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the whole array of people and agencies involved in a case in any distribution of a memorandum or message. Some of these conflicts over communication are reflected in the expressions of probation; institutional and parole people listed below. A probation agent remarked:

"We never hear anything from the institutions about our people, how they are getting along or if our reports about them are of much help to them."

An institutional worker said:

"I wish we would have known this about him when he was committed to us. It surely would have helped us avoid some of the mistakes we have made in dealing with him. I wonder where this was held up. It's like finding a hidden treasure. I hope it's not too late to do us some good."

A parole agent explained:

"This report shows why the institution recommended her for parole. This conclusion is supported very well in their summary report; however, when you look over the concrete description of the girl's problems and behavior, the conclusion to parole her is not substantiated nearly as well. This clouds the whole case. I wonder if they have other pertinent information, ideas or plans they haven't brought out."

4. AGENCY AND PERSONALITY CLASHES AND STATUS STRUGGLES

Agency and personality clashes and status struggles are interwoven in the conflicts between probation and parole agents and institutional personnel. Struggles over power, prestige, raises in salary, along with the jealousies, envy and hostilities that accompany such competitory activity are included in these conflicts. Fears that cooperative efforts between services might lead to their reorganization and an accompanying centralization of an administrative control over them, or infringe in some way on their vested interests incites some agencies to remain at odds with others.

The subjective or personal aspects causing these inter-service or inter-individual conflicts are often masked behind other issues—issues which are more socially acceptable than the personalized or agency interests. Hence a worker or a service may not be interested in cooperating on a particular recommendation or decision regarding a delinquent or an older offender made by another service because such action would not be consistent with the special interests of that service or the worker's personal advantage. The struggle, however, will not be represented in this manner. Rather workers in any of these services may emphasize certain negative aspects of the case or an issue in order to achieve the unexpressed motives. At times, the participants in these types of conflict are aware of some of the underlying factors which influence their overt behavior; at other times, they are not aware of the latent motivations of their striving and conflicts. In either case, they tend to defend their supposedly reasonable position with logic and selected facts which are based upon an unexpressed set of assumptions.

Some of these personality clashes and status struggles are indicated in the statements of probation and parole agents and institutional personnel. A probation agent, talking about comparative salaries, said:

"Probation Agents should get a higher salary than comparative positions in institutions. We have to work more independently than they and have less resources upon which we can rely. They, (institutional staff) have a whole institutional staff and facilities to draw on for ideas and support when they are working with delinquents."

One service frequently attaches more importance to their functions than to those of the other fields. This is indicated in a remark by an institutional person.

"I think every parole or probation agent should have some institutional experience before doing their work. They need it so they really know how people in institutions behave. This way you can get a real feeling for these kids and learn how they operate in groups. Then, too, there is something about institutional work that you cannot appreciate or understand unless you have experienced it."

A parole agent touched on some of the problems of status and prestige when he commented on the procedures of releasing men from prison:

"When it comes right down to it, it depends on who (parole or institutional personnel) carries the most weight on deciding when a man is to be released. Sure, there are other things connected with the release, but this is one of the most important."

CONCLUDING REMARKS

The similarities between probation and parole and institutional services are usually viewed as being positive in that the similarities provide

bases for common understanding and cooperation. The differences between these services can and do pose problems; nevertheless, these differences are often seen as positive in that they provide for the division of work among probation, parole, and institutional workers. Conflict, however, is usually thought to be negative because of its disruptive and destructive effects on the relationships between these services. But some conflict with the existing conditions is a prerequisite for change and can be utilized as a motivating force to improve the inter-agency and inter-personal relationships and professional services. Two cautions, however, are in order. First, it is one thing to work constructively with conflict situations for their improvement and it is another thing to exploit conflict situations for vested interest gains or to make a worker or group of workers appear inadequate. Second, it must be remembered that solutions are rarely complete or final. They continually need revision. By working together in a spirit of mutual understanding and cooperation, probation and parole agents and institutional workers can make conflicts an opportunity.

SCOPE AND PURPOSES OF JUVENILE COURT JURISDICTION

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INTRODUCTION

The premise that the juvenile offender should receive treatment different in kind from that obtained by his adult counterpart is agreed upon by responsible members of the community in all jurisdictions of the United States. The establishment of juvenile courts in every state in this country is evidence of this fact. Questions as to what kind of juvenile courts we should have are, however, by no means subjects of universal agreement; basic questions here are: (1) which juveniles should receive treatment from the juvenile court and, (2) what sort of treatment they should receive from the juvenile court.

The first question is a jurisdictional question and is the subject of this paper. Related jurisdictional questions, such as the overlapping of jurisdiction between domestic relations courts and juvenile courts, the continuance of court jurisdiction after the child has been committed to an institution or other agency or has passed the juvenile court age, and jurisdiction over matters other than delinquency, dependency, and neglect[1] are not here discussed; these questions relate, not to which children should be brought before a noncriminal court or institution, but to which noncriminal court or institution should have authority over children once it has been determined that they should be subject to the authority of some such agency. The question of the maximum age jurisdiction of the juvenile courts is not discussed directly, although it does fit logically within the boundaries here outlined.[2] This question merges with the problem of special courts for the adolescent offender and would have swollen the already large area covered by this paper beyond workable proportions.

The attempt to answer the question of which children should be subject to the jurisdiction of the juvenile court is made through an analysis of the purposes which the court is now attempting to serve. Having determined these purposes, the paper suggests an analysis of which of these purposes the juvenile court is qualified to serve in order to present an answer to the question of what the scope of juvenile court jurisdiction should be.

I. THE GENERAL SCOPE AND PURPOSES OF DELINQUENCY, DEPENDENCY, AND NEGLECT JURISDICTION

Juvenile court statutes in the United States typically designate three categories of jurisdiction over juveniles: Delinquency, dependency, and neglect. The delinquency category is focused primarily upon the conduct of the juvenile; it typically embraces actions which, if committed by an adult, would be a violation of the criminal law, and actions which, if committed by an adult, would clearly not be a violation of the law, such as habitually using obscene language or associating with "thieves, vicious, or immoral persons."[3] Dependency jurisdiction and neglect jurisdiction, on the other hand, are oriented toward the unfortunate family circumstance of the child; in theory they are differentiated in that dependency denotes a lack of satisfaction of the physical and moral needs of the child by the parent without parental fault, whereas the parent of the neglected child is culpable by virtue of his ability to provide these needs and by his failure to do so.[4] These descrip-

[1] Courts handling problems of delinquency, dependency, and neglect frequently have jurisdiction over problems of divorce, guardianship, adoption, physically and mentally handicapped children, and illegitimacy. COSULICH, JUVENILE COURT LAWS OF THE UNITED STATES, 42–46 (1939).

[2] In general, this problem is suceptible to the same kind of analysis as that here developed in relation to delinquency, dependency, and neglect jurisdiction. For an excellent treatment of the problem of the adolescent girl offender, see TAPPAN, DELINQUENT GIRLS IN COURT (1947). And, see generally, TAPPAN, JUVENILE DELINQUENCY, 224–250 (1949).

[3] SMITH-HURD ILL. ANN. STAT. c.23, Sect. 190 (1956 Sup.)

[4] COSULICH, *op. cit. supra*, note 1, 42. For examples of this differentiation, see Gen'l Stats. of Conn., c. 126, Sect. 2802, (1949); Del. Code Annot., Title 10 e.11, Sect. 1101 (1953). In some states, dependency and neglect jurisdiction are not differentiated by statute. See, e.g., Col. Rev. Stat., c.22, Art. 1, Sect. 1 (1953);

tions of juvenile court jurisdiction will be refined later; for present purposes, they serve to establish the point that the typical juvenile court has a jurisdictional base that extends beyond the violator of the criminal law and embraces actions and family circumstance deemed presently or potentially injurious to the welfare of the child or society.

The traditional rationale for this broad jurisdictional base is the so-called *parens patriae* theory.[5] According to this theory, the child is a ward of the state, and to the extent that his parents fail to provide for his welfare, the state, acting through the juvenile court, must so provide. This theory has roots in the practice of courts of chancery of providing for needy infants. Juvenile court proceedings today are formally in equity;[6] typically, juvenile court statutes provide that proceedings are civil rather than criminal[7] and that they are brought in the interest of the child.[8] Thus, a child is not given a summons commanding him to come to court; instead, a petition is issued. He is not convicted a criminal and sentenced to punishment; instead, he is adjudicated a delinquent (or dependent or neglected) child and treatment is administered.[9]

Although the *parens patriae* theory may here be conceded to account for existence of dependency and neglect jurisdiction, it is clear that such a theory will not do as an explanation for the court's delinquency jurisdiction. Delinquency jurisdiction, since it is based primarily upon the conduct of the child, requires only a finding that such conduct did in fact occur, and does not require a finding of default by the natural parent.[10] An answer that might be suggested by the defender of the *parens patriae* rationale would be that juveniles whose actions place them within the delinquency definition have shown by their conduct that their natural parents have failed to provide moral training.[11] But because this answer rests upon an absolute presumption that would equate conduct within the delinquency definition with parental default, it is clear that in many cases this presumption must be fictional; surely there are children guilty of infringement of the juvenile court code whose parents, at least in terms of the more immediately visible indicia of dependency and neglect, have not defaulted in their obligations. This explanation is further unsatisfactory in that it would pretend that the treatment administered by the juvenile court to the juvenile adjudicated delinquent is given solely in the interests of the child; that essentially penal devices such as detention or the "parental school" can be explained by this dogma is disputed more fully in the following pages.

An explanation of the purposes of delinquency jurisdiction can be made, however, that will square with reality, or at least that reality perceived by the planners of juvenile court jurisdiction. The inclusion in the delinquency definition of terms that apply to a child who knowingly associates with "thieves, vicious, or immoral persons" or who "is guilty of indecent or lascivious conduct"[12] must be based on the assumption that such conduct is dangerously pre-criminal and that the authoritarian intervention of the state is thus called for.[13] It would appear thus that the jurisdictional basis of the juvenile court are motivated by two separable purposes: the purpose of crime prevention motivates delinquency jurisdiction, and the purpose of social welfare service by the state, traditionally labeled *parens patriae*, motivates dependency and neglect jurisdiction.

The interest of crime prevention intended to be served by delinquency jurisdiction is clearly a

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Fla. Stat. Ann., Sect. 415.01 (1952); SMITH-HURD ILL. ANN. STAT., c. 23, Sect. 190 (1956 Sup.) (Appendix, ¶91 of this paper.)

[5] For a conventional exposition of this doctrine, see SCHRAMM, *Philosophy of the Juvenile Court*, 261 Ann. Am. Acad. Polit. Soc. Sci. 101 (1949).

[6] *Ibid.*

[7] ANN. LAWS OF MASS. c.119, Sect. 53 (1949). N. J. STATS. ANN., Title 2A, Sect. 2A: 4-39 (1956 Sup).

[8] RUBIN, *Protecting the Child in the Juv. Ct.*, 43 J. CRIM. L. 426 (1952).

[9] TAPPAN, *Unofficial Delinquency*, 29 NEB. L. REV. 548 (1950).

[10] 29 INDIANA L. J. 475 (1954).

[11] In addition to the intellectual inadequacy of this theory, there is danger of a misconceived disposition if it is taken too seriously by the judge. "The legal fiction that delinquents are like dependent and neglected children in being wards of the state may often lead to the placing of blame on the home situation and the too easy assumption that if children are removed from their homes and put in a 'good' environment, all will be well." WITMER, *Social Casework in the Field of Juvenile Probation*, 1941 NTL. PROB. ASSN. YRBK. 159.

[12] SMITH-HURD ILL. ANN. STAT., c. 23, Sect. 190 (1956 Sup.)

[13] The courts have frequently acknowledged this fact. In In Re Lundy 82 Wash. 148, 143, P. 885 (1914), the court said: "The policy underlying the act is protection, not punishment. Its purpose is not to restrain criminals . . . , it is to prevent the making of criminals. Its operation is intended to check the criminal tendency in its inception, and protect the unformed character in the facile period from its improper invironment and influences. In short, its motive is to give the weak and immature a fair fighting chance for the development of the elements of honesty, sobriety, and virtue essential to good citizenship."

social interest. It may be argued that the interest is also an individual interest of the juvenile; whether this argument is accepted would depend on what is meant by the individual interest of the juvenile. In a democratic society individual's interest, for the purpose of determining when he shall be free to do a given act without adverse legal consequences, is deemed to be a freedom to do whatever he is in fact interested in doing. Where an action is deemed so inimical to the interests of other individuals or of society at large that the sanctions of civil or criminal liability are applied, the fact of individual interest in doing the act is not negated, but restraints are applied for the protection of the supervening interests of other individuals or of society at large. Hence, from our perspective, the argument that the interest of crime prevention is an individual interest must be rejected; that this interest is a social interest has already been acknowledged. The ultimate question, then, is in what circumstances the social interest of crime prevention justifies the authoritarian action of the juvenile court upon the juvenile.

II. Criminalistic Incidents of a Delinquency Adjudication

Proponents of a broad delinquency definition argue that proceedings are non-criminal and hence that they are not to the detriment of the individual adjudicated a delinquent. It is true that juvenile court statutes typically provide that proceedings are civil rather than criminal in nature,[14] and that none of the criminal disabilities shall attach to the adjudicated delinquent.[15] But the argument is deficient in that it overlooks criminalistic incidents of a delinquency adjudication: the stigma of being branded in the public mind as a law violator and the liability to authoritarian treatment by the court that is criminal in nature.

The reality of the social stigma attached to a delinquency adjudication is apparent. Even though the process is concededly less stigmatic than would be a criminal conviction, the fact that in most jurisdictions he is labeled "delinquent", or in some, has been given no label but has been simply subjected to the courts processes and found a subject in need of authoritarian treatment, gives him the status in the community of one who has violated the law. The practical incidents of this status are similar to those that would attach if he were labeled criminal: social rejection by those members of the community who consider themselves law abiding, "denial of employment, denial of the right to serve in the armed forces," and the fact that his "record" of juvenile delinquency "is included in a presentence investigation for crime, although it is not considered a 'conviction' in relation to increased penalties for repeated offenders."[16]

The process of being adjudicated a delinquent renders the juvenile subject to treatment similar in kind to that received by the subject of a criminal prosecution. Although he is commanded to come before the court by a "petition" rather than a summons, his attendance is presumably required. The nature of the court proceeding is assuredly very different in kind from that received by the adult subject to a criminal prosecution, and the informal non-hostile nature of these proceedings is one of the outstanding attributes of the juvenile court.[17] The fact remains, however, that the court proceeding is directed at a fact finding as to whether he did or did not conduct himself in a delinquent manner, and the fact of the potentially traumatic nature of the court experience is widely recognized.[18] He is subjected to the hazard of pretrial detention for periods ranging "from several hours to a few months" in jail or jail-like structures.[19] His delinquency adjudication renders him liable to probation[20] or to institutional commitment. Probation is frequently referred to as "case work in an authoritarian setting";[21] although in

[14] Note 7, *supra*.

[15] N. Y. Children's Ct. Act, Sect. 45 (1952); Purdon's Penn. Stats. Ann., Title 11, Sect. 261 (1953).

[16] Rubin, *op. cit. supra*, Note 8, at 437.

[17] A consideration of the purely procedural features of the juvenile courts is, of course, outside the scope of this paper. The problem confronted in this area is that of maintaining the informal, non-traumatic nature of juvenile court proceedings while at the same time protecting the rights of the accused through the maintenance of at least minimal procedural norms.

[18] Abbot, The Child and the State, 336 (1938).

[19] Norman, Detention Intake, 1951, Nat'l Prob. and Parole Ass'n. Y'R'B'K, 140, 141. There does not seem to be any consistent pattern of application of the device of detention, even in the same state: "One county will detain nearly every child picked up, while another of comparable size and jurisdiction rarely holds a single child in custody pending disposition." (*Ibid.*, 140).

[20] Probation is the disposition ordered in the majority of cases where there is a delinquency adjudication. In 1945, probation was ordered in 68 per cent of such cases. Tappan, Juvenile Delinquency, 333 (1949).

[21] McGrath, *Casework in an Authoritarian Setting*, 1937 Ntl. Prob. Assn. YRBK. 176; Taft, Criminology, 593 (1950).

its best forms it shares the therapeutic aims of other casework, conditions are attached to the delinquent's probation and for violation of the conditions of probation the delinquent is subject to further court action, including institutional commitment. Juvenile institutions, despite the euphemistic names frequently given to them and the patches of ivy that may be growing on the walls, are often justifiably known as "junior prisons".[22]

It is not questioned that pre-trial detention and institutional commitment are frequently necessary to protect the social interest in cases of serious offenders. But is there danger of their application to cases of less serious juvenile violators of the provisions of the criminal code? Is there danger of the application of these instruments, or of the less criminalistic though similarly authoritarian device of probation to those juveniles who fit within the language of those parts of the delinquency definition that pertain to conduct that does not violate the provisions of the criminal code?

III. Present Delinquency Definitions: An Invitation to Criminalistic Treatment

It would be well at this point to examine the actual content of delinquency definitions[23] used in the United States to see exactly what conduct they include, and to ascertain whether these definitions are ever given literal application to juveniles within their terms. Two general types of delinquency definitions are typically used in the United States.[24] The first type employs what may be called the technique of specific enumeration, and is the type most frequently used in this country.[25] The Illinois statute provides a good example of the technique of specific enumeration; it was enacted in its present form in 1907[26] and has been copied exactly, or substantially, in many jurisdictions. The Illinois statute provides:

> The words delinquent child shall mean any male child who while under the age of seventeen years or any female child who while under the age of eighteen years, violates any law of this State; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause and without the consent of its parents, guardian, or custodians absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequents a house of ill repute; or knowingly frequents any policy shop or place where any gaming device is operated; or frequents any saloon or draw shop where intoxicating liquors are sold, or patronizes or visits any public pool room or bucket shop; or wanders about the streets in the night time without being on any lawful business or lawful occupation; or habitually wanders about any railroad yards or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful authority; or uses vile, obscene, vulgar, profane or indecent language in any public place or about any schoolhouse; or is guilty of indecent or lascivious conduct; any child committing any of these acts herein mentioned shall be deemed a delinquent child and shall be cared for as such in the manner herein provided."[27]

The second type has provisions of a generalized nature;[28] the Wisconsin statute may be cited as typical in its provision that a juvenile may be deemed delinquent if:

> "(1) He has violated any state law or county, town, or municipal ordinance; or
> (2) He is habitually truant from school or home; or
> (3) He is uncontrolled by his parent, guardian, or legal custodian by virtue of being wayward or habitually disobedient; or
> (4) He habitually so deports himself as to injure or endanger the morals of himself or others."[29]

The generalized nature of terms in the Illinois statute such as those relating to youths who are

[22] See, e.g., the institutional experience of (alias) Sidney Blotzman in Shaw, The Natural History of a Delinquent Career (1931).

[23] In a few states, there is no delinquency definition *as such*; instead, jurisdictional provisions specify actions and courses of conduct fitting within the ordinary delinquency definitions and family circumstances fitting within the ordinary dependency and neglect definitions, without giving the ordinary label to each type of provision. Ca. W. and I. Code, Sect. 700 (1955 Supp.); Ga. Ann. Code, Sect. 24-2408 (1955 Supp.); Idaho, Laws of 1955, ch. 259, Sect. 3, p. 603; Nevada Compiled Laws, Sup. 1943-1949; Sect. 10383. The motivation behind this policy would appear to be to eliminate the stigmatic consequences of a delinquency adjudication; that such a strategem can achieve this result may be doubted. See Stand. Juv. Ct. Act (1949 ed.) Sect. 7, which adopts this practice.

[24] See Appendix.

[25] See Appendix.

[26] See Appendix.

[27] Smith-Hurd, *Op. cit. supra*, note 3.

[28] Although the Illinois type of statute is here classified as one of "specific enumeration", and the Wisconsin type of statute is classified as a "generalized" type (by virtue of the catch all provisions of subsection (4)), it should be noted that, in addition to the terms specifically enumerated in the Illinois statute, it also contains such vague and generalized terms as "incorrigible" and "growing up in idleness or crime". The significance of the specific enumerations of the Illinois type of statute is that they sanction a delinquency adjudication in any situation falling within the specific terms. See *St. ex rel Boyd v. Rutledge*, 321 Mo. 1090, 135 W. 2d 1061 (1929) (dicta), and the courts decision in In Re Lundy, 82 Wash. 148, 143 p. 885 (1914).

[29] See Appendix.

"incorrigible" or "growing up in idleness or crime", and of the catch-all provision in the Wisconsin statute relating to juveniles who "habitually so deport(s) . . . (themselves) as to injure or endanger the morals of . . . (themselves) . . . or others" can operate to deny the youth charged of a definite charge of a particular offense. This defect is often responsible for much of the procedural laxness in delinquency hearings. Without a definite charge of a particular offense, rules of relevancy of evidence become impossible to apply; anything that the juvenile may be alleged to have done that would reflect badly on his character becomes "relevant" to such vague standards. Without a specific charge the juvenile has no opportunity to know with what accusations he is charged and hence is deprived of the right to marshall evidence in his defense. Further, in states where a delinquency adjudication is appealable, his rights on appeal are diluted since the vagueness of these terms is such as to convey an indeterminant discretion on trial judges applying them.[30] And where a technique of specific enumeration of petty or minor conduct norms is employed, as under the Illinois statute, law enforcement agencies and the court can retreat to establish evidence of these everyday "offenses" where the evidence will not satisfy whatever requirements the court may have for establishing violations of the generalized terms. These dangers of wrongful branding as delinquent conduct are multiplied by such features of juvenile court law as the admissability of hearsay evidence, the power to commit to an institution after an adjudication of delinquency and a period of probation without a rehearing.[31] and the failure of many statutes to provide a right to appeal an adjudication, even where a commitment has been rendered.[32] The protection of the accused from the deprivations of the right to appeal, and the right to a re-hearing upon an institutional commitment after a period on probation, and the admissability of hearsay evidence cannot be obtained by amendment of the delinquency definitions. But procedural norms governing the relevancy of evidence, the opportunity to present evidence to rebut the charges made, a more meaningful right to appeal where this right is granted, and protection against the substitution of minor offenses where more serious fault is suspected but not established can be achieved by delinquency definitions that include only terms denoting particular conduct of a genuinely inimical nature. Because such terms are not employed, and because these procedural norms are thereby sacrificed, the danger is increased that the juvenile who is not in fact guilty of serious misconduct may be adjudicated delinquent and subject to the authoritarian treatments entailed by such an adjudication.

That generalized provisions in the delinquency statutes confer a good deal of discretion upon the components of the law enforcement mechanism is obvious and has been alluded to. They afford members of the community an opportunity to register complaints to law enforcement agencies about juveniles whose conduct may be conceived of as fitting within these provisions; the police, to whom such complaints may be registered or who may themselves discover such conduct, are enabled to unofficially "treat" such conduct or to refer it to the court;[33] and finally, the juvenile court itself is given a broad discretion in determining whether a formal adjudication of delinquency shall be made or whether unofficial treatment shall be rendered in lieu of a formal adjudication. The specifically enumerated provisions of the Illinois statute similarly confer discretion upon members of the community and the police in deciding whether to request court action in cases of conduct falling within these terms, since unlike criminal conduct that is immediately inimical to the social welfare,[34]

[30] TAPPAN, *Treatment Without Trial, 24* SOC. FORCES, 306 (1946). This is certainly the case in jurisdictions where the petition need only allege delinquency in general terms. Jurisdictions, however, following the rule that the petition must state the facts showing the alleged delinquency might provide a specific charge of a particular offense, depending on how seriously the requirement were taken in practice, and on how specific or generalized "facts" within the rule might be. See *31* AM. JUR., JUV. CTS., etc., Sect. 34 (1940).

[31] Ex Parte Woodward, 92 Okla. Cr. 235, 222 p. 2d 528 (1950); Pet. of Morin, 95 N.H. 518, 68 A2d 668 (1949).

[32] *31* AM. JUR., JUV. CTS., etc., Sect. 40 (1940). Deprivation of a right to appeal by the legislature is not deemed a denial of due process. *Wissenburg v. Bradley*, 209 Iowa 813; 229 N.W. 205 (1929). Where the right of appeal has not been granted by statute, relief from improper judgements may be obtainable by extraordinary writs. *Ibid.*

[33] See Appendix.

[34] TAPPAN, JUVENILE DELINQUENCY, 16 (1949). The crimes of conspiracy and criminal attempt may be justly excepted from the above generalization. Nevertheless, in a conspiracy, the conspirators are planning an action that, if consummated, will be immediately inimical to society, and the interest of preventing such actions in their incipiency may be thought to justify the crime of conspiracy in light of the above formulations. The criminal attempt would seem more analogous to the non-criminal provisions of the delinquency definition, for here the action is punishable because the

much "delinquent" conduct will instead only provoke a response from peculiarly irritable members of the community. Similarly, it is clear that all judges will not adjudicate as delinquent every boy falling within these terms so that the courts, too, are in effect given discretion in deciding whether to apply these terms.

A study by Porterfield provides good evidence that the sources of intake to the court—parents, offended individuals, institutions, and the police—do in fact exercize the broad discretion conferred to report justified juvenile conduct or peccadillos to the court.[35] Many of the instances cited of parental referral to the court revealed clearly unfit parents whose children had been reported as "unmanageable" where the parent had sought to impose irrational or excessive discipline. Court records revealed parents who had appealed to the court: "Keep him in jail for a few days, it might do him some good," or, "Could you not send him to the training school.... We have just enough to eat and that is all." Many of the individual complaints were petty and more revealed irascible complainants than juvenile threats to the social welfare. A case is cited of a girl who was petitioned to court by a male landlord on the ground that the girl had cursed and abused the landlord in the course of a dispute in which the girl had defended her employer's right to hang clothes on a community washline. Other complainants referred to the court such juvenile peccadillos as riding horses without permission, getting fruit off other peoples' trees, shining mirrors in peoples' eyes, hanging around the pool hall until two a.m., teasing a park attendant, writing obscene words in public places, etc. A similar catalogue could be made out of peccadillos referred to the court by private institutions and the police.[36] Such cases, although not providing the bulk of juvenile court references, do not appear to be exceptional or only occassional. In 1944 and 1945, of references to 380 juvenile courts in the United States, "ungovernable" and "running away" were the reasons for reference in 18% of the cases, and "acts of carelessness and mischief" were the reason for reference in 20% of the cases.[37] It seems likely that the reasons for reference in both categories were predominantly for acts that did not constitute law violation.

IV. Incidence of Delinquency Adjudications for Conduct Not Violating Criminal Norms

The cases indicate that such activities have been adjudicated by the courts as delinquent, and that in some cases institutional commitment has resulted. In *Hambel v. Levine*[38] a juvenile was adjudicated delinquent because of his creating noise in a moving picture during a performance. In *In Re Lundy*[39] a girl of seventeen who was employed singing in a restaurant where liquor was sold was adjudicated as within the specific terms of the delinquency provisions. What appears clearly to have been an improper institutional commitment is reported in *State of Washington v. Superior Ct.*,[40] where the sole basis for the delinquency adjudication and the institutional commitment was a finding of reckless driving, without the presence of evidence of other reckless driving or of the juvenile's home life, and in the face of testimony of his school principal that his conduct was good. In another case (not reported in the reporters because the parents of the boy agreed to institutionalization and hence did not appeal) an unstable boy found throwing stones at animals in the zoo was held delinquent and committed to an institution.[41] It is not possible to tell by an examination of the reporters just how frequently adjudication as a delinquent for peccadillos occurs, for in cases where institutionalization does not result and the child is instead placed on probation there is little incentive to appeal, and the parent frequently cannot afford an appeal. Even in cases of institutionalization, the reporters cannot provide an accurate indication of the frequency of improper

actor has manifested that he is a potential social danger. Nevertheless, in a criminal attempt, the defendant has attempted one of the very acts which, if successful, society has labeled as so inimical to its welfare as to render the actor criminally liable; he is merely an unsuccessful criminal, rather than, as in the case of the violator of the non-criminal content of delinquency definitions, a person who has committed acts or followed a course of conduct that, though non-criminal, is deemed peculiarly pre-criminal.

[35] Porterfield, Youth in Trouble, 15–22 (1946).

[36] *Ibid.*

[37] Rubin, *The Legal Character of Juvenile Delinquency*, 291 261 Ann. Am. Acad. Polit. Soc. Sci. 1, 2 (1949).

[38] 243 App. Div. 530, 274, N. Y. Supp. 702 (1934).

[39] 82 Wash. 148, 143, p. 885 (1914).

[40] 139 Wash. 1, 245, Pac. 409 (1926). The institutional commitment was reversed by the appellate court. But what would have been this boy's fate if his parents had been satisfied with the commitment, or if an appeal had not been allowed? And, note that the case does not indicate that the delinquency adjudication was reversed, so that he was still subject to the other authoritarian treatments here mentioned.

[41] *11* U. of Pitt. L. Rev. 281 (1950), citing Official Report on Investigation ordered by the Commissioners of Allegheny County.

commitment, since in many states there is no right to appeal and an extraordinary writ may not be possible, or, even where an appeal is possible the parents may be happy with the institutional commitment and the child may not be aware of his rights. The only thing that may be said on the basis of research here conducted is that cases of adjudication of delinquency for peccadillos and cases of clearly improper commitment to institutions do exist. It certainly can be postulated, however, that delinquency adjudications for peccadillos occur as frequently as irascible, moralistic judges sit on the bench of the juvenile court and hear such cases, and because frequently the juvenile court and hear such cases, and because frequently the juvenile court judge will be no different in his social attitudes than other representative members of the community, it can be inferred that the frequency of delinquency adjudications for such behavior is disturbingly high.

V. Unofficial Delinquency: Authoritarian Treatment Without Adjudication

A little less than half of the delinquency cases referred to the juvenile court each year result in a formal court adjudication of delinquency or non-delinquency. The remaining cases are dealt with unofficially;[42] at some point in the juvenile court procedure before a decision is rendered, the child is subjected to authoritarian but unofficial treatment by the court probation department, or police, or is referred to another agency, or is dismissed without treatment. The frequency with which these techniques of unofficial treatment are used, and the given techniques of unofficial treatment used, differ greatly from court to court.[43] Where unofficial authoritarian treatment is administered, sometimes it will occur by virtue of the police, probation department, or other intake agency not referring the matter to the court; sometimes these intake agencies will refer the matter to the court[44] and the judge, after hearing the case, will "hold a decision in abeyance during the child's good behavior, with the implicit or explicit threat of adjudication in the event of his (the boy's) failure to cooperate."[45] Authoritarian treatments that may be administered, in addition to a simple warning by the judge, include unofficial probation and an occasional dose of detention rendered under the theory that the boy could profit by a shock.[46] It is likely that such unofficial treatment is typically applied to the less serious forms of juvenile conduct within the delinquency definition;[47] however, since this practice is not explicitly authorized by the juvenile court statutes and no statutory norms are established, there is no assurance that such a discrimination is made. Hence, the intake officer is given the same free reign of discretion in referring these cases to the judge as is the judge in disposing of them. And, of course, the fact that the juvenile who commits a minor offense may not be officially treated by court order is no defense of the broad scope of delinquency jurisdiction; although such treatment is better than the egregious case of an institutional commitment being founded on such a case, the instances of unofficial detention, or even of authoritarian treatment through unofficial probation or a court appearance with a warning by the judge constitute a real interference with the individual's freedom.

VI. The Assumption of Pre-Criminality

Our previous analysis has shown that the justification for delinquency jurisdiction is the social interest of crime prevention. Delinquency definitions, then, must rest upon the assumption that their terms embrace conduct which provides solid evidence of pre-criminality.[48]

Studies of recidivism among delinquents coming into contact with the courts are based upon samples of juveniles who were brought into court for serious offenses. They provide incontrovertible

[42] U. S. Children's Bureau, *Juv. Ct. Statistics 1946–49* (1951) report 58 percent of the delinquency cases in courts reporting were handled unofficially. The 1954 report (statistics for 1950–52) reports that 57 percent of delinquency cases were handled unofficially in these years.

[43] U. S. Children's Bureau, *Juv. Ct. Statistics: 1946–49*. Different courts reflect practices of unofficial treatment running the spectrum from 22 percent of cases (Pennsylvania courts) to 96 percent of cases (Hamilton County, Ohio).

[44] Hall, *Limiting Unofficial Casework*, 1951 Nat'l Prob. and Parole Ass'n Y'R'B'K, 84, reports that the Bureau of Adjustment, New York City's intake agency, referred 24.7 percent of its cases to the juvenile court.

[45] Tappan, *op. cit. supra*, note 9.

[46] *Ibid.*

[47] Lindeman, *op. cit. supra*, note 33, reports at 128 that under the system used in Essex County, New Jersey, the following types of cases are typically disposed of without court action: "acting in a disorderly manner, habitual vagrancy, incorrigibility, growing up in idleness or delinquency, knowingly visiting or patronizing gambling places, idly roaming the streets at night, family conflicts, and neighborhood scraps." Neary, in 1936 Nat'l Prob. Ass'n. Y'rB'k, 209, reports that a similar practice is followed in Cleveland juvenile courts.

[48] Tappan, Delinquent Girls in Court, 101 (1947). Sutherland and Cressey, Principles of Criminology, 402 (1955 ed.).

evidence that juveniles who commit serious offenses recidivate to an alarming extent,[49] but, of course, they do not prove the extent of recidivism among non-serious juvenile offenders. There do not appear to be any studies of post-juvenile court subjects who committed minor offenses. A study by Porterfield of the pre-college delinquent conduct of college students in northern Texas showed that all the college students, both men and women, reported that they had committed acts of the kind for which delinquency charges had been made against children.[50] This study is no more than a verification of the immediately apparent fact that pre-college, as well as pre-criminal, juveniles frequently indulge in petty acts of malicious mischief and vagabondage.

The petty act of malicious mischief, or vagabondage, then, is but a symptom of the child's total personality:[51] it may, on deeper examination, be consistent with a personality structure, family background, and associations strongly indicative of precriminality; it may, on the other hand, in the light of more favorable factors of personality structure, family background, and associations, be consistent with an interpretation of social normality. In the more enlightened courts, of course, the techniques of social investigation and clinical examination are employed; in these courts, the court's action is based on more solid evidence of pre-criminality than the act alone. But in many jurisdictions, such facilities are not available. The court probably does not have clinical facilities at its command, and if a social investigation is made by a probation officer, he probably lacks the training and insight to make an accurate forecast of pre-criminality.

VII. The Unwisdom of Authoritarian Treatment of the Nominal Delinquent, Even Where the Assumption of Pre-Criminality Is Well Founded

The more difficult question, of course, is presented where it is assumed that the court has a personnel and resources with which it can make a reliable estimate of pre-criminality; its judge is well versed in the philosophy that the act alone is but a symptom, the probation department is manned by workers thoroughly skilled in the techniques of pre-trial examination, and a clinic is used regularly that employs capably the best of predictive techniques.[52] At this point, may it not be argued that the court's broad delinquency jurisdiction is justified on the ground that it has served the function of bringing to the attention of the court a large portion of the possibly pre-criminal population, and from this population the court has selected those whom reliable predictive devices indicate have a high likelihood of future criminality for rehabilitative treatment?

A partial answer to this question has already been indicated. Our concept of justice requires that before a person is exposed to the stigmatic and punitive consequences of an adjudication of social wrongdoing, his conduct must have been sufficiently inimical to the social welfare to justify such consequences and he must be given procedural protection so that a finding that such conduct did in fact occur will be reliable. A delinquency adjudication, it has been shown, is stigmatic and does involve such possible punitive or authoritarian consequences as detention and institutional commitment or probation. Much of the conduct legally sanctioning such consequences is not sufficiently inimical to the social welfare to justify these consequences under the theory here set forth; moreover, the procedural rules governing the juvenile court, both by virtue of the very looseness of the delinquency definition and other factors alluded to, are not such as will guarantee a sufficiently reliable adjudication of wrongful conduct. But suppose the question is framed in still more difficult terms: suppose our court not only follows sound predictive policies, but that it follows sound legal policies as well. It follows procedural norms as consistent with the goal of informality as is possible to insure non-traumatic and fair fact finding. We are assuming that our subject has been brought into the court for non-serious conduct violative of the delinquency definition; our enlightened court will not hold him in detention, because he has not demonstrated that he constitutes a danger to the social welfare; it will put him on probation rather than commit him to an institution.

We might make our subject more concrete. Suppose he is a fourteen year old who has frequented the neighborhood pool hall on several

[49] See note 56, *infra*.

[50] Porterfield, *op. cit. supra*, note 38.

[51] Young, Social Treatment in Probation and Delinquency, 14 (1952 ed.).

[52] See, e.g., prediction tables developed in S. and E. Glueck, Unraveling Juvenile Delinquency (1950). For a report of validations of the Glueck's prediction tables, see Whelan, *An Experiment in Predicting Delinquency*, *45* J. Crim. Law, 432 (1954). For a report of validation of attitude-interest tests as a predictive device, see Durea, *The Differential Diagnosis of Potential Delinquency*, *9* Am. Jour. of Orthopsychiatry 394 (1939).

evenings and on this particular evening there is shooting pool with an older and somewhat disreputable person at eleven-thirty. The manager of the pool hall, responding to a latent social conscience and the urge to exercize his authority, shouts at the boy, "Come on punk, it's time kids like you was home in bed." At this point, the policeman strolls in. He seconds the proprietor's promptings, but our juvenile is resentful and curses the proprietor in a shocking round of four letter words; he insists to the policeman that he is going to finish his game. At this point, the policeman, frustrated by the rebuke to his authority and feeling a paternalistic urge to have the juvenile court treat the boy, takes him to the police station, after which he is petitioned to appear in juvenile court. Sound predictive techniques applied in the prehearing investigation reveal that the boy has a dangerous potential for criminality, and he is adjudicated a delinquent, as he clearly could be under the specific language of the Illinois statute and the generalized language of the Wisconsin statute. Should probation be applied? An affirmative answer rests upon the assumptions, first, that the boy's conduct justified the authoritarian treatment he has received and the stigma attached to his delinquency adjudication, and second, that the court's probation work will be genuinely rehabilitative and will arrest the tendency to pre-criminality found to exist in the boy.

Objection to the first assumption has already been indicated. It is the second assumption, that probation will here be rehabilitative, that must now be examined.

Probation, as was stated earlier, has sometimes been referred to as casework in an authoritarian setting. That the setting is authoritarian is not to be questioned; what is to be questioned is whether it can serve the ends of non-authoritarian casework. All agree that a necessary condition precedent to successful probation is a rapport relationship between caseworker and client.[53] It seems doubtful that this can be achieved in the authoritarian setting of probation. Our subject is hostile and resentful to the probation officer. He has received what he conceives to be wrongful and unjustified treatment by the police and court. His conditions of probation are that he must stay away from pool halls and eschew corrupting influences. The probation officer checks with the proprietor of the pool hall to make sure that our subject stays away; the proprietor is co-operative because he is antagonistic now to the "wise delinquent punk." The probation officer cannot be the friend of the delinquent; he is exercizing surveillance to make sure that the conditions of probation are fulfilled. The delinquent resents his required visits with the probation officer.[54] The essential condition of rapport is defeated.

This is not to categorically condemn the authoritarian aspects of court treatment. It all depends on to whom they are applied.[55] Follow-up studies of the after careers of serious juvenile offenders uniformly show that the court cannot hope for a high degree of success with the youth who is already seriously delinquent.[56] Nevertheless, no other technique has demonstrated success; until this happens it would seem that we must follow the common sense assumption that the youth whose conduct violates fundamental social norms must, if possible, be educated to the reality that the community has authority to apply sanctions against such behavior. Because this authority is thus assumed to be necessary in these cases, a compromise must be made with the other desiderata of casework. In the case of the nominal delinquent, however, there is no occasion to exercise such authority; because his behavior has not partaken of the culpable qualtites that require awareness of authority, it will not perform an educational function but will only serve to confuse and depreciate whatever respect for authority he may have had.

In our case of the delinquent poolplayer, whom investigation showed to have a high probability of future criminality, it is likely that the best occasion for genuinely crime-preventive measures to have been applied would have been in his child-

[53] CHERRY, *The Probation Officer on the Job*, 1945 NT'L PROB. ASS'N YRBK., 195.

[54] KAWIN, *Legal Handicaps in Juvenile Casework*, 1937 NAT'L PROB. AND PAROLE ASS'N YRBK., 188.

[55] BERKMAN, RAPPAPORT, AND SULZBERGER, *Therapeutic Effects of an Authoritarian Setting in Children's Courts*, 9 AM. J. ORTHOPSYCHIATRY, 347 (1939).

[56] S. and E. GLUECK, ONE THOUSAND JUVENILE DELINQUENTS, 151 (1934) showed that 88.2 percent of the delinquents studied recidivated within five years. The youths here studied were serious offenders; more than two-thirds of them had committed serious property offenses (p. 100). MERRIL, PROBLEMS OF CHILD DELINQUENCY, 292 (1947) reports 47.9 percent recidivism among three hundred offenders, the majority of whom appear to have been serious offenders (Appendix B, Table 2, p. 396). HEALY and BRONNER, DELINQUENTS AND CRIMINALS 245 (1928) report 61 percent recidivism in a group of 420 Chicago boy offenders; again the subjects studied were serious offenders (pp. 12–16). These studies establish beyond doubt that sanguine expectations about the court's ability to transform serious offenders into law abiding citizens are mistaken.

hood at the age when these tendencies were first observable and his attitudes and behavior patterns were sufficiently uncrystalized to be amenable to therapeutic treatment.[57] The most promising methods of crime prevention, then, lie in the development of community resources capable of detecting and treating the potential criminal at an early age. Where violations of fundamental social norms occur at a later juvenile age, authority must be applied, but this is, at best, a second line of defense.

VIII. Community Welfare Agencies: The Desired Agency for Treatment of the Nominal Delinquent

The typical juvenile court, of course, does not participate fully in the utopian features of the court described in the case of the juvenile poolplayer. Typically, its judge is a political appointee, and he may rotate from court to court, not even specializing in juvenile court work.[58] Its probation department is typically understaffed;[59] a good part of the fault here is due to the assumption of casework occasioned by bloated delinquency definitions and dependency and neglect jurisdiction.[60] Would it not be better for the juvenile court to surrender its jurisdiction over juveniles whose conduct has not violated basic community norms? The solution would be for welfare agencies in the community, that can do casework without the disadvantages of an authoritarian setting, to assume this task;[61] these juveniles, under our hypothesis, do not require an authoritarian setting and, indeed, should not be placed under one. Their personnel would be genuinely trained for juvenile casework, as is frequently not the case with probation officers. The community would be more ready to submit cases to these agencies, because despite the fiction of *parens patriae*, it conceives of juvenile delinquents as law violaters and is often reluctant to send cases to the juvenile court.[62] The non-serious offender would not be subject to the dangers already mentioned; in addition, it may be pointed out that in this process he is exposed to the risk of contact with the seriously delinquent and to a treatment process that symbolically represents to him that his lot is cast with the "outs" in the community.[63]

Two problems must be encountered before we finally determine that the broad scope of delinquency definitions is totally without justification. The first is that in many communities a wise system of intake is employed whereby the youth who has conducted himself in a non-serious manner violative of the delinquency statute is not brought before the court but is instead referred immediately to other agencies in the community; thus, our juvenile poolplayer would never have received court treatment or probation but would have been referred initially to other agencies in the community. This intake technique has already been described in the earlier material on unofficial treatment. The dangers there described sufficiently answer the argument for self-limitation by intake; it seems unreasonable to presume that the discretion here conferred will be exercized wisely in all juvenile courts in a given state. Assuming, however, that such a measure of discretion is exercised, or that a reasonably close approximation of such discretion is exercized, has not the intake system of self-limitation the merit of being able to bring the resources of the community to a large number of persons by virtue of the broadness of the delinquency definition? The answer is that this possible gain in subjects for welfare service treatment is offset by the fact of reluctance of many members of the communty to refer juveniles to the court or to the police.

The second problem is that in many communities such non-authoritarian welfare agencies do not exist. Hence, there is no alternative here to authoritarian treatment; either the court deals with the juvenile who is guilty of a minor violation of the delinquency statute, or he will receive no treatment at all. The answer to this problem has already been suggested: in view of the dangers of court treatment and, at best, its nominal effectiveness, the preferred solution in this case is that the juvenile receive no treatment at all.

IX. A Suggested Delinquency Definition

Having decided, then, that the delinquency jurisdiction should be narrowed to exclude from

[57] S. and E. Glueck, Unraveling Juvenile Delinquency (1950).

[58] Killian, *The Juv. Ct. as an Institution, 261* Ann. Am. Acad. Polit. Soc. Sci., *89* (1949).

[59] In Cooley, Probation and Delinquency, (1927) it is reported that in New York State home visits to delinquent probationers averaged less than eight per year and lasted for from ten to fifteen minutes.

[60] Hanna, *Dependency and Neglect Cases in the Juv. Ct.*, 1941 Nt'l Prob. and Parole Ass'n YrBk., 136, 152.

[61] Nutt, *Juvenile Court Function*, 1946 Nt'l Prob. Ass'n. YrBk., *94* (1942).

[62] Nutt, *The Future of the Juv. Ct. as a Casework Agency*, 1939 Nt'l Prob. and Parole Ass'n, YrBk., 157, 161.

[63] Shaw, *op. cit. supra*, note 22, 228.

court contact the juvenile whose conduct has violated non-serious portions of present juvenile court delinquency provisions. how, specifically, should the delinquency definition be changed? The answer suggested by the analysis already presented would be that the appropriate content of the delinquency definition should be the violation of any state law, or county, town, or municipal ordinance. The violation of such laws, by definition, is conduct sufficiently inimical to the social welfare to justify the state in applying sanctions against the offender; moreover, most of these terms are sufficiently definite to avoid the defect of not providing the offender with a specific charge of a definite offense. Such provision, of course, cannot completely protect against abuse of discretion by the law enforcement system; the child who spits on the sidewalk, or, more realistically, who engages in a petty first and only theft with some companions, is still amenable to the court's process. However, some degree of discretionary application is inherent in any system of law; the gain here is that it is cut down to tolerable proportions. Moreover, since the law of the community is an authoritarian fact with which the juvenile must learn to live for his entire life, assuming that a fair amount of discretion is applied in ordering treatment, the juvenile is well reminded by authority that these are the rules within which he must live.[64]

It might be suggested that, accepting the foregoing analysis, there is some conduct which, when committed by juveniles, is peculiarly serious conduct by virtue of the age group and hence specially in need of authoritarian treatment. Examples that spring readily to mind are the juvenile drinking in a bar, or habitually truant, or visiting a prostitute. Should qualifications be made to the "violation of law" formulation by making special laws for juvenile conduct?

A virtue of a theory that juveniles may only be adjudicated delinquent for conduct which, if committed by an adult, would constitute a violation of law has been seen as an insurance that delinquent conduct will be conduct that the community views inimical *as conduct*, and not as peculiarly dangerous because of the nature of the actor apart from its manifestation in the conduct. The community may, of course, be wrong in its evaluation; the delinquency definition suggested can be no better than the laws of the community. A wholesale concession to the view that laws specially relating to juvenile conduct should be made would, of course, place us back in the same position as we are in at present; such a concession would be inartistic as well because provisions of the criminal code would stipulate "no juvenile shall" and the juvenile court statute would state that juveniles violating the criminal code shall not be held subject to the criminal court but shall be amenable only to the process of the criminal court. It would be more artistic, then, to have matters as they are than to make a wholesale concession; the end result would be the same.

Concessions are not to be made, then, to special juvenile laws of the generalized course of conduct type ("waywardness", "incorrigibility", etc.) nor to the balance of the specific terms of the Illinois statute (running away from home; wandering on the streets in the night time or about railroad yards anytime; vulgar language, etc.); the foregoing has suggested that such conduct should be treated instead by community welfare agencies. What about juvenile conduct such as drinking in a bar or visiting a prostitute that violates fundamental moral taboos of the community? I would be inclined not to let such exceptions be made to the principal of uniformity of substantive norms for adults and juveniles. The fear, of course, is that in opening the door to these moral taboos it becomes difficult to exclude others; many of the specific terms of the Illinois statute reflect but differing degrees of "corruption". There is better foundation, it may be conceded, for allowing exceptions in the cases of juvenile drinking and prostitute visitation; community interests are adversely affected by the conduct itself since a drunken citizenry is prone to reckless conduct and a prostitute visiting citizenry will spread venereal disease. The theoretical answer is that such conduct is thus inimical whether committed by juveniles or adults, and hence the community may only claim such interests consistently if it has laws applicable to juveniles and adults alike; the practical answers are that the community can prevent juveniles from these "corruptions" by special laws applicable to bartenders and prostitutes doing business with juveniles and that such juveniles can, where proper subjects, be treated by welfare agencies of the community. I would, however, allow a qualification to the principle of uniformity of norms by allowing truancy laws. The community has an interest in an educated citizenry, and compulsory

[64] TABER, THE VALUE OF CASEWORK TO THE PROBATIONER, 1940, NAT'L PROB. AND PAROLE ASS'N. YRBK., 167.

school attendance laws would seem to aid this interest by insuring at least a nominal education for many who would otherwise not receive one. Truancy laws are another area where community action, here in the form of special school programs for truants with learning difficulties, would seem in the final analysis most effective,[65] but the legal condition of compulsory school attendance would seem a necessary support to such programs.

One other qualification to these principles should here be suggested. There would seem to be no reason for juvenile court jurisdiction over traffic law violators other than those whose persistent violations reflect personality problems and disregard for authority that may more beneficially be handled by the juvenile courts than by the adult courts.[66] For such minor traffic violators, the jurisdiction of the juvenile court would not seem necessary and such problems could expeditiously be handled by regular traffic courts.[67]

X. Exceptions to Juvenile Court Jurisdiction in Cases of Serious Crimes

Although the delinquency jurisdiction of the juvenile courts is sweeping in its inclusion of much behavior that is not violative of the criminal code, offenses of the most serious nature, at least where committed by persons of the upper degrees of juvenile court age, typically are excluded from juvenile court exclusive jurisdiction. In some jurisdictions, this condition is a result of legislative enactment; in others, the courts, often by processes of statutory and constitutional construction, have carved away exclusive jurisdiction from the juvenile courts in cases where it seems to have been clearly intended by the legislature.

The present legal pattern in the United States may be sketched as follows.[68] In one jurisdiction, Texas, all juveniles of juvenile court age (ten to seventeen) are excluded from criminal court jurisdiction, regardless of their offense. In eight jurisdictions, although not all juvenile court ages are exempted from criminal court jurisdiction, criminal court jurisdiction is excluded for juveniles under varying ages between thirteen and sixteen.[69] In seven jurisdictions, the juvenile court has original and exclusive jurisdiction for all juvenile court ages, but may waive jurisdiction to the criminal court either in all cases or in special categories of cases.[70] In all other jurisdictions, regardless of the age of the offender, the criminal court has either concurrent jurisdiction (in which case it may take jurisdiction if it so chooses) over all cases or over specified categories of serious cases, and/or exclusive jurisdiction over specified categories of serious cases. The categories of specified serious crimes for which exceptions to juvenile court jurisdiction are typically made are capital crimes, crimes punishable by life imprisonment, rape or attempt to commit rape, "infamous crimes", and, sometimes, all crimes for which a penitentiary sentence may be imposed. Some jurisdictions will exclude only capital crimes; others will exempt capital crimes and those punishable by life imprisonment; others will exclude all of the specified categories.

Although legislatures have usually made exceptions to exclusive jurisdiction in the juvenile court in cases of the most serious crimes, the courts have typically shown an eagerness to carve exceptions to exclusive juvenile court jurisdiction, or to widen the scope of legislatively created exceptions beyond proportions designed by the legislature. A complete review of the cases in this field is not here attempted, but a survey of some of the leading cases should illustrate the techniques the courts have used to exclude jurisdiction over categories of serious crimes from the juvenile court.

A first category of cases shows the courts not carving out new categories of exceptions to juvenile court jurisdiction but diluting the effect of exclusive jurisdiction in areas where it has been conferred. Thus courts have narrowly construed grants of exclusive jurisdiction by decisions holding that a juvenile defendant in a criminal prosecution must himself plead the question of age, in lieu of which an objection to criminal court jurisdiction on the ground of age is deemed waived.[71] Such treatment of the question of age in criminal court

[65] Eliot, *Should Courts Do Casework?*, *60* Survey 601 (1928); See, for an account of a program of this kind, Rubin, *op. cit. supra*, note 8, 431.

[66] See U. S. Children's Bureau, *Standards for Specialized Courts*, D-2 and 3 (1953). Statutes in at least two states provide that minor traffic violations shall not be deemed delinquent conduct. N. J. Stat. Ann. 2A: 4–14 (1956 Sup.); Idaho, Laws of 1955, c. 259, Sect. 3, p. 603.

[67] *Ibid.*

[68] The data here presented is derived from Ludwig, Youth and the Law, table, 30–36, (1955).

[69] See Appendix.

[70] See Appendix.

[71] Flexner and Oppenheim, *The Legal Aspect of the Juvenile Court*, U. S. Children's Bureau publication no. 99, p. 15.

proceedings would seem to imply that the question was simply "another technicality" and would seem oblivious to the policy assertion that the state has shown an interest in not having children treated as criminals by creating exclusive juvenile court jurisdiction over certain ages.[72] A majority of courts have held, emasculating the meaning of exclusive juvenile court jurisdiction over specified ages of offenders, that even though a defendant was of juvenile court age at the time he committed the act, he may be tried in the criminal court upon passing the juvenile court age.[73] Indeed, one court has held, after invalidating a premature conviction of a person of juvenile court age at the time of his original conviction, that a re-conviction for the same act upon his reaching criminal court age was valid.[74]

The second group of cases shows the courts carving out new exceptions to exclusive juvenile court jurisdiction bestowed by the legislature. Two general techniques have been used here: first, the courts have held grants of exclusive jurisdiction to the juvenile courts unconstitutional under state constitutions; second, by a process of sometimes very tortured statutory construction, they have found that when the legislature said that juvenile courts shall have exclusive jurisdiction it did not really mean exclusive jurisdiction.

The constitutional method seems to have been used wherever possible since it is easier to say that a legislature could not mean what it said than to say that it did not mean what it said. The "whenever possible" part of this formula seems to have been supplied where criminal courts have been established by the constitution, rather than by the legislature, and juvenile courts have been established by the legislature. Three recent Georgia cases illustrate this process: in one, a sixteen year old was convicted by a criminal court for murder;[75] in another, a negro sixteen years old was sentenced to electrocution for rape of a white female;[76] in a third, a criminal court convicted a fourteen year old for manslaughter.[77] The Georgia juvenile court law explicitly conferred original exclusive jurisdiction to the juvenile court in all cases involving offenders of these ages, with the juvenile court having power to waive jurisdiction in any case in which it deemed waiver appropriate. However, using a provision in the Georgia Constitution specifying that the "superior court shall have exclusive jurisdiction...in criminal cases where the offender is subjected to loss of life or confinement in the penitentiary..."[78], the court found exclusive original jurisdiction in the juvenile court an unconstitutional usurpation of the exclusive jurisdiction of the criminal court in "criminal cases" of the above order conferred by the constitution. The obvious answer to the Georgia court would seem to be that cases tried in the juvenile court are not "criminal cases where the offender is subjected to loss of life or confinement in the penitentiary" and that exclusive original jurisdiction with power to waive was given to the juvenile court so that it could determine whether the case was to be a criminal case where the defendant was subject to such penalties. Surely, if the court had had any respect for the presumption of constitutionality or the juvenile court laws' grant of exclusive jurisdiction to the juvenile court, it would have so held. The court, however, carved a wide exception to the exclusive original jurisdiction given to the juvenile court. As a result, the juvenile court in Georgia now has discretionary power to transfer jurisdiction *to* the criminal court in all cases where a penitentiary sentence may be rendered, but no power to withhold jurisdiction *from* the criminal court.[79] The protective power of the juvenile court is thereby taken away in all such cases. Cases involving a carving of exceptions to exclusive original jurisdiction in the juvenile court by a process of statutory interpretation need not be reviewed here; in some, there was genuine ambiguity in the juvenile court statute or were other statutory provisions in conflict with the juvenile court code;[80] in others, a process of tortured construction has been used that is consistent only with an interpretation of hostility to the juvenile court laws.[81]

[72] *Ibid.*

[73] *Ibid.* See also the numerous cases cited in *123* ALR 446 (1939) and *48* ALR 2d 665 (1956).

[74] *Ibid.*

[75] *Jones v. Balkcom*, 210 Ga. 689, 82 S.E. 2d 657 (1954).

[76] *Jackson v. Balkcom*, 210 Ga. 412, 80 S.E. 2d 319 (1954).

[77] *Armstrong v. State*, 90 Ga. App. 173, 82 S.E. 2d 51 (1954).

[78] Ga. Const., art. 6, Sect. 4, Code Ann. Sect. 2-3901.

[79] In *People v. Lattimore* 362 Ill. 206, 199 N.E. 275 (1935) (murder) and *People v. Lewis* 362 Ill. 229, 199 N.E. 276 (1935) (larceny) the Illinois court reached the same result by a similar method of statutory construction. See approving commentary in 247 JOURN. CRIM. L. 448 and critical commentary in 25 *Ill. Bar J.* 77.

[80] See *St. v. McCoy*, 145 Neb. 750, 18 N.W. 2d 101 (1945); *St. v. Burnett* 179 N.C. 735, 102 S.E. 711 (1920).

[81] See *People ex rel Cruz v. Morley* 77 Cols 25, 234

It would be misleading to imply that all state appellate courts have shown hostility to legislative grants of exclusive jurisdiction to the juvenile courts. Louisiana courts have held that where the juvenile court statute gives it exclusive jurisdiction over all but capital cases, that a criminal court does not have jurisdiction on a murder indictment to convict for manslaughter.[82] New York courts have held that where the juvenile courts have exclusive jurisdiction for all but capital cases, that a felony-murder conviction cannot be obtained since the independent felony could not exist by virtue of the fact that the independent felony was not a capital crime.[83] And a recent New Jersey case, *St. v. Monahan*[84] seems to have over-ruled *In Re Mei*,[85] which had held, despite a statutory stipulation that a person under sixteen was incapable of committing a crime, that a fifteen year old could be convicted of murder.

As a matter of judicial policy the courts are obliged by first principles of separation of powers to follow the legislative design. The policy question here, then, is primarily a legislative choice. What policy should the legislature follow in determining which, if any, crimes shall be exempted from exclusive original jurisdiction? Should this exclusive original jurisdiction include a power to waive jurisdiction, and if so, when should such a power to waive be granted?

A basic premise underlying the establishment of juvenile court jurisdiction is that the juvenile courts are better equipped to deal with the juvenile law violator than are the criminal courts.[86] The juvenile courts, because of their informal proceedings, are likely to protect the young offender from the traumatic aspects of a criminal court trial; on disposition of a delinquency adjudication, where institutionalization is to be required (as it typically will be in cases of the most serious violations) the juvenile is sent to an institution for juveniles and thereby avoids the danger of exposure to adult criminals; he is afforded a somewhat less penitentiary-like environment than would be obtained in an adult prison. It has been seen that the broadness of the delinquency definition gives juvenile courts jurisdiction over youths whose acts do not contravene state or municipal laws; to this extent, juvenile court jurisdiction has, instead of serving the function of protecting juveniles from criminal court jurisdiction, exposed them to authoritarian treatment that they would not otherwise have received. Where, on the other hand, juvenile courts are denied jurisdiction over acts that constitute violations of the criminal law, they are denied their protective purpose. The only supervening interest that may be conceived of as justifying this denial of juvenile court jurisdiction must be the social interest of crime prevention; where this justification is employed to deny the juvenile court of jurisdiction the underlying assumption must be that the criminal court is better equipped to perform this role of crime prevention than is the juvenile court. The question, then, is when, if ever, a criminal court is better equipped to fulfill the purpose of crime prevention than is the juvenile court.

One fundamental limitation on the juvenile court's powers of disposition is that it can exert its power over the offender only during his minority.[87] For it to purport to direct action over the individual beyond his minority would seem to be unconstitutional, since the rationale used for its constitutional authority is that it is acting in the

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Pac. 178 (1925,. The court here read the statutory provision "juvenile courts shall have co-ordinate jurisdiction in any criminal case of the people versus or concerning any person under 21 . . . (and) . . . exclusive jurisdication . . . in all cases concerning delinquent children" (defined as children 18 and under violating the law). The court here read the first part of the provision (co-ordinate jurisdiction) but not the latter part of the provision (exclusive jurisdiction), and thus failed to harmonize the two parts to realize their obvious impact of exclusive jurisdiction for children 18 and under and co-ordinate jurisdiction for minors between 19 and 21.

[82] *St. v. Howard* 126 La. 353, 52 So. 539 (1910); *St. v. West* 173 La. 974, 139 So. 304 (1932); *St. v. Bedford* 193 La. 104, 190 So. 347 (1939). Cases contra in other jurisdictions include: *Collins v. Robbins*, 147 Me. 163, 84 A2d 536 (1951); *Howland v. State* 151 Tenn. 47, 268 S.W. 115 (1924); *Hinkle v. Skeen* 138 W. Va. 116; 75 S.E. 2d 223 (1953).

[83] *Peo. v. Roper*, 259 N. Y. 170, 181 N.E. 88 (1932); *Peo. v. Porter* 54 N. Y. S. 2d 3 (1945, Co. Ct.).

[84] 15 N. J. 34, 104 A2d 21 (1954).

[85] 122 N. J. Eq. 125, 192 A. 80 (1937). The *Monehan* case was a felony-murder case, whereas the *Mei* case was a premeditation and deliberation case. It seems possible that the *Mei* premeditation and deliberation situation may be *sui generis*, although the *Monahan* court did not explicitly qualify its rejection of *Mei*.

[86] Commenting on the establishment of the Illinois juvenile court, V. A. LEONARD says: "The great concern at the time was to get children out of jails as well as out of Criminal Courts." *40* J. CRIM. L. 618 (1950). See, to the same effect, MACK, *The Juvenile Court, 23* HARV. L. REV. 104 (1909).

[87] Juvenile court statutes so provide. BURNS IND. ANN. STATS., Sect. 9-3216 (1956); Cal. W. and I. Code Ann., Sects. 740, 750 (1952); N. Y. Soc. Wel. Law, Sect. 430 (1941).

non-punitive capacity of *parens patriae*.[88] A power to institutionalize for longer than minority would, under the judicially accepted theory of *parens patriae*, seem a criminal [illegible]nt and hence unconstitutional.

If the juvenile court is impotent to institutionalize for longer than minority, it would seem that in some cases the social interest of crime prevention would require jurisdiction in a court with power to institutionalize for longer than minority, i.e. the criminal court. The problem, then, is one of drawing a line. The line drawn by the United States Children's Bureau in its publication "Standards for Specialized Courts"[89] seems a sensible one. Under the view of the Children's Bureau, the juvenile court should have original and exclusive jurisdiction, but in cases of juveniles over sixteen charged with felonies it can waive jurisdiction where the minor "is not feeble-minded or insane and is not treatable in any institution or facility of the state designed for the care and treatment of children, or where the court finds that the safety of the community clearly requires that the child continue under restraint for a period extending beyond his minority."[90] Note, first, that contrary to the prevailing law in this country, juveniles sixteen and under, regardless of their offense, must be tried in the juvenile court. At least three considerations justify this approach. As a rule of thumb, juveniles sixteen and under would seem to have some potential for rehabilitation; this potential is best protected by preventing institutionalization in an adult penitentiary. Further, even lacking such potential, the inhumanity of sentencing children of this age group to a system where they are subject to physical and psychological abuse by older inmates requires their segregation from adult criminals. Finally, if such juveniles are incorrigible and constitute a dangerous threat to society, in many cases they will commit acts in the juvenile institution after reaching the age of seventeen that may place them within the jurisdiction of the criminal court. Second, note that in all felonies where the offender is over sixteen and of juvenile court age, the juvenile court and not the criminal court has power to determine whether he shall be tried in the criminal court; further, the conditions under which the juvenile court may waive jurisdiction are defined and presumably a waiver of jurisdiction by the juvenile court would be reviewable on an appellate challenge to criminal court jurisdiction. This system would seem to resolve the competing considerations inherent in the problem as well as may be expected.

[88] See *Petition of Morin*, 95 N. H. 518, 68 A2d 668 (1948) and cases cited therein.

[89] P. D-4.

[90] *Ibid.*

XI. Jurisdiction in Cases of Dependency and Neglect

Dependency jurisdiction and neglect jurisdiction,[91] unlike delinquency jurisdiction, have not been analyzed as being necessarily founded on the protection of the social interest of crime prevention but can be explained by the *parens patriae* theory. Does it necessarily follow, however, that the court is the agency of the state best suited to perform this parental role?

If the special qualifications of the court may be accepted as being in resolving controversies of fact and in applying provisions of law to render authoritative orders for the state or private persons,[92] the reasons for the court's assumption of jurisdiction in cases where the need is simply for aid, as is usually the case in dependency jurisdiction and frequently the case in neglect jurisdiction, may be explained only on historical grounds. Founded at the turn of the century when non-court agencies for aid to needy children were undeveloped, the court was a convenient instrument for centralizing juvenile aid.[93] But the passage of the Social Security Act in 1935 authorized the expenditure of federal funds "for public assistance to various groups of dependent persons, including children, and for assistance to state public welfare agencies 'in establishing, extending, and strengthening, especially in predominantly rural areas, public welfare services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent.' "[94] As the result of this legislation, today every state has established a state public welfare agency.[95] These state welfare agencies, as well as independent community welfare agencies, provide a ready mechanism today for the administration of the

[91] See Appendix.

[92] Eliot, *Casework Functions and Judicial Functions*, 1937 Nat'l Prob. Ass'n Yrbk., 253. Eastman and Cousins, *Juvenile Court and Welfare Agency*, 38 A.B.A.J. 575 (1952).

[93] Nutt, *The Responsibility of the Juv. Ct. and the Public Welfare Agency in the Child Welfare Program*, 1947 Nat'l. Prob. and Parole Ass'n. Yrbk., 207.

[94] *Ibid.*, at 208.

[95] *Ibid.* In 1932, three years before the passage of the Social Security Act, only twelve states had state public welfare agencies.

disposition of dependent and neglected children. Their personnel, unlike that of the court, is specially trained for welfare work and it would seem a more sensible allocation of functions to designate the placement of children to personnel trained for this work.

There are, moreover, dangers in the court's assumption of jurisdiction over dependent and neglected children. Under the terms of many juvenile court statutes, children adjudicated dependent or neglected are subject to the same dispositions as are delinquent children.[96] Too frequently, communities do not have special dwellings for dependent and neglected children, and many of them, "young in age, are indiscriminately thrown together in detention homes with older delinquents,"[97] sent to the same foster homes as delinquent children, and indeed a few are even committed to the same institutions as delinquent children.[98] Frequently, dependent and neglected children are placed under probationary supervision;[99] the motive, no doubt, is to provide them with care and guidance, but why this task should be assumed under the auspices of the court by probation officers who all too frequently lack qualification for their jobs is by no means apparent. These dangers could be appreciably ameliorated by legislation at least prohibiting the detention and placement of dependent and neglected children in homes or institutions where delinquent children are kept, and should further be ameliorated by legislative requirement that casework for dependent and neglected children be done outside the court. Even such legislation, however, might in some cases be ineffective, for just as prohibitions against the detention of delinquent children in jail are frequently ignored by the courts, so too might these provisions be ignored. Where such facilities are close at hand to the court, it might be all too disposed to use them.

The fundamental problem, of course, is the development of adequate community resources for the placement of dependent and neglected children.[100] As long as these are not available, dependent and neglected children will be detained or placed in sub-standard dwellings; where they are available, the juvenile court typically makes use of them. But at least, it seems safe to assume, the social welfare agencies would be able to find *some* facilities other than detention homes and institutions for delinquents.

In some neglect cases, authoritative action is necessary against the parents and court action is clearly justified here.[101] But the helpfulness of such authority over the parent is doubtful. It is difficult to appreciate that a culpable parent would be transformed into a good parent simply by virtue of a court order;[102] again, the fundamental problem would appear to be the development of adequate community resources for the care of the child. Court jurisdiction is certainly needed for the protection of parental rights in cases where the right to custody of the parent is involved because of dependency or neglect.[103] Jurisdiction over such matters may be specifically conferred without the unnecessary and frequently harmful consequences of blanket jurisdiction over the child in cases of dependency and neglect.

XII. Conclusion

An intelligent formulation of the purposes of juvenile court jurisdiction requires an appreciation of the court's limitations, liabilities, and special qualifications. A recognition of the fact that the court is not specially qualified to do social welfare work and of the fact that its attempt to do such work in cases of dependency and neglect creates risks for the child of detention and foster home placement with delinquent children would dictate that is be divested of jurisdiction where the child's need is simply for aid. Vesting the court with delinquency jurisdiction in cases where the juvenile's conduct has not violated the social norms defined by state, county, and municipal laws rests upon a failure to appreciate the dangers of unjustified authoritarian treatment involved, and upon the mistaken assumptions that such conduct

[96] See, not stipulating that dependent and neglected children shall not be sent to the same institution: Code of Ala., title 13, Sect. 361 (although it *is* stipulated that whites and negroes shall not be sent to the same institution); Ariz. Rev. Stat. Ann. c. 2, Sect. 8-231; Michigan Stats. Ann., Sect. 27, 3178 (598.18). But see, stipulating that dependent and neglected children shall not be sent to the same institution as delinquent children: Ark. Stats. Ann. Title 45, c. 221 (1947); Smith-Hurd Ill. Ann. Stats., c. 23, Sect. 196 (1952); Purdon's Penn. Stats., Title 11, Sect. 253 (1953).

[97] U. S. Children's Bureau, *op. cit. supra*, note 42.

[98] Rubin, *op. cit. supra*, note 8, at 427.

[99] Rubin, *op. cit. supra*, note 8, at 426.

[100] Nutt, *Juvenile and Domestic Relations Courts*, 1947 Social Work Yearbook, 271.

[101] Nutt, Juvenile Court Function, 1942 Nt'l Prob. Ass'n YrBk., 94.

[102] Rubin, *op. cit. supra*, note 8, at 429–30.

[103] Mead, *The Juvenile Court and Child Welfare Service*, 1947 Nt'l Prob. and Parole Ass'n YrBk., 224.