

A PRELIMINARY DICTION STUDY OF THE PHILIPPINE  
MAGNA CARTA OF WOMEN  
Words as Shapers of Filipinas' Rights

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Abstract

Proceeding from the theory that Language is the incarnation of a speaking community's valued experience and reality-shaping power, this paper looks into the very language used in the 2009 Philippine Magna Carta for Women, and explores how the wording of this legislative milestone for Filipinas strengthen women's rights, or actually weaken or defeat the purpose thereof. Taking into account overlapping considerations of the law-making process as well as statutory construction, this paper humbly offers the preliminary conclusion that although the law in the main affords security for women's rights, in the fine, it contains provisions and clauses that are not as accurately phrased, so that they open up crevices for repression, oppression, abuse and misuse to seep into the otherwise watertight gender-equality law.

"The word is the skin of the living thought." – *Oliver Wendell Holmes*

For most first meeting discussions of my introductory English class, the above quotation from one of the most celebrated US Supreme Court Justices is the first sentence I whet their intellectual appetites with. I caution my students that before exploring the intricate maze of the rules of effective paragraph development, and going down the narrow and shifting alleyways of punctuation conventions, it is imperative to begin the course with a more extensive, if not a full appreciation of how the language is, foremost, a tool for the creation and recreation of the world as we perceive it. I walk the class through a pragmatic observation of how we shape our realities, and they in turn shape us, through words; of how these initially random strings of letters take on life and meaning when they are used to

signify a parcel of the world that created it.

Language history and its more back-reaching evolution showed how a word is really, quite literally, the incarnation of a speaking community's valued experience. So that conversely, if an idea or a concept is not as consequential to a collective speaking consciousness, they will not bother to create a word for it. So that the massive cloud of words that blanket our speaking population is more than just a representation of who we are, of what we think, and of how we comprehend the world. In fact, Edward Sapir could not have stated it any better when he surmised that "It is difficult to see adequately the functions of language, because it is so deeply rooted in the whole of human behavior that it may be suspected that there is little in the functional side of our conscious behavior in which language does not play a part" (Sapir 11). In truth, in the past 25 years, the study of language has expanded dramatically, so that its findings are now of value not only to linguists, but to psychologists, sociologists, philosophers, anthropologists, teachers and others who have more concretely realized that language permeates all segments and domains of the human existence. (Downes 275-323).

Language is so intimately interwoven with the speakers of a society within which it is tongue, and the different interplays of social factors are inevitably represented if not reflected in their speech. So that to study language and observe it as a social phenomenon becomes a very revealing technique of uncovering the different conflicting values, power tensions, ideological clashes and battling sensibilities that use words as containers for acceptance and resistance.

This reality-creating utility and power of the word cannot be more highlighted and illustrated than in the black letter of the law. Our laws, the texts to which we perpetually hark back to distinguish legally right from legally wrong, right from privilege, duty from optional initiative, are all words.

The law is said to perpetually succeed reality, as the instrument that preserves it, and embodies it in black and white. The law reflects reality, and institutionalizes it. The black letters embody the whole systemic value judgments and collective sensibilities of a given society. So that in order to study the law in relation to its task as the singular reference of collective values, one must employ not only a framework that studies discourse, but also that which studies social practices.

Legislative writing, or the act of drafting laws, has acquired a certain degree of notoriety rarely equaled by any other variety of English. It has long been criticized for its obscure expressions and tortuous syntax, meaningless repetitions and archaisms. To the language scholars, these

are indispensable linguistic devices which bring in precision, clarity, unambiguity and all-inclusiveness and so on; but to others, it is a mere ploy to promote solidarity between the members of the specialist community and to keep non-specialists at a respectable distance. The legislative language of the law, in some perspectives, has been regarded as nothing more than pure linguistic nonsense bringing into professional discourse pomposity, verbosity, flabbiness and circumlocution (Gibbons 136).

Legislative language is highly impersonal and de-contextualized, the general function of which is directive, to impose obligations and to confer rights. As legal draftsmen are well aware of the age-old human capacity to wriggle out of obligations and to stretch rights to often unexpected limits, in order to guard against these eventualities, they attempt to define their model world of obligations and rights, permissions and prohibitions, as precisely, clearly and unambiguously as words will permit. Another factor which further complicates their tasks is that laws generally deal with a universe of human behavior, which is unrestricted in the sense that it is impossible to predict exactly what may happen within it. Nevertheless, the attempt to refer to every conceivable contingency within their model world and this gives the legislative writing the all-inclusive quality of it. However, the laws are also made to apply to real life situation and are invariably interpreted in the context of a particular dispute, which leads to the drafter's need to strike a balance and achieve the dual characteristic of clarity, precision and unambiguity on the one hand, and the all-inclusiveness on the other hand. The cumulative sense of legislation of laws adds to the challenge of drafting a law that has to harmonize itself with all the other laws that already exist before it, in the words of Caldwell:

Very rarely is a new legislative provision entirely freestanding... it is part of a jigsaw puzzle... in passing a new provision you are merely bringing one more piece and so you have to acknowledge that what you are about to do may affect some other bit of the massive statute book (Reported in Gibbons, 1994: 151).

The language being the primary vehicle of legislative intent in the law, a close, careful and critical consideration of the language use is of great importance, in order not only to understand rights and obligations provided for in the law, but also to equip drafters with an approach or framework to drafting provisions and clauses that linguistically accurately embody the thought behind them, in order to avoid losing the spirit of the law in a heap of confusing and misleading legalese.

From the above mentioned premise of the importance of language

study and the law, and as a language teacher and a student of the Law, I would like to explore the critical vantage point which views under a more scrutinizing lens how language is used to draft laws and the consequential rights for Filipinas.

For the methodology, this study focused mainly on the diction of the law, paying closest attention to the provisions which contain clauses that have been considered contentious or, at the very least, debatable. Other aspects of the language are highly recommended to be taken into account as well. However, for the limited purposes of this preliminary study, the discussions will look into legislative word choice in order to explore and identify the possible power-relation tensions that are inevitably built into the language of the law. This short critical paper also seeks to delve into several legally consequential implications of the provisions of the law.

The analysis in this paper will also use the basic principles of statutory construction in order to theorize possible tension-points that may be facilitated by the language utility in this particular piece of recent legislation. Statutory construction is the procedure of rendering and enforcing legislation. Some amount of interpretation is always essential when a case involves a statute. Sometimes the words of a statute have a plain and straightforward meaning. But in most cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge. To find the meanings of statutes, judges use various means and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose (Martin 18-23).

The central question that this paper seeks to answer is this: "How are words used to create, deprive, change and perpetuate the rights of women as provided for in the written law?" Due to the expansive array of laws written for the rights of women, this paper will focus on the most recent legislative milestone and crowning achievement of the advocacy for women's liberation and equal rights: the Republic Act 9710 or the "Act Providing for the Magna Carta for Women", signed by then President Gloria Macapagal Arroyo and enacted into law on August 14, 2009. This essay seeks to explore how the wording of the Magna Carta for Women truly, in the word choice, strengthen the empowerment of women, or actually weaken or defeat the purpose thereof.

The Magna Carta of Women (MCW) serves as the Philippines' gender equality law. It is a comprehensive women's human-rights legislation that seeks to eliminate discrimination against women and outlines the duties of the state in recognizing, protecting, fulfilling and promoting the rights of women, especially the marginalized. It closely resembles the provisions of CEDAW, the women's rights convention, particularly

in defining gender discrimination, state obligations, substantive equality, and temporary special measures (“United Nations Development Program Philippines”).

However, the “Magna Carta of Woman” as proposed by the Philippine Legislature, although said to have good and welcomed pronouncements – also contained dubious and questionable provisions (Cruz). Sharply at the tail of the passing of the gender-equalizing law were substantial criticisms from dissatisfied ends of both the groups of women’s rights advocates and the Catholic community over the very wording of the law, and how certain provisions were finally phrased in such a manner that the substantive rights they hoped to embody became weak and even contentious.

Ana Maria Nemenzo of WomanHealth criticized the law on how it fell short of stating a clearer and more categorical pronouncement of rights afforded to women on provisions of family planning, maternal health, gender and sexuality (Somera). This dissatisfaction shared among different women’s rights groups have pointed out that the provisions on cultural relativism found under Section 17(a) on Comprehensive Health Services actually makes the provision itself problematic and prone to being watered down.

On the other end of the dialogue that birthed the above special law, the Episcopal Commission on Family and Life (ECFL) and the Office of Women of the Catholics Bishops Conference of the Philippines (CBCP) criticised what they deemed as “anti-life” and “anti-family” provisions of the draft, also particularly closing in on the provision under Section 17 entitled *Women’s Rights to Health*. It questioned gender as a result of culture and choice, for it appeared as though it sought to replace a person’s divinely ordained sexual identity with a self-constructed gender arising from one’s sexual preference or orientation. They further asserted that, “a Magna Carta of Women, to be worth its name, must first of all protect and uphold her natural calling to marriage, family life and motherhood” (Somera).

Some key provisions of the Magna Carta of Women are the following: (1) ensure that the State will review and, when necessary, amend and/or repeal existing laws that are discriminatory to women within three years from its enactment; (2) institute affirmative action mechanisms so that “women can participate meaningfully in the formulation, implementation, and evaluation of policies, plans, and programs for national, regional, and local development; (3) ensure mandatory human rights and gender sensitivity training to all government personnel involved in preventing and defending women from gender-based violence; (3) encourage Local

Government Units (LGUs) to develop a Gender and Development (GAD) code in their respective localities based on consultation with their women constituents; (4) increase women's representation in third level positions in government to achieve equal gender balance within the next five years while the composition of women in all levels of development planning and program implementation will be at least 40 percent; (5) provide equal access and elimination of discrimination in education, scholarships and training and outlaw "expulsion, non-readmission, prohibiting enrollment, and other related discrimination of women students and faculty due to pregnancy out of marriage" and; (6) promote the equal status of men and women on the titling of the land and issuance of stewardship contracts and patents ("LawPhil Project: Philippine Laws and Jurisprudence Databank").

In order to study the text of the Magna Carta for Women, this essay utilized Discourse Analysis (CDA) as the tool of scrutiny. CDA is a type of discourse analytical research that primarily studies the way that social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context. CDA takes an explicit position, and thus seeks to understand, expose and ultimately resist social inequality (Dijk 22-25). It is an interdisciplinary approach to the study of discourse that views language as a form of social practice and focuses on the ways social and political domination are reproduced by text and talk (Wodak 12). CDA has been deployed as a method of analysis throughout the humanities and social sciences. It is neither a homogeneous nor necessarily united approach. Nor does it confine itself only to method. The single shared assumption uniting CDA practitioners is that language and power are entirely linked.

Norman Fairclough, the prominent mover behind the CDA approach, developed a three-dimensional framework for studying discourse, where the aim is to map three separate forms of analysis onto one another: analysis of (spoken or written) language texts, analysis of discourse practice (processes of text production, distribution and consumption) and analysis of discursive events as instances of sociocultural practice (Fairclough 34-36). A legislative piece, in this light, is likewise seen as an overlapping of these three linguistic phenomena: it is an example of a written language text which is legally defined as the embodiment of the social life as unfolding in various socio-cultural and political discourse practices.

Language use, discourse, verbal interaction, and communication belong to the microlevel of the social order. Power, dominance, and inequality between social groups are typically terms that belong to a macrolevel of analysis. This means that CDA has to theoretically bridge the well-known "gap" between micro and macro approaches. There are several

ways to analyze and bridge these levels. The first one is the *members-groups* analysis, where language users-engage in discourse as members of (several) social groups, organizations, or institutions; and conversely, groups thus may act “by” their members. The second process is that which looks into the *action - process* dynamics, where social acts of individual actors are thus constituent parts of group actions and social processes, such as legislation and news-making. The third process is that which studies the *context - social structure*, where situations of discursive interaction are similarly part or constitutive of social structure; for example, a press conference may be a typical practice of organizations and media institutions. Finally, there is the *personal and social cognition*, where language users as social actors have both personal and social cognition: personal memories, knowledge and opinions, as well as those shared with members of the group or culture as a whole (Dijk 53-54).

For the focus of this brief study, this paper will zero in on the *action – process* aspect, where actions of individual members become the representation of the action of the whole society, as in the case of law-making. This paper seeks to offer analyzed inferences on how certain words and terms in the final draft of the law which were found contentious by different stakeholders of the society concerned with the issue of women’s rights.

Since the actual text of the law spans the length of a total of 9,506 words, I opted to draw the attention to certain key provisions in it that, upon surveying and reading the entirety of the text, stood out in terms of its diction and the possible ways that the choice of words would affect how a law is to be construed and statutorily constructed (Agpalo 12).

The first important language-related point worth looking into is the fact that the featured law, which is the legislative achievement in the direction of gender-equalization, does not contain an operative definition of the term “gender.” The definition of terms under section 4 paragraphs (a) to (m) include the designated meanings, terms like “women empowerment,” “marginalization,” “urban poor,” “indigenous peoples,” “children,” “senior citizens” (“LawPhil Project: Philippine Laws and Jurisprudence Databank”); it does not, however, hold a working definition of gender. It may initially seem as if the omission of the same is due to the notion that gender, as far as womanhood goes, is a biologically-predetermined assumption, more in line with the dictionary definition of gender as the behavioral, cultural or psychological traits typically associated with one sex (“Gender”). However, if we are to look at the concept of gender on a more complex scale, we can see that the distinctions from one gender to the next is actually more complicated, more socially and

culturally rooted, than our biologically given suppositions would tell us (Wood 18). Such a complexity of the unaccounted for nuances of gender are not accommodated by this law, the only basis of its spirit being what is in black and white. A case in point that might put this law to the test would be a possible case of a transgendered person. Transgender is an umbrella term that refers to people the biological and gender identity or expression of whom may not be the same. This can but does not necessarily include preoperative, postoperative or non-operative transsexuals, female and male cross-dressers, drag queens or kings, female or male impersonators, and intersex individuals (Weiss). This nuanced situation will render the law problematic for transgendered individuals who claim and identify themselves as women. Without a stipulated definition of the word gender, the scope of who will be covered by the privileges and affirmative action proffered by the law will be open to uncertainty. With such a fluid and debated core concept, it would have been imperative for that law carefully and categorically define the term so as not to throw it upon the mercy of subjective interpretations and understandings, which are in turn at the mercy of individual ideologies and belief-systems.

The inadvertent absence or intentional omission of the operating definition of “gender” exposes the law to a possible tendency of indefinite expansion or restriction of its substantive scope. So that if a transgendered woman seeks protection under the safeguarding of this Magna Carta, an opposing counsel may well and perhaps easily argue that a close reading of the law reveals that gender, if taken in its ordinary cultural meaning, may not include the transgendered woman. In a legal system the statutory construction of which grounds itself in the elementary principle that the expressed puts an end to what is implied (and so to understand and interpret the law, one must primarily look into the very words written in the four corners of the paper, and to refrain from reading between and beyond the lines of the words unless well-merited (i.e., when there is patent ambiguity resulting to an obvious failure of the law from reflecting the legislators’ true intent).

It is true and might be argued that to do so, narrowly define the word gender, would be at times too limiting, as are all other exercises of definition. But, for purposes of unambiguously producing a law that affords for women their rights, a clear operational understanding of what the term “women” includes is necessary. To not define any more clearly the term gender would go into a linguistic manifestation of the dominant power of the collective members of the Filipino society who automatically presume that the only ones who are women are those who are anatomically predisposed to be so. The fact that the law did not even concern itself



with taking other factors into consideration may be arguably seen as a clear reflection of how its drafters were writing not only as legislators, but more evidently as representatives of the belief-system that they have. Consequently, this may lead to conflicts in the law where a legislator may have been producing laws that serve the interest of the ruling class to which that legislator belongs, to the (deliberate or unintentional) disadvantage of the non-represented, non-ruling class.

The second portion of the law which I would like to look at more closely is the decidedly contentious provision under section 17 entitled “Women’s Right to Health” where paragraph (a) on Comprehensive Health Services states that,

The State shall, at all times, provide for comprehensive, culture-sensitive and gender responsive health services and programs covering all stages of a woman’s life cycle and which addresses the major causes of women’s mortality and morbidity. *Provided*, that in the provision for comprehensive health services, *due respect shall be accorded to women’s religious convictions, the rights of the spouses to found a family in accordance with their religious convictions, and the demands of responsible parenthood*, and the right of women to protection from hazardous drugs, devices, interventions, and substances.

Access to the following services shall be ensured:

Xxx

Xxx

(3) Responsible, *ethical*, legal, safe and effective methods of family planning (“LawPhil Project: Philippine Laws and Jurisprudence Databank”) (Italics supplied).

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The above quoted portion of the law is litigious on two points: first, its qualifying statement stating that the comprehensive health care services for women will halt as soon as it begins to threaten the sacredness of the woman’s religious convictions, and secondly, the insertion of the word “ethical” as one of the descriptions of the kind of methods of family planning that are mandated under this law.

Women advocates are arguing that the inclusion of those statements significantly weakens the potency of the law, and actually allows for wide elbowroom within which the women may, for one religious/ethical reason or another, be deprived of the services which this law precisely seeks to provide to all women. Via the statutory construction principle that in order to interpret a clause, one must look at the context wherein such clause was found, the word “ethical” in this particular context may be argued as that

which reflects religious normative sentiments and valuations (as the word “religious” has been repeatedly mentioned in its preceding paragraphs). This provision would, in an ideally neutral and legally pluralistic setting, be harmless. On the contrary, in the Philippine setting where a State-determined legal centrism is the status quo, the religious sentiments of the majority of the population has a very real tendency of being considered as the main basis of the ethical standards, which fails to take into account the normative heterogeneity attendant upon the fact that social action always takes place in a context of multiple, overlapping semi-autonomous social fields. This danger easily disenfranchises religious, cultural and other indigenous groups, belonging to the minority, that might not share the doctrines of the more popular religion.

Paragraph (a)(4) of the same section declares that the law shall ensure “Family and State collaboration in youth sexuality education and health services without prejudice to the primary right and duty of the parents to educate their children.” The clause there which states the primary right of the parents to rear their children the way they want to is supposed to be the exception to the general rule that sexuality education should be administered to the youth. However, when applied in an actual scenario where a parent can always opt out of the general rule, the exception may actually be so broadly and vaguely drafted that it can easily overpower the general rule. This is the fear of the women’s rights advocates: that all the rights that they have lobbied to be included in the then bill, would just be weakened or easily disregarded because of the catch-all exception that it will not go against religious or ethical convictions of people.

Qualifications also form part of the structuring of legislative statements. Without qualifications in the legislative provision, the latter will be taken to be of universal application, and it is very rare that a rule of law is of universal application. However, there may be cases, one of which shall be pointed out in the latter discussion, of how attached qualifying clauses make the whole provision extremely narrow and restricted, so as to possibly negate the main point of the legislation to begin with.

Which brings us to the next observed point in the Magna Carta of Women: the ethical qualification. Advocates have also questioned the inclusion of the word “ethical” to describe the kind of family planning methods that this law ensures. The challenge to the inclusion is not so much in the idea of not wanting the birth control methods to be ethical, but in the more critical question of *whose* ethical standards the term “ethical” in this provision is to be based. The term ethical may be generally and loosely defined as “morally right”, but that would also already beg the question of the shades and grays of morality. For example, for certain members of

religious groups and faith communities, using birth control pills might be perfectly ethical, while for others, it would be considered a variant of the many abortive products that are considered gravely immoral. By whose moral/ethical yardstick will the family planning methods be measured? The construction of the proviso and the inclusion of such a qualifying word do not answer this critical question.

In a legal system where the rule of law is defined as essentially ethical, and rights and obligations are given and conceded depending on the way that the laws tip the justice scale, to loosely use ethics without sufficient safeguarding risks opening it to a plethora of subjective interpretations that diminishes the standardizing force of law.

The final contentious provision I would like to look into is section 28, entitled “Recognition and Preservation of Cultural Identity and Integrity” which declares that,

The State shall recognize and respect the rights of Moro and indigenous women to practice, promote, protect and preserve their own culture, traditions, and institutions and to consider these rights in the formulation and implementation of national policies and programs. To this end, the State shall adopt measures in consultation with the sectors concerned to protect the rights to their indigenous knowledge systems and practices, traditional livelihood, and other manifestations of their cultures and ways of life; *Provided*, that these cultural systems and practices are not discriminatory to women.

Although it would appear that this provision is clearly phrased, and its idea well-safeguarded, it actually offers a doubly-problematic picture in execution, where the power relations between women and men, between the majority of the non-indigenous citizens and the indigenous peoples, are stirred. Take for example the case of the Binukot women of some of our indigenous peoples’ tribes, who are daughters of datus or rulers who are literally kept hidden in special rooms and were not allowed to be seen by any man (Abrera 33-35). If we are to take the Magna Carta of Women and apply it in this cultural milieu, it would be unclear whether the Binukot woman would be afforded the economic and physical freedoms that this law safeguards for Filipinas. On the one hand, the Magna Carta of Women should be able to set the Binukot woman free from physical, economic and social bondages imposed on her by her immediate community. On the other hand, if we are to follow the qualifying clause about how this law puts a prime on the respecting and recognizing the preservation of the traditions of the different indigenous groups, it would mean that although the Magna Carta exists to liberate women, it will never apply to a Binukot

woman because she will always fall within this broad exception to the rule.

In fact, that is the overarching question when dealing with statutory construction and phrasing exceptions to exceptions to the general rule: how do you qualify enough so that all the rights are carefully calibrated in relation to others, without slipping into the tendency of using words that are too ambiguous or general that they become weightless in the face of the law? How do you disclaim enough without amounting to a circuitous and almost toothless law? Legislation has not found it an easy task to walk this tensioned line between over-generalization and over-specification, but to not contend with the actually balance that must be struck will more gravely amount to a law may allow it to be subjected to the whims, legal-manuevering and creative and interpretative imaginations of those who seek to tailor-fit the law to a vast variety of conflicting interests.

It is true that legislative writing has a long and well-established tradition and the style of legal documents has become firmly standardized, with the inevitable result that drafters may tend to become comfortable with the tried, tested, time-honored and formulaic linguistic expressions and the style of writing over a period of time. This should be an important point that drafters and legal scholars may well give close attention to, since legislative writing *is* a right-conferring and/or obligation-imposing writing activity.

In general, the Magna Carta of Women does stand faithful to the goal of achieving not a reverse dominance of women over men, but equality and equity for all, regardless of gender. In the fine, it does have provisions and clauses that are not as accurately phrased, so that they open up crevices for repression, oppression, abuse and misuse to seep into the otherwise watertight gender-equality law.

This paper does not seek to insist that the final draft of the Magna Carta of Women is weak and unhelpful. It does propose that a closer study at the language of the law should be done in order to scrutinize and see whether the words employed actually embody the ideas they ought to contain. Rights and duties are bestowed and taken away with just words in the written law. So that more often than not, in constitutional case battles, the fight between clients and their opposing counsels boil down to a war of semantics. Now, if words used in laws are not carefully chosen and deliberately reviewed, and they do not stand exactly and truthfully for the spirit of the law which they seek to convey, then nothing will stop anyone from performing semantic gymnastics over, beyond and between the lines of the provisions, so that the law is summarily rendered useless and empty – a mere scrap of paper.

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