

and human dignity seeps through each and every provision of this fundamental law. The IPRA is an expression of such intent. Today's regalian doctrine is no longer the archaic reminder or stubborn remnant of an exploitative past. It is a flexible and dynamic principle that accommodates the demands of equity and justice, not of greed or exploitation.

An understanding of the close connection between the land and the people among indigenous cultures reveals that what is at stake is not just a piece of property but the very life and survival of a people, played against the urgent themes of human rights and social justice. This being the case, when the regalian doctrine is held up against indigenous peoples' rights, it is actually being pitted against the due process clause of the Constitution, which states that no person shall be deprived of life without due process of law.⁵⁶ This right to life is not just freedom from bodily restraint but the right to have a full life.⁵⁷ For an indigenous community, this right to life is necessarily tied up to a healthy and balanced ecology⁵⁸ and self-determination.⁵⁹ To the extent, therefore, that the regalian doctrine is construed as a limitation upon the right of the indigenous cultural communities to exist and preserve their culture in today's society, then it must perforce give way.⁶⁰

56. PHIL. CONST., art. III, § 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

57. JOAQUIN BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 102 (1996).

58. PHIL. CONST., art. II, § 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

59. PHIL. CONST., art. XIV, §§ 17, 22.

60. *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc.*, 50 SCRA 189 (1973).

Did the Domestic Adoption Act of 1998 alter the Law on Succession? A Perspective

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I. INTRODUCTION

The societal attitude towards adoption has changed remarkably over the past decades; hence, the evolution of Philippine Adoption laws. From the early statutory provisions embodied in the Code of Civil Procedure,¹ it has evolved and been replaced by the provisions contained in the 1940 Rules of Court,² New Civil Code,³ Child and Youth Welfare Code,⁴ Family Code, and presently, Republic Act No. 8552,⁵ otherwise known as the Domestic Adoption Act (hereinafter the Act).

With the introduction of certain substantive and procedural amendments by the Act, opinions differ with respect to the successional rights of the

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1. Act No. 190 (1901).

2. Rules of Court (1940).

3. An Act to Ordain and Institute the Civil Code of the Philippines (1950).

4. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

5. Domestic Adoption Act (1998).

adoptee and the rights of his biological parents and other blood relatives to inherit from each other through intestate succession, largely because the Act is silent as to this particular issue.

This work shall examine the implications of Section 18 of the Act, and more specifically, shall attempt to resolve the question of whether the reciprocal rights to inherit *ab intestado* between the adoptee and his biological parents have been effectively repealed by this new law on adoption.

II. BACKGROUND

The legal provisions on Philippine adoption were originally found in the Code of Civil Procedure, then subsequently in the 1940 Rules of Court and later in the 1950 Civil Code. Before the Act took effect, Philippine law on adoption was embodied in the Family Code,⁶ which had earlier repealed all the substantive provisions of Presidential Decree No. 603, otherwise known as The Child and Youth Welfare Code, and Executive Order No. 91.⁷

Philippine jurisprudence is replete with definitions of the socio-legal institution of adoption. The Supreme Court in *Prasnik v. Republic*,⁸ defined adoption to be "a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation."

Earlier, the goals of adoption rested on the premise that such an act was for the benefit of the adopter with the view of affording to "persons who have no children of their own the consolation of having one by creating, through legal fiction, the relation of paternity and filiation where none exists by blood relationship."⁹ Now this view has been replaced by the contemporary view that it shall be for the benefit of the child or children to be adopted, giving it "a social and moral purpose; that is, to extend to the orphan or to the child of the indigent, the incapacitated or the sick, the protection of society in the person of the adopter."¹⁰ The policy of the State, as it now stands, is to make the welfare and best interests of the child the paramount consideration. To this end, the present law on adoption considers the adoptee as the legitimate child of the adopters. The adopted becomes entitled to the same rights and burdened with the same obligations of a legitimate child.

6. The Family Code of the Philippines, Executive Order No. 209 (1987).
7. ALICIA SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 289 (1995).
8. 98 Phil. 665, 669 *citing* Valverde, 473 (1956).
9. *In re* Adoption of Resaba, 95 Phil. 246 (1954).
10. I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 554 (1990) [hereinafter TOLENTINO].

III. RIGHT OF THE ADOPTEE AND THE BIOLOGICAL PARENTS TO INHERIT FROM EACH OTHER

Adoption laws prior to the Act have consistently recognized the right of the adoptee to inherit from the biological parents and vice versa through intestate succession.

Under the 1940 Rules of Court, the biological parents and the blood relatives of the adoptee were considered the legal heirs of the latter and vice-versa.

Article 342 of the Civil Code provides that the adopter shall not be considered the legal heir of the adoptee, whose parents by nature shall inherit from him. The Child and Youth Welfare Code, repealing the Civil Code rules on adoption, contains an express provision stating that the biological parents of the adoptee shall be the legal heirs of the latter.¹¹ Although these provisions do not categorically state that the adoptee is also the legal heir of the biological parents, that conclusion may be deduced based on the general principle of reciprocity in succession.

Under the Family Code, the adoptee continues to be an intestate heir of his parents and other blood relatives pursuant to Article 189(3) thereof.

The following matrix sets out the pertinent successional rights of the adoptee vis-à-vis his biological parents and other blood relatives:

NEW CIVIL CODE	CHILD AND YOUTH WELFARE ACT	FAMILY CODE	DOMESTIC ADOPTION ACT OF 1998
Art. 342. The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him.	Art. 39. Effects of Adoption - (4) Make the adopted person a legal heir of the adopter: Provided, That if the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child: Provided, further, That any property received gratuitously by the adopted from the	Art. 189. Adoption shall have the following effects: (3) The adopted shall remain an intestate heir of his parents and other blood relatives. Art. 190. Legal or intestate succession to the estate of the adopted shall be governed by the following rules: (2) When the parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur	Sec. 18. Succession. - In legal and intestate succession, the adopter(s) and adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

11. The Child and Youth Welfare Code, Presidential Decree No. 603, art. 39, § 4 (1974).

adopter shall revert to the adopter should the former predecease the latter without legitimate issue unless the adopted has, during his lifetime, alienated such property: Provided finally, That in the last case, should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or spouse, such illegitimate issue collectively or the spouse shall receive one fourth of such property; if the adopted is survived by the illegitimate issue and a spouse, then the former collectively shall receive one-fourth and the latter also one-fourth the rest in any case reverting to the adopter, observing in the case of the illegitimate issue the proportion provided for in Article 895 of the Civil Code.

The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession, whether testate or intestate.

with the adopters, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half, by the adopter;

(6) When only the collateral blood relatives of the adopted survive, then the ordinary rules of legal or intestate succession shall apply.

Unlike its predecessors, the Act has integrated the successional rights of the adopter, adoptee, and the biological parents into a single provision under Section 18, thus:

Sec. 18. Succession. - In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

From a perusal of the foregoing provision, the question that first comes to mind is whether the adoptee and his parents by nature, as well as the other blood relatives of the adoptee, have retained their reciprocal rights to inherit from each other through intestacy. The Act is silent on this point. It is submitted, however, that the adoptee and his biological nature and other blood relatives remain to be intestate heirs of each other, following the rules of statutory construction, and in keeping with the provisions of the Family Code and other prior laws which have not been repealed by the Act.

IV. DISCUSSION

Generally, the effect of adoption is to vest in the adopting parents the parental authority originally existing in the biological parents, to the same extent as if the child had been born in lawful wedlock to the adopting parents.¹² The parental authority of the biological parents is dissolved, and all the legal consequences of such authority are obliterated.¹³

Section 16 of the Act provides:

Sec. 16. Parental Authority. - Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parents(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).

The above provision states that, as a consequence of adoption, all legal ties between the adoptee and the parents by nature shall be severed. As clearly stated by the title of the provision itself, the legal tie referred to in the foregoing provision refers only to the parental authority of the biological parents. Hence, when Section 16 speaks of severance of ties, the same relates only to the parental authority of the biological parents and not to all rights and duties between parent and child which are not the mere consequences of parental authority. That "severance" is nowhere mentioned in Section 18 of the Act. It must be emphasized that certain rights and duties existing between parents and offsprings that arise from natural relations are not extinguished by adoption unless expressly provided by law.¹⁴

There is nothing in the aforementioned provision that indicates any intention on the part of legislature to terminate *all* types of ties between the adoptee and his biological parents, such as those that do not arise from parental authority but from natural relations. To construe the provision as terminating *all* ties would be to disregard the welfare and best interests of the child, who would not, if such interpretation were accepted, be entitled to such other rights as support and inheritance from his biological parents and his blood relatives.

12. TOLENTINO, *supra* note 10, at 564.

13. *Id.*

14. *Id.* at 565.

Section 18 of the Act, which embodies the entire rule on succession under the Act, expressly provides that the adoptee and the adopter shall have reciprocal rights of succession without distinction as to legitimate filiation. It further states that in cases where a will had been left by the adoptee or the biological parents, the principles of testamentary succession shall be applicable.

The ambiguous wording of the law has resulted in the misconception that the right of the biological parents and other blood relatives to inherit from the adoptee and vice versa shall only exist when the same is provided for in a will.

It must be noted that the Act contains a repealing clause under Section 26, which provides:

Sec. 26. Repealing Clause. - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

Pursuant to the foregoing provision, only laws that are inconsistent with the provisions of the Act are deemed repealed. Hence, the Act did not expressly repeal the rules on adoption in the Family Code or the Child and Youth Welfare Code. The rules contained in the two Codes must be first inconsistent with the provisions of the Act before they can be deemed repealed.

It is submitted that the Family Code provisions are not inconsistent with the new rules embodied in the Act. Section 18 of the Act, while not reproducing the specific rules found under Article 189(3) and Articles 190(2) and (6) of the Family Code, does not expressly nor impliedly present inconsistent statements with any of the latter provisions. An implied repeal takes place only when an irreconcilable inconsistency and repugnancy in the terms of the new and old laws exist.¹⁵

Under the repealing clause of the Act, the repeal was made dependent upon *actual inconsistency* with previous laws. There being none in this case, no such implied repeal can be deemed to have taken place. In the absence of any explicit statutory provision precluding the adoptee and his biological parents and other blood relatives from inheriting from each other through intestate succession, or that which by necessary implication omits such right, then it cannot be said that these rights have been set aside by the Act.

Laws passed prior to the Act have always upheld the principle that the biological parents can inherit from the adoptee and vice versa. This principle is based on the premise that "adoption does not sever the previous status of the adoptee with regard to his other blood relatives, let alone his parents by nature,

except only to the extent that the law otherwise provides. In main, his rights and duties continue in respect to his natural relations."¹⁶

Notwithstanding the fact that adoption dissolves the authority of the biological parents and terminates all the legal consequences of such authority, there are still certain rights and duties, as earlier stated, which are not merely legal consequences of parental authority, but arise from natural relation not extinguished by adoption, unless *expressly* provided by law.¹⁷ Arturo Tolentino, an eminent civilist, is of the view that the reciprocal rights to inheritance between the adoptee and the parents by nature, like the duty of the child to honor and respect his parents by nature, subsist notwithstanding adoption.¹⁸ Considering that all predecessors of the Act have upheld the principle that the adoptee and his blood relatives may inherit from each other through intestate succession, there appears to be no reason to disturb the same by assuming that the new law has impliedly repealed the provisions in the Family Code which espouse such principle. The existence of reciprocal rights of succession between biological parents and the adoptee must be maintained, since this is consistent with the welfare and best interests of the child.

In addition, it must be emphasized that the fact of adoption does not deprive the child of his status as an "issue" of his natural ascendants.¹⁹ Although the biological parents lose their rights over the child after he has been legally adopted by another, that does not automatically divest the child of his right to inherit from his parents by nature, nor should such implication be drawn from the fact that the child thereafter becomes the legal child of the adopters who are vested with all the rights and duties as a result of such new status.²⁰

It must be remembered that while Section 18 of the Act provides that the adopters and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation, the Act does not grant the adoptee a similar right to inherit from the blood relatives of the adopters. The relationship created by adoption is only between the adopting parents and the adoptee, and does not extend to the blood relatives of either party.²¹ The adoptee still does not have the right of representation over the intestate estate of the parents of the adopters²² or the right to inherit from the blood relatives of the adopters. Thus, to construe that Section 18 of the Act repealed Articles 189(3), 190(2) and 190(6) of the Family Code would mean that the adoptee

16. JOSE VITUG, COMPENDIUM OF CIVIL LAW AND JURISPRUDENCE 237 (1993).

17. TOLENTINO, *supra* note 10, at 564.

18. *Id.*

19. *Re Kay's Estate*, 127 Mont 172, 260 P. 2d 391 (1953).

20. *Re Benner's Estate*, 109 Utah 172, 166 P. 2d 257 (1946).

21. *Sayson v. Court of Appeals*, 205 SCRA 321, 330 (1992).

22. *Id.*

15. RUBEN AGPALO, STATUTORY CONSTRUCTION 414 (1998).

does not have the right to inherit not only from the adopters' blood relatives but likewise from his own blood relatives. Certainly, this derogates from the best interest and welfare of the adoptee.

Others may be of the view that although the Act does not expressly repeal the provisions of the Family Code relating to the rights of inheritance between the adoptee and the parents by nature, it does not however contain any reference to the right of inheritance from the biological parents. However, there is authority to the effect that "a statute which includes as its dominant and principal feature the establishment of the adoptee as the heir of the adopting parent, without reference to inheritance from natural parents, is not likely to be construed as depriving that child of that inheritance."²³ This only means that Article 189(3) of the Family Code has not been repealed by the silence of the Act on the matter. Moreover, since the Act did not likewise provide the guidelines on how the intestate estate of the adoptee should be distributed, the rules provided for under Article 190 of the Family Code should still govern the distribution of the intestate estate of the adoptee. In light of the foregoing, it is evident that the reciprocal rights to inheritance between the adoptee and the biological parents and other blood relatives still subsist notwithstanding the silence of the Act on such matters.

In sum, the adoptee has the right to inherit from his biological parents and other blood relatives despite Section 18 of the Act. Nothing in the Act is inconsistent or repugnant to Articles 189(3), 190(2), and 190(6) of the Family Code. In fact, Sections 16 and 18 of the Act merely reiterate what are already contained in Article 189 of the Family Code — (1) that the adoptee shall be considered as the legitimate child of the adopters and (2) that the parental authority of the parents by nature over the adoptee shall be vested in the adopters.

A contrary view would lead to a situation where the adoptee's right to intestate succession would be diminished. The adoptee can only inherit by intestate succession from his adoptive parents, spouse, and legitimate and illegitimate descendants but never from his own biological parents and other blood relatives.

V. CONCLUSION

Adoption is the means by which the lot of a child is hoped to be improved and uplifted. It is also the legal procedure that pursues, as its primordial objective, the welfare and best interests of the child. This remains to be the objective of the various laws on adoption as well as jurisprudence relating to the same.

The legal fiction created by adoption between the adoptive parents and the adoptee and successional rights between an adoptee and his natural parents and other blood relatives subsist. The right to inherit by intestate succession between and among the adoptee and his biological parents and other blood relatives is reciprocal in nature, and continues albeit the silence of the Act on the matter for the reason that this view is supported by legal principles that promote the welfare of the child. While the right to exercise parental authority over the adoptee vests in and pertains to the adoptive parents after the legal processes have been complied with, the Act, following the legal principle that adoption aims to uphold the welfare and best interests of the child, has not abrogated the right between and among the adoptee, his biological parents and other blood relatives, to inherit from each other *ab intestado*.

This view is further bolstered by the fact that under the rules on statutory construction, no express or implied repeal of the pertinent provisions of the Family Code on adoption and succession took place as a result of the effectivity of the Act.

23. *Shaver v. Nash* (Ark), 29 SW2d 298 (1930).