MEMORANDUM

TO: Atty. Silvia Jo Sabio
FROM: Pauline Mae P. Araneta
DATE: August 18, 2011
RE: The Doctrine of Parens Patriae: Its development in Philippine jurisprudence

Issue

What are the developments in Philippine jurisprudence regarding the doctrine of parens patriae?

Discussion

Article 24 of the New Civil Code states,

“[i]n all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.”

The law seeks the welfare of the incapacitated, disadvantaged and handicapped being unable to fully protect themselves. This is anchored on the doctrine of parens patriae.¹

Parens patriae² (Latin, Parent of the country) is a doctrine which refers to the inherent power and authority of the State to provide protection of the person and property of a person non sui juris³ or an individual who lacks the legal capacity to act on his or her own behalf, such as an infant or an insane person⁴. Under such doctrine, the State has the sovereign power of guardianship over persons under disability.⁵

² Id.
³ Latin, Not his own master.
⁴ www.law.jrank.org/pages/8833/non-sui-juris
⁵ Vasco vs. Court of Appeals, G.R. No. L-46763, February 28, 1978, 81 SCRA 763
The *parens patriae* doctrine has its roots in English common law. In feudal times various obligations and powers, collectively referred to as the “royal prerogative,” were reserved to the king. The king exercised these functions in his role of “father of the country.”\(^6\)

In the United States, the *parens patriae* doctrine has had its greatest application in the treatment of children, mentally ill persons, and other individuals who are legally incompetent to manage their affairs. The State is the supreme guardian of all children within its jurisdiction, and state courts have the inherent power to intervene to protect the best interests of children whose welfare is jeopardized by controversies between parents. This inherent power is generally supplemented by legislative acts that define the scope of child protection in a state.\(^7\)

In an annotation written by Judge Jorge R. Coquia, district judge of the court of First Instance of Manila, he laid down the concept *parens patriae*.\(^8\)

In general,

the term *parens patriae* has been defined as the inherent power of the State, acting thru the legislature, to provide protection to the persons and property of these *non sui juris*, such as minors, insane and incompetent persons.\(^9\)

*(McIntosh vs. Dill, 86 Okla, 205 Page 917)*

*Parens patriae* means parent or guardian of the country. The State as a sovereign, as parens patriae, has the right to enforce all charities of such public nature by virtue of its general superintending authority over the public interests, where no other person is entrusted with it.\(^10\)

*(Government of the P.I. vs. Monte de Piedad, 35 Phil. 747)*

In the case of the *Government of the P.I. vs. Monte de Piedad*,\(^9\)

*parens patriae* is:

“a prerogative, inherent in the supreme power of the State to be exercised in the interest of the humanity, and for the prevention of injury to those who cannot protect themselves.”

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\(^6\) [www.law.jrank.org/pages/9014/parens-patriae](http://www.law.jrank.org/pages/9014/parens-patriae)

\(^7\) *Id.*

\(^8\) *Vasco vs. Court of Appeals*, G.R. No. L-46763, February 28, 1978, 81 SCRA 769-780

\(^9\) G.R. No. 9959, December 13, 1916
As for the constitutional provisions on *parens patriae*,

“[t]he State shall strengthen the family as a basic social institution. The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the Government.”¹⁰

“The State recognizes the vital role of the youth in nation building and shall promote their physical, intellectual, and social well-being.”¹¹

Statutory provisions were also anchored to the doctrine of *parens patriae* and they are found in articles 1 and 3 of Presidential Decree No. 603, amended by P.D. 1179, otherwise known as the Child and Youth Welfare Code.

As guardian of private rights, the state’s prerogative of *parens patriae*:

“is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature. It has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties. On the contrary, it is more beneficient function, and often necessary to be exercised in the interest of humanity, and for the prevention of injury to those who cannot protect themselves.”¹²

(Mormon vs. U.S. 136 U.S. 1)

For the protection of the home and family,

“the constitutionality of the Massachusetts Child Labor Act prohibiting child labor was sustained on the basis of *parens patriae*. The home and the family are not outside the power of reasonable regulation, and greater latitude of power is exercised where the object is to protect, promote and safeguard the health, education and development of minor children.”¹²

¹⁰ CONST. (1973), art. II, sec. 4
¹¹ Id., sec. 5
¹² Prince vs. Massachusetts, No. 98 Argued: December 14, 1943, Decided: January 31, 1944
Furthermore, it is asserted that “[t]he family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.”

Where minors are involved, the State’s responsibility is to act as parens patriae:

“To it is cast the duty of protecting the rights of persons or individual who because of age or incapacity are in an unfavorable position, vis-a-vis other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust.”

In the case of Melchora Cabanas vs. Francisco Pilapil,

“The judiciary as an agency of the State acting as parens patriae, is called upon whenever a pending suit of litigation affects one who is a minor to accord priority to his best interest. It may happen, as it did occur here, that family relations may press their respective claims. It would be more in consonance not only with the natural order of things but the tradition of the country for a parent to be preferred. It could have been different if the conflict were between father and mother. Such is not the case at all. It is a mother asserting priority. Certainly the judiciary as the instrumentality of the State in its role of parens patriae cannot remain insensible to the validity of her plea.”

Another case where “a boy between 11 and 13 years of age, who is a total orphan without any guardian and is destitute of any economic means with which to maintain and educate himself, is a ward of the State.”

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13 NEW CIVIL CODE, art. 149
14 Martin Nery vs. Lorenzo, G.R. No. L-23096 and 23376, April 27, 1972
15 G.R. No. L-25843, July 25, 1974
16 Hernandez vs. Superintendent of Welfare, G.R. L-2903

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The Child Welfare Division of the Social Welfare Commission has the right to his custody, care, education and training in the absence of either a natural or legal guardian or training in the absence of either a natural or legal guardian duly appointed by the Court. Said minor cannot be entrusted to the custody of an alleged “third degree aunt” who has “barely enough to support her own family.”

In *Perez vs. Samson*,

“Parents being the natural elders of the children exercise full parental authority over the latter. This prerogative is not absolute, however, because the State may come in when the natural parents fail in their duty. As to the State there is clearly a point beyond which it might not constitutionally go in interfering with the natural liberty of parents to direct the upbringing of their children. As a matter of fact, it has been said that parental authority is an emanation of God, and every attempt to infringe upon it, except from direct necessity, should be registered in all well governed states.”

As for the duty of the State, in the case of *People vs. Baylon*,

“is under the obligation to minimize the risk of harm to those, who, because of their minority, are yet unable to take care of themselves fully. Those of tender years deserve its utmost protection. Moreover, the injury in cases of rape is not inflicted on the unfortunate victim alone. The consternation it causes her family must also be taken into account. It may reflect a failure to abide by the announced concern in the fundamental law for such institution. There is all the more reason then for the rigorous application of the penal law with its severe penalty for this offense, whenever warranted. It has been aptly remarked that with the advance in civilization, the disruption in public peace and order it represents defies explanation, much more so in view of what

17 Id.
18 48 O.G. 5368
19 G.R. No. L-35785, May 29, 1974
Currently appears to be a tendency for sexual permissiveness. Where the prospects of relationship based on consent are hardly minimal, self-restraint should even be more marked."

Lastly, regarding the care of juvenile offenders,

"Under the doctrine, the Government may also provide measures for better care of juvenile offenders, providing such juvenile offenders be not considered as common criminals, but as children lacking encouragement and guidance to their normal development."\(^\text{20}\)

Article 189 of P.D. No. 603,\(^\text{21}\) as amended by P.D. No. 1179 and Rep. Act No. 9344\(^\text{22}\) stated the provisions for a child in conflict with the law, minimum age of criminal responsibility, intervention program, diversion programs for children over 15 and under 18 who acted with discernment in the commission of the felony, court proceedings, detention of the child pending trial, diversion measures, discharge of the child in conflict with the law, return of the child in conflict with the law to court, credit in service of sentence, probation as an alternative to imprisonment, rehabilitation and reintegration, civil liability of youthful offenders and confidentiality of records and proceedings, among others.\(^\text{23}\)

### Conclusion

The Constitution provides that the State shall protect and strengthen the family as a basic autonomous social institution. Jurisprudence provides that when the State so intervenes, it is exercising it prerogative of parens patriae. Parens patriae literally means “father or parent of his country.” It refers to the inherent power and authority of the State to provide protection of the person and property of a person non sui juris. Under such doctrine, the State has the sovereign power of guardianship over persons under disabilities. Hence, the State is considered the parens patriae of minors.

\(^{20}\) Bactoso vs Governor of Cebu, G.R. No. 24046, September 25, 1925
\(^{21}\) The Child and Youth Welfare Code, December 10, 1974
\(^{22}\) Juvenile Justice and Welfare Act of 2006