

THE QUERIDA: THE SURROGATE DIVORCE SYSTEM IN THE PHILIPPINES

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ADJUSTING AN IMPERFECT SYSTEM

If there were a perfect human system, some would refuse to support it or share its benefits. Persons who do participate in a system may be emotionally, mentally, or socially immature. Persons do change over time, and it is difficult to legislate regarding emotional behavior except to punish violators. Such generalizations apply to most human systems, including family systems, in any culture. Each culture contains socially sanctioned ways by which marriage bonds may be effectively broken. In the United States, marriages may be broken through annulment, separation, and divorce. When the marriage contract becomes insufferable, it may be broken with legal sanction and social approval.

What is the adjustment in a system that makes divorce absolutely illegal? In the Philippines, once a marriage is legally contracted, it can be dissolved only by the death of a spouse. There are four conditions defined by law as sufficient for the court to declare that the marriage never existed, and to allow an annulment. 1) If within four years of marriage it can be shown that force or coercion was a condition of the marriage (the Philippine term *pikot* equals the American phrase, "shot gun marriage). 2) If one party was previously married and the spouse were still living, the marriage is bigamous. 3) If the officiant at the wedding was not duly registered to perform it, there is no marriage. 4) If within eight years, one spouse becomes insane. Annulments are possible in the Philippines, but they are rare, because they are expensive and time consuming.

Legal separation is possible on three grounds: 1) proven cohabitation by the husband and a woman not his wife over a prolonged period; 2) one instance of adultery by the wife; 3) any attempted murder of one spouse by the other.

In legal separation, each spouse may take tangible property which he/she brought to the marriage. Property acquired after the marriage is deemed common property, and may be divided as the judge determines. It is usually awarded to the innocent spouse. The two will now live separately, and the marriage fades

into nonexistence, but they are still *legally* married to each other until the death of one.

Legal divorce does not exist. The Catholic Church has been dominant in the Philippines since the Spanish occupation, which began 400 years ago. The Catholic Church claims 85 percent of the population as communicants. The Church is adamant against divorce, and is the leading force against any movement to legalize it. There is considerable selfrighteousness among Philippine citizens when they make invidious comparisons of their divorceless society with the Western World, and especially with the United States, with its very high divorce rate.

COHABITATION

Social needs cannot be suppressed, ignored, or displaced by legal codes. To attain the desired end, ways are found to circumvent religious, legal, and cultural obstacles. So it is in the Philippine marriage and family system. The Filipino has two modes to attain the social effect of divorce while foregoing the legal status of divorce.

The first method is *avoidance of the marriage rite*. If marriage is indissoluble, then why get married? Cohabitation without formal marriage becomes the solution for many. The couple has the benefits of cohabitation without the legal responsibilities of marriage. Common law marriage is not recognized in the Philippine law code, so there are no permanent entanglements in cohabitation.

Living in is gaining popularity with those who feel disillusioned and stifled by the marriage institution. "Why go through the hassle of securing legal documents to prove that you are one with your mate?" comments an advocate of Live-Ins. "It's terrific to know that my man stays with me because he wants to, and not because he has to," says a liberated career woman (Reben-Yllana 1975 7).

There are two major problems with this alternative. 1) Due to the lack of legality and responsibility, there is little security for the woman or for the children which she may bear in this relation. Separation and breakup of the live-in tie is as simple as walking away.

2) There is no legitimacy for the children, and no way to force parents to provide for them. Some seek to avoid penalizing the faithful

paramour and her children by entering a "death-bed marriage" pact. When the man realizes that he is dying, he may summon a properly registered official of the court, usually a priest, to perform a wedding ceremony. The law allows this, providing that the officiant goes before a court and files the proper papers. Such a last minute wedding provides for a more equitable distribution of common property, and legitimizes the children, allowing them a full share in the inheritance.

The extent of live-in arrangements is not known. In July 1975 the Jaycees of Makati, an area of metropolitan Manila, held a free mass wedding with all of the amenities, plus valuable door prizes. There were 499 couples who participated. Alfredo Manga, 65, and his bride, Maria, 61 were wed after 8 children and 40 years of cohabitation. The oldest couple were a man named Balag and his bride, aged 75 and 68 years (Bulletin Today 1975). The following year, 1000 couples were united in such a mass wedding in Manila.

THE QUERIDA SYSTEM

Those who are already married are locked into a permanent, binding contract. What recourse do they have if the marital bond becomes an intolerable shackle? The people of the Philippines have developed a surrogate or substitution divorce system which functions as a divorce procedure with some legal sanction under another rubric. The *querida* system serves a social and biological need, despite religious and legal prohibitions. *Querida* is the feminine Spanish word for "loved one." The feminine form is typical because it is usually the man who abandons his wife to take a *querida*. The masculine form is *querido*.

The origin of the *querida* system is uncertain. A similar practice exists among the Muslim Moros in the Southern Philippines. But Muslim law permits both multiple marriage and divorce, so the system is not analogous. The Spanish Friars, who were both political and religious leaders during the long Spanish domination were not allowed to marry. This religious prohibition did not keep them from sexual liaisons with mates whom they called their *queridas*. Children of these non-marital unions were *mestizos*, or "half-and-halves." This set the precedent.

Today the *querida* system is practiced by

all social classes. At the higher social levels, having a *querida*, though not encouraged, is socially accepted. At the lower social levels, there are mixed feelings regarding a man with a *querida*. Such a differential in attitude by social class is not unusual. A student gave an expression common in his barrio about a prominent man who had a *querida*: "It's all right. He is rich, and can afford it." The *querida* system is often used by men whose work frequently takes them away from home, such as mariners, brokers, salesmen, judges, and itinerant workers. One respondent cited a judge with a three-city circuit having a wife in one city and a *querida* in each of the other two.

SOURCE MATERIALS

The author taught three sections of a university course called "Sociology of Marriage and the Family" at Silliman University in Dumaguete City of the Philippines, in 1975-1976. The students, mainly sophomores and juniors, did a term research project on marital relations resulting in 100 term papers, and provided information through structured interviews.

Students varied by sex on their assessment of the *querida* system. Men students offered six primary reasons for the *querida*:

- 1) Wife cannot bear a child.
- 2) Man receives prestige from peers.
- 3) Sex life with wife is unsatisfactory.
- 4) Reaction to forced marriage.
- 5) Wife neglects personal hygiene & looks.
- 6) Desire for younger woman.

The older man's selection of a *querida* is explained by a Philippine aphorism, "An old carabao likes tender grass." The most commonly cited cause by the men students was to prove "machismo" or manliness. The Philippine housewife manages the household and controls the money, so that there is little avenue for the married man to assert machismo in his legitimate family.

Women students listed 13 dominant reasons for the *querida*.

- 1) Money. The *querida* is often well-paid.
- 2) Sex.
- 3) Nagging wife at home.
- 4) Suspicious or distrustful wife.

- 5) An uncaring wife.
- 6) Search for assurance & acceptance.
- 7) Lack of fulfillment in marriage.
- 8) Long separation due to work.
- 9) Barren wife.
- 10) Absence of sharing in marriage.
- 11) Jealous wife.
- 12) Too young at original marriage.
- 13) Too much parental influence at original marriage.

The most common "cause" which the women students listed was: "Because he is a man." Many assume that man is polygamously by nature (Liu 1971).

QUERIDA PROBLEMS

Five major problems result from the Philippine surrogate divorce system, and these problems are strikingly similar to those where divorce is legal, and some are intensified because this is a quasi divorce system with minimal legal recognition.

1) There is a serious threat to family unity. Much of the family income is spent on the querida. The wife is hurt, but helpless. The average wife is left with the care of 6 children. The social *mos* requires that she fulfill the responsibilities of home management. Often she is unskilled, and fit only for the most menial tasks. There is little chance of rebuilding a satisfying relation with her husband. The querida system often produces a broken home.

2) Children in the home lose respect for both parents. A woman student related her emotional trauma on learning, as a college sophomore, that her father had sired a child by his querida, a girl of her own age. She found it hard to accept her father's behavior, or ever again to trust him. Shame and embarrassment are common results for children, who are taunted by their peers about their parents' behavior. This produces a strong emotional stress, because a child is taught the social value of absolute duty to parents from a very early age.

3) When a man takes a querida it soon becomes common knowledge. All ramifications of the situation, real and imagined, are explored in the neighborhood gossip chain. Women gather at the local convenience store and the laundering place to share the scandal.

The querida and the affected families are discussed openly and thoroughly in the most frank terminology. This verbal dissection makes life for the injured wife and children much more stressful.

4) The only recourse for the injured party is to await the death of the errant mate. Contracting a new marriage before such death is illegal, and lays one open to the charge of bigamy. The wife left at home is bound to a marriage that no longer exists, tied to a mate who no longer cares about her, and denied a real marital relation for herself.

5) Other effects, less frequently cited, were: spread of venereal disease; prejudicing girls against men, and causing them to hate and distrust men as they do their fathers; and murder, which may be sought to free the desperate wife.

STUDENT ATTITUDES

Regarding the taking of a querida, students tended to apply very pejorative terminology. Synonyms for the querida were: bitch, husband stealer, home breaker, flirt, kept woman, whore, and gold-digger. No student used complimentary terms for the querida. A male student cited the saying: "Bed now; cry later." A vehement woman senior said: "Whatever this querida business is all about, I'd be damned if I won't leave my husband the minute I'd know he is having a swinging affair or relationship of any kind with any woman in any situation. To be taken for a fool is one thing I cannot stand."

LEGAL PROVISIONS

Although divorce is not legal and children born of querida liaisons are considered bastards, the law still recognizes the social fact of the presence of such children. The law also recognizes that where privileges exist, there must be corresponding responsibilities. The Legal Civil Code of the Philippines of 1950 specifies three status groups of children.

1) Legitimate children. These are children whose parents are legally married to each other.

2) Natural illegitimate children. These are children whose parents are eligible to be married, but are not yet legally married. These

are the offspring of live-in arrangements. These children acquire the status of legitimacy when the parents are married, even as adults, when their parents enter the "death-bed" marriage. By recognizing this status group, the Legal Code tends to legitimize common-law marriages.

3) Spurious illegitimate children. These are children of parents who could not legitimately marry because of the previous marriage of one or both. Children of a man by his *querida* fit this category.

These three status groups of children were defined in the Legal Code for the express purpose of defining inheritance rights. The live-in mate and the *querida* do not have inheritance rights, but their children do. When a man dies, one half of his property goes to his legal spouse; the other half goes to his children to be shared as follows: Each surviving legitimate child receives one full share; each natural illegitimate child receives one half of a full share; each spurious illegitimate child receives three eighths of a full share. Thus the law recognizes the social realities of extramarital and premarital relations, and provides a degree of justice in the distribution of inherited wealth to the children.

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