

ON LOWERING THE AGE OF CRIMINAL RESPONSIBILITY: PERSPECTIVES FROM PHILIPPINE LOCAL GOVERNMENT OFFICIALS

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ABSTRACT

The proposal to amend the minimum age of criminal responsibility has elicited polarized reactions in the Philippines. On one side are the politicians led by President Duterte, who are behind a bill lowering the age of criminal responsibility from 15 to 9 for two reasons: school-age thieves and drug-runners must be “taught responsibility” and that the Juvenile Justice and Welfare Law is “soft” in dealing with children in conflict with the law (CICL). On the other side are human rights advocates vehemently opposing the bill on the ground that studies in the social sciences link emotional and mental immaturity to youth offending, not to mention the Philippines’ binding commitment to protect children’s rights when it signed the Convention on the Rights of the Child. At the forefront, are the barangay officials, the first authorities encountered by the CICL upon apprehension, where the crucial decision is made: amicable settlement or State involvement. A survey among 30 barangay officials reveals that punishment is favored to deter re-offense. The lack of parental supervision is perceived as the root cause, but it is this same negligence that convinces them that handling the CICL should be a national affair, hence, their approval for lowering the minimum age of criminal responsibility, and the children’s subsequent detention in government facilities. This study recommends that barangay officials be re-oriented regarding the aptness of rehabilitation for the CICL, particularly the framings of discourses from the social sciences, while also advancing a critique of the justice system itself critically through a Gramscian lens.

Keywords: CICL, juvenile justice, minimum age of criminal responsibility

1.0 INTRODUCTION

Children begging for money have become a normal sight on the main thoroughfares and clogged arterial roads of Dasmariñas, a city found on the northern part of the Philippines. In many instances, they come in pairs. Upon getting on a jeepney (Filipino term for a public utility vehicle), one of them would distribute envelopes where passengers can put in money as alms. Another, carrying an infant would suddenly place the latter in a vacant seat to the shock and consternation of the passengers.

Anecdotes such as these, indicate that these younglings are not just begging. While everyone’s attention is on the infant who then wails uncontrollably, they would steal from the unsuspecting passengers. As soon as the traffic light turns green, they would hastily alight from the jeepney, bringing with them loot of various items. “They cannot be put in jail, that’s why they are emboldened to steal”: this is the explanation often offered as to why

young people seem to have no qualms about breaking the law.

Republic Act 9344, or the Juvenile Justice and Welfare Act of 2006, stipulates that the imprisonment of young people below 18 is an illegal act. Instead, it mandates that children in conflict with the law (CICL) be required to undergo a holistic intervention program for the purpose of rehabilitation. Recently, legislators Pantaleon Alvarez and Fredenil Castro sought to amend this act by passing House Bill No. 2, the "Minimum Age of Criminal Responsibility Act", that lowers the minimum age for criminal liability from the current 15 years old to 9 years old, insisting that lowering the age will deter minors from dauntlessly violating the law and from being used as accomplices especially in drug-related cases. Arguing for the children are human rights groups exclaiming that doing such "threatens the children's well-being." (Kratcoski, 2012). Margarita Ardivilla, a UNICEF child protection specialist, cites the Philippine National Police 2016 data on the number of crimes committed by children to contend that youth offense is marginal. The data indicated that it only comprised 1.72%, and these are mostly theft, physical injury, and violations of municipal and city ordinances. Furthermore, reports stated that the children who committed crimes are mostly school drop-outs, street children, those who have fragmented families, and most likely belonging to the lower class (Caparas, 2009; Trinidad & Manzano, 2007; Etimadi, 2005).

Hence, improving the conditions of the children and their families should take center stage, rather than contesting the age of responsibility (Candaliza-Gutierrez & Shoemaker, 2008). At the forefront of this debate are the barangay officials or village heads, the first authorities encountered by the CICL upon apprehension. It is at their level where the crucial decision is made: work for amicable settlement between parties, or police involvement either through barangay tanods (constables) or the blue men in uniform. Their understanding of RA 9344 and their role as one of the pillars of justice is assumed to affect their decisions on how to proceed once a CICL is brought.

When young people engage in deviant acts, what do the officials think are the reasons? Is it their youth that makes them prone to violations? Are they for or against the proposed bill to lower the age of criminal responsibility? More importantly, at their level, what do they think must be done? These are some questions that this study will tackle, and some theories and frameworks are to be advanced in response.

2.0 YOUTH DEVIANCE AND LABELING

Deviance is widely defined as the recognized violation of a norm or a set of norms (Macionis, 2010; Adler & Adler, 2000). As an all-encompassing concept, it embraces actions ranging from what is criminal and what is simply a cultural idiosyncrasy. For this research, the interest is specifically on crime, defined as "a violation of societal rules of behavior as interpreted and expressed by a criminal legal code created by people holding social and political power" (Siegel, 2013, p.15). When deviance is done by children or adolescents, it qualifies as youth deviance (Klein, 1986).

The definitions of deviance and crime presented above stem from social constructionism, the school of thought generally subscribed to by sociologists (Siegel, 2013). Social constructionism maintains a relativist stance: there are no fixed, invariable or universal features that define deviance because it is relative to time, place and people (Klein, 1986). Moreover, no behavior is inherently deviant, there has to be an existing norm that is either followed or violated. Concomitant to this is the belief that it is society that labels

people and/or their action as deviant. People define and redefine deviance. Apart from focusing on the nature of labeling and its consequences, constructionists are also interested in studying people who label others as deviants - such as the police, courts, and medical experts, among others. This view is succinctly expressed as labeling theory found in the works of Charles Horton Cooley, George Herbert Mead and W.I. Thomas (Klein, 1986; Schur, 1971).

When applied to young people, this theory proposes that in their everyday lives, children are bombarded with different cues, and clues regarding how others perceive them (Stephenson, 2007). Labeling results in deviance when young people execute the negative label that their significant others tag on them. Although not intended to be a general theory of the cause of delinquency, it can explain "how casual, random or adventitious deviance becomes redefined and stabilized through status change and self-conscious adaptation to secondary problems..." (Lemert, 1981, p.34) Tannenbaum (1999, p. 164) further illustrates the power of labeling delinquent behavior:

"The process of making the criminal, therefore, is a process of tagging, defining, identifying, making conscious and self-conscious; it becomes a way of stimulating, suggesting and evoking the very traits that are complained of. If the theory of relation of response to stimulus has any meaning, the entire process of dealing with the young delinquent is mischievous insofar as it identifies him to himself or to the environment as a delinquent person. The person becomes the thing he is described as being."

Following this premise of "self-fulfilling prophecy", proponents of labeling theory argue that the juvenile justice system has a stigmatizing effect upon those who are labeled delinquent or criminal after having gone through the formal process, with or without a guilty sentence (Ibid). Hence, the basic assumption of labeling theory is on the power of social response, especially in the structure of formal social control, to produce delinquent behavior (Shoemaker, 1996). Its aim is to understand how publicly or officially labeling someone as a delinquent might result in the person's becoming the very thing he or she is being described.

It can be argued that "repeated acts of delinquency are influenced by formal labels because such labels eventually alter a person's self-image to the point where the person begins to identify himself as a delinquent and act accordingly (Ibid)." In the field of rehabilitation, social constructionism is most useful as it points out that taking away the label criminal is crucial in preventing subsequent deviant actions. Moreover, since deviance is not lodged in the act itself but on the response of people surrounding the offender, support from significant others, proper supervision, management, among others can positively impact on the offender and can lead to his/her rehabilitation. Because formal labeling can come from incarceration of youth offenders, diversion is the preferred option promulgated by both the Convention of the Rights of the Child (CRC) and RA 9344.

The contrasting view is absolutism, which is rooted in the positivistic tradition. It holds that deviance is lodged in the act itself, and that it is absolutely and intrinsically real. Deviants have qualities that are distinctly different from what is conventional. In essence therefore, a deviant behavior will be deviant eternally and anywhere since it is the very act that is objectively deviant. Social norms, customs, or rules are not important in defining deviance for the absolutists. Absolutism is also used by proponents of the biological context of deviance. The classical biological approach suggests two important notions: first, deviance is caused by properties and mechanisms internal to the person and second, these internal properties act as predisposition to committing deviance (Ibid., p. 21). A later

development of this approach is called the biosocial approach which suggests that biological traits combine with environmental factors, such as the influence of family and peers to produce deviance.

The late 19th century physician and psychiatrist Cesare Lombroso is widely recognized as a pioneer of the biological approach. He proposed that criminals are "atavists" or evolutionary throwbacks. "Atavists" have physical characteristics distinct from the common people. Later researches that followed the biological/biosocial tradition retain the role of biological instincts to explain deviance. The present application of this theory can be seen in genetics research that attempt to isolate defective genes that are believed to contribute to criminality.

Lombroso's approach was critiqued on several grounds, leading to alternative explanations such as the socio-political dimension, implying that the justice system is an element on how the State (bourgeoisie state) functions. The Marxian theoretician Antonio Gramsci, in his *Prison Notebook* (1971) argued that an 'objective' appraisal of the Law, is utterly impossible, for the Law itself is a mere instrument of the apparatus of the ruling class. The ruling class directs its own agenda from a myriad of channels and diffused tools of control to stave or repress the irrepressible, and this form of control is termed "cultural hegemony", in which the maintenance of authority is held to conveniently present the values of the hegemon indistinguishable from the common people. This renders the Law and the court system susceptible to distortions, reminiscent of Max Stirner's (1907) "spooks" or ideations which are bankrupt of any content outside of its use.

The two approaches, that of social constructionism and atavism, lack the vigor and the bluntness of the third, that explicitly admits the role of political systems on defining justice within its own premises. It is the blank slate frameworks which consistently downplays the role of systems of control. It is where the origin point of this study hurls itself into, towards a critique of the Law and its parameters.

3.0 JUVENILE JUSTICE: OVER THE YEARS

Historically, children experienced the denial of privileges and oppression (Regoli et al. 2008; Champion 2010). Compared to adults, they were perceived in earlier times not only as different but also inferior, and in many cultures, as little adults themselves. It was a common practice to place them under servitude to an adult in the guise of apprenticeship and in extreme cases they might be servants for life (Champion, 2010). Many societies formulated legal prohibitions aimed at controlling their behavior which is believed to go astray unless restrained.

It was only in the beginning of the 1800s when children were recognized as a group that needs special attention, partially due to a shift associated with Enlightenment ideas and their espousers such as Jean-Jacques Rousseau (Rousseau, 1970) . During this period, society's view of childhood changed, as it began to recognize that children are innocent, and they have special needs. The perspective that childhood was a stage of experimentation began to dominate and thus, children needed to be supervised and controlled (Champion, 2010). Against this backdrop, the doctrine *parens patriae* emerged in England (Siegel & Welsh, 2011; Champion, 2010). The underlying notion was that the parents are merely agents of society for child-rearing and the state has the primary and legal interest in the upbringing of its children. In practice, this doctrine placed the king in charge of all matters involving children beyond the age of seven. As their guardian, it is the duty of the state to

reform, save, and rehabilitate the child who has committed violations. The state's child-saving efforts soon gave birth to the creation of juvenile court.

Created in 1899 in England, it was designed to divert or remove juveniles from adult courts. The child-saving movement was a collective effort on the part of communities to control delinquent children by offering constructive and supervised activities as opposed to mere punishment or confinement. These efforts not only focused on the violators, but also on their parents who were considered part of the problem. The juvenile court became a judicial-welfare alternative to the adult court system (Siegel & Bartollas, 2011). Accordingly, the state took on the role as *parens patriae*, or substitute parents, and allowed the court to intervene on behalf of the child. From the discussion above, it can be said that systems for dealing differently with child offenders have existed for more than a century, commencing with the establishment of separate institutions for delinquent children, and followed shortly thereafter by legislative provisions to establish separate courts for children. These events paved the way for the recognition of children using the rights-based approach. In recent years, laws both here and internationally have shown how the recognition of the rights of children evolved from mere declarations to legally binding documents (Children and Youth Foundation of the Philippines, 1998).

As a signatory to international documents safeguarding the rights of children, the Philippines is bound by the provisions enshrined in several important treaties. The most important of these international instruments is The Convention on the Rights of the Child promulgated in 1989 and ratified in the Philippines on August 21, 1990. It is the most important global legislation focused on the protection of children because "it is the first legally binding international instrument which incorporates the full range of human rights - civil, political, economic, social and cultural - of children (Ibid, p. 27)." Furthermore, it advocates the adherence of children's basic rights in four modes: survival, development, protection, and participation. This legislation also devotes one specific article to address matters regarding "the right of every child alleged as, accused of, or recognized as having infringed the penal law" ... (Article 40).

Republic Act 9344 otherwise known as the Juvenile Justice and Welfare Act of 2006 law is the most important Philippine legislation for children/youth offenders (Children and Youth Foundation of the Philippines, 1998). A Filipino below 18, in accordance with the law, is considered a child (chapter 1 section 3e), and is therefore not subject to incarceration despite having violated a law (chapter 1 section 4h). Instead, "the child in conflict with the law is required to undergo a diversion program after he/she is found responsible for an offense without resorting to formal court proceedings" (chapter 1, section 4j). In chapter 2 section 5 of the Juvenile Justice and Welfare Act of 2006, the promotion of the rights of the CICL evidently shows how the state is attempting to genuinely implement rehabilitation rather than punishment of child offenders and act in accordance with the "best interest of the child."

4.0 METHOD OF STUDY

To answer the research questions, the study used qualitative research, specifically in-depth interviews of a total of 30 barangay officials in Cavite, to gather rich descriptive data of the experiences of barangay officials in handling CICLs. The barangay officials were chosen based on these criteria: barangay ruled had cases of CICL, willingness to participate, and proximity to the town proper (less delinquency is expected in distant barangays).

Attempting to understand how they make sense of delinquency and the law (RA 9344) is important to be able to understand their response once a CICL is brought to them. It also illustrates their understanding of their role as one of the pillars of juvenile justice in the Philippines. Questions asked delved on the following: beliefs and views about cause of delinquency, beliefs about juvenile justice in the Philippines, views on proper handling of CICL, understanding of the juvenile justice law, and their views regarding the proposed bill that lower the age of criminal responsibility.

Data culled from above were supplemented by two sources: first, observations done in the barangay hall where CICLs are brought. A checklist detailing what areas to focus the observation was prepared. The areas observed where: how the CICL are asked, words and expression used by both the CICL and officials during investigation, and how parents of CICL are handled. Second, local and national documents from government offices were also reviewed.

The in-depth interviews, observations, and document review were triangulated to provide check and balance, lessening the common biases of qualitative studies. Thematic and content analysis were employed to make sense of the voluminous data.

5.0 RESULTS AND DISCUSSION

5.1 Diversion at the Barangay Level

"Diversion" refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings (RA 9344).

Ideally, at the barangay level the lead person for youth diversion programs is the Punong Barangay (village leader). Assisting him/her is the Barangay Council for the Protection of Children (BCPC). The kinds of diversion programs proposed are enumerated in section 31 of RA 9344 as follows: counselling, trainings, seminars and lectures, and the like.

However, in practice, local officials say that in towns where there is no youth facility, there is no diversion. Diversion occurs more than those towns which have. Specifically, the youth is diverted from formal court proceeding through the punong barangay's effort to achieve amicable settlement between the families of the CICL and the victim. Hence, the case is settled at the barangay level and no police involvement is needed. This is however dependent on the severity the child's offense and the frequency of offending. Crimes against property (theft and robbery) are the most common offense, followed by drug-related violations and lastly, crime against persons (rape, homicide, abuse, to name a few). Crimes against property are considered the least serious and if it is a first offense, amicable settlement is initiated. Some victims demand payment of civil liabilities and when this is done, the child is released to his parents right away. If civil liabilities are not asked, a reprimand and a stern warning for repeat offending is given to the child and his parents.

5.2 Common law violations encountered

The local officials are one in saying that violations done by the young people in their barangay are mostly petty or "less serious". One official said, "it could be as trivial as a stare. But when a stare is perceived as an intimidation, it could result to a fistfight." Another one shared that, "sometimes, it's just hollering done by a peer group to which another group might interpret as directed to them. Next thing you know, a brawl has started." The officials also note that "these fights happen usually when there's drinking." Other violations brought to the barangay and are considered trivial are curfew violations, verbal altercations due to gossips mostly among female teens, and name calling.

The officials also consider theft and shoplifting as less severe. Without intimidation, the officials perceive these offenses as "easy to forgive or correct". They explain that in theft and shoplifting, there is no intention to hurt people, but only to procure a small sum, enough to buy things that they want. One councilor explains the sentiment of the rest:

"You know teenagers, they easily get envious. Without the means, they easily fall into illegal activities that would enable them to get hold of the thing they desire. But they do not have intentions to harm anyone physically."

That the CICL mostly commit petty crimes is seen around the world. Studies show that 90% or more of children in prison were charged with only petty crimes (Juvenile Justice Reform Commission of Montenegro , 1997). In many cases, children with no options were being punished for what could be considered as survival strategies when begging, or theft (Martin & Parry-Williams ,2005). Furthermore, four (4) out of five (5) CICL commit only one offense in their lifetime. This is true not only of the Philippines, Laos, Kenya or Ethiopia but also in industrialized countries and even in countries facing major levels of social and community violence (Regoli, 2008).

Also, delinquency is primarily a male phenomenon (Candaliza-Gutierrez & Shoemaker, 2008; Alampay, 2006). Males are apprehended more often than their female counterparts. It is in the area of prostitution (Regoli, 2008), running away (Regoli et al, 2008: 53-55; Siegel & Welsh, p.150; Champion, 2010, p. 197-98), curfew violations, unruly behavior and larceny-theft that females outnumber males (Champion, 2010).

In the Philippines, Save the Children-UK, (2004) reported that three types of offenses were observed to be quite common among the CICL – offenses against property, drug-related offenses and sexual offenses. Several trends were also noted in these types of offense. Offenses against property were the most common. In Metro Manila, cellular phones were the most common targets. In Cebu, offenses against property usually take the form of shoplifting. Offenses linked to drug abuse have increased over the recent years. This type of offense constitutes 13% of the reported offenses committed by children in Metro Manila but is the second most common offense in Cebu (20%) and Davao (26%). Drug-related offenses were also the second most common offense for girls in both Metro Manila and Cebu. Compared to first offense, there is an increase in drug-related offending in second- time offenses. In Cebu, for instance, drug-related offending rose from 14% to 37% of all offenses. Many CICL came from impoverished families that did not have the means to provide even the most basic needs such as food, shelter, clothing, and education Economic hardship have pushed some children to commit crimes to provide for their own and their families' needs (Trinidad & Manzano, 2007).

On the part of the female children, the most common violations they were charged with were: crimes against property, followed by drug-related offenses, and lastly violations of ordinances (Save the Children-UK, 2004). It is also important to note that there were children among complainants in the cases involving crimes against persons and sex-related offenses. In the drug-related offenses, the most common substances used were "shabu" and rugby. Children were charged with either use, possession or sale of prohibited drugs. In cases of crimes against property, specifically theft and robbery, the most common item stolen was cell phone, followed by clothes and shoes, wallets, bags, jewelry and other accessories. In cases involving possession of weapons, the CIJL took fan knives, followed by guns and ammunitions, and "sumpak" (hand-made bladed weapon). The offenses were usually committed on the streets, in the house of other people or buildings, and in stores, malls or markets.

5.3 Why young people violate the law?

Local officials see youth offenders as people who are not intrinsically bad or evil. Offending is generally perceived as stemming from factors outside of the individual. Three main themes could be generated from their responses.

5.3.1 Lack of maturity

One theme consistently appearing in the answers of the local officials regarding the cause of offending is the lack of maturity of the offenders. One official, Ramon¹, 48 explains that, as minors, "kids will be kids, the children's psyche is less stable so they're easily manipulated." This presupposes that the officials look at young people as pliable, therefore, prone to influence from fellow teens who possess more power than them. One official explains this further: "The children who violate are still learning to control their impulses, to think ahead, and to resist pressures from others." Another official, Jose, 52, agrees, adding that this immaturity becomes even more pronounced when their curiosity is piqued because, "it is their nature to want to explore. Part of being young is to be less knowledgeable of the law, at the same time, to be coarse in their actions."

Psychologically, the notion that their age is a big factor in offending is justified by the United Nations Guidelines for the Prevention of Juvenile Delinquency (2013, p.191),

"Youthful behavior or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood; a great majority of young people commit some kind of petty offence at some point during their adolescence without this turning into a criminal career in the long term."

The officials argue that it is the parents who should bear the brunt: "whatever is done by the child, it is the result of everything the parents cultivated in them". Jaime, 50, a councilor purports that "parents are responsible for the well-being of their children; everything that parents do reflect on their children". Hence, when they are not guided enough, one barangay captain said, "they seek attention elsewhere, and it is the peers who can fulfill this need." Furthermore, many officials surmised that it is when family problems

¹ All names mentioned here are aliases

become overwhelming that the youth act out: "they will become rebellious, they start drinking, smoking and do other self-destructive acts. But what do you expect from kids?"

It is worth noting that in a few cases, some officials revealed that the parents are themselves addicts. Cases like these are referred to the police and the Department of Social Welfare and Development (DSWD).

From the above, it seems apparent that youth offending is blamed to the parents on the whole and the young age of the CICL.

5.3.2 Peers are more influential than parents

Several officials single out peer pressure as the most influential cause of offending. Bert, 62, a councilor explains the views of the rest: "lawful or unlawful, peer influence is greater than parental authority because there is acceptance with people their age. Also, with peers, a teen has a relationship with an equal". This is important to note because most offenses by the youth happen in the context of the peer group. Filipino youth call their peers *tropa*. The *tropa* is not just a group with whom a teen can hang out with, play, or drink with. One barangay captain observed that "The *tropa* eventually becomes their world." Officials explain that the *tropa* gives the members a blanket protection such that, it does matter if the group is wrong, or wronged. Retaliation is almost always a group response to real or imagined intimidation by another *tropa*. As Joshua, 39, an official remarked, "frats are common here, and members live near each other, so it's easy for them to hang out. They are emboldened when their peers are with them. Expect violations when they're hanging out, especially when there's drinking."

The *tropa* also figured in survival offending. Survival offending is any violation done of which the root cause is to provide for the basics, such as food, or to buy medicines. A few officials note that stealing and shoplifting, which have become more common, all involved the *tropa*. Other minor offenses, such as curfew violations, heated exchanges due to computer games in internet cafe and vandalism are also done with the *tropa*. Likewise, in drug peddling, the *tropa* is an accomplice. Pushers need people who will not just squeal easily. Hence, the code of secrecy and the "no one gets left behind rule" tacitly agreed upon by *tropa* is a boon.

The presence of peers as co-accused in offending is seen in earlier studies on the CICL in the Philippines (see Save the Children-UK, *Breaking Rules: Children in Conflict with the Law and the Juvenile Justice Process, the Experience in the Philippines*. These studies similarly pointed out that violations like shoplifting or snatching is planned and executed by peers.

Edwin H. Sutherland's differential association theory (Siegel & Bartollas, 2009) is applicable here. A young person violates the law "in response to an excess of attitudes favoring law or norm violation, at that time, and that principally, he has attained this excess in association with others" (Shoemaker, 136). Following the findings presented above, it can be argued then that since youth offending happens in the context of the *tropa*, there is strength in the notion that delinquent association result to delinquent actions. Sutherland explains that this association occurs among a relatively small group of people of which intimate and personal relationships can arise. The *tropa* qualifies as a primary group.

Many of the members of the tropa live close to each other. Sutherland recognizes the importance of living in close proximity. Being neighbors is an important factor because there is a link between communities that young people live in, and their propensity toward gang membership (Meres & Kahan, 1998). Those in high crime neighborhoods are much more likely than those in low crime neighborhoods to believe that a majority of their peers admire gang members. These perceptions can reinforce desire to join and ultimately determine the level of gang criminality in a particular community (Aldaba-Lim, 1978). In gang-free neighborhoods, the belief that others loathe gang membership strengthens the dislike that individual youth have toward joining the gang. But in gang-ridden ones, the belief that their peers approve of gang members can make joining a gang seem worthwhile even to young people who were otherwise weakly committed to or even opposed to gangs. It is however important to clarify that gangs are not altogether made up of youths whose upbringing is fraught with violence. Several studies indicate that gangs are made up of troubled youths who come from different kinds of families but are commonly socialized by the streets rather than by conventional institutions (Siegel & Welsh 2011). That is why controlling gangs is very difficult to achieve because youth who live in areas where their needs cannot be met by existing institutions turn to gangs, and thus, the challenge is really to provide them with resources within their communities that would make them choose legitimate institutions rather than gangs.

5.3.3 "Rewards" come easy

Luis, 65, a barangay captain argued that in general, young people are easily swayed by the latest gadgets, cell phones and other consumer durables (like designer clothes, shoes, etc.) that most often are beyond their means. With their young age, they are drawn to these immediate rewards. This explains why in many cases theft cases they handled, the youth offenders steal cellphones and tablets, and many CICL do not sell them, but use them personally. This rationalization ironically harks back to the argument presented by Jean Baudrillard, who added another attribute of value in social relations which is the sign value, or the value contained in the acquisition and consumption of goods as a hallmark of immersion and participation in the capitalist world (Baudrillard, 1994).

A big majority however, steal because they "need" to. Officials stress that some teens have to mature quickly because of poverty, making theft a part of their survival. Officials explain that some CICLs are saddled with responsibilities beyond them, such as providing for their siblings, buying medicines for their sick parents or for their own needs. One barangay captain describes the CICL's life: "Of course they know it's wrong to steal, but they do not have any other recourse. Given their background, they cannot be employed, or if they are, they are paid so meager. It is not enough."

Many CICLs also drop out for lack of funds to continue schooling. Forced to stop, the streets become the primary socializing agent together with fellow drop outs. Seeing how easy it is getting away with pick pocketing, for example, one official remarked "It becomes a habit when you do it often, especially when the punishment is not strong enough". Officials say that CICLs know that imprisonment is not legal because some are repeat offenders while others have tropas who have been caught and have been released scot-free.

Hence it would appear that local officials believe that there are two interconnected factors rationalizing youth offending. First, because what the youth think they need and want can be easily obtained, albeit illegal means, and second, they can get away with it given that the law prohibits imprisonment for minors.

5.4 Rehabilitating the CICLs: Whose Job is it?

Officials were asked to point out people or organizations that are rightfully responsible for the job of youth rehabilitation.

It is clear from the responses of the local officials that they are not well-informed of RA 9344 as their answers could best be described as arbitrary, as no clear guidelines are enforced. Concomitantly, handling them is mostly dependent on who is left at the barangay hall at the time a youth offender is brought.

Without any clear guidelines and common understanding on how to handle the CICL, officials rely on their own subjective decisions as to how to proceed.

Most of them say that as most cases are not serious, first time offenders are only reprimanded and counselled by the officer of the day. In some barangays, the parents are called, reminded of their duties in supervising their children and then, they are asked to pledge better supervision of their children. In lecturing the parents, councilors believe that "instilling fear of the Lord is a big part", an almost parodic resuscitation of faded religious tenets to a secular discourse or issue.

They deduce that spiritual enrichment via bible studies would change the CICLs into law-abiding citizen. In several barangays, both child offender and his/her parent need to sign an agreement, that a second offense will merit harsher punishment because police involvement will then be deemed necessary even if the violation is not very serious, like misdemeanor, or theft. Third time offenders are recommended for DSWD intervention. When asked to elaborate on this, the officials say that it meant being brought to court and be placed in a facility for the CICL. Officials believe that when the DSWD enters the picture, the offender will not only learn a lesson; he will also be away from his peers and hence, the chance for rehabilitation. Rommel, 37, an official said, "if they cannot be disciplined in their homes, then, maybe the DSWD can discipline them. They have to be placed in a facility." Likewise, the officials think that the DSWD should also include the parents in the intervention, by giving seminars on better parenting and values education and requiring them to attend. The officials rationalize that "the parents are part of the problem."

However, significant arguments against the effectiveness of rehabilitation facilities to reform have been presented, most notably by Andrew Scull (1984) in *Decarceration: Community Treatment and the Deviant – a Radical View*. Scull uses the term decarceration to refer to the policy of closing down asylums, prisons, and reformatories and the admission of "the mad and the bad" in community-based facilities to be rehabilitated. He dismisses decarceration as a "new humanitarian myth, built on a foundation of sand." Through historical and comparative methods, he concludes that rehabilitation facilitated in the community has not lowered crime statistics, mainly because communities are ill-equipped to deal with criminals and mentally-ill people and facilities do not have the deterrence mechanisms of prisons to prevent re-offending.

On the other hand, Erving Goffman's *Asylum: Essays on the Social Situation of Mental Patients and Other Inmates* (1961) contends that a rehabilitation facility that qualifies as a "total institution" may aim to reform the people inside but cannot achieve this goal because a meaningful homelife existence is problematic in a "total institution." As a "social hybrid organization", it presents itself as a home but handles all its inmates' needs through a bureaucracy, considered as "the key fact of total institutions (Goffman, 1961). This bureaucratic nature gives rise to structural factors that impact on the rehabilitation of

those placed inside. Foremost is the inmate-staff relationship that is premised on surveillance rather than guidance (Ibid, p.71). Another structural factor is the privilege system consisting of house rules, rewards and punishments (Ibid). Goffman also conceived of mortifications –“series of abasements, degradations, humiliations, and profanations of self” as implicit experiences of inmates once they are admitted to a “total institution.”

Although the local officials are correct in pointing out the DSWD as an integral part of juvenile justice, it seems as if the rehabilitation of the CICLs is placed entirely in their hands.

5.5 What is to be done?

Falcis, 46, a barangay captain state that “sometimes we think the law is prone to abuse because the youth offender knows the ‘no touch policy’, so what we can do is limited.” Given these, all barangay officials note that the first response that should be done is reprimand, followed by counseling. Although they admit that no one among them have received formal training for counseling, they think that they are capable of giving sound advice, which young people need. Being parents, they think that counseling is innate: “with our own children, we always give advice. It’s the same with these children.”

Two barangay officials said they want the apprehended youth not to think that it is easy to get away from offending, so, the youth have to stay in the barangay for the whole day, and before the day ends, the parents are called, also for counseling, before they could fetch their child. As one official said, “you may want to exact physical punishment, not just a admonish them, but that is illegal. You could get into trouble if you do.”

A few said that if they had their way, they would involve the police right away, because the rules are simple, and thus, it is difficult to think that the children don’t know how to follow them. They reasoned that the presence of the police could deter future offending. Thus, seeing the police would result to fear on the part of the CICL, so recidivism is prevented.

All agreed that when cases are not serious and committed for the first time, such as curfew violations, theft, and public disturbance, amicable settlement is sought. The parents have to promise that through their supervision, their son or daughter will not lapse into recidivism.

Thelma, 35, a councilor said they have formed their committee on violence against women as mandated. The Committee on VAW will call on parents of the offender and have them attend a lecture on parenting, a bible study to instill fear of the Lord. Then the child also will be admonished.

Involving the DSWD figured in many responses: “Youth offending is for the DSWD to handle. They know better than us because this is their work.” When asked further on who should handle the CICL between parents and DSWD, 20 of the 30 local officials ruled that it should be the DSWD, not the parents primarily, because “there is a violation of a law and these kids should learn discipline which their own parents cannot teach.”

The belief that it is a matter of right that a youth offender is rehabilitated and not punished may be difficult to accept, as seen in the discussion above. As Robert Hoge stated, the idea of rehabilitation requires a “reframing” of traditional notions especially among people who are handling them (Hoge & Guerra, 2008). This reframing should be focused on

reinforcing the conviction that offenders are persons who can still be productive citizens and not deviants who must be treated harshly (Armaline, 2005). Thus, the people who are directly in contact with them have to be trained more in counseling than in control and this training should be on-going. Their beliefs can impede or facilitate rehabilitation (Dodge, Dishion & Lansford, 2006)

5.6 To lower or not to lower the age of criminal responsibility?

The discussion of juvenile justice, particularly on the age of criminal responsibility is fraught with contentions even at the level of the local officials. At present, under the Juvenile Justice and Welfare Act of 2006, or Republic Act 9334 as amended by Republic Act 10630, the minimum age of criminal responsibility in the Philippines is set at 15 years old. As of September 2016, some lawmakers filed bills to lower the minimum age of criminal responsibility from 15 years to nine years old.

Among the 30 barangay officials, sixteen supports the bill lowering the age, while twelve believe there is no need as the present bill is right, and 2 said it should depend on the offense committed.

Those who advocate the lowering of age think that 15 is "too old". When asked to clarify, the officials explained that at age 15, young people are past the age of innocence: they already know fully well the consequences of what they have done. Also, the officials say that youth offenders will have no qualms re-offending because they know they will not be jailed. This is enough encouragement for syndicates and other groups to use children for their operations.

Those who oppose the bill say that lowering the bill will not deter crime, rather, the number will balloon because the problem is not just the children but poverty. Hence, they said, if the government can address poverty effectively, children would not have to steal. Besides, the local officials argued that not all cities or towns have facilities where the CICLs will be housed for rehabilitation, and hence, many youth offenders are simply sent home. Some have facilities, but there are no programs targeting rehabilitation.

6.0 CONCLUSION

The ratification of the Convention on the Rights of the Child by most countries is a manifestation that even with those who violate the law, young people are assured that their rights are protected. As a signatory to the CRC, the Philippine government has promulgated its own law to specifically address its CICL. RA 9344 promises to advocate for the needs of the CICL within the rights-based framework. Consequently, diversion has become the norm in handling the CICL. It is believed that diversion prevents the formation of a delinquent self-image and the occurrence of stigma from significant others (Bazemore & Umbreit, 1995). Without a criminal record, the youth offender is given a chance to redeem himself/herself. Through RA 9344's adoption of restorative justice, the CICLs are not viewed as criminals but as persons with problems in their social environment involving their family, peers and community, and who needs to be rehabilitated for them to reintegrate successfully with their families and communities.

Crucial to the rehabilitation is the barangay, for apprehended CICLs are first brought to them. Barangay officials show deficiency of information as to their role in juvenile justice,

and albeit, their response is arbitrary, it is leaning towards diversion of the CICLs away from the formal justice system. This perhaps explains the backing the bill to lower the age of criminal responsibility.

It is apparent that the barangay officials concur with the sociological view that it is an oversight to ignore the social and ecological factors in trying to present a thorough explanation for youth offending. Looking at offending as an individual level phenomenon could not explain why there is a consistent pattern in regard to the demographic characteristics of the CICL. The officials also subscribe to the idea that at the crux of their offending is their family's low economic status. This appears to be the case because stealing among the young is often considered "survival offending": they need to, otherwise, they will go hungry. In some ways, the infraction then becomes justifiable.

Officials are also cognizant of how the dynamics of the interaction between the CICL and their family and peer group contribute to the commission of crime. Officials hold that the conduct or behavior of both parents and the family environment where the children grow are fundamental factors in the development of a violent behavior. They insist that deficient parental monitoring and supervision of children are strong predictors of violence and offending during adolescence. Also, the CICL had a co-accused when caught; this lend credence to the premise that youth involved with peers who are themselves law-offenders may learn the "tricks of the trade" and soon become deeply influenced by them.

Officials also support the notion that the neighborhood and community where the youth reside influence contribute to law-breaking. It is poverty or destitution that fosters crime at the community level only because it generates social disorganization and hence undermines traditional social control. Social disorganization is the breakdown in conventional institutional controls, as well as informal social control forces within a community or neighborhood. There are places that sustain crime. These are mostly poor urban neighborhoods with overcrowded homes, which generate family conflict and lead their inhabitants, especially the adolescents, to spend extra time outside the home to have some elbow room. Once outside, they are freer to associate with delinquent peers, with more delinquency resulting.

The study invites theoretical debate on what ought to be done to handle these youth offenders because the study renders restorative justice questionable given the negligible support of local officials. Definitely, it is not an easy question to answer because society wrestles with differing philosophical approaches. For a long time, retributive or punitive justice dictated that youth offenders must pay for the wrong they have done, and their punishment must be proportionate to their crime. Consequently then, incarceration of juveniles was the norm. The recent shift to restorative justice signaled the beginning of youth decarceration and the assignment of rehabilitation to the community. The view that youth offenders are entitled to rights and could be reformed in the more humane community correctional facilities began to flourish.

RECOMMENDATIONS

In light of the conclusions above, the following practical steps are recommended:

Training should be given to all barangay officials in regard to the importance of adopting rehabilitative justice because the study indicates a clear manifestation of their inability to reframe their response to the CICL. They continue to believe that rehabilitation is too soft as it does not guarantee that the CICL will not re-offend.

The role of the barangays should be clarified especially since the officials are not fully knowledgeable of their role in juvenile justice. A seminar requiring the attendance of all barangay captains can clarify the crucial role of the barangay play in the diversion process, beginning from apprehension until post-release care.

It is imperative that the Barangay Council for the Protection of Children be established and functional in each barangay. As the principal coordinating body for children and youth well-being, it can solicit various kinds of support from different individuals, groups and entities to enable supervision and intervention to continue after release. Presently, compliance with rules seems to extend only in so far as the residents remain in a controlled environment.

Still, despite of the programmatic recommendations, it does not necessarily defuse the lingering contradictions within the implementation of the Law, for it goes back once more to how justice is exercised. The Philippine state, a postcolonial entity with legacies of punitive subjections, is still yet to come up with its own legalities. Worse, the present directives and the proposed ones reveal the inherent cynicism of political figures and their relationship with their temptation to solidify their stranglehold. Discussions regarding criminality and legality therefore, should never be divorced of political and social considerations. A thorough critique is hence needed, in order and to properly comprehend the myriad cracks in the parchment curtain, or the fissures in the national edifice.

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