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RECENT TRENDS IN GERMAN TREATMENT OF JUVENILE DELINQUENCY

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Since National Socialist doctrine repudiates the conception of training or education in penology, it was only natural that there should be suggestions for changing the rules of procedure against youthful offenders (fourteen to eighteen years), established in the law of 1923. The most reactionary proposal came from the neo-classical school and it was directed primarily against sections 5 and 6 of the 1923 law, which allowed courts to omit punishment when educational measures were deemed sufficient. The neo-classicists saw in this rule a step towards the final elimination of retributive justice, an illogical procedure which upholds the conviction but refrains from any punitive action. They sought a clear-cut separation. They would permit the judge to let a youthful offender go without punishment upon consideration of his mental and moral development (the possibility is already provided for in Sect. 3 of the statute), but a strict separation between punitive and educational functions is to be maintained in all other cases. Only after the fulfillment of a term of punishment should educational measures be prescribed, and then not by the judge of the criminal court but by one competent for this special function (Vormundschaftsrichter¹—tutorial court).

Schaffstein is the chief exponent of a less dogmatic and less reactionary proposal, one that has received a great deal of attention.² He also begins with the fundamental idea of separating educational and punitive measures but he disregards the question of guilt, and would limit the application of punitive measures to two categories of offenses:

(1) If the deed and guilt are particularly grave, and (2) in case of uneducability. The minimum duration of punishment is

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¹ See the proposals of Schötensack in *Der Denkschrift der Akademie für Deutsches Recht*, "Grundzüge eines allgemeinen Deutschen Strafrechts," 1934, p. 39 seq. and Ötker "Strafe und Erziehung nach den Sec. 5 und 6. des Jugendgerichtsgesetzes" in *Der Gerichtssaal*, 1935, Vol. 106, p. 94, et seq.

² *Die Erneuerung des Jugendstrafrechts*, Berlin, 1934. In more concise form, "Schaffung eines Nationalsozialistischen Jugendrechtes," *Deutsche Justiz*, 1934, Vol. 96, pp. 1565-67.

TABLE I
DISPOSITION OF CONVICTED YOUTHFUL OFFENDERS

	Total Juvenile Offenders Convicted (14 to 18)	Index of Juvenile Delinquency	Index of Criminality	Acquittals (% of Juveniles Convicted	Acquittals According to § J.G. (% of Convictions)	Index of Criminality (Male)	Index of Criminality (Female)	Recidivism (% of Juvenile Offenders	Age (% of Juvenile Of- fenders—14 to 16	Age (% of Juvenile Of- fenders—16 to 18	Convicted, Not Sentenced Acc. to §6 and 9 J.G.*	Total*	1 Year and Over (% of Imprisonment)	3 Months to 1 Year (% of Imprisonment)	Less than 3 Months (% of Imprisonment)	Fines (% of Convicted) *	Paroles (% of Convicted)
1931	22,846	561	1125	10.4	1.4	977	138	12	25.8	74.2	18.8	46.6	1.6	14.2	84.2	33.9	32.9
1932	12,533	623	1124.5	10	1.1	1093	144	13.4	22.8	77.2	16.9	51.9	1.9	16.1	82.0	30.0	34.5
1933	15,960	553	973.4	7.8	1.0	959	137	13.2	27.4	72.6	15.6	57.5	2.6	20.2	77.2	26.2	35.0
1934	12,394	419	761.4	6.9	0.99	702	125	11.1	34.9	65.1	16.7	57.3	4.1	21.6	74.3	25.9	34.7
1936	16,855	403	737.4	..	..	..	..	..	..	..	21.1	52.6	3.4	25.8	70.8	25.9	..

Source: Compiled from Kriminalstatistik für das Jahr 1931, 1932, 1933, 1934, the latter with principal results for 1936.

* These percentages do not total 100 as minor forms of disposal, e. g., arrests, etc., are disregarded.

fixed at nine months for these two cases. A special kind of *Jugend-arrest* is provided for certain other cases; its deterrent effects are supposedly beneficial and without any undesirable after-effects on the offender. The duration of the *Jugendarrest* may range from several hours or days to three months. The right of the judge to prescribe further educational measures remains.

It would be superfluous to enter into a detailed discussion of the criticism directed at these proposals, since none of them have been enacted into law and they have had no noticeable influence on court practice.³

Table I indicates that such changes as have so far taken place are in accord with the general penal policy of the new regime. At a first glance there appears to be a striking decrease in crime between the years 1931 and 1936. The rate of decrease is approximately the same for the general index of crime and for juvenile delinquency. The absolute figures for 1936 are higher than those for 1934, while the crime rate has dropped because the post war generation, which is larger, now come to the fore. It would be erroneous to accept these figures as proof of a decided decrease in the rate of crime, either general or juvenile. During this very period, there were generous amnesties, involving not only the revocation of sentences already pronounced but also the quashing of prosecutions against all offenders liable to a sentence of no more than six months in prison or to a corresponding fine.⁴ Since such cases do not appear in the criminal statistics, it is impossible to make general statements about the trend in criminality.

As regards the rate of acquittal, the duration of prison terms, and the frequency of fines we find the same tendencies in the treatment of both adult and youthful offenders, namely, a decline in the number of acquittals and a considerable increase in long-term imprisonment at the expense of short-term imprisonment. This feature of the new German criminal policy is a consequence of the disappearance of legal guarantees in procedure and of the official drive for more severe punishments. There has been no significant decrease in fines in either adult and juvenile cases, although the fine

³ Trenchant critique by Kohlrausch "Für das Jugendgericht" in *Zeitschrift für die gesamte Strafrechtswissenschaft*, 1937, Vol. 56, pp. 459-484. See also Gallas, "Strafe und Erziehung im Jugendstrafrecht," *ibid.*, pp. 635-41.

⁴ Besides the pre Hitler amnesty law of December, 1932, RGBl I 589, there are the following decrees which are apparently becoming a regularly recurrent affair, March 29, 1933, RGBl I 134, August 7, 1934, RGBl I, 769, April 25, 1936, RGBl I, 368, May 1, 1938, RGBl I, 433.

is officially frowned upon by the regime as a plutocratic measure. The reasonable proposal to impose fines on youthful offenders only when they can pay such fines themselves so that the penalty would not fall on the parents, has found a relatively weak response. There has been no appreciable change in the probation rate either, while the rate of recidivism is slightly smaller.

As for those regulations which are directed specifically to juvenile cases, there has been an increase in the tendency to restrict the range of exemptions from legal responsibility (the exemption of Sect. 3 already mentioned) allowed when the offender, because of the stage of his mental and moral development, was unable to understand the character of the deed at the time it was committed. This tendency was noticeable even before 1933. At the same time, the provisions of Sects. 6 and 9 which enable the judge to refrain from punishment in less serious cases have begun to find new favor after a brief decline in their use since 1931, and they applied more than one-fifth of all convictions in 1936.

It is clearly difficult to find any uniformity in these trends. On the one hand, they reveal the influence on the treatment of juvenile offenders of the generally harsher German criminal policy; on the other hand, we see greater leniency reflected in the parole figures and in the number of those convicted but not sentenced.

One unfavorable development is revealed in Table I. There has been a significant increase in crime among the youngest adolescents. This fact stands out even more sharply when we examine the figures from a single town like Hamburg.

TABLE II

JUVENILE DELINQUENCY IN HAMBURG

	14 Years	15 Years	16 Years	17 Years
1931	80	135	235	283
1932	99	147	286	463
1933	86	120	151	301
1934	158	114	139	155
1935	218	221	173	197
1936	208	284	274	213

This increase in crime among the younger elements is not due to a corresponding increase in ratio of these age groups to the total population. We also find a rise in the crime rate among school

children. In Hamburg, for example, it rose from 6.3% in 1931 to 17.4% in 1936.⁵

TABLE III

	<i>Juveniles Convicted (% of Total Convictions)</i>	<i>Larcenies Committed by Youths (% of Total Larcenies)</i>	<i>Sexual Offenses Committed by Youths (% of Total Sexual Offenses)</i>
1932	3.8	9.0	5.6
1933	3.3	9.0	5.7
1934	3.2	9.0	5.5
1936	4.3	13.0	7.2
1937 (¾ of the year)	5.3	16.7	9.9

Table III reveals an equally unfavorable development; the increasing proportion of youthful offenders in certain kinds of crime (discounting commercial fraud and similar offenses the nature of which prohibits commission by juveniles). The rise in sexual offenses is most striking, even after we take into consideration the general increase in such crimes which has occurred since the new regime came into power. The index of juvenile sexual offenses rose from 26.25 in 1932 to 39.10 in 1936. Officially, this increase is attributed to the greater efficiency of police methods.⁶ There is some truth in this claim, especially with reference to homo-sexuality where the crime index rose from 1.88 in 1934 to 10.24 in 1936. Greater police efficiency, however, cannot explain the disproportionate increase of sexual offenses committed by youthful offenders, the details of which appear in nearly every publication concerned with the problem.⁷ It would seem that changed habits of living, generally poor housing conditions, and the crowding together of young people in all sorts of labor and military camps have had an unfavorable influence in this direction. There is no evidence that

⁵ The figures for Hamburg are taken from H. Kruse, "Die Straffälligkeit der Jugend in Hamburg in den Jahren 1930-36," in *Monatsschrift für Kriminalpsychologie*, 1937, Vol. 28, pp. 499 ff. The same development is noticeable in other towns, too, see for instance the figures given by K. Seibert, *Die Jugendkriminalität Münchens, Leipzig*, 1937, who on page 33 plans the rate of the school children in juvenile criminality at 9.6% in 1932 and at 21.2% in 1935.

⁶ This is the justification given by the Statistische Reichsamt in *Kriminalstatistik für das Jahr 1934*; see also T. Ehrhardt, "Die Kriminalität der Jugendlichen im Jahr 1934-35," in *Zeitschrift . . .*, Vol. 56, pp. 591-92. The changes in legislation mentioned by Exner: *Die Reichskriminalistik von 1934 in Monatschrift*, 1938, Vol. 29, p. 341, are likewise not a sufficient explanation for the stupendous increase.

⁷ They rose in Munich, for instance, from 13 cases in 1932 to 38 cases in 1935; see Seibert, *op. cit.*, p. 16; see also the various official reports cited by Ehrhardt, *op. cit.*, p. 591.

official youth organizations have done anything to counteract the effect of these other conditions.

Concerning larceny, we find an appreciable increase in the number of juvenile thieves at the same time that the general index for simple larceny declined from 169.9 to 111.05 and for aggravated larceny from 54.3 to 25.9 between 1932 and 1936.

Prisons for youths, like the other prisons, show a distinct tendency towards overcrowding, largely because of the prolongation of prison terms. On August 15, 1936, according to official figures, the average population of the prisons for youthful offenders was already 86.1% of the normal capacity.⁸ In some cases the normal capacity was exceeded (Anrath 101%, Eisenach 109%, Stuhm 164%) or virtually reached (Wittlich and Hahnöfersand, 97% on August 15, 1936).

These prisons have relatively few offenders under 18 years; 7.6% of the total on August 15, 1936. The other inmates fall between the ages of 18 and 24. Prison regulations allow them to be interned in prisons for youths under certain conditions, but the great majority (86.7%) does not receive special treatment in either the prisons for juveniles or in the general prisons.

Prison regulations have been completely revised. The provisions of the "*Grundsätze über den Vollzug von Freiheitsstrafen*" of June 7, 1923, which were somewhat liberal and progressive, were amended as early as 1933, and again in 1934. On January 22, 1937, the Minister of Justice issued special regulations for the punishment of youthful offenders, virtually superseding the general rules for the execution of punishments.⁹

These new rules deviate from the general prison policy insofar as the value of the educational motive is not flatly denied as in the case of adult prisoners. Thus, Rule 2 of Sect. 9 shows a queer mixture of contradictory principles when it reads, "The execution of punishment on juvenile offenders definitely applies all its energies to influencing the future behavior of the young prisoners. The prisoner should not be lost but returned to the right path, and should become so firm that he becomes a useful member of the national community."

⁸ Figures are calculated from the table contained in the official publication, *Gedanken über Strafvollzug an jungen Gefangenen*, published by Staatssekretär Freisler (Berlin, 1937).

⁹ The order is reprinted in *Blätter für Gefängniskunde*, Vol. 67 supplement to issue 4 (Heidelberg, 1937).

Rule 3: "Beyond this education by punishment, the prisoner gets the education which cannot be given by the parents because of the fact of imprisonment, insofar as the punitive aim permits."

Rule 4: "The young prisoner . . . must be kept firm disciplined with just severity. He must learn to become hard against himself. . . ."¹⁰

We get closer to the spirit of these regulations by examining the provision for physical exercise and for leisure time activity. It appears that the maintenance of strict supervision and the suppression of spontaneous personal or voluntary group activity are of primary importance. There is no room for such group activity, the benefits of which are stressed by every report of the English Borstal Institutions.¹¹ All physical exercise, as provided for in Sects. 36-41, is conducted on a strictly disciplinary basis. That modern pedagogical measures are rejected by the framers of these regulations is revealed by the attitude to stage privileges. There is no doubt in their minds that the educational value of stage privileges is practically non-existent, but they have not tried to find an adequate substitute. The maintenance of better order and the necessity for minor officials to observe the prisoner more carefully in order to be able to report to the conference board on the advisability of advance are often cited in official reports as sufficient reason for retaining the stage system.¹² The stage system, they say, must be personalized so that the youth shall realize that he is receiving a strictly personal favor. It is clear that the transformation of the stage system into strictly individual rewards and favors, works, and is intended to work, as a check against the possible rise of any real group spirit.

Concerning work, Sect. 25 places a justifiable emphasis on the

¹⁰ Sieverts, a specialist in this branch of criminal law, calls these regulations the recognition of the idea of educational punishment, naturally of a National Socialist Character. H. Sieverts, "Zur Neuordnung des deutschen Jugendstrafrechtes" in *Monatsschrift* . . . 1938, Vol. 29, pp. 31-46, is a perfect example how a progressive author must hide under prevailing German conditions a critic, pretending that all reactionary features of the rules are contrary to "true national socialist spirit."

¹¹ The most recent report of the governor of the Portland Borstal Institution in *Report of the Commissioners of Prisons and the Directors of Convict Prisons for 1936*, London, 1938, pp. 78-79, places special emphasis on the educational value of voluntary group activity.

¹² See the different reports of the directors of prisons in *Gedanken über Strafvollzug* . . . pp. 25, 39, 57, 70, 88. It is interesting to note, however, that Staatssekretär Freisler dislikes the stage system not as one should assume because its disciplinary functions are merely mechanical in nature but because he thinks that the maintenance of order and discipline is secured in German prisons without resort to such petty methods. *Ibid.*, pp. 87-88.

need for coordinating educational and vocational training with the preservation of good health. The teaching of handicrafts rather than the use of machinery can hardly be considered more than a romantic gesture, however, since it is obvious that the inmates will later be compelled to earn their living as workers.¹³ The training is not of great consequence even in the preferred handicrafts. Although Sect. 24 recommends vocational training of a kind that will permit greater freedom from monotony, the convict is denied the privilege of finishing this vocational training with an examination. The official reason is that it is impossible to predict the further development of the prisoner.¹⁴ This reason does not fully conceal the fact that the important idea here is that of the fundamental dishonor of all prison work.

The practical importance of the question of vocational training should not be underestimated. Detailed reports of the directors of juvenile prisons reveal the fact that nearly 30% of all German prisoners are occupied with some traditional and well-known type of prison work, such as mattress making, basketry, bag-making, and so forth, clearly lacking in any educational value. Handicrafts like shoemaking, carpentry, or locksmithing are relatively rare. Finally, a large number of prisoners are occupied with domestic or agricultural work (in some prisons the latter is a major feature).

On the whole, official reports, together with the new regulations give the impression that German prisons for youthful offenders, caught between the official reactionary slogans on the one hand and the honest desire of officials to save these prisons from some of the worst possible consequences of the new policy, on the other hand follow the traditional lines of bureaucratic rule.

The increasing bureaucratization of working conditions in Germany has an unfavorable fact in the juvenile after his release from prison, and no solution has yet been found for this problem.¹⁵ The

¹³ Although the problem of vocational education in prisons is by no means satisfactorily settled in other countries, the Borstal Prison Institution report for 1935 lays great stress on continuous efforts to keep abreast of modern workshop developments. (*Report of the Commissioner for Prisons, for 1935*, p. 65.) The 1936 report of the Camphill Borstal Institution (*Report of the Commissioners, 1936*, p. 67) emphasizes the advantage of the absence of any large amount of machinery from the workshops.

¹⁴ Freisler in *Gedanken über Strafvollzug*, p. 80.

¹⁵ See Sieverts and Mumme, "Die Strafregistrierung bei Jugendlichen," *Zeitschrift . . .*, Vol. 57, pp. 771-788. It would be interesting to obtain information about the operation of the elaborate rehabilitation procedure provided in the Italian law of July 20, 1934, on juvenile delinquency. Such information has not been made available in the Italian journals. The article of Vorelli, "la Rieducazione dei Minorennis dal Punta di vista scientifico" in rivista di diritto peniten-

time spent in prison is entered as "unemployed" in the *Arbeitsbuch* which the law requires must be shown when seeking employment. Although the ex-convict is not required to volunteer the information that he has served a sentence, he must answer truthfully when asked or risk to lose his job if the lie is subsequently discovered. And a prospective employer would naturally be anxious about the reason for the "unemployment" recorded in the *Arbeitsbuch*.

ziario, Vol. IX, pp. 254-55, only describes the procedure without regard to the actual working of the prescription.