which is a pertinent issue in a felony charge against defendant, and concluded that the defendant's right against self-incrimination had not been violated.

In a recent leading case, a stomach pump was used on defendant to cause him to spit up two capsules of previously swallowed morphine. This evidence was introduced, and, as a result, the defendant was convicted of possessing narcotics. The California District Court of Appeal decision[16] was consistent with the principal case in holding that evidence improperly obtained could be introduced on the ground that illegality of search does not affect admissibility of evidence. On certiorari, however, the United States Supreme Court held that this forced extraction was a violation of the due process clause of the Fourteenth Amendment of the Federal Constitution in that it constituted a coerced confession.[17] This was not treated by the Court as either an instance of unreasonable search and seizure or of self-incrimination, since the Fourth and Fifth Amendments do not apply to state action.[18] The ruling indicates, however, that due process under the Fourteenth Amendment may be invoked to inhibit state action similar to, although more extreme than, that of the principal case.

The prevailing view, expressed in the principal case, may lead to unexpected results. In the present zeal for the clean-up of crime, powers which may boomerang have been allowed law enforcement agencies. Although the stricter view may in some instances protect the guilty, such an occasional result would appear to be a mere incidental by-product of a sounder procedure which eventually would force the prosecutor to obtain evidence from other sources.

CONSTITUTIONAL LAW—FREEDOM OF RELIGION—PARENTS' DUTY TO PROVIDE MEDICAL ATTENTION

Parents of an infant child suffering from a serious blood condition refused, on religious grounds, to consent to a blood transfusion. Pursuant to a statute authorizing the appointment of a guardian for neglected childen, an order was sought for appoint-

16. People v. Rochin, 101 Cal. App. 2d 140, 225 P.2d 1 (1950), *rehearing denied* (by the California Supreme Court), *id.* at 143, 225 P.2d at 9913 (1951).
17. Rochin v. California, 342 U.S. 165 (1952).
18. *Ibid.*

ment of a guardian who would consent to a blood transfusion. The trial court entered the order. On appeal to the Supreme Court of Illinois, held: affirmed. A child whose parents refused to permit a blood transfusion, when lack of the transfusion meant that the child would almost certainly die or at best be mentally impaired for life, was a "neglected child" within the meaning of the statutory definition[1] and a religious belief does not constitute a defense for the breach of a statutory duty.[2]

Religious liberty and freedom of worship are protected by the constitutions of the various states[3] and the United States.[4] While the First Amendment of the Federal Constitution refers only to federal action, it is now well settled that the prohibitions imposed upon Congress by that Amendment have also been imposed by the Fourteenth Amendment as prohibitions against state action.[5] However, statutes which are designed to promote and protect the peace, health, and welfare of society have been held to be constitutional and within the police power even though such statutes may indirectly infringe upon the freedom of religious actions.[6] The Courts in deciding such cases have distinguished between the absolute freedom to believe and the freedom to follow by actions the dictates of one's conscience.[7]

The holding of the principal case illustrates another instance where religious action predicated upon a religious tenet has been indirectly invaded. A case directly in point and reaching the same result is *Mitchell v. Davis*.[8] The greater number of decisions have arisen, however, on manslaughter proceedings[9] where a sick child, who was incapable of judging for himself, has died because his parents, on religious grounds, had failed to procure

1. ILL. REV. STAT. c. 23, §§ 190-220 (1949).
2. People v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1951).
3. *E.g.*, ILL. CONST. Art. II, § 3; MO. CONST. Art. I, § 5; N.Y. CONST. Art. I, § 3.
4. U.S. CONST. AMEND. I.
5. Marsh v. Alabama, 326 U.S. 501 (1946); Jamison v. Texas, 318 U.S. 413 (1943); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Cantwell v. Connecticut, 310 U.S. 296 (1940).
6. Prince v. Massachusetts, 321 U.S. 158 (1944); Reynolds v. U.S., 98 U.S. 145 (1879).
7. People v. Donner, 199 Misc. 643 (1950) (this case also appears as Shapiro v. Dorin, 99 N.Y.S.2d 830); Rescue Army v. Municipal Ct. of City of Los Angeles, 28 Cal.2d 460, 171 P.2d 8 (1946).
8. 205 S.W.2d 812 (Tex. Civ. App. 1947).
9. People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903); Regina v. Downes, 1 Q.B.D. 25, 13 Cox C.C. 111 (1875); see Note, 12 A.L.R.2d 1050 (1947); Note, 10 A.L.R. 1138 (1920).

medical attention. There is doubt as to what the correct common law rule was in such a case,[10] but, following statutory enactments establishing the duty of a parent to furnish medical and dental attention for infant children,[11] it has been almost universally held that a religious belief offers no defense for failure to provide such attention.[12]

In arriving at their decisions, the courts have given careful attention to the following factors: (1) whether the legislature or a judicial decision has imposed the duty upon the parents to provide medical attention for their infant children; (2) whether it has been found as a matter of fact that the parent breached such duty; (3) whether such neglect has resulted in death or if continued would result in the death, acceleration of death, or gross physical or mental impairment of the infant; (4) whether there were conflicting theories of medical diagnosis, prognosis, and method of treatment employed by recognized schools of medical science; (5) whether such medical procedures as were deemed necessary would involve substantial risk of life, and (6) whether the benefit which would accrue to the child in ordering a temporary separation and treatment[13] would outweigh the social benefit that would result if the child remained with its parents.[14]

Where the defense of a religious and conscientious belief is raised, the problem is essentially one of reaching a balance between the rights of parents and the state's valid exercise of its

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10. Regina v. Wagstaffe, 10 Cox C.C. 530 (1868). *But cf.* Regina v. Senior, [1899] 1 Q.B. 283; Regina v. Hines, 80 Sess. Pap. C.C.C. 309 (1874) (cited in Regina v. Downes, 13 Cox C.C. 111, 114 n.a. (1875) and Regina v. Senior, *supra*); Regina v. Hurry, 76 Sess. Pap. C.C.C. 63 (1872) (cited in Regina v. Downes, 13 Cox C.C. 111, 113 n.a. (1875) and Regina v. Senior, *supra*).

11. For a history of English statutory enactments, see Regina v. Senior, [1899] 1 Q.B. 283.

12. Owens v. State, 6 Okla. Crim. Rep. 110, 116 Pac. 345 (1911); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903); Rex v. Brooks, 9 B.C. 13, 5 Can. Cr. Cas. 372 (1902); Regina v. Senior, [1899] 1 Q.B. 283 *Contra:* Regina v. Felton, 33 L.J.N.C. 563 (1898); *cf.* Justice v. State, 116 Ga. 605, 42 S.E. 1013 (1902).

13. It should be noted that the separation from the parents resulting from guardianship, in these cases, is of temporary nature. Mitchell v. Davis, 205 S.W.2d 815 (Tex. Civ. App. 1947).

14. Although reaching opposite, but distinguishable, results from that of the principal case, the courts in the following cases have presented detailed analysis of the problems involved in such situations: *In re* Hudson, 13 Wash. 2d 673, 126 P.2d 765 (1942); Justice v. State, 116 Ga. 605, 42 S.E. 1013 (1902); *In re* Tuttendario, 21 Pa. Dist. Rep. 561 (1912).

police power for the protection of the health and welfare of society. In reaching such a balance, any reasonable doubt on the part of the court or the jury as to the efficacy of the treatment and prognosis, the urgency and necessity of such treatment, and the resultant social and moral advancement, should be resolved in favor of the parent's fredom of action. The area where courts intervene should always be limited by extremely narrow bounds which can only be extended as the science of medicine and surgery becomes more definite and exact.

CRIMINAL LAW—POWER OF A COURT TO TRY A PERSON BROUGHT INTO THE JURISDICTION ILLEGALLY

While residing in Illinois, petitioner was seized by Michigan police, taken into Michigan, tried and convicted of a murder committed in Michigan. Extradition proceedings were not availed of. Petitioner sought a writ of habeas corpus in the United States District Court, alleging that he had been brought into the jurisdiction in violation of the Federal Anti-Kidnapping Statute.[1] The petition was denied. On appeal to the Court of Appeals, the decision of the District Court was reversed and remanded. On certiorari to the Supreme Court of the United States, held: reversed, and the decision of the District Court reinstated on the ground that the power of a court to try and convict a person accused of a crime is not impaired by the fact that he has been forcibly brought into the jurisdiction.[2]

The decision of the Supreme Court of the United States was consistent with its own precedents. In *Ker v. Illinois*,[3] where a state official had forcibly brought the accused back from a foreign country without having first requested the foreign country to return him, it was held that the state court had jurisdiction to try and convict the accused. Later, in *Mahon v. Justice*,[4] the same court ruled that the forcible abduction of a person accused of a crime from a sister state by police officers of the prosecuting state did not render the conviction void. The rule of those two cases has been consistently followed by both federal and state tribunals in cases involving the trial of persons abducted

1. 62 STAT. 760 (1948), 18 U.S.C. § 1201 (1950).
2. Frisbie v. Collins, 342 U.S. 519 (1952).
3. 119 U.S. 436 (1886).
4. 127 U.S. 700 (1888).