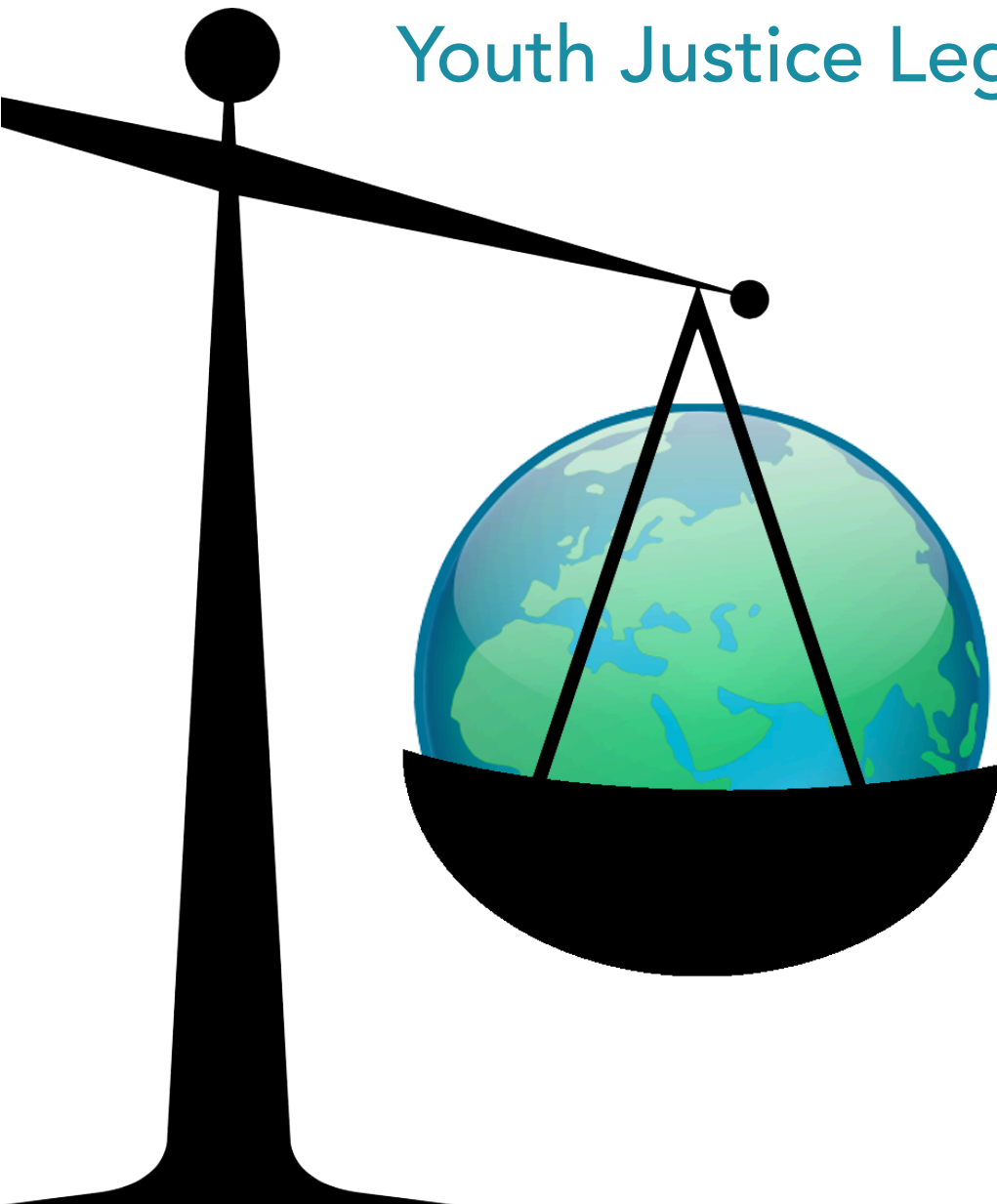
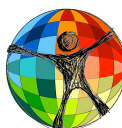


# The Unfinished Philippine Juvenile Justice Puzzle: the Missing Normative Piece to Restorative Youth Justice Legislation



INTERNATIONAL HUMAN RIGHTS INTERNSHIP WORKING PAPER SERIES



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# Table of Content

Introduction	4
Part 1. Entering the Void: Filipino Youth Crime and its Human Rights Dimension	6
Poverty causes Filipino youth crime	7
Inhumane Youth Detention Conditions and Practices	9
Part 2. Creating the Void: Transplanting Youth Restorative Justice in the Philippines	11
Best Practice Design to State Design	13
Part 3. The Missing Normative Blueprint	15
United Nations Approach: Child Offender as 'Corrigible Child'	15
The JJWA Transcription: Child Offender's Status as the Missing Piece of the Juvenile Justice Puzzle	19
Part 4. Philippine Moral Discourse: the Child Offender's Fall from Childhood	20
Catholic Moralism and Philippine Law's Relationship	20
Local Moral Discourse on Child Offenders	23
Retributive dessert: a moral and classist value	25
Part 5. Beyond Criminal Moralism: Illuminating the Human Rights Dimension to Youth Crime	27
Conclusion	28
Bibliography	29

# Introduction

The Philippine House of Representatives signed House Bill 6052 on June 4, 2012. If approved by the Senate, the bill will weaken the already feeble reach of restorative justice programs for Filipino child offenders. House Bill 6052 aspires to lower the national minimum age of criminal responsibility from age fifteen to age twelve. Philippine children's rights civil society groups criticize this proposed amendment; they argue that it would function as a prison sentence for more and younger child offenders. Contrary to domestic and international law, many (if not most) Filipino child offenders end up in prison. These children slip through the cracks of the country's scantily implemented restorative youth justice model. House Bill 6052 is the latest in a series of measures taken by the current Philippine Government to overhaul the country's restorative youth justice infrastructure.

Rudimentary public discussion about child offenders in the Philippines is cast in criminal law casing. A closer look at the contours of this discussion, however, reframes the Philippine juvenile justice discussion more appropriately as a human rights issue. The country's apparent trajectory backward to a more retributive form of juvenile justice will disproportionately punish and debilitate poor youth. Conditions in Philippine jails and prisons pose health, safety and psychosocial dangers to detainees. Upon release back into society, formerly detained children suffer from stigmatization and inadequate education and skills development. Whether or not House Bill 6052 is enacted, Philippine juvenile justice policy and its underlying assumptions require scholarly reflection. Philippine media and politics' emphasis on child offender's desert of punishment must be corrected because it obscures the human rights dimensions of the juvenile justice puzzle.

At first glance, the Philippine government's efforts to collapse the very restorative justice scheme that it erected seems illogical. The Juvenile Justice and Welfare Act of 2006 (JJWA), the current legislative framework for administering juvenile justice in the Philippines,

created a charge for a more humane approach to juvenile justice. Resources were spent on implementing some youth restorative programs; government agencies were staffed and equipped to oversee the scheme. Yet it is in coming to see the absence of logic underpinning the Philippine restorative youth justice scheme that one can make sense of this contradiction. This paper casts light in the shadows of the Philippine juvenile justice discussion. I argue that the Philippine restorative youth justice scheme is currently unworkable because it has no identifiable normative base. Consequently, Filipino society's longstanding piety toward retributive justice principles fills the Act's normative vacuum. The human rights implications of juvenile justice fall beyond the purview of this retributive lens, and are thus left unsolved.

This paper begins by illuminating the context of youth crime in the Philippines, which I argue is inextricably linked to systemic poverty and has an important human rights dimension. It then questions why the JJWA's implementation is exiguous. Ultimately, I examine why the challenge to implementing the restorative youth justice scheme could be fundamentally normative in nature. I show that the JJWA, which essentially transplanted the United Nations' youth restorative justice model into domestic law, may be unworkable because it lacks a normative base. The rest of this paper will focus on the JJWA's perceived undesirability in the Philippines. I argue that this perceived undesirability, articulated in local media and policy debates, is a paramount factor undermining the JJWA's implementation. I explore why the JJWA's program introduced into Filipino culture a new youth restorative justice paradigm that conflicts with the dominant local normative framework on juvenile justice. Dominant local views on juvenile justice, I argue, are rooted firmly in a Filipino moral discourse on retributive dessert, a Catholic and criminal law principle. To create a new, child rights-friendly discourse on juvenile justice in the Philippines, advocates should redirect their focus from international law compliance to socioeconomic inequality and other human rights aspects of youth crime.

# **Part 1. Entering the Void: Filipino Youth Crime and its Human Rights Dimension**

The problem of youth crime in the Philippines is stark and often overshadows its human rights dimension. Before exploring why youth crime's human rights dimension is largely eluded in Philippine media and politics, I will first contextualize the problem of Filipino youth crime and its human rights elements. The exact number of Filipino child offenders is unknown but is estimated to be somewhere between the thousands and tens of thousands. Philippine National Police (PNP) crime data from 2011 shows an increase in reported child crimes in the country over the past few years. This increase is coupled by an overall surge in Metro Manila's crime rate during the 2012 year. The upward crime trend in Metro Manila is an anomaly to the net decrease in the 2012 national crime rate, which has reduced by about twenty-three per cent. Youth crime is an increasingly prevalent problem in the Philippines, particularly in urban areas, that has not diminished since the JJWA's implementation.

I will present the human rights dimension to youth crime in the Philippines as twofold. First, the majority of child offenders in the Philippines likely come from poor backgrounds. I support this inference by referring to studies showing that Filipino youth crime is perpetuated by material deprivation. Second, the Philippine juvenile justice system does not distinguish crimes of poverty from other crimes. Youth offenders who commit crimes of poverty are often detained in inhumane conditions. I will briefly discuss how detention conditions worsen child offenders' mental and physical health, endanger their security, and stunt their employment prospects upon release.

Before presenting my analysis of the human rights dimension, I would like to first acknowledge a third layer to this dimension. The Philippines' 1974 Child and Youth Welfare Code enshrines positive socioeconomic and other rights for all Filipino children. Several of

these rights—which are designed to safeguard the Filipino child’s “welfare and enhance his [and her] opportunities for a useful and happy life”—are usually infringed before an impoverished child commits a crime and during his or her detention. In my research, I did not come across scholarship or commentary marshalling this Code as a lobbying tool to bring Philippine detention conditions in line with children’s socioeconomic rights. An assessment of this possible advocacy strategy is beyond this paper’s scope, but I flag it for Filipino child offenders’ advocacy groups to expand upon.

## **Poverty causes Filipino youth crime**

Most Filipino child offenders come from impoverished backgrounds and their crimes are typically responses to material deprivation. Field research and PNP data empirically support the causal relationship between poverty and youth crime in the Philippines. An illustrative field research example is the “Still Behind Bars” study, completed by Jessica Knowles on behalf of the People’s Recovery, Empowerment Development Assistance (PREDA) Foundation, a non-profit organization focusing on Filipino children’s rights. Knowles led face-to-face interviews between April 2008 to May 2010 with 175 child offenders at city jails, police precincts, and youth detention homes in Metro Manila. The vast majority of interviewed child offenders were male (95%), came from large families with low incomes, and had completed only elementary school or a few years of high school. Only 3 respondents (under 2 %) reported that they had taken college courses. The vast majority of interviewed child offenders said that they dropped out on their own volition or were forced to drop out due to their arrest and detention.

The PREDA study shows a causal link between poverty and youth crime. Crimes of poverty are crimes against property, such as theft, robbery and snatching. Over sixty per cent of the study’s interviewees were charged with crimes against property. Violent crimes, such as murder/homicide (7%), frustrated/attempted murder (5.3%), and physical injury/assault (8.6%)

were in the minority, and were often the result of gang warfare or peer group violence. Crimes of a sexual nature were also in the minority (3.2%). Combined together, youth crimes involving illegal possession of a deadly weapon (3.7%) or drugs (2.1%) occurred less frequently than youth offences resulting from curfew violation, trespassing, and violation of local laws (together at 9.1%). Some of these local law violations occur when children engage in livelihood activities, like peddling and begging, which are outlawed in many localities. The PREDA study indicates that many, if not most, Filipino child offenders in Metro Manila come from impoverished backgrounds and commit crimes of poverty.

This trend may also apply nationwide. A United Nations International Crime and Justice Research Institute (UNICRI) study indicates that poverty caused the majority of youth crimes across the Philippines during the mid-1990s. National Police Commission Commissioner Celia Sanidad-Leones reports that her professional experience in dealing with youth offenders corresponds with the UNICRI study's findings. She also states that PNP data indicates that most of the recent youth crimes stem from offenders' socioeconomic deprivation. Sanidad-Leones, however, did not disclose the PNP data. The inference that most youth crimes in the Philippines are crimes of poverty is strongly suggested, but not entirely proven, by the above studies.

The cycle of poverty contributing to Filipino youth crime seems unlikely to break in the near future. Commissioner Sanidad-Leones believes that youth offences will increase in Philippine cities because rapid urbanization is deepening the country's inequality gap. She explains that natural and human-made calamities in rural areas, coupled with rapid urbanization, are pull factors to cities. The migration tide breaks at urban slums and squatter areas, where high population density, deteriorated living conditions, and high unemployment and underemployment persist to produce a decrease in real wages. Sanidad-Leones paints a picture of how she observes urban poverty to cause youth crime:



Inequalities in resources, opportunities, power and access to social status rewards create alienation and frustration, and develop into pockets of subcultures of violence, which lead to crime... The problem of massive poverty is the primary breeding ground or root cause of crime... Deterioration of living conditions in urban areas has produced its share of juvenile delinquency.

Indeed, the lack of state monitoring on youth poverty suggests that remedying this problem is not a state priority. Figures on youth poverty and general poverty in the Philippines foreshadow that youth poverty in the Philippines is high and unlikely to subside in the near future. The Philippine Daily Inquirer, a leading national newspaper, reports that almost half of the estimated 94 million Filipinos are children below age 18. It states that some 65 million Filipinos or some 70 per cent of the population try to live off of P104 (just over US\$1), or even as little as P20-P40, a day. In contrast, the Asian Development Bank reports a more modest national poverty rate. It finds that as of 2009, just over 18 per cent of the country's population lives on less than \$1.25 (PPP) a day, and that almost 27 per cent of the population lives below the national poverty line. The actual rate of youth poverty and poverty in general may be between these two figures, but, in either way, is a serious and entrenched problem in Philippine society that perpetuates crime.

## **Inhumane Youth Detention Conditions and Practices**

Filipino child offenders are subject to inhumane detention conditions and juvenile justice practices. In 2005, the United Nations Committee on the Rights of the Child (which will be discussed in the next section) critiqued the Philippine State for its failure to correct major human rights issues affecting child offenders. The Committee's critiques highlight prevalent domestic and international law breaches occurring in Philippine youth detention facilities like: unlawful detentions, a lack of monitoring of detention facilities for juveniles, and a lack of rehabilitation and social reintegration services. It found that food rations, food

quality, and basic facilities for sleeping and toileting needs were inadequate. It reported that as of 2005, only 40 percent of the country's 1,454 municipalities, 83 cities and 79 provinces had detention centers for children, and none had separate provisions for girls. The Committee concluded its review by expressing its "serious alarm" at the human rights dimension to Philippine youth detention, particularly: "The persistent violations of the rights of children in conflict with the law; the alleged cases of torture, abuse, including sexual abuse and other forms of degrading treatment of persons below 18 years of age in detention; and the overall deficiencies in the administration of the Philippine juvenile justice system."

These inhumane conditions coalesce to undermine child offenders' health, security and rehabilitation back into society. Conditions in adult holding facilities, where most child offenders end up due to the absence of youth detention facilities in most parts of the country, are worse. I investigated this problem as an intern at the Ateneo Human Rights Center (AHRC), an auxiliary research and academic unit at the Ateneo de Manila Faculty of Law. In July 2012, I conducted field interviews with ten male and ten female adult detainees at a Metro Manila City Jail. All interviewees said that they knew of minors (children under age 18) who had or were currently been detained at the jail. They reported conditions in the jail that they believed were detrimental to children's wellbeing and security. These issues were: cell overcrowding, which contributes to the spread of skin diseases and other illness among detainees; prevalent drug use and possession of weapons (mostly knives); violence between detainees and from guards; public instances of suicide and self-abuse; severe malnourishment; rape and other sexual crimes; and mental illness caused and aggravated by factors like separation from family and community.

Additionally, many youth offenders detained in the Philippines are not adequately prepared for their reintegration back into society. For instance, the PREDA study found that child offenders' detention conditions sometimes force them to quit school. This finding illustrates how the Philippine juvenile justice system can hinder children's intellectual

development and future earning capacity. A lack of skills and educational training, coupled with stigmatization, make gaining sustainable employment difficult for detained juveniles upon their release. One can assume that some of these children, for lack of alternative employment, reoffend. In this regard, juvenile detention in the Philippines expands, rather than breaks, the cycle of youth poverty and crime.

## **Part 2. Creating the Void: Transplanting Youth Restorative Justice in the Philippines**

International pressure drove the Philippine State to legislate a restorative youth justice scheme. The first instance of pressure was indirect and stemmed from the Philippines' ratification of the Convention on the Rights of the Child (CRC), created by the United Nations that same year. The CRC affirmed the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules. The crux of these rules is as follows: child offenders should only be detained as a last resort once rehabilitation fails, and child detainees must be held separately from adult offenders. For nearly two decades after the Philippines ratified the CRC, the Philippine State's juvenile justice model remained characteristically punitive.

The second instance of pressure on the Philippine State to reform its juvenile justice policy was direct and more confrontational. In 2005, the United Nations' oversight body for the CRC, the Committee on the Rights of the Child, reviewed the Philippines' progress on implementing the Convention's basic rules on juvenile justice administration. As discussed above, the Committee alerted the Philippine State and listening members of the international community to the country's poor implementation of these standards. During the same year, human rights watchdog agencies broadcast these critiques to the world in an international media campaign. The campaign aggressively exposed the abhorrent conditions

that child detainees faced in the Philippines, which Filipino children's rights advocates applaud for having "shamed" the Philippine State into action.

After almost twenty years of delay, the Philippine Congress passed the JJWA in March 2006. The JJWA, as the first piece of Philippine legislation to fully comply with international standards for the treatment of children in conflict with the law, seemed to lead a new charge in the Philippines for humane treatment of child offenders. Admittedly, Philippine legislators may have created the new restorative youth justice legislation simply to stave off international criticism. In this light, legislators may have conceived of the Act as more of an aspirational, long-term endeavour than a state priority. However, at first glance, the Philippines' capacity to implement the new juvenile justice program in accordance with the CRC and Beijing Rules seemed promising.

Typical reasons why developing states fail meet their international obligations—like resource and infrastructural restrictions—do not seem to be detrimental to implementing the JJWA. Title II of the JJWA mandated the creation of a fairly robust state- and local-government apparatus to implement the new system. In accordance with Section 8 of the Act, the Juvenile Justice and Welfare Council (JJWC) was created in 2006 to ensure the effective implementation of the JJWA's provisions. Since its creation, the JJWC has vigorously pursued its duties to coordinate various government agencies in implementing the Act in full. There is a paucity of data on local and state governments' expenditures on implementing the JJWA. However, the existence of some effective youth restorative justice programs in the Philippines suggests that the JJWA's expansion, though not cheap or easy, should be feasible. A full analysis of the Philippines' capacity to fully implement the JJWA, however, is beyond this paper's scope.

My focus on the normative challenges to the JJWA's implementation was carefully framed. I observed that Philippine media and politicians tend to base their criticisms of the JJWA on their disbelief in the appropriateness of restorative youth justice, and much less so

on resource limits. House Bill 6052 is the latest in a series of proposed house bills aspiring to dismantle the JJWA. Though none of House Bill 6052's legislative predecessors passed, each was built on energetic, moral opposition to the JJWA in public and political spheres. Before characterizing the normative components of this opposition movement, I will first show that the JJWA is essentially a transplant of the United Nations' restorative youth justice model. The JJWA's transcription of international rules on restorative youth justice into domestic legislation sets the stage for analyzing why the Act is based on a foreign normative system.

## **Best Practice Design to State Design**

The Philippine state essentially transcribed the United Nations' restorative youth justice model directly into the JJWA's text. The striking similarity between the two models is best illustrated by the JJWA's key rules, aims and principles, which all overlap with those laid out in the CRC and Beijing Rules. The key areas of overlap include: detention as a last resort, separate detention from adult offenders, a restorative justice aim, and the "best interests of the child" guiding principle. These key principles are restorative in their nature. Though restorative justice has no universal definition, restorative theoretical frameworks encompass values, aims and processes that have as their common factor attempts to repair the harm caused by the criminal. It is especially aimed at restoring the dignity of all those harmed, including perpetrators.

I will now turn to the JJWA's implementation of these factors to illustrate how the Act, on its face, establishes a youth restorative justice scheme embodying the CRC's restorative-centered juvenile justice system. With few exceptions, the JJWA is designed to divert minors from the criminal justice system. The Act provides that children in conflict with the law have the right to be detained or imprisoned only as a last resort and for the shortest appropriate time possible, including during pre-trial detention. In accordance with every child's general right to not be detained or imprisoned, the JJWA prohibits criminal responsibility from

attaching to most youth offender categories. This shields most types of child offenders from imprisonment because Philippine criminal law only permits imprisonment as a criminal sentence when an accused is held to be criminally responsible. The JJWA thus vastly narrows the instances in which child offenders can be held criminally responsible and spend time in prison. Child offenders who do undergo detention or imprisonment shall be kept separate from adult offenders at all times.

The JJWA stipulates that all child offenders who do not receive a criminal sentence shall undergo restorative training. Two modes of restorative training exist in the Philippine juvenile justice system: (1) intervention; and (2) diversion. Children below the minimum age of criminal responsibility (age fifteen) shall be subject to intervention. Intervention refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counselling, skills training, education, and other activities that will enhance his or her psychological, emotional and psycho-social wellbeing. Children ages fifteen to eighteen who acted with or without discernment but not subject to a criminal sentence shall undergo diversion. Diversion refers to an alternate, "child-appropriate process of determining the responsibility and treatment of a child in conflict with the law" on the basis of his or her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

The CRC's guiding principle for promoting child welfare is the "the best interests of the child" principle. The best interest of the child principle is part of the JJWA's Declaration of State Policy, which sets forth the legislation's guiding principles. The Act and the CRC's definitions of the best interests of the child principle are identical. The best interests of the child is the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. The Act's "best interest of the child"

concept obliges juvenile justice administrators to carry out their mandates in accordance with child welfare. This means that juvenile justice administrators must deal with child offenders in ways that are “the least detrimental...for safeguarding the growth and development of the child.”

Each of these rules and principles exemplify an underlying goal in restorative justice theory to rehabilitate the perpetrator. The JJWA’s emphasis on diverting child offenders from prison when possible, and placing all child offenders in rehabilitative programs, reflect the CRC and Beijing Rules’ restorative justice values and practices.

## **Part 3. The Missing Normative Blueprint**

### **United Nations Approach: Child Offender as ‘Corrigible Child’**

The United Nations’ restorative youth justice model has a normative component that is problematically hard to identify. The CRC’s child offender restorative project is normative because it hinges on the belief that these children can be repaired. By repaired, I mean that children who act wrongly by committing crimes can be rehabilitated into good children. I will now discuss how the CRC treats child offenders as corrigible and deserving of rehabilitation. I will then argue that the United Nations’ restorative youth justice model has been poorly packaged. The CRC only implicitly says what needs to be explicit about the state of childhood. It does not provide Member States like the Philippines with a normative blueprint to reconstruct societal beliefs about child so that they align with restorative justice aims.

Implicit in the UN’s notion of restoration for child offenders is a vision of child offenders principally as children. The CRC and the Beijing Act emphasize that the child offender should be treated primary as a “child,” and less strictly as an “offender.” They imply

that the child offender's child status is paramount to his or her treatment for an offence by drawing a distinction between adult offenders and child offenders. This distinction suggests that something about child offenders, by virtue of their status as children, merits special protection. United Nations' Commentary on rule 17.1(b) of the Beijing Rules highlights that the CRC youth restorative regime treats child offenders as a distinct offender category: "Whereas in adult cases... just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person."

This Commentary on rule 17.1(b) embodies assumptions about child offenders and childhood that need to be unpacked. It assumes that child offenses are a distinct offender category, and that this category shall, as a general rule, not be punished retributively, ie. through criminal sanction. The Commentary also depicts an intrinsic societal interest in protecting child offenders' welfare and futures. Read on its own, the Commentary on rule 17.1(b) does not explain why child offenders are different from adult offenders, why they should not be punished retributively, or why society has a duty to protect their welfare. The rule, as displayed by this commentary, lacks a justificatory base to legitimize its treatment child offenders as a distinct offender category.

To resolve why rule 17.1(b) regards child offenders as a special category, it is helpful to turn to the CRC's Preamble. The Preamble proclaims that "childhood is entitled to special care and assistance" for two reasons. First, children need special care because they are physically and mentally immature. Second, children living in "exceptionally difficult conditions" require additional special considerations. The Preamble seems to provide reasoning to justify children's special treatment when they offend. The first reason implies the drafters' belief that children can make mistakes while they are developing because they lack experiential wisdom to discern right from wrong. In light of this view, society's role should be to help children correct their mistakes and develop into responsible adults. The second



reason complements the first, acknowledging that children's difficult life circumstances can make them especially vulnerable in certain situations.

Applying this logic in a juvenile justice context would seem to provide justificatory support for the Beijing Rules' treatment of child offenders as a distinct category. Labelling a child as a wrongdoer for an offence would be unfair because it would impart onto the child a sense of responsibility that he or she had in fact not yet cultivated. This seems to be especially true in light of the second consideration for children who commit poverty offences. The child's impoverished status renders him or her vulnerable to the charity of others or to committing crimes of poverty to survive. The child's unique status as materially deprived is a difficult circumstance that, in accordance with the Preamble, could be used to mitigate his or her blame for the poverty crime.

Indeed, the CRC explicitly states that a child's life circumstances must be taken into account when juvenile justice administrators are dealing with a child offender. This provision supports the above interpretation of the normative justification underpinning the Commentary on rule 17.1(b). It seems to allow a justice administrator to lower a youth's sentences for a poverty crime. Again, the rationale underpinning this flexible approach to juvenile justice administration seems to be that children who commit poverty crimes are vulnerable to material deprivation. In light of this vulnerability, a child offender's poverty crime is less an immoral act than a means of survival.

The CRC and the Beijing Rules build the restorative youth justice paradigm on the premise that youth offenses can result from lapses in judgment that are corrigible. All of these expressions of childhood and child offences help to contextualize the assumptions underpinning the Commentary on Rule 17.1(b). Child offenders differ from adult offenders because they lack the capacity to discern right from wrong. Child offenders require special considerations because they may not have been acting as moral agents, and society may

have played a role in their offence. Society may, for instance, have failed to teach the child that the offence committed was wrong, or society may have placed the child in position where the child is likely to respond to a deprivation with criminal behaviour. Yet, as a single rule outside of the CRC's normative framework, the Commentary on Rule 17.1(b) has no apparent justificatory value.

Even less precise than the Commentary on this rule is the actual wording of rule 17.1(b) in the Beijing Rules. Rule 17.1(b) states: "The disposition of the competent authority shall be guided by the following principles: Restrictions on the personal liberty of the juvenile shall be imposed only after consideration and shall be limited to the possible minimum." Unlike the United Nations Commentary on this rule, the actual text for rule 17.1(b) does not denote child offenders' special status. Rule 17.1(b) does not distinguish child offenders from adult offenders, and it does not hint at the public's interest in protecting child offenders' wellbeing. What, exactly, must the competent juvenile justice authority consider before detaining a child offender? 17.1(b)'s stipulation that child offenders shall be detained as a last resort and for the shortest period possible is fairly clear. But why this rule is socially acceptable, and even the right thing to do, is left unsaid by rule 17.1(b), and even by the United Nations' Commentary on this rule.

This analysis of the justificatory gap in rule 17.1(b) and its commentary is indicative of the CRC framework's general failure to justify why specific restorative youth justice practices are modes of best practice. My analysis is therefore indicative of a fundamental problem with the CRC's transferability of restorative youth justice practices to Member States. The United Nations provides states with rules and practices, but it does not anchor the architecture of restorative youth justice in a normative base to legitimize (and hold up) its application. Consequently, Member States may transcribe the practices of restorative youth justice into domestic law without establishing a local normative base for the endeavour. This is what happened in the Philippines, which I will now address.

## **The JJWA Transcription: Child Offender's Status as the Missing Piece of the Juvenile Justice Puzzle**

The child offender's status in Philippine society is left out of the JJWA. Unless one looks to the CRC's Preamble, it is unclear why child offenders should be given special treatment. The JJWA's lack of an examination of the role of child offenders in Philippine society is crucial. It exemplifies how the JJWA transcribed the CRC's restorative youth justice framework without anchoring them in a normative scheme. This problem pervades all of the JJWA's rules. For instance, the JJWA transcribed the CRC rule that child offenders shall be detained only as a last resort and for the shortest period possible. Like the Beijing Rules, the JJWA's text does not answer why this rule came into existence or why it is desirable. The JJWA merely states the rule, and moves onto the next rule. Even worse, the JJWA has no preamble for readers to grapple with when interpreting rules. The JJWA's lack of a preamble illustrates how States who apply the CRC's restorative youth justice rules may themselves neglect or fail to devise a normative base for the rules. Without a preamble to frame and present the overall normative assumptions and implications of its restorative youth justice model, the JJWA's rules lack their own justificatory value. The JJWA, and its rules, seem to exist in a normative vacuum.

The Philippine juvenile justice puzzle orbits around the Act's normative vacuum. The fundamental question of why a restorative approach to juvenile justice is desirable in the Philippines is unanswered by the Act. The puzzle cannot be solved because it is unclear how its pieces fit together. The metaphor of the Philippine juvenile justice system as an unsolved puzzle is instructive. It helps to reveal why the practical implementation of the United Nations' restorative justice program is susceptible to misapplication or critiques of being undesirable in local contexts. Member States like the Philippines who transmit the CRC's model for youth restorative justice only take a piece of the overall puzzle. The CRC, read as a

whole, contextualizes its rules pertaining to restorative youth justice in other rules and principles pertaining to childhood. Yet the JJWA's legislators only transcribed the CRC rules particular to youth restorative justice. In doing so, they only pulled a piece of the puzzle, which they then shoved into a different context. The result is that the JJWA's drafters cut away the edges of the CRCs' puzzle pieces on youth restorative justice. Drafters then shoved them into the current Philippine juvenile justice framework, where they do not easily fit. The unsolved juvenile justice policy in the Philippines today is a product of Philippine drafters having taken only the CRC provisions on youth restorative justice. The drafters, and the JJWA, missed the normative foundation of these pieces that give the whole restorative youth justice system meaning.

Had the United Nations drafted a preamble specifically to frame its juvenile justice scheme, it is possible that the JJWA's legislators would have also transcribed this justificatory framework into the Act. Yet the Philippine State is also responsible for the current Philippine juvenile justice puzzle because the JJWA's drafters did not couple the legislation with a justificatory framework. Consequently, local moral discourse on child offenders has filled the JJWA's normative vacuum.

## **Part 4. Philippine Moral Discourse: the Child Offender's Fall from Childhood**

### **Catholic Moralism and Philippine Law's Relationship**

Crimes involving child offenders have been "hogging headlines" in Philippine news sources over the past several years. The Philippine media is fervently casting spotlight onto child offenders that is hued by local (characteristically Catholic) morality. I will discuss the prevalent moral assumptions underpinning Philippine media and political discourse surrounding child offenders. I will touch on how Catholic principles, as well as social status,

could influence these moral assumptions, which ultimately lay a retributive lens over the country's youth crime problem.

The idea that criminal law concerns itself with articulating societal morals is entrenched in criminology theory. Anthony Duff, a leading expert on the philosophy of criminal punishment, explains that criminal law is premised on societal beliefs about right and wrong behaviour, which are essentially shared moral judgments. "We have criminal law because we take seriously wrongdoing, as something distinct from mere harm-causing." Duff's conception of criminal law as a moral exercise explains why local norms in Philippine society impact criminal law. I will now demonstrate that Philippine morality is heavily contoured by Catholic principles, and that this moral discourse shapes public opposition to the JJWA scheme.

Catholic principles profoundly shape public morality in Philippine society. As a result of Spanish colonialism, the Philippines became predominantly Catholic during the 16th Century. For over three centuries, a blend of civil, military and ecclesiastical authority under Spanish control ruled the Philippines archipelago. The Spaniard settlers' wedding of government and Church meant that Catholic principles permeated all areas of Philippine society. Iberian Catholicism, which completely dominated education, taught by precept and example that the Church itself had the right to play a major, if not controlling, role in social, political and economic life. By the time Philippines became a secular state. The Church's historic legacy meant that Philippine society's morals and laws already came to reflect Catholic principles.

Philippine policy on reproductive rights illustrates the live nexus between Catholic principles and Philippine law. Feminist scholar Carolina Ruiz Austria discusses how laws of Spanish origin continue to dominate Philippine family, civil and penal law, and how these laws reflect Catholic sexual morality at the expense of women's reproductive health rights.

She writes: "The Philippine Catholic hierarchy not only affirms Vatican authority as holistic and absolute, it is collectively demanding legal enforcement of many major tenants of Catholic dogma, especially in regard to women's sexuality and reproductive rights." Since the 1960s, the Philippines' Catholic clergy has rebuffed government attempts to promote family planning. Indeed, the Philippine Catholic Clergy is currently campaigning against politicians who support a controversial reproductive bill. Clergy members call the reproductive health bill "immoral," and are threatening to turn Catholic voters against politicians who support the bill. The live issue of reproductive health in the Philippines illustrates how Catholic principles transit themselves through Philippine society's morals to influence law.

The Philippine criminal law reflects can be conceived of as a moral exercise because its role is to censure immoral conduct. Serge Brochu's concept of criminal law is illustrative. Brochu views criminal law as a painful way to censure behaviour that denies crucial values of the culture that is at stake. In Hegelian terms: it negates the negation of shared norms. This is also the motto of Brochu's paper: "The Commission of an offence constitutes a violation of a statutory value that aims at protecting the law. While reacting to the offence, courts affirm the standard which this violation could have weakened." Brochu thus confirms an important intuition about punitive actions: these are never the business of the offender and victim only; they always indicate a wider context and a public interest. A crime is not only a person-relative fact, that harms a victim and perhaps morally degrades the offender, it is also an act that brings to the fore the fragile character of the norm that is transgressed.

Before applying Brochu's theory on moral justice to the Philippines, it is important to make two qualifications. First, Philippine society is still predominantly Catholic (about 83 per cent of the population). The Philippines maintains many policies and criminal prohibitions that are inspired by Catholic principles because Catholicism has not lost its cultural clout in the Philippines. Second, Philippine society is admittedly not hermetic; Filipino culture is

shaped by a plurality of domestic and global factors. Yet Catholic principles remain highly influential in Philippine politics and law. Part of the reason for this is that the country's elite class comes mostly from families handpicked by the Church during the colonial period to form the country's native ruling class. Despite globalization, I argue that the nexus between Catholic principles and Philippine politics and law remains active.

## **Local Moral Discourse on Child Offenders**

In reviewing discussions on the JJWA in Philippine media, a common picture emerges of child offenders as sinners who have Fallen from Innocence. The Philippine Daily Inquirer, a leading national newspaper, published an anonymous editorial about child offenders in 2011 that is exemplary of this trend. The editorial title, "Innocence Lost," immediately alerts the reader to the author's view that children lose their innocence when they commit crime. The idea of lost innocence harkens Biblical imagery, particularly Genesis 3. The Catholic exegesis of Genesis 3 affirms that the Fall of man was a primeval transition of the first humans from a state of innocent obedience to God to a state of guilty disobedience to God. By analogizing child offenders to humankind's fall from God's state of grace, the editorial posits child offenders as sinners who wilfully act against God's will. The author establishes this link by describing child offences as "unspeakable pleasures" to their perpetrators.

The author's conception of child offenders as wrongdoing sinners grounds the article's overall argument that child offenders must be punished by the criminal retribution. The author makes this argument first by drawing a distinction between child offenders and children who do not offend. The author writes, "It's clear that the innocence presumed in children of his age had long deserted him [the child offender], and that in seeking justice, it would be folly to treat him like a child." The child offender, by virtue of his or her crime, has Fallen from the state of Childhood Innocence and should be treated principally as an offender. The author's conception of the child offender primarily as an offender is the

inversion of the CRC's treatment of child offenders as children deserving special considerations.

The editorial presents vignettes of violent youth offences to support its view that child offences are absolutely immoral acts requiring swift punishment. Children are "young thugs" who commit offences of "unparalleled evil and barbarity." These phrases link child crime to humankind's primeval Fall from divinity into primordial sin. Child offenders "get stoned out of their skulls on cheap solvent," "maul a classmate and kill him by strangulation," and "shoot a friend in the head and turn the gun on themselves." Each of these vignettes represents child offenders as threats to their personal and private safety. The vignettes together misrepresent violent youth offences in the Philippines as the rule rather than the exception, providing validation for a retributive response.

The sentiments in the "Innocence Lost" editorial are expressed in Philippine public and political spheres. Lawyer Earl Bonachita, president of the Integrated Bar of the Philippines Cebu City, described youth offenders as threats to Philippine society's moral order. Bonachita views increasing youth crime as undermining Philippine society's moral order. He explains, "The long-cherished values of discipline and family unity are no longer there [and] at the age of 15, an offender is at the age of reason. He or she knows what is right and wrong." Cebu City Police Office Director Senior Superintendant Melvin Ramon Buenafe supports lowering the minimum age of criminal responsibility. He claims that criminal sanctions for youth offenders would solve the problem of "minors frequenting Mango Avenue at night and committing petty crimes."

The moral discourse in Philippine media is also reified in Philippine politics. For instance, during the Philippine 2010 presidential race, candidate Senator Dick Gordon promised to amend the JJWA. He called the law a "mistake," and said that he would urge Congress to teach young people more about "accountability" by replacing restorative youth



programs with prison sentences. Senator Gordon's idea that youth offenders need to be 'held accountable' for their crimes seems to place blame entirely on the shoulders of youth crime. Likewise, Senator Francis Escudero is proposing a suspension of the law, while Senator Vicente Sotto has called for the lowering of the age of criminal liability down to twelve years old, adding that he is willing to bring down the minimum age of criminal responsibility to age nine.

## **Retributive dessert: a moral and classist value**

These discussions represent how Philippine media often publishes commentary on juvenile justice that abstracts child offences from societal and human rights issues like poverty. Local restorative justice critics seem to view child offenders as criminals who intrinsically deserve to be punished. This mode of thinking falls within retributive justice theory, which holds that offenders must be punished to hold them morally responsible for their wrongdoings.

Retributive justice is closely tied to protecting society's moral structure. Criminologist von Hirsch explains that retributive justice provides a means to censure amoral crime, and systematic censure through the criminal justice system is needed to safeguard society's morals from erosion. For von Hirsch, "Morality is not given by nature; it is not an absolutist system, but it is a pragmatist social construction, based on civilization, to keep life in community liveable. Morality itself thus serves a target, and preserving morality through censure indirectly serves the same target.

Surprisingly, retributivists seldom question the ethical value of the norm system itself, which the punishment is supposed to enforce. Retributivists seem to equate legal order with moral order. The media and political representations of Philippine child offenders as immoral

therefore calls for hard-treatment in punishment, which serves a “prudential reason for obedience to those insufficiently motivated by the penal censure’s moral appeal.”

Part of the reason why Philippine media and politicians unflinchingly characterize child offenders as wrongdoers may have to do with the country’s stark inequality. The Philippines is a highly segmented society, and usually the society’s elites take on roles in the media and government because of the education requirements for these posts. The distance between where these elites posture themselves in Philippine society vis-à-vis many youth offenders is (perhaps unconsciously) depicted in the “Innocence Lost” editorial. The “Innocence Lost” author asserts, “The passing motorist, aghast, might ask: Who initiated them [child offenders] in the unspeakable pleasure, who should otherwise be in school [but] fry their brains out breathing from little plastic bags dispensing lethal fumes?” Situating him/herself as a motorist denotes the author’s privilege, because the vast majority of Filipinos cannot afford a vehicle. As an observer of glue sniffing, the author passes quickly by the scene and is just as quick to pose judgment without understanding the context of this act. “Rugby sniffing” is a common act among poor Filipino youth: they sniff toxic glue to stave off hunger pains. Thus, the author condemns the child’s glue sniffing as wrong, passing over the greater wrong—and true issue—debilitating child poverty.

Moreover, the author seems entirely oblivious about the role systemic poverty plays in youth crime in the Philippines. “How did the hope of the motherland come to this?,” the author laments. This comment abstracts state responsibility from youth crime, making it practically impossible for the author to see the Philippine state as an active agent in youth poverty that should be held accountable. The editorial “Innocence Lost” blames children for their offences because the author is seemingly too far removed from the daily lives of the youth offenders she criticizes to understand the roots of their crimes.

## **Part 5. Beyond Criminal Moralism: Illuminating the Human Rights Dimension to Youth Crime**

To move forward, Philippine children's rights advocacy groups must bring to light the invisible human rights dimension of the youth crime problem. Though children's rights advocates do publish in papers and on human rights websites, their concerns about child offenders' rights are less frequently published and do not address the normative component of the juvenile justice puzzle. Human rights advocates' arguments for the JJWA's implementation are based on upholding international law commitments. A fresh, restorative-oriented discourse to challenge the dominant local moral discourse is needed. This discourse needs to acknowledge the role that socioeconomic inequality plays in youth crime

Bringing to light the human rights dimension of youth crime is an effective normative tool to challenge the dominant retributive discourse on juvenile justice. Criminologists argue that retributive justice only makes sense to punish crimes that occur in societies where everyone is on equal footing. Lode Walgrave explains that the reasons for retributive justice's pain infliction are sought in a conception of an equal society. Punishment is designed to rectify the illegitimate advantage a criminal obtains from crime. This is the principle of proportionality, an instrument for curbing punitive sanctions mostly expressed in terms of just deserts in relation to the gravity of the offence.

In a highly unequal society like the Philippines, retributive justice seems to lack its justificatory rationale because poverty crimes do not give youth an advantage relative to the rest of society. In contrast, poverty crimes conceivably permit a child offender's survival. Systematic poverty ultimately holds impoverished children, and impoverished child offenders, at a disadvantage relative to the Philippines' small elite class. Publicizing this human rights dimension to youth crime may help to gain public support for the JJWA's restorative approach to youth justice.

# Conclusion

House Bill 6052 is the latest in a series of measures taken by the current Philippine Government to overhaul the same juvenile justice infrastructure that it created in 2006. The political will to implement the JJWA is waning in Philippine society. The public predominantly views restorative youth justice as an undesirable response to youth crime. Restorative youth justice conflicts with public morality, which generally favours retributive approach to youth crime that is based on Catholic principles. This normative conflict permeates public and political discussions on the JJWA, which itself lacks a normative base. Consequently, the JJWA in praxis is largely at odds with the CRC framework. Much of Philippine society continues to regard child offenders predominantly as offenders, even though the CRC imagines child offenders primarily as children requiring special protection. As a result, the human rights dimension to youth crime, particularly in relation to offenders' poverty, remains untreated. Even though the Philippines created the JJWA in response to international criticisms of its juvenile justice policy, the principles of restorative justice must become understood as desirable in Philippine society for the legislation to fulfill its human rights purpose. Issues like socioeconomic inequality and youth poverty need to be injected into the discourse of children's rights advocates concerning youth offenders' rights as children.

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