Rising Above Contempt: SOGIESC Equality and LGBTQI+ Rights in Philippine Law Through the Lens of *Falcis v. Civil Registrar General*

Luis Jose F. Geronimo[★]

★ '11 J.D., *with honors*, University of the Philippines College of Law. The Author was awarded the Dean's Medal for Academic Excellence and the Dean's Citation for Service and Leadership. He is currently Director IV at the House of Representatives Electoral Tribunal, and clerked at the Supreme Court (Court Attorney VI, 2013-2018). He was part of the Technical Drafting Committee for the Implementing Rules and Regulations of Republic Act No. 11313 (Safe Spaces Act), and has worked with the Supreme Court's Committee on Gender Responsiveness in the Judiciary in the development of its programs and policies. He has delivered lectures on gender concerns before academic and public institutions, including the Commission on Human Rights and the Philippine Commission on Women.

The Author thanks Deanna Clarisse M. Heceta, Patricia Kareena A. Israel, Jamilah Paola C. Laguardia, Marc Christian M. Lopez, Geraldine Marie V. Paulo, and Glydel Shialyn D. Urbano, whose insights — shared on many occasions — helped inform this Article, as well as Maria Ana E. Espinosa and Arianne Christian G. Tapao, for their editorial assistance.

The Author extends his special and warmest gratitude to Atty. Gino Paulo O. Uy, the single greatest impetus for this Article.

Cite as 64 ATENEO L.J. 1309 (2020).

I. INTRODUCTION

> *A constitution states or ought to state not rules for the passing hour, but principles for an expanding future.*
>
> — Justice Benjamin N. Cardozo[1]

1. BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 83 (1921) (emphasis omitted).

> *Better to go step by step and have a series of decisions rather than have one decision that made every law of every state, even the most liberal, unconstitutional. … Too giant a stride to take.*
>
> — Justice Ruth Bader Ginsburg,[2]
> on *Roe v. Wade*[3]

On 3 September 2019, following its regular Tuesday *en banc* session, the Supreme Court, through its Public Information Office, released a two-page media briefer,[4] announcing the dismissal of the Petition for Certiorari and Prohibition filed by Atty. Jesus Nicardo M. Falcis III.[5] The Petition had sought the legalization of same-sex marriage by invalidating Articles 1 and 2 of the Family Code[6] — which respectively define marriage as "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"[7] and specify as an essential requisite of marriage the "[l]egal capacity of the contracting parties *who must be a male and a*

2. CBS News, Ruth Bader Ginsburg: Her view from the bench, *available at* https://www.cbsnews.com/news/ruth-bader-ginsburg-her-view-from-the-bench (last accessed Aug. 15, 2020).

3. Roe v. Wade, 410 U.S. 113 (1973).

4. Mike Navallo, @mikenavallo, Tweet, Sep. 3, 2019: 2:36 p.m., TWITTER, *available at* https://twitter.com/mikenavallo/status/1168774629701210112 (last accessed Aug. 15, 2020).

5. Supreme Court junks same-sex marriage petition, *available at* https://news.abs-cbn.com/news/09/03/19/supreme-court-junks-same-sex-marriage-petition (last accessed Aug. 15, 2020).

6. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1987).

7. *Id.* art. 1 (emphasis supplied). This provision states, in whole —

> 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.

Id.

female."[8] The Petition also prayed for the nullification of Articles 46 (4) and 55 (6) of the Family Code — which respectively recognize concealment of homosexuality[9] or lesbianism existing at the time of the marriage[10] as fraud warranting annulment of a marriage, and "lesbianism or homosexuality" as a ground for legal separation.[11] The briefer intimated "lack of standing, violat[ion of] the principle of hierarchy of courts, and fail[ure] to raise an actual, justiciable controversy"[12] as reasons for dismissal. The same briefer noted that Atty. Falcis, along with his co-counsels, had been cited in contempt for failing to meet standards of court procedure and decorum.[13]

8. *Id.* art. 2 (emphasis supplied). This article provides that "[n]o marriage shall be valid, unless these essential requisites are present: (1) Legal capacity of the contracting parties who must be a male and a female; and (2) Consent freely given in the presence of the solemnizing officer." *Id.*

9. To the extent possible, this Article shall refrain from the use of the terms "homosexual" and "homosexuality." It has been explained that "the term 'homosexuality' has been associated in the past with deviance, mental illness, and criminal behavior, and these negative stereotypes may be perpetuated by biased language." American Psychological Association, Avoiding Heterosexual Bias in Language, *available at* https://www.apa.org/pi/lgbt/resources/language (last accessed Aug. 15, 2020). Quoting this, *Falcis v. Civil Registrar General* limited its use of the terms "homosexual" and "homosexuality" only "in the context of a faithful reference to the parties' pleadings and/or averments, legal provisions, and works by other authors." Falcis v. Civil Registrar General, G.R. No. 217910, Sep. 3, 2019, at 5 n. 14, *available at* http://sc.judiciary.gov.ph/8227 (last accessed Aug. 15, 2020). The same parameters observed in *Falcis* shall be observed by this Article.

10. FAMILY CODE, art. 46 (4). The provision states, "Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article: ... (4) Concealment of drug addiction, habitual alcoholism or homosexuality or lesbianism existing at the time of the marriage." FAMILY CODE, art. 46 (4). *Id.*

11. *Id.* art. 55 (6) "A petition for legal separation may be filed on any of the following grounds: ... (6) Lesbianism or homosexuality of the respondent[.]" *Id.*

12. Navallo, *supra* note 4.

13. *Id.*

The Court's decision in *Falcis v. Civil Registrar General*,[14] penned by Associate Justice Marvic M.V.F. Leonen, rather expectedly drew jubilant reactions from opponents of same-sex marriage, LGBTQI+[15] rights, and SOGIESC[16] equality. Hours after the briefing, the ruling was hailed by oppositor-intervenor Atty. Jeremy I. Gatdula. In a public Facebook post, he stated that "[t]his was the ruling that we who oppose same sex 'marriage' wanted, based on serious constitutional principles, and we got it."[17] Atty. Gatdula called the decision "an important victory for marriage and the family, for future pro-life issues[.]"[18] Roman Catholic prelates celebrated the "dismiss[al of] an immoral plea."[19] They spoke of the ruling as an "affirm[ation of the] just, natural[,] and ethical nature of marriage,"[20] and a "defense of what is in the [C]onstitution — that marriage is between a man and a woman[.]"[21]

Still, the same briefer suggested that there was more to the Court's decision than the Petition's bare dismissal.[22] It quoted the then unreleased decision as stating, "[f]rom its plain text, the Constitution does not define, or restrict, marriage on the basis of sex, gender, sexual orientation, or gender identity or expression[.]"[23] It noted the same decision as "recogniz[ing] the

14. Falcis v. Civil Registrar General, G.R. No. 217910, Sep. 3, 2019, *available at* http://sc.judiciary.gov.ph/8227 (last accessed Aug. 15, 2020).

15. LGBTQI+ refers to lesbian, gay, bisexual, transgender, queer, intersex, and other gender and sexual minorities.

16. SOGIESC refers to sexual orientation, gender identity and expression, and sex characteristics.

17. Jemy Gatdula, Status Update, Sep. 3, 2019: 4:57 p.m., FACEBOOK, *available at* https://www.facebook.com/jigatdula/posts/were-still-waiting-for-the-text-but-indications-are-the-supreme-court-accepted-o/865211927183514 (last accessed Aug. 15, 2020).

18. *Id.*

19. Leslie Ann Aquino, *Bishops hail SC junking of same-sex marriage,* MANILA BULL., Sep. 4, 2019, *available at* https://news.mb.com.ph/2019/09/04/bishops-hail-sc-junking-of-same-sex-marriage (last accessed Aug. 15, 2020).

20. *Id.*

21. Leahna Villajos, Desisyon ng SC sa same-sex marriage: Pagpapatibay sa umiiral ng batas, ayon sa Obispo, *available at* https://www.veritas846.ph/desisyon-ng-sc-sa-same-sex-marriage-pagpapatibay-sa-umiiral-ng-batas-ayon-sa-obispo (last accessed Aug. 15, 2020).

22. Navallo, *supra* note 4.

23. *Id.*

protracted history of discrimination and marginalization faced by the [LGBTQI+] community, along with their still ongoing struggle for equality."[24]

The subsequent publication of the decision's full text would reveal a significantly more nuanced ruling. Its 109 pages intricately spelled out reasons that spanned an exploration of the constitutional terrain, a balancing and demarcation of legislative and judicial prerogatives, a revisiting and refinement of the standards of judicial review, inquiry on the inadequacy of the co-existing Petition-in-Intervention, reflection on an alternative procedural vehicle, and stricture on professional responsibility and contempt liability. The decision showed itself to be far from a contemptuous renunciation of what opponents would dismiss as depraved and immoral proclivities.[25] To the contrary, it was a perceptive consideration of "erasure, discrimination, and marginalization,"[26] an optimistic appreciation of "the virtue of tolerance and the humane goal of non-discrimination,"[27] and a firm articulation of the need to correct long-entrenched wrongs.

This demands an examination of the doctrinal worth of the Court's pronouncements. This Article submits that the Court's statements which may otherwise be characterized as beneficent to the LGBTQI+ cause are integral pronouncements that both sustain and are engendered by the basic reasons underlying the Court's ultimate two-fold disposition where *first*, the

---

24. *Id.*

25. Catechism of the Catholic Church, part 3, ch. 2, ¶ 2357, *available at* https://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm (last accessed Aug. 15, 2020) (citing *Genesis* 19:1-29; *Romans* 1:24-27; 1 *Corinthians* 6:10; 1 *Timothy* 1:10; & Sacred Congregation for the Doctrine of the Faith, *Persona Humana*: Declaration on Certain Questions Concerning Sexual Ethics at part VIII, *available at* https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html (last accessed Aug. 15, 2020)).

> Basing itself on Sacred Scripture, which presents homosexual acts as acts of *grave depravity*, tradition has always declared that 'homosexual acts are *intrinsically disordered*.' They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.

Id. (emphases supplied).

26. *Falcis*, G.R. No. 217910, at 46.

27. *Id.* at 2.

Petition and Petition-in-Intervention were dismissed; and *second*, counsels were cited in contempt. It is by understanding these statements' true worth that the place *Falcis* holds in jurisprudential history and the potential that it presents in advancing LGBTQI+ rights and SOGIESC equality can be gleaned.

This Article begins by recalling what transpired in *Falcis*.[28] It proceeds to scrutinize the decision's text, examining, in particular, statements that favorably consider the plight of members of the LGBTQI+ community. It shall examine how the decision and its reasoning are structured, and the role played by those statements in how the Court developed and arrived at its disposition.[29] From this, the analysis proceeds to appraise the doctrinal worth of those statements. This, in turn, enables an examination of *Falcis*' capacity to facilitate legal and policy changes. In view of this, the Article examines prior jurisprudence that considered LGBTQI+ persons and concerns. While, in the past, Court pronouncements have been insensitive and dismissive, there is an emerging line of jurisprudence — in which *Falcis* is the latest — that more favorably considers the plight of LGBTQI+ individuals and is more receptive to SOGIESC equality. Contemporaneous developments in legislation and administrative rule-making are then examined. This shall lead to a recognition of how contemporaneous judicial, legislative, and administrative developments are unprecedented strides — across different branches and levels of government — that sustain cautious optimism on securing consummate SOGIESC equality and LGBTQI+ rights.

28. This is not meant to be an in-depth chronicle but a self-contained account serving to acquaint the reader with the most notable incidents in *Falcis*.

29. This Article does not aim to explore and critique the correctness of the Court's disposition (i.e., dismissal of the Petition and Petition-in-Intervention, as well as the contempt citation). Neither does it seek to explore how the Court may have ruled or the case played out differently, nor to consider alternative measures that the parties and/or counsels could have employed. It takes the Court's ruling as a given from which analysis shall proceed. In addition, the Article shall refrain from proposing specific strategies for future litigation.

    For a discussion on the efficacy of the *Falcis* Petition's efforts to argue for marriage equality on the basis of religious freedom, see Raphael Lorenzo Aguiling Pangalangan, *Relative Impermeability of the Wall of Separation: Marriage Equality in the Philippines*, 13 ASIAN J. COMP. LAW 415 (2018).

II. THE CASE AND ITS DEVELOPMENT

On 28 May 2015, Atty. Falcis, acting *pro se* (i.e., as counsel for himself), filed before the Supreme Court a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Civil Procedure which sought to "declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46 (4) and 55 (6) of the Family Code."[30] Atty. Falcis impleaded the Civil Registrar General as sole respondent and specifically prayed that the Civil Registrar General be prohibited from enforcing Articles 1 and 2 of the Family Code in the processing of applications for marriage licenses.[31]

Not having himself previously applied for and failed to obtain a marriage license, Atty. Falcis invoked no other facts and antecedents than the prior adoption in 1949 of the Civil Code — whose provisions did not expressly limit marriage to a man and a woman — and the subsequent adoption in 1988 of the Family Code.[32] He pleaded having a personal stake in the outcome of the case as he, "an open and self-identified homosexual ... has grown up in a society where same-sex relationships are frowned upon because of the [Family Code's] normative impact."[33] Moreover, he claimed that his "ability to find and enter into long-term monogamous same-sex relationships [was] impaired because of the absence of a legal incentive for gay individuals to seek such relationship."[34] He added that the current prohibition on same-sex marriage "injure[d his] plans to settle down and have a companion for life in his beloved country."[35]

He justified resort to a Rule 65 Petition, asserting that his plea for relief concerned "a constitutional case attended by grave abuse of discretion,"[36] such grave abuse being the mere passage of the Family Code.[37] To justify

30. Petition for Certiorari and Prohibition, May 18, 2015, at 29 (on file with the Supreme Court), *in* Falcis v. Civil Registrar, G.R. No. 217910, Sep. 3, 2019, *available at* http://sc.judiciary.gov.ph/8227 (last accessed Aug. 15, 2020).

31. *Id.* at 1-2.

32. *Id.* at 3-4.

33. *Id.* at 10.

34. *Id.*

35. *Id.*

36. *Falcis*, G.R. No. 217910, at 4 (citing Petition for Certiorari and Prohibition, May 18, 2015, at 7-8).

37. *Id.*

direct recourse to the Court, Atty. Falcis invoked transcendental importance and the supposed lack of factual issues requiring trial.[38] He further asserted that Articles 1 and 2 of the Family Code denied "individuals belonging to religious denominations that believe in same-sex marriage ... the right to found a family in accordance with their religious convictions."[39]

Required by the Court to file its Comment,[40] the Office of the Solicitor General (under then Solicitor General Florin T. Hilbay), representing the respondent Civil Registrar General, asked the Court to dismiss the Petition.[41] According to it, Atty. Falcis failed to show injury-in-fact or demonstrate an actual, justiciable case or controversy.[42] It asserted that Atty. Falcis was merely asking for an advisory opinion.[43]

In the interim, an Answer-in-Intervention was filed by Atty. Fernando P. Perito.[44] Citing the Christian Bible as principal authority, he sought the dismissal of the Petition.[45] With Atty. Falcis as counsel, LGBTS Christian Church, Inc., Reverend Crescencio "Ceejay" Agbayani, Jr., Marlon Felipe, and Maria Arlyn "Sugar" Ibañez filed a Petition-in-Intervention.[46] They noted that petitioners-intervenors Reverend Agbayani and Felipe, as well as Ibañez (along with her partner) were denied marriage licenses on 3 August 2015.[47] The Court subsequently allowed these interventions.[48]

The case was set for oral arguments. Following the preliminary conference for oral arguments, Atty. Falcis was cited in contempt as he failed to observe customary courtesies in court (such as properly addressing the justices and rising to manifest his presence or to respond to the Justices'

38. Petition for Certiorari and Prohibition, May 18, 2015, at 8-9.

39. *Id.* at 27.

40. *Falcis*, G.R. No. 217910, at 6.

41. *Id.* at 7.

42. *Id.*

43. *Id.*

44. *Id.* at 6.

45. *Id.*

46. *Falcis*, G.R. No. 217910, at 7.

47. *Id.* at 8.

48. *Id.* at 9.

queries).[49] He had also come in improper attire despite receiving notice months prior to the preliminary conference.[50] He was further noted to have stated contracting the services of external counsel but failed to specifically identify a lawyer or law firm.[51] It would only be well after the preliminary conference that a law firm would enter its appearance.[52] This contempt citation resulted in Atty. Falcis being admonished and "sternly warned that any further contemptuous act shall be dealt with more severely."[53]

Another adverse Intervention would be filed by Ronaldo T. Reyes, Jeremy I. Gatdula, Cristina A. Montes, and Rufino L. Policarpio III.[54] They claimed to have standing to intervene "as the proposed definition of marriage in the Petition [was] contrary to their religious beliefs and religious freedom."[55]

On 14 June 2018, the Office of the Solicitor General (under Solicitor General Jose C. Calida) filed a Supplemental Comment.[56] It addressed the substantive issues and "claim[ed] that since the Constitution only contemplates opposite-sex marriage in Article XV, Section 2 and other related provisions, Articles 1 and 2 of the Family Code are constitutional."[57]

Oral arguments were held on 19 and 26 June 2018.[58] At the close of oral arguments, the parties were given 30 days to file their memoranda.[59]

49. Resolution, July 3, 2018, at 1-2 (on file with the Supreme Court), *in* Falcis v. Civil Registrar, G.R. No. 217910, Sep. 3, 2019, *available at* http://sc.judiciary.gov.ph/8227 (last accessed Aug. 15, 2020).

50. *Id.* at 2.

51. *Id.* at 1.

52. *Falcis*, G.R. No. 217910, at 11.

53. *Id.* at 10.

54. *Id.* at 10-11.

55. *Id.*

56. *Falcis*, G.R. No. 217910, at 11.

57. *Id.* at 11-12.

58. *Id.* at 12.

59. *Id.*

On 26 July 2018, Atty. Falcis and his co-counsels filed a Motion for Extension to file Memorandum.[60] For his part, Atty. Perito failed to file his memorandum or make any submission concerning it.[61] Atty. Falcis and his co-counsels' plea for extension instead of actual filing of memoranda within 30 days, as well as Atty. Perito's omission, prompted the Court to issue a Resolution on 7 August 2018 ordering Atty. Falcis, his co-counsels, and Atty. Perito to show cause why they should not be cited in contempt.[62] The same Resolution denied Atty. Falcis' and his co-counsels' Motion for Extension and dispensed with the filing of the memoranda due from them.[63]

On 3 September 2019, the Court *en banc* unanimously ruled to dismiss both Atty. Falcis' original Petition and the Petition-in-Intervention which he filed for other persons.[64] The Court also found Atty. Falcis, his co-counsels, and Atty. Perito guilty of indirect contempt of court.[65] Owing to his having been previously cited in contempt and sternly warned, Atty. Falcis was meted a fine.[66] His co-counsels and Atty. Perito were reprimanded and admonished to be more circumspect of their duties as counsel.[67] In addition to the decision penned by Associate Justice Leonen, then-Associate Justice Diosdado M. Peralta and Associate Justice Francis H. Jardeleza wrote concurring opinions.[68]

III. THE DECISION: DESIGN, STRUCTURE, AND METHOD

The Court identified two sets of issues concerning the Petition and Petition-in-Intervention: *first*, "whether or not [they] are properly the

60. *Id.*

61. *Id.*

62. *Falcis*, G.R. No. 217910, at 12.

63. *Id.*

64. *Id.* at 107.

65. *Id.*

66. *Id.*

67. *Id.*

68. *See Falcis*, G.R. No. 217910 (J. Peralta, separate opinion & J. Jardeleza, concurring opinion), *available at* http://sc.judiciary.gov.ph/8254 & http://sc.judiciary.gov.ph/8256 (last accessed Aug. 15, 2020).

subject of the exercise of [its] power of judicial review;"[69] and, *second*, substantive issues concerning the validity of limiting marriage to opposite-sex couples and, *ultimately*, whether Atty. Falcis and the petitioners-intervenors were entitled to the reliefs they sought.[70] The Court noted that the second set of issues would merit consideration only if "the Petition and/or Petition-in-Intervention [would] show themselves to be appropriate subjects of judicial review."[71] The 7 August 2018 show-cause

---

69. *Falcis*, G.R. No. 217910, at 13. Specifically, it mentioned:

> First, whether or not the mere passage of the Family Code creates an actual case or controversy reviewable by this Court;
>
> Second, whether or not the self-identification of petitioner Jesus Nicardo M. Falcis III as a member of the LGBTQI+ community gives him standing to challenge the Family Code;
>
> Third, whether or not the Petition-in-Intervention cures the procedural defects of the Petition; and
>
> Fourth, whether or not the application of the doctrine of transcendental importance is warranted.

Id.

70. *Id.* at 13-14. Specifically:

> First, whether or not the right to marry and the right to choose whom to marry are cognates of the right to life and liberty;
>
> Second, whether or not the limitation of civil marriage to opposite-sex couples is a valid exercise of police power;
>
> Third, whether or not limiting civil marriages to opposite-sex couples violates the equal protection clause;
>
> Fourth, whether or not denying same-sex couples the right to marry amounts to a denial of their right to life and/or liberty without due process of law;
>
> Fifth, whether or not sex-based conceptions of marriage violate religious freedom;
>
> Sixth, whether or not a determination that Articles 1 and 2 of the Family Code are unconstitutional must necessarily carry with it the conclusion that Articles 46 (4) and 55 (6) of the Family Code, on homosexuality and lesbianism as grounds for annulment and legal separation, are also unconstitutional; and
>
> Finally, whether or not the parties are entitled to the reliefs prayed for.

Id.

71. *Id.* at 13.

order also remained unresolved and the Court would proceed to rule on the concerned counsels' liability for contempt.

The 3 September 2019 decision was thus binary. *First*, it was a ruling on the Petition and Petition-in-Intervention, whose principal pleas were the invalidation of the Family Code's heteronormative conception of marriage. *Second*, it was a ruling on several individuals' liability for disrespecting the Court.

The Court laid out its reasons in 14 parts. The first 12 parts concerned the dismissal of the Petition and Petition-in-Intervention. The last two parts concerned the contempt citation.

Part I surveyed the constitutional terrain. It engaged in a principally textual analysis of relevant constitutional provisions[72] and observed that the Constitution does not actually stipulate heteronormativity in marriage. It then considered the implications of the Constitution's textual silence.[73]

Part II discussed basic principles and concepts concerning judicial review. It explained that the power of judicial review inheres in judicial power, particularly given the 1987 Constitution's "expan[sion of] the territory of justiciable questions and narrow[ing of] the off-limits area of

72. *Id.* at 14-17 (citing PHIL. CONST., art. II, § 12 & art. XV, §§ 1 & 2). According to these constitutional provisions —

> Article II, Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.
>
> Article XV, Section 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.
>
> Article XV, Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Falcis, G.R. No. 217910, at 14-17 (citing PHIL. CONST., art. II, § 12 & art. XV, §§ 1 & 2).

73. *Id.* at 15-17.

political questions."[74] It clarified that, even under this expanded regime, basic requirements of justiciability are not abandoned.[75] Thus,

> the following requisites must be satisfied: (1) there must be an actual case or controversy involving legal rights that are capable of judicial determination; (2) the parties raising the issue must have standing or locus standi to raise the constitutional issue; (3) the constitutionality must be raised at the earliest possible opportunity, thus ripe for adjudication; and (4) the matter of constitutionality must be the very *lis mota* of the case, or that constitutionality must be essential to the disposition of the case.[76]

Part III delved into the nature of questions that are properly the subject of judicial review. It noted that it is improper to "decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests."[77] It emphasized that Supreme Court rulings are "final and binding construction[s] of law"[78] which "cannot be mere counsel for unreal conflicts conjured by enterprising minds."[79]

Part IV considered the bounds of judicial review when what is questioned is a statute, as enacted. Noting that it is not for courts to make conclusions on the wisdom of policy adopted by Congress, it underscored that the basic requirement of an actual case remained imperative.[80] Conceding that "[t]here are instances when th[e] Court exercised the power of judicial review in cases involving newly-enacted laws[,]"[81] it nevertheless affirmed that "[u]ltimately, petitions ... that challenge an executive or legislative enactment must be based on actual facts, sufficiently for a proper joinder of issues to be resolved."[82]

---

74. *Id.* at 19.

75. *Id.* at 20 (citing Ocampo v. Enriquez, 807 SCRA 223, 338 (2016)).

76. *Falcis*, G.R. No. 217910, at 20 (citing Macasiano v. National Housing Authority, 224 SCRA 236, 242 (1993) & Disini, Jr. v. Secretary of Justice, 716 SCRA 237 (2014) (J. Leonen, concurring and dissenting opinion)).

77. *Falcis*, G.R. No. 217910, at 21 (citing Spouses Arevalo v. Planters Development Bank, 670 SCRA 252, 262 (2012)).

78. *Falcis*, G.R. No. 217910, at 21 (citing Belgica v. Ochoa, 710 SCRA 1, 279 (2013) (J. Leonen, concurring opinion)).

79. *Falcis*, G.R. No. 217910, at 21.

80. *Id.* at 22.

81. *Id.* at 23.

82. *Id.* at 29 (citing Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 632 SCRA 146, 177 (2010)).

Part V emphasized that it is the duty of parties seeking relief "to demonstrate actual cases or controversies worthy of judicial resolution."[83] As they litigate cases before the Supreme Court, they do this through pleadings which "must show a violation of an existing legal right or a controversy that is ripe for judicial determination."[84]

Part VI asserted that "[t]he need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups[,]"[85] and that "scrutiny on the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny[.]"[86] Applying this precept, it recognized the LGBTQI+ community as a marginalized minority which has "borne the brunt of societal disapproval."[87] It then examined different dimensions of the marginalization of LGBTQI+ individuals.[88]

Proceeding from the prior parts' discussions on principles concerning justiciability, Part VII applied those principles and explained how Atty. Falcis failed to present a justiciable controversy.[89] It noted that, contrary to the requirement that his pleadings "must show a violation of an existing legal right or a controversy that is ripe for judicial determination,"[90] Atty. Falcis referred to portions of retired Chief Justice Reynato Puno's Separate Opinion in *Ang Ladlad Party-list v. Commission on Elections*,[91] but at the same time "did not explain why th[e] Court should adopt th[at] separate opinion."[92]

It explained that Atty. Falcis' Petition "stay[ed] firmly in the realm of the speculative and conjectural."[93] It lamented how the "29-page initiatory pleading neither cite[d] nor annexe[d] any credible or reputable studies,

83. *Falcis*, G.R. No. 217910, at 31.

84. *Id.*

85. *Id.* at 33.

86. *Id.*

87. *Id.* (citing Ang Ladlad LGBT Party v. Commission on Elections, 618 SCRA 32, 60 (2010)).

88. *Falcis*, G.R. No. 217910, at 34-46.

89. *Id.* at 46-49.

90. *Id.* at 31.

91. Ang Ladlad LGBT Party v. Commission on Elections, 618 SCRA 32 (2010).

92. *Falcis*, G.R. No. 217910, at 47.

93. *Id.*

statistics, affidavits, papers, or statements that would impress upon th[e] Court the gravity of [Atty. Falcis'] cause."[94]

Part VII also noted that even Atty. Falcis' choice of sole respondent "expose[d] the lack of an actual case or controversy."[95] It explained that Atty. Falcis' chosen remedy — a Petition for Certiorari and Prohibition — needed to be anchored on grave abuse of discretion.[96] Yet, Atty. Falcis never came to the Civil Registrar General or to anyone acting under that officer's authority to apply for a marriage license.[97] Thus, there was never an instance when the Civil Registrar General exercised discretion — let alone gravely abused that discretion — insofar as Atty. Falcis' intention to facilitate the issuance of marriage licenses to same-sex couples was concerned.[98] It further quoted Atty. Falcis as admitting during oral arguments "that he has not suffered from respondent's enforcement of the law he is assailing"[99] —

> JUSTICE BERNABE:
>
> Have you actually tried applying for a marriage license?
>
> ATTY. FALCIS:
>
> No, Your Honors, because I would concede that I do not have a partner and that even if I do have a partner, it is not automatic that my partner might want to marry me and so, Your Honors, I did not apply or I could not apply for a marriage license.[100]

Further affirming that the LGBTQI+ community is "a historically marginalized community"[101] and noting how favorable action on Atty. Falcis' Petition, despite its limitations, could mean encroachment on prerogatives that are beyond the Court's judicial power, Part VIII presented a litany of laws from diverse areas that stood to be affected by an invalidation of the Family Code's heteronormative conception of marriage. It emphasized that "none [of those laws] was ever mentioned in the Petition or

94. *Id.*

95. *Id.*

96. *Id.* at 48-49.

97. *Id.* at 48.

98. *Falcis*, G.R. No. 217910, at 48.

99. *Id.* at 49.

100. *Id.*

101. *Id.* at 50.

the Petition-in-Intervention."[102] Addressing what could otherwise have been the wholesale reframing of volumes upon volumes of legislation, and also hearkening to its own limits, the Court, adverted to how, as things then stood, Congress was in a better position to craft the intricacies of how same-sex unions are to be legally recognized.[103] It added that the summary legalization of same-sex marriage through favorable action on Atty. Falcis' Petition may not be optimal for same-sex couples as it might "delay other more inclusive and egalitarian arrangements that the State can acknowledge."[104]

Part IX concerned Atty. Falcis' lack of legal standing. Addressing his Petition's specific allegations, it stated —

> Mere assertions of a 'law's normative impact[;]' 'impairment' of his 'ability to find and enter into long-term monogamous same-sex relationships[;]' as well as injury to his 'plans to settle down and have a companion for life in his beloved country[;]' or influence over his 'decision to stay or migrate to a more LGBT[QI+] friendly country' cannot be recognized by this Court as sufficient interest. Petitioner's desire 'to find and enter into long-term monogamous same-sex relationships' and 'to settle down and have a companion for life in his beloved country' does not constitute legally demandable rights that require judicial enforcement.[105]

Part X explained how, even with the Petition-in-Intervention, relief could not be facilitated. The Court observed that the Petition-in-Intervention, which was also filed by Atty. Falcis as counsel, suffered from the same defects as the original Petition and "merely 'adopt[ed] by reference as [its] own all the arguments raised by [Atty. Falcis] in his original Petition[.]'"[106] It drew attention to how, even as the petitioners-intervenors allegedly applied for but were denied marriage licenses, their Petition-in-Intervention never sought to compel the Civil Registrar General to issue marriage licenses to them but instead merely mimicked the original Petition's prayer.[107] With these observations, the Court concluded that the

---

102. *Id.* at 79.

103. *Id.* at 80.

104. *Falcis*, G.R. No. 217910, at 82.

105. *Id.* at 84-85.

106. *Id.* at 87.

107. *Id.*

Petition-in-Intervention was "a veiled vehicle by which petitioner sought to cure the glaring procedural defects of his original Petition."[108]

Part XI further delved into Atty. Falcis' wrong choice of remedy and discussed declaratory relief as an alternative.[109]

Part XII discussed Atty. Falcis' violation of the doctrine of hierarchy of courts as further reason for dismissing his Petition.[110] Citing its recent decision in *Gios-Samar, Inc. v. Department of Transportation and Communications*,[111] the Court emphasized that "concurrent jurisdiction of the Court of Appeals and the regional trial courts with th[e Supreme] Court does not give parties absolute discretion in immediately seeking recourse from the highest court of the land."[112] The Court added that Atty. Falcis' averment of transcendental importance failed to impress, as all he pleaded in his Petition to substantiate transcendental importance was the following solitary paragraph —

> 25. Lastly, Petitioner submits that the instant petition raises an issue of transcendental importance to the nation because of the millions of LGBT[QI+] Filipinos all over the country who are deprived from marrying the one they want or the one they love. They are discouraged and stigmatized from pursuing same-sex relationships to begin with. Those who pursue same-sex relationships despite the stigma are deprived of the bundle of rights that flow from a legal recognition of a couple's relationship — visitation and custody rights, property and successional rights, and other privileges accorded to opposite-sex relationships.[113]

Having exhausted the reasons for dismissing the Petition, Parts XIII and XIV delved into the contempt liability of Atty. Falcis, his co-counsels, and Atty. Perito.[114]

---

108. *Id.* at 88.

109. *Id.* at 90-92.

110. *Falcis*, G.R. No. 217910, at 92-102.

111. Gios-Samar, Inc. v. Department of Transportation and Communication, G.R. No. 217158, Mar. 12, 2019, *available at* http://sc.judiciary.gov.ph/2331 (last accessed Aug. 15, 2020).

112. *Falcis*, G.R. No. 217910, at 94 (citing *Gios-Samar*, G.R. No. 217158, at 14 & Southern Luzon Drug Corporation v. Department of Social Welfare and Development, 824 SCRA 164, 190 (2017)).

113. *Falcis*, G.R. No. 217910, at 101.

114. *Id.* at 102-107.

Part XIII emphasized the need for lawyers "to zealously defend their client's cause, diligently and competently, with care and devotion[.]"[115] Lamenting how Atty. Falcis "wagered in litigation no less than the future of a marginalized and disadvantaged minority group[,]"[116] the Court faulted Atty. Falcis for again being unable to meet standards of procedure, as he and his co-counsels sought an extension, instead of filing memoranda within 30 days, as the Court had actually required.[117]

Part XIV explained that a higher degree of diligence was expected of lawyers who "take up the cudgels on behalf of a minority class"[118] and engage in public interest litigation. Atty. Falcis was noted to have failed to meet this quantum of diligence, as he did not satisfy standards of procedure and decorum on several occasions. The Court remarked that "[l]itigation for the public interest of those who have been marginalized and oppressed deserves much more than the way that it has been handled in this case."[119]

IV. "[T]O DISMISS THE PETITION, NOT THE IDEA OF MARRIAGE EQUALITY": CENTERING ON THE COURT'S BENEFICENT STATEMENTS

It is not difficult to see that *Falcis* is far from a rebuke — as those who initially celebrated it seemed inclined to think — of same-sex marriage, in particular, and SOGIESC equality and LGBTQI+ rights, in general. Associate Justice Jardeleza's concurrence succinctly captures what could very well be the decision's underlying sentiment — "I vote to DISMISS the petition, *not* the idea of marriage equality."[120]

A. Introductory Statements

Right at its opening paragraph, *Falcis* speaks amiably of those who "courageously choose to be authentic to themselves"[121] even as "[c]ultural

115. *Id.* at 102.

116. *Id.* at 103.

117. *Id.* at 104.

118. *Id.* at 105.

119. *Falcis*, G.R. No. 217910, at 107.

120. *Id.* at 1 (J. Jardeleza, concurring opinion) *available at* http://sc.judiciary.gov.ph/8256 (last accessed Aug. 15, 2020) (emphasis supplied).

121. *Falcis*, G.R. No. 217910, at 2.

hegemony [makes] impositions on their identities."[122] Succeeding paragraphs immediately recognize the LGBTQI+ community's being marginalized and discriminated —

> Those with sexual orientations other than the heteronormative, gender identities that are transgender or fluid, or gender expressions that are not the usual manifestations of the dominant and expected cultural binaries — the [LGBTQI+] community — have suffered enough marginalization and discrimination within our society.[123]

The introduction further adverts to the propriety of extending legal recognition to same-sex relations: "The pleadings assert a broad right of same-sex couples to official legal recognition of their intimate choices. They certainly deserve legal recognition in some way."[124]

B. Exploring the Constitutional Terrain

The Court's discussion of issues opens with the observation that, "[f]rom its plain text, the Constitution does not define or restrict marriage on the basis of sex, gender, sexual orientation, or gender identity or expression."[125] This sentence is supported by references to statutory and academic sources that define each of the terms comprising the overarching concept of SOGIE.[126]

This observation and emphasis on the Constitution's plain text is in keeping with *verba legis* and "[t]he fundamental principle in constitutional construction ... that the primary source from which to ascertain

---

122. *Id.*

123. *Id.*

124. *Id.* at 3.

125. *Id.* at 14 (citing An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313, §§ 3 (d) & (f) (2019); American Psychological Association, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PSYCHOL. 832, 862 (2015); American Psychological Association, *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients*, 67 AM. PSYCHOL. 10, 11 (2011); & ARC International, et al., Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review at 14, *available at* https://ilga.org/downloads/SOGIESC_at_UPR_report.pdf (last accessed Aug. 15, 2020)).

126. *Id.* at 14-15.

constitutional intent or purpose is the language of the provision itself."[127] As explained in *David v. Senate Electoral Tribunal*[128] —

> The entire exercise of interpreting a constitutional provision must necessarily begin with the text itself. The language of the provision being interpreted is the principal source from which this Court determines constitutional intent.
>
> To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis*. The Constitution is truly a public document in that it was ratified and approved by a direct act of the People: exercising their right of suffrage, they approved of it through a plebiscite. The preeminent consideration in reading the Constitution, therefore, is the People's consciousness: that is, popular, rather than technical-legal, understanding. Thus:
>
> *We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin*. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus, these are the cases where the need for construction is reduced to a minimum.[129]

Indeed, at no point do the Constitution's provisions on family and marriage expressly stipulate heteronormativity. From this, *Falcis*' succeeding point proceeds, i.e., that, "[l]acking a manifestly restrictive textual definition of marriage, the Constitution is capable of accommodating a

127. Ang Bagong Bayani-OFW Labor Party v. Commission on Elections, 359 SCRA 698, 724 (2001).

128. David v. Senate Electoral Tribunal, 803 SCRA 435 (2016).

129. *Id.* at 477-78 (citing *Ang Bagong Bayani-OFW Labor Party*, 359 SCRA at 724; Chavez v. Judicial and Bar Council, 696 SCRA 496, 546 (2013) (J. Leonen, dissenting opinion); & Francisco, Jr. v. Nagmamalasakit na mga Mananganggol ng mga Manggagawang Pilipino, Inc., 415 SCRA 44, 126 (2003)).

contemporaneous understanding of [SOGIESC],"[130] that "[t]he plain text and meaning of our constitutional provisions do not prohibit SOGIESC."[131]

Falcis then explains that constitutional interpretation cannot be confined to reading text according to static, historical denotations, but must allow for the evolved understanding of the present, and even what society forwardly envisions.[132] It proceeds to detail how "[t]he evolution of the social concept of family reveals that heteronormativity in marriage is not a static anthropological fact." [133] In dismantling the immutability of heteronormativity in marriage, *Falcis* invites challenge on, *first*, the centrality and indispensability of procreation in marriage, [134] and *second*, distaste towards so-called nontraditional families —

> The perceived complementarity of the sexes is problematized by the changing roles undertaken by men and women, especially under the present economic conditions.
>
> To continue to ground the family as a social institution on the concept of the complementarity of the sexes is to perpetuate the discrimination faced by couples, whether opposite-sex or same-sex, who do not fit into that mold. It renders invisible the lived realities of families headed by single parents, families formed by sterile couples, families formed by couples who preferred not to have children, among many other family organizations. Furthermore, it reinforces certain gender stereotypes within the family.[135]

C. Keen Language

The Court's exploration of text and terminologies reveals unprecedented adeptness in and sensitivity towards gender dynamics. For the first time, the distinctions between sex, a biological concept, and gender, a social

130. *Falcis*, G.R. No. 217910, at 15.

131. *Id.*

132. *Id.* at 15-16 (citing *David*, 803 SCRA; Social Weather Stations, Inc. v. Commission on Elections, 757 Phil. 483, 521 (2015); & *Chavez*, 696 SCRA (J. Leonen, dissenting opinion)).

133. *Falcis*, G.R. No. 217910, at 17.

134. *Id.* at 16-17.

135. *Id.* at 17.

concept,[136] and further, sexual orientation, gender identity, and gender expression were recognized by and accurately contained in a Supreme Court decision.

The Court also shunned the use of the term "homosexual." It quoted the American Psychological Association's *Avoiding Heterosexual Bias in Language* in noting that "the term 'homosexuality' has been associated in the past with deviance, mental illness, and criminal behavior, and these negative stereotypes may be perpetuated by biased language."[137] Thus, it limited the use of the term "only ... in the context of a faithful reference to the parties' pleadings and/or averments, legal provisions, and works by other authors."[138]

D. Considering Justiciability: Recognizing Marginalization, Oppression, and the Need for Equality

Well into its discussion on justiciability and the actual case or controversy requirement, *Falcis* articulates the imperative of carefully assessing justiciability in cases involving minorities and the marginalized, stating, "[t]he need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups."[139] It adds, "scrutiny on

---

136. Republic v. Unabia, G.R. No. 213346, Feb. 11, 2019, *available at* http://sc.judiciary.gov.ph/2302 (last accessed Aug. 15, 2020 (J. Leonen, concurring opinion) (citing Susan E. Short, et al., *Sex, Gender, Genetics, and Health*, 103 AM. J. OF PUBLIC HEALTH 93 (2013)).

137. *Falcis*, G.R. No. 217910, at 5 n. 14. As similarly explained in GLAAD's Media Reference Guide —

> Because of the clinical history of the word 'homosexual,' it is aggressively used by anti-gay extremists to suggest that gay people are somehow diseased or psychologically/emotionally disordered — notions discredited by the American Psychological Association and the American Psychiatric Association in the 1970s. Please avoid using 'homosexual' except in direct quotes. Please also avoid using 'homosexual' as a style variation simply to avoid repeated use of the word 'gay.' The Associated Press, The New York Times and The Washington Post restrict use of the term 'homosexual' (see AP & New York Times Style).

GLAAD, GLAAD's Media Reference Guide — Terms To Avoid, *available at* https://www.glaad.org/reference/offensive (last accessed Aug. 15, 2020).

138. *Falcis*, G.R. No. 217910, at 5 n. 14.

139. *Id.* at 33.

the existence of actual facts becomes most necessary when the rights of marginalized, minority groups have been thrust into constitutional scrutiny by a party purporting to represent an entire sector."[140]

Part VI begins simultaneously with caution at the limits of, as well as confidence, in the extent of the Court's competence. The Court here recognizes that it is not the final authority in fields other than law, but is at the same time sufficiently learned and capable of judiciously determining which ideas and propositions deserve credence. This is in addition to how judicial power is fundamentally disinterested with prospective policy —

> We are equipped with legal expertise, but we are not the final authority in other disciplines. In fields such as politics, sociology, culture, and economics, this Court is guided by the wisdom of recognized authorities, while being steered by our own astute perception of which notions can withstand reasoned and reasonable scrutiny. This enables us to filter unempirical and outmoded, even if sacrosanct, doctrines and biases.
>
> This Court exists by an act of the sovereign Filipino people who ratified the Constitution that created it. Its composition at any point is not the result of a popular election reposing its members with authority to decide on matters of policy. This Court cannot make a final pronouncement on the wisdom of policies. Judicial pronouncements based on wrong premises may unwittingly aggravate oppressive conditions.[141]

Having both laid out a fundamental precept for analysis and demarcated the Court's capacities, *Falcis* makes the conclusion that the LGBTQI+ community is a marginalized minority.[142]

In arriving at this conclusion, it dispels the notion that anything other than heteronormativity and/or cisnormativity is "objectively disordered."[143] It rejects the idea, rooted in natural law, of complementarity of the sexes. Specifically quoting a document prepared by the Vatican's Congregation for Catholic Education, it spurns the claim that "the sexual orientation, gender identity, and gender expression of members of the LGBTQI+ community [are] unnatural, purely ideological, or socially constructed[,] ... 'founded on nothing more than a confused concept of freedom in the realm of feelings and wants, or momentary desires provoked by emotional impulses and the

---

140. *Id.*

141. *Id.*

142. *Id.* at 46 & 50.

143. Catechism of the Catholic Church, *supra* note 25, ¶ 2358.

will of the individual, as opposed to anything based on the truths of existence.'"[144]

In view of this, *Falcis* cites scientific literature discussing how same-sex conduct is a natural phenomenon documented in close to 1,000 animal species.[145] It further references studies which suggest that "sexual orientation is polygenetic and sociocultural,"[146] and "propose that there are anatomical differences between [individuals] of different sexual orientations."[147]

Keen at how advocates of complementarity of the sexes tend to insist that humans and their behavior ought to be differentiated from the rest of nature and supposedly sub-human, animal tendencies, *Falcis* discusses the errors of human-nature dualism, anthropocentrism, and perceived innate human superiority —

> To insulate the human species from the natural phenomenon of same-sex conduct is to reinforce an inordinately anthropocentric view of nature. Giving primacy to 'human reason and sentience[,]' anthropocentrism is 'the belief that there is a clear and morally relevant dividing line between humankind and the rest of nature, that humankind is the only principal source of value or meaning in the world.'
>
> This 'human-nature dualism contains a problematic inconsistency and contradiction,' for it rejects the truth that human beings are part of nature. Further, human superiority is conceived from the lens of human cognitive abilities and imposes a socially constructed moral hierarchy between human beings and nature.
>
> Human-nature dualism lays the foundation 'for a cultural context that legitimized domination ... [which] is at the root of other modern

144. *Falcis*, G.R. No. 217910, at 34 (citing CONGREGATION FOR CATHOLIC EDUCATION, "MALE AND FEMALE HE CREATED THEM": TOWARDS A PATH OF DIALOGUE ON THE QUESTION OF GENDER THEORY IN EDUCATION 14-15 (2019)).

145. *Falcis*, G.R. No. 217910, at 34 (citing University of Oslo Natural History Museum, Homosexuality in the Animal Kingdom, *available at* https://www.nhm.uio.no/besok-oss/utstillinger/skiftende/tidligere/againstnature/gayanimals.html (last accessed Aug. 15, 2020)).

146. *Falcis*, G.R. No. 217910, at 35 (citing Andrea Ganna, et al., *Large-scale GWAS reveals insights into the genetic architecture of same-sex sexual behavior*, 365 SCIENCE 1, 6-7 (2019)).

147. *Falcis*, G.R. No. 217910, at 36 (citing Nuffield Council on Bioethics, *Review of the evidence: sexual orientation*, *in* GENETICS AND HUMAN BEHAVIOR: THE ETHICAL CONTEXT 104 (2014)).

> "imaginary oppositions "such as the split between reason-emotion, mind-body, and masculine-feminine.' This dichotomy propels numerous forms of gender oppression in that anything attached to reason and culture is associated with masculinity, while anything attached to emotion, body, and nature is associated with femininity. This anthropocentric view can only manifest itself 'in a violent and self-destructive manner, fatal both to human and non-human life[.][148]

In further support of its rejection of same-sex conduct's being objectively disordered, *Falcis* notes that the scientific community has long abandoned any conception of such conduct as a mental disorder. It specifically cites the delisting of "homosexuality" from the Diagnostic and Statistical Manual, and the World Health Organization's International Classification of Diseases.[149]

Substantiating how a misguided understanding of same-sex conduct has engendered oppressive conditions, *Falcis* cites a survey of how penal laws have been instrumental in persecuting members of the LGBTQI+ community.[150] It further cites reports prepared for the United Nations

148. *Falcis*, G.R. No. 217910, at 36 (citing Martin Coward, *Against Anthropocentrism: The Destruction of the Built Environment as a Distinct Form of Political Violence*, 32 REV. OF INT'L STUD. 419, 420 (2006); Ronald E. Purser, et al., *Limits to Anthropocentrism: Toward an Ecocentric Organization Paradigm?*, 20 THE ACADEMY OF MANAGEMENT REV. 1053, 1054 & 1057-58 (1995); Thomas White, *Humans and Dolphins: An Exploration of Anthropocentrism in Applied Environmental Ethics*, 3 REV. OF INT'L STUD. 85, 87 (2013); Amy Fitzgerald & David Pellow, *Ecological Defense for Animal Liberation: A Holistic Understanding of the World*, *in* COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 29 (2014); & Adam Weitzenfeld and Melanie Joy, *An Overview of Anthropocentrism, Humanism, and Speciesism in Critical Animal Theory*, *in* COUNTERPOINTS, VOL. 448, DEFINING CRITICAL ANIMAL STUDIES: AN INTERSECTIONAL SOCIAL JUSTICE APPROACH FOR LIBERATION 6 (2014)).

149. *Falcis*, G.R. No. 217910, at 37-38 (citing Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, 5 BEHAVIORAL SCIENCES 565, 568 (2015); Gregory M. Herek, Facts About Homosexuality and Mental Health, *available at* https://psychology.ucdavis.edu/rainbow/html/facts_mental_health.html (last accessed Aug. 15, 2020); & American Psychological Association, Sexual Orientation & Homosexuality, *available at* https://www.apa.org/topics/lgbt/orientation (last accessed Aug. 15, 2020)).

150. *Falcis*, G.R. No. 217910, at 38-39 (citing Ma. Theresa Casal De Vela, *The Emergence of LGBT Human Rights and the Use of Discourse Analysis in Understanding LGBT State Inclusion*, LX PHIL. J. PUB. AD. 72, 75-79 (2016)).

Human Rights Committee and the Committee on the Elimination of Discrimination against Women, which detailed information from 1996 to 2017 on hate crimes and human rights violations against members of the LGBTQI+ community, discussed the inadequacy of existing frameworks, and documented discrimination by those who should otherwise be protecting LGBTQI+ individuals, among others, the police, health workers, educators, employers, and even the judiciary.[151]

Exploring the domestic situation, *Falcis* discusses how pre-colonial Philippine society was characterized by diversity in SOGIESC expressions, reverence for "gender crossers,"[152] and non-limitation of marriage to a man and a woman. These, however, were suppressed by Spanish colonizers —

> For instance, the Vocabulario de la Lengua Tagala, published in 1860, and the Vocabulario de la Lengua Bicol, in 1865, both make reference to the word asog, which refers to men who dress in women's clothes and keep relations with fellow men. These persons exercised significant roles in the pre-colonial Philippine society and were even revered as authorities[.]
>
> ...
>
> Aside from this fluidity in gender expression, it has also been observed that 'the local concept of matrimony was not imprisoned into male-and-female only.' According to various cronicas y relaciones, the bayoguin, bayok, agi-ngin, asog, bido, and binabae, among others, 'were 'married' to men, who

151. *Falcis*, G.R. No. 217910, at 39-41 (citing International Gay and Lesbian Human Rights Commission, Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines (A Coalition Report Submitted for Consideration at the 106th Session of the Human Rights Committee), *available at* https://www2.ohchr.org/english/bodies/hrc/docs/ngos/IGLHRC_Philippines_HRC106.pdf (last accessed Aug. 15, 2020); EnGendeRights, Inc., et al., Philippine LBT Coalition Report for 64th Session of CEDAW, *available at* https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PHL/INT_CEDAW_NGO_PHL_24215_E.pdf (last accessed Aug. 15, 2020); & Joint Submission of Civil Society Organizations on the Situation of Lesbian, Bisexual, Transgender, Intersex and Queer (LGBTQI) Persons in the Philippines, *available at* https://aseansogiecaucus.org/images/resources/upr-reports/Philippines/Philippines-UPR-JointReport-3rdCycle.pdf (last accessed Aug. 15, 2020)).

152. *Falcis*, G.R. No. 217910, at 42 (citing J. Neil C. Garcia, *Nativism or Universalism: Situating LGBT Discourse in the Philippines*, 20 KRITIKA KULTURA 48, 52-53 (2013)).

> became their maridos ('husbands'), with whom they indulged in regular sexual congress.'
>
> It was only during the arrival of the Spanish colonizers in the Philippine islands that these activities previously engaged in by the asog, bayoguin, and binabayi became suppressed[.][153]

This discussion echoes literature on how diversity in SOGIESC expressions characterized pre-colonial Asian societies. This was typified by, among others, the *manang bali* of Malaysian Borneo, the *Ngaju Dayak basir* of Indonesian Borneo, the *bissu* of the Indonesian Bugis people, the *nat kadaw* of Burma, and the *hijra* of India.[154] Similar findings have been made in Native North America where more than two gender categories were recognized, such as the *Zuni*, and where gender was seen as changing through one's lifetime, such as the *Kwiwishdi*.[155] These and other similar findings have placed emphasis on the need to not view ancient societies through heteronormative lenses —

> The assumption that only heterosexual relationships were accepted and normal in ancient societies can cause archaeologists to consider as abnormal or socially unacceptable forms of relationship that were, in fact, normal and accepted. In Classical Greek society, older men formed affective and sexual relationships with youths that were the subject of approving representations in both text and visual media. Archaeologists who do not recognize the bias they have in favor of the two-sex/two-gender heterosexual model may take same-sex relations in the past as evidence of transgression of a heterosexual norm, when such a simple correspondence between two sexes and two genders may not have existed.[156]

---

153. *Falcis*, G.R. No. 217910, at 42-43 (citing Jay Jomar F. Quintos, *A Glimpse Into the Asog Experience: A Historical Study on the Homosexual Experience in the Philippines*, 9 PLARIDEL 155, 156-57 (2012) & Garcia, *supra* note 152, at 52-53).

154. Joseph N. Goh, A divinely-inspired gender: The *manang bali* shamans of Sarawak, *available at* https://www.malaysiakini.com/news/507423?fbclid=IwAR3iWNxfKdPJlsunBTzZ_1mglYeeYThuhxzB4z9Rf27FHa0IqCyRNeCRgSo (last accessed Aug. 15, 2020).

155. ROSEMARY A. JOYCE, ANCIENT BODIES, ANCIENT LIVES: SEX, GENDER, AND ARCHAEOLOGY 58 (2009).

156. *Id.* at 92.

Ultimately, *Falcis*' examination of pre-colonial Philippine society turns on its head the claim raised not only against SOGIESC,[157] but also against reproductive health rights[158] and divorce,[159] as purportedly being a product of "ideological colonization." It demonstrates that, to the contrary, it was imported religious dogma — a belief system undermining diversity in SOGIESC — which colonization brought and which eroded indigenous culture.

Falcis proceeds to survey existing legal frameworks. It acknowledges certain developments, including Republic Act No. 11166 (Philippine HIV and AIDS Policy Act), the progress of SOGIE and anti-discrimination bills in Congress, Republic Act No. 11313 (Safe Spaces Act), and the increasing number of local government units adopting anti-discrimination ordinances. It notes however, that, overall, the Philippine legal system has yet to enable consummate SOGIESC equality and to completely secure LGBTQI+ rights.[160]

Having extensively considered the history and prevalence of repressive conditions, *Falcis* concludes its Part VI by reiterating the need to more meticulously consider justiciability in connection with minorities and marginalized groups —

> The history of erasure, discrimination, and marginalization of the LGBTQI+ community impels this Court to make careful pronouncements — lest it cheapen the resistance, or worse, thrust the whole struggle for equality back to the long shadow of oppression and exclusion. The basic

157. Ansel Beluso, Member of Pro-Life Board of Trustees, Address at the Senate Hearing on SOGIE Bill (Sep. 4, 2019) (transcript *available at* http://www.prolife.org.ph/?p=8610 (last accessed Aug. 15, 2020)) & Bernardo M. Villegas, *Catholic Beliefs on Human Sexuality*, MANILA BULL., Dec. 14, 2017, *available at* https://news.mb.com.ph/2017/12/14/catholic-beliefs-on-human-sexuality (last accessed Aug. 15, 2020).

158. Mar Domingo, Pro-life solons file bill vs RH, 'ideological colonization' — CBCP, *available at* http://thesplendorofthechurch.com/2015/02/27/pro-life-solons-file-bill-vs-rh-ideological-colonization-cbcp (last accessed Aug. 15, 2020).

159. Santosh Digal, Manila, Catholics against divorce bill: 'It's unconstitutional', *available at* http://www.asianews.it/news-en/Manila,-Catholics-against-divorce-bill:-'It's-unconstitutional'-43629.html (last accessed Aug. 15, 2020).

160. *Falcis*, G.R. No. 217910, at 43-46.

> requirement of actual case or controversy allows this Court to make grounded declarations with clear and practical consequences.[161]

Still well within its discussion on justiciability, Part VIII introduces its survey of laws that stood to be affected by favorable action on the Petition and Petition-in-Intervention by hearkening to the caution implored in Part VI —

> Aware of the need to empower and uphold the dignity of the LGBTQI+ community, this Court is mindful that swift, sweeping, and indiscriminate pronouncements, lacking actual facts, may do more harm than good to a historically marginalized community.[162]

Echoing the demarcation of judicial and legislative competence, and in view of how it had previously determined that Atty. Falcis' Petition lacked specific facts, on the basis of which litigation and adjudication can be completed, the Court, in Part VIII, further cautioned that the summary legalization of same-sex marriage and the wholesale subjection of same-sex couples to the existing marriage regime could be counter-productive, further entrenching oppressive conditions and frustrating "more inclusive and egalitarian arrangements"[163] —

> This Court must exercise great caution in this task of making a spectrum of identities and relationships legible in our marriage laws, paying attention to 'who and what is actualized when the LGBT[QI+] subject is given a voice.' We must be wary of oversimplifying the complexity of LGBTQI+ identities and relationships, and even render more vulnerable 'a range of identities and policies that have refused to conform to [S]tate-endorsed normative homo-or heterosexuality.'
>
> Thus, an immediate announcement that the current marriage laws apply in equal and uncalibrated measure to same-sex relationships may operate to unduly shackle those relationships and cause untold confusion[ ] on others. With the sheer inadequacies of the Petition, this Court cannot arrogate unto itself the task of weighing and adjusting each of these many circumstances.
>
> ...
>
> Allowing same-sex marriage based on this Petition alone can delay other more inclusive and egalitarian arrangements that the State can acknowledge. Many identities comprise the LGBTQI+ community.

161. *Id.* at 46.

162. *Id.* at 50.

163. *Id.* at 82.

> Prematurely adjudicating issues in a judicial forum despite a bare absence of facts is presumptuous. It may unwittingly diminish the LGBTQI+ community's capacity to create a strong movement that ensures lasting recognition, as well as public understanding, of SOGIESC.[164]

Once again here, the Court was unprecedentedly keen and adept in its understanding and treatment of LGBTQI+ concerns. Its discussion on how the wholesale subjection of same-sex couples to the existing marriage regime could be less than optimal evokes, among others, discussions within the LGBTQI+ community itself on whether extending marriage "as-it-stands" to same-sex couples suffices as equality, or whether more radical options (e.g., new forms of legal recognition in lieu of mere assimilation) are preferable —

> The gay-liberal argument for same-sex marriage primarily rests upon the norm of *formal equality:* The [S]tate ought to accord the same legal options for committed same-sex couples that different-sex couples now enjoy, including the rights and duties entailed in civil marriage. Although almost all [LGBTQI+] Americans agree that the [S]tate should not discriminate or exclude them from [S]tate institutions, they do not all support same-sex marriage. Gay-radicals, for example, believe in *transformative equality*: a culture that has denigrated and randomly persecuted gender-benders and sexual minorities must itself change if these unfairly disadvantaged groups are to assume their rightful place as equal citizens; marriage is a prominent part of such an oppressive society. Hence, LGBTQI+ people should seek new forms of legal recognition rather than assimilate into a questionable form.[165]

E. Stricture on Professional Responsibility: Greater Care for Minorities and the Marginalized

Going into the contempt liability of counsels, the Court centered on the need for counsels to represent their client's cause "to the best of their knowledge and discretion, and with all good fidelity."[166] The Court added, however, that this responsibility is magnified when the cause that a counsel

---

164. *Id.* at 80-82 (citing Katherine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights*, 44 COLUM. HUM. RTS. L. REV. 1, 38 (2012)).

165. WILLIAM N. ESKRIDGE, JR. & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE?: WHAT WE'VE LEARNED FROM THE EVIDENCE 13 (2006).

166. *Falcis*, G.R. No. 217910, at 102 (citing Ramos v. Jacoba, 366 SCRA 91 (2001) & CODE OF PROFESSIONAL RESPONSIBILITY, canon 17).

represents pertains to minorities and marginalized groups, and when counsels litigate in the public interest —

> Lawyers who wish to practice public interest litigation should be ever mindful that their acts and omissions before the courts do not only affect themselves. In truth, by thrusting themselves into the limelight to take up the cudgels on behalf of a minority class, they represent the hopes and aspirations of a greater mass of people, not always with the consent of all its members. Their errors and mistakes have a ripple effect even on persons who did not agree with or had no opportunity to consent to the stratagems and tactics they employed.[167]

The Court further implored advocates of the marginalized and public interest lawyers to disabuse themselves of prestige and recognition, and instead incline themselves to modesty, sacrifice, and hard work.[168] It then reproached Atty. Falcis for failing to meet the standard of diligence in representing a marginalized community.[169] At this point expressing disappointment not just at missed deadlines, in-court decorum, and improper attire, but in the overall handling of the case, the Court was most emphatic in its language —

> One who touts himself an advocate for the marginalized must know better ... . Public interest lawyering demands more than the cursory invocation of legal doctrines, as though they were magical incantations swiftly disengaging obstacles at their mere utterance. Public interest advocacy is not about fabricating prestige. It is about the discomfort of taking the cudgels for the weak and the dangers of standing against the powerful. The test of how lawyers truly become worthy of esteem and approval is in how they are capable of buckling down in silence, anonymity, and utter modesty — doing the spartan work of research and study, of writing and self-correction. It is by their grit in these unassuming tasks, ... that they are seasoned and, in due time, become luminaries, the standard by which all others are measured.
>
> ...
>
> [P]etitioner betrayed the standards of legal practice. His failure to file the required memorandum on time is just the most recent manifestation of this betrayal. He disrespected not only his cause, but also this Court — an unequivocal act of indirect contempt.
>
> ...

---

167. *Falcis*, G.R. No. 217910, at 105.

168. *Id.* at 105-06.

169. *Id.* at 106.

> What we do in the name of public interest should be the result of a collective decision that comes from well-thought-out strategies of the movement in whose name we bring a case before this Court. Otherwise, premature petitions filed by those who seek to see their names in our jurisprudential records may only do more harm than good. Good intentions are no substitute for deliberate, conscious, and responsible action. Litigation for the public interest of those who have been marginalized and oppressed deserves much more than the way that it has been handled in this case.[170]

V. APPRAISING DOCTRINAL VALUE

A. Falcis' Consideration of Marginalization and Discrimination as Animating its Rulings to Dismiss and to Cite in Contempt

As can be gleaned from the manner by which *Falcis* developed and structured its reasoning, the Court's discussions on the LGBTQI+ community's being marginalized were well within its consideration of two key points on which the case's binary disposition turned. The first was on justiciability and the need for an actual case or controversy. The second was on the amplified responsibility of lawyers representing the marginalized and advocating for the public interest.

Thus, these discussions were "presented and decided in the regular course of the consideration of the case."[171] They pertained to questions that "led up to the final conclusion,"[172] and "on which the decision [was] predicated."[173] They were part of the ratio decidendi and ought not be set aside as obiter dicta. They are crucial in informing and imbue what *Falcis* established as binding precedent. As such, in appropriate, future cases, they operate as stare decisis, and will form part of "the criteria which must control the actuations not only of those called upon to abide thereby but also of those in duty bound to enforce obedience."[174]

Writing separately in *Dario v. Mison*,[175] Associate Justice Ameurfina Melencio-Herrera explained what ratio decidendi pertains to: "ultimate

---

170. *Id.* at 105-07.

171. Villanueva, Jr. v. Court of Appeals, 379 SCRA 463, 469 (2002).

172. *Id.* at 469-70.

173. *Id.* at 470.

174. Caltex (Philippines), Inc. v. Palomar, 18 SCRA 247, 257 (1966).

175. Dario v. Mison, 176 SCRA 84 (1989).

issues directly before the Court, expressly decided in the course of the consideration of the case, so that any resolution thereon must be considered as authoritative precedent, and not a mere dictum."[176] *Villanueva v. Court of Appeals*[177] distinguished ratio decidendi from obiter dictum —

> [A]n adjudication on any point within the issues presented by the case cannot be considered as obiter dictum, and this rule applies to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. A decision which the case could have turned on is not regarded as obiter dictum merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as dicta. So, also, *where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions dicta.*[178]

Falcis' discussion on justiciability and the actual case or controversy requirement was multi-faceted and exhaustive. It explored the concept, nature, and purpose of these requirements, the attributes of justiciable controversies, justiciability in cases involving laws as enacted, who bears the burden of demonstrating an actual case, and how that burden is discharged. *Falcis* also refined extant standards on justiciability by entreating greater care "in cases concerning minority groups"[179] and "scrutiny on the existence of

176. *Id.* at 147 (J. Melencio-Herrera, dissenting opinion) (citing Valli v. U.S., 94 F.2d 687 (1st Cir. Ct. App. 1938) (U.S.) & Weedin v. Tayokichi Yamada 4 F.2d 455 (9th Cir. Ct. App.1925) (U.S.)).

177. Villanueva, Jr. v. Court of Appeals, 379 SCRA 463 (2002).

178. *Id.* at 469-70 (citing 21 CORPUS JURIS SECUNDUM, § 190) (emphasis supplied).

179. *Falcis*, G.R. No. 217910, at 33.

actual facts ... when the rights of marginalized, minority groups have been thrust into constitutional scrutiny."[180]

This refinement is integral to *Falcis*' discussion on justiciability which was, in turn, key to the ultimate ruling to dismiss the Petition and Petition-in-Intervention. It is as much a part of the exploration of how Atty. Falcis failed to "show a violation of an existing legal right or a controversy that [was] ripe for judicial determination[,]"[181] as was the affirmation made by the Court on long-settled principles concerning justiciability. It does not undermine its value that, as *Villanueva* notes, an otherwise bare reiteration of long-settled standards could have potentially been, by itself, "sufficient to determine the ultimate issue."[182] To the contrary, its value is affirmed by how the Court saw the need and went out of its way to articulate, explore, and apply it alongside other standards.

It was in the course of its discussion on the greater scrutiny required in cases involving minorities and marginalized groups that *Falcis* explored the different dimensions — among others, scientific, philosophical, medical, legal, historical, and anthropological — of the oppression and marginalization experienced by LGBTQI+ persons. This exploration was integral to operationalizing that peculiar precept on enhancing scrutiny. It was a logical next step to the Court's having laid that precept that it would proceed to explore the matter of whether or not the community involved in the case was indeed marginalized. A rule was articulated and the Court proceeded to apply it. Having seen that such community was marginalized, it was then equally logical for the Court to make a definite declaration to that effect in order that its subsequent discussions — particularly Part VII, which detailed how Atty. Falcis failed to show an actual, justiciable case — may be adequately informed and grounded.

The Court's invocation of the LGBTQI+ community's being marginalized was equally integral in determining Atty. Falcis' liability for contempt. The 3 September 2019 decision was the culmination of the time and energies spent in litigating the case. These encompass the many missteps throughout the proceedings. The Court's determination that lawyers should take greater care in representing the cause of the marginalized was borne by its own experience of adjudicating a matter whose handling — in its perception — left much to be desired. That determination is also borne by

180. *Id.*

181. *Id.* at 31.

182. *Villanueva, Jr.*, 379 SCRA at 470.

the exercise of its function to set standards in legal ethics and practice. Most importantly, that determination animated its ultimate disposition to impose a relatively heavy penalty on Atty. Falcis and in seeing it fit to penalize him twice in the course of a single proceeding. It was the very reason for the Court's decision to penalize Atty. Falcis in the precise manner that he was penalized.

Henceforth, the Court will be well-founded in maintaining that any subsequent litigation involving minorities or marginalized groups must hurdle the heightened scrutiny on justiciability enjoined by *Falcis*. So too, any lawyer representing them must grapple with the standard that "any entity that attempts to speak for and on behalf of a diverse community must be able to adequately thread the needle in representation of them, assisting th[e] Court's understanding with sufficient facts that would enable it to empower, and not further exclude, an already marginalized community."[183]

Likewise, any lawyer who will thereafter represent minorities or the marginalized, or otherwise engage in public interest litigation shall rightly be held to the same amplified standard as was Atty. Falcis and his co-counsels. Any similar action which is construed as not only disrespectful to a court but also tantamount to disregard for the cause that such a lawyer represents will be proper basis for liability.

Logically, applying these precepts requires a standard for ascertaining which groups should be considered as minorities or marginalized. It follows, then, that the method and manner by which the Court made the underlying determination that the LGBTQI+ community is marginalized is a proper benchmark for further appraisals of which groups qualify as minorities or marginalized.

Indeed, the factual findings and legal propositions derived therefrom by the Court can hold as much weight as precedent. The capacity to serve as authority for subsequent interpretation is not confined to normative formulations or articulations of rights and duties. Noting that "[c]ourts and agencies often resolve questions of fact by discovering or inventing propositions of law which answer the questions of fact[,]"[184] Kenneth Culp Davis has emphasized that "judicial determinations of questions of fact have become precedents, so that questions of fact today are resolved by evidence or judicial notice in yesterday's cases."[185] Jurisprudential determinations of

183. *Falcis*, G.R. No. 217910, at 41-42.

184. Kenneth Culp Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 966 (1955).

185. *Id.*

factual matters and the anchoring of legal propositions on them can be self-reinforcing, enhancing or affirming the acceptance of what once may have been disputed. Davis adds —

> The reality seems to be that courts often go beyond the record for disputable facts, and that one of the principal sources of such extra-record facts is factual propositions of law that have been laid down in earlier cases either on the basis of evidence or on the basis of judicial notice. Whatever the theory about stare decisis may be, the tendency of the courts to apply that principle to findings of fact is a rather substantial one.[186]

Even if cast as obiter dicta, such determinations and propositions still hold significant value. As another author observed, "lower courts will, as a practical matter, often reflexively follow a statement by a higher court, *even if the statement is only dictum* or a factual finding that perhaps ought not be binding."[187]

Thus, any further case (and any ruling on it) that will concern LGBTQI+ persons should be informed and animated, not just by the Court's methodology in *Falcis*, but also by the conclusion arrived at by that methodology, that is, that the LGBTQI+ community has been "historically marginalized"[188] or otherwise suffered a "history of erasure, discrimination, and marginalization[,]"[189] and that there is a "need to empower and uphold the dignity of the LGBTQI+ community[.]"[190]

The dismissal of Atty. Falcis' Petition prevented the issuance of a fully favorable ruling based on its specific prayers. Nevertheless, it would be in his being cited in contempt and failing to demonstrate justiciability that Atty. Falcis would — not without irony — secure reasoning that firmly recognizes LGBTQI+ marginalization and the need for LGBTQI+ protection.

---

186. *Id.* at 970.

187. Brianne J. Gorod, *The Adversarial Myth: Appellate Court Extra-Record Factfinding*, 61 DUKE L.J. 1, 64 (2011) (emphasis supplied). Note that Gorod's article explored the precarious tendencies of independent judicial fact-finding and how those tendencies can be addressed.

188. Falcis, G.R. No. 217910, at 50.

189. *Id.* at 46.

190. *Id.* at 50.

B. Laying a Roadmap for Constitutional Interpretation

In contrast with its discussions on the LGBTQI+ community's marginalization, *Falcis*' exploration of the constitutional terrain came by way of a preliminary discussion (although, the matter of whether the Constitution exclusively contemplates opposite-sex marriage was both addressed by the parties in their pleadings and discussed during oral arguments). In any case, *Falcis*' exploration of the constitutional terrain remains well-reasoned. *Falcis* was well-advised to commence as it did. For indeed, the text of the provisions involved in a dispute are the proper starting point of legal interpretation. Moreover, it is true that at no point does the Constitution expressly state that marriage is limited to a man and a woman.

It is equally true that the Court has settled that reading text cannot be confined to historical conceptions which may have bound society's past understanding but which would be unreasonable, unjust, or absurd to maintain in the present. *Social Weather Station Stations v. Commission on Elections*[191] explained that

> the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity of meaning is a rarity. A contrary belief wrongly assumes that language is static.
>
> The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — *saligan* — demonstrates this imperative of constitutional primacy.[192]

The United States (U.S.) Supreme Court has similarly intimated that constitutional text may properly be read in light of evolved circumstances, precisely as it is "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs."[193] Reading the *necessary*

191. Social Weather Stations, Inc. v. Commission on Elections, 755 SCRA 124 (2015).

192. *Id.* at 167.

193. McCulloch v. Maryland, 17 U.S. 316, 415 (1819).

and proper clause of the U.S. Constitution,[194] the U.S. Supreme Court explained in *McCulloch v. Maryland*[195] that

> [t]he subject is the execution of those great powers on which the welfare of a Nation essentially depends. It must have been the intention of those who gave these powers to insure, so far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. *This provision is made in a Constitution intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs.*[196]

Justice Felix Frankfurter has lauded *McCulloch*'s "language of adaptation"[197] as "the single most important utterance in the literature of constitutional law[.]"[198] This, even as he emphasized the need for judicial restraint vis-à-vis legislative prerogatives —

> Frankfurter clearly recognized that the practice of judicial interpretation would be neither intelligible nor legitimate without the concept of legislative purpose. He further urged that judicial construction of statutory purpose should never usurp the 'power which our democracy has lodged in its elected legislature.' Yet he also lauded John Marshall's language of adaptation in *McCulloch* (1819) as 'the single most important utterance in the literature of constitutional law' and consistently advocated 'the evolution of social policy by way of judicial application of the Delphic provisions of the Constitution.'[199]

194. U.S. CONST. art. 1, § 8 (which states that "[t]he Congress shall have Power ... [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.").

195. McCulloch v. Maryland, 17 U.S. 316 (1819).

196. *Id.* at 415 (emphasis supplied).

197. JOHNATHAN O'NEILL, ORIGINALISM IN AMERICAN LAW AND POLITICS: A CONSTITUTIONAL HISTORY 54 (2005).

198. *Id.*

199. *Id.*

Given the Constitution's textual silence, there does not appear, as *Falcis* notes, an impediment to considering the Constitution as being capable of accommodating a contemporary and evolved understanding of gender, sexuality, human relations, and marriage — an understanding that is better informed, grounded in reason, science, and empiricism, enlightened by the advancement of social values, and animated by the need to abandon oppressive conditions.

The U.S. Supreme Court did precisely this in its own same-sex marriage case. In *Obergefell v. Hodges*,[200] it recognized that "[t]he history of marriage is one of both continuity and change"[201] and that "new insights have strengthened, [rather than] weakened, the institution of marriage."[202] It drew particular emphasis on how changes in marriage gradually embodied equality between men and women —

> The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution — even as confined to opposite-sex relations — has evolved over time.
>
> For example, marriage was once viewed as an arrangement by the couple's parents based on political, religious, and financial concerns; but by the time of the Nation's founding it was understood to be a voluntary contract between a man and a woman. ... As the role and status of women changed, the institution further evolved. Under the centuries-old doctrine of coverture, a married man and woman were treated by the State as a single, male-dominated legal entity. ... As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned. ... These and other developments in the institution of marriage over the past centuries were not mere superficial changes. Rather, they worked deep transformations in its structure, affecting aspects of marriage long viewed by many as essential.
>
> ...
>
> These new insights have strengthened, not weakened, the institution of marriage. Indeed, changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new

200. Obergefell v. Hodges, 576 U.S. 644, June 26, 2015, *available at* https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf (last accessed Aug. 15, 2020) (U.S.).

201. *Id.* at 6.

202. *Id.* at 7.

> generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process.[203]

Thus, *Falcis*' exploration of relevant constitutional provisions — along with the implications of those provisions' silence — does not lose its efficacy, even if it is cast as obiter dictum. That exploration's being anchored on sound approaches to constitutional construction should enable it to be the bedrock of future adjudication, if and when it is proper. Indeed, it is settled that "a dictum which generally is not binding as authority or precedent within the stare decisis rule may be followed if sufficiently persuasive."[204]

Even outside the confines of litigation and adjudication, that exploration remains valuable as a roadmap for constitutional interpretation by other public officers and bodies, by private entities, and by the general public, all of whom — duty-bound as they are to abide by the Constitution — necessarily engage in its reading and construction.

VI. POTENCY IN POLICY

It is in animating policy and potentially engendering wider social change that *Falcis* holds its greatest potential. The Court's 3 September 2019 decision is as much for legislators and policy-makers, civil society, advocates, the academe, mass media, private organizations (commercial or otherwise), and the general public to consume, process, and build on, as it was for the parties, their counsels, the judiciary, and the legal profession.

---

203. *Id.* at 6-7 (citing NANCY F. COTT, A HISTORY OF MARRIAGE AND THE NATION 9-17 (2000); STEPHANIE COONTZ, MARRIAGE, A HISTORY: FROM OBEDIENCE TO INTIMACY, OR HOW LOVE CONQUERED MARRIAGE 15-16 (2005); 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 430 (1765); & HENDRIK HARTOG, MAN & WIFE IN AMERICA: A HISTORY (2000)).

204. Uy Lee v. Court of Appeals, 68 SCRA 196, 204 (1975) (citing 21 CORPUS JURIS SECUNDUM, § 309).

A. Understanding Judicial Policy-Making

It is erroneous and naive to suppose that the judiciary's deference from considering questions of policy completely insulates it from policy-making. Quite the contrary, "the judiciary[,] as exemplified by the Supreme Court[,] is not a neutral factor in our political system."[205] The following discussion concerning the U.S. Supreme Court applies with equal force to the Philippines —

> Clearly the Supreme Court is more than just a legal body: the Justices are also 'rulers,' sharing in the quintessentially political function of authoritatively allocating values for the American polity. Representing a coordinate branch of the national government, they address their mandates variously to lawyers, litigants, federal and state legislative, executive, and judicial officials, and to broader concerned 'publics.' ... [T]he Justices employ essentially common law judicial techniques: they are inheritors indeed, but developers too — 'weavers of the fabric of constitutional law' — as Chief Justice [Evans] Hughes observed. The nature of the judicial process and the growth of the law are intertwined. The Constitution, itself the product of great policy choices, is both the abiding Great Charter of the American polity and the continual focus of clashing philosophies of law and politics among which the Supreme Court must choose: 'We are very quiet there,' said Justice [Oliver Wendell] Holmes plaintively, 'but it is the quiet of a storm center, as we all know.'[206]

Justice Oliver Wendell Holmes has stated that "judges do and must legislate, but they can do so only interstitially; they are confined from molar

205. Vicente Abad Santos, *The Role of the Judiciary in Policy Formulation*, 41 PHIL. L.J. 567, 567 (1966).

206. Howard E. Dean, *Judicial Policymaking*, *in* ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 1043 (Leonard W. Levy, et al. eds., 1986).

to molecular motions."[207] Justice Holmes explained that in close or doubtful cases "the simple tool of logic"[208] of preponderant precedent does not suffice. Rather, in such cases, judges must "exercise the sovereign prerogative of choice"[209] —

> We must think things not words, or at least we must constantly translate our words into the facts for which they stand, if we are to keep to the real and the true. ... But inasmuch as the real justification of a rule of law, if there be one, is that it helps to bring about a social end which we desire, it is no less necessary that those who make and develop the law should have those ends articulately in their minds. I do not expect or think it desirable that the judges should undertake to renovate the law. That is not their

---

207. Southern Pacific Co. v. Jensen, 244 U.S. 205, 221 (J. Holmes, dissenting opinion). Justice Holmes' position has been further discussed in the following manner —

> [I]t was Holmes who first (or at least most quotably) articulated both the instrumental and the contextual sides of American legal thought. To take the instrumental aspect first, he wrote in *The Common Law* that 'what the courts declare to have always been the law is in fact new' and based on 'considerations of what is expedient for the community concerned.' He proposed that 'judges as well as others should openly discuss the legislative principles upon which their decisions must always rest in the end, and should base their judgments upon broad considerations of policy.' Thus he criticized those of his judicial contemporaries who presented what were necessarily policy choices 'as hollow deductions from empty general propositions.' Famously, he wrote that, in the doubtful case, the judge is called upon 'to exercise the sovereign prerogative of choice.' Thus we have Holmes the instrumentalist, who thought that judges must make law on the basis of policy and that they should do so explicitly[.] But that is only half of pragmatism. Holmes was also a contextualist, someone who believed that theory could not rule over practice but must live alongside it.

Thomas C. Grey, *Molecular Motions: The Holmesian Judge in Theory and Practice,* 37 WM. & MARY L. REV. 19, 23-24 (1995) (citing OLIVER WENDELL HOLMES, THE COMMON LAW 31-32 & 64 (Mark D. Howe ed., 1963); Oliver Wendell Holmes, *Privilege, Malice, and Intent*, *in* COLLECTED LEGAL PAPERS 117 & 120 (1920); & Oliver Wendell Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443, 461 (1899)).

208. Oliver Wendell Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443, 461 (1899).

209. *Id.*

> province. ... But *I think it most important to remember whenever a doubtful case arises*, with certain analogies on one side and other analogies on the other, *that what really is before us is a conflict between two social desires*, each of which seeks to extend its dominion over the case, and which cannot both have their way. The social question is which desire is strongest at the point of conflict. The judicial one may be narrower, because one or the other desire may have been expressed in previous decisions to such an extent that logic requires us to assume it to preponderate in the one before us. But if that be clearly so, the case is not a doubtful one. *Where there is doubt the simple tool of logic does not suffice, and even if it is disguised and unconscious the judges are called on to exercise the sovereign prerogative of choice.*[210]

The Philippine Supreme Court has been recognized to be a "political organ when it functions as a constitutional court"[211] —

> It is said that when the Supreme Court decides constitutional cases, it exercises the powers of a legislature, i.e., 'because the *Constitution is about politics … [constitutional cases] can be decided only on the basis of political judgment*, and a political judgment cannot be called right or wrong by reference to legal norms.'
>
> The Supreme Court of the Philippines, like its American counterpart functions both as an appellate court and a constitutional court. Unlike many countries, the Philippines does not have a separate constitutional court. ...
>
> United States (U.S.) Court of Appeals Judge Richard A. Posner provides four factors behind the political nature of a constitutional court —
>
> First, because the [F]ederal Constitution is so difficult to amend, the Court exercises more power on average, when it is deciding constitutional cases than when deciding statutory ones. Second, a constitution tends to deal with fundamental issues, and more emotion is invested in those issues than in most statutory issues, and emotion influences behavior, including the behavior of judges. *Third, fundamental issues in the constitutional context are political issues: they are issues about political governance, political values, political rights, and political power.* And fourth, constitutional provisions tend to be both old and vague ... The older and vaguer the provision at issue, the harder it is for judges to decide the case by a process reasonably described as interpretation rather than legislation.

---

210. *Id.* at 460-61 (emphases supplied).

211. Sedfrey Candelaria & Maria Eloisa Imelda Singzon, *Testing Constitutional Waters II: Political and Social Legitimacy of Judicial Decisions*, 55 ATENEO L. J. 1, 5 (2010).

> While these observations are more relevant to the U.S., suffice to say, the Philippine Supreme Court becomes a political organ when it functions as a constitutional court.[212]

Legal reasoning does not operate in an environment of absolute certainty. Reality is typified by variance and ambiguity. Thus, mechanisms of legal reasoning provide "a forum for the discussion of policy in the gap of ambiguity[ ]"[213] —

> It is important that the mechanism of legal reasoning should not be concealed by its pretense. The pretense is that the law is a system of known rules applied by a judge; the pretense has long been under attack. In an important sense legal rules are never clear, and, if a rule had to be clear before it could be imposed, society would be impossible. The mechanism accepts the differences of view and ambiguities of words. It provides for the participation of the community in resolving the ambiguity by providing a forum for the discussion of policy in the gap of ambiguity. On serious controversial questions, it makes it possible to take the first step in the direction of what otherwise would be forbidden ends. The mechanism is indispensable to peace in a community.
>
> ...
>
> Yet this change in the rules is the indispensable dynamic quality of law. It occurs because the scope of a rule of law, and therefore its meaning, depends upon a determination of what facts will be considered similar to those present when the rule was first announced. The finding of similarity or difference is the key step in the legal process.
>
> ...
>
> [T]he kind of reasoning involved in the legal process is one in which the classification changes as the classification is made. The rules change as the rules are applied. More important, the rules arise out of a process which, while comparing fact situations, creates the rules and then applies them ... Not only do new situations arise, but in addition people[ ] want[ ] change.[214]

---

212. *Id.* at 4-5 (citing Pacifico A. Agabin, The Judicial Philosophy of the Puno Court, Address at the Fourth Chief Justice Reynato S. Puno Distinguished Lecture Series (May 7, 2010) & Richard A. Posner, *The Supreme Court 2004 Foreword: A Political Court*, 119 HARV. L. REV. 31, 39-40 (2005)).

213. Edward H. Levi, *An Introduction to Legal Reasoning*, 15 U. CHI. L. REV. 501, 501 (1948).

214. *Id.* at 501-503 (citing JEROME FRANK, LAW AND THE MODERN MIND (1936)).

It is the judicial process that animates this mechanism. In so doing, circumstances may make it necessary for it to grapple with *legislative facts*,[215] which provide "descriptive information about the world [and] which judges use as foundational 'building blocks' to form and apply legal rules."[216] Judicial processing of legislative facts is not confined to what the rigidities of the rules on evidence allow in an adversarial system. This is far from novel. Nevertheless, it has been accelerated and facilitated by contemporary technological advances that enhance courts' capacities to pursue independent research —

> Many of the Supreme Court's most significant decisions turn on questions of fact. These facts are not of the 'whodunit' variety concerning what

---

215. The term was originally considered and defined by Kenneth Culp Davis in the context of adjudication by administrative agencies. In *An Approach to Problems of Evidence in the Administrative Process*, he explained —

> Through adjudication administrative agencies create law and determine policy, as well as make findings which concern only the parties to the specific case. Creation of law and determination of policy usually do not rest upon uninformed a priori judgments having only an ethical or a logical basis. Frequently agencies' choices of law or policy must depend on fact-finding. But the fact-finding process for such purposes is different from the process of finding facts which concern only the parties to a particular case and calls for different rules of evidence.
>
> When an agency finds facts concerning immediate parties — what the parties did, what the circumstances were, what the background conditions were — the agency is performing an adjudicative function, and the facts may conveniently be called adjudicative facts. When an agency wrestles with a question of law or policy, it is acting legislatively, just as judges have created the common law through judicial legislation, and the facts which inform its legislative judgment may conveniently be denominated legislative facts. The distinction is important; the traditional rules of evidence are designed for adjudicative facts, and unnecessary confusion results from attempting to apply the traditional rules to legislative facts.

Kenneth Culp Davis, *An Approach to Problems of Evidence in the Administrative Process*, 55 HARV. L. REV. 364, 402-03 (1942).

216. Allison Orr Larsen, *Confronting Supreme Court Fact Finding*, 98 VA. L. REV. 1255, 1257 (2012) (citing Robert E. Keeton, *Legislative Facts and Similar Things: Deciding Disputed Premise Facts*, 73 MINN. L. REV. 1, 11 (1988)). *See also* Carolyn Sutherland, *Interdisciplinarity in judicial decision-making: exploring the role of social science in Australian labour law cases*, 42 MELB. U. L. REV. 232, 243-53 (2018).

happened between the parties. They are instead more generalized facts about the world: Is a partial-birth abortion ever medically necessary? Can one effectively discharge a locked gun in self-defense? Are African American children stigmatized by segregated schools?

Questions like these are not legal — they do not involve the interpretation of a text, nor do they involve a choice between competing rules that proscribe conduct. But they are also not 'facts of the case' in the way we generally use that phrase — the who/what/where/why questions that should ultimately go to a jury or fact finder. Instead, these questions implicate what have come to be known as 'legislative facts.' *A legislative fact gets its name not necessarily because it is found by a legislature, but because it relates to the 'legislative function' or policy-making function of a court. The central feature of a legislative fact is that it 'transcend[s] the particular dispute,' and provides descriptive information about the world which judges use as foundational 'building blocks' to form and apply legal rules.*

...

So where do the Justices find information that enables them to decide factual questions about the world? The typical answer involves trust in the adversarial system. The basic idea is that 'the adversary system is ... quite practiced at finding facts.' If a fact is important to a case's resolution, then the parties (and their amici) can provide the Court with enough information to address it through testimony (at the trial level) and briefing (on appeal). And if one party presents unreliable or flawed evidence to support his factual claim, then we can count on the other party to point this out.

The idea, however, that courts depend only on the adversary system to inform their decisions — even for fact finding — is 'more myth than reality.' As others have recently observed, judges 'reach beyond the four corners of the parties' briefing' when they think the parties have not done enough. With respect to questions of legislative fact, this happens because the importance of the fact did not become apparent until after the case was pending on appeal, or perhaps because the parties do not brief it in enough detail to convince a judge or Justice that he knows all he needs (or wants) to know.

...

Independent judicial research of legislative facts is certainly not a new phenomenon. We have all heard the stories of Justice [Harry] Blackmun holed up in the medical library at the Mayo Clinic during the summer of 1972 studying abortion procedures. But since that time the world has undergone a massive change in the way it obtains

> information. The digital revolution provides a new tool for members of the judiciary to address legislative facts.[217]

It is in this context that the Court, in *Falcis*, demarcated its competence and recognized that, even as it is not the final authority in fields other than law, it is nevertheless sufficiently capable of ascertaining postulates worthy of credence —

> The need to demonstrate an actual case or controversy is even more compelling in cases concerning minority groups. This Court is a court of law. We are equipped with legal expertise, but we are not the final authority in other disciplines. *In fields such as politics, sociology, culture, and economics, this Court is guided by the wisdom of recognized authorities, while being steered by our own astute perception of which notions can withstand reasoned and reasonable scrutiny. This enables us to filter unempirical and outmoded, even if sacrosanct, doctrines and biases.*[218]

---

217. Larsen, *supra* note 216, at 1255-60 (citing Gonzales v. Carhart, 550 U.S. 124, 165-66 (2007); Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 733 (2007); Brown v. Bd. of Educ., 347 U.S. 483, 493-94 (1954); District of Columbia v. Heller, 128 S. Ct. 2783, 2818 (2008) (U.S.); LINDA GREENHOUSE, BECOMING JUSTICE BLACKMUN 82-83, 90-91 (2005); Frederick Schauer, *The Dilemma of Ignorance: PGA Tour, Inc. v. Casey Martin*, 2001 SUP. CT. REV. 267, 285 (2001); Gorod, *supra* note 187, at 3-4; Wendy M. Rogovin, *The Politics of Facts: "The Illusion of Certainty"*, 46 HASTINGS L.J. 1723, 1758 (1995); Amanda Frost, *The Limits of Advocacy*, 59 DUKE L.J. 447, 449 & 453 (2009); Elizabeth G. Thornburg, *The Curious Appellate Judge: Ethical Limits on Independent Research*, 28 REV. LITIG. 131, 185 (2008); Robert E. Keeton, *Legislative Facts and Similar Things: Deciding Disputed Premise Facts*, 73 MINN. L. REV. 1, 11 (1988); David L. Faigman, *"Normative Constitutional Fact-Finding": Exploring the Empirical Component of Constitutional Interpretation*, 139 U. PA. L. REV. 541, 552 (1991); Brenda C. See, *Written in Stone? The Record on Appeal and the Decision-Making Process*, 40 GONZ. L. REV. 157, 191 (2004); Kenneth Culp Davis, *An Approach to Problems of Evidence in the Administrative Procedures*, 55 HARV. L. REV. 364, 365-66 (1942); DAVID FAIGMAN, CONSTITUTIONAL FICTIONS: A UNIFIED THEORY OF CONSTITUTIONAL FACTS xiii (2008); John McGinnis & Charles Mulaney, *Judging Facts Like Law*, 25 CONST. COMMENT. 69, 70-71 (2008); Suzanna Sherry, *Foundational Facts and Doctrinal Change*, 2011 U. ILL. L. REV. 145, 146 (2011); & Kenneth L. Karst, *Legislative Facts in Constitutional Litigation*, 1960 SUP. CT. REV. 75, 77 n. 9 (1960)) (emphases supplied).

218. *Falcis*, G.R. No. 217910, at 33 (emphasis supplied).

Sociologically, the extent to which a judicial decision gains legitimacy is a matter that rests on public perception. There is then a measure of democratic accountability even as the judiciary is not a political branch of government. Acceptance of Court decisions can engender wider social change, even revolutionary change —

> A judicial decision's legitimacy in sociological terms is measured insofar as the 'relevant public regards it as justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward.' It is essentially the active belief by citizens, whether warranted or not, that courts' claimed authority deserves respect or obedience for reasons beyond self-interest.
>
> ...
>
> [T]he Supreme Court seems to 'possess a reservoir of trust that is not easily dissipated.' With regard to the authoritative legitimacy of judicial decisions, American experience has shown that this type of legitimacy is relative, rather than absolute, meaning '[t]he authoritative sociological legitimacy of judicial rulings is ultimately a matter of fact, capable of either evolutionary or revolutionary change regardless of the Court's pronouncements.'[219]

B. Jurisprudence as Herald: Past Judicial Decisions and Policy Shifts

Falcis can follow the example of several Court decisions and opinions that directly served as impetus for, or otherwise augured, subsequent legal and policy developments, or even wider societal change.

The U.S. Supreme Court's 1954 decision in *Brown v. Board of Education*,[220] which undid the 75-year old separate but equal doctrine and

---

219. Candelaria & Singzon, *supra* note 211, at 14-15 (citing Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1795; 1829; & 1831-32 (2004)). The quoted study qualifies this with findings unique to the Philippines, "determining legal legitimacy of a constitutional cases [sic] depends more on socio-political implications of acceptability or 'kung katanggap-tanggap' than the quality of legal reasoning." Candelaria & Singzon, *supra* note 211, at 14-15.

Dean Pacifico Agabin identified "three factors that affect the social and political legitimacy of Supreme Court decisions: first is the self-interest of the people affected by the decision; second is the state of public policy and of public opinion — that is, how popular or unpopular its decisions are and how intense are the statements against these [—] and third is the extent to which the government and the constituency affected accept or reject the rulings of the [C]ourt." (PACIFICO A. AGABIN, THE POLITICAL SUPREME COURT 25 (2012)).

220. Brown v. Board of Education, 347 U.S. 483 (1954).

abandoned the U.S. Supreme Court's own 1896 ruling in *Plessy v. Ferguson*,[221] was criticized in its immediate aftermath: "The Court did not interpret the Constitution — the Court amended it."[222] Nevertheless, *Brown* would be instrumental in enabling many subsequent legal developments, including an amendment to the U.S. Constitution, that furthered civil rights and racial equality —

> Brown forms the cornerstone for subsequent legal developments. Brown served as the primary motivating force for the passage of the 24th Amendment to the Constitution in 1964, which outlawed the poll tax and literacy tests for voting. Designed to enforce the 14th Amendment, enacted in 1868, the Civil Rights Act of 1964 attacked segregation in public accommodations, employment, and education. A year later, Congress enacted the Voting Rights Act of 1965 and three years later the Fair Housing Act in 1968. More than two decades later, Congress enacted the Civil Rights Act of 1991 that overturned five U.S. Supreme Court decisions, making it more difficult to bring discrimination suits against public agencies.[223]

McCarty v. McCarty,[224] decided on 26 June 1981, is illustrative of instances in which a ruling is reached but where members of the Court simultaneously see wisdom in Congress altering the state of law such that a different future outcome may be realized. In keeping with precedent,[225] the U.S. Supreme Court ruled that State courts are barred by federal law from awarding a portion of military retirement pay to a veteran's spouse in divorce proceedings — "it is manifest that the application of community property principles to military retired pay threatens grave harm to 'clear and substantial' federal interests."[226] Extensive reasons were provided by the Court, including military retirement pay's being in the nature of personal entitlement.[227] Still, the Court stated that it "recognize[d] that the plight of

221. Plessy v. Ferguson, 163 U.S. 537 (1896).

222. Abad Santos, *supra* note 205 (citing ALAN F. WESTIN, THE SUPREME COURT: VIEWS FROM INSIDE 113 (1961)).

223. Frank Brown, *The First Serious Implementation of Brown: The 1964 Civil Rights Act and Beyond*, 73 J. OF NEGRO EDUC. 182, 182 (2004).

224. McCarty v. McCarty, 453 U.S. 210 (1981).

225. *See* Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979).

226. *McCarty*, 453 U.S. at 232 (citing United States v. Yazell, 382 U.S. 341, 352 (1966)).

227. *Id.* at 224 & 232 (citing S. Rep. No. 1480, at 6, 90th Cong., 2d Reg. Sess. (1968) (U.S.)).

an ex-spouse of a retired service member is often a serious one."[228] Emphasizing its own limits, the Court indicated that Congress may act and remedy the situation —

> Congress may well decide, as it has in the Civil Service and Foreign Service contexts, that more protection should be afforded a former spouse of a retired service member. This decision, however, is for Congress alone. We very recently have re-emphasized that in no area has the Court accorded Congress greater deference than in the conduct and control of military affairs.[229]

The U.S. Congress acted favorably. More than a year later, on 8 September 1982, it enacted the Uniformed Services Former Spouses' Protection Act.[230] This statute overrides *McCarty* in that, it allows State courts to treat disposable retired pay as marital property.[231]

There is a seeming oddity in Supreme Court justices ruling a certain way only to openly invite congressional override. This is accounted for however, by understanding justices as principled individuals having not only a fundamental understanding of what is good policy, but also a desire to see good policy prevail, except that they perceive their judicial function as constraining them to act within the limits of the current state of law —

> [O]ne motivation for invitations to override is a concern with achieving both good law and good policy. More specifically, one response to a perceived conflict between the two is for justices to follow the law as they see it while asking Congress to supplant their choice with good policy as they see it. ... If justices in the majority invite congressional action to 'rescue' good policy after the Court's decision, such action demonstrates

---

228. *Id.* at 235 (citing Hearing on H.R. 2817, H.R. 3677, and H.R. 6270 before the Military Compensation Subcommittee of the House Committee on Armed Services, 96th Cong., 2d Sess. (1980) (U.S.)).

229. *Id.* at 235-236 (citing Rostker v. Goldberg, 453 U.S. 57, 64-65 (1981)).

230. Uniformed Services Former Spouses' Protection Act, Pub. L. No. 97-252, 96 Stat. 718 (1982) (U.S.).

231. *Id.* As amended, 10 U.S.C. § 1408 (c) (1) provides —

> Subject to the limitations of this section, a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court.

Id.

> that they care about achieving good policy. But it also demonstrates that they feel constrained by their reading of the law.[232]

Developments relating to *Ledbetter v. Goodyear Tire and Rubber Co.*[233] illustrate how not just Supreme Court decisions, but even separate opinions can shape public policy. The U.S. Supreme Court's 2007 Decision in *Ledbetter* declined to rule on whether the plaintiff Lilly Ledbetter suffered compensation discrimination on account of her sex.[234] Instead, it ruled that discrimination charges should be filed within 180 days of the occurrence of the alleged unlawful employment practice.[235] Thus, Ledbetter's claim was barred by the statute of limitations.[236]

Justice Ruth Bader Ginsburg registered her dissent.[237] She rejected the application of the 180-day limit.[238] Justice Ginsburg noted that discrimination often occurs in "small increments" over a prolonged period and that information on an employee's compensation was unlikely to be immediately available and prompt an employee to take action.[239] Justice Ginsburg expressly called on Congress to correct the iniquity — "Once again, the ball is in Congress' court. As in 1991, the Legislature may act to correct this Court's parsimonious reading of Title VII."[240]

On 29 January 2009, the Lilly Ledbetter Fair Pay Act of 2009 would be the first bill signed into law by President Barack Obama.[241] It amended Title

---

232. Lori Hausegger & Lawrence Baum, *Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation*, 43 AM. J. POL. SCI. 162, 182 (1999).

233. Ledbetter v. Goodyear Tire and Rubber Co., 550 U.S. 618, May 29, 2007, *available at* https://www.supremecourt.gov/opinions/06pdf/05-1074.pdf (last accessed Aug. 15, 2020) (U.S.).

234. *Id.* at 9.

235. *Id.*

236. *Id.* at 22.

237. *Id.* (J. Ginsburg, dissenting opinion).

238. *Id.* at 4.

239. *Ledbetter*, 550 U.S. at 2-3 (J. Ginsburg, dissenting opinion).

240. *Id.* at 19.

241. Megan Slack, From the Archives: President Obama Signs the Lilly Ledbetter Fair Pay Act, *available at* https://obamawhitehouse.archives.gov/blog/2012/01/30/archives-president-obama-signs-lilly-ledbetter-fair-pay-act (last accessed Aug. 15, 2020).

VII of the Civil Rights Act of 1964 and provided, consistent with Justice Ginsburg's position, that the 180-day statute of limitations for presenting an equal-pay discrimination suit resets with each new paycheck issued.[242]

In 2014, in *Corpuz v. People*,[243] the Philippine Supreme Court was confronted with the petitioner's assertion that the penalty imposed on him for estafa (swindling) violated the equal protection clause and amounted to cruel and unusual punishment.[244] Penalties for estafa, as with most other crimes against property, had been determined by the value of the property involved.[245] The correspondence of property values and penalties were fixed in 1930 by the Revised Penal Code and had, by then, never been adjusted for changes in monetary value.

The Court sustained the imposition of a penalty that adhered to the Revised Penal Code's octogenarian scale. It stayed its hand at invalidating Revised Penal Code provisions or otherwise adjusting the penalty to be meted. Nevertheless, it adverted that Congress may be well-advised to legislate the calibration of penalties —

> [T]he Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[246]

Dissents were registered by Chief Justice Maria Lourdes P. A. Sereno, Senior Associate Justice Antonio T. Carpio, Associate Justice Roberto A. Abad (joined by Associate Justice Mariano C. del Castillo), and Associate Justice Leonen.[247] They drew attention to the injustice of imposing penalties pegged at more than 80-year-old, grossly disproportionate valuations.[248]

---

242. *Id.*

243. Corpuz v. People, 724 SCRA 1 (2014).

244. *Id.* at 45.

245. *Id.* at 69.

246. *Id.* at 67.

247. *Id.* at 68.

248. *Id.* at 68-70 (C.J. Sereno, concurring and dissenting opinion); 86-87 (J. Carpio, dissenting opinion); 129-32 (J. Abad, dissenting opinion); & 146-47 (J. Leonen, concurring and dissenting opinion).

In 2017, Republic Act No. 10951 was adopted.[249] It amended the Revised Penal Code and adjusted the values of properties and damage on which penalties are based.[250] The explanatory note to Senate Bill No. 14, which became Republic Act No. 10951, explicitly referenced *Corpuz* as its impetus —

> In the 2014 case of *Lito Corpuz versus People of the Philippines*, the Supreme Court turned the spotlight on the perceived injustice brought about by the range of penalties that the courts continue to impose on crimes committed today, based on the amount of damage measured by the value of money eighty years ago. The discussion called for the 'much needed change and updates to archaic laws that were promulgated decades ago when the political, socio-economic, and cultural settings were far different from today's conditions.' Lest the law run the risk of violating the constitutional prohibition against cruel and excessive punishment, the High Court urged Congress to wield its power in realigning the law with the goals for its passage.[251]

Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004,[252] further demonstrates the interplay of jurisprudence and evolving public policy. Adopted in 2004, it recognized battered woman syndrome,[253] as a defense against criminal and civil liability —

> SECTION 26. Battered Woman Syndrome as a Defense. — Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the

249. An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended, Republic Act No. 10951 (2017).

250. *Id.*

251. An Act Adjusting the Amount Involved, Value of Property or Damage on which a Penalty is Based, and the Fines under Act No. 3815, Otherwise Known as the Revised Penal Code, S.B. No. 14, explan. n., 17th Cong., 1st Reg. Sess. (2016).

252. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004).

253. *Id.* § 3 (c) ("'Battered Woman Syndrome' refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.").

> absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.
>
> In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.[254]

Republic Act No. 9262 was not the Philippine legal system's first consideration of battered woman syndrome as a factor that works against criminal liability. In 2000, the Court's first resolution in *People v. Genosa*[255] manifested openness to battered woman syndrome's being equivalent to self-defense and thus, negating criminal liability. Accordingly, "the case was remanded to the Regional Trial Court of Ormoc City for reception of the testimony of the psychiatrist, the late Dr. Alfredo Pajarillo, as an expert witness."[256] In 2004, the case was again before the Supreme Court. The Court remained receptive to the concept of battered woman syndrome and proceeded to recognize a battered woman, as follows —

> A battered woman has been defined as a woman 'who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.'[257]

However, the Court did not appreciate self-defense as it found that the appellant, Marivic Genosa, was unable to demonstrate unlawful aggression.[258] Still, the Court added that "[t]he severe beatings repeatedly inflicted on appellant constituted a form of cumulative provocation that broke down her psychological resistance and self-control. This 'psychological paralysis' she suffered diminished her will power, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13

---

254. *Id.* § 26.

255. People v. Genosa, 395 Phil. 711 (2000).

256. Rowena V. Guanzon, *Legal and Conceptual Framework of Battered Woman Syndrome as a Defense*, 86 PHIL L.J. 124, 132 (2012).

257. People v. Genosa, 419 SCRA 537, 564 (citing McMaugh v. State, 612 A.2d 725, 731 (1979) (U.S.)).

258. *Genosa*, 419 SCRA at 542.

of the Revised Penal Code."[259] Thus, it reduced the penalty meted on Genosa.[260]

Genosa was not the first occasion in which the Court considered circumstances indicating battered woman syndrome. Long before *Genosa*, in 1950, Associate Justice Marcelino Montemayor wrote separately in *People v. Canja*[261] and maintained that the defendant-appellant Teopista Canja was deserving of executive clemency —

> On the very day that she killed her husband, according to her own confession on which her conviction was based, he came home drunk, forthwith laid hands on her, striking her on the stomach until she fainted, and when she recovered consciousness and asked for the reason for the unprovoked attack, he threatened to renew the beating. At the supper table instead of eating the meal set before him, he threw the rice from his plate, thus adding insult to injury. Then he left the house and when he returned[,] he again boxed his wife, the herein appellant. The violence with which the appellant killed her husband reveals the pent-up righteous anger and rebellion against years of abuse, insult, and tyranny seldom heard of. Considering all these circumstances and provocations, including the fact as already stated, that her conviction was based on her own confession, I repeat that the appellant is deserving of executive clemency, not of full pardon but of a substantial if not a radical reduction or commutation of her life sentence.[262]

C. Falcis' Urging for Policy Action

Falcis does not merely outline the marginalization and discrimination suffered by LGBTQI+ persons. It expressly recognizes the "need to empower and uphold the[ir] dignity."[263] It does not close the possibility of adjudication on the merits in a proper case, but nevertheless expresses optimism that perhaps even before judicial action is ineluctable, Congress shall have already seen the wisdom of lending official recognition to same-sex relations —

> This Court sympathizes with the petitioner with his obvious longing to find a partner. We understand the desire of same-sex couples to seek, not

259. *Id.*

260. *Id.* at 543.

261. People v. Canja, 86 Phil. 518 (1950).

262. *Id.* at 522-23 (J. Montemayor, concurring opinion).

263. *Falcis*, G.R. No. 217910, at 50.

> moral judgment based on discrimination from any of our laws, but rather, a balanced recognition of their true, authentic, and responsive choices.
>
> Yet, the time for a definitive judicial fiat may not yet be here. This is not the case that presents the clearest actual factual backdrop to make the precise reasoned judgment our Constitution requires. Perhaps, even before that actual case arrives, our democratically-elected representatives in Congress will have seen the wisdom of acting with dispatch to address the suffering of many of those who choose to love distinctively, uniquely, but no less genuinely and passionately.[264]

Falcis emphasizes — much like opinions in *McCarty*, *Ledbetter*, *Corpuz*, and *Canja* did — the need for other branches of government to take action on a situation which the Court sees as problematic. *Falcis* arrived at this conclusion through the Court's own astute perception and examination of academic and scientific sources, historical records, reports of cases, and legal issuances. From this perception and examination, the Court did not only detail the tribulations of the LGBTQI+ experience, but even expressed hope for more progressive arrangements than what the current marriage regime enables.

To echo Justice Ginsburg, "the ball is in Congress' court."[265] Yet, it is not only for Congress to act. *Falcis* equips advocates with tools and material already filtered and refined by the highest court's collegial wisdom. Its part being done in the meantime, the Court is constrained to its imperative passivity until any further case arrives.

VII. FROM RIDICULE TO BENEVOLENCE: THE TRAJECTORY OF JURISPRUDENCE

Falcis' value is further bolstered when viewed through the lens of jurisprudential history. It immensely differs from several prior treatments by the Court of LGBTQI+ concerns. For one, its keen consideration of SOGIESC, recognition of historical erasure and discrimination, and "[a]ware[ness] of the need to empower and uphold the dignity"[266] of LGBTQI+ persons are marked departures from prior jurisprudential pronouncements that, if not apathetic, were entirely dismissive of LGBTQI+ concerns and even furthered marginalization. At the same time, it is also the latest and most emphatic determination by the Court in an

---

264. *Id.* at 107.

265. *Ledbetter*, 550 U.S. at 19 (J. Ginsburg, dissenting opinion).

266. *Falcis*, G.R. No. 217910, at 50.

emerging line of contemporary Court pronouncements that favorably considers the plight of LGBTQI+ individuals.

Coming from the highest court of the land, the Court's direct discussion of LGBTQI+ concerns is the most authoritative declaration by the government on the subject, thus far. In the context of an emerging line of jurisprudence, it supplies forward momentum that builds steadily on recent gains. It does not only sustain optimism in more favorable government action. More importantly, it could itself be what induces subsequent positive developments.

A. Insensitivity and Erasure in Jurisprudence

Several prior Court decisions wittingly or unwittingly helped entrench an understanding of same-sex relations as anomalous, disordered, or undesirable.

In *People v. Joaquin*,[267] a 1993 decision, the defense assailed the credibility of two prosecution witnesses. It claimed that those witnesses were "lesbian lovers who have conspired to take revenge on [Joaquin] by fabricating their story against him."[268] The Court did not give weight to the defense's assertion.[269] Still, its explanation suggested that being in same-sex relations could have actually operated to undermine witness credibility — that, if proven, it would warrant distrust — except that, in that particular case, the defense failed to substantiate the witnesses' being in same-sex relations.[270] The Court was, thus, accepting of the defense's premise that being in same-sex relations was a damaging imputation —

> To impugn the credibility of the two housemaids, the defense makes a serious charge that it has not even attempted to substantiate. *Counsel has no license to vilify* in the guise of arguments. *Lesbianism is a malicious accusation* that should not be made without proof. The defense has not by its unsupported charges destroyed the credibility of the two housemaids. In any event, the Court feels that even without their testimonies, the crimes of Necemio have been sufficiently established.[271]

---

267. People v. Joaquin, 225 SCRA 179 (1993).

268. *Id.* at 185.

269. *Id.*

270. *Id.* at 187-88.

271. *Id.* at 187 (emphases supplied).

As with *Joaquin*, in 2005's *Pablo-Gualberto v. Gualberto*,[272] the Court considered same-sex relations as damaging, albeit the party claiming it failed to demonstrate how purported same-sex relations actually influenced a child's moral development —

> Based on the above jurisprudence, it is therefore not enough for Crisanto to show merely that Joycelyn was a lesbian. He must also demonstrate that she carried on her purported relationship with a person of the same sex in the presence of their son or under circumstances not conducive to the child's proper moral development. Such a fact has not been shown here. There is no evidence that the son was exposed to the mother's alleged sexual proclivities or that his proper moral and psychological development suffered as a result.[273]

Decided in 2008, *Almelor v. Regional Trial Court of Las Piñas*[274] concerned legal separation proceedings where the Court needed to clarify and distinguish that "homosexuality per se is only a ground for legal separation. It is its concealment that serves as a valid ground to annul a marriage."[275] In doing so, it favorably cited an American pronouncement describing same-sex relations as "unnatural practices"[276] that bring "indignity"[277] —

> In the United States, homosexuality has been considered as a basis for divorce. It indicates that questions of sexual identity strike so deeply at one of the basic elements of marriage, which is the exclusive sexual bond between the spouses. In *Crutcher v. Crutcher*, the Court held:
>
> 'Unnatural practices of the kind charged here are an infamous indignity to the wife, and which would make the marriage relation so revolting to her that it would become impossible for her to discharge the duties of a wife, and would defeat the whole purpose of the relation. In the natural course of things, they would cause mental suffering to the extent of affecting her health.'[278]

---

272. Pablo-Gualberto v. Gualberto, 461 SCRA 450 (2005).

273. *Id.* at 478.

274. Almelor v. Regional Trial Court of Las Piñas City, Br. 254, 563 SCRA 447 (2008).

275. *Id.* at 466.

276. *Id.* at 467 (citing Crutcher v. Crutcher, 86 Miss. 231, 235 (1905) (U.S.)).

277. *Almelor*, 563 SCRA at 467.

278. *Id.* at 466-67 (citing Annotation, *Homosexuality as Grounds for Divorce*, 78 A.L.R. 2d 807 (1961) & *Crutcher*, 86 Miss. at 337).

Ngo Te v. Yu-Te[279] concerned an action for annulment of marriage. In its analysis, it favorably invoked commentary on Roman Catholic Canon Law which characterized "homosexuality" as abnormal sexual activity as to the nature of the activity itself.[280] This characterization placed same-sex conduct in the same category as sadism and masochism, and described it as akin to nymphomania and satyriasis —

> Yet, as held in *Santos*, the phrase 'psychological incapacity' is not meant to comprehend all possible cases of psychoses. ... The intendment of the law has been to confine it to the most serious of cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This interpretation is, in fact, consistent with that in Canon Law, thus:
>
> 3.5.3.1. The Meaning of Incapacity to Assume.
>
> ...
>
> The problem as treated can be summarized, thus: do sexual anomalies always and in every case imply a grave psychopathological condition which affects the higher faculties of intellect, discernment, and freedom; or are there sexual anomalies that are purely so — that is to say, they arise from certain physiological dysfunction of the hormonal system, and they affect the sexual condition, leaving intact the higher faculties however, so that these persons are still capable of free human acts. *The evidence from the empirical sciences is abundant that there are certain anomalies of a sexual nature which may impel a person towards sexual activities which are not normal, either with respect to its frequency* [*nymphomania, satyriasis*] *or to the nature of the activity itself* [*sadism, masochism, homosexuality*]. However, these anomalies notwithstanding, it is altogether possible that the higher faculties remain intact such that a person so afflicted continues to have an adequate understanding of what marriage is and of the gravity of its responsibilities. In fact, he can choose marriage freely. The question though is whether such a person can assume those responsibilities which he cannot fulfill, although he may be able to understand them. In this latter hypothesis, the incapacity to assume the essential obligations of marriage issues from the incapacity to posit the object of consent, rather than the incapacity to posit consent itself.[281]

---

279. Ngo Te v. Yu-Te, 579 SCRA 193 (2009).

280. *Id.* at 218-19.

281. *Id.* at 213-15 (citing Santos v. Court of Appeals, 240 SCRA 20, 31 (1995) & ADOLFO N. DACANAY, CANON LAW ON MARRIAGE: INTRODUCTORY NOTES AND COMMENTS 110-19 (2000)) (emphases supplied).

Other Court decisions reveal the willingness of courts to use gender insensitive language or to typecast LGBTQI+ persons.

People v. Taruc[282] concerned prosecution for murder and frustrated murder where the trial court found a prosecution witness credible because he "*as a homosexual*, ... would have been deterred by his *timid nature* from testifying against the two accused-appellants, who were notorious 'toughs,' unless he was telling the truth."[283] The Court did not find error in the trial court in lending credibility to that witness' testimony, but limited its discussion to the supposed inconsistencies in his testimony.[284] The Court never addressed the propriety of or corrected the trial court's equating his supposedly being timid with his sexual orientation.

In *People v. Sandoval*,[285] the Court expressed no reservation at the needless identification of an individual as "homosexual ('bayot')"[286] —

> Bruno Zafra, erstwhile chief investigator at the San Nicolas Police Substation on May 31, 1986, supported the defense theory by testifying that although it was Cpl. Aballe who was the duty investigator, he was at the police station when a homosexual ('bayot') who was being investigated, named a certain 'Roland' and two unidentified persons as the suspects in the crimes, and revealed that the scene of the crime was dark because the bulb at the electric post was busted.[287]

The Court's 2007 decision in *Silverio v. Republic*[288] was a tremendous setback. Immediately revealing its leanings, its epigraph quoted the myth of *Malakas at Maganda*, as well as the Book of Genesis — "When God created man, He made him in the likeness of God; He created them male and female."[289]

Silverio concerned a petition filed by Rommel Jacinto Dantes Silverio, a transgender woman who underwent several procedures, including gender confirmation surgery.[290] Silverio sought the change of her name (from

282. People v. Taruc, 171 SCRA 75 (1989).

283. *Id.* at 81 (emphasis supplied).

284. *Id.* at 84.

285. People v. Sandoval, 254 SCRA 436 (1996).

286. *Id.* at 444.

287. *Id.*

288. Silverio v. Republic, 537 SCRA 373 (2007).

289. *Id.* at 380 (citing *Genesis* 5: 1-2).

290. *Silverio*, 537 SCRA at 381.

Rommel Jacinto to Mely) and sex (from male to female) as appearing in her birth certificate.[291] The Regional Trial Court initially ruled for her, explaining, "[p]etitioner's misfortune to be trapped in a man's body is not [her] own doing and should not be in any way taken against [her]."[292] However, the Court of Appeals granted the Office of the Solicitor General's Petition for Certiorari and set aside the Regional Trial Court's ruling.[293]

The Supreme Court, through then Associate Justice Renato C. Corona, sustained the Court of Appeals.[294] In a decision mired by the use of gender insensitive and archaic language (e.g., misgendered pronouns and inappropriate terminologies), it reasoned that the petitioner's use of the name *Rommel Jacinto* "does not prejudice *him* [sic] at all."[295] It dismissed her plea as possibly "only creat[ing] grave complications in the civil registry and the public interest."[296] It was hostile in its appreciation of gender confirmation surgery and revealed a lack of understanding of, if not insensitivity towards, petitioner's gender identity and expression, stating, "petitioner's female anatomy is all man-made. The body that *he* [sic] inhabits is a male body in all aspects other than what the physicians have supplied."[297]

Decided in 2008, *Republic v. Cagandahan*[298] appears to offer a partial respite from *Silverio*. It allowed the change of name in the birth certificate of respondent, an intersex individual, from Jennifer to Jeff.[299]

Reading *Cagandahan*, however, reveals that the Court's inclination was more of capitulation. It did state that it was "consider[ing] the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial."[300] Still, its reasoning reveals the extent to which it capitulated to what, as it perceived, nature has rendered immutable. Thus, it was less motivated by a consummate appreciation of

291. *Id.*

292. *Id.* at 382.

293. *Id.* at 383.

294. *Id.* at 387.

295. *Id.* at 388 (emphasis supplied). Note the pronouns used to refer to Mely.

296. *Silverio*, 537 SCRA at 387.

297. *Id.* at 392 n. 31 (emphasis supplied).

298. Republic v. Cagandahan, 565 SCRA 72 (2008).

299. *Id.* at 88.

300. *Id.* at 86.

SOGIESC, of the inherent dignity of an intersex individual, and of the need to empower and to eliminate discrimination, than it was compelled by "nature." It adverted to a gender "no-man's land."[301] Its reference to "unnatural steps" also hinted approval of *Silverio*'s distaste for gender confirmation surgery —

> In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. 'It has been suggested that there is some middle ground between the sexes, *a "no-man's land" for those individuals who are neither truly "male" nor truly "female"*.' The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when *nature itself fundamentally negates such rigid classification*.
>
> ...
>
> *Respondent here has simply let nature take its course and has not taken unnatural steps* to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. Respondent could have undergone treatment and taken steps, like taking lifelong medication, to force his body into the categorical mold of a female but he did not. He chose not to do so. *Nature has instead taken its due course* in respondent's development to reveal more fully his male characteristics.
>
> ...
>
> In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.[302]

B. Abandoning Past Tendencies and Looking to Greater Gains

More recent pronouncements reveal a Court that is increasingly gender-sensitive and perceptive of LGBTQI+ concerns.

Decided in 2009, *Dojillo v. Ching*[303] saw the Court take exception to the use of gender-insensitive language. It admonished Judge Jaime L. Dojillo, Jr.

---

301. *Id.* (citing M.T. v. J.T., 355 A.2d 204 (NJ Super. Ct. 1976) (U.S.)).

302. *Cagandahan*, 565 SCRA at 86-88 (emphases supplied).

303. Dojillo, Jr. v. Ching, 594 SCRA 530 (2009).

for his statement referring to a clerk of court as "a lesbian and a well-known gossiper and trouble maker."[304] Notably, Judge Dojillo did not only make that statement, he aggravated it by "plac[ing] emphasis on the word 'lesbian.'"[305]

Citing the New Code of Judicial Conduct for the Philippine Judiciary, the Court, speaking through Associate Justice Conchita Carpio Morales, castigated Judge Dojillo[306] —

> In the case of Judge Dojillo, he should be admonished to be more circumspect in his choice of words and use of gender-fair language. There was no reason for him to emphatically describe Concepcion as a 'lesbian' because the complained acts could be committed by anyone regardless of gender orientation. His statements like 'I am a true man not a gay to

304. *Id.* at 541.

305. *Id.* n. 23.

306. Prior to *Dojillo*, there have been other instances in which judges and court personnel were disciplined for using colloquial pejoratives concerning sexual orientation. *See* Re: Anonymous Complaint dated Feb. 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Br. 12, Ormoc City, 523 SCRA 175 (2007); Sy v. Fineza, 413 SCRA 374 (2003); & In Re: Ms. Edna S. Cesar, RTC, Branch 171, Valenzuela City, 388 SCRA 703 (2002). *Dojillo* is particularly notable however, as it proceeds from a definite and fundamental appreciation of gender sensitivity and fairness, emphasizing that undesirable acts may be committed by an individual regardless of sexual orientation. Its dispositive portion also specifically stated that Judge Dojillo "is ADMONISHED to be more circumspect in his choice of words and use of gender-fair language." *Re: Anonymous Complaint Against Judge Francisco C. Gedorio, Jr.* involved the statements, "Animal ka, bakla ka[,]" and "Sino si Clinton? Bakla yon," which the Court denounced as "vulgar and insulting language." In *Sy*, where respondent Judge Antonio Fineza "describ[ed] one of the complainants' witnesses as 'BAKLA' in a pleading filed before [the Supreme] Court," the Court noted that "resort to *argumentum ad hominem* is certainly most unbecoming of a judge[.]" In *In re Cesar*, a legal researcher shouted invectives at a security guard, among which was "Bakla! Bakla! Pumapatol sa babae!" The legal researcher was found guilty of discourtesy, with the Court decrying her "[h]igh-strung and belligerent behavior" and noting that "[s]houting and cursing, particularly at the workplace, is not only an exhibition of paucity of professionalism, but is also an act of disrespect towards co-employees and this Court."

Dojillo, 594 SCRA at 541; *Re: Anonymous Complaint Against Judge Francisco C. Gedorio, Jr.*, 523 SCRA at 178 & 182; *Sy*, 413 SCRA at 382; & *In re Cesar*, 388 SCRA at 704 & 707-08.

> challenge a girl and a lesbian like her,' 'the handiwork and satanic belief of dirty gossiper,' and 'the product of the dirty and earthly imagination of a lesbian and gossiper' were uncalled for.
>
> Being called to dispense justice, Judge Dojillo must demonstrate finesse in his choice of words as normally expected of men of his stature. His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.[307]

In 2010, in *Ang Ladlad LGBT Party v. Commission on Elections*,[308] the Court sustained Ang Ladlad LGBT Party's (Ang Ladlad) right to participate in the party-list system.[309] In so doing, it emphasized secularism and rejected religious justifications for Ang Ladlad's exclusion. Impugning the Commission on Elections' reliance on the Bible and the Koran, the Court, through Justice del Castillo, stated that

> [r]ather than relying on religious belief, the legitimacy of the Assailed Resolutions should depend, instead, on whether the COMELEC is able to advance some justification for its rulings beyond mere conformity to religious doctrine. Otherwise stated, government must act for secular purposes and in ways that have primarily secular effects.[310]

The Court recognized the general proposition that same-sex conduct has "borne the brunt of societal disapproval"[311] but rejected the notion that such disapproval is characteristic of the nation's morals. Referencing *Anonymous v. Radam*,[312] the Court expressed doubt at whether distaste for same-sex conduct was a matter that genuinely typified Filipino moral identity —

> In *Anonymous v. Radam*, ... we ruled that immorality cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on 'cultural' values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally

307. *Id.* at 541 (citing NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, canon 5; Negros Grace Pharmacy, Inc. v. Judge Hilario, 416 SCRA 324, 330 (2003); & Dela Cruz v. Judge Bersamira, 349 SCRA 626, 629 (2001)).

308. Ang Ladlad LGBT Party v. Commission on Elections, 618 SCRA 32 (2010).

309. *Id.* at 80.

310. *Id.* at 59.

311. *Id.* at 60.

312. Anonymous v. Radam, 541 SCRA 12 (2007).

> guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.[313]

It added that, in any case, 'moral disapproval' would not suffice to disqualify Ang Ladlad. Here, the Court intimated its own disapproval of how mere dislike pervaded the effort to exclude Ang Ladlad —

> [W]e hold that moral disapproval, without more, is not a sufficient governmental interest to justify exclusion of homosexuals from participation in the party-list system. The denial of Ang Ladlad's registration on purely moral grounds amounts more to a statement of dislike and disapproval of homosexuals, rather than a tool to further any substantial public interest.[314]

The Court further expressed openness to learning from other jurisdictions that have been more welcoming of LGBTQI+ rights —

> European and United Nations judicial decisions have ruled in favor of gay rights claimants on both privacy and equality grounds, citing general privacy and equal protection provisions in foreign and international texts. To the extent that there is much to learn from other jurisdictions that have reflected on the issues we face here, such jurisprudence is certainly illuminating. These foreign authorities, while not formally binding on Philippine courts, may nevertheless have persuasive influence on the Court's analysis.
>
> In the area of freedom of expression, for instance, United States courts have ruled that existing free speech doctrines protect gay and lesbian rights to expressive conduct. In order to justify the prohibition of a particular expression of opinion, public institutions must show that their actions were caused by 'something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.'
>
> ...

313. *Ang Ladlad,* 618 SCRA at 61 n. 29.

314. *Id.* at 62.

> [A]s far as this Court is concerned, our democracy precludes using the religious or moral views of one part of the community to exclude from consideration the values of other members of the community.[315]

The Court's 2019 Decision in *Republic v. Unabia*,[316] decided seven months before *Falcis*, concerned another petition to correct one's name and sex in his birth certificate.[317] Unlike *Silverio* and *Cagandahan*, the Court's ruling in *Unabia* was relatively straightforward as the respondent, Miller Omandam Unabia, was found to be phenotypically male.[318] This, in the Court's words, meant that "[his] entire physical, physiological, and biochemical makeup — as determined both genetically and environmentally — is male."[319] Thus, "[h]e was conceived and born male, he looks male, and he functions biologically as a male."[320]

What is more notable is Justice Leonen's concurrence. This, in hindsight, reads like an overture to *Falcis*. Justice Leonen called attention to the distinction between *sex* and *gender*, explaining that "[s]ex is a biological concept, while gender is a social concept."[321]

---

315. *Id.* at 67-72 (citing Toonen v. Australia, Comm. No. 488/1992, U.N. GAOR Hum. Rts. Comm., 50th Sess., U.N. Doc. CCPR/c/50/D/488/1992 (1994); Dudgeon v. United Kingdom, 45 Eur. H.R. Rep. 52 (1981); Norris v. Ireland, 13 Eur. Ct. H.R. 186 (1991); Modinos v. Cyprus, 16 Eur. H.R. Rep. 485 (1993); L. and V. v. Austria (2003-I 29; (2003) 36 EHRR 55); S.L. v. Austria (2003-I 71; (2003) 37 EHRR 39); Fricke v. Lynch, 491 F. Supp. 381 (Dist. Ct. 1980) (U.S.); & Gay Student Services v. Texas A&M University, 737 F. 2d 1317 (5th Cir. 1984) (U.S.)).

316. Republic v. Unabia, G.R. No. 213346, Feb. 11, 2019, *available at* http://sc.judiciary.gov.ph/2302 (last accessed Aug. 15, 2020).

317. *Id.* at 1.

318. *Id.* at 9.

319. *Id.* (emphasis omitted).

320. *Id.* (emphasis omitted).

321. *Id.* (citing Susan E. Short, et al., *Sex, Gender, Genetics, and Health*, 103 AM. J. PUB. HEALTH 93, 93 (2013)) (J. Leonen, concurring opinion). Justice Leonen further explained —

> On one hand, sex 'refers to the biological distinctions between males and females,' and is based primarily on a person's capability to reproduce. It 'encompasses those that are biologically determined.' On the other hand, gender pertains to the 'social elaboration of biological sex.' It highlights 'the socially constructed differences between men

Akin to *Falcis*, Justice Leonen's concurrence in *Unabia* expressed hope at enlightenment and a more receptive attitude toward individual identity, as well as a reassessment of the dominant understanding of the male-female binary —

> This fundamental desire to change and correct one's entry in his or her birth certificate is born from the need to be identified as an individual. The entries in one's birth certificate separate him or her from others. The entries, such as the name and sex, as indicated in one's birth certificate, are considered as markers of one's identity. To ensure that an individual's sex is aligned with his or her identity, one undergoes the process of correcting his or her sex, as entered in his or her birth certificate.
>
> Perhaps in the nearest future, when our society, as represented by our constitutional organs, may become more enlightened, the binary male or female may be reassessed. Understanding that sex may be a continuum interacting with gender as another continuum may assist to identify ourselves better, devoid of the stereotypes imposed by a patriarchal society.
>
> Even the objective of being identified as regards to biological sex may become superseded with the changing of times. For instance, there has been a steady rise of sex reassignment surgeries being performed all across the globe.

> and women' influenced by the different norms and standards of societies, varying from one society to the other.
>
> Determining a person's sex mainly depends on 'a combination of anatomical, endocrinal[,] and chromosomal features.' 'Chromosomes are the structures that carry genes which in turn transmit hereditary characteristics from parents to offspring.'
>
> ...
>
> Conversely, gender is the result of the norms and standards imposed by society. It is a changing concept that differs in every society. While most individuals are biologically born as male or female, the behavioral standard enforced in a given society affects one's gender identity. Exactly how one is taught how to interact with others of the same or opposite sex usually defines one's gender identity.

Unabia, G.R. No. 213346, at 9 (J. Leonen, concurring opinion) (citing Susan E. Short, et al., *Sex, Gender, Genetics, and Health*, 103 AM. J. PUB. HEALTH 93, 93 (2013)); PENELOPE ECKERT & SALLY MCCONNEL-GINET, LANGUAGE AND GENDER 2 (2013); & World Health Organization, Gender and Genetics, *available at* https://www.who.int/genomics/gender/en (last accessed Aug. 15, 2020)).

> Sex reassignment or gender-affirming surgery 'is a medical treatment intended to effect change to a person's sex. It may include surgery and hormonal treatments designed to alter a person's gender.' As more individuals undergo sex reassignment, changing the sexes in their birth certificates is inevitable. Thus, sex may cease to be believed as permanent and immutable. It may already be an impractical and obsolete marker of identity. Rather than identify, it may become a forced category with all its attendant burdens.[322]

Affirming the Court's departure from prior rulings that entrenched stereotypes and were ambivalent to, if not condoned, the use of pejoratives and gender-insensitive language, the Court's August 2019 Resolution in *Canete v. Puti*,[323] penned by Associate Justice Alfredo Benjamin S. Caguioa, saw the Court reprimand a lawyer for using "bakla" to ridicule another lawyer. Specifically, Atty. Artemio Puti was noted to have stated, "Ako muna, [hijo]. Ikaw naman para kang bakla."[324]

Citing *Sy v. Fineza*,[325] where the Court similarly took exception to the use of "bakla" (albeit not as unfair and insensitive language, but as argumentum ad hominem),[326] *Canete* explained —

> To recall, Atty. Puti called Atty. Tan 'bakla' in a condescending manner. To be sure, the term 'bakla' (gay) itself is not derogatory. It is used to describe a male person who is attracted to the same sex. Thus, the term in itself is not a source of offense as it is merely descriptive. However, when 'bakla' is used in a pejorative and deprecating manner, then it becomes derogatory. Such offensive language finds no place in the courtroom or in any other place for that matter. Atty. Puti ought to be aware that using the term 'bakla' in a derogatory way is no longer acceptable — as it should have been in the first place. Verily, in *Sy v. Fineza*, the Court ruled that

322. *Unabia*, G.R. No. 213346 (citing Jordan D. Frey, et al., *An Update on Genital Reconstruction Options for the Female-to-Male Transgender Patient: A Review of the Literature*, 139 NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION 728 (2017) & BLACK'S LAW DICTIONARY (9th ed. 2009)) (J. Leonen, concurring opinion).

323. Canete v. Puti, A.C. No. 10949, Aug. 14, 2019, *available at* http://sc.judiciary.gov.ph/7711 (last accessed Aug. 15, 2020).

324. *Id.* at 2.

325. Sy v. Fineza, 413 SCRA 374 (2003).

326. *Sy v. Fineza* stated, "As for describing one of the complainants' witnesses as 'BAKLA' in a pleading filed before this Court, resort to argumentum ad hominem is certainly most unbecoming of a judge, to say the least." *Id.* at 382 (emphasis omitted).

> the respondent judge's act of ruling that a witness should not be given any credence because he is a 'bakla' was most unbecoming of a judge.[327]

As the most recent addition, *Falcis* adds to and reinforces the emerging line of beneficent Court decisions and opinions. However, it is distinct not only by sheer novelty. More importantly, its unprecedented sophistication and breadth, as well as manifest authority make it an encouraging impetus for further progress.

VIII. AFFIRMING THE TRAJECTORY: CONTEMPORANEOUS DEVELOPMENTS IN LEGISLATION AND ADMINISTRATIVE RULE-MAKING

The emerging line of favorable Court pronouncements mirrors parallel developments in legislation, both national and local, and administrative rule-making. These parallel developments indicate improving understanding of SOGIESC, increasing awareness of marginalization and appreciation for non-discrimination, and greater willingness to assume commitments and adopt measures that promote equality and enable empowerment.

A. Statutes, Their Implementing Rules, and Administrative Interpretation of Statutes

Philippine statutes and their implementing rules and regulations have expressly recognized the need for non-discrimination as early as 1998. More recent laws however, transcend non-discrimination. These laws signal a potential transition towards recognition, greater enabling measures, and definite bases of actionable liability.

Two recent statutes stand out. The first, the 105-Day Expanded Maternity Leave Law,[328] extends a degree of recognition to same-sex relations and affords benefits to mothers and their same-sex partners. The second, the Safe Spaces Act[329] (along with its Implementing Rules and

327. *Canete*, A.C. No. 10949, at 6-7 (citing Sy v. Fineza, 413 SCRA 374, 382 (2003)).

328. An Act Increasing the Maternity Leave Period to one Hundred Five (105) Days for Female Workers With an Option to Extend for an Additional Thirty (30) Days Without Pay, and Granting an Additional Fifteen (15) Days for Solo Mothers, and for Other Purposes [105-Day Expanded Maternity Leave Law], Republic Act No. 11210 (2019).

329. An Act Defining Gender-Based Sexual Harassment in Streets, Public Spaces, Online, Workplaces, and Educational or Training Institutions, Providing Protective Measures and Prescribing Penalties Therefor [Safe Spaces Act], Republic Act No. 11313 (2019).

Regulations), articulates the most comprehensive statutory appreciation, thus far, of SOGIE and imposes criminal and administrative liability for gender-based sexual harassment.

In addition to statutes and their implementing rules, recent administrative interpretation of a long-standing statutory provision formally recognizes the capacity of LGBTQI+ persons to enable their partners to partake of a legal benefit.

Adopted in 1998, Republic Act No. 8551, the Philippine National Police Reform and Reorganization Act of 1998, mandates the adoption of a gender sensitivity program which shall encompass "the prohibition of discrimination on the basis of gender or sexual orientation."[330]

In 2007, Republic Act No. 9433, the Magna Carta for Public Social Workers recognized "[p]rotection from discrimination by reason of sex [and] sexual orientation,"[331] as among the rights of public social workers.

In recognizing the equality and inherent dignity of human persons, Republic Act No. 9710, the Magna Carta of Women, which was adopted in

330. An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled, "An Act Establishing the Philippine National Police Under a Re-Organized Department of the Interior and Local Government, and for Other Purposes" [Philippine National Police Reform and Reorganization Act of 1998], Republic Act No. 8551, § 59 (1998). The provision states —

> SECTION 59. Gender Sensitivity Program. — The Commission shall formulate a gender sensitivity program within ninety (90) days from the effectivity of this Act to include but not limited to the establishment of equal opportunities for women in the PNP, the prevention of sexual harassment in the workplace, and the prohibition of discrimination on the basis of gender or sexual orientation.

Id.

331. An Act Providing for a Magna Carta for Public Social Workers [Magna Carta for Public Social Workers], Republic Act No. 9433, § 17 (a) (2007). The provision states that "[p]ublic social workers shall have the ... [right to] [p]rotection from discrimination by reason of sex, sexual orientation, age, political or religious beliefs, civil status, physical characteristics/disability, or ethnicity[.]"

Id.

2009, articulates a policy against discrimination on the basis of, among others, gender and sexual orientation —

> SECTION 3. Principles of Human Rights of Women. —
>
> ...
>
> All individuals are equal as human beings by virtue of the inherent dignity of each human person. *No one, therefore, should suffer discrimination on the basis of* ethnicity, gender, age, language, *sexual orientation*, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.[332]

The Magna Carta of Women's Implementing Rules and Regulations enhances its policy against discrimination by reiterating that "[n]o one ... should suffer discrimination on the basis of ... gender [and] sexual orientation,"[333] recognizing that sexuality encompasses sexual orientation,[334] and specifically stipulating that qualified enlisted women personnel "shall not be denied of promotion to the highest non-commissioned officer position in

---

332. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710, § 3 (2009) (emphasis supplied).

333. Rules and Regulations Implementing an Act Providing for a Magna Carta of Women, Republic Act No. 9710, rule I, § 6 (2010). The provision states —

> SECTION 6. Principles of Human Rights of Women. —
>
> ...
>
> All individuals are equal as human beings by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.

Id.

334. *Id.* § 7 (R). The provision states —

> SECTION 7. Definition of Terms. — As used in these Rules and Regulations, the following terms shall mean:
>
> ...
>
> R. 'Sexuality' refers to the expression of a person's thoughts, feelings, sexual orientation and relationships, as well as the biology of the sexual response system of that person[.]

Id. (emphasis omitted).

the military, police and similar services solely on the basis of sex and sexual orientation[.]"[335]

Also adopted in 2009, Republic Act No. 9851,[336] the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity recognizes "[p]ersecution against any identifiable group or collectivity on ... gender, sexual orientation[,] or other grounds that are universally recognized as impermissible under international law,"[337] "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack[,]"[338] as

---

335. *Id.* § 18 (A) (8). The provision states —

> SECTION 18. Women in the Military, Police and Other Similar Services. —
>
> ...
>
> A. The DND, DILG, DOJ[,] and LGUs shall:
>
> ...
>
> 8. Promote the rights of women enlisted personnel in the military, police and similar services. Qualified enlisted women personnel shall not be denied of promotion to the highest non-commissioned officer position in the military, police and similar services solely on the basis of sex and sexual orientation[.]

Id.

336. An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes [Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity], Republic Act No. 9851 (2009).

337. *Id.* § 6 (h). The provision states —

> SECTION 6. Other Crimes Against Humanity. — For the purpose of this Act, 'other crimes against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> ...
>
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act[.]

Id.

338. *Id.* § 6.

potentially amounting to a crime against humanity. Specific penalties are provided in Section 7 of Republic Act No. 9851.[339]

The Implementing Rules and Regulations of Republic Act No. 10627, or the Anti-Bullying Act of 2013 were adopted by the Department of Education (DepEd) under then Secretary Bro. Armin A. Luistro, FSC. Its definition of *bullying* encompasses "gender-based bullying."[340] *Gender-based bullying* is, in turn, defined as "any act that humiliates or excludes a person on the basis of *perceived or actual* sexual orientation and gender identity (SOGI)."[341] This definition is notable, not only for incorporating the concepts of sexual orientation and gender identity, but also for identifying as bullying any act of humiliation or exclusion on the basis of such concepts even if they are based on mere perception.

2016's Republic Act No. 10801, the Overseas Workers Welfare Administration (OWWA) Act, mandates that "[w]elfare assistance, services,

---

339. *Id.* § 7.

340. Rules and Regulations Implementing the Anti-Bullying Act of 2013, Republic Act No. 10627, rule II, § 3 (b) (b.1) (2) (2013). The rules provide —

> Section 3. Definition of Terms. — As used in th[ese] Implementing Rules and Regulations (IRR), the following terms shall be defined as:
>
> ...
>
> b. 'Bullying' refers to any severe, or repeated use by one or more students of a written, verbal or electronic expression, or a physical act or gesture, or any combination thereof, directed at another student that has the effect of actually causing or placing the latter in reasonable fear of physical or emotional harm or damage to his property; creating a hostile environment at school for the other student; infringing on the rights of another student at school; or materially and substantially disrupting the education process or the orderly operation of a school; such as, but not limited to, the following:
>
> ...
>
> b.1. The term 'bullying' shall also include:
>
> ...
>
> 2. 'Gender-based bullying' refers to any act that humiliates or excludes a person on the basis of perceived or actual sexual orientation and gender identity (SOGI).

Id.

341. *Id.* § 3 (b) (b.1) (2) (emphasis supplied).

and programs provided by the OWWA shall be gender-responsive."[342] To this end, its Implementing Rules and Regulations stipulate that such welfare assistance, programs, and services shall "tak[e] into consideration the different impacts of labor migration [on] men and women, including their sexual orientation, gender identity and expression[ ]."[343]

Consistent with non-discrimination, Republic Act No. 11036, the Mental Health Act, which was adopted in 2018, recognizes as among the rights of service users (i.e., "person[s] with lived experience of any mental health condition)[344] the rights to "[e]xercise all their inherent civil, political, economic, social, religious, educational, and cultural rights respecting individual qualities, abilities, and diversity of background, without discrimination on the basis of ... gender [and] sexual orientation,"[345] as well as to "[a]ccess to evidence-based treatment of the same standard and quality, regardless of ... sex, ... or sexual orientation[.]"[346]

Also adopted in 2018, Republic Act No. 11166, the Philippine HIV and AIDS Policy Act, [347] is the first statute to comprehensively recognize

342. An Act Governing the Operations and Administration of the Overseas Workers Welfare Administration [Overseas Workers Welfare Administration Act], Republic Act No. 10801, § 2 (2016).

343. Department of Labor and Employment, Rules and Regulations Implementing an Act Governing the Operations and Administration of the Overseas Workers Welfare Administration, Republic Act No. 10801, rule I, § 1 (2016). The provision states —

> SECTION 1. Declaration of Policy. —
>
> ...
>
> The OWWA shall provide gender-responsive welfare assistance, programs and services, taking into consideration the different impacts of labor migration to men and women, including their sexual orientation, gender identity and expressions.

Id.

344. An Act Establishing a National Mental Health Policy for the Purpose of Enhancing the Delivery of Integrated Mental Health Services, Promoting and Protecting the Rights of Persons Utilizing Psychiatric, Neurologic and Psychosocial Health Services, Appropriating Funds Therefor, and for Other Purposes [Mental Health Act], Republic Act No. 11036, § 4 (t) (2018).

345. *Id.* § 5 (b).

346. *Id.* § 5 (c).

347. An Act Strengthening the Philippine Comprehensive Policy on Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome

SOGIE. In its declaration of policies, it recognizes discrimination on the basis of *sex, gender, sexual orientation, gender identity and expression* as hampering the enjoyment of human rights and constitutional freedoms, and as being inimical to national interest —

> SECTION 2. Declaration of Policies. —
>
> ...
>
> Policies and practices that discriminate on the basis of perceived or actual HIV status, sex, gender, sexual orientation, gender identity and expression, age, economic status, disability, and ethnicity hamper the enjoyment of basic human rights and freedoms guaranteed in the Constitution and are deemed inimical to national interest.[348]

Even ahead of Republic Act No. 11166, the Implementing Rules and Regulations of its precursor, Republic Act No. 8504, the Philippine AIDS Prevention and Control Act of 1998, stipulated gender-sensitivity and the need to not undermine same-sex conduct in HIV/AIDS education and information offering —

> SECTION 7. Content. —
>
> The standardized basic information on HIV/AIDS shall be the minimum content of an HIV/AIDS education and information offering. Additional content shall vary with the target audience.
>
> Selection of content or topic shall be guided by the following criteria:
>
> ...
>
> e. Gender-sensitive — Content portrays a positive image or message of the male and female sex; it is neither anti-women nor anti-homosexual.[349]

Enacted in 2019, Republic Act No. 11188, the Special Protection of Children in Situations of Armed Conflict Act, provides for the rights of children in situations of armed conflict. Among these is "[t]he right to be treated humanely in all circumstances, without any adverse distinction

---

(AIDS) Prevention, Treatment, Care, and Support, and Reconstituting the Philippine National Aids Council (PNAC), Repealing for the Purpose Republic Act No. 8504, Otherwise Known as the "Philippine Aids Prevention And Control Act of 1998," and Appropriating Funds Therefor [Philippine HIV and AIDS Policy Act], Republic Act No. 11166 (2018).

348. *Id.* § 2.

349. Philippine National AIDS Council, Implementing the Philippine AIDS Prevention and Control Law of 1998, Republic Act No. 8504, § 7 (e) (1999).

founded on race, color, religion or faith, [SOGIE], birth, wealth[,] or any other similar criteria[.]"[350]

Republic Act No. 11210, or the 105-Day Expanded Maternity Leave Law, uses gender-neutral formulation concerning the availing by a mother's current partner of seven days of maternity leave credits in lieu of a child's father.[351] Thus, it goes beyond non-discrimination. It extends a measure of recognition to same-sex relations and allows a same-sex partner to avail of benefits —

> SECTION 6. Allocation of Maternity Leave Credits. — Any female worker entitled to maternity leave benefits as provided for herein may, at her option, allocate up to seven (7) days of said benefits to the child's father, whether or not the same is married to the female worker: *Provided, That in the death, absence, or incapacity of the former, the benefit may be allocated to* an alternate caregiver who may be a relative within the fourth degree of consanguinity or *the current partner of the female worker sharing the same household*, upon the election of the mother taking into account the best interests of the child: *Provided, further,* That written notice thereof is provided to the employers of the female worker and alternate caregiver: *Provided, furthermore,* That this benefit is over and above that which is provided under Republic Act No. 8189, or the 'Paternity Leave Act of 1996': *Provided, finally,* That in the event the beneficiary female worker dies or is permanently incapacitated, the balance of her maternity leave benefits shall accrue to the father of the child or to a qualified caregiver as provided above.[352]

Republic Act No. 11210's Implementing Rules and Regulations affirm a same-sex partner's capacity to avail of seven days of maternity leave credits under Section 6 —

> RULE VIII
>
> Allocation of Maternity Leave Credits
>
> SECTION 1. Allocation to the Child's Father or Alternate Caregiver. — ...

350. An Act Providing for the Special Protection of Children in Situations of Armed Conflict and Providing Penalties for Violations Thereof [Special Protection of Children in Situations of Armed Conflict Act], Republic Act No. 11188, § 7 (i) (2019).

351. 105-Day Expanded Maternity Leave Law, § 6.

352. *Id.* (emphasis supplied).

> In case of death, absence, or incapacity of the child's father, the female worker may allocate to an alternate caregiver who may be any of the following, upon the election of the mother taking into account the best interests of the child:
>
> ...
>
> b. The current partner, *regardless of sexual orientation or gender identity*, of the female worker sharing the same household.[353]

Republic Act No. 11313 or the Safe Spaces Act and its Implementing Rules and Regulations offer the most comprehensive treatment of SOGIESC and gender-based discrimination thus far. The Safe Spaces Act was itself cited in *Falcis* as a means through which "Congress has made headway in instituting protective measures,"[354] even as "comprehensive anti-discrimination measures that address the specific conditions faced by the LGBTQI+ community have yet to be enacted."[355]

The Safe Spaces Act addresses four categories of gender-based sexual harassment: *first*, gender-based streets and public spaces sexual harassment; *second*, gender-based online sexual harassment; *third*, gender-based sexual harassment in the workplace; and, *fourth*, gender-based sexual harassment in educational and training institutions.[356]

It protects persons of diverse SOGIE by recognizing "misogynistic, transphobic, homophobic, and sexist slurs as acts amounting to gender-based streets and public spaces sexual harassment"[357] and misogynistic, transphobic, homophobic, and sexist remarks and comments online as amounting to gender-based online sexual harassment[358] —

> Section 4. Gender-Based Streets and Public Spaces Sexual Harassment. — The crimes of gender-based streets and public spaces sexual harassment are committed through any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks.

---

353. Rules and Regulations Implementing the 105-Day Expanded Maternity Leave Law, Republic Act No. 11210, rule VIII, § 1 (b) (2019) (emphasis supplied).

354. *Falcis*, G.R. No. 217910, at 44.

355. *Id.*

356. Safe Spaces Act, art. I.

357. *Id.* § 4.

358. *Id.* § 12.

> Gender-based streets and public spaces sexual harassment includes catcalling, wolf-whistling, unwanted invitations, *misogynistic, transphobic, homophobic and sexist slurs*, persistent uninvited comments or gestures on a person's appearance, relentless requests for personal details, statement of sexual comments and suggestions, public masturbation or flashing of private parts, groping, or any advances, whether verbal or physical, that is unwanted and has threatened one's sense of personal space and physical safety, and committed in public spaces such as alleys, roads, sidewalks and parks. Acts constitutive of gender-based streets and public spaces sexual harassment are those performed in buildings, schools, churches, restaurants, malls, public washrooms, bars, internet shops, public markets, transportation terminals or public utility vehicles.
>
> SECTION 12. Gender-Based Online Sexual Harassment. — Gender-based online sexual harassment includes acts that use information and communications technology in terrorizing and intimidating victims through physical, psychological, and emotional threats, unwanted sexual *misogynistic, transphobic, homophobic and sexist remarks and comments online* whether publicly or through direct and private messages, invasion of victim's privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorized recording and sharing of any of the victim's photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing false abuse reports to online platforms to silence victims.[359]

The Safe Spaces Act itself defines gender and gender identity and/or expression.[360] Its Implementing Rules and Regulations supplement these definitions[361] and facilitate a clearer understanding of homophobic and transphobic remarks or slurs as affronts that fundamentally concern SOGIE —

---

359. *Id.* §§ 4 & 12 (emphasis supplied).

360. *Id.* § 3 (d) & (f). These provisions state —

> Section 3. Definition of Terms. — As used in this Act:
>
> ...
>
> (d) Gender refers to a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them;
>
> ...
>
> (f) Gender identity and/or expression refers to the personal sense of identity as characterized, among others, by manner of clothing,

> SECTION 4. Definition of Terms. — As used in these rules, the following terms are defined as follows:
>
> ...
>
> i) Homophobic remarks or slurs are any statements in whatever form or however delivered, which are indicative of fear, hatred[,] or aversion towards persons who are perceived to be or actually identify as lesbian, gay, bisexual, queer, pansexual and such other persons of diverse sexual orientation, gender identity or expression, or towards any person perceived to or actually have experienced same-sex attraction.
>
> ...
>
> o) Transphobic remarks or slurs are any statements in whatever form or however delivered, that are indicative of fear, hatred[,] or aversion towards persons whose gender identity and/or expression do not conform with their sex assigned at birth.[362]

> inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender[.]

Id.

361. Rules and Regulations Implementing the Safe Spaces Act, Republic Act No. 11313, rule II, § 4 (f) and (h) (2019). The rules provide —

> Section 4. Definition of Terms. — As used in these rules, the following terms are defined as follows:
>
> ...
>
> f) Gender refers to a set of socially ascribed characteristics, norms, roles, attitudes, values, and expectations identifying the social behavior of men and women, and the relations between them.
>
> ...
>
> h) Gender identity and/or expression refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, or may have been assigned a particular sex at birth but who identifies with the opposite sex, or may have an identity that does not correspond to one's sex assigned at birth or to one's primary or secondary sex characteristics, in which case this person is considered transgender.

Id.

362. *Id.* rule II, § 4 (i) & (o).

The Safe Spaces Act's Implementing Rules and Regulations further mandate coverage of SOGIE in trainings that must be undergone by anti-sexual harassment enforcers[363] and members of committees on decorum and investigation.[364] It also calls for representation of persons of diverse SOGIE in committees on decorum and investigation for educational and training institutions.[365]

---

363. *Id.* rule III, § 11 (a). This section provides —

> Section 11. Implementing Bodies for Gender-Based Sexual Harassment in Streets and Public Spaces. — To respond to GBSH in streets and public spaces:
>
> a) The Metro Manila Development Authority (MMDA), the local units of the PNP for the provinces, and the Women and Children Protection Desk (WCPD) of the PNP shall have the authority to apprehend perpetrators and enforce the law.
>
> The PNP and MMDA, shall ensure that their Anti-Sexual Harassment Enforcers (ASHE) undergo gender sensitivity training (GST), which shall cover topics, among others, gender, sexual orientation, gender identity, gender expression, sources of gender discrimination, the roles of different institutions in society in perpetuating discrimination, sexual orientation, gender identity, gender expression, the different manifestations of discrimination, including sexual harassment, and the solutions to minimize or eliminate such forms of discrimination.

Id.

364. *Id.* rule VIII, § 32 (c). This section provides —

> Section 32. Development of Code of Conduct. — Within one hundred fifty (150) days from the effectivity of these rules, employers both from the public and private sector, and heads of educational and training institutions shall develop a Code of Conduct, in consultation with workers or the union, if any, in workplaces, and with the student council in the case of schools and training institutions, that will:
>
> ...
>
> c) Specify the functions, responsibilities, composition, and qualifications of the members of the CODI, including the penalties to be imposed on members of the CODI in cases of non-performance or inadequate performance of functions. All members of the CODI shall undergo continuing training on gender sensitivity, gender-based violence, sexual orientation, gender identity and expression, and other gender and development (GAD) topics as needed.

Rules and Regulations Implementing the Safe Spaces Act, rule VIII, § 32 (c).

365. *Id.* rule VIII, § 33 (b). This section provides —

On 4 March 2020, the Insurance Commission issued an Opinion[366] interpreting a long-standing statutory provision, Section 11 of the Insurance Code,[367] as allowing LGBTQI+ persons to designate their partners as life insurance beneficiaries.[368] The Opinion was prompted by a letter sent to the

> Section 33. Committee on Decorum and Investigation (CODI). —
>
> ...
>
> b) For educational and training institutions, the CODI shall be composed of at least one (1) representative each from the school administration, the trainers, instructors, professors or coaches and students or trainees, students and parents, as the case may be. The school head or the head of the training institution may include other groups in the CODI as may be applicable. It shall be ensured that there is equal representation of persons of diverse sexual orientation, gender identity and/or expression, as far as practicable. Aside from the regular members of the CODI, the school head or the head of training institution must designate their respective permanent alternate who shall act on their behalf in case of absence of the regular member and must have the authority to render decision so as not to delay the proceedings being undertaken and to ensure continuity of deliberation.

Id.

366. Insurance Commission, Insured's Right to Designate Beneficiary, Legal Opinion No. 2020-02 [LO No. 2020-02] (March 4, 2020), *available at* https://www.insurance.gov.ph/wp-content/uploads/2020/03/IC-LO-No.-2020-02_Insureds-Right-to-Designate-Beneficiary_REPD.pdf (last accessed Aug. 15, 2020).

367. An Act Strengthening The Insurance Industry, Further Amending Presidential Decree No. 612, Otherwise Known As "The Insurance Code", As Amended by Presidential Decree Nos. 1141, 1280, 1455, 1460, 1814 And 1981, And Batas Pambansa Blg. 874, And For Other Purposes [THE INSURANCE CODE], Republic Act No. 10607, § 11 (2013). It states:

> SEC. 11. The insured shall have the right to change the beneficiary he designated in the policy, unless he has expressly waived this right in said policy. Notwithstanding the foregoing, in the event the insured does not change the beneficiary during his lifetime, the designation shall be deemed irrevocable.

Id.

368. The Opinion states —

> [T]he lnsurance Commission affirms your position that the insured who secures a life insurance policy on his or her own life may designate any individual as beneficiary, subiect only to the exceptions provided in Article 2012 in relation to Article 739 of the Civil Code.

Commission by Prof. E. (Leo) D. Battad, Program Director of the UP College of Law Gender Law and Policy Program, which noted the specific problem of how "there are instances when insurance companies refuse the designation of non-relatives as beneficiary of the insured, resulting in the inability of members of the LGBTQI+ community to designate their domestic partners as beneficiaries of their life insurance[.]"[369]

The Opinion, thus, facilitates the capacity of LGBTQI+ persons to allow their partners to partake of a legal benefit from which they had been thought excluded. It dispels restrictive notions on demandable rights and duties that are blind to or have even actively sought to erase the lived realities of LGBTQI+ individuals. This Opinion, then, is notable not only for its own merit in respect of life insurance, but also in how it can be a model for similar inclusive and enabling interpretation.

B. Administrative Rules

In administrative rule-making, rules adopted by government agencies concerning the administrative aspect of Republic Act No. 7877, the Anti-Sexual Harassment Act of 1995, include affronts to sexual orientation as among punishable offenses. Moreover, non-discrimination policies are articulated in procedural rules, codes of conduct and other administrative guidelines. Rules governing child welfare, youth development planning, and basic education similarly articulate commitments to non-discrimination, gender responsiveness, and gender sensitivity. Of the many administrative issuances concerning SOGIESC, an Executive Order issued in December 2019 by President Rodrigo Roa Duterte institutionalizes a national Diversity and Inclusion Program and creates the Inter-Agency Committee on

---

> While there is no express provision in the Amended Insurance Code on who may be designated as beneficiary in a life insurance policy, the right of the insured to designate any person as beneficiary in such insurance policy may be implied from Section 11 of the Amended Insurance Code[.]
>
> ...
>
> [T]here is no legal impediment to the designation as beneficiary of the domestic partner of an insured who has secured a life insurance policy on his or her own life.

Insurance Commission, Insured's Right to Designate Beneficiary, Legal Opinion No. 2020-02 [LO No. 2020-02] (March 4, 2020), at 1-3.

369. *Id.* at 2.

Diversity and Inclusion.[370] This is, to date, the most definite, comprehensive, and emphatic manifestation of the Executive Branch's commitment to SOGIE equality.

In 2001, the Civil Service Commission (CSC) adopted Resolution No. 01-0940, the Administrative Disciplinary Rules on Sexual Harassment Cases.[371] This was pursuant to Section 4 of the Anti-Sexual Harassment Act of 1995, which mandates heads of agencies and employers to adopt rules that will govern sexual harassment cases and prescribe administrative sanctions.[372] This Resolution, which applied to all government officials and employees,[373] classified "derogatory or degrading remarks or innuendoes

370. Office of the President, Institutionalizing the Diversity and Inclusion Program, Creating an Inter-Agency Committee on Diversity and Inclusion, and for Other Purposes, Executive Order No. 100, Series of 2019 [E.O. No. 100, s. 2019] (Dec. 17, 2019).

371. Civil Service Commission, Administrative Disciplinary Rules on Sexual Harassment Cases, Resolution No. 01-0940 [Res. No. 01-0940] (May 21, 2001).

372. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877, § 4 (a) (1995). It states —

> SECTION 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment. — It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head of office shall:
>
> (a) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor.
>
> Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.
>
> The said rules and regulations issued pursuant to this subsection (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

Id.

373. Res. No. 01-0940, rule 2, § 2. It states —

directed toward ... one's sexual orientation"[374] as a less grave offense. Pursuant to Rule XI, Section 56 (B) of these Rules, the first offense is punishable by a fine or by suspension for 30 days to six months, while the second offense is punishable by dismissal.[375]

CSC Resolution No. 01-0940's classification of such remarks or innuendoes concerning sexual orientation as less grave offenses was echoed in the administrative rules adopted by the Department of Foreign Affairs (DFA),[376] the Philippine National Police (PNP),[377] the Department of Social Welfare and Development (DSWD),[378] the Bureau of Internal Revenue (BIR),[379] the Department of Information and Communications

---

> SECTION 2. These Rules shall apply to all officials and employees in government, whether in the Career or Non-Career service and holding any level of position, including Presidential appointees and elective officials regardless of status, in the national or local government, state colleges and universities, including government-owned or controlled corporations, with original charters.

Id.

374. Res. No. 01-0940, rule X, § 53 (B) (3).

375. *Id.* rule XI, § 56 (B).

376. *See* Department of Foreign Affairs, Rules and Regulations on Administrative Sexual Harassment Cases, Order No. 05-02 [DFA Order No. 05-02] (Jan, 31, 2002) & Department of Foreign Affairs, Implementing Rules and Regulations on Administrative Sexual Harassment Cases, DFA Foreign Service Institute Office Order No. 21-08 (Jan. 30, 2008).

377. *See* Philippine National Police, Revised Implementing Rules and Regulations of CSC Resolution No. 01-0940 Re: Administrative Disciplinary Rules on Sexual Harassment Cases, PNP Circular No. 19-06 [PNP Circ. No. 19-06] (Sep. 5, 2006) & Philippine National Police, Revised Implementing Rules and Regulations of CSC Resolution No. 01-0940 Re: Administrative Disciplinary Rules on Sexual Harassment Cases, PNP Memorandum Circular No. 001-10 [PNP Memo. Circ. No. 001-10] (Jan. 8, 2010).

378. *See* Department of Social Welfare and Development, Administrative Disciplining Rules on Sexual Harassment Cases in the Department of Social Welfare and Development, Memorandum Circular No. 008-09 [DSWD Memo. Circ. No. 008-09] (Apr. 17, 2009).

379. *See* Bureau of Internal Revenue, Promulgation and Implementation of the Revised Code of Conduct for Bureau of Internal Revenue Officials and Employees, Revenue Memorandum Order No. 053-10 [BIR Rev. Memo. Order No. 053-10] (June 11, 2010).

Technology (DICT),[380] and the Commission on Audit (COA).[381] It was also maintained in CSC Resolution No. 1701077, the 2017 Rules on Administrative Cases in the Civil Service.[382]

Non-discrimination policies and similar measures in procedural rules, codes of conduct and ethical standards, as well as guidelines on human resource actions and on the rendition and availing of certain benefits and services spell out specific obligations. Violations of these policies and measures can engender disciplinary liability or, in certain cases, be the bases of administrative protests.

The Securities and Exchange Commission's (SEC) 2000 Revised Rules of Procedure enjoined hearing officers to not "by words or conduct, manifest bias or prejudice ... based upon ... sex [and] sexual orientation."[383]

In 2004, the Supreme Court adopted the New Code of Judicial Conduct for the Philippine Judiciary.[384] Canon 5, Section 1 of this Code enjoined respect for sexual orientation as a hallmark of advancing equality in the performance of judicial functions. It is this Fifth Canon which would animate the Court's subsequent 2009 Resolution in *Dojillo*[385] where a judge was admonished for using gender-insensitive language —

> CANON 5
>
> Equality
>
> Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

380. *See* Department of Information and Communications Technology, Implementing Rules and Regulations on the Handling of Sexual Harassment Cases Under RA 7877, DICT Administrative Order No. 01-17 (Jan. 19, 2017).

381. *See* Commission on Audit, Rules of Procedure in the Investigation, Resolution, Settlement, and Prosecution of Sexual Harassment Cases in the Commission on Audit, COA Resolution No. 024-17 [COA Res. No. 024-17] (Dec. 22. 2017).

382. Civil Service Commission, 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), CSC Resolution No. 1701077 (July 3, 2017).

383. Securities and Exchange Commission, 2000 Revised Rules of Procedure of the Securities and Exchange Commission, canon 3, rules 3-4.

384. NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC (Apr. 27, 2004).

385. *Dojillo, Jr.*, 594 SCRA.

> SECTION 1. Judges shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, color, sex, religion, national origin, caste, disability, age, marital status, *sexual orientation*, social and economic status and other like causes.[386]

The Social Security System's (SSS) Code of Ethical Standards, adopted in 2008, lists as a prohibited act "[d]iscriminating against SSS members, employers, SSS officials[,] or employees by word or conduct, bias or prejudice based on ... gender [and] sexual orientation ... [.]"[387]

Issued by the Professional Regulatory Board of Guidance and Counseling in 2009, the Code or Manual of Technical Standards for Registered and Licensed Guidance Counselors stipulates the following standards —

> III. KEEPING TRUST
>
> ...
>
> 17. Practitioners should not allow their professional relationships with clients to be prejudiced by any personal views they may have about lifestyle, gender, age, disability, race, sexual orientation, beliefs[,] or culture.[388]
>
> XI. WORKING WITH COLLEAGUES
>
> ...
>
> 67. Practitioners should maintain their professional relationships with colleagues and not be prejudiced by their own personal views about a colleague's lifestyle, gender, age, disability, ethnicity, sexual orientation, beliefs[,] or culture.[389]

386. Supreme Court, Adopting the New Code of Judicial Conduct for the Philippine Judiciary, Administrative Matter No. 03-05-01-SC, canon 5, § 1 (Apr. 27, 2004).

387. Social Security System, Code of Ethical Standards for Social Security System Officials and Employees [Code of Ethical Standards for Social Security System (SSS) Officials and Employees], § 8 (C) (iv) (July 10, 2008).

388. Professional Regulatory Board, Code or Manual of Technical Standards for Registered and Licensed Guidance Counselors, Board Resolution No. 01-09 [PRBGC Board Reso. No. 01-09], part III (17) (Jan. 22, 2009).

389. *Id.* part XI (67).

Adopted in 2010, the Code of Conduct for Public Attorneys and Employees of the Public Attorney's Office (PAO)[390] expressly includes "[n]on-discrimination as to ... sexual orientation"[391] as among the core values of the Public Attorney's Office. It further includes non-discrimination, regardless of sexual orientation, as among the Office's standards of personal conduct.[392]

Also issued in 2010, PNP Memorandum Circular No. 017-10, governing the use of government information and communications technology equipment, facilities or properties prohibits the use of such equipment, facilities or properties in inappropriate or offensive activities, including "hate speech, or material that ridicules others on the basis of ... sex, ... or sexual orientation[.]"[393]

2011's National Ethical Guidelines for Health Research which was prepared by the Philippine Health Research Ethics Board's Ad Hoc Committee for the Revision of the Ethical Guidelines recognized *gender bias* as "[p]artiality, unfairness, [or] prejudice manifested towards an individual or group of individuals based on sex and sexual orientation."[394]

In 2012, the DSWD issued Memorandum Circular No. 021-12, the Enhanced Guidelines on the Code of Conduct for Personnel of the Department of Social Welfare and Development. Its norms of behavior on "Relations with Colleagues, Subordinate Employees and the Public" proscribe discrimination "on account of ... gender [and] sexual orientation."[395]

---

390. Public Attorney's Office, Code of Conduct for Public Attorneys and Employees of the Public Attorney's Office, Memorandum Circular No. 007 [PAO Memo. Circ. 7, s. 2010] (Aug. 27, 2010).

391. *Id.* § 3.

392. *Id.* § 6 (A) (e).

393. Philippine National Police, Authorized Use of Government Information and Communications Technology Equipment, Facilities or Properties, Memorandum Circular No. 017-10 [PNP Memo. Circ. No. 017-10], part 5 (b) (4) (Sep. 9, 2010).

394. PHILIPPINE HEALTH RESEARCH ETHICS BOARD, NATIONAL ETHICAL GUIDELINES FOR HEALTH RESEARCH 140 (2011).

395. Department of Social Welfare and Development, Enhanced Guidelines on the Code of Conduct for Personnel of the Department of Social Welfare and Development, Memorandum Circular No. 021-12 [DSWD Memo. Circ. No. 021-12], part IV, para. 5 (i) (Oct. 16, 2012). The provision states —

Similarly, CHED Order No. 001-13, the Code of Conduct of the Commission on Higher Education, which was adopted in 2013, prohibits "discriminat[ion] against anyone, on account of ... gender ... or sexual orientation."[396]

> IV. Norms of Behavior
>
> ...
>
> 5. Relations with Colleagues, Subordinate Employees and the Public
>
> DSWD personnel shall observe the following in dealing with the public which includes colleagues in the government (LGUs, NGAs and legislators, etc.), colleagues within the Department, other partners (business, socio-civic groups and academe, NGOs involved in social welfare and development, foreign and multi-lateral agencies, media and the general public.
>
> ...
>
> i. Unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, sexual orientation, age, disability, religion, political persuasion, belief, culture or language or dialect.

Id.

396. Commission on Higher Education, Establishing a Code of Conduct for the Officials and Employees of the Commission on Higher Education (CHED), Order No. 001-13 [CHED Order No. 001-13], rule III, § 4 (c) (June 25, 2013). The provision states —

> SECTION 4. Norms of Conduct of CHED Officials and Employees. — Every official and employee shall observe the following norms as standards of personal conduct in the discharge and execution of official duties:
>
> ...
>
> (c) Justness and sincerity. — CHED officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, on account of rank, economic status, age, gender, religion or sexual orientation, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs

The Civil Service Commission's 2017 Omnibus Rules on Appointments and Other Human Resource Actions,[397] govern "[a]ny action denoting the movement or progress of human resource in the civil service such as promotion, transfer, reappointment, reinstatement, reemployment, reclassification, detail, reassignment, secondment, demotion and separation[.]"[398] It includes as among its prohibitions "discrimination [that is] exercised, threatened or promised against or in favor of any person examined or to be examined or employed by reason of his/her ... sex, sexual orientation and gender identity[.]"[399] Its Section 83, which concerns the Merit Selection Plan, also stipulates that "[t]here shall be no discrimination in the selection of employees on account of ... sex, sexual orientation and gender identity[.]"[400]

Echoing the Civil Service Commission's standards on human resource actions, the Merit Selection Plan in the Office of the President (OP) Proper,[401] provides that "[t]he OP Proper shall adhere to the principles of equal employment opportunity and shall not discriminate based on ... gender identity [and] sexual orientation ... among applicants."[402] It adds that "[d]iscrimination on account of ... gender identity [and] sexual orientation"[403] shall be a ground for protest against an appointment or promotion.

Id.

397. Civil Service Commission, 2017 Omnibus Rules on Appointments and Other Human Resource Actions (June 16, 2017) (as amended).

398. *Id.* § 3.

399. *Id.* § 134.

400. *Id.* § 83. This section provides —

> SECTION 83. The Merit Selection Plan (MSP) shall cover positions in the first and second level and shall also include original appointments and other related human resource actions.
>
> There shall be no discrimination in the selection of employees on account of age, sex, sexual orientation and gender identity, civil status, disability, religion, ethnicity, or political affiliation.

Id.

401. Office of the President, The Merit Selection Plan in the Office of the President (OP) Proper, Memorandum Order No. 37 (July 18, 2019).

402. *Id.* part (IV) (13).

403. *Id.* part (VIII) (2) (b).

Also reflecting a commitment to non-discrimination, the Office of the President's Memorandum Order No. 40, Amending the Policies and Guidelines on Scholarships and Other Training Grants in the Office of the President Proper, provides that "[t]hese Guidelines shall adhere to the policy of equal opportunity for all regardless of gender identity [and] sexual orientation[.]"[404]

A number of rules concerning child welfare, youth development planning, and basic education provide protective mechanisms that recognize SOGIE.

Rules issued by the Supreme Court concerning criminal cases involving children in conflict with the law[405] include sexual orientation as among the factors that may be considered in determining the best interests of a child in conflict with the law.[406] They further stipulate that sexual orientation shall be considered in providing "a healthy environment and adequate quarters"[407] for children in conflict with the law.

404. Office of the President, Amending the Policies and Guidelines on Scholarships and Other Training Grants in the Office of the President Proper (OP), Memorandum Order No. 40, part I (A) (Oct. 25, 2019).

405. 2009 REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC (Nov. 24, 2009); RE: RULE ON JUVENILES IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC (June 26, 2018); & 2019 SUPREME COURT REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, A.M. No. 02-1-18-SC (Jan. 22, 2019). Several distinct Supreme Court issuances are associated with A.M. No. 02-1-18-SC. The Rule on Juveniles in Conflict with the Law was originally issued on February 28, 2002. The Revised Rule on Children in Conflict with the Law was issued on November 24, 2009. The November 24, 2009 Revised Rule was amended on June 26, 2018. On January 22, 2019, the Supreme Court issued the 2019 Supreme Court Revised Rule on Children in Conflict with the Law.

406. 2009 REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, § 42 & 2019 SUPREME COURT REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, § 40.

407. 2019 SUPREME COURT REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, § 27. *See also* 2009 REVISED RULE ON CHILDREN IN CONFLICT WITH THE LAW, § 29, as amended by RE: RULE ON JUVENILES IN CONFLICT WITH THE LAW.

A 2013 Joint Memorandum Circular[408] issued by the Department of Education, the Department of Social Welfare and Development, the Department of the Interior and Local Government (DILG), and the Department of Health (DOH) governs evacuation center coordination and management in the event of natural and human-induced disasters.[409] It mandates the setting-up of "Child Friendly Spaces (CFS) for children ... using a rights-based approach, inclusive and non-discriminatory regardless of ... gender, [and] sexual orientation[.]"[410]

First issued in 2014 and amended in 2018, the Department of Social Welfare and Development's Omnibus Guidelines on Foster Care Service[411] stipulates that prospective foster parents shall not be disqualified on the basis of SOGIE —

> VII. IMPLEMENTING PROCEDURES
>
> ...
>
> A. Recruitment and Development of Foster Parents
>
> ...
>
> 3. Applicants shall be assessed and licensed based on demonstrated capacity, willingness and motivation to foster a child. No applicant shall be disqualified by mere Sexual Orientation and Gender Identity Expression (SOGIE) of Foster Parent/s (e.g., heterosexual, homosexual, or bisexual, lesbian, gay) religious affiliations, disability or indigenous group membership and marital status.[412]

---

408. Department of Education, et al., Guidelines on Evacuation Center Coordination and Management, Memorandum Circular No. 001-13 [Joint DEPED-DSWD-DILG-DOH Memo. Circ. No. 001-13] (May 6, 2013).

409. *Id.* part II (1).

410. *Id.* part VIII (4.3.2) (c).

411. Department of Social Welfare and Development, Omnibus Guidelines on Foster Care Service, DSWD Memorandum Circular No. 021-18 [Memo. Circ. No. 021-18] (Oct. 16, 2018).

412. *Id. Cf.* Department of Social Welfare and Development, Guidelines on Foster Care Service, DSWD Memorandum Circular No. 023-14 [Memo. Circ. No. 023-14] (Oct. 13, 2014). In its original 2014 formulation, the Guidelines on Foster Care Service did not include gender expression, stating, "[n]o applicant shall be disqualified by mere reason of Sexual Orientation and Gender Identity (SOGI) of Foster Parent/s (e.g., heterosexual, homosexual or bisexual, lesbian, gay)[.]" *Id.* part VI (B) (9) para. 4.

In 2019, the Department of the Interior and Local Government adopted its Guidelines on Local Youth Development Planning, Comprehensive Barangay Youth Development Planning, and Annual Barangay Youth Investment Programming of the National Youth Commission.[413] Among its strategies and objectives in relation to social inclusion and equity — which is one of its nine "centers of youth participation"[414] — are addressing "LGBTQI+ [and] SOGI discrimination,"[415] as well as "[i]ncreas[ing] awareness among youth and the community about different sexual orientation and gender identity (SOGI),"[416] and "[p]ush[ing] for the enactment of a law on anti-discrimination based on SOGI[.]"[417]

Under Sec. Luistro, the Department of Education adopted its Child Protection Policy.[418] This Policy defined 'discrimination against children' as "an act of exclusion, distinction, restriction[,] or preference which is based on any ground such as ... sex, sexual orientation[,] and gender identity ... ."[419]

The Department of Education's issuance in 2017 of its Gender-Responsive Basic Education Policy[420] is one of the most significant strides in addressing SOGIE. Through this Policy, the Department aims "to integrate the principles of gender equality, gender equity, gender sensitivity, non-discrimination, and human rights in the provision and governance of basic education."[421] To this end, it provides specific mechanisms to "[m]ake its strategic framework gender-responsive,"[422] "[m]ainstream gender in its

413. Department of the Interior and Local Government, Guidelines on Local Youth Development Planning, Comprehensive Barangay Youth Development Planning, and Annual Barangay Youth Investment Programming of the National Youth Commission, Memorandum Circular No. 151-19 [DILG Memo. Circ. No. 151-19] (Sep. 10, 2019).

414. *Id.* part I (4.2).

415. *Id.* Annex 1.

416. *Id.*

417. *Id.*

418. Department of Education, DepEd Child Protection Policy, DepEd Order No. 40, Series of 2012 [DepEd Order No. 40, s. 2012] (May 14, 2012).

419. *Id.* § 3 (J).

420. Department of Education, Gender-Responsive Basic Education Policy, Order No. 032-17 [DepEd Order No. 032-17] (June 29, 2017).

421. *Id.* part III.

422. *Id.* part V (A).

[p]olicies and [p]rograms, [p]rojects, and [a]ctivities,"[423] "[e]nsure gender parity in staffing and create an enabling work environment,"[424] and "[s]trengthen gender and development institutional mechanisms."[425] In addition to denouncing *gender-based discrimination*,[426] it recognizes that sex, gender, and SOGIE "intersect with and are constituted by other social factors[.]"[427]

In addition to these administrative issuances, in December 2019, President Duterte issued Executive Order No. 100.[428] This Executive Order articulates a policy of diversity and inclusion that expressly recognizes SOGIE[429] and establishes a national Diversity and Inclusion Program. This

---

423. *Id.* part V (B).

424. *Id.* part V (C).

425. *Id.* part V (D).

426. DepEd Order No. 032-17, part IV (f). This is defined as

> any gender-based distinction, exclusion, or restriction that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by men and women regardless of their sexual orientation, gender identity, and civil status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

Id.

427. *Id.* part IV (s). This defines intersectionality, as follows —

> IV. DEFINITION OF TERMS
>
> ...
>
> For the purposes of this Order, the following terms shall be understood as follows:
>
> ...
>
> s) Intersectionality is an analytical tool for studying, understanding, and responding to the ways in which sex and gender intersect with and are constituted by other social factors such as age, class, disability, ethnicity, race, religion, sexual orientation, gender identity or gender expression, and other status.

Id.

428. E.O. No. 100, s. 2019.

429. *Id.* § 1. This section provides —

> SECTION 1. Policy of Diversity and Inclusion. — The State values the dignity of every human person and guarantees full respect for human rights. To this end, taking into account that the equal

program shall "consolidate efforts and implement existing laws, rules and issuances against the discrimination of persons on the basis of [SOGIE, among others], towards the identification and adoption of best practices in the promotion of diversity and inclusion."[430]

To facilitate its objectives, the Executive Order created the Inter-Agency Committee on Diversity and Inclusion, which includes 13 agencies[431] and is assisted by a Secretariat.[432] In addition to developing the Diversity and Inclusion Program, the Inter-Agency Committee shall provide guidance and technical assistance, enable capacity-building, encourage local government units to issue enabling ordinances, ensure that government agencies and instrumentalities undertake appropriate measures, including those for the filing of actions against erring persons, recommend further legislation, establish a monitoring system, enlist the aid of other government agencies and instrumentalities, and perform such other tasks as the President may direct.[433]

This Executive Order is, to date, the most definite and emphatic manifestation of the commitment of the Executive Branch to SOGIE equality. In the interim, pending comprehensive laws, this Executive

---

> protection of laws does not bar reasonable classification based on substantial distinctions, the State shall endeavor to advance and protect the rights and welfare of all Filipinos, regardless of age, disability, national or ethnic origin, language, religious affiliation or belief, political affiliation or belief, health status, physical features, or sexual orientation and gender identity and expression, and shall cultivate a supportive, collaborative and inclusive environment to maintain equal opportunities and to recognize the diverse and empowered thoughts and perspectives of all persons.

Id.

430. *Id.* § 2.

431. *Id.* § 3. These agencies are: the Department of the Interior and Local Government; the Department of Social Welfare and Development; the Department of Budget and Management; the Department of Labor and Employment; the Department of Justice; the Department of Education; the Department of Health; the Philippine Commission on Women; the Commission on Higher Education; the Presidential Commission for the Urban Poor; the National Commission on Indigenous Peoples; the National Council on Disability Affairs; and the National Youth Commission. *Id.*

432. E.O. No. 100, s. 2019, § 5.

433. *Id.* § 4.

Order, and the national Diversity and Inclusion Program developed pursuant to it, will potentially be the most extensive measure addressing LGBTQI+ rights and SOGIE equality. Given the Executive Order's policy to "cultivate a supportive, collaborative and inclusive environment to maintain equal opportunities and to recognize the diverse and empowered thoughts and perspectives of all persons" [434] and mandate to "[o]utline mechanisms for accountability ... and provide a process for seeking redress[,]" [435] government is on course towards adopting definite affirmative steps and enabling concrete mechanisms for relief.

C. Ordinances and Local Government Action

In addition to advances in national legislation and administrative rule-making, an increasing number of local government units have adopted anti-discrimination ordinances. To date, seven provinces,[436] 24 cities,[437] four municipalities,[438] and three barangays[439] have done so.[440] Quezon City was

434. *Id.* § 1.

435. *Id.* § 2 (c).

436. Namely, Agusan Del Norte, Albay, Batangas, Cavite, Dinagat Islands, Ilocos Sur, and Iloilo.

437. These are the following: Angeles, Antipolo, Bacolod, Baguio, Batangas, Butuan, Cagayan de Oro, Candon, Cebu, Dagupan, Davao, Dumaguete, General Santos, Ilagan, Iloilo, Malabon, Mandaluyong, Mandaue, Marikina, Puerto Princesa, Quezon, San Juan, Taguig, and Vigan.

438. San Julian, Eastern Samar; Orani, Bataan; Poro, Cebu; and Angono, Rizal.

439. Bagbag, Greater Lagro, and Pansol, Quezon City.

440. Xavier Javines Bilon and Claire De Leon, With no national law, can we rely on local ordinances to protect LGBTQs against discrimination?, *available at* https://cnnphilippines.com/life/culture/2018/06/25/antidiscrimination-bill-lgbtq.html (last accessed Aug. 15, 2020); International Gay and Lesbian Human Rights Commission (IGLHRC), Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines (Report submitted to the 106th Sessionof the Human Rights Committee for the Fourth Periodic Review of the Philippines), *available at* https://outrightinternational.org/sites/default/files/philippines_report.pdf (last accessed Aug. 15, 2020); Mikee dela Cruz, Ilagan City in province of Isabela enacts SOGIE-specific anti-discrimination ordinance, *available at* https://outragemag.com/ilagan-city-in-province-of-isabela-enacts-sogie-specific-anti-discrimination-ordinance (last accessed Aug. 15, 2020); Marc Jayson Cayabyab, *Malabon passes anti-gender discrimination ordinance*, PHIL. STAR,

the first to adopt such an ordinance in 2003. In 2018, it adopted a new ordinance, the Quezon City Gender-Fair Ordinance. All of the ordinances adopted by provinces, cities, and municipalities, with the exception of Quezon City and Albay,[441] were adopted within the past eight years.

Quezon City is not only notable for being a pioneer. In addition to identifying discriminatory acts and penalizing them, Section V of the Quezon City Gender-Fair Ordinance identifies affirmative acts that are positive duties imposed on, among others, employers and private offices, government agencies, and educational and training institutions. These include equal pay and gender sensitivity training. Quezon City has likewise

---

Oct. 19, 2018, *available at* https://www.philstar.com/nation/2018/10/19/1861199/malabon-passes-anti-gender-discrimination-ordinance (last accessed Aug. 15, 2020); Non Alquitran, *Discrimination vs LGBTQ members now a crime in Marikina*, PHIL. STAR, July 1, 2019, *available at* https://www.philstar.com/nation/2019/07/01/1930845 discrimination-vs-lgbtq-members-now-crime-marikina (last accessed Aug. 15, 2020); Portia Ladrido, What went right in the Philippines in 2018, *available at* https://cnnphilippines.com/life/culture/2018/12/28/good-news-philippines-2018.html (last accessed Aug. 15, 2020); Greg Refraccion, Orani adopts anti-discrimination ordinance, *available at* http://1bataan.com/orani-adopts-anti-discrimination-ordinance (last accessed Aug. 15, 2020); Delta Dyrecka Letigio, On pride month, Poro approves anti-discrimination ordinance for LGBTQ++, *available at* https://cebudailynews.inquirer.net/238902/poro-approves-anti-discrimination-ordinance-for-lgbtq (last accessed Aug. 15, 2020); Dumaguete SOGIE Law Passed, *available at* https://dumaguetemetropost.com/dumaguete-sogie-law-passed-p11578-422.htm (last accessed Aug. 15, 2020); Angono Public Information Office, Status Update, July 29, 2019, FACEBOOK, *available at* https://www.facebook.com/AngonoPIO/posts/ang-sexual-orientation-gender-identity-and-expression-sogie-bill-ay-pormal-nang-/1292839574217513 (last accessed Aug. 15, 2020); & Froilan Gallardo, *CdeO city council okays anti-discrimination ordinance*, MINDA NEWS, Aug. 13, 2020, *available at* https://www.mindanews.com/top-stories/2020/08/cdeo-city-council-okays-anti-discrimination-ordinance/?fbclid=IwAR0AGf-kp640rOhAV8YYwBN4CDY7rEMLMk14tLBoQ_-2qLxL9SLopgJWckw (last accessed Aug. 15, 2020).

441. The Province of Albay's ordinance was adopted in 2008. Laurindo Garcia, Manila beams with pride, despite debut of anti-gay protesters, *available at* https://www.fridae.asia/gay-news/2008/12/08/2168.manila-beams-with-pride-despite-debut-of-anti-gay-protesters (last accessed Aug. 15, 2020).

established a Pride Council[442] and committed itself to commemorating events including an annual pride march every first Saturday of December.[443]

Several other local government units have SOGIE or anti-discrimination ordinances in the pipeline. Among these are the Province of Bohol,[444] and the cities of Catbalogan[445] and Pasig.[446]

The state of public health emergency occasioned by the COVID-19 pandemic has also been an opportunity for local government units to extend recognition to LGBTQI+ partners and individuals. On 5 May 2020, the Pasig City Public Information Office announced that cohabiting LGBTQI+ couples who have a child sharing a surname with either partner shall be counted as among the beneficiaries of the city's supplemental social amelioration program.[447] On 7 May 2020, the Iloilo City Government announced that it was extending cash aid to Iloilo residents of diverse SOGIE belonging to low income brackets. It specifically stated that cohabiting LGBTQI+ partners may avail of the aid.[448]

442. Ordinance No. SP-2357 (2014), § IX.

443. *Id.* § X.

444. Daniel Yap, Bohol eyes SOGIE ordinance, *available at* https://tribune.net.ph/index.php/2019/07/11/bohol-eyes-sogie-ordinance (last accessed Aug. 15, 2020).

445. Anti-discrimination advocacy in Catbalogan, *available at* https://www.tlfshare.org/post/anti-discrimination-advocacy-in-catbalogan (last accessed Aug. 15, 2020).

446. Matthew Reysio-Cruz and Maxine Sta. Cruz, *After Marikina, Pasig eyes Sogie bill,* PHIL. DAILY INQ., July 5, 2019, *available at* https://newsinfo.inquirer.net/1138070/after-marikina-pasig-eyes-sogie-bill (last accessed Aug. 15, 2020).

447. Pasig City Public Information Office, Status Update, May 5, 2019, FACEBOOK, *available at* https://www.facebook.com/PasigPIO/posts/1694398954052549 (last accessed Aug. 15, 2020).

448. Iloilo Pride Team, Status Update, May 7, 2019, FACEBOOK, *available at* https://www.facebook.com/IloiloPrideTeam/photos/a.438004192990561/1657395041051464/?type=3&theater (last accessed Aug. 15, 2020).

D. Total Government Engagement

Recent developments have not been all cheery. Some legislators have vowed to block the passage of a SOGIE equality bill.[449] Among administrative issuances, the 2015 edition of the Bureau of Jail Management and Penology's Comprehensive Operations Manual is particularly notable as it counts among *sex deviates*: "[h]omosexuals [who] should be segregated immediately to prevent them from influencing other inmates or being maltreated or abused by other inmates."[450] Also, even with finely crafted rules, there is the question of enforcement and practical utility. How and whether law and rules are actually implemented is entirely another matter.

Nevertheless, as with jurisprudence, a trajectory of greater understanding, acceptance, and empowerment is evident in legislation and administrative rule-making. Much remains to be won, but appreciable progress has been made. In addition to an increasing number of laws and administrative rules with a better grasp of SOGIESC and which espouse non-discrimination, laws and rules are emerging that take more positive steps towards equality and empowerment.

Together, developments in jurisprudence, legislation, and administrative rule-making sustain confidence and optimism — albeit tempered by pragmatic caution — in the prospect of further affirmative and empowering developments. This confidence and optimism are driven not only by the quantitative increase of beneficent issuances, but, more so, by qualitative expansion on matters such as principles established, measures instituted, commitments undertaken, and reliefs facilitated. In jurisprudence, *Falcis* breaks new ground with an unprecedentedly keen appreciation of LGBTQI+ concerns, compelling and categorical recognition of marginalization and the need for equality, institution of jurisprudential standards, and urging for policy correction. Legislation and administrative rule-making are making advances beyond non-discrimination. There is nascent recognition of LGBTQI+ persons and partners. Likewise, there are now stipulations of specific obligations and bases of actionable liability, as well as positive duties and government commitments aimed at advancing equality.

449. Press Release *by* Senate President Sotto and Sen. Joel Villanueva on the SOGIE bill (Sep. 30, 2019), *available at* https://www.senate.gov.ph/press_release/2019/0930_prib2.asp (last accessed Aug. 15, 2020).

450. BJMP Comprehensive Operations Manual Revised 2015, rule IV, § 34 (7) (a).

IX. CONCLUSION

No struggle for rights has been easy. Precisely, they are *struggles*, proceeding, by definition, "with difficulty or with great effort."[451] Wars and uprisings have been fought to secure rights and freedoms. Many legal and political battles have been protracted.

In the U.S., same-sex marriage was first brought to the Supreme Court's attention in 1972 in *Baker v. Nelson*.[452] This involved an application for marriage license by gay couple James Michael McConnell and Richard John Baker. Before being brought to the U.S. Supreme Court, during oral arguments before the Minnesota Supreme Court, Justice Fallon Kelly "rotated his chair to face the wall, literally turning his back"[453] on lawyer Mike Wetherbee as he argued the case for McConnell and Baker. When it was its turn, the U.S. Supreme Court did not merely rule against the appeal. It did so unceremoniously, in a one-sentence order: "Appeal from Sup. Ct. Minn, dismissed for want of substantial federal question."[454]

Baker was part of the "first trio of marriage cases,"[455] along with *Singer v. Hara*[456] and *Jones v. Hallahan*.[457] *Jones* was particularly dismissive, stating, "what they propose is not a marriage"[458] and that "no constitutional issue [was] involved."[459] It would not be until more than 40 years later, in *Obergefell*,[460] that marriage equality would be realized in the U.S. This would not be without roadblocks. From 1995 to 2005, 43 states "adopted statutes or constitutional amendments barring their judges from recognizing

451. Merriam Webster, *available at* https://www.merriam-webster.com/dictionary/struggle (last accessed Aug. 15, 2020).

452. Baker v. Nelson, 409 U.S. 810 (1972).

453. ESKRIDGE & SPEDALE, *supra* note 165, at 22.

454. *Baker*, 409 U.S. *See also* Andrew Janet, *Eat, Drink, and Marry: Why Baker v. Nelson Should Have No Impact on Same-Sex Marriage Litigation*, 89 N.Y.U. L. REV. 1777 (2014).

455. Chris Geidner, *The Court Cases That Changed L.G.B.T.Q. Rights*, N.Y. TIMES, June 19, 2019, *available at* https://www.nytimes.com/2019/06/19/us/legal-history-lgbtq-rights-timeline.html (last accessed Aug. 15, 2020).

456. Singer v. Hara, 522 P.2d 1187 (Wash. Ct. App. 1974) (U.S.).

457. Jones v. Hallahan, 501 S.W.2d 588 (Ky. 1973) (U.S.).

458. *Id.* at 589.

459. *Id.*

460. *Obergefell*, 576 U.S.

same-sex marriages in their jurisdiction."[461] At the federal level, the Defense of Marriage Act was passed in 1996. It defined *marriage*, for federal purposes, as "only a legal union between one man and one woman as husband and wife."[462]

During the intervening time between *Baker* and *Obergefell*, in 1986, the U.S. Supreme Court sustained the validity of sodomy laws in *Bowers v. Hardwick*.[463] There, it declared that those laws had "ancient roots."[464] It would take 17 years for the U.S. Supreme Court to abandon *Bowers*. But, when it did in 2003, through *Lawrence v. Texas*,[465] it left no doubt: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."[466]

Even with marriage equality, many facets of LGBTQI+ rights were still fought for in American courts. These include workplace discrimination in relation to sexual orientation and gender identity (which was ultimately decided by the U.S. Supreme Court in favor of the LGBTQI+ community),[467] as well as military service by transgender individuals.[468]

In the Philippines, the SOGIE Equality Bill has made headway, but has yet to be adopted. In the 17th Congress, it passed third reading with a unanimous vote in the House of Representatives.[469] However, it languished in the Senate. There, its obstruction has earned it the dubious distinction of

461. ESKRIDGE & SPEDALE, *supra* note 165.

462. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2420 (1996) (U.S.).

463. Bowers v. Hardwick, 478 U.S. 186 (1986).

464. *Id.* at 192.

465. Lawrence v. Texas, 539 U.S. 558 (2003).

466. *Id.* at 578.

467. Bostock v. Clayton County, 590 U.S. __ (2020), June 15, 2020, *available at* https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf (last accessed Aug. 15, 2020).

468. Karnoski v. Trump, D.C. No. 2:17-cv-01297-MJP, June 14, 2019, *available at* https://cdn.ca9.uscourts.gov/datastore/opinions/2019/06/14/18-35347.pdf (last accessed Aug. 15, 2020 (U.S.)).

469. Bea Cupin, *House Passes SOGIE Equality Bill on Final Reading*, RAPPLER, Sept. 20, 2017, *available at* https://www.rappler.com/nation/182796-sogie-equality-bill-passes-house (last accessed Aug. 15, 2020).

being the "longest-running bill in the period of interpellations."[470] It has since been refiled in the 18th Congress.[471]

The Falcis Petition failed to secure the reliefs that it sought. This, coupled with the imposition of penalties on those who advocated it, has fueled eagerness to celebrate its defeat as a supposed rebuke of SOGIESC equality and the LGBTQI+ cause. Yet, a disciplined reading of *Falcis* reveals it to be more than what rushed reactions have made it to be. At no point does it affirm oppressive notions of gender, sexuality, and intimate human relations. Its contempt citation does not epitomize institutional enmity towards those whose sexual orientation, gender identity, or gender expression the dominant mold refuses to accept.

Far from these, the Court expressed that it "underst[ood] the desire of same-sex couples to seek, not moral judgment based on discrimination from any of our laws, but rather, a balanced recognition of their true, authentic, and responsive choices."[472] *Falcis* is definite in its recognition and rejection of the discrimination and oppression borne by cultural dominance. It is learned and compassionate in its consideration of diversity and personal autonomy.

Falcis makes no promises on policy prospects. Yet, it signals a potential watershed moment. It signifies the highest court of the land rising above its own past tendencies, becoming better informed, and moving more humanely, towards greater understanding, acceptance, and empowerment. The Court is not moving in isolation. Government — through all of its branches and in all of its levels — is fully engaged. Increasingly, policy-makers are seeing and acting on the wisdom of ensuring non-discrimination and advancing equality. *Falcis* and its contemporaneous developments remain far from consummate equality, but they sustain hope and optimism.

---

470. Chad de Guzman, *Anti-Discrimination Bill Fails to Hurdle Congress*, RAPPLER, June 4, 2019, *available at* https://cnnphilippines.com/news/2019/6/4/Anti-discrimination-bill-SOGIE-equality-bill-Senate.html (last accessed Aug. 15, 2020).

471. Press Release *by* the Senate of the Philippines, *Hontiveros: Sogie Equality Bill gains new allies and wider acceptance, will pass 18th Congress* (June 4, 2019) (*available at* https://www.senate.gov.ph/press_release/2019/0604_hontiveros1.asp (last accessed Aug. 15, 2020).

472. *Falcis,* G.R. No. 217910, at 107.

Where the struggle for SOGIESC equality and LGBTQI+ rights proceeds from *Falcis* remains to be seen. What *Falcis* does is at once rule on the immediate case before the Court and encapsulate the Court's sentiments on many dimensions that attend that case. In doing so, it spells out definite standards that will guide and delimit subsequent legal action, lays a roadmap for understanding the Constitution's provisions on family and marriage, articulates the highest court's learned discernment of the many attendant dimensions — chiefly, "erasure, discrimination, and marginalization"[473] — and unambiguously calls the attention of policy-makers to unjust situations and the need to correct them.

Though not the exact victory that its proponents and advocates had sought — even coming to them at great personal cost — *Falcis* is far from the dismal defeat that some would paint it. Setting the stage for the proverbial next round, *Falcis* is brimming with potential arms and munitions in the struggle for equality. These are now for advocates and policy-makers to wield.

473. *Id.* at 47.