The Irrevocable Decision: Structurally Delineating Parental Rights vis-à-vis Section 4(a) of the Domestic Adoption Act of 1998

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I. INTRODUCTION

From the enactment of the Family Code[1] on 6 July 1987, to the recent adoption of Republic Acts 9344[2] and 9262,[3] there is clearly a growing consciousness — within the halls of Congress, if not the entire nation — of the need to strengthen Persons and Family Relations legislation. Whether it is the abolition of distinctions between kinds of illegitimate children, the incorporation of a system of absolute community of property in marriages, or the severe reprisals imposed upon those who practice violence against women and children, the desire to create a stronger and more vibrant Filipino family is fully underway. Evidence of such heightened sensitivities could not be more palpable than in the Domestic Adoption Act of 1998.[4]

However, in an unremarkable provision in an otherwise remarkable piece of legislation, Congress has midwifed into existence a very peculiar rule. Instead of focusing on strengthening the family, Section 4(a) of Domestic Adoption Act of 1998 instead attempts to weaken it altogether. The provision states:

> The Department shall provide the services of licensed social workers to the following:
>
> (a) *Biological Parent(s)* — Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. *A period of six (6) months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption before the decision becomes irrevocable.* Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.[5]

As can be seen, from the time of giving of consent and for a period of six months thereafter, the natural parents are granted a grace period, as it were,

1. The Family Code of the Philippines [FAMILY CODE]. The Family Code took effect on Aug. 3, 1988.
2. An Act Establishing A Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 9344 (2006) [hereinafter JUVENILE JUSTICE AND WELFARE ACT OF 2006],
3. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Republic Act No. 9262 (2006) [hereinafter ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004].
4. An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes, Republic Act No. 8552 (1998) [hereinafter DOMESTIC ADOPTION ACT OF 1998].
5. *Id.* at § 4 (a) (emphasis supplied).

to change their minds regarding the adoption: but, as *per* Domestic Adoption Act of 1998, after the lapse of the six month period, that consent is irrevocable. Hence the propriety of the phrase: "the irrevocable decision."[6]

It is difficult to determine exactly why the law has not given the natural parents a chance to set aside their decision to adopt and allow the pre-adoption *status quo* to prevail. Clearly, rescission is not available to them. Under such thinking, the adopter and the natural parents should not be allowed to renege on their commitment to improve the child's lot in life. What is done is done, so to speak. For indeed, if they were given such right, it would lead to inevitable confusion and disorientation on the part of the adoptee, not to mention to a host of other incalculable negative emotions that would, perhaps, harm the child more than protect him — which is diametrically opposed to the noble purpose behind adoption.

Yet, if one were to dig deeper into the true quagmire of social situations and their relationship to the Domestic Adoption Act of 1998, the answer does not seem so transparent. It is relatively straightforward to breakdown adoption as a simple process of one couple finding themselves in some sort of social and financial dilemma that forces them to give up, albeit willingly, their child to another couple. Were that the case, it would be difficult to perceive the Domestic Adoption Act of 1998, as presently worded, to be of any problem.

But, the truth is that real life situations are not that simple. It is not difficult to conceptualize a situation wherein the parents are faced with a certain situation at a particular moment in time, pressuring them to make the decision to put up their child for adoption. Should that situation improve, then clearly the need for adoption has diminished, if not disappeared altogether. Under Section 4(a) of the Domestic Adoption Act of 1998, however, the consent initially given is irrevocable after six months. Hence, parents who have decided to place their child in adoption proceedings as a result of extenuating, yet temporary, circumstances are left without recourse should such circumstances improve after a period of six months from the time they made their decision, and should they wish to keep their child. The adoption proceedings, after all, take between six months and two years to complete.[7] There is thus an interregnum between the issuance of the final adoption decree and the time from whence the decision becomes irrevocable. It is this grey area, finally and irrevocably sealing off the fundamental rights of parents over their natural children, that bespeaks of legislative and social inconsistency.

Even were one to pass beyond the probable vagaries of the law and into purely legal theory, the irrevocable decision should find cause for concern. First, it detracts from the very foundations of adoption itself. The consent of the natural parents to the adoption, so essential for the process to even have validity, is made unnecessary by the lapse of the six months. In such a case, were the parents to attempt to revoke their consent, the attempt would, of course, be denied. The practical effect of this denial is to allow the proceedings to continue, but *without the true consent* of the biological parents. At the same time, the irrevocable decision derogates from parental authority and parental rights. First, by unnecessarily diluting the bundle of rights so inherent to the parents; and second, by creating a grey area wherein confusion arises as to who properly exercises parental authority.

Assuming, however, that parental claims to their children may be endorsed over a creation of the legislature, it behooves the inquiry to proceed further and determine how the two may co-exist, or if they can co-exist at all. The essence lies in understanding, and conceivably resolving, the dichotomy between two seemingly antonymous legal beings. Perhaps there is some valid reason for mandating that a decision to adopt be irrevocable after a period of six months. If such is the case, then the confluence of the Domestic Adoption Act of 1998 and parental rights must be established. On other hand, if there be no valid reason, or if that reason pales in comparison the negative effects of the law, then a convergence must still be struck. At the very least, doing so will allow a deeper understanding of the legislature's desire to limit this freedom; at best, it will resolve lingering questions regarding the limitations of the right of parents to personally raise and care for their children.

The natural denouement is, of course, to discover some tangible structural framework that will delimit and guide court action when determining parental rights in adoption. It is important in two regards: first, it provides solid structural basis for protection of parental rights; and second,

6. *See,* The Child and Youth Welfare Code, Presidential Decree No. 603, art. 164 (1974). This contained the immediate precursor of the Irrevocable Decision.

> *Restoration After Voluntary Commitment.* Upon petition filed with the Department of Social Welfare the parent or parents or guardian who voluntarily committed a child may recover legal custody and parental authority over him from the agency, individual or institution to which such child was voluntarily committed when it is shown to the satisfaction of the Department of Social Welfare that the parent, parents or guardian is in a position to adequately provide for the needs of the child: *Provided, That, the petition for restoration is filed within six months after the surrender.*
>
> *Id.* (emphasis supplied).

7. Interview with Judge Leticia P. Morales, Presiding Judge, Branch 140, Family Court, Makati City (June 26, 2006).

it prevents abuse of any potential right to withdraw consent to adoption by providing courts with a coherent guideline for allowance or disallowance.

II. THE PRIMARY RIGHTS OF NATURAL PARENTS

A. International Law

The most fundamental postulate of both parental and child rights is the recognition that the family is the most natural and fundamental societal grouping.[8] It is from this premise that all rights accorded to parents and children are necessarily derived. What this means is that the law provides a strong bias towards maintaining the biological and natural bonds of the family — as against interference by third persons, by members of the extended family and even by the state — which bias is reflected in the various parental rights that one may find embedded in international law. The umbrella principle is, therefore, the right to family solidarity.

Of course, it must be understood that, oftentimes, these rights are not granted explicitly to parents. Rather, their existence is weaned both from the fundamental postulate of familial sanctity and from the rights that are more clearly granted to children themselves. Thus, when it is declared that a child has the right to be fostered by his natural parents and not to be interfered with in his family relations, it is implied that his parents have a right to exercise such fosterage and a similar right not to be subject to interference in their family relations, as well.[9] Speaking specifically of adoption, when it is written that states shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, the corollary parental right is that such parent shall not be separated from the child except upon judicial review.[10] Indeed, even when such separation is decreed, the child still has a right to maintain personal relations and direct contact with both parents on a regular basis.[11]

This is not to say that parents are not explicitly granted recognition in the enforcement of their roles. Under the International Convention on the

8. Universal Declaration of Human Rights, G.A. Res. 217 III(A), U.N. GAOR, 3d Sess., Supp. No. 127, at 71, U.N. Doc. A/810, art. 16 (3) (1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, U.N.T.S. No. 14668, vol. 999, at 171, art. 23 (1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, U.N.T.S. No. 14531, vol. 993, at 3, art. 10 (1) (1976) [hereinafter ICESCR].

9. International Convention on the Rights of the Child, Document A/RES/44/25, art. 8 (1989) [hereinafter CRC].

10. *Id.* art. 9 (1).

11. *Id.* art. 9 (3).

Rights of the Child, for instance, it is mandated that the parents have a right to be respected by the state in the exercise of their duties over the child as regards the latter's direction and guidance.[12] This responsibility for the education and guidance of the child lies, in the first place, with his parents.[13] Parents, moreover, are to be respected in the exercise of their prior right to determine the education and type of schools of their children.[14] Finally, in determining measures for the protection of the child as is necessary for his well-being, the rights and duties of parents must always be taken into account, with states ordered to make all appropriate legislative and administrative initiatives with those under consideration.[15]

Most important are those provisions that essentially implement the principle that the solidarity of the family is to be afforded the utmost respect. Hence, children are given a right to know and be cared for by their parents,[16] a right that is, in fact, accorded 'first priority'[17] and specifically singled out for state implementation.[18] This is in addition to the right of children (and parents) not to be separated except upon judicial review.[19] Finally, the right of the child to his family relations, also clearly encompassing the right of the parents and family solidarity, is, under the Convention on the Rights of the Child, to be recognized by law without unlawful interference.[20]

B. Municipal Law

Again, the discussion begins with the basic principle of family solidarity. The 1987 Constitution recognized the sanctity of family life and explicitly made it a state policy to protect and strengthen the family as a basic autonomous social institution.[21] Because the family serves as the most basic societal grouping, then in the words of a Constitutional commissioner: "such a deeply human family system as ours deserves to be enhanced and preserved

12. *Id.* art. 5.

13. Declaration on the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354, Principle 7 (1959) [hereinafter DRC].

14. CRC, art. 14 (2); ICCPR, art. 13 (3); ICESR, art. 13 (3); DRC, Principle 4.

15. CRC, art. 3(2).

16. CRC, art. 7 (1); DRC, Principle 6.

17. Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally, art. 3 (1986) [hereinafter DLSP].

18. CRC, art. 7 (2).

19. CRC, art. 9 (1).

20. *Id.* art. 8 (1).

21. PHIL. CONST. art II, § 12.

not only for the sake of our own country but even for the sake of the rest of the world. It deserves the fullest support and protection from the State."[22]

Two aspects pervade this Constitutional protection. First, there is mandated to the state a positive duty to strengthen the family; and, at the same time, a negative duty to not adopt measures impairing its solidarity.[23] This becomes explicit under article XV, section 1 of the Constitution, which reads: "[t]he State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development."[24]

Yet, societal stability does not serve as the sole reason for familial protection. More so, perhaps, is the acknowledgment that the family — and parents, by extension — possesses certain inherent and inalienable rights which are intrinsic to its, and their, very existence and perpetuity.[25] Again, then, becomes evident the relation between the family, as an institution worthy of protection, and parents, as an integral part of such institution. Were one to juxtapose the two, then what arises is the realization that family and parental rights exist both as a dichotomy *and* as a single nexus of the same sphere: the first because one necessarily flows from the other, and the second because each finds the source of their recognition in the other. Translated, this simply means that parents, as natural precepts in and essentials to a family, will be accorded the same amount of protection accorded to that family relation.

The Constitution affirms this by continuing on to say that "[t]he 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."[26] This right is founded on the basic philosophy of liberty guaranteed by the due process clause.[27] Hence the rulings in various decisions of the United States Supreme Court upholding the right of parents

22. JOAQUIN G. BERNAS, S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS, 1129 (1995 ed.) (citing V Record 79, Commissioner Teresa Nieva, Chairperson of the Committee on Social Justice) [hereinafter BERNAS, INTENT].

23. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 84 (2003 ed.) [hereinafter BERNAS, COMMENTARY].

24. PHIL. CONST. art XV, § 1.

25. BERNAS, INTENT, *supra* note 22, at 1129 (citing V Record 79, Commissioner Teresa Nieva, Chairperson of the Committee on Social Justice).

26. PHIL. CONST. art II, § 12.

27. BERNAS, COMMENTARY, *supra* note 23, at 86.

to choose not only the type, but also the substance of their children's education.[28]

Therefore, because parental rights are primary and natural, they should, as a matter of course, be afforded some sort of protection — not only as such, but also because they form part and parcel of the right to liberty under the due process clause. As a consequence, while it may be conceded that the natural right of parents to custody, care and maintenance of the child remains subject to the power of state regulation, this power itself is limited to the consideration that such rights may not be removed except after due notice and an opportunity to be heard.[29] If a parent is thus deprived of his rights over the child without proper basis or lawful ground, it becomes a deprivation of rights without due process.[30]

It is this positive and negative duty of the state to ensure that the solidarity of the family is free from unnecessary interference that constitutes the scope of protection that should be afforded to parental rights. The role of the state is to protect and aid the right of parents — not to defeat it.[31] As stated by the Supreme Court in *Malcampo-Sin v. Sin,*[32] "the task of protecting marriage as an inviolable social institution requires vigilant and zealous participation and mere *pro-forma* compliance."[33] Though dealing with marriage, the same should also be taken to refer to the state's duty to the family. Indeed, the family, while also described as an inviolable social institution, is itself more often recognized in the Constitution than marriage itself.[34] Therefore, not only must the state enact preventive measures to protect the right of natural parents, it should also take curative action when such rights are being defeated — whether explicitly or not.

The aforementioned Constitutional guarantees find amplification and affirmation in both statutes and jurisprudence. As bemoaned by the Court in *Silva v. Court of Appeals:*[35] "There is, despite a dearth of *specific* legal

28. *Id.* at 87 (citing Pierce v. Society of Sisters, 268 U.S. 510 (1925); Wisconsin v. Yoder 406 U.S. 205 (1972)). Though this right to liberty is more focused on the right of parents to choose the education for their children, there can be no doubt that liberty is also essentially part and parcel of other parental rights. This will be discussed below.

29. 2 AM. JUR. 2d *Adoption* § 4 (1962).

30. Legare v. Cuerques, 34 Phil. 221, 225 (1916).

31. Cang v. Court of Appeals, 296 SCRA 129, 162 (1998); 2 AM. JUR. 2D *Adoption* § 4 (1962).

32. Malcampo-Sin v. Sin, 355 SCRA 285, 288 (2001).

33. *Id.* at 288.

34. PHIL. CONST. art II, § 12 & art XV.

35. Silva v. Court of Appeals, 275 SCRA 605 (1997).

provisions, enough recognition on the *inherent* and *natural right* of parents over their children."[36] Specifically, the Court mentioned Article 150 of the Family Code, which provides that family relations include those between parents and children.[37] There are others, however. The principle of continued family solidarity, for example, finds life under Domestic Adoption Act of 1998, which makes it state policy to ensure that every child remain under the care and custody of his or her parents.[38] Also, under the Family Code, parents have both the right and duty, with respect to their unemancipated children, to "keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing ..."[39]

C. The Protection Afforded to Parental Rights

The right of parents over their children is an inherent one, not created by the state nor by the courts, but rather, is derived primarily and solely from the nature of parental relationship — finding its source as both a natural right and in substantive law.[40] Consequently, it should also be remembered that, "for every right of the people recognized as fundamental, there lies a corresponding duty on the part of those who govern, to respect and protect that right."[41]

How then does the State consider the role to which it has been relegated, considering the prime importance accorded to family and parental rights in this jurisdiction? Comparing the approved text of article II, section

36. *Id.* at 609 (emphasis supplied).

37. *Id.*

38. DOMESTIC ADOPTION ACT OF 1998, § 2 (a).

39. FAMILY CODE, art. 220 (1). This provisions mirrors the then previously operative Article 316 of the Civil Code, which reads:

> [t]he father and the mother have, with respect to their unemancipated children:
>
> (1) The duty to support them, to have them in their company, educate and instruct them in keeping with their means and to represent them in all actions which may redound to their company...
>
> An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE].

40. Legare v. Cuerques, 34 Phil. at 221, 224 (1916).

41. Legaspi v. Civil Service Commission, 150 SCRA 530, 537 (1987) (citing THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 5 (1927)).

12 of the Constitution with its proposed text proves enlightening. The proposed text read:

> [t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a *basic social institution... [t]he natural right and duty of parents* in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the government.[42]

The approved text, on the other hand, adds certain important elements. Thus:

> [t]he 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.[43]

With the inclusion of the word 'primary,' it is clear that the framers of our Constitution meant it to be that such right of parents to child-rearing is superior to the role of the State in the same subject matter.[44] The addition of "autonomous," on the other hand, imports that the family occupies a more protected sphere vis-à-vis outside interference than other societal groupings. Thus, not only are parental rights regarded as superior to the role of the state in rearing children, so also the family is considered as an institution completely self-sufficient and consequently also to be protected from needless meddling.[45] This conceptualization of superiority and self-sufficiency is later on affirmed in article XV, section 1, which provides that the state "shall strengthen [family solidarity] and actively promote its total development."[46]

The fact that parental rights over their children are inherent and natural have also been taken into account by the Supreme Court. In *Silva v. Court of Appeals*,[47] the Court considered the issue of whether the father of illegitimate children had a right to visitation. The Court had this to say: "[p]arents have

42. BERNAS, INTENT, *supra* note 22, at 117 (emphasis supplied).

43. PHIL. CONST. art II, § 12.

44. BERNAS, INTENT, *supra* note 22, at 121; BERNAS, COMMENTARY, *supra* note 23, at 86.

45. So important was this concept of family solidarity that it was even agreed by the Constitutional Commissioners that "family," while it normally referred to one founded on marriage, also included other stable unions even when there had been no marriage. (BERNAS, INTENT, *supra* note 22, at 121 (citing IV Record 808-809)).

46. PHIL. CONST. art XV, § 1.

47. Silva v. Court of Appeals, 275 SCRA at 605 (1997).

the natural right, as well as the moral and legal duty, to care for their children, see to their proper upbringing and safeguard their best interest and welfare. *This authority and responsibility may not be unduly denied the parents.*"[48] This then sets the bounds for the protection that is dictated by the Constitution and enforced by courts. Indeed, the Court, despite the claims that the father would set a bad example to the children, refused to even consider that issue. It merely stated that it would seem unlikely that the father would have any ulterior motives other than merely his natural desire to see his children. In so holding, the Court did not bother to make its own determination of the father's good intentions, relying merely on the opinion of the Solicitor General and the trial court.[49] This reluctance to take into account the best interests of the child evidences the high respect that should be accorded parental rights. As such, whatever negative predilections the mother in *Silva* had over allowing her children to stay with their father, an alleged gambler and womanizer, they could not prevail over what the Court recognized as fundamental rights.

Indeed, even if we study cases dealing directly with adoption, the court still manifests a marked sympathy for the plight of natural parents and for the assurance of their parental rights. This was the intimation of *Republic v. Court of Appeals and Bobiles,*[50] wherein it was held that the approval of the adoption is always within the sound discretion of the trial court; and which discretion is to be exercised in accordance with the best interests of the child, *"so long as the natural right of the parents are not disregarded."*[51]

Bobiles was later directly applied by the Supreme Court in *Cang v. Court of Appeals.*[52] Therein, the *Cang* Court, using *Bobiles* as a basis, stated that "the discretion to approve adoption proceedings is not to be anchored solely on best interests of the child but likewise, with due regard to the *natural right of the parents* over the child."[53] *Cang* was peculiar in that it involved a finding by the trial court that the consent of the natural father was not needed in adoption because first, he had abandoned the children, and second, because he lived an immoral lifestyle. Partly with the consideration in mind that this negative influence would adversely affect the best interests of the children, the trial court granted the adoption.

The Supreme Court found that the reasons presented by the judge for divesting the father of parental authority were wholly insufficient. Though

48. *Id.* at 606 (emphasis supplied).

49. *Id.* at 610.

50. Republic v. Court of Appeals and Bobiles, 205 SCRA 356 (1992)

51. *Id.* at 365-66 (emphasis supplied).

52. Cang v. Court of Appeals, 296 SCRA at 129 (1998)

53. *Id.* at 157 (emphasis supplied).

such reasons included having a second family, having left the children to live in another country and a failure to prove that he still financially supported the children, the Court nevertheless refused to allow any of the above to equate to an abnegation of his parental authority. As they did not suffice to deprive him of parental rights, much less could they amount to abandonment; hence the reversal of the adoption decree. More important, however, is the realization that, in so doing, the Court implicitly affirmed the protection first pronounced in *Silva* and *Bobiles*. Thus, if those decisions were to be followed, then to take those reasons put forward by the trial court and sum them up as a derogation of parental rights, would be equivalent to an undue denial and deprivation. This, the Court could not do since it would contravene the Constitutional protection granted to the natural right of the parents that it had previously noted.[54]

There is no doubt, of course, that parental rights over the child and regarding the adoption may, in certain cases, also be curtailed by legislation. This much is made extant by the various provisions of law authorizing adoption even without the consent of certain types of parents. If the child has been abandoned, for example, then consent to the adoption is not anymore required.[55] This is based upon the consideration that a parent has no inherent right of property in a child, and that the right that a parent has to the custody and rearing of his children is not an absolute one, but one that may be forfeited by abandonment, unfitness of the parent, or whether some exceptional circumstances render the parents' custody detrimental to the best interests of the child.[56]

But, this foundation for legislative deprivation of parental rights connotes an undeserving act on the part of the parent — for example, abandonment, neglect, cruelty, etc. It does not, and should not, imply that the state may, without some overriding cause or purpose, arbitrarily affect parental rights. That is the essence of the protection given to those rights in the first place. Thus, it is only those interests of the highest order and those not otherwise served that can overbalance the primary interest of parents over their children.[57]

54. *Id.* at 162-63.

55. Chua v. Cabangbang, 27 SCRA 791 (1969). *See,* DOMESTIC ADOPTION ACT OF 1998, § 9. *See also,* FAMILY CODE, arts. 228-32.

56. Winter v. Director, Department of Welfare, 217 Md. 391, 143 A.2d 81, 84 (1958).

57. JOAQUIN G. BERNAS, THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 18 (2006 ed.) (citing Wisconsin v. Yoder, 406 U.S. 205, at 215 (1972)) [hereinafter BERNAS, REVIEWER]. An argument against the use of article II, section 12 of the Constitution, as well as article XV, and even the various international instruments outlined above, can be raised.

This Constitutional protection, however, does not even take into account state obligations under international human rights law. Because the Philippines is a signatory to the various international conventions outlined above, it is bound "to bring its laws and practices into accord with the accepted international obligations and not to introduce new laws or practices which would be at variance with such obligations."[58] Indeed, under the Covenant on Civil and Political Rights, each State Party is mandated to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the [Covenant]."[59]

As we have seen in *Cang*, parental rights should always be accorded some distinct measure of respect under domestic law. Under international law the duty of the state is the same. Thus, and again under *Cang*, the Court stated:

> [i]nasmuch as the Philippines is a signatory to the United Nations Convention on the Rights of the Child, the government and its officials are duty bound to comply with its mandates .... Underlying the policies and precepts in international conventions and the domestic statutes with respect to children is the overriding principle that all actuations should be in the best interest of the child. This is not, however, to be implemented in derogation of the primary right of the parent or parents to exercise parental authority over him. The rights of parents vis-à-vis that of their children are not antithetical to each, as in fact, they must be respected and harmonized to the fullest extent possible.[60]

The above statement by the Court is, if nothing else, the strongest affirmation of the two-pronged mantle of protection which should cloak parental rights. Indeed, considering what has already been said about *Cang*, there was no need for the Court to even mention the obligation of the state under international instruments. Yet, it nevertheless chose to make a jurisprudential stand regarding not only domestic law, but regarding international law, as well.

Similarly, in *Lahom v. Sibulo*, the Court found it necessary to mention the concurrence, nay the subservience, of municipal law to international law within the parental rights. Hence, the various Philippine statutes — the Civil Code or Domestic Adoption Act of 1998, for example — merely "gave acknowledgement to" or "secured" the rights already provided for in the previously mentioned international covenants.[61] Thus, domestic law was to be enacted with a mind fully conscious towards the recognition and enforcement of internationally-declared principles.

Implicit in the adoption of the methodology in either *Silva* or *Cang* is that, while either domestic or international may provide sufficient coverage on their own, the best way in which international rights may be protected is through the concurrent assimilation of both into the decision-making rationalizations of the courts and in the acts of the legislature.[62] It is only thus through the dual-headed Cerberus of international and municipal law that proper guarantees of parental liberties may be afforded.

III. CONSENT TO ADOPTION AND THE IRREVOCABLE DECISION

A. The Nature of Consent

At the very foundation of adoption statutes lies the consent of the natural parents who have not forfeited their parental rights over the child.[63] Such consent is a jurisdictional requisite for the adoption proceedings,[64] the

One might take the stand that the dictates embodied in the aforementioned provisions are not self-executing, and thus serve merely as guides for judicial review. (*See,* Tañada v. Angara, 272 SCRA 18 (1997); Kilosbayan v. Morato, 246 SCRA 540 (1995)). However, positioning oneself on this side does not take into account the fact that courts have already affirmed the right of parents over their children to be free from unwarranted state interference. (*See,* Wisconsin v. Yoder, 406 U.S. 205 (1972); Meyer v. Nebraska, 262 U.S. 390 (1922); Pierce v. Society of Sisters, 262 U.S. 510 (1925)). Essentially then, this is an implicit affirmation that parental rights, as embodied in the Constitution and treaties, are self-executing. At the very least, they can be embodied in the right to liberty, and hence are part and parcel of a fundamental right to which the state must give adherence. Indeed, even the wordings of the Constitution, semantically classify state action as a *duty*. Thus, "[the state] shall strengthen [family] solidarity..." (PHIL. CONST. art XV, § 1) and "[the state] shall protect and strengthen the family as a basic autonomous social institution." (PHIL. CONST. art II, § 12.)

Even if the focus is solely concentrated on the *ratio* of *Tañada, Kilosbayan* and other cases arguing over self-executory provisions of the Constitution, the fact that a *right* is explicitly mentioned in the provisions regarding parents and children should lends credence to the claim that they need no implementing legislation. (*See,* Oposa v. Factoran, 224 SCRA 792 (1993); Kilosbayan v. Morato, 246 SCRA 540 (1995); Pamatong v. Commission on Elections, 427 SCRA 96 (2004)).

58. JOAQUIN G. BERNAS, AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 305 (2002).

59. ICCPR, art. 2.

60. Cang v. Court of Appeals, 296 SCRA 129, 161-62 (1998).

61. Lahom v. Sibulo, 406 SCRA 135, 140-142 (2003).

62. *See,* Tañada v. Angara, 272 SCRA 18 (1997).

63. 2 AM. JUR. 2d *Adoption* § 24 (1962).

64. 1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 701 (8d ed. 1983).

absence of which is fatal to the validity of the adoption decree.[65] Considering, moreover, the strong familial and filial state policies outlined above, the giving or withholding of consent is properly considered a right of the natural parents. [66]

The entire purpose of requiring consent is two-fold. First, it implements the strong policy of the state towards maintaining family solidarity by preventing interference in the natural parental relationship. Second, it puts into play a proper safeguard for the best interests of both the prospective adoptee and his natural parents.[67] Not only is the attractiveness of adoption for all concerned thus ensured, but at the same time, the consent manifests the psychological preparation of the parents for the imminent loss of their child.[68]

Consent, however, is not needed in every instance of adoption. Since the law presumes, in requiring consent, that the natural parents have the capacity to give it, then conversely, the consent of an incapacitated parent — whether as regards civil incapacity or incapacity vis-à-vis the exercise of parental authority — is not needed.[69] In such a case, whoever happens to be validly exercising parental authority may give the consent. If there is no such person or entity, then, as in a decided case, the consent may be given by an abandoned child's *de facto* guardian.[70]

B. The Right to Withdraw Consent

When the law speaks of consent to adoption, it necessarily presumes that the consent is freely, voluntarily and intelligently given.[71] Such consent includes within its scope the consent to the adoption in general and also consent to all the legal consequences of the same.[72] There is, therefore, a built-in escape clause regarding consent to the adoption — vitiated consent. Hence, when fraud, violence, undue influence or mistake, prove influencing factors for the

65. 2 AM. JUR. 2d *Adoption* § 24 (1962).

66. ERNESTO L. PINEDA, FAMILY CODE OF THE PHILIPPINES ANNOTATED 346 (1994 ed.).

67. 2 AM. JUR. 2d *Adoption* § 24 (1962).

68. RUFUS B. RODRIGUEZ, FAMILY CODE OF THE PHILIPPINES ANNOTATED 451 (3d ed. 1995).

69. *See,* Santos v. Aranzanso, 16 SCRA 345 (1966); Chua v. Cabangbang, 27 SCRA 791 (1969); TOLENTINO, *supra* note 64, at 702.

70. Duncan v. Court of First Instance, 69 SCRA 299, 305 (1976).

71. 2 AM. JUR. 2d, *Adoption* § 44 (1962).

72. *Id.*

consent, it is without question that the courts will not hesitate to allow the same to be withdrawn. Vitiated consent is equivalent to no consent at all.[73]

However, what of a situation where there are no vitiating circumstances and the natural parents seek to revoke their consent? It is here where the problem begins to form itself. Generally, the right to withdraw consent is governed by statute.[74] It is seldom though that such a statute will provide for absolute irrevocability.[75] At the very least, when there are no consent-vitiating factors present, the consent may not be withdrawn arbitrarily or as a matter of right,[76] and, if good cause is alleged, the courts should take into account all circumstances attendant to the situation.[77] More specifically, and in line with the general purpose of adoption statutes, the best interests of the child are the prime consideration in determining whether the withdrawal may be allowed.[78]

If withdrawal of consent can be considered a right at all, it is a right the existence and exercise of which is predicated upon its interrelation with the rights of other parties to the adoption. In the first instance, it is subject to the best interests of the child. It is towards this purpose that other considerations influencing the availability of the right to withdraw should be taken into account: such as the nature of the adoption proceedings, the reasons for seeking withdrawal and the stage at which it is attempted.[79] Yet, it is not solely the right of child that takes precedence since the state policy towards maintaining the solidarity of the natural family provides another important influence in allowing the exercise of the right.[80] And, underneath such policy, one finds existing the rights of the natural parents.

Withdrawal, however, may not be effected once the decree of adoption has been entered.[81] If best interest considerations stress solely the rights of the adoptee, the finality of the decree places emphasis on both the adoptee and the adopters. Because it is at this point that their relationship becomes legitimate in the eyes of the law, then the law necessarily will take steps to maintain such a relation — much like it takes steps to maintain the blood relation prior to the decree.[82] Such a limitation has, for its basis, the fact that

73. *Id.*

74. *Id.* at § 46; 74 ALR 3d 421, § 2 (a).

75. 74 ALR 3d 421, § 2(a).

76. 2 AM. JUR. 2d *Adoption* § 46 (1962).

77. *Id.*

78. 74 ALR 3d 421, § 2 (a).

79. *Id.*

80. *Id.*

81. TOLENTINO, *supra* note 64, at 702.

82. *See,* R.A. No. 8552.

one of the effects of the adoption decree is the termination of all legal ties between biological parent and child.[83] Another reason is that prior to the decree, no judicial body has as of yet acted upon either the petition or the consent itself.[84]

It should be noted that the above rules proceed from a foreign federal jurisdiction where the withdrawal of consent is governed by different state statutes and by common law. In the Philippine setting, obviously it is the Domestic Adoption Act of 1998 that serves as the sole determinant of the right. This discrepancy in jurisdictional source should not detract from the applicability of the principles herein outlined, however. For, as will be discussed below, these same principles serve as convenient guideposts in determining whether the irrevocable decision is in need of closer legislative scrutiny.

C. *The Irrevocable Decision*

Notwithstanding the above, this jurisdiction prefers to make consent to adoption irrevocable. The irrevocable decision is worded as follows:

> The Department shall provide the services of licensed social workers to the following:
>
> (a) *Biological Parent(s)* — Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. *A period of six (6) months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption before the decision becomes irrevocable.* Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.[85]

It is a seemingly innocuous proviso in a section that deals otherwise with psychological matters. However, in understanding the rationale behind the provision, its relation with the entire provision, not to mention with Domestic Adoption Act of 1998 in general, is quite important. For, by providing an obvious correlation between irrevocability and parental counseling, the law clearly evidences the rationale and purpose behind Section 4 (a).

Despite its harsh effect on natural parents, the irrevocable decision has, on the contrary, their best interests in mind. As worded, the provision seems to imply that the six month period was created *for the benefit* of the parents, not otherwise. First, there is the clause on counseling both against the

83. *Id.* at § 16.

84. Thompson v. Lane, 178 Kan. 127, 283 P.2d 493, 498 (1955).

85. DOMESTIC ADOPTION ACT OF 1998, § 4 (a) (emphasis supplied).

decision to consent and against its effects. Second, the law protects the unborn child — and by extension, the as of yet nascent filial bond —from the separation that necessarily comes with adoption. Finally, when the law provides that the six month period is *allowed,* the permissive tenor highlights a generous attitude towards the plight of natural parents. Taken conversely, what this implies is that the state deems itself vested with the full power to completely withhold the right to withdraw consent; and merely tolerates the existence of this right through some beneficent design.

In *Bailey v. Mars,*[86] the Supreme Court of Connecticut expounded on the manner of gleaning the intent of adoption provisions. In deciding on the right to withdraw consent to the adoption, the court therein centered its *ratio* on the provision of the adoption statute requiring consent of the natural parents. Because it did not explicitly permit withdrawal of consent, it was held that whether such right existed depended on the interpretation accorded to the statute.[87] And, since the provision repeated three times the best interests of the child without mentioning anything of a similar nature about the natural parents, it indicated "very clearly that the primary purpose of the legislature as expressed in the statute is to insure the welfare of the child" and not of the parents.[88] This conclusion was, moreover, confirmed by the history of the statute.[89]

As *per* Section 4 (a), it clearly appears then that the primary purpose of the legislature, as expressed in the statute, is to insure the welfare of *the natural parents*. Here, the provision, like in *Bailey*, thrice makes mention of the natural parents. And, also like in *Bailey,* it fails to recognize the other parties to the adoption.[90] Even the fact that the irrevocable decision is a new legal animal — vis-à-vis the statutory history of Philippine adoption — militates against ignoring the methodology in *Bailey*. Thus, this primary statutory focus on the natural parents inescapably leads one to the conclusion that it is they to whom the protections, if any, of the irrevocable decision are intended.

Of course, if one takes into account the theory that adoption is for the benefit of the children, then another purpose comes to light. By ensuring that the adoption will, as a matter of course, definitely proceed, the law protects the interests of the adoptee by guaranteeing that his personal capacity and family status will not be left in a state of perpetual flux; which could theoretically occur were the natural parents to vacillate between

86. Bailey v. Mars, 138 Conn. 593, 87 A.2d 388 (1952).

87. *Id.* at 390.

88. *Id.* at 391.

89. *Id.*

90. They are, however, recognized in the succeeding paragraphs.

permitting and disallowing the adoption. That same confusion will similarly have a negative effect on the prospective adopters and the field of adoption, in general.[91]

Yet, there is no doubt that the irrevocability of the consent does not have the effect as intended by the legislature. As will be seen below, both parental rights and the best interests of the child are effectively trampled upon, rather than upheld. How indeed does the state expect to safeguard the rights of the parents when it unceremoniously and promptly takes away such rights after a period of six months?[92] How also does it expect to protect the child when, by the mere lapse of time, without judicial intervention and determination, separation from the parents is deemed to be for the best interests of the child, as it will then proceed as a matter of course?

IV. THE EFFECT ON ADOPTION AND PARENTAL AUTHORITY

A. The Continuing Nature of Consent

Adoption laws that adversely affect parental rights should be construed strictly.[93] The reason is that the decree of adoption transfers the legal relation of parent and child from the natural to the adoptive parents.[94] For this reason also, it is generally provided that the consent of the natural parents be obtained in order for the adoption to be valid.[95]

There is no doubt that Philippine adoption statutes require the consent of the natural parent.[96] What is not so clear is whether that consent is needed throughout the pendency of the entire proceedings and until entry of the adoption decree. A reading of section 4 (a) seems to imply that after the six-month period, the continuing validity of the consent of the natural parents becomes immaterial. Whether they desire to withdraw it or not, the withdrawal itself is prohibited. Essentially thus, if a withdrawal is attempted after the six months, which will subsequently be prohibited by section 4 (a), then the adoption, if later decreed, is one that exists without the true consent of the natural parents.

91. 2 AM. JUR. 2d *Adoption* § 46 (1962).

92. *See*, MELENCIO S. STA. MARIA, JR., PERSONS AND FAMILY RELATIONS LAW 640-41 (4d ed. 2004).

93. Williams v. Capparrelli, 180 Or. 41, 175 P.2d 153, 154 (1946).

94. DOMESTIC ADOPTION ACT OF 1998, § 16.

95. Green v. Paul, 212 La. 337, 31 So.2d 819, 822 (1947).

96. DOMESTIC ADOPTION ACT OF 1998, § 9 (b).

The case of *Green v. Paul*[97] is enlightening. The pivotal issue dealt with the ability of the biological parent to withdraw his consent to the adoption. The peculiarity of the law, however, provided that before the decree proper was granted, an interlocutory order of adoption had to be entered, effectively terminating the rights of the parents over the child. The Court held that the withdrawal should be allowed. It construed the essentiality of consent to imply that consent was needed throughout the pendency of the case, and until the final decree of adoption.[98] In doing so, it highlighted one important provision of Louisiana law: the requirement that a social worker make a report to the judge on the continuing availability of the child for adoption before the final decree is granted.[99] Because that requirement on continuing availability necessarily dealt with the consent that once again had to be affirmed, then logically, this could only mean that the consent must continue until the final decree.

This is similar to our own Rule on Adoption,[100] which provides that the child study reports may be given to the court before the hearing and after consent has been given.[101] The purpose of the reports also mimics the statute in Louisiana as they are both aimed at determining whether the child is available for adoption.[102] It is this similarity that allows us to use *Green* as a guidepost in determining the nature of consent. In both instances, parental rights are essentially altered before the child study is made; and also in both, the child study is aimed at determining whether the child is indeed available for adoption. Thus, as the child study reports may be made either before consent is given or right before the hearing, then, according to *Green*, this can only mean that the legislature intended the consent to continue until the final decree.

Nevertheless, the irrevocable decision makes it possible for an adoption decree to be entered even without the consent of the parent. Not only is this in violation of the continuing nature of that consent,[103] but, more importantly, it also undermines the right of the parents in giving and withholding consent.[104] In the sphere of international law, it violates the right of parents not to be separated from their children without judicial

97. *Green*. 212 La. 337, 31 So.2d 819.

98. *Id.* at 822.

99. *Id.* at 821.

100. Rule on Adoption, A.M. No. 02-6-02-SC (2002).

101. *Id.* at § 12 (5).

102. *Id.* at § 13; DOMESTIC ADOPTION ACT OF 1998, § 11.

103. We do not speak here of instances when the parent himself has forfeited the right to give consent, such as with abandoned or neglected children.

104. PINEDA, *supra* note 66, at 346.

review.[105] To put it simply, section 4 (a) undermines the right to family solidarity. And it is this right, along with those that will be discussed subsequently, that is deserving not of the state's derogation, but rather, its vigilant protection.

B. Parental Authority

Parental authority is essentially the sum of all parental rights over the child; and, as such, it is deserving of a relatively high degree of protection. The lapse of the six month period, however, triggers the existence a grey area wherein the exercise and ownership, so to speak, of parental authority is muddled. For, between the end of six months from the giving of consent and until the adoption decree, natural parental authority is terminated, or at least effectively negated, while the adoptive parental authority has not, as of yet, been granted. Section 4 (a) therefore unwittingly creates a gap in the continuum of parental authority whence it becomes unclear in whom the same is vested.

In *Tamargo v. Court of Appeals,*[106] the Court considered the issue of parental authority in relation to the adoption process.[107] The situation arose because the adoptee committed a tort after the filing of the petition for adoption, but before the granting of the decree.[108] Action was brought against the natural parents, who claimed that it was the adopters should be held liable since parental authority had shifted to them from the time the petition was filed.[109]

In holding against the natural parents, the Supreme Court stated that under both the Civil Code and the Family Code, parents were liable for the torts committed by their children who live in their company. Thus, since the child was still in the custody and under the control of his natural parents, they were the ones to shoulder the vicarious liability.[110] Additionally, the Court discussed the nature of parental authority vis-à-vis the adoption proceedings. It held:

> [w]e do not consider that retroactive effect may be given to the decree of adoption so as to impose a liability upon the adopting parents accruing *at a time when adopting parents had no actual or physically custody over the adopted child.* Retroactive affect may perhaps be given to the granting of the petition for adoption where such is essential to permit the accrual of some benefit or advantage in favor of the adopted child.
>
> x x x
>
> Under the above srticle 35 of the Child and Youth Welfare Code], parental authority is provisionally vested in the adopting parents during the period of trial custody, i.e., before the issuance of a decree of adoption, *precisely because the adopting parents are given actual custody of the child during such trial period.* In the instant case, the trial custody period either had not yet begun or bad already been completed at the time of the air rifle shooting; in any case, actual custody of [the child] was then with his natural parents, not the adopting parents.[111]

105. CRC, art. 9(1).

106. Tamargo v. Court of Appeals, 209 SCRA 519 (1992).

107. *Id.* at 521.

108. *Id.* at 520.

109. *Id.*

110. *Id.* at 525-26.

The lesson that can be taken from *Tamargo* is who, between natural and adoptive parent, exercises parental authority. Through an examination of the Child and Youth Welfare Code[112] provision authorizing supervised trial custody, which stated that "[d]uring the period of trial custody, parental authority shall be vested in the adopting parents", the Court was able to deduct that it was only during such a period that the adopters had parental authority; otherwise, the same was vested in the natural parents. By thus tying parental authority to the trial custody period, and hence to actual physical custody, the Court essentially dictated that in adoption proceedings, parental authority is vested in whoever has the child in his company.[113]

On the other hand, the irrevocable decision, while not explicitly doing so, revokes, or at least certainly derogates from, parental authority after six months from the time of giving of consent. This contrast between case and statutory law is far from illusory. For, it cannot be argued that the effectivity of the grey period merely withholds the ability to withdraw consent to adoption without, however, similarly undermining the overarching institution of parental authority. It would be nonsensical to assume that the natural parent, still having both custody and control, could not, at the same time, prevent the adoption from proceeding. This goes against the very nature of parental authority and parental rights.

First, it diminishes the primordial objective of parental authority and parental rights as being exercised not simply for the present best-interests of the child, but more for their *eventual* "civic efficiency and the development of moral character."[114] This forward-minded outlook of the Constitution, and of parental rights and authority, will be negated by the fact that the natural parent is not ensured that his own past performed duty over the child

111. *Id.* at 526-27 (emphasis supplied).

112. P.D. No. 603, art. 35.

113. It should be noted that *Tamargo* was decided in 1992, well before the irrevocable decision became effective.

114. PHIL. CONST. art II, § 7.

will bear fruit, considering that his ability to prevent the adoption from proceeding is curtailed. It frustrates the possibility itself that the natural parent exercise authority over the child for his future development, as the exercise of such authority is limited by the irrevocability of the consent.

Second, and more importantly, the right to give or withhold consent to the adoption is one that is fundamentally bound with parental authority.[115] Dispossessing this right from the parent, thus undercuts the entire institution of parental authority as it is not merely the withdrawal of consent that is affected, but also, and again, the right to future care, custody and rearing of the child. Once the six months has elapsed, and if the adoption is judicially decreed, then one only need to refer to the end of such period to pinpoint the precise time when the loss of parental authority — already complete at the time of the decree — began to erode.

Third, there is a violation of the Parental Preference Rule. If *Tamargo* is to be followed, and it should, then parental authority during adoption flows from whoever has actual custody and control of the child. According to the Parental Preference Rule, however: "*parents are entitled to the custody of their children as against foster or prospective adoptive parents* ... or as against an agency or institution."[116] It will be seen that, even against the prospective adopters, the natural parents should be entitled to custody over the child. Custody, meanwhile, is understood to embrace "the sum of parental rights with respect to the rearing of a child, including his care. It includes the right to the child's services and earnings, and the right to direct his activities and make decisions regarding his care and control, education, health, and religion." — in other words, it forms part and parcel of parental authority.[117] Yet, the irrevocability of consent after a lapse of six months, does away with this preference. In fact, once that period has gone by, the question of whether the natural parent should be preferred becomes moot, as he is, inexplicably, removed from the equation.

Even under the Domestic Adoption Act of 1998, it is implied that parental authority is affected by the giving of consent. Section 4(a) states: "counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption."[118] Notice that the counseling is not offered aft[illegible]e decree, but in the period before. Notice also that the term used is 'relinquish', intimating that parental authority has already been lost upon the giving of consent. Finally, notice

115. PINEDA, *supra* note 66, at 346.

116. Luna v. Intermediate Appellate Court, 137 SCRA 7, 23 (1985) (Makasiar, J., dissenting opinion) (emphasis supplied).

117. *Id.* at 19.

118. DOMESTIC ADOPTION ACT OF 1998, § 4 (a).

that it does not speak of a completed adoption. This counseling can only thus refer, at its earliest, to the time when the decision to allow adoption may not anymore be revoked. The care offered thus foresees a period wherein the parent is effectively, if not nominally, divested of his child and his parental authority; which period can only refer to the grey area.

Tamargo itself concedes that the parental authority of the natural parents during the adoption proceedings is itself in a precarious position. First, the parental authority of the adopters may retroact if it is for the best interests of the child. And second, the authority *may not* retroact if it would potentially give rise to some liability in the adopters.[119] It would thus make a farce of the institution of parental authority to allow one party to lamely exercise the same and yet have those actions obliterated by some chance fact that allows a retroaction, bestowing parental authority in another. This construction, along with all the other reasons abovementioned point to one simple conclusion: the *de facto* termination of parental authority.

Upon whom does parental authority then devolve in the grey area? If the end of the six months overlaps or leads to the supervised trial custody period, then clearly it is upon the potential adopters.[120] But, what if the trial custody has not yet begun or has already ended? The logical successor would be the Department of Social Welfare and Development (DSWD). But, the DSWD is only directly granted parental authority when there has been a commitment of the child to its care.[121] It could also be a child-caring or child-placing agency, but these only assume substitute parental authority either after the child has been surrendered to them specifically for care and adoption, or after summary judicial proceedings, as in the case of abandoned or neglected children.[122] Lastly, it could be vested in the persons mentioned under article 216 of the Family Code — for example, the grandparents, siblings or the actual custodian — but, once again court intervention is necessary for the same.[123]

Other situations are equally confusing. What if the supervisory trial custody period begins before the six months provided in section 4 (a) have not yet lapsed? Under section 12, parental authority is vested in the adopters

119. Except, of course, were the cause of action to arise during the supervised trial custody period. *See*, Tamargo v. Court of Appeals, 209 SCRA at 519, 527 (1992).

120. *Tamargo*, 209 SCRA at 519, 527.

121. *See*, DOMESTIC ADOPTION ACT OF 1998, § 3; P.D. No. 603, arts. 155-56.

122. *See*, DOMESTIC ADOPTION ACT OF 1998, §§ 3 (h) & 5 (j); *see also*, FAMILY CODE, art. 217 and P.D. No. 603, arts. 155-56.

123. FAMILY CODE, art. 216. It is implied that court process is necessary because the substitute shall take over, as such, unless unfit (FAMILY CODE, arts. 214 & 216). And who else makes a determination of unfitness but the courts?

during the period. But, parental authority includes the right to give or withhold consent to the adoption. Will the trial custody then effectively shorten the already inadequate period? If the premature termination of parental rights is already an issue, what more when the same may be dissolved even before the irrevocable decision say so? Or what if the adoption fails, or is denied, or the petition is rescinded, or the DSWD gives an unfavorable recommendation? Again, if these occur within the six month period, may the natural parents then have the child back, considering that their right to withdraw still exists?

Whatever the answers, the end result is that, by its invocation of the grey area, section 4 (a) of Domestic Adoption Act of 1998 effectively confuses the person in whom parental authority is to be vested. While not explicitly terminating parental authority, it dilutes its strength to the extent of crippling the natural parents in their exercise of the same — hence, the *de facto* termination. As such, it places the welfare of the child in the hands of some indeterminate entity. This not only makes it difficult to pinpoint liability, or benefit, should a situation similar to *Tamargo* rear its heard, but more importantly, it adversely affects the best interests of the child by making him suffer a deprivation of the care, advice and guidance that can only be rendered by one properly charged with the exercise of parental authority.

V. DUE PROCESS

Because parental rights occupy such a high rung on the ladder of state policy, then surely their existence deserves some more cautious and trustworthy means of security. Due process, itself the protective bulwark of constitutionally enshrined freedoms, dictates no less. The Constitution mandates that "no person shall be deprived of life, liberty, or property without due process of law."[124] The Domestic Adoption Act of 1998, however, fails to live up to this standard.

The right of parents to rear their children has, as part of its foundation, the right to liberty guaranteed by the due process clause.[125] Though initially cast as the right of persons to be free from restraint and to enjoy their human faculties, [126] the right to liberty has also been held to include "not merely freedom from bodily restraint but also the right of the individual to ... establish a home and bring up children."[127] In *Pierce v. Society of Sisters*,[128] the Supreme Court of the United States affirmed this selfsame interrelationship.

124. PHIL. CONST. art III, § 1.

125. BERNAS, COMMENTARY, *supra* note 23, at 86.

126. *Id.* at 107.

127. *Id.* at 86 (citing Meyer v. Nebraska, 262 U.S. 390 (1923)).

128. Pierce v. Society of Sisters, 262 U.S. 510 (1925).

It held that because "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations", the right to liberty precluded the state from interfering with the natural parents' raising of their children — in this case, by invalidating a law requiring only public school education for children.[129] Essentially, characterizing parental rights as being founded on the right to liberty enforces the state's own conception of those same rights as primary, natural, basic and autonomous — all of which imply a freedom inherent in parents. And, it is precisely this dichotomy between parental rights and the right to liberty that allow one to criticize the irrevocable decision under the shadow of the requirements of due process.

Procedural Due Process

Procedural due process encompasses two basic principles: notice and the opportunity to be heard.[130] Absent either of those, there is a clear transgression of due process and any act effected with such deficiency is deemed unconstitutional. One can argue that section 4 (a) encompasses proper notice — as the natural parents not only give their consent in writing, but are also, at least in theory, counseled as to the effects of such consent.[131]

But, what about the requirement of opportunity to be heard? Opportunity to be heard is taken to mean that judicial intervention — whether fully judicial or merely quasi-judicial — is made available to a person before a deprivation of his rights ensue. The essence is not that an actual hearing is conducted, but rather that the *opportunity* itself is presented to the potentially affected person.[132] Even under the glare of this rather forgiving requirement, however, section 4 (a) withers. For in this case, there is, simply, a complete absence of an opportunity to be so heard.

The essence of due process is that the law, or one acting with its surrogate authority — for example, a tribunal — hears before it condemns.[133] With the irrevocable decision, however, the natural parents, when faced with a deprivation of their fundamental rights, are denied the chance to submit their case to a judge fully capable of making a complete determination of their rights. Instead, the legislature has deemed it enough

129. BERNAS, COMMENTARY, *supra* note 23, at 87 (citing Pierce v. Society of Sisters, 262 U.S. 510, 535 (1925)).

130. *Id.* at 115.

131. DOMESTIC ADOPTION ACT OF 1998, § 4 (a),

132. BERNAS, COMMENTARY, *supra* note 23, at 115.

133. *Id.* at 113 (citing Lopez v. Director of Lands, 47 Phil. 23, 32 (1924)).

that such a determination is made by the passage of time. This is wholly unprecedented — both logically and legally. Logically, it presumes that the lapse of six months is both an effective renunciation of parental rights and the final arbiter for the exercise of those rights. Legally, it goes against the basic principle that to take away rights, some capable authority must intervene. As constant as the passage of time is, it is the purely human abilities of "[contributing] to accuracy and thus [minimizing] errors in deprivations",[134] and giving the person subject to deprivation "a sense of rational participation in a decision that can affect his destiny and thus enhances his dignity as a thinking person,"[135] so essential to opportunity to be heard, that it sorely lacks.

In support of section 4 (a), it must be noted that obviously the law deems the irrevocability to be totally dependent upon the actions of the natural parents. If they remain inactive for the time provided, then they are essentially assenting to the subsequent adoption. If they decide to withdraw their consent within six months, however, then the law refrains from interposing any objections to the same. Perhaps it is in this way that the law deems opportunity to be given to, and subsequently rejected by, the natural parents. Yet, this *laissez-faire* attitude should not be countenanced. Whatever claims the state may make to passivity fall short of its own stated policies, when clearly the Constitution itself provides that the state "*shall protect and strengthen* the family ..." an active mandate, to be sure.[136] It is thus the positive *duty* of the state to actively take measures to uphold family solidarity and parental rights over the child; and the negative duty to prevent those rights from being trampled without first allowing the observance of due process. One such way is to provide means whereby those rights are only taken away fairly and after due consideration of all the legal and personal ramifications by some competent tribunal.

This much was decided by the Supreme Court in *Legare v. Cuerques*,[137] when it had occasion to directly tackle the dichotomy between parental rights and procedural due process, answering, in turn, the above argument as to the time of opportunity. Therein, the father, Legare, filed a petition for custody over his illegitimate children, as against Cuerques, the mother. She was initially held in default, and judgment was rendered against her on the ground that her way of living proved her unfit to be a mother.[138]

134. *Id.* at 116.

135. *Id.*

136. PHIL. CONST. art II, § 12 (emphasis supplied).

137. Legare v. Cuerques, 34 Phil. 221(1916).

138. *Id.* at 224.

In overturning the trial court's decision, the Court, after noting that Cuerques exercised both custody and parental authority over the children for the entire period leading up to and during the case, said: "If, by reason of her way of living, the mother had become unworthy to exercise her parental authority, an action should have been brought for the purpose of depriving her of her said right, but it should not have been taken away from her without due process of law."[139]

Cuerques did not attend the initial hearings because of a lack of notice regarding the ruling on a demurrer she had previously filed. Moreover, even if she had, the petition filed by Legare was insufficient to deprive Cuerques of parental authority — as her unfitness should have been tried and decided in an action precisely for that purpose.[140] To put it simply, the *Legare* Court bemoaned the deprivation by the judge of Cuerques' parental rights arbitrarily and without any attempt at procedural fairness.

The nuances of the case demand that our attention be turned solely to the rule that parental authority may not be deprived except in the cases provided for by law[141] and to the consideration that the children involved in this case were illegitimate, and hence under the parental authority of their mother.[142] In addition, however, the situation in *Legare* is not dissimilar to the situation the natural parents face when confronted with the lapse of six months from the time of giving their consent to an adoption. In both cases, there is some form of initial notice: the giving of consent and the counseling under Domestic Adoption Act of 1998, and Cuerques' previous appearance in court. Nevertheless, in both *Legare* and section 4 (a) of the Domestic Adoption Act of 1998, there is a lack of opportunity to be heard *at the moment of deprivation.*

Indeed, it seems rather strange that the Court chided the judge for taking into account the unfitness of Cuerques despite the action not being one for deprivation of parental authority, when clearly, the issue at hand — custody — itself involves a determination of fitness of one of the parents, and concerns itself less with parental rights or parental authority.[143] As such, it should have been the best interests of the children that took primary concern of the courts. In fact, this is precisely what the lower court had in mind when it bestowed custody to Legare on the grounds that he would be able to provide an education for the children.[144]

139. *Id.* at 225.

140. *Id.*

141. FAMILY CODE, art. 210.

142. *Id.* art. 176.

143. 74 ALR 3d 421, § 3.

144. Legare v. Cuerques, 34 Phil. 221, 224 (1916).

The answer, of course, lies in the fact that the end result of the litigation was a derogation of parental rights, irrespective of how the best interests of the child were involved. And, because there existed such a derogation, the Court was apparently not content to let it happen in the absence of proper safeguards.

Obviously, there was a lack of opportunity to be heard: as much can be gleaned from the necessity of filing another, more specific, action. More importantly however, this lack of opportunity did not occur at the commencement of the action, but rather, at the time that Cuerques was to be deprived of her parental rights. It must not be forgotten that she was a duly notified party. But, because notice regarding her motion failed to reach her, her participation was non-existent, especially at the point of deprivation. It was precisely this lack of participation that caused the *Legare* Court to defy the previous compliance with due process and uphold the mother's rights to her children.

In much the same way, whatever previous opportunity is given to natural parents regarding the consent they give to the adoption of their children should be rendered moot by the lack of the same at the close of the six month period. However valid the consent may be — as valid as the jurisdiction acquired over Cuerques, even — *Legare* holds that when it comes to a deprivation of parental rights, what becomes necessary for the satisfaction of procedural due process is opportunity to be heard at the exact time of such deprivation.

Legare itself only speaks of custody — which is inherently mutable and may be modified even after a judgment on the subject has been rendered.[145] What about adoption itself? Adoption is infinitely more damaging to the natural filial relationship because it dissolves the parental authority of the parents and extinguishes all legal consequences of such authority (which includes the natural rights of parents).[146] It thus behooves the state to take even more care than that outlined above when considering parental rights within the context of adoption.

VI. PARENTAL RIGHTS AND PHILIPPINE LAW

A. Necessity of Adoption Decree

It goes without saying that the adoption procedure is a judicial process and hence requires a decree to become effective. This, of course, means that extra-judicial adoptions may not make any successful claims to validity.

145. Espiritu v. Court of Appeals, 242 SCRA 363, 369 (1995).

146. Green v. Paul, 212 La. 337, 31 So.2d 819, 821 (1947). *See,* Tamargo v. Court of Appeals, 209 SCRA 519 (1992).

In 1954, the Court passed on the case of *Santos-Yñigo v. Republic,*[147] anchoring its *ratio* on the then Rules of Court, which encapsulated the necessary adoption procedure. Therein, a petition was filed for the adoption of a certain child by prospective adopters who already had children of their own.[148] The trial court granted the petition on the basis of an adoption agreement executed between the adopters and natural parents a few months before the Civil Code came into effect — in other words, at a time when there was no law prohibiting those with children from adopting.[149]

The Court wasted no time in reversing the decision of the lower court. It stated thus:

> We find no merit in this contention. While the adoption agreement was executed at the time when the law applicable to adoption is Rule 100 of the Rules of Court and that rule does not prohibit persons who have legitimate children from adopting, we cannot agree to the proposition that such agreement has the effect of establishing the relation of paternity and filiation by fiction of law without the sanction of court ... Now, said rule expressly provides that a person desiring to adopt a minor shall present a petition to the court of first instance of the province where he resides. *This means that the only valid adoption in this jurisdiction is that one made through court, or in pursuance of the procedure laid down by the rule, which shows that the agreement under consideration can not have the effect of adoption as now pretended by petitioners.*[150]

The essence of *Santos* is the rule that adoption may not be effected extra-judicially.[151] According to the Court, a valid adoption must either course itself through judicial process or via legal procedure.[152] Since the agreement did not encompass either of the above, then it could obviously not take the place of formal adoption proceedings.

The *ratio* in *Santos* obviously still holds. Much like it was then, present laws do not directly state that a decree is necessary before adoption becomes

147. Santos-Yñigo v. Republic, 95 Phil. 244 (1954).

148. *Id.* at 245.

149. NEW CIVIL CODE, art. 335 (1) ("[t]he following cannot adopt: [t]hose who have legitimate, legitimated, acknowledged natural children, or natural children by legal fiction.").

The Civil Code came into effect on Aug. 30, 1950. The agreement to adopt, on the other hand, was executed on Mar. 20, 1950. The petition, however, was filed only in 1952.

150. *Santos-Yñigo,* 95 Phil. at 247 (emphasis supplied).

151. 1 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 714 (7d ed. 1971).

152. Santos-Yñigo v. Republic, 95 Phil. 244, 247 (1954).

effective.[153] Yet, what they do provide is that a person desiring to adopt must present a petition before the proper court.[154] Hence, the inescapable conclusion is that a decree is needed for an adoption to be valid. Prescinding from that, and perhaps even more important, is the conclusion that an agreement to adopt — an extra-judicial adoption — will similarly not hold water.

The irrevocable decision is akin to an extra-judicial adoption when it presumes that occurrences prior to the granting of the decree — indeed, prior to even hearing itself — have the effect of *ipso facto* midwifing such a decree into existence. Because an agreement to adopt, executed between the natural parents and prospective adopters, is a relinquishment of parental rights and of control over the adoption proceedings, verily, it has the same effect as the lapse of the six-month period. Indeed, it can even be said that such an agreement is markedly similar, if not the same, as the actual giving of consent to adoption. Once the natural parents thus give their consent, they are also consenting to the eventual revocation of their parental rights; much as would if they simply entered into a contract with the adopters to relinquish their child.[155] It is precisely this situation that jurisprudence, though perhaps not the law itself, has sought to avoid.

B. De Facto Termination of Parental Authority

If adoption needs a decree to become effective, what about the termination of parental authority, which itself subsumes the effects of adoption? May that be done without the concurrence of judicial intervention? Indeed, when speaking of the irrevocable decision, parental authority and its loss assume roles of extreme significance. It may be argued that the necessity of an adoption decree impacts very little the irrevocable decision since adoption proceedings will still be taking place and since, through such proceedings, the courts will have a chance to properly intervene. But, as already noted, the six-month period nevertheless still provides for a grey area wherein parental authority itself is effectively lost. Thus, however much it becomes necessary to equate the irrevocable decision to a completed adoption, this much is clear: after the lapse of the period, there is a *de facto* termination of parental authority.

It therefore becomes *apropos* to revisit the Family Code provisions on parental authority. A fundamental postulate is found in article 210, which

153. DOMESTIC ADOPTION ACT OF 1998; Rule on Adoption, A.M. No. 02-6-02-SC (2002).

154. *Id.*

155. *See,* TOLENTINO, *supra* note 64, at 703; Tamargo v. Court of Appeals, 209 SCRA 519 (1992).

states that: "Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law."[156] Essentially, this dictates that any abdication or dispossession of parental authority may only occur strictly within the grounds specified by statute. However, another meaning can be read from the provision. While the phrase 'cases authorized by law' necessarily lends itself to an interpretation that only lawful reasons terminate parental authority, it may also intimate that parental authority may only be lost through the procedure lain down by law.

C. The Need for Judicial Determination

Though discussed previously, *Legare v. Cuerques* again becomes important when considering termination of parental authority. It will be remembered that, therein, the natural mother was deprived of parental authority over her children, but not in an action filed for that purpose, the Court said: "If by reason of her way of living, the mother had become unworthy to exercise her parental authority, *an action should have been brought for the purpose of depriving her of said right*, but it should not have been taken away from her without due process of law."[157] By stating that an action for deprivation was ultimately necessary, the Court identified the sole means by which such deprivation could take effect.

The Family Code, though not directly requiring judicial proceedings for termination, implicitly makes the same an essential requirement. Thus, article 229, when speaking of grounds for termination of parental authority peppers its wordings with reference to judicial process: "*appointment* of a general guardian," "*judicial declaration* of abandonment," "*final judgment of a competent court,*" and the like.[158] Suspension of parental authority likewise requires court intervention. Under article 230, "parental authority is suspended upon *conviction.*"[159] Under article 231, "*the court in an action filed for the purpose* in a related case may also suspend parental authority... "[160] Finally, under article 232, if the parent abuses the child sexually, "such person shall be permanently deprived *by the court* of such authority."[161] Even the restoration of parental authority presupposes that the same first course through the instrumentality of the courts.[162]

156. FAMILY CODE, art. 210.

157. Legare v. Cuerques, 34 Phil. at 221, 225 (1916) (emphasis supplied).

158. FAMILY CODE, art. 229 (emphasis supplied).

159. *Id.* art. 230 (emphasis supplied).

160. *Id.* art. 231 (emphasis supplied).

161. *Id.* art. 232 (emphasis supplied).

162. *Id.* arts. 229 & 231.

The above provisions reiterate the difference between the existence of the grounds for termination or suspension and the effect that those grounds have on parental authority. The mere presence of a lawful cause does not *ipso facto* suspend or terminate parental authority. In all cases, judicial declaration is necessary.[163] Of course, once a decree is entered to that effect, then either termination or suspension will ensue by operation of law.[164]

D. Unfitness as a Reason for Loss of Parental Authority

One ground that does prove serious enough for loss of parental authority is that the natural parent is unfit to exercise the same. The unfitness of the parent, while not an explicit requirement, is nevertheless the single underlying element for all the grounds of deprivation.[165] Abandonment, absence, cruelty and even conviction of a crime bespeak of the inability of the parent to carry out the duty reposed in the filial relationship. As such, it is this inherent unfitness, whether of character or action, that allows the law to put aside the protections reposed on parental rights and divest the parent of parental authority.

Indeed, even adoption itself is premised on unfitness of the natural parents. Whatever predispositions the law currently has towards using adoption as a vehicle to benefit the child, the fact still remains that the adoptee is allowed to be separated from his natural parents. Though, strictly construed, this separation equates itself with the child's best interests, at its underbelly, one also notices that unfitness is the basis. For, why would it be in the best interests of the child to be displaced from his natural family in favor of another when his parents are fit? To put it simply, a favorable adoption is essentially a legal stamp of approval not only on the greater benefits that the adoptive parents can give the child, but also on the fact that his natural parents cannot or do not give him such benefits — in other words, they are unfit.

Unfitness, however, is solely dependent on the facts. If we are to couple this with the requirement that it is only the most compelling of reasons that

> Art. 229. *Unless subsequently revived by a final judgment*, parental authority also terminates ... (emphasis supplied).
>
> Art. 231. ... The suspension or deprivation may be revoked and the parental authority revived *in a case filed for the purpose or in the same proceeding* ... (emphasis supplied).

163. *See*, TOLENTINO, *supra* note 64, at 691-92.

164. *Id.*

165. Except, of course, for the involuntary grounds found in art. 228 of the Family Code; namely, death of either parents and child, or emancipation of the child. (FAMILY CODE, art. 228).

can adversely alter parental authority,[166] then an allegation of unfitness necessitates both a thorough determination of the facts upon which it is based and a strict standard for such determination. This standard is found in the statement of the Court in *Briones v. Miguel* that parental authority may only be abrogated by the courts upon a showing of a "real, grave, or imminent threat to the well-being of the child."[167]

In this manner, neglect and abandonment, immorality, habitual drunkenness, drug addiction, insanity and affliction with a communicable disease have all been held as sufficient evidence of the unfitness of the natural parent.[168] In all these cases, the well-being of the child is put in jeopardy by his continued relation and subjugation to the parent concerned. The latter is hence considered unfit and parental authority may subsequently be taken away.

But, what if the threat to the well-being of the child is neither real, nor grave nor imminent? Indeed, what if there is no threat to his well-being at all? Obviously, in such an instance, there can be no finding of unfitness and parental authority should remain intact. This is precisely the basis for the *ratio* in *Cang v. Court of Appeals*, outlined above, wherein the Court held that even the conceded immoral lifestyle of the father could not equate to a determination of his unfitness. In determining such fitness, the *Cang* Court went so far as to state: "that a husband is not exactly an upright man is not, strictly speaking, a sufficient ground to deprive him as a father of his inherent right to parental authority over the children."[169] Hence, in the absence of any real or grave threat to the children, the father was allowed to retain his parental authority.

In certain cases, the Supreme Court has even found it necessary to make a determination of unfitness despite the presence of other, more relevant grounds of deprivation. One of the more relevant of these is *Chua v. Cabangbang*,[170] involving the attempt of a mother to regain custody of her children after having abandoned them for a long period. It is an interesting study because, after already having affirmed the fact of abandonment — in itself a ground for loss of parental authority — the Court still found it necessary to elaborate on the evident unfitness of the mother. Thus:

> For, by her own admission, the petitioner has no regular source of income, and it is doubtful, to say the very least, that she can provide the child with

166. Briones v. Miguel, 440 SCRA 455, 464-65 (2004).

167. *Id.* at 465 (2004).

168. *Id.*

169. Cang v. Court of Appeals, 296 SCRA 129, 156 (1998).

170. Chua v. Cabangbang, 27 SCRA 791 (1969).

> the barest necessities of life, let alone send her to school. There is no insurance at all that the alleged father ... would resume giving the petitioner support once she and the child are reunited. What would then prevent the petitioner from again doing that which she did before, *i.e.*, give her away? These are of course conjectures, but when the welfare of a helpless child is at stake, it is the bounden duty of courts ... to respect, enforce, and give meaning and substance to a child's natural and legal right to live and grow in the proper physical, moral and intellectual environment.[171]

The above statement by the Court is an *obiter dictum* amidst its more relevant discussion. All it does is reinforce the inability of the mother to properly continue performing her parental duties because a lack of future income and the possibility of once again giving up custody of the child. Yet, it still found its way into the *ratio*, even when the case had, at that point already been properly decided via other grounds.

This pattern was repeated in two other cases. In *Santos v. Aranzanso,*[172] an attempt of the natural parent to invalidate the adoption decree was repelled by the Court on the ground that adoption could not be attacked collaterally; the same having been brought up in probate proceedings.[173] Additionally, however, the Court still chose to make a lengthy disquisition on the fact of abandonment — as showing unfitness — in order to answer the issue raised of lack of parental consent to the adoption.[174]

In *Cervantes v. Fajardo,*[175] the parents, despite having given their consent to the adoption, attempted to revert custody to themselves, *after* the adoption had been granted. On this ground alone the petition should have failed. Yet, once again, the Court chose to harp on the unfitness of the natural parents, pointing out that the father was now married to someone else and that the mother had a family with another man.[176] The *ratio* of the case takes up but very few pages, but the majority of that number is devoted to explaining how the best interests of the child would be better served. Thus:

> In all controversies regarding the custody of minors, the foremost consideration is the moral, physical and social welfare of the child concerned, taking into account the resources and moral as well as social standing of the contending parents ...
>
> It is undisputed that [the father] is legally married to a woman other than [the mother], and his relationship with the latter is a common-law husband and wife relationship. His open cohabitation with co-respondent ... will not accord the minor that desirable atmosphere where she can grow and develop into an upright and moral-minded person. Besides, respondent ... had previously given birth to another child by another married man with whom she lived for almost three years but who eventually left .... For a minor to grow up with a sister whose "father" is not her true father, could also affect the moral outlook and values of said minor. Upon the other hand, [the adopters] ... appear to be morally, physically, financially, and socially capable of supporting the minor and giving her a future better than what the natural mother, who is not only jobless but also maintains an illicit relation with a married man, can most likely give her.[177]

171. *Id.*

172. Santos v. Aranzanso, 16 SCRA 344, 354 (1966).

173. *Id.* at 358.

174. *Id.* at 356.

175. Cervantes v. Fajardo, 169 SCRA 575 (1989).

176. *Id.* at 577.

In passing on what should have been the crux of the issue — the effects of the adoption decree — the Court, in what seems like a total afterthought, stated: "[b]esides, the minor has been legally adopted by petitioners with the full knowledge and consent of respondents. A decree of adoption has the effect, among others, of dissolving the authority vested in natural parents over the adopted child .... "[178]

Strangely enough, the *Cervantes* Court thus chose the unfitness of the parents as the central pillar upon which to build its foundation, while at the same time merely glossing over the effects of the adoption. From a legal point of view, it was the latter that should have received prime consideration as it dealt squarely and promptly with the matter at hand. The discussion on the unfitness of the parents was, like in *Chua,* mere *obiter dictum.*

In determining why the Court has still bothered to spend time elaborating on unfitness, when the presence of more compelling grounds makes it unnecessary, one must return to the *Briones* standard. To repeat, the rule holds that parental authority may only revoked when there is a real, grave or imminent threat the child's well-being. Hence, in *Chua,* that threat was the possibility of the mother again giving her child away and of her potential inability to care for the child. In *Cervantes,* it was the immoral environment in which the child would have found herself had she been returned to her parents. As such, if the Court was to properly adhere to the standard, it still had to determine that some grave grounds of unfitness existed, regardless of the other ways in which the case might be decided.

Unlike *Chua,* however, which absolutely foreclosed the right of the mother to regain custody of her child, the *Cervantes* Court is more forgiving. As *per* the above quoted portion, the Court speaks as if there is a possibility that the child may have been returned to her natural parents. Thus, it is held that the cohabitation of the father with another woman would not provide a desirable atmosphere for the child, and that living with a half-sister would

177. *Id.* at 578-79.

178. *Id.* at 579.

negatively affect her moral values. But those situations would only occur *if the child was returned to her parents* — an impossibility considering that the adoption had already been granted. And this was something that Court should have, and does, know.

This, in turn, leads to a very intriguing question. If the parents were not, in fact, unfit to exercise parental authority, would the outcome of the abovementioned cases have been any different? If the mother in *Chua* had a stable job and promised not to give her kids away again, would the Court still have ruled against her? Conversely, if the father in *Cang* had proven to be unfit, would this effectively negate the lack of consent to the adoption?

Cervantes is, of course, the most puissant. Had the natural parents decided to remarry and provide the child with a healthy family atmosphere, then one could argue that the very basis of the Court's decision in that case would falter. Through the Court's own words, there is a marked possibility that custody and authority over the child might just have reverted to the natural parents. And, by the importance the Court chose to place on the best interests of the child, as compared to the adoption decree, it could also be argued that such a reversion might even take precedence over the adoption itself. Indeed, if there had yet been no decree and if the parents manifested a willingness to give up their immoral lifestyles, is there any doubt that the Court would have decided in their favor?

Naturally, the answer to this question has implications on the right to withdraw consent, as will be discussed below. Suffice it to say that this pattern of having to couple the main legal basis with a determination of unfitness does exist and runs as an undercurrent of case-law dealing with parental authority. It evidences the strong bias of the law, already so trumpeted above, in favor of the natural parental rights and against the demolition of family solidarity. And, at the very least, it opens up an avenue of additional considerations for the courts and leaves them free to consider the obvious human frailties innately bundled up with these cases. If that avenue is exploited, along with the proper invocation of the *Briones* standard, then it is perhaps quite likely that the inclination to uphold the family will reign supreme.

If the lapse of the six months does not equate to a valid adoption — one of the grounds for loss of parental authority — may the irrevocable decision then hide under the contention that mere consent to the adoption is a ground for its termination? For that is ultimately the effect of section 4 (a) of the Domestic Adoption Act of 1998 when it completely and irrevocably prohibits the withdrawal of consent. If this is the case however, then not only is the law clearly violated, but at the same time, the entire concept of parental authority as inviolable and deserving of the protection of the law is undermined.

First, the deprivation of parental authority presupposes not only that there is a decree to that effect, but more importantly, that there has been some sort of judicial intervention in the matter. The irrevocable decision, however, substitutes a judge with the passage of time. This cannot be countenanced in light of all the provisions of the Family Code already reviewed.

Neither can it be countenanced with the argument that it is a ground provided by law. True, article 229 of the Family Code provides that adoption terminates parental authority.[179] But, as has been argued, the legal institution of adoption truly only takes effect upon the issuance of the decree. It is this order of the court, *after* the adoption proceedings have been completed, that article 229 refers to. As for the other grounds of termination or suspension of parental authority, only abandonment and absence or incapacity relate to the giving of consent to adoption.[180] Even then, a judicial declaration is still necessary for either to take effect. And, because none of the grounds for termination or suspension of parental authority apply, then to deprive the natural parents of the same, via section 4 (a), violates parental rights and due process of law.

Even were one to consider the lapse of the six-month period under the more abstract concept of unfitness, it cannot be said that it is an effective determination of the same. First, unfitness may only be decreed by a court authorized for that purpose. Next, and according to the *Briones* standard, unfitness and the other grounds for termination require a strong factual basis, evidencing some grave or imminent threat to the well-being of the child in question. Does the mere passage of time then present such a threat? The answer is, of course, no. This would be wholly out of line with the Court's unflinching need to determine unfitness, even when it is markedly irrelevant to do so. If the Supreme Court itself has thus found it important to unnecessarily pass upon unfitness, then how can the mere lapse of time hold a candle to what is principally within the realm of judicial determination?

VII. A STRUCTURAL FRAMEWORK FOR THE RIGHT TO WITHDRAW

A. The Search for a Standard

There can be no doubt that the irrevocable decision presupposes that the consent is valid in the first instance, as the law has decided to ignore the wide range of scenarios inherent in giving consent to adoption. Thus, and if one takes the law as it is, when consent is given and there are no vitiating circumstances present, irrevocability steps in after six months.

179. DOMESTIC ADOPTION ACT of 1998, art. 229.

180. *Id.*

It is with this type of consent with which this discussion has been generally been dealing. Indeed, if the argument centered on consent-vitiating factors, the simple answer would be that that consent is no consent at all. Yet, past chapters have traded in arguments of such abstract concepts as parental authority and Constitutional protections. There would thus be no need to ply our already trodden logical route were the core of the issue so simply answered. It therefore becomes *apropos* to turn our attention to consent that is freely and voluntarily given, yet is sought to be withdrawn by the natural parents, and the manner in which the courts have treated this attempt.

Thus, the following analysis will determine whether there does exist some cogent structural framework for determining the question of the availability of withdrawing consent to the termination of parental authority. Naturally, the search will begin with how the right to withdraw consent has been treated by the courts.

B. Jurisprudential Methodology Vis-à-vis the Right to Withdraw

1. Statutory Governance

The right to withdraw consent is primarily controlled by statute.[181] This is one of the more compelling arguments against any attempt to amend or alter section 4 (a) of the Domestic Adoption Act of 1998. Adoption is, indeed, a creature purely called into existence by law, and thus, the state has both the right and the inherent ability to control and regulate the same.[182] However, in light of the protection afforded to parental rights by both the Constitution and international law, and the cavalier manner in which the irrevocable decision treats those rights, this primacy of legislative discretion should be reconsidered.[183]

The Constitution dictates family solidarity and mandates the state to take measures to uphold family relations.[184] A juxtaposition of international conventions, on the other hand, reveals the strong global policy towards maintaining the integrity of the family and giving parents preferential considerations when it comes to exercising authority over their children. But, as has been the theme of this study so far, these conceptions are foregone by section 4 (a) in a variety of ways. Whether it is by sidestepping due process requirements or by undermining the rules put into place

181. 74 ALR 3d 421, § 2 (a).

182. Lazatin v. Campos, 92 SCRA 251 (1979); 2 AM. JUR. 2d *Adoption* § 46 (1962); 74 ALR 3d 421, § 2 (a).

183. *See*, Chapter II.

184. PHIL. CONST. art II, § 12.

regarding parental authority, the ultimate effect is that family rights, as enshrined in the above areas of legislation are essentially disregarded.

Thus, since both the Constitution and international conventions are contravened by the irrevocable decision, it cannot be said that the state's implementation of the right to withdraw should remain sacrosanct. As recognized by the Court in *Lahom v. Sibulo*,[185] our own laws merely recognize and secure the rights of the parties in adoption.[186] Indeed, "[a] treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties .... A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations."[187] Considering the failure then to coincide Domestic Adoption Act of 1998 with both international and domestic obligations, one cannot subsequently argue that the right to withdraw is completely within the realm of state discretion and regulation.

2. Arbitrary Withdrawal

Conceding that the right to withdraw is governed by law, how has the Supreme Court, itself tasked with interpreting that law, treated such a right? It must be remembered that the irrevocable decision finds few precursors in statutory history.[188] Otherwise, the Court has generally guided itself by the signposts provided by rules governing parental rights and parental authority. Still, this does not detract from the scant consideration that the Court has given, whether impliedly or not, to the right to withdraw in its various decisions.

We have already had the opportunity to discuss the case of *Cervantes v. Fajardo*.[189] Though the presentation of the case centered around the determination of the fitness of the natural parents, a parallel theme dealing instead with the right to withdraw did exist, albeit unnoticed by the Court. To recapitulate, *Cervantes* came to the Court's attention because the natural parents retook the child after her adoption had been decreed by the trial court. Naturally, the Court was compelled to deny them such custody and care, and to reaffirm the parental authority of the adopters. Though the natural parents never explicitly stated the same, their actions reveal what was essentially a plea to withdraw their consent. In denying the plea, the Court simply held that because the consent was freely and voluntarily given, the

185. Lahom v. Sibulo, 406 SCRA 135 (2003).

186. *Id.* at 142.

187. Tañada v. Angara, 272 SCRA 18 (1997)

188. Act. 3094; P.D. 603, art. 156 & art. 164.

189. Cervantes v. Fajardo, 169 SCRA 575 (1989).

effects of an adoption decree would ensue.[190] One of those effects being the dissolution of the natural parental authority, there was then no doubt that the decision would be in the adopters' favor.

Cervantes primarily suggests that the right to withdraw may be possible in this jurisdiction. At the same time, it also adopts the general trend of American courts to deny the attempt to withdraw an otherwise valid consent arbitrarily and as a matter of right.[191] Doing so generally has the effect of undermining both the spirit of adoption and the rights of the child and the adopters; neither of which may be effectively counterbalanced by an arbitrary change of mind.[192] In *Cervantes*, no reason was cited by the natural parents for seeking to withdraw their consent. In fact, it was not even alleged that their consent was vitiated in any way. As stated by a court:

> It is apparent that if in particular cases the unstable whims and fancies of natural mothers were permitted, first, to put in motion all the flow of parental love and expenditure of time, energy and money which is involved in adoption, and then, as casually, put the whole process in reverse, the major purpose of the statute would be largely defeated. [193]

Yet, this is not to say that the right to withdraw valid consent may be prohibited in all its reincarnations. Exceptions have been made allowing for the exercise of such right; despite statutory prohibition, and these exceptions are premised upon the reasons for generally prohibiting withdrawal in the first place.

As noted, the primary reason is that withdrawal may not be allowed, if arbitrary, because it derogates from the rights of the adoptive parents and the child. After a consideration of the interests involved and the grounds put forward, and their subsequent valuation vis-à-vis those of the other party, the assertions of the natural parents are of deemed of lesser substance than those of the adopters or of the child. In other words, a balancing of interests is also involved.

There is, however, an attempt to further classify the reasons for prohibiting arbitrary withdrawal. Thus, to allow arbitrary withdrawal would in the first instance undercut the best interests of the child by placing his familial status in a state of constant flux, subject solely to the whims of the natural parents. Second, arbitrary withdrawal can also be prevented by recourse to equitable estoppel. However, if these two grounds are shown not to exist — for example, it is in the best interests of the child that withdrawal

190. *Id.* at 579.

191. 2 AM. JUR. 2d *Adoption* § 46 (1962); 74 ALR 3d 421, § 7(b).

192. 2 AM. JUR. 2d *Adoption* § 104 (2005).

193. In re: Adoption of a Minor, 144 F.2d 644 (1944).

be granted, or the circumstances of estoppel are not present — then conversely, the natural parent should be allowed to withdraw his consent.

An examination of these two grounds, along with that of arbitrary withdrawal, will reveal a consistent judicial methodology applied to the right to withdraw.

3. Best Interests of the Child

Even in the cases enouncing the rule of equitable estoppel, paramount consideration is given to the best interests of the child. One of the leading cases of equitable estoppel, *Dugger v. Lauless*,[194] indeed precedes its invocation of that ground by a call to the best interests of the child. Thus: "*[s]ince the child's welfare is of primary concern*, we are of the opinion that the natural parent may, under certain circumstances, be estopped to withdraw consent to the adoption."[195] Hence, even where the consent to adoption is deemed irrevocable, exceptions are generally made for cases where the court finds it to be in the best interests of the child that the withdrawal be effected.[196] In some instances, this exception is generated by the laws itself — as in the uniform and model adoption laws of the United States.[197] In others, it is the courts that find the need to apply such an exception.[198]

This is but natural considering that, if the purpose of the rule is to protect the child, when that protection becomes unnecessary, then *ipso facto*, the prohibition on withdrawal should similarly prove inutile. To do otherwise would also circumvent not only the very purpose and spirit of

194. Dugger v. Lauless, 216 Or. 188, 338 P.2d 660 (1959).

195. *Id.* at 665 (emphasis supplied).

196. 2 AM. JUR. 2D *Adoption* § 103 (2005); 2 C.J.S. Adoption of Persons, § 76 (1972). An example of which is found in AS 25.23.070 of the Alaska Uniform Adoption Act:

> A consent to adoption may be withdrawn before the entry of a decree of adoption ... if the court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing the child for adoption, that the withdrawal is in the best interest of the person to be adopted and the court orders the withdrawal.
>
> (AS 25.23.070, Alaska Uniform Adoption Act, *at* http://www.touchngo.com/lglcntr/akstats/Statutes/Title25/Chapter23.htm (last accessed Dec. 14, 2006)).

197. 74 ALR 3d 421, § 2(a).

198. Ex Parte Fowler, 546 So.2d 926 (1990).

adoption as being for the benefit of the child,[199] but the state's own policies regarding family solidarity as well.[200]

Our own courts have used the well-being of the child as a sufficient gauge for allowing withdrawal. Hence, going back to *Cervantes*, it was the best interests of the child — or lack thereof — that militated against the implied withdrawal of consent.[201] In *Chua v. Cabangbang*, [202] the immorality of the mother, coupled with a lack of potential earnings and her previous attempt to give away the child negated any belief that the child would be better served under her authority. Finally, in *Celis v. Cafuir*,[203] the Supreme Court allowed the natural mother to reclaim the child, despite valid consent, because she was already in position to care for and support him and because there were no other strong considerations for not so allowing: this, even despite the fact that she had previously consented to his adoption.

Naturally, these best interests are found via a review of the factual circumstances of each case. Indeed, because best interests of the child represent the *"totality of the circumstances and conditions"* congenial to a child's proper development, then it is only when the proper examination is given of all such circumstances and conditions that the true best interests of the child can be found.[204] In *Chua*, for example, this review included not only a consideration of the child's situation, but also that of the mother.[205]

And, once the best interests are revealed, then what follows is the weighing of those interests against those of the natural parents and the adopters. Of course, the only time that the natural parental interests may truly be perceived with as much gravity as the best interests of the child is when either party presents some valid reason for upholding his own concerns. Thus, if the withdrawal is attempted arbitrarily, then clearly the biological parents' interest will not be placed on equal footing with that of the child so as to prevent the adoption from proceeding. On the other hand, if there is some good cause, then necessarily the rights of the natural parents may find some substantial ground upon which to stand. As such, withdrawal will be allowed as in the case of *Celis*, wherein the improvement in the natural mother's situation weighed down the love that the foster mother felt

199. Daoang v. Municipal Judge, 159 SCRA 369, 373 (1988).

200. *See*, Chapters II and V.

201. Cervantes v. Fajardo, 169 SCRA 575, 579 (1989).

202. Chua v. Cabangbang, 27 SCRA 791, 800 (1969).

203. Celis v. Cafuir, 86 Phil. 555 (1950).

204. Rule on Examination of a Child Witness, A.M. No. 004-07-SC, § 4(g) (2000) (emphasis supplied).

205. *Chua*, 27 SCRA at 800.

for the child.[206] And, it will not be allowed as in the cases of *Chua*, wherein revenge against the child's father was the sole ground given for withdrawing consent.[207]

If there is still some doubt after the concurrence of valid ground and balancing, then it is at this point that the rights of natural parents to family solidarity and of children to know and be reared by their parents will come into play. As noted earlier, due to the rather vague conception of a child's best interests, an appropriate guideline for determining the same is whether the recognized rights of children as enshrined in various international instruments are upheld. The need then to uphold family solidarity, coupled with whatever valid ground and the best interests of the child, will naturally tilt the scales of interests in favor of the natural parents.

In the invocation, therefore, of the best interests of the child, as an exception to a rule prohibiting withdrawal of consent or termination of parental authority, has been allowed by the court following two guidelines: a) the withdrawing parent must present some valid ground; and, b) a balancing of interests of all concerned weighs favorably for the granting of the withdrawal.

4. Equitable Estoppel

Another reason arbitrary withdrawal is not allowed is that of equitable estoppel. The rule was formulated by an Oregon court in *Dugger v. Lauless*,[208] and later in *Small v. Andrews*,[209] as follows: "the natural parent may, under certain circumstances, be estopped to withdraw consent to the adoption."[210] In another case, where the principles of estoppel were also invoked, it was held:

> The wisdom behind that rule is self evident. If a natural parent has freely and knowingly given the requisite consent to the adoption of his or her child, and that consent has been acted upon by the adopting parents by their commencing adoption proceedings, and if the proposed adopting parents have relied on that consent by taking the child into their custody and care for a substantial period of time and, especially if bonds of affection have been forged between them and the child, then to allow the natural parent to revoke his or her consent because he or she had a change of mind

206. *Celis*, 86 Phil. at 558-59.

207. *Chua*, 27 SCRA at 800.

208. Dugger v. Lauless, 216 Or. 188, 338 P.2d 660, 665 (1959).

209. Small v. Andrews, 20 Or. App. 6, 530 P.2d 540, 544 (1975).

210. *Dugger*, 216 Or. 188, 338 P.2d at 665; *Small*, 20 Or. App. 6, 530 P.2d at 544.

> would create a great hardship for the child, for the adopting parents, and for the field of child adoption in general.[211]

The circumstances under which the natural parent may be estopped include:

> [T]he circumstances under which the consent was given; the length of time elapsing, and the conduct of the parties, between the giving of consent and the attempted withdrawal; whether or not the withdrawal of consent was made before or after the institution of adoption proceedings; the nature of the natural parent's conduct with respect to the child both before and after consenting to its adoption; and the 'vested rights' of the proposed adoptive parents with respect to the child ... [212]

It should be noted that all of the above circumstances point to reliance made by the other parties to the adoption on the consent of the natural parents. It is estoppel because the adopters have reposed their confidence on the consent of the natural parents; and to suddenly revoke such consent without valid ground would interfere with their rights.[213] Even at the outset of this particular discussion, it will be seen that, by definition, preventing withdrawal via estoppel is merely another way of stating that a proper balancing of interests negates the rights of the natural parents.

Estoppel, however, should only be invoked cautiously. As it deals with the fact of consent, denying the right to withdraw on the basis of estoppel essentially transforms a voluntary relinquishment of parental rights into an involuntary one, without necessarily providing the safeguards that would be accorded where parental rights are being terminated against a parent's will.[214] This effect apes that of the irrevocable decision, which, as discussed, grants an adoption even when the consent therefore is lacking.[215]

This is not surprising as section 4 (a) itself does deal, albeit impliedly, in principles of reliance and estoppel. It does so because it presumes that after the six-month period, the parents have given up their right to withdraw the consent. The period is, after all, granted so that the parents have time to reconsider their initial decision. If this time lapses and the parents still have yet to exercise their rights, then effectively, they are precluded from claiming

211. Ex Parte Fowler, 546 So.2d 926, 965 (1990).

212. *Dugger*, 338 P.2d at 665 (citing Williams v. Caparelli, 180 Or. 41, 175 P.2d 153, 155 (1946)).

213. In some jurisdictions, of the same effect as estoppel is the concept of "vested rights:" As will be seen below, there really is no difference between the two as both involve strong factual determinations and a balancing of rights. (*See*, Rhodes v. Shirley, 234 Ind. 587, 129 N.E.2d 60, 63 (1955)).

214. 2 C.J.S. Adoption of Persons, § 76.

215. *See*, Chapter V; 74 ALR 3d 421, § 10(a) (citing Green v. Paul, 212 La 337, 31 So 2d 819 (1947)).

such a right not only because of their very own omission, but also because the adopters and perhaps even the child himself, have now relied upon that omission. This is precisely the situation contemplated by article 1431 of the Civil Code when it states that, "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying."[216]

Thus, in *Williams v. Caparelli*,[217] upon which both *Dugger* and *Small* are based, the court therein found that no estoppel could be claimed against the natural parent. First, the mother's own parents refused to allow her to return home with the baby after it was born. The mother also executed the consent to the adoption a mere four days after giving birth and with the prohibition imposed by her parents already in mind. Finally, the attempt at withdrawal occurred a mere three months after giving the consent — the length of time having been caused by her inability to find the prospective adopters.[218] After listing the circumstances through which estoppel may be deduced, the court, considering those same circumstances, then held that it was rather inconceivable that the mother could be estopped.[219]

In *Small*, estoppel was considered in a different manner. The right to withdraw having been allowed by the trial court, the prospective adopters countered with the argument that the withdrawal would be against the best interests of the child, as they were more financially capable than the mother.[220] After harping on the inadequacy of such a ground, the court therein held:

> Where, as here, a natural mother not represented by legal counsel at the time consent is given attempts to withdraw that consent within a few weeks and thereafter takes reasonable steps available to regain the custody of her child, neither so-called "vested rights" nor superior economic or social position of the proposed adoptive parents will serve to deprive that withdrawal of legal effect.[221]

Here, the finding of estoppel was not based quite exactly on the facts. Of course, the circumstance that she was not properly informed of her right by counsel and that withdrawal was attempted soon after giving consent provided one leg of the *ratio*. The other, however, was comprised of an inverse finding of estoppel: that the reasons averred by the prospective

216. NEW CIVIL CODE, art. 1431.

217. Williams v. Caparelli, 180 Or. 41, 175 P.2d 153 (1946).

218. *Id.* at 153-54.

219. *Id.* at 156.

220. Small v. Andrews, 20 Or.App. 6, 530 P.2d 540, 544 (1975).

221. *Id.*

adopters could not operate to estop the natural parent from withdrawing her consent.

In any case, whether one uses *Small* or *Williams,* estoppel deals primarily with a consideration of the *factual* circumstances surrounding the adoption. And, whether such circumstances arise from the milieu of the adopters or of the natural parents is immaterial. In other words, a determination of estoppel implies a showing that there are some strong reasons for allowing the right to withdraw — strong enough, at least, to overturn any reliance that the adopters or even the child may have made to the proceedings themselves.

Moreover, as shown by *Small,* the finding, or lack thereof, of estoppel indicates a balancing of concerned interests. Indeed, that case revolved around the determination of the rights of all three parties: the natural mother, the child and the adopters. By examining the factual circumstances relevant to each party and by weighing the value of the rights inherently held by each, the court was able to arrive at the law of the case.

5. Burden of Proof

Underlying both interest balancing and valid ground is that such a claim to withdrawal must be put forward, primarily and principally, by the natural parents. In *Espiritu v. Court of Appeals,* the Supreme Court upheld the loss of a mother's parental authority partly because of the fact that she did not allege, much less prove, that a reversion of such authority would be in the best interests of the child.[222] Thus:

> A scrutiny of the pleadings in this case indicates that Teresita [the mother], or at least, here counsel are more intent on emphasizing the "torture and agony" of a mother separated from her children ... rather than the feelings and future, the best interests and welfare of her children.[223]

This omission, coupled with the circumstance that both the children despised her and that she lived an immoral lifestyle consequently militated against the granting of her *habeas corpus* claim.

Concurrently with the above exceptions therefore, there is also a duty placed on the natural parents. Even before it is decreed that they have some valid ground upon which to stand or that a balancing of interests tilts the scales in their favor, they are initially laden with the burden to allege and prove those facts. Indeed, this is the very reason why arbitrary withdrawal is absolutely prohibited in the first place — the failure of the parents to shoulder their burden of proof that some just cause exists that will allow

222. Espiritu v. Court of Appeals, 242 SCRA 363 (1995).

223. *Id.* at 368.

withdrawal. Having failed to do so, then no interests may be balanced, much less may the ground adduced even begin to be considered as sufficient.

That the burden is placed on the parents is but natural considering that it is by their own actions that the child has been removed from their care and custody. Hence, it would be manifestly unfair to both the child and the prospective adopters were the parents allowed to withdraw their consent to the adoption without first bringing evidence to show such withdrawal's propriety. Similarly, so burdening them necessarily allows the parents to fully prove to the courts that whatever negative predilections may have been unearthed by their previous action in giving up the child have either washed away or are untrue.

6. A Structural Framework for Determining the Right to Withdraw

Of course, the primordial reason for requiring so much of the natural parents is that the consent they are attempting to withdraw is valid in the first instance. Not being beset by consent-vitiating factors, there has to be some more rigorous standard for the exercise of the right to withdraw. This is the standard implicit in the various rulings discussed above.

As noted, courts will generally allow the withdrawal of consent in three instances: lack of arbitrariness, best interests and estoppel. Consistent in all of them, however, is the methodology adopted by the courts in determining whether the exceptions should be applied. Thus, in all three cases, the biological parents first have to lift their burden of proof by putting forward some overriding concern or good cause. This concern, in turn, allows a consideration of whether or not their interests can outweigh those of the adopters and be viewed on the same plateau as the child's welfare.

C. Application of the Framework

But, the question remains as to what exactly serves as valid ground for attempting withdrawal? At the very core of the recognized exceptions is the basic premise that there has existed some ground sufficient enough to allow the withdrawal; and that this ground serves to tilt the weight of balancing of interests in favor of the natural parents. Yet, as noted, the natural parent cannot claim vitiated consent, as this would substitute the above-mentioned framework in favor of an action for nullity of the proceedings. Assuming, as we have done, that arbitrary withdrawal is not allowed, this leaves only one reason that may serve as proper justification for allowing the right to withdraw — a change in circumstances.

D. Change of Circumstances

If good causes shown are enough to allow withdrawal, may a change in the circumstances causing initial placement of the child for adoption be claimed as good cause? And if so, is the precise same methodology of balancing plus cause applied? If a change of circumstances is found to be good cause, then it affirms the Constitutional protections discussed above by providing the parents the avenue within which they may, in the future, exercise their parental rights, previously prohibited only by happenstance. Moreover, if such a change is not held to be good cause, then it is an undue curtailment of essential Constitutional freedoms without substantial basis. In that case, not only would the whole purpose of irrevocability — the child's best interests — be rendered nugatory, but at the same time, the capacity of a natural parent to exercise the parental rights and duties that he strongly desires to undertake, is taken away. As mentioned, to do otherwise would be tantamount to approving the adoption when the consent is lacking

Admittedly, of course, good cause is up to the discretion of the court and based more on a balancing of all the interests involved rather than on an examination of the cause, or causes, in a vacuum. The same goes for the priority given to the best interests of the child. But, this is exactly where the sympathetic view of parental rights comes in. If, as argued, they do have a place in considering adoption proceedings, then surely a change of the circumstances causing the consent to be initially given is enough, if balanced properly with all the circumstances, to allow the withdrawal of consent? This is almost the same situation extant in allowing a revocation based on best interests of the child: if the purpose of the rule is nullified, then the rule itself should follow suit. Thus, if the reason for giving consent has ceased, then so should that consent — so long as the child and the other parties remain protected.

In the recently decided case of *Santos, Sr. v. Court of Appeals*,[224] the Court held that a change in circumstances was enough to allow a parent to recover his child. Therein, the natural parents had previously given up their child to his maternal grandparents. After the father removed the child from the home of his grandparents, the latter filed a case for custody of the child; citing concurrently their financial ability, the father's own lack of means, and his previously having abandoned the child. In answering this issue, the Court stated:

> The latter's wealth is not a deciding factor, particularly because there is no proof that at the present time, petitioner is in no position to support the boy. *The fact that he was unable to provide financial support for his minor son from birth up to over three years when he took the boy from his in-laws without permission, should not be sufficient reason to strip him of his permanent right to the child's custody.* While petitioner's previous inattention is inexcusable and merits only the severest criticism, it cannot be construed as abandonment.

224. Santos, Sr. v. Court of Appeals, 242 SCRA 407 (1995).

> *His appeal of the unfavorable decision against him and his efforts to keep his only child in his custody may be regarded as serious efforts to rectify his past misdeeds.* To award him custody would help enhance the bond between parent and son. It would also give the father a chance to prove his love for his son and for the son to experience the warmth and support which a father can give ... *Petitioner's employment of trickery in spiriting away his boy from his in-laws, though unjustifiable, is likewise not a ground to wrest custody from him.*[225]

The changed circumstances in *Santos, Sr.* comprised two factors: first, the father's newfound means to support the child; and second, his apparently renewed desire to "rectify his past misdeeds" and attempt to be a good father.[226] These then were the valid grounds that were enough, in the Court's mind, to prevent a finding of abandonment and thus consequently prevent a similar finding of the continued validity of the consent to giving up his parental rights. So pressing were the circumstances that even his deceit in taking the child from the grandparents could not operate negatively against his claim to the child.

The Court even entered into a consideration of all the interests concerned. First were those of the natural father; which, as shown above, were held to naturally predispose themselves to a retention of his parental rights. In comparison, the grandparents had not shown that their own rights would be curtailed. Being merely authorized to exercise parental authority as substitutes, they had not shown that there were grounds for such substitution.[227] Neither was it shown that parental authority had been terminated in the manner provided by law.[228] Finally, as to their emotional interest, the Court said:

> Private respondents' attachment to the young boy whom they have reared for the past three years is understandable. *Still and all, the law considers the natural love of a parent to outweigh that of the grandparents,* such that only when the parent present is shown to be unfit or unsuitable may the grandparents exercise substitute parental authority, a fact which has not been proven."[229]

It was thus in this manner that the Court has most recently affirmed that a change of circumstances, if properly weighed against other interests, equates to good ground preventing a valid relinquishment of parental rights from taking effect.

225. *Id.* at 413-14 (emphasis supplied).

226. *Id.* at 414.

227. *Id. See also,* FAMILY CODE, art. 212.

228. *Santos, Sr.*, 242 SCRA at 414 (citing FAMILY CODE, arts. 210, 222-24).

229. *Id.* (emphasis supplied).

But, *Santos, Sr.* is only the most recent. Ten years prior to that case, came the dissent of Justice Makasiar in *Luna v. IAC.*[230] Therein, the majority opinion had previously denied the restoration of parental rights over the child on the ground that the she herself manifested an extreme unwillingness to go back to her natural parents. It held that, since the best interests of the child were paramount in all cases involving children, those interests could override procedural rules and even the rights of the parents to the children.[231] The majority found themselves bound by this choice of the child, even if the threat to her well-being that she so expressed had "proven empty."[232]

Justice Makasiar found the *ratio* undesirable. The main reason for his dissent was that parental authority, and all its attendant rules, had been completely overlooked.[233] As parental authority could only be terminated in the cases specified, and since none of those cases had been proven in the decision, in his opinion, the majority were sorely mistaken.[234] In a nutshell, the protection afforded to parental rights was completely disregarded.

At the core of the dissent, however, is the claim that the majority opinion did not make a proper balancing of interests. Sure, interests were considered, but they were those solely of the child in question. By relying on the strength of parental rights to bolster his argument, Justice Makasiar was, in effect, stating that the same should have been taken into account. Thus, he noted that the preference of the child is only *one of the factors that should be considered*, and in any case, never in clear derogation of parental rights.[235]

If these interests were thus properly weighed, then, according to him, there could be no doubt that the case would have been decided in favor of the natural parents. Especially — and here care as to the change of circumstances is shown — when there was reason to allow the natural parents exercise of their parental rights. Thus:

> Some United States courts have consistently ruled that since children cannot be bought and sold, and since the parent is subject to obligations which he cannot throw off by any act of his own, agreements by which the parents, or one of them, transfer custody of a child to a third person, with the provision or informal understanding that custody will not be reclaimed, are not generally considered legally binding contracts, unless ... [they] are

230. Luna v. Intermediate Appellate Court, 137 SCRA 7 (1985).

231. *Id.* at 16.

232. *Id.*

233. *Id.* at 17.

234. *Id.* at 21.

235. *Id.* at 23.

> supported by other express statutory provisions. *This is especially true in the case of a parent who, having been compelled by poverty or unfavorable circumstances to surrender the custody of his child, wishes to reclaim it when circumstances are improved.*[236]

Although the above quote is found in a dissenting opinion, it reiterates both the principle that a change in circumstances may, indeed, allow revocation of a previous relinquishment of parental rights, and that in so doing, the above-mentioned framework must be applied.

The precursor of both *Luna* and *Santos, Sr.* is *Celis v. Cafuir,*[237] a 1950 case concerning a mother who had previously given written consent to relinquishment of her parental authority and to any potential adoptions involving the child. Celis, an unwed mother, was forced to give up custody of her son to Cafuir. She did this because the father of the child was unknown, and because her own father refused to take the child into his home.[238] In entrusting the child, Celis executed two documents stating:

> TO WHOM IT MAY CONCERN:
>
> I hereby entrusted (sic) to Mrs. Soledad Cafuir of 131 Limasana, Quiapo, Manila, my son named John Cafuir, for the reason that I don't have the means to bring the child up.
>
> Anybody who may claim my son for adoption in the future without the consent of the undersigned is hereby ignored.[239]

and

> TO WHOM IT MAY CONCERN:
>
> I, Nenita Celis, of 1196 Singalong, Malate, Manila, hereby designate Mrs. Soledad Cafuir, residing at 131 Limasana, R. Hidalgo, Quiapo, Manila to be the real guardian of my son, named Johnny Cafuir.
>
> No one has the right to claim for adoption except Mrs. Soledad Cafuir.[240]

Two years later, having married in the meantime, she decided to get her son back.

It must be noted that the quoted documents imply consent by Celis to Cafuir's adoption of her child. There is, after all, no strict requirement for the form nor the words of the consent — it is enough that it is merely

236. Luna v. Intermediate Appellate Court, 137 SCRA 7, 21 (1985) (emphasis supplied).

237. Celis v. Cafuir, 86 Phil. 555 (1950).

238. *Id.* at 555.

239. *Id.* at 556.

240. *Id.*

written[241] Thus, the factual background of the instant case is precisely the situation contemplated both by section 4 (a), when it seeks to bind the biological parents to the their consent to the adoption, and by this discussion, which examines how such parent may revoke that consent. Furthermore, in *Celis*, the adoption had not yet been effected. Indeed, if the adoption had been granted then obviously Celis' claim to her child would fail. However, since the documents spoke merely of a future adoption that had not yet begun, much less been decreed, Celis' rights could be properly put in issue.

In deciding for Celis, the Court anchored its *ratio* on two concepts: a) temporary relinquishment of parental authority; and, b) the change of circumstances and a balancing of interests. It is with the latter that we are now concerned.

The methodology adopted in *Santos, Chua, Small* and the other cases above-mentioned is almost an exact replica of that used by the *Celis* Court. In the latter case, the Court began with an invocation of the changed circumstances of the mother: her emancipation from the parental authority of her father, her marriage, her newfound ability to support and care for the child and the consent of her husband to the petition.[242] "In her legitimate efforts, and to have her realize her natural desire in this respect, the law and this court should give her every help,"[243] since "[s]he wants to make up for what she has failed to do for her boy during the period when she was financially unable to help him and when she could not have him in her house because of the objection of her father. *Now that she has her own home and is in better financial condition,* she wants her child back …. "[244] Thus, the displacement of the burden of proof, evidenced by facts showing the mother's improved situation — one that was, moreover, at complete variance with that at the time of giving consent — constituted sufficient cause for the restoration of her parental authority.

Interestingly enough, the pecuniary means of the mother were never assessed by the trial court. The Court merely presumed that due to the marriage and the willingness of her husband to join in the support, the couple must have now had sufficient means to successfully accomplish the same.[245] This, of course, then stresses the importance of balancing interests. For indeed, if the interests of Cafuir were found to be greater than Celis', then there would be no need to even make the presumption, as the latter would either be in estoppel or not have sufficient cause to attempt the withdrawal.

241. *See,* DOMESTIC ADOPTION ACT OF 1998, § 9.

242. *Celis,* 86 Phil. at 555, 558-59.

243. Celis v. Cafuir, 86 Phil. 555, 559 (1950).

244. *Id.* (emphasis supplied).

245. *Id.* at 560.

The Court then proceeded to weigh the interests of Celis against those of Cafuir. While, on the one hand, it expressed sympathy for the loss that Cafuir would feel, on the other, it recognized as infinitely more important the improved situation of the mother and the natural bond and affection she shared with the child — one to which Cafuir was not inherently attuned.[246] Following this, the Court quoted with approval the disquisition of the trial court judge:

> El juzgado mira con simpatia los esfuerzos hechos por la recurrida Soledad Cafuir y su familia por el ciudado del niño Joel, a quien se le ha rodeado de todas las comodidades y cuyos maneras caprichos han sido satisfechos, y preve el dolor que causaría a ella y a los demas miembros de su familia la seperacion del niño Joel, en quien se han acostumbrado a ver a un verdadero hijo. Pero si este cariño es digno de respeto, que es el amor de madre, no solo porque esta reconocido y amparado por las leyes y constituye un derecho mejor, sino porque tiene su origen en la misma sangre.[247]

Indeed, the judge could not have said it any better. In such a statement, he succinctly summarized the weight placed on the competing interests. Because those of Celis were protected by law and constituted a *better* right, they would then necessarily trump those of Cafuir. In the words of the Court, "[f]lesh and blood count."[248]

Necessarily therefore, a right to withdraw due to a change of circumstances does exist. In the forty-year gap between *Celis* and *Santos, Sr.,* nothing has changed. Both cases clearly recognize the right to revoke a previous relinquishment of parental rights, however valid the latter may have been. Changing circumstances presuppose, of course, that the consent was valid in the first place. Indeed, a change in the reason for placing one's child up for adoption is entirely different from a consent infested with vitiating factors. In the latter, it is the lack of true consent that gives rise to the

246. *Id.* at 559-60.

247. *Id.* at 560.

> The court looks with sympathy on the efforts made by Cafuir and her family for the care of the child, Joel, to whom she has given all possible comfort and whose whims and caprices have been satisfied, and it foresees the pain that separation from the child would cause her and her family, who they have treated as their own. But, if the love of the mother is to be worthy of respect, it is not solely because it is recognized and protected by law nor because it is a better right, but also because it has, for its origin, the same blood.

248. *Id.*

possibility of withdrawal. In the former, because true consent exists, the courts have found it necessary to apply the precise same structural framework in determining the validity of withdrawal: first, requiring the parents to shoulder the burden of proof affirming the ground's existence; and second, to balance all the interests concerned.

The complete application of the above methodology should then support an attempt at withdrawal of consent. No less than its consistent use by the courts has proven its viability. Of course, were any of its requisites lacking, then withdrawal should not be allowed, as a matter of course. But, if both concur, then justice demands that the right be respected.

Indeed, the irrevocable decision is itself intended to protect all the parties to the adoption — the biological parents, the child and the adopters — as well as adoption itself. Thus, when the entire purpose of adoption falls apart, as with a change of circumstances, and the parties find themselves faced with a prospect of having adoption *derogate* from their rights rather than uphold them, they should be allowed a chance to prevent adoption from proceeding. It would be the height of absurdity were the irrevocable decision itself used to deny rights to its own objects of protection. The recognition of this right is also a recognition of the fact that the consent in adoption is continuing in nature, and to permit an adoption when a withdrawal has been attempted is essentially no better than to grant the adoption without consent having been given in the first place.

Most importantly, however, permitting the right to withdraw, so long as it is premised with the above framework, falls succinctly in line with the protections granted by law over parental rights. It applies most fully the policy of family solidarity by assuring that judicial review is truly and substantially available after termination *de facto* of parental authority. The state thus assures to undertake its both its positive and negative duties to parents: first, by affording parents one last chance, so to speak, to prevent complete separation from their children; and second, by ensuring that a possible error in application of law, regarding the realities of the situation, may be rectified.

VIII. CONCLUSION

A. The Proper Solution

1. A Presumption of Unfitness

All the above failings of the irrevocable decision center around one basic omission: the lack of judicial determination. Were judicial determination necessary to confirm the consent of the biological parents at the lapse of the six month period, then none of the deficiencies would have any ground

upon which to stand. Thus, due process would be satisfied, parental rights would be terminated only in the manner provided by law, the right to withdraw consent would be given proper consideration and, most important of all, a body clothed with the inherent ability to see through the vagaries and technicalities of law and peer into the human sensibilities inherent in adoption proceedings would intervene. Indeed, whatever failings are inherent in administrative safeguards, the best and most appropriate bulwark against undue deprivations of parental rights is always judicial process and hearing.[249] All the grand adjectives used by the Constitution and international conventions to described parental rights would thus be given true meaning and applicability by a judiciary whose prime duty is to give vibrancy to those adjectives.

In *Diaz v. Estrera*,[250] wherein the Court disallowed withdrawal of consent, Justice Hilado dissented on the ground that the deprivation of custody could not be properly effected because there had been *no presentation of evidence* in the trial court regarding *the ability, or lack thereof, of the mother to support her child*.[251] Though the point has been belabored above, implicit in this statement is Justice Hilado's recognition that, when it comes to the withdrawal of consent to a termination of parental rights, judicial intervention is necessary.

This view finds approval in numerous foreign sources, which generally recognize that approval of the court is necessary for a withdrawal of consent.[252] Courts are given discretionary power in such an instance because it is only they who can properly assess the reasonableness of the application under the circumstances while at the same time turn a sympathetic eye towards the best interests of the child.[253] Considering what has already been said regarding the right to withdraw, this falls succinctly in line with the manner in which our own courts have treated it and the methodology adopted in determining the propriety of its exercise. For, if Philippine jurisprudence is any indication, the availability of the right to withdraw rests upon both a determination of legitimate grounds for such and a balancing of interests involved — both of which may only be done by a judge competent and authorized to do so.

Yet, by what standard must such judicial determination be measured? Again, recourse may be made to Justice Hilado's dissent. By requiring evidence on the ability of the mother to provide support for the child, and

249. Interview with Judge Leticia P. Morales, *supra* note 7.

250. Diaz v. Estrera, 78 Phil. 637 (1947).

251. *Id.* at 651-52 (emphasis supplied).

252. 2 C.J.S. Adoption of Persons, § 75; 74 ALR 3d 421, § 9(a).

253. 2 C.J.S. Adoption of Persons, § 75.

by recognizing that it was primarily her duty to give such support, what he was essentially saying was that the presentation of evidence should be geared towards a determination of the mother's unfitness to carry out her parental obligations.[254] Thus, according to Justice Hilado, absent proof of that unfitness, the mother could not be deprived of her parental authority.[255]

That unfitness may even be a ground upon which withdrawal is based is implied in *Cervantes v. Fajardo*.[256] It will be remembered that the *Cervantes* Court found it of more pressing importance to center its *ratio* around the fact that a reversion of the child back to her parents would not be in her best interests. And, in so ratiocinating, the Court expressed itself in words that clearly intimated that there was a distinct possibility that the biological parents could, indeed, regain custody of their child — all of this despite the already validly decreed adoption.[257] Therein, the Court couched its decision in terms hinting at the possibility of return and the negative impact that it would have on the well-being of the child. Hence, it appeared that the Courts considered more the unfitness of the parents, rather than the decree itself, as the true basis to denying their claim to the child.

But, what if the parents in *Cervantes* were indeed found fit? The answer is made explicit by *Celis v. Cafuir*,[258] wherein the previous consent to adoption was allowed withdrawn by the Court due to the improved situation of the mother. 'Improved situation' is, of course, merely another way of saying that the mother had then become fit to competently exercise parental authority. Consequently, the improved means to support the child and the willingness of the mother's new husband to do the same, proved that the mother had indeed shed the stigma of unfitness.[259] It was this finding of fitness that thus henceforth paved the way for a valid revocation of consent.

Therefore, the best method for altering the irrevocable decision is simply to provide for a presumption of unfitness on the part of the biological parents after the lapse of the six months.[260] Unfitness is the standard for two simple reasons. First, because of the fact that the natural parents decide to place their child up for adoption in the first place. Though, as has already been shown, this may not definitely equate to a valid renunciation,[261] the willingness to forego parental duties evidences some act of unworthiness on

254. *Diaz*, 78 Phil. at 651-652.

255. *Id.*

256. Cervantes v. Fajardo, 169 SCRA 575 (1989).

257. *Id.* at 578-579.

258. Celis v. Cafuir, 86 Phil. 555 (1950).

259. *Id.*

260. STA. MARIA, PERSONS, *supra* note 92, at 641.

261. *Celis*, 86 Phil. at 558.

the part of the parent; for, indeed, it is unnatural for a parent not to do everything possible to remain with his or her child.[262] And second, as already mentioned above, unfitness of the natural parents also lies at the heart of a decreed adoption.

2. Benefits of the Presumption

To base the judicial determination on a finding of fitness coincides neatly with the Parental Preference Rule. Under the rule, so long as the parent is fit, he is entitled to the custody and care over the child. Thus: "[A] natural parent ... who is of good character and a proper person to have the custody of the child and is reasonably able to provide for such child, ordinarily is entitled to the custody as against all persons. Accordingly, such parents are entitled to the custody of their children as against foster or prospective adoptive parents ... "[263] Custody, meanwhile, is understood to embrace "the sum of parental rights with respect to the rearing of a child, including his care. It includes the right to the child's services and earnings, and the right to direct his activities and make decisions regarding his care and control, education, health, and religion." — in other words, it forms part and parcel of parental authority.[264] Therefore, because the parents are prioritized in their custody of the child, it follows that they should also retain their parental authority.

It also finds support in the *Briones* standard, which holds that only a real, grave and imminent threat to the child's well-being is sufficient to deprive parents of their fundamental rights.[265] As unfitness naturally presupposes the inability of the parent to exercise parental authority, the best interests of the child are clearly put in danger by a less than worthy parent. But, if the parents are allowed to present evidence of worthiness or fitness, and if the same is positively passed upon by a court, then it cannot gainsaid that the standard is adequately respected and upheld.

Due process itself is also respected. If the parents were to allow the presumption to lapse without adducing evidence in their favor, then one may not argue that there is still no opportunity to be heard at the moment of deprivation. The opportunity itself is presented, but the parents will, by their own omission, voluntarily choose not to avail of its advantages. If they do choose to appear and contest the presumption, then the same argument still holds water. Moreover, a reasonable connection will consequently be established between the irrevocability and its purpose. Again, this is for the

262. Chua v. Cabangbang, 27 SCRA 791, 798 (1969).

263. Luna v. Intermediate Appellate Court, 137 SCRA 7, 23 (1985).

264. *Id.* at 19.

265. Briones v. Miguel, 440 SCRA 455, 465 (2004).

simple reason that because the natural parents are granted an opportunity to present evidence in their favor, the beneficial intent of the law in considering the natural parents as its primary beneficiaries is upheld.

In any of the instances above, the continuing nature of consent is thus assured. For, if the parents are indeed successful in proving their fitness, then the possibility that the adoption may proceed without their consent is effectively foregone. If they fail in overcoming the presumption and the unfitness becomes a matter of fact, then the continuing validity of their consent is rendered unnecessary - as the law does not require the consent of incapacitated parents, such as those unfit to exercise parental authority. Lastly, if they refuse to even take advantage of the opportunity, it can be said that they are allowing the adoption to proceed as a matter of course; and hence, their consent continues.

Where the rules regarding parental authority are concerned, providing for a presumption of unworthiness softens the initially harsh and abrupt termination experienced by section 4 (a). In this instance, it may be likened to the mere suspension of parental authority. Claiming it as such is clearly warranted by the various provisions of the Family Code. In articles 230 and 231, for instance, which deal with conviction of a crime and acts of degradation committed against the child — for example, acts evidencing unfitness — parental authority is merely suspended.[266] In article 229, on the other hand, though initially terminated, the law nevertheless allows for the possibility that parental authority may still be restored.[267] Hence, if the parents are able to subsequently prove their fitness then either the suspension of parental authority is lifted or it is simply restored, as in the last mentioned provision of the Family Code. If, however, they still prove unfit, then either the suspension continues until finally revoked by the decree or, by analogy, its restoration is not given effect.

Yet, none of the above arguments would validly hold were the rights recognized in both the Constitution and international conventions still disregarded. Are the right to rear one's children, the right to choose their education, and the right not to be separated without subsequent judicial review, just to name some, all given due respect by the presumption of unworthiness? The answer is yes.

What must be realized is that, in suggesting this particular solution, this study is essentially allowing the state a chance to wash its hands of any possible interference in parental rights that it may soil itself with. Creating a mere presumption, along with the parallel chance to rebut the same, effectively places the onus on the natural parents to prevent an impairment

266. *See,* FAMILY CODE, arts. 230-1.

267. *Id.* art. 229.

of their own rights. For this reason alone may it be argued that the state thus continues to fulfill its Constitutionally mandated duties to both protect the family and ensure that no enactments are passed the impair its solidarity, and that therefore the instruments in which their rights are enshrined remain viewed with due esteem. Indeed, there is nothing in such instruments holding against the possibility that the parents may, by their own acts or omissions, derogate from their own rights. And neither should there be, as both the Constitution and the international conventions to which the Philippines is a party are solely directed at and intended for state action.

Consequently, the implementation of this solution is simply another manifestation of the state's duty to protect and strengthen then family as it gives the biological parents a chance to reconsider their very own decision to break that family apart.[268] The proposed amendment fully recognizes the right not to be separated from one's child except when competent authorities determine, subject to judicial review.[269] It allows parents free exercise of their right to liberty vis-à-vis their parental duties and retains the family's position as autonomous and anterior to the state. Finally, it truly and effectively implements the policy and right of family solidarity — the foundation upon which the state itself is built.

B. Towards a Structural Framework for Court Action

What follows then is a juxtaposition of both the presumption of unfitness and the previously mentioned jurisprudential methodology. If they are placed in accord with one another, then all the foregoing analysis would invariably come together. Not only will the theories thus discussed find subsequent affirmation in some coherent and tangible process. But, more importantly, the courts will have a definite roadmap with which to guide their actions when the issue of withdrawal is presented.

First: Determine Good Cause

A finding of subsequent fitness is, in fact, another way of saying that there has been a change of circumstances. The latter ground presupposes that the initial reason for giving up one's child for adoption has ceased: as has been shown, this encompasses not only financial improvement, but moral and emotional, as well. Thus, it also presupposes that the pre-change situation was one wherein the parent was unfit to exercise authority over the child. This is precisely the same situation extant in the shift from unfitness to fitness. By presuming that the act of giving up one's child to adoption makes the parent unfit, and by then only allowing a withdrawal if the parent proves

268. *See,* PHIL. CONST. art II, § 12 & art XV, § 1.

269. CRC, art. 9 (1).

otherwise, the above recommendation is naturally accommodated within this step of the structural framework requiring good cause.

As such, the initial act of the courts is to determine whether the withdrawing parent has sufficiently shown his newfound fitness — representing the good cause and change of circumstances — to carry out parental authority.

Second: Balance the Interests Involved

Good cause cannot stand on its own without a concurrent determination of the best interests of the child and the interests of the adopters. Unfitness, on the other hand, is anchored precisely on a consideration of that child's welfare vis-à-vis the interests of the natural parent, and on the ability of the latter to trump the interests of the adopters. Declaring the parent as unfit is equivalent to stating that the parental interests he invokes are nullified by the precedent given to those of the child. If fitness is invoked however, then it behooves the court to determine if it truly is in the child's best interests to remain with the parent. Proof of fitness and best interests will also mean that the interests of the adopters are not in any way prejudiced, as, according to the Parental Preference Rule and the *Briones* standard, the right of a fit parent necessarily trumps those of the adopters. Hence, there is once again a concurrence between the presumption and the framework.

The second step of the courts will therefore be to determine if the proof of fitness of the natural parent can equate to a finding that it is in the best interests of all concerned that the adoption be prevented from continuing.

Third: Require that the Burden of Proof Be Properly Displaced

Underpinning the structural framework is the fact that the natural parents have alleged and proved that there is some good cause for allowing withdrawal. Providing for a presumption of unfitness also provides for the selfsame burden of proof by compelling the natural parents to present evidence necessary to overturn that presumption. Thus, as a tertiary step (though theoretically it should perva ' the entire process), the courts will require that the evidence of fitness uld be alleged and proven by the natural parents.

C. Refashioning the Law

It follows then that section 4 (a) of the Domestic Adoption Act of 1998 should be amended to read:

> Sec. 4. *Counseling Service.* — The Department shall provide the services of licensed social workers to the following:
>
> (a) *Biological Parent(s)* — Counseling shall be provided to the parent(s) before and after the birth of his/her child. No binding commitment to an adoption plan shall be permitted before the birth of his/her child. *A period of six (6) months shall be allowed for the biological parent(s) to reconsider any decision to relinquish his/her child for adoption; at the close of which period, the parents shall be presumed unfit to continue exercising parental authority and their consent to the adoption shall be presumed valid for the continuation of the proceedings. However, if they desire to revoke that consent after the six month period has lapsed, they must prove, at a hearing called for that purpose, their fitness to exercise parental authority. Provided, in no case may consent be withdrawn after the decree of adoption has been entered.* Counseling and rehabilitation services shall also be offered to the biological parent(s) after he/she has relinquished his/her child for adoption.

In three simple sentences, the harshness of the irrevocable decision has been replaced by provisions of law that are markedly more sympathetic and understanding to the plight of natural parents forced to give up their children for adoption. *Dura lex, sed lex* is, indeed, a maxim that should not be applied perfunctorily and without due regard for the sensibilities of natural parents and the unfortunate realities of society. To give respect to parental and familial rights, to give respect to the Constitution and international human rights instruments, and indeed, to give respect to the frailties and difficulties inherent in familial relationships and the basic human condition, there can be no other way. As stated by Justice Montemayor, "[f]lesh and blood count".[270] Through this study and its attendant conclusions and recommendations, it is hoped that now, they do count for something.

270. Celis v. Cafuir, 86 Phil. 555, 559-60 (1950).