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Two fourteen year old juveniles, Issac Pipes and Richard Workman, forcibly raped an elderly woman and were brought before juvenile court for a hearing. The defendants were waived to the grand jury to be tried as adults and were subsequently indicted on the charge of rape. At the trial they pleaded guilty and punishment was fixed at life imprisonment without benefit of parole. On appeal, defendants contended that such a sentence was cruel and unusual punishment when applied to a juvenile offender. *Held,* although a penalty of life imprisonment without benefit of parole may be imposed on an adult, such a penalty is cruel and unusual punishment when applied to juvenile offenders. *Workman v. Commonwealth,* 429 S.W.2d 374 (Ky. 1968).

The early interpretation by American courts of the phrase "cruel and unusual punishment" was restrictive.[1] More recently, however, three major tests have envolved for evaluating the punishment inflicted upon a particular defendant. If the punishment shocks the conscience of the community because it is so inhuman that it "violates the principle of fundamental fairness," it is generally held cruel and unusual.[2] If the punishment is extremely disproportionate to the nature of the crime, the courts will likewise find it cruel and unusual.[3] The third test questions whether or not the punishment is unreasonably excessive in light of the public intent expressed by the statute.[4] If the punishment exceed legitimate penal aims it is held to be cruel and unusual.

Legitimate penal aims embrace the concept that punishment for a certain crime should be the same for everybody. To this general rule there is an exception for juvenile offenders. However, if the crime is of a heinous nature, there is still another exception and the juvenile may be tried as an adult. The court in *Workman* went a step further and examined the punishment meted out to a juvenile in the light of his being a juvenile even though he was tried as adult.

The *Workman* court found that a life sentence for rape without possibility of parole was designed by the legislature "to deal with

[1] Cruel and unusual punishment was defined as cruel or degrading punishment not known to the common law. *In Re* Bayard, 25 Hun 546, 549 (N.Y. 1881).
[2] Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. 1968).
[3] *Id.*
[4] *Id.*

dangerous and incorrigible individuals."[5] This being assumed, the court further assumed that incorrigibility was inconsistent with youth and it therefore held the punishment cruel and unusual as applied to juveniles.

The *Workman* decision thus added a new contour to the vague outline of cruel and unsual punishment. It was the unique concept of juvenile treatment which guided the court in its determination that the punishment was cruel and unusal. That is to say, the court found the punishment inconsistent with its philosophy of the disposition of juvenile offenders.

Generally in the United States a juvenile offender is treated with the aim of rehabilitating, re-educating, and guiding him to become a useful member of society.[6] The main goal is to keep a juvenile offender from being branded a criminal.[7] Accordingly, modern legislation has tended to separate juvenile and adult offenders.[8] However, nearly all jurisdictions which embrace this approach to juvenile offenders recognize certain exceptions.[9] In the case of extremely serious crimes courts have waived the protections of the juvenile court process and treated the defendants as adults.[10] Thus the significance of the *Workman* case lies chiefly in the court's implied questioning of the concept of waiver of a juvenile to be tried as an adult.

The court in *Workman* seems to find waiver inconsistent with the philosophy of handling juvenile offenders. It would seem consistent

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[5] *Id.*

[6] Carver & White, *Constitutional Safeguards for the Juvenile Offender,* 14 CRIM. & DELIN. 63, 64 (1968). For a more extensive discussion of the history, function, and philosophy of the juvenile court in the United States, see E. ELDEFONSO, LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER: JUVENILE PROCEDURES 157-76 (1967).

[7] Kent v. United States, 383 U.S. 541, 554 (1966).

[8] Nicholas, *History, Philosophy, and Procedures of Juvenile Courts,* 1 J. FAMILY L. 151, 160 (1961). The West Virginia court has held that the Legislature's intent is to separate "with respect to definition, trial, and punishment, the misdeeds of children from public offenses by adults." State v. Boles, 147 W. Va. 674, 680, 130 S.E.2d 192, 196 (1963).

[9] Some reasons for waiver are (1) some children are more mature than the normal juvenile and the juvenile court facilities may not be able to help them; (2) there is a lack of facilities to help even the immature juvenile offender; (3) some juvenile cases are hopeless. Sargent, *Waiver of Jurisdiction,* 9 CRIM. & DELIN. 121 (1963).

[10] This is not to say however, that juvenile hearings can be void of constitutional safeguards. The juvenile court must hold a hearing on the matter of waiver, provide the juvenile with counsel at this proceeding, and make the juveniles' records available to their counsel. Kent v. United States, 383 U.S. 541 (1966).

with the *Workman* rationale to conclude that a juvenile cannot be waived to an adult court any time such waiver will subject the juvenile to adult punishment. If this is so, the extent of the waiver concept is impliedly limited to this extent.

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Domestic Relations—Constitutionality Of The West Virginia Nonsupport Statute

Dewey Bragg was indicted for failure to support two children born in 1950 and 1952. He was convicted on the theory that the children were legitimate because they were born as a consequence of what would have been a common-law marriage if such marriages were recognized in West Virginia.[1] Bragg stipulated the existence of the essential of a common law marriage but appealed on the ground that the statute which declares that the issue of marriages null in law are legitimate[2] is ambiguous and is not applicable to a nonsupport action. *Held,* judgment affirmed. The provisions of the statute in question are clear and unambiguous, and no limitations or qualifications may be read into it. *State v. Bragg,* 163 S.E.2d 685 (W. Va. 1968).

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[1] Common-law marriages contracted in West Virginia are null and of no effect so far as the husband and wife are concerned. *Cf.* W. VA. CODE ch. 48, art. 1, § 5 (Michie 1966); Kester v. Kester, 106 W. Va. 615, 618, 146 S.E. 625, 626 (1929); Beverlin v. Beverlin, 29 W. Va. 732, 736, 3 S.E. 36, 38 (1887). However, common-law marriages contracted in a state which recognizes the validity of such marriages will be given recognition in West Virginia. Meade v. Compensation Comm'r, 147 W. Va. 72, 82, 125 S.E.2d 771, 777 (1962); Jackson v. Compensation Comm'r, 106 W. Va. 374, 375, 145 S.E. 753, 754 (1928). There has been much controversy as to what elements are requisite to a common-law marriage. In one West Virginia case the elements were stated to be "lawful capacity to contract a marriage, and matrimonial intent, *bona fides,* on the side of at least one of the parties." Luther v. Luther, 119 W. Va. 619, 621, 195 S.E. 594, 595 (1938). In the same case, the court stated the requirements to be "an understanding in the present tense that the parties are husband and wife, and they must . . . in good faith assume such relation . . . and believe in good faith that they are husband and wife." *Id.* at 621-22, 195 S.E. 595.

[2] W. VA. CODE ch. 42, art. 1, § 7 (Michie 1966), which reads, "The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate." This Code section will be referred to hereinafter as the "legitimation" statute for brevity. It should be kept in mind that legitimation may also take place by virtue of intermarriage of the parents subsequent to the birth of their children. W. VA. CODE ch. 42, art. 1, § 6 (Michie 1966).