STATE-SPONSORED ORPHANING AND WIDOWING: ARGUMENTS AGAINST THE CONSTITUTIONALITY OF THE DEATH PENALTY FOR PARRICIDE*

*Theodore Te***

(Introductory Notes : The death penalty in the Philippines was restored by Republic Act No. 7659 pursuant to the exceptional provision in Article III, section 19 (1) of the 1987 Constitution.[1] The statute provided for twelve offenses punishable by death. Parricide, which was previously punished under Article 246 of the Revised Penal Code with reclusion perpetua to death, was among those crimes defined by Congress as heinous and for which the death penalty was restored.[2]

Mr. Pedro Villaespin Malabago, a 43 year old farmer from Dipolog City, was among the very first to be convicted and sentenced to death under Republic Act No. 7659; he is the first to be sentenced to

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*Adapted from the "Memorandum" submitted by the Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force in G.R. No. 115686 entitled "People of the Philippines v. Pedro V. Malabago"; automatic review proceedings before the Supreme Court from the death sentence imposed by the Regional Trial Court of Dipolog City, Branch 10 for parricide.

**Ll.B., Univ. of the Phil. (1990); Vice-Chair, Student Editorial Board, Philippine Law Journal (1988-1989), Member, FREE LEGAL ASSISTANCE GROUP (FLAG), Senior Associate, SANCHEZ ROSALES SANIDAD & ABAYA LAW FIRM. Atty. Te is a member of the FLAG Anti-Death Penalty Task Force and is the counsel of record of Mr. Pedro V. Malabago; he argued before the Supreme Court *En Banc* on September 3, 1996 against the constitutionality of Republic Act No. 7659 insofar as it restores the death penalty for parricide.

[1]The provision reads: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*."

[2]Rep. Act No. 7659 (1994), sec. 5.

death for parricide.[3] *His appeal, on automatic review before the Supreme Court, is the first to raise the constitutionality of the death penalty for parricide.)*

The fundamental premise underlying these arguments is that death, *as a penalty for parricide,* was *abolished* upon the ratification of the 1987 Constitution and *not merely prohibited* as an imposable penalty.[4] As a result of the abolition of the death penalty for parricide, the various provisions of the Revised Penal Code relating to the penalty for death became immediately *functus oficio*; for instance, Article 63 of the Revised Penal Code governing the application of *indivisible penalties* became *functus oficio* insofar as death, as an indivisible penalty, is concerned. The intent to abolish the death penalty upon ratification of the 1987 Constitution is clearly expressed in the deliberations of the Constitutional Commission of 1986.[5] Moreover, it also finds support in the last line of Article III, section 19 (1), which provides that "(a)ny death penalty already imposed shall be *reduced to reclusion perpetua*" thereby clearly recognizing that while

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[3]RTC (Dipolog City, Br. 10), Crim. Case No. 6598, May 12, 1994.

[4]Mr. Malabago submitted that it becomes necessary for the Supreme Court to revisit its ruling in People v. Munoz, 170 SCRA 107 (1989), to the effect that the death penalty was not abolished under the 1987 Constitution but was only prohibited from being imposed; his submission is based on: (1) the change in the Court's composition; and (2) the fact that *Munoz* was decided five (5) years ago, in the absence of a statute which provided for the reimposition of the death penalty, such as Republic Act No. 7659.

Of the original *Munoz* Court composed of Fernan, *CJ.*, Narvasa, Melencio-Herrera, Gutierrez Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea and Regalado, *JJ.*, only Narvasa (now), *CJ.* and Padilla and Regalado, *JJ.* remain. Of the original 9-6 split in *Munoz* (Fernan, *CJ*, Gutierrez Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Grino-Aquino and Medialdea, *JJ.* as opposed to Narvasa, Melencio-Herrera, Paras, Sarmiento, Cortes and Regalado, *JJ.*), only Padilla, *J.* is left in the erstwhile majority while Narvasa, *CJ.* and Regalado, *J.* are left of the erstwhile minority. Considering the import of the constitutional question involved (the constitutional abolition of the death pe.. ty) and the effects of such a question on the appellant's fate, the 1-2 count of the remaining members of those who decided *Munoz* warrant a revisit of *Munoz* with the end in view of adopting the dissent of Madame Justice Melencio-Herrera as the correct interpretation of Article III, section 19 (1)'s effects on the death penalty.

[5]*See* 1 CONCOM RECORDS 676, 747-749.

the effects of a conviction for a capital crime may stand, death, as a penalty, no longer exists.

Starting from constitutional abolition of capital punishment as a premise is significant because restoration thereof now becomes only an exception to the general rule; and, having been enacted pursuant to an exception, RA 7659 enjoys *no presumption of constitutionality* and must always be construed strictly against the State, which claims the exception.[6]

This treatment has been extended by the Supreme Court in cases involving fundamental freedoms and rights, such as freedom against unreasonable searches and seizures[7] and freedom of speech, press and assembly.[8] In *People v. Burgos*[9], the Supreme Court stood by an accused's constitutional right to be free from unreasonable searches and seizures under Article III, section 2 when it ruled that

> "The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. *The statute or rule which allows exception to the requirement of warrants of arrest is strictly construed.* Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. *We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.*[10] (italics supplied)

In *Reyes v. Bagatsing*,[11] the Court upheld the freedom of speech and assembly by enunciating the "Clear and Present Danger" test and restricted State regulation of these rights and freedoms to instances

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[6]People v. Burgos, G.R. No. 68955, September 4, 1986, 144 SCRA 1 (1986).
[7]CONST., art. III, sec. 2.
[8]CONST., art. III, sec. 4.
[9]*Supra* note 6.
[10]*Id.* at 14.
[11]G.R. No. 65366, November 9, 1983, 125 S.C.R.A. 553 (1983).

where there is a "clear and present danger of a substantive evil that (the State) has a right to prevent."

Where RA 7659 seeks to impair the right to life,[12] the same -- or, if at all possible, a more -- stringent standard of constitutional scrutiny and protection is justified.

Thus, for RA 7659 to survive constitutional scrutiny, it must, on its face, show that: (a) parricide is a heinous crime, and (b) that compelling reasons involving parricide exist; it must also, in its application, not violate all other constitutional norms of general application which implement the general rule against State-sponsored life-taking, such as due process and equal protection,[13] the prohibition against "cruel, degrading and inhuman" punishment,[14] and the prohibition against torture.[15]

Republic Act No. 7659, insofar as it imposes the death penalty on parricide, is an UNREASONABLE and UNCONSTITUTIONAL IMPAIRMENT OF THE RIGHT TO LIFE because: (a) it provides for no objective standards for a trial judge to determine when parricide is heinous and what compelling reasons exist to justify death for parricide and allows life-taking in an arbitrary manner inconsistent with Article III, section 1; (b) it fails to satisfy the standards in Article III, section 19 (1) that the crime should be heinous and compelling reasons should exist involving said heinous crime; (c) it is cruel, degrading and inhuman punishment violative of the general prohibition in Article III, section 19 (1); (d) it violates the State mandate to strengthen and protect the family as a basic autonomous social institution under Article II, section 12 and (e) it is discriminatory against the poor and powerless, in violation of Article III, section 1.

R.A. 7659 FAILS TO PROVIDE OBJECTIVE STANDARDS TO GUIDE JUDICIAL DISCRETION IN IMPOSING THE DEATH PENALTY, THUS

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[12]CONST., art. III, sec. 1.
[13]CONST., art. III, sec. 1.
[14]CONST., art. III, sec. 19, par (1).
[15]CONST., art. III, sec. 12.

RESULTING IN AN UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY AND THE IMPOSITION OF THE DEATH PENALTY IN AN ARBITARY MANNER IN VIOLATION OF DUE PROCESS.

Parricide is punished with *reclusion perpetua* to death, both of which are indivisible penalties. RA 7659, however, fails to provide any objective standards to guide the exercise of judicial discretion in determining when to impose the lower penalty of *reclusion perpetua* and when to impose the supreme penalty of death. Concretely, the law does not state the instances when parricide is considered a heinous crime and what are compelling reasons involving parricide to justify the judge in imposing the penalty of death instead of reclusion perpetua. RA 7659 leaves the determination of these matters solely to the trial judge's discretion; worse, it does so without providing for concrete and objective standards to guide judicial discretion.

Essentially, RA 7659 gives the trial judge free rein to define, in each particular instance, when parricide would be heinous and when there are compelling reasons to impose death but *without any objective standards to guide this discretion.*

The absence of objective standards to guide trial judges in the exercise of their discretion to impose death for parricide leaves the imposition of the death penalty to each trial judge's own subjective - and, thus, arbitrary - appreciation of the heinousness of parricide and the existence of compelling reasons to justify the death penalty.

Mr. Malabago's case is in point. The penalty of death imposed on him was based on the trial judge's appreciation of the existence of aggravating circumstances[16] not offset by mitigating circumstances,[17] thereby leading him to impose the maximum penalty provided by RA 7659. The trial judge's determination was that the parricide committed was heinous and there were compelling reasons to impose death because the element of treachery, not offset by voluntary surrender, was present. The penalty of death imposed by the trial judge on Mr.

[16]The trial judge appreciated treachery to be present.

[17]The trial judge refused to appreciate voluntary surrender in Mr. Malabago's favor.

Malabago was based solely on the former's mechanical application of Article 63 of the Revised Penal Code, which gives the following rules :

> "Art. 63. Rules for the application of indivisible penalties. -
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> 1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
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> 2. When there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied.
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> 3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
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> 4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation."

Assuming *ex gratia argumenti* that Article 63 applies,[18] the rules therein are not expressly stated in the law as standards for determining whether parricide is a heinous crime and whether or not compelling reasons involving parricide exist. *RA 7659 does not provide that parricide becomes a heinous crime if aggravating circumstances in Article 14 of the Revised Penal Code are present and not offset by any of the mitigating circumstances in Article 13 of the Revised Penal Code; neither does it state that, in such an instance, there are compelling reasons to impose the penalty of death for the offender.* Moreover, *RA 7659 does not also provide that the aggravating circumstances in Article 14 are, in fact, the standards of heinousness required by the Constitution; neither does the statute provide which among the 21 aggravating circumstances -- not all of which are applicable to parricide -- suffice to make parricide a heinous crime.*

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[18]This article was, however, not restated in RA 7659 when it put back in the statute books the penalty of death; consequently, the rules provided therein, which became *functus oficio* when the death penalty was abolished in 1987, cannot be applied unless expressly restored by law.

The effect of RA 7659 is to leave all trial judges speculating on the elements of heinousness and the existence of compelling reasons insofar as parricide is concerned. It is that speculation which renders the exercise of judicial discretion arbitrary and the death penalty for parricide, based on such speculative and arbitrary exercise of discretion, unconstitutional.

Life cannot be taken unless it is done pursuant to due process; no law which presumes to take life is valid if it offends due process. Due process contemplates *reasonableness and absence of arbitrariness.* In *Ermita-Malate Hotel and Motel Operators Association Inc. v. City Mayor of Manila,*[19] the Supreme Court stated that:

> "(T)here is no controlling and precise definition of due process. *It furnishes though a standard to which the governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case be valid.* What then is the standard of due process which must exist both as a procedural and substantive requisite to free the challenged ordinance, or any governmental action for that matter, from the imputation of legal infirmity sufficient to spell its doom? It is *responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action,* to paraphrase Cardozo, *must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness.* Correctly, it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness and political thought.' It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances,' decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society.' Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases."[20] (italics supplied)

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[19]G.R. No. 24693, July 31, 1967, 20 S.C.R.A. 849 (1967).

[20]*Id.*, at 860-861.

The arbitrariness of RA 7659 insofar as parricide is concerned offends due process and precludes a valid taking of life; the unguided discretion also violates the prohibition against undue delegation of legislative power. The United States Supreme Court, which has a long and rich history of death statutes, has voided statutes which allow too wide a discretion on the grounds that the exercise of such unguided discretion leads to arbitrariness.[21] The Philippine Supreme Court has itself disallowed statutes which allow unfettered discretion and arbitrariness either due to incompleteness or lack of standards;[22] in the same manner, RA 7659 must be voided for being an unreasonable and arbitrary impairment of the right to life.

RA 7659 FAILS TO SATISFY THE CONSTITUTIONAL STANDARDS IN ARTICLE III, SECTION 19 (1) OF THE 1987 CONSTITUTION.

The Constitution is explicit and unequivocal; for the death penalty to be validly reimposed for parricide, it must be shown that parricide is a heinous crime and that there are compelling reasons involving parricide to justify the reimposition.[23] RA 7659 fails on both counts.

THERE ARE NO COMPELLING REASONS TO JUSTIFY THE RE- IMPOSITION OF THE DEATH PENALTY FOR THE OFFENSE OF PARRICIDE.

The reasons given by Congress to justify the reimposition of the death penalty are those stated in the third and fourth preambular paragraphs of RA 7659, *i.e.*,

> "(D)ue to the alarming upsurge of (heinous) crimes which has resulted not only in the loss of human lives and wanton destruction of property but has also affected the nation's efforts towards sustainable economic development and prosperity while at the same time has undermined the people's faith in the

[21]Green v. Georgia, 442 U.S. 95 (1979).

[22]United States v. Ang Tang Ho, 43 Phil. 1 (1922); People v. Vera, 65 Phil. 56 (1937).

[23]CONST., art. III, sec. 19, par. (1).

> **government and the latter's ability to maintain peace and order in the country;**
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> **x x x**
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> **the Congress, in the interest of justice, public order and the rule of law and the need to rationalize and harmonize the penal sanctions for heinous crimes, finds compelling reasons to impose the death penalty for said crimes;"**

RA 7659 does not specify the reasons for each and every offense set forth in the law; it merely states generally the compelling reasons involving these offenses in the preambular paragraphs and makes these reasons apply to each and every offense defined in the law. This being the case, *the test of "compelling reasons" for the crime of parricide involves a determination of the sufficiency of each of these reasons to justify the impairment of the right to life.*

No alarming upsurge of parricide cases

The first reason given is "the alarming upsurge" of parricide cases. Contrary to what RA 7659 states, there has been no such upsurge. The Congressional record is bereft of any empirical data to show that after abolition of the death penalty in 1987 until 1993, when the death statute was under consideration, incidence of parricide increased dramatically such as would present compelling reasons to impose the death penalty. On the other hand, from 1976 to 1986, parricide cases on automatic review before the Supreme Court represented only 2.8% of the total case load of death cases on review[24]; from 1991 to 1994, only 27 cases involving parricide were decided by the Court. Since the reimposition of the death penalty, only four (4) people have been sentenced to death for parricide, representing only 2.42% of 165 death row convicts as of August 21, 1996.[25] The empirical data will show that, for the relevant period under consideration, there

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[24]Unpublished monograph by the FREE LEGAL ASSISTANCE GROUP (FLAG) dated August 10, 1994.

[25]Profile of 165 Death Row Convicts (unpublished monograph by the FREE LEGAL ASSISTANCE GROUP [FLAG] based on information gathered by the Association for the Abolition of the Death Penalty) dated August 21, 1996 ("DRC Profile").

was no upsurge - let alone "alarming upsurge" - of parricide cases as would justify the reimposition of the death penalty.

The reliance on the "alarming upsurge" of parricide cases betrays a deterrence viewpoint, which is, however, largely inconclusive for crimes in general[26] and for parricide, in particular. As has been shown, there has neither been an "alarming upsurge" of parricide cases such as would constitute a compelling reason for Congress to reimpose the death penalty nor a conclusive showing that the death penalty has had a unique deterrent effect on the crime of parricide. Plainly, reimposing the death penalty for parricide is based on a speculative hope that the penalty may deter the commission of parricide; as between speculation and the actual destruction and dismemberment of the family that death for parricide will cause, the reimposition of the death penalty for parricide is clearly unjustified.

Retribution inconsistent with State policy to guarantee human dignity

The second reason given is "loss of lives and wanton destruction of property" resulting from parricide. This reason, which smacks of retributive justice or State vengeance, cannot be considered "compelling" because it violates State policies set forth in the 1987 Constitution. Verily, no valid State policy can be built around retribution because of these State policies; with more reason, a State policy which seeks to impair the right to life.

A policy of State vengeance is incompatible with the Constitutional mandate in Article II, section 11 to value the convict's human dignity and guarantee full respect for his human rights as well as the mandate in Article II, section 12 to protect and strengthen the family as a basic autonomous social institution. It is also incompatible with the ideology behind the State policy in Article II, section 12 which recognizes that the family is not a creation of the State as it is

[26] 1 CONCOM RECORDS 676.

anterior to the State;[27] no righteous retribution may thus be claimed by the State for the death of a family member especially where such retribution results in the destruction of yet other lives -- that of the convict and that of his family.

The South African Constitutional Court had occasion to rule recently on the constitutionality of the death penalty in South Africa; in ruling against retribution as a justification for the death penalty, it stated thus:

> "Retribution is one of the objects of punishment, but it carries less weight than deterrence. The righteous anger of family and friends of the murder victim, reinforced by the public abhorrence of vile crimes, is easily translated into a call for vengeance. But *capital punishment is not the only way that society has of expressing its moral outrage at the crime that has been committed. We have long outgrown the literal application of the biblical injunction of "an eye for an eye, and a tooth for a tooth." Punishment must to some extent be commensurate with the offense, but there is no requirement that it be equivalent or identical to it. The State does not put out the eyes of a person who has blinded another in a vicious assault, nor does it punish a rapist, by castrating him and submitting him to the utmost humiliation in goal.* The State does not need to engage in the cold and calculated killing of murderers in order to express moral outrage at their conduct. A very long prison sentence is also a way of expressing outrage and visiting retribution upon the criminal."[28] (italics supplied)

Retribution is, moreover, incompatible with the spirit and text of a manifestly pro-life and pro-human rights Constitution which boasts of unprecedented provisions such as the absolute ban on torture,[29] the protection given to the mother and the unborn from the moment of conception,[30] and the ban on nuclear weapons within Philippine territory,[31] all of which aim to protect fundamental human rights. In the face of such State policies which emphasize

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[27] 2 J. BERNAS, SJ, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES (1987 Ed.) at 48.

[28] The State vs. T Makwanyane and M Mchunu, Case No. CCT/3/94, June 6, 1995 at Par. 129.

[29] CONST., art. III, sec. 12, par. (2).

[30] CONST., art. II, sec. 12.

[31] CONST., art. II, sec. 8.

the primacy of the right to life - both collective and individual - retribution cannot be given undue weight in the balancing process.

Economic development and restoration of faith in government not compelling reasons

The third and fourth reasons given by the statute, economic development and restoration of faith in government, similarly do not justify the death penalty for parricide. These are not penal ends and cannot be considered the compelling reasons contemplated by the framers of the Constitution to justify the reimposition of the penalty of death.

Moreover, there is no causal connection shown between parricide and adverse effects on economic development as well as faith in government; similarly, there is no connection whatsoever between the death penalty and economic development and restoration of faith in government, especially for the crime of parricide.

Finally, there are more effective methods of forestalling adverse effects on economic development arising from criminality as there are more enlightened methods of restoring faith in government than a policy of State-sponsored cold-blooded murder.

State recognizes that death penalty is unnecessary

Strangely enough, the State, in enacting RA 7659, itself recognizes that death is not necessary for parricide as with 27 other offenses which it punishes with a range of penalties from *reclusion perpetua* to death.

The law itself recognizes that death is unnecessary to achieve the penal ends insofar as parricide is concerned because *reclusion perpetua* will suffice in certain instances, which it however does not define.[32] The recognition that *reclusion perpetua* may achieve the

[32]The same goes for the 27 other offenses RA 7659 punishes with a range, the four (4) offenses where a penalty other than death or *reclusion perpetua* is

penal ends of RA 7659, insofar as parricide is concerned, *belies the existence of compelling reasons* involving parricide, and makes the death penalty for parricide a pointless infliction of suffering as there exists a less brutal alternative punishment adequate to achieve the purposes for which the punishment is inflicted.[33]

THERE IS NO FUNDAMENTAL CHANGE IN THE ELEMENTS OF PARRICIDE, AS WOULD JUSTIFY ITS BEING CLASSIFIED AS A HEINOUS CRIME.

Prior to the abolition of the death penalty for parricide, the offense was already punished by *reclusion perpetua* to death under Article 246 of the Revised Penal Code. The elements of parricide under Article 246 of the Revised Penal Code, prior to the 1987 Constitution, are exactly the same as the elements of parricide under RA 7659, with the latter merely placing back in the statute books the death penalty, *viz*:

> "Art. 246. *Parricide*. -- Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendant, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death."

The State, in enacting RA 7659, therefore, admits that the nature of parricide as well as the means by which it is committed remains unchanged from February 1987 until the passage of RA 7659 in December 1993. It was not considered heinous in 1987 and was still not heinous in 1993, at the time RA 7659 was under consideration; the mere reiteration of the exact provision of Article 246 in section 5 of RA 7659 indicates that it is exactly the same pre-1987 offense of parricide which is being penalized with death under RA 7659 and does not, by that simple fiat, make it heinous.

For this reason, the inclusion of parricide as a heinous crime under RA 7659 must be tested against the intent of the Constitutional

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provided, and the two (2) offenses where only *reclusion perpetua* is provided. It must be stressed that in only 17 of 51 offenses is death solely mandated.

[33]Furman v. Georgia, 408 U.S. 279; 33 L. Ed. 2d 346; 92 S. Ct. 2726 (1972).

Commission, in inserting the exception to the abolition of the death penalty; this intent was to ensure that the death penalty could only be reimposed for crimes vastly different from those already existing in 1986. Thus, the reimposition of death for parricide required that the nature of and manner by which parricide is committed must have fundamentally changed.[34] Absent these fundamental changes in the nature of and manner by which parricide is committed -- which RA 7659 concedes -- it cannot be considered a heinous crime in contemplation of Article III, section 19 (1) and does not warrant inclusion in RA 7659.

THE DEATH PENALTY FOR PARRICIDE IS A CRUEL, DEGRADING AND INHUMAN PUNISHMENT.

RA 7659 imposes a penalty that is not only unnecessary but also destructive of human dignity. For these reasons, the penalty of death for parricide constitutes "cruel, degrading and inhuman" punishment.

RA 7659 recognizes that death penalty unnecessary

The recognition in RA 7659 that *reclusion perpetua* may suffice to achieve its penal ends insofar as parricide is concerned and the implication that death is unnecessary for parricide makes the death penalty for parricide an *excessive and unnecessary punishment* and, thus, a "cruel, degrading and inhuman punishment" violative of Article III, section 19 (1) of the 1987 Constitution.

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[34]*See* 1 CONCOM RECORDS at 743 where Commissioner Christian Monsod, the proponent of the proviso, explained the purpose thereof in these words:

> ". . . in the contemporary society, we recognize the sacredness of human life and . . . it is only God who gives and takes life. However, the voice of the people is also the voice of God, and we cannot presume to have the wisdom of the ages. Therefore, it is entirely possible in the future that circumstances may arise which we should not preclude today. We know that this is a very difficult question... However, in the future we should allow the National Assembly, in its wisdom and as representatives of the people, to still impose the death penalty for the common good, in specific cases."

The Supreme Court, relying on American tests, has held that the "cruel and unusual punishment" clause prohibits only those which are "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community"[35] it has also impliedly held that the test for determining whether punishment is "cruel, degrading and inhuman" under the 1987 Constitution is the same test for determining whether punishment is "cruel and unusual" under the 1973 Constitution.[36]

The United States Supreme Court, from whom the test originated and evolved, has held in *Coker v. Georgia*[37] that a punishment is "excessive and unconstitutional" if it: "(1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering, or (2) is grossly out of proportion to the severity of the crime" and that a statute may fail the test for either reason.

Despite the difference in phraseology of the prohibition in the 1987 and 1973 Constitution, "cruel, degrading and inhuman" as opposed to "cruel and unusual", the test of prohibited punishment has remained the same : *if it is excessive, unnecessary or disproportionate, it is prohibited and unconstitutional.*

RA 7659 itself recognizes that death is unnecessary for parricide by allowing the trial court to impose, in its discretion, a lower penalty; evidently, RA 7659 fails the standard of necessity required by the general rule on punishments under the 1987 Constitution and is, thus, a "cruel, degrading and inhuman" punishment.

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[35]People v. Estoista, 93 Phil. 655 (1953), People v. Dionisio, G.R. No. 25513, March 27, 1968, 22 S.C.R.A. 1301 (1968), People v. Dacuycuy, G.R. No. 45127, May 5, 1989, 173 S.C.R.A. 90 (1989), Baylosis v. Chavez, G.R. No. 95136, October 3, 1991, 202 S.C.R.A. 417 (1991), and Agbanlog v. People, G.R. No. 105907, May 24, 1993, 222 S.C.R.A. 537 (1993).

[36]Agbanlog v. People, G.R. No. 105907, May 24, 1993, 222 S.C.R.A. 530 (1993).

[37]433 U.S. 584, 97 S. Ct. 2861 (1977).

Death penalty violates human dignity

Above all else, "(t)he State values the dignity of every human person and guarantees full respect for human rights."[38] This Constitutional command reflects a recognition by the State of the primacy and inalienability of human rights and human dignity.

The value accorded human dignity and humanity and the proscription against inflicting "cruel, degrading and inhuman" punishment are closely related as "(t)he basic concept underlying the (prohibition) is nothing less than the dignity of man. While the State has the power to punish, the (prohibition) stands to assure that this power be exercised within the limits of civilized standards."[39] RA 7659, which inflicts the only punishment so severe as to totally erode human dignity,[40] is unconstitutional for violating Article III, section 11 of the 1987 Constitution.

A person sentenced to die is stripped of his dignity and humanity because the official sanction given by the State to his killing demonstrates the latter's view that he is unworthy to be considered a human being, below human dignity and thus outside the Constitutional mandate to value human dignity and guarantee full respect for human rights.

More than the pain inherent in the penalty, the true significance of the death penalty lies in the State's treatment of those persons sentenced to die as non-humans, a treatment which is fundamentally irreconcilable with the essence of Article II, section 11 that "even the vilest criminal remains a human being possessed of common human dignity."[41] In *District Attorney for the Suffolk District v. Watson and Others,*[42]

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[38]CONST., art. II, sec. 11.
[39] Furman v. Georgia, 408 U.S. 270 (1972).
[40]*Id.*, at 271.
[41]*Id.*, at 273.
[42]381 Mass. 648 (1980).

> "The ordeals of the condemned are inherent and inevitable in any system that informs the condemned person of his sentence and provides for a gap between sentence and execution. Whatever one believes about the cruelty of the death penalty itself, this violence done the prisoner's mind must afflict the conscience of the enlightened government and give the civilized heart no rest... The condemned must confront this primal terror directly, and in the most demeaning circumstances. A condemned man knows, subject to the possibility of successful appeal or commutation, the time and manner of his death. His thoughts about death must necessarily be focused more precisely than other people's. He must wait for a specific death, not merely expect death in the abstract. Apart from cases of suicide or terminal illness, this certainly is unique to those who are sentenced to death. *The State puts the question of death to the condemned person, and he must grapple with it without the consolation that he will die naturally or with his humanity intact. A condemned person experiences extreme form of debasement... The death sentence itself is a declaration that society deems the prisoner a nullity, less than human and unworthy to live. But that negation of his personality carries through the entire period between sentence and execution.*" (italics supplied)

Death is also the only penalty which degrades and dehumanizes the person sentenced to die because its devastating and dehumanizing effects are mirrored by his family -- from the extreme anxiety at the prospect of irrevocable loss of a family member or friend, the unbearable despair felt during the interminably long period of waiting for the execution, the final, fleeting agonizing moments of hope to the realization that a family member is lost forever. These dehumanizing effects of death as a penalty were expressly recognized by Fr. Joaquin Bernas, SJ, when he reminded that "(t)he reason for the constitutional abolition of the death penalty is that (it) is inhuman for the convict and his family who are traumatized, even if it is never carried out."[43]

In *People v. Anderson*,[44] Chief Justice Wright stated that :

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[43]1 CONCOM RECORDS 676.

[44]493 P. 2d 880 (1972).

> "The cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out. *Penologists and medical experts agree that the process of carrying out a verdict of death is often so degrading and brutalizing to the human spirit as to constitute psychological torture.*" (italics supplied)

The cruelty and inhumanity of death, as a penalty, is however uniquely felt in parricide. Not only are its cruel and degrading effects felt by the individual, it is inflicted also on his family, which after his killing, is dismembered and destroyed by the very same State which is mandated to protect and strengthen it. In the appellant's case, the cruelty lies not only in the State's treatment of him as unworthy of human dignity and the protection of Article II, section 11 but also in the State's cavalier treatment of his family as undeserving of the "sanctity" and the protection guaranteed by Article II, section 12.

THE IMPOSITION OF THE DEATH PENALTY FOR THE OFFENSE OF PARRICIDE VIOLATES THE STATE POLICY CONTAINED IN ARTICLE II, SECTION 12 OF THE 1987 CONSTITUTION.

The infliction of the death penalty necessarily results in a widowed spouse or an orphaned child. This process of State-sanctioned widowing and orphaning, however, assumes a more significant constitutional dimension where parricide is involved because of the constitutional mandate, enshrined as State policy, in Article II, section 12 to recognize the sanctity of family life and *protect and strengthen the family as a basic autonomous social institution.* The purpose of the provision, as explained by Fr. Joaquin Bernas, SJ, was to formalize the adoption of an ideology first enunciated in the 1971 Constitutional Commission which recognized the family as the basic social institution; positively, it enjoins the State to strengthen the family, negatively, it prohibits the State from adopting measures which can impair the solidarity of the Filipino family.[45]

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[45] 2 J. BERNAS, SJ, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES (1987 Ed.) at 47.

Consequently, this State policy precludes the imposition of the death penalty for parricide because it will necessarily and inevitably dismember and destroy the family, which the Constitution compels the State to protect and strengthen. It is not enough, therefore, for the State to say, as it does in RA 7659, that compelling reasons involving the heinous crime of parricide exist to justify the reimposition of the death penalty; these compelling reasons must be shown to be of an extremely exceptional nature to justify the derogation of Article II, section[12]. In this regard, there does not -- and cannot -- exist compelling reasons - and RA 7659 fails to state any - to justify the derogation of the State mandate to protect and strengthen family life by reimposing the death penalty for parricide.

The argument that it was the offender who caused the destruction of his family, in the first place, is unavailing because the mandate to protect and strengthen the family is reposed on the State. Thus, State-sponsored life-taking, where it results in the dissolution and dismemberment of a family, is inconsistent with and violative of the State policy in Article II, section 12, which must be read into Article III, section 19 (1) insofar as State-sponsored life-taking is concerned. The 1987 Constitution concerns itself with life-taking by the State and not by life-taking by an individual, which is addressed by the Revised Penal Code.

THE DEATH PENALTY IS DISCRIMINATORY IN ITS EFFECTS AND APPLICATION IN VIOLATION OF THE EQUAL PROTECTION GUARANTEE.

The appellant is a 43 year old farmer, with no education and no fixed source of income. He is the father of three (3) minor sons and was, until his incarceration, the sole breadwinner of his family. He does not speak or understand English or Tagalog and speaks and understands only Cebuano. His arraignment and trial were conducted purely in English and was marked by judicial misconduct and bias so patent and palpable. He was sentenced to death after only two (2) months of trial.

The appellant's situation is disturbingly typical of those who have been sentenced to death since the reimposition of the penalty in 1994. A profile of 165 death row convicts under RA 7659 shows that the death penalty has discriminated against the poor and powerless since its reimposition in 1994:

> (1) Since the reimposition of the death penalty, 186 persons have been sentenced to death. At the end of 1994, there were 24 death penalty convicts, at the end of 1995, the number rose to 90; an average of seven (7) convicts per month, double the monthly average of capital sentences imposed the prior year. From January to June 1996, the number of death penalty convicts reached 72, an average of 12 convicts per month, almost double the monthly average of capital sentences imposed in 1995.[46]
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> (2) Of the 165 convicts polled, approximately *twenty one percent (21%) earn between P200 to P2,999 monthly*; while approximately *twenty seven percent (27%) earn between P3,000 to P3,999 monthly*. Those earning above P4,000 monthly are exceedingly few: *seven percent (7%) earn between P4,000 to P4,999, four percent (4%) earn between P5,000 to P5,999, seven percent (7%) earn between P6,000 to P6,999*, those earning *between P7,000 to P15,000 comprise only four percent (4%)*, those *earning P15,000 and above only one percent (1%)*. Approximately *thirteen percent (13%) earn nothing at all*, while approximately *two percent (2%) earn subsistence wages with another five percent (5%) earning variable income*. Approximately *nine percent (9%) do not know how much they earn in a month*.
>
> (3) Thus, *approximately two-thirds of the convicts, about 112 of them, earn below the government-mandated minimum monthly wage of P4,290.00; ten (10) of these earn below the official poverty line set by government*.[47] Twenty six (26) earn between P4,500.00 and P11,000.00 monthly, indicating they belong to the middle class; only one (1) earns P30,000.00 monthly. Nine (9) convicts earn variable income or earn on a percentage or allowance basis; fifteen (15) convicts do not know

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[46]DRC Profile at 1.

[47]The National Statistics Office sets the poverty threshold at P8,884.68 annually or P740.39 monthly; the National Economic Development Authority and the National Statistics Coordination Board both set the poverty threshold at P8,885.00 annually or P740.42 monthly; *Id.*, at 8.

> or are unsure of their monthly income. *Twenty two (22) convicts earn nothing at all.*[48]
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> (4) In terms of occupation, approximately *twenty one percent (21%) are agricultural workers or workers in animal husbandry*; of these, thirty (30), or almost one-fifth thereof, are farmers. *Thirty five percent (35%) are in the transport and construction industry*, with thirty one (31) construction workers or workers in allied fields (carpentry, painting, welding) while twenty seven (27) are transport workers (delivery, dispatcher, mechanic, tire man, truck helper) with sixteen (16) of them drivers. *Eighteen percent (18%) are in clerical, sales and service industries*, with fourteen (14) sales workers (engaged in buy and sell or fish, cigarette or rice vendors), twelve (12) service workers (butchers, beauticians, security guards, shoe makers, tour guides, computer programmers, radio technicians) and four (4) clerks (janitors, MERALCO employee and clerk). *About four percent (4%) are government workers*, with six (6) persons belonging to the armed services (AFP, PNP and even CAFGU). *Professionals, administrative employee and executives comprise only three percent (3%), nine percent (9%) are unemployed.*
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> (5) *None of the DRCs use English as their major medium of communication.* About *forty four percent (44%)*, or slightly less than half *speak and understand Tagalog; twenty six percent (26%)*, or about one-fourth, *speak and understand Cebuano.* The rest speak and understand Bicolano, Ilocano, Ilonggo, Kapampangan, Pangasinense and Waray. One (1) convict is a foreign national and speaks and understands Niponggo.[49]
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> (6) Approximately *twelve percent (12%) graduated from college*, about *forty seven percent (47%) finished varying levels of elementary education* with twenty seven (27) graduating from elementary. About *thirty five percent (35%)*, fifty eight (58) convicts, finished *varying levels of high school*, with more than half of them graduating from high school. Two (2) convicts finished vocational education; nine (9) convicts did not study at all.

The foregoing profile based on age, language and socio-economic factors clearly demonstrates that RA 7659 has affected only the poor and powerless in society. NONE of those convicted may be

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[48] *Id.*

[49] *Id* at 5.

considered to be within the upper socio-economic strata of Philippine society, with only a handful belonging to the middle class, not many more having finished formal education up to the college level and with NONE of them using English as primary medium of communication.

The personal and socio-economic profile of the appellant and 164 others like him, convicted under RA 7659, palpably demonstrates the discriminatory effects of the death penalty on the poor and the powerless. It is easy to see why.

The poor cannot afford the legal services required to defend them in criminal cases involving heinous crimes where a high-level of preparation, investigation, and research is required within a very limited period of time. The amount of time, resources and preparation required before a competent defense may be mounted in a capital offense is tremendous. Frequently, counsels *de oficio* are PAO lawyers who are severely overworked and, on this basis alone, may be ill-equipped to handle the demands of a capital defense. In the absence of guidelines or standards to "regulate" or "equalize" the type of counsel assigned to persons charged with capital offenses, poor litigants in capital cases are frequently denied a fair trial for lack of a competent defense, even despite the best efforts of counsel *de oficio*. Thus, the practical effect of the death penalty is to discriminate against the poor.

The poor in our society are also the unschooled and uneducated; they are also those who are least conversant of the English language, which is the only official medium of conducting judicial proceedings. It is absolutely disconcerting effect of conducting a trial in English to a poor and uneducated man who understands no english whatsoever; it is bad enough that the law, as it is written, is complex even to educated laymen, it is worse that the proceedings are themselves complicated and intimidating to a poor and uneducated person, such as the appellant, whose first instinct would perhaps be merely to keep silent and not say anything in his defense.

In concrete terms, therefore, the reimposition of the death penalty is a discriminatory penalty affecting the poor and the powerless in Philippine society. It is incompatible with the 1987

Constitution, which guarantees equality before the law in Article III, section 1 by providing that "(n)o person shall be deprived of life, liberty or property, without due process of law, nor shall any person be denied the equal protection of the laws."

On this matter, the Supreme Court has recently ruled that even "though the law be fair on its face, and impartial in its appearance, yet if it is applied and administered by the public authorities charged with their administration and thus representing the government itself, with an evil eye and unequal hand so as to practically make unjust and illegal discrimination, the denial of equal justice is still within the prohibition of the Constitution.[50]

The 1987 Constitution is NOT ordinary legislation, and the commands therein not merely directory instructions; it is the SUPREME LAW and the commands therein mandatory State policies. The 1987 Constitution regulates acts of State, in the process, setting forth the boundaries of permissible action between the State and the sovereign People. Where the State transgresses these constitutional boundaries by its acts, it is the solemn duty of this Court to strike down these acts.

RA 7659 is, on its face, an unreasonable restriction on the right to life as it does not merely purport to take away life without compelling reasons for a crime not shown to be heinous, but it does so in a discriminatory and arbitrary manner. It is also, in its application, heavy-handed against the poor and the uneducated. It, more importantly, creates a uniquely cruel process insofar as parricide is concerned-- that of State-sanctioned orphaning and widowing.

RA 7659 transgresses the Constitutional boundaries of permissible action by the State against the right to life. It is an UNREASONABLE IMPAIRMENT OF THE RIGHT TO LIFE and is

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[50]Genaro R. Reyes Construction Inc. v. Court of Apeals, G.R. No. 108718, July 14, 1994, 234 S.C.R.A. 116, 131-132 (1994) citing Yick Wo v. Hopkins, 128 U.S. 356; Ex Parte Virginia, 100 U.S. 339, Henderson v. Mayor, 92 U.S. 259, Chy Lung v. Freeman, 92 U.S. 175, Ned v. Delaware, 103 U.S. 320, Soon Hing v. Crowley, 113 U.S. 703.

ABSOLUTELY AND FUNDAMENTALLY REPUGNANT TO THE 1987 CONSTITUTION and cannot survive constitutional scrutiny.

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