

Legalism and Legal Pragmatism: Concepcion v. Court of Appeals and the Rights of (Legitimate) Children

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In 1990, the United Nations General Assembly enforced the Convention on the Rights of the Child (UN CRC), an “international human rights treaty” that declares the preservation and protection of the rights of children regardless of their race, gender, class, and other ascribed status in the society.¹ Article 3 of the Convention states that, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”² This “best interest” is imposed by the statute, and therefore inalienable to every child subjected to programs and procedures that cater to children’s rights. However, who determines the best interests of the child? Due to the innocence and vulnerability of children, the best interests of children are determined by the adults—precisely, the legal authorities, especially when it comes to circumstances involving judicial bodies. This paper is grounded on how the rights of children are viewed and enforced by legal mechanisms. A legalist interpretation follows the letter of the law—strictly giving little to no consideration of the big picture.³ Legal pragmatists, on the other hand, concern themselves with what is “best for the community’s future, not counting any form of consistency with the past as valuable for its own sake.”⁴

Rights, in this case, are viewed as legally enforceable mechanisms; hence, perspectives on law are also adopted when realizing the implications of these rights. To portray this, Onora O’Neill in her article *The Dark Side of Human Rights*, emphasizes that problems arise with how these rights are viewed (whether meaningfully or not) and implemented (or not) by parties given the obligation to realize these rights.⁵ Her article examines the nature of rights and the implications of holding rights. A ‘Normative View’ of human rights implies that there are duties to be carried out for rights to be upheld. On the other hand, the ‘Aspirational View’ of human rights implies that rights are only perceived as something idealistic. Lastly, the ‘Cynical View’ of human rights entails that rights can be limited to particular groups of people through declarations and covenants (given the lack of unanimous agreements to these documents). These perspectives on how rights are treated and expected to be enforced may inform how they are interpreted by the law, and vice versa.

¹ Civil Society Coalition on the Convention on the Rights of the Child, “Guide for Monitoring the UN CRC in the Philippines.”

² United Nations, Convention on the Rights of the Child.

³ As Scheingold mentions in “Chapter 10: Legal Education and Professional Socialization: The Myth of Rights Revisited”, legalists refuse to see the matter in the greater scheme of things and consider the moral, socio-political and even economical layers of the issue at hand when deciding on a ruling (*The Politics of Rights*). Legalists tend to overemphasize the blackletter law and adhere strictly to what legal procedures entail.

⁴ Dworkin, *Law’s Empire*, 95.

⁵ O’Neill, “The Dark Side of Human Rights,” 320–22.

The case of *Concepcion v. Court of Appeals* shall demonstrate how the legalist nature of Philippine courts enact a potentially harmful interpretation of rights. In substantiating, O’Neill’s four critiques of rights enforcement shall be invoked.⁶ First, rights upheld through legislations, are subjected to complexities of bureaucracies and technicalities that essential responsibilities are looked over. Second, compliance with these complexities may impose burdens to the rights holder, forcing them to forfeit their rights. Third, when rights holders complain about a violation of their rights or its inaccessibility, they are oftentimes dispirited, left without consolation, for insisting on their rights. Lastly, compensations for a violation of their rights or its inaccessibility are not warranted by legal or political institutions. These four shall prove the argument that stringently enforcing the rights of the child—the best interests of the child—is not pragmatically ideal.

The first section shall present the context of UN CRC and its subsequent Philippine laws. The next section shall provide the salient facts of the case, followed by the ruling of the Court in terms of O’Neill’s criticisms of rights enforcement. Furthermore, the role of the state in pursuing the Rights of the Child shall be introduced. The last section will conclude the application of concepts on the case study.

The Rights of the Child

Children’s rights are both a combination of liberty rights—entitlement to freedom and security—and welfare rights—entitlement to education, healthcare, and the likes. These rights are deemed by worldwide treaties and national laws. Following O’Neill’s perspective on rights, in the Philippines, children’s rights are viewed as both aspirational and normative. The Aspirational View of rights sees the act of upholding the rights as the ideal. With this, there are no accountabilities that belong to the entities that should enforce these rights. For example, Principle 9 of the Declaration of the Rights of the Child states that it is the right of a child to be protected from undue employment while they are not yet of legal age.⁷ Yet, the Philippine government fails to ensure that there will be no child labor.⁸ However, the State will not be subjected to punishment by other governing bodies as there are no institutions that compel the State to enforce such security. Meanwhile, the Normative View of rights demands the bearers of rights to perform duties. However, there are sectors which cannot adhere to such obligations namely, the children who cannot be expected to do obligations like paying taxes as a contribution to the State.

With this, it should be noted that a few months after the UN CRC was unanimously ratified by the UN General Assembly, the Philippines became a signatory to the convention, which was supported by the Senate.⁹ Moreover, to put the rights convention into action, the Philippines executed the Juvenile Justice and Welfare Act (JJWA) of 2006 which now transformed these abstract rights to legally enforceable provision.¹⁰ Because of the national laws in place, the UN CRC would not be perceived from the Cynical View, but are now perceived from the Normative View. These rights prescribe and proscribe through the legal sanctions drafted by legal authorities. The signing of international declarations entails commitment to abide by the values it forwards. But long before the

⁶ O’Neill, “The Dark Side of Human Rights,” 320–22.

⁷ UNICEF, Declaration of the Rights of the Child.

⁸ Philippine Statistics Authority, “Working Children by Occupation, Year and Sex.”

⁹ Civil Society Coalition on the Convention on the Rights of the Child, “Guide for Monitoring the UN CRC in the Philippines.”

¹⁰ UNICEF, “Philippines Can Be Proud of Juvenile Justice Law as World Commemorates 30 Years of the Convention on the Rights of the Child – United Nations.”

UN CRC was established, the Philippines has been following the same principle. As invoked by the court decision in the *Concepcion v. Court of Appeals*, the Child and Youth Welfare Code of Presidential Decree 603 bears the same essence as it demands to prioritize every child's welfare. Thus, it can be said that the notion of children's rights the very least, does not remain ostracized from the reality of children's welfare.¹¹ The existence of policies upholding them and legal decisions defending them implies that the Philippines is striving towards making rights more than a mere aspiration.

Explication of the Case

Gerardo Concepcion, the petitioner, wanted to have his marriage with Ma. Theresa Almonte, the respondent, annulled due to bigamy. Gerardo reasoned that Ma. Theresa has been married to Mario Gopiao for nine years before Gerardo and Ma. Theresa married. The fact that there was a previous marriage was not denied by Ma. Theresa but she insisted that it was not legitimate and that they did not even live together. It is important to note that Gerardo and Ma. Theresa had a child, Jose Gerardo. Now, Gerardo's petition resulted to Jose Gerardo being recognized as an illegitimate child by the trial court. In the Family Code, legitimacy is always preferred over illegitimacy because the former has more rights than that of the latter. Having been declared as an illegitimate child, Ma. Theresa then wanted her child's surname to be named after her maiden name as this was one of the rights of an illegitimate child. It can be surmised that Ma. Theresa did not bother considering the illegitimate status of her child so long as her child is named after her, as the biological mother. Ma. Theresa's insistence was not well-received by the court because ascribing to an illegitimate status does not translate to pursuing the best interest of the child. When the case was raised to the Court of Appeals, the first marriage that Ma. Theresa had, was recognized as the legitimate and persisting marriage, making Jose Gerardo (Gerardo and Ma. Theresa's biological son), a legitimate child of Mario Gopiao and Ma. Theresa. Mario Gopiao. However, the legitimacy was already considered irrelevant by Ma. Theresa due to years of non-interaction. Thus, Jose Gerardo was deemed a legitimate child of a man whom he had not known.

Duty of the Court

The rights of children are treated as normative due to the laws implicating them. Invoking O'Neill's normative perspective on rights, the Court responds by interpreting the law formally and being legalistic about the benefits that the child may attain. Whatever the court's ruling is, it will inform how the rights of the child should be enacted and what the best interests of the child are.¹² Because of this, the State has a mandated obligation to endorse these rights and ascertain that they are being observed. In the ruling of this case, the court affirmed the role of the state as *parens patriae*. Meaning, that by the laws, the State guards children from being taken advantage of and to ensure the children's unhindered growth and maturity towards becoming citizens with a sense of accountability and morality in the society.¹³ Likewise, the court, as the defender of the laws and as part of the State, is given the duty to fulfill obligations which carries out justice for the rights of the child.¹⁴ The court has the power to correct, punish, and provide compensation whenever these rights are violated by others or even by the receiver of the rights. In this instance, the Supreme Court attempted to correct the previous rulings

¹¹ "G.R. No. 123450 - Gerardo B. Concepcion v. Court of Appeals, et Al."

¹² Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change*.

¹³ "G.R. No. 123450 - Gerardo B. Concepcion v. Court of Appeals, et Al."

¹⁴ O'Neill, "The Dark Side of Human Rights," 319.

and redirect the situation to cater directly to the rights of the child—by providing more rights—where the best interest lies.

The Court on “Best Interests of the Child”

“Best interest” is not interpreted subjectively or relatively as in considering the situations of real life. Interpretivism has no place in the eyes of the law. Rather, what the best interest of the child is, is interpreted legally as these laws in place are expected to pursue the highest good for the child. In this judicial case, Ma. Theresa suffered from the consequences of legally upholding what is in the best interest of her child. O’Neill identified four (4) ways on how rights can burden human beings: complexity, compliance, complaint, and compensation.¹⁵ These were all experienced by all the parties involved in this case.

Complexity. Because of Gerardo’s desire to have his and Ma. Theresa’s marriage annulled and still merit visitation rights of their son, Jose Gerardo, they all have to undergo through the lengthy bureaucratic procedures of the legal system. As O’Neill posed, conforming to regulations—in this case, submitting proof of filiation, exposing rather private records and media, documenting concerned parties’ whereabouts—seems to be a requirement to fully realize one’s rights.¹⁶ The case went from the Trial Court to the Court of Appeals up to the Supreme Court only for Jose Gerardo to be declared as a son of someone irrelevant to him up until the decision of the Supreme Court was reached. The Court itself said that it took almost 15 years for the case to be settled. For 15 years, Jose Gerardo’s status was thought to be legitimate. And now, his identity was drastically changed by legally making him the son of a supposed father whom he had not known.¹⁷ They had to go through all these complexities motivated by the fight for their rights and the right to their son, and yet, it was the son who was at a disadvantage brought by the impractical turnout of the case ruling.

Compliance. In a situation where a certain right is not enforced or is violated, O’Neill states that the possessor of rights is urged to call out the State for the absence of compliance. At the same time, when the enforcer implements that right in its own interpretation, the possessor of that right is bound to comply. Since the best interests of the child is the governing principle in deliberation on issues concerning the rights of the child, in the end, Jose Gerardo had no choice but to have a legitimate status in the eyes of the law. However, in the early phase of this case, when Jose Gerardo was declared illegitimate, Ma. Theresa, his biological mother, appealed to the court for not complying with her right as the mother. She requested to have her surname as the child’s too. Yet, the court frowned upon this. Ma. Theresa, as a mother, cannot claim to have a legitimate child with her recent husband. However, she can claim legitimacy for her child with her former husband who was not even the father of the child. This mandatory compliance to the rights of the child enforced by the law forced undue strains on the relationships of the parties involved. For instance, Mario must morally and economically support his legitimate child, Jose Gerardo, as dictated by the legitimacy of Jose Gerardo. Not only that, Gerardo, the biological father of Jose Gerardo, earned no rights to his child nor obligation to support his child.

Complaint. Gerardo, Ma. Theresa, and Mario are obligated to abide by the ruling of the court for it legally caters to the interests of Jose Gerardo. Complaining about the enforcement of rights will only bring about further complications due to the complexity of the bureaucracy and the lack of

¹⁵ O’Neill, “The Dark Side of Human Rights,” 321.

¹⁶ O’Neill, “The Dark Side of Human Rights,” 321.

¹⁷ “G.R. No. 123450 - Gerardo B. Concepcion v. Court of Appeals, et Al.”

guarantee of just reparations to the parties affected.¹⁸ Doing so would spend valuable time, energy, and resources; Jose Gerardo's re-seeking of justice would be nothing but inconvenient. Even before the case reached the Supreme Court, the legitimacy sought by Gerardo and Ma. Theresa has been hindered by bureaucracy. Having to go on trial from one court to another not only burdens the two parties but also Jose Gerardo as his legitimacy status is being legally questioned. Furthermore, the case had already been moved to the jurisdiction of the Supreme Court for oral arguments. This means that unless new pieces of evidence are presented and new circumstances arise, there is no reason for the Supreme Court to revoke its decision. Complaints can only be made informally and seeking to move the case for reconsideration will only add a few more years to the 15 years that the case has been running. Doing so might cause further injustice to Jose Gerardo.

Compensation. The Court, by the power of the laws, delivered compensation in the form of attributing legitimacy to Jose Gerardo. However, due to the systems of the courts and the appeals by both parties, it took 15 years for Jose Gerardo's right to legitimacy and support be acknowledged. The supposed compensation, attaining justice and pursuing Jose Gerardo's best interest, was delayed, in a legal-bureaucratic aspect, and denied, pragmatically. O'Neill was correct when she said that gaining compensation has its advantages though the disadvantage lies with what one had to go through to attain compensation and with how worthwhile it is.¹⁹ It is not always worth the time, resources, and effort. In Gerardo's case, his filing for annulment and its consequences i.e., acquiring visitation rights to Jose Gerardo, only resulted in losing his status as the recognized father of Jose Gerardo. Since Jose Gerardo was only a child when this case took place, his rights were put in prime by the court. The unexpected compensation due to the child's rights produced the least desirable outcome for both Gerardo and Ma. Theresa, and to an extent, the oblivious Mario.

Conclusion

This paper aims to prove that a normative notion of rights and a legalistic interpretation of rights enforcement do not always work in favor of the rights holder. Such is the case of how Jose Gerardo was subjected to legal complexity, coerced compliance, undue repercussions of complaint, and a rather troublesome form of rights compensation.

In the Philippines, declarations or covenants of rights are backed up by the State via the laws used to legally enforce them. The court always goes back to the essence of the rights. Though they are meant to protect when these rights are imposed on an individual or groups of people it is not always the case that it results in favorable outcomes. G.R. No. 123450 attests that an imposition, such as rights, can prove to be harmful even when it intends to secure a universal good.

What is declared to be legal may not always be pragmatic. As in the case of *Concepcion v. Court of Appeals*, when the court ruled in favor of the child—Jose Gerardo—by declaring him to be a legitimate child of his mother's first husband, Mario, whom Jose Gerardo is not even acquainted with. Gerardo, the petitioner, and the proven biological father of Jose Gerardo, then had all his paternal rights to Jose Gerardo null, void, and non-existing to begin with. Upholding the "best interests" of Jose Gerardo resulted in a lengthy legal battle of complexities, undue obligations, and less-than-ideal compensation. For the Court, what is the "best interest" for Jose Gerardo fails to consider the social context he was in. The Court neglected to look beyond the formalist letter of the

¹⁸ O'Neill, "The Dark Side of Human Rights," 321.

¹⁹ O'Neill, "The Dark Side of Human Rights," 321.

law and value the reality the child was in. All these complications subject the notion of rights and its enforcement to questioning. To add, when it comes to the topic of illegitimate children, the children have no choice but to be governed by what the law prescribes and what their parents caused them. This the vulnerable children at an inescapable disadvantage, mostly caused by their parents. Only the parents have accountability for their status, and yet, it is the children suffering the consequences, had it been harmful. The poor children have nothing to do with their illegitimacy. As Judge Ulysses Butuyan once remarked, “There are no illegitimate children. There are only illegitimate parents”.²⁰

In whichever way rights are viewed, it is of prime importance to consider beyond the legal implications of its enforcement. Legal pragmatism offers an avenue for flexibility and adaptability for the rights holder, particularly when the rights holder itself is a child. The law bears the duty to state and inform what should be attained, but it is the legal institution, as represented by the judge in this case, that bears the accountability and responsibility to see to it that the ideal and realistic ‘best interests of the child’ are met. *Concepcion vs. CA* begs us to question what rights are for when its imposition entails injury, and how the body of law can remedy this.

²⁰ Butuyan, “Illegitimate Parents.”

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