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### CRIMINALITY AND THE FAMILY\*

Conrado V. Sanchez \*\*

Through the years, considerable shift in criminological thought has taken place. The erstwhile dominant classical or juristic theory of penology — which postulates that man is a rational and calculating being, free to choose between good and evil who guides his actions with reference to the principles of pleasure and pain, and bases criminal responsibility on the actor's knowledge and free will — has been losing adherents. Contesting it for the position of primacy is the positivist or realistic school which, following the doctrine of Lombroso, one of its chief exponents, denies that there is such a thing as a "born criminal," recognizable by certain peculiar physical stigmata, whose inborn criminality is an atavism. Instead, to the positivist, crime is essentially a social and natural phenomenon, and criminality depends mostly on social factors, environment, education, economic condition, and the inborn or hereditary character of the criminal himself. So much so that the central idea of all positivist thinking is that crime cannot be checked by the application of abstract principles of law and jurisprudence nor by the imposition of a punishment, fixed and determined *a priori*, but rather through the enforcement of individual measures in each particular case after a thorough, personal and individual investigation conducted by a competent body of psychiatrists and social scientists.

The Philippines, for one, has not remained uninfluenced by this trend. Our Revised Penal Code,<sup>1</sup> though decidedly of the classical school, having evolved from the French Penal Code of 1810, thru the Spanish Penal Code of 1870, reflects certain positivistic influences. Its provisions on impossible crimes,<sup>2</sup> exempting circumstances,<sup>3</sup> habitual delinquency,<sup>4</sup> and the like, are clear proofs of this. More

\* Paper presented to the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Stockholm, Sweden, August 9 — 18, 1965.

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<sup>1</sup> Act No. 3815, as amended.

<sup>2</sup> Art. 4, par. 2.

<sup>3</sup> Art. 12.

<sup>4</sup> Art. 62, par. 5.

recently, the Code Commission created by Executive Order No. 48, dated March 20, 1947, drafted in 1950 a Code of Crimes patterned specifically after the positivist school. This, however, remains unacted upon by Congress.

The growing acceptance of the new theory should not, however, be interpreted as indicating an inclination to totally disregard the influence of volition in the generation of crime. Our knowledge of human nature rejects as quite radical the proposition which would relegate free will into nothing. It is still as true that what one does is dependent greatly on his thought-life and on the values it holds before him for volition. One thing, however, is becoming evident. Past theories which generally seek to explain delinquent behavior in terms of single causation are being gradually levelled off and supplanted by the studied conclusion of sociologists and criminologists that the causes or factors conducive to criminality are multiple, complex, and interactive. This is as it should be. For, there appears to be undeniable truth in the statement that human behavior is the product of a continuous and dynamic interplay between the human organism and environmental factors. Hence, though no scientific exactitude is possible in prognosticating the conduct of a man, due to the intangible and ungovernable autonomy of the will, there exists, nevertheless, a probability of predetermining the course of action he will take under given conditions.

In this context, it is not hard to realize that the day is long past when society should be content with merely punishing the criminal and then washing its hands off the matter. The offender must no longer be viewed solely as an object of punishment or retribution but a victim of heredity and environment, sometimes more sinned against than sinning, and a virtual patient deserving of social consideration for reformation, to the end that society may be protected. Concomitantly, prevention of criminality must be approached from a multi-causal frame of reference which requires a thorough knowledge concerning its various symptoms and roots so that the same could be reduced to a desired minimum.

The problem of criminality is undoubtedly universal. The toll that it exacts is cause for dismay. From the material aspect alone, it is wreaking great havoc, leaving in its wake a trail of death, disability, property and financial loss that defies estimation. It is a source of gratification that the United Nations has recognized these facts and has continued to take an active interest in the competent, painstaking and penetrating study of the root causes and other contributing factors of criminality, the judicious choice of remedies

and preventives, and especially in promising an international forum for the exchange of ideas amongst nations on the common crusade against crime.

#### *Importance of the Family*

While the complexity of causes which induce criminality is conceded, one single factor, by present-day standards, stands out as most pervasive — *the family* where, in many cases, some defect would be discoverable at the bottom of criminality.

Basically, the social unit is the family. It provides the most important part of the child's environment from his earliest years and plays a fundamental role in the molding of his personality and character. No other agency teaches the child so early, stays with him so long and affects him so deeply as the family. Since preventive work, if it is to bring results, must be focused at the source, any attempt to solve the problem of criminality must concern itself, first of all, with the family out of which the potential criminal could come. Verily, it has been said that when a man commits a crime, a greater crime has already been committed in the home by failure to instill, by precept and example, the fundamentals of right conduct. Juvenile delinquency, indeed, has been diagnosed as really adult delinquency. Undoubtedly, then, the family with its adjunct, the home, stands out with striking clearness as the area in which a large measure of responsibility must be reposed and to which a vigorous attack in the treatment and prevention of criminality must be directed.

#### *Vital Family Environmental Conditions*

A causal nexus between many family environmental conditions and criminality is demonstrable.

#### *Family Economic Security*

Although not necessarily a predisposing factor when taken alone, poverty — experience and impressive evidence tend to show — appears to be conducive to delinquency in that it lowers physical and mental powers of resistance, increases temptations and physical disease, and forces the family into substandard surroundings.

Normal family living undoubtedly requires decent homes. Because of unemployment, insufficient wages, or other factors beyond their control, however, there are families that are cast into the throes of poverty, unable to provide for the basic requirements of life. By force of these circumstances, they are driven into squat-

ter or slum areas or overcrowded, unsanitary dwellings hardly fit for human habitation. Wanting in play space, except in busy and traffic-congested streets and squalid alleys, children easily succumb to the compulsion to leave the house, away from supervision of their elders, and into the streets, gambling dens and hangouts or with gangs and other unsupervised contacts where they are exposed to delinquent habits and attitudes. In time, delinquency becomes their traditional behavior.

Oftentimes, too, the need to meet basic family needs unwittingly opens up unexpected avenues towards defiant behavior. Mothers, whose place should better be at home minding the children, are often impelled to seek outside employment in order to produce or help augment the family income—all to the neglect of their children and their home duties. Or, children of tender age may be forced into the streets as hawkers, shoe-shiners, beggars, and the like, and thereby become hardened thru continued exposure to harmful influences.

Solutions to these difficulties unfortunately do not lie within the family alone. Governmental aid is invariably sought. The elimination of slum and other blighted areas thru the resettlement of dwellers into housing projects should be accelerated in order to eliminate the unwholesome environmental condition. Home building should be encouraged in non-congested areas thru the reduction of housing costs by such methods as cooperative housing establishments, lower interest charges and longer amortization periods. Perhaps, where economic conditions permit, the fixing of a realistic wage level or the control of ceiling prices for basic commodities thru legislation could go a long way in alleviating the sufferings of the poor wage earners. So, too, would the increase of social security benefits, like unemployment insurance and others help towards this direction.

#### *Family Control and Discipline*

Traditionally, parental control and discipline over children is an accepted norm of family life. In most jurisdictions, this is legally recognized. In the Philippines, for instance, the Constitution declares it as a principle that —

“Sec. 4. The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government.” (Article II).

And, as an incident to parental authority, the Civil Code of the Philippines imposes upon the father and the mother, amongst others,

the duty “to have them in their company, educate and instruct them in keeping within their means,” as well as grants upon them the “power to correct them and to punish them moderately.”<sup>5</sup> Every parent, Article 358 of the same Code commands, “shall particularly, by precept and example, imbue the child with highmindedness, love of country, veneration for the national heroes, fidelity to democracy as a way of life, and attachment to the ideal of permanent world peace.” Backed with some such legal mandates, parents have a golden opportunity to provide the basis for good personality-building from almost every angle: example, rapport and discipline.

Unfortunately, however, many a time parents are found remiss in their parental duties. There are those who, too occupied with pursuits of their own selfish ends, both business and pleasure, leave their children with inadequate or no supervision, if not abandon them altogether. Others expose their children to vice both publicly or in the privacy of their homes, as when a parent maintains an extra-marital affair in the presence or with the knowledge of their children. Still others directly encourage delinquency by instigating or sanctioning their engagement in vice, harboring or shielding them from the authorities when they run afoul of the law, or condoning their commission of crimes, such as by receiving or concealing properties object thereof. Worse of all are those who fail to give their children adequate moral and ethical teaching, training, and supervision; who fail to inculcate in them habits and attitudes of obedience and respect for the rights of others and for law and authority; who fail to set a sterling example of rectitude thru default in creating a home atmosphere permeated with the simple virtues of honesty, industry, thrift and affection; who fail to administer prompt, intelligent, objective and effective discipline or else fail to understand and sympathize with their children and are unduly strict and severe. When these come to pass, the children become ripe for the attractions of criminality.

Problems of this kind are particularly vexing as far as remedies are concerned. Of course, civil sanctions are commonly resorted to in many instances. Thus, provisions for the deprivation of the parents of their parental authority are usual penalties for recalcitrant parents. Under the Civil Code of the Philippines, for instance —

“ART. 332. The courts may deprive the parents of their authority or suspend the exercise of the same if they should treat their children with excessive harshness or should give them corrupting orders, counsels, or examples, or should make them beg or abandon them. In

<sup>5</sup> Art. 316.

these cases, the courts may also deprive the parents, in whole or in part, of the usufruct over the child's property, or adopt such measures as they may deem advisable in the interest of the child."

Similarly, under the New Rules of Court, a child may be ordered taken from its parents and committed to the care of another person, or to a suitable orphanage, asylum, children's home or benevolent society to be ultimately placed for adoption —

"When the parents x x x by reason of long absence or legal or physical disability have abandoned it, or cannot support it through vagrancy, negligence, or misconduct, or neglect or refuse to support it, or treat it with excessive harshness or give it corrupting orders, counsels, or examples, or cause or allow it to engage in begging, or to commit offenses against the law x x x". (Section 7, Rule 99).

In addition, the Civil Code disqualifies from succession by reason of unworthiness —

"(1) Parents who have abandoned their children or induced their daughters to lead a corrupt or immoral life, or attempted against their virtue" (Article 1032).

They also may be disinherited by their children just mentioned.<sup>6</sup>

The suggestion that errant parents be subjected to penal sanctions for contributing to the delinquency of their children may be worth considering. While this approach may somehow smack of nothing more than mere revenge, the threat of punishment could prove rather effective in exacting cooperation from them in minimizing the situation sought to be avoided.<sup>7</sup>

At all events, it seems indispensable that remedies of similar import be devised to make the parents adhere more closely to the demands of their duty of parental control and discipline over their children to the end that the proper direction of conduct may best be achieved.

#### *Family Peace and Morality*

Essential to proper child development is a home where parents give them love, security and affection. A child's feeling of security and affection involves not only harmony between parent and child but also the ability of the parents to get along with one another. Without socially mature parents the child is handicapped from the start.

<sup>6</sup> Art. 920, par. 1.

<sup>7</sup> In the Philippines, penal provisions there are for abandonment of minors by their parents or guardians (Articles 276, 277, Revised Penal Code); neglect of parents to give their children the education their station in life requires and financial condition permits (Articles 277, par. 2, *id.*); exploitation of minors (Articles 278, par. 4, *id.*); and corrupting of minors (Articles 340, *id.*).

Deserving attention, then, as a factor predisposing to criminality is that of troubled and broken homes. While it is clear that the broken home does not necessarily cause delinquency, it seems obvious that a break in a home—which functions as a social stabilizer—will tend toward criminality. Convincing evidence tends to indicate that juvenile crimes flourish where the home ties have been weakened by quarrelling parents, divorce, separation, desertion or indifference of the parents. Divorce, in particular, with its train of broken homes and neglected dependent children is definitely a significant factor in the production of delinquency.

Against this backdrop, the need for fostering closer family ties projects itself to the fore. Stricter divorce laws which permit dissolution of the marriage bond only for really serious causes are called for. And, even then, where such an eventuality becomes inevitable, such dissolution should be decreed only after adequate provision for the care, custody and upbringing of children affected has been assured. In the Philippines where family ties are comparatively stronger, absolute divorce has been altogether outlawed. If at all, only legal separation or relative divorce may be judicially decreed and solely upon the grounds of adultery on the part of the wife or concubinage on the part of the husband, or of an attempt by one spouse against the life of the other.<sup>8</sup> Not only that. Every impediment is placed astride the route to legal separation. Thus, a court is required to exhaust all steps toward a reconciliation before granting legal separation,<sup>9</sup> no decree may issue upon a stipulation of facts or by confession of judgment;<sup>10</sup> no hearing can be held except until after 6 months since the filing of the petition;<sup>11</sup> and reconciliation stops the proceedings and rescinds the decree of separation already rendered.<sup>12</sup> It is thus clearly evident that it is the policy of our law to afford the parents all the opportunity to cool off and thus stave off the disruption of normal family life, with its concomitant detrimental effects.

#### *Parental Literacy*

The art of parenthood is not a simple one. As life in our rapidly changing society grows more complicated, parents often are found wanting in the knowledge and ability to deal with problems of rearing their children. Some know but little of the child's

<sup>8</sup> Art. 97, Civil Code of the Philippines.

<sup>9</sup> Art. 98, *id.*

<sup>10</sup> Art. 101, *id.*

<sup>11</sup> Art. 103, *id.*

<sup>12</sup> Art. 108, *id.*

acquired and molded from living examples set by his parents to which he is exposed at such a most impressionable age. Parents, therefore, should be prepared to take up their duty to teach religion to their children by precept and example. True, religion is the domain of the church. But even the church is bound to fail if the correct moral standards, sense of values and basic outlook in life are not early enough inculcated in the child by the home.

On this subject, it is pertinent to note that in the Philippines, the importance of religious instruction in the schools obviously to reinforce religious training in the home, is constitutionally recognized. Article XIV of the Constitution commands —

"x x x Optional religious instruction shall be maintained in the public schools as now authorized by law. x x x".

Indeed, the Civil Code of the Philippines makes it a matter of right for a child to be "given moral and civic training by the parents or guardian".<sup>13</sup> In furtherance of this end, the same code likewise provides —

"Art. 359. The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible:

"(1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian.

"x x x x x"

Of late, too, a bill calculated to further bolster the teaching of religion in the public schools, particularly by allowing public school teachers to handle religion classes, was considered — not without much controversy mainly on the constitutional ground of separation of Church and State — by the Congress. This and technicalities in legislative procedure have stalled its passage.

#### CONCLUSION

The foregoing, from a more or less unscientific standpoint, are offered as a jumping board for discussion primarily on the subject of controlling criminality thru the home and the family. The outlines are broad; the coverage is limited. Crystallization may well depend upon existing local conditions which undoubtedly vary in different countries. Remedies may, accordingly, be tailored to fit individual demands and the possibility of accomplishment of the desired results.

<sup>13</sup> Art. 356.

## STOCK TRANSFER RESTRICTIONS IN CLOSE CORPORATIONS

Antonio P. Borja \*

### INTRODUCTION

This is the age of giant commercial and industrial business corporations.<sup>1</sup> Their complicated organizations, financed almost without limit, stretch nearly all over the world. Understandably, attention in the field of corporation law tends to focus principally on gigantic publicly held corporations. However, it should not escape our attention that the term "corporation" is not limited to these large business enterprises alone. The term also encompasses the one-man corporation and those small ones with few shareholders. These are the so-called "close corporation".<sup>2</sup> Although these cor-

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<sup>1</sup> The 500 largest U.S. industrial corporations account for more than half the sale of all U.S. manufacturing and mining companies. The combined sales of these companies amounted to \$220.1 million for the year 1962. For the list of the 500 largest U.S. industrial corporations, see: FORTUNE magazine, July 1963, p. 117; for list of the 50 largest U.S. commercial banks, merchandising, life insurance, transportation and public utility system companies, see: FORTUNE magazine, August 1963, p. 140. This issue also contains the ranking of the 200 largest foreign industrial corporations.

<sup>2</sup> Judicially, the term has been defined as: "A corporation in which the stock is held in few hands, or in few families, and wherein it is not at all, or only rarely, dealt in by buying or selling." — *Brooks v. Willcuts*, 78 F. 2d 270, 273 (C.C.A. 8th 1935): See: O'NEAL, CLOSE CORPORATIONS: LAW AND PRACTICE, p. 3 (1958) (hereinafter cited as O'NEAL); Simply a corporation which has relatively few shareholders. — Wiener, *Proposing a New York "Close Corporation" Law*, 28 CORNELL L.Q. 313, 314 (1943); A corporation whose shares are not generally traded in the securities market. — See: Latty, *The Close Corporation and the New North Carolina Business Corporation Act*, 34 N.C.L. REV 324, 439 (1956), also 1 O'NEAL, p. 2, sec. 1.02. Adopting an economic approach and focusing on one of the most significant characteristics of many corporations with small number of shareholders, it has been defined as: A corporation in which management and ownership are substantially identical. — ISLAELS AND CORMAN, CORPORATE PRACTICE, 17 (rev. ed 1955); ROHRlich, ORGANISING CORPORATE AND OTHER BUSINESS ENTERPRISES, sec. 4.10 (rev. ed 1953).

It is interesting to note that for the term "close corporation," the terms "closed corporation" and "closely held corporation" have been frequently substituted. For the different shades in meaning of these terms, see: 1 O'NEAL p. 5.