

1920

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### Recommended Citation

Arthur W. Towne, Shall the Age Jurisdiction of Juvenile Courts Be Increased, 10 J. Am. Inst. Crim. L. & Criminology 493 (May 1919 to February 1920)

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## SHALL THE AGE JURISDICTION OF JUVENILE COURTS BE INCREASED?<sup>1</sup>

ARTHUR W. TOWNE<sup>2</sup>

At present children 15 years old and younger in New York State, charged with any offense except murder in the first degree, as well as those alleged to be with no proper guardianship, are brought under the beneficent wing of the children's court. Boys and girls who have reached or passed their sixteenth birthday, upon becoming enmeshed in the toils of the law, are haled before the bar of our criminal courts. The question before us is as to whether boys and girls 16 and 17 years old—that is, up to their eighteenth birthday—should also be embraced within the inquiry and control of the children's court. In other words, when is a child not a child? That famous query, "How old is Ann?" pales into insignificance beside the riddles confronting us tonight. At what age does our Ann of the children's court cease to be an impressionable, irresponsible girl, and become instead a mature, thoroughly stabilized and rational woman, prepared, if need be, to face with impunity the ordeals of the magistrate's court? And, likewise, as to Ann's brother. Does he go to bed the night before his sixteenth birthday, a tender boy in need of the state's solicitude, and awaken the next morning a bearded man, full-fledged in experience and self-control, and in ability to fulfill his obligations as a citizen? Upon donning his long trousers does he forthwith become a man; or in spite of his somewhat lengthened years and clothes, may he still be in his short "pants" mentally and morally? As one ponders over these perplexing age problems one soon discovers about eighteen arguments against such a revolutionary, dangerous change as is proposed in the law, and fully eighteen other reasons in favor of this perfectly natural and needed reform.

Just because the subject is so debatable it merits careful examination from every angle—physiological, psychological and social, as well as legal and administrative. Especially is this true since it seems impossible to find any printed discussion of its many aspects. Therefore, even at the risk of over-extending the length of the paper, it

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<sup>1</sup>Presented at the New York City Conference of Charities and Correction, May, 1919.

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has seemed best to view the matter, first, in a more or less general and theoretical way before taking up the more concrete operative details.

As will be pointed out later, certain states have already amended their juvenile court laws so as to include these older youths within their scope. The problem will have to be considered by the legislatures of other states. The main principles dealt within this paper will probably be applicable to the situation in other states as well as in the Empire State.

#### PART I. SOCIAL AND INDIVIDUAL ASPECTS

*Objections to Increasing Age Jurisdiction.*—I am not at all unmindful of the different objections urged against the proposed change. For instance, it may be asked: Are not many boys and girls of 16 and 17 as hardened and dangerous as some of the worst adult criminals? Don't girls marry at 16 or 17, and didn't boys of 17 help win the war? If those 16 or 17 years old knowingly violate the law, why shouldn't they suffer the full penalty the same as adults? Is there not already too much disrespect for law, and wouldn't the mollycoddling of the children's courts, applied to these older offenders, be pooh-poohed by the young ruffians and gunmen and taxi-bandits in the community, and threaten us with a gigantic crime wave? Anyway, shouldn't we have concern primarily for the welfare of the little children, and wouldn't the bringing of the older youths into the children's court seriously menace the younger boys and girls? In fact, wouldn't such a practice rob the children's court of its distinctive merits as a tribunal especially devoted to children?

In reply it may be admitted that certain boys and girls of 16 and 17 may be about as depraved and dangerous as some prisoners at Sing Sing. The same may be true of those younger. Nor can it be disputed that lads and girls of 17, even at 15 and 14, sometimes display a maturity equal to that of many grown-ups; just as, on the other hand, those in their forties may still be infantile. But what we should consider is the average type. Exceptional cases can be considered later.

Let us not get excited about disrespect for law or crime waves. These things exist where there are no children's courts. Where is the evidence that the children's courts would deal any more leniently with youths needing disciplinary or custodial care than do our judges of criminal courts? Far too often the judge of the criminal court, who has never previously seen the youth arraigned before him, looks upon his offense as trivial, regards him as a first offender, and lets

him go on a suspended sentence; whereas, if the same youth were before a children's court he would likely be there recognized as a well-known customer, and the children's court judge would be less inclined to suspend sentence.

One of the above questions suggested that youths in their teens who knowingly overstep the law have proven themselves unworthy of mercy and should be held responsible for the consequences of their acts. Will we never get over that hoary notion about worthiness and unworthiness? Do physicians vary their treatment of typhoid fever on the basis of whether the patient violated the laws of hygiene with or without deliberation, and of whether the patient is worthy or unworthy? No; what the doctor seeks is not a moral appraisal of the cause, but the cure of the bad effects. So with our courts, the essential matter is not whether the youth is worthy or unworthy; the thing is to deal with him in such a manner as is most likely to protect society and reform him. It remains to be shown that the children's courts are not just as capable of effectively handling boys and girls of 16 and 17 as are our criminal courts. Certainly the methods thus far employed with this age group by our criminal courts have not achieved success to an especially conspicuous degree. It is therefore fitting to ask whether there are grounds for believing that the children's courts might handle boys and girls of 16 and 17 with any better results than our adult courts. The subject deserves our open-minded examination.

*Disadvantages of Trying Youths in Adult Courts.*—It is certainly a sad spectacle to see boys and girls of 16 or 17 forced to run the gauntlet of police lock-up, arraignment in the magistrate's court, trial in the court of special sessions or the county court, and incarceration in jail or some other adult correctional institution. Is it not a reproach upon our laws that a girl of 16, virtuous in character, charged with some minor infraction of the statute, should still be officially locked behind the bars with drunks and prostitutes? In addition to the contamination likely from this promiscuous herding the stigma of a criminal court record is, in itself, a terrible handicap—sometimes ruinously so.

Day after day our machinery for turning out indictments and felonious convictions has to be halted by the human feeling in the breasts of our judges and jurors; it breaks down out of sheer repugnance at the injustice of the system as applied to a large proportion of these young persons. The reluctance of the courts to adhere to the harsh

letter of the law is witnessed in the proportion of cases in which pleas are unnecessarily accepted to lessened charges, in which sentence is suspended or a petty fine imposed when more rigorous treatment is needed, and in which there are dismissals with a warning. It used to be deemed necessary to send little children through this same pitiless mill and to stamp them with the criminal brand, but society has gradually outgrown this barbarism. Most people would welcome some practical reform which would overcome the shortcomings of our venerable criminal law in its operations towards these youths of 16 and 17.

Particularly would such a change be welcomed by parents of wayward sons and daughters. For the ordinary father and mother naturally dislike to stigmatize either their children or themselves by making a charge of incorrigibility, or of any other kind, in the police court. As a result of this parental unwillingness to seek magisterial aid the boy or girl of 16 or 17 who is starting on the downward path often continues without restraint and grows from bad to worse. Likewise, the police and others, desirous of sparing boys and girls of these ages from the notoriety of a police court appearance, are often unduly lenient, when curbing and correction are sorely needed. With many of these youths the delinquent tendencies do not take serious form or are not discovered until about this age, and they have never had the benefit of treatment through the children's court. Parents and others who hesitate about resorting to a police court would often gladly avail themselves of the chance to invoke the help of the children's court were its age jurisdiction made to embrace these two additional years.

There is not much hope of sufficiently bettering conditions in our criminal courts and institutions for adults so as to bring about the humane and specialized treatment desirable.

The establishment of a special court for young adults, so-called, such as is found in certain cities, is hardly practicable in small communities, and is, at best, a halfway measure. This will later be pointed out more at length. These courts still remain criminal courts; they offer no fundamental change in the underlying principles of the treatment.

We are led to inquire, then, as to whether the juvenile court should be enabled to cover the period up to the eighteenth birthday.

*The Juvenile Court Idea.*—The juvenile court idea rests upon the recognition that children are entitled to special consideration on account of their tender years. During the superstitious middle ages, when duly constituted tribunals solemnly tried dumb animals on criminal

charges and imposed penalties, one such court, upon finding a mother pig and her litter of baby pigs guilty of trampling upon and killing a human child, sentenced the adult hog to death, but magnanimously released the juvenile pigs under suspended sentence because of their immaturity and inexperience. For centuries after this it continued to be the practice of judges, who thought more of the blind majesty of the state and the inviolate rights of property than of the lives of boys and girls, to condemn children of 8 and 10 years to death upon the gallows for petty offenses. Within the last two decades we have at last caught at least part of the vision possessed by that sixteenth century animal tribunal, and now we mollify the rigors of the law in dealing with most child delinquents under 16.

The juvenile court idea recognizes that children often overstep the law out of mere mischief, without any wrongful intent; that they are generally the victims of unfavorable environment and evil associations; that they have as a rule been deprived of proper parental guidance, and that, even when aware of the wrongfulness of their transgressions, they are usually creatures of impulse without those powers of resistance and self-control that ordinarily develop with maturer experience and judgment. It is the duty of the state to give to the child who has made a slip another chance; to reclaim him, if possible, as a normal, useful member of society, and to shield him from the handicaps and baneful atmosphere of criminal courts and jails.

To these ends the juvenile court tries the cases of children separate and apart from those of adults; it segregates them from grown-up culprits, both during preliminary detention and in the subsequent institutional treatment; it does not criminally convict those who have broken the law, but either finds them guilty only of juvenile delinquency, or adjudges them as in need of the care and protection of the state; and it makes liberal use of social, medical and psychological diagnostic resources and of the probation service.

*Age Jurisdiction Raised in Other States.*—Men used to shake their heads when this juvenile court idea was first launched. While it is not yet demonstrating one hundred per cent efficiency, we have got used to the idea, and no one would go back to the old criminal procedure in dealing with children under 16. Heads have also been shaken in other states when the proposal has been made to bring boys and girls of 16 and 17 within the juvenile court law; but in several states this step has been taken. In certain states the wisdom of the step has been carefully inquired into by state commissions on child

welfare or other bodies before the age has been advanced. Some states include youths still older.

For the sake of accurate knowledge the actual results in these states should be investigated through case analyses, field studies and statistical research. So far as I know, this has not been done on an extensive scale. The request to prepare this paper reached me too late to enable me to institute any systematic inquiry concerning the outcome where the experiment has been made. No public protests against the step have come to my attention, and, judging from the very limited information at hand, the test has apparently been on the whole satisfactory. In the absence of data as to the actual fruits of experience this paper must treat the subject largely from other viewpoints. (See note at end of paper.)

*Trend in Other Child Welfare Legislation.*—This revision upward is in keeping with the general trend of legislation affecting child life. Various laws exemplify this tendency to encourage what John Fiske calls the "prolongation of infancy." As society grows in complexity, it takes longer to prepare a boy or girl for full participation in the duties of life. Compulsory school attendance and child labor laws have steadily been reaching higher in the chronological scale. England, Ontario and certain American states (including New York) have lately enacted provisions requiring a certain amount of school attendance in continuation schools up to the eighteenth birthday. The age of consent, which in this and nearly half of the other states is 18, is approaching this age in other states. Girls under this age and boys under 21 cannot marry without parental consent, and their marriages can be annulled. Minors have incapacities as to making civil contracts. A minor cannot even manage his own property without a guardian. Boys are not entitled to join the army short of 18. No one can vote or hold public office under 21. A movement has been started in certain states where girls become emancipated and attain their civil majority at 18 to push the age up to 21. Legislators are more and more cloaking childhood and youth with special immunities and protection, and the upper legal age limits of childhood are steadily advancing.

*Proper Basis of Determining Age Limits.*—Of course no special age limit established by law for any particular purpose should be taken as a criterion in determining the proper age for other purposes.

That strange notion which still lingers about the complete transformation of the body every seven years is as mystical as was that old belief of the Egyptians about the sanctity of the number seven and

its multiples. Equally absurd is the supposition of any inherent merit in placing the age of civil majority at 21, or the age limit of our children's court jurisdiction at 16. If facts justify, it may even be desirable and practicable for the children's court to exercise authority over certain matters up to one age and over other matters to a different age. The desirable age demarcation with respect to any particular subject matter should be decided, not on the ground of precedent or analogy, but on the basis of the nature of the acts, the capacities of the children, and their relationship to society.

Whatever age cleavage is legally adopted must necessarily be more or less arbitrary; it cannot conform to the varying degrees of development among those individual children either above or below the boundary line who deviate from the normal. In establishing age divisions for any such purpose we should view the children of a particular age period as a group. Critics should not scrutinize the line of separation with a microscope, but should survey it along with the two bordering age groups, viewed as extended intervals of time.

The immediate question is whether youths of 16 and 17 are so different from those of say 14 and 15 as to justify and require a dividing line at their sixteenth birthday in their court treatment.

To answer this, let us recall certain characteristics of childhood and youth. At the risk of what may seem rather protracted comment on certain scientific aspects of childhood and adolescence, I ask you to turn your attention to the following facts because they afford one of the best grounds upon which we may rest our conclusions as to whether 16 and 17-year-olds are most properly to be considered as juvenile or adult.

*Stages of Physical Growth.*—All growth is by gradual change rather than by sudden leaps. While one set of organs is maturing, another may be only just beginning to unfold. Biology shows that each organ passes through three successive stages—first, increase in size; second, exercise of the organ, accompanied by further growth in size; third, the putting on of the finishing touches in its functioning, and the acquisition of ripened powers of endurance. Maturity cannot be measured by mere bulk. If it could, a girl of 15 would be practically a woman, for she is then practically full grown as to height, and has ordinarily obtained nine-tenths of the weight she will have at 20. A boy of 15 is usually three-quarters grown in weight and nine-tenths in stature. But they are no more mature than is a full-sized Baldwin apple which is still green. The brain attains practically adult size by the age of seven, but nobody would for a



moment think of the mentality as being anywhere near adult at that age. The onset of pubescence and its usual completion shortly before the sixteenth birthday probably account, as much as any other single item, for the placing of the upper boundary of the children's court age span at the sixteenth birthday. Yet viewed solely as a physiological change, this event comes not at the entrance upon adulthood but rather as an introduction to the stage preparatory for manhood and womanhood. Even anatomical completion of the body is not reached till after the twenty-first year.

*Adolescent Changes in Personality.*—A human being is more than an animal body; our distinguishing mark is our mental, moral and social natures. And these, too, grow in irregular stages after the fashion of our physical natures. Different psychic qualities and abilities develop at different ages, each following its own special time schedule. Some ripen early; some late. The maturing of the intellect and of character takes place even more slowly than the physical maturity. This is especially important in connection with our problem, because conduct and misconduct are, after all, primarily an expression of the psychic side of life.

Adolescence is ordinarily said to start at the age of 12 years or thereabout and run to the neighborhood of 25. Throughout this period the psychic individuality, in both the conscious and the subconscious regions, is in a constant flux and mutation. No greater error could be made than to consider a child as passing into adulthood simply because of a certain degree of physical development. The transition of the mind from its childhood state to that of normal adulthood is just as essential a part of the growing-up process as is the bodily side, and this psychic growth requires much longer to attain maturity.

Modern psychology no longer clings to the old classical partitioning of the mind into intellect, feeling and will. Any psychic act may involve an interweaving of all three of these mental processes. Human personality vibrates with thousands of ancestral, social and associational ties and with thousands of intermingling currents of impulse and feeling. Our personality is not a mosaic of distinct faculties, but a restless, surging sea of psychic life; forever absorbing from without and welling up from within; at once susceptible to myriad subtle environmental influences, and eagerly responding, to every outer stimulus, through its internal urgings toward activity and self-expression. Maturity is to be measured not on the basis of mere intellectual capacity; the personality must be viewed in its totality, with due regard to the instinctive, emotional, volitional and social elements, and

to the achievement of a normal degree of stability and unity of purpose.

With the physical metamorphosis, which usually comes at 14 or 15, there are ushered in new impulses and sentiments and a rebirth of self-consciousness which powerfully influence the youth's subsequent development, psychically and socially. For the next few years the interests of the boy and the girl multiply, wax and wane; there is emotional unrest; the desire for personal assertion adds its tension, and the whole individuality and character undergo re-shaping and readjusting. This age period, 15, 16 and 17, is the season of budding romantic love, of religious conversions, of breaking away from parental control, of entering upon self-support, or defying customs and authority as never before. It is pre-eminently a time of meeting new situations, getting a new outlook on life, and making new adaptations in thought, feeling, aims and social relationships. Both boys and girls are in a vortex of adolescent experimentation, stumbling and instability. They are in a stage when their bodies are taking on the finishing touches, when their intellectual powers of judgment and foresight have progressed still less, and when their moral and social reactions are even less organized. It is a critical period because they are just acquiring self-mastery over instinct and emotion and building up habits of application and moral reflection, and finding their social orientations.

*The Unfolding of Reason.*—The more we analyze human behavior and the part played by pure reason the more we wonder who the humorist was that first dubbed man a "rational being." Most mortals are far more powerfully swayed by their scores of instincts and social pressures. He who fancies that a lad reaches the "age of discretion" at 14, as taught by the old common law, or that reason seizes the helm with a firm hand at 16, simply flies in the face of present-day psychology and the hard facts. While crude reasoning processes are getting under way by the fourteenth year, they arrive gradually at man's estate. Like every other habit, the exercise of reason grows only with practice. Its control over conduct is conditioned by the extent of the youth's experience with different sides of life and by the relative strength of his various contending non-rational tendencies. The guidance of conduct through reason and self-control is an art that has to be learned like any other art. The middle adolescent period is when nature carries on this educational effort. Not before the eighteenth birthday, in the vast majority of persons, do we discover anything like full-blossomed deliberation,

understanding and conviction. The eighteenth birthday usually comes during the senior year in high school; the sixteenth birthday corresponds to the sophomore year. Would we attribute adult judgment and foresight to boys and girls at either of these periods? Intellectual maturity certainly does not come before the eighteenth birthday; most of us would probably date its arrival considerably later.

*"First Maturity" at 18.*—We are accustomed to say that girls mature earlier than boys. Yet we have the authority of G. Stanley Hall that girls do not ordinarily reach what he terms their "first maturity" until 18 or 20. The literature of psychology leaves no doubt that, viewing the matter from this angle, boys and girls are as a rule still juvenile up to their eighteenth birthday.

After 18 the changes in personality are less marked than before. Few new ingredients enter into the make-up of the individuality. The traits which are to run through life are now pretty well established. The instinctive and emotional life are not altered much from now on, except as to assuming more fixed and intensified forms. The greatest change that comes about shortly after 18 is the enhancing of the role played by reason. Experience increases, and judgment and foresight gradually mount in their authority.

During the middle adolescent years, from 15 to 17 inclusive, the boy and girl are juvenile; during the later adolescent years, from 18 to 25, the personality and character become more and more adult.

*Sixteenth Birthday Not a Cleavage Point.*—The foregoing outline of what goes on during the journey from childhood through youth to adulthood shows that the sixteenth birthday does not make a natural boundary between any two of these periods; rather it falls in the midst of a stretch of years from about 14 to 17 inclusive, which, especially from their mental and moral development, have as a rule much in common, and are clearly not adult. The sixteenth birthday does not have as valid a claim as either the fifteenth or the fourteenth birthday as a point of cleavage between childhood and youth. The eighteenth birthday is a more logical dividing line than is the sixteenth between adulthood and the preparatory period which precedes it.

The individuals, among delinquents as well as among non-delinquents, present wide variations as to their degree of bodily, intellectual and character development. Some will be wayward and difficult; others orderly and easily led. Some will be retarded or precocious by nature, others handicapped or forced by an unusual environment or experience. A youth of the streets may be far more mature in so

far as so-called knowledge of the world is concerned than the lad from a refined home and protected environment; but the street lad is usually not so far advanced in his ideals and moral defense mechanism. The wide variability in the maturity of children and youths makes us wish that the basis of determining whether an offender should be taken before a juvenile or an adult court might be considerations entirely distinct from mere years and months. But age classifications must continue to be recognized. If the juvenile court has demonstrated its ability to cope with the various types of 14 and 15-year-old boys and girls, it is a good augury that it can, on the whole, successfully handle those 16 and 17. For, in general, those during this two-year period are much more juvenile than adult.

*Character of Offenses of Older Youths.*—But we are facing not a theoretical situation but an eminently practical problem—one about which society can ill afford to make any scatter-brained experiments. Granted that 16 and 17-year-old youths are still juvenile, it would be folly to attempt to handle them in the children's courts if their delinquency were of a type with which these tribunals cannot successfully cope.

Authorities on criminology point out that with increase in age comes an increase in the gravity of the offenses, until some point in early adult life when the curve turns downward again. The misdeeds by young boys are usually due to nomadic and vagrant impulses. They next assume more and more the form of trespass against property. As their physical development becomes more manlike, their offenses against property tend to be rather more serious, and in addition they more frequently commit crimes of violence and against chastity. Not until the age of 21 to 25, according to most authorities, do the most serious deeds of violence, and those involving deliberation like fraud, reach their peak. In the case of females the years immediately following the present juvenile court age lead oftenest to waywardness, centering about sex.

It must of course be granted that very serious offenses—highway robberies and murder—are every now and then committed by youths of 16 and 17. Perhaps exception should be made in these cases; this will be discussed later. But, on the whole, the offenses of boys and girls at these ages bear a close resemblance to those chargeable to children 14 and 15 years old. Anyone acquainted with the work of our juvenile courts knows that the wrongdoings of boys and girls—particularly the former—at these ages are not infrequently just as

serious (burglaries, assaults with dangerous weapons, and even homicide) as those coming before our criminal courts.

While the circumstances vary with each individual instance, and while, as already said, some cases may possibly be so very grave as to demand other methods than those to be had in the juvenile court, it does not seem unreasonable to believe that, on the whole, the cases presented by boys and girls 16 and 17 can be dealt with in the juvenile courts, *provided the necessary equipment and machinery are available.*

In this connection let me quote Dr. William Healy, our foremost authority on juvenile delinquency: "I venture to say from long observation that the vast majority of offenders at 17 or 18 years of age are still in great need of being understood and treated by the methods in vogue in a well-conducted juvenile court, where past records with all their showing of factors in environment, personality, opportunities, etc., can be taken into account for further disposition of the case."

*Extending the Age Jurisdiction With Respect to Neglected Children.*—Before taking up the administrative problem of handling the offenses of those 16 and 17 years old through the juvenile court, let us inquire whether corresponding grounds exist for enlarging the jurisdiction of these courts with respect to the cases of boys and girls of this same age period where the complaint would be one of neglect; that is, where the youth instead of being an offender, is a victim of some offense or neglect by an adult. Should greater safeguards be thrown about these youths than they now enjoy, through extending the upper range of our no proper guardianship laws and related statutes?

Parental duties toward their sons and daughters certainly do not cease at the end of the fifteenth year. The fact that a child goes to work and becomes at least partly self-supporting does not release the parents from their moral responsibilities. As indicated above, the trend in the law relating to public education is to lift the compulsory school attendance age to 18. If children are entitled to education up to that age, they certainly have an equal or greater right to sympathetic moral protection to this same age. Every child protective agency can cite case after case in which boys and girls 16 and 17 need judicial protection against selfish, brutal and depraved fathers and mothers. Countless boys and girls during these adolescent years certainly suffer from parental ill-treatment, indifference and bad home conditions, especially from harmful moral influences, just as much as those younger.

It is my belief that the statutory provisions covering different

forms of neglect and ill-usage should be raised to a higher maximum age, and that it should be left to judicial discretion to construe such provisions in accordance with a rule of reason. The courts would naturally take cognizance of the fact that the age of the child would often tend to modify the effects of parental neglect.

Besides furnishing direct aid, sometimes in the form of foster care, to these youths, this change would help toward making it possible to hold parents more strictly to their legitimate responsibilities with respect to their children of 16 and 17. Parental coercion through the criminal law would often in these cases be most salutary.

The raising of the no proper guardianship age limit would also contribute to prevent much of the harm that now befalls these young persons through poolrooms, dance halls, cabarets, street loitering and other baneful associations and influences. Numerous statutes intended as protective measures for youths at this adolescent period are virtually dead letters because of their lack of co-ordination with a no proper guardianship law of sufficient scope. At present it is often impossible to reach out and shield a youth of 16 or 17 who is in moral jeopardy, because of lack of proof of the commission of an overt act in violation of law, whereas the needed guidance and control might readily be furnished if the neglect law made it possible to admit evidence showing simply the harmful conditions and influences surrounding the boy or girl.

The lifting of the chronological range of child neglect would also facilitate the prosecution of adults guilty of sex offenses against boys and girls of 16 and 17. The societies for the prevention of cruelty to children in this state, restricting their activities to efforts in behalf of children within the range of the children's court, that is, those under 16, take an aggressive part in bringing sex offenders against these younger children to justice. There is usually no agency vigilantly at work in behalf of similarly safeguarding the morals of girls of 16 and 17. Although the age of consent in this state is 18, how few men are prosecuted for rape when their victims are 16 and 17. These laws deserve better enforcement. Admittedly they are harder to enforce at these ages, and some have expressed the fear that the attempt to enforce them when the complainants are young women of 16 or 17 would embarrass the handling of cases where the victims are younger. I do not fully share this apprehension. Public opinion has much to do with shaping standards and judgments in this field. The elevation of the age to which girls can be treated as neglected children (and that is what many, yes, most, of these 16 and 17-year-

old girl victims are) would promote a truer understanding of these statutory rape and other sex cases and give more support to the prosecuting authorities. Thus greater protection would be given to girls who are usually more in need of safeguarding at this epoch in their lives than ever before.

The extension of the age jurisdiction of the juvenile court in cases of neglected children would be a decided boon to both boys and girls during these two years, which are so filled with exposure and temptation and other dangers.

## PART II. ADMINISTRATIVE ASPECTS

*A State-wide Problem.*—Before trying to put any such reform into operation as this suggested extension of the children's court age jurisdiction in cases of delinquent and neglected children, we should carefully inquire into certain facts. We should bear in mind, in the first place, that the problem affects not New York City alone, but is state-wide. Governor Whitman was forced to veto a bill increasing the age jurisdiction of a proposed county children's court in Chautauqua County to 18, because, as he pointed out, an offense cannot be made non-criminal and triable civilly in one part of the state while it is criminal elsewhere.

Every now and then we encounter the assertion that city children, particularly those from the metropolis, present special difficulties which militate against dealing with them and with rural children by the same means. This prejudice does not stand the test of experience. We are dealing with an age problem which pertains to both urban and rural communities, and in my opinion the reform is as feasible in one part of the state as another. It must be viewed as a state problem.

*Question of Extent and Equipment.*—Viewing the increase of the age jurisdiction of our juvenile courts as an administrative problem, we must bear in mind the number of additional cases which would thus be thrust upon these courts, upon the institutions and upon the various other agencies. Some thousands of extra cases would each year be unloaded upon the children's courts in New York City alone. The number of 16 and 17-year-old youths found in the course of a year in jails and other adult correctional institutions in this state likewise would probably run into four figures; and under the proposed change somewhat similar numbers of additional inmates might conceivably have to be accommodated in juvenile institutions.

While theoretically these older children should be dealt with by juvenile courts, the feasibility of such a step depends largely upon the sufficiency of the resources and co-operation available to these tribunals. Do we possess, or can we secure, the equipment essential to master the new situation that would be created? This query demands that we analyze the chief factors a little in detail.

*Temporary Detention Quarters.*—The scheme of extending the age jurisdiction of the juvenile courts would be incomplete without parallel provisions for the preliminary detention of the 16 and 17-year-olds awaiting trial or the disposition of their cases in suitable places separate and apart from police lock-ups and jails. As yet we can boast of few such detention quarters even for children of 15 and younger in this state. Only three or four municipal juvenile detention homes have thus far been established, none of them in modern, well-equipped buildings; while in probably less than a dozen other places in the state are the younger children cared for in the temporary shelters of the local societies for the prevention of cruelty to children. Elsewhere police stations and other makeshifts are still in use. It would be difficult to find a single place in the state having thoroughly modern and proper facilities for the segregation and care of the children already requiring to be held for the children's courts.

The work of looking after the older girls in a juvenile detention home especially accentuates the moral problem of proper separation of the girl inmates on the basis of age, development and character. The presence of boys 16 and 17 years old would complicate the problem of discipline and of physical restraint against escape. Even with ample space, the admission of these older youths would call not only for greater segregation but also for more or less modification in the methods and in some instances in the staff. It might even be found advisable in some of the larger cities to use a special building for part, or all, of the older youths.

While in some places, where the average number of children to be detained is small, it might at times be safe to house the older youths in the present juvenile quarters, it would certainly not be right in the larger centers of population to jeopardize the welfare of the younger children by any wholesale herding with these older youths in the temporary detention quarters. The matter of providing suitable facilities for the observation, study and care of these older boys and girls merits thoughtful study.

*Segregation in the Children's Courts.*—Likewise, it would have to be made possible to keep these older lads and girls away from



their younger brothers and sisters while in the children's courts. In the smaller courts this would not be difficult. With courts having a large volume of work the problem would not always be so simple. Indeed, in New York City it might become necessary to appoint one or more additional judges in the children's courts, and, perhaps, to establish one or more special parts or sessions of the court for the trial of these older adolescents. The increasing practice of hearing juvenile cases in chambers rather than in the open court-room, would greatly assist in solving the problem of segregation in so far as the hearings themselves are concerned. This device would not necessarily guarantee protection against harmful mingling in the rooms in the court where the children are held immediately before and after the hearings. To accomplish this in certain of our larger courts there might even have to be changes in the architecture of the courthouse.

A more serious predicament is that New York State does not yet have a state-wide system of juvenile courts. About three thousand magistrates still have jurisdiction to try children's cases in the Empire State. The cases are often tried in all manner of buildings and rooms, and according to all kinds of methods and standards. What we need is the organization of a system of special county or district courts or parts to hear children's cases. When we have such tribunals, presided over by qualified judges and properly equipped, there would seem to be no good ground for hesitation about letting these judges try and dispose of the cases of children up to their eighteenth birthday, provided we have the needed institutional and other facilities.

*Probation.*—Probation is the measure best adapted for dealing with most of these older delinquents. Indeed, certain investigations would indicate that young persons in their later teens often have more appreciation of the opportunities afforded by probation, and are more responsive, than those younger. If the service is prudently conducted, little trouble need be encountered in trying to keep the different ages and types properly separated. But, before we add to the burdens of our children's court probation officers, let us frankly face the truth that they have long been staggering under far too heavy a burden. One of the best means of solving the problem of 16 and 17-year-old offenders and of reducing the number recruited to their ranks would be through strengthening their probationary oversight while 12, 13, 14 and 15 years old. With a higher age jurisdiction the enlargement of the staffs of our juvenile courts would be imperative.

Many of those arrested after their sixteenth birthday are still nominally under probation in the children's court; for under the letter

of the law that court may continue its oversight for three years. Yet, in practice the children's court finds it difficult to discipline violators of the probationary conditions after their sixteenth birthday, on account of the difficulty in securing the admission of the offenders to suitable institutions. Any such breaking down of the probation naturally undermines its value. If the children's court is to try lads up to 18, it should be given statutory control over the probationers for say three years, that is, to their twenty-first birthday, and it should also be assured of the necessary institutional facilities for dealing effectively with those who violate its confidence.

*Institutional Needs.*—The most serious difficulty which would be created by adding to the age jurisdiction of juvenile courts would doubtless be in connection with the handling of the older youths in institutions. It would do little good to have their cases adjudicated in the children's courts if they were to continue to be sent to county jails and similar dens of corruption as at present. At the same time every precaution should be taken against the mingling of these older delinquents with those younger and susceptible of contamination.

While we are over-supplied with institutions for dependent and neglected children under 16, the same cannot be said of institutions of a reformatory type. In fact, we do not have as liberal accommodations as needed for certain types of delinquent girls. Yet, to a certain extent, 16 and 17-year-old delinquents could be cared for in our present juvenile reformatory institutions, provided the needed segregation is made possible. This would be less easy, of course, in institutions on the congregate plan. It would seem to be the opinion of many, if not most, superintendents of reformatory institutions on the cottage plan in country locations, that the older youths can safely be cared for in places of this character without detriment to the younger inmates. They already hold many of their inmates beyond their eighteenth birthday, sometimes to the twenty-first birthday; and this is not deemed objectionable so long as the proper separation is maintained. It is certain, however, that adequate facilities would not be found in our present juvenile institutions of a reformatory type for all of the 16 and 17-year-old offenders needing commitment, and for those older ones who would violate the conditions of their probation. Special accommodations would have to be developed to care for a good proportion of these older offenders. Probably the most practical means of meeting the need would be through the establishment of certain state or city institutions for these older adolescent offenders.

*Equity Versus Criminal Trials.*—It is assumed in this paper that the bringing of 16 and 17-year-old delinquents before the children's court should ordinarily spare them from a criminal conviction, and that they would be found guilty of juvenile delinquency, as at present, or preferably that their cases would be heard in equity, in which event they would be adjudged in need of the care and protection of the state. It is to be hoped that we need not wait long for the constitutional amendment which will confer this equity jurisdiction upon these tribunals.

In connection with the above suggestion for the founding of special institutions for these older youths we think of the New York City Reformatory for Male Misdemeanants, Cheshire Reformatory in Connecticut, Shirley School in Massachusetts, Preston School in California, and the modified Borstol reformatories in England. Yet, if our children's courts are soon to acquire an equity jurisdiction, they would be expected not to sentence to punitive institutions as a penalty, but to commit to training schools for the purpose of providing for the delinquents' education and welfare. This would mean, for example, that under the equity jurisdiction a children's court would not be free for example to sentence a youth to Elmira. The status of the suggested special institutions should be like that of our present juvenile reformatory institutions, which are deemed charitable rather than corrective in nature.

It may be pointed out, however, that certain states applying equity methods permit the children's court to waive jurisdiction in case of an aggravated offense and to transfer the case to a criminal court. Elsewhere the children's court itself has both civil and criminal jurisdiction. Perhaps our legislature would deem some such provision desirable, at least at first. If this is to be done, it would seem preferable to allow the children's court itself, in cases of emergency, to exercise this criminal jurisdiction. The district attorney might be authorized to move a criminal trial whenever he feels that the public interest demands such a step, as for example in a murder case. I would expect, however, that with proper institutional resources this would seldom be necessary, for the civil procedure of the juvenile court would probably be adequate to cope with most all the problems coming before it.

(Wherever the courts are given an administrative discretion, comparable to that where a judge of the children's court might deny a child the privilege of an equity hearing and order a criminal trial, it is important that the judge upon the bench should be of the highest ability and character in order that this discretion may not be abused.

It is also important that the judges disposing of the cases of these older lads, and having the power to commit to juvenile institutions, should display knowledge and judgment, for otherwise some judges might contract the habit of committing these young persons by the wholesale to these institutions, much to the institutions' embarrassment. These dangers would be lessened by reducing the number of judges with jurisdiction over juvenile cases, and by having a system of county or district courts possessing exclusive jurisdiction over juvenile cases.)

*System of Transfers.*—Granted that the most careful inquiry is made by the court, or some other agency, as to the institution to which a particular juvenile offender should be committed, it will every now and then happen that the disposition will prove unsatisfactory in that he is more properly a subject for some other institution. Our system of transfers from one institution to another is more or less limited and cumbersome. Once we raise the age jurisdiction of the juvenile courts the importance of a better transfer system would be increased. A growing body of opinion favors the plan whereby original commitments would be made, not to specific institutions but to some state or local board which would have the power to select the institution in which the delinquent is to be placed, and to make such transfers as may prove desirable. This idea is being worked out, for example, in Ohio and New Jersey. It is suggested at this point simply as being worthy of consideration in connection with any plans for coping with the new institutional problems which would be created through the extension of the age jurisdiction of our juvenile courts.

*Extradition and Uniform Legislation.*—It would be unfortunate if any obstacle should be placed in the way of extraditing young persons from other states who are guilty of grave offenses for which they should be brought back and tried, or who are fugitives from institutions. Our present extradition laws cover only criminal cases. The increasing of the age range of juvenile courts might at times make it desirable to extradite those charged with grave offenses. This might require certain reservations in our laws permitting the lodging of criminal charges against such absconders. The value of uniformity in the laws of the several states with respect to age limits is also to be borne in mind.

*Child Protective Societies.*—If the age jurisdiction of the juvenile court is to be increased with respect to neglected children, as well as delinquents, we need to ask whether the child protective agencies in the state are in a position to handle the increased volume of neglect

cases. The answer must be in the negative. This is another reason for moving slowly.

*Extension of Original Age Jurisdiction Beyond 18 Undesirable.*—

The question may arise as to whether an extension of the age jurisdiction to the eighteenth birthday might be followed by a demand that it be extended later to the twentieth or twenty-first birthday. This is not an immediate likelihood; and the burden of proof is certainly upon those who would be bold enough to advocate such a step.

In some states the age jurisdiction varies for the two sexes. Certain states try girls up to their eighteenth birthday in the juvenile court, but hear cases of boys in this court only to their seventeenth birthday. In other states the ages are reversed. If any distinction between the sexes should be deemed necessary in New York it would seem best to follow the example of those states which have adopted the eighteenth birthday as the top limit for girls and the seventeenth for boys.

Sometimes a boy or girl believed to be guilty of having committed an offense while fifteen or under is not formally charged with the act until he or she has become 16 or over, whereupon the question arises as to whether the case shall be heard in the children's or an adult court. Such hearings belong in the children's courts and this is the established practice in New York City. If the age jurisdiction of the children's court is to be lengthened, it should be clearly stated what is to be done in these border-line cases where the culprit guilty of an act within the court's age jurisdiction passes the upper age limit before being apprehended or officially charged with the offense.

*Special Police Courts for Youths.*—An entirely different means of trying to avoid the evils of handling the cases of young persons in their middle teens in the ordinary criminal courts has been attempted in certain places. Special courts, or parts of courts, usually a branch of the police court, have been set up for the trial of charges against young folks from 16 to 21 or thereabouts. The English laws especially recognize those of this age as young adults. The first such innovation in this country came about in 1914, when the Chicago Municipal Court instituted a special part, known as the "boys court," which tries misdemeanor complaints against lads from 17 to 21. The idea has been tried in a few other places, and a similar court has been suggested for New York City.

The primary purpose of such courts is to keep the youths apart from old and hardened criminals. A special court for young delinquents here in New York City would separate the older adolescents

from adult offenders; the stigma of court arraignment might be somewhat lessened; more specialized treatment would be possible; and other advantages might accrue. But the procedure would probably differ little if any from that now followed in our criminal courts, and the court would probably not try felony cases. Boys and girls of 16 would likely associate with those of 20. The problem would still remain of trying to secure proper care of the boys and girls, awaiting trial, outside of police stations and jails, as well as proper care of those under commitment, in the right kind of institutions. Any such plan would be hard or impossible of operation outside of the larger centers of population, for we could not expect small communities to establish these special courts. On the other hand the plan of taking these young persons before juvenile courts could much more readily be carried out in rural districts.

The idea of a special part in a police court for the trial of these adolescent delinquents is at best a halfway measure and does not have the positive, constructive merits of our first proposal, that of increasing the age jurisdiction of the juvenile courts. Youths of 16 and 17 are still juvenile and should be dealt with as such.

#### CONCLUSION

The question before us as to age jurisdiction cannot be answered categorically. From the theoretical standpoint the change is desirable, but there are practical difficulties. The problem cannot be dealt with in isolation, but is interwoven with other problems. The problem should receive thoughtful investigation before any legislation is contemplated. There should be a harmonious correlation of juvenile court laws with those affecting institutions and other phases of child welfare. Equally important is it to recognize that proposals are also being made every now and then that the juvenile court be developed into a family court, with jurisdiction over non-support, illegitimacy, adoption, divorce, and kindred matters in addition to juvenile delinquency and neglect. The problem of 16 and 17-year-old youths is largely a family problem and would fit into the program of such a family court. Advocates of an increase in age jurisdiction to 18 should not think that this is the only, or the most pressing, need. The most urgent need is the establishment of a state-wide system of county or district courts, be they juvenile or family courts, where juvenile cases, whatever the age limit may be, can be handled. Let us first be sure of our machinery, judicial and institutional, before we tack on these extra two years. Eventually they should be added.

(Note: Through the courtesy of the Federal Children's Bureau the following facts are added concerning the age limits in the juvenile court laws of the various states:

The jurisdiction of the juvenile court in fourteen states extends to children under sixteen years of age. These are Alabama,<sup>3</sup> Colorado,<sup>4</sup> Georgia,<sup>5</sup> Indiana,<sup>6</sup> Iowa,<sup>7</sup> Kansas,<sup>8</sup> New Jersey,<sup>9</sup> New Mexico,<sup>10</sup> New York,<sup>11</sup> Oklahoma,<sup>12</sup> Pennsylvania,<sup>13</sup> Rhode Island,<sup>14</sup> Tennessee,<sup>15</sup> and Vermont.<sup>16</sup>

In thirteen states—Arkansas,<sup>17</sup> Delaware,<sup>18</sup> Florida,<sup>19</sup> Illinois,<sup>20</sup> Kentucky,<sup>21</sup> Louisiana,<sup>22</sup> Massachusetts,<sup>23</sup> Michigan,<sup>24</sup> Missouri,<sup>25</sup> Montana,<sup>26</sup> New Hampshire,<sup>27</sup> Texas,<sup>28</sup> and Wisconsin<sup>29</sup>—and the District of Columbia,<sup>30</sup> jurisdiction is extended to seventeen years.

<sup>3</sup>*Ala.* General Laws, 1915, No. 506, sec. 1. (In Jefferson County, girls under 18.)

<sup>4</sup>*Colo.* Revised Statutes, 1908, sec. 586. (Delinquent girl under 18.)

<sup>5</sup>*Ga.* 1915, No. 210, sec. 2, amended 1916, No. 575.

<sup>6</sup>*Ind.* Burn's Annotated Statutes, 1914, sec. 1630. (Delinquent girl under 18, dependent boy or girl under 17.)

<sup>7</sup>*Iowa.* Supplement, 1913, sec. 254, art. 14.

<sup>8</sup>*Kans.* General Statutes, 1915, sec. 3065, amended 1917, C. 154.

<sup>9</sup>*N. J.* Compiled Statutes, 1910, p. 1887, sec. 206; 1912, C. 353, amended 1918, C. 81; 1918, C. 82.

<sup>10</sup>*N. M.* 1917, C. 4, sec. 2.

<sup>11</sup>*N. Y.* Consolidated Laws, 1909, C. 40 (Penal), art. 44, sec. 485, amended 1916, C. 278; sec. 486, amended 1912, C. 169; 1915, C. 480, and 1917, C. 430; 1910, C. 611, sec. 2; 1913, C. 270, sec. 2; 1918, C. 464, sec. 1.

<sup>12</sup>*Okla.* Revised Laws, 1910, sec. 4412.

<sup>13</sup>*Pa.* 1903, p. 274, sec. 1, amended 1909, p. 89; 1909, p. 119; 1911, p. 543; 1911, p. 959; 1913, p. 1039, and 1915, p. 304; 1913, p. 711, sec. 11, amended 1915, p. 988; 1915, p. 1017, and 1917, p. 1015.

<sup>14</sup>*R. I.* 915, C. 1185, sec. 1, amended 1917, C. 1546. (Wayward and dependent under 17.)

<sup>15</sup>*Tenn.* Public Acts, 1911, C. 58, sec. 1, amended 1913 (first extra session), C. 22; 1915, C. 177; 1917, C. 41, and Private Acts, 1917, C. 294; 1917, No. 120, p. 355.

<sup>16</sup>*Vt.* General Laws, 1917, sec. 7323.

<sup>17</sup>*Ark.* 1911, art. 215, sec. 1, amended 1917, art. 420. (Girl under 18.)

<sup>18</sup>*Del.* Revised Code, 1915, secs. 3827-3828. (Applies to Wilmington. Girl under 18.)

<sup>19</sup>*Fla.* 1911, C. 6216, sec. 1, amended 1913, C. 5494; 1915, C. 6919, and 1917, C. 7332.

<sup>20</sup>*Ill.* Hurd's Revised Statutes, 1917, C. 23, sec. 169. (Girl under 18.)

<sup>21</sup>*Ky.* Carroll's Statutes, 1915, sec. 331e, I. (Girl under 18.)

<sup>22</sup>*La.* Constitution, 1913, art. 118, sec. 3.

<sup>23</sup>*Mass.* 1906, C. 413, sec. 1, amended 1912, C. 187, and 1916, C. 243. (Neglected under 16.)

<sup>24</sup>*Mich.* Compiled Laws, 1915, secs. 2011 and 2017.

<sup>25</sup>*Mo.* 1917, p. 195, sec. 1.

<sup>26</sup>*Mont.* 1911, C. 122, sec. 2. (Dependent under 16.)

<sup>27</sup>*N. H.* Public Statutes Supplement, 1913, C. 85 (Laws, 1907, C. 125, sec. 1), amended 1915, C. 96, and 1917, C. 74.

<sup>28</sup>*Tex.* Code of Criminal Procedure, 1911, art. 1197, amended 1913, C. 112, and 1918, C. 26. (Girl under 18. Dependent and neglected children under 16.)

<sup>29</sup>*Wis.* Statutes, 1915, sec. 573-I. (Girl under 18.)

<sup>30</sup>*D. C.* 34 U. S. Statutes at Large, p. 73, sec. 8.

In seventeen states—Arizona,<sup>31</sup> Connecticut,<sup>32</sup> Idaho,<sup>33</sup> Minnesota,<sup>34</sup> Mississippi,<sup>35</sup> Nebraska,<sup>36</sup> Nevada,<sup>37</sup> North Carolina,<sup>38</sup> North Dakota,<sup>39</sup> Ohio,<sup>40</sup> Oregon,<sup>41</sup> South Carolina,<sup>42</sup> South Dakota,<sup>43</sup> Utah,<sup>44</sup> Virginia,<sup>45</sup> Washington,<sup>46</sup> and West Virginia<sup>47</sup>—to eighteen years.

In Maryland<sup>48</sup> the limitation is extended to eighteen for girls and twenty for boys, and in California<sup>49</sup> to twenty-one for both girls and boys. A number of states<sup>50</sup> provide that jurisdiction once obtained over any minor may continue beyond these age limits, usually until he reaches twenty-one.)

<sup>31</sup>*Ariz.* Revised Statutes, 1913 (Civil Code), sec. 3562.

<sup>32</sup>*Conn.* 1917, C. 308, sec. 4.

<sup>33</sup>*Idaho.* 1911, C. 159, sec. 152, amended 1917, C. 84.

<sup>34</sup>*Minn.* 1917, C. 397, sec. 1.

<sup>35</sup>*Miss.* 1916, C. 111, sec. 6.

<sup>36</sup>*Neb.* Revised Statutes, 1913, sec. 1263.

<sup>37</sup>*Nev.* Revised Laws, 1912, sec. 728.

<sup>38</sup>*N. C.* 1915, C. 222, sec. 2.

<sup>39</sup>*N. D.* Compiled Laws, 1913, sec. 11402.

<sup>40</sup>*Ohio.* General Code, secs. 1642 and 1643, amended 1913, p. 864.

<sup>41</sup>*Oreg.* Lord's Oregon Laws, 1910, sec. 4406.

<sup>42</sup>*S. C.* 1917, No. 73, sec. 1; 1912, No. 429, sec. 1.

<sup>43</sup>*S. D.* 1915, C. 119, sec. 1.

<sup>44</sup>*Utah.* 1913, C. 54, sec. 2.

<sup>45</sup>*Va.* 1914, C. 57. (Dependent under 16.)

<sup>46</sup>*Wash.* 1913, C. 160, sec. 1.

<sup>47</sup>*W. Va.* 1915, C. 70, sec. 1, amended 1917, C. 63.

<sup>48</sup>*Md.* 1916, C. 326, sec. 2. (In Baltimore, under 16.)

<sup>49</sup>*Cal.* 1915, C. 631a, secs. 1 and 5, amended 1917, C. 627 and C. 634.

<sup>50</sup>*Ala.* General Laws, 1915, No. 506.