

# COMPARATIVE SENTENCING PRACTICE\*

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## I

### INTRODUCTION

Since this survey forms part of a symposium, it is essential clearly to define its exact scope. As other contributors have dealt with the general philosophical and technical aspects of the subject, treatment here will be largely confined to a statistical picture of recent developments in sentencing practice in selected European countries. Naturally, the material at the disposal of the writer from English sources is more detailed than that from other countries.

Judicial sentencing practice depends on a variety of factors, of which the following may be regarded as the most important—although not necessarily in the order of their enumeration:

1. the state of the criminal law—the variety which it offers in the choice of sanctions and the scope it leaves to judicial discretion by providing minimum and maximum penalties, aggravating and mitigating circumstances, and lists of factors making for greater severity or leniency;
2. other forms of legislative guidance regarding the choice of sanctions;
3. the sources of information made available to the courts on the background of the offender by mandatory or discretionary presentence inquiries;
4. the views of judges and magistrates on the value of available sanctions and their philosophy of punishment;
5. guidance by courts of appeal or of cassation and the influence of ministerial circulars or of public prosecutors and counsel for the defense;
6. the state of crime and economic conditions at a given time in a certain area;
7. the state of public opinion concerning crime and punishment, and the influence of the press; and

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8. the teachings of criminology and penology, and research in these fields.<sup>1</sup>

With some exceptions, it is impossible statistically to assess accurately the effect of each of these factors. Moreover, their importance may differ from country to country, and some of them do not exist everywhere. Some countries, for example, neither prescribe minimum penalties in their criminal statutes nor provide legislative guidance to their courts; others may know no presentence inquiries, no adult probation, no criminological research, and hardly any public opinion capable of influencing sentencing policy.

Despite considerable national differences, however, there were, at least in many countries of Western Europe, certain general features which more or less strongly determined the trend of sentencing practice towards the end of the nineteenth century. The principal ideas dominating the minds of European penal reformers at that crucial period of some fifty or sixty years ago were very simple, and they found their most forceful expression in the publications of the *Union internationale de droit pénal* (in German, *Internationale Kriminalistische Vereinigung*, or I.K.V.), founded in 1888 by Franz von Liszt, Adolphe Prins, and G. A. van Hamel. There was, primarily, the conviction that imprisonment, by far the most frequent form of punishment at the time, had largely failed to reduce the crime rate, and in particular the rate of recidivism.<sup>2</sup> The latter, as pointed out by Franz von Liszt,<sup>3</sup> had risen in Germany from 25 per cent of those sentenced in 1881 to 57.7 per cent in 1895, and it could be shown that the probability of relapse rose in proportion to the number and length of previous sentences. The reformers—on the Continent, the *Union internationale*; in England, a government committee, the so-called Gladstone Committee, which published its report in 1895<sup>4</sup>—accordingly, unanimously demanded fundamental changes in prison administration. And the International Penal and Penitentiary Commission, at its Ninth Congress in London, in 1925, had on its program<sup>5</sup> the question: "What measures could be taken, instead of imprisonment, with regard to offenders who have committed a petty offence or an offence which does not constitute a danger to public security?" The answer was:

The hope is expressed that every endeavor will be made to substitute other penalties in place of imprisonment for short terms. It is to be recommended notably that:

1. The system of probation should be extended to the utmost extent.
2. The power of the court to impose fines instead of imprisonment in suitable cases should be extended, and the machinery for payment of fines should be developed so as to eliminate as far as possible imprisonment in default of payment.

For habitual and dangerous offenders and mentally abnormal persons, measures of preventive detention and similar measures of security had generally been intro-

<sup>1</sup> See Mannheim, *Some Aspects of Judicial Sentencing Policy*, 67 *YALE L. J.* 961 (1958).

<sup>2</sup> See the spirited attack on the whole system of criminal justice at the end of the nineteenth century by Franz von Liszt, *Kriminalpolitische Aufgaben, 1889-92*, reprinted in his *1 STRAFRECHTLICHE AUFSATZE UND VORTRÄGE* 290, esp. 340 *et seq.* (1905).

<sup>3</sup> 2 *id.* at 241; see also 1 *id.* at 168.

<sup>4</sup> Departmental Committee on Prisons, *Report*, CMD. No. 7702 (1895).

<sup>5</sup> See NEGLEY K. TEETERS, *INTERNATIONAL PENAL AND PENITENTIARY CONGRESSES* 157 (1949).

duced in the early decades of this century in several European countries, notably Great Britain, Norway, Belgium, Italy, and Germany.

The over-all tendency was unmistakable, and, together with the general directives for the guidance of the courts included in several modern penal codes,<sup>6</sup> it was likely to be reflected in judicial sentencing policy. It is not surprising, therefore, to find in the national statistics a decline in the proportion of very short prison sentences and their partial replacement by fines and some form of probation, or *sursis*, as well as a decrease of very long prison sentences and the appearance of measures of security in their place. What is surprising, in view of the strength of the criticism of the old system, however, is that the change in judicial practice has, in some countries, not been much more striking than it appears to have been. The explanation may be, in part, that the new policy, with its new penalties and measures, has not yet stood the test of experience, in that it has not yet led to a general reduction in the crime rates—which may, of course, be attributable to events entirely beyond the powers of any penal system. In part, it may also be attributable to the failure of legislators and administrators in many countries to implement another of the resolutions of the London Congress of 1925:<sup>7</sup>

Judicial studies should be supplemented by criminological ones. The study of criminal psychology and sociology, forensic medicine and psychiatry, and penology, should be obligatory for all who wish to judge in criminal cases.

Such judges should devote themselves solely and permanently to criminal law and there should be sufficient opportunity for advancement in this branch.

Courses of lectures should be established to complete their knowledge of criminology. They should have a full knowledge of prisons and similar institutions and should visit them frequently.

The judge before determining the penalty should have a full knowledge of the physical and psychic conditions and the social life of the accused and the motives for the crime.

.....

The trial ought to be divided into two parts: in the first the examination and decision as to his guilt should take place; in the second one the punishment should be discussed and fixed. From this part the public and the injured party should be excluded.

Twenty-six years after the London Congress, another international gathering of experts, organized by the United Nations Secretariat, was held in Brussels on the subject of the medicopsychological and social examination of offenders.<sup>8</sup> A careful comparison of the papers read and the resolutions passed at these two gatherings shows that, although progress has undoubtedly been made in the intervening period, it has been slower and more uneven than expected. Many of the old traditions, dogmas, and prejudices still persist; and, in particular, comparatively little has been done in some countries to bring the teachings of criminology and penology nearer to the judges and magistrates, on whom the success of the new system so largely depends, and to provide adequate facilities for presentence investigations.

<sup>6</sup> See Mannheim, *supra* note 1.

<sup>7</sup> TEETERS, *op. cit. supra* note 5, at 158.

<sup>8</sup> For the full report on the Brussels Conference, see *Int'l Rev. Crim. Policy*, Jan. 1953.

The effect of these two factors, dogmatic difficulties and inadequate knowledge both of the personality of the offender and of the value of the various penalties or measures of security available, may be illustrated by reference to the fate of preventive detention in England between the introduction of the old double-track system in 1908 and its replacement by the present single-track system in 1948. Dogmatic difficulties and, one might even say, prejudices have also prevented the wider acceptance of the Anglo-American system of probation and of the division of the trial into two stages, as recommended by the London Congress of 1925; and this, too, may have greatly affected judicial sentencing policy.

It is difficult to make a universally valid assessment of the effect of systems of remission and of the presence or absence of the indeterminate sentence. As will be seen, it has happened that judges, to counteract the shortening effect of the administrative system of remission existing in their countries, have tended to impose longer sentences than they would have otherwise done. With regard to the indeterminate sentence, all that can safely be said is that it has never been really popular in Europe. Nevertheless, various systems of absolute or relative indeterminacy have been introduced in a number of countries, especially for habitual and mentally-abnormal offenders, and in some instances also for special groups of ordinary offenders, as exemplified by the relatively indeterminate Borstal sentence in the United Kingdom, with a minimum term of nine months and a maximum term of three years.<sup>9</sup> And even less successful than the indeterminate sentence has been the movement in favor of treatment tribunals, or adult and youth authorities, of which there are none in European countries.<sup>10</sup>

Of the external events which influenced not only the crime situation and the penal system, but also judicial sentencing policy, the effect of the two World Wars would have to be considered. Whereas worthwhile information for the 1914-18 war is practically nonexistent, some material for the years 1939-45 has been presented in a volume on *The Effects of the War on Criminality*, published by the former International Penal and Penitentiary Commission.<sup>11</sup> While this publication was chiefly concerned with wartime changes in crime, a few data have also been given on sentencing. It is stated, for example, that in Belgium, under the influence of special wartime legislation and of public opinion, the proportion of prison sentences increased at the expense of fines.<sup>12</sup> More detailed information is given for Denmark, where the courts, owing to the special difficulties of the occupation period, adopted a firmer attitude to offenders. Thus, the proportion of sentences of arrest (for males) fell from 14 per cent of all cases in 1937 to 9 per cent in 1943, while that of imprisonment increased from 73 per cent to 80 per cent. Conditional suspension

<sup>9</sup> For more extensive treatment of this subject, see DEP'T OF SOCIAL AFFAIRS, *THE INDETERMINATE SENTENCE* (U.N.Pub.Sales No. 1953.IV.28).

<sup>10</sup> See HERMANN MANNHEIM, *CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION* 223 *et seq.* (1946).

<sup>11</sup> INT'L PENAL AND PENITENTIARY COMM'N, *THE EFFECTS OF THE WAR ON CRIMINALITY* (1951), reprinted from IV RECUEIL DE DOCUMENTS EN MATIERE PENALE ET PENITENTIAIRE (1951).

<sup>12</sup> *Id.* at 530.

of prison sentences was granted in 35 per cent of all cases in 1937, but in only 21 per cent in 1943. There was also a decline in prison sentences of up to three months from 62 per cent of all cases in 1937 to 51 per cent in 1943, and an increase in sentences of from four to six months from 20 per cent to 28 per cent and in sentences of over one year from 5 per cent to 7 per cent.<sup>13</sup>

Similar wartime tendencies towards greater severity of sentences could be observed in England, with the exception of the initial period, when fines increased and less use was made of imprisonment and similar penalties on account of the desire of the courts to make offenders available for war service.<sup>14</sup> The general trend of the war years, however, emerges from a comparison between the last prewar year, 1938, and the years 1942 and 1945, which shows the following picture: While probation orders for persons aged over twenty-one years fell from 15 per cent of all cases in 1938 to 6 per cent in 1945, the figures of persons fined rose from 32 per cent to 53 per cent. Prison sentences for males not exceeding one month numbered 51 per cent of all cases in 1938 and 26.1 per cent in 1945, whereas sentences of one month to twelve months rose from 43.8 per cent to 63.8 per cent and sentences of over twelve months rose from 5.2 per cent to 10.1 per cent.

The most comprehensive European studies of actual sentencing practices are the well-known older book by Franz Exner in Germany<sup>15</sup> and the more recent Danish investigation by W. E. v. Eyben,<sup>16</sup> which latter is based upon replies to questionnaires sent to judges in several European countries and on an analysis of 3,690 unpublished sentences pronounced by Danish courts. The present writer's views on v. Eyben's work are based merely upon his all-too-short English summary and the full review by Johannes Andenaes.<sup>17</sup> V. Eyben seems to be critical of the prevailing view that penalties have become generally more lenient. While admitting the growing use of suspended sentences and the decline in very long prison terms, he thinks that the appearance of greater leniency may be caused, first, by the fact that many new offenses have been created for which prison sentences are not easily imposed; and, secondly, by changes in procedure and in the selection of cases for prosecution. He also criticizes the inconsistency of judicial sentencing policies<sup>18</sup> and recommends the abolition of statutory minimum and maximum penalties as useless fetters of judicial discretion which, he thinks, are largely ignored in actual practice. While we can agree with him that minimum penalties could be dispensed with, the abolition of all upper ceilings would seem to be dangerous and unjustified in the light of practical experience.

<sup>13</sup> *Id.* at 560 *et seq.*

<sup>14</sup> *Id.* at 634.

<sup>15</sup> FRANZ EXNER, *STUDIEN ÜBER DIE STRAFZUMESSUNGSPRAXIS DER DEUTSCHEN GERICHTE* (1931).

<sup>16</sup> W. E. v. EYBEN, *STRAFUDMALING (THE ASSESSMENT OF PUNISHMENT)* (1953).

<sup>17</sup> See Andenaes, *Critical Notice*, 6 *BRIT. J. DELINQ.* 152 (1955).

<sup>18</sup> On this, see also Mannheim, Spencer, and Lynch, *Magisterial Policy in the London Juvenile Courts*, 8 *BRIT. J. DELINQ.* 13, 119 (1957).

## II

## SENTENCING POLICIES IN SOME EUROPEAN COUNTRIES

As will be seen, exact comparisons between different countries are often impossible because of differences in the ways their statistical tables are arranged. To give but one or two examples, the length of prison sentences imposed may be classified only as "up to one year" and "over one year," as in France, or in much greater detail, as in most other countries; the classification may be "up to one month," as in England and Wales, Austria, and Italy, or "less than one month," as in the Netherlands, or "thirty days or less," as in Denmark, and so on. Sometimes, the method of classification even changes for the same country over a period of time. Such differences may seem to be insignificant, but in view of the well-known preference of the courts for certain round figures, there may be very considerable differences in actual practice between the total of sentences of "up to one month" and that of sentences of "less than one month."

Moreover, the meaning of such distinctions as that between imprisonment and arrest, or the equivalent terms, may differ from country to country. Special research would be needed to determine the practical significance of the existence of minimum penalties, of the ceiling imposed by maximum penalties, and of the choice offered between the ordinary scales of penalties and the extraordinary ones available in the case of aggravating and mitigating circumstances. In the following survey, it is impossible to go into such detail, but the figures presented may be of some interest as showing at least certain general features of judicial sentencing policy in recent decades.

#### A. England and Wales<sup>19</sup> (population: approximately 45,000,000)

The sentencing policy of English courts has undergone profound changes within the past fifty years, partly on account of changes in the social and economic conditions and in the nature and extent of crime, and partly because of reforms in the criminal law and the penal system. The present survey can deal only with the last two factors.<sup>20</sup> Largely because of the growing skepticism about the value of imprisonment, and thanks to the availability of probation and other methods of disposal, the number of persons committed to prisons in the course of one year (including those not sentenced, but committed on remand or by order of civil courts) fell from 186,395 in 1910 to 56,425 in 1934. The daily average prison population fell from 20,826 to 12,238. Particularly striking was the decline in very short sentences during those twenty-five years. In fact, sentences not exceeding one month numbered 81,986 males and 29,334 females in 1913, but only 17,007 and 3,083 respectively, in 1934.

<sup>19</sup> The data in this part are drawn from the Prison Commissioner's *Reports*, and *Criminal Statistics for England and Wales*.

<sup>20</sup> For prewar and wartime changes in crime, see HERMANN MANNHEIM, *SOCIAL ASPECTS OF CRIME IN ENGLAND BETWEEN THE WARS* pt. 2 (1940), and *GROUP PROBLEMS IN CRIME AND PUNISHMENT* c. 5 (1955).

The explanation has to be found partly in the decrease of committals for drunkenness offenses from 37,033 males and 15,116 females in 1913 to 4,920 and 1,915, respectively, in 1934, and partly in similarly drastic falls in committals for "begging and sleeping-out," assaults, cruelty to children, and similar offenses of a primitive type characteristic of low educational standards and poverty. Committals for more sophisticated offenses such as burglary, false pretenses, and forgery, however, showed slight increases. Sweeping changes were also brought about in the number of persons committed to prison for short periods "in default of fines"—an annual average of 83,187 for 1909-13, but an annual average of only 13,433 for 1926-30—mainly through allowing time for payment and payment by installments, although improved economic conditions may have been a contributing factor. A further decline to 7,022 was produced in 1936 through the Money Payments (Justices Procedure) Act,<sup>21</sup> which provided, among other matters, that defaulters should, as a rule, not be committed to prison unless inquiries into their means and the reasons for their default had been made in their presence.<sup>22</sup>

As far as fines in general are concerned, Dr. Radzinowicz has pointed out that while their absolute number had increased over the years which he examined—*i.e.*, 1900, 1910, 1924, and 1936—they had remained fairly constant proportionally—*i.e.*, 22.2 per cent, 15.2 per cent, 20.4 per cent, and 19.3 per cent, respectively.<sup>23</sup> These figures, presumably, refer to all courts and all kinds of indictable offenses. How much sentencing policy can be affected by legal provisions, even if they are not mandatory, may be seen from table one, showing the position regarding fines for courts of assizes and quarter sessions before and after the passage of the Criminal Justice Act, 1948, which gave these courts the power to impose fines even for felonies.<sup>24</sup> The proportion of fines imposed in the years 1951-54, in particular for

TABLE I  
ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—FINES (WITH PERCENTAGES  
OF ALL SENTENCES IMPOSED FOR THE GROUP OF OFFENSES)

	1909-13	1922-26	1934-38	1946-50	1951-54
Offenses against the person (nonsexual) . . . . .	32	—	—	75 (2 %)	206 ( 6.5%)
Offenses against the person (sexual) . . . . .	7	—	—	236 (2.5%)	1,412 (15.1%)
Offenses against property with violence . . . . .	8	—	—	466 (1.0%)	1,511 ( 4.2%)
Offenses against property without violence . . . . .	36	—	—	384 (2.3%)	846 ( 6.6%)
Miscellaneous offenses . . . . .	7	—	—	41 (1.7%)	135 ( 6.9%)

<sup>21</sup> 25 & 26 GEO. 5, c. 46 (1935).

<sup>22</sup> See Departmental Committee on Imprisonment by Courts of Summary Jurisdiction in Default of Fines and Other Sums of Money, *Report*, CMD. No. 4649 (1934).

<sup>23</sup> Radzinowicz, *The Assessment of Punishments by English Courts*, in L. RADZINOWICZ AND J. W. C. TURNER (EDS.), *THE MODERN APPROACH TO CRIMINAL LAW* (4 ENGLISH STUDIES IN CRIMINAL SCIENCE) c. 8 (1948).

<sup>24</sup> 11 & 12 GEO. 6, c. 58, § 13.

sexual crimes, is fairly large. An even more striking illustration is provided by the development of preventive detention: When the old "dual-track" system came to an end in 1948, the number of offenders serving such sentences was about thirty; but under the new "single-track" system, it rose soon to about 1,000 per year, because the new system was more popular with the courts.

Tables two, three, and five show the development of sentencing in English jury courts (assizes and quarter sessions) over the five periods 1909-13, 1922-26, 1934-38, 1946-50, and 1951-54, for imprisonment in its various forms, probation, and conditional discharge, which was called "binding over without supervision" before 1948.

TABLE II

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—SENTENCES OF PENAL SERVITUDE (UNTIL 1948) AND IMPRISONMENT (WITH PERCENTAGES OF ALL SENTENCES IMPOSED FOR THE GROUP OF OFFENSES)

	1909-13	1922-26	1934-38	1946-50	1951-54
Offenses against the person (nonsexual)	381+ 2,285 (81.0%)	246+1,150 (77.2%)	252+ 968 (74.3%)	2,573 (69.5%)	2,225 (63.0%)
Offenses against the person (sexual)	378+ 2,373 (88.7%)	276+3,008 (83.6%)	273+2,392 (66.4%)	5,274 (61.5%)	4,290 (47.2%)
Offenses against property with violence	1,495+ 8,377 (80.0%)	733+5,957 (65.0%)	871+6,614 (48.8%)	20,817 (46.9%)	14,797 (42.0%)
Offenses against property without violence	1,591+18,514 (82.1%)	407+6,165 (74.9%)	645+4,888 (67.3%)	11,666 (68.9%)	7,862 (62.6%)
Miscellaneous offenses	282+ 1,169 (86.4%)	155+ 947 (78.9%)	130+ 804 (75.1%)	1,770 (72.9%)	1,214 (62.7%)

Table two shows:

1. For all five groups of offenses listed, there has been, with one insignificant exception, an unbroken downward trend in the use of sentences of penal servitude and imprisonment.

2. This downward trend differs considerably according to the type of offense concerned, being much more marked for sexual offenses and offenses against property with violence than for nonsexual offenses against the person, offenses against property without violence, and the miscellaneous group.

3. This trend was more marked before World War II in the group of offenses against property, but more marked after World War II for nonsexual offenses against the person; whereas for the remaining groups, the decline was fairly evenly distributed over these two periods. This picture is not affected by the legal changes brought about by the Criminal Justice Act, 1948, the figures for preventive detention and corrective training being relatively small, the highest percentage figure in the period under review being 1.7 per cent and 4 per cent, respectively.

With regard to probation, as table three shows, there was an all-around and, with three trifling exceptions, constant increase in the use of probation over the

TABLE III  
ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—PROBATION ORDERS  
(WITH PERCENTAGES OF ALL SENTENCES IMPOSED FOR THE GROUP OF OFFENDERS)

	1909-13	1922-26	1934-38	1946-50	1951-54
Offenses against the person (nonsexual)...	164 (5.0%)	128 ( 7.0%)	100 ( 6.1%)	368 ( 9.9%)	405 (11.4%)
Offenses against the person (sexual).....	24 (1.0%)	47 ( 1.2%)	276 ( 6.9%)	1,033 (12.1%)	1,372 (14.7%)
Offenses against property with violence...	793 (6.4%)	1,211 (11.8%)	3,173 (20.7%)	8,473 (19.7%)	7,531 (21.2%)
Offenses against property without violence.	1,690 (6.9%)	865 ( 9.4%)	1,028 (12.5%)	1,620 ( 9.6%)	1,281 ( 9.6%)
Miscellaneous offenses.....	5 —	22 ( 1.6%)	97 ( 7.8%)	263 (10.8%)	245 (12.7%)

forty-five-year period covered, at least in the higher courts. It was much more substantial, however, in the categories of sexual offenses, of offenses against property with violence, and of miscellaneous offenses than it was in the other two categories. Offenses against property with violence showed by far the highest proportion of probation orders, and offenses against property without violence the lowest; indeed, in the case of the latter, the increase was inconsiderable—after a fairly promising start, there was even a decline after the peak period of 1934-38. These increases correspond roughly to the simultaneous decreases in the use of imprisonment and penal servitude.

TABLE IV  
ENGLAND AND WALES: PERSONS PUT ON PROBATION (EXPRESSED AS PERCENTAGES OF ALL COURT DISPOSITIONS)

Year	COURTS OF SUMMARY JURISDICTION		Courts of Quarter Sessions	Courts of Assizes
	Excluding Juvenile Courts	Juvenile Courts		
1910	11.3	25.7	7.3	0.2
1913	12.2	27.4	9.6	0.2
1919	11.7	27.4	16.9	0.2
1925	18.4	47.7	15.9	1.0
1928	20.1	53.4	14.2	1.9
1930	21.1	55.3	16.3	3.2
1933	19.1	53.9	15.9	4.4
1938	22.2	50.8	23.6	10.5
1946	11.0	41.9	14.8	—
1947	10.4	41.9	14.5	—
1948	12.3	41.7	15.3	—
1949	13.1	41.8	16.6	—

Comparing the use of probation by different kinds of courts, table four, reproduced from *Probation and Related Measures*,<sup>25</sup> shows, first, that the percentage figures differ as greatly as might have been expected, with juvenile courts making

<sup>25</sup> DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES 127 (U.N.Pub. Sales No. 1951.IV.2).

the greatest and courts of assizes the smallest use of probation; and, secondly, that the fairly steady rise up to World War II was followed by a marked decline afterwards in magistrates' courts, which are courts of summary jurisdiction. The figures for the higher courts for the pre- and postwar periods given in this table are not really comparable, because of the lumping together of courts of assizes and quarter sessions for the latter period; but on the strength of table three, it seems safe to assume that there has been no general postwar decline as far as these courts are concerned.

TABLE V

ENGLAND AND WALES: MAGISTRATES' COURT—PROBATION, CONDITIONAL DISCHARGE, AND FINES (EXPRESSED AS PERCENTAGES OF ALL COURT DISPOSITIONS FOR THE GROUP OF OFFENDERS)

Age Groups	1938			1956		
	Probation	Conditional Discharge	Fines	Probation	Conditional Discharge	Fines
Under 14.....	50	7	5	39	29	12
14 and under 17.	51	8	8	39	21	18
17 and under 21.	45	14	18	25	14	47
21 and over.....	16	16	32	11	11	55

For magistrates' courts, however, the decline in the use of probation for indictable offenses which began after 1938 has continued up to the present day for all age groups, accompanied by a steep rise in conditional discharges and fines, as is indicated in table five. Naturally, there has been some speculation regarding the reasons for this drastic decline. Are magistrates' courts beginning to doubt the value of probation? Or have they simply become more discriminating and aware of the need for careful selection of cases? Or have probation officers become so overworked that courts are reluctant to add to their burden? No conclusive answer can be given without further painstaking research. All that can be said at present is that the success rates of probationers seem to be satisfactory and that there is a need for a much wider use of probation in some adult magistrates' courts.<sup>26</sup>

Here as elsewhere, over-all figures for the whole country, for all age groups, and for all kinds of offenses tend to obscure the real picture. Just as the rate of use of imprisonment for adult males by magistrates' courts has been found to vary roughly from 7 per cent to 47 per cent,<sup>27</sup> the proportion of probation orders varies considerably from one court to the other, and there are still some magistrates' courts in the country where probation is hardly used for adults.

Dr. Radzinowicz has found that for all indictable offenses, the percentage of cases

<sup>26</sup> See particularly DEP'T OF SOCIAL AFFAIRS, PRACTICAL RESULTS AND FINANCIAL ASPECTS OF ADULT PROBATION IN SELECTED COUNTRIES (U.N.Pub.Sales No. 1954.IV.14). For juvenile courts, see MAX GRÜNHUT, JUVENILE OFFENDERS BEFORE THE COURTS (1956).

<sup>27</sup> These figures are taken from a study, soon to be published, carried out at the London School of Economics and Political Science (University of London).

"bound over without supervision" had remained fairly constant between 1910 and 1936, in which years they were 13.4 per cent and 13.1 per cent, respectively.<sup>28</sup> Table six shows that, for cases dealt with by courts of assizes and quarter sessions, there was a steady and substantial increase until 1934-36 and an equally steady and substantial decline afterwards. As in the case of probation, the highest figures are to be found for sexual offenses and for offenses against property with violence. This decline, as table five shows, however, has been counteracted by a greatly increased use of conditional discharges in the juvenile courts.

TABLE VI

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—CONDITIONAL DISCHARGES  
(UNTIL 1948 "BOUND OVER WITHOUT SUPERVISION") (WITH PERCENTAGES  
OF ALL SENTENCES IMPOSED FOR THE GROUP OF OFFENSES)

	1909-13	1922-26	1934-36	1946-50	1951-54
Offenses against the person (nonsexual) . . .	408 (12.4%)	278 (15.1%)	277 (16.9%)	531 (14.4%)	212 ( 6.5%)
Offenses against the person (sexual) . . . . .	285 ( 9.2%)	549 (14.4%)	1,014 (25.3%)	1,888 (22.0%)	1,055 (11.2%)
Offenses against property with violence . . .	854 ( 6.9%)	1,452 (14.1%)	2,400 (15.6%)	6,772 (15.2%)	2,759 ( 7.6%)
Offenses against property without violence .	1,933 ( 6.3%)	963 (10.5%)	983 (12.0%)	1,734 (10.2%)	707 ( 5.5%)
Miscellaneous offenses . . . . .	179 (10.7%)	252 (18.1%)	170 (13.7%)	210 ( 8.6%)	94 ( 4.6%)

The postwar increase in the prison population, amounting to about 9,000, or 125 per cent, from 1938 to 1954, has caused the Prison Commission to undertake an investigation into the causes of this phenomenon. The results of their research<sup>29</sup> show that roughly two-thirds of the increase could be attributed to the increased number of convictions of indictable offenses, a fact which is of no direct interest to us here, and roughly one-third to the increased average length of sentences imposed by the higher courts. More specifically, it was shown, for example, that if the average length of sentence in 1938 was taken as 100, the figures for 1954 were 171 for breaking and entering, 165 for sexual offenses, and 134 for offenses of violence against the person. Tables seven to ten show the picture in some greater detail for the period 1922-54. Although there are not inconsiderable differences among the four main categories of offenses, there has been a general, usually very striking, decline in sentences under six months, a slight decline of sentences over seven years, and an increase in sentences between these two extremes.

Traffic offenses and their treatment by the magistrates have been among the most widely discussed topics in this field. In 1956, 452,346 persons were found guilty of such offenses, and, with very few exceptions, they were fined; only 1,376 men and 12 women were received into prisons either under a prison sentence without

<sup>28</sup> RADZINOWICZ, *op. cit.* *supra* note 23, at 116.

<sup>29</sup> Prison Commissioners, *Report*, CMD. No. 9547, at 44 *et seq.* (1955); *Criminal Statistics for England and Wales*, CMD. No. 9884, at xxiii *et seq.* (1956).

TABLE VII

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—LENGTH OF PRISON SENTENCES—  
OFFENSES AGAINST THE PERSON (NONSEXUAL)  
(WITH PERCENTAGES OF ALL SENTENCES IMPOSED)

Year	Total	Under 6 mos.	Over 6 mos.-1 yr.	Over 1 yr.-2 yrs.	Over 2 yrs.-3 yrs.	Over 3 yrs.-4 yrs.	Over 4 yrs.-5 yrs.	Over 5 yrs.-7 yrs.	Over 7 yrs.-10 yrs.	Over 10 yrs.
1909-13.....	2,666	1,334 (50.0%)	659 (24.7%)	292 (11.0%)	125 (4.7%)	24 (1.0%)	98 (3.7%)	55 (2.1%)	46 (1.7%)	33 (1.2%)
1922-26.....	1,396	604 (43.3%)	361 (25.9%)	185 (13.3%)	94 (6.7%)	21 (1.5%)	56 (4.0%)	38 (2.7%)	24 (1.0%)	10 (1.0%)
1934-38.....	1,221	377 (30.9%)	324 (26.5%)	268 (22.0%)	119 (9.7%)	32 (2.6%)	58 (4.8%)	20 (1.6%)	13 (1.1%)	10 (1.0%)
1946-50.....	2,573	461 (18.0%)	724 (28.1%)	751 (29.2%)	263 (10.2%)	108 (4.2%)	124 (4.8%)	88 (3.4%)	34 (1.3%)	20 (1.0%)
1951-54.....	2,225	264 (11.8%)	631 (28.0%)	704 (31.6%)	265 (11.8%)	128 (5.7%)	108 (4.8%)	89 (4.0%)	31 (1.3%)	6 (0.2%)

TABLE VIII

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—LENGTH OF PRISON SENTENCES—  
OFFENSES AGAINST THE PERSON (SEXUAL) (WITH PERCENTAGES OF ALL SENTENCES IMPOSED)

Year	Total	Under 6 mos.	Over 6 mos.-1 yr.	Over 1 yr.-2 yrs.	Over 2 yrs.-3 yrs.	Over 3 yrs.-4 yrs.	Over 4 yrs.-5 yrs.	Over 5 yrs.-7 yrs.	Over 7 yrs.-10 yrs.	Over 10 yrs.
1909-13.....	2,751	1,276 (46.4%)	664 (24.1%)	433 (15.7%)	145 (5.3%)	36 (1.3%)	111 (4.0%)	61 (2.2%)	18 (1.0%)	7 —
1922-26.....	3,285	1,760 (53.6%)	791 (24.1%)	458 (13.9%)	143 (4.4%)	25 (1.0%)	75 (2.3%)	23 (1.0%)	10 —	—
1934-38.....	2,664	1,315 (49.4%)	656 (24.6%)	420 (15.8%)	122 (4.6%)	56 (2.1%)	70 (2.6%)	18 (1.0%)	6 —	1 —
1946-50.....	5,269	1,945 (36.9%)	1,392 (26.4%)	1,020 (19.4%)	375 (7.1%)	207 (3.9%)	191 (3.6%)	104 (2.0%)	29 (1.0%)	6 —
1951-54.....	4,290	973 (22.6%)	1,271 (29.6%)	1,083 (25.3%)	308 (7.2%)	239 (5.5%)	192 (4.4%)	166 (3.9%)	45 (1.0%)	10 (0.2%)

TABLE IX

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—LENGTH OF PRISON SENTENCES—  
OFFENSES AGAINST PROPERTY WITH VIOLENCE (WITH PERCENTAGES  
OF ALL SENTENCES IMPOSED)

Year	Total	Under 6 mos.	Over 6 mos.-1 yr.	Over 1 yr.-2 yrs.	Over 2 yrs.-3 yrs.	Over 3 yrs.-4 yrs.	Over 4 yrs.-5 yrs.	Over 5 yrs.-7 yrs.	Over 7 yrs.-10 yrs.	Over 10 yrs.
1909-13.....	9,862	3,656 (37.1%)	2,881 (29.2%)	1,844 (18.7%)	1,029 (10.4%)	127 (1.3%)	277 (2.8%)	43 (0.4%)	—	—
1922-26.....	6,690	2,716 (40.6%)	2,134 (31.9%)	1,117 (16.7%)	537 (8.0%)	63 (1.0%)	100 (1.5%)	19 —	3 —	1 —
1934-38.....	7,486	2,341 (31.3%)	2,591 (34.6%)	1,684 (22.0%)	635 (8.5%)	101 (1.3%)	115 (1.0%)	16 —	3 —	1 —
1946-50.....	20,869	4,006 (19.2%)	6,906 (33.1%)	6,579 (31.5%)	2,006 (9.6%)	726 (3.5%)	459 (2.2%)	142 (1.0%)	38 —	7 —
1951-54.....	14,797	1,836 (12.4%)	4,736 (32.0%)	4,930 (33.3%)	1,391 (9.4%)	885 (6.0%)	535 (3.6%)	341 (2.3%)	44 (0.3%)	6 —

option of a fine or in default of payment. There has been criticism of the leniency shown to traffic offenders by magistrates' courts—in particular for using the penalty of disqualification much too sparingly. In 1953, for example, there were only 200 disqualifications for 80,000 convictions of speeding, and the average fine imposed:

TABLE X

ENGLAND AND WALES: ASSIZES AND QUARTER SESSIONS—LENGTH OF PRISON SENTENCES—  
OFFENSES AGAINST PROPERTY WITHOUT VIOLENCE (WITH PERCENTAGES  
OF ALL SENTENCES IMPOSED)

Year	Total	Under 6 mos.	Over 6 mos.-1 yr.	Over 1 yr.-2 yrs.	Over 2 yrs.-3 yrs.	Over 3 yrs.-4 yrs.	Over 4 yrs.-5 yrs.	Over 5 yrs.-7 yrs.	Over 7 yrs.-10 yrs.	Over 10 yrs.
1909-13.....	20,110	9,252 (46.0%)	6,293 (31.3%)	2,964 (14.7%)	1,219 (6.1%)	113 (1.0%)	229 (1.1%)	36	4	—
1922-26.....	6,872	2,544 (37.0%)	2,406 (35.0%)	1,215 (17.7%)	568 (8.3%)	59 (1.0%)	77 (1.1%)	3	—	—
1934-38.....	5,537	1,619 (29.2%)	1,914 (34.6%)	1,360 (24.6%)	466 (8.4%)	94 (1.7%)	80 (1.4%)	4	—	—
1946-50.....	11,665	1,993 (17.1%)	3,805 (32.6%)	4,127 (35.4%)	1,187 (10.2%)	339 (2.9%)	187 (1.6%)	25	2	—
1951-54.....	7,862	964 (12.2%)	2,676 (34.0%)	2,789 (35.0%)	749 (9.6%)	384 (4.9%)	205 (2.7%)	87 (1.1%)	7	—

was two pounds, ten shillings. Out of 25,000 convictions of careless driving, there were only 600 disqualifications, and the average fine was less than four pounds.<sup>30</sup> The new Road Traffic Act, 1956, however, makes disqualification compulsory in the case of second convictions.<sup>31</sup>

As the death sentence was mandatory for murder until 1957, as it is now under the Homicide Act, 1957, for "capital" murder,<sup>32</sup> the subject is outside the scope of this paper.

B. Scotland (population: approximately 5,000,000)

The Scottish legal and judicial systems and also the method of compiling criminal statistics differ in so many respects from those of England and Wales that comparisons are difficult. The matter has recently been treated by Mr. T. S. Lodge, Statistical Adviser to the English Home Office, in an illuminating paper to which reference may here be made.<sup>33</sup> The following results are worth mentioning: While convictions of theft, fraud, and, in particular, housebreaking and drunkenness, are, in proportion, much more frequent in Scotland than in England and Wales, there are fewer prison sentences there without option of a fine. What is particularly striking, however, is that the mean length of prison sentence imposed in Scotland in 1952, the year under review, was about three and a half months, as compared with about eight months in England and Wales. One of the explanations suggested by Mr. Lodge is that many offenses, such as housebreaking, which have to be tried by a jury court in England, can, in Scotland, be dealt with by summary courts.

C. Austria<sup>34</sup> (population: approximately 7,000,000)

Table eleven shows the absolute numbers and percentage figures for sentences of imprisonment imposed for the more serious offenses (*Verbrechen*) after the last

<sup>30</sup> See The Magistrate, Dec. 1955, p. 142; *id.* Feb. 1956, p. 15.

<sup>31</sup> 4 & 5 ELIZ. 2, c. 67.

<sup>32</sup> 5 & 6 ELIZ. 2, c. 11.

<sup>33</sup> Lodge, *A Comparison of Criminal Statistics of England and Wales with those of Scotland*, 7 BRIT. J. DELINQ. 50 (1956).

<sup>34</sup> The data in this part are drawn from 43 BUNDESMINISTERIUM FÜR JUSTIZ, KRIMINALSTATISTIK FÜR DAS JAHR 1954 (Wien: Oesterreichische Staatsdruckerei, 1956).

war. Short sentences of up to three months were usually more than one-half of the total, and sentences of up to six months usually more than three-quarters, whereas sentences of more than five years were about 1 per cent. The total number of prison sentences seems rather high, but as table twelve shows, 40 per cent of the sentences imposed on adults for these more serious offenses were suspended.

TABLE XI

AUSTRIA: LENGTH OF PRISON SENTENCES (WITH PERCENTAGES OF ALL SENTENCES IMPOSED)

Year	Up to 1 mo.	1-3 mos.	3-6 mos.	6-12 mos.	1-5 yrs.	Over 5 yrs.	Total
1946.....	1,607 (13%)	3,989 (34%)	2,943 (25%)	1,617 (14%)	1,492 (13%)	164 (1%)	11,812
1947.....	3,092 (15%)	6,951 (33%)	4,761 (23%)	3,181 (15%)	2,773 (13%)	182 (1%)	20,948
1948.....	5,237 (16%)	12,084 (37%)	7,353 (23%)	4,294 (13%)	3,089 (10%)	274 (1%)	32,331
1949.....	4,850 (18%)	10,597 (40%)	5,334 (22%)	3,007 (11%)	2,020 (8%)	197 (1%)	26,605
1950.....	2,397 (13%)	7,416 (41%)	4,538 (25%)	2,241 (12%)	1,389 (8%)	122 (1%)	18,103
1954.....	1,583 (10%)	6,220 (39%)	4,342 (27%)	2,183 (14%)	1,459 (9%)	96 (1%)	15,883

TABLE XII

AUSTRIA: SUSPENDED SENTENCES (EXPRESSED AS PERCENTAGES OF ALL COURT DISPOSITIONS FOR THE GROUP OF OFFENDERS)

	JUVENILES			ADULTS			TOTAL		
	1952	1953	1954	1952	1953	1954	1952	1953	1954
Crimes ( <i>Verbrechen</i> ).....	46	46	47	40	40	40	40	41	41
Misdemeanors ( <i>Vergehen</i> ).....	43	38	40	42	44	53	42	44	53
Contraventions ( <i>Uebertretungen</i> )...	17	18	17	20	20	18	20	20	18
Total.....	30	27	27	25	23	23	25	25	23

D. Denmark<sup>35</sup> (population: approximately 4,400,000)

The Danish Penal Code of 1930<sup>36</sup> provides three types of ordinary penalties: simple detention (*haefte*) as the more lenient form, with a minimum of seven days and a maximum of usually not more than two years; imprisonment (*almindeligt faengsel*) from thirty days to sixteen years or for life; and fines (*bøde*) in form of day-fines. In the case of simple detention up to two years, imprisonment up to one year, and fines, the execution of the penalty may be suspended for a period of two to five years, and, according to a Danish writer,<sup>37</sup> no measure has contributed so much to reduce imprisonment as this device, which has now been employed in Denmark for fifty years. About a third of all cases of violation of the criminal code result in a suspended sentence. The United Nations report on *Probation and Related Measures* states that in 1939, prison terms of up to three months were

<sup>35</sup> The data in this part are drawn from DANMARKS STATISTIK 1954 (København Aarhus Stiftsbogtrykkerie A/S, 1956).

<sup>36</sup> An English translation, with an introduction by Professor Knud Waaben, has been published in Copenhagen in 1958. There are also French and German translations of this Code.

<sup>37</sup> *Id.* at 15.

suspended in 62 per cent of all cases, terms of up to six months in 25 per cent, and terms of nine to twelve months in 12 per cent.<sup>38</sup>

Preventive detention from four to twenty years or longer can be applied to professional or habitual criminals as an alternative to punishment. The average duration has so far been some seven years, however, and it is used in no more than one or two cases a year.<sup>39</sup>

The penalties imposed in 1954 are set forth in table thirteen; the offenses for which sentences were conditionally suspended, with or without supervision, in table fourteen.

TABLE XIII  
DENMARK: PENALTIES IMPOSED, 1954

Simple Detention ( <i>Hæfte</i> )			
For 30 days or less.....	572	suspended	137
Over 30 days (including 60 days).....	96	suspended	35
Over 60 days (including 3 mos.).....	4	suspended	4
Over 3 mos.....	1	suspended	1
Penalty served during arrest.....	32		
Total.....	673		177
Imprisonment ( <i>Almindeligt Faengsel</i> )—males			
For 30 days.....	229	suspended	153
Over 30 days (including 60 days).....	1,318	suspended	793
Over 60 days (including 3 mos.).....	1,130	suspended	552
Over 3 mos. (including 6 mos.).....	1,604	suspended	533
Over 6 mos. (including 12 mos.).....	799	suspended	87
Over 1 yr. (including 2 yrs.).....	313		
Over 2 yrs. (including 3 yrs.).....	57		
Over 3 yrs. (including 4 yrs.).....	17		
Over 4 yrs. (including 6 yrs.).....	14		
Over 6 yrs. (including 8 yrs.).....	3		
Over 8 yrs. (including 12 yrs.).....	4		
Over 12 yrs. (including 16 yrs.).....	2		
For life.....	2		
Total.....	5,542		2,118

Fines (*Bøde*) were imposed on 775 males; no figures were given for females.

These figures show that despite the liberal use of suspended sentences, a fairly large number of prisoners, 48 per cent of all males sentenced to imprisonment, served sentences of not more than three months. A study undertaken several years ago of a sample of short-term prisoners showed that in the majority of these cases, other measures might have been more usefully applied.<sup>40</sup> Further material on the use of suspended sentences, in particular on the extent to which it is combined with supervision by the Danish Welfare Association, is given in the United Nations report, *Practical Results and Financial Aspects of Adult Probation in Selected Countries*.<sup>41</sup>

<sup>38</sup> DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES 82 (U.N.Pub.Sales No. 1951.IV.2).

<sup>39</sup> WAABEN, *op. cit. supra* note 36, at 14.

<sup>40</sup> Bernsten and Christiansen, *The Resocialization of Short-Term Offenders*, Int'l Rev. Crim. Policy, July 1954, p. 25.

<sup>41</sup> DEP'T OF SOCIAL AFFAIRS, PRACTICAL RESULTS AND FINANCIAL ASPECTS OF ADULT PROBATION IN SELECTED COUNTRIES 39 *et seq.* (U.N.Pub.Sales No. 1954.IV.14).

TABLE XIV  
DENMARK: SUSPENDED SENTENCES, 1954

	Males	Females
Sex crimes.....	225	5
Crimes of violence.....	106	14
Crimes against property.....	1,900	421
Other crimes.....	41	27
Total.....	2,272	467

To the changes in judicial attitudes during the war, attention has already been drawn above. Interesting sidelights on sentencing policy are thrown by the studies made in Denmark of the treatment of those found guilty of wartime collaboration with the German occupation force. While sentences imposed immediately after the war tended to be severe—sentences of more than three and a half years were imposed in 33.5 per cent of all cases—substantial reductions were made later when a general revision of these sentences took place in accordance with changed popular reactions to collaborators.<sup>42</sup>

E. France<sup>43</sup> (population: approximately 44,000,000)

In France, the Penal Code of 1810, with several amendments, is still in force.<sup>44</sup> It distinguishes penalties involving the loss of liberty or life and civil rights (*peines afflictives et infamantes*), correctional penalties (*peines correctionnelles*), and summary penalties (*peines de simple police*).<sup>45</sup> Penalties involving the loss of liberty or life and civil rights are death (*condamné à mort*), hard labor for life (*travaux forcés à perpétuité*), transportation (*déportation*), hard labor for a term of five to twenty years (*travaux forcés à temps*), simple detention (*détention*), and solitary confinement for five to ten years (*réclusion*). The principal correctional penalties are imprisonment for a term of ten days to five years (*emprisonnement à temps*) and fines (*amende*). The summary penalties are imprisonment from one day to ten days (*emprisonnement*) and fines (*amende*).

Table fifteen shows, first, that as of 1947, there was still a fairly large number of death sentences in France. According to Vouin-Léauté, there was a considerable increase in executions after the last war.<sup>46</sup> Life imprisonment sentences numbered, according to the same source, slightly over a hundred per year, which is rather high as compared with recent Italian, German, and, in particular, English figures and those for the smaller countries. Unfortunately, French statistics do not show the actual length of the sentences of hard labor for a term imposed by courts of

<sup>42</sup> See KARL O. CHRISTIANSEN, *MANDLIGE LANDSSVIGERE I DANMARK UNDER BESÆTTELSEN 156, 173* (1950).

<sup>43</sup> The data in this part are drawn from *MINISTÈRE DE LA JUSTICE, COMPTE GÉNÉRAL DE L'ADMINISTRATION DE LA JUSTICE CIVILE ET COMMERCIALE ET DE LA JUSTICE CRIMINELLE* (1944-47 and 1955).

<sup>44</sup> ROBERT VOUIN ET JACQUES LÉAUTÉ, *DROIT PÉNAL ET CRIMINOLOGIE* (1956).

<sup>45</sup> *Id.* at 541 *et seq.*

<sup>46</sup> *Id.* at 543.

assizes (*cours d'assises*), nor are the sentences of imprisonment imposed by the courts of petty sessions (*tribunaux correctionnels*) further classified beyond the basic distinction of under and over a year. Exact comparisons are, therefore, impossible, but it seems that the number of sentences of over one year is, in proportion, not much higher than in Western Germany or Italy, although it is incomparably higher than in England. According to Vouin-Léauté, sentences of correctional imprisonment of over one year number, on an average, 6.25 per cent of the total of such sentences.<sup>47</sup>

TABLE XV  
FRANCE: PENALTIES IMPOSED

	1947	1955
<b>Courts of Assizes (<i>Cours d'Assises</i>)</b>		
Death ( <i>Condamnés à mort</i> ).....	69 (31 executions)	9
Hard labor for life ( <i>Travaux forcés à perpétuité</i> ).....	133	44
Hard labor for a term ( <i>Travaux forcés à temps</i> ).....	490	241
Solitary confinement ( <i>Réclusion</i> ).....	393	245
Correctional penalties ( <i>Peines correctionnelles</i> ).....	851	627
Benefited by extenuating circumstances ( <i>Ayant bénéficié des circonstances atténuantes</i> ).....	860	
Suspended sentence ( <i>Ayant obtenu le sursis de la peine</i> ).....	245	234
<b>Courts of Petty Sessions (<i>Tribunaux Correctionnels</i>)</b>		
Imprisonment—excluding offenses and regulations concerning customs, posts, etc. ( <i>Emprisonnement</i> )		
Over 1 yr.....	12,945	
Under 1 yr.....	172,579	
5 yrs. and over.....		86
3 yrs.-5 yrs.....		295
1 yr.-3 yrs.....		3,735
Over 3 mos. but under 1 yr.....		14,819
3 mos. and under.....		58,324
Total.....	185,524	77,259
Suspended sentence of imprisonment ( <i>Sursis à l'emprisonnement</i> ).....		29,068
Fine ( <i>Amende</i> ).....	122,237	95,735
Suspension of fine ( <i>Sursis à l'amende</i> ).....		17,895
Transportation ( <i>Relégation</i> ).....	416	
Suspended sentence—total ( <i>Sursis de l'exécution de la peine</i> ).....	79,415	46,963
<b>Police Courts (<i>Tribunaux de Simple Police</i>)</b>		
Imprisonment ( <i>Emprisonnement</i> ).....	3,775	4,775
Fine only ( <i>Condamnés à l'amende seulement</i> ).....	372,151	456,851

The 1955 figures show that death sentences and long sentences of hard labor imposed by courts of assizes have greatly declined since 1947. Cases of suspended sentences have remained the same in absolute figures, which means a considerable proportional rise. It also appears that sentences imposed by courts of petty sessions have now been further classified, which makes comparisons with other countries more meaningful. Whereas sentences of over one year numbered 12,945 in 1947, sentences of one year and over numbered only 4,016 in 1955, which, considering that the latter figure must include a substantial proportion of sentences of one year,

<sup>47</sup> *Id.* at 558.

indicates a very considerable decline in longer sentences. At the other end of the scale, however, a larger number of very short sentences of three months or less has become visible. But suspension was granted in nearly 40 per cent of all prison sentences imposed by courts of petty sessions and in 18 per cent of all fines.

The French system of suspension of sentences has been decried in the United Nations report on *Probation and Related Measures*,<sup>48</sup> and, more fully, by Vouin-Léauté.<sup>49</sup> From table fifteen, it will be seen that this system was employed in a few hundred cases by courts of assizes and to a large extent—in about 43 per cent of all cases involving prison sentences—by courts of petty sessions.

F. Western Germany<sup>50</sup> (population: approximately 48,500,000)

Under the German Penal Code of 1871, which, after many amendments, is still in force in the German Federal Republic in a new 1953 version, the principal penalties are penal servitude for one year to fifteen years or for life (*Zuchthaus*), imprisonment from one day to five years (*Gefängnis*), confinement for one day to fifteen years (*Einschliessung*—formerly *Festungshaft*—*i.e.*, *custodia honesta*), simple detention for one day to six weeks (*Haft*), and fines from three to 10,000 deutsche Mark, in certain cases unlimited (*Geldstrafe*). Capital punishment (*Todesstrafe*) was abolished in 1950.

When comparing the figures for the year 1933 with those of 1955, one must bear in mind that the former refer to the undivided Germany, with a population of approximately 65,000,000; the latter to Western Germany, with a population of approximately 50,000,000.

In 1933, there were 372,459 persons, including 14,269 juveniles aged fourteen to eighteen, sentenced for offenses against the Penal Code and 116,631 persons, including 1,689 juveniles, sentenced for offenses against other statutes of the Reich—*i.e.*, altogether 489,090 persons, including 15,958 juveniles. In 1955, the figures were 594,215 persons sentenced, including 37,717 juveniles aged fourteen to eighteen and 71,574 adolescents aged eighteen to twenty-one. The penalties imposed are set forth in table sixteen (figures for 1933 including juveniles, those for 1955 excluding juveniles).

In addition, there are now measures of security and reformation (*Massregeln der Sicherung und Besserung*) introduced by a statute of the 24th of November, 1933, and now incorporated in the Penal Code. In 1955, such measures, for which no maximum is provided by law, were used in the case of 15,300 persons, of whom a few hundred were committed to institutions as dangerous recidivists, others were sent

<sup>48</sup> DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES 65, 83, 202 (U.N.Pub.Sales No. 1951.IV.2).

<sup>49</sup> VOUIN-LÉAUTÉ, *op. cit. supra* note 44, at 343, 556.

<sup>50</sup> The data in this part are drawn from 478 STATISTIK DES DEUTSCHEN REICHS: KRIMINALSTATISTIK FÜR DAS JAHR 1933 (1936); 172 STATISTIK DES BUNDESREPUBLIK DEUTSCHLAND: DIE ABGEURTEILTEN UND VERURTEILTEN 1955 (ERGEBNISSE DER STRAFVERFOLGUNGSSTATISTIK) (Herausgeber: Statistisches Bundesamt Wiesbaden, 1957).

TABLE XVI  
GERMANY: PENALTIES IMPOSED

	Death ( <i>Todesstrafe</i> )	Penal Servitude ( <i>Zuchthaus</i> )	Imprisonment ( <i>Gefängnis</i> )	Confinement ( <i>Festungshaft</i> )	Simple Detention ( <i>Haft</i> )	Fine ( <i>Geldstrafe</i> )
1933	78	9,643	217,913	45	2,531	258,739
1955	—	3,122	156,558	—	833	379,487

to mental hospitals, and the great majority were traffic offenders who lost their driving licenses.

The figures in table sixteen show a considerable decline in sentences of penal servitude and imprisonment. Under the influence of the reform movement referred to above, prison sentences had already declined from 69 per cent of the total dispositions in 1882 to 44.7 per cent in 1912, whereas fines had risen from 25 per cent of the total dispositions to 51.8 per cent during the same period. Robert von Hippel, from whose book these figures are taken, rightly regards this change as reflecting "the beneficial impact of a sound theory on a reasonable judicial practice."<sup>51</sup> By 1955, the share of incarceration had further fallen to about 29 per cent, and that of the fine climbed to about 70 per cent, which means that the position of the two is almost the reverse of what it was in 1882.

The length of sentences of penal servitude and imprisonment is shown in table seventeen. The increase in life sentences is probably attributable to the abolition of the death penalty, whereas the small figures of sentences of imprisonment of over five years is probably attributable to the fact that such sentences can be given only in the case of several offenses. The number of sentences of penal servitude of over five years is, however, comparatively small, too. It is important to note that the German Penal Code provides minimum penalties of imprisonment for many offenses. On the other hand, if the court wishes to impose a prison sentence of less than three months, it has to impose a fine instead if the object of punishment can be achieved by fining. This provision was applied on an average in about 50,000 cases per year in the period 1925-31<sup>52</sup> and in 46,063 cases in 1955.

Before 1953, conditionally suspended sentences could be imposed in Germany only as conditional pardon (*bedingter Strafaufschub*), regulated not in the Penal Code, but in ministerial decrees of the *Länder*. In Prussia, such pardons were granted in about 30-40 thousand cases per year in the period 1925-29.<sup>53</sup> The subject is now dealt with in the Penal Code largely on Franco-Belgian lines, giving somewhat wider scope to the courts than before. Consequently, of the 106,336 sentences

<sup>51</sup> I R. v. HIPPEL, *DEUTSCHES STRAFRECHT* 555 n. 5 (1925).

<sup>52</sup> 2 *HANDWÖRTERBUCH DER KRIMINOLOGIE* 723 (1932-36).

<sup>53</sup> *Id.* at 734. Much higher figures are given by E. Bumke, 47 *ZEITSCHRIFT FÜR DIE GESAMTE STRAFRECHTSWISSENSCHAFT* 256 n. 27 (1927), for Prussia for the period 1921-24; 1921-124, 968; 1924-67,916. It must be remembered, however, that this was the period of the German inflation and, therefore, a peak period of crime. According to Bumke, 400,000 persons were sentenced to imprisonment in 1921 and 315,705 were fined. *Id.* at 254 n. 23.

TABLE XVII  
GERMANY: LENGTH OF PRISON SENTENCES

	Penal Servitude ( <i>Zuchthaus</i> )			Imprisonment ( <i>Gefangnis</i> )			
	Life imprisonment	Under 3 yrs.	3 yrs. or over	Under 3 mos.	3 mos. but under 1 yr.	1 yr. or over	
1933	19	7,056	2,586	124,872 (including 7,124 juveniles)	73,443 (including 1,854 juveniles)	19,407 (including 245 juveniles)	
	Life Imprisonment	2 yrs. or under	Over 2 yrs.	3 mos. or under	Over 3 mos.- 9 mos.	Over 9 mos.- 5 yrs.	Over 5 yrs.
1955	67	1,547	1,506 (of which 239 are over 5 yrs.-15 yrs.)	106,336	37,065	13,619	38

of up to three months' imprisonment, 44,525, and of the 37,065 sentences of up to nine months' imprisonment, 14,341 were suspended conditionally in 1955. Sentences of more than nine months cannot be conditionally suspended. The draft of the "General Part" of a new Penal Code which has recently been published has, for the time being, retained this limit of nine months, but leaves the door open for a reconsideration of the matter.<sup>54</sup>

As will be seen, the number of sentences of up to three months is still very large. The new draft code proposes to abolish sentences of imprisonment of less than one month and replaces them by criminal detention (*Strafhaft*), with a minimum of one week. Apart from this, however, it regards short sentences as indispensable and stresses that they are now often used for offenders of a new type, in particular for traffic offenders, for whom such sentences are regarded as less damaging than for other offenders. In 1955, approximately 13,000 persons were sentenced to imprisonment for traffic offenses, which is nearly ten times as large as the corresponding figure in England and Wales. Prison sentences of up to three months for simple larceny numbered 11,861 in 1955, as against 21,760 fines imposed for this offense.

#### G. Italy<sup>55</sup> (population: approximately 47,000,000)

The Italian Penal Code of 1930 distinguishes principal and accessory penalties. According to the Code, the principal penalties for crimes (*delitti*) are capital punishment (abolished in 1944, last execution 1876), penal servitude for life (*ergastolo*), imprisonment for a minimum of two weeks and a maximum of thirty years (*reclusione*), and fines from 50 to 50,000 lire (*multa*). Principal penalties for misdemeanors (*contravvenzioni*) are simple detention for two weeks to three years (*arresto*) and fines from 20 to 10,000 lire (*ammenda*). In addition, there are

<sup>54</sup> ENTWURF DES ALLGEMEINEN TEILS EINES STRAFGESETZBUCHS MIT BEGRÜNDUNG (1958).

<sup>55</sup> The data in this part are drawn from REPUBBLICA ITALIANA ISTITUTO CENTRALE DI STATISTICA, STATISTICA GIUDIZIARIA PENALE ANNI 1940-48 (1957), ANNUARIO DI STATISTICHE GIUDIZIARIE 1955 (1957).

the so-called measures of security (*misure amministrative di sicurezza*) applicable to socially-dangerous offenders, such as assignment to an agricultural colony or a reformatory.

The total number of persons convicted by courts of the first instance was 1,321,885 in 1952 and 1,214,483 in 1953, excluding juveniles. The penalties and measures of security that were inflicted in 1952 and 1955 are set forth in table eighteen.

TABLE XVIII  
ITALY: PENALTIES IMPOSED

	1952	1955
Imprisonment ( <i>Reclusione</i> ).....	141,893	95,163
Penal servitude ( <i>Ergastolo</i> ).....	113	45
Simple detention ( <i>Arresto</i> ).....	26,506	23,948
Fine for crime ( <i>Multa</i> ).....	163,873	142,889
Fine for misdemeanor ( <i>Ammenda</i> ).....	508,799	464,323
Measure of security ( <i>Misure di sicurezze</i> ).....	2,515	2,107

On the whole, the detentive penalties have shown a persistent decline since 1950, whereas the pecuniary penalties, following a zigzag course, have steeply risen between 1945 and 1955. Measures of security have considerably declined from 4,524 in 1940, to 2,654 in 1947, to 2,107 in 1955. Sentences of imprisonment and simple detention of not longer than one year, including those taking the place of pecuniary penalties, can be suspended. In 1955, 58,523 such suspensions were granted, as compared with 38,823 in 1940 and 65,878 in 1948, with considerable fluctuations in the annual figures.

Table nineteen shows the distribution of these penalties between a few of the main categories of offenses in 1953. The length of sentences imposed in the same year is shown in table twenty. It may be seen that 39 per cent of these sentences were of no more than three months, and 65 per cent were of no more than six months.

TABLE XIX  
ITALY: DISTRIBUTION OF PENALTIES BY OFFENSES, 1953

	Fine for crime ( <i>Multa</i> )	Imprisonment ( <i>Reclusione</i> )	Penal servitude ( <i>Ergastolo</i> )	Total
Offenses against the person.....	5,374	19,623	80	25,077
Offenses against property.....	2,598	49,339	—	51,937
Simple larceny ( <i>Furti</i> ).....	106	32,045	—	32,151

TABLE XX  
ITALY: LENGTH OF SENTENCES OF IMPRISONMENT (*Reclusione*), 1953

Up to 1 mo.	1-3 mos.	3-6 mos.	6-12 mos.	1-2 yrs.	2-3 yrs.	3-5 yrs.	5-10 yrs.	10-15 yrs.	15-30 yrs.	Total
15,127	18,203	22,953	14,722	7,339	2,854	1,882	1,197	604	664	85,604

There is, however, also a substantial number of long sentences of between five and thirty years, nearly 3 per cent of all sentences of imprisonment. No corresponding information is given for simple detention.

There is no probation for adults in Italy, which may, to some extent, explain the frequency of short prison terms.

#### H. The Netherlands<sup>56</sup> (population: approximately 11,000,000)

The criminal courts of first instance imposed the principal penalties over the period 1913 to 1955 set forth in table twenty-one.

TABLE XXI  
NETHERLANDS: PENALTIES IMPOSED (WITH PERCENTAGES OF ALL COURT DISPOSITIONS)

Year	Imprisonment	Simple Detention	Fines
1913.....	7,414 (48.8%)	708 (4.9%)	5,876 (40.3%)
1918.....	22,192 (54.5%)	603 (1.5%)	16,117 (39.6%)
1923.....	7,979 (45.2%)	1,175 (6.7%)	7,577 (43.0%)
1939.....	9,589 (42.3%)	721 (3.7%)	10,339 (45.6%)
1943.....	21,257 (35.2%)	296 (0.5%)	35,044 (58.0%)
1949.....	15,690 (34.8%)	379 (0.8%)	27,073 (60.1%)
1954.....	11,426 (33.3%)	205 (0.6%)	21,644 (63.1%)
1955.....	11,257 (32.7%)	170 (0.5%)	21,897 (63.6%)

This shows that, ignoring the abnormally high figures during the two World Wars, sentences of imprisonment have risen only moderately since 1913, whereas the penalty of simple detention (*hechtenis*) is hardly used any more and the fine (*geldboete*) has increased nearly fourfold. Proportionately, the use of prison has declined by one-third, and that of the fine increased by more than one-half.

The length of prison sentences is set forth in table twenty-two.

TABLE XXII  
NETHERLANDS: LENGTH OF PRISON SENTENCES (WITH PERCENTAGES OF ALL SENTENCES IMPOSED)

Year	3 yrs. and over	Over 1 yr. but under 3 yrs.	1 yr.	6 mos. and over but under 1 yr.	3 mos. and over but under 6 mos.	1 mo. and over but under 3 mos.	Under 1 mo.	Total
1952	89 (0.6%)	539 (3.4%)	1,254 (8.0%)	3,216 (20.5%)	2,669 (17.0%)	3,612 (23.0%)	4,293 (27.4%)	15,672
1954	62* (0.5%)	418 (3.7%)	829 (7.3%)	2,381 (20.8%)	1,733 (15.2%)	2,581 (22.6%)	3,422 (29.9%)	11,426
1955	63† (0.6%)	406 (3.6%)	698 (6.2%)	2,192 (19.5%)	1,705 (15.1%)	2,427 (21.0%)	3,766 (33.5%)	11,257

\*Including 3 life imprisonment. †Including 1 life imprisonment.

Capital punishment was abolished in the Netherlands in 1870, and sentences of life imprisonment are extremely rare. There is a prevalence of very short prison

<sup>56</sup> The data in this part were drawn from CENTRAAL BUREAU VOOR DE STATISTIEK, CRIMINELE STATISTIEK 1955 (Uitgeversmaatschappij W. de Haan N.V., Zeist, 1957).

sentences, those of less than six months amounting to more than 70 per cent of all dispositions, and those under three months to more than 55 per cent.

In 41.7 per cent of all cases of simple larceny, sentences of imprisonment were imposed in 1955; their length and that of corresponding sentences for aggravated larceny are set forth in table twenty-three.

TABLE XXIII  
NETHERLANDS: LENGTH OF PRISON SENTENCES—LARCENY (WITH PERCENTAGES  
OF ALL SENTENCES IMPOSED)

	3 yrs. and over	Over 1 yr. but under 3 yrs.	1 yr.	6 mos. and over but under 1 yr.	3 mos. and over but under 6 mos.	1 mo. and over but under 3 mos.	Under 1 mo.
Simple larceny....	1 (0 %)	67 ( 2.6%)	162 ( 6.2%)	530 (20.3%)	406 (15.5%)	587 (22.4%)	863 (33%)
Aggravated larceny	33 (2.5%)	177 (13.3%)	179 (13.5%)	355 (26.7%)	181 (13.6%)	218 (16.4%)	186 (14%)

In the Netherlands, too, suspended sentences have been widely employed, combined with a highly developed system of supervision.<sup>57</sup> Prison sentences of up to one year, sentences of arrest, and fines can be conditionally suspended altogether or in part, but partial suspension is more frequent. Success rates are very high, and a further expansion of the system is contemplated. A detailed study of the results of juvenile probation, carried out after the war, also bears witness to the success of the system.<sup>58</sup>

#### I. Sweden<sup>59</sup> (population: approximately 7,000,000)

In Sweden, the total number of persons on whom criminal sanctions are imposed is fairly high: 199,095 in 1952, and 228,245 in 1956—*i.e.*, 3,659.7 and 4,150.6 per 100,000 of population, respectively, as compared with 2,080.8 per 100,000 for indictable and nonindictable offenses in England and Wales in 1956. The proportion of offenses of "drunkenness and disorderly conduct," however, was much higher than in England—*i.e.*, 39,939, or 726.3 per 100,000. Prosecution was suspended in 8,683 cases in 1952 and in 9,450 cases in 1954. Of the total number of persons sentenced in Sweden, approximately 90 per cent, numbering 205,231 in 1953 and 214,413 in 1954, received fines. It will be remembered that in Sweden, particular attention has been paid for many years to the development of a satisfactory system of fining.<sup>60</sup>

<sup>57</sup> For the following text, see the details in DEP'T OF SOCIAL AFFAIRS, PRACTICAL RESULTS AND FINANCIAL ASPECTS OF ADULT PROBATION c. 3 (U.N.Pub.Sales No. 1954.IV.14), and DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES c. 12 (U.N.Pub.Sales No. 1951.IV.2).

<sup>58</sup> See B.L.F. CLEMENS SCHRÖNER, *GEZINSVOOGDIJ EN LEVENSLIOP* (1952); G. TH. KEMPE, *RECLASSERING IN ONZE SAMENLEVING* (1958).

<sup>59</sup> The data in this part were drawn from SVERIGES OFFICIELLA STATISTIK, *RÄTTSVÄSEN BROTTSLIGHETEN ÅR 1939 AV STATISTIKA CENTRALBYRÅN* (1941); *STATISTIK ÅRSBOK FÖR SVERIGE* (1957).

<sup>60</sup> See the description of the present Swedish system in THORSTEN SELLIN, *THE PROTECTIVE CODE—A SWEDISH PROPOSAL* (1957). This publication also gives a picture of the proposal for reform drafted

The present criminal code provides for two types of prison sentences—those with hard labor, with a minimum of two months and a maximum of ten years or life; and those of simple imprisonment, with a minimum of one month and a maximum of two years. As the figures in tables twenty-four and twenty-five show, there are still many very short sentences, especially of simple imprisonment, imposed by the courts; and in most cases of this kind, the execution of the sentence is not suspended.

TABLE XXIV  
SWEDEN: PENALTIES IMPOSED, 1954

	Males	Females
<b>Imprisonment with Hard Labor</b>		
Execution not suspended		
2 mos.....	159	4
Over 2 mos. but under 6 mos.....	853	18
6 mos.....	518	23
Over 6 mos.-12 mos.....	999	26
Over 1 yr.-2 yrs.....	372	9
Over 2 yrs.-4 yrs.....	68	2
Over 4 yrs.....	12	—
Life.....	1	—
Total.....	2,982	82
Execution suspended.....		
	2,324	266
<b>Simple Imprisonment</b>		
Execution not suspended		
1 mo.....	1,280	18
Over 1 mo.-2 mos.....	1,527	11
Over 2 mos.-6 mos.....	575	4
6 mos.....	34	—
Over 6 mos.....	28	—
Over 6 mos.-2 yrs.....	—	—
Total.....	3,444	33
Execution suspended		
1 mo.....	312	42
Over 1 mo.-2 mos.....	568	120
Over 2 mos.-6 mos.....	494	71
6 mos.....	85	6
Over 6 mos.....	—	—
Over 6 mos.-2 yrs.....	43	2
Total.....	1,502	250
Preventive Detention.....		
	226	2
Probation.....		
	2,862	739

The development of probation and conditional sentences in Sweden is described in *Probation and Related Measures*.<sup>61</sup> There it is stated that in cases of probation, the suspension of the execution of sentences is used from 3.5 to 4.2 times as frequently

by the Swedish Penal Code Commission. The present Western German draft proposes to adopt the Scandinavian system of day-fines (*Tagesbussen*). See the detailed discussion in *ENTWURF DES ALLOEMEINEN TEILS EINES STRAFGESETZBUCHS MIT BEGRÜNDUNG 55 et seq.* (1958).

<sup>61</sup> See DEP'T OF SOCIAL AFFAIRS, PROBATION AND RELATED MEASURES c. II (U.N.Pub.Sales No. 1951.IV.2).

TABLE XXV  
SWEDEN: PENALTIES IMPOSED, 1956

Imprisonment with Hard Labor	
Under 6 mos.....	1,048
6 mos.-under 1 yr.....	1,484
1 yr.-under 2 yrs.....	615
2 yrs. and over.....	127
Life.....	—
Total.....	3,274
Simple Imprisonment	
Under 3 mos.....	3,805
3 mos. and over.....	205
Total.....	4,010
Preventive Detention	
1 yr.....	24
1 yr.-2 yrs.....	42
Over 2 yrs.....	19
Total.....	85
Probation.....	3,847

as the suspension of the imposition of sentence. In 1946, for example, out of a total of 3,207 cases put on probation, in 2,492 cases the execution of the sentence was suspended, whereas in only 715 cases was the imposition of the sentence suspended. In another United Nations publication,<sup>62</sup> it is pointed out that "Swedish judges, under the influence of the prevailing Continental tradition, preferred the customary form of suspended sentences . . . in numerous cases where one might have expected a resort to the new form of suspension of the imposition of a sentence." The figures given above show that the execution of prison sentences was more frequently suspended in cases of imprisonment with hard labor than in those with simple imprisonment; more frequently in cases of females than in cases of males. On the other hand, there are very few sentences of four or more years. To some extent, their place is taken by preventive detention, which can be used for mentally-defective offenders and habitual recidivists, with periods from one to twelve years for the former group, and from five to fifteen years for the latter. There were 272 such sentences in 1953 and 226 in 1954, but only 85 in 1956, of which only 19 were for over two years.

### III

#### CONCLUSION

This survey is, in many ways, incomplete. The time and space available did not permit, for example, an investigation of the differences in sentencing according to age, sex, and previous convictions. Nor could, with a few exceptions, differences for the various categories of offenses be shown. Such further analysis of

<sup>62</sup> See DEP'T OF SOCIAL AFFAIRS, PRACTICAL RESULTS AND FINANCIAL ASPECTS OF ADULT PROBATION IN SELECTED COUNTRIES 47 (U.N.Pub.Sales No. 1954.IV.14).

the material would be essential, however, to obtain an accurate picture. As could be shown in one or two instances, developments sometimes differ widely according to the type of offense studied, and it would be a matter of considerable interest to examine the significance of the age and sex factors and of recidivism for judicial sentencing policy.<sup>63</sup>

If there is one particular feature which seems to have emerged from this study and to which special attention should be drawn, it is the large numbers of very short sentences of imprisonment still used in many countries. Experience has shown that such sentences cannot be altogether dispensed with, but their use might be still further reduced. If, as may well be the case, the potentialities of using fines instead of such sentences have largely been exhausted, other alternatives will have to be found,<sup>64</sup> among which an extended use of probation seems to deserve special attention.

<sup>63</sup> See Mannheim, *supra* note 1.

<sup>64</sup> See HOME OFFICE ADVISORY COUNCIL ON THE TREATMENT OF OFFENDERS, REPORT ON ALTERNATIVES TO SHORT TERMS OF IMPRISONMENT (1957).