieve the main goal can be tolerated within the coalition of policy actors.

On the side of the moralist group, they modified their position in the late 1980s, from one of absolute prohibition against divorce (or absolute indissolubility) to a policy

allowing for the annulment of marriage based on causes which are of a psychological nature in the Family Code, for which their dominant influence is also of public knowledge, as in the 1950 legislation prohibiting divorce. As pointed out by Ruiz-Austria (2000), 'the Catholic Church did not recognize psychological incapacity per se as a ground for annulment until 1983 when Pope John Paul II issued the New Code of Canon Law' (p. 2). Not only does this highlight the greater susceptibility to change policy positions as a consequence of change in secondary beliefs, as Sabatier's … (1998) model suggests, it also highlights the role of policy learning in making that change possible. Given the findings in the field of psychology, regarding the connection between one's personality traits, which are formed prior to the marriage and its subsequent breakdown due to these premarital causes, the Church learned that its position on the absolute prohibition against breaking up of marriage was no longer tenable and had to be modified. It had to adapt accordingly in order for its policy position to stay relevant with new learning and discoveries in other related fields. The pronouncements of Justice Romero (as cited in Ruiz-Austria, 2000, p. 2) illuminate this: the Church in making a change,

> took pains to point out that its new openness in the area did not amount to the addition of new grounds for annulment, but rather was an accommodation by the Church to the advances made in psychology during the past decades. There was now the expertise to provide the all important connecting link between a marriage breakdown and premarital causes.

Again, it will be noted here that so long as the end objective is to maintain the policy of 'no-divorce', minor adjustments in policy, especially those that are supported by

new learning, which will not defeat the main policy goal can be accommodated by the group. Thus, it is understood that a decree of annulment of marriage based on psychological incapacity is not to be considered as an exception to the rule on the indissolubility of marriage but merely a modification thereof. In a case of annulment of marriage on the grounds of psychological incapacity, the marriage is considered to be void from the very beginning and may be considered as not having existed at all.

The role of problem definition and the agenda-setting process

Interestingly, the policy as adopted raises the question: How did this come to be the solution to the problem as described above? In part, the answer lies with problem definition in the process of agenda setting. Thus, the issue of marriage breakdown was framed as a problem relating to the parties' consensual incapacity. In framing the issue this way, the Church and its allies in government were able to filter the possible policy solutions to one which deals with how it can be annulled considering that it can be considered as void *ab initio*. Consequently, this constrained the other groups who were trying to put forward their alternative agenda, that is, to allow for absolute divorce. As one legislator would put it, 'why is there a need for a divorce law, when one can acquire the right to remarry under annulment and declaration of nullity?'

The pre-1950 and post-1950 policy achievements of the Catholic Church enabled it to establish pre-dominance on the issue. The wide political power and influence it had established was able to be extended to this important issue. The policy battle it continues to wage against the liberal camp may not yet be over, but the conflict may

have already entered its latent phase. Indeed, as Schattschneider (1960) points out 'whoever decides what the game is about also decides who gets in the game' (p. 105). Clearly, the Church may be seen as the dominant political actor which determined that the game is about the indissolubility of marriage.

Subsequent attempts to promote a policy for legal divorce

Many years would pass before the issue was to reach the institutional agenda of government once again, particularly in the Senate as a policy arena. To recap:

- In 1988 a bill was filed seeking to recognize marriage dissolutions by religious organizations, but was never discussed at the committee level and therefore was also not reported out.
- In 1992 a bill seeking to provide recognition of divorce obtained overseas by Filipinos was filed, but was never discussed nor reported out.
- In 1995 a resolution to inquire into the propriety of enacting a Divorce Code was filed, but was never discussed nor reported out.
- In 1998 a bill seeking to delete the provision on legal separation and to integrate it as grounds for annulment of marriage, was filed. Following its referral to two Senate Committees, a committee hearing was conducted but there was no subsequent reporting by that committee on the bill.
- In 2001 a bill seeking to legalize divorce was filed, but was never discussed nor reported out.

In the House of Representatives, four bills seeking to legalize divorce were filed in 1999, 2001, 2005 and again in 2008 and, like in the Senate, all four bills were unable to reach the Second Reading stage. Thus, all of the proposals seeking to place the policy issue of divorce on the agenda suffered the same fate: they all were unsuccessful in attaining a higher agenda status.

All of these divorce bills were filed in either or both Houses of Congress, but were not even discussed in the Committee level after each were individually referred to the appropriate Committees during the 'First Reading' stage. In the Philippine Senate, divorce bills are normally referred to the Committee on Constitutional Amendments, Revision of Codes and Laws as well as the Committee on Youth, Women and Family Relations. The First Reading stage basically entails the reading of the title of the bill and the name of its author and its referral to the appropriate committee/s. Only when a bill is calendared for a hearing by the Committee to which it is referred, can it receive a formal discussion or hearing, after which, it can be reported out to the Senate. As a result, since these bills were not heard at the Committee level, no reports were submitted back to the Senate and therefore, as a consequence, the bills were archived. This is what parliamentarians mean by the phrase 'killed in the Committee'. Unfortunately, this practice is legal and is a convenient means to put a policy issue out of the institutional agenda. After the first reading stage, a bill must be reported out by the Committee before it can reach higher agenda status which is the Second Reading stage. Thus, each bill came to a silent end in the Committee, except Senate Bill Numbered 461 filed in 1998 by Senator Guingona. This bill, disguised as an amendatory bill, was actually seeking to provide for divorce. Interestingly, a year had to pass after its referral to the Committees before a hearing was conducted thereon.

This, however, has not been reported back. Although it had reached the institutional agenda of the policy-making arena of Congress through its filing and later first reading therein, it never reached 'decision agenda' status. In the Senate, none of the divorce related bills which were filed therein were calendared for any hearing, after referral to the appropriate Senate Committees. As one member of Congress noted, one of the key reasons was simply that: 'It was not considered a priority during that time'.

This response draws our attention to the way the list of priority issues is constructed and the way the scope of conflict in policy areas can be narrowed by those who enjoy a dominant position in a policy area and through their allies in government (Schattschneider 1960; Cobb and Elder 1983). How could they have arrived at such conclusion, if they have not even heard what individuals or interest groups have to say regarding the proposal? A member of a group working for the re-establishment of a divorce policy conceded that 'since they were not informed about the divorcee bills, they were unable to participate in the deliberations'. Note that reference was made to this policy as 'divorcee' policy – a term which in the Philippine context implies moral failure. That quote also illustrates the point made by Bachrach and Baratz that 'demands for change can be suffocated by the dominant interests before they are voiced or killed even before they gain access into the relevant decision-making arena through the hidden realm of 'non-decisions'. They posited that non-decisions are decisions 'that results in the suppression or thwarting of a latent or manifest challenge to the values and interests of the decision maker' (Bachrach and Baratz, 1970, p. 7). This notion suggests that those with power have a capacity to keep issues off the agenda through acts, omissions or decisions which could result in institutional inaction through the process of non-decision making, which actually involves the

containment of policy making to safe issues, manipulated to be so through the mobilization by the dominant of values, myths and rules of the game that supports its policy advocacy.

This is congruent with the point made by an insider with experience in the workings within the Committees who commented that:

> 'As to what bills and resolutions would be scheduled for committee hearings, that is the prerogative of the Chairman of the Committee. The Chairman is always in command as to who would be invited as resource persons during Committee hearings.'

Non-decisions were obscured and the hidden exercise of power in these issue areas can shut them out of the political process. As Crenson (1971) succinctly puts it, 'the operation of political power, therefore, is not always revealed in observable political action' (p. 178).

Thus, the elites in this case are shown to have the ability to exercise substantial control over what the public actually care about and how vigorously they articulate their concerns. As Lukes (1974) argues: 'A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping, or determining his very wants' (p.23). To this, he adds that 'thought control takes many less total and more mundane forms, through the control of information, through the mass media, and through the process of socialization (Lukes, 1974, p. 23). A comment from an interviewee that, 'the biggest barrier to the passage of divorce law is our culture, traditional beliefs and customs; once you are

married you can no longer get out of the marriage as taught by priests, in schools', illustrates this.

Lukes (1974) points out that an analysis of power must allow for the consideration of the many ways issues are kept out of politics through the operation of social forces which may include the study of social myths, language and symbols and how they are shaped or manipulated. Thus, the absence of observable conflict does not necessarily mean consensus but may simply mean that conflict may have been successfully averted. This point can also be seen through the expression of dominant values and social myths expressed in terms such as: 'the family is the basic social, economic, political, and religious unit of society, in its elementary form, this unit is composed of the father, the mother, and their unmarried children' (Jocano, 1969). Indeed, the hidden and invisible exercise of power can be revealed by studying the communication of information, of what is communicated and how it is communicated. Lukes (1974) also posited that an analysis of power involves looking into the means through which social legitimations are developed around the dominant and instilled as beliefs or roles in the dominated. Clearly, there is a general lack of relational definition/descriptors for extended families due to remarriage or re-partnering. Where do they fit in the dominant picture of a nuclear family?

The Philippines divorce policy issue has been through various phases of conflict in the political arena, from being active in 1917 and 1950 to one of latency and dormancy afterwards. Using the analytical tools of power in politics provided by Lukes (1974) enables one to see how this has occurred, and that this issue has been organized out of politics through the exercise of power by the Church which has also

had the capacity to transform from one that is visible in the resolution of conflicts, to one which is obscured, hidden or invisible, because the conflict has been successfully averted.

Chapter Five: Conclusion

For many years, then, the issue of marriage law reform, particularly that which allows for a provision on absolute divorce, has been kept off the agenda of the Philippine government decision makers. For a very long time, sectors of Philippine society affected by the lack of a divorce provision in the country have either remained quiescent or have been prevented from raising the issue. This state of affairs is attributed to the sustained exercise by the Catholic Church of its strong influence on the government and its exercise of power of organizing the divorce issue out of politics. The Church and its numerous allies, in their common desire to maintain the present set of marriage regulations in accordance with its teachings, consistently dominates the policy debates around the issue by insisting that only its views are represented, while disregarding the views of the broader community. Moreover, recent attempts to reform marriage laws to include a provision for divorce seem to indicate that its failure is due, in large part, to the influential power of the Church and the balance of power relations between those seeking reform and those seeking to maintain the status quo.

A well-respected Filipino political observer and journalist, Amado Doronilla (1997), once wrote that: 'In many mature democracies, political mobilization is carried out by political parties. In our democracy, the Church's national infrastructure serves as the vehicle for mass mobilization' (p. 9). Such is the power of the Catholic Church in the Philippines that it is seen as one of the dominant actors in society. In policy areas such as divorce, its power is so strong that its exercise mostly can be described as hidden

and invisible. In the Philippines, family law is based on the policy that marriage is not a mere contract but a social institution; that the family serves as the foundation of society. It has also been romanticized that the breakdown of the family will weaken the country's 'social and moral fabric'; therefore, it is in the interest of the State to protect it. This is a clear bias propounded by the Church

This dissertation has asked, why, in a country where cases of marriage annulment and separation has ballooned through the years, does one find or appear to find quiescence with the present set of marriage laws therein? Directly assailing the assumption of the early pluralists is the claim of critics that the political process is not so open to allow all issues and that not all potential issues can be brought to the decision-makers' attention. It is claimed that many issues or problems do not even reach the government decision process because demands for change are excluded, or participants are prevented from airing their grievances through the operation of bias favoring some groups, ideas or interests and against others. As Schattschneider (1960) said, 'some issues are organized into politics while others are organized out' (p. 71). This points out that, realistically, issues can be prevented from being raised and would be participants can be prevented from participating altogether. One of the many ways by which the powerful or dominant actors have accomplished this has been through mobilization of bias, the:

> 'set of predominant values, beliefs, rituals and institutional procedures ('rules of the game') that operate systematically and consistently to the benefit of certain persons and groups at the expense of others. Those who benefit are placed in a preferred position to defend and promote their vested interest' (as cited in Gaventa, 1980, p. 14).

In the earlier chapters, it has been noted that the sweeping victory of the Catholic Church in placing the policy of indissolubility of marriage in 1950 placed it in a position to dictate the shape of policy in this area well beyond the post-1950 period. In fact, the Catholic Church's dominance in this policy area is even more strengthened by its victory in specifying the parameters by which certain marriages, under conditions of vitiated consent, can be dissolved under the 1987 Family Code. This particular victory even had a spill-over effect through the adoption of its policy preferences in all three legal instruments, namely: the Civil Code, the Family Code, and the Constitution. In all these three legal instruments, significant provisions relating to marriage and family attributed to Church influence and power can be found. In the Family Code,

> Article 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

In the Constitution,

> Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Indeed, the Catholic Church has mobilized a substantial amount of bias in favor of its beliefs and policies which work to the disadvantage of the competing advocacy grouping favoring divorce. The operation of the said legal instruments reinforces the power of the dominant actor and acts as new barriers or new symbols that limit the scope of conflict and which run against the challengers' efforts to widen the same (Cobb and Elder, 1971).

The Church effort to shape the 1987 Family Code was also made possible by the personal efficacy of its leaders, notably Archbishop Jaime Sin, who could be considered as an effective policy entrepreneur on this issue area. These strengths explain the Church's success in putting into place the policy contained in Article 36 of the Family Code, which really may have been promoted in order to inhibit the pro-divorce movement, and which, in the words of one member of Congress, 'could have rendered the arguments of pro-divorce redundant'.

What implications, if any, does this have regarding the extent for meaningful democratic participation in the country?

Recent efforts to place the issue on the agenda through the filing of legislative bills aimed at re-establishing a divorce policy are not lacking in the Philippine Congress. However, despite increasing public support for change, the issue is systematically kept off the agenda. Groups advocating for the re-establishment of absolute divorce have not made a considerable dent against the dominant Catholic Church position. Much to the disappointment of groups seeking to place a divorce policy on the

government's agenda, it seems clear that their efforts to change the law are being frustrated at every step. Most bills that were filed in the Senate of the Congress of the Republic of the Philippines, except for one, were not heard in the Committees. No meetings have been held for the purpose of hearing opinions or receiving submissions from any concerned sectors which may bear upon these bills proposing the enactment of a divorce law. Given that no hearings have been held, the Committee, consequently, has not reported out the bills, resulting in their 'archiving.'

Indeed, the Catholic Church and its allies in Philippine society and politics have won in every turn of the policy battle against those who advocate and support the establishment of divorce law, beginning from the 1950 when the New Civil Code took effect. It has made known its non-negotiable position on the issue, and it has become a force to reckon with for any other groups' initiative to change the policy. Indeed, the Church has persevered in dominating the agenda and has maintained its stronghold in this policy issue.

The Philippines divorce policy issue has been through various phases of conflict in the Philippine political arena, from being active in 1917 and 1950 to one of latency and dormancy afterwards. Using the analytical tools of power in politics provided by Lukes (1974) enables one to see how this has occurred, and how this issue has been organized out of politics through the exercise of power by the Church. Using this theoretical framework enabled us to see that the political actor, who gains power and dominance in a particular policy area, can also have the capacity to transform the conflict from one that is visible, to one which is obscured, hidden or invisible, through machination or mobilization which successfully averts the conflict. Given

this view of power, the political silence of the population cannot be taken as consensus or merely explained as a feature of Philippine political culture. The operation of the Senate committee seems to have involved the invocation of an existing bias in the way issues have been kept off the agenda. Symbols of broken families and disrespect for authority have been used to silence discussion on the issue. All of this has contributed to inaction by the state; this inaction is a concrete example of how power impacts the policy process and determines who wins and who loses.

Clearly, the 1917 and 1950 policy battles can be characterized as visible conflicts which were settled through the wielding of direct power and resources. In 1917, the policy victory of the pro-divorce establishment group can be attributed to the strength of support they enjoyed among their members in the Philippine Legislature and the support provided by the presence of the Americans who are known to favor divorce as a matter of policy. Similarly, in 1950, during the deliberation on the New Civil Code, the conflict between those advocating for a policy on divorce and those advocating against such policy was a direct conflict which was resolved through the visible use of political resources. Thus, the policy victory of Catholic Church and its allies in society and politics in 1950 were largely determined by their superior resources and their ability to wield their power to win over the competing advocacy coalition. However, their continued dominance over this policy area is attributable to their efficient use of the hidden and invisible faces of power.

Limitations of research

Certain difficulties were encountered in the conduct of this research, foremost of which was the challenge of obtaining data. It proved difficult to gain interviews with many policy actors who had been directly involved in this policy issue. It was apparent some prospective interviewees felt awkward and uneasy about accepting an invitation for an interview relating to the divorce policy in the Philippines, this reflecting the social stigma attached to this topic and the hushed tones with which it is often discussed. There was also potential to identify and interview a greater number of the community-based policy actors advocating for a more liberal policy on divorce and hearing more of their accounts of the struggle over this policy. This was perhaps compounded by the tight timeframe within which data was set to be obtained, the timing being late November and December 2008 – the Christmas season. The geographical distance between New Zealand where I was based and the Philippines where I carried out these interviews contributed to this limitation.

The findings of this research could be supported by a further examination of the networks of actors opposing the current divorce policy and their lack of success in putting in place their alternative policy specification. Is their current lack of power and influence an insurmountable barrier to achieving their policy goals? Further research could also examine the links between the business elites, the Catholic Church and the state and the way they have operated to control the policy agenda.

Recommendations

There is a need to widen the scope of participation in many areas of politics in the Philippines. This case study in agenda setting has provided the opportunity to understand through direct application not only the theories regarding the direct and indirect exercise of power, the impact of politics and windows of opportunity, the importance of subsystems with multiple actors, the need for a longer time perspective, the importance of core belief systems, the role of policy learning, and the institutional parameters within which political actors and coalitions interact. Through this analysis of stability and change in marriage dissolution policy in the Philippines, I have been able to identify many hidden faces of power which affect the conception of this issue area and the options and alternatives available.

There has to be a mechanism that ensures that all legislative bills filed in Congress are not only duly heard in the Committee but also properly reported out to ensure that dissent is not unduly silenced nor summarily dismissed as unimportant. To ensure that bills have their 'day in the Committee', there should also be a mechanism which will ensure that those groups or individuals who may have an opinion or suggestion which may bear on the policy discussion are properly invited and be given the opportunity to participate in the Committee deliberation in a manner that reflects a balanced representation. Perhaps the time has come for the Philippine Congress to finally reflect whether a policy issue such as the marriage dissolution policy, which affects the very freedom and liberty of our people which our democracy promised, is really a non-priority, considering the clamour of the people for change. It is time to have their voices heard in the proper forum of the Congressional Committees.

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Appendix One

Interview Schedules:

A. Key informant category: Senator

1. Sometime in June 2001, you introduced Senate Bill No. 782, titled: "An Act Legalizing Divorce, Amending for the Purpose Title II and Articles 55 to 67 Thereunder of Executive Order No. 209, as Amended by Executive Order No. 227, Otherwise Known as the Family Code of the Philippines was referred to the Committee on Constitutional Amendments, Revision of Codes and Laws, and the Committee on Youth, Women and Family Relations which you were a member of during the 12th Congress, what happened to that bill? Why do think that was the outcome? How do you feel about that outcome?
2. Why do you think the Chairman did not schedule to hear resource persons, or to receive position papers from interested or concerned parties for this bill?
3. What groups were lobbying on this policy issue? (Those who favours its enactment and those who were against it.)
4. The Church and groups identified with it are vehemently against the enactment of the divorce bill, what sorts of reaction did you receive from them when you filed this bill? How did you feel about those reactions?
5. Among groups or individuals who were lobbying for and against this bill, who do you think make useful contributions on this topic, in terms of bringing out the relevant issues that argues for and against the enactment of the divorce law?
6. Which group do you think were more influential in this policy issue, in terms of getting this policy issue on and off the agenda of the Senate or Congress?

7. Which groups do you think provide a more persuasive argument?
8. When your committee is to conduct public hearings, how do you decide who would participate (groups/individuals) and who would not?
9. When a bill is referred to a committee of which you are a member, how do you decide, who to invite as participants/resource persons? How do the chairperson of the committee handle your request to include certain groups when a referred matter is tabled on the committee's agenda?
10. If an individual or group requests to participate in the hearing and communicates this to you, how do you act upon such requests?
11. What do you do with the written position papers submitted in reference to a bill under consideration by the committee? Is a written position paper given equal weight as the testimonies heard in the committee hearing?
12. How important is it to pass divorce legislation? Why? Why not?
13. How did you vote in the committee regarding this bill? What were your reasons?
14. What do you think is the reason behind the failure of the divorce bill to get enacted?

B. Key informant category: 3 Anti-divorce advocate

1. What is the role of the Church in your advocacy? How important do you think the Church is in maintaining the enduring success for your advocacy?

2. What advocacy strategies do your group engages in? What do you think is the most effective?
3. How important is the media in maintaining the strength of your advocacy?
4. Why do you think is it important not to have a divorce law?
5. Did your group participate in the deliberations for the passage of the New Family Code? Why do you think the Code Commission did not include divorce as another remedy for dissolving a marriage?
6. What do you think is the reason behind the decision of the Code Commission to include a provision for annulment of marriage and not for divorce?
7. How can you describe your group's relation with members of Congress? Who do you think is and/or had been your most reliable ally therein?
8. Is your group always invited in committee hearings in Congress whenever a bill that could be of interest to you is on the agenda?
9. When did your advocacy for divorce start?

C. Key informant category: 3 Committee staff

1. What was your role at the time when Senate Bill No. 782, titled: "An Act Legalizing Divorce, Amending for the Purpose Title II and Articles 55 to 67 Thereunder of Executive Order No. 209, as Amended by Executive Order No. 227, Otherwise Known as the Family Code of the Philippines was referred to the Committee on Constitutional Amendments, Revision of Codes and Laws during the 12th Congress, and introduced by Senator Biazon?
2. What does your job as the Committee Secretary involve?

3. A) I noticed that your committee did not hold any hearing for this bill (per history of bills), can you confirm this? B) Why is that so? What do you think is the reason why that is the outcome? C) Did the Committee solicit or receive position papers for this bill from interested and concerned parties? D) Why do you think the Chairman did not schedule to hear resource persons, or to receive position papers from interested or concerned parties for this bill? E) To what extent, is the committee chair and/or committee member responsible for who will be the resource persons? F) Is the decision on how to go about a referred matter and how to dispense it purely dependent on the discretion of the committee chairperson? What about the other committee members, do they have as much a say as to how to deal with any matter (bill or otherwise) referred to their committee? F) Are these observations as you explained them to me, true for all Senate committees?
4. To what extent, are you, as the Committee Secretary, independent about deciding who can participate in a hearing or in soliciting any position paper for any bill referred to your committee?
5. In inviting resource persons for a committee hearing, in general, how do you decide who to invite to attend, or to solicit position papers from? Do you have your own list from your own professional network of possible attendees (groups or individuals)? How do you make use of such list? How do the media (through newspaper coverage and broadcasts) help in identifying these concerned parties, if any?
6. If an individual or group requests to participate in the hearing and communicates this to you, how do you act upon such request?

7. What do you do with written position papers submitted in reference to a bill under consideration by the committee? Is a written position paper given equal weight as the testimonies heard in the committee hearing?
8. How do other offices in the Senate Secretariat provide you with information that can help you identify possible committee hearing participants/resource persons (for example the External Affairs and Relations Office)? How would you make use of such information, if there be any?
9. What happens after a committee hearing? How do you report out what transpired during the hearing?
10. What happened to Senate Bill No. 782? In your knowledge, has this bill been re-filed after the 12th Congress?
11. What is your personal view on divorce? Do you think we should have a divorce law or not? Why? Why not?
12. If another bill is referred to your committee, which you personally believe to be something that should be enacted, what measures would you take to have this tabled on the agenda of your committee?

Information Sheet:

The University of Waikato Private Bag 3105 Hamilton 3240, NZ	**Researcher**:	Emmanuel Guzman Senate Bill Drafting Service, 3rd Floor, Senate Of the Philippines, Pasay City Tel. (632) 552-6834 Email: eag3@waikato.ac.nz

Information Sheet

Thank you for considering participating in this research. It is part of a project to complete the academic requirements towards a Masters in Social Science degree being undertaken with the University of Waikato, New Zealand.

The project is a case study titled:

Marital law reform policy, Congress and the Catholic Church:
A Philippine case study in agenda setting.

This research aims to document the history and the dynamics of marital law reform in the Philippines. The research will draw on the perspectives of those who had been involved in the deliberation of divorce bills filed in the Philippine Senate. The study will contribute to an understanding of the role of interest groups, governmental actors and governmental processes on policy formulation and the setting of agenda.

If you agree to be part of this study your participation will involve a semi-structured interview that will take between 60-90 minutes. The interview will be audio taped. You will be given opportunity to read the transcription of your interview and give any feedback you consider appropriate. Very careful measures will be taken to protect your privacy and confidentiality. A confidential coding system will be used instead of your name during the analysis and completion of the project. All interview data, notes and tape recordings will be securely stored for five years, after which time, they will be destroyed. The completed thesis will be lodged in the University of Waikato library and will be publicly available online on the internet. It may also be published elsewhere.

Interviews will be conducted by Emmanuel Guzman. Dr Patrick Barrett of the University of Waikato, New Zealand, is supervising this research project. Please feel free to contact Dr. Barrett about any other issues, questions or concerns you have about the study. You may contact him at the University of Waikato. Private Bag 3105 Hamilton 3240, or email: pbarrett@waikato.ac.nz.

This research has been approved by the Faculty of Arts and Social Sciences Human Research Ethics Committee and any inquiries about the ethical conduct of the research may be made to the Secretary of the Committee at fass-ethics@waikato.ac.nz.

If you agree to take part in this research, you have the right to:

- Refuse to answer any particular question and/ or to withdraw from the project up until two weeks after the interview.
- Ask any further questions about the study.
- Be given access to a summary of the findings from the project when it is completed.

Consent Form:

The University of Waikato Private Bag 3105 Hamilton 3240, NZ	**Researcher**:	Emmanuel Guzman Senate Bill Drafting Service, 3rd Floor, Senate of the Philippines, Pasay City Tel. (632) 552-6834 Email: eag3@waikato.ac.nz

Marital law reform policy, Congress and the Catholic Church:
A Philippine case study in agenda setting.

I have read the information Sheet for this study relating to the role of interest groups, governmental actors and governmental processes on policy formulation and the setting of agenda and have had the details of the study explained to me.

I understand that I have the right to:

- Refuse to answer any particular question, and/or to withdraw from the project up until two weeks after the interview.
- Ask any further questions about the study.
- Be given access to a summary of the findings from the project when it is completed.

I agree to provide information during a semi-structured interview under the conditions set out above and on the information sheet.

I am willing to participate in this study under the conditions as set out above.

Signed: _____ Date: _____

Name: _____

Project interviewer: **Emmanuel Guzman**, Legislative Bill Drafting Service.

Please specify how you would like copies of the transcripts be sent to you. _____

_____

Project supervisor: Dr.Patrick Barrett, The University of Waikato, Private Bag 3105 Hamilton 3240, New Zealand. Email: pbarrett@waikato.ac.nz