

## The Failure of the Criminal Justice System

What is the goal of punishment? It is supposed to serve the purposes of deterrence, correction or reform of the criminal, and societal security.<sup>24</sup>

How does the established penal law fulfill these three goals? We will first be concerned with the goal of correction and reform of the criminal. Let us again listen to F. von Liszt:

Imperial crime statistics demonstrate in an irrefutable manner that the increase in recidivism is far greater than the overall increase in the number of criminals who have been sentenced, and is far greater than the number sentenced for the first time. . . .<sup>25</sup> The inclination toward crime increases with each sentence. . . . The harsher the type and length of the previous sentence, the faster recidivism follows. This not only demonstrates the ineffectiveness of our contemporary system of punishment with regard to professional criminality, but one may also assert without exaggeration that each instance of punishment must be considered a factor in the development of criminality. (1905f [1900]: 324–25)

In summation, Liszt states: “Our punishments have neither a corrective nor a deterrent effect. They do not prevent or hinder crime. On the contrary, they have the effect of strengthening the inclination toward crime.”<sup>26</sup> This conclusion is confirmed by experience: “All penitentiary prisoners who had served at least three sentences (penitentiary, prison, or house of correction), of which one or more amounted to six months and over, were counted on the first of October 1894, and to these were added also all those who were committed between then and March 31, 1897. A conference of officials reported what in their judgment was to be expected of each of these 15,539 men and 2,510 women in the future” (Aschaffenburg 1923: 224, 1913:202; see also table 8.3).

We see therefore that punishment does not achieve the goal of reforming or correcting criminals who are dangerous to society. The same facts that prove the complete failure of the goal of correction or reform also show that the second goal of punishment, deterrence, is not achieved either, or hardly so. A distinction is made between two kinds of deterrence, i.e., specific and general. The former is intended to deter the previously convicted person from further criminal acts; the latter is to prevent the mass of people that have not yet become criminals from committing a first offense. With regard to the deterrent effect of punishment, G. Aschaffenburg states:

In normal times one may perhaps hope for some effect from the threat of punishment; but this effect cannot of course be expressed in numbers. On the contrary, if we examine the statistics objectively, the impression strongly suggests itself that the

Table 8.3. Recidivism of the Convict after Release

	Probable Because of					
	Probable	Incorrigibility	Physical or Mental Defects	Other Reasons	Doubtful	Improbable
Men	14,726	14,441	163	122	440	373
Women	2,319	2,217	38	64	123	68
Total	17,045	16,658	201	186	563	441
[1894-97]						
Men	8,369	8,357	10	2	225	92
Women	1,132	1,128	4	—	30	26
Total	9,501	9,485	14	2	255	118

Source: Aschaffenburg 1913.

expected result has not occurred, or has occurred only to a minimal extent. For many years, the number of people punished for the first time has increased rather than decreased, and with juveniles it has increased decisively. . . . Hence it follows that the fear of punishment is not enough to stop crime. We must not forget, however, that causes external to the individual largely explain this increase. We must therefore limit our opinion with regard to general deterrence to the point that it is not strong enough compared to the growing social danger. . . . At the moment that a crime is decided on or, as in the case of a crime of passion, suddenly committed, the idea of punishment has very little effect as a countermotive. The threat of punishment can be seen only as a remote contingency, because of the excitement in the one case and the hope to remain undetected in the other. Every crime committed by someone not previously punished is a proof of the failure of general deterrence. (1923:292ff.)

With regard to specific deterrence, Aschaffenburg states in the same context: "As regards the effects of specific deterrence, the statistics on recidivism are extraordinarily instructive. They prove that, generally speaking, it fails utterly." In summation, Aschaffenburg thinks he can state with regard to the efficacy of punishment: "Our statistics leave no doubt that our penal system is ineffective" (1923:316).

Finally, the above-cited material shows with great clarity that the third goal of punishment, societal security from crime, is also a failure. Societal security from the recidivist cannot be achieved by a subtly calibrated dose of punishment following each criminal act, but only by his incarceration for the entire period of his danger to the public. Considering the present social conditions and the present state of our methods of influencing the criminal, this usually means incarceration for life. Precisely this has often been demanded by politicians who concern themselves with crime [*Kriminalpolitiker*], and who emphasize the rational character of punishment (cf. Heindl 1926).

Hence, we see that both statistics and the conclusions of leading experts of criminal justice confirm that punishment is an almost complete failure as an effective measure for reform and correction of the criminal, deterrence, and societal security.<sup>27</sup>