

# YOUTH AND CRIME

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The study of penal reform yields convincing proof of the fact that childhood and the early years of adolescence have been the first to benefit by progressive change in the criminal law or in the systems of punishment. Children of tender years have generally been held incapable of committing crimes, but at whatever age criminal responsibility has been assumed to begin, childhood has had certain prerogatives, partly because of the natural sympathy which grownups feel for children and partly due to a recognition of the existence of a growth process, in which physical and mental maturity is gradually reached.

There is strangely little in the literature which tells us about the punishment of juvenile delinquents in ancient times or in the Middle Ages. The illustrations used by historians and culled from the records almost invariably refer to young adults or adults. In the late Middle Ages, however, the first "reformatories" or "bettering houses" are established for delinquent and neglected children, and shortly after the Reformation correctional imprisonment makes its appearance, in part at least to provide a more suitable means of dealing with delinquent children and youths. As the years go by, children's institutions multiply, the correctional school makes its appearance, and finally the juvenile court. In the process, the definition of the child becomes enlarged to include the early adolescent period. The setting up of reformatories for young adults, especially those who have not previously shown an inclination to criminality, marks an extension of this interest in the younger age groups and a desire to prevent the formation of criminal careers.

Humanitarian impulses no doubt played a part in this interest and the changes it produced in the penal system, but it is obvious that these impulses were buttressed by psychological insight. Some elementary psychological principles of behavior were well understood in older times. As Sancho Panza might put it, our forefathers realized that like seeks like, one rotten apple will spoil a barrel, and that as the twig bends so grows the tree. Modern psychology has lent the authority of science to these homely truths and has given us a better understanding of the mechanisms of behavior. One effect of the conquests of modern science in its study of conduct has been that we now understand more fully that our penal system, even when we con-

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sider the great reforms made therein, still largely rests on a philosophy of correction which no longer is acceptable to the student of human behavior, having failed to adapt itself fully to the knowledge acquired in the fields of psychology, psychiatry, and sociology.

Today there is no possible disagreement on one principle, namely, that delinquency or crime should be prevented, if possible, and that, if it cannot be prevented, it should be attacked when its first manifestations occur in a person, in order that recurrence be prevented. It is when we come to discuss the methods for achieving these ends that the disagreements may arise. There may also be some doubts concerning the focal points of attack. When the American Law Institute began its work in drafting the Youth Correction Authority Act, it did so because it was felt that, while the juvenile court movement had wisely recognized the urgent necessity for setting up new treatment devices for the youngest age groups on principles new to the legislator and in a sense outside the province of the criminal law, no such advances have been made in dealing with the "youth group," that is, the group under the age of majority, but above the traditional juvenile court age of jurisdiction.

It is not my purpose to anticipate here the arguments for and against the act drafted by the Institute or to defend its underlying assumptions. My task is fortunately much simpler and restricted, namely, that of showing what role the youth group plays in criminality, the importance of recidivism in this group, and, finally, the effect of the war on youthful crime. All but the last question has been discussed at some length elsewhere<sup>1</sup> and in subsequent pages, therefore, a summary of such findings will be given, occasionally supplemented by more recent data.<sup>1a</sup>

### *The Role of the Youth Group in Criminality*

Without elaborating on the technical difficulties involved in arriving at conclusions based on statistical data, our criminal statistics being notoriously weak in many respects, certain conclusions may be drawn from an analysis of the information scattered in the reports of official agencies.

1. First of all, it is evident that the youth group does *not* violate laws in general to the same proportionate extent that do some older age groups. The 16- to 20-year-olds inclusive—and for purposes of comparison this is the group we are interested in—comprises about 13% of the population above 15 years of age. Yet, it is rare to find more than seven or eight per cent of those arrested by the police of our municipalities in this age group, *i.e.*, if we include in these arrests all violations of the criminal law and traffic violations.

2. On the other hand, when we limit our view to the serious misdemeanors and to felonies, the picture changes. In crimes against property, the youth group shows

<sup>1</sup> SELLIN, *THE CRIMINALITY OF YOUTH* (Am. L. Inst., 1940; pp. 116, including 45 statistical tables). Unless otherwise indicated, the data cited in this article may be found in this monograph.

<sup>1a</sup> Since the receipt of Dr. Sellin's manuscript, a survey of youth offenders in the California courts has been largely completed, and data from this survey have been presented in an appendix to Holton, *The Youth Correction Authority in Action: The California Experience*, *infra* at p. 663. Ed.

higher ratios than any other group. The highest burglary and larceny rates fall in this group. For instance, the youth group commit proportionally twice as many burglaries as the people between 25 and 30 years of age and almost 30 times as many as those of people over 50. They commit twice as many ordinary thefts as do persons between 35 and 40, and nearly nine times as many as those of over 50 years of age. In auto thefts they predominate to such an extent that they nearly triple the rate of the 25- to 29-year-olds and exceed those above 50 more than 125 times.

3. The three crimes mentioned represent the specialties of the youth group. Three out of every four more serious crimes committed by youths are either burglaries or some form of larceny. This means that offenses of violence against persons, sex offenses, and other serious crimes do not figure heavily in the criminality of youth, comparatively speaking. As we examine older age groups we find that the property crimes, while their incidence may still be high, tend to become less and less important. They make up only one out of three serious crimes committed by those above 50 years of age.

4. Although in all serious offenses taken together the 19-year-olds show somewhat higher rates than any other single year age group within the youth bracket, the 18-year-olds have the highest rates for the property crimes mentioned above. Here we are faced with a dilemma. Since our best data are drawn from fingerprint statistics, it is quite possible that we are getting a distorted view of our problem and that the highest crime rates actually fall in the earlier years of the youth group or even within the late juvenile years. That this possibility exists may be realized when we discover that in England and Wales, where more complete statistics are available, the highest rates for indictable offenses in general were found in the 14-15-year age group for each year in the period 1931-36 and in the group under 14 in 1937 and 1938. Recent studies in Sweden found the highest theft rates to lie in the 16-year group.<sup>2</sup>

Enough has been said to show the very great importance of the criminality of youth. It must be remembered that property crimes make up the vast majority of all serious offenses. When we consider that half of the automobile thieves, and a third or more of the robbers, burglars, and other thieves fall in the youth group, it is evident that here is an age period which for some reason presents moral problems of extraordinary seriousness. It may be argued that these facts show that we have not yet succeeded in attacking effectively the problems of childhood conduct and that we must devote increasing effort to the prevention of juvenile delinquency and the arresting of delinquency in its incipient stages. That may be so, but we shall note presently that most of those who commit crimes during their youth have had no previous record of overt conflict with the law, which means that many of them have never been dealt with by juvenile courts and that the opportunity to apply carefully planned and executed remedial treatment did not present itself until the juvenile court age had passed.

<sup>2</sup> SOCIAL ÅRSBOK, 1941, p. 50.

*The Recidivist of Youth Age*

If it is difficult to secure adequate data concerning the incidence of crime at different age levels it is almost impossible to find usable data on recidivism at different ages. But the few sources of information available all point in the same direction, at least.

1. An interesting study made a few years ago by Harry M. Shulman for the New York State Crime Commission showed that in New York City in 1929, male youths arraigned were *without any previous known record* in the following proportions: property crimes, 69%; property crimes involving the person, 57%; assault, 79%; sex offenses, 81%; civic offenses, 66%; and, non-negligent homicide, 55%. Mr. Shulman stated: "The importance of these findings is that we are apparently not dealing in New York City with a small group of repeated serious offenders, but that each year brings to our courts a substantial new group of offenders; whether the major group of the offenders of the previous year ceased criminal conduct or whether they merely avoided being caught is a matter for conjecture."<sup>3</sup>

2. In Germany during the same year, 1929, only 22.3% of the youths of 16-20 convicted had ever been punished previously.

3. In a recent study of criminality in three large Swedish cities and the surrounding rural areas, it was found that, among criminals by violence convicted in 1930-39, 19% of the 15-17-year group were recidivists; 24% of the 18-20-year group; and 32% of the 21-24-year-olds. The corresponding figures for thieves were 16, 31, and 39%.<sup>4</sup>

These facts are but straws in the wind. Together with other scattered data pointing in the same direction, they justify the tentative conclusion that the youth group by and large contains a sufficiently high proportion of "first offenders" to justify the most serious efforts of the legislator and the penologist. We may all have our doubts of the wisdom of expending great energy and large amounts of public funds on the confirmed offender, but in the youth group we find the embryo criminal in an amazingly large proportion. Here certainly is a focal point of attack on the crime problem, a sector, so to speak, where a break-through will probably yield large gains.

We know some other things from statistics of recidivism which should give the thoughtful citizen something to worry about.

1. There is no doubt that punishment itself increases the likelihood of recidivism. Whether this is due to the fact that conventional punishments are not of a kind which cures, or the result of the social ostracism of the punished, no one knows. Perhaps it is a little bit of each, but the fact remains, if we are to believe the most careful and elaborate data available on this question from Germany a generation ago,<sup>5</sup> that if a person has been once convicted, there is one chance out of five that he will again be convicted in the next ten years. But this probability of reconviction for crime rises to 50% if he had two previous convictions, 68% if he had three to five

<sup>3</sup> SHULMAN, *THE YOUTHFUL OFFENDER* (Report to the N. Y. State Crime Comm'n of the Sub-Comm'n on Causes and Effects of Crime, 1931).

<sup>4</sup> SOCIAL ÅRSBOK, 1941, pp. 40, 55.

<sup>5</sup> 3 VON MAYR, *STATISTIK UND GESELLSCHAFTSLEHRE* (1917) 889.

previous convictions, while if he had six or more, his chance of escaping reconviction is only one out of seven.

2. An interesting official study<sup>6</sup> of English criminal statistics made recently showed that of those who in England and Wales were convicted as first offenders in 1932 of a fingerprintable offense, 21% were reconvicted within a five-year period thereafter. This study brought out a fact of great importance to students of youth crime. Of those who in 1932 were 16 or 17 years of age, 30% were reconvicted, and of those who were 18-20, 27% were reconvicted, while those who were over 40 years of age on conviction recidivated in only 10% of the cases. In other words, the younger the person was at first conviction the greater was the likelihood that he would again come into conflict with the law within a few years. This evidence again points to the inescapable conclusion that the best and most purposive penal and correctional treatment must be designed for youthful offenders, since they present the greatest risks.

3. Finally, the type of crime is definitely related to recidivism. A person who commits a property crime is more likely to relapse than one who commits an offense against the person. The British data just referred to indicate that the sex offender is the best risk and the burglar the poorest.<sup>7</sup> Since the youth offender is so frequently a property offender, he figures prominently among the recidivists, but whether it is his youth or the character of the crime which is responsible is perhaps difficult to say. It may well be that the economic motive which has such a strong relationship to property crimes is more powerful in the youthful groups.

#### *Youth and the War*

The great concern which is felt with regard to the course of delinquency and crime during and after the war is reflected daily in the press, in committee reports, and in the proceedings of national associations. This is not the place for a discussion of this question except in one of its aspects. What is likely to be the effect of the war on the criminality of youth? While so far there is little real evidence available for the United States it may not be amiss to point to the lessons of the last war and to some of the experiences of England since the beginning of the present conflict.

The best studies of the effect of the war of 1914-18 on criminality have come out of the countries of central Europe. The excellent works of Professors Liepmann and Exner,<sup>8</sup> sponsored by the Carnegie Endowment, are now more than ever worth examining. While both of them found the same difficulties in locating data concerning the youth group (German and Austrian statistics are well supplied with information about child delinquents below 16 or 18 years of age, but not equally usable for the

<sup>6</sup> HOME OFFICE CRIMINAL STATISTICS OF ENGLAND AND WALES, 1938, pp. xx ff.

<sup>7</sup> *Ibid.*

<sup>8</sup> LIEPMANN, *KRIEG UND KRIMINALITÄT IN DEUTSCHLAND*. (Stuttgart, 1930); EXNER, *KRIEG UND KRIMINALITÄT IN OESTERREICH* (New Haven, 1927).

See also MANNHEIM, *WAR AND CRIME* (London, 1941). This recent study is largely based on the above reports and on British official statistics. Interesting material for the postwar period in England is available in Mannheim's *SOCIAL ASPECTS OF CRIME IN ENGLAND BETWEEN THE WARS* (London, 1940).

18 to 20 group) their conclusions regarding the criminality of the early and middle adolescent ages are still worth consideration in this connection.

In Germany delinquency of children 15-18 years of age showed a slight decline in the first year of war, followed by a rapid rise, which reached its peak in 1918 and in the terrible years of postwar reconstruction. The same phenomenon was noted in Austria. Crimes against property in the age group mentioned rose 57% in Germany from 1913 to 1917. The rise was greatest in the cities. In Vienna, the rise in thefts and frauds was very noticeable and much greater for the younger than for the older age classes in the child and youth bracket. As a matter of fact, in both countries there was a noticeable decline in offenses other than property crimes, except for the fact that serious crimes against the person showed abnormal increase among children until the armistice. Truancy became increasingly common, but sex delinquency among girls declined.

The reasons assigned to the general rise in juvenile delinquency were many and are familiar to all sociologists and child welfare workers. Lack of adult workers drove children into industry—child laborers in Germany under 16 years of age increased 20% for boys and 13% for girls during the war period—their wages rose, the apprenticeship periods were shortened to a vanishing point, the responsibilities of caring for a family were often placed on youthful shoulders. The absence of the father in the army and of the mother in industrial work meant less adequate supervision. Family conflicts and the emotional tensions of the war coupled with the above factors stimulated increased alcohol consumption, induced sexual aberrations and acts of violence. Delinquency phenomena appeared more and more frequently in psychologically normal children. And when the war was over the returning workers drove the children into the ranks of the unemployed.

In England the first year of the present war noted a rise in juvenile delinquency, greatest in the lowest age groups and relatively modest in the highest ones. "At the end of the first year of war, the English Board of Education reported that the number of children under fourteen convicted of offenses was 41 per cent higher than in the previous year; the increase in the age span 14-17 was 22 per cent."<sup>9</sup> The increase in the 18-20-year group was 5%.<sup>10</sup> ". . . In general, it was noted," states Mrs. Glueck, "that it was in burglary, looting and thieving that the increase largely expressed itself. . . . It is of importance to note that in the first few months of the war the number of offenders fell below pre-war figures." The British experience points, however, to the fact that the highest rise was among mentally defective children, while those of normal or borderline mentality showed a decline in delinquency in 1940-41 as compared with 1939-40,<sup>11</sup> a finding which apparently was not matched by continental experience during the previous great war.

The United States has not as yet been in the war long enough to permit anything but very tentative observations. Recently, the Children's Court of New York an-

<sup>9</sup> E. T. Glueck, *Wartime Delinquency* (July-Aug., 1942) 33 J. OF CRIM. L. AND CRIMINOL., 119, 128.

<sup>10</sup> Evjen, *Delinquency and Crime in Wartime* (July-Aug., 1942) 33 *id.* 136, 138.

<sup>11</sup> E. T. Glueck, *supra* note 9, at 122.

nounced that it has handled 14% more cases during the first six months of 1942 than during the corresponding period of 1941.<sup>12</sup> Police departments in our cities and juvenile courts generally report increases in child delinquency. There is evidence, however, that we are experiencing temporarily the same modifications in youthful crime as have been recorded in other nations. The fingerprint records of the FBI indicate that in the last three six-months periods, *i.e.*, the first and the second halves of 1941 and the first half of 1942, the 18-20-year-olds showed a steady rise in robbery and assaults, but, while their arrests for criminal homicide rose in the second half of 1941, they fell subsequently; their burglaries also showed a steady decline; and their arrests for ordinary thefts as well as for automobile thefts were fewer in 1942 than during the last half of 1941. The data for the 16- and 17-year-olds are very similar, but cannot be given the same credence, since in this younger age group fingerprinting practices are not so uniformly or generally established.<sup>13</sup>

There is no reason for optimism, however. Experience tells us that we may expect a great rise in juvenile delinquency and increased criminality in the youthful age groups immediately above the juvenile court ages and that this increase is likely to occur in property crimes, economic motives playing an even greater role during wartime than in normal periods. Past experience would also cause us to expect an increase in offenders, who have no previous record. All told, the work for crime prevention and the establishment of more carefully developed plans for the treatment of delinquent youth, therefore, should receive strong public support in these times of conflict. Furthermore, over the horizon looms the demobilization period and postwar economic crises which, should they prove severe, would cause us to regret any present failure on our part to profit from the lessons of the past and to build constructively for the future.

<sup>12</sup> N. Y. Times, Sept. 23, 1942, p. 27.

<sup>13</sup> 12 UNIFORM CRIME REP. (1941) nos. 2 and 4; 13 *id.* (1942) no. 1.