Juvenile Delinquency Law - A Product Of The Sociological School

IN the waters of the world's legal systems, men's lives, philosophies, and writings, schools of thought, events and movements, have caused ripples which have reached even us of the present. One such life was that of Rudolf von Jhering (1818-1892) ; one such school of thought was sociological jurisprudence.

Jhering shifted emphasis from the nature of the law to its purpose. His school started a chain of consequences, one of which affected criminal law, particularly as to the theory of punishment. The current theory was retributive justice, rooted in Hammurabi's "An eye for an eye and a tooth for a tooth". Even in England, a child of thirteen years was hanged in Tyburn for larceny of a piece of spoon. Punishment was adjusted to the nature of the crime. Jhering insisted that it be adjusted to the nature of the criminal; it must be governed by its social ends, and must be fixed with a reference to the future rather than to the past. Saleilles said that "it is a theory of punishment characterized by its purpose as opposed to punishment crystallized as a mechanical and mathematical retribution, without effect as to the past and without result as to the future." (Fernando, *Readings on Jurisprudence* 35.)

This school of thought inquired into the subject of criminal punishment, and exposed there, among other things, the sad and unfortunate plight of minors confused and undistinguished from adult criminals. It probed deep into the diseased body of society and discovered a gangrene in the treatment of minor delinquents. With discovery naturally came a reaction. Thus was started a revolution in the attitude of the STATE towards its offending minors, not only in Europe and in America, but also in Australia, the Philippines and other places beyond the pale of the so-called "white civilization".

"The fundamental thought in criminal jurisprudence was not reformation of the criminal but punishment, and this applied to children as well as to adults. Today, the thought is that a child who began to go wrong, who is incorrigible, who has broken the law or ordinance, is to be taken in hand by the state, not as an enemy, but as a protector, the ultimate guardian, because either the unwillingness or inability of the natural parents to guide him towards good citizenship has compelled intervention by the public authority." (1 American Jurisprudence 619).

As early as 1906, our legislators, affected consciously or unconsciously perhaps by the new school, passed a law, the object of which, according to our Supreme Court, is "to remedy the present unsatisfactory conditions of juvenile offenders in the Philippines, wherein it is observed that some of these youths are confined together with adult and criminal prisoners. The Legislature passed this Act (Act No. 3203 amending Act No. 1438) as a necessary measure for better care of juvenile offenders, providing that they be considered not as common criminals, but as children lacking help, encouragement, and guidance in normal development. (Bactoso v. Governor of Cebu 48 Phil. 126.) Such a conclusion was inevitable considering that the first juvenile delinquency law was enacted by the Philippine Commission, mostly Americans, and interpreted by a Supreme Court a majority of whose members were Americans, who were all soaked with the doctrine and methods of sociological jurisprudence. In fact, this attitude of society towards its erring minors had been already crystallized in America as revealed by the decisions of the different courts even as the American fleet was blasting the fleet of the "conquistadores" in Manila Bay. Witness the Supreme Court of Iowa when it said: "The object of the law (commitment of minors) is not punishment of juvenile offenders but their removal from the paths of temptation and direction into paths of rectitude by preventive, corrective means." (Wisseburg v. Bradley 209 Io. 813) The Washington Supreme Court also said in Re Lundy (82 Wash. 148): "The operation intended to check criminal tendency in its inception, and protect the unformed character in the facile period from improper environment and influence, and to give to the weak and the immature a fair fighting chance for the development of honesty, sobriety and virtue essential to citizenship"; and in State ex rel Berry v. Superior Court (139 Wash. 1), "To prevent them from growing up to lead idle, dissolute or immoral lives."

As intimated above, the first juvenile delinquency act passed here was Act No. 1438 of the Philippine Commission which provided:

> "Whenever any boy or girl less than eighteen years of age shall be accused in any court of an offense not punishable by life imprisonment or death, the court, before passing sentence of conviction, shall commit such minor into the control of any of the institutions mentioned in sections 1 and 2, until said minor shall have reached his majority or for such period as to the court may seem proper . . . at the termination of which he shall be returned to the court for either sentence or dismissal."

This was followed by Act No. 3203 of the Philippine Legislature, as amended by Act No. 3559, providing for exactly the same procedure except that a probation officer was provided for. Act No. 367, our Revised Penal Code, repealed all these laws. Article eighty as

amended recently, became the applicable law. Said Article 80, before its amendment on October 3, 1946, provided:

> "Whenever a minor of either sex, under eighteen years of age at the date of the commission of the grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of school or his representatives, subject to such conditions as are prescribed herein below until such minor shall have reached his majority or for such less period as the court may deem proper."

We notice from a comparison of the law as it stands and the law as it stood that there are three marked changes, to wit: (1) As to the crimes committed (par. 1, above); (2) As to the return to the court (par. 6, Art. 80, Act No. 367); and (3) As to the age (par. 1, above as amended on October 3, 1946). Article 80 covers within its protection minors committing grave or less grave offenses; the old laws excluded within their protection offenses punishable with life imprisonment or death. Paragraph 6 of Article 80 makes it the duty of the court to order his final release if the minor has behaved properly, and has complied with all the conditions of his confinement; the old law provided for either sentence or dismissal, which in the opinion of the court, the records of the minor and the recommendation of the Public Welfare Commissioner shall justify. We note that except as to the change in age which I shall discuss lastly, changes 1 and 2 are consistent and promotive of the purposes which initially prompted the passage of the Act.

CONSTITUTIONALITY OF THE ACT

Philippine jurisprudence is still barren on the subject of juvenile delinquency. The not more than ten decided cases, not all of which have been reported, do not compel a deep and serious study of the matter; the few legal questions presented before the bench lacked that profundity and intelligence which would force the deciding justices to put forth all that they have in learning, aptitude and philosophy. For nineteen years, from the enactment of the first measure in 1906, no counsel dared question the Act. In 1925, its validity was raised as a question in Bactoso v. Governor, 48 Phil. 126.

Bactoso, a minor of sixteen years, was found guilty of theft of milk and a bottle of "tansan", all worth ₱0.70, and pursuant to Act

No. 3203, then in force, was ordered by the judge to be confined at Lolomboy (1) until he reached his majority. The accused contended that the organic law defined the authority of the justice of the peace and insofar as Act No. 3203 gave to the justice of the peace the power to order confinement beyond the period of six months, such Act No. 3203 was in conflict with the Organic Law and therefore void. The Supreme Court brushed this theory aside by saying that confinement in a reformatory is not a penalty, but a reformatory measure, for social improvement and betterment of the character of the minor. The section is entirely constitutional and in accordance with legislation in the United States."

The defense counsel made also a half-hearted sally against the Act along the line of "due process". The Supreme Court lazily disposed of this contention by referring to Act No. 1438, the prodecessor of Act No. 3203, as providing exactly the same procedure and yet having never been questioned. The Court hastily added that the minor was submitted to due process because there was a hearing. As the problem was shallow, so was the answer.

As our delinquency laws were borrowed from the United States, it is well our worth to tae a dip into the American jurisprudence on the subject. After all, it is an accepted canon of construction and interpretation that a statute borrowed from a foreign country carries with it the interpretation of that statute by the courts of such country. (Yu Cong Eng v. Trinidad, 271 U.S. 500). "Statutes providing for commitment of minors to and detention in reformatory institutions are generally upheld against various objections on constitutional grounds as salutary police measures intended for the protection and welfare of children on the theory that the delinquent is not on trial for a crime, and that the institution is not a prison, but a place where reformation and education and not punishment is the end." (31 American Jurisprudence 796) The Michigan Supreme Court also said: "Such statute is an essential assertion of the state's *parens patriae,* and its right to exercise proper parental control over those of its minors who are disposed to go wrong. The welfare of the child is at the very foundation of the statutory scheme." (Hunt v. Wayne Circuit Judge 142 Mich. 93) From 1925 until now nobody has questioned the validity of the Juvenile Delinquency Act.

RIGHT TO APPEAL

Among the more interesting questions presented before our Supreme Court is the right to appeal by the minor ordered to the reformatory. In the case of People v. Makaraig (54 Phil. 904), the defendant, a lad of sixteen years, was found guilty of qualified seduction. The sentence was accordingly suspended. and the accused was ordered to the Philippine Training School for Boys until he would

come of age. The defendant appealed to the Supreme Court. The Attorney-General opposed the motion on the ground that no appeal can be taken from such orders. He took the position that the right to appeal was merely statutory, and in the absence of statute does not exist. Act No. 3203 contained no such provision. Proceedings under the Act were not criminal, therefore, the Code of Criminal Procedure which permitted and governed appeals did not apply. He then referred to the weight of authority in the United States where proceedings under the Juvenile Delinquency Law were not considered criminal, and, therefore, there were no appeals from orders of commitment in the absence of statute.

Our Supreme Court dismissed the opinion by reminding the Attorney-general that the weight of authority in the United States referred to proceedings in Juvenile Courts specially created by law. There being no such courts in the Philippines, the doctrine finds no application here. Instead, our highest court pointed to the Texas courts. "The Texas Delinquency Law," it said, "is most similar to the Philippine Law, and it is settled by the Texas courts that an appeal can be brought from a commitment thereunder direct to the Court of Criminal Appeals, (82 Texas Criminal Reports 495)."

How did our Supreme Court arrive at its conclusion allowing the appeal? To the question "are the proceedings criminal?" Justice Malcolm, the author of the majority opinion, answered: "Though two decisions of this court intimated that the proceedings (under Act No. 3203) may perhaps be not regarded as criminal, the question was not discussed under either." (People v. Navarro No. 30994, not reported, and Bactoso v. Governor, 48 Phil. 126). "The law, in its title, speaks of penalties, section seven speaks of 'return of the minor to the court for either sentence or dismissal' and the rendering of 'final judgment', and section 14 of 'judgment of the court' although intimating that delinquents should not be treated as criminals." We think that while the laudable purpose of the Juvenile Delinquency Law is aid, encouragement, and guidance of children who have temporarily gone astray, yet the proceeding is sufficiently akin to the criminal prosecution provided for in the Criminal Procedure, and the decision and orders handed down as sufficient to be final judgments as mentioned in the Code of Criminal Procedure to warrant the provision of this Code being given application to minor delinquents who are desirous of taking appeals from the Court of First Instance to the higher court." Justice Malcolm buttressed this conclusion by the observation that "Act No. 3203 was a successor of the first legislation on the matter, Act No. 1438, enacted January 11, 1906. For over twenty-four years appeals of this kind were permitted, and the inclination of the Legislature is towards sanction-

ing of unlimited appeals to the Supreme Court, so that it would be far-fetched to deduce that because Act No. 3203 does not mention appeals, that the Legislature intended that the Code of Criminal Procedure should not be given effect and no appeal is permitted. It is a rule of construction that a statute will not be construed as ousting or restricting the jurisdiction of the Supreme Court unless there be express words or necessary implication to that effect. (U. S. v. Veray, 36 Phil. 539) Any attempt to curtail the right of appeal would impair the jurisdiction of the Supreme Court in violation of the Organic Law which should be avoided."

RIGHT TO BAIL

In the determination of another case brought before it, our Supreme Court resolved another legal question the teleological way. Has the delinquent minor the right to bail? In the case of Ching Huat v. Ysip, GR L-920, promulgated on January 27, 1947, Maria Ching was found guilty of marrying without her parent's consent, Co Heong, on June 21, 1946, when she was only sixteen years old. Such act was punished by Article 350 of the Revised Penal Code. Due to minority, the sentence was suspended and the defendant was ordered to be committed to the Welfareville Correctional Institution. She appealed, and she was released on bail after posting the bond of one thousand pesos (₱1,000). Petitioner, defendant's father, now impugns the order of the Court directing release on bail. Upon release, the defendant went to her husband's waiting arms. The father claimed that he was thereby deprived of his patria potestas.

But the Supreme Court said: "A minor found guilty in the lower court of a criminal offense is not deprived of the right to appeal by reason of such minority. The decision or judgment finding her guilty and ordering her commitment as provided by Article 80 of the Revised Penal Code is stayed and unenforceable until it is final and executory, and it becomes such only when the decision on which it is based becomes final and executory. Appeal suspends its effects. This is logical because appeal may result in a reversal. There is no reason why a minor should be excluded the benefits of constitutional and legal provisions on bail. A minor is entitled to more protection from the law, never to less."

SUSPENSION OF SENTENCE

I made a serious indictment above that the legal questions on juvenile delinquency presented to the Supreme Court lacked that profundity . . . (See page 641 on Constitutionality of the Act). This is best illustrated by People v. Sardonia, (GR L-673 promulgated on November 28, 1947)

Daniel Gesoro was one of four defendants charged with the complex crime of robbery with homicide. The lower court found all of them guilty and sentenced all of them, except Daniel Gesoro who was a minor below eighteen. He was placed under the custody of the Director of Public Welfare to be confined in any establishment under the control of the bureau. The defendants all appealed. Gesoro's contention was that it was error for the trial court to pronounce him guilty. Said judgment read: "For the foregoing considerations, Aguedo Sardonia, Honorato Gesoro, Daniel Gesoro and Bonifacio Samarang are found *guilty*, beyond reasonable doubt, of the crime charged." (Italics mine.)

The counsel for the defense cited Article 80 of the Revised Penal Code, which provided that "the court, after hearing the evidence in the proper proceedings, should suspend all further proceedings, instead of pronouncing judgment of conviction, and shall commit the minor to the custody or care of a public or private . . ." institution established and defined by law. The defense counsel also dug up the Philippine Reports and thought he saw an authority in Bactoso v. Governor of Cebu, (48 Phil. 126)," for a part of the opinion read: "If he proves to be guilty therefore, the competent court, instead of finding him guilty, shall suspend the judgment and order the confinement of the minor in a reformatory, to remain there until he reaches majority, or for a shorter period as the court sees fit." However, Mr. Chief Justice Moran, writing for the court, decided that there was no error committed. He wrote: "The suspension of the proceedings and the commitment of a minor to a charitable institution as required by Article 80 of the Revised Penal Code are necessarily predicated upon a finding that the minor is guilty of the crime charged. What is really suspended is the imposition of the penalty."

Thus the Supreme Court, because of a specious argument advanced by a desperate counsel, was forced to express unequivocably what it and everybody else has never doubted theretofore. What is really suspended is the imposition of the penalty, and a pronouncement by the court a quo that the minor is guilty beyond reasonable doubt constitutes no reversible error on that ground.

The Reduction of the Age Limit from 18 to 16 Years

On October 3, 1946, the Congress of the Philippines, incensed by the incremental incidence of crime in the city and in generally over all parts of the archipelago, thought that it saw a remedy, quick and simple. It lowered the age of the delinquent minors who would be benefitted by Article 80 of the Revised Penal Code from 18 to 16 years. So does the law stand.

Was it wise for Congress to reduce the age limit? Let us view the problem from the perspective of the sociological school. The statute, before its amendment, fixed the age limit at eighteen years on the belief that even at eighteen, the Filipino mind is still immature and incapable of realizing the import of its acts. Until it is conclusively shown that the situation is otherwise now, that a mind, at sixteen, can now fully appreciate its acts where it never did before, the age should not be lowered. I take the position that until now a mind is no wiser, no more discreet, no more judicious at eighteen than it is at sixteen years. Why, there are law students at nineteen or twenty years, who, despite thirty-six months of enemy occupation which is supposed to have made the youth mature at an earlier age, do not, because they cannot, discern the consequences of their acts. I advance the opinion that our Congress passed the amendatory act rather haphazardly. It was impelled more, perhaps, by vengeance. It could have been more realistic; it could have solved the vexing problem of youths in crime with more foresight and wisdom by a little deliberation on the purposes of juvenile delinquency laws. It could have cast its eyes far across the Pacific for enlightenment on the subject and saw there that the tendency of more recent statutes is to make the age limit higher, rather than casting its eyes there for more vices to emulate.

But let us not be hard on Congress. Can we not say that the legislature was merely being pragmatic in the solution of a big problem, that circumstances demanded the change because a large percentage of these criminals were lads below eighteen? And does not the sociological method hold that there can be no sacrosancts before the onslaught of necessity and change? Was this not what the legislature did? Maybe. Nonetheless, let us probe deeper.

What has been the cause of the increasing delinquency of minors lately, especially after the occupation? If the cause can be traced, even faintly, to the provision of Article 80 of the cited code, extending the benefits of that article to minors not over eighteen years, then wisdom it was for Congress to reduce the age limit from eighteen to sixteen years. But is it? For me to discuss the causes, would be to digress to the fields of sociology and criminology, which is beyond the scope of this paper. It is sufficient to say that the age at eighteen as fixed by Article 80 before its amendment would be the last cause.

The effect of the amendment would be to negate the purposes of the Juvenile Delinquency Law insofar as those youths covered by the two-year difference are concerned. And these are legions! They would be exposed to all the evils and dangers sought to be

avoided by the enactment of the first law. Each one of these youths would be a potential atom-bomb of crime and a prospective bane to society, instead of being harmlessly "defused" by the social technicians of our reformatory schools and turning to be assets to a country badly in need of some.

WHITHER TENDS THE CONCERN OF THE STATE AND THE PEOPLE TOWARDS ITS MINORS?

Our government and our people are awakening to the wisdom of preventing, rather than curing, minor delinquency. An ounce of prevention is worth more than a pound of cure. Except for the above-cited retrograde legislation, our government is acquitting itselft well of its responsibility towards its young wards. Besides increasing the appropriations for the Welfareville Institution, and the adoption of the most modern equipments and most effective methods for the moral rejuvenation of the erring youths, the government has been carrying on a coordinated battle in all fronts. It has sent the Commissioner of Public Welfare to the United States to study the Flanagan Boys' Town and other institutions devoted to a like purpose. Schools for social workers, specially emphasizing the roots and solution of juvenile delinquency in this country, have been set up along the most modern trends. More and more outlays are set apart to increase the enrolment in primary schools. The young are made to participate in governmental and other activities calculated to arouse their civic pride. Such are the Junior Police (2), Boys' and Girls' Week, Clean-up Week and Fire Prevention Week. Playgrounds are being built, and the slums are being cleared to make way for planned and more sanitary barrios. The many civic agencies and associations, not excluding the different churches in the country, are vieing with one another in helping the homeless and unfortunate youths. Boy Scout and Girl Scout organizations, springing like mushrooms, are channeling the energies of the formative youths along useful and healthful and peaceful grooves, thus reducing almost to nil the probability that any of its members would become wayward and become an enemy of society. Bootblacks, newsboys and street-urchins are given yearly treats to an outing in the country and are thus given a chance to feel the bliss of serene and nature. Outing once a year is, of course, far from the ideal, but it is consoling to report that the ball has started rolling. Our universities seem to be the only agencies capable of doing something to win the battle for the youths, yet are not doing anything constructive. Surely something can be done. Recently a home for the homeless was established in the old Bilibid, out of the contributions of a generous public.

These are all signs of the sympathetic attitude of our people. The sympathy is there. What we need more is honest leadership and intelligent exploitation of all the resources of our people, human and material, to help these unfortunate minors. This leadership, to be effective, must represent the cross-section of society, and not come solely from the benevolence of the "400". Perhaps our universities are cut out to furnish us these leaders. Let us see!

DEMOSTHENES B. GADIOMA

[1] The old place where erring minors were committed, now the Welfareville Correctional Institution.

[2] A body of selected and specially trained high school boys who direct traffic in school zones immediately before and after classes.

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GUILTY AND NOT GUILTY

"MAY it please your honor," said the counsel, "the indictment isn't sustained, and I shall demand an acquittal on direction of the court. The prisoner is on trial for entering a dwelling in the night-time with intent to steal. The testimony is clear that he made an opening, through which he protruded himself about halfway and, stretching out his arms, committed the theft. But the indictment charges that he actually entered the tent or dwelling. Now, your honor, can a man enter a house, when only one half of his body is in, and the other half out?" "I shall leave the whole matter to the jury. They must judge of the law and the fact as proved," replied his honor. The jury brought out a verdict of "guilty", as to one half of his body from the waist up, and "not guilty" as to the other half. The judge sentenced the guilty part to two years' imprisonment, leaving it to the prisoner's option to have the not guilty half cut off or take it along with him. (*From Bench and Bar, Modern Eloquence.*)