

Chapter 5

THE MEDICALIZATION OF WILHELMINE AND
WEIMAR JUVENILE JUSTICE RECONSIDERED

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Because of the great import of the juvenile court decisions, the authoritative collaboration of the jurist is indispensable, according to German legal conceptions, so that attempts to entrust the treatment of punishable juveniles to . . . physicians, with an exclusion of jurists, have never been able to win ground in Germany.¹

Herbert Francke, 1932

This statement by Herbert Francke, Weimar Germany's preeminent juvenile court judge, gives a picture of the development of juvenile justice that is quite different from Foucault's image of the insidious corrosion of law by a medicalized version of discipline and from the abiding historiographical inclination to locate the repressive turn in German criminal justice after 1933 in its Wilhelmine and Weimar prehistory. This chapter will argue that Francke's assessment is a useful corrective that has a great deal of validity. First and foremost, historians should be careful not to overemphasize the mantra of the Wilhelmine and Weimar German juvenile justice movement, repeated *ad nauseum* since its inception in the 1890s: "(re)education in lieu of punishment" (*Erziehung statt Strafe*). Although it was undergirded by a vision of social progress, juvenile justice in Germany, especially after World War I, represented a historically contingent compromise between a modest degree of penal experimentation and penal conservatism.² To borrow a phrase from David Crew in a related context, this compromise was forged in the spirit of "damage control."³ The erosion of authoritative prescriptions in German criminal law prior to World War I and then their disintegration during and after the war, which precipitated what cultural critic Siegfried Kracauer labeled a

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“confusion of standards” and an “exceptional degree of insecurity,” led desperate Germans to search for an expedient solution to an apparently irrepressible rise in crime, especially juvenile delinquency.⁴ This exercise in damage control resulted in the passage of the rather elastic *Jugendgerichtsgesetz* of 1923 (Juvenile Justice Act; JGG).

To be sure, the act promoted its fair share of eclectic experimentalism in the name of “(re)education,” exemplifying the fundamental tension between law and discipline in modern penal reform. In this spirit, it provided for resort to the expertise of forensic psychiatrists in the juvenile courtroom. Already before passage of the JGG, the entrenchment of certain trends in juvenile justice reform indicated the establishment of a niche in juvenile court for forensic psychiatry. These trends included the transformation of juvenile delinquency from a moral into a medical condition, the deemphasis in penal reform of the offense in favor of the personality of the offender, and the abridgment of normal judicial procedures. Furthermore, since many of its pioneers were wont to stress the paradigmatic potential of juvenile justice, with the expectation that innovations successfully tested in the crucible of juvenile justice would then be applied to adult criminals, forensic psychiatrists hoped that their investment of professional capital in the juvenile justice system would reap dividends in the form of extended influence throughout the entire criminal justice system.⁵ Nevertheless, in the final analysis, the 1923 act—and by implication all of pre-1933 juvenile justice in Germany—remained, in the words of a highly respected contemporary commentary, “incorporated into the philosophy of criminal law.”⁶ In juvenile justice of all places, a hallmark of the modern therapeutic approach to social deviance, the impact of forensic psychiatry, I would argue, was limited; to borrow from Jan Goldstein, discipline remained framed by law.⁷ The challenge is to explain this unexpected turn of events.

Forensic Psychiatry and the Juvenile Delinquent

In line with German psychiatry’s burgeoning social orientation, which entailed its ambition to intervene in the diagnosis and treatment of offending behaviors, including criminal behavior, from the 1890s onward, forensic psychiatrists established their credentials in juvenile court first by promoting their discursive message and then by encouraging its practical social application.⁸ Borrowing a phrase from Richard Wetzell’s study of German criminology, forensic psychiatry took pains to invent the juvenile delinquent.⁹ It recast the existence of juvenile deviance and then toiled indefatigably to identify, explain, and prevent it. While nineteenth-century notions of juvenile delinquency generally ascribed adolescent criminal behavior to the morally debilitating effects of neglect and poverty, the burgeoning endorsement of a socially engineered vision of the social order from

the last third of the nineteenth century onward prompted the transformation of this personal deficiency from a moral to a medical condition. Being medical, it was now deemed amenable in principle to diagnosis and treatment. The pathologization of juvenile delinquency suited the welfarist orientation of juvenile justice because the creation of a special nosological category of juvenile offenders promised to expand the power of the state to curb offensive behavior that was not formally proscribed by criminal law.¹⁰

Prewar studies in forensic psychiatry of juvenile delinquency continued to deemphasize biological factors in favor of environmental ones, but by the end of World War I a biological concept of juvenile deviance established itself in the firmament of German juvenile justice with the landmark publication in 1918 of *Die Verwahrlosung: Ihre klinisch-psychologische Bewertung und ihre Bekämpfung* (Waywardness: Its Assessment in Clinical Psychology and Combating It) by Adalbert Gregor and Else Voigtländer. The authors, who examined fifteen hundred male and female juvenile reformatory inmates, of whom they described one hundred male and one hundred female inmates in detail, stressed the role of a “psychopathic personality” (*Psychopathie*) in the formation of juvenile delinquency. The change in terminology from what these authors considered the “vague concept” of *Verwahrlosung* to the ostensibly more scientifically rigorous *Psychopathie* paralleled a similar usage of the term throughout forensic psychiatry in the discussion of adult criminals. As Richard Wetzell has explained, the German term *Psychopathie* and its derivatives refer to the broad area of mental abnormalities or personality disorders.¹¹ In Gregor’s own words, *Psychopathie* signified a “pathological predisposition (constitution)” that was either “congenital or acquired” and manifested itself “in deviations in relations between psychological functions, in an abnormal way of reacting, and in a conspicuous variation of behavioral patterns.”¹²

The correlation of juvenile deviance with mental disorders had already played a minor role in earlier influential studies of juvenile delinquency, which had strained to explicate the interaction of environmental and individual factors in the creation of the deviant personality. But Gregor and Voigtländer drastically minimized the role of environment in favor of a biological etiology of delinquency. According to their findings, which far exceeded those of previous studies, about 90 percent of the juvenile inmates in their study, males and females alike, were “hereditarily burdened” (*erblich belastet*).¹³ They hesitated to equate a psychopathic personality with criminal behavior, but in their view most juveniles with psychopathic disorders became criminals because the domination of the intellect by instinctual drives was bound to bring them into conflict with the law.¹⁴ The authors did not entirely dismiss the impact of social factors on delinquent behavior, especially deficient childrearing, and they also noted the baleful effect of World War I on the spiraling rate of juvenile delinquency. In the final analysis, however, “deviance,” they concluded, “is determined as a rule

not by external factors but rather by the constitution of the individual.”¹⁵ After Gregor and Voigtländer’s work, biological explanations of juvenile deviance came to overshadow, albeit not totally eclipse, social ones. As a result of the palpable impact of their work, a large percentage of adolescents in juvenile justice would be considered to have a diagnosable mental disorder.

In the aftermath of Gregor and Voigtländer’s study, German forensic psychiatrists almost invariably incorporated a highly mutable concept of the psychopathic personality into their own typologies of the juvenile deviant, and precisely because the notion was so mutable, the juvenile delinquent with a psychopathic disorder seemed to assume almost pandemic proportions. The potential consequences of being so classified were clearly articulated by Gregor and Voigtländer. To be considered mentally ill might entail ominous repercussions because “a rehabilitative program [*Erziehung*] operating with intellectual resources, logic, and conviction would be meaningless [in such cases] and a rote form of training [*Dressur*] must take its place, whereby the premises of correctional education dissolve.”¹⁶ In this regard, the authors helped spawn the concept of the “uneducable” or, literally, “difficult to educate” (*schwer erziehbar*) juvenile who should be excluded from therapy.¹⁷ The medicalized approach to juvenile delinquency thus came to imply not only endangerment of the individual offender but also dangerousness to society. In line with the approach of Kurt Schneider, a prominent psychiatrist whose work on the psychopathic personality left an indelible mark on criminal biology, a juvenile delinquent came to signify someone who suffers from an illness because of which society suffers, with the accent on social dangerousness.¹⁸ Juvenile delinquency now represented a medical condition of individuals whose way of life was incompatible with a normative vision of social progress. Indeed, before the end of the 1920s, Gregor would consider the rehabilitation of the “uneducable” impracticable and would advocate their exclusion from correctional education because their presence could jeopardize the reformation of other inmates.¹⁹ It would become the function of forensic psychiatry in the juvenile prison and in correctional education to determine who should be excluded from an institution’s rehabilitative program. A significant circle of forensic psychiatrists in the Weimar Republic who operated in the juvenile justice system came to share this approach to juvenile delinquency.

Forensic Psychiatry in the Juvenile Courts

What further consolidated the position of forensic psychiatry in late Wilhelmine and Weimar juvenile justice was the era’s blueprint for the future of the German criminal justice system. In classical German penal jurisprudence since Feuerbach, guilt was predicated exclusively on the commission of a criminal act, whereas the criminal’s internal motivation, not to mention his personality, was irrelevant to a

determination of his culpability and punishment. Juvenile justice was poised to throw the old notion of criminal responsibility overboard and become a preemptive instrument of crime prevention, addressing not what one had done but who one was. This prospect of de-legalization tantalized the practitioners of forensic psychiatry. In such a medicalized penal order, the psychiatric profession would have the potential to wield enormous disciplinary power; forensic psychiatrists would be able to significantly influence the verdict, determine an eventual place of incarceration, and shape—or even preclude—carceral therapy.

Moreover, by relaxing or abridging formal procedural requirements in pursuit of creating a nonadversarial environment in juvenile court, which was to be attained in large part through the expansion of judicial discretion, juvenile justice threatened to undermine the very foundation of the rule-of-law state (*Rechtsstaat*), where the promise of law is secured by the guarantee of procedural rights.²⁰ Thanks to the creation of this collegial atmosphere, forensic psychiatrists could expect to intervene in the system in ample measure during the process of investigation and trial. Through an alliance with the coercive power of the state, forensic psychiatrists hoped to expand their area of authority from narrow medical diagnoses of the mental state of juvenile offenders by seizing opportunities to examine their entire life—whatever may have contributed to shaping their personality—and to design individualized regimens for their future. From the vantage point of forensic psychiatrists, it would be optimal to expand the examination of individual juvenile offenders to include examinations of their relatives because only then would it be possible to draw a “total picture” of their lives.²¹

Forensic psychiatrists had ingratiated themselves with the juvenile court system already from its inception in 1908. An early enthusiastic supporter of forensic psychiatry in the juvenile court was Paul Köhne, a prominent Wilhelmine juvenile court judge who presided over the juvenile court in the central district of Berlin (Berlin-Mitte). Köhne was deeply dissatisfied with the standard superficial judicial assessment of the mental competence of juvenile defendants based on the presence of conspicuous physical handicaps and their familiarity with the Ten Commandments. Köhne firmly believed that this unsophisticated procedure did not satisfy the legal requirement of the criminal code (*Strafgesetzbuch*; StGB) to determine specifically whether a juvenile defendant who was not legally insane should still be excused from criminal responsibility on account of a defective intelligence (§ 56).²² For this reason he started using forensic psychiatrists immediately after the creation of the juvenile court in central Berlin in 1908.²³ By 1910 he had institutionalized the practice of psychiatric examinations in his court. Although the initial employment of forensic psychiatry in juvenile court generated predictable resistance to the practice in traditional circles, Köhne was able to deflect a lot of this criticism because the new practice did not lead to wholesale acquittals of juvenile offenders on the grounds of mental incompetence. On the contrary, he endorsed the procedure precisely not only because it “impedes the

unjust conviction of people whose mental illness without a medical examination is unrecognizable even to the trained eye [of the judge],” but also because “in individual cases the judge needs medical assistance to expose those who feign mental illness.”²⁴ In addition, he supported psychiatric examinations because they helped identify defendants inhabiting the borderland between mental health and mental illness who would benefit from state intervention, especially removal from their current criminogenic environments. He credited psychiatric advice to the court with “saving many a youth from illness and crime.”²⁵ Köhne was pleased with the psychiatrization of his juvenile court. “This procedure,” he boasted, “has proved itself very beneficial.”²⁶ Indeed, he was in favor of subjecting most juvenile defendants to a psychiatric examination.

The rate of psychiatric examinations performed for the juvenile court of central Berlin bore witness to the increasing influence of forensic psychiatry in the Berlin juvenile court system. Between the end of 1909 and the end of 1912, roughly 2,300 psychiatric examinations were conducted for that court, an average of 767 examinations a year.²⁷ By the fall of 1917, 6,745 examinations had been conducted since 1909, an average of 834 per year.²⁸ An average of 889 examinations per year were conducted in the five-year period between 1912 and 1917. The prominent forensic psychiatrist Jacobsohn estimated that he alone had performed about 2,000 psychiatric examinations for the juvenile court of Central Berlin between 1909 and 1917.²⁹

The introduction of forensic psychiatry into the juvenile justice system was not limited to Berlin. From the outset, psychiatrists were authorized by the administrative regulations of several German states to consult the fledgling juvenile courts.³⁰ Frankfurt is illustrative of this trend. The juvenile court prosecutor routinely solicited an evaluation of a defendant’s mental competence, which ensured the engagement of a psychiatrist. Karl Allmenröder, Germany’s legendary first juvenile court judge, made it a practice to be consulted by a psychiatrist along with an official from the youth welfare association before each hearing.³¹ The municipal Juvenile Observation Center (*Jugendsichtungsstelle*) established by the forensic psychiatrist Wilhelm Fürstenheim in 1916 worked closely with the juvenile court in Frankfurt. When the impression made by a juvenile offender warranted it, the Juvenile Observation Center would relay its diagnostic findings via the local youth welfare organization to the juvenile court. If deemed necessary, the court then summoned the institution’s director to testify. The court issued such summonses in approximately ten percent of its cases.³²

The alliance between forensic psychiatry and the youth welfare bureaucracy, which was entrusted by the juvenile courts with the task not only of supervising probation but also of assessing juvenile offenders’ personalities on the basis of rather intrusive investigations into their lives, was mutually beneficial. In line with the individualizing approach to juvenile deviance, private and semi-public charitable organizations naturally turned to forensic psychiatrists because of their

touted expert insight into personality disorders. Collaboration between youth welfare officials and psychiatrists active in juvenile justice was intimate in several cities, including Berlin, Frankfurt, Hamburg, and Nuremberg. As Heinrich Vogt, the first forensic psychiatrist assigned to cases in the Frankfurt juvenile court, observed, “without the investigations [of the Frankfurt youth welfare association] my activity would hardly be possible.”³³ Psychiatric observation was no less important to the investigative function of youth welfare associations on account of the suspicion that relatives’ frequently tendentious descriptions of juvenile offenders’ personalities were unreliable.³⁴

In spite of its expanding influence in the juvenile justice system forensic psychiatry was not immune, however, to disappointment. Although forensic psychiatrists continued to insist on the psychiatric examination of all juvenile defendants, the juvenile justice system only partially acceded to this demand. In 1914, of the approximately 550 German juvenile courts in operation, only 10 authorized the psychiatric examination of every juvenile defendant. These juvenile courts were located exclusively in metropolitan areas, including Hamburg, Leipzig, and Central Berlin.³⁵ This demand never infiltrated the provinces. And even in cities it proved impracticable to continue this practice, even in Berlin. There, in 1917, an exasperated Prussian justice minister was compelled to reissue his previous directive that juvenile court judges could order psychiatric examinations of juvenile defendants only in the presence of compelling reasons because psychiatric examinations had become the rule for the panel of juvenile court judges in central Berlin, who defiantly urged juvenile court judges elsewhere to follow suit. Notwithstanding the practice in central Berlin, in other juvenile courts in Prussia psychiatric examinations were the exception rather than the rule in accordance with the justice minister’s concern that superfluous psychiatric examinations in juvenile courts could lead to innumerable unjustifiable acquittals. The cost of this practice did not escape his attention either.³⁶

The vulnerability of forensic psychiatry in juvenile justice was also driven home by the reaction of Frankfurt juvenile court judge Paul Levi to that court’s cooperation with the Frankfurt Juvenile Observation Center. Levi found that the center’s reports were “especially useful to investigate juveniles’ personality and manner of acting” and that “they [formed] a good foundation for adjudication and the selection of judicial remedies.” But he punctuated his description of his juvenile court’s interaction with the center with a caveat: “It is nevertheless self-understood that the juvenile court decided the extent to which it ought to follow the expert opinion and the recommendation of the juvenile observation center only on the basis of the totality of the circumstances.”³⁷

Seeking to bolster their role in juvenile justice, forensic psychiatrists mobilized in support of revisions of the law. Fürstenheim and others lectured frequently in favor of expanding the law to allow more psychiatric intervention.³⁸ Forensic psychiatrists also formed the *Vereinigung ärztlicher Sachverständiger am*

Jugendgericht Berlin-Mitte (Union of Medical Experts at the Juvenile Court of Central Berlin). During legislative debates in 1912 and 1913 on a juvenile justice act, this organization petitioned the Reichstag to broaden the role of forensic psychiatry in juvenile court. It asked legislators not only to provide for the psychiatric examination of every juvenile defendant but also to mandate psychiatric consultation in sentencing and to assess the costs of these practices to the judicial system. It justified these demands by reference to the high proportion of mentally ill juvenile offenders, which, it argued, a juvenile court judge could not be expected to manage competently without the benefit of psychiatric expertise.³⁹ To the psychiatrists' chagrin, their petition was ignored.

They continued their quest to consolidate their presence in juvenile court when debate on a juvenile justice act resumed after World War I. In 1920, a subcommittee of the Deutscher Jugendgerichtstag (Conference of German Juvenile Courts; DJGT) under the rubric of "Jugendgericht und Arzt" (Juvenile Court and Physician) proposed a resolution, which was adopted by the entire assembly, calling for the psychiatric examination of all juvenile defendants who raised suspicion of a mental abnormality, had committed a serious offense, or demonstrated conspicuous antisocial or deviant behavior.⁴⁰ In 1927, when the Reichstag considered the motions of Socialists and Communists to raise the absolute age of criminal responsibility from fourteen to sixteen and the age of limited criminal responsibility from eighteen to twenty or twenty-one, its judiciary committee heard the testimony of half a dozen psychiatrists.⁴¹

In the end, however, these efforts bore only modest fruit, as the 1923 Juvenile Justice Act provided for psychiatric examinations of juvenile defendants only "in appropriate cases" (§ 31). Juvenile court judges would determine which youth would be referred to a psychiatrist. In the minds of the ministerial framers of the act, the judge's determination whether educative measures were appropriate was to depend on what effect they would have on the juvenile offender's personality; but the juvenile court judge was also to consider what impact an order to replace punishment with nonpenal remedies would have both on the public and on the claim of the victim to redress.⁴² The reaction of many forensic psychiatrists to the 1923 act's restrictions on their authority was anything but conciliatory.⁴³ This reaction was on the mark: the psychiatric profession's self-mobilization during the legislative evolution of the Juvenile Justice Act since the eve of World War I was, in the end, only a partial success and arguably demonstrated the limited character of its disciplinary authority in the judicial system of the German welfare state.

The increasing restriction of psychiatric examinations to demonstrable cases of mental instability, which found legislative expression in the 1923 act, was due to many factors. In addition to budgetary constraints, the influence of psychiatry in juvenile justice was limited by the desire of juvenile court judges to protect the hard-won expansion of judicial discretion in juvenile court. Even so, many

juvenile court judges seem to have been sensitive to the dangers of intoxication with their own expanded power. During a seminar for juvenile court judges in 1926, one of their own number admonished his colleagues not to abuse their judicial discretion: "We have to admit that great freedom becomes arbitrariness in the hand of the judge. But we cannot vanquish this danger if our freedom as judges is abridged, but rather only if one educates judges who understand how to use their freedom."⁴⁴

To be sure, their relatively large degree of judicial discretion was in part a form of professional compensation. The German legal profession was highly stratified, and the permanent assignment of juvenile court judges to local courts (*Amtsgerichte*), of which the juvenile court constituted a division, paled in professional status with judgeships in district courts (*Landgerichte*), which were more prestigious and lucrative. However, the majority of Wilhelmine and Weimar juvenile court judges seem not to have resented the superior status of their colleagues in higher courts; service in the gestating juvenile justice system seemed to provide sufficient reward for most of them.

Without a doubt, not all juvenile court judges were sympathetic to the plight of juvenile offenders, many of whom were driven to law-breaking by economic distress. Such juveniles could expect no quarter from older juvenile court judges in particular. But which other judge in the German criminal justice system but a juvenile court judge could have conceived of defining his judicial role in terms of compassion? Thus Herbert Francke could unabashedly urge his colleagues on the juvenile court bench to cultivate a "love of youth."⁴⁵

The Tenacity of Rule-of-Law Habits

Indeed, juvenile court judges had another, more substantive motive not to concede too much ground to doctors: From their perspective, the introduction of a medicalized approach into criminal justice threatened to lead to the progressive moral disarmament of the law. For the most part, juvenile court judges were liberal-minded jurists who supported reform of the current judicial treatment of juvenile offenders, but they also believed in imposing limits on the contents of reform. In particular, the majority of juvenile court judges, with the support of other legal practitioners in the juvenile court system, remained committed to the notion of criminal responsibility. Regardless of how entrenched forensic psychiatry eventually became in the German state's mechanisms of control before 1933, not only in criminal justice but also in various forms of social welfare, in juvenile justice the stubborn survival of old rule-of-law habits limited the latitude of forensic psychiatry.

This tenacity of rule-of-law habits in juvenile justice is illustrated in contemporary commentaries to the law. Even though the 1923 Juvenile Justice Act vested

broad discretionary authority in the juvenile court “to refrain from punishment” and in its place to order “educative remedies” (*Erziehungsmaßregeln*) from an ample catalogue of such remedial measures (§§ 5-7), interpretation of this novelty was unsettled. Albert Hellwig, a judge and then, during the Weimar Republic, an official in the Prussian Justice Ministry who helped shape juvenile justice legislation, interpreted the discretionary use of educative measures restrictively; he would have subordinated the act’s promotion of behavior modification to the need for deterrence.⁴⁶ Herbert Francke’s construction of the Juvenile Justice Act was only somewhat less restrictive. In his view, the act contemplated judicial approval of educative remedies only “if they of themselves suffice to produce the success intended [otherwise] by punishment.” And he restricted their use even further by adding that “there are cases in which consideration of the general public makes the imposition of punishment appear unavoidable.”⁴⁷ On the other hand, the commentary of Wilhelm Kiesow, a high official in the Reich Justice Ministry who participated in framing the act, stressed the educative objective of the law: “The reaction of the state,” he argued, “is now certainly directed . . . in the first place at the [juvenile] offender; he ought to be rehabilitated, to be kept away from future violations of the law. Education forms one means to this end.” Yet Kiesow, too, added a caveat: “It would be to fully misconstrue the state of affairs if one meant to exclude [the] retributive idea from penal law.”⁴⁸ The act’s educative measures, then, represented a significant innovation, but there was palpable reluctance to cede too much traditional ground to an alternative vision of criminal responsibility.

The *modus operandi* of Bruno Müller, chief judge of the Hamburg magistrate court and juvenile court during the Weimar Republic, illustrates the extent to which law framed discipline in German juvenile justice. Müller brought a substantial degree of rationalization to the Hamburg juvenile justice system by reducing the number of cases brought to the juvenile courts, terminating some proceedings before they reached a verdict, and preferring educative alternatives to incarceration. Nevertheless, he was inclined to order punishment when the “gravity of the offense” (*Schwere der Straftat*) dictated it, even if the juvenile was a first-time offender.⁴⁹ He employed this terminology, which did not appear in the Juvenile Justice Act, deliberately because he felt compelled to establish doctrinal grounds for the incarceration of juvenile offenders. Such grounds were missing from the 1923 act, which vaguely authorized juvenile court judges to refrain from ordering punishment if rehabilitative measures were “adequate” (§ 6).

Müller’s formulation speaks to the ambiguous character of late Imperial and Weimar juvenile justice. It was in society’s interest to minimize the social dissonance of juvenile crime, especially juvenile recidivism. Juvenile justice largely promoted conformity to a minimal consensus about normative behavior, and in this respect operated no differently from any other form of penal law. What distinguished juvenile justice was that its partial disengagement from

traditional criminal law through “(re)education” imparted an essential elasticity to it. Although the rehabilitative ideal could serve to minimize punitive reactions to venial and first-time offenses, under certain circumstances, especially if the offense was grave or the offender was a recidivist, it could also serve to maximize the punitive reactions to juvenile wrongdoing. To borrow from Franz Streng, offenders came to assume a “contingent position” in German juvenile justice: “On the one hand, they [could] count on extensive consideration of their developmental prerequisites. The well-intentioned attitude of their fellow citizens [had] limits, however, when the offense [entailed] an all too obstinate or all too massive calling into question of social values.”⁵⁰ Francke made the same point in a speech to juvenile court professionals in 1927, in which he articulated his commitment to criminal responsibility and punishment when the preservation of the sanctity of generally accepted norms dictated punishment because the offense, even if caused by negligence, was serious:

In my opinion, on the basis of the [Juvenile Justice Act] there is absolutely no question that the educational ideal is not sole sovereign, but that the general concept of punishment, as realized in criminal justice against adults, must not be totally disregarded. . . . [In section 9 of the Juvenile Justice Act] we find the stipulation that punishment of up to ten years can be imposed on juveniles. No one will pretend to assert that such punishment can be justified purely on grounds of the educative ideal. . . . If the law has . . . adopted such rules, these provisions can be explained only on the basis of the fact that the legislator’s position was that under [certain] circumstances the legal order must be preserved against juveniles, even at the price of the educational objective, which must then retreat.⁵¹

Notwithstanding the rationalization of juvenile justice, the judicial philosophies of Bruno Müller and Herbert Francke, perhaps the two most influential juvenile court judges in the Weimar Republic, look a lot like an attempt to reinscribe, albeit with limitations, the old-fashioned concept of guilt in juvenile justice.

The persistence of old rule-of-law habits affected the resort to educative remedies in general. An instructive example is the fate of administrative “juvenile arrest” (*Jugendarrest*)—the committal of juvenile status offenders to solitary confinement for varying lengths of time in a public institution like a school or a jail. This measure was already proposed in 1911, and the spiraling juvenile crime rate during World War I generated support for it. But although it won the endorsement of the juvenile justice movement in the 1920s, juvenile arrest never became law in the Weimar Republic. For his part, Bruno Müller, who went to great lengths to improvise alternatives to incarceration, refused to order juvenile arrest even though he approved of it in principle—if implemented properly, it could lend “inner support” to a juvenile offender—because it was not specifically enumerated in the Juvenile Justice Act’s catalogue of educational remedies and was too intrusive to be considered implicitly sanctioned by the 1923 act. Juvenile

arrest was later enacted under the Third Reich. If a disciplinary measure like juvenile arrest was not incorporated systematically into German juvenile justice, it was, I would suggest, because late Wilhelmine and Weimar juvenile justice lacked a single-minded ideological agenda to replace Germany's existing legal system with the normative power of an administrative legality, which the enthronement of forensic psychiatry in the courtroom would have epitomized. Rather, German juvenile justice before 1933 demonstrated considerable sensitivity to liberal principles of penal jurisprudence. Juvenile justice was not merely an alibi to redescribe punitive sanctions in the vocabulary of reform. The medicalization of juvenile justice was limited precisely because of the prevalence of this commitment to the liberal principle of the rule of law.

Judges as Lay Psychologists

Sensitive to the incursion of forensic psychiatry into their courtrooms but only partially able to check its momentum, juvenile court judges mobilized to co-opt it by transforming themselves into lay psychologists.⁵² They rationalized their strategy by pointing to their expanded judicial discretion, which, they asserted, empowered them to evaluate not only the legal dimensions of an offense but also the soul of the offender. In this enterprise, they found support in the increasing promotion of a judge's "intuitive grasp of the psychological life of the criminal," which delegates to the 1925 meeting of the German chapter of the Internationale Kriminalistische Vereinigung (International Penal Association; IKV), for instance, endorsed.⁵³ In the 1920s, several members of the second generation of juvenile court judges who were now entering professional maturity developed expertise in adolescent psychology. One juvenile court judge, Walter Hoffmann of Leipzig, even made a significant contribution to the field with the publication of a book in 1922.⁵⁴

The formation of a consensus that juvenile court judges should possess expertise of this type generated an effort to institutionalize the systematic specialized training of prospective and sitting juvenile court judges. In 1924 and 1927, the Deutscher Jugendgerichtstag (DJGT), the institutional voice of the juvenile justice reform movement, passed resolutions calling for the specialized training of juvenile court judges and other juvenile court professionals.⁵⁵ In 1928, the Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen (German Association for Juvenile Courts and Juvenile Court Assistance; DVJJ) convened thirty experts, including Herbert Francke, to discuss the training of juvenile court judges. They unanimously endorsed the integration of the study of psychology, along with sociology, the organization of welfare, and education, into the curriculum of law students who intended to become juvenile court judges. To this end,

in 1929 the DVJJ proposed the creation of a practical and theoretical training course of six to nine months for prospective juvenile court judges.

The majority of juvenile court judges attended one or more seminars conducted by the DVJJ in the second half of the 1920s. The first such seminar, held in Berlin in June 1925, was representative of the others. It addressed both the theoretical and practical aspects of juvenile justice. Twelve lecture hours were allotted to the psychological and psychiatric causes of juvenile delinquency and eight to the pedagogical approach to problem adolescents. The Berlin seminar included observations of a juvenile prison and reformatories in the region. Most seminars also featured a lecture by a respected juvenile court judge who discussed both the practical application of the 1923 Juvenile Justice Act and the judicial philosophy of juvenile justice. Seminars of this sort were organized not only in Berlin but also in Hamburg, Bonn, Kassel, Frankfurt, and Dresden.⁵⁶ Several shorter conferences for juvenile court judges were also organized in the late 1920s.⁵⁷

Although the Depression frustrated the DVJJ's plan to establish a regular nine-month course for future juvenile court judges, the organization's plea inspired circuit court officials in Berlin to sponsor a special one-month regional course for a dozen prospective and fledgling juvenile court judges and prosecutors in 1929 and 1930. In the first and third weeks of the course, participants divided their time evenly between lectures on psychology, sociology, and welfare policy and visiting local youth welfare offices, where they observed social workers in action, even accompanying them on home visits. The course's second week was solely devoted to lectures. During its last week each participant resided in a different reformatory. This immersion in the daily rhythm of a reformatory created a deep appreciation for the complexity of resocializing problem adolescents. According to the reports of participants, not all who attended were sympathetic to psychiatric and psychological explanations of delinquency, but the lecturers seem to have persuaded the majority of them to pay as much attention to the juvenile offender as to his offense and to study the adolescent personality with the help of psychology. Most participants left the course inspired to apply what they had learned.⁵⁸

A prominent lecturer on this circuit was Herman Nohl, an acclaimed professor of education in Göttingen. A perusal of his 1926 lectures in Hamburg and Göttingen imparts a sense of the message being conveyed to juvenile court judges.⁵⁹ Nohl explained theoretical concepts in the psychological sciences for his listeners and suggested to them how they could employ these concepts in the creation of a "pedagogical relationship" (*pädagogischer Bezug*) with juvenile offenders—which they might achieve in large measure with the aid of psychoanalytic techniques, especially transference—because "the first task" of the juvenile court judge was winning the juvenile offender's confidence and trust.⁶⁰ If the juvenile court judge hoped to modify the behavior of a juvenile offender, he would have to

understand him. Judicial assessment of the facts of the case alone would be inadequate because the relevant facts lay primarily “in the soul of the offender.”⁶¹ In this vein, “if he thinks pedagogically, the judge sees the offender and not merely the offense.”⁶² Nohl urged juvenile court judges to use the diagnostic categories of psychology, psychiatry, and especially psychoanalysis. He traced many acts of juvenile delinquency to the instinctual reactions of juveniles to enticement; the juvenile’s perception of a desired object motivated him instinctively without malice or forethought to acquire it. More serious criminal offenses ensued from a “psychopathic”—that is to say, abnormal—overreaction to a physiological weakness created by puberty. Such weaknesses occurred in all youngsters, but some had a more pronounced disposition to a labile temperament, which caused psychological “short-circuits” during the maturation process. Suppression of physical urges might induce the defective development of especially weak adolescents. Finally, adolescents were frequently not equal to the expectations of parents, and to flee the intense pressure to succeed they often escaped into private fantasies and led a double life, frequently descending into youth gangs. This was especially true of adolescents from proletarian backgrounds, who went to work at age fourteen but were unprepared for the demands of employment and thrown prematurely into the company of cynical adults.⁶³ But Nohl warned his listeners that however enlightening the psychological sciences may be, they were still in their infancy, and, in the final analysis, juvenile court judges “stand again every time before the individual with his singular history. . . . The child must . . . always feel that it is not merely a case and a type but a you!”⁶⁴

Although Nohl urged juvenile court judges to be sensitive to the emotional life of juvenile offenders, he adamantly defended the role of punishment in juvenile justice. He was of the conviction that punishment was tantamount to an “authoritative expression of ethical life.” In punishment, the juvenile offender perceived the “reality of the authority of [a] higher [form of life].” In the final analysis, “punishment is certainly not the first thing in education, but ever and again the last, truly the famous *ultima ratio* . . . It is . . . indispensable because through it and it alone the authority of a higher existence proves itself [superior] to the authority of the [individual] ego.”⁶⁵

What lessons did juvenile court judges, especially novices, draw from Nohl’s lecture? The published report of a judge in training who attended the 1926 seminar in Hamburg describes what he derived from Nohl’s presentation:

The exposition certainly does not have the objective of making juvenile court judges into psychiatrists, but it will certainly make it easy for judges to recognize whether a psychiatric opinion should be requested and how it should be used in reaching judgment. Certainly in some cases deep understanding will hardly make the decision of the judge easy, e.g. in a case of arson motivated by homesickness, for it can hardly be disposed of without punishment.⁶⁶

This reaction of a student training to become a juvenile court judge attests to the inculcation of a certain judicial style in juvenile justice: juvenile court judges were expected to be solicitous of the emotional weaknesses and handicaps of problem adolescents and to cooperate in their courtrooms with psychiatrists, but when confronted with serious criminal offenses, whatever the cause, they remained committed to the traditional notion of criminal responsibility.

Forensic Psychiatrists and the Suasion of the Rule of Law

In spite of their initial hostility to the 1923 Juvenile Justice Act's limit on their influence, forensic psychiatrists came to reconcile themselves partially to the resistance of juvenile court judges. This attitude was dictated in large part by professional interest. To remain relevant in the juvenile courtroom, it was not unusual for psychiatrists to formulate their roles in juvenile court in a restrictive manner. Heinrich Vogt, who conducted the first psychiatric examinations in the Frankfurt juvenile court system, expressed his respect for the "free discretion of the judge" to heed or reject his medical opinion and emphatically confined the role of the psychiatrist to that of "advisor" (*Ratgeber*) to the juvenile court judge.⁶⁷ Many other psychiatrists who were active in juvenile court proceedings made similar public professions of deference to judicial authority.⁶⁸ Moreover, co-optation of forensic medicine was not all that difficult. For all of its pretensions to scientific rigor, it clothed bourgeois moral values in scientific terms. Indeed, what I find rather remarkable is the dispassionate approach of these forensic psychiatrists to healing. Although they never disavowed interest in healing, it was never at the center of their concerns. In my research, I have found only one psychiatrist who expressed the task of forensic psychiatry in humanitarian terms—in this specific instance, to serve the "humanization of adjudication."⁶⁹ Thus it is not surprising that forensic psychiatry tended to generate outcomes that were acceptable to the judiciary of the juvenile justice system. In cases involving serious offenses such as homicide or even automobile theft, forensic psychiatrists often negated any suspicion of mental incompetence on the part of juvenile defendants, even if they showed serious signs of personality disorder. This made it easy for juvenile court judges to endorse their opinions.⁷⁰ In line with the philosophy of modern criminal law reform, with its emphasis on "social defense," forensic psychiatry essentially defended conventional norms against socially unacceptable transgressions. Forensic psychiatrists were able to accommodate this subordination of their role in the juvenile courtroom by focusing their activity increasingly on the juvenile prison.

Finally, without wanting to indulge in overstatement, I would suggest that an influential circle of psychiatrists started to have second thoughts about two issues: the wholesale pathologization of the juvenile delinquent and the role of

the forensic psychiatrist in the juvenile courtroom. In the first place, the resuscitation in some circles of the so-called born criminal caused unease among many participants in juvenile justice. Herbert Francke, the preeminent juvenile court judge in the Weimar Republic, emphatically dismissed the notion in his 1926 study of juvenile deviance.⁷¹ The challenge posed by this redirection in approach to juvenile delinquency prompted a special commission of the DVJJ calling itself “Juvenile Court and Physician” (not to be confused with the 1920 subcommittee of the DJGT under the same name) to convene two meetings of experts in Berlin in March 1928 and in Dresden in June 1930 to discuss the “significance of predisposition in crime”—in shorthand, the question of the born criminal. Several of the most important figures in German juvenile justice debated the existence of hereditary juvenile criminality. Without a doubt, the lawyers among them were uncomfortable with this trend, but they were not alone. The vast majority of the psychiatrists who attended these sessions, including Eduard Hapke, who opened the first meeting and closed the second, and Franz Kramer, a distinguished forensic psychiatrist active in the juvenile justice system, cast doubt on the validity of the born criminal and, notwithstanding the undisputed significance of the role of personality in criminality, still considered the nature of the interaction of personal traits and environmental influences in the formation of juvenile deviance unsettled. After two meetings the conferees failed to clarify the causes of juvenile criminality, but one implicit outcome of the proceedings was to marginalize the idea of the born criminal.⁷²

The suasion of rule-of-law habits on forensic psychiatry is compellingly illustrated in a report by Kramer that was prepared for his appearance in 1927 before the Reichstag judiciary commission that was conducting hearings on the joint proposal by the Socialists and the Communists to raise the age of criminal responsibility and the age of limited criminal liability. Kramer wrote:

There are . . . without a doubt many offenses that do not suggest a danger of future delinquency at all, but must be confronted nonetheless. If we have only rehabilitative remedies at our disposal in combating these offenses, there could, in my opinion, exist the danger that rehabilitative measures overshoot the mark of what is necessary in an individual case. . . . The following point appears significant to me as well: Criminal proceedings afford the juvenile rights that he does not possess in rehabilitative proceedings [in civil guardianship court]. The clarification of questionable facts is significantly enhanced by the formalities of criminal proceedings.⁷³

He later concluded his actual testimony to the commission with an exhortation to maintain “sufficient optimism to introduce a legislative epoch.”⁷⁴ This remarkable testimony by a leading forensic psychiatrist was tantamount to an admonition to the parliamentary guardians of the *Rechtsstaat* to resist the pressure—or the temptation—to pathologize juvenile justice lest it forfeit its rule-of-law heritage altogether.

Conclusion

In the final analysis, the narrative of the alliance between forensic psychiatry and Wilhelmine and Weimar juvenile justice is a contrapuntal one of integration and fragmentation: forensic psychiatry made significant inroads into the juvenile justice system, but its aspirations to centrality were constrained by the competing claim of judicial authority. Juvenile court judges were encouraged to cooperate with doctors, but they were averse to relinquishing their authority to them in wholesale fashion because of their commitment to the idea of criminal responsibility and—this is what is unexpected—to the autonomous integrity of the individual, even when that individual, in this case the juvenile offender, was a member of a socially marginal group. Without a doubt, the law made important concessions to forensic psychiatry, but it still held sufficient sway to circumscribe the psychiatric profession's more ominous and promiscuous potentialities, in large part by appropriating the tools of psychiatric professionalism.

This unexpected fate of forensic psychiatry in Wilhelmine and Weimar juvenile justice has implications for the historiographical treatment of pre-1933 German criminal justice in general. Richard Wetzell has argued that the readiness of penal reformers around Franz von Liszt to curtail the legal rights of defendants in the interests of social defense paved the way for an alliance of forensic medicine and state power that “made possible the transformation of the traditionally antagonistic relationship between law and psychiatry into the symbiotic one that came to be the hallmark of criminal justice in the age of criminology.”⁷⁵ Although Wetzell's argument should apply to German juvenile justice, I have tried to show that German juvenile justice before 1933, with all of its contradictions, ultimately becomes intelligible only if we take into account not only the convergence but also the collision of forensic psychiatry and a liberal commitment to the rule-of-law tradition. Although forensic psychiatry, with its ominously imaginative theories and diagnoses, insinuated itself into juvenile justice and was sustained by the hygienic vision of German society endorsed by penal reform, it was nonetheless forced in the juvenile justice system to contend with and accommodate different holdover habits and values in support of certain guarantees promised by law, even if the implementation of these habits and values was increasingly threatened by erosion.

Notes

1. Herbert Francke, “Juvenile Courts in Germany,” *Sociology and Social Research* 16 (1932), 408.
2. See Jörg Wolff and Christine Dörner, “Jugendstrafrecht zwischen Weimar und Nationalsozialismus,” *Recht der Jugend und des Bildungswesens* 38 (1990), 55.

3. David Crew, "The Ambiguities of Modernity: Welfare and the German State from Wilhelm to Hitler," in *Society, Culture, and the State in Germany, 1870–1930*, ed. Geoff Eley (Ann Arbor, 1996), 326.
4. Siegfried Kracauer, "The Murder Trial and Society," in *The Weimar Republic Sourcebook*, ed. Anton Kies, Martin Jay, and Edward Dimendberg (Berkeley, 1994), 741.
5. For articulation of this aspiration by a forensic psychiatrist, see W[ilhelm] Fürstenheim to Frankfurt Juvenile Court, 18 August 1926, Geheimes Staatsarchiv Preußischer Kulturbesitz, Berlin-Dahlem (GStA) Rep. 84a, no. 1032, 109.
6. Wilhelm Kiesow, *Das Jugendgerichts-Gesetz vom 16. Februar 1923* (Mannheim, Berlin, and Leipzig, 1923), xxxiii.
7. Jan Goldstein, "Framing Discipline with Law: Problems and Promises of the Liberal State," *American Historical Review* 98 (1993), 364–381.
8. On the development of social prophylaxis in German psychiatry, see Eric J. Engstrom, *Clinical Psychiatry in Imperial Germany: A History of Psychiatric Practice* (Ithaca and London, 2003), chap. 7.
9. Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880–1945* (Chapel Hill, 2000).
10. On the co-production of scientific knowledge and normative prescriptions, see Sheila Jasanoff, ed., *States of Knowledge: The Co-Production of Science and Social Order* (London and New York, 2004).
11. Wetzell, *Inventing the Criminal*, 145.
12. Adalbert Gregor and Else Voigtländer, *Die Verwahrlosung: Ihre klinisch-psychologische Bewertung und ihre Bekämpfung* (Berlin, 1918), 61, 153.
13. *Ibid.*, 218–219, 475–476
14. *Ibid.*, 194–212.
15. *Ibid.*, 231.
16. *Ibid.*, 4–5.
17. *Ibid.*, 146–149.
18. See Wetzell, *Inventing the Criminal*, 147.
19. A[dalbert] Gregor, "Wie ist die Erziehung Schwersterziehbarer zu gestalten in bezug auf Fürsorgeerziehung?" *Zeitschrift für Kinderforschung (ZKF)* 37 (1930), 153–161.
20. On the integral function of procedural rules in the Imperial *Rechtsstaat*, see Kenneth F. Ledford, "Lawyers, Liberalism, and Procedure: The German Imperial Justice Laws of 1877–79," *Central European History* 26 (1993), 171–172.
21. See the remarks of Franz Kramer in *Kreistagung der Deutschen Jugendgerichtshilfen (4. Deutscher Jugendgerichtstag) am 12., 13., und 14. April 1917 zu Berlin* (Berlin, 1918), 116–117.
22. Paul Köhne, "Das Strafverfahren gegen Jugendliche," in *Reform des Strafprozesses: Kritische Besprechungen der von der Kommission für die Reform des Strafprozesses gemachten Vorschlägen*, ed. P[aul] F[elix] Aschrott (Berlin, 1906), 627.
23. *Idem*, "Über Jugendgerichte," speech to the twelfth Landesversammlung der Landesgruppe Deutsches Reich at Posen in 1908, *Mitteilungen der internationalen kriminalistischen Vereinigung (MIKV)* 15 (1908), 545.
24. *Idem*, "Die Tätigkeit des Jugendgerichts Berlin-Mitte im Jahre 1910," *Deutsche Juristenzeitung* 16 (1911), 627–628; see also *idem*, "Die Mitwirkung der Ärzte bei den Jugendgerichten," *Zentralblatt für Vormundschaftswesen, Jugendgerichte und Fürsorgeerziehung (ZblVorm)* 4 (1912–1913), 212.
25. *Idem*, "Mitwirkung der Ärzte," 212.
26. *Idem*, "Tätigkeit des Jugendgerichts Berlin-Mitte," 627. For the expression of similar sentiments by another early Berlin juvenile court judge, see L. Fischer, speech, *Verhandlungen des 1. Deutschen Jugendgerichtstages 15. bis 17. März 1909* (Berlin and Leipzig, 1909), 34; *idem*,

- “Die Tätigkeit des Jugendgerichts vor, in und nach der Hauptverhandlung,” *Monatsschrift für Kriminalpsychologie und Strafrechtsreform (MKPStR)* 6 (1909–1910), 326–327.
27. This figure is available in the petition of the Union of Medical Experts at the Juvenile Court of Central Berlin (Vereinigung ärztlicher Sachverständiger am Jugendgericht Berlin-Mitte) to the Reichstag, January 1913, Bundesarchiv Berlin-Lichterfelde (BABrIL) Rep. 30.01, no. 5573, 95.
 28. Kammergerichtspräsident und Oberstaatsanwalt bei dem Königslichen Kammergericht to Prussian Justice Minister, 22 November 1917, GStA Rep. 84a, no. 1030, 219.
 29. L. Jacobsohn to Prussian Justice Ministry, no date [October 1917], GStA Rep. 84a, no. 1030, 217.
 30. See, e.g., the regulations of the Bavarian and Saxon justice ministries in the appendix to “Bericht der 13. Kommission über den Entwurf eines Gesetzes über das Verfahren gegen Jugendliche,” in *Stenographische Berichte über die Verhandlungen des Reichstags*, 13. Legislaturperiode, 1. Session, vol. 302, Aktenstück Nr. 1054, 1800, 1803.
 31. Karl Allmenröder, “Die Tätigkeit des Frankfurter Jugendrichters,” in *Das Jugendgericht in Frankfurt a. M.*, ed. Berthold Freudenthal (Berlin, 1912), 9; Ludwig Becker, “Die Tätigkeit des Staatsanwaltes,” in *ibid.*, 25; H[einrich] Vogt, “Die Tätigkeit des ärztlichen Gutachters beim Jugendgericht,” in *ibid.*, 87.
 32. Amtsgerichtsrat [Paul] Levi via Amtsgerichtsdirektor to Landesgerichtspräsident in Frankfurt am Main, 19 August 1926, GStA Rep. 84a, no. 1032, 103; Wilhelm Fürstenheim to the Frankfurt Juvenile Court, 18 August 1926, GStA Rep. 84a, no. 1032, 108–109.
 33. Vogt, “Die Tätigkeit des ärztlichen Gutachters,” 94.
 34. On the collaboration between forensic psychiatry and the youth welfare bureaucracy in juvenile court, see Anna Schultz, “Aus der Praxis der Jugendgerichte und der privaten Jugendgerichtshilfe,” *MKPStR* 6 (1909–1910), 574–577; Immanuel Fischer, “Die erzieherische Tätigkeit des Jugendgerichtshelfers,” in *Die erzieherische Beeinflussung straffälliger Jugendlicher: Referate der Tagung der Vereinigung für Jugendgerichte und Jugendgerichtshilfen am 11. und 12. Juni 1926 zu Göttingen* (Berlin, 1927), 46–47; Franz Kramer, *Die Mitwirkung des Psychiaters im Vormundschafts- und Jugendgerichtsverfahren* (Berlin, 1931); Karl Tilman Winkler, “Reformers United: The American and German Juvenile Court, 1882–1923,” in *Institutions of Confinement: Hospitals and Prisons in Western Europe and North America, 1500–1950*, ed. Norbert Finzsch and Robert Jütte (Cambridge, 1996), 270.
 35. Stein, “Ueber Jugendgerichte,” speech, “Verhandlungen der 9. Tagung der Deutschen Gesellschaft für gerichtliche Medizin,” in *Vierteljahresschrift für gerichtliche Medizin und öffentliches Sanitätswesen* (3. Folge) 47 (Supplement-Heft) (1914), 298.
 36. See the series of exchanges in Amtsgerichtspräsident to Kammergerichtspräsident, 24 April 1917, Rep. 84a, no. 1030, 204; Prussian Justice Minister to Kammergerichtspräsident and Oberstaatsanwalt beim Kammergericht, 22 June 1917, Rep. 84a, no. 1030, 212; Prussian Justice Minister to Kammergerichtspräsident and Oberstaatsanwalt beim Kammergericht, 31 December 1917, Rep. 84a, no. 1030, 225; juvenile court judges Lindhorst, Karwinkel, Herr, and Langer to Amtsgerichtspräsident, 14 June 1918, GStA Rep. 84a, no. 1030, 223; Kammergerichtspräsident and Oberstaatsanwalt beim Kammergericht to Prussian Justice Minister, 15 August 1918, GStA Rep. 84a, no. 1030, 231–232.
 37. Amtsgerichtsrat [Paul] Levi via Amtsgerichtsdirektor to Landesgerichtspräsident in Frankfurt am Main, 19 August 1926, GStA Rep. 84a, no. 1032, 103.
 38. See press reports of such lectures in “Die Jugend auf der Anklagebank,” *Der Tag*, 5 November 1909, GStA Rep. 84a, no. 10724, n.p.; “Die sittliche Reife jugendlicher Angeklagter,” *Der Tag*, 16 February 1912, GStA Rep. 84a, no. 10724, n.p.
 39. Petition of the Union of Medical Experts at the Juvenile Court of Central Berlin to the Reichstag, January 1913, BABrIL Rep. 30.01, no. 5573, 94–97. For a psychiatrist’s public advocacy

- of the petition, see L. Jacobsohn, "Zum Strafverfahren gegen Jugendliche," *Vossische Zeitung*, 20 December 1912, GStA Rep. 84a, no. 10724, n.p.
40. *Die Verhandlungen des 5. Jugendgerichtstages in Jena 1920* (Berlin, 1922), 63, 75.
 41. Unpublished transcript of the fourth session of the 21. Ausschuß (Reichsstrafgesetzbuch), 11 October 1928, GStA Rep. 84a, no. 8445, 29.
 42. "Begründung zum Entwurf eines Jugendgerichtsgesetzes," 24 October 1922, in *Stenographische Berichte über die Verhandlungen des Reichstags*, vol. 375, Drucksache Nr. 5171, 10–11 (§§ 5, 6).
 43. See, e.g., the criticism of the dean of German forensic psychiatry, Gustav Aschaffenburg, "Der Jugendgerichtsarzt," speech, in *Die Durchführung des Jugendgerichtsgesetzes als Personenfrage: Bericht über die Verhandlungen des 7. Deutschen Jugendgerichtstages* (Berlin, 1928), 107–108.
 44. Dürhen, "Die erzieherische Tätigkeit des Jugendrichters," in *Die erzieherische Beeinflussung straffälliger Jugendlicher*, 42.
 45. Herbert Francke, "Erziehungsgedanke im Jugendgerichtsgesetz," in *Der Erziehungsgedanke im modernen Jugendrecht: Vorträge des 1. Rheinischen Fortbildungskurses für Jugend- und Vormundschaftsrichter, Jugendstaatsanwälte und Jugendstrafvollzugsbeamte*, ed. Ludwig Clostermann (Düsseldorf, 1927), 41.
 46. Albert Hellwig, *Jugendgerichtsgesetz* (Berlin, 1923), 29.
 47. Herbert Francke, *Das Jugendgerichtsgesetz von 16. Februar 1923*, 2nd ed. (Berlin and Munich, 1926), 42–43.
 48. Kiesow, *Jugendgerichts-Gesetz*, 54.
 49. Bruno Müller, "Die praktische Handhabung des deutschen Jugendgerichtsgesetzes," speech, in *Verhandlungen des 6. Deutschen Jugendgerichtstages Heidelberg 17.-19. September 1924* (Berlin, 1925), 15; see also idem, "Das Jugendgerichtsgesetz in der Praxis des Hamburger Jugendgerichts" (unpublished manuscript), BABrL Rep. 30.01, no. 5568, 83 (19). For a similar contemporary gloss on the act by Herbert Francke using the terminology "gravity of the case" (*Schwere des Falles*), see Herbert Francke, "Denkschrift zum § 4 des Entwurfes eines Jugendgerichtsgesetzes," 25 September 1922, GStA Rep. 84a, no. 1031, 35–36.
 50. Franz Streng, "Erziehungsgedanke im Jugendstrafrecht: Überlegungen zum Ideologiecharakter und zu den Perspektiven eines multifunktionalen Systembegriffs," *Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW)* 106 (1994), 76–78.
 51. Francke, "Erziehungsgedanke im Jugendstrafrecht," 39–40.
 52. This concerted effort to co-opt psychiatry in juvenile court is reminiscent of the contemporaneous demand by the Prussian Judges Association to assume control over *Gerichtshilfe* (court assistance), which Warren Rosenblum describes in his chapter in this volume.
 53. See the speeches of Linz, Mittermaier, Schulze, and Liepmann in *MIKV* (Neue Folge) 1 (1926), 22, 34, 45, 50.
 54. Walter Hoffmann, *Die Reifezeit: Probleme der Entwicklungspsychologie und Sozialpädagogik* (Leipzig, 1922).
 55. "Entschließung I," in *Verhandlungen des 6. Deutschen Jugendgerichtstages*, 57; "Entschließung I," in *Die Durchführung des Jugendgerichtsgesetzes als Personenfrage: Bericht über die Verhandlungen des 7. Deutschen Jugendgerichtstages*, 127–128.
 56. Reports from many of these seminars were published in *Zentralblatt für Jugendrecht und Jugendwohlfahrt (ZblJugR)*. See, e.g., Herbert Francke, "Psychologisch-pädagogische Fortbildung von Richtern und Staatsanwälten in Jugendsachen: Sonderkursus der Vereinigung für Jugendgerichtshilfen in Berlin," *ZblJugR* 17 (1925–1926), 113–114; Bahnson, "Jugendrichtertag in Hamburg," *ZblJugR* 18 (1926–1927), 133–134; Ludwig Clostermann and Stofregen, "Zwei Fortbildungskurse für Jugendrichter und Jugendstaatsanwälte," *ZblJugR* 19 (1927–1928), 76–79; Daus, "Fortbildungskurs für Jugendrichter und Jugendstaatsanwälte," *ZblJugR* 20 (1928–1929), 77–78. The Bonn lectures were published in *Der Erziehungsgedanke im modernen Jugendrecht: Vorträge des ersten Rheinischen Fortbildungskurses für Jugend- und*

- Vormundschaftrichter, Jugendstaatsanwälte und Jugendstrafvollzugsbeamte*, ed. Ludwig Clostermann (Düsseldorf, 1927).
57. Lectures from two of these conferences were published. See *Die erzieherische Beeinflussung straffälliger Jugendlicher: Referate der Tagung der Vereinigung für Jugendgerichte und Jugendgerichtshilfen am 11. und 12. Juni 1926 zu Göttingen* (Berlin, 1927); Max Grünhut and Bruno Müller, *Zwei Vorträge über Jugendgerichtsbarkeit vor thüringischen Jugendrichtern und Jugendstaatsanwälten in Eisenach am 21. März 1927* (n.p., n.d. [1927]).
 58. On the 1929 course, see Hans Steinlitz, "Ein Sonderlehrgang für Jugendrichter and Jugendstaatsanwälte," *ZblJugR* 22 (1930–1931), 317–320; on the 1930 course, see Lührse, "Der zweite Jugendrichter-Kursus in Berlin," *ZblJugR* 23 (1931–1932), 69–73.
 59. Both lectures were published. His Hamburg lecture appears in Herman Nohl, "Zum psychologischen Verständnis der Tat," in *Jugendwohlfahrt* (Leipzig, 1927), 55–70; the Göttingen lecture appears in "Gedanken für die Erziehungstätigkeit mit besonderen Berücksichtigung der Erfahrungen von Freud und Adler," *ibid.*, 71–83. A summary of his Hamburg lecture is available in Bahnson, "Jugendrichtertag in Hamburg," 133. The Göttingen lecture appeared originally in *Die erzieherische Beeinflussung straffälliger Jugendlicher*, 3–16. References to these lectures here are from *Jugendwohlfahrt*.
 60. Nohl, "Gedanken für die Erziehungstätigkeit," 74.
 61. *Idem*, "Zum psychologischen Verständnis der Tat," 56.
 62. *Idem*, "Gedanken für die Erziehungstätigkeit," 73.
 63. *Idem*, "Zum psychologischen Verständnis der Tat," 58–69.
 64. *Idem*, 57.
 65. *Idem*, "Gedanken für die Erziehungstätigkeit," 82–83.
 66. Bahnson, "Jugendrichtertag in Hamburg," 133.
 67. Vogt, "Die Tätigkeit des ärztlichen Gutachters," 91, 125, 128.
 68. See the speeches of Anton and Düring, respectively, in *Kriegstagung der Deutschen Jugendgerichtshilfen*, 122, 125.
 69. Düring, speech, in *Kriegstagung der Deutschen Jugendgerichtshilfen*, 126.
 70. See the printed judgments of Weimar juvenile court judges in "Psychiatrische Gutachten über kriminelle Jugendliche (Minderjährige) und jugendliche Zeugen," *ZKF* 38 (1931), 390–391, 402–403, 408–409; Ludwig Clostermann, "Urteil des Jugendgerichts N.," *ZKF* 39 (1932), 171–175; Werner Villinger, "Psychiatrische Begutachtung zweier jugendlicher Mörder," *ZKF* 42 (1934), 415–418.
 71. Herbert Francke, *Jugendverwahrlosung und ihre Bekämpfung* (Berlin, 1926), 14–15. See also *idem*, "Der Erziehungsgedanke im Jugendstrafrecht," 50–51.
 72. Reports of the two meetings are available in "Bericht über die Sachverständigenkonferenz der Deutschen Vereinigung für Jugendgerichte und Jugendgerichtshilfen," *ZKF* 34 (1928), 631–645 and "Sachverständigen-Konferenzen des Deutschen Vereins zur Fürsorge für jugendliche Psychopathen und der Vereinigung für Jugendgerichte und Jugendgerichtshilfen, Dresden, 6./7. Juni 1930" *ZKF* 37 (1930), 112–130. For papers delivered at the Dresden conference, see *ibid.*, 131–412.
 73. Franz Kramer, "Jugendzeit und Strafmündigkeit," *ZblJugR* 19 (1927–1928), 3, 230–231.
 74. See the unpublished transcript of the fourth session of the 21. Ausschuss (Reichsstrafgesetzbuch), 11 October 1928, GStA Rep. 84a, no. 8445, 30.
 75. Richard F. Wetzell, "The Medicalization of Criminal Law Reform in Imperial Germany," in *Institutions of Confinement*, ed. Finzsch and Jütte, 282–283.