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What Constitutes Recidivism

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WHAT CONSTITUTES RECIDIVISM

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Recidivism has a variety of meanings which are frequently used interchangeably with the result that statements or conclusions must be carefully explained and qualified. Because of this, the findings become vitiated and tend to create a morass which lacks clarity and hinders progress.

In his report to the American Law Institute, Professor Sellin states "Recidivism is unfortunately a term which lacks clear connotations."[2] He then proceeds to consider it from three different aspects—prior commitment, prior conviction, and prior arrest.

Each of these definitions relates to different data and has different significance and implications.

This paper is intended to focus attention on these varying concepts and to contribute toward agreement on one measure as the basis of determining recidivism. It is hoped that such uniformity of definition will then be accepted by all official bodies. There will then no longer be different connotations, and the accumulated material will be of assistance in research that will help in the development of plans of treatment of offenders.

Prior Arrest

Recidivism based on prior arrest is usually thought of as measuring the adjustment of the individual to social life as expressed by the legislated penal or criminal law. However, it fails to do this since the person arrested may not be convicted and in fact may not have committed the offense. This definition would include not only those who have violated laws but also the large number of persons arrested because they were suspected of such violations. Studies made of the relationship between arrests and convictions have shown that very many charges are dropped or that the defendants are acquitted. Because of this determination that so many arrests are unfounded or unjustified it would obviously be unfair and unwarranted to consider prior arrests as indicative of recidivism. Nor is this the only problem presented. There would also be the need to determine whether all arrests—felonies, misdemeanors and violation of ordinances—should be included or only some of these.

The definition of recidivism as based on prior arrest is unsatisfactory because it includes many who were found to have been innocent and who were wrongfully arrested. In addition it is con-

[1]The Capitol, Albany, N. Y., Division of Parole.

[2]Thorsten Sellin, The Criminality of Youth, p.70.

trary to the doctrine of the penal law in that it would condemn and injure persons who had been legally absolved of all guilt.

Prior Incarceration

The most widely used meaning of recidivist is one who had previously been incarcerated. Its general acceptance is probably based on the length of its usage. Before methods of identification were introduced, it was recognized and known that the same names and faces recurred in the correctional institutions. The report of the New York State Prison for 1815 shows that out of a total of 295 persons received during that year, 23 were second and third offenders.[3]

In those early days each penal institution operated as a separate agency, distinct and apart from all others, and was unconcerned with what happened in other institutions or who were admitted there. Each institution kept some record of those who passed through its gates and reported how many of the inmates had previously been incarcerated in it. The term recidivist therefore came to mean one who came back to the same institution.

Many institutions, far too many, have become slaves of precedent and still maintain the same system of record-keeping. This has persisted, in spite of the rapid extension of the use of methods of identification and the consolidation and exchange of such information by city, state and federal bureaus.

Professor Warner in his report on Criminal Statistics for the Wickersham Commission says in speaking of prison reports: "The most common table on recidivism shows former commitments by number. Former commitments refer sometimes to previous terms in the institution in question and sometimes to terms served in it or in other State penal institutions."[4]

In the horse and buggy days, people were deeply rooted to a particular soil and remained in the same locality for their entire lives. Those were the days when transportation was difficult, time-consuming, expensive, and hazardous. In those days all of a person's incarcerations were in the same institution. Improved methods and facilities of transportation have brought widely separated places closer together. As a result, people are in a state of movement—going and coming. Permanence of residence is no longer so prevalent. A person's criminal activities are no longer confined and restricted to one particular locality.

Warner's comment suggests that statistics of recidivism have not kept pace with the change from an essentially agrarian economy with its comparative fixed residence to an industrial economy in which transportation became easier, less costly, speedier and safer.

[3]N. Y. Assembly Journal, 1816, p.132.
[4]National Commission on Law Observance and Enforcement, Report on Criminal Statistics, 1931, p.83.

Within more recent years there has been marked development and wide extension of bureaus of identification. Numerous such bureaus have been established and they are acting as clearing houses. The major development in this field has been the federal bureau which serves as a clearing house for all jurisdictions that co-operate with it. All reporting units known to be interested in an individual are advised of all recorded previous criminal involvement of that individual.

Even this marked extension has failed to change institutional record keeping from the routine adopted in the past. While the institutions receive the complete criminal records of their inmates, the published reports continue to ignore the fund of data thus made available. They still persist in showing previous incarceration in the particular institution and occasionally in other state penal institutions.

If every person accused of a crime were incarcerated it might then be valid to measure recidivism by the previous commitment to a penal institution. However this is not the case and charges are dismissed, the individual is often acquitted, and even if convicted he might be fined, or placed on probation, or merely reprimanded. This definition limits the meaning of recidivist only to those who have had previous institutional experience—only a small fraction of the total number arrested or even found guilty of crime.

If recidivism is to be based on prior incarceration, it has very little value if this is restricted to apply only to the same institution. Assuming however, that there is no such limitation and that prior incarceration includes other penal institutions there is a further problem which must be faced. This is as to whether any distinction shall be made between juvenile institutions, reformatories, jails, penitentiaries and prisons.

Generally only prisons are considered and other penal institutions are disregarded. A notable exception to this is the Census Bureau's table which shows previous commitments to jails only, to juvenile institutions, to both jails and juvenile institutions, and to prisons.

However, this definition cannot be accepted because it fails to include those who were convicted but were not punished by incarceration.

Convictions of crime are determinations made by competent bodies (judges or juries) that there have been violations of laws enacted to regulate the orderly conduct of affairs so that the individual and the group will be protected.

While crimes have been separated into various categories and carry different punishments, they are all injurious to the well-being of the group and they all indicate non-conformity to established standards of "proper" action. This applies to the person who

violates an ordinance by maintaining a health hazard, to the person guilty of disorderly conduct, and to the individual who commits homicide.

Prior Conviction

It is urged that a definition of recidivism that is based on previous conviction has greater validity than the other two which have been discussed. This would omit from consideration those who were wrongfully arrested and would include all those found guilty of crimes, whether they were incarcerated or were dealt with in some other manner.

The report of the Attorney General's Survey of Release Procedures states "A recidivist, as the term is here used, is a person who has served at least one period of incarceration. . . . Although the number of prior convictions probably would be a more accurate measure of recidivism than the number of previous commitments, records of commitments are used because there is more complete and reliable information for commitments than for convictions."[5]

This apology for the continued use of commitments is not very sound inasmuch as even the most ardent advocates of this measure would not urge that it is complete. The 1938 report of the Bureau of the Census on Prisoners states "Records of prior commitments to local penal institutions are much less complete, as there are large numbers of these institutions that do not clear fingerprint records with either Federal or State bureaus of identification."[6]

Surely every commitment is preceded by a conviction and if the crime of commitment is known the crime of conviction is identical. Certainly, then, the substitution of records of conviction for those of commitment would be very easy.

Attention has previously been called to the increased use of criminal identification and its extension. No longer is it restricted to those received in institutions but it is used by police departments and by courts. The result has been that criminal records are not limited solely to commitments but also contain data relative to arrests and convictions. This extension makes it possible to secure adequate and complete records of convictions. There is no reason to continue the definition of recidivist as one who had previously been incarcerated.

It is appreciated that some jurisdictions may not report convictions to the bureaus of identification. These laggards should not control the procedure for the entire nation because they will probably also be found to be deficient in reporting commitments. The path to progress is not to tie procedure to the slowest or least co-operative by using them as standards. Rather, it is to set a minimum above

[5]Attorney General's Survey of Release Procedures, 1939, Vol. 2, p.388.

[6]Bureau of the Census. Prisoners in State and Federal Prisons, 1938, p.30.

them and to attempt by education and persuasion to cause them to effect the changes necessary to reach the standards that have been established.

Include Felonies and Misdemeanors

It is necessary, however, that a determination be made as to what crimes shall be included. There will of course be no question regarding felonies. There may be some doubt relative to misdemeanors and violations of public ordinances. This uncertainty arises out of a hesitancy to include minor offenses. It is a well established fact that many persons charged with felonies (and who perhaps actually committed felonies) are frequently convicted of misdemeanors. Then too, the distinctions between misdemeanors and felonies are arbitrary and are not constant. By legislative enactment some felonies have been changed to misdemeanors while at other times some of the latter have been changed to felonies. However, both felonies and misdemeanors are crimes and differ only in the degree of damage imputed to them by society. They both relate to acts which injure individuals or threaten the safety or well-being of the body politic. It is therefore advisable to include both of these as criteria in determining recidivism.

Public ordinances fall into a separate and distinct category. They are often temporary in the period of their enforcement and at times are not even set down as guides for conduct. An illustration of this are the many convictions for violations of the traffic or motor vehicle laws. It would be most unfair to denote as a criminal one who is convicted of such an infraction when the same act would be permitted or condoned in another jurisdiction. The distinction is that while felonies and misdemeanors do not bear the identical definitions in all places they are nevertheless considered crimes almost universally. Public ordinances, on the other hand, vary from place to place and even at different times in the same locality.

Three measures for determining recidivism have been examined. Each of these uses a different unit. That measure based on arrests has been shown to be extensive in that equal importance would be placed on those resulting in dismissals as on those in which guilt is established. It is not an index of lawlessness but rather indicates the suspicion of anti-social conduct.

When recidivism is based on prior incarceration there are included not all persons convicted but only that part of them that are sentenced to penal institutions. The large number of persons who are not committed but are fined, placed on probation or merely rebuked are omitted. This measure is almost invariably employed but it is too limited in scope. At best it is an indication of the effectiveness or rather the ineffectiveness of the programs employed by the institutions.

A more accurate index of recidivism is based on prior conviction. This measures the social adjustment of the individual. It excludes those whose arrests were not followed by the establishment of guilt and it includes all those found guilty whether they were committed to institutions or dealt with in other ways.

It is urged that this definition can easily be substituted for that heretofore employed—one who had been previously committed. This substitution is now possible because of the increased use of systems of identification and the existence of a national bureau through which all records are cleared. Information which was previously maintained exclusively by penal institutions is now secured in the various stages of the criminal process and is made available to all jurisdictions. The adoption of this unit for measuring recidivism will give greater meaning to research designed to show the composition of the criminal group and the recurring transgressions of individuals.

QUESTIONS AND ANSWERS

Question: Is an officer justified in using force to bring to the station a person who has been arrested for a traffic violation, when he tells the officer that he will not appear in court the next day as ordered?

Answer:

An officer has the right (as in this case) to make an arrest when the offense is committed in his presence. That the officer permits the offender to appear voluntarily in court the following day is a privilege accorded to the offender, and not a right upon which he may insist. If, however, the offender informs the officer that he will not appear, notwithstanding the privilege (which in fact is a release on his own recognizance), it is the duty of the officer to put the arrest into actual effect by taking him into custody, and bringing him to the station. The fact that it is a minor infraction makes no difference so far as this particular question is concerned.

As regards the use of force to bring the offender to the station, the officer is authorized by law to use only such force as in necessary and proper. What that would be depends upon the circumstances of each particular case. The officer should always be actuated by no other desire than to secure, legally and in good faith, the submission of the offender to the restraint which his violation of the law makes necessary. When that restraint can be procured by mild force, then the use of mild force is the limit of the power of the officer. A more liberal latitude is allowed if the offender uses force in his resistance to arrest.

For an interesting account of the law of arrest see Chapter XII, "The Law of Arrest" in Perkins' *Elements of Police Science,* in particular, pages 334-339.—John I. Howe.