

LAW IN THE WORLD OF THE CHILD *

FLERIDA RUTH P. ROMERO **

INTRODUCTION

Before anything else, may I take this opportunity to thank the Supreme Court Commission on Bar Integration, the Integrated Bar of the Philippines and the U.P. Law Center for having given me this singular opportunity of speaking on a subject dear to my heart and the corporate heart of the U.P. Law Center. That it is being delivered in observance of International Year of the Child makes it doubly significant and timely.

May I also state that I am deeply honored to deliver this lecture honoring the first Chief Justice of the Supreme Court of the Philippines, Cayetano S. Arellano, a man who was as erudite as he was morally upright. Of him, President Taft said he "could fill with honor the Chief Magistracy of the highest Tribunal of any civilized nation." It is so apt that this lecture is dedicated to the youth whose rights the learned Justice sought to uphold even as against the parents themselves, as we shall shortly note in some of his decisions.

Over the years, scores of lectures have been delivered from this rostrum on the various aspects of law as it affects adults. For the first time, attention will be focused on the impact of law on the life of the youth of the country, the term "youth" referring to persons below 21 years of age as provided by Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code. This is the sector which comprises 56.85% of our total population of 42,070,660, decidedly a majority. It is for this reason, incidentally, that social scientists assert that ours is a very young country.

Yet for all their overwhelming numbers, has the citizenry through its laws and institutions, accorded them the due recognition they so fully deserve? While poets and writers wax ecstatic and rhapsodize over innocent

* Second Chief Justice Cayetano S. Arellano Lecture delivered at the U.P. Law Center, on March 3, 1979.

** Professor of Law, U.P. College of Law and Director, U.P. Law Center

childhood, in so far as law is concerned, they remain a marginal group whose members do not seem to qualify as "persons" under the equal protection clause of the Constitution.

It is to the credit of the United Nations that its cornerstone principle in the Declaration of the Rights of the Child states: "All children, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family."

CONTEMPORARY NATIONAL EFFORTS AT SAFEGUARDING THE WELFARE OF CHILDREN

Long a neglected and ignored group, mute but not voiceless, bereft of political power and more of a consumer than a producer, the youth, just like the women in our society, were a majority suffering the discriminations of the minority" — until the State decided to positively exercise its sovereign right of guardianship over children under the doctrine of *parens patriae*.¹

When the 1973 Constitution was approved, policy statements on the relationship of the State *vis-a-vis* the youth were incorporated therein. Article II, section 5 provides: "The State recognizes the vital role of youth in nation-building and shall promote their physical, intellectual and social well-being." One would have wished that the 1971 Constitutional Convention delegates could have included either of the proposed phrases "moral well-being" or "spiritual upbringing", but one finds comfort in the inclusion of these concepts in the Child and Youth Welfare Code.

Another provision, Article II, section 4, reiterates the mandate imposed on parents in the 1935 Constitution which states: "The State shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the Government."

¹"The State may act not merely for itself as a sovereign but also as *parens patriae* or as guardian of the private rights of particular groups of persons. In that capacity, it may bring any suit to . . . defend the interests of helpless infants . . ." SINCO, PHILIPPINE POLITICAL LAW 15 (1962).

Actualizing the "vital role of youth in nation-building", President Ferdinand E. Marcos issued Presidential Decree No. 210 in effect allowing the 15-year olds to participate in nation-wide referenda conducted on important national issues in order to broaden the base of citizen participation in the democratic process.² He likewise promulgated Presidential Decree No. 684 authorizing the creation of organizations known as Kabataang Barangay composed of the residents of every barangay who are at least fifteen years of age but less than eighteen "to assign to the youth of each and every *barangay* a definite role as well as afford them a medium to effectively express their views and opinions on issues of transcendental significance."³

The rising visibility of the youth's image in the national consciousness reached its apex with the enactment of Presidential Decree No. 683, the Child and Youth Welfare Code, on December 18, 1974 in observance of Human Rights Day and in the same year that UNICEF declared a global emergency for children.⁴

This forward-looking statute which recognizes the child as one of the most important assets of the nation served to codify the scanty and scattered laws on rights and responsibilities of children below 21 and parents; embodied substantive and procedural provisions with respect to the role of such institutions as the home, the school, the church, the guild or *samahan* and the community in general in the preparation of the child for the responsibility of adulthood and catalogued the kinds of children who should receive special treatment in view of their peculiar needs. These are the dependent, abandoned, neglected, physically handicapped, mentally retarded, emotionally disturbed, gifted and youthful offenders.

A Council for the Welfare of Children was likewise created under the Office of the President charged with the task of coordinating the implementation and enforcement of all laws relative to the promotion of child and youth welfare.

² Pres. Decree No. 210 (1973).

³ Pres. Decree No. 684 (1975).

⁴ Initial studies looking towards the drafting of a Code for the protection of children which started in 1966 culminated in the U.P. Law Center's being directed by a Cabinet Coordinating Conference to make studies and proposals thereon. The U.P. Law Center Committee created for this purpose was composed of the following: Prof. Maria Clara Lopez Campos, Atty. Rosa Maria J. Bautista, Prof. Salvador Carlota and Prof. Soledad de Castro. Inputs were subsequently contributed by a Department of Social Welfare Discussion Group and a Malacañang Committee of Selected Members.

youth welfare. The Code took effect on June 10, 1975, six months after its approval.

On the international level, the United Nations, which had been singling out certain sectors of mankind as targets of special attention, proclaimed 1979 as the International Year of the Child, which coincides with the 20th anniversary of the adoption of the Declaration of the Rights of the Child.⁸

In proclaiming the year 1979 as the International Year of the Child, the U.N. laid down the following general objectives:

- (a) To provide a framework for advocacy on behalf of children and for enhancing the awareness of the special needs of children on the part of the decision-makers and the public.
- (b) To promote recognition of the fact that programmes for children should be an integral part of economic and social development plans with a view to achieving, in both the long term and the short term, sustained activities for the benefit of children at the national and international levels.⁹

Doing the world organization one better, the Philippine government, through President Marcos, issued Proclamation No. 1604 on December 7, 1976, proclaiming 1977-1987 as the Decade of the Filipino Child.

Said the President: "When as an imperative of national survival, I declared martial law in our country, it was one of my first resolves that the New Society plan and carry out a comprehensive programme for the children and youth of our nation. We recognized in the ferment of those early years the impatience for reform of our young. We knew then that whatever was our programme, social transformation could never be accomplished without the youth as primary beneficiary and participant."

Likewise, he called a National Conference on the Development of Children on December 8-10, 1976 on the theme "The Filipino Child: Our Richest Human Resources."

The goal and direction of the conference were as follows:

1. Discuss urgent concerns and issues affecting the development of children in five areas, to wit:

⁸ U.N. General Assembly Resolution 1386 XIV.

⁹ U.N. Resolution 31/169 of 21 December 1976.

- a) education
- b) health and nutrition
- c) justice and the courts
- d) labor
- e) social services and development

2. Determine strategies for the implementation of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code in each of the areas aforementioned.

3. Propose an integrated National Plan of Action for the Development of Children and Youth for the coming decade, 1977-1987.

On December 10, 1976, another Presidential Proclamation directed all government offices to "gear their plans, programs and activities for children and youth towards the attainment of the objectives, policies and strategies for the Decade embodied in the National Plan of action for the Development of Children and Youth, as well as the over-all socio-economic goals and progress of the New Society relevant to children and youth."⁷

Principally designed as a consciousness-raising program to heighten the level of awareness of the nation with respect to the child, the Decade Plan which was accordingly formulated includes an integrated network of delivery systems to implement the basic rights of children. Specific plans have now been drawn up for the five sectors cited in Presidential Proclamation No. 1604. In part implementation of the blueprint for the sector on justice and the courts, a live-in seminar is currently being conducted between judges of the Juvenile and Domestic Relations Courts and the executive judges of the Courts of First Instance of Metro Manila.

THE CHILD AND THE FAMILY

In the Philippines, as in most Asian countries, the family is regarded as the basic sociological, economic, political and developmental unit.

In recognition of the fact that the family, as the bedrock of society, is a major determinant of the strength or weakness of the state, Philippine laws give due emphasis to the family as a vital social institution,

⁷ Proclamation signed by President Ferdinand E. Marcos on December 10, 1976 "Proclaiming the Nationwide Observance of the Decade of the Filipino Child for the Years 1977-1987, including the Philippine Participation in the International Year of the Child; and Convoking the President's National Conference for the Development of Children and Youth in 1980 and Every Five Years Thereafter."

The Constitution of the Philippines provides: "The State shall strengthen the family as a basic social institution."⁸ It should be borne in mind that in law, family relations include only those between husband and wife, parent and child, brothers and sisters and other ascendants and descendants.⁹

PARENTAL AUTHORITY

All rights and obligations which the parents have in relation to the person and property of their children, until their majority age or emancipation, and even after this under certain circumstances, are anchored on parental authority which was derived from the *patria potestas* of Roman and Germanic law. Originally a right of life and death over children called the *jus vitae ac necis* of the Roman law, *patria potestas* has now evolved into a more humane institution due to the influence of Christian faith and doctrines. As Puig Peña perceptively points out, now "there is no power but a task; no complex of rights (of parents) but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor."¹⁰

In this jurisdiction, "the father and mother exercise jointly just and reasonable parental authority and responsibility over their legitimate or adopted children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary."¹¹

Amending the Civil Code, the Child and Youth Welfare Code now provides that "in case of the absence or death of either parent, the present or surviving parent shall continue to exercise parental authority over such children, unless in case of the surviving parent's remarriage, the court, for justifiable reasons, appoints another person as guardian." Before the amendment, the widow who contracts a subsequent marriage automatically loses her parental authority over her children.¹²

In thus exercising the right of parental authority, the parents may invoke the aid of the government for the Constitution has mandated that

⁸ CONST. (1973), art. 2, sec. 4.

⁹ CIVIL CODE, art. 217.

¹⁰ PUIG PEÑA, DERECHO CIVIL, Vol. II part 2, p. 153 as cited in the case of Medina v. Makabali, G.R. No. L-26953, March 28, 1969, 27 SCRA 502, 504 (1969).

¹¹ CHILD AND YOUTH WELFARE CODE, art. 17.

¹² Art. 328 of the CIVIL CODE provided: "The mother who contracts a subsequent marriage loses the parental authority over her children, unless the deceased husband, father of the latter, has expressly provided in his will that his widow might marry again, and has ordered that in such case she should keep and exercise parental authority over their children."

"the natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the government."¹³ On the other hand, the child has a right "to the care, assistance and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development and improvement."¹⁴

Parental Rights

Improving on the Civil Code, the Child and Youth Welfare Code lays down in greater detail the rights and responsibilities of parents and children towards each other. Foremost of the rights of parental authority over the person of the child is the right of the parents to the company of their children and, in relation to all other persons or institutions dealing with the child's development, the primary right and obligation to provide for their upbringing."¹⁵ Many a time has the Supreme Court been called upon to exercise Solomonic wisdom in awarding custody of a child to feuding parties. While parents obviously have first claim to their children as against others who may be better circumstanced, the Court has not hesitated to award the custody to third persons where the mother, for instance, is morally unfit to raise the child, such as when she is living with a man in common-law relationship and her son would only be compelled to witness her irregular *menage a trois* with the latter;¹⁶ or has had successive liaison with several men with whom she has had children whom she has been in the habit of giving away to others and or has been using as leverage to obtain concessions, financial and otherwise from discarded lovers and other parties.¹⁷ However, where the parents are separated, no child under five years of age shall be separated from his mother, unless the court finds compelling reasons to do so.¹⁸

In all such cases, the Court never loses sight of the guiding principle that "in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount."¹⁹ Also, that "the rights of parents to the company and custody of their children is but ancillary to the proper discharge of parental duties to provide the children with

¹³ CONST. (1973), art. 2, sec. 4.

¹⁴ CHILD AND YOUTH WELFARE CODE, art. 3(10).

¹⁵ CHILD AND YOUTH WELFARE CODE, art. 43.

¹⁶ Medina v. Makabali, *supra*, note 10.

¹⁷ Chua v. Cabangbang, G.R. No. L-23253, March 28, 1969, 27 SCRA 791 (1969).

¹⁸ CHILD AND YOUTH WELFARE CODE, art. 17; Lim v. Soa Pin Lim, G.R. No. L-41405, October 22, 1975, 67 SCRA 382 (1975).

¹⁹ CIVIL CODE, art. 363.

adequate support, education, moral, intellectual and civic training and development." ²⁰

Collaterally, the "parents have the right to discipline the child as may be necessary for the formation of his good character, and may therefore require from him obedience to just and reasonable rules, suggestions and admonitions." ²¹

Even in this permissive age, parents may chastise their children as long as it is reasonable and moderate. Chief Justice Arellano's attitude on this point bears citing. Said he in *U.S. v. Insierio*: "It is true that there is always reason for reproach if an outsider should lay his hands on a boy or a girl; but the same act done in order to punish a boy or a girl cannot be censured if, for example, it were done by the father or the mother. Punishment, even though it be administered by laying the hands on a child, is not *per se*, a crime, as long as it is reasonable and moderate. Excessive punishment is the kind for which the penal law punishes the father or mother." ²²

At this juncture, since there are educators in the audience, it may be pertinent to point out that the relations between the teacher, who exercises substitute parental authority in school, and the pupil, are fixed by government regulations and those of each school or institution. In no case shall corporal punishment be countenanced. ²³

Parental Responsibilities

Correlative to the above rights of the parents over the person of the unemancipated child are their responsibilities, the primary one being the duty to support the latter. ²⁴ "Support" includes a balanced diet, adequate clothing, sufficient shelter, proper medical attention ²⁵ and an education commensurate with the child's abilities, ²⁶ until he completes his education or training for some profession, trade or vocation, even beyond the age of majority. ²⁷ Aside from these material amenities, the parents are enjoined

²⁰ *Medina v. Makabali*, *supra*, note 10.

²¹ CIVIL CODE, art. 45.

²² 15 Phil. 358, 361 (1910).

²³ CIVIL CODE, art. 352.

²⁴ *Ibid.*, art. 316.

²⁵ CHILD AND YOUTH WELFARE CODE, art. 3(4).

²⁶ *Ibid.*, art. 3(6).

²⁷ CIVIL CODE, art. 290.

to give him affection, companionship and understanding²⁸ and extend to him the benefits of moral guidance, self-discipline and religious instruction.²⁹

Cognizant of the pressing need within families of bridging the generation gap and "endowing the child with the dignity and worth of a human being" as enjoined by law,³⁰ explicit provisions designed to achieve these ends have been incorporated in the Child and Youth Welfare Code. Whenever proper, parents are urged to allow the child to participate in the discussion of family affairs, especially in matters that particularly concern him. In cases involving his discipline, the child shall be given a chance to present his side.³¹ No longer may the parents make unilateral decisions crucial to the child. They may not impose their choice of a career on him;³² nor unduly influence him to marry a person he has not freely chosen.³³ It is the child's prerogative to choose his own career and future spouse, the two most important matters in any individual's life.

One recognizes that in their anxiety to provide the best life can offer to their children, parents at times tend to preempt decision-making on vital matters. It would do well at such moments to recall the reminder of the Lebanese mystic, poet, philosopher and artist Kahlil Gibran who pointedly said:

Your children are not your children.
They are the sons and daughters of Life's longing for itself.
They come through you but not from you,
And though they are with you yet they belong not to you.
You may give them your love but not your thoughts,
For they have their own thoughts.
You may house their bodies but not their souls,
for their souls dwell in the house of tomorrow, which you cannot
visit, not even in your dreams.
For life goes not backward nor tarries with yesterday.
You are the bows from which your children as living arrows are
sent forth.
The archer sees the mark upon the path of the infinite, and He
bends you with His might that His arrows may go swift and far.
Let your bending in the archer's hand be for gladness;

²⁸ CHILD AND YOUTH WELFARE CODE, art. 646 (1974).

²⁹ *Ibid.*, art. 46(2).

³⁰ *Ibid.*, art. 3(11).

³¹ *Ibid.*, art. 47.

³² *Ibid.*, art. 56.

³³ *Ibid.*, art. 57.

You may strive to be like them, but seek to make them like you.
For even as He loves the arrow that flies, so He loves also the
bow that is stable."

Parents are further encouraged to win the child's confidence and encourage him to consult with them on his activities and problems.³⁴ If by reason of his studies or for other causes, a child does not live with his parents, it is the latter's duty to communicate with him regularly and visit him as often as possible.³⁵

Even the child's reading habits, association with his peers, participation in community activities and social gatherings are regulated. School administrators may now cite the law to their charges when they insist on the presence of an adult in Junior-Senior Proms, Graduation Balls and disco parties. The law enjoins: "When a party or gathering is held, the parents or a responsible person should be present to supervise the same."³⁶ Special care is to be taken to prevent the child from becoming addicted to intoxicating drinks, narcotics drugs, smoking, gambling and other vices or harmful practices.³⁷

Indeed one cannot help wishing he were a child in this child-oriented world instead of a parent. Can one forget the time when children were meant to be seen and not to be heard? And can the youth today deny that they can manage to get away with what was either taboo or anathema in bygone days? While not everyone can mold himself into the ideal parent sought in the Child and Youth Welfare Code, they can, at least, in the words of Mr. Justice J.B.L. Reyes, "pretend to have the virtues they lack and hide the vices they have."

Depending on one's perception, parents have both the right and the duty to represent their children in all actions which may redound to their benefit.³⁸ This holds true with both extrajudicial acts and court proceedings involving the child's person and/or property. In fact, even if the minor is already freed from parental authority by marriage or voluntary concession of the parents, he cannot sue or be sued except with the assistance of his father, mother or guardian.³⁹

³⁴ *Ibid.*, art. 48.

³⁵ *Ibid.*, art. 49.

³⁶ *Ibid.*, art. 54.

³⁷ *Ibid.*, arts. 51-55.

³⁸ CIVIL CODE, art. 316.

³⁹ *Ibid.*, art. 399.

As Chief Justice Arellano rightly pointed out in the case of *Salunga v. Evangelista*: "If the minors are interested in an estate left to them by one not related to them or by a relative and in which the father or the mother, under whose parental authority they are, have no share whatever, it is well indeed that no one other than such father or mother should represent them in the partition of the estate; and in this case, the circumstance of their being minors does not make the intervention or the approval of the court necessary on account of the fact that they are represented by their father or mother, as, by general rule, would be required without the assistance of a father or a mother holding parental authority over them."⁴⁰

In those rare instances when the interests of parent and child conflict, the courts are authorized to appoint a guardian of the child's property, or a guardian *ad litem*.⁴¹

Further expatiating on this point, Chief Justice Arellano said: "... But if the father or the mother who exercises the parental authority is also a party interested in the partition, and his or her interest be opposed to that of their children, neither of the two can represent them in the partition, because contrary designs and tendencies would attach to contrary interests and would be hard to harmonize in the mind of a single person."⁴²

Again, what may be regarded as both a right and a duty of parents is that of administering the property of the unemancipated children. Whether it be the father who is the principal legal administrator of the minor's property, or the mother, acting in his absence, he or she is duty bound to give a bond if the property under administration is worth more than two thousand pesos.⁴³

Decidedly a right is that of usufruct enjoyed by the parents over the property which the unemancipated child may acquire with his work or industry or by any lucrative title although the latter owns the same.⁴⁴ This is justified by the indivisibility of the family appropriation for the support of every member thereof and as a compensation to help the parents bear the work, the expenses, and the other burdens inherent in parental

⁴⁰ 20 Phil. 273, 299 (1911).

⁴¹ CIVIL CODE, art. 317.

⁴² *Salunga v. Evangelista*, *supra*, note 40.

⁴³ CIVIL CODE, art. 320.

⁴⁴ *Ibid.*, art. 321.

authority.⁴⁵ Such a working child is entitled to a reasonable allowance from his earnings in addition to the expenses incurred by his parents for his support and education.⁴⁶

It needs no undue stretch of the imagination however, to conjure the countless working minors whose earnings have gone down the drain due to profligate and spendthrift parents! Children in the entertainment industry, because of the large fortunes they earn, are now the object of special regulations laid down by the Council for the Welfare of Children. For the child stars and the cute, appealing infants that flash their toothsome or toothless grins at the viewer of TV commercials, their parents are urged, among other things, to put their earnings in a trust fund. The other requirements laid down to protect the minor from the exploitation of senseless, materialistic parents will be further dealt with in the topic on Youth at Work.

Children's Responsibilities

In order to effect the proper balance, the self-same law that bestowed numerous rights upon the youth likewise imposed the correlative duties. For instance, if they have the right to support from their parents they in turn owe the latter love, respect and obedience.⁴⁷ While they have the right to education, they should exert their utmost to develop their potentialities for service by undergoing formal education suited to their abilities in order that they may become assets to themselves and to society.⁴⁸ The parents may be obligated to extend to them the benefits of moral guidance and religious instruction, but they are committed to leading an upright and virtuous life in accordance with the tenets of said religion and the teachings of their elders and mentors.⁴⁹

Parental Responsibility for Children's Fault

In addition to the responsibilities of parents to their children, the former are liable for whatever damages may be occasioned by the latter to others through their commission of quasi-delicts; the civil liability that is imposed with every criminal liability and, at times, they incur criminal liability themselves through acts performed in relation to their offspring.

⁴⁵ I TOLENTINO, CIVIL CODE OF THE PHILIPPINES 646 (1974).

⁴⁶ CIVIL CODE, art. 323.

⁴⁷ CHILD AND YOUTH WELFARE CODE, art. 4(2).

⁴⁸ *Ibid.*, art. 4(4).

⁴⁹ *Ibid.*, art. 4(1).

The father, and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.⁵⁰ This vicarious liability springs from the obligation of the parents to supervise their minor children in order to prevent them from causing damage to third persons. As long as the children are unemancipated and remain under the custody of their parents, the latter must exercise the diligence of a good father of a family in supervising them. When by act or omission, they cause damage to another, there being fault or negligence, the parent becomes jointly and severally liable with the minor for such *culpa in vigilando* or negligence of the parents in the supervision of their children.

However, through marriage, a minor becomes emancipated from parental authority over his person. He shall administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. Outside of these enumerated acts, he is not disqualified from entering into transactions by himself. Likewise, he can sue and be sued in court only with the assistance of the above-mentioned elders.⁵¹ Lacking maturity and experience, the law has sought to make up for his inadequacy through his parent's intervention.

Comes now the case of *Elcano v. Hill*⁵² stretching by interpretation the signification of the above-cited provision. In this case, one Reginald Hill, a married minor still living with his father, killed the son of plaintiffs. When criminally prosecuted, he was acquitted on the ground that his act was not criminal, because of "lack of intent to kill, coupled with mistake." Consequently, the victim's parents filed a civil action for damages. The issue is whether the minor's father, Marvin Hill, was civilly liable for quasi-delict under Article 2180 of the Civil Code. It is undisputed that the boy, although already married, was still living with and getting subsistence from his father.

Bearing in mind that Reginald Hill was already emancipated by marriage when he killed the victim, one might be led to conclude that the father could no longer be answerable for such an act committed by his son. In fact, the law does not make him liable civilly for the consequences of those acts mentioned in Article 399 which necessitate the consent of parents.

⁵⁰ CIVIL CODE, art. 2180.

⁵¹ *Ibid.*, art. 399

⁵² G.R. No. L-24803, May 26, 1977, 77 SCRA 98 (1977).

Surprisingly, the Supreme Court decided that the father remains civilly liable for the quasi-delict of his son. Said the Court: ". . . the clear implication of Article 399, in providing that a minor emancipated by marriage may not, nevertheless, sue or be sued without the assistance of the parents, is that such emancipation does not carry with it freedom to enter into transactions or do any act that can give rise to judicial litigation. And surely, killing someone else invites judicial action."⁵³

In other words, the High Tribunal assumed that in so lending assistance to the emancipated minor in certain transactions, the parent impliedly assumed personal liability. It equated the intervention of the parent in litigations with such acts of the minor as borrowing money and alienating or encumbering real property. Hence, it concluded: ". . . the marriage of a minor child does not relieve the parents of the duty to see to it that the child, while still a minor, does not become answerable for the borrowings of money and alienation or encumbering of real property which cannot be done by their minor married child without their consent."⁵⁴ It further added: ". . . inasmuch as it is evident that Reginald is now of age, as a matter of equity, the liability of Atty. Hill has become merely subsidiary to that of his son."⁵⁵

In all instances of vicarious liability, the responsibility for civil liability shall cease when the persons sought to be held liable prove that they observed all the diligence of a good father of a family to prevent damage."⁵⁶ Hence, parents may exempt themselves from culpability by putting up this defense.

Parental Responsibility for Children's Civil Liability Arising From a Crime

As stated earlier, the parents may be civilly liable not only for the tortious acts or quasi-delict of their minor children who live in their company but, likewise, criminal acts committed by youthful offenders. It shall first devolve upon the offender's father and, in case of his death or incapacity, upon the mother or in case of her death or incapacity, upon the guardian. It may also be voluntarily assumed by a relative or family friend of the youthful offender.⁵⁷

⁵³ Elcano v. Hill, *ibid.*, at 109.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ CIVIL CODE, art. 2180.

⁵⁷ CHILD AND YOUTH WELFARE CODE, art. 201.

Criminal Liability of Parents

A radical innovation introduced by the Child and Youth Welfare Code is the imposition of criminal liability upon parents for certain reprehensible acts physically or morally injurious to the child. For instance, criminal liability shall attach to any parent who abandons the child either to make such child lose his civil status or for a valuable consideration;⁵⁸ or neglects to give the child the education which the family's station in life and financial conditions permit;⁵⁹ or improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.⁶⁰ One is immediately reminded of the children in the movie industry or in TV who are exposed to all kinds of undesirable conditions and, miss classes besides. Parents who allow their children to drive without a license or with a license which they know to have been illegally procured open themselves also to criminal liability.⁶¹ The list is longer, but the above examples will suffice.

Adoption

Just like *patria potestas*, the concept of adoption has evolved from being adopter-oriented to being child-centered. Originally conceived to give happiness to childless couples, at present, the primary consideration is the welfare of the child to be adopted.

Regardless of the intent or motive behind the act, the effect is the same — that a relationship is created between two persons similar to that which results from legitimate paternity and filiation.

In the Philippines, babies have become a most exportable "commodity." Outside of the United States, the Scandinavian countries get the largest share of adoptive babies due to the fact that they have a bigger death rate than birth rate. Netherlands, Italy and Spain likewise rank high in child placement figures.⁶²

A potentially disturbing, if not traumatic, emotional experience for both adopter and adopted who are likely to come from the age group six

⁵⁸ *Ibid.*, art. 59(1) and (3).

⁵⁹ *Ibid.*, art. 59(4).

⁶⁰ *Ibid.*, art. 59(7).

⁶¹ *Ibid.*, art. 59(1).

⁶² Alano, Ching M., *A Child Cannot Wait*, Expressweek, Sept. 2, 1976.

months to three years, law has extended its reach by regulating the adoption process further. Of far-reaching significance, however are the substantive changes introduced by the Child and Youth Welfare Code in 1975.

Before outlining the radical changes brought about by the Code, it bears repeating that adoption can only be effected through the courts. Adoption by prescription or through sheer passage of time cannot bestow the coveted status of a legitimate child upon the person sought to be brought into the fold of the adopting family. Nor can a quasi-adoptive relationship ripen into the legal one through its implicit acceptance by the community. Only the judicial process can confer the stamp of legitimacy on the adopted child.

The most significant change wrought by the Child and Youth Welfare Code is the repeal of the provision that disqualified those who already have legitimate, legitimated, acknowledged natural children or natural children by legal fiction from adopting. At present as long as one is in a position to support and care for all such children in keeping with the means, both material and otherwise of the family, no obstacle stands in the way of adoption.⁶³ In fact a person who has an illegitimate child upon whom he wishes to confer all rights enjoyable by a legitimate offspring would do well to resort to adoption.

Taking cognizance of the fact that children are a scarcity in other countries whereas, in the Philippines, the government has embarked on an aggressive, intensive population control program to cut down one of the highest birth rates in the world, the present law now authorizes foreign adoption. Moreover, it was realistic enough to admit that most prospective alien adopters were in a better position to provide the amenities of life than the Filipinos themselves. Why continue prohibiting the alien from adopting? Quite often, it led to the farcical spectacle of government officials publicly turning over babies to foreigners or themselves escorting the children to the airplanes that were to take them to their destination. Unless disqualified to adopt according to the laws of his own country or his government has broken diplomatic relations with the Republic of the Philippines, aliens, whether resident or non-resident, are now qualified to adopt.⁶⁴

⁶³ CHILD AND YOUTH WELFARE CODE, art. 27.

⁶⁴ CHILD AND YOUTH WELFARE CODE, art. 28(4).

But no matter who the adopter, the law requires an age difference of fifteen years⁶⁵ to insure the maturity and capability of the adopter, as well as to forestall the blossoming of other than filial love between adopter and adopted.

Not only are the consent of the person to be adopted, if fourteen years of age or over, and that of the natural parents of the child needed, but as well, the natural children, fourteen years and above, of the adopting parents. Obviously, this additional requirement is intended to pave the way for a harmonious, frictionless family life even after the introduction of a new brother or sister. After all, sibling rivalries, according to psychologists are a major cause of unhappy homes and family breakups.

Once legally adopted, the child stands in the position of any other legitimate child in so far as his rights and duties are concerned except that he does not acquire thereby the Philippine citizenship of his adoptive parents. While this is a new provision in law, jurisprudence had ruled this wise before.⁶⁶

It may be interesting to note at this point that among the Muslims, as sanctioned by the Code of Muslim Personal Laws of the Philippines, no adoption in any form shall confer upon any person the status and rights of a legitimate child under Muslim law, except that said person may receive a gift.

What many regarded as unfair in pre-Child and Youth Welfare Code days was the provision which prohibited the adopter from inheriting from his adopted child when the latter enjoyed successional rights from the former almost identical with the legitimate issue. This has been rectified to some extent. Although the natural parents of the child still have priority in the line of succession, in the event of their death, the adopting parents take their place.

Considered controversial is the provision on *reversion adoptiva* whereby property received gratuitously by the adopted from the adopter reverts to the latter in case of, among others, predecease. This was, however restored in the law to temper the resultant injustice when properties of the adopter

⁶⁵ CHILD AND YOUTH WELFARE CODE, art. 27.

⁶⁶ *Therkelsen v. RP, G.R. No. L-21951*, Nov. 27, 1964, 12 SCRA 400 (1961).

given to the adopted ultimately finds its way to the patrimony of the natural parents.

Because of the emotional impact of adoption on the people involved and its social consequences, the Child and Youth Welfare Code has incorporated steps in the adoptive process which enlarge the participation of such agencies as the Ministry of Social Services and Development and the Juvenile and Domestic Relations Courts. Additional safeguards have been laid down by the Council for the Welfare of Children in the exercise of its rule-making power. These include case studies conducted by all kinds of child experts to insure a mutually satisfying adoptive relationship, memoranda of agreement entered into by the state welfare agency of foreign countries with our Ministry of Social Services and Development, a six-month trial custody period to assess the emotional readiness of the parties to the legal union and confidentiality of all hearings and records relating to adoption cases.

As in other government proceedings, the good intention behind the law is watered down through lack of implementation. In practice, because non-resident aliens course their petitions for adoption through their lawyers, no case study on them is ever made. It is suggested that, since a memorandum of agreement is entered into between the foreign government and ours, the welfare agency abroad should be authorized to conduct the case study which should be properly accredited and recognized at this end. Said agency should be responsible for supervising and monitoring the six-month trial custody period.

The confidentiality of proceedings and records may be rendered nugatory by the jurisdictional requirement of publication of the petition for adoption at least once a week for three consecutive weeks, as provided in the Rules of Court since adoption is a proceeding *in rem* dealing with a person's status. If in adulthood, an adopted child seeks to blot out his past, he cannot completely obliterate the same even if the entire adoption proceedings and records are not available to the public for the petition has been brought to public attention through publication. Records can so easily be unearthed, what with present-day computerized facilities.

The final step in the adoption process is the recording of the same in the local civil register's office through annotation on the record of birth. This shall entitle the adopted person to the issuance of an amended cer-

tificate of birth.⁸⁷ It is assumed here that all births have been recorded. Unfortunately it is not so. Therefore, for babies whose births have not been recorded, no amended certificate of birth can be issued. For such non-compliance with the order of the court, many Civil Registrars have been cited for indirect contempt. Precisely to remedy this situation, Presidential Decree No. 651 was promulgated making the registration of births and deaths compulsory as of January 1, 1974.

THE CHILD AND THE SCHOOL

Recognizing the crucial role of education and the educational system in the qualitative development of the human resources of the country, the government has unfailingly given it top priority in national concerns. In the national budget, it gets an average annual allocation of 23.92%.⁸⁸

Constitutional Provisions

The basic State policies on the matter are at present incorporated in the Constitution and have been implemented in various statutes, notably the Child and Youth Welfare Code. In the Charter, Article XV of the General Provisions, particularly Section (8), provides for the supervision and regulation of all educational institutions by the State; their ownership solely by citizens of the Philippines or corporations or associations 60% of the capital of which is owned by Filipino citizens; their control and administration by citizens of the Philippines, the maintenance of a system of free public elementary education and the laying down of the aims of all educational institutions.

Incidentally, in connection with the last, it is to be noted that while the objectives enumerated are "to inculcate love of country, teach the duties of citizenship and develop moral character, personal discipline and scientific, technological and vocational sufficiency",⁸⁹ nowhere is mention made of the development of the mental faculties of the students which is admittedly the primary goal of all schools.

⁸⁷ CHILD AND YOUTH WELFARE CODE, art. 37.

⁸⁸ National Position Papers for 1977 UNICEF Executive Board Session and Special Meeting on the Situation of Children in Asia.

⁸⁹ CONST. (1973), art. XV, sec. 8(4).

Aside from the maintenance of public and private schools, the State is also mandated to provide citizenship and vocational training for *out-of-school youth*.⁷⁰

Implementation of the Constitution

This concern for the out-of-school youth has been concretized in various assistance programs such as State scholarships, national study grants offered by private colleges and universities in accordance with Presidential Decree No. 451 at the rate of one per 500 students enrolled; the Study-Now-Pay-Later plan intended for students whose parents earn less than ₱12,000 a year, as well as accreditation schemes which recognize certain learnings acquired outside school.

Such attention given to the out-of-school youth is laudable for while in the elementary schools, only 0.21% are out of school because of free elementary education, the percentage rapidly increases in the secondary levels to 46.02% and, in the collegiate level, to 68.65%.⁷¹

Inasmuch as the Child and Youth Welfare Code grants the child "the right to an education commensurate to his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowman,"⁷² special facilities have been set up for exceptional children. For instance, special classes for the gifted are now in operation in fourteen school divisions. For the physically handicapped and mentally retarded, special classes are likewise being conducted.

The Child and Youth Welfare Code stresses the complementary roles of the home and the school in the implementation of the total school program, both curricular and co-curricular. Parent-teacher associations are encouraged and the notorious contributions collected by schools from students, directly or indirectly, are discouraged.

⁷⁰ *Ibid.*, art. XV, sec. 8(6).

⁷¹ NCSO Projected Population of the Philippines by single years of age, 0-25, as cited in National Position Papers for 1977 UNICEF Executive Board Session and Special Meeting on the Situation of Children in Asia.

⁷² CHILD AND YOUTH WELFARE CODE, art. 3(6).

School's Responsibility for Quasi-Delict

Earlier, mentioned was made of the vicarious liability of the parents for the damage caused through the fault or negligence of their children. Similarly, responsibility for the tortious acts of others who are under one's control and supervision is likewise imposed by law on "teachers or heads of establishments of arts and trades . . . for damages caused by their pupils and students or apprentices, so long as they remain in their custody."⁷³

According to the Supreme Court in the case of *Palisoc v. Brillantes*,⁷⁴ "the protective custody of the school heads and teachers is mandatorily substituted for that of the parents, and hence, it becomes their obligation as well as that of the school itself to provide proper supervision of the students' activities during the whole time they are at attendance in the school, including recess time, as well as to take the necessary precautions to protect the students in their custody from dangers and hazards that would reasonably be anticipated including injuries that some students themselves may inflict willfully or through negligence on their fellow students."⁷⁵ The parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction.

Accordingly, the schoolhead and teacher must respond for damages resulting from the death of a student who dies as a result of an altercation with a classmate during recess time.

The phrase "so long as they remain in their custody" was interpreted to mean the protective and supervisory custody that the school and the teachers exercise over the students while these are at attendance therein. It should not be interpreted to mean actually living or boarding with the school officials.

School's Role in Curbing Use of Prohibited Drugs by Students

Under the Dangerous Drugs Act of 1972,⁷⁶ instruction on the adverse effects of dangerous drugs, including their legal, social and economic im-

⁷³ CIVIL CODE, art. 2180.

⁷⁴ G.R. No. L-29025, October 4, 1971, 41 SCRA 340 (1971).

⁷⁵ *Ibid.*, at 556-557.

⁷⁶ Rep. Act No. 6425 (1972).

plications, shall be integrated into the existing curricula of all public and private schools, whether general, technical, vocational or agro-industrial.⁷⁷

For the purpose of enforcing the provisions of the Dangerous Drugs Act, all school heads, supervisors and teachers shall be deemed persons in authority and are vested with the power to apprehend or arrest any person violating its provisions, but only if they are in the school or within its immediate vicinity, or beyond such immediate vicinity if they are in attendance at any school function in their official capacities.⁷⁸

THE CHILD AT WORK

In the Philippines, of a total labor force of 14.2 million, 3.6% are unemployed and 62% of this belongs to the age group 10 to 24 years of age. It is within the age bracket 25-44 that labor force participation rate is highest and the 10-14 range where it is lowest.⁷⁹

Given such appalling figures, the National Plan of Action for labor during the Decade of the Filipino Child focused its attention on the 2.6 million working youth entrants into the labor force annually.⁸⁰

Over the past years, surveys undertaken of the unemployed have revealed that more than one-third of the total national unemployment figures constitute the out-of-school youth, most of them coming from the rural areas. In other words, one out of three unemployed persons is an out-of-school youth.⁸¹ Annually, during the Decade, according to NEDA projections, about one million 7-14 year olds and 3 million 15-24 year olds will be out of the formal educational system. Hence, the scenario for the next ten years calls for an increase in employment opportunities in the economic sector and in the educational sector, intensified efforts to meet industrial and agricultural manpower skill requirements.⁸²

⁷⁷ *Ibid.*, sec. 29.

⁷⁸ *Ibid.*, sec. 28.

⁷⁹ Taken from the paper presented by the Department of Labor at the President's 8-10, 1976, Philippine International Convention Center, Manila.

⁸⁰ Comprehensive National Programme for the Decade of the Filipino Child, 1977-1987.

⁸¹ *Supra*, note 79.

⁸² Five-Year Philippine Development Plan, 1978-1982, prepared by the National Economic and Development Authority.

To ease unemployment among the youth, they have to be trained for gainful employment. Under the Labor Code,⁸³ the National Manpower and Youth Council has been created, for the further development, not only of the actual, but also the potential, labor force, and this has particular reference to the youthful entrants. Its "vocational preparation training" program refers specially to a range of training activities aimed at the youth.⁸⁴ The National Manpower and Youth Council is assisted in this phase of its work by the Ministry of Education and Culture through its vocational schools.

A more recent enactment, Letter of Instruction No. 740⁸⁵ launched the Batarisan Program of the Pambansang Katipunan Ng Mga Kabataang Barangay and the National Manpower and Youth Council. Primarily conceived to develop the skills and promote the employment opportunities of out-of-school youth, all private companies with the necessary capabilities and resources are enjoined to provide and make available these resources, facilities and technology for the training of out-of-school youth in technical and related skills. They shall, among others, grant the needed allowances, stipend and other material support needed.⁸⁶

We all know that our streets and sidewalks are full of these working teen-agers who play hide-and-seek with the cops. They are the newsboys, watch-your-car boys, cigarette peddlers and the younger elements of the light-fingered gentry. The others are factory workers, hospitality girls and minor prostitutes of both sexes. Generally, they would belong to the families below the poverty line or bottom 30% of the lowest income group.

At the other extreme are the favored few, the ones whom the gods smiled upon, the kiddie superstars of the motion-picture and TV industries. Their problem is not lack of employment opportunities but exploitation. Since they flash out in the celluloid firmament all too briefly, then fade away into oblivion, the people around them exert their utmost to parlay these ephemeral talents into cold cash. Not alone are these confined to the producers and film-makers, but parents themselves get carried away, unmindful of the undesirable consequences on the child stars. These in-

⁸³ Book II, Titles I and II.

⁸⁴ Rules and Regulations Implementing the Labor Code, Book II, Rule I, Sec. 1(1).

⁸⁵ Approved on September 8, 1978.

⁸⁶ Letter of Instruction No. 740, 2.

clude hazards to the health and frequent absences, if not actual dropping out, from school.

Under the Child and Youth Welfare Code, "every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development."⁸⁷ As a result of the growing awareness by the public of the irregular and unhealthy conditions under which the child stars work, public hearings were held among the children, their parents and directors, producers and writers within the entertainment industry. The Council for the Welfare of Children then issued its August 8, 1978 amendment to Rule No. 3, Series of 1976 regulating the employment of children in the movie, television, radio and entertainment industry.

Among its provisions is a requirement that the employment of a child shall not be allowed unless said employment is covered by a valid and written contract duly signed by the employer and by the parents or legal guardian of the child containing the following stipulations: (a) that the parties shall protect the child against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social, educational and moral development; and (b) that the employer shall furnish a copy of the contract as well as all amendments thereto to the parents or legal guardian and to the Director within fifteen (15) days from the execution thereof.

Moreover, the duty is imposed on the parents or legal guardian to set up a trust fund for the child.⁸⁸ The task of implementing these rules devolves on the Director of the Bureau of Women and Minors of the Ministry of Labor.

Protection for the majority of the youth workers is accorded by the Labor Code. Normally, any person of either sex, between 15 and 18 years of age, may be employed in any non-hazardous work for such member of hours and such periods of the day as determined by the Secretary of Labor.⁸⁹ By way of exception, a child below fifteen years of age may be

⁸⁷ CHILD AND YOUTH WELFARE CODE, art. 3(8).

⁸⁸ Rules and Regulations on the Employment of Children in the Movie, Television, Radio and Entertainment Industry, Sec. 4.

⁸⁹ LABOR CODE, Book II, Title III, Chapter II, Art. 139(b).

allowed to work directly under the sole responsibility of his parents or guardian, and if his employment does not in any way interfere with his schooling."⁹⁰

These fifteen-year olds may qualify either as apprentice when the occupation requires more than three (3) months of practical training on the job supplemented by related theoretical instruction⁹¹ or as a learner when the occupation is non-apprenticeable and may be learned in a relatively short period of time not exceeding three (3) months.⁹² In either case, their wages shall not start below seventy-five (75%) of the applicable minimum wages shall not start below seventy-five (75%) percent of the applicable minimum wage.⁹³ There shall always be a written agreement signed by the employer and the parent or guardian of the minor covering the terms and conditions of the employment.⁹⁴

The Labor Code further prohibits any act of discrimination against any person in respect to terms and conditions of employment on account of his age.⁹⁵

Those of us who employ househelpers below the age of eighteen years, it is our duty to give the latter an opportunity for at least elementary education. The cost of such education shall be part of his or her compensation, unless there is a stipulation to the contrary.⁹⁶

THE CHILD AND SOCIETY

Special Categories of Deprived Children

In default of, or upon the failure of, parents to competently discharge their responsibilities, the care of children may devolve directly upon society. The manner in which society treats the helpless and oft-neglected segments of its population is a reliable gauge to determine how advanced or backward a particular civilization is.

⁹⁰ *Ibid.*, art. 139(a).

⁹¹ *Ibid.*, art. 58(b).

⁹² *Ibid.*, art. 73.

⁹³ *Ibid.*, art. 61.

⁹⁴ *Ibid.*, arts. 61 and 62.

⁹⁵ *Ibid.*, art. 140.

⁹⁶ *Ibid.*, art. 146.

With the enactment of the Child and Youth Welfare Code, our government has squarely committed its resources to the upliftment of the dependent, abandoned, neglected and physically and mentally disabled as well as the juvenile offenders

Rules have been laid down in the Code and regulations issued by the Council for the Welfare of Children to govern children's agencies such as child-caring institutions, detention homes, nurseries, reception and study centers, rehabilitation centers and maternity homes.⁹⁷

Procedures are spelled out for the commitment, whether voluntary or involuntary, of minors in child-placement agencies. These include children like Rosalie whose eyes were gouged out by her deranged mother, babies who are abandoned in hospitals, children who are left uncared for at home by parents who must go to work and the countless who are maltreated or abused by parents and guardians.

YOUTHFUL OFFENDERS

The Crime Picture in the Country

Everyone can take cognizance of the fact officially expressed this week by no less than President Ferdinand E. Marcos that the crime rate in the country has alarmingly increased. It is only logical that crimes committed by the youth have *pari passu* climbed up.

Manila, which can claim 48% of the crime rate in the country, has consistently ranked highest, followed by Quezon City with 39% and lastly, Makati with an 11% rate.⁹⁸ In Metro Manila, the districts with high delinquency rates are Tondo, Binondo and Sampaloc.

To the credit of the Manila Juvenile and Domestic Relations Court, first under Judge now Justice Corazon Juliano Agrava and, at present, Judge Regina Ordoñez-Benitez, the number of juvenile cases filed with it has steadily declined from 8,769 in 1967-68 to 1,133 in 1974-75. This achievement has been due, first, to the socio-legal approach the court has adopted in handling cases, by stressing to a greater degree, the rehabilitative and preventive instead of the punitive aspect, and second, the sustained extra-

⁹⁷ CHILD AND YOUTH WELFARE CODE, arts. 117-132.

⁹⁸ Data furnished by the National Police Commission.

legal services offered with the support of the community — both of which have served at patterns for similar courts which were subsequently organized.

From data obtained by the U.P. Law Center Socio Legal Research Project on Child and Youth Welfare headed by Atty. Rosa Maria J. Bautista, we gather the following information.

The age range of juvenile offenders is 13-18, with most offenses being committed from 13-16 and with a peak of serious offenses committed at 15 and 16. Male offenders outnumber their female counterparts by an 8:1 ratio.

As regards the nature of offenses, data available conclusively reveal that the most common offense committed by minors are crimes against property, more particularly, theft. Coming as most of them do, from the low income group, this comes as no surprise.

Records from 23 provinces consistently showed that of all offenses, 73% are against property. In Manila alone 25% of the wards committed theft, 18%, robbery, 16% vagrancy, 15% disobedience and 13% gambling, peddling or violations of city ordinances.

Intakes and psycho-social studies have shown that children from broken homes manifest such behavioral problems as promiscuity in girls and theft in boys. The theft syndrome is more pronounced among those who come from broken homes, probably a manifestation of rebellion on the part of the minor to undesirable home conditions.

Profile of the Youthful Offender

By "youthful offender" is meant "a child, minor or youth, including one who is emancipated in accordance with law, who is over nine years but under eighteen years of age at the time of the commission of the offense."⁹⁹

A legal definition, this does not take into account the psycho-social factors that mold the particular child into the creature known before as "juvenile delinquent" and now "youthful offender".

⁹⁹ Pres. Decree No. 603 as amended by Pres. Decree No. 1179, art. 189.

The profile of such a child is: male between ages 13-18; a school drop-out with an educational attainment midway between intermediate and high school; economically deprived; apprehended at 15 or 16 suggesting an early delinquency; belonging to a broken family, hence lack of consistent supervision by parents who have had only an intermediate education and are usually unskilled laborers; living in a crowded home with an average of seven children and where "inappropriate" patterns of child-rearing are practices; poor self-image with low self-esteem, distrust, anxiety and a feeling of alienation from the home; and depending for support on a negative peer culture.¹⁰⁰

Criminal Justice for Youthful Offenders

Because of their as yet undeveloped mental and emotional faculties and over-all immaturity, youthful offenders merit special treatment under our system of administering justice.

Apprehension by the police, especially for a first offense, may be traumatic. As mentioned earlier, the malefactor is no criminal at heart, but circumstances have goaded him into committing an offense. Take the most common light offense, vending or peddling. More often than not, the minor is ignorant of the ordinance which prohibits vending. Only when chased by the cops does he realize the illegality of his act. The trauma is brought about by the interrogation or rough handling by law enforcement officers who have had absolutely no training in juvenile work. Because apprehension spells the entry of youthful offenders into the formal criminal justice system, their relations to, and treatment in the hands of, the police are most crucial.

Modern penologists would rather divert minors from the system at this stage. If regarded as criminals, the only matters to decide are whether the youthful offender committed a violation of the law and if so, what penalty should be meted out to him. The question "why?" has no place in this kind of criminal justice system. The prosecutor's duty is clearly spelled out for him in the law: "If a *prima facie* case is established by the evidence, the investigating fiscal or state prosecutor shall immediately file the corresponding information in court. If he feels that there is no

¹⁰⁰Data gathered by U.P. Law Center Socio-Legal Research Project on Child and Youth Welfare headed by Atty. Rosa Maria J. Bautista; Luciano, Leonor Lacs, *ZONTA Heeds the Child*, *Lookin Times Philippine Yearbook* 1977 at 340.

prima facie case, he shall dismiss the case unless he believes there are matters to be clarified in which case he may propound clarificatory questions."¹⁰¹ Reform can be effected at this stage by giving the fiscal other alternatives even if there is a finding of the probable guilt of the accused. Rehabilitative treatment which is more effective when administered by trained workers is indicated. More than the officers of the court whose sworn duty it is to uphold the letter of the law, the social workers, through interviews, counselling and referrals are in a better position to delve into the root cause, of which the offense is merely a symptom.

The court authorized by law to try and hear cases against juvenile offenders is the Juvenile and Domestic Relations Court first provided for in the Civil Code but actually created by Republic Act No. 1401. From the first Juvenile and Domestic Relations Court established in Manila, nine have followed in these cities: Quezon City, Caloocan, Baguio, Iloilo, Dumaguete, Bacolod, Tacloban and Naga. Aside from its adjudicatory function over minor offenders, it likewise exercises jurisdiction over actions involving the family such as those on custody, guardianship, adoption, paternity and acknowledgment of children; annulment of marriages, legal separation and separation of properties of spouses and action for support and petition for the declaration of absence and for change of name.¹⁰²

All the charters creating the Juvenile and Domestic Relations Courts uniformly provide that it shall have exclusive original jurisdiction to hear and decide criminal cases cognizable by the Municipal Court and the Court of First Instance wherein the accused is under sixteen years of age at the time of the trial. It should be observed here that since youthful offenders are defined in the Child and Youth Welfare Code as "one who is over nine years but under eighteen years of age", the Juvenile and Domestic Relations Court is expressly denied jurisdiction over those malefactors between 16 and 18. Hence, this group may not benefit from the special procedures and facilities obtaining under the Juvenile and Domestic Relations Court aimed at the prevention and rehabilitation of juvenile offenders in general.

The Juvenile and Domestic Relations Court provides the extra-legal services so vital to the juvenile offenders right at the threshold point through their intake service. Employing the socio-legal, more than the strictly legal

¹⁰¹ Pres. Decree No. 911 (1976), sec. 1.

¹⁰² Rep. Act No. 140 (1975), sec. 38-A.

approach, the Court undertakes an investigation into the family background of the offender through social workers. Here motives can be probed, the parents' cooperation sought, the offender properly categorized for purposes of applying the most apt remedy and personalized treatment accorded for the rehabilitation of errant youth. Understandably, the judge leans heavily on her team of social workers, psychiatrists, doctors and the parents themselves, more than on counsel.

It is at the informal pre-trial where the defense counsel can be most useful, but only if he likewise adopts the socio-legal, personalized approach of the court. His expertise can be brought to bear in paving the way for a less acrimonious atmosphere during trial and in narrowing down the issues to the essentials.

Youthful offenders under detention or awaiting the disposition of their cases are turned over to such places as the Manila Youth Reception Center in Manila, Molave Youth Hall in Quezon City and such rehabilitation centers as Marillac Hills Village Training School for girls and the Vicente Madrigal Rehabilitation Training School for the boys.

After hearing evidence during the trial and it being shown that the child is below nine years of age or over nine and under fifteen at the time of the commission of the offense, not having acted with discernment, he shall be exempted from criminal liability. Instead, he shall be committed to the care of his parents or nearest relative or family friend, in the discretion of the court and subject to its supervision.¹⁰³

If the court finds that the youthful offender has committed the acts charged against him, it shall determine the imposable penalty, taking into account such attending circumstances as would mitigate liability due to minority.¹⁰⁴ The civil liability shall likewise be imposed with the criminal.¹⁰⁵

¹⁰³ Pres. Decree No. 603 as amended by Pres. Decree No. 1179, art. 189.

¹⁰⁴ Art. 68 of the Revised Penal Code provides for a privileged mitigating circumstance of minority, thus: "When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

¹⁰⁵ Pres. Decree No. 603 as amended by Pres. Decree No. 1179, art. 192.

However, instead of pronouncing judgment of conviction, the court, upon application of the minor and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody of the Ministry of Social Services and Development or any of the training institutions mentioned above, until he shall have reached twenty-one years of age or for a shorter period, as the court may deem proper.¹⁰⁶

Thus, in the case of *Virtuoso, Jr. v. Municipal Judge of Mariveles, Bataan*,¹⁰⁷ the Supreme Court took judicial cognizance of the fact that petitioner minor who filed an application for the writ of *habeas corpus* on the ground that the preliminary examination which led to the issuance of a warrant of arrest against him was a useless formality, was seventeen years old. As such, he could be provisionally released on recognizance in the discretion of the court applying the benefits accorded him by the Child and Youth Welfare Code.

Before the Child and Youth Welfare Code amended the Revised Penal Code in 1975, the latter statute prescribed the same suspension of sentence but only for those under sixteen years of age.¹⁰⁸ Moreover, it was authorized to suspend all further proceedings automatically instead of pronouncing judgment of conviction. There was no need for the juvenile offender to apply therefor.

With the repeal of the provision automatically granting the offender suspension of sentence, the Juvenile and Domestic Relations Courts have been constrained to officially inform him of this right when it had no duty to do so. Some courts go further by providing forms which the minors can easily fill up in case they may desire to avail themselves of this privilege. Some defense counsels make their reservation early in the course of the trial.

A query that has been posed by practitioners and judges alike is: At what precise point of time should an application for the suspension of proceeding be made? The law states "... instead of pronouncing judgment of

¹⁰⁶ *Ibid.*

¹⁰⁷ G. R. No. L-47841, March 21, 1978, 82 SCRA 191 (1978).

¹⁰⁸ REV. PEN. CODE, art. 80.

conviction, the court, upon application of the youthful offender . . . may suspend all further proceedings . . ." How can the minor be expected to make such an application before the judgment of conviction when his guilt and concomitant penalty has yet to be pronounced by the court, that is, taking for granted that he is not pleaded guilty much earlier?

Another vexing point in the law is the disqualification imposed upon one who has previously enjoyed suspension of sentence. Many a time, this provision has been more honored in the breach than in the observance by some courts. Consonant with the rehabilitative philosophy, some judges would rather disregard this provision to give the minor all opportunities of changing for the better. Only in case of adverse report from the training institution does the judge apply the full force of the law.

Moreover, some offenders commit their first offense at a very tender age, say 10 years. After a year or two they may be charged again with another offense. It would seem most inhuman and cruel not to suspend the sentence of such a minor who invariably has not acted with discernment.

Or it may happen that the first offense may be a serious one and the second, light. Again the judge could be less than human if she did not allow suspension of sentence, whether applied for or not.

What seems even more heart-breaking is the fact that the order of the court denying an application for suspension of sentence is not appealable.

In order to give the youthful offender the opportunity to start a new lease of life, the law provides that all records shall be considered privileged and may not be disclosed to anyone for any purpose whatsoever, directly or indirectly, once he has been charged before a city or provincial fiscal or municipal judge and the charges have been ordered dropped. To give substance to such a provision, media should be urged to practice self-restraint and desist from publishing the name or picture of either a youthful offender or a victim of a crime against chastity who is still a minor.

COMMENTS AND PROPOSALS

If law is to give substance and vitality to the philosophy behind the Constitution and the Child and Youth Welfare Code that the child is "not a mere creature of the State"¹⁰⁹ but "one of the most important

¹⁰⁹ CHILD AND YOUTH WELFARE CODE, art. 1

assets of the nation",¹¹⁰ it is needful that amendments be introduced to existing law. Hereunder are proposals to amend the relevant laws on the youth.

Citizenship

Admittedly, the 1973 Constitution, in providing that those whose mothers are citizens of the Philippines¹¹¹ are citizens themselves without need of any further legal act on their part bestowed the coveted status on countless children who would otherwise be merely in the position of "conditional citizens". Because of the prospective nature of the provision, those children born before 1973 of Filipino mothers do not now enjoy the same privilege. Filipino citizenship can only be theirs if they choose to elect the same upon reaching the age of twenty-one in accordance with the 1935 Constitution.¹¹²

The result is that at present we have two kinds of children born to the same Filipino mother — those who, having been born under the 1935 Constitution, may only acquire Filipino citizenship by electing the same upon reaching the age of twenty-one and those who, having been born under the 1973 Constitution are natural-born citizens. Such a disparity in treatment by, no less than the basic Charter, brought about by accident of birthdate is, to say the least, inequitable and discriminatory. It is submitted that this particular provision should be amended as to clearly apply to everyone born of a Filipino mother.

Status of Women

Coinciding with the Decade of the Filipino Child for the years 1977-1987 is the U.N.-proclaimed International Women's Decade running from 1975-1985. The child, being inextricably linked to his mother, all measures taken, whether by the government or the non-government organizations, to enhance the status of women and accord them equal opportunities with the men in the exercise of social, economic, political and civil rights, will ultimately redound to the welfare of such child. Progressive legislation in this area must in the forefront of all moves to give women the respect and dignity that is rightfully theirs.

¹¹⁰ *Ibid.*

¹¹¹ CONST. (1973); art. III, sec. 1(2).

¹¹² CONST. (1935), art.

Youth Representation

In consonance with the governmental policy to encourage the youth to express themselves on major issues, particularly those which affect their well-being and happiness, efforts should be exerted to give them representation in policy-making bodies, all kinds of organizations and international delegations. As a youthful conference to an international conference perceptively declared to his adult audience: "You are discussing the world we shall live in."

This is but to recognize the fact that, in the words of the Child and Youth Welfare Code, "it is the youth who will eventually be called upon to discharge the responsibilities of leadership in shaping the nation's future".¹¹⁸

Socio-Legal Researchers

Researches utilizing the socio-legal method must be undertaken to study the feasibility and implications of the following: lowering the age of majority from 21 to 18; fixing the age of consent in marriage at 18 uniformly for both sexes from the present minimum ages of 14 for girls and 16 for boys; changing the age of discernment for purposes of making minority an exempting circumstance in imposing the penalty for the commission of an offense.

Proposed Amendment to the Child and Youth Welfare Code

1. Lower the age of the youthful offender from 18 to 16 for the following reasons:

(a) in order to place such minors within the jurisdiction of the Juvenile and Domestic Relations Court which is in a better position than the regular courts to administer individualized justice which lays stress on the preventive and rehabilitative instead of the punitive aspect of justice;

(b) to decongest the penitentiaries; and

(c) in recognition of the fact that minors below 16 are more immature, have different psycho-social responses and predispositions from those above 16 who are better classifiable as young adults.

¹¹⁸ CHILD AND YOUTH WELFARE CODE, art. 4(6).

2. Restore the automatic suspension of sentence of the youthful offender who is found by the court of the commission of an offense and corollarily repeal the provision disallowing an appeal from the order of the court denying an application for suspension of sentence.

3. Repeal the disqualification of previous enjoyment of suspension of sentence and leave the same to the discretion of the judge.

4. Incorporate a provision clearly authorizing the adoption of an adult as in the Civil Code before the repeal of all provisions relating to adoption by the Child and Youth Welfare Code.

5. Incorporate a provision explicitly stating that in those cases where custody of a child is transmitted to the Ministry of Social Services and Development or a child placement agency, only parental authority over the person is transferred thereby and that parental authority over the property remains with the natural parents.

Revamp of Criminal Justice System

A drastic "dejudicialization of the entire criminal justice system as applied to juvenile offenders is in order based on rehabilitation more than on punishment. Towards this end, the rules of procedure in the Juvenile and Domestic Relations Courts should be revised to make them uniform for all such courts and, more importantly, to allow more flexibility and discretionary action to the judge.

Other proposals:

1. Decriminalize certain crimes as vagrancy, peddling and the like.
2. Change the penalties imposed on youthful offenders from incarceration to rendition of appropriate service to the community.
3. Separate jail facilities for offenders age 16-18 from those for adults.
4. Closer coordination and establishment of a network of services and facilities among such agencies working for the welfare of the youth such as the Ministry of Social Services and Development, Ministry of Labor, Council for the Welfare of Children, non-governmental organizations and other entities. The publication of an organ for the dissemination and exchange of information about the youth should be included among their activities.
5. Penalize the publication by the media of, either the picture or the name of a youthful offender or a minor who is a victim of a crime against chastity.

CONCLUSION

As discussed, above, law, which had hitherto remained in the fringes of the life of the child now assumes a pivotal role in determinative of his present happiness and well-being as well as his success in adult life. The Child and Youth Welfare Code stands out as the veritable "Magna Carta for Youth", repository of children's rights and fountainhead of duties of all institution that seek to mold them into well-rounded personalities.

Law would be fulfilling its highest mission were it to inspire and encourage further efforts at making their world a more secure and tranquil one for the child. The frailties of human beings and shortcomings of institutions may, however, frustrate our best efforts. Still this should not deter us in the task we have assumed for ourselves. But let it be done now. As Gabriela Mistral, the Nobel prize-winning Chilean poet said:

We are guilty of many errors and many faults;
But our worst crime is abandoning the children;
Neglecting the fountain of life.

Many of the things we need can wait;
The child cannot.

Right now is the time his bones
are being formed, his blood
is being made and his senses
are being developed.

To him we cannot answer

'Tomorrow'

His name is 'Today'.