VICTIMLESS CRIMES: ENFORCING THE UNENFORCEABLE

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INTRODUCTION

In a developing country like ours, beggars, mendicants and the unemployed abound the city streets and the metropolis. They consist of a significant percentage of our population and continually grow in number. Society has devised ways and means to solve this perennial problem and has come out with various methods of arresting their rapid increase since they have become a threat to peace and order. Unfortunately, the methods used have proven to be ineffective.

Crimes in most penal statutes generally consist of proscribed actions or inactions. The Revised Penal Code of the Philippines, for instance, defines felonies as acts and omissions punishable by law.[1] However, there are certain atypical offenses, of which vagrancy is the most familiar, that are instead based on one's status or condition, mode of life, or reputation. These offenses have been called "victimless crimes", a rubric for offenses that do not result in anyone feeling that he has been sufficiently injured so as to compel him to bring the offense to the attention of the authorities.[2] Included in this category are begging, drug addiction, drunkenness, prostitution, gambling, jaywalking, and littering.

The Penal Code of Spain of 1870 which was in force in this country up to December 31, 1931 did not contain a provision on vagrancy. The first statute punishing vagrancy was Act No. 519 passed by the Philippine Commission in 1902. Subsequently, Act No. 899 was promulgated authorizing the suspension of sentences of American citizens convicted under Act No. 519 on the condition that the convict leaves the Philippines without returning for a period of not more than ten years. The fulfillment of this condition was deemed to extinguish the prescribel sentence.[3]

Act No. 519 was modeled after the American vagrancy statutes. It was perhaps intended primarily to prevent the migration to the Philippines of American citizens who either were unemployed or had no business coming here. Suffice it to say, vagrancy statutes have remained in our legal system. While historically an Anglo-American concept of crime

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1 Revised Penal Code, art. 3.

2 Bondoc, Interrogating the Police for a Change, Observer, April 18, 1982, p. 19.

3 Act No. 899 (1903), sec. 1.

prevention, the law on vagrancy was included by the Philippine legislature as a permanent feature of the Revised Penal Code.

In the early stage of its enforcement, Act No. 519 accounted for a large number of arrests. From 1908 to 1913, statistics on "crime against public order" show that 691 persons were arrested for vagrancy as compared to only 642 for illegal possession of firearms; 156 for public disturbance; 282 for bringandage; and, 556 for assault and violence against public officers. In spite of this, vagrancy has never attained dangerous proportions as indicated by the constant decline in the number of arrests.[4]

The primary problem, however, lies in the enforcement of the vagrancy law. Associate Justice Villamor, in his book *Crime and Moral Education,* made these observations on vagrancy: "Such simple crimes as theft, swindling, and forgery, are committed in the majority of cases by vagrants. *And whenever the evidence in a case would not warrant the conviction of the accused for theft, he is generally charged with vagrancy and convicted.* This practice has somewhat increased the total number of vagrants in the Philippines."[5] It is also worth noting that our vagrancy statute has been commonly referred to as a "dead letter law" since the same is hardly enforced. This observation may be true as we often see vagrants loitering around and prostitutes blatantly peddling their unlawful trade. It is indeed a task of enforcing the unenforceable. Sad to say, the vagrancy law has been heedlessly used by law enforcers as a "fall back" provision in case they fail to gather enough evidence to prosecute an individual for a crime he was originally intended to be charged of.

The distinctive character of vagrancy as being more of a "status criminality" than a "conduct criminality" has given rise to various constitutional issues regarding the validity of the statute in many American states. Whether or not one is really punished because he belongs to a certain class or is engaged in a proscribed socially-injurious habit or activity has never been raised before the Philippine Supreme Court. Professor Guevara, commenting on vagrancy, said that "the constitutionality of the law has not been assailed. *No lawyer at the present time will dare contend that this law violates the constitutional guarantee against deprivation of liberty without due process.*"[6]

This paper seeks to establish that because our social milieu differs from that in the United States and England, where the concept of vagrancy originated, the latter has no place in our statute books. Secondly, the concept evolved in a digerent time frame thus, it contradicts prevailing concepts of constitutional rights, criminal law and law enforcement. Lastly, there is definitely a need to reexamine vagrancy law in order that it conforms with present standards of criminal law and due process.

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[4] Villamor, Crime and Moral Education (1924).
[5] *Ibid.* at 84-86. (Underscoring—mine.)
[6] Guevara, Commentaries on the Code of Crimes 58 (1978).

I. *The Vagrancy Law*

A. History

The concept of vagrancy dates back to the fourteenth century. Vagrancy laws were originally enacted in order to control the labour market and to prevent crime in Medieval England. The legislators then noted that laborers were continuing to flee from place to place "to the great damage of gentlemen and others whom they should serve." Thus, in an effort to offset the loss of workers and to check the rise of wages which resulted from the Black Death, they promulgated the Act of 1414, a law that sought to prevent worker migration by giving the magistrates the summary power to punish vagrants.[7]

The statute was an attempt to serve as a substitute for serfdom by binding workers to their jobs.[8] However, due to lack of work or harsh working conditions, laborers were forced to wander around and migrate to other parts of the country.[9] In the middle of the seventeenth century right down to the reform of the Elizabethan poor law in the first half of the nineteenth century, "the roads of England were crowded with masterless men and their families, who had lost their former employment through a variety of causes, had no means of livelihood and had taken to a vagrant life." The gradual decline of the feudal system coupled with the breakdown of the monasteries in the reign of Henry VII, and the consequent disappearance of the religious orders which had previously administered public assistance in the form of lodging, food and alms, had been responsible for the upsurge of vagrancy.[10] These conditions changed the emphasis of the anti-migratory policy to requiring work at a fixed abode to protect the countryside against the financial burden, nuisance and potential criminality of the vagrant class. The ban on migration was nevertheless maintained as paupers and idlers. Those unable to work were confined to their own parish. a preventive measure to keep the parish from being burdened by foreign Violators of the law were meted out punishment and compulsorily removed from their parish. Those who refused to work although able to do so were viewed with hostile eyes, not only because of the suspicion they aroused but also because they posed as potential social burdens.[11]

While prevention of worker migration was undoubtedly one of the purposes of the early English laws, an examination of the statutes reveals that their enactment was motivated from the beginning by a desire to prevent crimes. Lawmakers then were of the belief that industry is necessary for the preservation of society and that he who is able to work yet unable

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7 3 Stephan, History of the Criminal Law of England (1883).
8 *Ibid.* at 204.
9 Foote, Vagrancy-Type Law and its Administration, 104 U. Pa. L. Rev. 603, 615 (1956).
10 See note 7 at 274. *supra.*
11 See note 9 at 616, *supra.*

to support himself, deliberately plans to exist by the labour of others and is an enemy of society and the states.[12] Vagrants were thus regarded as probable criminals and the law was to prevent crimes which were likely to flow from their mode of living. Accordingly, the primordial goal of making vagrancy a crime was to force the idle to work.[13]

Vagrancy legislation in the United States which began in 1349 during the colonial times, closely followed the English model. The Articles of Confederation which provided for the guarantee of the right to free ingress and egress to and from any other state to all free inhabitants of each of the state excepted paupers, vagabonds and fugitives from justice.[14] As early as 1837, the U.S. Supreme Court noted that it was "as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds and convicts, as it was to guard against the physical pestilence which may arise from unsound and infectious disease."[15] During the depression, some states established "border patrols" to keep out unwanted migrants. Statutes of this nature were adopted in some twenty-seven states prior to 1940 until they were declared unconstitutional in the landmark case of *Edwards vs. California.*[16]

The law assailed in that case provided that "every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." The Court said, thru Justice Byrnes, that "the grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals and especially finance, the proportions of which are staggering. We have repeatedly and recently affirmed that we do not conceive it our function to pass upon "the wisdom, need or appropriateness" of the legislative efforts of the State to resolve such difficulties. But this does not mean that there are no boundaries to the permissible area of State legislative activity."

In contrast to the statutes in the United States, however, England's Vagrancy Act of 1824 placed almost exclusive emphasis on conduct and did not purport to attach criminality to status alone. Thus, although English law prosecuted the common prostitute as did the California statute, she was not made to undergo punishment unless she wandered in the public streets "behaving in a riotous or indecent manner." The wanderer was punished if he roamed around for the purpose of begging or entered another person's property without permission and could not give a good account

12 State vs. Hogan, 58 N.E. 572 (1900).
13 District of Columbia vs. Hunt, 163 F. 2d 833, 835 (1947).
14 See note 9 at 616, *supra.*
15 City of New York vs. Miln, 36 U.S. 102, 143 (1837).
16 314 U.S. 160 (1941).

of himself. The loiterer was criminally liable only if he was found in specified places with intent to commit a felony or in possession of tools for the purpose of breaking and entering another's property.[17] In other words, being a prostitute *per se* was not proscribed. Neither were the mere acts of roaming or loitering made punishable. One had to do a separate act in order to be held liable for vagrancy. Unfortunately, the Philippine statute on vagrancy carried with it the defects of the American statutes.

It may also be said that the reasons for the development of the vagrancy statutes did not exist in the Philippines. Our country has never suffered from a pestilence as devastating as the Black Death as to cause the migration of workers. Nor did we ever experience a large influx of migrant workers from other countries as in the case of the United States. While we were for a long period of time a feudal society, this socio-economic structure no longer exists at present because of the land reform programs implemented by the government. Indeed, it is puzzling to see the concept of vagrancy, a concept so alien and repugnant to our tradition, incorporated in our statute books, for admittedly, our ancestors were the adventurous, seafaring Malays. The wonderlust trait is innate in our blood.

B. *The Philippine Law on Vagrancy*

The first Philippine law on vagrancy was Act No. 519 which defined the term "vagrant" in seven different manners. A brief discussion on each one of them follows.

> 1. Every person having no apparent means of subsistence who has the physical ability to work, and who neglects to apply himself or herself to some lawful calling.

The Court of Appeals rationalized the above clause by holding that "neither the courts nor the law condemns mere lack of visible means of support or of employment. There is no stigma in one being poor or unemployed. Sometimes these deplorable circumstances are not of his own making. At times he is merely a victim of the same. But what is reprehensible and what society and the law look on with disfavor is when a man without means of support, and having ability and the health to work, neglects or disdains to employ himself and then, to cap it all, loiters about public places. His behaviour oftentimes leads him to an irresistable temptation to prey upon his fellowmen by raking away their property through force, stealth, deceit, or other illegal means He becomes a public nuisance and menace and is a potential lawbreaker, pickpocket, thief and even robber."[18] In other words, the law on vagrancy is a means to deter the possible commission of crimes. The legislators were under the impression that an individual who is poor and unemployed is a potential criminal and

[17] Sherry, Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision, 48 Calif. L. Rev. 557 (1960).

[18] People vs. Rivera, C.A.-G.R. No. 127-R, July 20, 1947.

in order to forestall the perpetration of an offense, they proposed incarceration as the remedy.

The same clause is now found in Art. 202 of the Revised Penal Code with minor changes in phraseology. Thus, under the present law, a vagrant is defined as "any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling."

> 2. Every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support.

Want of visible means of support was an essential ingredient of vagrancy under this clause. A person could not be considered a vagrant for frequenting saloons or gambling houses unless it was shown that he was without visible means of support.[19] What was objectionable about this clause, however, was the phrase "found loitering about." The phrase had been the object of misinterpretation leading to arrests on mistaken facts.

The above definition is retained in the Revised Penal Code with slight modifications. Thus, Art. 202 provides in part: "any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or streets without visible means of support." The places which under the former statute were enumerated are now stated in general terms, using instead the phrase "public or semi-public buildings or places". Does this mean that one can be arrested if found loitering about a public park without visible means of support? The law does not seem to answer this.

> 3. Every person known to be a pickpocket, thief, burglar, *ladrone*, either by known confession or by his having been convicted of either of said offenses, and having no visible or lawful means of support when found loitering about any gambling house, cockpit, or in any outlying barrio of a pueblo.
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> 6. Every lewd or dissolute person who lives in and about houses of ill fame.

Under clause no. 3, mere notoriety or previous confession or conviction was not sufficient to make one liable. Want of visible or lawful means of support was also an essential element of the crime. However, where the only evidence supporting the charge of vagrancy was a previous conviction for the same offense and the fact that he was in the company of other vagrants at the time of the arrest, it was held that the accused should be acquitted especially where he was still a minor and dependent on his parents for support.[20]

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[19] U.S. vs. Hart, 26 Phil. 149, 154 (1913).

[20] Muñoz y Hart, 8 ACR 7 cited in 2 Aquino, The Revised Penal Code 1148 (1976).

The present law consolidated clause nos. 3 and 6. It now reads: "any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes." Like Act No. 519, the provision punishes the mere act of lodging in a house of ill-fame. To illustrate, in the *Choa Chi Co case,* the accused was convicted by the lower court for vagrancy for living in and about a house of ill-fame. On appeal to the Supreme Court, he was acquitted since the evidence showed that he only happened to be inside the house of ill-fame in order to find out if his missing friend was there.[21]

Want of visible means of support, however, has been omitted as an essential element. Again, what is objectionable about the law is its ambiguity. It uses terms like "idle or dissolute person" and "lodges in house of ill-fame" without defining them, resulting to many erroneous arrests and convictions. It seems that the *Choa Chi Co case,* one that should never have been litigated at all, has not taught us a lesson.

> 4. Every idle or dissolute person or associate of known thieves or *ladrones* who wanders about the country at unusual hours of the night.
> 5. Every idle person who lodges in any barn, shed, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof.

In the case of *U.S. vs. Gandole,* which depicts the danger of having known criminals as gambling mates, the accused was charged and convicted in the lower court for associating with known criminals. However, the Supreme Court acquitted him since the evidence showed that the accused was sick in bed when a band of *ladrones* (thieves) came to his house and gambled there for about two hours. Such evidence was held insufficient to convict the accused for vagrancy under sec. 4 of Art. 519.[22]

Clause nos. 4 and 5 were consolidated to constitute paragraph 4 of Art. 202 which provides that "any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited places belonging to another without any lawful or justifiable purpose." This is what was earlier referred to as a "fall-back" provision. Note the phrase "not being included in the provisions of other articles of this Code." It would seem that an accused may be prosecuted for vagrancy when there is insufficient evidence to prosecute him for a crime under any provision of the Code.[23]

> 7. Every common prostitute and common drunkard.

Paragraph 5 of Art. 202 includes only prostitutes, deleting the phrase "common drunkards." Unlike Act No. 519, it defines prostitutes as "women who, for money or profit, habitually indulge in sexual intercourse or las-

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21 U.S. vs. Choa Chi Co, 3 Phil. 678 (1904).
22 6 Phil. 253 (1906).
23 See discussion at note 5, *supra.*

civious conduct." What is prostitution in the legal sense? Is it a habit or a status? Or is it similar to the crime of adultery where every instance of sexual intercourse is considered as a separate act? It is submitted that under the legal definition of prostitution, what is punished is the status itself, i.e., the fact of being a prostitute. There is no necessity for the individual to be caught in the act of sexual intercourse for pay nor in the act of peddling her services. Since the provision does not make any qualification, a woman may be convicted for vagrancy on the mere ground of having a reputation of being a prostitute. Thus, there is no assurance that a prostitute previously convicted will not be further harassed, giving her little if no chance at all to reform.

Section 822 of the Revised Ordinances of Manila defined vagrancy in eleven ways. There is no need to dwell on each of the definition. However, clause (j) of the Ordinance would show the questionable soundness of the vagrancy law. Under that clause, "one who being diseased, maimed, or deformed so as to be unsightly or disgusting object, exhibits himself in a public street or place," was considered a vagrant. Clearly, the ordinance prosecutes the unfortunate disabled individuals. It leaves one wondering whether the deformity of an individual is an appropriate subject for criminal sanction or the public's attention and sympathy. Fortunately, the clause was not carried over in the present Penal Code. The various definitions of vagrancy in our statutes exemplified the incorporation in our legal system of antiquated and defective concepts of criminal law which were borrowed from the American models.

II. *Constitutional Issues*

American authorities have come to the conclusion that vagrancy and other crimes of personal condition consist of being a certain kind of person rather than in having done or failed to do certain acts.[24] Vagrants are punished not for their act or omission but for belonging to a class of persons. Stated differently, vagrancy statutes attempt to proscribe not the commission of an act or acts, as is usually the case in most crimes, but seek to punish a person because of his status.[25]

While the United States Supreme Court has not squarely ruled on the constitutionality of vagrancy statutes, it has indicated in many decisions the constitutional objections which may be involved therein. In *State vs. Grenz,* although the court upheld the statute prohibiting wandering, four justices of the Washington Supreme Court dissented casting further doubt on the constitutionality of vagrancy statutes.[26] It would then appear that the constitutionality of the traditional sort of vagrancy statute may not be entirely settled.

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[24] Lacey, Vagrancy and Other Crimes of Personal Conditions, 66 Harv. L. Rev. 1203 (1953).

[25] Alegata vs. Commonwealth, 231 N.E. 2d 201 (1967).

[26] 175 P. 2d 633, 638 (1946).

A. *Infringement of personal liberty*

Personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law.[27] While vagrancy laws do restrict personal liberty, they are under the aegis of the police power of the State. Considering the growth of states and the congestion in large cities where the idle, the vicious and the depraved congregate around many public place, it was essential to the peace of the state and the protection of society that some further expansion of the common law definition of vagrancy be made.[28] Consequently, the common law definition, i.e., an idle person without visible means of support, who though able to work for his maintenance, refuses to do so, has been broadened to include one whose business, pursuit, or occupation, or want of it, was vicious to society, and one who loitered or stayed about immoral places.[29]

While the case of *State vs. Grenz* was decided in 1946, this should not be taken to mean that the constitutional objection against vagrancy arose only in the turn of the twentieth century. As early as 1908, in the case of *In re McCue,* the California court said in an *obiter dictum* that "while idleness is a prolific source of crime, still it is not competent for the legislature to denounce mere inaction as a crime without qualification."[30] A West Virginia statute which provided that during World War I, all able males between the ages of 16 and 60, except students, who failed to work regularly would be deemed a vagrant, was held unconstitutional as an unreasonable restraint on personal liberty in the case of *Ex Parte Hudgins.*[31] In *Territory of Hawaii vs. Anduha,* a statute punishing persons who habitually loaf, loiter and or idle upon any public street or highway or in any public place was held to be an infringement on the right of the citizen to do what he wills so long as his conduct is not inimical to himself or the general public of which he is a part.[32]

Arguably, the above cited cases are inapplicable in the Philippines since Art. 202 of the Penal Code makes the absence of visible means of support essential for prosecution under paragraphs 1 and 2. The problem now shifts to the interpretation of the phrase "without visible means of support" as it is not unlikely for an employed person to physically appear without means of support. Philippine jurisprudence has so far not defined the phrase. It would seem that law enforcers are vested with a wide latitude of discretion in the absence of any standard provided by law,

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27 Pinkerton vs. Verberg, 44 N.W. 579, 582 (1889).
28 Ex Parte Strittmatter, 124 S.W. 906, 907 (1910).
29 Parshall vs. State, 138 S.W. 759 (1911).
30 96 P. 110, 111 (1908). The Court further said that idleness differs from lewdness or dissoluteness which applies to the unlawful indulgence of lust.
31 103 S.E. 327 (1920).
32 48 F. 2d 171, 173 (1931).

in determining whether a person is with or without visible means of support in order to warrant his arrest. Once the matter has been turned over to the fiscal, the latter would usually dismiss the case after discovering that there is no *prima facie* case against the accused. Thus, the accused is released from custody only after serving so many days in jail for a crime he has never committed.

What remedy does the accused have? It should be noted that police officers are always presumed to have acted in good faith. To put a sanction on every erroneous arrest made by a policeman would only cause great prejudice to his law enforcement function since he will always be wary in apprehending criminals.

Paragraphs 1 and 2 of Art. 202 find legal support in the Constitutional provision which states that "it shall be the duty of every citizen to engage in gainful work to assure himself and his family a life worthy of human dignity."[33] This is a new provision. Ironically, the 1935 Constitution did not contain a similar provision even though Art. 202 had been in force since 1932.

With regard to the contention that vagrancy laws violate the freedom of association of an individual, the American courts have opined that the legislature is powerless to choose for their citizens who their associates should be.[34] Yet, legislations of this nature continued to exist. New York made it a crime for one bearing an evil reputation to consort for an unlawful purpose or to frequent unlawful resorts. In Illinois, one was held liable as a vagabond if reputed to act as an associate of persons reputed to be habitual violators of the law. New Zealand made it criminal to consort with reputed thieves or persons having no visible means of support.[35] These statutes may very well be interpreted as punishing an individual because of companionship and not because of participation in an unlawful business.[36]

The same argument maybe taken in assailing paragraph 3 of Art. 202 which makes it criminal to habitually associate with prostitutes. After all, association with prostitutes does not necessarily mean availing of their services or conniving with them in their unlawful trade. The saying "birds of the same feather flock together" is in no wise applicable in this case.

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[33] Const. art V, sec. 3.

[34] Ex Parte Smith, 36 S.W. 638 (1896). The provision assailed in this case provided that "anyone who knowingly associates with persons having the reputation of being thieves, burglars, pickpockets, pigeon droppers, bawds, prostitutes, or lewd women or gamblers..."

[35] Criminal Law—Vagrancy—Reputation as Evidence 34 Colum. L. Rev. 370 (1934).

[36] Stevens vs. Adrews, 28 N.Z.L.R. 773, 775 (1909).

B. *Improper exercise of police power*

Police power of the State has been defined as the authority of the State to enact laws and statutes that may interfere with personal liberty or property in order to promote the general welfare. Persons and property could be subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State.[37] The legislature in whom this inherent power is vested may prohibit and punish any act interpreted as crimes provided it does not transgress constitutional limitations. The courts cannot look further into the propriety of a penal statute than to ascertain whether the legislature had the power to enact it.[38] Thus, one may be prevented from acting the way he wishes to. To this extent, there is a diminution of liberty.

In the case of regulatory measures like the vagrancy statutes, these laws may then be questioned as repugnant to our constitutional scheme unless in the enactment thereof the standards of due process and equal protection are satisfied. No stigma of illegitimacy attaches to deprivation of liberty so long as it can be shown that it is not tainted by lack of due process and denial of equal protection.[39]

While innocent acts may be prohibited by statutes enacted under the police power where it is necessary to protect the public peace, safety and welfare,[40] the U.S. Supreme Court noted some constitutional drawbacks to punishing a status or condition which is non-volitional. Evidently, it was the intention of the legislature in enacting vagrancy statutes to enable law enforcers to keep the streets clear, at late and unusual hours of the night, of lewd persons who because they are bent upon serious mischief, theft or burglary, have no visible or lawful business or mission in the locality.[41] Nevertheless, the vagrancy law may be assailed as an invalid exercise of police power since it seeks to punish a person because of his status. By way of explanation and analogy, we have the case of *Robinson vs. California*.[42] In that case, the California statute made it a criminal offense for a person to "be addicted to the use of narcotics." The Court distinguished between the "use" of narcotics as being based upon the "act" of using narcotics and "addicted to the use" of narcotics as being based upon a condition or status. The latter is a continuing offense and differs from most other offenses in that it is chronic rather than accute; that it continues after it is complete and subjects the offender to arrest at any time before he reforms. The same maybe said of a vagrant.

[37] Edu vs. Ericta, G.R. No. 32096, October 24, 1970, 35 SCRA 481.
[38] 16 C.J.S. 60-61 (1939).
[39] People vs. Fajardo, 104 Phil. 443 (1958).
[40] Phillips vs. Municipal Court of Los Angeles, 75 P. 2d 548, 549 (1938). Justice McComb dissented and was of the opinion that the provision assailed attempted to make actions inherently innocuous, public offenses.
[41] See note 26, *supra*.
[42] 370 U.S. 669, 668 (1962).

In *Handler vs. Denver,* the Court said that the gist of the vagrancy statute is not based on one who has committed any crime but one who reflects "a present condition or status."[43]

Despite imprecision in the legislative language employed to demonstrate the legitimacy of social concern, there appear to be three basic justifications for punishing vagrancy. The first involves what amounts to a legislative imposition of the Protestant work ethic.[44] Thus, in the vagrancy context, the Ohio Supreme Court recognized the "economic truth that industry is necessary for the preservation of society."[45] The thrust of the offense therefore, is the doing of certain things when one has no visible means of support. Society's interest is in preventing an individual from becoming a "public charge".[46] But does this not amount to discrimination since only the pauper is the target? The idle rich is not punished. If an individual has sufficient means of support, he may spend his whole life in idleness, wandering from place to place.

The second justification accommodates the broad range of reactions to the "sordid individuals who infest our communities such as the dirty, dishevelled, besotted characters whose state is but a step short of intoxication."[47] Vagrancy laws are thus, a manifestation of the right of the state to recognize social sensibilities and to protect the "decent citizens of the community" from contact with undesirable elements of the general population. Hence, it becomes apparent that one of the intentions of the legislature in enacting vagrancy stature is to rid the city streets of eyesores in the persons of vagrants, tramps and beggars. While under the police power, regulatory measures may be resorted to in the interest of public health, public morals, public safety, or the public welfare including the promotion of aesthetics, it has been held that where the objective of the law is the satisfaction of man's thirst to make the community a more attractive place, a desirable end in itself, its attainment could under certain circumstances be characterized by arbitrariness or unreasonableness and thus violative of due process.[48]

The above considerations receive only occasional attention in the courts since crime prevention is a widely accepted justification for the punishment of vagrants and seems to be regarded as the dominant motive for imposing sanctions.[49] This shall be further discussed in a subsequent chapter.

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43 77 P. 2d 132, 135 (1938).
44 Dubin and Robinson, The Vagrancy Concept Reconsidered: Problems and Abuses of Status Criminality, 37 N.Y.U.L. Rev. 102 (1962).
45 State vs. Hogan, 58 N.E. 572, 573 (1900).
46 People vs. Sohn 199 N.E. 501, 502 (1936).
47 See note 44, *supra.*
48 See note 39, *supra.*
49 See note 44, *supra.*

C. Void for vagueness

It is basic in criminal law that clear and precise language in penal statutes is an essential requirement of due process of law.[50] Fairness requires that criminal statutes be defined enough to serve as a guide to future conduct by giving notice as to what conduct is necessary to avoid punishment and to provide the courts, as well as policemen, with definite guides for determining violations of the statutes.[51]

Statutes creating crimes of personal conditions are often unprecise and vague to meet the standard of due process of law that an accused has no way of knowing for what acts he is being charged.[52] The same may be said of our vagrancy statute. Art. 202 is replete with phrases worded in very general terms making the import of the law itself vague and ambiguous. It is not suggested that the legislators should enumerate every act that they wish to proscribe. What is necessary is that the language of these statutes, since they affect more the deprived and illiterate citizens, should be worded in clear, simple but precise language. After all, it is elementary that ignorance of the law excuses no one from compliance therewith.[53] It is also disputably presumed that an unlawful act was done with an unlawful intent under Rule 131 of the Rules of Court.[54] Furthermore, good faith and absence of criminal intent are not valid defenses against statutory offenses which flatly prohibit the doing of certain things.[55] Bearing these in mind, it is not unusual that an individual is arrested for the crime of vagrancy without fully understanding the reason for his arrest or not being aware at all that he has committed a criminal offense.

A concrete example of the application of the void for vagueness doctrine is shown in the *Lanzetta vs. State of New Jersey*.[56] The appellant was convicted under a state statute known as the Gangster Act which made it a crime "for any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person or who has been convicted of any crime in this or in any other state." The Court said that the challenged provision condemns no act or omission; the terms it employs to indicate what it purports are so vague, indefinite

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[50] Connally vs. Gen. Construction Co., 269 U.S. 385, 391 (1926).

[51] Scott, Constitutional Limitations on Substantive Criminal Law, 29 Rocky Mt. L. Rev. 275, 288 (1957).

[52] Edelman vs. California, 344 U.S. 357, 366 (1953). Seven members of the Supreme Court held that they had no power to decide on the validity of the vagrancy statute since the constitutionality of the law was not seasonably raised in the State Court. Nevertheless, it was admitted that the statute punishing "dissolute" persons was patently ambiguous.

[53] Koppel Inc. vs. Collector of Internal Revenue, 87 Phil. 348 (1950).

[54] People vs. Francisco, 98 Phil. 241 (1956).

[55] People vs. Cava, G.R. No. 9416, August 31, 1956.

[56] 306 U.S. 451 (1938). Note, however, the concurring opinion of Justice Desmond in the case of People vs. Bell, 115 N.E. 2d 821, 823 (1953). He said that the term "loitering" has by long satutory usage taken on a reasonably definite manner.

and uncertain that it must be condemned as repugnant to the due process clause.

III. *Problems in the Enforcement of the Law*

A. Ineffectual means to prevent crimes

The efficacy of any system of criminal law is necessarily dependent upon the existence of a logical relation between the harm to be prevented and the behaviour punished. Identification of this logical relation and description of the behaviour or act, the object of punishment, are functions of the criminal theory which is employed.[57]

An examination of status criminality reveals radical departures from traditional criminal theory. It has been opined that its unique characteristics result, both in theory and in practical application, in arbitrary and inefficacious attribution of criminal responsibility. To elucidate further, let us distinguish between status criminality and conduct criminality with which we are more familiar. The former has no requirement of conduct and requires no evidence of actual causation while the latter does. Recognition of the element of causation is limited to a presumption that the necessary certainty of cause and effect exists in the relationship between the status group and the anticipated future criminal conduct.[58] For example, in *Daniel vs. State*, it was reasoned by the court that assumption of a condition of idleness is conducive to criminality.[59] Indeed, the accused cannot by any stretch of the imagination be said to have committed a crime for which he should be punished. Yet, his conduct, i.e., idleness, is considered by law as an indication that he is likely or is about to commit an offense. It does not necessarily follow that one who is idle and apparently without visible means of support will become a criminal. Attribution of future criminality to vagrants is unfounded in fact.[60] There is no effective demonstration of any causal relation between the assumption of a proscribed status and the propensity for future criminal conduct.

Even accepting the debatable proposition that isolation of a probable wrongdoer is a desirable method of preventing crime, serious problems remain. Justice Jackson opined that "imprisonment to protect society from predicated but unconsummated offenses is so unprecedented and so fraught with danger of excesses and injustice that he loaths to resort to it."[61]

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57 See note 44, *supra.*

58 *Ibid.*

59 36 S.E. 293 (1900). In this case, the evidence showed that the accused occasionally worked. The Court held that since the law does not say how many days in a month a man should devote to labor, the evidence presented did not warrant the conviction of the accused.

60 See note 9 at 626, *supra.*

61 Williamson vs. U.S., 184 F. 2d 280, 282 (1950).

B. Subject to abuse by law enforcers

The vagrancy statutes have become a bane to social justice. Law enforcers have resorted to these laws to arrest, punish and expel criminals from their jurisdiction. These statutes furthermore, are frequently used to assist the police in their investigation of serious crimes. When they desire information, they arrest a "suspicious person" in order to interrogate him.[62] Indubitably, vagrancy laws is one of the most abused law by policemen who even go to the extent of arresting an individual for vagrancy for the simple reason that they find the person's face objectionable.

Opportunities for abuse which status criminality inherently fosters are most apparent in the realm of police administration.[63] The police have used vagrancy legislation to accomplish under color of legal right an illegal object. So long as this kind of laws exist there will always be a statutory misdemeanor available to justify the apprehension of a person suspected of a felony. Whether or not the person is subsequently convicted or acquitted under the vagrancy statute, or released without trial, the object has withal been accomplished with relative impunity.

Another reason for the abuse of the law is that policemen find themselves seriously hampered by traditional restrictions on the power to arrest without a warrant. Before a police officer may arrest without a warrant, he must have personal knowledge that the person arrested has committed, is actually committing, or is about to commit an offense in his presence; or, when an offense has in fact been committed, and he has reasonable ground to believe that the peron to be arrested has committed it.[64] The testimony of the arresting officer would be sufficient evidence for the fiscal to file an information without prejudice to the presentation of other evidence during the trial. However, should the fiscal not believe or doubt the veracity of the testimony or evidence, there would be no legal reason for him to wait until further evidence may be secured before dismissing the case against the accused or detaining the accused without violating the precept of Art. 125 of the Penal Code.[65] Thus, before the arresting officer can adduce enough evidence to prosecute the accused, the latter is released. By then, the suspect will have disappeared from the scene until the situation is safe enough for him to continue with his criminal intents. Consequently, policemen have increasingly utilized vagrancy statutes which permit wider police discretion in arrest of persons suspected of having committed or of intending to commit a crime.[66]

By way of illustration, in *State vs. Grenz,* which was earlier mentioned, a chicken thief who was about to enter a chickenyard was arrested under

[62] Michael and Adler, Crime, Law and Social Sciences 363 (1933).
[63] Stoutenburgh vs. Frazier, 48 L.R.A. 220 (1900).
[64] Revised Rules of Court, Rule 113, sec. 6 (a) and (b).
[65] Sayo vs. Chief of Police of Manila, 80 Phil. 859 (1948).
[66] Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons, 59 Yale L.J. 1351 (1950).

a vagrancy law.[67] In *McNeilly vs. State,* the accused was apprehended under the Disorderly Person Act while allegedly looking for a store window to break.[68] In our own jurisdiction, a classic example is found in Professor Tadiar's article entitled *A Philosophy of a Penal Code.* Here, the author related the following events: "During one election, the police picked up two strangers suspected of an attempt to "liquidate" a mayoral candidate. There being no evidence to substantiate such suspicion, the two men were charged for vagrancy. Confidentially informed of the suspected plot, the judge meted out a sentence of imprisonment for a period that thwarted the possibility of its commission during the election."[69]

In the *Azanza case,* the accused was prosecuted for idling and loitering about the public waiting rooms and hallways of the office of the City Fiscal. He was acquitted since the Court discovered that the intention of the policemen was to stop the accused's practice of victimizing ignorant drivers under the ruse of fixing their cases with the fiscal.[70] Another example is the *Gonzales case.* The accused was apprehended by members of the pickpocket squad of the Manila Police Department. He was found loitering in the gallery of the gymnasium of a school campus where graduation exercises were then being held.[71] In the *Mirabien case* which could very well have been prosecuted under the Penal Code provision on white slave trade, the accused was convicted for vagrancy.[72]

In these cases, it would seem that either the police officers were not able to gather sufficient evidence to prosecute the accused for the actual crime he was arrested for or they only intended to harass the accused, he being a known criminal. This last supposition is not unusual. Frequently, the police would repeatedly arrest for vagrancy a known or suspected criminal against whom no serious crime can be proven in order to keep him from the streets and dissuade him from committing any further crime.[73] Mere suspicion is no evidence of crime of any particular kind and forms no element in the constitution of crime.[74] Furthermore, it is a subjective term incapable of providing any intelligible standard to guide either the suspect or court. The absence of limiting standards leaves the citizen at the "mercy of the officers" whim or caprice."[75]

While the accused has the remedy of filing a case against the policeman for alleged harassment or erroneous arrests, the same is highly unlikely since the persons arrested for vagrancy are usually not the sons of bankers,

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[67] See note 26 at 634-635, *supra.*
[68] 195 A. 725 (1937).
[69] Tadiar, A Philosophy of a Penal Code, 52 Phil. L.J. 165 (1977).
[70] 88 Phil. 150 (1951).
[71] 105 Phil. 47 (1959).
[72] 50 Phil. 499 (1927).
[73] Eimbeck, Some Recent Methods of Harassing the Habitual Criminal, 16 St. Louis L. Rev. 148, 151-158 (1931).
[74] See note 64 at 223, *supra.*
[75] See note 25 at 205, *supra.*

industrialists, lawyers or other professionals. Most of them come from the lower strata of society, or from minority groups who are not vocal enough to protect themselves, and who do not have the prestige to prevent an easy laying-on of hands by the police.[76]

A perusal of the statistics below on crime incidence in Metro-Manila for the years 1975 to 1979 would prove that vagrancy although a mere misdemeanor represents a significant percentage of arrests made by law enforcers.

TABLE

Crime incidence in Metro Manila by classification of offense, 1975-79 (Philippine Yearbook 1981 NCSO).

Classification of offenses	*1975*	*1976*	*1977*	*1978*	*1979*
TOTAL	55,259	42,633	35,843	32,855	26,793
Crimes against persons	13,089	9,554	8,529	8,038	6,019
against property	25,909	20,694	16,988	15,859	14,389
against chastity	1,177	861	777	617	507
against morals & order	11,579	8,892	7,058	6,308	3,918
other crimes	3,505	2,632	2,491	2,033	1,960

Crime incidence in Metro Manila by specific offenses

Prostitution	6	19	7	7	10
Vagrancy	4,492	4,459	3,063	1,885	1,050
Gambling	829	909	767	1,956	825
Prohibited drugs	133	60	71	146	226
Drunk & Disorderly conduct	505	280	11	25	7

From 1975 to 1979, a total of 193,383 crimes were reported to the authorities. Of these, vagrancy accounted for 14,949 (7.7%) arrests or an annual average of approximately 2,990. The figures were at their peak at 10.5% in 1976 and tapered down to 4.0% in 1979. The decrease does not mean that the problem on vagrancy has been resolved. It still remains a problem in our society and will continue to be so unless our legislators come out with a viable solution.

IV. Other Victimless Crimes

Under Presidential Decree No. 1563, also known as the Mendicancy Law of 1978, a mendicant is defined as "any person who has no visible means and legal means of support, or unlawful employment and who is physically able to work but neglects to apply himself to some lawful calling and instead uses begging as a means of living." The exception to this are the following: (a) an infant or child 9 years old and below; (b) a minor over 9 years of age and under 15 who acted without discernment;

[76] Douglas, Vagrancy and Arrest on Suspicion, 70 Yale L.J. 1, 13 (1960).

(c) a minor over 9 years of age and under 15 who acted with discernment; and (d) a person who is physically or mentally incapable of gainful occupation.[77]

The preambular clause provides that "mendicancy breeds crime, creates traffic hazards, endangers health and exposes mendicants to indignities and degradation." One is left to wonder whether the imposition of criminal liability is a reasonable and just solution to the problem of mendicancy. Should not the thrust of our legislation be more on social upliftment projects rather than on penal imposition considering that we are dealing with an already deprived class of the society? Should we not reconsider the traditional belief that the vagrant is "the chrysallis of every species of criminal"?[78]

Earlier, we have seen the expansion of the concept of status criminality. The broadened concept now includes conducts which were erstwhile considered as harmless. For example, a city ordinance in Manila punishes persons who wear tattoos on their body. Since those who wear tattoos are usually members of notorious gangs or are ex-convicts, they are thus, believed to be potential criminals. While the ordinance may be constitutionally assailed as being an *ex post facto* law, no attempts have been made in that regard.

Verily, such petty offenses which are mere social nuisance rather than social threats, not only clog the courts with cases and congest our jails but actually take up unnecessarily a great deal of police time and effort. Consider the observations made by former U.S. Attorney General Ramsey Clark. He said, "attempts to use criminal sanctions against such misconduct result in discriminatory and selective enforcement, which leads to police corruption and loss of respect for the rule of law. Corruption is caused in great measure by the hypocritical attempts of society to control conduct which millions will nevertheless engage in." On the same matter, former New York City Police Commissioner Patrick Murphy stated that "by charging our police with the responsibility to enforce the unenforceable, we subject them to disrespect and corruptive influences, and provide the organized criminal syndicate with illicit industries upon which to thrive."[79]

While it may be argued that these observations are not entirely true in the Philippines, police officers usually find themselves at a dilemma when it comes to matters of priority. When the public outcry for strict enforcement of jaywalking and cleanliness ordinances mount, the police will have to shift their priorities due to lack of manpower or the absence of an independent agency that could better enforce these laws. Brig. Gen.

[77] Pres. Decree No. 1563 (1978), 63 Vital Docs. 81.
[78] See note 77, *supra*.
[79] See note 2, *supra*.

Hermilo Ahorro, INP Deputy Director General concludes that "in an area where there is rampant robbery, you cannot concern yourself with petty gambling, *mahjong* or *cara y cruz*."[80]

V. *A Need to Revise the Vagrancy Law*

A. The Trend in American States

Admittedly, the present vagrancy laws contain *passe* and antiquated concepts of criminal law and social justice. They have been aptly described in the following manner: "Vagrancy laws are based on social relationships now passed away. They were formed in an age when science did not consider the abnormality of a class or distinguish between those who become a burden on the parish through subjective imperfection, and those whose state was due to objective social conditions. They are the direct descendants of statutes whose object was to prevent the migration of able-bodied poor, and to place the burden of the impotent upon the home parish."[81]

American state courts have declared vagrancy statutes unconstitutional on the ground that they violated due process in that they unreasonably made criminal and provided punishment for the conduct of an individual which in no way impinged on the rights and interests of others.[82] It has been observed that the persons arrested and prosecuted as common-law vagrants were alcoholics, derelicts and other unfortunates, whose only crime, if any, was against themselves and whose main offense usually consisted in disturbing the sensibilities of residents of nicer parts of the community or being suspected criminals with respect to whom the authorities do not have enough evidence to make a proper arrest or secure a conviction of the crime suspected.[83] As to the former, it clearly seems that they are proper objects of the welfare laws and public health programs than of the criminal law; as to the latter, it should be clear to law enforcers that the vagrancy law was never intended to be and may not be used as an administrative short-cut to avoid the requirements of constitutional due process in the administration of criminal justice.[84]

The Philippine law on vagrancy may be found in Book II, Title VI or Crimes Against Public Morals, specifically in Chapter II or Offenses Against Decency and Good Customs. During the last four decades, many

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[80] *Ibid.*

[81] Lisle, Vagrancy Law: Its Faults and their Remedy, 5 J. Crim. L. 498, 500 (1914).

[82] Fenster vs. Leary, 299 N.E. 2d 426 (1967).

[83] See note 24 at 1218-1219, *supra.*

[84] *Ibid.* Note, however, the dissenting opinion of Judge Scileppi in the Fenster vs. Leary case, *supra.* He said that "it is argued that this end might be better achieved through social welfare legislation rather than through criminal sanctions. This may be so, but the relative merit of one approach over another is for the Legislature to decide and not the courts. As long as the exercise of the State's police power bears a reasonable relationship to the ends sought to be accomplished, the constitutionality of the statute must be upheld.

concepts involving the dispensation of criminal justice have undergone changes and innovations. Some of these have been brought about by legislations and many more by court decisions. For instance, there was a time when the provisions of Arts. 200 and 201, both located in the same chapter where the law on vagrancy is found, were strictly enforced. In the case of *People vs. Go Pin,* it was held that the showing of pictures of women in the nude was offensive to morals and that the accused should be punished.[85] Five years later, the case of *People vs. Serrano* was decided by the Court of Appeals.[86] The Court took a totally liberal stand and held that displaying and offering for sale to the public of keychains with eye holes through which one could see pictures of nude women were not offensive to morals, for the reason that mere nudity is not *per se* obscene. Nude pictures of men and women are now indiscriminately sold and they are not considered as obscene and offensive to public morality. In fact, a daily newspaper regularly carries a picture of a half-naked woman in its front page for everyone to see, regardless of age, but has been tolerated by the media authorities.

There certainly has been a great change in our concept of public morality. While the Revised Penal Code, save for a few amended articles, has remained the same ever since it took effect in 1932, its interpretation has undergone a radical change because of what many people term as "desirable permissiveness".[87] Nonetheless, as a people, the Filipinos have maintained a conservative standard of morality as we can discern from the recent public outrage against the rise of sex trade and child prostitution. In fact, the provisions of the Penal Code on white slavery were amended to prevent the large scale syndication of these perverted activities.

This social permissiveness or tolerance extends also to the unemployed who comprise a large percentage in our population. Every day we see idle men roaming around the streets hoping that they would be able to find something to eat and sustain their big families. They either beg, display their physical deformity to get public sympathy or search through garbage cans of plush communities for food. Should they be imprisoned for their unfortunate situation? If society shows its compassion and understanding to drug addicts by building rehabilitation centers for them, or to youthful offenders by sending them to reformatory establishments, or to foreign refugees by giving them a place to settle, why can we not show the same compassion and understanding to these vagrants whose mode of life may not after all be their own wanting?

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[85] 97 Phil. 418 (1955).
[86] C.A.-G.R. No. 5560, November 24, 1960.
[87] Chan, Changing Concepts of Criminal Justice, Criminal Law and Procedure 49-50 (1971).

B. Balancing of Interests

Personal freedom should not be left to the whimsical judgment of police and local courts. Freedom from physical restraint at the mere will of another is not liberty.[88]

Indeed, individual liberty and the competing demands of crime prevention in a highly mobile and modern society are often hard to reconcile. While it is within the police power of the State to enact laws that would restrain and burden citizens' rights in order to secure the general comfort, health and prosperity of the society, a balancing of interest must be had. When a law has been publicly known to have been used to indiscriminately arrest innocent persons, suspects, indigents or persons who happen to have caught the ire of the policemen, the scale of justice has truly tilted to the disfavor of the people. Undoubtedly, the present vagrancy law has conferred a dangerous discretionary power on police officers which has been rampantly abused.

It is contended, on the other hand, that because of the vagrancy law police officers are able to arrest suspicious persons or known criminals against whom not enough evidence could be gathered. The law has enabled the policemen to harass the undesirables for the benefit of the public. But no matter how good the motives and intentions of the law enforcers are, when a law infringes the constitutional rights of citizens and is abused by the law enforcers, such law should be deleted from the statute books.

Consider the case of *State vs. Hogan.* The Court in justifying the Tramp Law said the following: He is numerous (referring to the tramp), and he is dangerous. He is a nomad, a wanderer on the face of the earth, with his hand against every man, woman and child, in so far as they do not promptly and fully supply his demands. He is a thief, a robber, often a murderer, and always a nuisance. He does not belong to the working classes, but is an idle. He does not work, because he despises work. It is a fixed principle with him that, come what may, he will not work. He is so low in the scale of humanity that he is without that not uncommon virtue among the low, of honor among thieves. The law is one calculated to secure the repose and peace of society.[89] Some seven decades after, the case of *Fenster vs. Leary* was decided. The Court held that the vagrancy statute violates due process and constitutes an overreaching of the proper limitations of the police power in that it unreasonably makes criminal and provides punishment for conduct (if we can call idleness conduct) of an individual which in no way has been demonstrated to have anything more than the tenuous connection with prevention of crime and preservation of the public order, other than, perhaps, as a means of harassing, punishing or apprehending suspected criminals in an unconstitutional fashion.[90]

[88] Yick Wo vs. Hopkins, 118 U.S. 350 (1886).
[89] See note 45, *supra.*
[90] See note 83 at 428, *supra.*

A reconsideration of the vagrancy laws, from legislative draftsmanship to judicial administration, reveals therefore, that they are an anachronistic survival of a past age, unjustified in principle and abusive in application. They reflect a disregard for basic and essential elements of effective criminal theory in that vagrancy concept replaces actual causation of criminal harm with "suspicion causation" and substitutes status for the traditional requirement of conduct.[91] Deterrence of the abuses attributable to status criminality can be effected only through legislation which would completely abolish the vagrancy concept.[92] It is a doctrine which finds its only support in the uncritical Philippine legislature and judicial acceptance of outmoded American concepts. England has gotten rid of that concept. The United States has gotten near that end. It is time for the Philippines to do the same.

C. The Proposed Code of Crimes

In criticizing the vagrancy statutes and other crimes of personal condition in the Philippines, we must consider that the Revised Penal Code, having been principally derived from the Penal Code of Spain of 1870 basically belongs to the old or classical school of penology. Thus, the Code is eminently retributive in its purpose and considers crime only as an issue of free human will paying little or no attention at all to the person. Positive criminology, on the other hand, proposes the complete study of crime, not as a juridical abstraction but as a human act and as a natural and social fact.[93] The positivists define punishable acts as "those which, determined by individual and anti-social motives, disturb the conditions of existence and shock the average morality of a given people at a given moment."[94]

The Proposed Code of Crimes which is a cross breed of the two schools, introduces the concept of a "socially dangerous" person who may may be liable for preventive imprisonment. Professor Guevara, in his commentaries, cited as his basis for the inclusion of the concept the State's police power to enact laws providing for the confinement of lepers, vagrants and alcoholics, lunatics and prostitutes.[95] The Proposed Code, however, fails to define what is a socially dangerous person. Although it enumerates the circumstances by which a person may be considered as socially dangerous,[96] the same suffers from ambiguity and may thus be assailed on the void for vagueness principle. Furthermore, the concept has been criticized on the ground that it convicts an accused on the basis of "substantial probability" rather than beyond reasonable doubt. This is so, since one is convicted by the mere fact that he possesses the character of a "socially dangerous" person and not because of having committed the

91 Tiedeman, Limitations of Police Power 117 (1886).
93 Guevara, Penal Sciences and Philippine Criminal Law 8 (1974).
94 Hall, General Principles of Criminal Law (1947).
95 See note 6, *supra*.
96 *Ibid.*

crime for which he was feared of probably committing. Secondly, the concept violates the presumption of innocence. And thirdly, it imprisons a person for unproved, anticipated crime rather than for actual criminal conduct.[97] While Professor Guevara has expressed confidence that the proposed provision on "socially dangerous" persons will not be used to undermine the constitutional rights of the citizens, withal defects on the vagrancy law, as we have already pointed out, continue to subsist in the proposed code.

The proposed code has retained some provisions on vagrancy. Thus, Art. 761 thereof provides that: The following persons shall be guilty of vagrancy and shall be punished with a fine in a sum ranging from the equivalent of one to fourteen days' earnings: (1) Every person without visible means of living who has the physical ability to work and who does not seek employment, nor labor when employment is offered to him; or, (2) Every able-bodied person who solicits alms as a means of livelihood; or, (3) Every person who roams about the streets at late or unusual hours of the night without any visible or lawful business; or, (4) Every person who lodges or stays in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof. The provision was taken from sec. 647 of the Penal Code of California.[98]

Unlike Art. 202 of the Penal Code, the proposed provision imposes fines and eliminated imprisonment as a penalty. Under the first clause, the separate act of refusing the work offered to him is necessary in order to make the accused liable. This is more of a conduct criminality. The second clause is similar to the provisions of Presidential Decree No. 1563. The third clause has a reasonable basis since a person roaming about the streets at late or unusual hours of the night without any lawful business will surely arouse the suspicion of an average prudent man. The fourth and final clause reveals tinges of American influence because of the terms used like barn and outhouse.

Admittedly, the proposed vagrancy provision is an improvement over its predecessors. However, this does not mean that the possibility of abuse on the part of law enforcers will be totally avoided considering the introduction of the concept of a "socially dangerous" person. Moreover, the proposal fails to provide the necessary safeguards to prevent its being used again as a "fall back" provision by law enforcers.

VI. *Recommendations and Conclusions*

There is little dissent from the conclusion that the vagrancy law is archaic in concept and quaint in phraseology. It is a symbol of injustice

[97] See note 70, *supra.*
[98] See note 6, *supra.*

to many and at variance with prevailing standards of constitutional law. Nonetheless, it has survived not only in its antique forms but with a variety of curious accretions that have been added from time to time as the particular needs of social change and regional customs had required.[99]

The probability that the vagrancy law will be entirely deleted from our statute books is highly remote. Presidential Decree No. 1563 is a plain indication for this supposition. It seems that our legislators are solemn advocates of the old saying that "where there is smoke, there must be fire." Presently, our statute books contain similar legislations such as the law imposing criminal liability on the possession of firearms and picklocks. While possession of unlicensed firearms or picklocks *per se* is not harmful to the public, the same is proscribed because of the potential danger it poses to society.

In view of this, it is suggested that the vagrancy law and other similar statutes be revised so as to protect the citizens, particularly the class or group of people in our society who are most affected against possible harassment and abuse by the law enforcers. It may be significant to note the case of *People vs. Weger*. The Court said in that case that in repealing the former vagrancy statute, the California Legislature recognized that the time had come to abandon the old vagrancy concept for statutes which will harmonize with notions of decent, fair and just administration of criminal justice and which will at the same time make it possible for police departments to discharge their responsibilities in a straightforward manner.[100] Under the new vagrancy law of California, mere roaming from place to place by persons without visible means of support is no longer forbidden. To be guilty of an offense under the new statute, one must also refuse to identify himself and to account for his presence when requested to do so by police officers if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification.

While the addition of refusal to identify oneself and explain his presense in a particular public place as an essential requisite for the prosecution for vagrancy is not a guarantee that the vagrancy law will no longer be used as vehicle to harass known criminals or "suspects", such inclusion would at least rid the statute of some of its constitutional defects. It will make the statute more of a "conduct criminality" rather than a "status criminality". Presidential Decree No. 1563 is along this view since it does not penalize a person who is physically able but does not work but only he who uses begging as a means to support himself. The proposed code on vagrancy is likewise in consonance with this suggestion. Furthermore, the inclusion of a separate act will discount the possibility of subsequent prosecution since under the suggestion, a person may be prosecuted again

99 See note 17, *supra*.
100 59 Cal. Rptr. 661 (1967).

so long as he refuses to identify himself and account for his presence whenever he is arrested.

Another recommendation is with regard to the observations made by authorities that the vagrants are properly the subject of welfare legislations and not of criminal law. The Decree provides for rehabilitation programs to be undertaken by the Ministry of Social Services for the benefit of mendicants. The same consideration should be accorded to the vagrants and the jobless. Perhaps if the government would do its share in creating more jobs for the people, the problem of vagrancy will be greatly minimized if not totally resolved. Criminal prosecution and incarceration will definitely not solve the problem; neither can it compel an unemployed to work. Legal compulsion has not been proven to be a workable solution as we have experienced in the past elections where refusal to exercise the right to vote was criminally prosecuted. It might only turn the accused to a hardened criminal.

The present law on vagrancy reveals poor draftsmanship on the part of our legislators. This probably reflects a lack of concern which is easily understandable since the offender is only a misdemeanant and is usually an indigent or derelict. However, the brevity of the sentence or the poverty of most of its violators should not excuse these laws from meeting constitutional standards of personal liberty.[102]

It is also suggested that the law be made clearer by using simple and precise words in order to fully appraise the public of what is really sought to be proscribed. It is also necessary that certain guidelines be included in the law for the purpose of preventing possible abuse on the part of the law enforcers as the past have shown us.

Lastly, it is recommended that the adjudication of violations of these laws be handled by a separate government agency other than the courts. Shifting the burden of adjudication will further relieve the ordinary courts of a significant part of the existing case blacklogs. The suggestion is not new. There is already a move to create traffic courts that will adjudicate exclusively traffic violations and claims arising out of traffic accidents.

The utter impotence of this class of misdemeanants is ample guarantee that they will not be able to employ lawyers or otherwise retaliate against the police with cases for false imprisonment or illegal detention. Thus, it becomes more realistic, as medical, psychiatric and criminology knowledge increases, that the vagrant, drunkard, drug addict, prostitute, mendicant and others, be separated in theory as well as in practice, from the true criminal, and given treatment according to their needs.[101]

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[101] Hall, the Law on Arrest in Relation to Contemporary Social Problems, 3 U. Chi. L. Rev. 345 (1936).

[102] Whaley, Constitutionality of Loitering Ordinance, 6 St. Louis U. L. J. 247 (1960).

The theory that poverty will lead to other criminality has a certain basis in common sense, for if a man is idle with no means of support, "there is a great temptation to steal in order to relieve his hunger." But that statement suggests the rationale's limitations, for if the necessity of self-support is what turns the vagrant to crime, the criminality may be of very petty nature too. The most common example is begging which although proscribed by statute, still retains strong public tolerance carried over from religious teaching on charity and the tradition of holy men living upon alms.[103]

Two decades ago, President Magsaysay expressed the concept of social justice in his own phrase: He who has less in life should have more in law. President Marcos expounding his own concept of a "compassionate society", has only one emphasis: the balancing of the scales between the affluent and the poor".[104] Indeed, the "compassionate society" does not tell us to prosecute the poor by reason of his poverty, nor to discriminate against the vagrant because he is an indigent, nor to look at the prostitute with disdain because of her immoral trade.

The time is surely at hand to modernize the concept of vagrancy or better yet, to abandon it altogether for statutes which will conform to prevailing concepts of social justice, due process and fair administration of criminal justice. This might be done by drafting legislations having to do with conduct rather than status, i.e., a law which will describe the acts to be proscribed with precision and which will be free of the hazy penumbra of medieval ideas of social control characteristic of existing law.[105]

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[103] See note 9 at 626, *supra*.

[104] Magtoto vs. Manguera, G.R. Nos. 37201-02, March 3, 1975, 71 O.G. 3604 (Sept. 1, 1975).

[105] See note 17 at 567, *supra*.