

## Uncovering Heteronormativity Within the Philippine Marriage Model

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### ***Abstract***

*Sexuality is an essential element within the Philippine marriage model. It establishes the norms and values embedded in it. Articles 1 and 2 of the Family Code of the Philippines only recognize marriages between the opposite sexes, whereas Articles 46(4) and 55(6) identify the concealment of homosexuality and being homosexual as legal grounds for annulment or legal separation. This articulation potentially poses a challenge in the present-day conversations about sexuality. This study examines the statutory construction of these provisions to uncover their role in establishing the standard for cis-gendered heterosexual marriage. The result reveals that the language employed in Articles 1, 2, 46(4) and 55(6) upholds a heteronormative standard that enables the exclusion of same-sex couples from the institution of marriage and misrecognition of the identity of Filipinos with diverse sexual orientations. Corollary to this, prejudice against people with diverse sexual orientations is perpetuated, undermining their right to intimate choice.*

Keywords: Sexual Orientation, Heteronormative, Marriage Model, Family Code

### **Introduction**

Identity politics is a distinctive characteristic and enduring contribution of late twentieth-century social movements. Tully (2003) describes it as “the range of political activities [comprising] struggles over the appropriate forms of legal, political and constitutional recognition and accommodation of [identities]” (p. 517). Berberoglu (2018) claims that these struggles for political recognition and accommodation are grounded on people’s “outrage against the dominant classes and powers [due to] exploitation and oppression” (p. 3). This social atmosphere cultivated by late twentieth-century social movements became the background of a modern intellectual tradition centered on people’s identity and their political demand for recognition.

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### 1.1. Identity and Its Demand for Recognition

Canadian philosopher and proponent of Multiculturalism Charles Taylor explored the link between identity and recognition. He argues that “[people’s] identity is partly shaped by recognition or its absence” since its authenticity is acknowledged or contradicted through dialogue with others (Taylor, 1994, pp. 25–43). Essential to this dialogue is people’s interaction within the public sphere, which includes the government and civil society. These institutions may validate or damage people’s identities through enacted public policies and prevailing social norms, which affect their authenticity.

American feminist philosopher Nancy Fraser also contributed to the subject of identity and recognition by identifying the root cause of conflicts concerning recognition and redistribution and classifying the remedies to such issues. She claims that people’s demand for recognition stems from cultural or symbolic injustice and that attempts to remedy this may be classified as either affirmative or transformative (Fraser, 1995, pp. 71, 82–83). Affirmative recognition assimilates all identities within society by securing equal rights and liberties, whereas transformative recognition dismantles the grounds for any form of essentialism that institutionalizes distinction between identities.

Emerging concerns against essentialist views on human sexuality (or sexuality) during the late twentieth century is one example of where identity and its demand for recognition is clearly evident. During this period, essentialist views on sexuality are either classified as biological or cultural essentialism (DeLamater & Hyde, 1995, pp. 10–13). The former view construes sexuality as being “fixed” by biological anatomy; having male human anatomy consequently means one is necessarily predisposed to be masculine and attracted to the opposite sex (See DeCecco & Elia, 1993, pp. 2–4; Hart, 1984, p. 40). Meanwhile, the latter sees sexuality as being determined by cultural expectations about the “fundamental attributes” of sexuality “conceived as internal, persistent, and generally separate from [individual] experience” (Bohan, 1993, p. 7). Examples of such cultural expectations would be popular conceptions such as women being overly emotional than men or that boys or men do not cry.

Both types of essentialism promote a rigid understanding of sexuality that results in categories and conceptions that are inappropriately universalizing. One example of a prevalent essentialist conception of sexuality during the late twentieth century (and continues to be so today) is the notion that the diversity of sexual orientations is perverse and unnatural. In response, queer theorists and their allies promote transformative recognition as the ideal proper to identity politics. Bernstein (2005, pp. 56–58) noted that queer theorists employed the Postmodernist approach to challenge essentialist categories of gender identity and sexual orientation. As a result, Bondi (1993) states that this turned identity politics into “deconstructing *and reconstructing* (necessarily multiple) identities in order to resist and undermine dominant mythologies that serve to sustain particular systems of power relations” (p. 94).

Essential in the discussion of queer theorists' effort in exposing the essentialist conceptions of sexuality embedded within society that enabled the differentiation and subordination of sexual minorities is the concept of sexual orientation. Sexual orientation is a well-contested aspect of human identity subject to public scrutiny. It is part of the larger complex of human sexuality, together with biological sex and gender identity (Beier & Loewit, 2013, p. 9). Although the dimensions of biological sex, gender identity, and sexual orientation often intersect, each refers to distinct aspects of sexuality that deserve separate conceptual treatment and development to avoid confusion and misunderstanding.

## 1.2. The Complex of Human Sexuality

The first aspect of sexuality is sex characteristic, commonly referred to as sex. An individual's sex is naturally determined at conception through chromosomal (primary) sex determination and further develops during phenotypic (secondary) sex determination (Gilbert, 2000, chap. 17). Following this, an individual is classified as either male or female. However, there are rare cases (about 0.018% of the population or "fewer than 2 out of every 10,000 births" (Sax, 2002, p. 177)) in which an individual's sex determination encounters discrepancies, leading to such individuals being generally classified as intersex.

Harper (2007) shows insight into the reality of such variances of sex by exposing numerous cases of multiple individuals who are intersex and the challenges their sex poses to them. Aware of these issues, authors such as Dreger et al. (2005) and Hughes et al. (2006) propose medical classifications for being intersex to distinguish "disorders of sexual development" from concerns of gender identification. However, Griffiths (2018), Carpenter (2018), and Zieminska (2018) warn how such classification and terminology could be a catalyst for discrimination and misconception. Hence, there is much more to understand in the aspect of sex insofar as each has a unique sexed body that develops over time.

The second aspect of sexuality is gender identity or, simply, gender. The operational definition of gender identity employed by the United Nations is as follows:

Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech, and mannerisms" (The Yogyakarta Principles, 2007, as cited in Madrigal-Borloz, 2018, para. 2).

By definition, gender identification may fall within these categories: cisgender (gender matches the person's sex characteristic), transgender (gender does not match the person's sex characteristic), and non-binary (gender does not conform with the traditional gender binary) (See Doble, 2022, pp. 14–19). Wood & Eagly (2015) indicate two standing traditions that explain how such identities form: the first focuses on "gender-typical personality traits or

interests," and the other focuses on self-identification to a particular gender group. From the mid-twentieth century until the late 2010s, trans and non-binary identities were diagnosed as psychological disorders, which resulted in their stigmatization (See Money, 1994; Cohen-Kettenis, 2005; World Health Organization, 2019, F64–F64.9). Efforts to increase awareness and acceptance of trans and non-binary identities are in progress to dispel practices of exclusion and discrimination (See Trithart, 2021).

Finally, the third aspect of sexuality is sexual orientation. The operational definition of sexual orientation provided by the Yogyakarta Principles<sup>2</sup> (2007) is as follows: "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender" (p. 6) The American Psychological Association (2008) conforms with this operational definition of sexual orientation but also provides a social aspect to it, "Sexual orientation also refers to a person's sense of identity-based on those attractions, related behaviors, and membership in a community of others who share those attractions" (p. 1).

Studies within the field of psychosocial studies, such as the works of Savin-Williams & Ream (2007) and Kaestle (2019), focus on investigating the internal affectional aspect of sexual orientation, analyzing the relationship between its components (romantic attraction, sexual behavior, and sexual identity) with the intent to understand its emergence during the formative stages of human development. Meanwhile, sociological studies on sexual orientation, such as the works of Dillon (2005) and Coyle & Rafalin (2001), explore the social aspect of sexual orientation by understanding the process of negotiating one's self-identified sexual orientation within society.

By definition, people's sexual orientation can be classified based on their object-choice. There are four prevalent classifications: heterosexual (commonly referred to as straight), homosexual (lesbian/gay), bisexual, or asexual (See Doble, 2022, pp. 23–26). Heterosexuals pertain to persons who are attracted to the opposite gender. Homosexuals pertain to persons who are attracted to the same gender. Bisexuals pertain to persons attracted to either sex or to multiple genders. Finally, asexuals pertain to individuals who experience little or no attraction.

### 1.3. Power Asymmetry Between Sexual Orientations

The advancement of knowledge regarding sexual orientation not only led to the demarcation of differences between sexual orientations but also established a basis for power asymmetry. Gayle Rubin's analysis of the development of sexual values in American society

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<sup>2</sup> The Yogyakarta Principles is an internationally recognized set of principles produced by multinational legal experts and non-government organizations concerning international human rights law coverage to sexual orientation and gender identity and expression concerns (See "About the Yogyakarta Principles," n.d.).

identifies several epistemological and moral factors, as well as legalized sexual stratification and oppression, that made sex or intimacy a “vector of oppression” (Rubin, 1999, pp. 148–160). Rubin’s analysis corroborates with Jonathan Ned Katz’s prior historical study of heterosexuality in America. He argues that the naturalization of heterosexuality as “ruling sexual orthodoxy” and the establishment of the “hetero or homo binary” in America, in effect, made the idea of heterosexuality designate to “...a word and concept, a norm and role, an individual and group identity, a behavior and feeling, and a peculiar sexual-political institution particular to the late nineteenth and twentieth centuries” (Katz, 1990/2020, pp. 62–72).

As a result, notions of proper/improper, valid/illicit, or permissible/forbidden sexual orientation that favor heterosexuality emerged, and they have since become the standard upon which American society is dependent. The institutionalization of these essentialist standards of sexual orientation was later referred to as heteronormativity.<sup>3</sup> Because heteronormativity establishes a basis for the substantive distinction between sexual orientations, discrimination against non-heterosexual sexual minorities, especially against homosexuals, has become prevalent within American society (Rubin, 1999, pp. 143–148). However, heteronormativity is not unique to American society; heteronormativity became prevalent in the Philippines as a direct result of colonization.

In Jay Jomar Quintos’s analysis of records and confessional manuals during the Spanish Contact, he uncovers the colonizers’ efforts to subvert natives’ understanding of gender and sexual behavior. He claims that the Spaniards vilified certain practices (e.g., cross-dressing and same-sex relationships) observed among non-conforming native males referred to as *asog*, *bayoguin*, and *binabayi*, who served as *babaylanes* (religious leaders that act as spiritual mediums and healers) in pre-colonial indigenous communities (Quintos, 2012, pp. 156–163). Brewer (1999/2021, p. 127) argues that the colonizers’ actions and attitudes towards these native practices are expected since they do not conform to their gender constructs. The opposition towards these native practices is motivated by the colonizers’ religious belief that classifies same-sex intercourse as “*pecado nefando*” or a “sin against nature” (See Reyes, 2012/2021; Marquez, 2021).

Furthermore, the arrival of the Americans marks another significant event in Filipino understanding of proper sexual behavior. According to Garcia (2008), the Americans introduced topics such as the modern concepts of sexuality, concerns in sexual health, as well as a “corporally paranoid discourse of AIDS” that further entrenched “the ‘homo/hetero’ distinction as the key organizing principle in the now-heavily freighted [*sic*] sexual lives of

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<sup>3</sup> Marchia & Sommer (2019) classify the different conceptions of heteronormativity used within literature into four distinct categories, one of which is Rubin’s which they called “cisnormative-heteronormativity.” However, contrary to Marchia’s and Sommer’s thoughts, Rubin (1999, p. 170) limits the scope of inquiry to the context of sexuality **only**; thus, heteronormativity is to be understood in the context of the hierarchization of sexual acts which focus on the “critical power relations in the area of sexuality”—an area feminist analysis of gender miss.

Filipinos” (p. 167). This American contribution to the “medicalization and pathologization of homosexuality” in Filipino perceptions of sexuality was also noted by Michael L. Tan (1995).

#### 1.4. Heteronormativity in Philippine Society

The degree to which heteronormativity is embedded within a given society can be determined by analyzing prevailing social norms and policies that involve people’s sexual orientation. In the Philippines, there is no standing sodomy law that criminalizes same-sex sexual activities. Thus, people with diverse sexual orientations<sup>4</sup> have privacy over their intimate relationships. However, there is a social institution in which they are excluded, and their sexual orientation is legally regulated – marriage.

The social institution of marriage in the Philippines is regulated by a legal framework of public terms and conditions, which can be referred to as a marriage model. The Philippine marriage model comprises the statutory definition and requisites of marriage, benefits, and obligations of spouses, and other provisions concerning its dissolution and matrimonial regime found in Philippine laws. Central to these laws is the Family Code of the Philippines, signed into law by President Corazon Aquino in 1987.

Vital to the institution of marriage is the concept of sexuality. As expressly defined by Article 1 and required by Article 2 of the Family Code, only marriages between “a man and a woman” are legally recognized (Family Code, 1987, arts. 1–2). Melencio S. Sta Maria (2010) explains that this legal language construes marriage as a “union founded on the distinction of sex,” as further “evidenced by the fact that the New Family Code as well as the Civil Code are replete with words of heterosexual import such as ‘husband and wife,’ ‘man and woman,’ and ‘father and mother’” (p. 115). Thus, marriage appears to be reserved for cis-gendered couples.

Furthermore, two articles of the Family Code explicitly mention homosexuality. Articles 46(4) and 55(6) of the Family Code (1987) state that concealment of homosexuality and being homosexual are grounds for annulment and legal separation, respectively. Citing *Almelor vs. Regional Trial Court of Las Piñas City* (2008), Sta Maria (2010, p. 358) clarifies that these provisions do not purvey the idea that homosexuality *per se* is an affliction but rather an act of bad faith. In other words, concealment or engagement in homosexual acts may constitute a breach of trust and confidence between the contracting parties, who are assumed to be heterosexual at marriage.

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<sup>4</sup> The term “people with diverse sexual orientations” is utilised over the term LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex +) and its other formulations (e.g., Lesbians/Gays, LGB, LGBT, LGBTQ, LGBTQ+, etc.). The former is preferred over the latter since it avoids conflating together the distinct vectors of sexuality. Moreover, employing the former avoids essentializing the sexual orientation of individuals into stereotypes that devalue the authenticity of their intimate choice. The term is derived from the operational term “people with diverse SOGIESC” (sexual orientation, gender identity and expression, and sexual characteristics) used by the United Nations Women (2021) and United Nations Immigration (2020).

Consequently, the Philippines' marriage model appears to adhere to an essentialist standard of sexuality, as evidenced by statutory language that favors cisgender heterosexual relationships. The provisions above not only exclude same-sex couples from marriage but also misrecognize people with diverse sexual orientations by identifying their sexual orientation as grounds for a latent conflict in marriage. This apparent lack of legal recognition of other forms of intimacies would become the subject of judicial scrutiny through the petition filed by Jesus Falcis III.

In 2019, the Supreme Court of the Philippines tackled Falcis III's petition challenging Articles 1, 2, 46(4), and 55(6) of the Family Code. The Court dismissed the petition for multiple reasons, including the lack of an actual case or controversy, the absence of legal standing, procedural error, and violation of the hierarchy of courts (Falcis III v. Civil Registrar General, 2019). A motion for reconsideration was submitted, but the Court denied it with finality (See Pulta, 2020). Nonetheless, the Court did acknowledge in its decision that "our current laws are confined to a heteronormative standard [as] they do not recognize the existence and specificities of other forms of intimacy," but the decision to legally recognize same-sex marriage is under the legislative prerogative of the Congress (Falcis III v. Civil Registrar General, 2019).

Legislative efforts were also made to legalize same-sex marriage during the Seventeenth Congress of the Philippines. A total of four legislative proposals were introduced between the span of the Seventeenth and Nineteenth Congresses in both chambers of the Legislature (See An Act Recognizing the Civil Partnership of Couples, Providing for Their Rights and Obligations, 2008; An Act Recognizing the Civil Partnership of Couples, Providing Their Rights and Obligations, 2019; An Act Recognizing the Partnership of Couples, Providing Their Rights and Obligations, 2022; An Act Institutionalizing Civil Unions of Same Sex Couples, Establishing Their Rights and Obligations, and for Other Purposes, 2022). However, no significant progress has been made.

Crucially, the Philippines' heteronormative marriage model maintains religious support because it aligns with standing doctrines concerning marriage and sexuality. In the teachings of Catholicism, the largest religious denomination in the Philippines (Philippine Statistics Authority, 2023), marriage is viewed as a covenant between a man and a woman entering a lifelong partnership ordered towards complementarity, procreation, and education of offspring (Catechism of the Catholic Church, 1993, paras. 1601–1605). While the sacrament of marriage is limited to heterosexual couples, same-sex couples may ask for a blessing, supplicating that "all that is true, good, and humanly valid in their lives and their relationships be enriched, healed, and elevated by the presence of the Holy Spirit" (Dicastery for the Doctrine of the Faith, 2023; See Pontifical Council for the Family, 1995). Moreover, the Pontiff, Pope Francis, has spoken about the importance of recognizing same-sex couples and their civil right to family (CNA Staff, 2020).

Despite the openness towards same-sex couples, the Catholic Church still adheres to an understanding of sexuality that appears to be heteronormative. In the Church's teachings, sexuality is the "intimate nucleus of the human person" that is naturally structured according to sex and "ordered towards the conjugal love of man and woman" (Catechism of the Catholic Church, 1993, paras. 2331–2339, 2360–2361). Therefore, homosexual acts, to the purview of the Catholic Church, are "intrinsically disordered" and "contrary to the natural law" insofar that they are sexual acts that (1) do not transmit life and (2) are contrary to sexual complementarity (Catechism of the Catholic Church, 1993, para. 2357). Nonetheless, regardless of how "objectively disordered" deep-seated homosexual tendencies are, the Church admonishes Catholics to remain respectful, compassionate, and sensitive towards homosexuals (Catechism of the Catholic Church, 1993, para. 2358).

Given the statements above, it follows that the Catholic Church will only confer the sacrament of marriage to heterosexual couples, while same-sex couples can only avail of pastoral blessings. This kind of religious dialogue on sexuality reproduces heteronormative views among Filipino devotees, a phenomenon that John Angelo De Leon and Joseph Jintalan identified as problematic. They argue that despite the visibility of people from sexual and gender minorities in Philippine media, there exists a "culture of silence" towards their recognition within Philippine society, which is sustained by a "silent obedience to the doctrines set by the church as well as there is still a prevalence of the colonial and postcolonial mindset" (De Leon & Jintalan, 2018, pp. 422–423).

These religious convictions, not just limited to the Catholic Church's, are reified within Philippine politics as compelling moral objections to legal attempts to recognize the rights of persons with diverse sexual orientations. Cornelio and Dagle (2019, pp. 77–80) claim that these religious convictions protected by religious freedom are politically weaponized to promote conservative/essentialist rhetoric against inclusivity. An example is Senator Joel Villanueva's objection to the proposed anti-discrimination bill or SOGIE bill (See Gregorio, 2023). As a result, the Philippine political institution appears to be intertwined with a "background culture"<sup>5</sup> composed of strong religious convictions in support of heteronormativity.

### 1.5. Practices of Exclusion in the Philippine Marriage Model

As demonstrated above, the Philippines' prevailing marriage model appears to adhere to a heteronormative standard that prefers cis-gendered heterosexual marriages. This article contends that the statutory language of several provisions of the Family Code excludes same-sex couples from the institution of marriage and misrecognizes their identity as persons with

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<sup>5</sup> The term "background culture" is borrowed from John Rawls. He defines it as follows, "This is the culture of the social, not of the political. It is the culture of daily life, of its many associations: churches and universities, learned and scientific societies, and clubs and teams, to mention a few." (Rawls, 1993, p. 14).



diverse sexual orientations. Thus, the objective of this article is to uncover the heteronormativity within the Philippines' prevailing marriage model.

To support the study's contention, this study will analyze the Philippines' marriage model, tracing significant periods in its development. In line with this, the study will employ document analysis as a data-gathering procedure to gather pertinent data that substantiates the history and background culture of the Philippine marriage model. These documents are written or electronically available resources, such as books, periodicals, legal or public documents, transcripts, and other sources that describe the prevailing legal understanding of marriage at that point in time.

Moreover, a qualitative content analysis of Articles 1, 2, 46(4), and 55(6) of the Family Code will also be conducted to reveal how certain wording of the present marriage model may imply an essentialist conception of sexuality that permits the exclusion of particular people from the institution of marriage. The scope of the statutes to be discussed in this study is limited to the Articles and provisions mentioned since the focus of this study is the heteronormative provisions in the Family Code that discriminate against people with diverse sexual orientations. The procedure for the analysis shall follow the cyclic coding process illustrated by Saldaña (2016) consisting of a combination of Initial and Axial coding.

For the first cycle of codification, the provisions will be broken down using Initial coding. In the initial cycle, the codes that will be chosen pertain to the various terms that determine the sexuality of the contracting party in marriage. These terms would be "male," "female," "man," "woman," "lesbianism," and "homosexuality." Right after the initial cycle, a second cycle of codification will follow. The second cycle will employ Axial coding to combine the various codes identified during the first cycle under one category—in this case, it shall be "sexuality".

Furthermore, there will also be a discussion exploring relevant religious doctrines, particularly the teachings of the Catholic Church. This is to provide a comprehensive overview of the current status quo on marriage in relation to perceptions of sexuality.

## **2. Marriage Models Throughout Philippine History**

The Philippines' marriage model has its roots in the country's rich legal tradition. Beginning with the pre-colonial period of Philippine history, Wiley (1976, p. 24–5) claims that there are no surviving records of marriage law adhered to by pre-colonial Filipino communities; what is known are pre-colonial marriage customs recorded by Spanish missionaries. As a Spanish colony, the Church initiated the formalization of marriage by institutionalizing canon marriage. The Americans further contributed to the development of marriage by ordaining civil administration of marriage and a freestanding Philippine marriage model. At present, marriage is enshrined within the Philippine Constitution and regulated under the Family Code.

### 2.1. Pre-colonial Philippine Marriage Customs

Upon the arrival of Spanish missionaries, they extensively studied the culture of Philippine indigenous communities to aid in their mission of evangelization. Habana (2014) and Camacho (2019) discovered from Spanish records and documents dating back as early as the 1600s that common pre-colonial marriage customs included bride service, monogamy, and divorce. Bride service takes place during the pre-matrimonial phase of marriage in which the groom settles a certain amount of dowry or renders services to his bride's household in exchange (or bride price) for marriage. After the bride price has been paid, the marriage takes place and is recognized and celebrated by the community through a ceremony.

Other pre-colonial marital customs in the Philippines are monogamy and divorce. According to Habana (2014) and Camacho (2019), records indicate that most pre-colonial Philippine communities practiced monogamy (except those in Islamic-influenced areas). However, matrimonial relationships were not exclusive—chastity was not practiced, concubinage was prevalent among the elites, and divorce was easily obtained. Spanish missionaries were interested in customary marriage in the Philippines to assess the existence of impediments to canonical marriage. As Camacho (2019) explains, “[Missionaries] were keen to note the features of the indigenous institution which went against either the canonical form or the properties of Catholic marriage” (p. 28).

### 2.2. Spanish Influences to the Philippines' Marriage Model

Grounded by their observations, Spanish missionaries began laying the groundwork for the formalization of marriage by institutionalizing canonical marriage. Under the Patronato Real (royal patronage) between the Spanish Monarchy and the Holy See, the Church and the State have shared material and administrative control over Spain's colonies (See Rivera, 2010, p. 76; Hill, 2021, pp. 753–756). According to Camacho (2019), beginning in the early 1600s, the Philippine Church implemented universal and local ecclesiastical laws and decrees governing the sacramental dispensation of marriage. Thus, Wiley (1976, p. 30) noted that canonical marriage became the prevailing marriage model throughout Spanish rule. This means that the Church has special authority over marriage due to its status as a sacrament.

Civil administration of marriage was later implemented, albeit to a limited degree, in the Philippines in the late nineteenth century, coinciding with the political developments happening in Spain. In 1870, the Civil Marriage Act and the Provisional Civil Registration Act were promulgated in Spain, which made civil marriage compulsory (Sancifiena-Asurmend, 2014, pp. 38–39). Although a colony of Spain, Wiley states that these laws were not extended to the Philippines, except for provisions on the rights and obligations of spouses (Wiley, 1976, p. 34). A reason for such exemption could be the strong political influence of the Church, whose authority is being challenged. However, both the Civil Marriage Act and the Provisional Civil Registration Act were amended by the Decree of February 9, 1875, which



reverted the compulsory nature of civil marriage and retroactively recognized the validity of canonical marriages contracted prior to the Decree (Sancifiena-Asurmend, 2014).

The Spanish Civil Code continued to recognize the validity of civil and canonical marriages as established by the Decree of February 9, 1875. Wiley states that the Spanish Civil Code was promulgated by Queen Regent Maria Cristina in 1888 and took effect in the Philippines a year after its promulgation (Wiley, 1976). Under the Spanish Civil Code, both civil and canonical marriages are recognized and must be registered with the Civil Registry (Código Civil, 1889, art. 42). However, Wiley (1976, pp. 34–36) recounts that provisions on marriage and civil registration were suspended by Governor-General Weyler, reverting to the previous marriage model. Therefore, throughout Spanish colonial rule, there was a gradual shift from canonical towards civil marriage, but the *de facto* Philippine marriage model remained the latter.

### 2.3. American Influences to the Philippines' Marriage Model

With the transfer of colonial authority, the Americans assumed civil administration of marriage in the Philippines and enforced a freestanding Philippine marriage model. Spanish marriage laws were first superseded by General Order No. 68 (1899), by command of the Military Governor of the Philippine Islands. It laid down the basic requirements for marriage (e.g., age, consent, the authorized solemnizing officer), indicated the necessary documents to be submitted to the Civil Registrar, and enumerated the conditions for the dissolution of marriage.

General Order No. 68 was later amended by General Order No. 70 (1900) and then by Act No. 3412 (An Act to Amend Sections One, Five, Six, Seven, Eight, and Fifteen of General Orders, Numbered Sixty-Eight, 1927). By 1929, Act No. 3613, or the Marriage Law, was promulgated by the 7th Philippine Legislature. The Marriage Law supersedes all previous promulgations on marriage, establishing a new marriage model in the Philippines (See The Marriage Law, 1929). While its provisions were similar to previous legislations, it established key legal concepts that are still used nowadays, such as essential and formal requisites, mutual consent, and others.

Moreover, Wiley (1976) claims that the Marriage Law paved the way for future marriage legislation in the Philippines by “[taking] cognizance of the divergent attitudes then prevalent in the Islands and reach a solution that would be both workable and agreeable to all concerned” (p. 38) This solution pertains to the structure of the newly established marriage model. Under the Marriage Law, marriage became open to any form, whether religious, civil, or customary, so long as these marriages meet the necessary civil requisites and follow the provisions of the law, such as marriage registration (The Marriage Law, 1929, secs. 1–26). As a result, marriage became freestanding, and the power to recognize the status of marriage was put under the government’s authority as a duly appointed administrative body.

#### 2.4. The New Civil Code and the Family Code of the Philippines

After the Philippines became independent, Republic Act No. 386, or the Civil Code of the Philippines, was enacted in 1949. Book I, Titles III to VI of the Civil Code, contains the provisions on marriage. Article 52 of the Civil Code defines marriage as “not a mere contract but an inviolable social institution. Its nature, consequences, and incidents are governed by law and not subject to stipulation, except that the marriage settlements may, to a certain extent, fix the property relations during the marriage” (Civil Code, 1949, art. 56). This emphasizes the Government’s authority to regulate marriage, which it considers not only a contract but also an inviolable social institution.

The structure of the Civil Code’s provisions on marriage resembles features from the Marriage Law and the Spanish Civil Code. Following the Marriage Law, the Civil Code lays down the essential and formal requisites of marriage, provisions for marriages of exceptional character, and the authorization of solemnizing officers. Meanwhile, the influence of the Spanish Civil Code is apparent with the provisions regarding annulment or separation, property regime, and the rights and obligations of spouses. As a result, the inspiration for the Philippine marriage model is a confluence of Spanish and American legal systems.

In 1977, then-President Ferdinand Marcos, Sr. promulgated an additional legal code for Filipino Muslims known as the Code of Muslim Personal Laws of the Philippines. In recognition of the cultural traditions of Filipino Muslims, the Code of Muslim Personal Laws of the Philippines provides the legal foundation for their particular norms. This code includes provisions regarding Muslim marriage and divorce that work in tandem with the New Civil Code. Notably, the code integrates essential requisites found in the *Shari’a*, such as *ijab-o-qabul* (proposal and acceptance), provisions regarding the dowry (or *mahr*), impediments to marriage, and others (Code of Muslim Personal Laws of the Philippines, 1977).

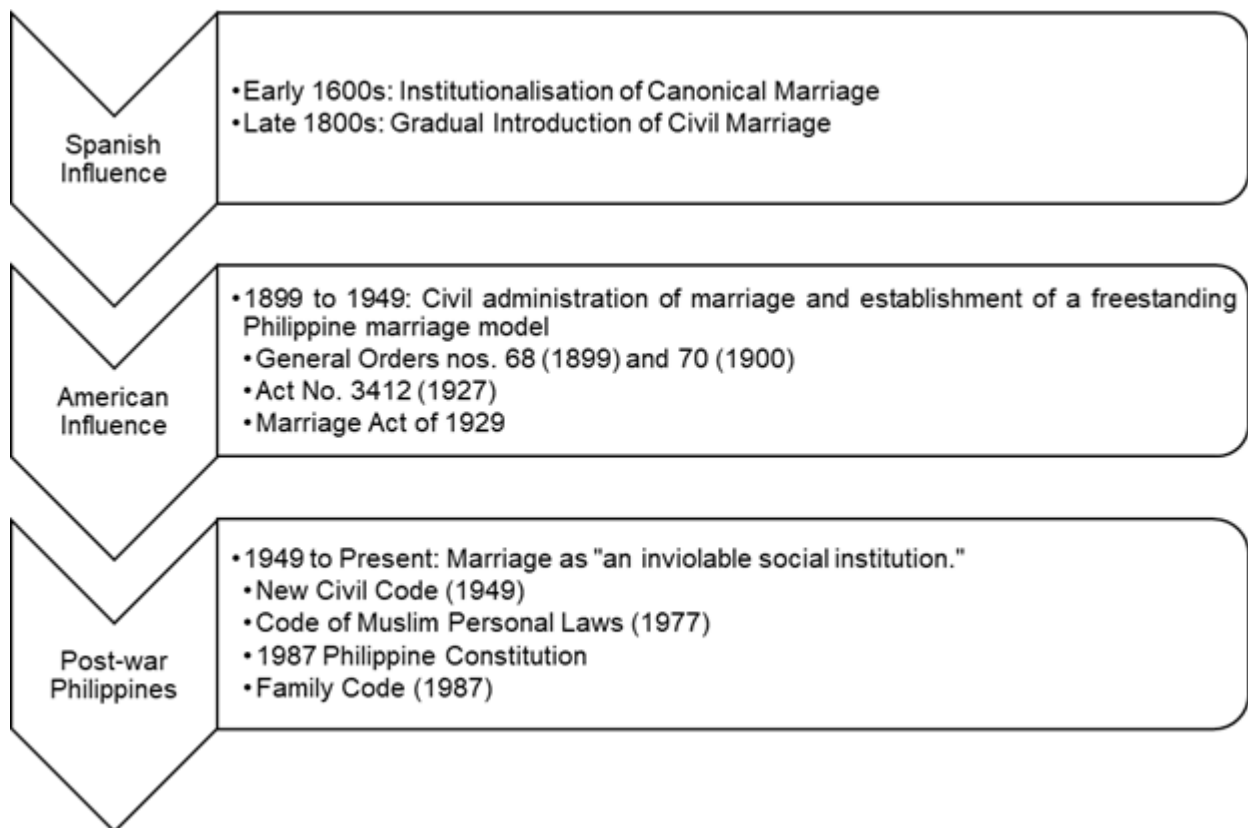
The conception that marriage is an “inviolable social institution” remains under the 1987 Philippine Constitution. Article XV, Section 2 of the Philippine Constitution states, “Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State” (Philippine Constitution, 1987, art. XV, sec. 2). This commitment towards marriage is emphasized with the promulgation of Executive Order No. 209, or the Family Code (1987) of the Philippines, which defines marriage as,

A special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code (art. 1).

The Family Code of the Philippines supersedes multiple Titles under Book I of the Civil Code and other related laws. It is divided into twelve Titles: the first four Titles are about

marriage, the fifth through tenth Titles are about the family, and the final two Titles contain the Code's procedural and final provisions. Alicia V. Sempio-Diy (2006) notes that the reasons provided by the Civil Code Revision Committee for the necessity of the then-proposed Family Code were gender equality, equitability, consistency, and innovation. More than three decades after its promulgation in 1987, the Family Code remains the basis of the Philippines' marriage model and family law.

In summary, the timeline of significant contributions to the development of the Philippine marriage model can be summarized through this diagram:



**Figure 1.** Timeline of significant contributions to the development of the Philippine marriage model

## 2.5. Marriage: A Special Contract of Permanent Union

Marriage is distinguished as a special kind of contract. Just as with every kind of legal contract, its "form and solemnity" are governed by Philippine laws—this is stipulated by Article 17 of the Civil Code (1949). According to Sempio-Diy, (2006, 2) marriage is distinguished by the following characteristics:

- 1) the sex of the contracting parties is specified by law;

- 2) it is a permanent contract that can only be dissolved either by the death of one of the parties, annulment or declaration of nullity from the court;
- 3) the parties' rights and duties are fixed by law, except in cases of marriage settlements;
- 4) a breach of contract does not give rise to damages, but the liable party may face civil and penal sanctions.

Part of marriage's characteristic as a special contract is that it confers the status of "married" to the contracting parties. Civil status, or status, is defined by the Court as "the circumstances affecting the legal situation (that is, the total of capacities and incapacities) of a person" (Silverio v. Philippines, 2007). In the case of marriage, the status of the contracting parties is changed from being single (or unmarried) to married through the Civil Registrar. This change of status means that the contracting parties are bound together by law to form one social unit or institution. Quoting *Saclolo v. Court of Agrarian Relations* (1960), *Sta Maria* (2010) states,

By the contract of marriage, a man and a woman enter a joint life acting, living and working as one. Whether under the common law or under the civil law, upon marriage the husband and the wife become one single moral, spiritual and social being, not only for purposes of procreation but also for the purpose of mutual help and protection, physically, morally and materially (p. 358).

Furthermore, the change of status entitles the contracting parties to legally and publicly recognized rights and duties that are contracted through marriage. As mentioned above, marriage confers rights, duties, and advantages to the contracting parties as specified by law. This is affirmed by the Court in the case of *Tan-Andal v. Andal*: "[marriage] remains an institution designed to provide legal and public recognition that may be well deserved not only the couple, but also for their families existing, or yet to come" (*Tan-Andal v. Andal*, May 11, 2021). Thus, it is expected that both parties, as well as the rest of society, would respect and acknowledge these marital rights, duties, and advantages.

Conflicts between spouses are also governed by law. For instance, certain actions and incapacities are considered a breach of contract punishable by civil and/or penal sanctions. As an example, under Article 36, a party's psychological incapacity can be grounds for the nullity of marriage (Family Code, 1987). In such instances, the aggrieved party may seek remedy from the appropriate court by petitioning for the declaration of nullity of marriage. When the court declares that the marriage is void and null, a resolution on the regime of property relations between contracting parties shall also be settled according to the law unless a prenuptial agreement is made.

### 3. Heteronormativity in the Philippine Marriage Model

This section analyses Articles 1, 2, 46(4), and 55(6) of the Family Code as follows:

Article 1. Marriage is a special contract of permanent union between **a man and a woman** entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

Art. 2. No marriage shall be valid unless these essential requisites are present:

(1) Legal capacity of the contracting parties, who must be **a male and a female**; and

(2) Consent is freely given in the presence of the solemnizing officer.

Art. 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

(4) Concealment of drug addiction, habitual alcoholism, **homosexuality, or lesbianism** existing at the time of the marriage.

Art. 55. A petition for legal separation may be filed on any of the following grounds:  
[...]

(6) **Lesbianism or homosexuality** of the respondent [...]

An initial analysis of the statutory language of the provisions above reveals a distinguishing feature—the use of terminologies that specify the sexuality of contracting parties. Articles 1 and 2 specify that parties must be “a man and a woman” or “a male and a female.” Meanwhile, Articles 46(4) and 55(6) specify that the concealment and the fact of “homosexuality or lesbianism” (or simply homosexuality) of either contracting party are grounds for annulment and legal separation of a subsisting marriage. A resulting matrix can then be formed containing the following codes: man and woman, male and female, and homosexuality.

Further analysis of the resulting matrix could be done by identifying an overarching category under which it can be subsumed. The identified category to be utilized for this analysis is sexuality, given the nature of the codes within the matrix. Having sexuality as the focus of the analysis demonstrates how the law utilizes sexuality as a basis for substantive distinction among persons in the context of marriage. In other words, sexuality is used to classify the contracting parties (e.g., male/female, man/woman, and homosexual) and determine what rights, duties, and advantages are conferred to each class of individuals. Consequently, legally binding standards regarding sexuality are established within marriage.

First, by legally requiring that the contracting parties must be of the opposite sex/gender, only marriages between opposite sex/gender (i.e., male and female or man and woman) are given recognition by the law. In *Silverio v. Republic* (2007), the Court determined that Philippine laws consider sex/gender as biologically determined and unalterable. Only in exceptional cases in which an individual is biologically intersex can the person choose to determine one's sex/gender (*Republic of the Philippines v. Jennifer Cagandahan*, 2008). Hence, the Philippine marriage model holds on to a biological essentialist view of sexuality, which eliminates the opportunity for same-sex marriage or any form of sex/gender transition for that matter.

In *Falcis III v. Civil Register General*, evolving socioeconomic factors were suggested as reasons why the Philippines' marriage model only allows marriages between the opposite sex/gender. The Supreme Court mentioned global trends that shaped the gender roles and expectations in marriage, starting with the value of procreation during the Middle Ages to the idea of freedom and companionship during the age of industrialization and the development of the notion of nuclear families during contemporary times (*Falcis III v. Civil Registrar General*, 2019). In line with these shifts, legislators are inclined to preserve prevailing standards when enacting marriage legislation.

It thus appears that the statutory language of Articles 1 and 2 designate the marriage between two cisgender persons of the opposite sex as the Philippine marriage model's prevailing standard. This standard can be called a standard for cis-gendered marriage. This means that other forms of intimacies, specifically same-sex relationships, remain unrecognized within the purview of the law since these are considered non-normative relationships that do not conform with the standard established by the law.<sup>6</sup> Due to their exclusion, same-sex couples cannot avail themselves of the same marital rights, obligations, and advantages that opposite-sex couples enjoy.

Furthermore, the Philippine marriage model also implicitly includes a standard for heterosexual marriage. Under Article 46(4), the concealment of homosexuality is a ground for the annulment of marriage. Citing *Almelor vs. Regional Trial Court of Las Piñas City* (2008), *Sta Maria* (2010) clarifies that the issue is not homosexuality *per se* but rather the fraudulent act of concealing such sexual orientation. In other words, consent (another essential requisite of marriage) was deceitfully obtained, causing a breach of trust between contracting parties entering a permanent and exclusive contract of marriage.

For instance, Party A is currently engaged and about to wed Party B. Party A has been previously involved in homosexual relationships but kept it secret from everyone, including

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<sup>6</sup> It is worth noting that, while the law would allow the marriage between male and female persons with diverse SOGIESC, this recognition is only a consequence of technicality—in the purview of the law, their sex/gender transition was never acknowledged, so both individuals are male/female or man/woman regardless of their SOGIESC.



Party B, for fear of stigmatization. Consequently, Party A decided to conceal his/her/their sexual orientation at the time of marriage for integrity's sake.

Later on, Party A's sexual orientation was discovered. In possession of substantial evidence proving Party A's action, Party B could petition for their marriage's annulment under Article 46(4). Party B could argue in court that if he/she had known Party A's sexual orientation, he/she would have ended the relationship due to intimate incompatibility. Whether Party A can provide a justifiable reason to mitigate his/her/their action, the law does not condone the act of concealment.

Evident in the example above is the intention of the law to prevent instances of bad faith at the time of marriage. However, the consequence of identifying the concealment of sexual orientation as grounds for annulment has the effect of making marriage with a person with a different or divergent sexual orientation (whatever it may be) appear intimately incompatible from the start. The notion of intimate incompatibility of marriage with a person with a different sexual orientation can be considered as an entailment of the Family Code's (1987, arts. 1–2) provision indicating that the purpose of marriage is the establishment of an intimate conjugal and family relationship between a man/male, and a woman/female.

It follows then that the structure of the intimate relationship that the marriage model implicitly favors as the standard is that of heterosexuality—intimate relationships between individuals attracted to the opposite sex/gender. The way it is, Article 46(4) serves as protection for contracting parties from unknowingly entering what the marriage model arbitrarily considers as intimately incompatible relationships, in this case, marrying someone with a different sexual orientation. Corollary to this, disclosure of one's diverse sexual orientation is necessary at the time of marriage to avoid committing fraud and subjecting the other party to an intimately incompatible relationship.

On the other hand, Article 55(6) also shows the standard for heterosexual marriages. The provision allows for the legal separation of valid and subsisting marriages on the grounds of homosexuality. For example, Party C did not conceal the fact from Party D that he/she/they is a homosexual. Despite knowing it, Party C's sexual orientation was not an issue for Party D, considering both parties got engaged and subsequently married. Party D eventually grew tired of Party C's continued homosexuality. Party D, therefore, petitioned for legal separation under Article 55(6), citing evidence demonstrating Party C's continued patterns of homosexual behavior.

The aforementioned situation demonstrates that under the Philippine marriage model, heterosexuality is not only the standard but also, borrowing the words of Katz, the "ruling sexual orthodoxy." As demonstrated in the example, the course of the marital relationship is under the discretion of the heterosexual party. A party may decide to petition for legal separation under Article 55(6) if he or she has found the marriage incompatible and the other party incapable. The same can be said about Article 46(4): intimate compatibility is such an

important factor in a marriage that sexual orientation must be disclosed to avoid misjudgment and latent conflict.

The construction of these Articles misrecognizes genuine non-normative intimate relationships. In this case, the standard for heterosexual marriages implicit in these Articles disadvantages people with diverse sexual orientations who are entering or have entered a valid marriage in a disadvantaged position because their non-conforming sexual orientation is considered to cause a latent conflict in marriage. However, the heteronormativity in the Philippines' marriage model appears to be inconsistent with the available *dicta* regarding the fundamentality of people's right to intimate choice.

The Court's decision on *Falcis III v. Civil Register General* (2019) shows the *ponente* acknowledging in *obiter dictum* that "*intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.*" Subsequent decisions would provide more instances of *obiter dicta* showing recognition of people's right to intimate choice, acknowledging that it is a fundamental liberty founded on autonomy and human dignity and protected by the liberty and equality clauses of the Constitution (See *Tan-Andal v. Andal*, 2021; *Estella v. Perez*, 2021; *Guevarra v. Banach*, 2021). This demonstrates that the Court supports people's personal autonomy when choosing their intimate relationships.

Therefore, two conclusions can be drawn from the preceding analysis. First, the Philippines' marriage model is heteronormative due to the standard for cis-gendered heterosexual marriage. Consequently, same-sex couples are excluded from marriage, and people with diverse sexual orientations are misrecognized for being identified as the cause of a latent conflict in marriage. The second conclusion is that the Philippines' heteronormative marriage model appears to become inconsistent with the available *dicta* regarding the fundamentality of people's right to intimate choice.

#### **4. Background Culture Supporting the Philippines' Marriage Model**

Marriage is more than a matter of legislation; it is also a matter pertinent to morals and faith. In 2020, Roman Catholics accounted for nearly four-fifths of the Philippines' total household population, making Roman Catholicism the largest religious affiliation in the country (Philippine Statistics Authority, 2023). In Catholicism, the Church's Magisterium teaches that the sacrament of marriage (or matrimonial covenant) is a permanent and exclusive partnership between man and woman founded on the complementarity of sex (Catechism of the Catholic Church, 1993, paras. 1601, 1644, 1646, 2333). Given the importance of marriage to Catholic living, Church pastors have spoken out against threats of marriage to protect the morals and faith of Filipino Catholics.

A perceived threat to marriage is the legal recognition of same-sex marriage. In 2015, the then-president of the Catholic Bishops' Conference of the Philippines (CBCP), Archbishop Socrates B. Villegas, released a pastoral statement concerning the Church's position towards



homosexuality and same-sex marriage (Agence France-Presse, 2015). This was the Church's response to renewed calls for the legalization of same-sex marriage in the Philippines.

Archbishop Villegas reiterated the Church's teachings on marriage and human sexuality in the pastoral statement. He wrote, "God created human beings as male and female, complementary and specifically for each other, and ordered or directed towards union and procreation that are intended to be fulfilled and perfected in marriage" (Catholic Bishops' Conference of the Philippines, 2015a). Consequently, the Archbishop recommended Filipino Catholics the following: to not participate in or attend any ceremony that celebrates same-sex marriage; reject attempts to normalize homosexual behavior and homosexual marriages; and oppose legislation of same-sex marriage, especially those holding public offices (Catholic Bishops' Conference of the Philippines, 2015a).

A supplementary pastoral statement followed, in which the CBCP provided a series of guide questions for the discernment of the Church's position on homosexuality and same-sex marriage. As a clarification in one of its guide questions, the Church maintains its teaching concerning the disordered nature of homosexual tendencies. According to the CBCP, by describing it as "objectively disordered," the Church refers to homosexuality as contravening the natural order in relation to marriage, i.e., "the union of male and female in a relationship of natural complementarity" (Catholic Bishops' Conference of the Philippines, 2015b). Despite these views on marriage and sexuality, the Church remains open to homosexuals.

A recent development within the Church was Pope Francis sanctioning blessings for homosexual couples. This is in line with the Church's teaching that homosexuality is a trial endured by homosexuals who must be treated with charity as they are called to a life of chastity (Catechism of the Catholic Church, 1993, para. 2358). The Church makes it clear that the sacramental blessing of same-sex couples is not to bless their union nor allow it, for such a blessing does not conform to the Church's understanding of the nature of sacramentals (Congregation for the Doctrine of the Faith, 2021). As intended, blessings for same-sex couples are to be conferred as a supplication for "all that is true, good, and humanly valid in their lives, and their relationships be enriched, healed, and elevated by the presence of the Holy Spirit" (Dicastery for the Doctrine of the Faith, 2023; See Pontifical Council for the Family, 1995) Hence, the blessing of same-sex couples is seen as the Church's act of pastoral charity for the conversion of homosexual individuals.

Aside from the Catholic Church, other religions also uphold the standard for cis-gendered heterosexual marriage. In response to Senator Robin Padilla's proposed bill for the legalization of same-sex marriages, the Grand Imam of Marawi withdrew support for the senator, condemning same-sex marriage as immoral and the proposal as an act of disbelief (Luczon & Bacelonia, 2022). *Iglesia ni Cristo*, the Philippines' third-largest religious affiliation, also published material supporting cis-gendered heterosexual marriage ("See Does God Support Same-Sex Marriage?", n.d.; Tiosen, n.d.) Meanwhile, fellow senator and son of pastor

and House Representative Eddie Villanueva, Joel Villanueva, supported the proposed legislation but dissented to equivocate it to marriage (See Noriega, 2022).

Given the religious support for cis-gendered heterosexual marriage, the Philippines' marriage model remains stable despite the Philippines' diverse beliefs. The proposed legalization of same-sex marriage has the potential to destabilize the existing relationship between the State and various religions and their communities. Hence, when discussing marriage equality in the Philippines, it is important to consider freedom of thought, belief, and religion, particularly when proposed legislation appears to contradict people's beliefs. In particular, the question is whether marriage equality and freedom of thought, belief, and religion could be made compatible with each other.

## Conclusion

The Philippine marriage model corresponds to the Philippine legal framework of public terms and conditions for marriage. Central to this model is the Family Code of the Philippines, and an analysis of Articles 1, 2, 46(4), and 55(6) of the Family Code demonstrates that heteronormative statutory language was employed in the construction of the Articles, which established the standard for cis-gendered heterosexual marriage.

Particularly, Articles 1 and 2 require that the contracting parties be of the opposite sex/gender— aspects of human sexuality that are biologically determined and unalterable in the purview of Philippine law (except for individuals who are biologically intersex). Moreover, Articles 46(4) and 55(6) imply that homosexuality raises concerns about the parties' intimate compatibility. Due to the standard for cis-gendered heterosexual marriages, same-sex couples are excluded from an essential social institution, and people with diverse sexual orientations are misrecognized by identifying their non-conforming sexual orientation as a latent issue in marriage.

The concern with the Philippines' heteronormative marriage model is that it undermines same-sex couples' right to intimate choice. This is inconsistent with the available *dicta* supporting the fundamentality of the right to intimate choice. The *dicta* state that people should be free from choosing whom to be intimately associated with since such liberty is rooted in human dignity and autonomy, which the Constitution protects (See Falcis III v. Civil Registrar General, 2019; Tan-Andal v. Andal, 2021; Estella v. Perez, 2021; Guevarra v. Banach, 2021). As such, the reasonableness of the standard for cis-gendered heterosexual marriage is called into question.

The value of marriage as a religious institution is also worth noting. Widespread support for cis-gendered heterosexual marriage is present among Filipino religious figures and authorities. The concern is that the legalization of same-sex marriage could stifle people's



freedom of thought, belief, and religion. Such conflict questions how liberty could be compatible with other's fundamental interests.

Uncovering the heteronormativity within the Philippine marriage model and the support it enjoys proves how prejudice against people with diverse sexual orientations is reinforced by legal and social frameworks. A way to resolve this practice of exclusion is to uphold the fundamentality of same-sex couples' right to intimate choice. However, this presents a challenge: the right to intimate choice and same-sex marriage as an instance of that liberty must be balanced with the fundamental interests and liberties of others.

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