U. S. DEPARTMENT OF LABOR
JAMES J. DAVIS, Secretary
CHILDREN'S BUREAU
GRACE ABBOTT, Chief

# THE LEGAL ASPECT OF THE JUVENILE COURT

Monograph prepared for the Children's Bureau

By

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and
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## LETTER OF TRANSMITTAL.

U. S. Department of Labor,
Children's Bureau,
*Washington, November 22, 1921.*

Sir: Herewith I transmit a report on The Legal Aspect of the Juvenile Court, by Bernard Flexner and Reuben Oppenheimer, the third of a series of juvenile-court monographs which will supplement the bureau's studies of the courts.

Mr. Flexner is a distinguished lawyer who has brought not only legal skill but also great interest in the care of children to his years of study of the juvenile-court movement. Juvenile Courts and Probation, of which he is a joint author, is the standard reference on that subject.

In this monograph the authors have assembled and analyzed the decisions rendered on legal questions raised in connection with the courts up to August 1, 1921, in a way which it is believed will prove of real value to the interested public as well as to professional workers in this field.

It will be observed that throughout the monograph comments are made on the policy of the juvenile court. In order that the monograph might have the greatest practical value the authors found it essential, in the examination of authorities, that consideration be given to questions of policy.

Respectfully submitted.

Grace Abbott, *Chief.*

Hon. James J. Davis,
*Secretary of Labor.*

# THE LEGAL ASPECT OF THE JUVENILE COURT.

## FOREWORD.

The principles underlying juvenile-court legislation are not new. While in some instances these principles have been greatly extended, their source is the common law, the juvenile court being a growth in, rather than a departure from, legal theory.

The conception that the State owes a duty of protection to children that it does not owe to adults was established by the old courts of equity. From the earliest times children have been regarded as the wards of chancery. The crown was parens patriae and exercised its prerogative to aid unfortunate minors through the great seal.[1] Generally the chancellor acted only when a property right was involved, but this element went only to the exercise of jurisdiction, not to the jurisdiction itself, as Lord Eldon declared when he took away the children of the Duke of Wellesley because of his profligate conduct.[2] It was not unusual for the chancellor to concern himself with the religious education of a child; Shelley was deprived of the custody of his children because he declared himself to be an atheist.[3] In this country the State has taken the place of the crown, the equity power has been delegated to a specialized court, and this court has been given the means of exercising jurisdiction whenever the interest of the State demands that the court shall intervene to save the child.

Notwithstanding the early recognition by common-law courts that minors occupied a favored position in the law, the duties of parents to their children were enforced by the common law only to a limited extent. The duty of maintenance was perhaps the most generally recognized; a father who neglected to provide for his child and so brought him to the point of starvation was held liable to criminal prosecution,[4] and a wife deserted by her husband could charge him with the support of their children as well as herself.[5] The duty of protection found its chief recognition in the rule that there was no legal liability when an assault was committed by a parent to safeguard his child's person. Education, despite the occasional inter-

[1] In re Spence (2 Phillips' Ch. Rep., 247).
[2] Wellesley *v.* Wellesley (2 Russ., 1; 2 Bligh N. S., 124).
[3] Shelley *v.* Westbrooke (Jac. 266).
[4] Friend's case (Russell and Ryan, 20).
[5] Bazeley *v.* Forder (L. R. 3 Q. B., 559).

ference of the chancellor in cases where the religious upbringing of children was involved, was a moral rather than a legal duty. A father was entitled to the earnings of his children, and this right, with the right to his children's custody, was enforced far more frequently than the corresponding obligations.

The distinction between children and adults was sharply drawn in criminal cases. Children under 7, at common law, were held incapable of committing a crime. By extending the age limit to 16 or 18 years, juvenile-court legislation, as in the enforcement of the duties of parents and of the State, has merely widened the application of the common-law rule. But in doing so it has, in effect, built a new structure upon the old foundations.

Probation—one of the most important procedural features of the juvenile court, under which a child, instead of being committed to an institution, is kept under the surveillance of the court until it is safe to release him—is an evolution of the common-law method of conditionally suspending a sentence. Sir Walter Raleigh was executed under a sentence pronounced against him 15 years before, after having been put at the head of a fleet and an army in the interim. Early American courts knew the device as "binding to good behavior."[6] In juvenile-court procedure the harsh connotation has been removed, but the root idea is the same.

While many of the methods used by juvenile courts, and the conception of having a distinct court devoted to the interests of one class, were unknown in the common law, nothing was more familiar to those who practiced before common-law judges than the idea that a certain class of offenders were to be tried by different standards and before different tribunals. "Benefit of clergy" was the refuge of the most powerful class in the community; the juvenile court is the refuge of the most helpless.

## FUNDAMENTAL PRINCIPLES.

The basic conceptions which distinguish juvenile courts from other courts can be briefly summarized. Children are to be dealt with separately from adults. Their cases are to be heard at a different time and, preferably, in a different place; they are to be detained in separate buildings, and, if institutional guidance is necessary, they are to be committed to institutions for children. Through its probation officers the court can keep in constant touch with the children who have appeared before it. Taking children from their parents is, when possible, to be avoided; on the other hand, parental obligations are to be enforced. The procedure of the court must be as informal as pos-

[6] Estes *v.* State (2 Humphreys (Tenn.), 496; Commonwealth *v.* Duane, 1 Binney (Pa.) 98, note).

sible. Its purpose is not to punish but to save. It is to deal with children not as criminals but as persons in whose guidance and welfare the State is peculiarly interested. Save in the cases of adults, its jurisdiction is equitable, not criminal, in nature.

## CONSTITUTIONALITY OF STATUTES.

The first point of attack upon juvenile-court statutes was that children were being deprived of due process of law. The constitutionality of a carefully drawn statute is probably no longer open to serious question in any jurisdiction, even though the act provides none of the safeguards designed to protect the accused in a criminal prosecution. That proceedings in the juvenile courts are not criminal in nature is held by the overwhelming weight of authority.[7]

In one or two States this principle is still not recognized,[8] but the rarity of such decisions shows how generally the purpose of the juvenile court has been established. If juvenile-court laws are not of a criminal nature it follows that they are not unconstitutional because of the informality of the procedure followed under them[9] or because they deprive children of the right to trial by jury[10] or the

[7] Mill *v.* Brown (31 Utah, 473; 88 Pac., 609); In re Sharp (15 Idaho, 120; 96 Pac., 563); Lindsay *v.* Lindsay (257 Ill., 328; 100 N. E., 892); Ex parte Ah Peen (51 Cal., 280); Reynolds *v.* Howe (51 Conn., 472); Pugh *v.* Bowden (54 Fla., 302; 45 So., 499); Jarrard v. State (116 Ind., 98; 17 N. E., 912); Marlowe *v.* Commonwealth (142 Ky., 106; 133 S. W., 1137); State *v.* Ragan (125 La., 121; 51 So., 89); Farnham *v.* Pierce (141 Mass., 203; 6 N. E., 830); Roth *v.* House of Refuge (31 Md., 329); House of Refuge *v.* Ryan (37 Ohio St., 197); State *v.* Dunn (53 Ore., 304; 99 Pac., 278; 100 Pac., 258); Commonwealth *v.* Fisher (213 Pa. St., 48; 62 Atl., 198); Milwaukee Industrial School *v.* Milwaukee County (40 Wis., 328); Ex parte King (141 Ark., 213; 217 S. W., 465); Childress *v.* State (133 Tenn., 121; 179 S. W., 643); State *v.* Burnett (179 N. C., 735; 102 S. E., 711); State *v.* Bryant (94 Nebr., 754; 144 N. W., 804); In re Hosford (107 Kan., 115; 190 Pac., 765); Ex parte Januszewski (196 Fed., 123); U. S. *v.* Briggs (266 Fed., 434); Ex parte Chartrand (107 Wash., 560; 182 Pac., 610. See 3 L. R. A. (N. S.) 564, note; 18 L. R. A. (N. S.) 886, note; and 45 L. R. A. (N. S.) 908, note. In some of these cases, the act declared that the proceedings were not to be deemed criminal, but, as the court said in Marlowe *v.* Commonwealth, supra, "if they were in fact such, the declaration to the contrary could not have the effect of changing their nature." Some of the early statutes contained provisions inconsistent with the real aim of juvenile-court legislation. In Robison *v.* Wayne Circuit Judges (151 Mich., 315; 115 N. W., 682), for example, the act authorized the court to impose a fine upon delinquent children, and the act was properly held unconstitutional because it provided for a jury of 6 instead of 12. There have been some instances when a court, in its eagerness to uphold juvenile-court legislation, has gone too far. In the case of Leonard *v.* Licker (23 Ohio Cir. Ct., 442), a boy had been committed by the juvenile court to the State reformatory, in which adult criminals were also confined, without a trial by jury. He petitioned for a writ of habeas corpus, but his application was denied on the ground that, although the reformatory was a prison for adults, it was only a place of reformation for children.

[8] Ex parte Pruitt (82 Tex. Cr. Rep., 394; 200 S. W., 392); State v. Tincher (258 Mo., 1; 166 S. W., 1028). In the latter case the act included in its scope cases which the State constitution expressly stated were felonies or misdemeanors.

[9] In re Ferrier (103 Ill., 367); Wilkinson *v.* Children's Guardians (158 Ind., 1; 62 N. E., 481); Ex parte Ah Peen, supra; In re Sharp, supra; Ex parte Januszewski, supra; U. S. *v.* Briggs, supra.

[10] Commonwealth *v.* Fisher, supra; Lindsay *v.* Lindsay, supra; Pugh *v.* Bowden, supra; Marlowe *v.* Commonwealth, supra; Ex parte King, supra; Childress *v.* State, supra; In re Sharp, supra; In re Brodie (33 Cal. App., 751; 166 Pac., 605).

right of appeal;[11] nor are the laws unconstitutional as imposing unequal penalties[12] or as depriving children of the equal protection of the laws,[13] or as infringing their right not to be tried except upon presentment or indictment.[14]

It is clear that to bind parents, or those persons having legal custody of children, the statutes must give them notice of the proceedings and the right to be heard.[15] But, as Chief Justice Gibson pointed out, the right of parental control is not inalienable.[16] Subject to the above restrictions, it is well settled that it is not a denial of due process to deprive parents of the custody of their children when the welfare of their children is at stake.[17]

Closely associated with juvenile-court laws, although jurisdiction is not always given to the juvenile court, are statutes making it a misdemeanor to cause or to contribute to the delinquency or dependency of a child. Carefully drawn laws of this kind have been uniformly upheld.[18]

Juvenile-court acts have often been attacked on grounds related to their draftsmanship rather than to their subject matter. Whether or not an act embraces more than one subject[19] is a matter of interpreting provisions of the State constitution which, however narrowly they may be construed, can not defeat skillfully framed juvenile-court legislation. But when a State constitution prohibits the formation of a new court without a constitutional amendment, the effectiveness of juvenile-court proceedings in the State may largely depend upon whether the provision is construed strictly[20] or liber-

[11] Marlowe *v.* Commonwealth, supra; Commonwealth *v.* Yungblut (159 Ky., 87; 166 S. W., 808); People *v.* Piccolo (275 Ill., 453; 114 N. E., 145); In re Sharp, supra.

[12] People *v.* Ill. State Reformatory (148 Ill., 413; 36 N. E., 76); State *v.* Phillips (73 Minn., 77; 75 N. W., 1029); Ex parte Liddell (93 Cal., 633; 29 Pac., 251); In re Sharp, supra.

[13] Commonwealth *v.* Fisher, supra; Robison *v.* Wayne Circuit Judges, supra; Moore *v.* Williams (19 Cal. App., 600; 127 Pac., 509); State *v.* Cagle (111 S. C., 548; 96 S. E., 291).

[14] Childress *v.* State, supra.

[15] Ex parte Becknell (119 Cal., 496; 51 Pac., 692); In re Sharp, supra.

[16] Ex parte Crouse (4 Wharton (Pa.), 9).

[17] Egoff *v.* Board of Children's Guardians (170 Ind., 238; 84 N. E., 151); In re Sharp, supra; State *v.* Burnett, supra; Mill *v.* Brown, supra; Ex parte Gutierrez (Cal. App.) (188 Pac., 1004).

[18] Commonwealth *v.* Yungblut, supra; People *v.* de Leon (35 Cal. App., 467; 170 Pac., 173); People *v.* Calkins (291 Ill., 317; 126 N. E., 200); State *v.* Clark (146 La., 421; 83 So., 696). But see People *v.* Budd (24 Cal. App., 176; 140 Pac., 714), where it was held that the act was unconstitutional because it provided these cases were to be tried in the court which tried other misdemeanors under a different procedure.

[19] In the following cases it was held that the act was not defective in this particular: Commonwealth *v.* Fisher, supra; In re Maginnis (162 Cal., 200; 121 Pac., 723); Robison *v.* Wayne Circuit Judges, supra; In re Powell (6 Okl. Cr. Rep., 495; 120 Pac., 1022); State *v.* Clark, supra. In the following cases the act was held unconstitutional: People *v.* Friederich (Colo.) (185 Pac., 657); Lynn *v.* Bullock (189 Ky., 604; 225 S. W., 733).

[20] Hunt *v.* Wayne Circuit Judges (142 Mich., 93; 105 N. W., 531).

ally.[21] When the question is whether a juvenile-court act is unconstitutional as local or special, courts are disposed to recognize the fact that different conditions in cities and rural communities call for different treatment and tend to rely upon the general presumption that the legislature has made a reasonable classification.[22] But when the provision of a State constitution that taxes are to be uniform is involved it has been held that a disproportionate share of the burden can not be placed upon the cities, on the ground that the care of delinquent and neglected children is the concern of the State and not of the municipality.[23]

Decisions are comparatively few regarding the constitutionality of those provisions of the acts which deal with the relation between the juvenile court and the probation officers. Not only have provisions giving juvenile courts power to appoint probation officers been held constitutional,[24] but it has been held that an act giving a board of county commissioners the power of appointment is unconstitutional, because it interferes with judicial functions.[25]

A most important recent decision in which the constitutionality of a juvenile-court law is considered is the New Jersey case of Kozler *v.* N. Y. Telephone Co.,[26] in which was upheld the constitutionality of an act providing that the conviction of juvenile delinquents should not be admissible in other proceedings, except during probation or during two years after discharge. Justice Swayze, who delivered the opinion of the court, said:

> Clearly the legislature, in creating a new tribunal like the court for the trial of juvenile offenders, may prescribe what record it shall keep, or whether it shall keep any record at all. * * * We see no reason why the legislature may not enact that it is against public policy to hold over a young person in terrorem, perhaps for life, a conviction for some youthful transgression.

No doubt exists as to the constitutional power of a legislature to exclude certain kinds of proof in the determination of an issue of fact, when there is a reasonable justification for the exclusion—as when it makes communications between doctors and patients privi-

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[21] State *v.* Bryant, supra; Marlowe *v.* Commonwealth, supra; Lindsay *v.* Lindsay, supra; Board of County Commissioners *v.* Savage (63 Fla., 337; 58 So., 835). See Mill *v.* Brown, supra (power to create a new court). In the following cases it was held that the proper court was given jurisdiction over children's cases: State *v.* Isenhuth (34 S. D., 218; 148 N. W., 9); Ex parte Grimes (Tex. Civ. App.) (216 S. W., 251); In re Gassaway (70 Kan., 695; 79 Pac., 113).

[22] In re Sing (13 Cal. App., 736; 110 Pac., 693); Ex parte Loving (178 Mo., 194; 77 S. W., 508); Mill *v.* Brown, supra. But see Lynn *v.* Bullock, supra.

[23] Campbell County *v.* City of Newport (174 Ky., 712; 193 S. W., 1).

[24] Nicholl *v.* Koster (157 Cal., 416; 108 Pac., 302); State *v.* Monongalia County Ct. (82 W. Va., 564; 96 S. E., 966). See People *v.* C. B. & Q. R. R. Co. (273 Ill., 110, 112; N. E., 278), where it was held that the salaries of juvenile probation officers could not be provided for by a tax levied to pay the salaries of county officers.

[25] Witter *v.* Cook County Commissioners (256 Ill., 616; 100 N. E., 148).

[26] (N. J. L.), 108 Atl., 375.

leged. Moreover, a statute such as the New Jersey one is in the nature of a statute of limitations, prohibiting, after a certain period, proof of a judgment instead of proof of a debt. But even apart from this feature, a State has the right to grant amnesty to those who offend against its laws, and to determine what the conditions and privileges of such an amnesty are to be.

## ORGANIZATION OF THE COURT.

### THE COURT GIVEN JURISDICTION.

In about a dozen States special juvenile courts are created for the larger cities or counties.[27] There are also, in response to a movement which is slowly but steadily gaining, a few courts of domestic relations in which the problems of children are considered in conjunction with the problems of the family. Often, where there is not enough work to justify the formation of a separate court, the juvenile judge can satisfactorily hear children's cases as part of another court.

In most of the States jurisdiction over children's cases has been vested in courts already existing. Such courts, when hearing children's cases, are generally called juvenile courts or children's courts.[28] In territories not thickly populated the county or district courts are given jurisdiction. In more crowded areas jurisdiction is generally given to courts which carry on certain branches of the general judicial work only, and so, to some extent, are already specialized.

In 10 or 12 States juvenile-court cases are heard by police judges or justices of the peace. Effective work can rarely be done under such circumstances. The training of police judges and magistrates does not, as a rule, equip them to deal with children's cases, and, in any event, juvenile-court work should be carried on by a court of record. Provisions such as these are a survival of the idea that children's cases can be treated merely as breaches of peace.

A few States disregard the purpose of the juvenile-court movement so far as to give jurisdiction over children's cases to criminal courts.

Under many laws a single judge is designated to hear children's cases. Other statutes provide for the selection, by the judges to whom jurisdiction is given, of one of their number to hear all juvenile cases. Under these laws there is, in effect, a separate court.

Wherever several judges are directed or permitted to choose one of their number to hear children's cases it is highly important that

[27] For a summary of the recent statutes dealing with juvenile courts see "A Summary of Juvenile-Court Legislation in the United States," Children's Bureau, Publication No. 70, Washington, 1920.

[28] But it has been held that, if jurisdiction over juvenile cases is given by statute to county courts, it is error in an appeal to say the appeal is from a juvenile court. In re Johnson (Wis.) (181 N. W., 741).

he be allowed to sit for a long period of time. In some States a rotating system, whereby one judge after another hears juvenile cases, is still in effect. Such a system does not permit the specialization which is necessary to the best juvenile work. The objection to this method of assignment is met in certain States by making the period of service of each judge one or two years.

## THE JUDGE.

The qualifications of the judge who hears juvenile cases have more to do with the success or failure of the work than any other single element. It is desirable that he be a lawyer, with a lawyer's realization of the rights of the individual; he should be in deep sympathy with the principles underlying juvenile-court laws, should have the ability to put himself in the child's place, and, most important of all, his personality should be such as to win the confidence of the child.

Where the judge hearing juvenile cases has other duties it is important that he be allowed sufficient time from his other work to keep in touch with the administrative side of the juvenile work and with the work of the probation officers. Unless the statute provides that the judge is to hear juvenile cases only, how much time the designated judge is to give to such cases is a matter for the court's own decision.

The methods of selection and the prescribed qualifications of those judges who are to sit in the juvenile court vary greatly. In some States the juvenile-court judges are appointed by the governor; in others by the mayor or city council; in some States they are elected by popular vote. In certain States any resident is eligible; in others the candidate must be a lawyer, and certain statutes prescribe qualifications which look to the fitness of the judge for the delicate work he will have to perform.

A few States make provision for the appointment by the judge of referees. These referees hear cases sent to them by the judge and make disposition of them subject to the court's approval. Referees are particularly useful in the court's work with girls, and a few statutes specifically provide for the appointment of a woman to hear girls' cases.

## THE PROBATION OFFICERS.

Probation is a judicial guardianship, an intimate, personal relation which deals with all the factors of a child's life. This work is so important that it has been found necessary to have special officers giving their whole time to it.

In the great majority of jurisdictions probation officers are appointed by the court. Even though the statute makes no provision for a merit system the appointing agency can, and often does, formu-

late rules as to eligibility. In several States the appointment must be approved by some State board or committee.[29]

The advisability of having women probation officers to handle girls' cases particularly is clearly recognized, and in most courts women have been appointed. Were it not for a decision that, under a State constitution which provided that only electors were eligible for office, a woman was ineligible to serve as probation officer,[30] the right of the court in any State to have women assistants would seem to be beyond question. At common law a woman could be appointed keeper of a prison,[31] or governess of a workhouse.[32] Under modern constitutions the right of women to be clerks of court has been sustained,[33] and it has been expressly held by West Virginia that women can be probation officers.[34] In States where the right to hold office is given to all electors the nineteenth amendment has made the question an academic one. In States which do not have such a provision it is to be hoped that, if the question arises, the West Virginia decision will be followed.

## JURISDICTION OVER MINORS.

### EXCLUSIVE AND CONCURRENT JURISDICTION.

In almost every State the juvenile court is faced with problems concerning its relation with other courts in the judicial system, both criminal and civil. A carefully drawn statute can do much to obviate these difficulties, but a great deal depends upon whether the courts of last resort really understand the purpose of the juvenile laws.

Some statutes provide in unmistakably clear language that the juvenile court shall have exclusive jurisdiction over all offenses committed by children under a certain age. Under such a statute even failure of the child to raise the question of age during his trial in the criminal court is not enough to sustain a conviction.[35] But one court refused to grant a writ of habeas corpus where the statute provided a case should be certified to the juvenile court upon proof that the accused was under 18, and a justice of the peace refused to hear testimony upon the question of age.[36]

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[29] In the case of Buffington *v.* State (52 Okl., 105; 152 Pac., 853), it was held that mandamus lay to compel a board of county commissioners to pass upon the eligibility of a probation officer appointed by the court, and that the only question the board could decide was whether the appointee was a discreet person and of good character.

[30] Reed *v.* Hammond (18 Cal. App., 442; 123 Pac., 346).

[31] Rex *v.* Lady Braughton (3 Keb., 32).

[32] Anon. (3 Salk., 2).

[33] Warwick *v.* State 25 Ohio St., 21); Gilliland *v.* Whittle (33 Okl., 708; 127 Pac., 698). See notes on the eligibility of women for public office in 24 Harv. L. Rev. 139, and 33 Harv. L. Rev. 295.

[34] State *v.* Monongalia County Court, supra.

[35] Mattingly *v.* Commonwealth (171 Ky., 222; 188 S. W., 370); State *v.* Griffin (7 Tenn. Civ. App., 230).

[36] In re Northon (35 Cal. App., 369; 169 Pac., 1051).

Sometimes the statute provides that when children under a certain age come before a criminal court the proceedings are to be suspended until the juvenile court decides whether or not the case is one in which it should take jurisdiction. Under such statutes it follows that children can be tried in the criminal court when the juvenile judge declines to hear the case.[37]

In some States the statute provides that in a criminal prosecution the accused may file an affidavit that he is under a certain age, and the proceedings must then be suspended until the question of age has been determined. Under such acts decisions have been rendered that a failure to bring up the question of age in the criminal proceedings validates a conviction.[38] This has been held even where the statute expressly provided that no children under the age limit could be prosecuted for crime until the matter had been submitted to the juvenile court.[39] These cases consider the juvenile-court laws as though they were designed only to give the accused the advantage of another technicality; the interest of the State, in not having children tried as criminals, is entirely disregarded.

A Texas court has held that a conviction by a criminal court is to be sustained if the boy was over the age limit at the time he was tried, even though he was under it when he committed the offense.[40] And the same court has gone a step further. A boy was indicted and convicted before he was 17; this conviction was reversed because the juvenile court was held to have had jurisdiction. The criminal court waited until the boy passed the age limit and then tried him again—and this time the conviction was sustained.[41]

In refreshing contrast to such decisions is a Tennessee case in which a boy, when convicted in criminal proceedings, was under the age limit but had passed it by the time the conviction came up for review. The court held that the juvenile court, in the eyes of the law, had vicarious jurisdiction over the boy while he was being erroneously tried as a criminal, and in the same judgment in which the conviction was reversed the boy was given to the custody of the juvenile court.[42]

The criminal court is not the only court with whose jurisdiction that of the juvenile court conflicts. It has been held that the institution of divorce proceedings does not oust the juvenile court of jurisdiction over a child whose custody the litigants in the divorce suit

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[37] People *v.* Wolff (Cal.) (190 Pac., 22; 192 Pac., 33).

[38] Slade *v.* State (85 Tex. Cr. Rep., 358; 212 S. W., 661); People *v.* Oxnam, (170 Cal., 211; 149 Pac., 165).

[39] People *v.* Oxnam, supra.

[40] Stracner *v.* State (86 Tex. Cr. Rep., 89; 215 S. W., 305).

[41] McLaren *v.* State (85 Tex. Cr. Rep., 31; 209 S. W., 669).

[42] Sams *v.* State (133 Tenn., 188; 180 S. W., 173).

are disputing,[43] and that the juvenile court can take jurisdiction over a child even though divorce proceedings have already been instituted.[44] As the California court said, "The mere fact that a litigation is pending between the parents, and that an order regarding the custody of the children has been made therein, does not take away the power of the State, nor prevent the exercise of that power under the juvenile-court law." Cases such as these, however, point to the desirability of having all matters affecting the family heard in a single court.

A juvenile court which has taken jurisdiction over a child can not be deprived of jurisdiction by another juvenile court, even though the latter has all the parties concerned before it.[45] It has been held that when a juvenile court has committed a child to an institution, a writ of prohibition lies to prevent another court of no greater powers from considering a petition of the parent to have the child restored.[46] But a juvenile-court law does not of itself deprive courts of equity of jurisdiction over a case in which rival claimants are contesting the custody of a child, when the juvenile court has taken no action in the matter.[47]

## JURISDICTION AS TO AGE.

In approximately one-third of the States the jurisdiction of the juvenile court extends to children under 16 years of age; in one-third, to children under 17; and in the remaining third, to children under 18 and above. The tendency of the more recent statutes is to make the age limit higher. In California the court has exclusive jurisdiction to 18 and concurrent jurisdiction to 21. In most States the age limit is the same for boys and girls, but in a few a distinction is made.

Decisions that the juvenile court has not jurisdiction over children brought into the criminal court after they have reached the age limit, although the offense was committed before,[48] point to the need of expressly providing in the statutes that the juvenile court is to have exclusive jurisdiction over all cases involving offenses committed by children when under a certain age, as well as exclusive jurisdiction over the persons of all children under that age.

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[43] Brana *v.* Brana (139 La., 306; 71 So., 519); Children's Home *v.* Fetter (90 Ohio St., 110; 106 N. E., 761).

[44] Dupes *v.* Superior Court (176 Cal., 440; 168 Pac., 888); Spade *v.* State (44 Ind. App., 529; 89 N. E., 604); In re Hosford, supra; State *v.* McCloskey (136 La., 739; 67 So., 813). Contra, Cleveland Orphan Protestant Asylum *v.* Soule (5 Ohio App., 67). See note appended to In re Hosford, supra (11 A. L. R., 147), on the conflict of jurisdiction under juvenile-court legislation.

[45] Ex parte Bowers (78 Ore., 390; 153 Pac., 412).

[46] Children's Home *v.* Kelley (32 S. D., 526; 143 N. W., 953).

[47] McDaniel *v.* Youngblood (Ala.) (77 So., 674).

[48] See notes 40 and 41, supra.

An interesting question arises when a girl under the age limit is married. The statutes generally apply in terms to minor children, and there are often other statutes in the jurisdiction providing that females married to persons of full age shall be taken to be of full age. Despite such a provision it has been held that a juvenile court has jurisdiction over a girl who was married when under age, when her marriage was afterwards annulled,[49] and the commitment of a married woman who was under the age limit has been upheld.[50] On the other hand, it has been held that a female minor, if married, can not be a delinquent child.[51] In many cases a married girl who is under the age limit is as much in need of the care of the juvenile court as an unmarried one, and, as a matter of practice, is dealt with as a juvenile in many jurisdictions.

Juvenile-court laws in a number of States provide that once jurisdiction is obtained it may continue after the age limit has been reached. Under such statutes no extension of the original order of commitment, when the child reaches the age limit, is necessary.[52]

These statutes generally provide that jurisdiction, once obtained, may continue until 21, and it has been held that such a provision is to be taken literally and does not necessitate the release of a girl delinquent when she reaches the age of majority.[53] Iowa has gone further, holding that jurisdiction does not terminate even though the girl has reached the age of majority and has married.[54]

## JURISDICTION AS TO CLASSES OF CASES.

Before the enactment of juvenile-court legislation, the courts dealt only with dependent children, with children who were charged with specific offenses, and with children whose custody rival claimants sought. The cases over which juvenile courts have custody are far more inclusive.

Children's cases coming before the juvenile courts are, broadly speaking, of two kinds—those in which children are charged with being delinquent and those in which they are charged with being neglected or dependent. Children charged with being delinquent are supposed to come before the court because they have, in some way, actively offended; children charged with being neglected or dependent come before the court because their welfare is jeopardized by improper surroundings.

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[49] In re Lundy (82 Wash., 148; 143 Pac., 885).
[50] Stoker *v.* Gowans (45 Utah, 556; 147 Pac., 911).
[51] State *v.* Gates (Oreg.) (193 Pac., 197); State *v.* Eisen (53 Oreg., 297; 99 Pac., 282).
[52] Commonwealth *v.* Murray (26 Pa. Dist., 489).
[53] In re Gilder (98 Wash., 514; 167 Pac., 1093).
[54] McPherson *v.* Day (162 Iowa, 251; 144 N. W., 4).

Under some statutes a juvenile court must relinquish jurisdiction in cases of serious offenses committed by children, and have the children tried in the criminal court. In other States relinquishment of jurisdiction in such cases is left to the judge's discretion. In a few States the juvenile-court judge can relinquish jurisdiction to the criminal court, even in other cases, if reformation seems impossible.

Cases of delinquency include those cases in which the child breaks some law. When the case is to be heard by the juvenile court it is provided usually that, whatever the offense, the finding of the court can only be that the offender is a delinquent child. Within this term the statute generally includes certain acts which are not punishable in adults, and which may not have been misdemeanors if committed by minors before the juvenile-court law was passed. Some statutes include within the term of juvenile delinquency any act or deportment which may endanger the child's health or welfare.

Confusion often arises in the application of the terms "juvenile delinquency" and "juvenile dependency," and some States classify a condition as delinquency which other States consider dependency.

Juvenile-court statutes generally define dependency and neglect in the broadest of terms, so as to include all children who are destitute or homeless or abandoned, or in surroundings dangerous to morals, health, or general welfare.

Jurisdiction over neglected children, as has been seen, was exercised by courts of chancery; jurisdiction over dependent children can be traced to the common-law rule which made it an offense to be a vagrant[55] and to the old English statutes which gave to magistrates and justices of the peace the power to commit to institutions persons who were a charge upon or a danger to the community. But in indictments for vagrancy and in commitments of paupers the law operated only to protect the public, whereas jurisdiction over dependent children is given primarily on behalf of the children affected.

Statutes such as these intrust to the juvenile courts large powers, powers compared to which, as Dean Pound has said, "the powers of the court of Star Chamber were a bagatelle." But juvenile-court judges in general have recognized that there must be definite limitations to their interference with family life; it is necessary that the jurisdiction given the courts be broad, but it is equally clear that there be recognized certain rules as to the way in which this jurisdiction should be exercised. In the words of the Illinois court, a juvenile-court law "should not be held to extend to cases where there is merely a difference of opinion as to the best course to pursue in rearing a child."[56] Nor, as was said by a California court of ap-

[55] Regina *v.* Branworth (6 Mod., 240).
[56] Lindsay *v.* Lindsay, supra.

peals, does the juvenile-court law contemplate the taking of children from their parents "merely because, in the estimation of probation officers and courts, the children can be better provided for and more wisely trained as wards of the State." [57]

Broadly considered, jurisdiction taken by juvenile courts over neglected and dependent children in practice is being confined to three types of cases—those which call for the assistance of courts in enforcing parental responsibility, those in which the children are public burdens, and those in which the unfitness of the children's surroundings makes it reasonably certain that if they are not removed they will become delinquent. It is only the third type of case which represents a departure from common-law doctrines. The first two types are merely extensions of old rules; but the common law did not concern itself with tendencies. This new power which modern legislation has given to juvenile courts must be exercised with the utmost caution. No parent should ever be deprived by the courts of the custody of his children merely because of his poverty. There is a social interest in the preservation of family ties as well as in the physical welfare of children.

Some States give jurisdiction to the juvenile court in cases under an aid-to-mothers' law. The wisdom of such a provision depends upon local conditions. As a general principle those in closest touch with juvenile-court work agree that the court should not be burdened with purely administrative functions.

A few States give the court jurisdiction over feeble-minded children and over cases of adoption. Such statutes evidence a growing tendency to broaden the court's jurisdiction so as to include all children in need of protection.

## JURISDICTION OVER ADULTS.

Acts or omissions of adults in regard to children come under legal cognizance in three classes of cases—first, those in which an adult is accused of a crime against a minor; second, those in which the adult has failed to fulfill a duty toward a minor; and third, those in which the adult is accused of causing, or tending to cause, juvenile delinquency or dependency.

A few statutes give juvenile courts jurisdiction over such offenses of adults as rape, statutory rape, and unnatural crimes committed

[57] People *v.* Gutierrez (Cal. App.) (190 Pac., 200). See also Mill *v.* Brown, supra; In re Mead (Wash.) (194 Pac., 807); In re Skowron (S. D.) (172 N. W., 806); Orr *v.* State (Ind. App.) (123 N. E., 470). It has been held that the mere fact a child is illegitimate is not sufficient to sustain a commitment to an institution. State *v.* Juvenile Court (Minnesota, Ramsey County Court) (179 N. W., 1006). Contra, In re S. (15 Ont. Weekly Notes, 346). A statute should not be so framed as to deprive a juvenile court of the opportunity to exercise its discretion as to finding a child guilty of delinquency. In the case of State *v.* Freudenberg (166 Wis., 35; 163 N. W., 184) it was held that, under the Wisconsin statute, the juvenile court had no discretion as to finding guilty a girl who had not attended continuation school, however strong might be the palliating circumstances.

upon minors. Where the statute is ambiguous courts take that construction which gives exclusive jurisdiction to the criminal court.[58] Where the offense is of a more minor nature, however, the juvenile court often has jurisdiction under the provision of the statute relating to adults who contribute to juvenile delinquency or dependency.

In about 10 States the juvenile court is given jurisdiction over cases of desertion and nonsupport. As neglect of parental duties and juvenile delinquency are often but two aspects of the same problem, the juvenile court would seem better adapted to handle these cases than courts of equity or law. In exercising this jurisdiction, however, care must be taken not to impose undue hardships upon parents; a father owes the duty of support only where the family is domiciled.[59] But the duty exists, and a breach of it is punishable, whether or not its fulfillment is formally demanded.[60] In a number of States the obligation of support is extended to the father of illegitimate children.[61]

Over 40 States have enacted legislation making adults criminally liable for causing or tending to cause juvenile delinquency or dependency. Jurisdiction over these cases usually is given to the juvenile court. Such jurisdiction should be exclusive. The objection to bringing children before courts other than the juvenile court includes these cases as well as cases in which only children are involved; moreover, cases of contributing to delinquency usually involve problems which will sooner or later come before the juvenile court in any event.

Often the statute groups former sporadic efforts of the legislature to prevent juvenile waywardness by punishing certain specific acts on the part of adults, such as enticing minors into saloons or houses of prostitution and violating child-labor laws; but in general the enumeration of specific acts in the statute is illustrative rather than definitive.[62] Clearly this jurisdiction, whether given to criminal or to juvenile courts, is criminal in nature.[63]

The offense of causing juvenile delinquency is not grounded upon the breach of an obligation arising out of status, but can arise whenever an adult knowingly acts in a manner contrary to a child's welfare. Nevertheless the Illinois court has held that under a statute

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[58] Colias *v.* People (60 Colo., 230; 153 Pac., 224); In re Songer (65 Colo., 460; 177 Pac., 141); People *v.* Camp (Cal.) (183 Pac., 845).

[59] State *v.* Smith (145 La., 913; 83 So., 189).

[60] State *v.* Clark, supra.

[61] But in the case of Moss *v.* U. S. (29 App. D. C., 188), the court held that the father of an illegitimate child could not be prosecuted for failure to support the child, although the statute, in terms, apparently covered the case. See "Illegitimacy as a Child-Welfare Problem, Part I," Children's Bureau, Publication No. 66, Washington, 1920.

[62] But see Longsine *v.* State (Nebr.) (181 N. W., 175).

[63] Mayhew *v.* State (Ind.) (128 N. E., 599); Pease *v.* State (Ind. App.) (129 N. E., 337); People *v.* Budd, supra; Longsine *v.* State, supra.

which expressly includes any person who contributes to juvenile delinquency, only those who stand in loco parentis to the child can be prosecuted.[64] Fortunately these decisions do not seem to have influenced the construction of statutes of other jurisdictions.

One of the most important questions in this class of cases is whether or not it is essential to the jurisdiction of the court to allege and prove that the offense with which the adult is charged actually resulted in delinquency. As the purpose of these statutes is to prevent delinquency as much as to punish those who cause it the answer to the question should be clear. But the authorities are divided.[65] The more recent statutes endeavor to obviate the difficulty by providing that tending to cause delinquency is an offense in itself. Of course, the acts complained of must have had some effect upon the child if the conviction is to be sustained.[66] But it is enough if the acts caused the continuation of delinquency.[67]

A recent decision is to the effect that in order that the defendant may "knowingly" encourage a girl to delinquency he must have been aware of her age.[68] It would seem, however, on principle, and on analogy to cases of statutory rape and abduction, that to come within the statute it is only necessary that the defendant intended to do the acts of which he is accused. That punishment is withheld in cases over the age limit is due to the discretion of the legislature, not to the absence of the elements of the offense.

## PROCEDURE.

The jurisdiction exercised by juvenile courts is in general an application of common-law principles, but the way in which the jurisdiction is exercised is new. The methods of the court in dealing with children who come before it are for the most part unknown to common-law or to chancery procedure.[69]

In most States jurisdiction in juvenile court proceedings is obtained by means of a petition filed by any reputable person upon information and belief, and a summons or warrant served upon the child and his parent or guardian.

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[64] People *v.* Melville (265 Ill., 176; 106 N. E., 622); People *v.* Lee (266 Ill., 148; 107 N. E., 112).

[65] That actual delinquency of child need not be charged: State *v.* Drury (25 Idaho, 787; 139 Pac., 1129); People *v.* de Leon, supra; State *v.* Dunn, supra; Rex *v.* Ducker (16 Ont. Weekly Notes, 212). Contra, State *v.* Williams (73 Wash., 678; 132 Pac., 415); People *v.* Mason (181 Ill. App., 718); People *v.* Pierro (17 Cal. App., 741; 121 Pac., 689). Even under an unfortunately worded statute it is not necessary to prove that the child was delinquent before the acts with which the accused is charged. State *v.* Adams (95 Wash., 189; 163 Pac., 403).

[66] People *v.* Hall (183 N. Y., 46); Rex *v.* Davis (40 Ont. L., 352).

[67] People *v.* Wilhite (Cal. App.) (193 Pac., 151).

[68] Gottlieb *v.* Commonwealth (Va.) (101 S. E., 872).

[69] People *v.* Piccolo, supra; Ogden *v.* State (162 Wis., 500; 156 N. W., 476); State *v.* Bockman (139 Tenn., 422; 201 S. W., 741); State *v.* Hoffman (12 Ohio App., 341).

The filing of the petition[70] and the service of the summons upon the person having custody of the child[71] have both been held essential to jurisdiction. Nor, it has been held, can lack of summons upon the parent be waived by appearance of the child at the hearing.[72]

As the procedure in children's cases in the great majority of States is not criminal in nature the petition need not have the particularity of an indictment.[73] A different rule, of course, prevails in those jurisdictions where children are still regarded as criminals.[74] In jurisdictions where it is provided that, when a child is brought into a criminal court and upon proof of his age the case is to be transferred to a juvenile court, the proceedings in the latter court can not be heard under the indictment.[75]

Almost without exception the statutes provide for notice to the parents of the proceedings. When such notice is not given, and the parent does not appear at the hearing, it is sometimes held that the provision as to notice is mandatory and that the proceedings are void.[76] On the other hand some courts take the view that while a parent who did not have notice is not bound by a decree depriving him of custody, that part of the decree which declares the child delinquent or dependent is valid.[77] Appearance of the parent at the hearing or waiver of notice will give the court jurisdiction even though notice was not given.[78] But it has been held that a waiver of notice may be revoked, even after the proceedings.[79]

Whether or not notice to those having custody of the children is held essential to jurisdiction over the children, courts agree that the parents can always have their day in court to determine if they have been improperly deprived of custody.[80] This right is not confined to parents, but belongs to anyone entitled to custody.[81]

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[70] Weber *v.* Doust (81 Wash., 668; 143 Pac., 148); Cullins *v.* Williams (156 Ky., 57; 160 S. W., 733).

[71] Karrib *v.* Bailey (Mich.) (180 N. W., 386); Weber *v.* Doust, supra.

[72] Karrib *v.* Bailey, supra.

[73] Ex parte Gutierrez, supra.

[74] Guerrero *v.* State (87 Tex. Cr. Rep., 260; 220 S. W., 1095); State *v.* Asher (St. Louis Court of Appeals) (216 S. W., 1013).

[75] Commonwealth *v.* Franks (164 Ky., 239; 175 S. W., 349); Ex parte Ramseur (81 Tex. Cr. Rep., 413; 195 S. W., 864).

[76] Weber *v.* Doust, supra; Ex parte Mallory (122 Va., 298; 94 S. E., 782); Ex parte Cain (86 Tex. Cr. Rep., 509; 217 S. W., 386); Ex parte Satterthwaite (52 Mont., 550; 160 Pac., 346).

[77] People *v.* N. Y. Nursery and Child's Hospital (230 N. Y., 119; 129 N. E., 341); Jensen *v.* Hinckley (Utah) (185 Pac., 716); Henn *v.* Children's Agency (123 C. C. A., 216; 204 Fed., 766); Bleier *v.* Crouse (13 Ohio App., 69).

[78] In re Turner (94 Kan., 115; 145 Pac., 871). See Juvenile Court *v.* State (139 Tenn., 549; 201 S. W., 771); Ex parte Satterthwaite, supra; Jensen *v.* Hinckley, supra; King *v.* Sears (177 Iowa, 163; 158 N. W., 513).

[79] Karrib *v.* Bailey, supra.

[80] People *v.* N. Y. Nursery and Child's Hospital, supra; Bleier *v.* Crouse, supra; Ex parte Becknell, supra; In re Sharp, supra; Jensen *v.* Hinckley, supra; Smith *v.* Reid (7 Sask. L. Rep., 143).

[81] In re Pilkington (15 British Columbia Rep., 456). The mother of an illegitimate child is entitled to notice. In re Remski (160 N. Y. S., 715).

When children are brought into the custody of the juvenile court under a large majority of the statutes they are segregated from adult offenders while in detention or are allowed to remain at home. Before the cases are heard the statutes in the main provide that a preliminary investigation is to be made by the probation officer. This investigation should cover not only the particular subject matter of the proceeding but the whole background of the case—the family history, the condition of the child's home, his personal history, including his habits and general conduct, his school history, and his working history if he has been employed.[82] A few States provide also for a mental and physical examination.

It has been found necessary in the hearing of children's cases to do away with technicalities of procedure. Generally the statutes provide that the hearings are to be informal in nature and conducted under such rules as the court may prescribe. While the nature of the proceedings is entirely unadapted to trial by jury, the statutes of a number of States provide that the child or parent may demand a jury trial. In many States the public may be excluded from the court room, and in some States the statute requires that the hearing be in private. The judge generally has the power to hear the testimony of children without putting them under oath. In this, as in other distinctive features of the proceedings, it is the constant aim of the court to avoid any form which may give children the idea of a prosecution, to win their confidence, and to convince them that the court is endeavoring to be their friend.

The judge and the probation officer act not as judge and prosecuting officer but as friends of the children. Counsel are rarely necessary; when they do appear it is generally in the interest of the parents.

Juvenile-court laws often provide that the proceedings are to be held in a separate room in the courthouse or in chambers. In the larger cities a separate building is occasionally furnished.

While the procedure of the court is informal it is generally given the means properly to exercise its functions. Either by express provision of the act or by virtue of its place in the judicial system,[83] a juvenile court has the power to punish for contempt. Being in some respects at least a court of equity, an injunction is among its arsenal of remedies.[84]

There are, in substance, three ways in which a juvenile judge may dispose of a case. He may discharge the child, place him on probation, or transfer his custody to an individual guardian or to an institution.

[82] See "The Practical Value of the Scientific Study of Juvenile Delinquents," by William Healy, M. D., Children's Bureau Publication No. 96.

[83] Juvenile Court *v.* Hughlett (44 App. D. C., 59); U. S. *v.* Latimer (44 App. D. C., 81).

[84] Cullins *v.* Williams, supra.

As a condition to discharge, restitution or reparation may be decreed. Money penalties, however, are opposed to the whole theory of the juvenile-court movement.

The conditional suspension of a sentence is not a relinquishment of jurisdiction.[85] Nor is the jurisdiction of a juvenile court over a delinquent child terminated merely because the commitment of the child to an institution is held void for lack of notice.[86]

Probation, the most important part of the court's work, presents few legal problems. The child is placed in the home of a guardian, or is allowed to remain in his own home, under the supervision of the probation officer. He is often required to report either to the judge or a probation officer, at intervals, until he is finally discharged.

After a child has been committed to an institution, in proceedings in which the rights of those entitled to custody were safeguarded, the parents must show cause if they wish the children to be restored to them,[87] but if the court finds that conditions have changed, and the parents have become fit to take charge of the children, the claim of the institution should not be allowed to stand in the way.[88] Even though children have been declared legally abandoned, their parents may afterwards be appointed guardians over them.[89]

While juvenile courts rarely intend to cut themselves off from taking further action in regard to children by committing them to institutions, there are several cases to the effect that once a child has been committed to an institution the jurisdiction of the court is ended.[90] In some instances these decisions are put upon the ground that the term in which the court entered judgment has elapsed,[91] while in others they are attributable to constitutional or statutory provision in regard to the institutions, adopted prior to the juvenile-court movement. But in order to deal with children's cases satisfactorily it is the opinion of the writers that the juvenile court must have the power to keep in constant touch with the children who have come before it and to use State and local institutions as instrumentalities toward this end. It may become advisable to remove a child from an institution to which he has been committed and place him on pro-

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[85] Stoker *v.* Gowans, supra.

[86] Greenman *v.* Dixon (Mich.) (180 N. W., 487).

[87] In re Driscoll (17 Ont. Weekly Notes, 144).

[88] Farnham *v.* Pierce, supra; In re Knowack (158 N. Y., 482; 53 N. E., 676). Contra, Whalen *v.* Olmstead (61 Conn., 263; 23 Atl., 964).

[89] Matter of Guardianship of Michels (170 Cal., 339; 149 Pac., 587).

[90] In re Johnson (36 Cal. App., 319; 171 Pac., 1074); McClain *v.* Superior Court of Chelan County (112 Wash., 260; 191 Pac., 852); Board of Children's Guardians *v.* Juvenile Court (43 App. D. C., 599); Board of Control of State Home *v.* Mulertz (30 Colo., 468; 154 Pac., 742); contra, State *v.* North Dakota Children's Home Society (In re Kol) (10 N. D., 493; 88 N. W., 273); McFall *v.* Simmons (12 S. D., 562; 81 N. W., 898); In re Knowack, supra.

[91] Board of Children's Guardians *v.* Juvenile Court, supra; Board of Control of State Home *v.* Mulertz, supra.

bation or transfer him to another home. Statutes and cases, which, in effect, give to an institution the power which should belong to the juvenile court make it difficult for the court to do its work in an efficient manner.

If it is necessary in order to protect the child the court can enjoin a parent from interfering with it.[92] A parent, moreover, can not force an institution to which his child has been committed to disclose where the child is,[93] unless, in the discretion of the juvenile court, such disclosures seems advisable.[94]

While the procedure in children's cases can be entirely informal, when adults are before the juvenile court for contributing to delinquency, they must be given the safeguards usual in criminal cases.[95]

Statutes in a few States provide specifically for cooperation between the court and other social agencies in the community. There is, on the other hand, in the absence of statutory provisions, a growing tendency on the part of the court to establish a real basis of cooperation with all agencies connected with the welfare of the child. Such agencies, engaged in child cases, have no authority over probation officers.[96]

## LEGAL EFFECT OF PROCEEDINGS.

### REVIEW BY APPELLATE COURTS.

Over half the States make statutory provision for appeals from decisions of the juvenile court. Where no such provision exists the tendency of the authorities is to hold that no appeal lies, generally on the ground that the procedure is purely statutory and that the right to an appeal is therefore not to be implied.[97]

When a parent is improperly deprived of the custody of his children a writ of habeas corpus will lie.[98] But it has been held that the writ will not lie if the petitioner could have sought relief in the juvenile court and has not done so.[99] Nor does the writ lie if the petitioner had his day in court and there is a remedy in appeal.[1] It has been held that the decree of a lower court which treats an application for a writ of habeas corpus as a motion for a change in custody will not be disturbed.[2]

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[92] Cullins *v.* Williams, supra.

[93] Dumain and Wife *v.* Gwynne (92 Mass., 270); In re Hosford, supra.

[94] In re Children's Protective Act (14 Alberta L. Rep., 46).

[95] See cases in note 63.

[96] In re Juvenile Court (17 Pa. Dist., 207).

[97] Commonwealth *v.* Yungblut, supra; In re Broughton (192 Mich., 418; 158 N. W., 884); State *v.* Bockman, supra; State *v.* Hoffman, supra. Contra, Ex parte Brooks (85 Tex. Cr. Rep., 252; 211 S. W., 592).

[98] People *v.* N. Y. Nursery and Child's Hospital, supra; Jensen *v.* Hinckley, supra; Ex parte Becknell, supra. Even though the commitment was valid a father can sue out the writ on the ground that he has become fit to have the child's custody, when the statute gives him no other remedy. Farnham *v.* Pierce, supra.

[99] McDonald *v.* Short (Ind.) (125 N. E., 451); Bleier *v.* Crouse, supra.

[1] Stoker *v.* Gowans, supra.

[2] State *v.* Mackintosh (98 Wash., 438; 167 Pac., 1090).

Appeal does not lie when the statute allows a writ of error to be taken;[3] conversely, a writ of error does not lie when the judgment can be appealed.[4] When an appeal lies application must be made during the term at which the order was passed, even though, in criminal cases, a different rule may prevail.[5]

In hearing an appeal the court may affirm that part of the order which declares the child delinquent or dependent and reverse that part which commits the child to an institution.[6]

Manifestly it is not the function of appellate courts, in hearing these appeals, to consider the case de novo, and it can be said of the cases as a whole that the reviewing courts give due weight to the findings of the juvenile judge. It is, however, the function of the courts to see that parents are not deprived of the custody of their children merely because a juvenile judge believes a change of custody might offer the child greater advantages.[7]

When a defect in the proceedings of the juvenile court is purely formal, such as the insufficiency of the petition, the judgment of the court will cure it.[8] It has been held that, on appeal, notice to the parents or waiver of notice will be presumed,[9] and even that the unfitness of the parent is to be presumed from an order depriving him of custody.[10] On the other hand, it has been held that the record of the juvenile court must show the essentials of jurisdiction, that the presumption as to jurisdiction which is invoked in support of judgments at common law and in chancery does not apply; that it is not enough to show that evidence was offered of the jurisdictional facts in the proceedings, if the record does not set this forth.[11]

## USE OF EVIDENCE IN OTHER TRIALS.

Many of the juvenile-court laws provide that a disposition of a child in the proceedings, or any evidence given in the course of the proceedings, shall not be admissible against the child for any purpose whatsoever except in subsequent proceedings under the act. Under such a statute it has been held that in an action to recover a reward for information leading to the conviction of a person guilty of stealing from a telephone company, evidence that a boy was adjudged delinquent by the juvenile court was inadmissible.[12]

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[3] People *v.* Piccolo, supra.
[4] Ogden *v.* State, supra.
[5] State *v.* Calhoun (St. Louis Court of Appeals) (211 S. W., 109).
[6] Bedford *v.* Anderson (Utah) (190 Pac., 775). See also the cases in note 77, supra.
[7] See notes 56 and 57, supra.
[8] Ex parte Hunter (Cal. App.) (188 Pac., 63).
[9] King *v.* Sears, supra; Gordon *v.* State (Tex. Cr. Rep.) (228 S. W., 1095).
[10] Matter of Cannon (27 Cal. App., 549; 150 Pac., 794). When a child is tried in a criminal court jurisdiction will not be presumed. Waters *v.* Commonwealth (171 Ky., 457; 188 S. W., 490).
[11] Kelsey *v.* Carroll (22 Wyo., 85; 138 Pac., 867).
[12] Kozler *v.* N. Y. Telephone Co., supra.

In a number of States the juvenile court is required to keep records of the cases which come before it. Some of these States forbid public inspection of the records except by special order of the court. Such records, apart from their statistical value, are of use to the court in its own work, although if a boy has been discharged he can not afterwards be committed to an institution solely upon past performances.[13]

The case of Lindsey *v.* People,[14] which deals with the question of privileged communications, has an important bearing upon the methodology of the court and the relations of trust that it is necessary to establish between judge and child in order to assure a wise handling of the case. In that case, before proceedings had been instituted against him, a boy came to Judge Lindsey, of the Denver Juvenile Court, and, upon assurance that the judge could not be made to testify against him, confided certain facts bearing upon the killing of his father. Proceedings were subsequently instituted against him as a delinquent child and were pending when the boy's mother was brought to trial for killing her husband. The boy was called as a witness, and after he had testified, Judge Lindsey was called upon to disclose what the boy had told him. The boy consented to a disclosure, but the judge refused to divulge his confidence. The judge was thereupon fined for contempt and to this judgment brought a writ of error. A Colorado statute provided that a child committing the offense for which the boy had been brought before the juvenile court " shall be deemed " a delinquent. Another statute provided that a public officer should not be examined as to communications made in official confidence if the public interests, in the judgment of the court, would suffer by the disclosure. A third statute provided that a judge could not act as attorney. The judgment of contempt was affirmed, three justices dissenting.[15]

## EFFECT OF PROCEEDINGS UPON STATUS OF CHILD.

When a child is committed to the guardianship of an individual or an institution, the proceeding is not equivalent to an adoption, but is only a police measure of the State, affecting the incidents, not the existence of the legal status between parent and child.

This distinction is brought out by the case of Henn *v.* Children's Agency.[16] In that case, a mother domiciled in Montana had sent her daughter to California for a visit. The child was committed to an institution by a juvenile court without notice to the mother and the mother prayed a writ of habeas corpus. The writ was denied, the circuit court of appeals affirming the judgment. If the proceedings

[13] State *v.* Zirbel (Wis.) (177 N. W., 601).
[14] (Colo.) 181 Pac., 531.
[15] For criticisms of this case see 29 Yale L. J., 356, and 33 Harv. L. Rev., 88.
[16] Supra.

had been in the nature of adoption by the State or by the institution the juvenile court would clearly have been without jurisdiction.

The guardian has no rights over the property of the child, but he has certain rights over his person. While it would seem obvious that one of the incidents of custody, even though it be only temporary custody, is the right to determine where the child shall reside, it has been held that children committed to the guardianship of persons who lived in a certain district were not residents of that district under a statute which provided that only residents were admissible to the district school.[17] The decision in an Ontario case in which it was held that a child committed to an institution in a certain town was a resident of that town, so as to make it liable for the child's support while in a public hospital,[18] is more reasonable.

## THE FUTURE OF THE COURT.

The legal questions likely to arise under the statutes establishing juvenile courts will not, in all probability, be difficult of solution. The real problem ahead is to find a solution for the practical difficulty of extending the court to rural communities and to secure a uniform level of efficiency in the work of the court.[19]

There is a growing movement to consolidate the function of the juvenile court and the functions of criminal and equity courts in dealing with problems between husband and wife and parent and child, in order to give jurisdiction over all cases of this nature to a court of domestic relations.[20] This commendable effort is directed against both the inadequacy of piecemeal justice and the procedural difficulties created by multiplicity of courts.

It is occasionally questioned if juvenile-court work, whether carried on by a separate tribunal or as part of the work of a domestic relations court, can ever be properly conducted by a judicial organ.[21] But those persons who would give to administrative bodies the sole right to deal with children overlook the fact that in one way or another children are directly or indirectly affected by the determination of legal rights and legal obligations, on which only a judicial body can properly pass. The recognition that these cases must be dealt with separately, that the administration of justice is as much a matter of procedure as of rules, and that justice can not be administered to children in the way that it is to adults, represents an advance in legal thought of which the juvenile court, conducted as a separate unit or as part of a domestic relations court, is the only possible fruition.

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[17] Black *v.* Graham (238 Pa., 381; 86 Atl., 266).

[18] Toronto Free Hospital *v.* Town of Barrie (39 Ont. L., 63).

[19] See "Studies of Children's Courts by the U. S. Children's Bureau," in the Annual Report of the National Probation Association for 1920.

[20] See "Justice and the Poor," by Reginald Heber Smith, Charles Scribner's Sons, New York, 1919, Chap. XI.

[21] See "Passing of the Juvenile Court," by Herbert M. Baker, in The Survey, Feb. 12, 1921.

## ADDENDUM—THE MORELAND CASE.

In the case of United States *v.* Moreland, decided by the Supreme Court on April 17, 1922, it was held that the District of Columbia statute dealing with contributors to delinquency was void, so far as it provided that an offender could be proceeded against by information and sentenced to imprisonment in the District workhouse, for not more than a year, at hard labor. The decision was placed upon the ground that the statute violated the fifth amendment of the Constitution of the United States, which provides that no person shall be held to answer for "a capital or otherwise infamous crime except upon presentment or indictment of a grand jury. Hard labor in the District workhouse for failure to support minor children, a majority of the Supreme Court held, inflicted an infamous punishment. A vigorous dissent was delivered by Justice Brandeis, in which Chief Justice Taft and Justice Holmes concurred. The dissenting opinion shows that confinement for a short period at hard labor in a workhouse or a house of correction was not regarded as an infamous punishment at the time of the adoption of the Constitution, and distinguishes the cases cited in the majority opinion, in that those cases deal with sentences to institutions which served as State prisons or penitentiaries as well as houses of correction. Certainly commitment of adults who do not support their children is to-day regarded more as a remedial act calculated to enforce an obligation than as the punishment for a heinous offense. The decision affects only the District of Columbia statute, as the fifth amendment of the Constitution does not apply to the States.[1] In many States there is no constitutional provision similar to that contained in the Federal Constitution on this matter, and offenses such as the one in the Moreland case can under the State statute be proceeded against upon information. Even in States which have a constitutional provision which resembles the fifth amendment the Moreland case will not necessarily be followed.[2] It is to be hoped that the decision will not further increase the practical difficulty, already felt by most juvenile courts, of reaching those who contribute to juvenile delinquency.

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[1] Barron *v.* Mayor and City Council of Baltimore (7 Peters 243, 8 L. ed. 672).

[2] In the case of King *v.* Florida (17 Fla. 183) it was held, under a provision of the Florida constitution similar to the Federal fifth amendment, that the keeping of a bawdy house was not an infamous crime, and could be proceeded against by information, although the offense was punishable by imprisonment in the county jails for a period not exceeding a year. At the time of this decision those sentenced to the county jails could be forced to perform hard labor. Laws of Florida, 1877, c. 2090 and c. 2093.

In the case of Jones *v.* Robbins (74 Mass. 329, at pages 348, 349) Chief Justice Shaw gave it as his opinion that a sentence to hard labor in the workhouse or house of correction was not considered as infamous punishment in colonial times, nor was it to be considered as such under the Massachusetts constitution.

# APPENDIX.

## TABLE OF CASES.

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