The Decriminalization of Vagrancy: A Final Farewell to an Anachronistic Law

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I. INTRODUCTION

On 27 March 2012, Republic Act No. 10158[1] was signed into law by President Benigno Aquino III.[2] The law amends Article 202 of the Revised Penal Code[3] to effectively declassify most forms of vagrancy from being criminal acts. Previously, the law read as follows:

> Art. 202. *Vagrants and Prostitutes — Penalty.* — The following are vagrants:
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> (1) 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;
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> (2) Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support;

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1. An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, Republic Act No. 10158 (2012).
2. *See* Aurea Calica, *Noy decriminalizes vagrancy*, PHIL. STAR, Apr. 5, 2012, *available at* http://www.philstar.com/Article.aspx?articleId=794506&publicationSubCategoryId=63 (last accessed May 28, 2012) & Genalyn D. Kabiling, Vagrancy decriminalized, *available at* http://www.tempo.com.ph/2012/vagrancy-decriminalized/#.T7hmNj-7dOR (last accessed May 28, 2012).
3. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).

> (3) Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;
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> (4) Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose; and
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> (5) Prostitutes.
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> For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.
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> Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.[4]

Under the amended law, Paragraphs one to four are deleted; only the Paragraph regarding prostitutes is retained.[5] This means that vagrants, in the traditional sense, are no longer considered as criminals. Only prostitutes, as defined, are penalized under the law.

This begs the question: what is a vagrant in the traditional sense anyway? This Essay delves into the history of the vagrancy law to find out the reason behind its enactment and whether it can still find relevance in today's society. This Essay also takes a look at some of the issues which the law has encountered in the past, including contentions regarding its recent amendment. All of these would help in analyzing the reasons behind the amendment as well as in evaluating whether it would be beneficial to the community at large.

II. HISTORY

Before discussing the law and analyzing why it was amended, it would be useful to first take a look at how the law on vagrancy came about. As one writer puts it, "[a] historical analysis allows an examination of the larger principles and rationales that underlie the older statutes to see how they have evolved over time and to examine the relevance of such laws in contemporary society."[6]

The historical development of vagrancy can be divided into three general periods: (1) as a criminal aspect of the economic condition in

4. *Id.* art. 202.

5. R.A. No. 10158, § 1.

6. Dennis J. Baker, *A Critical Evaluation of the Historical and Contemporary Justifications for Criminalising Begging*, 73 J. CRIM. L. 212, 213 (2009).

England from the 14th to the 16th century; (2) as a crime of status from the 16th to the 19th century; and finally, (3) as a crime of conduct.[7]

In 14th century England, when the Black Death ravaged Europe and killed a large number of its workers, the labor force realized that they were in demand and could ask for higher pay.[8] If their employers were not willing to pay, then they would simply look for jobs elsewhere.[9] Naturally, the employers did not like this, so they turned to legislation; thus, the birth of the laws against vagrancy —

> The vagrancy statutes emerged as a result of changes in other parts of the social structure. The prime-mover for this legislative innovation was the Black Death which struck England about 1348. Among the many disastrous consequences this had upon the social structure was the fact that it decimated the labor force. ... It was under these conditions that we find the first vagrancy statutes emerging. There is little question ... that *these statutes were designed for one express purpose: to force laborers ... to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he can afford to pay.*[10]

The first full-fledged law against vagrancy was passed in England in 1349.[11] The law criminalized giving alms to those who were of sound mind and body but were unemployed, to wit —

> Because that many valiant beggars, as long as they may live of[f] begging, do refuse to labor, giving themselves to idleness and vice, and sometimes to theft and other abominations; it is ordained, that none, upon pain of imprisonment shall, under the colour of pity or alms, give anything to such which may labour, or presume to favour them towards their desires; so that thereby they may be compelled to labour for their necessary living.[12]

The purpose of the law then was "to curtail mobility of laborers in such a way that labor would not become a commodity for which the landowners would have to compete."[13] As noted by Caleb Foote —

> The anti-migratory policy behind vagrancy legislation began as an essential complement of the wage stabilization legislation which accompanied the break-up of feudalism and the depopulation caused by the Black Death. By the Statute of Labourers in 1349-1351, every able[-]bodied person without

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7. *Id.* at 214 (citing 3 F.J. STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 266 (1996)).
8. William J. Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 SOCIAL PROBLEMS 67, 69 (Summer, 1964).
9. *Id.*
10. *Id.* (emphasis supplied).
11. *Id.* at 68 (citing 35 Ed. 1. c. 1).
12. *Id.*
13. Chambliss, *supra* note 8, at 70.

> other means of support was required to work for wages fixed at the level preceding the Black Death; it was unlawful to accept more, or to refuse an offer to work, or to flee from one country to another to avoid offers of work or to seek higher wages, or go give alms to able-bodied beggars who refused to work.[14]

The feudal system, however, did not last forever and in 1575, "Queen Elizabeth listened to the prayers of almost the last serfs in England ... and granted them manumission."[15] However, despite this change in social structure, instead of becoming dormant or even negated altogether, the vagrancy laws simply experienced a shift in focal concern from laborers to criminal activities.[16] The first statute which indicated this change took effect in 1530, and stated —

> If any person, being whole and mighty in body, and able to labour, be taken in begging, or be vagrant and can give no reckoning how he lawfully gets his living; ... and all other idle persons going about, some of them using divers and subtle crafty and unlawful games and plays, and some of them feigning themselves to have knowledge of ... crafty sciences ... shall be punished as provided.[17]

As shown, the change in England's social structure did not lead to the outright abolishment of the vagrancy laws, but merely a shift in their focus —

> After the decline of the feudal system, the justification for retaining vagrancy offences was premised on the belief that those without a consistent means of support were a dangerous class, who were likely to engage in criminal activity. The focus shifted from merely motivating idle members of society to working to prevent crime. ... During this period[,] vagrants were considered to be 'probable criminals' rather than runaway serfs[.][18]

It is during this time that vagrancy statutes started to be used as deterrents for "future criminality," a common justification for vagrancy statutes today.[19] Because of the shift in England's social structure, from one

14. *Id.* at 69-70 (citing Caleb Foote, *Vagrancy Type Law and Its Administration*, 104 U. PA. L. REV. 603, 615 (1956)).

15. Chambliss, *supra* note 8, at 71 (citing F. BRADSHAW, A SOCIAL HISTORY OF ENGLAND 61 (1918 ed.)).

16. *Id.*

17. Chambliss, *supra* note 8, at 71 (citing 22 H.8.c 12 1530).

18. Baker, *supra* note 6, at 217 (citing R. Teir, *Maintaining Safety and Civility in Public Spaces: A Constitutional Approach to Aggressive Begging*, 54 LA. L. REV. 285, 304 (1993) & STEPHEN, *supra* note 7, at 274).

19. Papachristou v. City of Jacksonville, 405 U.S. 156, 169 (1972) (citing Foote, *supra* note 14, at 625).

primarily concerned with labor under feudalism to an increased emphasis upon commerce and industry, the vagrancy laws shifted its focus to one concerned with the security of merchants and their goods.[20] The laws against vagrancy

> were revived in order to fulfill just such a purpose. Persons who had committed no serious felony but who were suspected of being capable of doing so could be apprehended and incapacitated through the application of vagrancy laws once these laws were refocused so as to include '... any ruffians ... who shall wander, loiter, or idle use themselves and play the vagabonds.'[21]

For the sake of emphasizing that vagrancy during this period was "the criminal aspect of the poor laws,"[22] it is worth noting that its punishment was likewise modified, whereby the offender was to be branded on the chest with the letter "V" (for vagabond).[23] Upon conviction for a second offense, the "V" would be branded on his forehead.[24] The law continued to change, and, as Halsbury notes, the law's

> elaborate provision [was] made for the relief and incidental control of destitute wayfarers. These latter, however, form but a small portion of the offenders aimed at by what are known as the Vagrancy Laws, ... many offender[s] who are in no ordinary sense of the word vagrants, have been brought under the laws relating to vagrancy, and the great number of the offenses coming within the operation of these laws have little or no relation to the subject of poor relief, but are more properly directed towards the prevention of crime, the preservation of good order, and the promotion of social economy.[25]

The law continued to undergo changes, expanding the scope of the prohibited acts covered by the vagrancy laws as the philosophy of the law shifted from a means to control labor to a means to control crime.[26] Because of this, "vagrancy laws evolved to encompass not only the runaway serf, but a host of curious accretions: begging, drunkenness, disorderly conduct, prostitution, lewdness, and narcotics."[27]

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20. Chambliss, *supra* note 8, at 72-73 (citing 27 H.8.c 25 1535).

21. *Id.*

22. T. Leigh Anenson, *Another Casualty of the War: Vagrancy Laws Target the Fourth Amendment*, 26 AKRON L. REV. 493, 494 (1992-1993) (citing William O. Douglas, *Vagrancy And Arrest On Suspicion*, 70 YALE L.J. 1, 13 (1960)).

23. Chambliss, *supra* note 8, at 73 (citing 27 H.8.c 25 1535).

24. *Id.*

25. Chambliss, *supra* note 8, at 74 (citing EARL OF HALSBURY, THE LAWS OF ENGLAND 606-07 (1912)).

26. Anenson, *supra* note 22, at 495 (citing Douglas, *supra* note 22, at 6).

27. *Id.*

As the law expanded in scope, so did its adoption outside of England. The vagrancy laws as of the middle of the 18th century were adopted generally by the United States (U.S.).[28] There was, however, more of a focus on the control of criminals and undesirables, this even being described as the "*raison de etre* of the vagrancy laws in the U.S."[29]

As the vagrancy laws made its way to the U.S. from England, so, too, would it eventually find its way into the Philippines. Verily, "[t]he first statute punishing vagrancy — Act No. 519 — was modeled after American vagrancy statutes and passed by the Philippine Commission in 1902. The Penal Code of Spain of 1870 which was in force in this country up to [31 December 1931] did not contain a provision on vagrancy."[30]

Act No. 519, also known as the Philippine Vagrancy Act,[31] was the first law to introduce the concept of vagrancy in the Philippines. It provides:

> Section 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; every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support; every person known to be a pickpocket, thief, burglar, ladrone either by his own 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; every idle or dissolute person or associate of known thieves or ladrones who wanders about the country at unusual hours of the night; 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; every lewd or dissolute person who lives in and about houses of ill fame; every common prostitute and common drunkard, is a vagrant, and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding one year and one day, or both, in the discretion of the court.[32]

In interpreting the first part of Section 1, the Supreme Court, in an early case,[33] used the definition provided by the U.S. Supreme Court in saying that vagrancy "consists in general worthlessness, that is to say, in being idle, and, though able to work, refusing to do so, and living without labor, or on

28. Chambliss, *supra* note 8, at 75.

29. *Id.*

30. People v. Siton, 600 SCRA 476, 486 (2009) (citing 57 Phil. L.J. 421 (1982)).

31. An Act Defining Vagrancy and Providing for Punishment Therefor [Philippine Vagrancy Act], Act No. 519, § 1 (1902).

32. *Id.* § 1.

33. United States v. Molina, 23 Phil. 471 (1912).

the charity of others."[34] It has also been noted that "[t]he object of the Vagrancy Act is to remove from the community at the time 'nonworking, worthless characters.'"[35] In another case, the purpose of vagrancy was discussed as follows —

> The offense of vagrancy as defined in Act No. 519 is the Anglo-Saxon method of dealing with the habitually idle and harmful parasites of society. While the statutes of the various States of the American Union differ greatly as to the classification of such persons, their scope is substantially the same.[36]

The Philippine Vagrancy Act continued to be in force until the enactment of the Revised Penal Code in 1932.[37] The law on vagrancy, "[w]hile historically an Anglo-American concept of crime prevention, ... was included by the Philippine legislature as a permanent feature of the Revised Penal Code in Article 202 thereof."[38]

The second paragraph of Article 202 is particularly noteworthy, as it essentially retained the second clause of Section 1 of the Philippine Vagrancy Act, except that the places under which the offense might be committed is now expressed in general terms — public or semi-public places.[39] This shows that even if there are slight modifications introduced in the vagrancy provisions in the Revised Penal Code, the essence of the law, and therefore its object and purpose, was effectively retained. And even though the vagrancy laws underwent changes through the centuries, some of its historical ideals have been preserved. As will be seen, these will become important when discussing the issues concerning the vagrancy provisions.

III. ISSUES

A. Vagrancy Prior to Amendment of the Revised Penal Code

Vagrancy has survived for many years as part of the Revised Penal Code without much fanfare, until a case was elevated to the Supreme Court, which brought up a lot of the overlooked issues surrounding the law.[40] Because minor offenses like vagrancy are seldom reviewed by higher courts, the actual limits and shortcomings of the vagrancy law cannot be found in

34. *Id.* at 473 (citing Gavin v. The State, 96 Miss. 377 (1985) (U.S.) & Philippine Vagrancy Act).

35. United States v. Kelly, 35 Phil. 419, 456 (1916).

36. United States v. Hart, 26 Phil. 149 (1913).

37. *Siton*, 600 SCRA at 493.

38. *Id.* at 486.

39. *Id.* at 487.

40. *Id.* at 476.

the statute, but in the actual practices of the police[41] — and herein lies the problem.

A number of issues were brought up in the recent Supreme Court case *People v. Siton*.[42] For the purposes of this Essay, the main issues concerning vagrancy will be classified into two general categories: implementation and substance.

1. Implementation

The most negative critique on the law on vagrancy stems from the possibility of abuse by police authorities —

> The tradition of vagrancy laws in America has also produced a tradition of abuse. ... [T]he vagrancy law results in abuse on the streets as law enforcement officials may arrest anyone merely on the suspicion that they have been involved in another crime which [cannot] be proved, and to justify arrests for conduct which is not criminal.[43]

This issue was brought to the forefront as early as 1972 in the U.S. Supreme Court case of *Papachristou v. City of Jacksonville*.[44] The case involved eight individuals arrested under the vagrancy ordinance of the city of Jacksonville, seemingly for doing nothing other than walking around and "prowling by auto."[45] Their reputation was even made a basis for charging some of them of being "common thieves."[46] The Supreme Court ruled the vagrancy ordinance as unconstitutional due in part to the arbitrary power it gave to police officers, which is prone to abuse.[47]

The inherent nature of the law against vagrancy "permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.'"[48] Moreover, "[a] vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest."[49] This is especially dangerous in a country like the Philippines, where the number of poor people is high and

41. Anenson, *supra* note 22, at 519 (citing Foote, *supra* note 14, at 608).

42. *Siton*, 600 SCRA 476.

43. Anenson, *supra* note 22, at 495.

44. *Papachristou*, 405 U.S. 156.

45. *Id.* at 159-60.

46. *Id.*

47. *Id.* at 170.

48. *Id.* at 170 (citing Thornhill v. Alabama, 310 U.S. 88, 97-98).

49. *Papachristou*, 405 U.S. at 169.

government officials, including police and prosecuting officers, are well-known as being corrupt.[50]

This propensity for abuse is likewise not attributable to any lack of training or code of ethics of police officers, but to the very nature of the law itself. For

> to authorize a police officer to arrest a person for being 'found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support' offers too wide a latitude for arbitrary determinations as to who should be arrested and who should not.[51]

In fact, Justice Felix Frankfurter, in a dissent, even implied that such overbreadth is a "feature" of vagrancy laws, to wit —

> Definiteness is *designedly avoided* so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense. In short, these 'vagrancy statutes' and laws against 'gangs' are not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided.[52]

However, the importance of protecting the citizens from police abuse due to vagrancy legislation was ultimately recognized by the U.S. Supreme Court. Protection from the "whim and caprice" of the police was deemed to be of paramount concern, and this would later become the benchmark for the evaluation of vagrancy statutes by the lower courts when such laws were challenged as unconstitutional.[53]

While the practice in the U.S. seems to be to declare vagrancy laws as unconstitutional under the void-for-vagueness doctrine[54] whenever such

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50. *See* The Guardian, Corruption index 2011 from Transparency International: find out how countries compare, *available at* http://www.guardian.co.uk/news/datablog/2011/dec/01/corruption-index-2011-transparency-international (last accessed May 28, 2012). *See also* Global Finance, The Poorest Countries in the World, *available at* http://www.gfmag.com/tools/global-database/economic-data/10502-the-poorest-countries-in-the-world.html#axzz1wXj9mWY8 (last accessed May 28, 2012).

51. *Siton*, 600 SCRA at 483 (citing *Papachristou*, 405 U.S. at 156).

52. *Papachristou*, 405 U.S. at 166 (citing Winters v. New York, 333 U.S. 507, 540 (1948)) (emphasis supplied).

53. Anenson, *supra* note 22, at 497 (citing Kolender v. Lawson, 461 U.S. 352, 358 (1983)).

54. *Siton*, 600 SCRA at 485. This doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential [element] of due process of law." *Id.*

cases reach the courts, it is recognized that it only kept the supposed criminals out of prison, but ultimately still failed to avoid abuse by police authorities.[55] The legislative drafters then amended the vagrancy laws, limiting "vagrancy" to a particular place, scope, or illicit purpose.[56] This was believed to cure the risk of arbitrary enforcement.[57]

Even if we assume that the object and purpose of the law is laudable and relevant to the current society, there are still inherent problems with implementing our vagrancy provisions given the great amount of discretion that it gives to the enforcing officers. Outside of a perfect world where humans are fully resistant to temptation and wrongdoing, abuse by police authorities cannot be totally prevented without amending the law.

This was apparently recognized by our legislators as well, and is notably one of the main reasons for the amendment of the law. As Senate President Pro-Tempore Jinggoy E. Estrada said, "[T]here are numerous reports of arbitrary arrest by police as a result of the wide discretion afforded to law enforcement by the vagrancy law. Police have rounded up the poor, accusing them of vagrancy, and holding them in prison cells."[58]

2. Substance

The other criticisms concerning our vagrancy law have more to do with the actual substance of the law, that is, its object and purpose given the current state of our society. It is to be noted that

> [t]he contemporary justifications for criminali[z]ing begging and vagrancy [center] around two core themes. The first is that vagrancy and begging are a precursor to more serious crime. The second focuses on the general offence and nuisance caused to passers-by as a result of the presence of beggars or vagrants (the public nuisance/deservedness/intimidation justification).[59]

These reasons are basically, (1) vagrants are more likely to commit crimes and (2) vagrants are annoying.[60] These justifications highlight the anachronistic nature of our vagrancy laws, especially given the relatively recent developments in the proliferation of individual human rights.[61]

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55. *Id.*

56. *Id.* at 500.

57. *Id.*

58. Marvyn Sy, *Senate okays bill decriminalizing vagrancy*, PHIL. STAR, Mar. 17, 2011, *available at* http://www.philstar.com/Article.aspx?articleId=666979 (last accessed May 28, 2012).

59. Baker, *supra* note 6, at 221.

60. *Id.* at 227.

61. *Id.* at 232.

Taking into consideration the history of vagrancy laws, we see that its original purpose remains intact, but society has moved forward. The vagrancy laws are presently applied indiscriminately to persons considered as nuisances, and are being used as a mechanism for clearing the streets of "derelicts."[62] In this context, the vagrancy laws have changed very little, and the lack of change can be seen "as a reflection of society's perception of a continuing need to control some of its 'suspicious' or 'undesirable' members."[63]

It is under this pretense that the vagrancy provisions in our Revised Penal Code were challenged as being violative of the Constitution in *Siton*.[64] The trial court, in ruling for the unconstitutionality of Article 202, stated —

> [S]ince the definition of Vagrancy under Article 202 of the Revised Penal Code offers no guidelines or any other reasonable indicators to differentiate those who have no visible means of support *by force of circumstance* and those who choose to loiter about and bum around, who are the proper subjects of vagrancy legislation, it cannot pass a judicial scrutiny of its constitutionality.[65]

Comparably, the U.S. Supreme Court in *Papachristou* raised the issue of vagrancy laws "encourag[ing] or promot[ing] opportunities for the application of discriminatory law enforcement"[66] —

> A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards — that crime is being nipped in the bud — is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws ... teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.[67]

These declarations point out the injustice in discriminating against the poor and destitute as a result of vagrancy legislation, as "[t]hose generally implicated by the imprecise terms of the [law] — poor people, nonconformists, dissenters, idlers — may be required to comport themselves

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62. Chambliss, *supra* note 8, at 75.

63. *Id.*

64. *Siton*, 600 SCRA at 476.

65. *Id.* at 484 (emphasis supplied).

66. *Id.* at 490.

67. *Papachristou*, 405 U.S. at 171.

according to the lifestyle deemed appropriate by the ... police and the courts."[68] This goes against one of the basic tenets of our Constitution, which requires equal treatment of all persons under the law.[69] Vagrancy laws, as will be recalled, were originally meant to be anti-poor, and this continues until the present day, especially given the relatively minor changes in its current wording. In the exceptional words of Justice Seamus Henchy —

> [T]he ingredients of the offence and the mode by which its commission may be proved are so arbitrary, so vague, so difficult to rebut, so related to rumour or ill-repute or past conduct, so ambiguous in failing to distinguish between apparent and real behaviour of a criminal nature, so prone to make a man's lawful occasion become unlawful and criminal by the breadth and arbitrariness of the discretion that is vested in both the prosecutor and the judge, so indiscriminately contrived to mark as criminal conduct committed by one person in certain circumstances when the same conduct, when engaged in by another person in similar circumstances, would be free of the taint of criminality, so out of keeping with the basic concept inherent in our legal system that a man may walk abroad in the secure knowledge that he will not be singled out from his fellow-citizens and branded and punished as a criminal unless it has been established beyond doubt that he has deviated from a clearly prescribed standard of conduct, and generally so singularly at variance with both the explicit and implicit characteristics and limitations of the criminal law as to the onus of proof and mode of proof, that it is not so much a question of ruling unconstitutional the type of offence we are now considering as identifying the particular constitutional provisions with which such an offence is at variance.[70]

In ruling the Jacksonville vagrancy ordinance unconstitutional, the U.S. Supreme Court rationalized its decision by stating that the law failed to give fair notice to ordinary persons that their contemplated conduct was forbidden by statute, it encouraged arbitrary arrests and gave unfettered discretion to the police, and it made normally innocent activities fall into the category of criminal acts.[71]

However, our own Supreme Court did not see it this way. In ruling that Article 202 did not violate the Constitution, it stated —

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68. *Id.* at 170.

69. PHIL. CONST. art. III, § 1. This Section provides: "No person shall be deprived of life, liberty, or property without due process of law, *nor shall any person be denied the equal protection of the laws.*" PHIL. CONST. art. III, § 1 (emphasis supplied).

70. Gerard Hogan, *The Judicial Through and Prose of Mr. Justice Seamus Henchy*, 46 IRISH JURIST 96, 99-100 (2011) (citing King v. The Attorney General, 1 I.R. 227, 257 (1981) (Ir.)).

71. *Papachristou*, 405 U.S. at 156.

> Article 202 (2) does not violate the equal protection clause; neither does it discriminate against the poor and the unemployed. Offenders of public order laws are punished not for their status, as for being poor or unemployed, but for conducting themselves under such circumstances as to endanger the public peace or cause alarm and apprehension in the community. Being poor or unemployed is not a license or a justification to act indecently or to engage in immoral conduct.
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> Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized[,] and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.[72]

It is worth mentioning that the Supreme Court did not accept the arguments based on the *Papachristou* ruling because it deemed the Jacksonville City Ordinance as being materially different from the vagrancy provisions under the Revised Penal Code.[73] It also gave importance to the

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72. *Siton*, 600 SCRA at 496.

73. *Id.* at 491.

> The [O]rdinance (Jacksonville Ordinance Code, § 257) provided, as follows:
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> 'Rogues and vagabonds, or dissolute persons who go about begging; common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, *persons wandering or strolling around from place to place without any lawful purpose or object*, habitual loafers, disorderly persons, *persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame*, gaming houses, or places where alcoholic beverages are sold or served, *persons able to work but habitually living upon the earnings of their wives or minor children* shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses.'

Id. (emphasis supplied). *Compare with* REVISED PENAL CODE, art. 202, §§ 1-4.

> Art. 202. *Vagrants and Prostitutes — Penalty.* — The following are vagrants:
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> (1) 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) Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support;

presumption of constitutionality of legislative acts and the separation of powers.[74] As regards the possible abuse by the police, the Supreme Court stated —

> The fear exhibited by the respondents, echoing Jacksonville, that unfettered discretion is placed in the hands of the police to make an arrest or search, is therefore assuaged by the constitutional requirement of probable cause, which is one less than certainty or proof, but more than suspicion or possibility.[75]

While it might be true that our vagrancy law was rightfully deemed as constitutional by the Supreme Court, considering the implementation and substance issues discussed, maybe the problem really lies in the *wisdom* of the law — which is appropriate, given its recent amendment.

B. Vagrancy as Amended by R.A. 10158

While most of the issues discussed have already been addressed by the recent amendment to Article 202 of the Revised Penal Code, there are newer issues that come with the new law. One such issue is succinctly stated by Atty. Melencio S. Sta. Maria —

> The amendatory bill removes a pimp as a vagrant but maintains a prostitute as a criminal. It targets exclusively women who engage in prostitution. It does not apply to males.
>
> The bill, in other words, is discriminatory, anti-women, and still anachronistic. It seems that our legislators are still oblivious to many studies as to why women engage in prostitution. While it is true that prostitution must be stopped, the focus of any amendatory law now must not be on the woman per se, but on the deeply rooted reasons why, lamentably, women (and indeed men and children) enter into this kind of work. To name just a few: poverty, forced labor, exploitation, organized crime syndicates, lack of

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> (3) Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;
>
> (4) Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose[.]

Id.

74. *Id.* 600 SCRA at 497.

75. *Id.* at 492 (citing 79 C.J.S. *Search and Seizures*, §§ 74 & 865).

> education[,] and other reasons that involve taking advantage of the vulnerable situations of women.[76]

Women's rights activists, among others, called for a veto of the (then) proposed Bill, saying it would "continue to penalize women in prostitution rather than the people who exploit them."[77] Even male activists opposed the Bill, saying that the law's "definition of prostitute[s] as women who engaged in sex for profit is a bias against women"[78] and that "prostitution is a form of violence against women."[79]

Another women's rights group even remarked that the new law violates Republic Act No. 9710[80] or the Magna Carta of Women.[81] According to the said law, prostitution falls under the definition of those acts that constitute "Violence Against Women."[82] The Magna Carta of Women also treats women subjected to prostitution as victims, thereby clashing with the vagrancy law because it classifies prostitutes as criminals and therefore violates their right to be protected from abuse and violence.[83] According to Representative Luzviminda C. Ilagan of Gabriela Women's Party, "[t]he amended law turns a blind eye to the realities of poverty and unemployment that heightens women's vulnerability to trafficking, prostitution[,] and slavery."[84]

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76. Mel Sta. Maria, Condemning Women on Women's Month, *available at* http://www.interaksyon.com/ article /27886/ opinion –condemning -women-on-womens-month (last accessed May 28, 2012).

77. Tonette Orejas, *Veto vagrancy bill vs women, Aquino urged*, PHIL. DAILY INQ., Mar. 20, 2012, *available at* http://newsinfo.inquirer.net/164281/veto-vagrancy-bill-vs-women-aquino-urged (last accessed May 28, 2012).

78. Iloilo News Today, MOVE-Aklan urges Pnoy to veto decriminalization of vagrancy, *available at* http://iloilonewstoday.com/index.php?option=com_content&view=article&id=8647:move-aklan-urges-pnoy-to-veto-decriminalization-of-vagrancy&catid=176:aklan&Itemid=537 (last accessed May 28, 2012).

79. *Id.*

80. An Act Providing for the Magna Carta of Women [The Magna Carta of Women], Republic Act No. 9710 (2009).

81. Gabriela Women's Party, GWP Rep. De Jesus To Aquino: Prostituted Women Are Victims, Not Criminals, *available at* http://www.gabrielawomensparty.net/news/press-releases/ gwp-rep-de-jesus-aquino- prostituted-women-are-victims-not-criminals (last accessed May 28, 2012).

82. The Magna Carta of Women, § 4 (k) (2).

83. Gabriela Women's Party, supra note 81 & Ina Alleco Silverio, Amended law decriminalizing vagrancy attacks exploited women — Gabriela, *available at* http://bulatlat.com/main/2012/04/13/amended-law-decriminalizing-vagrancy-attacks-exploited-women-gabriela/ (last accessed May 28, 2012).

84. Silverio, *supra* note 83.

Another law which seemingly contradicts the amended vagrancy law would be the Anti-Trafficking in Persons Act.[85] The law likewise treats women engaged in prostitution as victims and not criminals.[86] In relation to this, the law as amended could also be seen as violative of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[87] of which the Philippines is a signatory. One of the issues raised as regards the Philippines is that it continues to treat prostitutes as criminals when they should properly be considered as victims.[88]

It is to be noted that there was apparently a version of the Bill that removed the provision on prostitutes as well, which was sponsored by Sen. Francis G. Escudero; however, this version was evidently disregarded upon consolidation with the other bills.[89] This comes as a surprise given all of the conflicts with the other laws mentioned, and the reason for such decision is unclear.

IV. CONCLUSION

After taking a look at the history of vagrancy and the various issues it has encountered along the way, one can clearly see how antiquated the law really is. The law seemingly tries to answer the problem of poverty by criminalizing the poor, which is the wrong way of going about it. As one writer puts it —

> The 750-year-old offence of begging was enacted in a bygone age. It is no longer an appropriate response for dealing with indigence. ... The continued criminali[z]ation of begging violates the beggar's fundamental right not to be criminali[z]ed.
>
> ...
>
> An enlightened answer to the current homelessness problem cannot be found in the criminal law. The empirical evidence suggests that the public would prefer begging to be dealt with through other kinds of state

85. An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations, and for Other Purposes [Anti-Trafficking in Persons Act of 2003], Republic Act No. 9208 (2003).

86. *See generally* Anti-Trafficking in Persons Act of 2003.

87. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979).

88. *See* U.N. Committee on the Elimination of Discrimination Against Women, *Combined Fifth and Sixth Periodic Reports of States Parties, Philippines*, ¶ 234, U.N. Doc. CEDAW/C/PHI/5-6 (Aug. 2, 2004).

89. Silverio, *supra* note 83.

> intervention such as increased educational and employment opportunities and other initiatives.[90]

This is why the Author believes that the decriminalization of vagrancy is a step in the right direction. Apart from addressing the inherent issues of the law as previously discussed, decriminalization allows the government to focus its efforts towards helping the poor, as opposed to exerting efforts to punish them for a circumstance they had no control over. In fact, empirical data suggest that vagrants are no longer the source of harm, but rather are more likely to end up as victims of crimes.[91]

Sen. Estrada told it true when he said that "[t]he law on vagrancy blurs the line between poverty and criminality. As the economic crisis persists, the poor will continue to suffer from oppressive laws such as the law on vagrancy."[92] Legislation directed against a particular class is not only outdated, but goes against recognized constitutional rights. Indeed

> [t]he class against which the legislation was directed has ceased to exist. The poor law legislation and the increased industrial and commercial employment of the nineteenth century together reduced it to much narrower proportions. The legislation of the twentieth century, unemployment insurance, national health insurance, public assistance, and all the other social reforms of recent years have abolished it altogether ... To retain such laws seems ... inconsistent with our national sense of personal liberty, or our respect for the rule of law.[93]

While the new law is certainly an improvement over the previous state of our Penal Code, one can't help but wonder why the transformation wasn't as progressive as it could have been. The continued persecution of prostitutes as criminals remains as the only remaining blemish to an otherwise newly-polished octogenarian law. One can only remain hopeful that this travesty is merely temporary and that Congress is already in the process of correcting its oversight.

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90. Baker, *supra* note 6, at 212-14 (citing M. Alder et. al., *Begging as a Challenge to The Welfare State*, *in* BRITISH SOCIAL ATTITUDES — THE 17TH REPORT 219 (R. Jowell, et. al. eds., 2000-2001)).

91. *Id.* at 221 (citing NATIONAL COALITION FOR THE HOMELESS, ILLEGAL TO BE HOMELESS: THE CRIMINALISATION OF HOMELESSNESS IN THE UNITED STATES (Nov. 2004) & M. Foscarinis, *Out of Sight-Out of Mind?: The Continuing Trend toward the Criminalisation of Homelessness*, 6 GEO. J. ON POVERTY L. & POL'Y. 145 (1999)).

92. Sy, *supra* note 58.

93. Baker, *supra* note 6, at 221 (citing Ledwith v. Roberts, 3 All ER 570, 582-94 (1936) (U.K.)).