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# CRIMINAL LAW

## KIDS, GROUPS AND CRIME: SOME IMPLICATIONS OF A WELL-KNOWN SECRET\*

FRANKLIN E. ZIMRING\*\*

Social and policy sciences, reflecting human nature, are rich in contradiction and are occasionally perverse. It is sometimes possible both to know something important and to ignore that knowledge. To do this is to generate the phenomenon of the well-known secret, an obvious fact we ignore. When Edgar Allen Poe suggested that the best location to hide something is the most obvious place, he was teaching applied law and social science.

This article is about youth crime and sentencing policy. The "well-known secret" is this: adolescents commit crimes, as they live their lives, in groups. While the empirical evidence for this hypothesis is at least fifty years old, the consequences of this simple and important finding are frequently ignored when we measure crime, pass laws, and postulate theories of criminal activity. The problems associated with ignoring the obvious have grown more serious in recent years, as the study of criminal behavior has shifted from its sociological origins into a wide spectrum of social, behavioral, economic, and policy science disciplinary sub-specialties. We have failed to ask the right questions and have risked answering the questions we ask in the wrong way because we did not appreciate what we already know.

The sentiments expressed in this article are strong: the burden of

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proof is mine. I shall attempt to meet that burden in two stages. Part I discusses some evidence on adolescent crime as group behavior that emerged from the pioneering studies of the Chicago School in the 1920s, and supplements this rich information with more recent crime specific estimates of group criminality. Part II catalogues some of the things we do not know as a consequence of ignoring the obvious.

### I. KIDS, GROUPS AND CRIME: THEN AND NOW

Clifford Shaw and Henry McKay wrote a major study for the first National Commission on Crime. The year was 1931. The title was *Male Juvenile Delinquency as Group Behavior*.<sup>1</sup> The essay was based on an analysis of all boys who appeared in the Cook County, Illinois Juvenile Court charged with delinquency during 1928. The analysis justified the title of their essay, as shown in their original Figure 9, now labeled Figure 1.

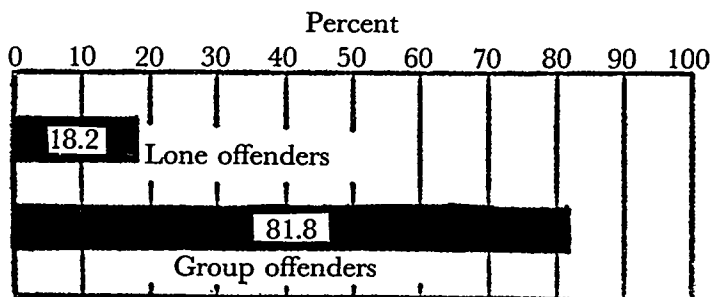


FIGURE 1

PERCENTAGE OF LONE AND GROUP OFFENDERS AMONG  
OFFENDERS BROUGHT TO THE JUVENILE COURT

(Source: Shaw & McKay)

Eight out of ten boys accused of delinquency were alleged to have committed their offenses in the company of one or more companions. Shaw and McKay extended this analysis by specifying the number of participants alleged in the 1928 petition sample as shown in Figure 2, their original Figure 10.

While these findings were dramatic, they were not surprising. A 1923 study of theft offenders in the same court had found that nine out of ten males charged with theft were believed to have committed their offenses in groups.<sup>2</sup>

<sup>1</sup> C. SHAW & H. MCKAY, *Male Juvenile Delinquency as Group Behavior* in *Report on the Causes of Crime*, 191-99 [II WICKERSHAM COMM'N REP., No. 13 (1931)], reprinted as Chapter 17 in *THE SOCIAL FABRIC OF THE METROPOLIS* (J. Short ed. 1971). [hereinafter cited as *THE SOCIAL FABRIC*].

<sup>2</sup> See *id.*, *THE SOCIAL FABRIC*, at 256, n.2.

More recent data on the relationship between groups and adolescent criminality are needed for two reasons. First, 1928 was quite a while ago. Second, the petty thieves depicted by Shaw and McKay hardly fit the contemporary image of serious delinquency in the American

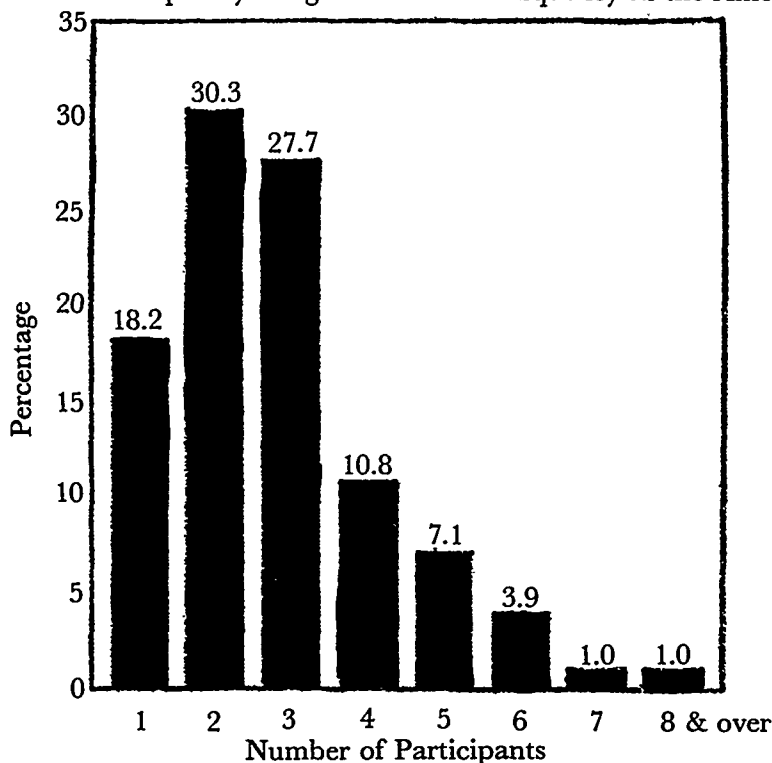


FIGURE 2

PERCENTAGE DISTRIBUTION OF OFFENDERS BROUGHT TO COURT BY NUMBER OF PARTICIPANTS

(Source: Shaw & McKay)

city. The authors of one textbook on criminology observe how "quaint" the Shaw and McKay "delinquents seem to us today, in their knickerbockers and cloth caps and pre-Atomic innocence."<sup>3</sup> Furthermore, while group activity is associated with most juvenile delinquency, there is a tendency to revert to individualistic models when discussing serious crime.

Modern evidence is available on the predominance of groups as a distinctive aspect of adolescent criminality, including the serious offenses that are the focus of recent concern about youth crime policy. Table 1 shows data collected from a sample of robbery victims in the National Crime Panel in 1973.

<sup>3</sup> D. TAFT & R. ENGLAND, *CRIMINOLOGY* 180 (4th ed. 1964).

**TABLE 1**  
**ROBBERY INCIDENTS BY NUMBER OF OFFENDERS**  
**AND AGE GROUPS\***

<u>NUMBER OF OFFENDERS</u>	<u>UNDER 21 PERCENT</u>	<u>21 AND OVER PERCENT</u>
1	36%	61%
2	29	25
3	16	10
4 or more	19	4
Total	100%	100%

(Source: National Crime Panel Data, provided by Wesley Skogan, Northwestern University.)

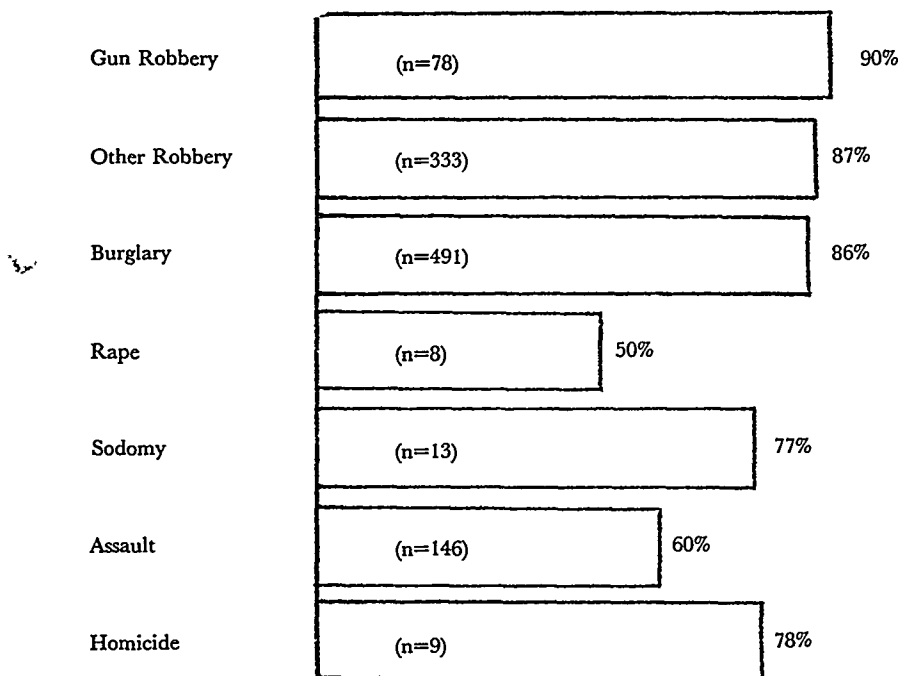
\* Cases in which offenders were identified as mixed age groups deleted.

For present purposes, the National Crime Panel data are deficient in two aspects. Since the method of the survey was to ask victims to guess the ages of offenders, it was necessary to use crude age categories. Robberies committed by offenders "under 21" are hardly homogeneous events. The second shortcoming of the National Crime Panel data is that when victims are asked to guess ages, a substantial number of incorrect guesses may produce a random error factor that would mute any difference in pattern between younger and older offenders because of improper classification.

Despite its drawbacks, the National Crime Panel data show that the relationship between the offender's age and group robbery is striking. Slightly more than a third of the robberies committed by offenders under 21 are committed by a single assailant compared with 61 percent of those robberies where the victim believes the offender was over 21. At the other end of the distribution, younger offenders commit five times as many victimizations in groups of four or more than do older offenders.

More precise data on youth criminality are available from the recent Vera Institute of Justice analysis of the delinquency jurisdiction of New York's Family Court. Figure 3 is an analysis of a sample of cases leading to court referral of offenders under age 16 and thus eligible for Family Court processing in New York City. This figure is comparable to the information presented in the first Shaw and McKay analysis. The Vera sample counts each alleged delinquent as a separate case. Thus, if two juveniles are referred for one robbery, this will result in two cases of group robbery while a single 15-year-old arrested for robbery counts as only one case. For this reason, the New York data overstate the number of offenses that are the product of group participation, but the method allows direct comparison with the Shaw and McKay figures

which were compiled using the same approach.<sup>4</sup>



**FIGURE 3**  
 MULTIPLE OFFENDER CASES AS A PERCENT OF TOTAL  
 JUVENILES CHARGED, BY CRIME  
 NEW YORK CITY

(Source: Vera Wide Sample, Family Court Disposition Study)

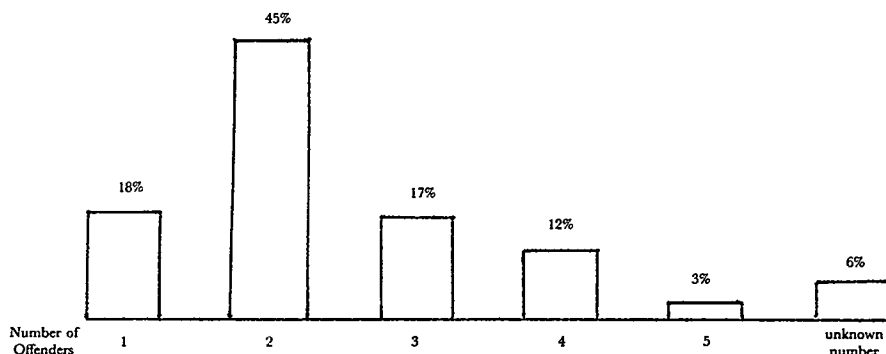
With the exception of assault and rape ( $n=8$ ), the bar charts bear what can only be called a striking resemblance to each other and to the theft estimates that emerged from the Chicago area studies.

The predominance of group crime in this sample of young adolescent offenders (under 16) is similar to the earlier studies of juvenile theft, but occurs across a wide variety of offenses. For these age groups, the youthfulness of the offender appears to predict group participation more effectively than the nature of the offense.

The New York data were not coded in a way that could replicate the pre-computer precision of Shaw and McKay's distribution of theft offenses by number of offenders.<sup>5</sup> However, a sample of armed robbery arrests referred to Juvenile Court in Los Angeles collected by the Rand Corporation does permit this further detail, as shown in Figure 4.

<sup>4</sup> Vera Institute of Justice, Family Court Disposition Study (1981) (unpublished draft).

<sup>5</sup> The Vera study dichotomized juvenile court cases into individual and group events. A case represented an individual charged. *Id.*



**FIGURE 4**  
PERCENT DISTRIBUTION OF ARMED ROBBERY OFFENSES  
INVOLVING JUVENILE SUSPECTS BY NUMBER OF  
OFFENDERS,  
LOS ANGELES\*

(Source: Rand Corp./ Juvenile Record Study, 1979)

\* Percentages rounded

In the Rand sample, 18 out of 103 robbery incidents attributable to juveniles involved lone offenders. The 97 robbery incidents for which the number of offenders was coded provide a potential pool of over 225 robbery arrests, and about a third of the incidents involved three or more offenders. The Los Angeles robbery data supplement the broader New York sample in several respects. First, the way in which the data were coded permits us to move closer to "offender to offense" ratios. Each robbery event was reported only once, eliminating the systematic overestimation of group crime that occurs when each offender charged is counted as a separate case. Second, Los Angeles operates a juvenile justice system that defines the eighteenth birthday as the end of juvenile court jurisdiction, while New York cuts off jurisdiction at the sixteenth birthday. This two-year interval is important: over half of the Los Angeles robberies (56%) involve defendants of age sixteen or seventeen. These cases would not result in family court processing of the sample defendants in New York. The proportion of all robberies committed by these sixteen and seventeen year-olds in groups is as substantial as that found among younger adolescents. Because the rate of robbery and other serious violent offenses is much greater among older adolescents, the Los Angeles findings suggest the impact of multiple offender adolescent crime and multiple arrests on aggregate statistics will be much greater.

## II. SO WHAT?

This essay is intended neither as a comprehensive survey of the evidence on group criminality during adolescence, nor as an assessment of

the importance of this data to criminological theories about delinquent behavior. Empirical studies documenting adolescent crime abound.<sup>6</sup> The criminological literature discussing the implications of "dyadic," "triadic," and "other group" conformations is extensive. Whatever else may be said of modern criminology, the role of "male juvenile delinquency as group behavior" is acknowledged as fundamental, and the extent to which different types of criminality exhibit similar characteristics is well-known, although the New York and Los Angeles data presented earlier provide us with larger numbers of serious offenses than many modern delinquency studies.<sup>7</sup>

This well-known pattern has important implications for contemporary research dealing with crime statistics, general deterrence, incapacitation, the construction of models of criminal behavior, the study of criminal careers, and efforts to reform sentencing practices in juvenile and criminal courts. These relatively recent research subspecialties are the intellectual next-door neighbors to traditional studies of crime and delinquency. Lately, however, the neighbors have not been speaking to each other.

#### (1) ESTIMATING THE PROPORTION AND VOLUME OF SERIOUS YOUTH CRIME

No one doubts that young offenders account for a disproportionate share of most serious crimes. But the question is, how large a share? This cannot be answered with current data. The evidence for this assertion goes beyond fashionable doubts about a "dark figure" of crime or of offenders. The current state of the art for estimating the youth share of serious crime is:

- (a) to establish the percentage of persons under 18 or 21 arrested for a particular offense; and
- (b) to assume, explicitly or implicitly, that the percentage distribution of arrests accurately reflects the percentage distribution of crimes.

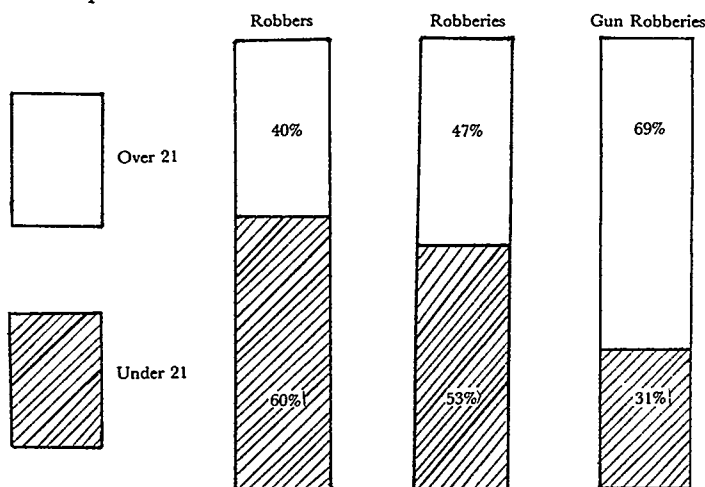
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<sup>6</sup> For general reviews of the literature on this subject see: R. HOOD & R. SPARKS, *Subcultural and Gang Delinquency*, in KEY ISSUES IN CRIMINOLOGY 80-109 (1970) (includes data on British and Scandinavian group behavior by age); K. Sveri, *Group Activity*, in 1 SCANDANAVIAN STUDIES IN CRIMINOLOGY 173-85 (C. Christiansen ed. 1965); PRESIDENT'S COMM. ON JUVENILE DELINQUENCY AND YOUTH CRIME, JUVENILE GANGS (Report of G. Geis 1965).

<sup>7</sup> The number of unambiguously serious, particularly violent, offenses in the typical self report study is quite small. The Philadelphia cohort data apparently include larger numbers of homicide arrests, and rape arrests (14 and 44 respectively). See M. WOLFGANG, R. FIGLIO & T. SELLIN, *DELINQUENCY IN A BIRTH COHORT* 68-99 (1972). As the authors note, the method of scoring used in this study does not provide information on how many events these arrests represent. *Id.* at 23-24. A separate accounting of armed robbery or assault with deadly weapons was not published. The 193 robbery arrests in the Philadelphia cohort were not classified by event or seriousness, other than in seriousness scores. By contrast, the Rand juvenile court study reported 253 armed robbery arrests that resulted in the 104 case sample which is the basis for Figure 4.



In the process of passing the Juvenile Justice and Delinquency Prevention Act of 1974,<sup>8</sup> the very first thing that the United States Congress found was that juveniles account for almost half the arrests for serious crimes in the United States today.<sup>9</sup> One problem with inferring that juveniles account for half of all serious crime from these statistics is that the crude heterogeneous categories used in crime and arrest reporting lump serious and relatively minor offenses under single rubrics, such as robbery or assault.<sup>10</sup> A second problem is that younger offenders who are arrested in groups are counted two, three or even four times in single offense data far more commonly than are older offenders. The compound effect of treating minor and major offenses with equal statistical dignity in multiple offender counts is illustrated by Figure 5, adapted from the previously discussed National Crime Panel data based on robbery victim reports.



**FIGURE 5**

PERCENTAGE OF ROBBERS, ROBBERIES AND GUN ROBBERIES BY AGE\*

(Source: National Crime Panel)

\* mixed group cases (N=106) deleted

Offenders under 21 comprise slightly over 60 percent of all the sample's "robbers," slightly over half of all "robberies," and less than a third of robberies committed with firearms.

Figure 5 is only the beginning. The estimates contained there use

<sup>8</sup> Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (codified at scattered sections of 5, 18, 42 U.S.C.) [hereinafter cited as Juvenile Justice Act].

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., Zimring, *American Youth Violence: Issues and Trends*, 1 CRIME & JUST. ANNUAL REV. RESEARCH 67 (1979).

the twenty-first birthday as a cut-line, while juvenile court jurisdiction typically ends on or before the offender's eighteenth birthday. The statistics used to compile the congressional findings of fact are FBI estimates of arrests under age 18.<sup>11</sup> Since the rate of robbery arrests increases with age and the proportion of robberies committed with firearms also increases as a function of age, the proportion of firearm robbery events attributable to "juveniles" could plausibly range as low as 10 percent.

In dealing with currently available statistics, using hedge phrases like "could plausibly range" is well-advised. We simply do not know the youth share of particular forms of criminal activity, and we *cannot* use arrest statistics to derive estimates with acceptable margins of error.

## (2) MEASURING ARREST AND PUNISHMENT RISKS IN THE STUDY OF GENERAL DETERRENCE

The past decade has witnessed a resurgence of interest in the general deterrent effect of the threat of criminal sanctions, and a variety of efforts to study deterrence by comparing crime rates and punishment levels over time or between jurisdictions.<sup>12</sup> Attempts to use existing aggregate data on offenses, arrests, and punishments are confounded by the overlapping jurisdictions of juvenile and criminal courts, and it is unlikely that researchers can use arrest statistics to "unconfound" matters.

The problem can be illustrated by examining common methods of estimating the risks of punishment and apprehension that are used to measure the credibility of threats in deterrence studies. The "risk of punishment" reported in Figure 6 is often used and fundamentally flawed.<sup>13</sup> By expressing adult prison admissions as a proportion of total reported offenses, "risk of punishment" measures no one's actual risk of punishment and will systematically be reduced as the proportion of juvenile offenses to total offenses increases. If juveniles are responsible for a large number of marginally serious offenses that either may or may not end up classified as a particular index offense, variations in police reporting and classification practices, as well as variations in the ratio of juvenile to adult offenses, will produce negative correlations between crime rates and the risk of punishment that have nothing to do with general deterrence.<sup>14</sup>

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<sup>11</sup> Juvenile Justice Act, *supra* note 8, UNIFORM CRIME REPORTS (1974).

<sup>12</sup> See, e.g., NATIONAL ACADEMY OF SCIENCE, PANEL ON RESEARCH IN DETERRENCE AND INCAPACITATION (FINAL REPORT 1978), for a summary of deterrence literature and methods.

<sup>13</sup> See *id.* at 99-103 for a list of more than a dozen studies that use risk variable displayed in Figure 6.

<sup>14</sup> A particular fear with respect to statistics that generate "artificial deterrence" is that

$$\begin{aligned}
 \text{Risk of Punishment} &= \frac{\text{Number of Prison Commitments (Adults)}}{\text{Number of Crimes (Juvenile and Adult)}} \\
 \text{Risk of Apprehension} &= \frac{\text{Number of Arrests (Juvenile and Adult)}}{\text{Number of Crimes (Juvenile and Adult)}}
 \end{aligned}$$

**FIGURE 6**

CONVENTIONAL METHODS OF ESTIMATING RISK IN  
DETERRENCE RESEARCH

Measuring the risk of apprehension by comparing total gross arrests to total gross offenses in any particular crime category generates similar problems. The measure is of two separate risks of arrest that cannot be segregated and a pool of offenses that represents an unknown admixture of juvenile and adult offenses with varying degrees of severity. Unless the mixture of adult and juvenile crimes and risks does not vary over time or from city to city, the result of this mixing will confound attempts to measure deterrent effects.

Under such circumstances, variations in the age distribution of crime or in police policy can successfully masquerade as variations in sentencing policy until we can separately estimate juvenile and adult offense rates. But the lesson of Figure 5 is that using the age distribution of arrests to attempt this segregation will not succeed. For this reason, it seems unlikely that comparative studies using aggregate data can measure true risks.<sup>15</sup>

(3) MEASURING THE INCAPACITATION IMPACT OF INCARCERATION

The logic of incapacitation is straightforward: lock up people who would otherwise commit crimes and the general community will experience a lower crime rate.<sup>16</sup> But selecting the appropriate candidates for incapacitation and estimating the number of crimes saved proves to be a

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"junk crimes" and "junk arrests," defined as crimes and arrests that are not likely to receive serious sanctions in the adult system, are the major share of variations between cities and over time. If this is the case, variations in juvenile arrests rates could thoroughly confound efforts to assess the general deterrent impact of criminal sanctions over time or in comparative studies.

<sup>15</sup> The alternative to this approach, however, is attractive. Given the difference between juvenile and adult criminal sanctions for similar behavior, deterrence theory that can exploit wide variations in the age of jurisdiction, and variations in patterns for similar crime to discover whether individuals respond to differences in risks when they cross over the borderline between juvenile and criminal justice at varying points in their criminal careers.

<sup>16</sup> See, e.g., Shinnar & Shinnar, *The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach*, 9 LAW & SOC'Y REV. 581 (1975). See also J.Q. WILSON, THINKING ABOUT CRIME 198-291 (1975).

tricky business. Efforts to estimate "crimes saved" have proceeded from individualistic models of criminal behavior to what may be inaccurate conclusions. Those studies that found high offense rates in early adolescent target populations have failed to account for the problem of group involvement.<sup>17</sup> Simply stated, if one of three offenders is taken out of circulation for one year, we have no current basis for estimating whether, or to what extent, the crime rate is affected. If all three offenders are incapacitated, it is possible to estimate "crime saved" as a joint function of the crimes these offenders would have committed alone and with each other, but not in other groups. Using current methods of incapacitative accounting, however, assigning *each* member of *each* group *every* crime they would have committed together or in other groups creates a form of double and triple counting that overestimates "crime saved" in the group-prone adolescent years. The published studies that purport to measure incapacitation effects have not made serious efforts to correct for this bias.

#### (4) MODELING PATTERNS OF CRIMINAL BEHAVIOR

Frequently, attempts to impose simplifying models to explain variations in particular offenses cannot succeed because of the diversity of behaviors subsumed in a single crime category. Robbery is a case in point, and an illustrative example concerns the determinants of whether firearms are used in robbery events. Working from a sample of robberies in Boston, John Conklin concluded "robbing with accomplices reduces the need to carry a weapon for self-protection, since the group itself acts as a functional equivalent of a weapon."<sup>18</sup> His data evidently did not control for age when relating weapon use to the number of offenders involved. Analyzing National Crime Panel data, Philip J. Cook found the opposite to be true: "Guns are *less* likely to be used by single offenders than by multiple offenders and . . . this pattern holds for subgroups of offenders . . . as well as for the entire sample . . . ! While it is plausible that a team of offenders has less 'need of a gun' than a single offender for a certain type of victim, the data suggest that teams of offenders tend to choose stronger victims."<sup>19</sup>

<sup>17</sup> See, e.g., Shinnar & Shinnar, *supra* note 16; J. PETERSILIA & P. GREENWOOD, CRIMINAL CAREERS OF HABITUAL FELONS (1979). The only mention of the problem of incapacitating one of the group is found in the PANEL ON RESEARCH, *supra* note 12, at 65 (see especially n.63 and the text accompanying n.64). In contrast, Albert Reiss has recently demonstrated the impact of group offending on incapacitation effects. Reiss, *Understanding Changes in Crime Rates*, in CRIME RATES AND VICTIMIZATION 13-14 (A. Reiss & A. Biderman eds. 1980).

<sup>18</sup> J. CONKLIN, ROBBERY AND THE CRIMINAL JUSTICE SYSTEM 108 (1972); see also the table at 106.

<sup>19</sup> Cook, *A Strategic Choice Analysis of Robbery*, in SAMPLE SURVEYS OF THE VICTIMS OF CRIME 180 (W. Skogan ed.1976).

It may not be necessary to referee this particular dispute, because *both* Conklin and Cook are correctly describing the behavior of different subsets of robbery offenders—Professor Cook's analysis applies with force to unpremeditated robberies by young offenders. These patterns cannot be detected, however, by cross-tabulating weapon use and number of offenders for the total sample of robberies, as shown in Figure 7.

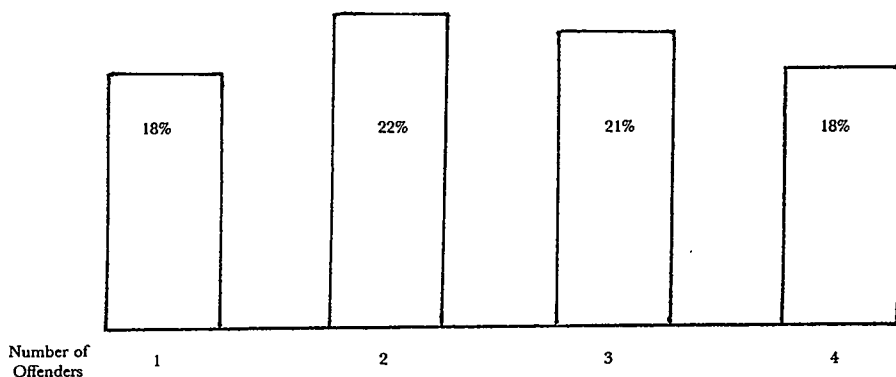


FIGURE 7

PERCENTAGE GUN USE IN ROBBERIES BY NUMBER OF OFFENDERS

(Source: National Crime Panel)

It turns out, however, that this flat pattern is misleading. Looking at these data without controlling for age is precisely the wrong way to examine the National Crime Panel data because of the greater likelihood that younger offenders (a) will rob in groups and (b) will use guns less often *whether or not* they rob in groups.<sup>20</sup> Table 2 displays the results of separate analysis patterns of guns use and number of offenders by age. For reported victimizations where all of the offenders were thought to be over 21, there is a modest increase in gun use as the size of the group increases. For offenders under 21, their youth is a much more powerful predictor of gun use than the number of robberies. Consistently, gun use is about a third of adult levels across all categories of offender group size. Thus, it may be true that young offenders find "courage in numbers" when a pre-existing group spontaneously decides to commit a robbery. This is consistent with the low rate of gun use and the low rate of single offender robberies among younger offenders. Older offenders engage in more planning and exhibit different target selection and accom-

<sup>20</sup> The comparison between gun robbers and other robbers charged, *see* Figure 3 (90% versus 87% multiple offenders) lends further support to this interpretation.

police selection patterns. For planned offenses, the target of the robbery has a substantial impact on the size of the group and the weapon used. In spontaneous robberies, the group and armaments have been determined before the target is selected, but failure to control for age of offender completely obscures these patterns.

TABLE 2

PERCENTAGE GUN USE IN ROBBERY BY AGE OF OFFENDER AND  
NUMBER OF OFFENDERS\*

NUMBER OF OFFENDERS	UNDER 21	OVER 21
1	8	24
2	13	33
3	13	36
4 or more	12	40

(Source: National Crime Panel Data)

\* For total robbery event numbers, see Table 1 *supra*.

#### (5) COMPREHENDING CRIMINAL "CAREERS"

Almost all American adolescents commit crimes at some point in the transition to adulthood. Many of these offenses are trivial; most of the time, adolescent criminality does not represent the beginning of a pattern of habitual criminality that will extend through adulthood. It is, however, also true that the majority of those who persist in patterns of predatory crime through early adulthood have started young.<sup>21</sup>

In recent years the study of criminal careers has been the subject of renewed interest and changing focus. For decades, criminologists have been interested in factors associated with desisting from or continuing to commit criminal offenses.<sup>22</sup> Recently, such studies have been undertaken with ambitions to contribute to policy: Finding characteristics that predict continued criminality is now seen as a path to sentencing policy, particularly sentencing policies that emphasize the incapacitative effects of incarcerative sanctions.<sup>23</sup> Similarly, if social scientists can find characteristics of adolescent-offending that are associated with a

<sup>21</sup> See F.E. ZIMRING, *CONFRONTING YOUTH CRIME: A REPORT OF THE TWENTIETH CENTURY TASK FORCE ON SENTENCING-POLICY TOWARD YOUTH OFFENDERS* (1978).

<sup>22</sup> See, e.g., S. GLUECK & E. T. GLUECK, *FIVE HUNDRED CRIMINAL CAREERS* (1930); S. GLUECK & E. T. GLUECK, *LATER CRIMINAL CAREERS* (1937); S. GLUECK & E. T. GLUECK, *CRIMINAL CAREERS IN RETROSPECT* (1943) (Three volumes of follow-up studies on the post-release careers of 510 inmates of the Massachusetts State Reformatory released in 1921-22).

<sup>23</sup> See, e.g., Boland & Wilson, *Age, Crime and Punishment*, *PUBLIC INTEREST*, Spring 1978, at 22; J. Q. WILSON, *supra* note 16.

lack of recidivism, this information can be used to allocate scarce penal resources more efficiently and avoid unnecessary social control.

All of this, of course, depends upon the development of accurate discriminant indicators of future behavior. The Wolfgang, *et al.*, cohort study of Philadelphia boys who turned eighteen during 1963 has provided some promising preliminary cues but stopped far short of predicting adult criminal careers.<sup>24</sup> The follow-up study of that Philadelphia sample may provide further information.<sup>25</sup> More recent retrospective study of individuals imprisoned as adults provides a list of characteristics associated with persisting criminality in the adult years but cannot, by the nature of the sample, provide data on what factors are associated with nonpersistence of criminal activity.<sup>26</sup>

The distinctive group character of adolescent criminality may provide a perspective that can increase the capacity of research to empirically test the degree to which prior behavior predicts future offenses. At some point in adolescence or early adult development, most of those who have committed offenses in groups either cease to be offenders or continue to violate the law, but for different reasons and in different configurations. Either of these paths is a significant change from prior behavior. The transition from group criminality to noncriminal individual behavior is obviously worthy of sustained study. The equally important transition from adolescent to adult patterns of criminal behavior should also be a particularly important period in the analysis of criminal careers.

At the outset it is important to identify *when* transitions from juvenile to adult criminality and from adolescent criminality to desistance occur. This is not to suggest that the search is for a particular day when crime is abandoned or when patterns of criminality change; rather, both transitions should be expected to be processes that occur over substantial periods of time, and occur at different stages in the life history of different individuals. But identification and study of these transitional periods, in individual cases and cohorts, could enhance our understanding of criminality as a developmental event and sharpen the empirical focus of the questions to be asked in predicting future criminality.

One critical contribution of this focus would be to discriminate be-

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<sup>24</sup> For this discussion of the implications of the Wolfgang data on the concentration and predictability of youth violence, see Zimring, *supra* note 10, at 94-98.

<sup>25</sup> For a preliminary report of the Philadelphia follow-up study see Wolfgang, *From Boy to Man*, in *THE SERIOUS JUVENILE OFFENDER* 101 (Hudson & Mack eds. 1978) (proceedings of a National Symposium, Government Printing Office). A book length report on this research is forthcoming.

<sup>26</sup> J. PETERSILIA & P. GREENWOOD, *supra* note 17; a second Rand report, *DOING CRIME* utilizes a weighted sample of all prison inmates who retrospectively study preprison careers for currently incarcerated inmates. RAND CORP., *DOING CRIME* (Apr. 1980).

tween predictive attributes or events that occur early in an adolescent career and those predictive events that occur more proximately to the transition out of crime or into different patterns of crime. A complete accounting scheme should separately consider:

- (1) Characteristics of the individual, such as age, location, and family structure that antedate or accompany the early adolescent years;
- (2) Aspects of the individual's involvement in early adolescent crime, including the kind of crime, age at first arrest, the type of group participating in crime, and the nature of the individual's role—dominant or passive—in adolescent group activities; and
- (3) Events or influences that occur later in adolescence that predict the nature of the change in the individual behavior.

Aggregate statistics on the distribution of arrests suggest that the transition out of criminality is not a random event spread over the late teens and through the mid-twenties, but rather clusters in late adolescence. However, my previous remarks suggest that aggregate arrest statistics are an insufficient foundation for studying this phenomenon. Those years where gross arrest rates decline are also periods when arrest statistics underestimate the extent of criminal participation when arrest rates of older age groups are compared to those of younger groups.<sup>27</sup>

When looking for the transition to "adult style" individual or planned group crime, there is no reason to select *a priori* any single one or two year period when we expect such a transition to occur. Case history studies and cohort samples can collect data on the nature of each individual offense coming to the attention of the police,<sup>28</sup> and other supplemental methods, such as self-report studies, can be used to determine the period of transition, its duration, and its significant concomitants.

#### (6) DETERMINING APPROPRIATE SANCTIONS FOR YOUTH CRIME

Statistics on the sanctions administered to young offenders in juvenile or family courts strike many observers as a classic instance of social non-control. The most impressive numbers come from New York City, a criminogenically congested urban area where only offenders under sixteen are referred to the Family Court. One study of nearly 4,000 juvenile robbery arrests found that more than half of these charges were dismissed without formal referral to the Family Court, and over three-quarters of all charges are eventually dismissed.<sup>29</sup> Barbara Boland and James Q. Wilson cite the end result of this study with evident disap-

<sup>27</sup> For age specific arrest estimates (with insufficient warnings about this difficulty), see F.E. ZIMRING, *supra* note 21, Table I-2, at 37.

<sup>28</sup> See M. WOLFGANG, R. FIGLIO, & T. SELLIN, *supra* note 7.

<sup>29</sup> Office of Children's Services, N.Y. Division of Criminal Justice Services, *cited in* Boland & Wilson, *supra* note 23, at 28 (Table I).



proval, "In short, only three percent of the juveniles arrested for robbery and only seven percent of the juveniles actually tried in Family Court received any form of custodial care, whether with a relative, in a Juvenile Home or training school, or in an adult prison."<sup>30</sup> In Los Angeles, another study estimated the chances of a formal determination of delinquency at 17 for every 100 arrests.<sup>31</sup> This kind of statistical portrait lends itself nicely to fears of an army of young violent offenders roaming the streets unchecked. The observer may also be tempted to conclude that the philosophy and youth welfare policies of the juvenile court are the explanation for such epidemic leniency.

Serious study of the relationship between age, crime, and punishment has only recently been undertaken. But the early returns suggest that the forces that produce such apparently alarming examples of "case mortality" are at once more complicated and less dependent on juvenile court philosophy than many had supposed.<sup>32</sup>

The animating philosophy of child protection in the juvenile court undoubtedly reduces the number of arrests that result in formal adjudications of delinquency and post-adjudication commitment in secure facilities. However, a number of juvenile court policies *not* clearly related to leniency toward the young also contribute to high rates of informal disposition. In marginal cases, police might arrest juvenile offenders expecting the case to be "adjusted" at intake but relying on the arrest as a sanction and an opportunity for compiling a dossier.<sup>33</sup> The juvenile court's well documented use of detention after arrest as a substitute for formal adjudication represents a troublesome social control device that is not visible when only the post-trial sanctions are examined. This is important because nationwide detention is about seven times as frequent as post-adjudication commitment to secure facilities.<sup>34</sup> It is difficult to view detention practices as part of a sentimental general theory of youth protection.

Aggregate statistics on juvenile arrests reflect more than the distinctive policies and style of the contemporary juvenile court. The offenders

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<sup>30</sup> *Id.* at 27-28.

<sup>31</sup> This estimate was derived by Peter W. Greenwood, in P. GREENWOOD, J. PETERSILIA, & F.E. ZIMRING, *AGE, CRIME, AND SANCTIONS: THE TRANSITION FROM JUVENILE TO ADULT COURT*, (1980) from K.S. Teilmann & M.W. Klein, *Assessment of the Impact of California's 1977 Juvenile Justice Legislation* (1977) (Draft, Social Science Research Institute, University of Southern California).

<sup>32</sup> See P. GREENWOOD, J. PETERSILIA & F.E. ZIMRING, *supra* note 31.

<sup>33</sup> See Coffee, *Privacy Versus Parens Patriae: The Role of Police Records in the Sentencing and Surveillance of Juveniles*, 57 CORNELL L. REV. 571, 579-94 (1972) for a discussion of arrests as a means of building a dossier on juveniles and for discussion of analogous procedures in New York City.

<sup>34</sup> F.E. ZIMRING, *supra* note 21, at 65-82.

processed in juvenile justice systems are different from other criminal defendants—they are younger, and their youth is an important influence on sentencing policy in criminal as well as juvenile courts.<sup>35</sup> Furthermore, and of central importance for present purposes, the offenses committed in early and middle adolescence also differ qualitatively from the criminal activity characteristic of older offender populations. The propensity of adolescent robbers to commit less serious forms of the offense than their elders must be taken into account in providing an explanation for the New York and Los Angeles statistics discussed earlier.<sup>36</sup> It is far from clear what the most just or efficient social response should be to adolescent garage burglaries, fist fights, and school-yard extortions.

The pervasive problem of the adolescent accessory aggravates the difficulty of determining appropriate sanctions for youth crime. One useful example occurs early in the cohort study volume, when its authors are discussing the proper assessment of "seriousness scores":

Let us suppose that three boys have committed a burglary. They range in age from 12 to 16 years. The oldest is the instigator and leader who actively committed the offense with one of the others: the youngest is an unwilling partner who was ignorant of the plan but was present because he happened to be with the others at the start of what began as an idle saunter through the streets of the neighborhood. Suppose the event is given a score of 4. Does this score, when applied to each participant, accurately measure the involvement of each? Should the oldest boy and his active partner be assessed this score, but the youngest given a lower one?<sup>37</sup>

In any system of justice that considers the magnitude of the harm done and the degree of the individual offender's involvement, the attempt to determine an appropriate sanction will confront the same difficulties as the researcher attempting to determine an appropriate score.

In discussing this case, Wolfgang and his colleagues state that all three offenders are equally guilty "from a legal point of view."<sup>38</sup> This statement is correct but potentially misleading. Assuming a trier of fact determines that the youngest was a reluctant but voluntary partner who aided and abetted the offense, all three adolescents can be found delinquent in a juvenile court.<sup>39</sup> This kind of group crime would also

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<sup>35</sup> *Id.* at 35-44, 65-82.

<sup>36</sup> A first effort to control for offense seriousness by age in Los Angeles is discussed in P. GREENWOOD, J. PETERSILIA & F.E. ZIMRING, *supra* note 31.

<sup>37</sup> M. WOLFGANG, R. FIGLIO, & T. SELLIN, *supra*, note 7, at 23-24.

<sup>38</sup> *Id.* at 24.

<sup>39</sup> My discussion in the text assumes a "modern" definition of delinquency, that is, a status conferred when a minor is found to have committed an act that would have been criminal if performed by an adult. Broader definition of delinquency, including standards such as "in danger of leading an immoral life," or "associating with bad companions," would obviate the necessity for determining the nature of our twelve year olds' participation. See INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASS'N STANDARDS RELATING TO JUVENILE DE-

generate criminal liability for the appropriate degree of burglary in a criminal court through the magic of the doctrine of accessory liability.<sup>40</sup> But prosecutorial discretion in selecting cases for prosecution, determining charges, and pressing for punishment combined with judicial discretion in determining sentences in both juvenile and criminal courts creates ample opportunity for differences in punishment policy that are not reflected in the formal substantive law of either crime or delinquency.

When sentencing policy is dispensed by a series of low visibility discretions, a system can have a policy toward accomplice problems in adolescence without announcing it, and not infrequently without knowing it. In the Rand study of the Los Angeles juvenile court, lone offenders arrested for armed robbery experienced a three-in-ten chance of commitment to the state's youth authority, while only thirteen percent of those who acted in groups received this most serious disposition available to the court. It seems plausible to suppose that much of this difference can be attributed to prosecutorial and judicial leniency toward individuals at the periphery of spontaneous adolescent crimes. But the discretionary decisions characteristic of juvenile justice hide rather than announce the real reasons they are made.

This article's ambitions fall short of resolving the complicated set of problems generated by the juvenile accomplice; instead, it is sufficient for present purposes to note the novelty and importance of these issues in the study of dispositional policy toward youth crime and realistic efforts to reform the law. To study dispositional patterns in juvenile court without paying careful attention to policies toward group offenses seems foolhardy. To assign to each of the three youths arrested in the hypothetical burglary discussed above the same seriousness score, and to use that score to predict the level of sanctions, will create the impression that serious crimes go unpunished if any of the group is excused because his participation was relatively minor.<sup>41</sup> This kind of research procedure will also continue our ignorance about how participants in group crime are sanctioned.

Attempts to reform sentencing practices in the juvenile court, especially efforts to lead sanctioning models away from the jurisprudence of treatment and toward concepts of making the punishment fit the

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LINQUENCY AND SANCTIONS (tentative draft 1977) at 17-27 [hereinafter cited as JUVENILE DELINQUENCY AND SANCTIONS].

<sup>40</sup> See, e.g., Criminal Code of 1961, ILL. REV. STAT. ch. 38, § 5-2 (1980); see also Sayre, *Criminal Responsibility for the Acts of Another*, 43 HARV. L. REV. 689 (1930).

<sup>41</sup> This weakness characterizes any research procedure that converts events into seriousness scores and gives the total score to each offender as well as studies that use offense and arrest. See, e.g., M. WOLFGANG, R. FIGLIO, & T. SELLIN, *supra* note 7; STRASBURG, *VIOLENT DELINQUENTS* (1978) (A Report to the Ford Foundation from the Vera Institute of Justice).

crime, will find the myriad problems of sanctioning the adolescent accomplice very close to the top of any sensible priority list for deliberation. These issues are important because they confront whatever set of institutions will process young offenders in a majority of all cases. The issues are novel because the nature of group criminality in adolescence bears scant resemblance to the classic image of the criminal conspiracy or the conceptual foundations of the common law of accessorial liability. The intelligent law reformer thus must take a short course in criminology as a preliminary to setting his agenda. My own review of recent literature and debate suggests that this sequence of events is infrequent.<sup>42</sup>

### CONCLUSION

The path of progress in social science proceeds more frequently from the general to the specific than the other way around. A survey of some of the difficulties generated by inattention to the special character of adolescent criminality bears an uncanny resemblance to a revised research agenda. Much that needs to be done can be done in the near future, using relatively straightforward methods of measurement on less than staggering budgets.

The criminological excursion reported in these pages illustrates a broader point: Those who regulate particular forms of human behavior, or study the effects of regulation, abstract themselves from the knowledge base of other social and behavioral sciences only at great cost. In an era when the study of public policy has become a discipline of its own, at a time when the study of law and legal institutions has developed prescriptive ambitions, the well-known secret is an occupational hazard of no small significance.

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<sup>42</sup> For example, two of the Juvenile Justice Standards volumes are closely related to juvenile court policy toward youth crime, but they contain no substantive analysis of the appropriate role of doctrines of accessorial liability, or conspiracy. JUVENILE DELINQUENCY AND SANCTIONS, *supra* note 39, INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASS'N, STANDARDS RELATING TO DISPOSITION (tentative draft 1977). While the role of peer pressure is not discussed, standard 3.4 argues against delinquency jurisdiction if a parent or guardian coerced a juvenile's participation in a criminal act, JUVENILE DELINQUENCY AND SANCTIONS, *supra* note 39, at 33, commentary. Further, the commentaries in these volumes contain no analysis of patterns of youth crime, the magnitude of the problem, or typologies of youth crime.