

Revisiting the Philippine Laws on Adoption: Issues on Succession

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I. INTRODUCTION

A. Background

Article 3 of the UN Convention on the Rights of the Child provides:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.

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2. State Parties shall undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. State Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number, and suitability of their staff, as well as competent supervision.

The family is considered as the basic social unit in a society. Section 1 of the 1987 Philippine Constitution provides, "The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development." With the constant rise in population of a country beset with economic problems, not all families are able to live properly. Countless children are neglected, abandoned, and abused. There are instances when the biological parents are unable to provide the essentials needed for the child's wholesome growth and development. These problems are brought about by extreme poverty, disruptions in family life, and high population growth, aggravated by unstable economic and political situations. Due to circumstances beyond their control, many children are permanently separated from their birth-families. Society is therefore responsible for making arrangements for alternative care for these children. The development of adoption as a means of social intervention is intended to ensure that family life can be restored to a child deprived of its biological family. Adoption provides a child with a permanent home and family, with the physical and emotional security most conducive to his growth and development.¹ In this regard, permanent placement in an adoptive home is the best option, both for the child and for the community. It is therefore necessary to ensure that legal adoption accomplishes all that it is intended to achieve, and that the familial relationships established by it have every chance of succeeding.

Adoption relieves the State of the financial and social burden of doing a job that it cannot do well — the job of raising a child. Without negating the contributions of the adopted child's birth-parents, the adoptive family should receive as much support as it can from the State for having assumed legal responsibility over the child. Certainly, the enactment of adoption legislation that gives it parity with the birth-family would provide incentives for families not only to adopt, but also to adopt legally. Legal adoption includes safeguards which protect not only the rights of the child but also those of the adoptive parents and the birth-parents.

Various laws have been passed by the Legislature in order to address this prevalent social problem. Adoption has been regulated since the Spanish Civil

1. DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, SELF-INSTRUCTIONAL MANUAL ON ADOPTION 7-8 (1992).

Code, followed by the Code of Civil Procedure, Rule 100 of the 1940 Rules of Court, the New Civil Code, Child and Youth Welfare Code, the Family Code, the Inter-country Adoption Act of 1995, and until recently, the Domestic Adoption Act of 1998 (hereinafter referred to as the "Act").

The Act has introduced a significant number of changes, in both substantive and procedural aspects. A controversy however, has arisen with respect to the provision on succession. The primary task of the Law on Succession is to determine who should inherit from the decedent, and the process by which the selection is to take place. Basically, the law must take into account the satisfaction of three main interests: those of the State, those of the family to which the decedent belonged, and those of the decedent himself. For these three are the principal factors that have contributed to the lifetime formation and accumulation of the transmissible estate: the decedent, through his initiative, activity, and foresight; the family, particularly the children and surviving spouse, by their help, assistance, and encouragement; and the State by maintaining peace, order, and justice. As a result, the rules of hereditary succession polarize around inheritance taxes and escheats, that constitute the share of the State and the community; legitimes and intestate succession in the interest of the family; and the disposition of property by the last will and testament of the decedent."²

It has been the policy of Philippine adoption laws to preserve the ties between the biological family and the adoptee. This was in consonance with the theory of consanguinity, that property passes by blood. However, with the passage of the Domestic Adoption Act, uncertainty arises as to whether these ties are maintained. The contemporary view on adoption is to ensure the child's successful assimilation into the adoptive family. This implies that all ties between the biological family and the adoptee shall be severed. However, this goes against the natural law theory of consanguinity. Against this backdrop, this work undertakes to determine whether the Act has effectively extinguished the rights of succession between the biological family and the adoptee and if so, to weigh the different considerations whether these rights should be maintained, to the end that the child's best interests will be served.

B. Statement of the Problem

Prior to the Domestic Adoption Act of 1998, the prevailing laws on domestic adoption were the Child and Youth Welfare Code and the Family Code. The new law attempts to correct the various deficiencies that can be found under these laws, specifically on the following aspects:

1. Exclusion of qualified alien residents from adopting locally;

2. Jose B. L. Reyes, *Reflections on the Reform of Hereditary Succession*, 4 JOURNAL OF THE INTEGRATED BAR OF THE PHILIPPINES 33, 34-35 (1976) [hereinafter Reyes].

2. Rescission of adoption where the adopted is a minor;
3. Classification of successional rights among the adopted, his biological family, and his adoptive family;
4. Denial of maternity leave for adoptive parents;
5. Absence of penalties for the disregard of adoption laws or procedures; and
6. Persistent problems of simulated birth.³

Although these are significant and novel changes in the field of domestic adoption, the problem lies with respect to the issue of succession. Did the law clarify or simplify the rules of succession? Did it really solve the confusion that was present under P.D. No. 603 and the Family Code? The author aims to solve the problem of succession under the new law, particularly with regard to the following matters:

1. Successional rights of the Adopter;
2. Successional rights of the Biological Parents and/or Relatives by Nature of the Adopted; and
3. Successional Rights of the Adopted.

It is the author's position that there should be a complete severance of all ties between the adoptee and his biological family. The "best interest of the child rule" should not be stretched too far as to disrupt the adoption in order to secure the successful integration of the adoptee into the adoptive family.

C. Organization

This study is divided into five chapters. Chapter One deals with the factual background of the study as well as the problems that have arisen due to the passage of the new law, specifically on the matter of succession. Chapter Two discusses the nature and purpose of adoption, the evolution of the Philippine laws on adoption, and the significant changes brought about by the new law. Chapter Three is an analysis of previous adoption statutes in order to effect an understanding of the proper interpretation of the provision on succession found in the Act. The arguments for and against the repeal of the Family Code by Section 18 of the Act are discussed, together with the view adopted by the proponent. Chapter Four contains the various considerations which have influenced the proponent in espousing the view that there is a need to amend the new law with respect to the successional rights between the adoptee and his biological parents or blood relatives. Finally, Chapter Five gives the conclusion and the recommendations of the proponent.

3. Explanatory Note, S.B. No. 1523, 10TH Cong., 3RD reg. Sess. (1997).

II. DOMESTIC ADOPTION ACT OF 1998

A. Nature and Purpose of Adoption

Adoption is "a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation."⁴ There is no fundamental right to adopt since the relationship created between the adopter and the adoptee is one established by law. Adoption laws reflect the general acceptance of the ancient principle of *adoptio naturam imitatur* – that is, adoption imitates nature.⁵ Originally, adoption was considered primarily for the benefit of the adopter: persons who have no child of their own were thereby afforded the consolation of creating, through legal fiction, the relation of paternity and filiation where none exists by blood relationship. Persons who had children of their own were therefore precluded from adopting since conflicts, friction, and differences may arise.⁶ The modern tendency, however, is towards the view that adoption is for the benefit of the child to be adopted. "Adoption is thus given a social and moral purpose, that is, to extend to the orphan or to the child of the indigent, the incapacitated or the sick, the protection of society in the person of the adopter. Under this theory, adoption has been used to give children born of illegitimate unions the same consideration as those born in lawful wedlock."⁷ Under this modern trend, adoption is no longer a mere act to establish the relation of paternity and filiation, but also one which may give the child a legitimate status.⁸

Adoption laws should be liberally construed, in line with the principle that such laws hold "the interest and welfare of the child to be of paramount consideration and are designed to provide homes, parental care, and education for unfortunate, needy or orphaned children and give them the protection of society and family in the person of the adopter, as well as to allow childless couples or persons to experience the joys of parenthood and to legally give them a child in the person of the adopted for the manifestation of their natural parental instincts."⁹

The adoption process has never been subject to rigid rules or guidelines. The circumstances of each child differ, a fact which militates against inflexibility. The procedure involved in adoption is geared towards ensuring

4. I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 554 (1990) [hereinafter TOLENTINO, 1990].

5. 2 AM JUR. 2D *Adoption* § 7 (1994).

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

7. I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 694 (1983) citing 4 Valverde 469-470 [hereinafter TOLENTINO, 1983].

8. Prasník v. Republic, 98 Phil. 665 (1956).

9. Malkinson v. Agrava, 54 SCRA 67 (1973).

that the child's best interests are served by adoption. Thus, the prospective adopters undergo a rigorous screening process to ensure that the child enters into a financially and emotionally-stable family environment. Furthermore, counseling is given not only to the prospective adopters, but also to the biological parents, to safeguard them from making hurried decisions in relinquishing their rights over their child. The State's interest in protecting the adoptee's welfare is emphasized by the fact that even after a decree of adoption has been entered, accredited social workers of the Department of Social Welfare and Development continue to provide post-adoption services to ensure the successful integration of the adoptee into the adoptive family.

B. Philippine Laws on Adoption

Articles 173-180 of the Civil Code of Spain contained provisions on adoption. These were deemed repealed by Act No. 190 or the Code of Civil Procedure¹⁰ and later by Rule 100, now Rule 99 of the Rules of Court.

In 1950, under the influence of Anglo-American and European legal systems, our new Civil Code was promulgated. Following the guidelines of the Strasbourg Convention, the objective of adoption was changed to adhere to the modern philosophy which underscores the benefit for the adopted as the only consideration. It overthrew the traditional Filipino practice of adoption where a poor relative of the adopting parents is brought into the family as an "ampon," fed, clothed, and sent through school, but treated as a second-class member of the family. One reason identified by social scientists for this phenomenon is that, as a race, the Filipinos are an inheritance-oriented people who refuse to divert their family wealth to children who do not directly belong to the line.¹¹ Thus, the practice of adoption "Pinoy Style" was abrogated.

Some provisions of the Rules of Court were carried over to the New Civil Code with amendments.¹² On June 10, 1975, Presidential Decree No. 603 (The Child and Youth Welfare Code) became effective, impliedly repealing Articles 334-348 of the New Civil Code. P.D. No. 603 was later amended by P.D. No. 1179, effective August 15, 1977, and again by Executive Order No. 91 issued by President Corazon Aquino. On August 3, 1988, Title VII (Adoption) of the Family Code expressly repealed Articles 17, 18, 19, 27, 28, 29, 30, 41, and 42 of P.D. 603, as well as Title XI of Book I of the Civil Code on adoption.¹³ For the effective regulation of the inter-country adoption

10. Act No. 190, §§ 675-772 (1901).

11. See Explanatory Note, H.B. No. 6868, 10TH Cong., 1ST reg. Sess. (1996).

12. See Civil Code of the Philippines, R.A. 386, arts. 334-348 (1950).

13. Ernesto L. Pineda, *Adoption: Philippine System (Substantive and Procedural Aspects)*, 11 LAW. REV., Aug. 1997, at 21.

process, Republic Act No. 8043 or the Inter-country Adoption Act of 1995 was passed. Finally, in order to address certain deficiencies found in the Family Code and in Presidential Decree No. 603, Republic Act No. 8552 or the Domestic Adoption Act of 1998 was promulgated.

C. Significant Changes Introduced by the Domestic Adoption Act of 1998

Prior to the effectivity of the Act, the laws in force were P.D. No. 603 and the Family Code. The Decree contained the procedural aspects of adoption while the Code provided the substantive aspects. The Act attempts to address the following deficiencies found in these two laws:

1. Exclusion of qualified alien residents from adopting locally;
2. Rescission of adoption where the adopted is a minor;
3. Classification of successional rights among the adopted, his biological family, and his adoptive family;
4. Denial of maternity leave for adoptive parents;
5. Absence of penalties for the disregard of adoption laws or procedures; and
6. Persistent problems of simulated birth.¹⁴

1. Who May Not Adopt

Under the Civil Code, non-resident aliens and an alien whose government has broken diplomatic relations with the Republic of the Philippines are not allowed to adopt.¹⁵ The reason behind the exclusion of non-resident aliens lies in the nature of adoption proceedings. Adoption is a proceeding *in rem* which no court may entertain unless it has jurisdiction, not only over the parties and subject matter of the case, but also over the *res*, which is the personal status of the parties. Under both the nationality theory and the domiciliary theory, Philippine courts cannot assume jurisdiction over the status of non-resident aliens.¹⁶

P.D. No. 603 gave non-resident aliens the right to adopt provided that they comply with residency requirements – they must reside in the Philippines for at least one year immediately preceding the filing of the petition for adoption, as well as for the entire duration of the trial custody period.¹⁷

14. S.B. No. 1523, 10TH Cong., 3RD reg. Sess. (1997).

15. Civil Code, art. 339.

16. I-A AMBROSIO PADILLA, CIVIL CODE ANNOTATED 333 (1975), citing Ellis, et. al., v. Republic, 7 SCRA 962 (1963).

17. Child and Youth Welfare Code, P.D. No. 603, art. 27 (1975).

On the other hand, the Family Code disqualified an alien from adopting, except in the following cases:

- a. a former Filipino citizen who seeks to adopt a relative by consanguinity;
- b. one who seeks to adopt the legitimate child of his or her Filipino spouse; or
- c. one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.¹⁸

The Decree now allows an alien to adopt. Such a person must meet the qualifications required to be possessed by a Filipino citizen aspiring to adopt, as well as the residency and certification requirements set forth in Section 7.

Under the Civil Code and P.D. No. 603, it is not required that the husband and wife adopt jointly. The Family Code however, provides for joint adoption by the husband and wife, except “when one spouse seeks to adopt his own illegitimate child or when one spouse seeks to adopt the legitimate child of the other.”¹⁹ The Act adds another exception: the husband and wife shall jointly adopt except if the spouses are legally separated from each other.²⁰

2. Rescission of Adoption by the Adopter and the Adoptee

From the Civil Code until the Family Code, Congress had always allowed the rescission or revocation of adoption either by the adoptee or the adopter. While the Act retains the right of the adoptee to rescind the adoption, it removes such right from the adopter. Section 19 (2) provides:

Sec. 19. *Grounds for Rescission of Adoption.* Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

The reason given by the authors of the bill was that the provision on the right of the adoptive parents to rescind the adoption while the adopted is still a minor, when he or she commits acts that have “definitely repudiated the adoption,”²¹ is discriminatory. “It places an undue burden on the minor adopted child to behave at all times in a manner that would not ‘repudiate the adoption;’ otherwise, his adoptive parents could take steps to terminate their relationship. This option is obviously not open to parents of biological children.”²²

18. Family Code of the Philippines, E.O. 209, art. 184 (1987).

19. *Id.* art. 185.

20. Domestic Adoption Act of 1998, R.A. No. 8552, § 7 (1998).

21. Family Code, art. 192(2).

22. See Explanatory Note, H.B. No. 6132, 10TH Cong., 1ST reg. Sess. (1996).

3. Rectification of Simulated Birth

The explanatory note of Senator Letitia Ramos-Shahani on Senate Bill No. 1405 is enlightening:

The most innovative feature of this bill however is the aspect of simulation of births. According to available records, there are about 300,000 to 500,000 Filipinos who have been locally "adopted" through simulated births. This practice leaves the "adopted child" unprotected in the event of death of the "adoptive" parents or if the legality of the simulation of births is challenged by unscrupulous parties. In these cases, the child will lose the right to use the family name, not to mention the trauma that the "adoptive" child will undergo by the disruption of family ties. Many parents who have undertaken "simulated births" are now afraid to come out in the open for fear of disclosure of the fact that the birth certificate of the child has been falsified. As such, they also run the risk of being prosecuted for falsification of public documents under the Revised Penal Code. To protect themselves from the public eye, many parents who have "simulated births" conceal this fact even from the "adoptive" child. To rectify this situation, the bill proposes to provide immunity from criminal prosecution to parents who have "simulated" their births provided the same has been done in good faith and has redounded to the best interest of the child, and also provided they rectify their "informal" adoption within two years from the effectivity of this proposed law."

This rationale is now embodied in Section 22 of said Act which provides:

Sec. 22. *Rectification of Simulated Births.* – A person who has, prior to the effectivity of this Act, simulated the birth of a child shall not be punished for such act. *Provided,* That the simulation of birth was made for the best interest of the child and that he/she has been consistently considered and treated by that person as his/her own son/daughter. *Provided, further,* That the application for correction of the birth registration and petition for adoption shall be filed within five (5) years from the effectivity of this Act and completed thereafter. *Provided, finally,* That such person complies with the procedure as specified in Article IV of this Act and other requirements as determined by the Department.

4. Procedure

Minor procedural changes were made under the Act. These are the provisions requiring counseling services to the biological parents, the prospective adoptive parents and the adoptee; on locating the unknown parents, and on requiring the consent not only of the legitimate and adopted children of the adopters but also those of the adoptee, to the adoption.

One interesting addition is on the irrevocability of the decision of the biological parents to relinquish his/her child for adoption. The law provides for a six-month period to reconsider any such decision before the decision becomes irrevocable,²³ to be counted from the signing of the Deed of Voluntary Commitment.²⁴

23. R.A. No. 8552, § 4(A).

24. Rules and Regulations to Implement the Domestic Adoption Act of 1998, § 4(t)(e) (1998).

III. EFFECTS OF ADOPTION ON SUCCESSION

A. *Comparison of the Successional Rights under the New Civil Code, P.D. No. 603, the Family Code, and the Domestic Adoption Act of 1998*

An examination of the provisions on the effects of adoption reveal that there are no substantial changes with respect to the provision on parental authority. The four laws have been consistent in providing that parental authority of the biological parents shall be terminated and vested in the adopter(s) except when the biological parent is the spouse of the adopter. Furthermore, the adoptee is given the same rights and duties as if he/she were a legitimate child of the adopter. In fact, the Family Code went one step further and granted the status of legitimacy to the adopted by mandating that "the adopted shall be deemed to be a legitimate child of the adopters."²⁵ The grant of legitimate status to an adoptee is also contained in the Act. The pertinent provision states:

Sec. 17. *Legitimacy.* – The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

In the realm of succession however, the provisions on adoption have undergone a series of amendments. Under the New Civil Code, the pertinent provisions are:

Art. 341. The adoption shall:

- (1) Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter; x x x
- (3) Make the adopted person a legal heir of the adopter.

Art. 342. The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him.

Art. 343. If the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child.

The Civil Code omitted the express provision of the Rules of Court that the adopted child shall remain a legal heir of its biological parents by nature.²⁶ However, such provision was still considered in force; it was not inconsistent with any provision of the Civil Code. Furthermore, Article 345 provides that "[t]he proceedings for adoption shall be governed by the Rules of Court insofar as they are not in conflict with this Code." Besides, under Article 342, since the parents by nature inherit from the adopted child, the adopted child

25. Civil Code, art. 189(1).

26. Rules of Court, Rule 99, §5.

must inherit from such parents, following the principle that succession is reciprocal, unless otherwise provided by law.²⁷

On the other hand, the adopter does not become a legal heir of the adopted child. This article is intended to prevent adoption for mercenary reasons on the part of the adopter. Adoption is primarily for the benefit of the adopted child.²⁸ If the parents by adoption were the ones to inherit from the adopted child, many would adopt rich children in order to inherit from them, and not for sentimental purposes or reasons.²⁹

Under Article 343, if the adopted child concurs with the legitimate parents or ascendants of the adopter, he inherits as an acknowledged natural child. By way of legitimate as compulsory heirs, the legitimate parents or ascendants get one-half of the estate, and the adopted child gets one-fourth.³⁰ In intestate succession, the legitimate parents and ascendants get one-half of the estate, and the adopted child gets the other half.³¹ The rationale of this provision was that it is unfair to give a relationship by legal fiction a preference over relationship by blood in the direct line.³²

Presidential Decree No. 603, which impliedly repealed the provisions on adoption under the Civil Code, provided for similar rights with only a few exceptions. In addition, Article 39³³ of said Decree revived the *reversión adoptiva*

27. TOLENTINO 1983, *supra* note 7, at 705.

28. *Id.* at 706.

29. DESIDERIO P. JURADO, COMMENTS AND JURISPRUDENCE ON SUCCESSION 445 (7TH ed. 1988), *citing* 2 CAPISTRANO, CIVIL CODE, 467 (1950).

30. Civil Code, arts. 889 & 896.

31. *Id.* art. 991.

32. TOLENTINO 1983, *supra* note 7, at 710.

33. Art. 39. *Effects of Adoption*. — The adoption shall:

(1) Give to the adopted person the same rights and duties as if he were a legitimate child of the adopter. *Provided*, That an adopted child cannot acquire Philippine citizenship by virtue of such adoption; x x x

(4) Make the adopted person a legal heir of the adopter. *Provided*, That if the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child. *Provided, further*, That any property received gratuitously by the adopted from the adopter shall revert to the adopter should the former predecease the latter without legitimate issue unless the adopted has, during his lifetime, alienated such property. *Provided, finally*, That in the last case, should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or a spouse, such illegitimate issue collectively or the spouse shall receive one-fourth of such property; if the adopted is survived by illegitimate issue and a spouse, then the former collectively shall receive one-fourth and the latter also one-fourth the rest in any case reverting to the adopter, observing in the case of the illegitimate issue the proportion provided for in Article 895 of the Civil Code.

found in the Rules of Court of 1940.³⁴ This reversion is a return to the pre-codal legislation, which is Act 3977, to compensate for the fact that the adopted child inherited from the adopter to the exclusion of parents and ascendants of the latter.³⁵ Two reasons were presented for *reversion*. One was to prevent parents from giving away their children in adoption with the expectancy of indirectly acquiring property from the adopting parents through such children by the operation of the ordinary rules of succession. Second, to prevent property from passing to strangers or to a different line.³⁶

The Decree modified Article 984 of the Civil Code in the sense that there are now two exceptional circumstances where the adopter may inherit by operation of law from the adopted should the latter die intestate:

1. Where the adoptee had received during his lifetime any property from the adopter by gratuitous title. Such property shall revert to the adopter should the adoptee predecease the former without legitimate issue unless the adoptee had, during his lifetime, alienated such property; and
2. Where the parents by nature of the adoptee are both dead. In such a case, the adopter shall take the place of the natural parents in the line of succession, whether testate or intestate.

By an express repeal, the Family Code³⁷ abrogated all the substantive provisions of said Decree, while maintaining the procedural aspects thereof.

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

34. 1940 Rules of Court, Rule 100, §5.

35. Reyes, *supra* note 2, at 44.

36. ARTURO M. TOLENTINO, THE LAW ON SUCCESSION, WILLS AND ADMINISTRATION 305 (1938).

37. Article 189. Adoption shall have the following effects: x x x

(3) The adopted shall remain an intestate heir of his parents and other blood relatives.

Article 190. Legal or intestate succession to the estate of the adopted shall be governed by the following rules:

(1) Legitimate and illegitimate children and descendants and the surviving spouse of the adopted shall inherit from the adopted, in accordance with the ordinary rules of legal or intestate succession;

(2) When the parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur with the adopters, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half by the adopters;

(3) When the surviving spouse or the illegitimate children of the adopted concur with the adopters, they shall divide the entire estate in equal shares, one-half to be

In formulating the provisions of the Family Code on adoption, the Civil Code and Family Law Committees considered the following underlying principles:

- (1) That adoption is primarily for the benefit of the adopted, so that he shall remain an heir of his parents by nature and also acquire the same rights and duties of a legitimate child of the adopter, particularly in relation to succession; and
- (2) That the essential objective of adoption is to secure permanently for the adopted child a normal home life.³⁸

The rules on intestacy on the adoptee's rights to the adopter's estate have been changed as the adopted is now treated by the law as having only a single status. This is a departure from the provisions in the Civil Code and in P.D. No. 603 wherein he was treated as if he had dual status as the child of the adopter – legitimate if he concurred with the legitimate children and descendants of the adopter, and illegitimate if he concurred with the parents or legitimate ascendants of the adopter.

It will be noted that Article 189(1) of the Family Code provides that, "[f]or civil purposes, the adopted shall be deemed to be legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relation of parent and child, including the right of the adopted to use the surname of the adopters."

The said provision does not address the issue of whether the adopter and adoptee are compulsory heirs of each other. The phrase "reciprocal rights and obligations arising from the relationship of parent and child" does not pertain to succession because there is another provision on succession which is Article 190. At most, this provision can only pertain to those rights which the adopted would have similar to those of a legitimate child. The adopters could also exercise rights over the adopted in the same way as the biological parents could since they are considered by law as the parents of the adopted.

Under the Family Code, in contrast with the Child and Youth Welfare Code, the adopter is given a right to inherit from the adoptee. Article 984 of

inherited by the spouse or the illegitimate children of the adopted and the other half, by the adopters;

(4) When the adopters concur with the illegitimate children and the surviving spouse of the adopted, they shall divide the entire estate in equal shares, one-third to be inherited by the illegitimate children, one-third by the surviving spouse, and one-third by the adopters;

(5) When only the adopters survive, they shall inherit the entire estate; and

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

38. ALICIA V. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 255-256 (1988) [hereinafter SEMPIO-DIY].

the Civil Code provides that in case of the death of an adopted child, leaving no children or descendants, his parents and relatives by consanguinity and not by adoption shall be his legal heirs. This reiterates the rule embodied in Article 342 of the Civil Code that "the adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him." Article 342 had been repealed by the Family Code. However, Article 984 is not affected by the repeal of Article 342, and thus remains in force, except in so far as modified by Article 190 of the Family Code.³⁹

Because of Article 190 of the Family Code, the total exclusion of the adopter from the hereditary estate of the adopted person has been abolished. Now, when the adopter concurs with the parents and ascendants, the illegitimate children, and the surviving spouse of the adopted divide the estate with them in the proportions established by Article 190 of the Family Code. In the absence of the adopters at the time of death of the adopted child, the adoption will not affect the succession, and under the present article of the Civil Code, "his parents and relatives by consanguinity... shall be his legal heirs." The order of intestate succession will thus apply.⁴⁰

As for the rationale in granting the adopter the right to inherit from the adoptee, the Minutes of Committee Meetings of September 21 and 28, 1985 states that the adopter should get more rights to the estate left by the adopted because,

the natural parents gave up their obligations to support and care for the child when they turned him or her over to the adopter for adoption. The adopter, on the other hand, did not only assume all the obligations of the natural parent towards the child, but also took all the problems and risks of parenthood with respect to the latter. If then, the child succeeds in life because of the education and other advantages given to him by his or her adopting parents, the latter should be given some reward by making them share in the estate of the adopted child who dies without legitimate issue.⁴¹

The following is a summary of the provisions on succession in relation to the estate of the adopted, the adopter(s), and the biological parents:

(1) New Civil Code

a. Adopter dies:

Adopted can inherit as the compulsory⁴² and legal heir of the adopter.⁴³

39. 3 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 466 (1992).

40. *Id.* at 467.

41. SEMPIO-DIY, *supra* note 38, at 270-71.

42. Civil Code, art. 979(2) provides: An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

43. Civil Code, arts. 979 & 341(3).

- If the adopted concurs with the legitimate parents or ascendants, the adopted shall not have more successional rights than an acknowledged natural child.⁴⁴
- b. Biological Parent Dies: Adopted can inherit as compulsory and legal heir of his biological parents.⁴⁵
- c. Adopted dies: Adopter cannot inherit,⁴⁶ unless he is related to the adopted by nature, in which case, the rules on intestate succession shall apply.
- Biological parents can inherit because they are considered as compulsory and legal heirs.⁴⁷
- (2) Presidential Decree No. 603
- a. Adopter dies: Adopted can inherit as compulsory and legal heir.⁴⁸
- b. Biological Parent dies: Adopted can inherit as compulsory and legal heir.⁴⁹
- c. Adopted dies: Adopter can inherit if both biological parents are dead since they take the place of the natural parents in the line of succession, whether testate or intestate.⁵⁰
- Biological parents can inherit as compulsory and legal heirs.⁵¹
- (3) Family Code
- a. Adopter dies: Adopted can inherit by compulsory and intestate succession.⁵²

44. *Id.* art. 343.

45. Rules of Court, Rule 99, §5, and applying by analogy Civil Code, art. 342.

46. Civil Code, art. 342.

47. *Id.*

48. P.D. No. 603, art. 39(4).

49. Rules of Court, Rule 99, § 5, and applying by analogy P.D. No. 603, art. 39(4).

50. P.D. No. 603, art. 39(4).

51. *Id.*

52. Article 189(1) of the Family Code provides:

Adoption shall have the following effects:

- b. Biological Parent dies: Adopted can inherit by compulsory and intestate succession.⁵³
- c. Blood Relatives Die: Adopted can inherit by compulsory and intestate succession.⁵⁴
- d. Adopted dies: Adopter can inherit by legal or intestate succession.⁵⁵
- Biological parents or legitimate ascendants can inherit by compulsory and intestate succession.⁵⁶

In the last case, the following is a simplified presentation of the different combinations pertaining to the succession of an adopted child based on Article 190 of the Family Code:

1. Legitimate and illegitimate children and surviving spouse – follow the rules on intestacy
2. Biological parents (legitimate or illegitimate, or legitimate ascendants, as the case may be) + adopter/s:
 - a. Parents / Ascendants – 1/2 of the estate
 - b. Adopter/s – 1/2 of the estate
3. Surviving Spouse or illegitimate children + adopter/s:
 - a. Spouse or illegitimate children – 1/2 of the estate
 - b. Adopter/s – 1/2 of the estate
4. Surviving Spouse and illegitimate children + adopter/s
 - a. Spouse – 1/3 of the estate
 - b. Illegitimate children – 1/3 of the estate
 - c. Adopter/s – 1/3 of the estate

(1) For civil purposes, the adopted shall be deemed to be a legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child, including the right of the adopted to use the surname of the adopters.

Article 979 of the Civil Code also provides:

Legitimate children and their descendant succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages. An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

53. Family Code, art. 189(3).

54. *Id.*

55. *Id.* art. 190.

56. *Id.*

5. Adopter/s alone – the whole estate
6. Collateral blood relatives alone – follow the rules on intestacy⁵⁷

Said article suffers from two serious deficiencies:

1. There are many combinations not provided for by the article, among them:
 - a. Biological parents (legitimate or illegitimate) or legitimate ascendants alone
 - b. Biological parents / ascendants + adopters + surviving spouse
 - c. Biological parents / ascendants + adopters + illegitimate children
 - d. Biological parents / ascendants + adopters + surviving spouse + illegitimate children
 - e. Biological parents / ascendants + surviving spouse
 - f. Biological parents / ascendants + illegitimate children
 - g. Biological parents / ascendants + surviving spouse + illegitimate children
2. Article 190 applies only to total intestacy. It does not give the legitimes of the heirs enumerated and therefore does not indicate how much the adopted child could dispose of by will.⁵⁸

In the concurrence of survivors, there is no provision for the case of concurrence of the adopter with the collateral relatives of the adopted. Paragraphs (5) and (6) provide for “only the adopter” or “only collateral blood relatives” survive, but there is no rule when both survive. Senator Arturo Tolentino, an eminent civilist, believes that there is an inadvertent omission here, a void which the courts may fill with a fair and just solution: divide the inheritance equally between the adopters and the collateral relatives, following the principle of equal division.⁵⁹ Furthermore, following the rule that the adopter is generally excluded from the inheritance left by the adopted, unless expressly given a share by the law, the adopter would be excluded and the entire estate would go to the collateral relatives.⁶⁰

57. RUBEN F. BALANE, *JOTTINGS AND JURISPRUDENCE IN CIVIL LAW 422-23* (1998) [hereinafter BALANE].

58. *Id.* at 423-24.

59. TOLENTINO 1983, *supra* note 7, at 468.

60. TOLENTINO 1990, *supra* note 4, at 567-568.

On the other hand, while there is a provision in paragraph (2) covering the concurrence of parents and ascendants of the adopter with the adopted, there is no rule for the parents and ascendants surviving without the adopter. Tolentino also believes that in such case the parents and ascendants will get the entire estate, assuming there are no children and descendants of the adopted.

In an attempt to address these deficiencies, the Legislature enacted Republic Act No. 8552 or the Domestic Adoption Act of 1998. The new law consolidated the provisions on succession found in Articles 189 and 190 of the Family Code into a single provision covering the entire subject matter on succession, to wit:

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

Section 18 is very clear on two matters. First, the adopter and the adoptee are intestate heirs of each other. Thus, the rules on intestate succession apply. The adopter is also a compulsory heir of the adoptee since he is considered a legitimate parent of the latter. Second, if the adoptee and his biological parents left a will, the law on testamentary succession shall govern.

On the other hand, this provision does not solve certain questions. Do the adoptee and his biological parents remain as compulsory and intestate heirs of each other? Does the adoptee remain an intestate heir of his blood relatives? Is there a complete severance of all ties between the biological parents and/or the other blood relatives and the adoptee?

B. *The Problem of Repeal by Implication*

In order to understand the effect of the changes brought about by the new law, it is necessary to determine whether the Act was intended to abrogate and replace all the existing laws pertaining to adoption, specifically the Child and Youth Welfare Code and the Family Code. Was there an express repeal of these laws? Section 26 of said Act sheds light on the matter. It provides:

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

This clause is generally known as an implied repealing clause. What is the nature of such a repealing clause as opposed to an express repealing clause which specifies the particular law to be repealed?

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second

is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.⁶¹

With this in mind, it is important to determine whether the Act intended to replace all the existing laws on adoption. Did the Act impliedly repeal the Family Code regarding the rules on succession? The repealing clause admits of two different interpretations. The proponent seeks to present the arguments supporting each view and the consequences of one construction as compared to the other with the end of arriving at a logical conclusion.

I. First View: The Domestic Adoption Act of 1998 repealed the provisions on succession found in the Family Code.

As earlier stated, the Domestic Adoption Act did not provide for an express repeal of the Child and Youth Welfare Code and the Family Code, which were the laws in force prior to the effectivity of said Act. Instead, it provided that: "[a]ny law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly."⁶²

Be that as it may, it can have the same effect as that produced by an express repeal. Under the doctrine of repeal by implication, the later statute completely replaces the earlier statute, and a provision of the earlier statute repeated in the later statute is deemed to be a new enactment and not a continuation of the former provision.⁶³ This later law can take the form of a revised or codified statute which the legislature sometimes enacts covering those subjects in which it has passed various laws. The purpose is to restate the existing laws into one statute, simplify complicated provisions, and make the laws on the subject easier to find. However, in the course of revision or codification, some new provisions are inserted, some old provisions are omitted, the phraseology is changed, and sections are rearranged.⁶⁴ The problem therefore lies in the meaning or significance of these modifications or changes.

The first step is to ascertain from the terms and provisions of the Act if there was a manifest intention on the part of the Legislature to enact an entirely new law in place of the old. The Act takes the form of a revised statute, since its purpose is to consolidate the existing laws on adoption. It is a well-accepted principle that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are

61. *Mecano v. Commission on Audit*, 216 SCRA 500 (1992).

62. R.A. No. 8552, § 26.

63. 73 AM JUR. 2D *Statutes* § 392 (1994).

64. RUBEN E. AGPALO, *STATUTORY CONSTRUCTION* 398 (4TH ed. 1998) [hereinafter AGPALO].

deemed repealed, unless the statute or code provides otherwise.⁶⁵ "The reason is that a revision or codification is, by its very nature and purpose, intended to be a complete enactment on the subject and an expression of the whole law thereon, which thereby indicates an intent on the part of the legislature to abrogate those provisions of the old law that are not reproduced in the revised statute or code."⁶⁶

A close examination of the Act reveals that it covers the entire subject matter of adoption found in P.D. No. 603 and the Family Code. The substantive aspects contained in the Family Code and the procedural aspects in said Decree are consolidated into one single law. Several provisions were added while some were omitted. The phraseology was changed and the sections, rearranged. Under the Family Code, the adopted remains an intestate heir of his parents and other blood relatives.⁶⁷ Furthermore, Article 190 of the said Code enumerated the different combinations on intestate succession governing the rights of the adopter and the biological parents to the estate of the adoptee. These provisions were not reproduced in the Domestic Adoption Act. This can only lead to the conclusion that they are deemed repealed. Section 18 thus intends to furnish the exclusive rule with respect to the successional rights of the adopter and the adoptee. Only when a will is made can the adoptee be entitled to inherit from the biological parents and vice versa. This is further buttressed by the fact that there are several provisions in the Act indicating an intention to terminate all ties between the adoptee and his/her biological parents. Section 16 of said Act provides:

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

On the other hand, Section 4 (a) of the Act states:

Sec. 4. *Counseling Services*. – 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.

Steps shall be taken by the Department to ensure that no hurried decisions are made and all alternatives for the child's future and the implications of each alternative have been provided.

65. *Id.* at 399, *citing* *People v. Benuya*, 61 Phil. 208 (1935).

66. *Id.* at 399, *citing* *Joaquin v. Navarro*, 81 Phil. 373 (1948).

67. Family Code, art. 189(3).

These provisions emphasize the fact that Congress intended to dissolve the bond between the adoptee and his/her biological parents by virtue of adoption. In fact, after a decree of adoption has been entered, an amended certificate of birth shall be issued without bearing any notation that the new birth certificate is an amended issue.⁶⁸ The best source to ascertain legislative intent is the statute itself — the words, phrases, sentences, sections, clauses, provisions — taken as a whole and in relation to one another. Legislative intent should be ascertained from a consideration of the whole context of the statute and not from an isolated part or particular provisions.⁶⁹ Every section, provision, or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature. Every part of the act must be taken into view.⁷⁰

While it is true that the Act still makes references to other laws, this does not necessarily mean that the statute is not complete in itself. It is a comprehensive law since it is an expression of the whole adoption process. "The fact that the revised statute or code is all-comprehensive and covers the whole field of a particular subject matter, especially if it provides that all acts inconsistent therewith are repealed, reveals the intent to establish a uniform system of rules and to nullify existing laws on the subject."⁷¹ References to other laws may be necessary only in order to avoid repetition. Section 17 of the Act provides that: "The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind." To determine their rights and obligations, one has to look into the provisions of the Civil Code and other laws. Another illustration is Section 18 of said Act concerning succession. It provides that the "In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation." Reference to rules on intestacy in the Civil Code is necessary. It would be impractical to reproduce all the provisions on intestate succession as this would be a mere surplusage.

Indeed, Section 18 admits of two different interpretations. Where the meaning of a statute or provision is ambiguous, legitimate aids to construction can be availed of to ascertain the true intent of the statute.⁷² These legitimate

68. R.A. No. 8552, § 14.

69. AGPALO, *supra* note 64, at 79, citing *Aboitiz Shipping Corp. v. City of Cebu*, 13 SCRA 449 (1965).

70. *Id.* at 79, citing *Commissioner of Internal Revenue v. TMX Sales, Inc.*, 205 SCRA 184 (1992).

71. *Id.* at 411-12, citing *Chinese Flour Importers Assn., Inc. v. Price Stabilization Board*, 89 Phil. 439 (1951).

72. *Id.* at 72, citing *U.S. v. De Guzman*, 30 Phil. 416 (1914).

aids can be internal or external. One such external aid is the legislative history of a statute. What constitutes legislative history? The history of a statute refers to all its antecedents from its inception until its enactment into law. "It includes the President's message if the bill is enacted in response thereto, the explanatory note accompanying the bill, committee reports of legislative investigations and public hearings on the subject of the bill, the sponsorship speech, the debates and deliberations concerning the bill, its amendments and changes in phraseology in which it undergoes before final approval thereof."⁷³ Statements of the author or the sponsor of a bill can be considered as showing the conditions of the period when the statute in question was enacted, or the mischief it was intended to remedy to throw light on its proper interpretation.⁷⁴

Committee reports and statements of committee members are also helpful in discovering the intent of the legislature. It is interesting to note that there were four bills filed in the House of Representatives regarding adoption. They were the following:

- a. House Bill No. 6132 introduced by Jose Carlos V. Lacson;
- b. House Bill No. 6266 introduced by Mario Serra Ty, M.D.;
- c. House Bill No. 6849 introduced by Teresa Aquino-Oreta; and
- d. House Bill No. 6868 introduced by Leonor Ines Luciano.

These were consolidated into House Bill No. 10378 which was approved unanimously on its third reading on February 2, 1998.

On the other hand, the Senate also produced its own versions of bills on adoption. These were the following:

- a. Senate Bill No. 1405 introduced by Leticia Shahani;
- b. Senate Bill No. 1514 introduced by Raul Roco; and
- c. Senate Bill No. 1523 introduced by Miriam Defensor-Santiago.

Senate Bill No. 1523 was the one which was approved and this was consolidated with House Bill No. 10378 by virtue of a Conference Committee Report which was approved by the Senate and the House of Representatives. It was eventually signed into law by President Joseph Estrada on February 25, 2000.

An examination of the explanatory notes and sponsorship speeches of the authors of said bills reveals the intention of the authors to consolidate in a single piece of legislation the various provisions on domestic adoption that were found in P.D. No. 603 and the Family Code.

73. AGPALO, *supra* note 64, at 90.

74. 73 AM JUR. 2D *Statutes* § 177 (1994).

The following exchange between Senator Santiago and Senator Romulo is very enlightening:

Senator Romulo: Therefore, as provided here on Section 30, any other laws which are not found here, executive orders, letter of instruction, *et cetera*, are hereby repealed or amended accordingly?

Senator Santiago: Correct. That is a standard repealing clause.

Romulo: So that when we are concerned with adoption, all we have to is to refer to this new bill once it becomes a law?

Santiago: One-volume manual.⁷⁵

From the foregoing, it can be gleaned that whatever is not reproduced in the Act is deemed omitted. A similar conclusion will also result upon consideration of the evolution of the Act on the basis of the contents of the bills that were passed. House Bill Nos. 6132, 6266, and 6849 all had provisions wherein the biological parents could obtain a share in the inheritance of the adopted. However, House Bill No. 6868 authored by Congresswoman Leonor Luciano did not contain a similar provision. Section 12(d) of said bill is hereby reproduced:

Section 12. EFFECTS OF ADOPTION

The following are the effects of the decree of adoption. x x x

d) In legal and intestate succession, the adopting parents and the adopted shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adopted and his/her natural parents die with a will, the law on testamentary succession shall govern.

During the hearing on the four House Bills, Congressman Luciano expressed her view that there was a need to simplify the rules on succession found in the Family Code. Said Code provided for many factions and it was imperative that the new law be specific about succession. The adopted child would be considered a legitimate child of the adopter and as such, he is entitled to all the rights of the legitimate child. The biological parents should not be allowed to share in the estate of the adopted. The only instance when they can so inherit is when the adopted dies with a will.⁷⁶

House Bill No. 10378, which was adopted in substitution of the four House Bills, was a virtual reproduction of House Bill No. 6868 authored by Luciano. Section 8 of the said Bill provides:

Sec. 8. *Effects of Adoption.* – The following are the effects of adoption: x x x

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

On the other hand, Senate Bill Nos. 1405 and 1514, authored by Senators Shahani and Roco, also provided for successional rights of the biological parents to the estate of the adopted. However, what was approved was Senate Bill No. 1523 authored by Senator Santiago. Sections 18 and 19 of the Bill state:

SEC. 18. *Effects of Adoption.* – Adoption shall have the following effects:

(1) For all purposes, the adopted shall be deemed to be a legitimate child of the adopter and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child; and

(2) Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parents and the adopted shall be severed.

SEC. 19. *Succession.* – Successional rights of the adopted shall be governed by the provisions in Title IV of the Civil Code subject to Section 18 of this Act.

In the consolidation of Senate Bill No. 1523 and House Bill No. 10378, the Conference Committee came out with a version that was patterned after House Bill No. 10378, which in turn was patterned after House Bill No. 6868 authored by Congressman Luciano. This came to be Section 18 of the Domestic Adoption Act of 1998:

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

Since the provision on succession in the Act was a substantial reproduction of what was contained in the bill authored by Congressman Luciano, it is reasonable to assume that her views on the matter were adopted as constituting the legislative intent. Thus, the biological parents shall not be allowed to inherit from the adopted and vice versa except when provided for in a will.

The deliberations of Congress on the matter clearly indicate that the Domestic Adoption Act of 1998 is intended to be a consolidation of the existing laws on adoption. A departure from the policy of the laws in existence prior to the Act must be made to emphasize the status of an adopted as a legitimate child of the adopter and this can be effected only by providing that the biological parents and the adopted are not entitled to inherit from each other by compulsory and intestate succession.

75. AGPALO, *supra* note 64, at 46.

76. *Domestic Adoption: Hearing on H.B. Nos. 6132, 6266, 6849, and 6868 Before the Committee on Social Services joint with the Committee on Population and Family Relations, 10TH Cong., 50-51 (Aug. 14, 1996).*

2. Second View: The Domestic Adoption Act of 1998 did not repeal the provisions on succession found in the Family Code.

Since the Domestic Adoption Act of 1998 did not provide for an express repeal of the existing laws on adoption, it is imperative to understand the implications of an implied repealing clause. What is the nature of such clause? How does it come into play in the proper interpretation of statutes? An implied repealing clause is one "which predicates the intended repeal upon the condition that a substantial conflict must be found on existing and prior acts of the same subject matter. Such being the case, the presumption against implied repeal and the rule on strict construction regarding implied repeal apply *ex proprio vigore*. For the legislature is presumed to know the existing laws so that, if repeal of particular or specific law or laws is intended, the proper step is to so express it. The failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws."⁷⁷

A repeal by implication can fall under any of two categories: "The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law."⁷⁸ From the foregoing, it is necessary to ascertain if there was a manifest intention of the legislature to enact a new law in place of the old by examining the terms and provisions of the later act.

Under the first category, there must be an irreconcilable inconsistency between the provisions of the two statutes covering the same subject matter and object. It is true that Section 18 of the Act did not reproduce the provisions found in the Family Code pertaining to the successional rights of the biological parents to the estate of the adopted. Neither did the said Act provide that the adoptee shall remain an intestate heir of his parents and other blood relatives as contained in the Family Code. What then is the significance of such an omission?

A review of Sec. 18 of the Act is in order:

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

The law is clear when it comes to intestate succession. The adopter and the adopted are intestate heirs of each other. Reference can be had to Title IV of

77. AGPALO, *supra* note 64, at 414-15.

78. Mecano v. Commission on Audit, 216 SCRA 500 (1992).

the Civil Code governing succession. The adopted remains a compulsory heir of the adopter since Section 17 of the Act grants to him a legitimate status. The law is also clear when it comes to testamentary succession. In fact, the latter is a mere surplusage because even without an express provision to that effect, the rules on testamentary succession will apply if one died with a will.

On the other hand, the law is not clear on three things: First, are the adopters compulsory heirs of the adopted? Second, does the adopted remain an intestate heir of his/her biological parents and other blood relatives? Third, can the biological parents inherit from the adopted by way of intestacy?

As to the first question, reference to the legislative history of the Act can be had. All the bills passed emphasized the need to make the adopters the compulsory heirs of the adopted. Although the Family Code cites the reciprocal rights and obligations of the adopters and the adopted, it does not state explicitly that the adoptive parents are compulsory heirs of the adopted child. This ambiguity in the law is inconsistent with the general principle of establishing reciprocal rights and obligations between parents and child — including succession rights. Article 984 of the Civil Code says: "[i]n case of the death of an adopted child leaving no legitimate children and descendants of the deceased, his parents and relatives by consanguinity and not by adoption shall be his legal heir." On this, the House deliberations say: "[t]his provision of the Civil Code, which was not repealed by the Family Code, not only appears to be unreasonable but is inconsistent with the principle of reciprocal rights and obligations between adoptive parents and child."⁷⁹ The bills intended to correct this inconsistency and ambiguity by providing that the adopters and the adopted are compulsory heirs of each other. However, the bill that was passed failed to convey the intended effect sought by the authors of the bills. Instead, what was expressed in the Act concerns only "legal and intestate succession."⁸⁰ Under the Civil Code, legal and intestate succession are synonymous with each other.⁸¹ The proponent believes that it was a simple case of improper drafting. Hence, it must be amended accordingly.

The second and third questions can be resolved by examining the provisions of the Act and the Family Code. Are they inconsistent on the matter of intestate succession? It is a cardinal principle that inconsistency is never presumed.⁸² An examination of Article 190 of the Family Code and Section 18 of the Act will reveal that there is no irreconcilable inconsistency between the two. The deficiency in said Section 18 can be supplied by the Family Code. Therefore, in intestacy, the biological parents concur with the adopters in the estate of the adopted. Since succession is, as a general rule,

79. H.B. No. 6132, 10TH Cong., 1ST reg. Sess. Explanatory Note (1996).

80. R.A. No. 8552, § 18.

81. Civil Code, art. 778.

82. Iloilo Palay & Corn Planters Assn., Inc. v. Feliciano, 13 SCRA 377 (1965).

reciprocal, it follows that the adopted should remain as the intestate heir of the biological parents and other blood relatives. He is also a compulsory heir of the biological parents since the principle in the Family Code that there is no severance of blood relationship still applies. Only parental authority is terminated.

Under the second category, a repeal is possible if the revised statute was intended to cover the whole subject to be a complete and perfect system in itself. It is the rule that a subsequent statute is deemed to repeal a prior law if the former revises the whole subject matter of the former statute. Before there can be an implied repeal under this category, it must be the clear intent of the legislature that the later act be the substitute to the prior act.⁸³ There must be a sufficient showing of the legislative intent to repeal and this intention to repeal must be clear and manifest; otherwise, "the latter act is to be constructed as a continuation of, and not a substitute for the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment."⁸⁴

This legislative intent must first be examined from the letter of the law. As earlier stated, there was no express repeal of the Family Code and Presidential Decree No. 603 on adoption. True, the legislative history indicates a desire to consolidate the existing laws on adoption. However, this was not made manifest in the Act. It would have been different if Congress had expressly provided that Articles 27-42 of P.D. No. 603 and Title VII of the Family Code are repealed. As it is, "if legislative intent or spirit is not expressed in some appropriate manner, the courts cannot by interpretation speculate as to an intent and supply a meaning not found in the phraseology of the law."⁸⁵

It has been held that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise, expressly or impliedly.⁸⁶ The reason is because a revision or codification is, by its very nature and purpose, intended to be a complete enactment on the subject and an expression of the whole law thereon, which thereby indicates an intent on the part of the Legislature to abrogate those provisions of the old laws that are not reproduced in the revised statute or code.⁸⁷ If this doctrine is to be followed, it would necessarily mean that the biological parents and the adopted child are hereby disqualified to inherit from each other, either by way of compulsory or intestate succession. This is the result of the repeal by implication. However, if an investigation is made on the policy of the laws

83. *Mecano v. Commission on Audit*, 216 SCRA 500 (1992).

84. *AGPALO*, *supra* note 64, at 403, *citing* *City of Manila v. Reyes*, 99 Phil. 986 (1956).

85. *Id.* at 83, *citing* *Regalado v. Yulo*, 61 Phil. 173 (1935).

86. *Id.* at 411, *citing* *People v. Benuya*, 61 Phil. 208 (1935).

87. *Id.* at 399, *citing* *Joaquin v. Navarro*, 81 Phil. 373 (1948).

existing prior to the Domestic Adoption Act of 1998, it has always been the consideration of the Legislature that there is no severance of blood relationship between the adopted and the biological parents. The adopted is still considered a child of his biological parents. This is a substantive right given to the biological parents since the Code of Civil Procedure. In ascertaining the intention of the lawmaker, courts are permitted to look to prior laws on the same subject and to investigate the antecedents of the statute involved.⁸⁸ The prior laws show the legislative history that may serve to clarify the intent of the law or shed light on the meaning and scope of the codified or revised statute.

The previous laws on adoption had always recognized the right of the biological parents to inherit from the adopted because ties between the biological parents and the adopted were not intended to be completely severed – they are, after all, connected to each other by blood. The justification advanced in support of this position is that the Filipinos are an inheritance-oriented race and would thus want to preserve the inheritance within the family connected by blood relationship. This is the general rule that must be followed unless the statute expressly provides otherwise or by necessary implication.

The complete severance of all ties between the biological family and the adoptee adopted by the first view cannot be justified under Sections 16 and Section 17 of the Act:

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

Sec. 17. Legitimacy. – The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.

Section 16 is on parental authority. Even if all legal ties between the biological parents and the adoptee are severed, this is not inconsistent with the right of the adoptee to inherit from the biological parents. One can lose parental authority without losing the right to succession.

In fine, Section 18 of the Act attempts to take away the rights that the biological parents possessed since time immemorial with just one sweeping statement that "if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern." Such an abrogation cannot be done by mere implication. It would have been best if Congress had categorically stated that they are no longer entitled to inherit from each other except by testamentary succession.

88. *Director of Lands v. Abaya*, 63 Phil. 559 (1936).

If it was the intention of the Legislature to take away a right which a person previously enjoyed, the appropriate way to do so is to express it in terms that will admit of no other interpretation. An example is the provision on the rescission of the adoption by the adopters. The Civil Code, P.D. 603, and the Family Code all provide that the adopter may rescind the adoption upon the occurrence of some grounds. However, this right was not recognized under the Act. Section 19, paragraph 2 provides:

Sec. 19. *Grounds for Rescission of Adoption.* Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code.

The right previously given to the adopter to rescind the adoption had been expressly removed in Section 19. In the same manner, if it were the intent of the Legislature to abrogate the provisions on intestate succession found in the Family Code, it should have categorically provided for a statement to that effect. Repeals by implication are not favored and will not be decreed, unless it is manifest that the Legislature so intended.⁸⁹

The fact that by the terms of the adoption statutes, the natural parents lose all rights over a child when it is adopted by another, does not necessarily imply that the child may not inherit from such parents,⁹⁰ especially when such inheritance will be to the best interest of the child.

It has been said that in the interpretation of statutes, legislative will is the controlling factor. Ascertaining the legislative intent is the primary rule of construction.⁹¹ Thus, the opinion posited by Congressman Luciano cannot be controlling. "The opinions and views expressed by the legislators during floor deliberations of a bill may not be given weight at all in any of the following instances: where there are circumstances indicating a meaning of a statute other than that expressed by the legislators; where the views expressed were conflicting; where the intent deducible from such views is not clear; or where the statute involved is free from ambiguity."⁹²

In the aforementioned hearing, Professor Elizabeth Pangalangan of the University of the Philippines adopted the view that biological parents inherit only in the absence of heirs of the adopted child. The fact that the bill authored by Congressman Luciano became the basis of the consolidated House Bill did not sufficiently indicate that Congress likewise adopted her opinion on the matter. Likewise, the explanatory notes of the bills passed cannot be considered controlling since they cannot be used as justification to read a

89. *NPC v. Province of Lanao del Sur*, 264 SCRA 271 (1996).

90. 2 AM JUR. 2D *Adoption* § 200 (1994).

91. 2 AM JUR. 2D *Statutes* § 145 (1974).

92. AGPALO, *supra* note 64, at 93, *citing* *Song Kiat Chocolate Factory v. Central Bank*, 102 Phil. 477 (1957).

meaning that does not appear, nor is reflected, in the language of a statute.⁹³ The explanatory note is a mere expression of the author's views and reasons for the proposed legislation and accordingly, may not override the clear legislative meaning or intent as expressed in the statute itself.⁹⁴

3. View Adopted by the Proponent

After careful consideration of the foregoing arguments, the proponent adopts the second view. Following the rules on statutory construction, the result is that the provisions of the Family Code on intestate succession should be harmonized with Section 18 of the Act. The biological parents and the adoptee should still be entitled to inherit from each other by intestate succession. The reason is that this right granted to them has been consistently upheld since time immemorial and in order to extinguish this right, an express repeal should be made. Adoption statutes being for the best interest of the child should not be accorded a construction that will produce a legislative intent not expressly stated in the wording of the statute. This is however without prejudice to what the proponent adopts as sound policy, as will be discussed in the next chapter.

IV. THE NEED TO AMEND THE PROVISIONS ON SUCCESSION

The view adopted by the proponent has two possible conclusions. First, the biological parents are entitled to inherit from the adoptee by way of intestacy. Second, the adoptee remains a compulsory and intestate heir of his biological parents and relatives by nature. Since the wording of the present law is not clear, the deficiencies can be supplied by the Family Code.

Despite the fact that the proponent agrees with the second view, it is submitted that an amendment is in order. There is much dispute and controversy whether the adoptee should continue to inherit from his/her biological parents and/or relatives by nature. After the decree of adoption is entered, the adoptee is considered a legitimate son/daughter of the adopter. Parental authority of the biological parents is terminated and vested in the adopters. Adoption laws are construed in the best interest of the child. In fact, under Section 2(b) of R.A. No. 8552 on the Declaration of Policies, it provides that, "[i]n all matters relating to the care, custody and adoption of a child, his/her interest shall be the paramount consideration in accordance with the tenets set forth in the UN Convention on the Rights of the Child; UN Declaration on Social and Legal Principles Relating to the Protection of Children and Cooperation in Respect of Intercountry Adoption. Toward this end, the State shall provide alternative protection and assistance through foster care or adoption for every child who is neglected, orphaned, or abandoned."

93. *Chong Yung Fa v. Gianzon*, 97 SCRA 913 (1955).

94. *Guzman v. Municipality of Taytay*, 65 Phil. 340 (1938).

It is submitted that the adoptee should not inherit from his biological parents by way of compulsory and intestate succession, except when the biological parent is the spouse of the adopter. It is not a sound policy if the adoptee would still be allowed to inherit from his/her biological parents who had relinquished their rights over their child. This may be viewed as contrary with the principle that the child's interest must be paramount. But what situation may truly be deemed to be for the best interest of the child?

Modern adoption goals rest upon the premise that an adopted person is born into the adoptive parents' family, a social birth as significant as a biological birth.⁹⁵ Adoption grants the adoptee the status of legitimacy and as such he/she is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to the adopters without discrimination of any kind.⁹⁶ Legal recognition of the adoptive family as a single unit encourages an adoptee's successful assimilation into the adoptive family. However, such an objective goes against the natural theory of consanguinity wherein blood is the basis of succession.

Several reasons were advanced as to why the adopted child continues to be a legal heir of his parents by nature:

1. What is dissolved by the adoption is only the parental authority of the parents by nature over the adopted child. Since adoption is for the benefit of the child, his legal rights with respect to his true parents should not be diminished by adoption.
2. The adopted child will thus become the heir of both the adopter and his parents by nature.
3. In many cases, the child is adopted while still an infant. Why cut off entirely his ties with his natural parents by depriving him of the right to inherit from the latter?
4. In the Philippines where the practice is to adopt one's own relatives, the child does not usually completely divest himself of his emotional ties with his parents and other relatives by nature.⁹⁷

This controversy is not entirely new. It had been discussed extensively during the meetings of the Civil Code and Family Law Committees in the drafting of the Family Code. Some members argued that "blood is thicker than water" and that it is for the benefit of the adoptee if he continues to be an heir of his biological parents and adopters. They came up with the following proposals:

1. That there should be complete or total cut-off of the relationship between the adopted and his natural parents and other natural relatives;

95. Hughes, *Intestate Succession and Stepparent Adoptions: Should Inheritance Rights of an Adopted Child be Determined by Blood or by Law?* 321 WIS. L. REV. 321 (1998).

96. R.A. No. 8552, § 17.

97. SEMPIO-DIV, *supra* note 38, at 268.

2. That they consider the following reservations against complete or total cut-off, as follows:
 - a. That the adopted who did not give the consent may revoke the adoption;
 - b. That the adopted may have natural brothers and sisters;
 - c. That the adopted has no heirs, either on the ascending or descending lines.
3. That there should be no cut-off and, therefore, retain the present law on exceptions.⁹⁸

During the meeting on September 28, 1985, the Committee outlined the various pros and cons of the complete cut-off of the relationship between the adoptee and his biological parents, as follows:

Pros

1. It will simplify the rules on succession, support and family relations;
2. The consent of parents by nature constitutes waiver or even abandonment;
3. The parents are not precluded from giving a share in the free portion;
4. The parents can grant voluntary support; and
5. The adoption stabilizes family relations.

Cons

1. The child does not completely divest himself of emotional ties with his parents and vice-versa; and
2. The adoption usually takes place when the child is of tender age and is not a participant in the decision.

On the point that the child does not completely divest himself of emotional ties with his parents and vice versa, the importance of pre- and post-adoption counseling services comes in. The social worker assigned to the adoptive family has the duty to communicate all the alternatives and consequences that may arise which are incidental to the adoption. On the one hand, he must see to it that the biological parents understand the consequences of their actions. On the other hand, he should educate the adopters in revealing to the adoptee the fact of his adoption. Justice J.B.L. Reyes remarked that the main benefit of adoption is to give the adopted child proper education and not so much of succession.⁹⁹ These issues were threshed out before a subcommittee created for such purpose. Unfortunately, the members of the subcommittee were not prepared to effect the drastic change of cutting all ties with the biological family.

98. *Adoption: Minutes of the Joint Meeting of the Civil Code and Family Committees* (Sept. 14, 1985).

99. *Id.*

Several important considerations have guided the proponent in adhering to the view that all ties, including inheritance ties, between the adoptee and his natural family should be severed.

The main goal of adoption has been to ensure that the child is placed in acceptable family environments. The State recognizes that the biological family is responsible for providing family life to a child and for this reason, it must be fostered and nurtured whenever possible. There are instances, however, when problems of broken home, unwed motherhood, abandonment, illness, and extreme poverty seriously disrupt the ability of the family to fulfill its primary function as a basic institution in rearing a child to adulthood. In such cases, substitute parental care becomes necessary. While there are residential facilities available, studies have shown that institutional life has had adverse effects for most children especially infants and pre-schoolers. Over-dependency, anti-social behavior, personality disorganization, and emotional disorders are often associated with adults who grew up in orphanages and institutions.

The foremost consideration of adoption is thus to provide an adoptee with a new family, in a healthy living environment, which best serves the welfare of the child. As a result, the adoptee is provided with a "fresh start" by treating him as the natural child of the adoptive parents, severing all ties with the past.¹⁰⁰ Justice Loevinger of the Minnesota Supreme Court in the case of *In re Patrick's Will*, identified the significance of the adoptive family:

We have come to realize that it is not the biological act of begetting offspring — which is done even by animals without any family ties — but the emotional and spiritual experience of living together that creates a family. The family relationship is created far more by love, understanding, and mutual recognition of reciprocal duties and bonds, than by physical genesis.¹⁰¹

Dual inheritance results when the adoptee is allowed to inherit from his biological parents and blood relatives. That is, the adoptee inherits from his natural family in addition to his right to inherit from his adoptive parents. Such an advantage is not available to biological children. Thus, it may appear that dual inheritance is deemed for the best interest of the child. However, it is possible that resentment and disharmony may result. "An adopted child may be treated as an object of jealousy by the other biological children in the adoptive family because of this extra inheritance capacity. Moreover, one adoption objective is to provide the adoptee with equal social and economic resources rather than put the adopted child in an advantageous position."¹⁰²

100. Hughes, *supra* note 95, at 337 citing *In re Estates of Donnelly*, 81 Wash. 2d 430, 436, 502 P. 2d 1163, 1166 (1972).

101. *Id.* at 337.

102. *Id.* at 339, citing WISCONSIN LEGISLATIVE COUNCIL, 1955 REPORT, CHILDREN'S CODE, vol. VI, pt. I, at 36 (1955).

Another factor that militates against complete severance of all ties between the adoptee and the biological parents is that the adopted child usually had no choice and gave no consent to his/her own adoption. "His natural parent, by his consent to the adoption, loses his right to inherit from his natural son. But no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent, whose issue...he does not cease to be when the right to his control passes to another."¹⁰³ However, the primary consideration is to address the need of the child to a healthy adoptive living environment. The adoptee's right of choice must yield to the important goal of fostering and legally recognizing adoptive family units.¹⁰⁴

These considerations focus on the child's "overall welfare and not simply on an adoptee's access to wealth by the preservation of inheritance rights from the natural bloodline."¹⁰⁵ The focus of adoption is to approximate the law of nature in the natural relationship of father and child or mother and child. The goal of adoption laws is to transplant the child completely into the adoptive family and sever all ties to the biological family to encourage the psychological development of the adoptive parent-child relationship.¹⁰⁶ All intestate inheritance rights between the child and the non-custodial parent should be extinguished. This is in keeping with the policy behind adoption laws of severing the ties of an adopted child completely from a surrendering parent. This is also in keeping with the biological parent's expectations, for the legal effect of an adoption decree is to sever the ties of the surrendering parent from the child for all purposes.¹⁰⁷ To give full effect to the implications of a legal adoption, the inheritance rights of the adoptee from the relinquishing parent bloodline must be terminated.

An important consideration against allowing the adopted to inherit from the biological parents is based on practicality. "Adoption proceedings are necessarily confidential. On the one hand, it is necessary to seal the records of the child's life prior to the adoption to give him or her a 'fresh start' in order

Due to the rigorous screening test, the adoptees usually enter into a financially and emotionally stable adoptive family environment. Therefore, there should be no need for the adoptee to get an extra inheritance right from outside the adoptive family, unless the adoptive family becomes destitute. However, destitution is not predictable for any child, whether that child be in a natural family or adoptive family. Hence, the argument of adoptee access to wealth must give way to the preservation of the identity of the adoptive family, which is essential to the psychological health of all family members individually and as a unit.

103. *Id.* at 348.

104. *Id.*

105. *Id.* at 340.

106. Anne Wiseman French, *When Blood Isn't Thicker Than Water: The Inheritance Rights of Adopted-Out Children in New York*, 53 BROOK. L. REV. 1007, 1041 (1998).

107. *Id.* at 1047-48.

that he will be completely assimilated into the adoptive family. Similarly, it is also necessary to protect the biological parents and the adoptive parents' right to privacy. On the other hand, some biological ties are harder to break, and a fresh start, with its corresponding severance of ties to the natural family, may not always be in the best interest of an older child."¹⁰⁸ Confidentiality is perceived to promote the efficacy of the adoption process and to protect the rights and interest of the natural parents, the adopters, and the adoptees.¹⁰⁹

Thus, where the proceedings are kept strictly confidential, as in the case of adoption by strangers, it would be impractical for the adopted child to remain the legal or intestate heir of the natural family. For one thing, there will be no way of knowing when succession to the estate of the decedent opens. It will also be possible for the estate of the decedent to remain unsettled for an indefinite period of time because of the difficulty in locating the child who has been relinquished for adoption.¹¹⁰

Under the new law, Sec. 15 provides:

All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books, and papers relating to the adoption cases in the files of the court, the Department, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential. If the court finds that the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the adoptee, the court may merit the necessary information to be released, restricting the purposes for which it may be used.

The Section 43 of the Rules and Regulations to Implement the Domestic Adoption Act also provides:

All records, documents and court proceedings relating to the adoption shall be confidential. No copy thereof shall be released without determination that it is for reasons substantially connected with or arising out of the adoption. In such event, records and information shall be disclosed in a way that will prevent persons who do not have a legitimate interest, from learning the fact that a person has been adopted or, if that is revealed, the identity of his/her biological parents.

Based on the foregoing, court approval for the disclosure of adoption records and documents applies only in case the disclosure would be made to a third person and not to the adopter or the adopted who clearly have a legitimate interest in the matter. Ms. Alicia Bonoan of the Department of Social Welfare and Development, states that it is not unnatural for the adoptee to have the need to discover his own roots and may request for the disclosure of information about his biological parents. However, this is still subject to the

108. Lisa A. Fuller, *Intestate Succession Rights of Adopted Children: Should the Stepparent Exception be Extended?*, 77 CORNELL L. REV. 1188 (1992).

109. *Alma Society, Inc. vs. Mellon*, 601 F. 2d 1225 (2d Cir. 1979).

110. Winnie Ruth J. Lacamilao, *Promoting the Best Interest of the Child: An Analysis of the Domestic Adoption Act of 1998* (1999) (unpublished J.D. Thesis, Ateneo Law School, on file with the Ateneo Law School Library).

right of the biological parents to refuse to have any contact with the adoptee. An adoptee's interest is usually concerned with knowing the identity of his biological parents and not about his inheritance rights.¹¹¹

As to whether or not the adopter's other relatives can inherit from the adopted and vice versa, the Civil Code and the Family Code are clear that there can be no such inheritance. Neither the adopted nor the adoptee has the right of representation in the law of succession.¹¹² This is still true under the Domestic Adoption Law. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.¹¹³ The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded.¹¹⁴

This right of representation does not exist in this instance because the relationship established by adoption is limited solely to the adopter and the adopted and does not extend to the relatives of the adopting parents or of the adopted child except those expressly provided for by law. Hence, no relationship is created between the adopted and the relatives of the adopting parents. As a consequence, the adopted is an heir of the adopter but not of the relatives of the adopter. The adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adoptee considered as descendants of the adopter. The relationship created is exclusively between the adopter and the adopted, and does not extend to the relatives either.¹¹⁵ In fact, the law provides in Section 18 that "the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation." By virtue of this provision, these rights only pertain to those existing and applicable solely between them in their relationship as parent and child since the adoptee is not related to the adopter's parent by blood or by legal fiction.¹¹⁶

111. Interview with Alicia Bonoan, Department of Social Welfare and Development, in Manila, Philippines (March 1, 2000).

112. *Mariategui v. Court of Appeals*, 204 SCRA 337.

113. Civil Code, art. 970.

114. *Id.* art. 971.

115. BALANE, *supra* note 57, at 379-380.

116. MELENCIO STA. MARIA JR., *PERSONS AND FAMILY RELATIONS LAW* 626-627 (3d ed. 1999).

V. CONCLUSION AND RECOMMENDATIONS

The evolution of laws concerning adoption has veered towards the trend of advancing the interests of the child. In all matters concerning the rearing and caring of these children, the paramount consideration should be the best interests of the child. Although the Domestic Adoption Act of 1998 presents significant changes to the Child and Youth Welfare Code and the Family Code, adoption laws are still far from perfect. The Legislature attempted to correct the deficiencies found in existing laws. Some of these were in fact corrected. However, with respect to the effects on succession, the Legislature seems to have overlooked certain issues on succession between the adopted and the biological parents and/or relatives by nature.

If the proponent's view were accepted, the following shall be the successional rights of the adopters and the adopted.

Successional Rights of the Adopter in case of Death of the Adopted

A. Compulsory Succession

Since the adopter and the adopted are considered compulsory heirs of each other, the Civil Code provisions on compulsory succession remain unchanged.

B. Intestate Succession

The provision on intestate succession under the Civil Code should remain. The relatives of the adopted as well as the legitimate children of the adopter will not be entitled to inherit from the adopted since adoption is created by fiction of law and establishes a relationship only between the adopter and the adopted.

Successional Rights of the Biological Parents/Blood Relatives

The biological parents/blood relatives of the adopted are not entitled to a legitime nor a share in the inheritance through legal or intestate succession. By relinquishing their rights over their child, the biological parents should be considered to have waived whatever right they may have over their child.

Successional Rights of the Adopted

The contemporary view of adoption emphasizes the welfare of the adopted child and the successful assimilation of the adopted child into the adoptive family. The adoptive family is regarded as the adopted child's legal family. As a result, all ties with the relinquishing natural bloodline, including inheritance rights, are severed.

In the interpretation of adoption laws, the paramount consideration is always the child's best interests. However, one should not confuse the child's best interests with the interests of the adopters, the biological parents, and the whole adoption process. The overall welfare of the child must be considered

not merely from a material point of view. The goal of adoption is to relieve the child from all unfavorable circumstances. The law will not be able to provide for all contingencies that may arise as a result of adoption. Hence, the law must provide for a general rule that all legal ties between the biological family and the adoptee are severed in line with the end of achieving a successful integration of the adopted child into the adoptive family. In cases where the adoptee continues to maintain close relationship with his biological family, the law has provided a solution in the form of testamentary succession.

It is hereby recommended that Section 18 of the Domestic Adoption Act of 1998 be amended to read as follows:

Sec. 18. *Succession.* — In compulsory and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. The adoptee shall not be a compulsory or intestate heir of his/her biological parents or other blood relatives save when the biological parent is the adopter's spouse. This is without prejudice to the right of the adoptee to dispose by will of the disposable portion of the estate as he may deem fit.