This is to certify that the

thesis entitled

THE BACKGROUND AND DEVELOPMENT OF STATUS OFFENSES

presented by

MAHENDRA PAL SINGH

has been accepted towards fulfillment
of the requirements for

M.S. degree in Criminal Justice

Robert C. Trojanowicz
Major professor

Date 5-16-79

THE BACKGROUND AND DEVELOPMENT OF STATUS OFFENSES

By

Mahendra Pal Singh

A DISSERTATION

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF SCIENCE

Department of Criminal Justice

1979

ABSTRACT

THE BACKGROUND AND DEVELOPMENT
OF STATUS OFFENSES

By

Mahendra Pal Singh

State legislators have long wrestled with the status offense controversy to be in tune with the Federal guidelines. Research on aspects of status offenses is scant and has failed to project them in their proper perspective. By exploring the background and development of status offenses, efforts have been made to establish a viable and credible rapport with the ongoing research and to provide a way out of the present impasse. The study has attempted to highlight the controversy by examining the pros and cons of it in its historical, philosophical, sociological, and legal perspectives.

The non-criminal chapter of the Juvenile Code needs to be redrafted to provide for services not only to the child but to the family as well in the most suitable environment. Provisions must be incorporated into the revision of the law to settle disputes over rights and privileges. Besides, further research must face the uphill task of clarifying problems facing status offenses.

ACKNOWLEDGMENTS

I express my gratitude and prayers to the Almighty, the Benevolent, the Merciful, whose protection and affection I seek and enjoy.

Professor Robert Trojanowicz, Chairman of my Thesis Committee has been much more than a teacher to me. He has been the guiding light that shows the way, the Spirit that inspires and the ideal that exalts. My heartiest and sincerest thanks to him and to Professor Ralph Turner and Professor Vincent Hoffman, members of the Committee, whose valuable suggestions/modifications and guidance helped me immensely in refining my thesis.

Professors Louis Radelet, Zolton Ferency, Hoyt Coe Reed, Peter K. Manning were very kind and considerate to me throughout and I owe them a lot. I am very thankful to Lynn Jondahl, Representative, State Legislature, who spared no valuable time to make records available to me.

I specially thank Mr. Ranji Lal, Inspector of Police, Delhi (India), and Dr. Usha Devi Tribhuvan for their constant and inexhaustible goodwill and support to me.

My wife and my children deserve all the credit for the exceptional courage and patience with which they tolerated my absence in a foreign land. Without their encouragement and emotional endearment this venture would not have even started.

Last, but not the least, I am grateful to my Department which inspired and encouraged me for this work in higher education.

TABLE OF CONTENTS

CHAPTER I
INTRODUCTION

Status offenses are peculiar in form, strange in understanding, and controversial in nature, and coercive in operation. They are an inevitable part of every State's juvenile code and a unique expression of adolescent acts not known in many parts of the world. These juvenile laws were possibly a culmination of the overwhelming concern of the "child-savers" to control immigrant children. They may be a remnant or projection of Anglo-Saxon laws of Colonial days. Whatever be the reasons or causes, these are admittedly a product of Nineteenth Century legislation. However, in one form or the other, these offenses are facing and have survived the hottest controversy.

The other side of the coin with regard to the status offenses is "neglect," "abuse," and other legal lapses by parents. The design of the laws does not appear to be the containment of the generation gap but to control the corrosion of family cohesion and an attempt to channelize a child's behavior.

> Every society views its young with a mixture of hope and trepidation. The young are a society's future, for good or ill, and are the focus of special efforts to educate, to protect, and to transmit culture from one generation to the next.[1]

To appreciate the dimensions of the situation posed by status offenses, a glimpse at the whole problem is necessary. The National Council on Crime and Delinquency did make an effort in that direction.

> Every year in the United States over 100,000 children from seven to seventeen inclusive are held in jails and jail-like places of detention. The significance of this situation is not merely the large number so held, or the fact that most of the jails in which they are detained are rated unfit for adult offenders by the Federal Bureau of Prisons' Inspection Service, but rather that many of these youngsters did not need to be detained in a secure facility in the first place.[2]

Another assessment of the situation records that

> Estimates by the National Council on Crime and Delinquency indicates that 1000,000 youngsters under 18 will be held in correctional institutions by juvenile courts in 1975. Of these children, 23 percent of the boys and 70 percent of the girls will not be guilty of any crime for which an adult would be arrested or prosecuted,[3]

---

[1]Zimring, Franklin E., Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime, Holmes and Meier Publishers, Inc., New York, 1978, p. 31.

[2]National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, New York, 1961, p. xxi.

[3]National Council on Crime and Delinquency, "Fact Sheet No. 2," April 10, 1975.

and furthermore,

> Detained against their will, having committed no crime, and seldom dangerous to themselves or others, thousands of these young people food our juvenile detention centers annually. The cost of feeding, clothing, housing, and supervising these children in security-facilities is tremendous (sometimes $30 a day or more). The cost in terms of the potential negative impact on adolescents is beyond calculation.[4]

Rosemary Sarri basing her survey on juvenile courts found that "using the national study of juvenile courts, we can estimate the proportion at 30 percent" and "can expect approximately 600,000 status offense causes to be processed or served through the juvenile courts and correctional programs of the U.S. each year."[5]

Evaluating PINS (Persons in Need of Supervision) performance, Andrews and Cohn mention that:

> Over 10 thousand young people are processed each year in New York State family courts as 'persons in need of supervision (PINS) because they have committed offenses illegal only for persons under sixteen--staying out late, disobeying parents, running away, skipping school.[6]

---

[4]Latina, Jane C., and Schembera, Jeffrey L., "Volunteer Homes for Status Offenders: An Alternative to Detention," in Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, N.J., 1978, p. 183.

[5]Sarri, Rosemary C., "Status Offenders: Their Fate in the Juvenile Justice System," Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, 1978, p. 66.

[6]Andrews, Jr., R. Hale, and Cohn, Andrew H., "PINS Processing in New York: An Evaluation," Beyond Control, Teitelbaum, Lee E., and Gough, Aidan R., Ballinger Publishing Company, Massachusetts, 1977, p. 45.

In the same context, Rector referring to the fact adds that "more than 66,000 youth are confined in State training schools or their equivalents, and that between 45 and 55 percent of them are status offenders,"[7] and

> The issue is that status offenses are offenses against our values....As long as it offends our values, be sure that police, or the Church or vigilante groups or somebody is going to do something about it.[8]

Status offenses pose multi-facet problems and transcend inter-disciplinary dimensions. One wonders why such a vital issue is being debated by only some sociolegal experts and involved professionals. Very little research has been done and offhand conclusions presented.

Behaviors of children, below a specified age, branded as offensive are punishable as status offenses. "Status" is a category based on age. Status offenses are described but not defined, rustically written but not refined. Kassebaum in his overview reflects:

> So broad are the powers of the public agencies with respect to youth, so limited are the legal rights of children, and so diffuse are the specific laws dealing with juvenile dependency, delinquency, and youth crimes, that it is impossible to set forth the statutes defining offenses of youth in any simple test.[9]

---

[7]Rector, M., "PINS: An American Scandal," National Commission on Crime and Delinquency, 1974.

[8]Hunter, Hurst, "Juvenile Status Offenders," a Speech Given to New Mexico Council on Crime and Delinquency, in Crime and Delinquency, April 1977, Vol. 23, No. 2, p. 121.

[9]Kassebaum, Gene, Delinquency and Social Policy, Prentice-Hall, Inc., Englewood, N.J., 1974, p. 11.

In fact, we have all violated some law some time when we were adolescents. Does that make any difference? Is that behavior at that age worthy of indictment? The following quotation addresses itself to the situation:

> An American adolescent, struggling with the biological and psychological pressures of growth, seeks status and reassurance in the company of his peers. Rebellion against parental authority and restrictions is combined with pressure to conform to the expectations of other adolescents. The teen years are a period of experiment, risk-taking, and bravado.[10]

And paradoxically,

> In American life, adolescents are physically strong before they are emotionally mature, enjoy physical mobility and freedom from supervision before they can make responsible life choices, and have the ability to do serious harm long before they fully realize their capacity to follow the rules and restrictions that society expects adults to obey. It is thus not surprising that youth crime is a growth industry in the U.S. and that dealing with the youthful offender presents a set of complex and difficult policy issues that can never be resolved in a totally satisfactory manner,[11]

and whatever may be the case, "either for their own protection or for that of the community, young people in the United States also are typically denied privilege available to adults."[12]

---

[10]Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime, Holmes and Meier Publishers, Inc., New York, 1978, p. 3.

[11]Ibid., p. 31.

[12]Ibid., p. 83.

Nobody can quarrel with Senator Birch Bayh when he said that "raising a child is one of the most difficult and important challenges any person can ever face, and this is so "because the collective success or failure that we confront in raising young people actually determines the future of the country."[13] Bayh continued, "but you know and I know that when young people first confront the American system of juvenile justice, the net result is often more injustice than equity."[14]

The juvenile justice system suffers from judicial paternalism, discriminates on the basis of sex and inflicts harsh penalties on dissenting youth. Meddling with intra-family problems, enforcing school discipline and controlling adolescent behavior are a few of the role patterns of the juvenile courts which adjudicate over status offenses. That juveniles are stigmatized is another allegation against the system. Status offenses are not delinquent behaviors or violations of any criminal code, but they are violations of established norms.

The philosophy governing the policy laid down for the Michigan probate courts, under the Juvenile Code is:

---

[13]Bayh, Birch, in Foreword for the National Council on Crime and Delinquency, Status Offenders and the Juvenile Justice System, N.J., 1978, p. ix.

[14]Ibid.

> that each child coming within the jurisdiction of the court shall receive such care, guidance and control, preferably in his own home, as will be conducive to the child's welfare and the best interest of the State and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to the care which should have been given to him by them.[15]

Status offenses are governed by the Juvenile Code and tried in a probate court. The same Code classifies status offenses as pertaining to a child:

> (1) who has violated any municipal ordinance or law of the State or of the United States; or
> (2) who has deserted his home without sufficient cause or who is repeatedly disobedient to the reasonable and lawful commands of his parents, guardian or other custodian; or
> (3) who repeatedly associates with immoral persons, or who is leading an immoral life; or is found on premises occupied or used for illegal purposes; or
> (4) who, being required by law to attend school, wilfully and repeatedly absents himself therefrom, or repeatedly violates rules and regulations thereof; or
> (5) who habitually idles away his or her time; or
> (6) who repeatedly patronizes or frequents any tavern or place where the principal purpose of the business conducted is the sale of alcoholic liquors.[16]

Section 712A.2(d) of the Code applies to a child:

> (1) who is repeatedly addicted to the use of drugs or the intemperate use of alcoholic

---

[15]Michigan Juvenile Code, MCL712A1-712A28, Juvenile Court Rules, Sec. 712A.1

[16]Ibid.

liquors; or
(2) who repeatedly associates with criminal, dissolute or disorderly persons; or
(3) who is found of his own free will and knowledge in a house of prostitution or assignation or ill-fame; or
(4) who repeatedly associates with thieves, prostitutes, pimps or procurers; or
(5) who is wilfully disobedient to the reasonable and lawful commands of his parents, guardian or other custodian and is in danger of becoming morally depraved; or
(6) who habitually idles away his or her time.[17]

In the same context it may be mentioned that "the problem of reaching a general description of childhood crimes by aggregating the standards of separate criminal justice agencies across the country is further complicated by variation from district to district."[18] Moreover, "there is no consistent policy governing the actions of law enforcement agencies in different areas toward juvenile or adult offenders or citizens as a whole."[19]

However, Kassebaum has summarized the common elements that constitute the proscribed behaviors in a child, when the child

violates any law or ordinance; engages in immoral or indecent conduct around school;

---

[17] Ibid.

[18] Kassebaum, Gene, Delinquency and Social Policy, Prentice-Hall, Inc., Englewood, New Jersey, 1974, p. 13.

[19] Ibid., p. 18.

> associates with vicious or immoral persons; grows up in idleness or crime; knowingly enters, visits house of ill-repute; patronizes, visits public shops or gaming places; patronizes saloons or houses where intoxicating liquor is sold; patronizes public poolroom or bucket shops; wanders in street at night, not on lawful business (curfew); (habitually) wanders about railroad yards or tracks; jumps train or enters a car or engine without authority; habitually plays truant from school; incorrigibly (habitually) uses vile, obscene or vulgar language in public places; absents self from home without consent; loiters, sleeps in alleys; refuses to obey his parent, guardian; uses intoxicating liquors; is found in place for the permitting of which adult may be punished; smokes cigarettes (around public places); engages in occupations or situations dangerous to self or others; begs or receives alms.[20]

The general nature of these words does not define the limits of specified actions characterized as status offenses, thus leading to vagueness. Mere lack of clear definition, and vagaries of interpretation and application not only detracts one from the desired objective but also makes one implement such laws oppressively. "Therefore, a large number of children are brought before the court because of laws couched in a language far more diffuse than would be tolerated in adult criminal procedure."[21] Once the children happen to fall in the net, they "may have greater problem in securing release,[22] and are likely to suffer long-range stigmatization.

---

[20] Ibid., p. 3.

[21] Ibid., p. 4.

[22] Ibid., p. 15.

Statement of the Problem

Evidently, status offenses are the most pertinent and pressing problem of the juvenile justice system today. It touches every home, affects adolescents, and creates a confrontation between society and State. About 70 percent of girls and 33 percent boys are categorized as "status offenders." In Michigan the total comes to around 40 percent. The question is whether status offenses: should exist, and if so, whether these should be processed through courts and housed in non-secure facilities? A wide ranging controversy hangs around some states' experimental diversionary programs or projects to save adolescents from court processes. The controversy over status offenses remains as acute as ever. The implications are far-reaching. The juvenile justice and Delinquency Prevention Act of 1974 is already in existence at the Federal level. The Act is:

> designed to prevent young people from entering our failing juvenile justice system, to assist communities in developing more sensible and economic approaches for youngsters already in the juvenile justice system and to provide $600 million through fiscal year 1980 to strengthen, continue and stabilize the 1974 congressional-citizen initiative which established juvenile crime prevention as the federal priority.[23]

---

[23]Birch Bayh, in Foreword for the National Council on Crime and Delinquency, Status Offenders and the Juvenile Justice System, N.J., 1978, p. ix.

The Act stipulated a period of three years for States to submit plans for deinstitutionalizing and decriminalizing the status offenses. However, the period was further extended to provide ample time and opportunity for the States to develop their plans. At the time of signing the Juvenile Justice Act extension into law, President Carter stated:

> Unfortunately, in our country there has been an absence of adequate distinction between those juveniles who commit serious crimes, such as murder, rape, and robbery, on the one hand, and those who commit crimes that are no threat to their neighbors, like being a runaway child."[24]

Speaking in a similar vein, in his IACP speech, Senator Edward Kennedy called for the elimination of less-than-adult penalties for the most serious violent juvenile offenders: "Age cannot justify treating the 17 year old rapist or murderer differently from his adult counterpart."[25] He urged that "the law permit photographing and fingerprinting of juvenile offenders, as well as make their criminal records available to judges for sentencing decisions."[25] On the other hand, Kennedy favored maximum efforts "to take the juvenile courts out of the business of punishing status offenders or jailing the 'problem child.'"[26]

John Rector of the Office of Juvenile Justice and Delinquency Prevention was quoted as saying that:

---

[24] Ibid.

[25] Criminal Justice Newsletter, Vol. 9, No. 21, Oct. 23, 1978, p. 3.

[26] Ibid.

> The current overreach of the juvenile system in its reliance on detention and incarceration is particularly shocking as it affects so-called status offenders....Many status offenders are arrogant, defiant and rude--and some are sexually promiscuous. Detention or incarceration, however, helps neither them nor us. Some of these children cannot be helped, and others do not need help. Real help, for those who need it, might best take the form of diverting them from the vicious cycle of detention, incarceration and crime."[27]

Amidst this controversial atmosphere most of the States appear to be adopting a cautious approach. There is more radicalism in words and writings, than in legislation. Every one of the States has almost the same problem and therefore they are waiting for and watching each other's actions.

Objective of the Study

The main object of this study is to fill the void by assembling all the relevant information together in one work and examine the nature and rationale for supporting, removing or retaining status offenses. In this context, Chapter II will trace and provide historical and philosophical perspective, which will be followed by a review of the literature in Chapter III.

Chapter IV will present sociological and legal considerations involved in various aspects of status offenses.

---

[27]Criminal Justice Newsletter, Vol. 9, No. 9, April 24, 1978, p. 2.

Chapter V will highlight specifically the poignant points of the controversy over status offenses. It will give an insight and limitations of the various cures prescribed for the problem.

Chapter VI will summarize the discussion by putting up a coherent and consistent case, and exploring the implications for possible program development.

Chapter VII will include the conclusion and future directions to delineate areas for further study.

Significance of the Study

The study seeks to establish a viable, and credible rapport with ongoing research. It supports the inbuilt strength of the sociological structure by compiling, analyzing and summarizing the data. Facts, principles, various arguments, opinions, observations and research findings are brought to a confluence so as to provide a way out of the present impasse. Specifically, it will be informative and broad based and try to level the oddities obscuring the view. It will usher in a new approach to the whole issue and enable reform of the rudimentary rubric of the juvenile justice system, regarding status offenses.

The study will help in developing new programs and perspectives in framing the mechanisms of new legislation. It will also focus prominently in on the otherwise low-lying aspects of status offenses. It will re-kindle and rejuvenate

the interest and involvement of persons and organizations vitally necessary for the growth and development of the existing juvenile justice system.

CHAPTER II
HISTORICAL AND PHILOSOPHIC PERSPECTIVE

Status offenses, historically and philosophically, grew out of the desire to treat the children legally as a special category. The process of immigration and local problems of settlers put a premium on the development and socialization of the children. The beginning of the laws in the U.S. is itself an interesting story and will provide an insight into the existing legislation. "In its early history, the Anglo American legal system developed more by trial and error than by plan."[28] This speaks of the phenomenon that most of the executive-cum-judicial offices are common law offices and do not possess statutory sanction or constitutional validity for a long time.

An enlightened background survey was provided by Paul Isenstadt and Rosemary Sarri:

> The creation of the juvenile court and related statutes governing the legal processing of children grew out of concerns as well as aspirations of Nineteenth Century social reformers. They sought to advance the welfare of the children by removing them

---

[28]Richard A. Myren, and Lynn D. Swanson, Police Work with Children, U.S. Dept. of H.E.W., Washington, D.C., 1962, p.1.

> from the jurisdiction of the criminal court and providing new institutional mechanisms whereby the State would intervene for rehabilitative rather than punitive purposes. But at the same time, these reformers were also concerned about social control and the moral development of immigrant and working class children who were flooding the cities. They believed that the State had the right to intervene benevolently to see that children were 'properly' socialized to assume the adult roles needed in an industrializing society.[29]

It is no wonder that "the juvenile court emerged from the convergence of several streams of social philosophy and legal practice,[30] and that "the creation of a specialized court for youth was viewed as one means of humanizing criminal law."[31] The undercurrent of this prevalent thinking is portrayed by Schlossmen on the belief that:

> The great majority of Americans, judges included, believed that universal education was a social panacea, that children, specially children of the poor, had few legal rights, that impoverished parents lacked moral character and were incapable of providing healthy conditions for childrearing, and that anything which the government could do to instill their children with proper values was for the better.[32]

---

[29]Isenstadt, Paul and Sarri, Rosemary C.,"Juvenile Court: Legal Context and Policy Issues," Brought to Justice, by Sarri, Rosemary C., and Hasenfeld, Yeheskel, University of Michigan, Ann Arbor, 1976, p. 2.

[30]Ibid., p. 2.

[31]Ibid., p. 2.

[32]Schlossmen, Steven L., Love the American Delinquent, The University of Chicago Press, Chicago, 1977, p. 17.

Before the establishment of juvenile courts and the juvenile justice system, laws regarding children were primitive and punitive in character. Most of the Puritan legislation bore testimony to this effect: The Puritans of Massachusettes prescribed death

> if any childe or children above sixteen years old and of sufficient understanding shall curse or smite their natural father or mother... unless it can be sufficiently testified that the parents have been very unchristianly negligent in the education of such children.[33]

According to these laws:

> If any man have a stubborn or rebellious sonne of sufficient yeares and understanding, viz. sixteene years of age, which will not obey the voice of his father or his mother, and that when they have chastened he will not hearken unto them; then may his father and mother, being his naturall parents, lay hold on him and bring him to the Magistrates assembled in Courte and testifie unto them, that theire sonne is stubborn and rebellious and will not obey their voice and chastisement, but lives in sundry notorious crimes, such a sonne shall be put to death.[34]

The juvenile court movement was viewed in a much wider perspective by Schlossmen:

---

[33]Lee E. Teitelbaum, and Harris J. Leslie, "Some Historical Perspectives on Governmental Regulation of Children and Parents," in Beyond Control by Lee E. Teitelbaum, and Aidan R. Gough, Ballinger Publishing Company, Massachusetts, 1977, p. 9.
(The General Laws and Liberties of the Massachusetts Colony (1672) in Juvenile Offenders for a Thousand Years, 318-19 (W. Sanders; ed. 1970)

[34]Ibid.

> The efforts to establish juvenile courts and probation departments in the early twentieth century were part of a broader social movement to accomodate urban institutions to an increasingly industrial base and a predominantly immigrant population; to introduce control and planning into diverse aspects of city life previously monopolized by entrepreneurs, and to apply recent discoveries in psychology, sociology, medicine, and business management to the education of children.[35]

And that was the reason why the juvenile courts considered to bring about reform and expected to achieve whatever remained to be desirable of them. An overview says:

> The Court inevitably became the ultimate proving ground for many other reform measures, such as child labor laws, industrial education, compulsory school attendance, visiting nurses and teachers, the establishment of kindergartens, and so forth.[36]

The whole philosophic rationale behind the extension of State power of intervention was to protect the children as well as the integrity of the family and, in a way, to balance the interests of both judiciously. In other words, they were also safeguarding the society and the foundations of the State. The rationalists and environmentalists took a whole new look at the situation and believed that there was a need for proper correctional, educational and legal programs.

---

[35]Schlossmen, Steven L., Love the American Delinquent, The University of Chicago Press, Chicago, 1977, p. 57.

[36]Ibid.

The year 1899, when Illinois passed an Act creating statewide court jurisdiction over children, is a landmark year. The cases of dependency, delinquency and incorrigibility were brought under court control. Other States gradually followed suit and there came into existence the juvenile justice system which includes in its fold a category of status offenses. As indicated, "on the basis of the concept of parens patriac, the juvenile court was authorized to intervene whenever a juvenile behavior was problematic for the child, family or society."[37]

Similarly tracing its history and philosophy Meda Chesney Lind gave a new dimension to the issue:

> In 1899, the first juvenile court was established in Chicago, culminating a long campaign to create a separate judicial system for youthful offenders. While using rhetoric about protecting children from horrors of the adult system, the court founders were actually interested in a system which would shore up traditional American institutions like the family. Imagining these to be threatened by foreign immigration and urbanization, the largely middle class, Anglo Saxon conservative set up a court to reinforce their definition of appropriate adolescent deportment.[38]

---

[37]Rosemary C. Sarri, and Paul Isenstadt, "The Juvenile Court: Legal Context and Policy Issues," in Brought to Justice by Rosemary C. Sarri and Yeheskel Hasenfeld, Ann Arbor, 1976, p. 3.

[38]Chesney-Lind, Meda, "Judicial Paternalism and the Female Status Offender," in Status Offenders and the Juvenile Justice System, by the National Council on Crime and Delinquency, Hackensack, N.J., 1978, p. 111.

It took quite some time for the people to evaluate the performance of the juvenile courts in particular and the juvenile justice system as a whole. As late as 1960 the realization of a subdued debate started taking shape which became more audible in the Nineteen Seventees. A number of U.S. Supreme Court decisions changed the focus, and there grew a widespread feeling that all was not well with the juvenile justice system. The criticism of the juvenile courts and of the laws pertaining to children became the obvious target. A phenomenal increase of runaways, rising index of juvenile crime, dropouts and vandalism in schools attracted the attention of social thinkers, educators, publicmen and legal functionaries.

Status offenses were treated at par with other criminal offenses and there was no differentiation in the treatment of the two in the Juvenile Code. Status offenders were similarly detained, processed and punished as any other juvenile criminal. This was a very late realization. In 1961 New York specifically brought out the legislation for the first time separating the status offenses from the categories of delinquency. California did it in 1962 and then other States reluctantly followed suit. In fact the pace was quickened because of the declaration of status offenses statutes as void by the courts on the grounds of "vagueness," "due process," and "fairness." California Juvenile Statute was void "because it failed to give fair warning of proscribed conduct or information to the fact finder

to enable accurate recognition of such conduct (Gonzalez V. Mailliard, 1971)."[39]

Earlier, the case of Kent versus the United States (1966) for the first time posed a major challenge to the juvenile courts on the grounds of "due process." The court gave its judgement in favor of "due process guarantees" to the juveniles and declared that "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony--without hearing, without effective assistance of counsel, without a statement of reasons (383 U.S. at 554)."[40]

In re Gault (1967), the U.S. "Supreme Court imposed procedural safeguards that set minimum standards in proceedings for delinquents who, having violated criminal statutes, might be committed to an institution."[41]

In re Winship (1970), the Supreme Court gave another important decision requiring the standard of "proof beyond a reasonable doubt"[42] in juvenile proceedings. In another case (Breed V. Jones, 1975), "the Court has ruled that subjecting a child to a criminal trial after a delinquency adjudication in a juvenile court for the same offense constitutes double jeopardy."[43]

---

[39]Rosemary C. Sarri and Paul Isenstadt, "The Juvenile Court: Legal Context and Policy Issues," in Brought to Justice, by Rosemary C. Sarri and Yeheskel Hasenfeld, Ann Arbor, 1976,p.7.

[40]Ibid., p. 9.

[41]Ibid., pp. 9-10.

[42]Ibid., p. 10.

[43]Ibid.

Still there are large numbers of legal issues related to status offenses repeatedly invoking Federal and State courts jurisdiction to revoke or reform statute provisions, on one ground or the other.

> Issues related to a right to abil, a hearing to test pretrial confinement, and admissibility of confessions and evidence procured during investigatory process--issues that for adults have been decided in Mapp N. Ohio (1961) and Mirande V. Arizone (1966)--remain unanswered for juveniles.[44]

At the Federal level, the Task Force Report of 1967 discussed, in detail, the policy implicationa and favored elimination of juvenile court jurisdiction over status offenses. It advocated development of alternative services for status offenders, instead of processing and incarcerating them as delinquents. Eventually, in 1974, the U.S. Congress enacted the Juvenile Justice and Delinquency Prevention Act which provided that

> a State must, within two years from the date of submission of a plan for funding, treat juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult in shelter facilities and cease placing them in juvenile correctional or detention facilities.[45]

The Act expressed the "clear legislature intent that States be offered the incentive to move toward minimizing

---

[44] Ibid., p. 11.

[45] Lee E. Teitelbaum and Harris J. Leslie, "Some Historical Perspectives on Governmental Regulation of Children and Parents," in Beyond Control by Lee E. Teitelbaum and Aidan R. Gough, Ballinger Publishing Company, Massachusetts, 1977, p. 279.

contact between law enforcement personnel and non-criminal juvenile offenders, specially runaways."[46]

An amendment to the Act has been accorded Presidential approval, extending the time limit for the States for three more years to enable them to develop the alternatives for the status offenders, through federal grants. The Federal Government, perhaps, wants to act as a catalyst, an agent of change and provide federal funding as an instrument to affect that change. The States are attempting to change their juvenile code regarding status offenses substantially, if not totally, because that is the price or condition of the change.

---

[46] Ibid., p. 279.

CHAPTER III
REVIEW OF LITERATURE

There is a scarcity of available literature on status offenses. Much literature has come out and is found under the references on juvenile delinquency, deviancy, youths, youth problems, youth crime and the like. Very little has been written so far specifically on status offenses. The reason obviously being that it was not in focus. It was only in 1967 that the President's Commission's Task Force Report on Juvenile Delinquency and Youth Crime attracted attention to noncriminal offenses. The issue was discussed in depth and in detail in the Seventees when the controversy to eliminate these offenses caught fire. This generated interest in academic and professional circles and some of the studies were done both at the macro and micro levels. I have cautiously excluded the literature pertaining to delinquency, deviancy, youth crime, etc. unless and until it has directly impinged status offenses. Had I not done so, the focus on status offenses would have been lost and the main issue concerning status offenses would have got drowned in the all-pervading generality of the delinquency sea.

The Task Force Report asserted:

> One frequent consequence has been the use of general protective statutes about leading an immoral life and engaging in endangering conduct as a means of enforcing conformity--eliminating long hair, Levis, and other transitory adolescent foibles so unsettling to adults. One need not expound the traditional American virtues of individuality and free expression to point out the wrongheadedness of so using the juvenile court; it is enough to reflect that the speed with which such fads come and go is equaled only by the strength of their resistance to outside attack.[47]

Further clarifying its views, the report added:

> It must be recognized, however, that the most earnest efforts to narrow broad jurisdictional bases, in language or practice, will not altogether remove the possibility of our extension. Statutory drafting deals necessarily in the general; applying legislation is in the last analysis subject to its administrator's views. Therefore, and in view of the serious stigma and the uncertain gain accompanying official action, serious considerations should be given complete elimination from the court's jurisdiction of conduct illegal only for a child. Abandoning the possibility of coercive power over a child who is acting in a seriously self-destructive way would mean losing the opportunity of reclamation in a few cases. It is hard to contemplate having no way of preventing a teenage girl from damaging her life with an illegitimate child when a sufficiently strong hand might have gotten her through the belligerent years without so permanent a blight. But in declining to relinquish power over her, we must bluntly ask what our present power achieves and must acknowledge in answer that

---

[47]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, U.S. Government Printing Office, Washington, D.C., 1967, p. 25.

> at the most we do not really know, and in at least some cases we suspect it may do as much harm as good.[48]

The review of literature will pursue the part which touches on the subject in general and highlights the controversy. The review will have general literature on the subject as well as the one which deals with the controversy. The literature which specifically addresses itself to various offenses like running away, dropping out, incorrigibility, ungovernability, curfew, etc. has been excluded because it would have blurred the focus of this paper. Status offenses have been taken as a whole and not parts of it as a separate entity, because each one of it is a subject in itself. I have maintained the totality of the problem and viewed it objectively as well as subjectively.

In the Nineteen Seventees, the subject of status offenses got its sailwind and very soon blew into a full-fledged controversy. Then, there have been semblances of reforms, revlauations of the same, and finally the Act of 1974 at the Federal level. The Juvenile Justice and Delinquency Prevention Act of 1974 envisaged the provision of federal funding to those States which planned alternate infra-structure to decriminalize or deinstitutionalize status offenses.

---

[48] Ibid., p. 27.

The main exponent of the course of decriminalization and deinstitutionalization has been the National Council on Crime and Delinquency. The National Council on Crime and Delinquency (NCCD) in October 1974, through its Board of Directors, laid down a policy for removing status offenses from the jurisdiction of the juvenile courts. The policy statement of the Board of Directors, giving various weighty reasons, came to the conclusion that

> The juvenile court should be the agency of last resort for anti-social--i.e., criminal--conduct. Its efforts and sanctions should be reserved for serious criminal conduct. Although a matter for community concern, non-criminal conduct should be referred to social agencies, not to courts of law.[49]

The policy statement gave rise to a barrage of articles for and against the elimination of juvenile courts' jurisdiction over status offenses.

> Other national organizations which concur with the NCCD policy include the National Americanism and children and youth division of the American Legion, the National Alliance for Safer Cities, the National Association of Counties and the National Council of Jewish Women.[50]

---

[49]Board of Directors, National Council on Crime and Delinquency, "Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court--A Policy Statement," Crime and Delinquency, 21(2): 97-99, 1975.

[50]William L. Hickey, "Status Offenses and the Juvenile Court," in Status Offenders and the Juvenile Justice System, NCCD, 1978, p. 124.

The Juvenile Justice Standards Project (Institute of Judicial Administration/American Bar Association), commonly known as Standards, in its Noncriminal-Misbehavior Volume has specifically mentioned:

> A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.[51]

The Controversy on Deinstitutionalization and Decriminalization

> The Office of Juvenile Justice and Delinquency Prevention (OJJDP), established by the Act, has funded over $14 million worth of special emphasis projects for the deinstitutionalization of status offenders.[52]

It provided the rationale for deinstitutionalization and also gave the necessary guidelines for the purpose. It quickened up the slumbering paces of States toward the goal of deinstitutionalization. States separated the category of status offenses, wrapped it under new nomenclatures, formulated distinct adjudicatory process and evolved alternate services instead of seeking courts' coercion.

---

[51] Juvenile Justice Standards Project (Institute of Judicial Administration and American Bar Association), Noncriminal Misbehavior (Cambridge, Mass., Ballinger Press), 1977, p. 35.

[52] William L. Hickey, "Status Offenses and the Juvenile Court," in Status Offenders and the Juvenile Justice System, NCCD, 1978, p. 125.

There is also evidence to show that statewide studies are being undertaken to collect data and other research material by various States to separate the problem of status offenses from the rest of the delinquency offenses and other statutory crimes. An analysis conducted by the National Assessment of Juvenile Corrections, based on laws that were in effect on January 1, 1972, found twenty-five jurisdictions, including the District of Columbia, to have separate categories for status offenders at that time.[53]

The failure of PINS laws and the like, convinced the people that mere dressing differently would not automatically upgrade the system of reform, but some substantial efforts were needed to mend the fences. Michigan's House Bill 4704 and the Model Juvenile Court Act by the National Juvenile Law Center are some of the attempts in this direction. There has been similar legislative activity in other States too.

A study of various juvenile codes in the U.S. was made by Mark M. Levin and Rosemary C. Sarri, and its findings form part of a book entitled Juvenile Delinquency which presented findings on six crucial dimensions of the Juvenile Codes: jurisdiction, detention, adjudication, disposition court structure, and records.[54]

---

[53]The National Center for Juvenile Justice, Juvenile Court Organizations and Status Offenses: A Statutory Profile (Pittsburg, Pa., 1974).

[54]Mark M. Levin, and Rosemary C. Sarri, Juvenile Delinquency: A Study of Juvenile Codes in the U.S., National Assessment of Juvenile Corrections, University of Michigan, Ann Arbor, 1974, p. 62.

A much broader focus on the problem was introduced in another research work edited by Rosemary C. Sarri and Yeheskel Hasenfeld wherein the writers addressed key policy issues facing the juvenile courts. Studying the juvenile courts in legal and environmental context, viewing structural and staff characteristics, assessing case processing: intake, adjudication and disposition, evaluating service technologies: diversion, probation and detention and reexamining the court performance in the light of due process, it perceptively provided feedback information about the impact of court decisions on the issue.[55]

The theory and practice of juvenile justice was discussed by Steven L. Schlossmen in his book Love and the American Delinquent. It made a selective historical enquiry into the American juvenile justice from 1825 to 1920.[56]

The Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders considered the sentencing policy for young offenders in detail. It was concluded in the words of Francis Allen that "the process of the (juvenile) court, with all their limitations may still

---

[55]Rosemary C. Sarri, and Yeheskel Hasenfeld, Brought to Justice?--Juveniles, the Courts, and the Law, National Assessment of Juvenile Corrections, University of Michigan, Ann Arbor, 1976.

[56]Steven L. Schlossmen, Love and the American Delinquent, the University of Chicago Press, Chicago, 1977.

represent the best and least harmful method that our civilization has devised to handle these problems."[57]

Allan J. Couch, in his article "Diverting the Status Offender from the Juvenile Court," considered the realities of the system: failures of the parents, disinterested citizenry, failure of schools, short-sightedness of legislation, imposition of the police, prosecution orientation of the district attorney and strongly suggested keeping the status offenders out of the juvenile court's jurisdiction.[58]

Judge Lindsay G. Arthur, in an article, very strongly defended the jurisdiction of juvenile courts over status offenders. Comparing status offenses category with other generic categories like chemical category, control category, education category and family category, Lindsay maintained that status offenses were as serious as any other offenses of the category and deserved court attention. The essence of his argument centered round the assertion that

> we should divert when we can divert. But if the child or the family cannot or will not accept needed treatment, and if the need for treatment is more important than the stigma of the court record, then the court should be there to impose the needed treatment.[59]

---

[57]Francis Allen, "The Borderland of Criminal Justice" (Chicago:University of Chicago Press, 1964), pp. 52-53, in Confronting Youth Crime, Twentieth Century Fund, Task Force on Sentencing Policy Toward Young Offenders, Holmes and Meir Publishers, Inc., New York, 1978, p. 104.

[58]Alan J. Couch, "Diverting the Status Offender from the Juvenile Court," Juvenile Justice, November 1974, pp. 18-22.

[59]Arthur G. Lindsay, "Status Offenders Need Help Too," Juvenile Justice, February 1975, pp. 3-7.

Justice Thomas D. Gill, in his speech to the New England Council of Juvenile Court Judges held in March 1976, discussed, in detail, the position of status offenders in the juvenile justice system. He said:

> In view of the demonstrable differences between children and adults, fundamental fairness demands that these differences should be reflected in the judicial yardstick by which children's obligations to society are measured, but there then follows notable differences of opinion concerning where the line of demarcation between the child's world and that of the adult is to be fixed.[60]

Discarding the administrative coercive power in place of courts' jurisdiction, and acknowledging the utility of voluntary agencies to handle status offenders, he defended the juvenile court as a proper forum for adjudicating juvenile offenders. Judge Gill contended:

> The children, then, who through the efforts of the court are returned to school, wedded to new programs, placed in new educational settings, given solid work experience through vocational probation, and who receive tutoring and other remedial help, are not in the headlines, but there are thousands of them.[61]

The Criminal Justice Newsletter (Vol. 8, Number 20, 1977), earlier, summarized the details of the Senate hearings

---

[60] Thomas D. Gill, "Status Offender," Juvenile Justice, August 1976, pp. 3-10.

[61] Ibid., p. 8.

regarding the problems and the progress toward status offender deinstitutionalization.[62]

Christopher A. Martin, in an article, "Status Offenders and the Juvenile Justice System: Where Do They Belong?" traced the philosophic and structural origins of the juvenile court which allowed the court to establish authority over juveniles. Referring to the controversy regarding deinstitutionalization and decriminalization, he suggested that "these changes not be implemented until such time as various research studies and pilot projects offer some significant degree of validation justifying those changes."[63]

In "Status Offenders Belong In Juvenile Court," Anthony A. Guarne took an opposite view to that of the National Council on Crime and Delinquency. He argued in favor of retaining juvenile courts' jurisdiction over status offenders and maintaining that "the juvenile court will not be the court of last resort but will continue to be the best resort."[64]

While studying the problem and the process in detail, Rosemary C. Serri pinpointed the main issues in the controversy:

---

[62]Criminal Justice Newsletter, Vol. 8, Number 20, October 10, 1977.

[63]Christopher A. Martin, "Status Offenders and the Juvenile Justice System: Where Do They Belong?" Juvenile Justice, February 1977, pp. 7-17.

[64]Anthony A. Guarna, "Status Offenders Belong in Juvenile Court," Juvenile Justice, November 1977, pp. 35-37.

> Status offenders are still processed as juvenile delinquents in most States. In 1972, 1,112,500 juvenile cases, excluding child abuse and neglect, were processed by the juvenile courts in the United States. When the juveniles in non-reporting counties plus those held in jails, institutions, and detention facilities are added, the estimate exceeds 2,000,000 cases. It is also estimated that 30 percent of juvenile court cases are status offenders. Thus, approximately 600,000 status offense cases can be expected to be processed or served each year through juvenile courts and correctional programs. The study of juvenile correctional programs by the National Assessment of Juvenile Corrections revealed that there is not yet any real separation in programs of status offenders and juvenile delinquents.[65]

Defining the role of the juvenile court, Edward Pabon did not approve of the "revolving door policy" of the courts and the referring agencies. Pointing out the difference not in the category but in the handling, he said:

> Running away from home, using alcohol and drugs, and having numerous problems not limited to a special category of youth officially detected and processed as status offenders. The author suspects that youth in correctional programs for status offenses are not intrinsically different from most adolescent youth in the behavior which resulted in their commitment. Rather, the differences lie in the handling of these youth by the juvenile justice system....[66]

---

[65]Rosemary C. Sarri, "Status Offenders: Their Fate in the Justice System and an Alternate Proposal," Criminal Justice Abstracts, September 1978, p. 294.

[66]Edward Pabon, "Serving the Status Offender," Juvenile and Family Court Journal, May 1978, pp. 41-48.

Spotlighting the elimination of status offenses, Robert L. Drake, Judge of Probate and Juvenile Court posed such questions as: what do children want from the adult world and what is needed? Exposing a number of fallacies, Judge Drake suggested for a unified and coordinated system by providing facilities, mandatory diversion for voluntary action, notice to the responsible non-court agency, screening by the Prosecuting or District Attorney, limitations on detention, education and training, counseling programs for children and families in need of specific services and an interdisciplinary in-service training.[67]

Elizabeth W. Vorenberg in her letter to LEAA gave a glimpse of how Massachusetts has shifted care of status offenders to social service unit.[68]

Similarly, a survey of ten States found progress in status offender deinstitutionalization. The study made by Arthur D. Little, Inc., under federal funding, showed progress toward deinstitutionalization by collecting data from ten States representing a mix of size, youth service systems, and

---

[67]Robert L. Drake, "Elimination of Status Offenses: The Myth, Fallacies and More Juvenile Crime," Juvenile and Family Court Journal, May 1978, pp. 33-40.

[68]Elizabeth W. Vorenberg, "How Massachusetts Has Shifted Care of Status Offenders to Social Service Unit," Criminal Justice Newsletter, Vol. 9, Number 2, January 16, 1978, pp. 1-2.

approaches to deinstitutionalization: Arkansas, California, Connecticut, Florida, Iowa, Maryland, New York, Oregon, Utah, and Wisconsin.[69]

The issue of status offenses and the controversy regarding decriminalization and deinstitutionalization was thoroughly thrashed in the book entitled Beyond Control, edited by Lee E. Teitelbaum and Aidan R. Gough. Dealing with historical perspectives, PINS processing and its evaluation, sex-based discrimination, vagueness doctrine, rule of law and the controversy over juvenile court's jurisdiction over status offenses, it attempted to focus the theory and practice of "beyond control" jurisdiction. It traced strategies and analyzed attitudes with respect to family concerning parent-child relationship. It highlighted the provisions stipulated by standards (IJA/ABA) relating to non-criminal behavior.[70]

An anthology under the name Status Offenders and the Juvenile Justice System published by the National Council on Crime and Delinquency discussed various issues relating to status offenses. There was more emphasis on the controversy over status offenses, evaluation of diversionary programs and other socio-legal aspects of the issue. It also contained a

---

[69]Arthur D. Little, Inc., "Cost and Service Impacts of Deinstitutionalization of Status Offenders in Ten States," Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, 1978, pp. 155-163.

[70]Lee E. Titelbaum and Aidan R. Gough, Beyond Control, Ballinger Publishing Company, 1977.

report on the 1977 Senate Hearing on the subject and the salient recommendations of Standards (IJA/ABA).[71]

Summary

The States, under federal funding, are moving slowly towards de-institutionalization but trying to evolve some sort of safeguards in the form of court intervention. There is no clear-cut consensus over total elimination of courts' jurisdiction but there are no two opinions about handling and providing services to status offenders by other volunteer or specialized agencies to avoid labelling as far as possible.

---

[71]Richard Allison (Ed.), Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, Hackensack, N.J., 1978.

CHAPTER IV
SOCIOLOGICAL AND LEGAL CONSIDERATIONS

Social

Status offenses are the punitive product of sociological and legal problems. But the problems are not new nor temporary or insoluble. These are embedded in adolescence and are signs of turbulence during growth years. In non-aggravated form these violations surface, though varying in nature and degrees. It is a part of socialization process.

> Neither the Spartan gymnasium, nor the Russian creches, nor the Israeli Kibbutz nurseries, nor scientifically run children's homes have been found to successfully duplicate the socio-psychological mystique which nurturs children into stable adults.[72]

The relationship of the child with parents, society and State is not based on one set of principles but consists of various considerations, explanations and implications. All those angles and points of views are to be looked into both in detail and in-depth.

---

[72]Edwin M. Lemert, "Juvenile Court--Quest and Realities," in Task Force Report: Juvenile Delinquency and Youth Crime, The President's Commission on Law Enforcement, 1967, p. 92.

Youth Family Relationship

Had homes been "sweet homes" children would not have untied themselves by uprooting the whole relationship so vital for any youth to grow as a normal being. It does not put blame on homes but only signifies its focal importance. There is no substitute for a family. With all attractions and amenities hotels cannot be homes. Why natural parents cannot be replaced by any other person or institution is a common knowledge. Parent-like or parens patriae is a poor substitute for parents. The environment at home is important but neither home nor parents per se make or mar juvenile delinquency.

There is another way of rational analysis:

> The family, like other social units or systems, is a power system. Force or its threat, money, respect, and love underlie the family structure and are the four sources of power by which people can move others to serve their ends. Socialization and control of children involves a pattern of exchange in which the adult gives positive rewards to the child for compliant behavior.[73]

There are various reasons for the parents to go to juvenile courts to petition against their children. Few of these include: (1) getting rid of the child, (2) inability to exercise control over the child, (3) failure to cope with

---

[73]Anne R. Mahoney, "PINS and Parents," in Beyond Control by Titelbaum, Lee E., and Gough, Aidan R., Bellinger Publishing Co., Massachusetts, 1977, p.

the child's needs to gain autonomy and freedom of movement, (4) to avoid public embarrassment and (5) maladjustment.

Schlossmen has rightly remarked that "the poor family had become an ally as well as an enemy in the crusade against juvenile crime."[74]

With the advent of industrialization, mobility and economic pressures, family homogeneity loosened and parental control got lost. Parents became helpless and so did the children. To take the family out of the dilemma, legal doctrine of parens patriae was adopted from the British Chancery Courts.

The change in outlook demanded a new approach to family problems:

> Circumstances now suggested grounds for doubt about the capacity of many families to rear children in the way necessary for them to become good citizens. At the same time, social, political and intellectual views had also changed in ways that justified and even required adoption of new strategies for dealing with family breakdown.[75]

Children on the one hand and the parents on the other are responsible and answerable to the juvenile courts. The court controlled the children under status offenses while the parents were punishable under "neglect" and "abuse." This brought the judicial intervention too deep into the family life and too wide in the life of a child.

---

[74]Steven L. Schlossmen, Love and the American Delinquent, The University of Chicago Press, Chicago, 1977, p. 78.

[75]Lee E. Teitelbaum and Harris J. Leslie, "Some Historical Perspectives on Governmental Regulation of Children and Parents," in Beyond Control by Lee E. Teitelbaum and Aidan R. Gough, Ballinger Publishing Company, Massachusetts, 1977, p. 20.

Child and Society Relationship

"The theory of society's relationship to children and parents developed during the last century is both forward and backward looking."[76]

The social system of earlier times was in the hands of those who got settled and established themselves. They framed their own rules and promoted the philosophy which they wanted. It was mainly based on their experience and expediency. In spite of the liberal and rational approach, the hangover of the Victorian era and Puritanism continued.

Society was aware of the need for imparting education to children. The only way to force a reluctant child to go to school and attend classes was through courts. There appeared to be an apprehension that wayward and uneducated children would go towards criminality or commit acts of delinquency.

The Child's Relationship With the State

The State empowered the juvenile courts and gave them the Juvenile Code, with a view and intention that everything would be set right and courts would be able to render required services for the fallen child. Parens patriae philosophy was enough to move. It was later on realized that the Code

---

[76] Ibid., p. 31.

changed its wording to PINS (Person in Need of Supervision), CHINS (Child in Need of Supervision), JINS (Juvenile in Need of Supervision), and FINS (Family in Need of Supervision) and they brought out new rehabilitative and diversionary programs. States move slowly and still proper type of legislation and treatment program is not in the making. There is more pressure from the Federal Government to decriminalize and deinstitutionalize the status offenses.

General Considerations

> The jurisdiction over unruly children is thus a kind of moral thumbscrew by which we seek to demand of our communities' children a greater and more exacting adherence to desired norms than we are willing to impose upon ourselves. And infirmities of constitutional law aside, the jurisdiction in operation is otherwise maladroit in several major respects.[77]

There were also talks of cultural crisis and value vacuum:

> The rise of our youth culture to a position of such prominence is a symptom of grave default on the part of adults. Trapped in frozen posture of befuddled passivity which has been characteristic of our society since the end of World War II, the mature generations have divested themselves of their adulthood.[78]

---

[77] Ibid., pp. 276-277.

[78] Theodore Roszak, "Youth and the Great Refusal," in The Politics and Anti-Politics of the Young, Michael Brown Glencoe Press, California, 1969, p. 8.

The growing affluence in some societies while poverty among others created a sort of imbalance, making it difficult for youth to rationalize their societal role in the real world of discrepancy and discrimination. The predicament was poignantly new for the new generation. "So the young are faced with creating values out of a cultural void. They must face the radically new question of what to do with affluence."[79]

The adult failed to set any satisfactory example for their life style before the young ones and that led to deeper confusion. The Task Force Report observed:

> This extended socialization is accompanied by the problem of poor adult models. Throughout the social classes, it appears that the search for the adult to be emulated is often a desperate and futile quest. Part of the reason for this futility is due to the very rapid social and technological changes occurring in our society which make it more difficult for the adult to perform his traditional role of model and mentor to youth.[80]

The impact of getting richer was also focused on by the Task Force Report:

> Our youth in general are richer today than they have ever been and have more alternatives of action and more privileges. The list of privileges usurped by youth has not only

---

[79]Michael Brown, The Politics and Anti-Politics of the Young, Glencoe Press, California, 1969, p. 3.

[80]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, U.S. Government Printing Office, Washington, D.C., 1967, p. 148.

> increased but has shifted downward in age. The high school student of today has the accoutrements of the college student of yesteryear--cars, long pants, money, and more access to girls.[81]

The Task Force Report does realize that "times and viewpoints shift rapidly and many of our children resemble world-weary and jaded adults at age fourteen."[82]

The growing state of misunderstanding or lack of understanding between children and their parents is also a point under consideration. It is said that the generation gap has always remained and will remain inevitable.

> Parents have almost been accused of not understanding their children. What may be new is that more parents either do not care that they do not understand or that it is increasingly impossible for them to understand.[83]

It is not only a one-sided difficulty but parents also have similar complaints that their children do not understand them. It is obvious that something is lacking in communication and both sides feel handicapped. Can the crisis of communication be resolved by a third party intervention? Should it be counseling, expert advice or coercion? Court intervention is thought to be the ideal agency of resolution and change. Now the trend is toward expert advice, counseling, and crisis intervention strategies.

---

[81] Ibid.

[82] Ibid.

[83] Ibid., p. 148.

Another aspect of the problem is pointed out by McLuhan:

> Suddenly today the child is merging with the total adult environment under elective information processing and is disappearing from the scene as child. It is absurd to ask us to pursue fragmentary goals in an electric world that is organized integrally and totally. The young today reject goals--they want roles--that is, involvement. They want total involvement, they don't want fragmented specialized goals or jobs....[84]

On the other hand there are different considerations:

> The gravity of time pulls hard on our muscles and too often the earlier triumph of principle gives way to the triumph of expedience. The once lambent minds of youth are frequently corroded by conformity in adulthood, and a new flow of youth into the culture is needed to involve their own standards of judgement on our adult norms.[85]

Explaining the drift and the reasons for falling into gangsterism, the Task Force Report adds:

> Lacking word skills, he will not be able to distinguish among nuances of feeling and will respond only to the most primitive, most basic stimuli. Such a young man or woman in a slum neighborhood is obviously unable to benefit from the customary social facilities designed to impart middle class 'virtues' or values. Instead, he will naturally drift to the gang or to narcotics or any lifestyle that gives him immediate gratification and

---

[84]Herbert Marshall McLuhan, Address at "VISION 65," The American Scholar, 35: 2 (Spring 1966), p. 205.

[85]Marvin E. Wolfgang, "The Culture of Youth," in Task Force Report, p. 154.

> even temporarily, a scene that he is master of his environment.[86]

Legal

From a sociological and legal consideration, status offenses are indefensible. Due to lack of social awareness and legal onslaught, status offenses survived all these years as a necessary evil and served as a whip in the hands of parents or society against non-criminal offenders. Sociologically and legally, status offenses remained an anachronism in the juvenile justice system. In other words:

> The jurisdiction over unruly children is thus a kind of moral thumbscrew by which we seek to demand of our communities' children a greater and more exacting adherence to desired norms than we are willing to impose upon ourselves. And infirmities of constitutional law aside, the jurisdiction in operation is otherwise maladroit in several major respects.[87]

For more than forty years, literature about juvenile justice emphasized the treatment aspect of the juvenile court but rarely mentioned the juvenile law, legal procedures, and rights of youth.[88]

---

[86]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, U.S. Government Printing Office, Washington, D.C., 1967, p. 341.

[87]Lee E. Titelbaum and Aidan R. Gough, Beyond Control, Ballinger Publishing Company, 1977, pp. 276-277.

[88]Mark M. Levin and Rosemary C. Sarri, Juvenile Delinquency: A Study of Juvenile Codes in the U.S., National Assessment of Juvenile Corrections, University of Michigan, Ann Arbor, 1974, p. 2.

There is another problem with these juvenile codes and the juvenile courts:

> All 51 codes bring within the purview of the juvenile court conduct that is illegal only because of the child's age--status offenses. Youth so charged have not violated a law applicable to adults. With the exception of truancy and curfew violations, juveniles really come under the courts' jurisdiction because of their condition, not because of specific conduct. These status offenses are defined in highly subjective terms--'incorrigibility,' 'immorality,' 'idling,' 'beyond reasonable parental control,' 'unruliness,' 'waywardness,' and 'in need of supervision.' In many States, status offenses are defined so broadly that any and all children could be brought within the juvenile court's jurisdiction if the judge were so inclined.[89]

Moreover:

> The juvenile codes are relatively silent about the substantive or constitutional rights of juveniles. Rather, they tend to emphasize the rights of society and the rights and duties of parents for more than those of the child. To a considerable extent, the law tends more to view the child as an inert object than as a human being with inherent rights equal to those of all other human beings.[90]

According to Sarri the "challenges to status offenses have arisen most frequently for (1) vagueness (2) punishment and (3) over-extension."[91]

---

[89] Ibid., p. 11.

[90] Ibid., p. 60.

[91] Ibid., p. 64.

Vagueness

Status offenses cannot withstand the test of void for vagueness doctrine. They are so vague that a man of common intelligence cannot guess the meaning or could make nothing out as to what he has to avoid. Supreme Courts have struck down quite a number of status offenses for vagueness.

Punishment of a Condition

The decision in Robinson V California,[92] supports the argument that a status must be differentiated from a criminal act and that punishment for a status violates the Eight Amendment.[93]

The New York Wayward Minor Statute was struck down on this ground. There are conflicting versions of the definition of "status" and it still needs a standardized legal interpretation.

Over-Extension

Over-extension is another ground to invalidate a statute. The principle of over-extension has not been properly developed in status offense cases and there is enough scope to challenge

---

[92]Robinson V California, 370 U.S., 660 (1962).

[93]Rosemary C. Sarri, "Status Offenders: Their Fate in the Juvenile Justice System," in Status Offenders and the Juvenile Justice System, MCCD, 1978, p. 64.

these statutes on this ground. Over-extension exists in various forms and its interpretation also needs legal validity.

As we have seen there is one more ground for legal attack, and that is "discrimination." Status offenses suffer from sex, class and status infirmities and the violators are being punished on account of discrimination and not due to crime-connection. It has already been established that girls are more victims of status offenses than boys and that they have to suffer more than their other counterparts. The disproportionate institutionalization of females is apparent. There is also a disproportionate number of non-whites and most of them come from large, poor communities and broken homes.

There is another dilemma that the "neglected" were classified as "ungovernable" though obstinacy of parents transforms them into "incorrigible." In this type of over-reaching, overbearing and over-punishing situation, it is no wonder that it would shock any conscience. Sarri remarked:

> It is shocking to see this level of punitive social control being exercised over these youths. Even a police state would not function properly if it had to maintain forcible control over 90 percent of the population.[94]

---

[94] Ibid., p. 68.

Do the kids from affluent families not have these infirmities or do they escape the attention of law enforcement? It obviously leads to the conclusion that one can avoid these consequences if there are necessary resources to avoid them.

A belated Act of 1974 at the federal level is the attempt in the right direction. There is still a long way for the States to go.

Status offenses are indications more of a sociological problem than of a legal one. As R. Mahoney indicated:

> Over half of the youths came from families supported by welfare. More then 85 percent of the youths were from racial minority groups. 79 percent of the youths came from broken families, and 14 percent of them lived with neither parent.95

Mahoney compared "child alienation" with parents with "marital alienation," leading to the dissolution of marriages, except that no relief to the child like that is available.

Birdwhistell clarified the family position:

> It requires but little reflection to see that American family, as idealized, is an overloaded institution. It is easy to see, too, that the goals set by the concept are unattainable and have people failing both as spouses and as parents. This can have even more tragic results if the people who find it impossible to live in such a situation, because they are human and have human needs, seek help to escape and are directed

---

95Anne R. Mahoney, "PINS and Parents," Beyond Control, Tietelbaum, Lee E. and Gough, Aidan R., Bellinger Publishing Company, Cambridge, Mass., 1977, p. 166.

> back into the pathological situation. The counselor, the therapist or the legal advisor who accepts the ideal becomes the reinforcer of the pathology.[96]

At one point in this effort, everyone seems to be helpless: children, parents, courts, society, the State, the powerful and the powerless.

Referring to PINS jurisdiction, vagueness doctrine and the rule of law, Al Katz and Tietelbaum observed that "in real sense, the juvenile court was originally conceived as a system of 'substantive justice' rather than 'legal justice.'"[97]

The curbing of desires, acceptance of rules are part of socialization. Adaptations are to be made while one is in the process of socialization. Adjustments through legal process are poor substitutes for socialization.

The problem of parental disobedience, truancy, sexual deviance, runaways are to be decided more on a sociological plane than by legal injunction. So much emphasis on socialization is to demonstrate a preference for sociological remedies and not to preclude the judicial concern towards social problems. The thin line of demarcation indicating

---

[96]Birdwhistell, "The Idealized Model of the American Family," 51 Social Casework 197 (1970), in Beyond Control, Bellinger Publishing Company, 1977, p. 173.

[97]Al Katz and Tietelbaum, "PINS Jurisdiction, the Vagueness Doctrine and the Rule of Law," Beyond Control, p. 208.

where to stop and where to intervene, form part of a continuous process of making and unmaking of laws. Ultimately it will come to value judgements, to societal responses, to its norms, and to what is acceptable as a way out. What is the need and concern of a society in one country may not be the same elsewhere and these variations are bound to be there. The remedies also lie within the ambit of the same society in which the problems originate. Transplantation of remedies is not a very healthy cure and occasionally leads to reaction. Therefore the sociological and legal considerations are very important to visualize the various aspects of a particular issue. The controversy can be resolved, keeping these factors in reference to their context in mind.

CHAPTER V
CONTROVERSY

Status offenses are highly controversial and one of the hotly debated issues. The controversy ranges from maintaining the status quo to decriminalization and deinstitutionalization. The problem is that in the present system there is more of punitive treatment, detention, stigmatization, decrimination, and excessive judicial intervention, but less of rehabilitation. If the reforms are made in the area of decriminalization or deinstitutionalization, there is no surety that another agency would do better than the courts, and an opportunity to help the juvenile or serve the family and society might be lost forever.

The controversy over decriminalization or deinstitutionalization will be presented in two parts, viz (1) arguments pleading for status quo (2) arguments in favor of decriminalization.

Before coming to the controversy, I would pause, for a while, to examine the background perspective. Tietelbaum thought:

> Perhaps the most important changes affecting societal views of the family are associated with changes in general philosophy....Among the most important of these was the innate wickedness of man, which assured that there would always be sin and negated any general theory of progress on earth. The function of civil government was to repress, as far as possible, that evil, its entire removal was never thought possible.[98]

And then came the theory of societal response according to which

> That response lay in mainpulation of the environment, generally through placement of child in an institution where proper attitudes could be instilled and encouraged. Through education, houses of refuge, reformatories, and the like, poor and wayward children could be molded 'into the form and character which the peculiar nature of the edifice (of American society) demands, and in due time the youth specially may become intelligent, enterprising and liberal minded supporter of free institution.'[99]

The change in the philosophy and sociological researches gave rise to reforms, bringing juvenile codes and courts into existence. The movement spread and every State accepted and implemented the new law. The reform was the major achievement of the era. It was thought that everything will go well with the courts. As described in The Task Force Report:

---

[98]Lee E. Titelbaum and Aidan R. Gough, Beyond Control, Ballinger Publishing Company, 1977, p. 14.

[99]Ibid., p. 20.

> The practicality of a 'stitch in time' combined with an idealistic faith in the social sciences and treatment to give them a zealous desire to extend the juvenile court's helping hand as far as it could reach and a somewhat uncritical conviction that whatever the court did, as long as it meant well, was in the child's best interest.[100]

But everything and everyone did not go well with the juvenile courts. The widening gap between philosophy and practice brought the juvenile courts into disrepute. As described by Schlossmen:

> Ideally the court was a missionary agent for the educational and moral uplift of the poor. In practice it functioned, more often than not, as a source of arbitrary punitive authority, and an arena for the evocation of hostile emotions on all sides.[101]

In the light of this background, we come down to the controversy itself.

Advocates of Status Quo or Those Not in Support of Decriminalization and Deinstitutionalization

Main advocates of status quo or opponents of deinstitutionalization or decriminalization are judges of juvenile courts, and other officials of the establishment. Thomas D.

---

[100] The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, U.S. Government Printing Office, Washington, D.C., 1967, p. 23.

[101] Schlossmen, Love the American Delinquent, The University of Chicago Press, Chicago, 1977, p. 188.

Gill agreed that "the law, as it generally does and properly should, did but conform to and embody the mores of the times."[102] Gill indicated:

> What emerges from this statutory melting pot, then, is a unanimous subscription to the conclusion which constitutes the basic philosophical undergirding of the court. That is, in view of the demonstrable differences between children and adults, fundamental fairness demands that these differences should be reflected in the judicial yardstick by which children's obligations to society are measured, but there then follows notable differences of opinion concerning where the line of demarcation between the child's world and that of the adult is to be fixed. It is this cloudiness of jurisdictional conviction bespoken both by these age differentials, as well as the confusing withholding of certain serious offenses from the juvenile court's jurisdiction in many states that makes it possible for those who would divert status offenders from the court to argue, as they seemingly do, that fourteen--and fifteen--year old children are sufficiently mature to break away from the familiar moorings of home and school and become self-directing without seriously endangering their own well-being, even as equally eloquent voices are protesting the diversion of children of similar age to criminal courts as being patently unready for the rigors of the adult justice system.[103]

Criticizing the Federal approach and the enactment of Juvenile Justice and Delinquency Prevention Act of 1974, Gill contends:

---

[102]Thomas D. Gill, "Status Offender," Juvenile Justice, August 1976, p. 4.

[103]Ibid., p. 5.

> to avoid the erasure of the status jurisdiction of the juvenile court through action that succeeds in negating the statutory implementation of the juvenile justice standards pertaining to status offenders in our respective states will indeed prove to be a pyrrhic victory if the carrot of the federal grants in aid dangled before the states under the terms of that Act compel us to yield to the big stick of the Act's mandate which demands the deinstitutionalization of all status offenders, including therein children who have violated a lawful order of the juvenile court.[104]

Referring to the guidelines, under the Act, regarding the delimitation of juvenile court's authroity, Gill said that "...every judge is transformed into a judicial wizard of Oz, a pitiful humbug, loud in words but equipped with nothing but legal blank cartridges."[105]

Returning to voluntary agencies and other alternatives, Judge Gill felt that these agencies are not tried ones and that there needs to be coordination between these agencies and governmental institutions. The judge differed with the dispositional criterion of the Act:

> The act also assumes that the offense of record at the time of confinement is the only one that determines the child's suitability for confinement in a particular type of facility. This presumption totally disregards the fact that disposition decisions in juvenile court are most often based on a

---

[104] Ibid., p. 5.

[105] Ibid., p. 6.

> child's total situation, rather than his offense. Many, if not all, juvenile court judges would consider it entirely inappropriate to exclusively use offense as the sole basis for determining a proper disposition. They recognize the superficial, often purely technical nature of the charge that immediately precedes the decision to incarcerate. Usually, the decision to confine is based upon a sequence of events, not just the most recent one.[106]

The judge differed in many ways but partially agreed to the few:

> The author believes, too, that the judges of the juvenile courts have not, do not, and will not oppose the handling of status offenders by voluntary agencies, either existing or to be created, whenever and wherever such agencies prove themselves effective in their efforts on behalf of these children. What, however, must be contended is that experience to date clearly demonstrates that the great majority of status offenders represent children who are having inherent problems with authority, problems which in turn can but rarely lend themselves to successful resolution save through the proper use of authority. The best evidence for the support of this truism is found in any court's case histories of those children who time and again have run the gauntlet of voluntary, non-authoritative agencies before referral to the legal setting.[107]

In the same context he differentiated between the authority of the court and that of an agency by saying:

> It would be our contention that unbridled coercive administrative power is far more

---

[106] Ibid., p. 6.

[107] Ibid., p. 7.

> threatening to children than the authority of the court, encased as it is in the scabbard of due process, and even more importantly, we fail to see how the significant rights and duties which characterize every child-parent relationship and which are by no means terminated by the rebellion or running away of a child can be left dangling in a legal void.[108]

He maintained that only the courts are competent and "equipped to adjudicate the divergent rights and duties which inevitably present themselves as by-products of the confrontation between parent and child."[109]

Counteracting the criticism that courts do not provide constructive solution to errant child, he mentioned:

> The children, then, who through the efforts of the court are returned to school, wedded to new programs, placed in new educational settings, given solid work experience through vocational probation and who receive tutoring and other remedial help, are not in the headlines, but there are thousands of them.[110]

But in this context, he also referred to the predicament faced by those who do not have court experience:

> Juvenile courts, being legal forums concerned with protecting the privacy of children and their families who come within the court setting, cannot publicize their successes. A scientist can and does tell exactly what he discovers in his probing of the unknown, but the boy next door is not going to recite what the court did for him.

---

[108] Ibid., p. 7.

[109] Ibid., p. 8.

[110] Ibid., p. 8.

> The court's successes fade into merciful obscurity which is part of the fabric of rehabilitation. This is as it was designed and should be. How to preserve the fabric and yet resolve the doubts, the misunderstandings, the confusion of those who will never have first hand experience with the court is both the dilemma and the challenge.[111]

He was of the view that the courts can do much more if the community and the State were so disposed toward the courts by providing them enough resources and alternatives.

Focussing on stigmatization, he alleged that any agency or program dealing with problematic children, as the courts, would

> soon be seen by the realistic eye of the community as a sanctuary for difficult children, for failures, and consequently such stigma as inevitably attaches itself to programs and facilities servicing such children will speedily be imputed to that agency or school.[112]

Discounting the charge of discrimination against the juvenile courts, he argued that

> few disadvantaged parents encountered by judges have really resented the efforts of the court to help their children return to school; they did not talk of discrimination; they were grateful for the help they needed and had not found elsewhere.[113]

---

[111] Ibid., p. 8.

[112] Ibid., p. 8.

[113] Ibid., p. 9.

He justified the treatment of children on the grounds that they were different from adults

> because children are not adults, distinctions predicted upon the patent emotional, physical, and social difference of the child and the adult are rationally and reasonably related to the State's laudable purpose of protecting a group which is not yet ready to protect itself.[114]

Shifting the onus of providing a solution on to the legislature, he concluded by flashing a formidable question:

> It is a changing world, and the law which after all is but the codification of our most cogent social and moral convictions, cannot long sustain a position divorced from these convictions. Do we still believe that children must be accountable to adult direction and that such direction finds its best expression in a strong cohesive family unit? Do we still believe in the American Dream, a mandated education for all? If a legislature believes that the home and the school, as the basic social institutions responsible for the molding of children, no longer need to draw upon the court for support, or equally important, be made answerable to the court for their respective stewardships in the lives of these children; or if the legislature concludes that the judicial process is after all not best equipped to determine, as someone must clearly do, where the genesis of the child's crisis rests, whether in the purpoted excessiveness of the parental or academic demand or the alleged willfulness of the child's response, it should be responsive to the proposed justice standards.[115]

And lastly,

---

[114] Ibid., p. 9.

[115] Ibid., p. 9.

> If, however, the legislature does not so believe, if it chooses to adhere to the long sustained and strongly held credos of the past, then it seemingly has no choice but to reject the position of the Standards Commission as embodied in its proposal for the status offender, for that position is an explicit negation of the very convictions which the legislature would be striving to reaffirm.[116]

Similarly, Judge Arthur took an exception to the "Standards of Juvenile Justice" and made scathing remark that "the function of judges is to find solutions to problems and the function of professors is to find problems with the solutions."[117] Over deinstitutionalization recommendation by the "Standards," he remarked that it is "based on a faulty analysis of the problems associated with the administration of juvenile justice" and that "it would result in severe costs to the child, the family and the community...."[118]

He clarified the standpoint of the juvenile courts:

> Juvenile courts are not anxious for cases, nor do they demonically desire to exert power. They realize--as do the Standards--that voluntary help is better than involuntary. But juvenile courts also realize that involuntary help is better than none--better for the child, better for the family, better

---

[116] Ibid., p. 10.

[117] Arthur G. Lindsay, "Status Offenders Need a Court of Last Resort," in Status Offenders and Juvenile Justice System, N.C.C.D., New Jersey, 1978, p. 19.

[118] Ibid., p. 19.

> for the public. They also realize that there are some children who need help, such as a correctional service, that they cannot get without a court order. Moreover, there are some children who need help that they cannot effectively get without parental participation, and experienced judges know that parents often will not participate without a court order.[119]

He enumerated the following factors responsible for compulsion:

(1) Some children are simply intransigent.

(2) Some parents are unable to discipline themselves or their children unless they are compelled. Inertia is a common parental failing.

(3) Family may not want the stigma of "treatment."

(4) Some decisions must be made for children, and there must be compulsion to back up these decisions.

(5) Court compulsion is necessary to assist these parents, to rebuild a family structure, and to prevent undisciplined children from plaguing a social structure founded on respect for others.

(6) Compulsion may be the only alternative that can effectively prevent uneducated children from burdening a culture that requires an educated demos.

(7) If compulsion is necessary to protect this country's future, then the proper institution for exercising this authority is the courts.

---

[119] Ibid., p. 20.

Disapproving the various provisions of the Standards favoring the child, Judge Arthur observed that

> the thrust of the Standards is to denigrate parents and family, to give any child at any age full control of his environment, and to protect children from juvenile courts that are pictured as somehow anxious to imprison children in heartless homes at the mere behest of a parent.[120]

Justifying the court coercion, he argued:

> But coercion does work, every day. It holds suicidal and runaway children until help can arrive; it maintains the status quo until the help can cool pressures; it compels medical and mental diagnoses that identify and solve root problems; it leads the horse to water.[121]

Replying to the "labelling theory" and stigmatization problem, he was of the view that "returning a child to the control of beneficent parents is certainly worth the price of some teasing the child might receive from his peers for being a 'J.D.'"[122]

Regarding availability and efficacy of alternative services suggested by the Standards, he contended:

> These services might exist in an ideal world, and they are being developed by juvenile courts in many metropolitan centres. But they do not now exist at every 'convenient' location throughout the length and

---

[120] Ibid., p. 24.

[121] Ibid., p. 25.

[122] Ibid., p. 25.

> breadth of this land, and not every community will--or can afford to--provide them simply because the Standards eliminate juvenile court jurisdiction over status offenses.[123]

Extending the logic, he pointed out that "by eliminating the court's jurisdiction over the juveniles, the Standards drastically curtailed the most meaningful surveillance over rehabilitative institutions."[124]

Rejecting the accusation of arbitrariness and lack of due process in the courts, he maintained that other alternative administrative agencies will develop their own standard of fairness and propriety, no better than the courts.

He upheld the ground of unequal protection on the premise that "Americans insist that their children have unequal protection."[125]

Main contentions of Judge Arthur Lindsay are:

> Children are not small adults. They lack experience; by definition they lack maturity. They cannot choose intelligently between options, because they do not know the options or the consequences of the options. Children should not be emancipated wholesale.[126]

In conclusion, he summarized:

> Finally, courts are able to resolve many family problems that would not be resolved without a court's involuntary intercession.

---

[123] Ibid., p. 26.

[124] Ibid., p. 27.

[125] Ibid., p. 29.

[126] Ibid., p. 31.

> Courts have demonstrated this ability time and again, in juvenile cases, in divorce cases, in alcoholism cases. Every possible case should be diverted, and every possible resource should be developed to allow maximum diversion; but courts should be, they must be, available to require needed help when it is refused or ignored. The focus of this intervention should not be shifted from the culpability of children to the culpability of parents, it should be shifted away from anyone's culpability, so far as the Constitution permits.[127]

The same writer, in an article in 1975, divided status offenses in four categories: (1) The Chemical Category (2) The Control Category (3) The Education Category, and (4) The Family Category. Discussing each category, he justified court intervention as the only valid intervention necessary for the child, family and society. Lindsay observed:

> I believe that status offenses are among the most serious matters that come before our courts, as serious certainly as car theft and shoplifting and possibly burglary. Status offenses are the tip of the iceberg, or may be more appropriately, the tip of the volcano. What little we see on the surface: skipping some school, staying out late, dating boys the father doesn't like, looks rather small and harmless. But for those who get as far as the court, there is usually much under the surface. Status offenses are an indication of some serious trouble. That this is the place where we can help, where we can help, where we can reduce the crime rates of the future.[128]

---

[127]Arthur G. Lindsay, "Status Offenders Need Help Too," Juvenile Justice, February 1975, p. 5.

[128]Ibid., p. 5.

Lindsay thought that "only a court can enforce conduct with proper protection of civil liberties" [129] and that "we cannot afford to have two sets of institutions, one for the nice children and one for the not so nice ones."[130] He warned: "let's not phase out the courts until we have phased in the new alternatives, and let's retain the court for those who refuse the new alternatives."[131]

In conclusion, he observed:

> The essence of this issue is that the court should be available when it is needed regardless of the misconduct, but it should not be used when it is not needed. We should divert when we can divert. But if the child or the family cannot or will not accept needed treatment, and if the need for treatment is more important than the stigma of a court record, then the court should be there to impose the needed treatment.[132]

Another, Judge Robert L. Drake, discussing the case of elimination of status offenses gave out:

> The proposal to eliminate status offenses misinterprets the fundamental reason for increasing crime, and, rather than decreasing it, will result in a further increase. It limits society's response to treatment of crime as a symptom, while accentuating its true cause: the widespread disease in contemporary society of liberation without responsibility and family breakdown. Its end result is unlimited permissivism.[133]

---

[129] Ibid., p. 6.

[130] Ibid.

[131] Ibid., p. 7.

[132] Ibid.

[133] Robert L. Drake, Juvenile and Family Court Journal, May 1978, p. 34.

Drake asked "What do children want from the adult world?" Answering, he agreed with Dr. Mario Pei "that quality is not buddyism, permissivism, sympathy, or even as perceived by many today, 'love'" but "he believed the best term is 'justice.'"[134] Drake believed that

> full liberation for children will result in more social breakdown and welfare costs; also in more abandonment, loneliness, mental illness, and, for those who strike out against their desolution, violence and crime.[135]

He suggested

> more facilities, mandatory diversion for voluntary action, notice to the responsible non-court agency, screening by the Prosecuting or District Attorney, limitations on detention, recording of educational priorities, counseling programs for children and families in need of specific services and interdisciplinary in-service training.[136]

Finally, he stated:

> For a system of justice for children to work it must first be believed in and practiced by the adult world. It must also offer positive alternatives, with fair rules which are consistently applied, and which have certainty.[137]

Anthony A. Guarna supported the view that status offenders belong in juvenile courts and argued:

---

[134] Ibid., p. 38.

[135] Ibid.

[136] Ibid., pp. 39-40.

[137] Ibid., p. 40.

> We cannot quarrel with the philosophy that whenever possible, the juvenile court process should not be invoked. Also, we cannot find any opposition against adjudicating the status offender non-delinquent. The opposition is against removing this child completely from the jurisdiction of the juvenile court. In addition, we cannot find any strong opposition against the current philosophy that status offenders should not be institutionalized with adjudicated delinquents.[138]

Expressing his disenchantment with other social agencies, he compared private and public social agencies:

> We can also place many of the public child welfare agencies in the same category as the private social agencies. Again, many probation officers will recognize that many of the status offenders who find their way into the juvenile court are the failures or rejects of public and private social agencies.[139]

He rounded off his conclusion with the remark that "the juvenile court will not be the court of last resort but will continue to be the best resort."[140]

Another point put forward by Martin and Snyder is

> that no one can show that children who are neglected by parents and society make better and happier citizens. Nor can anyone show that promiscuous teenagers are happier, better adjusted, and more adequate parents

---

[138]Anthony A. Guarna, "Status Offenders Belong in Juvenile Court," Juvenile Justice, November 1977, p. 36.

[139]Ibid.

[140]Ibid., p. 37.

> than teenagers whose sexual activities are curtailed by internal and external restraints. No one can show that ignoring runaways will make them feel wanted or loved.[141]

They believed that if the status offenses are taken out of the court and community resources are not placed at the disposal of the court, then "we are putting the burden of change on those who have shown that they can bear it least well."[142]

The Case for Deinstitutionalization or Decriminalization

Decriminalization involves elimination of status offenses from the Juvenile Code. Naturally it eliminates juvenile courts' jurisdiction. In other words, it would place a burden on other alternate agencies specifically and on the community generally. Again, the advocates argue in favor of decriminalization on the basis of the labeling theory, stigmatization and other socio-legal concepts.

The controversy over status offenses was simmering for quite some time but the first authoritative dissent was heard in the President's Commission's Task Force Report in 1967 which stressed the narrowing of juvenile courts'

---

[141] Lawrence H. Martin, Phyllis R. Snyder, "Jurisdiction Over Status Offenses Should Not Be Removed from the Juvenile Court," in Status Offenders and Juvenile Justice System, NCCD, 1978, p. 9.

[142] Ibid., p. 9.

jurisdiction:

> Any act that is considered a crime when committed by an adult should continue to be, when charged against a juvenile, the business of the juvenile court...but... serious consideration should be given to the complete elimination of the court's power over children for non-criminal conduct.[143]

More forthright comments and criticisms were audible in the Nineteen Seventees. The Board of Directors, National Council on Crime and Delinquency, in their policy statement, demanded that the "jurisdiction over status offenses should be removed from the juvenile court." In the Board's view "subjecting a child to judicial sanction for a status offense--a juvenile crime--helps neither the child nor society; instead, it often does considerable harm to both."[144]

The Board agreed that "imprisonment of a status offender serves no humanitarian or rehabilitative purpose" and that "it is, instead, unwarranted punishment, unjust because it is disproportionate to the harm done by the child's non-criminal behavior."[145]

---

[143]The President's Commission on Law Enforcement and Administration of Justice, Challenge of Crime in a Free Society, U.S. Government Printing Press, Washington, D.C., 1967, p. 85.

[144]Board of Directors, National Council on Crime and Delinquency, "Jurisdiction Over Status Offenses Should Be Removed From the Juvenile Court," Status Offenders and Juvenile Justice System, National Council on Crime and Delinquency, 1978, p. 3.

[145]Ibid.

Referring to a California Legislative Committee report, which mentioned:

> No one can prove that truants who become wards of the court end up better educated than those who do not. No one can show that promiscuous teenagers who are institutionalized have fewer illegitimate children than those who are not. Nor can anyone show that runaways who become wards of the court end up leading better adjusted lives than those who do not. Finally, no one can prove that unruly, disobedient minors who come under court supervision end up in prison less often then those who do not.[146]

The Board believed that the

> juvenile court system can utilize its coercive powers fairly and efficiently against criminal behavior that threatens the safety of the 'community' and that effort of the juvenile court to correct a non-criminal behavior, it has frequently resulted in misapplication....[147]

They quoted Judge David Bazelon as saying:

> The situation is truly ironic. The argument for retaining beyond-control and truancy jurisdiction is that juvenile courts have to act in such cases because 'if we don't act, no one else will.' I submit that precisely the opposite is the case: because you act, no one else does. Schools and public agencies refer their problem cases to you because you have jurisdiction, because you exercise it, and because you hold out promises that you can provide solutions.[148]

---

[146] Ibid., p. 4.

[147] Ibid.

[148] David L. Bazelon, "Beyond Control of the Juvenile Court," Juvenile Court Journal, Summer 1970, p. 44.

Regarding labelling, the Board contended that "whether we label children status offenders or delinquents, once introduced into the juvenile court process they become stigmatized."[149]

The Board further affirmed that "weighing the costs of the status offenders' involvement in the juvenile court process persuades us that this jurisdiction should be eliminated.[150]

The Board proclaimed that "rebelliousness and resistance to authority are characteristic of adolescent growth,"[151] and it concluded that

> The juvenile court should be the agency of last resort for antisocial--i.e., criminal--conduct. Its efforts and sanctions should be reserved to serious criminal conduct. Although a matter for community concern, noncriminal conduct should be referred to social agencies, not to courts of law.[152]

The federal legislation of Juvenile Justice and Delinquency Prevention Act of 1974 speeded up the pace of deinstitutionalization and endorsed the concern of the people about status offenses. The Act demanded that

---

[149]Board of Directors, National Council on Crime and Delinquency, "Jurisdiction Over Status Offenses Should Be Removed From the Juvenile Court," Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, 1978, p. 4.

[150]Ibid.

[151]Ibid., p. 5.

[152]Ibid.

> Juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities.[153]

The Act provided time span to the States and asked for the development of alternative services and a monitor system to review the progress achieved toward deinstitutionalizing status offenses, to enable the States for federal grant.

"The mainstream of current thinking within the field of juvenile corrections feels that the present juvenile institutions have proven unsuccessful, specially when dealing with status offenders."[154]

The Standards for Noncriminal Misbehavior proposed by the Institute of Judicial Administration and the American Bar Association Joint Commission on Juvenile Justice Standards recommended the elimination of status offenses from juvenile court jurisdiction. It stated that

> A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.[155]

---

[153]Christopher A. Martin, "Status Offenders and the Juvenile Justice System: Where Do They Belong?" in **Juvenile Justice**, February 1977, p. 11.

[154]Ibid.

[155]Board of Directors, National Council on Crime and Delinquency, "Jurisdiction Over Status Offenses Should Be Removed From the Juvenile Court," Status Offenders and the Juvenile Justice System, National Council on Crime and Delinquency, 1978, p. 15.

Judge Orman W. Ketcham of the Superior Court of the District of Columbia defended the recommendations, suggestions and observations made by the IJA/ABA (Institute of Judicial Administration/American Bar Association) Joint Commission of the Juvenile Justice Standards Project. The elimination of the jurisdiction was emphasized on the grounds that

> parents who bring complaints against their children are not always reasonable; independent and unruly youths are not necessarily antisocial and headed for criminal careers; and juvenile court intervention rarely remedies the interpersonal family conflicts that are at the root of such adolescent deviance.[156]

Ketcham indicated that "lawyers cite constitutional infirmities such as vagueness, lack of due process and unequal protection of the laws."[157] He contended that

> under our American Constitutional principles, coercive judicial action is not justifiable unless a vital State purpose is concerned and then only if judicial intervention equitably applied will carry out the defined purpose of the State,

and "by such measurements, juvenile court intervention into status offenders is neither justifiable nor effective."[158]

---

[156]Orman W. Ketcham, "Why Jurisdiction Over Status Offenders Should Be Eliminated from Juvenile Courts," in Status Offenders and the Juvenile Justice System, NCCD, 1978, p. 34.

[157]Ibid.

[158]Ibid., p. 35.

Ketcham rejected court intervention from sociological points of view such as labeling, stigmatization and interference in family autonomy. He said that

> court management and judicial administration allege administrative costs and inefficiency, overloaded court dockets and retardation of the growth of needed voluntary social agencies.[159]

Ketcham advocated that the "coercive intervention by a juvenile court is an unprincipled use of judicial authority."[160] He maintained, "A juvenile court's jurisdiction over status offenses violates these well established legal maxims."[161] He argued:

> Repeatedly, the juvenile court coercively intervenes into the lives and family affairs of juveniles for the private purpose of restoring a parent's control or returning a runaway child--like a chattel--to a parent. In matters of truancy, sexual promiscuity, or the use of alcohol or drugs, the juvenile court intervenes to enhance the private and individual best interests of the child by supervising his or her education, morals, manners, or health.[162]

He observed that the courts' "assertions are pretentions and overly ambitious."[163]

---

[159] K. Burkhart, "The Child and the Law--Helping the Status Offender," in Status Offender and the Juvenile Justice System, NCCD, 1978, p. 35.

[160] Orman W. Ketcham, "Why Jurisdiction Over Status Offenders Should Be Eliminated from Juvenile Courts," in Status Offenders and Juvenile Justice System, NCCD, 1978, p.35.

[161] Ibid., 36.

[162] Ibid.

[163] Ibid., 37.

Referring to education and court jurisdiction over truancy, he remarked:

> Nothing can be more valuable to a young person in today's world than a good education. But forced attendance at a public school, without motivation and personal involvement by the juvenile, does not assure an education. 'You can lead a horse to water, but you can't make it drink....' Too often juvenile court intervention in truancy cases is merely punitive and counterproductive in educational terms.[164]

Ketcham viewed that "coercive intervention by a juvenile court is an unwise and uneconomic use of public funds."[165] He was of the opinion that "if there were no status offense cases, juvenile courts could devote most of their time and attention to the most pressing problem of the decade--juvenile crime,"[166] because "status offenders under the jurisdiction of the juvenile court consume a far greater amount of social services than other types of cases, all at very substantial cost to the public."[167]

He further held that

> coercive intervention by a juvenile court damages juveniles instead of providing rehabilitation and socialization. In this context, he compared the juvenile justice

---

[164] Ibid., pp. 37-38.

[165] Ibid., p. 38.

[166] Ibid., p. 39.

[167] Ibid.

> system with hospitals and observed that like unsanitary hospitals, the juvenile justice system seems to be contagious and likely to infect its clients with further social deviance.[168]

He agreed that status offenders remain in jail for greater length of time and the social and behavioral problems cannot be solved by dictation. In the same connection, he said that the juvenile court judges should "humbly accept the limitations of judicial process"[169] because "no doctor should attempt to perform surgery with a garden spade."[170]

Ketcham alleged that "coercive intervention by a juvenile court is legally unwarranted and possibly unconstitutional."[171] He referred to "the void for vagueness doctrine," "prevention judicial action," "discrimination" were applicable and therefore status offenses legislation was unconstitutional.

He agreed that

> the original foundations of the juvenile status offense jurisdiction were infirm, and the long history of abuse of discretion, mismanagement, and misguided operation are so ingrained in the process that proposed reform is unlikely to succeed.[172]

---

[168] Ibid., p. 41.

[169] Ibid., p. 42.

[170] Ibid., p. 43.

[171] Ibid., p. 44.

[172] Ibid., p. 49.

A different level attack on the jurisdiction of juvenile courts was launched by Meda Chesney-Lind. Referring to "judicial paternalism" and "enforcement of patriarchal authority," it was maintained that "like good parents, police and court personnel respond differently to the indiscretions of young men and women."[173] It was observed that "the court involves itself in the enforcement of adolescent morality and parental authority through the vehicle of status offenses."[174]

Reiterating Meda maintained that

> The evidence is clear that girls charged with status offenses receive harsher treatment than girls suspected of crimes at the level of referral to court, pretrial detention, and incarceration. It is also apparent that girls are far more likely than boys to be brought into the court system as status offenders despite evidence that boys commit as much of this type of behavior as girls.[175]

Continuing the arguments, it was added:

> Putting this another way, status offenses have allowed the construction of a double standard of juvenile justice. These vague offense categories coupled with the court's commitment to operate in loco parentis

---

[173]Meda Chesney-Lind, "Judicial Paternalism and the Female Status Offender," in Status Offender and Juvenile Justice System, NCCD, 1978, p. 111.

[174]Ibid., 112.

[175]Ibid., 118.

> encourage the court to involve itself in the maintenance of traditional sex roles which require women to be obedient and chaste while encouraging young men to 'sow wild oats.'[176]

Meda pleaded that "these abuses of judicial discretion make it imperative that the courts' authority over the status offender be limited and other sort of responses to youth in trouble be sought."[177] Concluding, Meda declared that "the juvenile justice system has engaged in the violation of the civil rights of most of the females who have come into its jurisdiction."[178]

While measuring and analyzing the cost and service impacts of deinstitutionalization of status offenders in ten States, Arthur D. Little, Inc., observed that "in any event, our analysis indicates that the total net increase would not be prohibitive for any State that wished to move toward deinstitutionalization."[179]

Success of Sacramento County 601 Diversion Project and Santa Clara County's Diversionary Program for '601' offenders, provided a boost to the exponents of deinstitutionalization.

---

[176] Ibid.

[177] Ibid.

[178] Ibid., p. 199.

[179] Arthur D. Little, Inc., "Cost and Service Impacts of Deinstitutionalization of Status Offenders in Ten States," in Status Offender and the Juvenile Justice System, NCCD, 1978, p. 159.

Re-evaluation of PINS (Persons in Need of Supervision) and the like, indicate that "court action may seriously intensify rather then alleviate parent-child alienation."[180] Regarding the role of the courts in parent-child relationship, the following graphic description is very revealing:

> Often parents and child are sent home together and told to come back another day. Nothing seems to have changed, no remedies have been provided and neither parent nor child feels that he has really had a chance to explain his side of the story to anyone.... Families that bring PINS petitions come to court with some kind of expectations....It is hard to envision how such public displays of family hostility and rejection can improve relationships among family members.... Court intervention may also intensify competition among family members.[181]

According to a California Legislature Report:

> Not a single shred of evidence exists to indicate that any significant number of (beyond control children) have benefited (by juvenile court intervention). In fact, what evidence does exist points to the contrary.[182]

---

[180]Anne R. Mahoney, "PINS and Parents," in Beyond Control, Tietelbaum Lee and Gough, Aidan, Ballinger Publishing Company, 1977, p. 161.

[181]Ibid., p. 167.

[182]Lee E. Tietelbaum and Leslie J. Harris, "Some Historical Perspectives on Government Regulation of Children and Parents," in Beyond Control, by Tietelbaum and Gough, Ballinger Publishing Company, Massachusetts, 1977, p. 272.

Aidan R. Gough described the juvenile justice system as unfair because

> a system which allows the same sanction for parental defiance as for armed robbery--often with only the barest glance at the reasonableness of parental conduct--can only be seen as inept and unfair.[183]

Gough maintained that

> the studies appear to support the following points which underscore the feasibility of curtailing the juvenile courts' status offenses jurisdiction:
> (1) Runaway, beyond-parental-control, and other forms of non-criminal misbehavior can be successfully dealt with outside the juvenile justice system.
> (2) Formalized detention in such cases can be avoided through counseling services and alternative residential placements that are non-secure, temporary and voluntary.
> (3) Youths involved in non-criminal behavior who are handled in this way, rather than by induction into the intake and adjudication processes, are likely to have fewer subsequent brushes with the law and to have a better general adjustment to life and its problems than those drawn into the juvenile justice system.
> (4) Though many resources which do not now exist will have to be created, and many of those existent will have to be strengthened and re-directed, a start on handling non-criminal behavior cases outside the juvenile justice system can feasibly be made in most

---

[183]Lee E. Tietelbaum and Leslie J. Harris, "Some Historical Perspectives on Governmental Regulation of Children and Parents," in Beyond Control, by Tietelbaum and Gough, Ballinger Publishing Company, Massachusetts, 1977, p. 273.

> cases, with resources now available. And at least to some notable extent, the services now lacking may be created when the demand is created.[184]

Edward Pabon depicted how referers and the court pursue a revolving door policy to the detriment of the youth. He said:

> Hence, while the courts cannot stop the inflow of referrals, they certainly can attempt to exit them with minimal or no court intervention. By this revolving door policy, the referring agencies can show that they at least tried to cope with the problem youth, and the court can display its benevolent--in the best interest of the child--posture. The only victim of this policy, unfortunately, are the youth themselves, because they are not likely to receive needed services from either the referring agencies or the court.[185]

Pabon further contended:

> Running away from home, using alcohol and drugs, and having numerous problems with school are problems not limited to a special category of youth officially detected and processed as status offenses are not intrisically different from most adolescent youth in the behaviors which resulted in their commitment. Rather, the difference lie in the handling of these youth by the juvenile justice system, rather than by community, neighborhood, parents, relatives, or friends.[186]

---

[184] Ibid., p. 282.

[185] Edward Pabon, "Servicing the Status Offender," in Juvenile and Family Court Journal, May 1978, p. 43.

[186] Ibid., p. 47.

And finally he said that "from our observation of the contemporary juvenile court in the United States, comprehensive societal action toward enhancing the conditions for growing up in this country are long overdue."[187]

---

[187] Ibid., p. 48.

CHAPTER VI
DISCUSSION

Controversy around status offenses remains acute but still there are areas of agreement. It has been acknowledged that there should be minimum or no stigmatization, more and more use of alternate service facilities, adequate provision of community-based diversion, correctional and rehabilitative programs, overall improvement in school system, urban living, and in the juvenile justice system. Juvenile courts are to be used as courts of last resort. It is no more conclusive to say that poverty, broken homes, alcoholism, sexual immorality, etc. are by themselves causes of delinquency. We shall utilize a two-pronged approach to deal with the whole segment of status offenses, to know where all these arguments are leading. First, we will deal with the importance of status offenses and whether they should be decriminalized/deinstitutionalized. Secondly, the availability of other alternatives and their usefulness will be assessed.

Answer to the first is not far to seek. It is mostly a matter of perception and perceptions may and do change with time. There was a time when status offenses were thought necessary and became part of the social change. Now its relevance is being exposed.

> What is needed, as Judge Justine Polier has suggested, is nothing less than a major reorientation in American attitudes toward children--all children--to bring public policy in line with our much-touted conceit of being a 'child-centered' society.[188]

After all, the child is himself in a difficult situation to adjust. He or she is caught in the process of socialization and problems of growth. A child has to travel that awry alley connecting youthful adolescence with adult maturity. That is the time of unchilled desires, of awakened self, of feeling the world anew, crossing the contradictions, facing the social order, hobnobbing with norms and feeling susceptible to innumerable nuances of inner and outer stimuli. If we go back to our own times, it will be easy to comprehend whether the adolescent journey was exhilarating or tortuous. At that age punishment can be benevolent and benevolence can be punishment. It matters a lot what, why and how you administer the punishment. Judging from many corners, status offenses look punitive. I think the difference lies in viewing, perceiving, handling and recycling the behavioral pattern. The behavior of a status offender does deserve seriousness and attention but not to the extent that deviant be turned into a detenu. For more care and guidance they need not pass through adjudication and preventive detention. No amount of differentiation and incarceration would be helpful to correctional and rehabilitative process. The inherent capacity of the child must expand and we have to

---

[188] Steven L. Schlossmen, Love and the American Delinquent, The University of Chicago Press, Chicago, 1977, p. 192.

make adequate room for it. That is what we try to do through education and other social institutions. We should, therefore, shoulder our failures and share the agonies rather than treat the child as an appendix.

Societies differ and what is good to one at a certain stage may not be good to the other or vice versa. Therefore, whatever we have to say should be in the context of that society and that culture at that point of time. Thereby, it will be unwise to ignore the functioning pattern of American society while viewing status offenses which happen to be the by-product of existing social change. Before we move ahead, I will like to quote August Aichhorn:

> The path which the child must traverse from the unreal pleasure--the world of his nursing period to the real world of adult, parallels that of mankind from primitive times to the present. It may be longer or shorter according to the particular cultural level, but must be traversed by the child in those few years during which he ripens to maturity.[189]

That is a human tendency or what do we do? Do we as adults not always try to shift the blame? Do we not always try to quarrel, fight and struggle? Do we not sermonize to others all the time while violating the same principles we preach, under some sort of pretext or

---

[189]August Aichhorn, Wayward Youth, Viking Press, New York, 1966, p. 6.

justification? Do we ever do introspection? What is the difference? The President's Commission in the Task Force Report described the difference in this way:

> But the prescribed rules for street fighting produce more deadly quarrels with weapons of guns and knives than do competitions among males who use brush, a dissertation, or a contract.[190]

Therefore, the difference lies in kind, degree, quality and so on. The idea of raising children through other agencies except the home is preposterous, exceptions notwithstanding. It does not mean a case for full liberation--liberation in an anarchic sense. The utopian liberation is as counter-productive as subservience and irrational restrictions on human behavior. Both extremes result in social breakdown, welfare costs, mental illness, more violence and revolt against the establishment.

There is need for assimilation and consistent coherence to match and neutralize every effect of deviancy. The availability of a benign juvenile justice system based on parens patriae doctrine or mere correctional system, is not enough. All arguments favoring status offenses more or less are misplaced and sound like prescriptions of discarded

---

190 The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, U.S. Government Printing Office, Washington, D.C., 1967, p. 25.

medicines. The use of the word "offenses" is in itself offensive. It in no way communicates societal concern for wavering kids. Why use coercion for correction? That reflects ills of the social system. The process of decriminalization is of course taking shape but in a subtle form.

Social reforms are not to be dictated but should emerge out of the combined and general will of the people. The spirit of social reform, which brought status offenses to juvenile courts, should move ahead and not get clogged or lose momentum. What's needed is consensus for a suitable legislation at the State level. Some of the States are already coming up. The Federal government has timely given a catalyst in the form of the Juvenile Justice and Delinquency Prevention Act of 1974.

There are more heated arguments whenever the question of deinstitutionalization comes up, especially the elimination of the juvenile court's jurisdiction over status offenses. Judges feel that courts are the proper forum to adjudicate status offenses and can render valuable services to the needy ones. There is validity in those arguments put forward to demonstrate the utility of the courts. There is also validity in the criticism of the courts' performance too. At the first instance, how far is it proper for the courts to interfere in intra-family problems. The issue is debatable. The golden rule could be minimum interference is better. When courts become the "dumping grounds" for the problems which

do not belong to them, the juvenile justice suffers. Narrowing down of courts' jurisdiction is essential to make them effective as judicial bodies. Because courts adjudicate, schools, families and other agencies do not solve their problems at their level but follow escape route leading to courts. Let them face the challenge which the courts are facing. If police, courts and corrections have to regulate the families, schools and private environment of social life, then it will be more a police state rather than a welfare state. Inner strength or spirit to overcome develops when outside help is rationed. Social organisms grow healthy when they are allowed to function. Inexperience and immaturity may go with age. It may be tolerated and tempered rather than adjudicated. How can the courts say that their decisions are the best for the problematic child? There are better equipped agencies to take care of those problems. The court has no problem solving function. In an adversary type of system, the parties with a motive, with expectations and moreover with a desire to get a favor. Do the parties get satisfaction in the court's decisions? Can the court satisfy everybody? Is it its role? No wonder the courts have been the sole target of attack and have had to face all sorts of criticism whether it belonged to them or not. Too much responsibility and too much visibility is their vulnerability. The limitations of the courts are obvious. They may not get what they require and fail to accomplish what they desire.

Their image goes down not on account of what they do or perceive but their failure to do what others expect and perceive them to do. Courts are not in a predicament per se but their position has become controversial. Some of the judges rightly feel that they cannot legislate and their duty is to apply the law. If the people feel that the law is bad why do they not get it changed?

Much of the criticism levelled by the advocates of change may be valid but that is not enough for a change. Where is a constructive framework for an alternative? There should not only be an atmosphere conducive for a change, there should also be a will to change. In this case what is missing is a better alternate system. The Report or final draft of Standards IJA/ABA has not been approved. Drafts by other Committees lack unanimity. So long as there is no acceptable alternative program change cannot come. Patchwork may be a good political expedient policy but won't bring a change. Courts are at least the tested forums but they cannot bring change. Who should be the prime mover to bring about change? Should it be the Supreme Court or the State Legislature, the bureaucracy or social artifacts, academecians or social astronauts? Everyone means no one. A combined effort sometimes lacks functional viability. Some forums move slowly. We have to wait and see what the State legislatures do. They are trying to work out legislation to get federal grants. Time will tell us about their achievements.

Yet there is another viewpoint:

> Neither the omnibus theory of delinquency nor the total hands-off policy of the tentative Juvenile Justice Standards volumes fit all cases comfortably. The Omnibus theory casts its net too widely into the pool of youth misconduct. But a policy of 'benign neglect,' abandoning all bases for coercive State intervention, seems irresponsible. Public policy should seek a workable middle ground. But those who would use the juvenile court to protect the rebellious young must bear in mind that, often, coercive State power may simply be too blunt as instrument for the purpose.[191]

An interesting aspect of the whole issue is:

> In the 1840s, America established institutions for delinquents. In the 1970s, America is talking about dismantling those very same institutions. Why, after almost 130 years, is the United States turning its back on what was once believed to be the savior of the nation's wayward youth?[192]

Look back on the society and consider the Task Force Report's observation:

> In some ways it is an intensely sensual society; its members are preoccupied with the sensations they can obtain from surfing or drag racing or music or drugs. In some way it is an intensely moralistic society; its members are preoccupied with independence

---

[191] Francis Allen, "The Borderland of Criminal Justice" (Chicago, University of Chicago Press, 1964), pp. 52-53, in Confronting Youth Crime, Twentieth Century Fund, Task Force on Sentencing Policy Toward Young Offenders, Holmes and Meir Publishers, Inc., New York, 1978, p. 86.

[192] Clemens Bartollas, Stuart J. Miller, and Simon Divitz, Juvenile Victimization, Sage Publications, Inc., 1976, p. 3.

> and honesty and equality and courage. On the whole it is a rebellious, oppositional society, dedicated to the proposition that the grown-up world is a sham.[193]

After viewing a variety of arguments/comments, the discussion is wrapped up in the words of Sir Henry Maine that "the progress of civilized society was marked by the transition from status to contract." Let us keep up this progress of civilization in the context of status offenders.

CHAPTER VII
CONCLUSION

"Man was born free but everywhere he is found in chains." These words of a political philosopher never struck me that hard as when I was studying status offenses. Under status offenses, not the man but the child was in chains. Then, there flashed to my mind the Marxian slogan raised by workers of the world that they have nothing to lose but their chains. The children find themselves in a similar position. They have nothing to lose but their chains.

The noncriminal behavior of kids is punishable under the Juvenile Code as "status Offenses" and in those proceedings parents, teachers and guardians of the law are the complainants. Is youth really guilty of those acts? Yes, because

> Youth bears law and order grudgingly. It is asked to be quiet when noise is its vital medium; it is asked to be passive, when it longs for action; it is asked to be sober and

> judicious, when its very blood makes youth 'a continuous intoxication.' It is the age of abandon....[194]

We expect from youth a wise behavior without realizing that "the tragedy of life is that it gives us wisdom only when it has stolen youth."[195]

But, do children deserve judicial punishment? Yes, because by "discovering the world, youth discovers evil, and is horrified to learn the nature of man."[196] The irony for the kids is that parents feel offended, parens patriae-based-courts adjudicate, and they are lodged in homes away from home for rehabilitation. We also know what Dr. Karl Menninger said: "What a mother and father mean to them is more than any psychiatrist can ever mean" but we fail to practice it. We also failed when we placed more faith in artifical substitutes then in natural ones because as Karl Menninger says:

> Neither the modern state nor an harassed juvenile court judge is a father, a halfway house is not a home; a reformatory cell is not a teenager's bedroom, a juvenile hall counselor is not a dutch uncle, and a cottage matron is not a mother. This does not mean that the people referred to should not be or are not kindly and dedicated, but rather that

---

[194]Will Durant, Pleasures of Philosophy, Simon and Schuster, New York, 1953, p. 399.

[195]Ibid.

[196]Ibid., p. 400.

> they are first and foremost members of organizations, bound by institution controls and subject to its exigencies, they are enforcers of super-imposed rules. Where conflict arise between the interests of a youth and those of the organization to which these functionaries are bureaucratically responsible there is no pattern of action which can predict that they will observe an order of value satisfaction favourable to the youth's interest.

We also forgot what Shelley said in the Preface to Prometheus Unbound that

> Until the mind can love, and admire, and trust, and hope, and endure reasoned principles of moral conduct are seeds cast upon the highway of life which the unconscious passenger tramples into dust, although they would bear the harvest of his happiness.

Hard realities of life are difficult to face through tender emotional sentimentalism and simplistic solutions do not hold good for complex problems. The caution lies in the words of Professor Trojanowicz that:

> Mere removal of the offense from the books may cut the 'crime' rate, but this is too simplistic an approach to a complex problem. Without a means, a handle to justify intervention, and without alternative services to deal with the problem, the status offender would merely be left to proceed to committing more serious offenses, thereby losing an important and vital opportunity to intervene at a more benign level. The problem may stem from difficulties within family relationships or problems in relating to the community, but if the young person's problem is not dealt with, intervention is just delayed until the time a more serious offense occurs.[197]

---

[197] Robert C. Trojanowicz, Juvenile Delinquency: Concept and Control, Prentice-Hall, Inc., Englewood Cliffs, N.J., 1978, p. 393.

Considering the socio-cultural background of this country where a system of checks and balances is in vogue, where the family has broken down and where society is more legal, a different approach of understanding is needed. In countries where status offenses are not legally enforceable but socially tackled, it does not attract much attention.

Why is the pace of legal reform through legislation so slow in State legislatures? I came to know the answer through a State legislator: because the status offenders belong mostly to minority communities, and the poor sections of society, who, though greater in number, do not work as pressure groups, and fail to impress their representatives to move the matters in civic halls. Moreover, a sense of apathy, a low key approach, lack of awareness are other reasons for a lack of clamor for reform. Ironically, those who are rarely affected by status offenses are greatly involved but those who are really affected display hardly any concern.

To paraphrase Bernard Shaw: the tragedy of life is that we get what we don't need and we don't get what we need. In the case of status offenses, we don't get the services we need but we get the coercion which we don't need.

Taking a very realistic and practical view of the individualistic and fragmented society, I think it would be very difficult to escape courts altogether. Institutionwise, courts are the superior agencies. When rights, claims and

freedom are in jeopardy, who else except courts can adjudicate? Concluding, I may add that one should let there be "services" in place of offenses in the Juvenile Code, not only in words but in a real sense of the term. Let the agencies work because society does not. Let the State bind us together because our relationships do not. Let the courts be our rearguard and safeguard while faith, love and confidence be our enlightened vanguard.

Future Directions

The Juvenile Code is to be rewritten especially the part comprising status offenses. The effect of decriminalization and deinstitutionalization can be studied objectively after provision for various services is made. Quite a good amount of research is needed to focus in detail various aspects of juvenile problems, viz runaways, dropouts, disobedience, alcoholism, drug addicts, vandalism.... Socio-economic and cultural influences are to be identified and measured.

There is great dearth of data in this problematic area which could be collected and analyzed. After detailed analysis of various aspects, a comprehensive approach could provide valuable material for the legislative wing to coordinate its efforts with other professional and academic agencies to bring around a functional set of laws based on the social mandate.

BIBLIOGRAPHY

BIBLIOGRAPHY

Books

Allison, Richard (Ed). Status Offenders and the Juvenile Justice System. National Council on Crime and Delinquency, Hackensack, N.J., 1978.

Brown, Michael. The Politics and Anti-Politics of the Young. Glencoe Press, Beverly Hills, California, 1969.

Durant, Will. The Pleasures of Philosophy. Simon and Schuster, New York, 1953.

Romig, Dennis A. Justice for Our Children. Lexington, Mass., Lexington Books, 1978.

Sarri, Rosemary. Under Lock and Key: Juveniles in Jail and Detention. Ann Arbor: University of Michigan, 1974.

_____ Status Offenders: Their Fate in the Justice System and an Alternate Proposal. Ann Arbor, Michigan, University of Michigan, 1977.

Sarri, Rosemary, and Hasenfeld, Yeheskel. Brought to Justice? Juveniles, the Courts, and the Law. Ann Arbor, Michigan, University of Michigan, National Assessment of Juvenile Corrections, 1976.

Sarri, Rosemary, and Levin, Mark. Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States. Ann Arbor, Michigan, University of Michigan, National Assessment of Juvenile Corrections, 1974.

Schlossman, Steven L. Love and the American Delinquent. The University of Chicago Press, Chicago, 1977.

Tietelbaum, Lee E., and Gough, Aidan R. (Ed) Beyond Control. Ballinger Publishing Company, Cambridge, Mass., 1977.

Trojanowicz, Robert C. Juvenile Delinquency: Concept and Control. Prentice-Hall, Inc., Englewood Cliffs, N.J., 1978.

Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders. Confronting Youth Crime. Holmes & Meier Publishers, Inc., New York, 1978.

Periodicals

Arthur, Lindsay G. "Status Offenders Need Help Too," Juvenile Justice, February 1975.

Carpenter, Kenneth S. Halfway Houses for Delinquent Youth, Department of H.E.W., Washington, D.C., 1963.

Cernkovich, Stephen A. "Value Orientations and Delinquency Involvement," Criminology, Beverly Hills, California, 1978.

Couch, Alan J. "Diverting the Status Offenders from the Juvenile Court," Juvenile Justice, November 1974.

Criminal Justice Newsletter, July 11, 1977.

Criminal Justice Newsletter, Vol. 8, Number 20, October 10, 1977.

Criminal Justice Newsletter, Vol. 9, Number 6, March 13, 1978.

Drake, Robert L. "Elimination of Status Offenses: The Myth, Fallacies and More Juvenile Crime," Juvenile and Family Court Journal, May 1978.

Gill, Thomas D. "The Status Offender," Juvenile Justice, August 1976.

Guarna, Anthony A. "Status Offenders Belong in Juvenile Court," Juvenile Justice, November 1977.

Hepburn, John R. "The Impact of Police Intervention upon Juvenile Delinquents," Criminology, 1977.

Hunt, A. Lee, Weiner, Ken. "The Impact of a Juvenile Curfew: Suppression and Displacement in Patterns of Juvenile Offenses," Journal of Police Science and Administration, Gaithersburg, Md., 1977.

Kehoe, Charles J., and Freer, Richard. "Cooperative Services for Runaway Youth," Juvenile Justice, February 1977.

Martin, Christopher A. "Status Offenders and the Juvenile Justice System: Where Do They Belong?" Juvenile Justice, February 1977.

Pabon, Edward. "Serving the Status Offender," Juvenile and Family Court Journal, May 1978.