Policing ‘wayward’ youth: law, society and youth criminality in Berlin, 1939 - 1953

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Supervised by

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Declaration

The work presented in this thesis is my original. Due reference has been made when the work of others has been used.

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Abstract

The thesis is at once a legal, social, and everyday history of youth crime in Germany between 1939 and 1953. Its overarching tenet is that the so-called Zero Hour of 8 May 1945 as a starting or ending point is obstructive in any historical appreciation of deviance in twentieth Century German history. Whilst the dis/continuities in modern German history have been widely researched by scholars, little has been written on the importance of juvenile criminal discourse in wartime and post-war Germany, and almost nothing exists in the English language. This thesis aims to fill these lacunae. It argues that there was remarkable continuity in the policing of ‘wayward’ youth between the last years of the Third Reich and the period of Reconstruction. In order to prove this, the thesis has at its centre a case study of over three hundred juvenile Strafakten (criminal court case files) held at the Landesarchiv processed by Berlin local courts between 1941 and 1948. This is framed by a wide-ranging analysis of legal, sociological and pedagogical debate surrounding an ever-present juvenile criminal discourse, including archival material of the Reich Justice Ministry from the holdings of Berlin's Bundesarchiv and Foreign Office reports found at the Public Record Office in London. The choice of Berlin as the heart of the thesis’ investigation is obvious, given its position as the Reichshauptstadt and the centre of Allied administrative control after 1945, as well as the city boasting the largest population in Germany. In both the wartime and post-war periods, it was the laboratory for dealing with ‘criminal’ youth.
Introduction

The thesis is an investigation of youth crime in Germany between 1939 and 1953. Spanning the last years of the Third Reich and the post-war period of Reconstruction, it compares how the police, the courts, pedagogues, and welfare authorities treated so-called ‘wayward’ or ‘criminal’ youths. It finds that despite the considerable amount of social, political and cultural upheaval that took place during these fourteen years, there was a large degree of legal continuity in how juvenile criminals were dealt with by the authorities in Germany, calling into question how far the moment of German capitulation on 8 May 1945 can be viewed as an absolute Stunde Null (Zero Hour). Many of the juvenile decrees and ordinances introduced by the National Socialist regime remained on the statute books after the war. Indeed, the phrase schädliche Neigung (harmful tendencies), introduced as an explanation for the indefinite sentencing of youth in 1941, remains on the statute books to this day. In addition, there were certain similarities in the mentality and everyday practice of those charged with the policing of criminality, despite the catastrophic end of the so-called ‘Thousand Year Reich’ and the ‘new beginning’ of 1945. The study begins in September 1939, with the outbreak of war signalling a more punitive policy towards those viewed as potentially or actually criminal. New measures were introduced to curb a perceived ‘moral panic’, fuelled by crime statistics showing a significant increase in the incidence of juvenile crime. According to confidential figures released by the Reich Statistical Office in mid-1942, the rate of prosecutions involving youths below eighteen years of age rose by some 66
percent by the third-quarter of 1940 compared to the same period the previous year.¹ During 1942, well over 52,000 juveniles were sentenced throughout the Greater Reich, representing a 300 percent increase on the total figure for 1939.² Macro-level statistical data will be contextualized through use of micro-level data. Then the central part of the thesis is an examination of more than 300 juvenile Strafakten from the wartime and the post-war periods, taken from the holdings of the Landesarchiv and Bundesarchiv in Berlin. These files offer a valuable insight into the everyday practice of juvenile courts, as well as giving the historian a wealth of information on the particular individual and the crime they were accused of committing. Whilst one must be careful to bear in mind the bureaucracy and Amtsdeutsch of the legal authorities, these files nevertheless allow one to obtain a significant amount of information about individual cases of juvenile crime. The vast majority of the files utilised for this study have never been examined before now.

The thesis is centred on the historical, sociological, and legal examination of 300 juvenile court case files located at two archives in Berlin, the Landesarchiv (State Archive) and Bundesarchiv (Federal Archive). The criminal court cases examined in the thesis represent a micro-history of juvenile social, legal, and criminological thought. It contributes to the mapping of a particular historical landscape that has yet to be properly explored by historians.

Encompassing the years 1939 to 1951, the criminal court case files provide a rich source of information on how the juvenile criminal system operated during the wartime and immediate post-war period. Through this information, we can map out the social history of a youth; in particular how old they were, where they lived, what job they had, and their family background. The circumstances surrounding the crimes they committed also often provides information on the social environment in which the ‘criminal act’ was alleged to have taken place; for example what was stolen, from where, and from whom. At the same time, the files also represent a legal history through providing an insight into how juvenile criminal discourse was deployed on the ground level.

¹ Statistischen Reichsamt (ed.), Statistisches Jahrbuch für das Deutsche Reich, Vol. 59 (Berlin, 1942) p. 561. This was not accessible to the public.

² Figures taken from Bruno Blau ’Die Kriminalität in Deutschland während des zweiten Weltkrieges’ in: Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 64 Nr. 1 (Berlin, 1952) pp. 31-81. Here p. 34.
Protocols, reports, transcriptions, and letters submitted by policemen, welfare workers, lawyers, judges, prison officials, and Hitler Youth leaders revolved around the question of why the youth would have acted in such a way. Who the judge was, as well as where and when the trial was held, had a considerable importance for how juvenile sentencing practice operated. Then, as the thesis will demonstrate, the legal actors involved in policing ‘wayward’ youth were not only informed by contemporary juvenile criminal discourse, but were simultaneously attempting to inform it as well. These cases can only be understood when placed in historical context. Between 1939 and May 1945, the judge’s choice of sentence was influenced by the relative success or failure of the German war effort.

The catastrophic military defeat of the Wehrmacht at Stalingrad in the winter of 1942/1943 was a turning point in the war that also affected juvenile sentencing practice, as will be shown in chapter 2. In addition, the wholesale bombing of German cities such as Berlin from the summer of 1943 brought the war to the home front for the first time. Tens of thousands of buildings were either partially or completely destroyed as a result. Houses were often unoccupied as a result of their owner’s having been deported, evacuated, or deceased. Shortly after the first major bombing raids over Berlin in late 1943, the crime of 'looting' (Plünderung) came to be more commonly employed by the juvenile justice system. Certain ‘wayward’ or ‘delinquent’ youths, it was said, simply could not resist the temptation to ‘help themselves’ to the unguarded property that presented itself to them as a result of the air raids. Yet as we shall also see in chapter 2, such crimes could be labelled as ‘traitorous to the Reich’ and ‘sabotage of the war effort’ and could theoretically result in the death sentence being delivered to the guilty party.

The vast majority of court case files investigated for the thesis (288 out of the 300) are held at the Berlin Landesarchiv. Every one of these files included a sheet in the inside cover upon which the researcher was to write their name on receiving the file. Only very few had previously been seen. This is perhaps understandable given the incredible volume of court case files held in the Landesarchiv. Yet it also suggests that, where youth crime has been studied at all, the tendency has been to focus on more ‘spectacular’ cases that would have been processed by different courts than those belonging to the Berlin district.
Core Case Study

The case study is an investigation into juvenile criminal practice between 1941 and 1948, examined through the fate of 158 individual criminal court case files processed by the Amtsgericht Berlin-Mitte and Amtsgericht Berlin-Tiergarten. Of these 158 cases, 97 derive from the wartime period, and 61 from the post-war period. It must be stated at this point that the case study only includes 5 files dating from the year of Germany’s capitulation – 4 of which being processed before the formal, unconditional surrender of the German army, and 1 of which afterwards. Though the few files from this year necessarily preclude a detailed investigation into court practices around the time of the Zusammenbruch precludes a detailed statistical investigation, they are nevertheless included here as a demonstration that amongst the chaos of Berlin in 1945, this was a juvenile legal system that continued to operate – albeit only just. Indeed, the microhistories contained therein are a valuable, given both the scarcity of such criminal court cases that were concluded at the time, and for what they tell us about German society and youth criminality at a time of deep unease and chaos. For this reason, chapter 5 will deal with these cases in closer detail. For now, the question of how punitive both court practices were before and after 8 May 1945 will be studied.

To firstly give an overview, the total length of sentence (in days) handed to the 97 youths between 1941 and May 1945 was 7,956. This figure was reached through an addition of all sentences received gained from an examination of the court case files and subsequently logged onto a comparative case study database. This equates to an average sentence of just over 82 days, or around 2 months and 3 weeks. To be clear, not every case ended in the boy or girl’s conviction, but of all the cases studied here, the wartime period only saw three youths fully acquitted – once in 1942 and twice in 1943. In terms of the figures for the post-war period, between 1945 and 1947, the total length of sentence came to 7,606. This makes an average of just below 125 days imprisonment per youth. This means that, according to the case study findings, the average juvenile who came before the Berlin district courts on a charge of petty or aggravated theft in the

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3 This figure was reached through an addition of all sentences received gained from an examination of the court case files and logged in the comparative case study database.

4 File numbers 16755, 16771 and 15512 (LAB A Rep. 341-02)
immediate years after Germany’s capitulations would have spent 43 days longer behind bars. Of course, this requires qualification. One can conclude from this that the post-war courts treated the youths in their courtrooms more harshly than during the last years of Hitler’s regime. However, the type of crime committed must be taken into consideration. That no two crimes are the same is self-evident. Yet despite efforts to collate as similar types of crime as possible – difficult as the archive Findbücher do not list each individual crime – rather this becomes clear only when the file is examined – it is clear that both the extent and severe nature of youth crime accelerated in the years after the war. Over half of the post-war convictions included were tried as aggravated thefts (in 34 out of the 61 cases). Here it must also be qualified that there was no absolute measurement for what was to be considered petty, and what was to be filed as a more serious case of property theft. For example, the sixteen-year-old Robert K.’s group theft of five guinea pigs in May 1947 appears now to be an innocuous bit of ‘youthful nonsense’. Yet the dramatic lack of foodstuffs available around the time for the vast majority of Berlin’s population led the policeman to file the juvenile’s indictment as an aggravated theft. Nevertheless, the core case study’s findings correspond to a juvenile crime rate that was described by social and legal commentators as having reached epidemic proportions.

To qualify the comparative sentencing politics further, it is necessary to now focus on the 13 files involving cases of theft dealt with by other courts in wartime Germany: namely the Criminal Divisions of Regional District Courts in Berlin (7 cases), Frankfurt am Main (1), Cologne (2), Kattow (1), Linberg (1), and the Deutsche Krone (1). Of these, all of the cases were examined in the Federal Archive in Berlin (R 3001) except the latter, an anomaly found within the Berlin Landesarchiv’s records for Amtsgericht Berlin-Mitte. These court cases, spanning the period 1941 to 1944, involved a sentencing practice that was far more punitive than that found for the comparative (core) study. Of all twelve youths accused of committing property crimes, only one escaped with a fine. The rest were brandished with prison terms ranging from six months to five years. In adding together each individual sentence in terms of length of prison sentence received in days, we reach a figure of 11,805. This represents an average of 908 days per person, or just below two and a half years behind bars. Compared to the core study of 158 criminal court cases processed by the Berlin district courts, where the average – as we

5 File Nr. 10686.
have seen - fell at just under 82 days, the behaviour of legal actors during these 13 court cases is shown to be all the more retributive. Here again, of course, the type of offense committed is of importance to any assessment.

This close study of juvenile cases taken before the Berlin local courts (Amtsgerichte), put into context with the wider legal and societal debates on youth crime during the wartime and immediate post-war periods, offers fresh insight into debates about dis/continuity in mid-20th Century German history. Historians have, up until now, relatively neglected the study of youth crime. Where it has been dealt with, studies have often only been published in German, and much of the literature – whilst in the main soundly researched – is dry, legalistic, and footnote-heavy. The few studies that exist in the English language have tended to focus either on the Hitler Youth or oppositional youth groups during the Third Reich. Whilst this is clearly important, there has been a tendency to romanticise youth cliques, and to attribute them with an anti-Nazi bias that they did not necessarily possess. Further to this, there is an even more notable lack of studies concerning juvenile crime after 1945. The thesis aims to redress the balance here.

**Defining wayward and criminal youth**

It will now be necessary to define what exactly is meant by the terms ‘youth’ (in particular ‘wayward’ youth and youth criminality), and ‘policing’. Youth crime translates into German as *Jugendkriminalität*. Legally defined, this encompasses those persons between fourteen and twenty-one years-of-age who have been found guilty by a court of committing an act contravening the criminal code. This definition has its origins in the German Criminal Code of 1871, introducing a separate legal code with which to treat young lawbreakers. For the first time, youth was *legally defined* as a particular phase in life, a phase characterised by considerable moral, mental and physical development (or regression), and one that represented their *not-yet-adult* status. Fourteen years-of-age was chosen because it was the stage when a youth leaves school and begins their professional life, either beginning their working career or in a period of traineeship. But *Jugendkriminalität* can also be translated as juvenile delinquency.
The policing of wayward youth was determined by legal, societal and cultural interpretations of youth as criminal or educable. The term wayward is chosen specifically, representing the potential of youth to be interpreted as either criminal or educable. Though the dichotomy between youth as incorrigible or corrigible had existed since the nineteenth-century discovery of the adolescent, the exigencies of wartime and post-war Berlin saw a significant reduction in the space between both definitions. It contends that this period represents a distinct phase in the treatment of wayward youth. Berlin is an obvious choice for an examination of juvenile discourse, given that it was the city with the largest population in Germany, as well as being both the Reichshauptstadt and the centre of Allied authority after the capitulation of the Third Reich. As the thesis will demonstrate, the measures used by institutions involved in the policing of wayward youth were not new. However, the scale and intensity with which they were deployed in both the wartime and immediate post-war periods certainly was. The way in which waywardness was constructed is indicative of the contemporary societal, cultural and political status of youth. This construct involves numerous different strands, each informed by shifting legal, societal and cultural definitions of youth. The thesis disentangles these various strands in order to demonstrate significant continuity in the policing of wayward youth – legally, socially, and criminologically - from the wartime into the post-war period. This is surprising, given the enormous changes to German society as a result of wartime exigencies, the collapse of the Third Reich, the subsequent Allied occupation of Berlin, and the situation in the nascent East and West German states. The thesis will demonstrate that perceptions of youth as criminal (and thus incorrigible) or corrigible (thus educable) – on both the individual and the collective level – were instructive of the societal, cultural and political status of Germany. Why were certain wayward youths viewed as capable of improvement and others not? Who defined this, and through what methods were they defined? What were the factors that led to youth receiving a therapeutic or a punitive form of treatment both before and immediately after 1945, and what does this say about the state of contemporary German society?

For the purposes of the thesis, youth is primarily defined legally. Despite the relatively short timeframe of the thesis, the legal definition of youth changed significantly between 1939 and 1953. When the Second World War began on 1 September 1939, youth was legally defined as persons between fourteen and eighteen years-of-age. This was
determined by a still-valid 1923 Youth Court Law (Jugendgerichtsgesetz) that distinguished for the first time between young and adult offenders. Yet, on 4 October 1939, the enactment of a ‘Decree for Protection against Serious Young Offenders’ (Gesetz zum Schutz gegen Jugendliche Schwerverbrecher) allowed for those aged sixteen and above to be tried under adult criminal law. Furthermore, a 1943 reform of the Youth Court Law (Reichsjugendgerichtsgesetz) lowered the age of criminal responsibility to twelve, and was only raised to fourteen by a West German reform of the Youth Court Law in 1953 (Bundesjugendgerichtsgesetz).

Until now, most scholarly studies of youth in the Third Reich have understandably focussed either on the organisation and activities of the Hitler Youth, and have followed the exploits of members of such ‘oppositional’ youth cliques as the ‘Edelweiss Pirates’ or the more middle class ‘nonconformist’ Swing Youth. They have tended to locate young persons either within the Hitler Youth, and therefore portrayed as compliant, or in direct opposition to the movement, neglecting the wider social sphere that youth occupied in the Third Reich, in the immediate post-war period, and later, in both East and West Germany. These studies thus tend to ignore the shades, nuances, and fluctuations of youth and youth control under National Socialism and later.

Major exceptions to the above are to be found in the studies by Eve Rosenhaft and Alfons Kenkmann, who have provided comprehensive studies of ‘unorganised’ youth gangs. Furthermore, Frank Kebbedies has published a substantive study of juvenile criminal politics from the Third Reich into the post-war period. However, the previous two

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6 Detlev Peukert, *Die Edelweißpiraten: protestbewegung jugendlicher Arbeiter im Dritten Reich: eine Dokumentation* (Cologne, 1980); Karl-Heinz Schnibbe, *When truth was treason: German Youth against Hitler; the story of the Helmuth Hübener Group* (Urbana, Ill., 1991).


works mentioned are only available in the German language. The pioneering work of early social researchers into youth culture, and what the historian Thomas Lindenberger was later to term ‘street culture’\textsuperscript{11} from the 1920s formed the basis of Detlev Peukert’s magnus opus on youth in the Weimar Republic.\textsuperscript{12} This was a significant attempt to move beyond institutional or organisational history, and to cast the net of inquiry more widely over the everyday activities of German youth. Even so, his work still remains largely determined by the ideological and methodological constraints of early social science, as well as the prejudices and sympathies of the scientists involved. It also relies heavily on a limited number of studies from the late 1920s and early 1930s.

Moreover, his aim, similar to that of Elizabeth Harvey and Edward Ross Dickinson, was to offer a critical discussion of youth welfare policy, and the various discourses informing its evolution.\textsuperscript{13} With the exception of Rosenhaft whose work deals with the period of 1929 to 1932 (concentrating primarily on Communist youth violence), none of the above studies attempts to get to grips with what was described at the time as the ‘criminal world’ of youth in cities during the Third Reich, notably in the critical period of the war. Building on the above influential studies, but extending the empirical and methodological base of enquiry, my research will fill this lacuna.

Research into youth has tended to remain locked into discrete disciplinary areas with little crossover. The majority of research into youth criminality from 1939 to 1953 has tended towards legal,\textsuperscript{14} psychological, sociological,\textsuperscript{15} or more ‘institutional’ history.\textsuperscript{16}

\textsuperscript{11} Thomas Lindenberger, \textit{Straßenpolitik: zur sozialgeschichte der öffentlichen Ordnung in Berlin 1900 bis 1914} (Bonn, 1995)
\textsuperscript{12} Detlev Peukert, \textit{Grenzen der Sozialdisziplinierung: Aufstieg und Krise der deutschen Jugendfürsorge von 1878 bis 1932} (Cologne, 1987)
\textsuperscript{15} Victor Bailey, \textit{Delinquency and citizenship: reclaiming the young offender; 1914-1948} (Oxford, 1987)
The issue of youth and youth crime has been investigated in criminological studies; of particular note is Richard Wetzell’s enlightening study of German criminological theory and practice from the late nineteenth century up to 1945.\(^\text{17}\) Wetzell chose this date as his ending point as it “represents a clear break in the development of German criminology”.\(^\text{18}\) However, the author is therefore unable to provide the reasons as to exactly why it represented a clear break. Indeed, as we shall see, many criminologists active during the Third Reich were able to continue working unabated after the regime’s collapse.

Where youths have been subject to a more interdisciplinary research, they have been studied in terms of ‘sub-cultures’, defined largely by their leisure pursuits and their location in the inner city.\(^\text{19}\) The first reference to a ‘moral panic’ was by the British sociologist Jock Young in 1971.\(^\text{20}\) However, Stanley Cohen was the first to systematically investigate the concept in his study of media and public reactions to the ‘Mods & Rockers’ disturbances in early 1960s England. Cohen stated the key stages in a moral panic as follows:

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18 Richard Wetzell, *Inventing the Criminal*, p. 3.


Societies seem to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media; the moral barriers are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible.  

As we shall see in chapter 1, the beginning of war signalled a moral panic that did not disappear, but in actuality proved remarkably stubborn.

My research, rooted in empirical methodology, none the less adopts an interdisciplinary approach without losing its specifically historical focus; this facilitates a more balanced assessment of youth in the period 1939 to 1953. My approach is necessitated by the fact that much of the legislation governing the policing and punishment of wayward youth drew on socio-psychological discourses on the nature of youth and its crimes.

Despite the wealth of primary and secondary source literature dealing with themes of youth resistance, non-conformity, opposition and dissent in the Third Reich, historians have shown little inclination to make a comprehensive exploration of juvenile criminal law (Jugendstrafrecht) during this period. Fewer still have explored the issue through the intensive treatment it received both under Nazism (especially during the heightened tensions of the war years) and in the post-war period. Apart from those of Alfons Kenkmann and Frank Kebbedies, whose works will shortly be discussed, none of the cited studies commence their investigation of youth crime before 1945 and span the 'Zero Hour' of that year into the immediate post-war period.

Young-sun Hong, in a commanding article entitled *Neither singular nor alternative: narratives of modernity and welfare in Germany, 1870-1945*, explored the ways in which the historiography of the welfare state has been informed by our changing conceptions

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of modernity.\textsuperscript{23} Can one define Nazi Germany as a ‘welfare state’? From the 1990s, historians have increasingly characterised the Nazi regime as a ‘racial state’, demonstrating how Nazi policies of discrimination, exclusion and annihilation can be partly traced back to social scientific discourses and administrative practices present at the beginning of the German welfare state.\textsuperscript{24} Many people, argues Detlev Peukert, remember the actions of the National Socialist regime to quell deviant behaviour, for example criminality, begging, or being work-shy (\textit{Arbeitsscheu}), positively. In any discussion over the “good” and “bad” aspects of the regime, its ability to rigidly enforce measures to deal with deviants is often placed in the latter category, along with, for example, Hitler’s employment schemes such as “Strength through Joy” (\textit{Kraft durch Freude}). The placement of petty thieves, homosexuals, and the work-shy amongst other “undesirables” in concentration camps had been largely met “even from those who disapproved of the National Socialist terror against Jews and political opponents [...] with disinterest, or even restrained approval”.\textsuperscript{25}

Elizabeth Harvey, assessing continuities and discontinuities in youth policies from the Weimar Republic to the Third Reich, has pointed out that for Weimar’s ‘ineducable’ youth “there was nothing beyond the reformatory and the prison; after 1940, there was the concentration camp”.\textsuperscript{26} Whilst the concentration camp - or ‘youth protection camp’ (\textit{Jugendschutzlager}) as it was termed in Nazi jargon - represented a significantly more draconian policy in dealing with delinquent youth, conditions inside prisons and reformatories in Weimar were often terrible, as we shall see below. Harvey stressed that the Nazi state’s “positive incentives combined with an uninhibited application of force” in the implementation of youth policies contrasted with the more limited means available to the Weimar state authorities. These ‘positive incentives’ included a comprehensive youth employment scheme and a re-organisation of the labour market. However, many of these incentives were informed by negative images of ‘work-shy’,


\textsuperscript{24} Ibid, p. 136.


‘delinquent’ or ‘asocial’ youth that were present during the Weimar period. The Nazi regime adapted previously existing mechanisms for identifying and policing endangered or criminal youths to suit their own purposes. Furthermore, according to Harvey, the restructuring and reorientation of welfare and social policies as a consequence of the Great Depression “produced trends in policies towards young people that directly paved the way for Nazi policies”.27 Most importantly, the Weimar welfare system’s lack of financial resources (particularly acute during the depression) accelerated the exclusion of youths from state care on the grounds of their supposed ‘ineducability’.

The historian Marcus Gräser has challenged the claim that it was the depression that first precipitated a crisis within the youth welfare system. Referencing the series of revolts, suicides and scandals inside correctional education institutions before the depression hit Germany, Gräser contended that conservatives and racial hygienists had been labelling such institutions as breeding grounds for criminals and hopeless, ineducable degenerates well before 1929.28

Arno Klönne, more than a decade after the fall of Nazi Germany, argued that “the breadth of youth opposition [in the Third Reich] would be unthinkable without an acclimatisation to the life "of being responsible for yourself and your inner truth", as accomplished by the Jugendbünde before 1933”.29 This statement presupposes firstly that there was a broad opposition to National Socialism amongst youths, and secondly that this was enabled by their being successfully educated through the youth league organisation prior to the Nazi seizure of power in 1933. Alfons Kenkmann is one historian to have successfully challenged Klönne’s thesis. In his path-breaking study from 1996 entitled Wilde Jugend, Kenkmann asked the question as to what extent ‘subcultural continuity’ could be spoken of. He posited whether the deviant behaviour of such groups as the Edelweißpiraten or the Bündischen youth should be viewed as an original product of the Nazi regime, or rather as a phenomenon already present both before 1933 and after 1945. Though the Nazi seizure of power brought an additional

28 Marcus Gräser, Der blockierte Wohlfahrtsstaat: Unterschichtjugend und Jugendfürsorge in der Weimarer Republik (Göttingen, 1995)

29 Arno Klönne, Gegen den Strom. Bericht über Jugendwiderstand im Dritten Reich (Hannover, Frankfurt am Main, 1957)
Juvenile disciplinary institution in the Hitler Youth and its *Streifendienst*, Kenkmann concluded that the non-conformist attitude of these subcultures – demonstrated in their behaviour both in the Great Depression and in the post-war occupation – can be explained “less by the conflict-lines of the Nazi state than by the longer-term traditional lines of youth subcultures of the modern industrial society”. Kenkmann correctly pointed out that a singular focus on the Third Reich poses the danger of misinterpreting juvenile non-conformity in the National Socialist state. The sociologist Klönne could not gain a nuanced picture of youth due to a categorical judgement of juveniles as either criminal or in direct opposition to the regime. His detailed, regional analysis of the Rhein and Ruhr region from 1930 to 1948 provided an important basis for my own study in its focus on the everyday history of youth on both the individual and collective level, and analysis of dis/continuities after 1945.

Wolff’s 1992 study entitled *Jugend vor Gericht im Dritten Reich* was also pathbreaking in its wide-ranging analysis of the continuity thesis. This was investigated not merely in terms of reformist impulses and legislative development throughout the Third Reich and into the post-war period, but rather also through what he termed *Rechtswirklichkeit* – how laws and decrees were implemented on the ground level, in the everyday practice of the courts. Wolff stressed that there was no complete break in juvenile legal policy after 1933. “A peculiar characteristic of the Third Reich was that it sharpened elements already present beforehand if they could be useful; whereas developments that did not conform were re-interpreted from the inside”. In a 2004 publication entitled *Hitler’s Prisons*, Nikolaus Wachsmann posed the question as to why the legal system was retained until the very end of the Third Reich, given that Hitler and his closest allies regarded it as slow, inefficient and overly lenient. He answers it by commenting that “the dismantling of the legal apparatus would have required a far more radical assault on the core structures of German society than the Nazis were prepared, or able, to undertake”, further adding that, had the regime relied solely on the police and the concentration camps, “it would have destroyed the semblance of the rule of law vital for its popular support”. Thus, “the continued operation of the legal bureaucracy helped to mask the

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terrorist nature of the Nazi regime”. 32 This was not to say that the court system was not affected by Nazi ideology. It played a crucial role in the criminalisation of political dissent and the politicisation of common crime.

The same can be said for the period after 1 September 1939. Though there was a notable intensification of punitive measures by which to control deviant youth, there was no absolute break with pre-war juvenile criminal policy. Rather, as will be shown in chapter 1, the war provided the context in which ‘wayward’ or ‘criminal’ young persons could be more punitively treated.

Returning to Wolff’s study, he focussed rightly on what he termed the “politicalisation of criminality and the criminalisation of deviant political ideas” during the Third Reich.33 Here, as Wachsmann has also noted, ‘straightforward’ crimes such as petty theft could be imbued with political significance. Such acts demonstrated the inability of the regime to normalize behaviour in accordance with their aims. Given the totalising demands of Nazism, the potential to classify such offences as demonstrating the ‘criminal’ nature of the offender was significantly increased. This was demonstrated though a study of 491 cases processed by the youth court in Munich (Jugendgericht München), and 120 cases that came before the Berlin court’s juvenile division (Jugendkammer bei dem Landgericht Berlin) – along with a handful of files from the Bremen Special Court (Sondergericht Bremen).34 It included information such as the accused juvenile’s occupation, their age, the frequently cited problems of the youths (such as ‘lack of education’, or ‘difficulties at home’), the type of offence they committed, and the sanction meted out by the court. Mapping out the changes in the judge’s grounds for a verdict allowed Wolff to evaluate the ideal of youth upon which the delinquents were measured. He posited that the juvenile judges in Munich:


33 Wolff, Jugend, p. 367.

34 See in particular Wolff, Jugend, pp. 274-339.
... confirmed an image of young delinquents that had roots in a conservative viewpoint. The delinquents were measured less in terms of an observation of their individual personality than they were through an ideal of the duty-conscious, hard-working, driven youngster – one who at the same time also assisted the interests of the völkischen Gemeinschaft in a comradely and selfless manner. 35

The legal deployment of the type and anti-type was also characteristic of courtroom practice in the Berlin youth courts during wartime, as will be demonstrated in Chapter 4. This also includes an evaluation of the judges themselves – something omitted in Wolff's study. In addition, a closer analysis of the court personnel themselves is lacking from what otherwise is a thorough and insightful study of juvenile criminal policy in the Third Reich.

More recently, Michael Löffelsender has researched criminal proceedings against youths in Cologne's Higher Regional Court (Oberlandesgericht). His study, a detailed qualitative examination of legal proceedings against youths and women in Cologne courts between 1939 and 1945, attempts to locate the area of criminal justice within a social and cultural analysis of the National Socialist Kriegsgesellschaft.36 Löffelsender concluded that from the beginning of the war, "criminal law and criminal justice were ascribed high importance in the strategic direction of the National Socialist Heimatfront-Politik".37 This is contrary to the idea of the criminal justice system as a weaker protagonist within the Nazi controlling and sanctioning apparatus, an accepted position within historical research for many years. In the context of ongoing historical debate concerning the Volksgemeinschaft, Löffelsender understands criminal justice as a central component in the dynamic of “inclusion” and “exclusion”, a dynamic that has in recent years been characterised as a central characteristic of Nazi society.38

35 Wolff, Jugend, p. 338.


38 For example: Michael Wildt, Volksgemeinschaft als Selbstermächtigung. Gewalt gegen Juden in der deutschen Provinz 1919-1939 (Hamburg, 2007)
Finally, Frank Kebbedies’ book entitled *Außer Kontrolle*, investigating juvenile criminal politics in the Third Reich and the immediate post-war period, has also been a major influence on my own study. Similarly to Kenkmann, he posits that an investigation that seeks to explain the “fight against career criminality and asociality” or “protective detention” purely through the years 1933 to 1945 is unhelpful. It obscures the incredible amount of energy expended on such issues in the period of occupation. Kebbedies book represents a succesfull attempt to describe the complex interdependence of social, discursive and institutional practices that conferred onto youth a potential for disorder that was seen as threatening the stability of the state. He refers to the 1953 Youth Court Law as legislation that drew on the “modernity” of the 1943 *Reichsjugendgerichtsgesetz*: modified and (cosmetically) cleansed of its specifically National Socialist elements. However, a history of legislative and criminological discourse is only a part of Kebbedies’ thought-provoking investigation. Revolving around the concept of juvenile criminal politics, the author examines societal changes from the end of the nineteenth Century, through the Weimar Republic, into the Nazi regime and onto the immediate post-war period. In doing so, the study plots the ways in which varying institutions conceptualised and re-conceptualised the ‘problem’ of youth, and the significance this had on ‘disciplining’ and controlling the young population. He concludes that the “ambivalence of assistance and control” led to “the increasingly greater intervention of state institutions ‘for the benefit of children and youths’” that formed a substitute for familial education and a legitimization for the growth of state supervisory networks. However, it simultaneously had the potential to protect youth from “abuse, maltreatment and exploitation”.39 During the period of Nazi dictatorship, this potential was only valid for those who were deemed to be racially valuable members of the *Volksgemeinschaft*. Kebbedies’ discussion of how the ‘criminal personality’ was legally and socially constructed both before and after 1945 was particularly useful for my own study. This construction, though apparently shorn of Nazi elements, was actually remarkably similar to the years before *Stunde Null*.

In chronologically ordered chapters, the study examines constructions of wayward youth, and their significance to ongoing questions about continuities and discontinuities in mid-twentieth century German history. Firstly, Section I (below) examines a

discourse on criminal youth that became particularly virulent during from the late nineteenth century.

Chapter 1, spanning the period from outbreak of war in September 1939 to the end of 1940, examines constructions of wayward youth during a period of mass mobilisation and disruption to traditional forms of policing. Despite the Volksgemeinschaft being apparently at full strength after rapid victories over Poland and France, seven youth laws and decrees were passed during this period. These were designed to clamp down on criminal behaviour that was perceived as potentially destabilising the so-called ‘inner front’.

Chapter 2 investigates the period 1941 to the end of 1943. After the German invasion of the Soviet Union in June 1941, and particularly after the catastrophic military defeat of the German Sixth army at Stalingrad in the winter of 1942/1943, the war took a new course. The chapter explores the numerous competing agencies involved in the policing of wayward youth, and investigates why it was necessary to codify the numerous disparate pieces of juvenile legislation into a Reich Youth Court Law (Reichsjugendgerichtsgesetz) introduced in November 1943.

Chapter 3, spanning the years 1944 and 1945, investigates the effect of ‘total war’ on constructions of wayward youth. Large-scale Allied bombing raids over Berlin and the rapidly approaching Soviet army had a huge impact on constructions of wayward youth. Fastening on to discourses on the criminal type established in chapter 1 and the legal procedures for treating wayward youth dealt with in chapter 2, it will demonstrate that in this period, a new phase in juvenile criminal politics was reached.

Chapter 4 investigates the period of Allied occupation from 1945 to 1948. Because of the rubble-strewn streets and hugely depleted capacity to police wayward youth, much of the construction of wayward youth investigated in the previous chapters remained. In particular, the chapter considers the significance of attempts to locate youth in a city divided up into four zones of military occupation.

Chapter 5, dealing with the years 1949 to 1953, explores how wayward youth affected the nascent states of East and West Germany. It finishes by examining the Youth Court
Law of 1953. This law dismantled a significant amount of the strands involved in constructions of wayward youth between 1939 and 1953.

The following section traces the birth and development of a juvenile criminal discourse over the course of more than five decades in order to map out the landscape upon which constructions of wayward youth between 1939 and 1953 were based. It will assess the importance of the birth of a “criminal youth”, delivered with the aid of published criminal statistics in 1882 that first brought the “problem of youth” to light. It will also examine the early development of a juvenile criminal discourse that, as we shall see, chiefly operated within a framework of social actors pursuing the identification of common criminal or wayward characteristics.

I. Discovering the adolescent

The period after childhood and before adulthood had, particularly since the late nineteenth Century, been regarded as the stage in life most fraught with temptations and difficulties that could potentially disrupt a young person from becoming a ‘morally healthy’, responsible adult. The rapid industrialisation of German society in the last quarter of the nineteenth Century brought a considerable expansion of the juvenile population. There was a corresponding tendency of this age group to become self-dependent earlier, with young people increasingly moving away from their families after finishing school to take up employment in industrial cities such as Berlin. There was widespread anxiety that they did not possess the experience and maturity to adequately cope with this change.

In both the industrial regions of Germany and the rapidly expanding new cities of the *Kaiserreich* around the turn of the twentieth century, there were proportionally more 

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41 The number of juvenile labourers under 16 tripled within the space of 20 years, from 155,642 (1886) to 452,317 (1908), Those aged 16-21 also saw a threefold increase within 16 years, from 578,421 (1892) to 1,174,880 (1908). See Christine Doerner, *Erziehung durch Strafe*, p.27f.

male workers between the ages of twenty and twenty-five than those aged eighteen or less. However, a nationwide trend towards a younger population, apparent until the beginning of the twentieth century, was not reflected in Berlin at this point in time.\textsuperscript{43} As a percentage of the total crime figure, the absolute number of twelve to eighteen year olds convicted of a criminal offence in Germany rose from 9.7 percent in 1882 to 11.3 percent in 1900. Youth crime itself rose by 78.9 percent between 1882 and 1912.\textsuperscript{44}

As a result of the ability to plot youth crime over time being compromised by an ever-increasing amount of youths in Germany, a crime figure (\textit{Kriminalitätsziffer}) was introduced that gave the number of youths sentenced per 100,000 of the juvenile population. The figure for the years 1885 to 1910 can be seen in Table 1 below:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
Year & Population & Juvenile pop. & Sentences & Crime Figure \\
\hline
1885 & 46,705,000 & 5,477,700 & 30,675 & 560 \\
1890 & 49,239,000 & 6,179,800 & 40,972 & 663 \\
1895 & 52,001,000 & 6,321,800 & 44,379 & 702 \\
1900 & 56,046,000 & 6,351,100 & 48,657 & 745 \\
1905 & 60,314,000 & 7,025,600 & 51,498 & 733 \\
1910 & 64,568,000 & 7,681,900 & 51,315 & 668 \\
\hline
\end{tabular}
\caption{Total Population within the German Reich, Juvenile (below 18 years of age) population, Sentences passed against Juveniles and the crime figure around the turn of the century}
\end{table}


As we can see from Table 1, the number of juvenile criminal convictions rose by around a third within the space of five years. However, it increased by more than two-thirds


\textsuperscript{44} Calculated from statistics given in the 1927 \textit{Statistisches Jahrbuch}. 

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between 1885 and 1910. By comparison, the number of convictions amongst the adult population in Germany up to 1890 rose by twelve percent, though from 1885 to 1914 convictions increased by some sixty percent.45 Jurists and social commentators alike saw this as a very worrying development. This ability to measure crime rates was a consequence of a law introduced in the early 1880s.

Section 563 of the Federal Council Protocol (Bundesratsprotokoll) passed on 5 December 1881 made provisions for „creating statistics for established cases of crimes and transgressions against Reich laws“46 For the first time in Germany, this allowed for the registration of statistical data relating to criminal prosecutions on a national scale. Shortly after the foundation of the German Empire in 1871, a central Imperial Statistical Office (Kaiserlichen Statistischen Amt) was handed the responsibility implementing these statistics. The main responsibility of this office was the coordination and standardisation of regional statistical data.

Every month, the court in which a criminal case was processed completed slips containing information on every crime they had processed. The first juvenile court in Germany was set up in Frankfurt am Main in 1908, with other cities soon following suit. Of the 1,950 local courts established by 1914, only 550 possessed specific youth court facilities. Of the 1,400 remaining courts, 672 had only one judge, with 646 employing two judges. “Technical problems occurred here due to the small size of the courts, whilst almost all larger local courts could separate the juveniles”.47 However, there was a concerted effort to note the name, age, occupation, religion, and marital status of the offender, along with the details of the crime itself and the sentence duly received from the presiding court judge, where one was imposed. The State Prosecutor of the Regional Superior Court (Landgericht) would then collect these slips (which were to number on average some 400,000 to 500,000 in the first years of the Second World War) from the 1,666 District and 155 Regional Superior Courts before sending them on to the


Statistical Office each month. Here the information was collected and sorted, allowing
the graphic depiction of the amount of crime in tabular format, grouped into various
different sub-sections such as type of crime, male or female, adult or juvenile.48

Statistical annuals (Statistisches Jahrbücher) gave, from the first publication of crime
statistics in 1885 (dealing with the year 1882), figures for the total amount of criminal
convictions occurring annually in Germany. These figures corresponded to the 1871
Criminal Code for the German Reich (Strafgesetzbuch für das Deutsche Reich, or RstGB),
which determined criminal law in Germany. Offences within the Criminal Code came in
three forms, defined by the punishment they carried: indictable offences, non-indictable
offences and violations (Verbrechen, Vergehen and Übertretungen). An indictable offence
could result in hard labour, more than five years imprisonment, or the death penalty
being applied. A non-indictable offence could lead to a term of confinement up to five
years or a fine. Finally, a violation was an offence punishable by custody in police cells
(Haft), or a fine of up to 150 Marks. Violations were not shown in the statistical tables
compiled by the Reich Statistical Office. However, information on the type of crime
committed (organised according to the Section[s] of the Criminal Code the person was
convicted under) was included, as well as whether the offender was male, female or
juvenile. Thus, for example, the amount of persons aged twelve to eighteen who were
found guilty of theft (whether petty (einfach) or aggravated (schwer)) in any year after
1882 could be ascertained by reference to the relevant column.

These criminal statistics were indicative of developments posing a threat to both state
and society. It made criminality ‘visible’. Paul Felix Aschrott, involved in the compilation
of Germany’s official statistics in 1889, exclaimed in 1892 that: “young delinquents are
building an army against which existing laws appear powerless”.49 An increasing crime
rate instigated nationwide discussions concerning the failure of socialising institutions
(for example family, school, and social environment) as well as in the ineffectiveness of

48 Ernst Roesner, ‘Wesen und Forschungsziel der Kriminalstatistik, sowie ihre Technik und
Nutzbarmachung im Deutschen Reich’ in: Blätter für Gefängniskunde. (Berlin, Aug-Nov 1941) p. 99 – 132,
p. 111.

49 Paul Felix Aschrott, Die Behandlung der verwahrlosten und verbrecherischen Jugend und Vorschläge zur
Reform (Berlin, 1892) p.1. Cited in Robert Wegs, ‘Youth delinquency & "crime": the perception and the
the state instruments of criminal prosecution. In the first decades of criminal statistics, crime rose. However, crime involving those aged fourteen to eighteen rose disproportionately, leading to an intensification of debates surrounding the ‘moral health’ of German youth. In the year 1882, the reformer Franz von Liszt proclaimed that “just as a diseased organ poisons the whole organism, so the cancerous effects of a rapidly increasing habitual criminality eats away further at our social life”. In the same year, however, there were calls for interpretative restraint with regards crime statistics. The theology professor Alexander von Oettingen, whose groundbreaking analyses of unpublished Bavarian crime data in the late nineteenth century provided an impetus for the first official national crime statistics in 1882, argued that high crime rates do not necessarily reflect moral decline. Rather, this “[could] also be ... a sign of advancing civilization, stricter penal legislation and a conscientious power of repression, and therefore derive from ethical motives”. As we will see in chapter 1, National Socialist jurists used arguments drawing on similar themes in their explanations for the rapid increase in crime and delinquency in the early years of the war.

Since their first publication, the discursive nature of crime statistics was more important than their ability to accurately gage amount of crimes committed. They contributed to a dramatic upsurge in societal and governmental discussions on youth crime. Statistical tables were unable to define what was meant by juvenile criminality on their own. They were involved in a process of constructing juvenile criminal discourse. This was informed by the activities of government, legal scholars, jurists, social reformers, pedagogues, prison officials, judges and policemen; but these social actors were also reacting to the impulses provided by quantifiable statistical data demonstrating rising or falling crime rates. Statistics, as the economic historian J. Adam Tooze has noted, “...are not neutral reflections of social and economic reality. They are produced by particular social actors in an effort to make sense of the complex and unmanageable reality that


surrounds them.” Crime statistics permitted an impression that criminality was under control through the visual depiction of those persons that had been identified, processed and finally convicted of a criminal act. They afforded an accurate measurement of the effectiveness of the prosecuting organs of the state – the police, the public prosecutors office, and the criminal courts. However, for reasons that will be dealt with in the course of the chapter, they were unable to give an accurate picture of the amount of actual crime. However, that which the statistics were unable to show also sheds light on the issues and difficulties surrounding the problem of youth crime.

In the first decade of the twentieth century, Shigema Oba, a Japanese lawyer working in Germany, coined a term somewhat ominous for those involved in compiling criminal statistics: the ‘dark figure’ (Dunkelziffer). Oba explained the ‘dark figure’ as the discrepancy between those crimes known to the authorities (and therefore able to be statistically registered) and those that remained unknown or unsolved. In 1949, the influential criminologist Franz Exner (who was also active during the Third Reich) described the ‘dark figure’ as representing the “main crux of criminal statistics”. The longevity of the term demonstrates the consistent influence that crime statistics had on juvenile criminal discourse.

The ability of statistics to determine the exact amount of crime is necessarily limited to those offences that had been reported or came to the attention of the police, and that had been processed through the legal system all the way up to the courtroom. Before 1953, only court statistics were collected – that is to say, only those offences that resulted in a criminal prosecution were registered statistically. According to the historian and statistician Helmut Graff, three main variables were involved in the reliability of criminal statistics. Firstly, the tendency to commit a crime is dependant on the type and form of crime committed as well as “numerous personal, social, economic and political factors”. Secondly, the reporting or propensity to report by the victim and population as a whole is similarly affected by various factors. These include: trust in the

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53 Shigema Oba, Unverbesserliche Verbrecher und Ihre Behandlung (Berlin, 1908)

54 Franz Exner, Kriminologie (Berlin, 1949), p.15.
authorities, fear of repression, personal situations, numerous environmental influences, the ability to legally order specific circumstances, and the aptitude of those questioned. Finally, the workforce available, as well as the type of offence, the social position of offender and victim, and the resources at hand all effected the energy put into prosecuting by the police, the state prosecutor and the courts.56

Crime statistics can only hope to relate a proportion of the offences actually committed. The possibility of an exact recording of a crime increases when the distance from the crime itself is considered, requiring all of the organs of prosecution to function perfectly in order that an absolutely ‘true’ crime figure is achieved. As the historian Dietrich Oberwittler has noted, the “historical development of criminality as recorded in statistics must always be understood as the product of ‘real’ delinquent behaviour as well as the society’s desire to control and repress this behaviour”.57 Such statistics tell us as much about the institutional structures set up to contain such behaviour than they do about the persons they are quantifying. The West German Statistical Office, in a centenary history of German official statistics published in 1972, made substantial efforts to emphasise the gulf between the practice of official statistics and that of Nazi government. Claiming the source of disorder and terror came from outside the Statistical Office, they portrayed civil servants as being innocent victims, conscientiously compiling disinterested, scientific tables only for them to be handed on to Nazi functionaries, who ‘misused’ them for political gain.58 According to J. Adam Tooze, the basis of this argument originated with Wolfgang Reichardt, President of the Statistical Office from 1933 to 1940. Reichardt wrote an introduction to a Festschrift for Friedrich Zahn, the retiring head of the Bavarian Statistical Office, in which he emphasised the necessity of maintaining ‘statistical confidentiality’. By this was meant that data collected from individuals was only to be used for statistical purposes and never for


instigating administrative measures against the individual.\textsuperscript{59} Yet this was not adhered to. For the purposes of the historiography on the official statistics, Reichard’s claim that statistics \textit{ought} to remain apart from politics was reinterpreted as a claim that such a distance \textit{was} maintained. This was rejected outright by Tooze, who argued, “the Statistical Office was undermined from within as much as from without. There was no clean line separating the chaotic Party from the orderly civil servants. Official statisticians were not merely victims; they were active participants in the factional politics that tore the German state apart”.\textsuperscript{60}

The historian Robert Wegs has ably demonstrated how the image of a dangerous youth was constructed through a comparison of late nineteenth Century public perceptions of youth crime in Austria with crime data from the period. An examination the crime data in terms of the nature of the violations, he argues, reveal as much about elite anxieties as they do about juvenile delinquency and crime. Here, he cites the social and cultural historian John Gillis’ claim that it “was probably the broadening definition of ‘delinquency’ rather than a greater disposition to crime that was the cause of the increase in the crime rate.”\textsuperscript{61} Wegs also contended “elites created a youth crime panic because of heightened fears of a changing economic, social and political environment that appeared to threaten traditional relationships”.\textsuperscript{62} There was a wide range of issues perceived to increase the threat posed by an “immoral, unstructured youth”. The transitional period between an ordered economic and social era (as it was viewed in retrospect) to a new turbulent, socially chaotic period brought with it new fears within society about urbanisation, the breakdown of traditional family values, and an increasingly independent, unsupervised youth with more free time and money. This led to the proliferation of terms such as ‘pleasure seeking’, ‘averse to work’, and ‘wayward’


in contemporary juvenile criminal discourse. These were seen as particularly problematic within rapidly growing cities such as Berlin. The economic historian Eugen Schwiedland noted in 1894 that urbanisation:

... separated the child and the youth from the healthy, invigorating breath, the educating peace and fullness of the open land, and confined it to narrow streets and sky-high walls; it closed the book of books for them, i.e., nature, and put them in front of window displays of the city with its dazzling, false, seducing splendor; transplanted immature, under-age boys and girls to the dangerous height of economic independence, and provoked them to reckless satisfaction of their adolescent craving for pleasure...\(^{63}\)

After the turn of the twentieth century, the psychiatrist Gustav Aschaffenburg asserted that large cities "exercise an enormous power of attraction over criminals and work-shy rabble (Gesindel), finding there a better place for their shady (lichtscheu) dealings, [and] an easier connection to the like-minded". Aschaffenburg also mentions that the "attractions" of the metropolis (above all termed as prostitution and heavy drinking) are "a boundless danger for the weak-willed". In the machinations of the city, Aschaffenburg noted, such persons come to thoughts of property theft much more easily than surrounded by the "simple conditions of the country".\(^{64}\)

There was a strand in the construction of wayward youth that was quite specific to the city environment. The protestant pastor Clemens Schultz, for example, wrote extensively on the urgent necessity of educating the Halbstarken.\(^{65}\) In a 1912 study that aimed at the 'improvement' of working class boys in the St. Pauli district of Hamburg, Schulz contended that that above all, the Halbstarker:

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...likes standing around idly in marketplaces [...] he is the sworn enemy of order [...] For this reason he hates regularity, he hates all things of beauty and above all he hates work[;] the orderly, regular fulfilment of duty. As a consequence, he has no feeling for that which makes life worth living for other people: home, family, friendship, not to mention enthusiasm, or the desire to get on in life.66

Jurists and social workers such as Schulz frequently stressed that youth must learn to appreciate the simple, uncomplicated surroundings of the countryside as a cure for the intoxicating distractions of city life. These distractions were often cited as the reason for criminal activity, in particular where the so-called opportunist criminals (Gelegenheitsverbrecher) were involved. Marxist theory in particular propagated the theory that the ever-increasing tempo of the modern industrial life was producing a population increasingly out-of-sync with its surroundings (particularly amongst the working classes). This was also memorably present in Emil Durkheim’s theory of anomie.67 Deviant behaviour, particularly focussed on the exploits of youth and the “critical and threatening” increase in youth crime, was characterised within this concept as a consequence of worsening living and working conditions in the city.68

There was widespread agreement by contemporary commentators that family life was not stable enough; that flats were not adequate; that working life was unsteady, and that „street life offered an allure that the child could not resist“. Furthermore, general consensus regarded youth’s social development as occurring at much too fast a pace, and that young workers were taken away from the steadying influence of fathers or masters far too soon.69 As representatives of a new class, a new way of life, differing in their attitudes to the traditional values and authority, the new proletariat were perceived as a threat to (bourgeois) society. The social locations of these upheavals were often the working quarters of the industrial cities, and youth were the age group in which the social developments were most strongly visible for middle class observers.

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66 Clemens Schultz, Die Halbstarken (Leipzig 1912), quoted from Elizabeth Harvey, Youth and the Welfare State in Weimar Germany (Oxford 1993), p. 34.

67 See in particular Emil Durkheim, Die Methode der Soziologie (Leipzig, 1908)

68 Michel Foucault interpreted oppositions to taxes, theft of wood, smuggling etc. as diffuse articulations of potential resistance (Widerstandspotential) against the form changes in everyday manufacturing conditions (Reproduktionsbedingungen).

The historian Dietrich Oberwittler has drawn attention to how a perceived waywardness of the young *Lumpenproletariat* became a cipher for the endangerment of society as a whole. Oberwittler noted how the problem of their integration in the labour market was just as worrying as their attitude towards religion and politics. This was exacerbated by a younger entry into working life, in contrast to the longer period of dependence (and socialisation) their parents would have experienced in adolescence. The welfare system, according to Detlev Peukert, was expanded in order to ensure a more integrated youth who were increasingly seen as occupying a space outside of institutional control (such as family, school, and workplace) – the *Kontrollücke* between school and army.  

II Youth crime in the First World War and the Weimar Republic

Anxieties concerning the social integration of youth were heightened further after the outbreak of war in 1914. Compared to pre-war levels, the number of juvenile convictions doubled, reaching close to 100,000 at its peak in 1918. Explanations for the notable increase in the juvenile crime pointed to a significantly altered familial environment. Male patriarchs had left for the front, women were occupied in war industries, and youths were “enjoying” (quite literally, to the chagrin of many social commentators) higher wages. Though the crime rate amongst minors had levelled off after the turn of the century, in the first quarter of 1914 there were 14,087 juveniles brought to trial in Prussia; 48,977 in the first quarter of 1918. Correspondingly, the national figures were 47,000 and 99,500. During the First World War, the sociologist Georg Auer posited that an increase in wages and greater social mobility in the job market had less of an effect than changes to the home environment. The author stated that, in the majority of cases that came before the youth courts, the onset of waywardness could be traced back to the conscription of fathers:

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72 Figures from Edward Ross Dickinson, *Child Welfare*, p. 233
It is no wonder that – with the father called up to military service and the mother forced to work for strangers as opposed to being occupied in the home – young family members (...) can give up honest work because of dirty doings (unsaubere Machenschaften) or at best cultivate this as an additional occupation (Nebenbeschäftigung) (...) Drifting around in the war-shaken city showed itself to be particularly suited for destroying (...) the good effects of a home education which holds certain dangerous tendencies in youth at bay.73

Herbert Vornefeld, Head of the Social Office of the Reich Youth Leadership (Hauptstellenleiter im Sozialen Amt der Reichsjugendführung) related in a Deutsche Justiz article in 1939 that the First World War, along with the damage it caused to the home front, was still fresh in the mind of government officials. Criminal statistics, he asserted, vividly reflected the proliferation of wayward youth during the First World War. Doubting their ability to gage the exact level of juvenile crime that occurred from 1912 to 1920 (the years dealt with in his article), he nevertheless regarded the sources of statistical error as possessing legal (rechtspolitischer) significance:

As a result of failures of supervisory organs during the [First World] War, many a crime remained unsolved and not atoned for. Not only was the father or guardian missing – on whom, as is well known, a not inconsiderable share of reported crimes fall - but there was also a lack of satisfactorily staffed prosecution agencies. Due to the great dangers to the further development of a youth present when he, after his first criminal act, is not immediately and energetically made conscious of the criminality of his actions, this situation gains a particular importance. 74

In terms of the development of juvenile typologies in the early twentieth century, there have been suggestions that the First World War played an important role as a turning point from the Halbstarken of the Kaiserreich to the ‘Wild Cliques’ of the Weimar Republic. Detlev Peukert contended that the years 1917 and 1918 were pivotal in “releasing the sub-cultural typology of the “Wild Clique” through youth being brutally exposed to a “fatherless” war society (Kriegsgesellschaft); to the authoritarian system’s collapse in 1918; to revolutionary upheaval; and to the disquiet of the inflationary


74 Herbert Vornefeld, „Die Jugendkriminalität im Weltkrieg“, in: Deutsche Justiz, No. 50 (Berlin,1939), BAB, R3001/alt R22/1157 (120).
But as has been shown, even prior to these considerable disruptions taking hold of Germany, there was already a blossoming literature concerning delinquent youth. As the historian Lisa Pine has correctly suggested, the ‘traditional’ family was in a considerable state of flux long before the Third Reich. The enormous loss of men during the First World War, along with women’s increasing independence (mainly through being employed as shop assistants, waitresses and office workers) and use of contraception led – by the 1920s – to a decline in the birth rate and a growing modernity in family life. This led to a strain between modernising tendencies on the one hand, and traditional German family values in the other. However, as the historian Elizabeth Harvey has noted in her study of Weimar youth, the discovery of adolescence was mythologized as an idyll unsullied by political or industrial upheaval, a necessary “cult of youth” with which to offset fears of the decadence and decline of civilization.

There was, in this way, an increasing need amongst political actors to typologise those youths - visible in an abstract sense as numbers within crime data tables, or in a very real sense as delinquent youths hanging around street corners – as criminal.

The high birth rate between the years 1900 to 1914 led to an over proportional number of young persons between fourteen and twenty-five applying for jobs and places within educational institutions: in 1910 these year groups numbered 40.2 percent of the German population, increasing to 44.8 percent by 1925. The number then dropped to 34.6 percent by 1933. Even more alarming was the dramatic decrease in births since 1910. In this year, a staggering 63.6 percent of the German population were under fourteen years of age. By 1925, this had fallen to 47.5 percent, and by 1933 the figure stood at 46.1 percent. As a consequence, two opposing problems were discussed during the Weimar Republic. On the one hand, there were simply too many youths attempting to fill too few jobs. On the other – taking the reduction in births since 1910 as their cue – there was the threat of an apparently ‘aging’ German population.

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76 Elizabeth Harvey, Youth and the Welfare State in Weimar Germany (Oxford 1993), p. 29.


78 Ibid, p. 61.
has characterised youth in the Weimar Republic as the “superfluous generation”.\(^7^9\) He argued that, whilst the period of industrial boom witnessed during the *Kaiserreich* had enough youths to fill positions in the rapidly expanding industries, and the demographers and politicians of the 1930s consistently spoke of there being not enough young people, the Weimar Republic was a period with “simply too many youths”. This, for Peukert, was the defining characteristic of the inter-war years.\(^8^0\) There were, though, many contemporary social, legal and educational commentators who attempted to define the state of youth. One term that consistently appeared was that of the ‘post-war generation’: a generation indelibly (negatively) affected by the travails brought by the years 1914 to 1918.\(^8^1\)

After the end of the First World War, there was a notable increase in media coverage surrounding cases of juvenile crime. This was catalysed by societal changes that brought about a more liberal educational system compared to the pre-war period. Additionally, there was a closing of the gap between what were formerly exclusively male and female group activities, earlier financial independence, and an increase in their amount of free time. These changes particularly upset newspapers belonging to the more protestant-conservative circles, such as the *Berliner Lokal-Anzeiger*. One particular case of juvenile delinquency studied by the historian Daniel Siemens noted the reaction of this particular newspaper to a case of three youths between the ages of fifteen and seventeen who

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\(^8^0\) Ibid, p. 37-38.

came before the criminal division of the Berlin Regional Court in January 1919. They were accused of forgery, embezzlement, multiple counts of fraud, and one count of involuntary manslaughter (*fahrlässige Tötung*). According to the *Berliner Lokal-Anzeiger*, one of the defendants, the sixteen-year-old dental technician Walter Schulz, received a monthly wage of 700 Reichsmarks from his last employers at a medical insurer in the Berlin suburb of Lichterfelde. This, as the newspaper stated below a large headline of “700 Marks a month”, was due to the lack of civilian workers during the war, and was used by the Schulz to sustain his “bride”. He, along with his two accomplices, fraudulently claimed 50,000 Reichsmarks of the medical insurers from the bank – money that was apparently used for visits to the theatre, champagne, and overly generous presents to girlfriends. In addition, Schulz bought himself two pistols, and in showing them off to a colleague, accidentally fired one of them, and in doing so killed his friend. This was, according to Siemens, at the centre of the process, yet the *Berliner Lokal-Anzeiger* afforded this less column inches than to a general theorising on the state of post-war youth under the heading “youth of today”.

The post-First World War period saw numerous debates concerning the damaging effects of war on young people as plans were drawn up for a Law that would cater specifically to the ‘educational’ needs of youth. A Reichstag session of 1922 noted:

> In the main, the delinquency of youth leads back to a lack of the necessary education during the long war years. Fathers and guardians were called up into the army. Many mothers did not have the sufficient time to look after their children on account of the economic necessity. Frequently, schools had to be closed for weeks and months. Youth had to enter working life earlier than otherwise. With insufficient observation and often with substantial funds procured from their own activities, many juveniles, especially in the larger cities, were led into temptation and on the path to crime. The reason for the delinquency lay in a deficiency of education, so it is now imperative to place the thought of education in the foreground.

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A law for the protection of youth was included in the plans for re-structuring state and society. However, that Articles 120\textsuperscript{85} and 122\textsuperscript{86} were attached to the new Constitution was not inevitable, and the question was debated at length in parliament.\textsuperscript{87} When, and for what purpose the state could interfere in the right of the parent to educate their children was for the first time legally defined. Articles 120 and 122 provided the backbone of a Reich Youth Welfare Law of 9 July 1922 (Reichsjugendwohlfahrtsgesetz).

The central premise of the 1923 Youth Court Law was the right of German children to a proper education, with the state able to intervene in the event that this could not be sufficiently guaranteed by their parents or legal guardian. State Youth Offices and Youth Court Assistance Organisations were established in order to provide the requisite supervision and education necessary, where these were judged to be previously lacking.

Legislation to curb potential disorder amongst youth went further. A Law for the Protection of Youth from Trash and Filth Writings (Gesetz zur Bewahrung der Jugend vor Schund- und Schmutzschriften) was passed on 18 December 1926.\textsuperscript{88} An index of works deemed to constitute “trash” (Schund) or “filth” (Schmutz) was compiled by a specially commissioned inspection authority (Prüfstelle) set up by the Reich Ministry for the Interior, in cooperation with local governments. Henceforth shopkeepers, street vendors, and even librarians were prohibited from selling, receiving orders for, advertising, hawking, or in any way displaying indexed writings in public.\textsuperscript{89} The impetus

\begin{footnotesize}
\textsuperscript{85} „Die Erziehung des Nachwuchses zur leiblichen, seelischen und gesellschaftlichen Tüchtigkeit ist oberste Pflicht und natürliches Recht der Eltern, über deren Betätigung die staatliche Gemeinschaft wacht.”

\textsuperscript{86} „Die Jugend ist gegen Ausbeutung sowie gegen sittliche, geistige oder körperliche Verwahrlosung zu schützen. Staat und Gemeinde haben die erforderlichen Einrichtungen zu treffen. Fürsorgemaßregeln im Wege des Zwanges können nur aufgrund des Gesetzes angeordnet werden.”

\textsuperscript{87} For a more detailed discussion of the Constitutional drafting and significance of these two Articles, see Fritz Franztiöch, Die Entwicklung des Gesetzlichen Jugendschutzes in Deutschland (Hamburg 1971), p. 10 – 19.

\textsuperscript{88} RGBl. 1926 I, p.505-506.

\textsuperscript{89} The Prüfstelle consisted of a chair from the civil service and eight experts – two each from the fields of art and literature, the book and art trade, youth charity and youth organisations, along with teaching and adult education. See Margaret F. Stieg, “The 1926 Law to Protect Youth against Trash and Dirt: Moral
for the law was the government’s concern that the huge increase in printed magazines, periodicals, and books had flooded the market with works that were harmful to the moral health of those ‘impressionable’ youths who consumed them. Various commentators attributed the rapid rise in criminality to being in part influenced by trash literature, most prominently and consistently the district court judge and criminologist Albert Hellwig. Remarking on the results of a questionnaire sent by Hellwig to local youth authorities during the First World War, he noted “in 1910 the public prosecutors of Bremen (including official lawyers) brought 1685 cases against juveniles. Of these 94 were sentenced to prison, and 262 to the youth court. In 44 of the 1685 cases, not all of which include reports, frequent visitations to the cinema was asserted, and in 23 the reading of trash writings”.

Hellwig was also responsible for an article that appeared in the legal journal Der Gerichtssaal in 1916 that examined five juvenile criminal cases where trash writings and trash films (Schundfilme) could –in his opinion- be viewed as stimulants in the committing of criminal acts. The author however admitted, “it is extremely difficult to establish the adequate proof of such a connection in any concrete case”, stating later in the article “that […] such a connection exists can be doubted by no-one who is seriously involved in criminal-aetiological research.” The consuming of trash writings acted as an accelerator in the process of a juvenile becoming criminal, though constituting an act that was in itself not enough to turn a youth criminal. Rather, Hellwig understood it as part of the unfavourable influences affecting young people that over time could help bring about a “disposition tending to crime”.

Such qualifications were increasingly absent after 1933.

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III Juvenile criminal politics in the Nazi state

Two rhetorics dominated the official discourse about governmental structure and civil-service policy in Nazi Germany: the rhetoric of unity, concentration, and rationalization, and the rhetoric of crisis. These represented the polarities of administrative experience: on the one hand, an aspiration for clarity of structure, decision making, and policy execution; on the other, a recognition that this had entirely eluded policy-makers, and that the ostensible bearers of the structure were in equal disarray 92

The Third Reich was, more than most epochs, characterised by a constant re-negotiation of past, present and future. The future, it was consistently stated, belonged to Germany. Yet the actions of certain members of the Volksgemeinschaft – in reneging on their duties to ensure this brighter future – were evidence that the path was not a straight one, and that the movement thereon was not strong enough to carry all along in its slipstream. The group most consistently associated with ensuring a bright future were Germany’s youth.

After the Machtergreifung of the National Socialists in 1933, but particularly after their absolute consolidation of power in 1934, leading jurists within the NSDAP worked to radically alter criminal law in order to reflect, and indeed further, the ideological goals of the regime. Because Nazi ideology placed the Volksgemeinschaft at the forefront of all societal values, the traditional positions of state and law were, as a direct consequence, noticeably altered. No longer were they stand-alone values, but rather stood primarily in the service of the Volksgemeinschaft and existed only to serve its protection and advancement. The individual, as a “member of the Volk whose purpose in life consists of the fulfilment of his duties to the whole Volk (Volksganzen)” therefore owed it unconditional loyalty. Law was no longer required to regulate the relationship between individual and state; rather it existed solely for the advancement of the “Volk’s right to life” (völkischen Lebensrechtes) vis-à-vis the individual. Within this system, criminal law, as a “mirror image” of the state’s being, had the task of serving the “purification and

 protección requirements of the Volk”. Rights and duties within society and the state were bound to the Nazi ideal of a racially defined community – a community where Germany’s youth gained an entitlement to be “educated” (albeit in a limited sense, as we shall see) in how they were to serve its key concepts of “honour” and “loyalty”. There was a new definition of the criminal in order to emphasise that their behaviour not only went against their duty to be loyal to the Volk – thereby also resulting in their loss of honour – but also demonstrated their lack of “communal spirit” (Gemeinschaftsgesinnung). As the leading Nazi jurist Georg Dahm stated in 1935, “it is not the causation of the result that is punished, rather the confirmation of dangerous and Volk-hostile (volksfeindlich) intent. The criminal is captured, not the crime”.

The distance between ‘educable’ and ‘uneducable’, already in evidence before the Nazi seizure of power, was widened considerably after 1933. In order to “care for and develop the best racial elements”, Hitler stated that:

> ... in the first instance, educational work should not be geared towards the pumping in (einpumpen) of mere knowledge, but rather to the cultivation of healthy bodies. The development of character – in particular the promotion of willpower and decisiveness that is connected to a love of responsibility - is secondary to this. An academic education comes only in the last instance.

Individuality, particularly that which was viewed as disconnected to the Volk’s interests, was unequivocally not to be tolerated. Collective movement towards a pure, racial state was to be promoted in every instance. Anathema to this was the characterisation and definition of the criminal type.

A typology of the offender was deployed with particular ferocity by criminologists and jurists due to the exigencies of the home front after 1939. However, the onset of war did not create an entirely new structure for the policing of criminal youth. Rather, it resulted in an intensification of developments that were already present in the juvenile justice

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95 Adolf Hitler, Mein Kampf (2), p. 451f.
system. After the Nazi seizure of power, debates concerning the educability of the
criminal intensified significantly. One of the key components informing this debate was
the extent to which criminal behaviour could be attributed to heredity or environment.
It will be argued below that the legal, criminological and social establishment of the
_Täterpersönlichkeit_ (criminal personality) was well established at an early stage of the
Third Reich. This is testament to the to the rise of ‘criminal-biological’ expertise, in
conjunction with the Nazi regime’s consistently stated ‘war against criminality’.

In June 1933, The Criminal-Biological Society (_Kriminalbiologische Gesellschaft_)
convened in Hamburg for the first conference of criminologists under the Nazi regime.
According to Adolf Lenz, the Austrian Professor chairing the conference, the society was
“founded on the aspiration to bring together the multifarious methods of approach
(_Betrachtungsweise_) regarding the actions and personality of the offender from the
standpoint of medicine, psychology and legal expertise into a uniformly criminal-
biological method”.96 During his introductory speech, he complained that the “criminal-
political energy” during the previous “liberalistic-individualistic” period had been
obliterated by “the multiplicity of opinions on the essence and nature of punishment”.
Following on from this, Lenz was unequivocal that:

The opinion that the criminogenic causes found in heredity (_Anlage_) and environment necessitate a
milder judgement of the act and the offender is... biologically untrue. When it is concluded that an
inferior disposition on social or legal-moral grounds played a role in the act, a stricter judgement
must follow. Though there is often a majority of conflicting dispositions that make up the criminal
personality, it is not to be disputed that in the moment of criminal action, a domination and
subordination (_Über- und Unterordnung_) of the singular dispositions occur to produce a biological,
uniform realization (_Entäußerung_) in crime. 97

This is a line of argument that not only corresponded to, but also bolstered, the aim of
the Nazi regime to remove and ‘render harmless’ those that they considered to be
criminal. The Criminal-Biological Society was quick to throw its weight behind the new
German state. The proliferation of criminological terms in the passage above was not

96 Adolf Lenz, ‘Begrüßungsansprachen’. _Mitteilungen der Kriminalbiologischen Gesellschaft. Tagung in
Hamburg, 7-10 Juni_ (Graz, 1933), p. 17.

97 Adolf Lenz, ‘Begrüßungsansprachen’. _Mitteilungen der Kriminalbiologischen Gesellschaft. Tagung in
Hamburg, 7-10 Juni_ (Graz, 1933), pp.17-18.
used to pinpoint the causes of crime, or to suggest how best an offender could be re-educated. Rather, it reinforced the idea of the existence of ‘criminal personalities’ who were biologically predisposed to commit crimes. The dramatic simplification of individuals, and individual causes present in a criminal act had a profoundly political use. It provided the legitimization for severely punishing those within (or potentially within) legally elastic definitions such as ‘asocial’, ‘career criminal’, or ‘psychopathic offender’. This was clearly present in the work of another criminologist present at the Criminal-Biological Society conference. The psychiatrist Werner Villinger, in a paper written for the conference entitled ‘Unemployment, Work-shyness and Feebleness of Mind (Verstandesschwäche) of young criminals’, contended, “unemployment and unemployment are not the same”. There were those who are unemployed “due to fate” (schicksalbedingt), and those who were unemployed “due to their person” (personenbedingt). The first group were “faultless people”, unemployed purely because of a lack of work (Arbeitsmangel). “We find this group seldom amongst the criminals”.98 Quite the opposite, Villinger stated, is true of the second category. Here, unemployment, with its “moral instability, its boredom, its petulance, and its necessity to release workers” is regarded as too stern a test for those who were considered “morally or mentally lacking”, and frequently resulted in their becoming criminal. Villinger specified that such cases were in the domain of the youth psychiatrist – being frequently referred to them due to Section 3 of the Youth Court Law (regarding the ‘criminal culpability’ of the offender). “This group is of particular interest to the criminal-biologists, as a good proportion of those later career criminals are to be found in their midst”.99 In seeking to provide an explanation of why the personenbedingt unemployed committed a greater proportion of crimes, Villinger proposed that in a handful of cases, “the evil games of inert parents, siblings and comrades – particularly in times of fluctuating pensions, unemployment and medical insurance – may have played a part. The rest of the lazy and


work-shy fall, somehow biologically, out of bounds of the norm”.\textsuperscript{100} This is tantamount to an admittance that criminal-biology does not have the capacity to scientifically pinpoint the reasons why a criminality occurs. However, this was never its main objective. One can observe here the deployment of criminal-biology to ‘scientifically’ promote the ‘fact’ of criminal personality for National Socialist political gain. Nevertheless, the majority of criminal-biologists were unable to dismiss social causes of crime entirely, and that in many instances, there was an admittance that changes in the social milieu of a recidivist could prevent them from reoffending. But this was often followed by the caveat that because the environment could not, in practice, be changed, the criminal had to be defined as ‘incorrigible’. In his study of German criminology, Richard Wetzell stated that, “the prognosis of incorrigibility was not based on the conviction that the individual’s criminal behaviour resulted from unalterable genetic factors but on the belief that it was simply too difficult to change the social factors involved”.\textsuperscript{101} This was, as shall be demonstrated, particularly the case during the wartime period, where an offender’s particular environment was changing rapidly due to the conditions of the home front.

In the conclusion to his paper, Villinger wrote that an improvement on the current situation could only be assured through a thorough reform of the education system; one that was removed from the “exaggerated individualisation and sentimental softness of the previous decade”, through a cultivation towards a “sense of responsibility bound to religious and moral, healthy and national values”.\textsuperscript{102} Furthermore, the healthy German family should be restored. Lastly, and most importantly, eugenic measures should be introduced to prevent the “biologically unworthy” and “hereditarily mentally deficient” from reproducing.

\textsuperscript{100} Werner Villinger, ‘Arbeitslosigkeit, Arbeitsscheu und Verstandesschwäche bei Jugendlichen Kriminellen’. \textit{Mitteilungen der Kriminalbiologischen Gesellschaft. Tagung in Hamburg, 7-10 Juni} (Graz, 1933), p. 158.

\textsuperscript{101} Richard Wetzell, \textit{Inventing the Criminal}, p. 299.

Juridical debate had, particularly since the turn of the twentieth century, been shaped by the tension between a ‘lawyer’s law’ on the one hand, and people’s ‘innate sense of justice’ (gesundes Volksempfinden) on the other. This was intensified after the Nazi seizure of power in 1933. Wilhelm Stuckart, a judicial civil servant who had joined the NSDAP shortly before 1933, deemed this lawyers’ law (or Juristenrecht) to be abstract, materialist, and out-of-sync with the ‘law of life’ - the Volksrecht that derived from the moral values of the national community.103 Those accused of ‘behaviour inimical to society’ were classified by the legal apparatus of Nazi Germany as being ‘asocial’. In essence, any form of behaviour that assisted the stability and health of the Volk was viewed as social. Conversely, any activity that was seen to deviate from a recognised or stipulated societal norm was considered ‘asocial’.

In 1938, the Gestapo and the police instigated a nationwide campaign to ‘root out’ such deviants. The ‘Action Workshy Reich’ (Aktion Arbeitsscheu Reich) led to around 20,000 criminals, alcoholics, prostitutes, pimps, vagabonds, beggars and care home pupils (Heimzöglinge) being rounded up and sent to concentration camps. As a result of his, the prisoner population of these camps shifted decisively. By the end of 1938, the Sachsenhausen concentration camp just north of Berlin reported that some 57 percent of the inmates were ‘asocial’.104 As the historian Nikolaus Wachsmann has asserted, there was a determination to ‘root out’ deviance amongst regional and local police that found practical expression in such campaigns as the ‘Action Workshy Reich’– the basis for which being a decree passed in late 1937 that threatened ‘professional and habitual criminals’ and those guilty of ‘asocial behaviour’ with preventive police detention (Polizeiliche Vorbeugungshaft). Though the comprehensiveness and violence that accompanied the Nazi persecution of ‘asocials’ was unique, the criminological problem of how to deal with such social outsiders was one that was also discussed in other countries. The Swedish criminologist Harvey Göransson, for example, expressed in an American scientific journal from 1938 that “the treatment of asocial persons is a

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question which concerns everyone, since criminality and other social conduct means heavy economic burdens on the community and a constantly threatening danger to life and property. It is not only humane but [also] prudent to prevent and combat such phenomena. A very special interest is associated with the efforts to return the criminal and delinquent youth to an honest and socially useful life”.

The problem was similarly described, but the methods and practices deployed to 'solve' it differed significantly, as we shall see. Yet even after the war, the criminologist Wolf Middendorf could cite Sauer’s description of the act of theft as the “typical crime of the poor people, namely the young and ignorant (ungebildet), as well as weak, anchorless, workshy persons, and those who tend towards them”.

“The challenge for the National Socialist regime”, as the historian Jane Caplan has noted, “was to find the means of expressing an ideology which embodied the these healthy and sound values, as a Rechtsordnung, a legal order.” In practice, this was an impossible task. The legal system was consistently in a state of flux, with new and supposedly definitive laws and decrees being continually issued. Almost as soon as they had been introduced, ideas and circumstances altered, and new enactments became necessary. This was particularly evident during the Second World War, where increasingly innumerable sources of law existed (though not necessarily published), without anything like one comprehensive reference work to consult. From 1939, “German administrative policy was increasingly dictated by the exigencies and timetable of the war”, a war who’s ultimate goal was the:


terритори and spiritual refoundation of Germany ... linking the home and military fronts in a vast project of totalizing regeneration. Yet [...], the outline of the New Order that would arise at the end of the combat remained cloudy and indistinct. Temporization and deferral marked the wartime planning that did occur – as if institutions, like cities, must first be reduced to rubble by the accidents of war before they could be cleared and rebuilt.109

This was described by the author as representing the crux of the fight against criminality. The invasion of Poland on 1 September brought this fight against criminality into a new phase, as will be demonstrated in the following chapter.

Chapter One: Policing the home front, 1939 – 1940

The Second World War was characterised by Hitler as a “fight for the destiny of the National Community” (Schicksalskampf der Volksgemeinschaft). As he emphasised to members of the Wehrmacht on 23 November 1939, there was to be “externally no capitulation, internally no revolution”.\(^{110}\) This was a view from which the National Socialist regime did not deviate throughout the war. On 5 November 1941, Hitler proclaimed to the Reichsführer-SS and Head of Police Heinrich Himmler that:

> If I allow criminals to be kept alive at a time when the best men die out there, then I shift the balance of the people ... Degeneracy will start to triumph. If the nation faces an emergency, then a handful of the criminals that remain can deprive the fighters of the fruits of their sacrifice. We saw this happen in 1918.\(^ {111}\)

This was the propagandistic landscape that justified the introduction of a flood of measures with which to protect the Volksgemeinschaft from real or presumed enemies within. The period immediately after the outbreak of war saw the introduction of legislation designed to combat real or perceived threats to the German war effort. This was informed by the experiences of the First World War, along with Germany’s defeat and subsequent revolution in 1918. After the German invasion of Poland on 1 September 1939, constructions of wayward youth became heavily influenced by a ‘moral panic’ surrounding the breakdown of traditional familial, social, and educational ties brought on by the exigencies of a society at war. The absence of fathers at war, the increasing

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occupation of mothers within the war industry, and the mass mobilisation of youths aged eighteen and above led to widespread concerns about the moral health of youth on the home front. This was a group increasingly viewed as at risk from degenerating into criminals. The friend to or enemy of society propagated by National Socialist ideology was accelerated by a juvenile criminal politics that became polarised - either in defining youth as misguided, impetuous yet ultimately educable; or as deviant, impulsive, incorrigible criminals. Youths who were defined as dangerous criminals were no longer connected with juvenile traits. The particular reprehensibility and seriousness of their acts could be purported to demonstrate a complete disregard for he aims of the Volksgemeinschaft.

Writing in the first year of the war, the Nuremberg sociologist Marie Beck described waywardness as “the development of abnormal modes of behaviour due to certain dispositions of character and environmental influences that do not merely not correspond to the Volksgemeinschaft’s requirement of social order, but lead to the genetic deficiency of the community, or that living together is damaged – even made impossible”. Indeed, within the first two months of the war, new legislation introduced the terms ‘serious young offender’ (jugendlichen Schwerverbrecher), ‘National Pest’ (Volksschädling), and ‘violent criminal’ (Gewaltverbrecher) into everyday legal practice. Those defined as such by the justice system found themselves outside the traditional boundaries of juvenile justice, and could thereby be designated as criminally responsible for their actions. Henceforth, youths could be punished according to adult law. As this chapter will demonstrate, this was a practice legitimised through a radicalised construction of wayward youth. It was a practice that deployed theories that certain character types possessed an innate disposition towards criminal activity. Their crimes were vociferously purported to be endangering the stability and moral unity of the home front by institutions charged with their policing. This chapter assesses

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112 In peacetime, all German males were liable for military service from their eighteenth birthday until the 31 March following their forty-fifth birthday. By the end of the war, conscription was extended to include those aged seventeen (those born in 1928) to sixty-one (the class of 1884). From U.S. War Department Handbook on German Military Forces (1945), p.55.

113 Marie Beck, Die Verwahrlosung als soziologisches Problem (Langensalza, 1940), p. 11. [auf Grund von bestimmten Charakteranlagen und Milieueinflüssen erfolgte Entwicklung abnormer Verhaltensweisen, welche der Forderung der Volksgemeinschaft auf soziale Einordnung nicht nur nicht Entsprechen, sondern dazu führen, daß die Gemeinschaft erblich belastet, oder das Zusammenleben gestört, bzw. unmöglich gemacht wird]
constructions of wayward youth during a period where the war was going well for Germany, and the *Volksgemeinschaft* was seen to be at full strength.

A Decree for Protection against Serious Young Offenders (*Verordnung zum Schutz gegen jugendliche Schwerverbrecher*) was introduced less than one month after war began.\(^{114}\) As will be demonstrated in the chapter, the concept of ‘protection’ was deployed in an altogether different context in a ‘Police Decree for the Protection of Youth’ (*Polizeiverordnung zum Schutz der Jugend*) passed on 9 March 1940.\(^{115}\) Ideas about the term ‘protection’ constantly informed many of the juvenile laws and decrees enacted by the Third Reich between 1939 and 1940, and as we shall see in chapters four and five, they continued to influence legislation in the period after Germany’s capitulation.

Using the various laws and decrees as signposts, the chapter places them in context regarding their contemporary importance, whilst utilising micro-level information gained from criminal court case proceedings. The chapter will show that this is a distinct period in terms of the method and deployment of policing waywardness. As will be demonstrated in chapter 2, the period from 1941 to 1943 saw a shift in juvenile criminal policing as a result of the war turning against Germany, and towards the streets of the home front.

The police were responsible for mixing at will preventative, controlling and selective measures of the executive with legislative measures. The result was a tangled web of competencies between the justice ministry, the Reich Youth Leadership (*Reichsjugendführung*), and the police. This led to an increasingly disordered and discordant policy towards controlling wayward youth. This was only partially remedied by a 1943 Youth Court Law (*Reichsjugendgerichtsgesetz*), a piece of legislation that bundled together many of the strands created by laws and decrees promoted by often competing organisations and administrative departments. The Youth Court law and its significance will be assessed in Chapter 2.


Before the war began, notable efforts to combat youth crime had already been made. On 1 July 1939, a ‘Central Reich Office for the fight against youth criminality’ (Reichszentrale zur Bekämpfung der Jugendkriminalität) was established.116 This organisation, within Section V of the newly established Reich Central Criminal Police Office (Reichskriminalpolizeiamt), was charged with the task of monitoring children and youths who appeared to be “considerably burdened by criminality” as well as registering the children of “career criminals” (Berufsverbrecher).

The ‘Decree for Protection against Serious Young Offenders’ (Verordnung zum Schutz gegen jugendliche Schwerverbrecher) (henceforth referred to as DPSYO) was enacted on 4 October 1939.117 Subsequently, the DPSYO was incorporated into the Youth Court Law of 6 November 1943, before eventually removed from the statute books by a Youth Court Law of 4 August 1953. The DPSYO provided the legal framework for persons over sixteen years-of-age to be sentenced according to adult law “when the intellectual and moral development of the offender corresponds to a person over eighteen years-of-age, and when the particularly reprehensible criminal conviction displayed with the act or [emphasis is mine] the protection of the Volk requires such a punishment”.118 Before this decree was passed, youth could only be sentenced before a youth court.119 The decree allowed for the internment of youth in a penitentiary (Zuchthaus) or the application of the death penalty. The DPSYO was designed to exclude “exceptional” youths from the “protective clutches” of juvenile law where the seriousness of the crime and/or establishment of “deviant character” demanded their lengthy or indeed permanent exclusion from society.120 Determining how uniquely National Socialist this law was is important in contextualising juvenile criminal politics during the wartime

118 Paragraph 1, Section 2 of the VO zum Schutz gegen jugendliche Schwerverbrecher, RGBl I, p. 2000.
119 Although according to Section 3a of the Decree of the Reich Government regarding the Jurisdiction of Special Courts (Verordnung die Reichsregierung über die Zuständigkeit der Sondergerichte, 6.3.1933 in: RGBl I, p.259) it was permissible, under § 6 of the Amending Provisions of Criminal Law and Criminal Procedure (Gesetz zur Änderung von Vorschriften der Strafrechts und die Strafverfahrens, 24.4.1934, in: RGBl I, p.314f), to transfer juveniles committed of high treason to the People’s Court (Volksgerichtshof).
and post-war periods in Germany, as it provided a new legal basis for (severely) punishing a specific construct of wayward youth.121

As a consequence of the decree, at least 72 juveniles were sentenced to death between the end of 1939 and the summer of 1943, with a further 263 receiving penitentiary terms. In 1942, 107 youths were sentenced according to the general criminal law as serious young offenders. 24 of these received the death penalty. 43 cases involved internment in a penitentiary for three to fifteen years, 18 a term of up to three years, and a further 22 were handed long-term prison sentences.122 Jörg Wolff’s comprehensive study of juvenile court practices in Berlin and Munich during the period 1939 to mid-1943 uncovered two cases (both in Munich) of persons under sixteen being sentenced according to the DPSYO, one fifteen-year-old being sentenced to eighteen months in prison for looting (Plünderung) and another fifteen-year-old receiving a one year prison term for a sexual offence (Unzucht).123 Its ineffectiveness was due partially to the constant debates by juridical and social commentators of how a ‘serious young offender’ was actually to be defined - for example whether it should rest on a dispositional or sociological definition.124

However, there were those who pleaded for an acknowledgment of mitigating factors. They included Mathilde Kelchner, a social worker based in Berlin. She described young criminals drawn from files of the Jugendgerichtshilfe in 1939 and 1940 as follows:


122 See Bruno Blau, Die Kriminalität in Deutschland während des zweiten Weltkrieges’, Zeitschrift für die gesamte Strafrechtswissenschaft, Nr. 64 (1), pp. 31-81, here p. 72. Also see figures reproduced in Ulrike Jureit, Erziehen, Strafen, Vernichten: Jugendkriminalität und Jugendstrafrecht im Nationalsozialismus (Münster, 1995), pp. 65-66, and Wolff, Jugendliche, p. 41-43 (also comparing death sentences for (adult and juvenile) Violent Criminals (Gewaltverbrecher) and National Pests (Volksschädlinge), two decrees that will be dealt with later in the chapter.

123 See Wolff, Jugendliche, p. 285 for details of the two cases, including the judge's summary.

The picture of the accused mirrored in our files shows them to us as juvenile personalities. We see them at a time of development that still clearly demonstrates specifically childish traits, above all lively, impassioned reactions, strong lustfulness, impulsivity of action, lacking self-discipline, ease of seducibility, defiance, above all helplessness and also self-help. [...] The overwhelming lust for life, manifesting itself in a hunger for experience, drives the youth with growing physical power to perils of all sorts that above all mean defiance of authority and the disregarding of former limitations. A striving for pleasure leads the way more often than the imagination.125

Before this is explored further in terms of its importance to the construction of wayward youth during the wartime period, it will be necessary to elaborate on the origins of the DPSYO. One particular case in 1938 gave the Nazi government new impetus to re-configure the image of a perpetrator. On 7 November 1938, in the German embassy building in Paris, Herschel Grünspan fired off five shots at German legation secretary Ernst vom Rath. Vom Rath died days later as a result of this attack. Grünspan, a seventeen year-old Polish youth of Jewish descent, was arrested and tried by French police. After the German invasion of France in 1940, the Vichy government handed him over to the Gestapo, who subsequently interned him at the Sachsenhausen concentration camp located just north of Berlin. Grünspan did not survive the war.

National Socialist jurists such as Edmund Mezger stressed that such ‘incorrigible offenders’ should be recognised from an early age, and consequently removed from the ‘healthy body of the Volk’ in order to prevent them from ‘infecting ‘those racially valuable elements. This case influenced the sharpening of the law to deal with ‘precocious’ youngsters who were described as hopeless, degenerate individuals who were getting away with murder.126

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126 There was some question of Grünspan’s act being more privately as opposed to politically motivated - allegations the Nazi regime was keen to play down. See 'Lebt Herschel Grünspan noch?', Die Zeit, Nr. 48, 25 November 1960 [http://www.zeit.de/1960/48/Lebt-Herschel-Gruenspan-noch] The Grünspan case was in the first instance a trigger for the “spontaneous” Night of Broken Glass (Kristallnacht) on 9-10 November 1938. This resulted in the arrest of some 30,000 Jewish people, the destruction of more than 250 synagogues, and the looting of over 75,000 Jewish businesses.
The following case of juvenile murder had a key bearing on the formation of the DPSYO. In mid-August 1939, Hitler was handed a report concerning Walter W., a seventeen-year-old in Silesian (then in West Prussia; today in Poland) correctional education, who was convicted of murdering his employer. Despite the maximum punishment permitted by German criminal law standing at ten years imprisonment, Hitler decreed that the death penalty should be applied. He demanded that a corresponding legal basis should be introduced as quickly as possible. Roland Freisler, at the time director of the criminal law department of the Akademie für Deutsches Recht (Academy of German Law) and particularly involved in Tätotypenlehre (studies of criminal types), presently offered a new draft within two days that gave the age limit on receiving the death penalty at completion of the seventeenth year. He received notice back that this was not low enough, and that it should be corrected to include younger age groups.\(^{127}\) That the DPSYO could also be applied retroactively was a consequence of Hitler's demand that Walter W.'s sentence be corrected. This first of all demonstrates Hitler's obvious contempt for the normal workings of the legal system.\(^ {128}\) It also indicates the knee-jerk reaction, in this case instigated by Hitler, to sensational cases of criminality within juvenile criminal politics, basing decisions on exceptional cases in order to justify policy valid for the entire German juvenile population. The National Socialist government could use this to their advantage, citing an individual trait displayed during a criminal act as symptomatic of a general juvenile precociousness amongst a section of German youth, then using this as justification for draconian legislation to curb the problem. Forcing parity between individual and societal notions of the criminal was to reach a new phase once the Second World War began.

Writing in the Academy for German Law (Akademie für Deutsches Recht) in 1940, the leading Nazi criminologist Edmund Mezger wrote that the DPSYO "touches on one of the most problematical and burning criminal-political questions of today: the distinction between racially valuable juveniles, whose derailment possesses no further importance for his or her future development (the type for which the Youth Court Law was created)"

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\(^{127}\) For further details, see Gruchmann, Justiz, p.910f.

\(^{128}\) According to the Jörg Wolff, this event was "a typical example of the spontaneous, isolated case-oriented decision-making style of Hitler's, one which employed no systematic considerations whatsoever" See Wolff, Jugendliche, p.37.
and the future offender, whose criminality as we recognise today, begins extraordinarily often in early childhood”.129

With this explicitly racial statement, Mezger contributed to the construction of wayward youth by deploying a communal “we” to his supposition that one can recognise criminal traits from an early age. This is a re-interpretation of the potential of youth for political gain. The ‘friend or enemy’ construct that was immediately apparent after the Nazi seizure of power in 1933 found a more urgent and crystallised form in the context of war. Nevertheless, as is the case throughout the period of this study, a truly scientific evaluation of criminality was to prove elusive.

The criminologist Rudolf Sieverts was not alone in pressing for regulations against young criminals to be more precise, seeing the current form as not meeting the criteria of the “characterological, constitutionally (anlagemäßig) deviant juvenile” that he saw as the most accurate typology for assessing the deviancy of a young criminal. In 1938, Sieverts had argued for a new approach to criminology, one where the problem of youth criminality should no longer “end with the point of view of diminished criminal responsibility for juvenile lawbreakers... [they are] recognised today as the central problem of modern criminal politics”, and argued that as such any future juvenile criminal law “must be expanded into a law for fighting early criminality”.130

There were significant juridical efforts to anchor the juvenile criminal type in law after the war began. In December 1939, Herbert Vornefeld, Director of the Reich Youth Leadership’s Social Office (Sozialen Amt der Reichsjugendführung) and member of the Academy of German Law (Akademie für Deutsches Recht) sub-committee for juvenile criminal law, published an article in the journal Deutsche Justiz. In it, he provided reasons for the necessity of the regime’s newly introduced measures to combat juvenile precociousness. Vornefeld contended that the Academy of German Law had long been of the opinion that adult criminal law must be extended to dangerous juvenile criminals so


that those who were sixteen or over could be sentenced to a penitentiary term at least, and:

... the decision on authorization of the death penalty for juveniles (sixteen to eighteen-year-olds) must be reserved for the Führer. The reason for this position stems from a number of individual cases in which juveniles have committed crimes with an unparalleled brutishness and unscrupulousness under the complete recognition of the significance of their actions [emphasis is mine] which according to our current views on guilt and atonement require the most extreme punishment possible. 131

Vornefeld subsequently provided three examples that he believed illustrated the need for a change in the legal treatment of young criminals. The first involved a seventeen and eighteen-year-old who assaulted and subsequently suffocated a pensioner through forcing an apron into his mouth; the second a sixteen year-old who drowned a five-year-old child; and the third a seventeen-year-old who robbed, murdered, and buried his employer. Here Vornefeld left no space for any description of mitigating circumstances behind the crimes, merely providing the age of the perpetrators and a short description of their heinous acts. This simplified portrayal lent further weight to the concept of a rational, cold-blooded young perpetrator who, despite being able to recognise the severity of their actions, chose to carry them out regardless.

However, during the wartime period, many National Socialist criminologists acknowledged that a fully functioning Tatstrafrecht (where the criminal act itself was paramount) as opposed to Täterstrafrecht, (where the offender’s personality was the key factor in prosecution and sentencing) was impossible, as it would have required a complete reworking of the theory and practice of criminal law. The DPSYO, even given its stress on the personality of the offender, remained anchored to previous structures of criminal law. The jurist Paul Bockelmann wrote in 1939 that:

...Precocious criminality (kriminelle Frühreife) is not punished as such. It is merely the precondition for the offender meeting the full responsibility for his act. It supersedes the mitigation that the offender, thanks to his youth, has to his advantage. It removes therefore every – negative, inhibiting – effect that the principle of the offender (Täterprinzip) has in normal juvenile law. The decree thereby means in effect a reorientation to the idea of the offence (Tatgedanken). That shows also

the further preconditions that it covers for the co-ordination of the serious young offender with the adults. This is dependent either on whether the “protection of the people” requires it. Here it is obviously unimportant where the need for protection stems from: it may have its basis in the dangerous characteristics of the offender; it may just as well emerge from the particular circumstances of the crime or from preventive considerations in general: the punishment of the serious young offender does not, therefore, need to be defined by an offender-based law, rather just as well through an offence-based law. Or equal rights results from a consideration of “the particularly reprehensible criminal inclination shown by the offence”. Here the letter of the law says clearly that the lasting, constantly characterising conviction of the offender does not firstly justify the punitive punishment, rather the reprehensible mental attitude taken “with” this offence. Here the principle of the offence also stands in the foreground.\textsuperscript{132}

Despite the still extensive adherence to the principles of \textit{Täterstrafrecht} that applied in relation to juvenile criminals, there was scope within the DPSYO to reinstate the primacy of the offence as the the guiding principle behind prosecution and sentencing. As was mentioned in the thesis introduction, German legal discourse had included the concept of the precocious juvenile criminal, as an antithesis to the immature juvenile as early as 1905.\textsuperscript{133} That the decree was not abrogated until eight years after the end of the war signals this construction of the precocious young criminal was not just exclusive to the Third Reich. At the same time, however, an amendment to juvenile criminal law passed on the very same day as the DPSYO enabled judges to apply a juvenile arrest term instead of a prison sentence. This further cemented the polarisation - within and outside of juvenile criminal law – of the wayward young criminal who could be re-integrated back into society, and the heinous, amoral, dangerous juvenile perpetrator who could be of no further use to the \textit{Volk}.

A key term utilised by the Nazi regime to emphasise the inclusivity of their state youth system was education. The ability of a youth to be educated into becoming a productive member of the \textit{Volksgemeinschaft} directly affected whether they were viewed as, for example, leadership material within the Hitler Youth, or an unstable element that needed to be removed from the ranks. The Hitler Youth introduced a substantial disciplinary apparatus for its members that in many ways mirrored the normal juvenile

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\textsuperscript{132} Bockelmann 1940 p.601f.
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justice system. The reason for its establishment was the necessity for National Socialism to introduce and develop a legal apparatus for dealing with wayward juveniles that attempted to directly correspond to the regime’s ideological aims. The traditional system of juvenile justice with its checks and balances to the application of law was, also according to legal experts within the Hitler Youth, unable to defend the Volksgemeinschaft from potential or actual threats to its stability. There was also a construction of waywardness unique to female youths. Here, one can frequently find reports of alleged licentiousness and sexual depravity. The following is typical of such accounts:

Complaints about the waywardness amongst female youth have already been made before the war. It has been pointed out that they are more unrestrained (hemmungsloser) and impulsive (triebhafter) than previously. The girls excuse their behaviour with expressions such as: “but the Führer wants children!” or “I’m a German mother – what’s your problem” or “others are doing it too”. Since the onset of war, complaints concerning an increasing looseness and waywardness within the female youth in sexual matters have become more frequent.134

A Sicherheitsdienst report from March 1940 also noted “a waywardness of morals and manners is noticeable at present. For example, a series of medical examinations in East Prussia established that numerous girls, some as young as thirteen or fourteen, had engaged in sexual intercourse shortly beforehand”.135 Various sources were identified as contributing to this loosening of morals. There were certain newspaper articles described by National Socialist authorities as ‘lurid’. A Reich Youth Leadership report heavily criticised the 24 April 1940 editions of the ‘Potsdamer Tageszeitung’ and the ‘Potsdamer Beobachter’. In Du bist die Ursel aus Nauen, a sixteen-year-old girl’s rendezvous with a young sailor (to whom she had been writing since the start of the war) was comprehensively described. The article closed with news that “a date was immediately set for the evening, and it was cheerful and happy hours that Ursel spent with her sailor”. The report claimed that this last sentence “could be clearly understood by the female youth” a comment which reflects a level of paranoia about their

134 Arno Klönne, Jugendkriminalität und Jugendopposition im NS-Staat: ein sozialgeschichtliches Dokument (Münster, 1981)

promiscuity which was present in certain sections of the state’s supervisory networks.136

The Police Decree for the Protection of Youth, 1940

... youths under sixteen have absolutely no place (überhaupt nichts zu suchen) being on the city’s unlit streets at night; also the sixteen to eighteen year-olds who despite every police measure continue their nightly “corner standing” (Eckensteherei) should be fought as forcefully as possible. A corresponding timetable of HJ duties, as has already partially been the case [...] should be implemented without exception [to] make sure that every pretext for youths remaining on the streets at night is removed. Any activity to the contrary of this curfew (Streunverbot) should best be dealt with through spending the rest of the night [...] in police custody. 137

As we have seen, Hitler made it abundantly clear that the maintenance of order on the home front was to be achieved at all costs. To further this aim, two police decrees concerning the ‘protection’ of youth were enacted within the space of one month, and resulted in the removal of legal boundaries through new police disciplinary measures that required no juridical involvement.138 The first police decree, passed in late October 1939, concerned the removal of youths from public rifle ranges or gambling sites (Polizeiverordnung über die Fernhaltung Jugendlicher von öffentlichen Schieß- oder Spieleinrichtungen).139 The second, enacted in late November 1939, dealt with the removal of youths from public dances (Polizeiverordnung über die Fernhaltung Jugendlicher von öffentlichen Tanzlustbarkeiten).140


138 The Reich Minister of the Interior was able to issue police decrees concerning the protection of youth after the ‘Ordinance concerning Police Decrees of the Reich Minister’ (Verordnung über die Polizeiverordnung des Reichsministers) was passed on 14 November 1938 (RGBl. I, p. 1582). However, the eventual decrees were not drawn up by the Minister of the Interior, Wilhelm Frick, but rather the Reich Leader of the SS and Chief of German Police Heinrich Himmler (as Frick’s representative). Formally, Himmler was subordinated to Frick. Yet in practice, as the legal historians Jörg Wolff and Gerhard Werle have noted, this was in practice not the case. See Werle, Justiz, p. 153 and Wolff, Gericht, p. 111.

139 Decree of 24 October 1939, RGBl I p. 2116.

140 Decree of 29 November 1939, RGBl I p. 2374.
Both of the above decrees contributed to a more substantial piece of legislation introduced by the Reich Main Security Office (RSHA) on 9 March 1940. The Police Decree for the Protection of Youth (Polizeiverordnung zum Schutz der Jugend, or PolVO) equipped local police forces (Ordnungspolizei) with increased pre-emptive powers to arrest or detain minors. The PolVO essentially labelled all leisure activities of youth – those performed outside of Hitler Youth, school, or work – as “loitering” (herumtreiben). In guidelines for the new police decree’s application, Herbert Vornefeld suggested the legal meaning of loitering as “lingering needlessly in a public place without permission”. Vornefeld also stated what loitering was not: “the way to and from place of work and school, to and from Hitler Youth service, and to and from events or occupations outside of the home that are designed or permitted for youths, for example visiting work colleagues and evening classes, music rehearsals, theatre performances etc, but also visiting relations and friends in accompaniment with a parent or guardian (Erziehungsberechtigten)”.

Section 1 of the PolVO stated that due to the changing living conditions as a result of war, youths under eighteen years of age were henceforth prohibited from loitering on public streets and squares after fall of darkness. Section 9 of the decree lay down the punishment for transgressions as detention of up to three weeks or a fine of up to 50 Reichsmarks. In severe cases, a detention of up to six weeks was possible, but very rarely applied. In practice, those youths caught for the first time on the streets after dark were merely warned. Corresponding to a secret decree from Himmler, the PolVO was specifically targeted at German youths, though foreign (fremdvölkische) youths were also affected by it. After a second police decree in June 1943, transgressing youths were no longer put in normal prison cells of the district courts (Amtsgerichtsgefängnis), but rather transferred to a special detention centre for youths (Jugendgefängnis).


142 Müller, p.59 (Cf Franz 2000, p.199).

The Reich Criminal Police Office (RKPA) became increasingly involved in efforts to get a hold on the increase in symptoms of waywardness, fearing a repeat of the situation during the First World War. The criminal police took on a new type of work in regulating the free time activities of youth. In Frankfurt am Main, the Police presidium reported 1108 offences against the youth protection decree in 1940. This jumped to 1756 for 1943.

According to an internal report, the PolVO was responsible for an “improved attitude amongst youth”. This report, released by the SD on 29 April 1940, mentioned that one proprietor of a dancing club in a small Ostholstein (in the North German region of Schleswig-Holstein) suburb was forced to close because his usual customers (girls under eighteen) were staying away. This was not necessarily a direct consequence of the police decree, but here the SD assigns it the credit. Though many reports mentioned the general fall in numbers of transgressions involving visitations to pubs and cinemas, a worrying trend was noted amongst party members, NSV youth assistants (Jugendhelfer) and members of Hitler Youth patrols from numerous regions in the Greater German Reich. These included Breslau, Oppeln, Liegnitz, Chemnitz, Munich, Weimar, Kassel, Stettin, the Ostmark and the Sudetengau. “In bars or on the street”, the SD concluded from such reports, “adults present have repeatedly been siding with youths [emphasis in original] who have been called to order by patrols (Streifendienst) for contravening the youth protection law. The decree’s term “guardianship representative” (Beauftragten des Erziehungsberechtigten) is misused by youth with the tacit permission of many adults. Time and again the observation has been made that juveniles in pubs have called on older people, of whom it is highly questionable that they are acting under the instructions of parents when vouching for youths under [the age of] eighteen. When questioned, the parents confirm their child’s statement to shirk punishment for the child and themselves.”


Youth arrest (Jugendarrest) was a measure reserved for German youth.\textsuperscript{147} Youth arrest was made possible before the passing of the 1943 police decree with a ‘Decree for the amendment of Juvenile Criminal Law’ (Verordnung zur Ergänzung des Jugendstrafrechts) of 4 October 1940, as well as a Decree of 28 November 1940, legalising the application of youth arrest and prison. In this way, the police could act to punish youths without referring them to the normal channels of court justice. In practice, short spells (from four to twelve hours) in detention were meted out. For persistent re-offenders, weekend detention – usually performed in a school classroom – was given. In addition, they could be assigned with the cleaning of police offices.\textsuperscript{148} Frequently, however, returning the youth to their parents was viewed as sufficient. Police detention could be assigned in certain cases where the behaviour of a youngster, whilst transgressing the PolVO, indicated the onset of waywardness. At the same time, the police informed relevant parties such as their parents or guardians, their school, the local youth office, NSV-Youth Support and Hitler Youth, in the event of welfare education or another type of care being necessary. Special registration cards were formulated for each youth, in order to follow their ‘criminal development’, though they were not entered in the criminal register.

The measure most often applied by the juvenile jurisdiction (Jugendgerichtsbarkeit) to deal with breaking of contract or absenteeism was the youth arrest.\textsuperscript{149} The application of this measure was criticised by many as inadequate – with one Reich Trustee for Labour describing it as “a measure identified as a ‘badge of honour’ (Ehrensache) or a ‘romantic issue’; there have been exclamations [amongst youth] such as “every proper German boy has to be in youth arrest at least once”.\textsuperscript{150} In any case, it was a legal measure that was only to be applied where all other measures implemented by his/her employer or a Trustee for Labour were unsuccessful, or where these channels were deemed to be ‘hopeless from the outset’.

\textsuperscript{147} RdErL. d.RFSSuChdDtPol. of 23. April 1943, BA RR/1175 (520) (not published)

\textsuperscript{148} Artur Axmann, Kriminalität und Gefährdung der Jugend (1941), p.159.

\textsuperscript{149} See in particular Kenkmann, Wilde Jugend p.147.

\textsuperscript{150} ‘Bericht des Reichstreuhänders der Arbeit für das Wirtschaftsgebiet Westfalen’ from 23 December 1941, in: BA Koblenz, R22/3363, Bl. 203) Quoted from Kenkmann, Wilde Jugend, p. 147.
The youth arrest was also particularly time consuming, with a number of organisations (including the manager/foreman of the concern, careers service (*Berufsberatung*), Hitler Youth, Youth Office and NSV-Youth Assistance) involved in registering and processing the case even before it reached the court. According to the guidelines for a decree concerning juvenile work discipline introduced in 1943, the action taken by the court must be based on research into the offender’s personality (with a particular focus on the causes leading to absenteeism/loafing), with the necessity for implementing an educative or punitive sentence made clear. It must also be swiftly implemented, which was not always the case. An SD report in 1940 noted the numerous complaints lodged by the Trustees for Labour in the Saarpfalz (Saarland) region concerning the ineffectiveness of the court system in dealing swiftly enough with work-related offences. The example given was that of the State Prosecutors Office for the district court in Frankenthal, which by April 1940 still had 19 cases of absenteeism pending, five of which dated from January 1940, three from December 1939, and ten from November 1939. The report concluded that such a slow process could not possibly emphasise the importance of labour legislation to the German people.\(^{151}\)

Originally, the *Streifendienst* (SRD) was conceived of as a ‘self-policing’ organisation through which any criminal or delinquent behaviour within the ranks of the Hitler Youth would be pursued. The impetus for setting up such a practice began soon after the so-called ‘Night of the Long Knives’ of 30 June 1934, where high-ranking members of the SA – most notably its leader Ernst Röhm – were murdered by SS officers amidst rumours of corruption and decadence within SA ranks. Similar accusations were also levelled at other National Socialist organizations, including the Hitler Youth. The SRD was founded in early 1935 after initiatives to eliminate ‘criminal behaviour’ were launched first by the Reich Youth Leader Baldur von Schirach, then the head of the Hitler Youth police liaison agency (*Polizeiverbindungsstelle*) Heinrich Lüer, as well as Heinz Hugo John, Lüer’s nominal superior at the RJF Human Resources Department (*Personalamt*), and finally the RJF *Stabsführer* Hartmann Lauterbacher.\(^{152}\)

\(^{151}\) Boberach, Meldungen, Vol. 4 (15.3.1940 – 1.7.1940) p. 1137.

The formation of cliques, that is to say the confraternity of youths outside of the Hitler Youth has, since some years before the war, but especially during the war, increased to such an extent that a serious danger of the political, moral and criminal decay of youth can be spoken of.\textsuperscript{153}

This passage is taken from a Reich Youth Leadership report from September 1942, as the activity of cliques within Germany began to increase again after “a prolonged quiet of many months” at the beginning of the war, when “presumably the [Hitler Youth, Security Service and justice system] shock effect” had resulted in the reduction of clique activities. To what extent, however, was there a real danger of this political, moral and criminal decay of youth? The report states a reduction in overall levels of youth crime in 1942. However, serious group crimes involving the “application of criminal energy” such as breaking and entering were observed to have “significantly increased”. Such a “criminal” grouping of youths was easier to apprehend than those with a “political-ideological-oppositional” basis, such as the Meuten from Leipzig. This group was estimated by the Leipzig Police to be some 1,500 members strong in 1939.\textsuperscript{154}

The increasing duties which youth were obliged to perform, most notably with official duties connected to the Hitler Youth, War Assistance (Kriegshilfsdienst), but also in tighter controls on labour, increased the capacity for youths to be labelled criminal by simply not reporting for duty. Furthermore, they could also have been defined as criminal for refusing to work because the term ‘avoidance of duty’ (Dienstverweigerung) makes no distinction here.\textsuperscript{155} The Hitler Youth leadership declared themselves responsible for the “all missions of the physical, ideological, and moral education of the entire German youth outside of the household parents and school”. In both official and


\textsuperscript{155} The second Hitler Youth Law (Dienstpflichtverordnung), passed on 13 February 1939, obligated every German youth between the ages of ten and eighteen to attend Hitler Youth duty. Parents who attempted to prevent their children’s attendance could be fined or even handed a prison term. From 17 September 1940 (Erlass der Reichsjugendführers über den Jugenddienstarrest), Hitler Youth duty could be enforced through police measures.
public discourse, wayward behaviour was characterized as a significant threat to social order\footnote{Hans Boberach (ed.), Meldungen aus dem Reich, Vol. 2 (1938/1939), p. 148. For a useful overview of the SD’s role see: Heinz Boberach: Chancen eines Umsturzes im Spiegel der Berichte des Sicherheitsdienstes’ in: Der Widerstand gegen des Nationalsozialismus. Die deutsche Gesellschaft und der widerstand gegen Hitler (Munich/Zurich, 1986).} In particular, the behaviour of so-called cliques – a loose term denoting an assembly of youngsters outside of the Hitler Youth, but often in active or passive resistance to them, came to represent the most visible evidence of delinquency. A 1938 report by the SD described these cliques as being composed of both wayward and subversive tendencies – “these youths [...] represent an acute danger to the extracurricular education of youth. Their circles are comprised almost exclusively of asocial, morally corrupted and communist-influenced elements”.\footnote{Oberstaatsanwalt München 1, Der Kriminalität der Jugendlichen, 7 January 1939, in: BAB R 3001/alt R22, Nr. 1189 (9-13, here 10).}

The necessity of adopting more stringent measures to deal with this is present in numerous wartime reports. A senior public prosecutor (Oberstaatsanwalt) in Munich noted in a report from 7 December 1939 “...in numerous court case files of the post [First World] war period, the starting point of a criminal career was identified as the waywardness of youth during the war. Everything must be done, if need be with very stringent and decisive measures, to prevent - as far as possible - another development in this direction”.\footnote{Oberstaatsanwalt München 1, Der Kriminalität der Jugendlichen, 7 January 1939, in: BAB R 3001/alt R22, Nr. 1189 (9-13, here 10).} Just as the First World War is blamed here as the starting point of many youth’s criminal career, the disruptive effects of the Second World War were also cited as the cause for waywardness in both wartime and (as we shall see) post-war criminal court case files.

From 1939 onwards, reports of waywardness amongst youth increased dramatically. These reports were informed by the events of the First World War, when the fear that young people would spend their money on drink and debauchery led to the introduction of compulsory savings plans for minors by the military authorities. Lothar Gruchmann has contended that the National Socialist justice system proved itself to be an inadequate instrument of the regime due to its inability to effectively prosecute
oppositional youth cliques such as the *Meuten* in Leipzig and other *bündische* groups.\(^{159}\)

But before the courts could intervene, such youths needed first to be identified. This was a difficult task given the majority of the groups were irregular and unorganised, a consequence of the Hitler Youth Law of 1936 that prohibited the formation of any political, religious or social parties not officially sanctioned by the National Socialist state.\(^{160}\) In an attempt to clarify how cliques were to be identified, a *Streifendinest* directive from June 1938 listed the 'characteristic features' of *bündischen* youth as follows:

a) Countenance (*Haltung*) is casual, disorderly, unclean;
b) Hair and clothes are unkempt;
c) Headwear consists mainly of cut-up hats and curious caps of all kinds, adorned with numerous badges, insignia, plumes etc.;
d) They wear peasant's boots (*Bundschuhe*) or jackboots (*Schaftstiefel*) with very short trousers, often furnished with tassels;
e) Other clothing is distinguished by checked shirts and coloured cravats. The overall impression of *bündischen* groups is always irregular. Sheath knives (*Fahrtenmesser*) of all descriptions are worn. Pipes and combs are hidden in jackbooks, zips are to be found in all practical and impractical places.

3. These characteristics must not all be present in every *bündische* group. On the other hand, singular features do not prove *bündische* activity. One must therefore be cautious when intervening.

4. Bündische activity will be mostly ascertained through *Fahrtkontrolle*. If the immediate suspicion of *bündische* activity follows from such controls – through the appearance of a group, the type of identification or for other reasons - then the police... are to be informed.\(^{161}\)

This loose aggregation of characteristics, and the caution advised when approaching groups of youth, demonstrates that identifying waywardness through outward appearance was extremely problematic. More important to the National Socialist state was to enforce the message that all forms of group behaviour outside of a Hitler Youth uniform were to be considered suspicious. This directive is significant in its implicit


admittance that the police and state prosecutor’s office alone were inadequate for effectively fighting the development of bündisch groups. The label bündisch became a catchall term for all those juveniles who stood in certain contrariness to the Hitler Youth: in effect encompassing all those who distanced themselves from it. The chief problem faced by the National Socialist courts was the absence of a specific legal clause prohibiting the confraternity of young persons. The prevention of bündische youth meetings was rather fought with a battery of separate legal clauses. One of the legal implements deployed will be discussed below.

The Decree against National Pests & Decree against Violent Criminals 1939

Around noon on 30 September 1939, four days before a Decree against Violent Criminals was introduced, two youths attempted to rob a bank in the Teltow district of Berlin. As they fled, they shot an employee of the bank who was following in pursuit. On 13 October 1939, the Berlin Special Court (Sondergericht) found them guilty of attempted manslaughter (versuchten Totschlag), attempted serious robbery (versuchten schweren Raubes) and subsequent theft (Rückfalldiebstahl), and sentenced them both to ten years penitentiary. The Decree against National Pests (Verordnung gegen Volksschädlinge) was not applied because the crime had exploited neither a blackout nor any other war-related circumstances. Hitler nevertheless felt that only a death sentence was appropriate in this case, and promptly approved their transfer over to the police for death by firing squad.162

Two further pieces of legislation, a ‘Decree against National Pests’ (Volksschädlingsverordnung) of 5 September 1939163 and a ‘Decree against Violent Criminals’ (Gewaltverbrecherverordnung) of 5 December 1939164 were essentially interchangeable. Foremost in the National Socialist authorities’ minds was to widen the legal net with which to capture perceived harmful or potentially harmful elements from the Volksgemeinschaft at a time when the stability of the home front was paramount.

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162 Gruchmann, Justiz, p.911-912.
163 RGBl I, p. 1679
164 RGBl I, p. 2378
Indeed, the general consensus amongst the German public was that the DPSYO was a product of circumstances of war and engineered as a part of the ‘exceptional laws relating to wartime’ (Kriegssonderrecht). However, according to Herbert Vornefeld, this was the culmination of year long planning to replace the Weimar Republic’s “educational optimism that had run out of hand” with a more effective juvenile criminal politics.\(^{165}\) However, there was a certain degree of confusion amongst the authorities as to how the decrees were to be applied. On 15 October 1939, the SD reported that Section 2 of the law, concerning the ‘exploitation of measures for the defence against air raids’ (Ausnutzung der zur Abwehr einer Fliegergefahr getroffenen Maßnahmen), was frequently misinterpreted by courts and public prosecutors.\(^ {166}\) For example, the question of whether an act of theft was actually committed after or during fall of darkness was assessed by state prosecutors, and if the former, not applying the Decree against National Pests as a consequence. The report stated that one case “in which the offender had stolen a radio from a flat during the night, the public prosecutor did not apply the Decree against National Pests because the moon was shining brightly (heller Mondschein) at the time of the offence”.\(^ {167}\) This question – whether moonlight counts as a time of darkness - emerges again in an SD report less than a month later, with the author recommending that an official, definitive interpretation of Section 2 should be initiated in order to clear up the debate.\(^ {168}\)

At the beginning of 1940, three harsh sentences were delivered by the Königsberg Special Court to two apprentices and a post office worker. They were sentenced to fifteen, ten, and eight years imprisonment due to being guilty of a “looting raid on the city’s letterboxes”. The offenders, all of whom were under eighteen years–of–age, were sentenced by the judge as both ‘National Pests’ and ‘serious young offenders’ due to the large amount of military post (Feldpostsendungen) included in the haul. This act was thereby considered a more serious injustice due to its blatant disregard for the war effort - a sensitive point for a judicial system at pains to uphold the reliability and stability of the home front. The court, according to a legal critic of the time “ruled out


\(^ {166}\) Boberach (ed.) Meldungen 2, 15 October 1939, p.394-395.

\(^ {167}\) Boberach (ed.) Meldungen 2, 15 October 1939, p.394-395.

precociousness due to the 'blatant need for recognition' as well as the fact that the 'juveniles, of whom some had girlfriends, wanted absolutely to be seen as adults. They must therefore allow themselves (gefallen lassen) to be called to account as adults. The characteristics claimed here are commonly considered as typical attributes of puberty."169 By 1944, this type of crime was seen as enough of a problem to warrant a specific (unpublished) ordinance by the Reich Justice Ministry that dealt with the punishment of fourteen and fifteen year-old postmen “due to crimes and offences at the workplace”.170

Linked to such typologies, the criminologist Ludwig Clostermann devised a parallel classification of anti-criminal (Antikriminelle), criminal (Kriminelle) and the criminally willing (Kriminell-Bereite) on the one hand, Coincidental (Zufalls-), pubertal (Pubertäts-), and Tendential Criminals (Hangkriminelle) on the other; developing his typology through the combination of both. Of these, the criminologist Georg Dra contended that the 'criminally willing' would be the type where the indefinite sentence could be most often utilised, but only when 'harmful tendencies' could be successfully traced to their 'poor aptitude' (schlechte Anlage) and 'abortive development' (Fehlentwicklung). „Those with a difficult or abnormal pubertal development can be indefinitely sentenced. The same goes for simpler cases of tendential criminality."171 Sievert’s typology consisted of four sorts of youth crime: 1) as developmental crime (Entwicklungskriminalität), 2) as the expression of a mental miseducation (seelischen Verbildung), 3) as the expression of an abnormal pubertal development (abnormen Pubertätsentwicklung), and 4) as the expression of a serious characterological deviancy (schwer charakterologischer Abartigkeit). For Dra, the second and third groupings contained possibilities for indefinite sentencing. Quoting Sieverts, by 2) he meant those cases where the juvenile in question was normally disposed in mental and moral terms, but who has been changed by the constant effects of socially very unfavourable environmental influences. The result is an abortive development of the character, that can eventually lead to a practical inability to educate.’ The less serious cases should, according to Dra, be placed in

169 Kebbedies, Außer Kontrolle, p.195.


171 Clostermann, p. 11.
correctional education, and the more serious cases indefinitely sentenced. However, Dra proffered no explanation as to how one might differentiate a serious from a less serious case. He continued, positing that the indefinite sentence was the correct measure for 3) “as the time of cessation [of the sentence] is taken into account from the course of the abnormal pubertal development, and re-entry can be taken as the starting point for the normal stage of development.” Dra aged with Freisler in the contention that serious young offenders, as well as those juveniles who commit a criminal offence as a result of one particular situation (Zufallsverbrecher) should not be applicable for the indefinite sentence, likewise those who had been in correctional education, (being) “almost always seen by the youth as punishment; for them the indefinite sentence is merely the transition from one hand to the other... [yet] Whether specific criminal types, such as thieves, tramps, sex offenders and such like should be imposed with an indefinite sentence because of these criminal directions alone, is to be rejected. Criminality alone is not a sign for personality and educational prognosis, at least not yet today, where we know little about the differential psychology of specific types of criminality amongst adults and no more than this where juveniles are concerned. The legislator has also given no importance to these characteristics.”172

**Indefinite sentence**

This was a measure introduced on 10 September 1941, and was viewed by Nazi jurists such as Rudolf Sieverts as a key component in a criminal-political concept of the “fight against early criminality”.173 The establishment of a typology of juvenile criminals is linked closely to a criminal-biological definition of the offender. For example, according to a paragraph in the Indefinite Sentences Decree dealing with research of the personality (Persönlichkeitsforschung):

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172 Clostermann, p. 12.

173 The Indefinite Sentence (Unbestimmte Verurteilung) was enabled through the Verordnung des Ministerrats für die Reichsverteidigung on 10 September 1941 (RGBl. I, p. 567f.) For further information, see Dörner, Erziehung, p.215f.
A medical examination is recommended, when the suspicion exists that the crime is linked to a mental or emotional disorder, or if one is imminent; when signs of a pronounced mental or physical abnormality exists in the accused; when the accused is depraved without recognisable outward signs, or when the trial deals with an extraordinarily serious crime.¹⁷⁴

Heinrich Himmler and Reinhard Heydrich were the leading protagonists in establishing the basis of this law in 1940. Both advanced the idea at a ministerial meeting on 1 February 1940 concerning the ‘protection of youth’ during wartime. Hermann Göring chaired this meeting.¹⁷⁵ Himmler argued for the establishment of police-supervised ‘youth education camps’ (Jugenderziehungslagern), as “according to his observations, the system of welfare education did not come up to scratch (nicht zum Ziel führe)”. Roland Freisler was strongly in favour of court-based impositions of youth arrests and, as an alternative for serious transgressions, proposed the implementation of indefinite sentencing. This struggle for competency was to shape the debates between the Reich Justice Ministry and the Reich Office for Criminal Police (Reichskriminalpolizeiamt) over the next four years.¹⁷⁶ The general trend that emerged was “a step-by-step shift away from traditional notions of legality in favour of an all-powerful police force”.¹⁷⁷ During a meeting with Heydrich held on 22 March 1941, Ministerial Advisor Rietzsch of the Reich Justice Ministry strongly argued against this head-on challenge to the criminal courts’ jurisdiction:

The legal draft submitted to us by the Reich Ministry of the Interior could, amongst all the various tough laws created by the Third Reich, very well be the toughest. It ascribes the police authorities a range of additional powers not previously afforded by law to any country in the world, in particular the authority to long lasting arrests (Freiheitsentziehungen). In the legislature, such authority has up to now only been transferred to the courts. The courts are however handed more comprehensive and complicated regulations, on one hand to get reliable research into the facts of the matter (Sachverhalt) up-and-running, on the other to protect them against wrong decisions

¹⁷⁴ The Indefinite Sentence was retained in § 19 JGG 1953; then eventually removed from the statute books in 1990 with the First Amending Law to the Juvenile Court Law of 30 August 1990.

¹⁷⁵ The 1 February meeting, and its ramifications, is discussed extensively by Jörg Wolff. See Wolff, Jugend, pp. 45-57.

¹⁷⁶ See for example BA, R22, Nr. 1177 (Sheets 943-944)

(...) In the draft submitted to us, none of these safeguards are mentioned. The right to a hearing is not afforded the people concerned. A third party defence is not permitted. (...) It could surely not be held against the judicial system (Justizressort) if it is particularly sceptical of this draft and requires a judicial decision (to be made). (...) If Mr. Minister Dr. Gürtner has from the outset decided, despite all the serious misgivings apparent from my observations, not to reject the draft a limine [emphasis is mine], rather has worked positively on its forming, so is the consideration decisive that he also accepted the central legitimacy of the basic idea. The draft essentially affects the asocials (Asozialen) and anti-socials (Antisozialen), that is to say a group of people who stubbornly dodge or even oppose their duties regarding the community. However, those who distance themselves so far from the Volksgemeinschaft that they deprive themselves of their rights are degraded thereby to a person of reduced rights and must have only themselves to blame when a summary procedure results in hard measures for them.\textsuperscript{178}

Here the scepticism of Rietzsch with regards the extra-judicial powers proposed by the draft to bolster the police’s competency in arresting asocials and anti-socials is tempered by the last line, that they are themselves responsible for any further deprivation of rights which may befall them. The struggle for overriding competence here between the police and the judiciary, including the many changes of position and responsibilities as a result of the war, resulted in an increasing tide of laws concerning ‘asocial’ youth. After the beginning of the Second World War, the number of juvenile court decisions made public rose notably. An official Reichsgericht review of 1941 contained ten juvenile court judgements – more than ever before - while in the same year Deutsche Justiz included the details of eighteen juvenile judgements.\textsuperscript{179} In addition, there was a significant increase in the number of juvenile court case decisions published in the 1939 edition of the German Lawyer’s Union (Deutschen Anwaltvereins) weekly paper "Juristische Wochenschrift" compared to those contained in editions released in 1933, 1936 and 1938.\textsuperscript{180} As we have seen, the construction of wayward youth was informed by a heightened legal perception of the serious young offender. The heavy

\footnotesize{\textsuperscript{178} BAB R22 / 943 p. 93f.}

\footnotesize{\textsuperscript{179} Jörg Wolff, Jugendliche vor Gericht im Dritten Reich. Nationalsozialistische Jugendstrafrechtspolitik und Justizalltag (Munich, 1992), p.258. Wolff also states a notable increase in High Court decisions concerning juveniles printed in the “Zentralblatt für Jugendrecht und Jugendwohlfahrt” (later renamed Deutsche Jugendhilfe) at the beginning of the 1940s.}

\footnotesize{\textsuperscript{180} Jörg Wolff, Jugendliche vor Gericht im Dritten Reich. Nationalsozialistische Jugendstrafrechtspolitik und Justizalltag (Munich, 1992), p.258. The Juristische Wochenschrift merged with Deutsches Recht in May 1939, and henceforth took on the former’s name.}
bombing Berlin received - particularly from November 1943 - destroyed whole neighbourhoods and drastically changed the geographical landscape of the city's streets, parks and squares, and left a large proportion of Berlin's citizens homeless. The 'boundaries' to which youth had access as a consequence widened further, with the line between what constituted 'Streifraum' and 'Spielraum' became less apparent to juveniles on the street, whilst conversely becoming more obvious within juvenile criminal law. The implementation of these laws varied considerably between different Länder in the German Reich. Furthermore, when they were implemented often played a key role. The interpretation of juvenile laws and decrees also varied notably during the war. As shall be demonstrated in chapter 2, the trend for increasing use of the elastic clause (Gummiparagraph) in sentencing practice was increasingly evident from 1942. This was certainly influenced by Hitler's appointment of Otto Thierack as Reich Minister of Justice on 20 August 1942.\footnote{Erlaß des Führers, 20 August 1942.} Thierack was essentially authorized to deviate from existing law if such steps seemed necessary in the interest of a national socialist administration of justice. One German Radio broadcast, cited in the New York Times of 30 August 1942, alleged that Thierack made the following statement on entering office: “Every judge is at liberty to call on me in case he thinks that a law compels him to render a judgement not compatible with real life. In such an emergency it will be my task to provide him with the law he needs”.\footnote{New York Times, 30 August 1942, p.14.} With regards judicial procedure in wartime, Thierack stated that “the laws of war are inexorable, and their severity must be applied unsparingly to all war criminals as negative elements in the State. In the same measure as positive elements are placed on probation, a similar selective process must reveal negative and injurious elements. Incorrigible criminals must be annihilated”\footnote{Ibid}. This particular strand is will be further investigated in the next chapter, concerned with the period 1941 to 1943.
Chapter Two: Constructions of wayward youth, 1941-1943

In an article published in a 1941 edition of *Deutsches Jugendrecht*, the Chief of Security Police (*Sicherheitspolizei*) and SD Ernst Kaltenbrunner stated that it was the fundamental task of the police to ensure the “securing of order for *Volk* and community (*Volks- und Gemeinschaftsordnung*)”. This involved contact with young people, where the police – acting in conjunction with the SD’s Security Police – were not only involved with matters of day-to-day order, but also “where the protection of the community from debauched (*verderbten*) young persons can be just as decisive as the protection of the young persons themselves from a diverse range of impending harmful influences”.184 Kaltenbrunner goes on to play down the seriousness of such influences, proclaiming “the German youth is, despite the many dangers war brings, healthy. It has, up until now, passed the performance test (*Leistungsprobe*) and will continue to pass the test”.185

In both the good and bad days of this age, the youth of Germany has never disappointed the Führer. They were the first to gather, unconditionally, around his flag; they served him truly, and willingly took every victim, every struggle upon their young shoulders. They fuelled the fire of the revolution and still carried the torch of a new order through the Reich. Through self-discipline and taking the responsibility of building up the smallest units themselves, they made way for that educational idea (*Erziehungsidee*) to which the future belongs.186

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185 Ibid, p. 27.

Baldur von Schirach, Reich Youth Leader (*Reichsjugendführer*) from 1933 to 1940, delivered the above at an address to the Hitler Youth *Führerkorps* on 27 August 1940, just before Artur Axmann took his position. Schirach, in referring to the youth of Germany, by no means intended to include all of Germany’s boys and girls. Rather, it was a propagandistic tool serving to bolster the image of a united, consolidated youth successfully educated in National Socialist ideology. Internally, there was admittance that many still required education in order to become valuable members of the *Volksgemeinschaft* – and many were simply ‘uneducable’; in the crude, deterministic language of the Nazis, those inherently inferior racial or asocial types for whom incorporation into the Volk was impossible.

Schirach’s emphasis on a healthy, National Socialist youth is not at odds with a blusteringly upbeat account of a healthy, law-abiding German community included in a *Berliner Lokal-Anzeiger* newspaper from May 1941. It proclaimed in its concluding paragraph that:

The vigour and methodological work of German criminal prosecution agencies (*Strafverfolgungsbehörden*), supported by the public’s co-operation, guarantees that the dark figure remains at a minimum in Germany. The German people’s return to economically stable conditions and the awakening of healthy popular feeling (*gesunden Volksempfindens*) for law and morality have aroused a high “criminal irritability” – as it is called in criminal-statistical terminology – in the German people: the guarantee that a criminal act is not easily and not lengthily hidden. ¹⁸⁷

This presumes that the criminal statistics published in National Socialist Germany afforded a more or less true reflection of the *actual* number of crimes committed. As we have seen in the introduction, this is an impossible task. The article also presupposes a harmonious relationship between the German people and the prosecution agencies, with a so-called “criminal irritability” deriving from a strong, stable society in supposed harmony with the legal norms National Socialism consistently pronounced as morally unassailable. Thus, if the article above is to be believed, the ‘dark figure’ was negligible during the first years of the Second World War. This was a view constantly conveyed in

the public media: such proclamations as the passage above had their part to play in the supposition that Nazi Germany was largely crime-free. Yet it is a supposition both at odds with internal government correspondence and crime figures released during the National Socialist era. It was, though, necessary for the Nazi government to explain and reiterate their use in German society, at least until the cessation of their being made public.

On 27 May 1941, Ernst Roesner, a senior consultant at the Reich Statistical Office, delivered a lecture entitled ‘The Essence, Aim and Utilisation of Criminal Statistics’ before the Reich Press Department. The lecture demonstrated, according to a *Berliner Börsen* newspaper article published the next day, that crime statistics had become “a comprehensive scientific work, whose significance reaches much further than the purposes and aims that first grab the layman’s eye”. Roesner strongly asserted that crime statistics are a litmus test by which to gage Germany’s moral health. Throughout the lecture, he was at pains to stress the essential role they played in the “protection and well being of [the] people’s community (*Volksgemeinschaft*)”.

Roesner’s explanatory lecture was necessary, given the increasingly complicated system since crime statistics were first introduced in Germany. The Criminal Statistics of 1882 listed 142 different crimes and transgressions. This increased to 550 by 1938. By the second year of the Second World War, it had more than doubled to around 1,200 (arranged in 95 different categories of offence). Thus the chance of committing a crime, due to an ever expanding and more comprehensive legal code, had also increased.

According to confidential figures released by the Reich Statistical Office in mid-1942, the rate of prosecutions involving youths below eighteen years of age rose by some 66 percent by the third-quarter of 1940 compared to the same period the previous year.

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188 BA Berlin R3001/alt R22/1157 Bl. 376 *Berliner Börsen-Zeitung*, 28 May 1941.


190 Ibid, p. 104.

During 1942, well over 52,000 juveniles were sentenced throughout the Greater Reich, representing a 300 percent increase on the total figure for 1939.\textsuperscript{192} The Nazi government saw these numbers as so potentially destructive if published that the \textit{Volksgerichtshof} president Roland Freisler ordered “[…] primarily because of the increase in crime amongst juveniles and females, a publication of criminological results must be halted for the duration of war.”\textsuperscript{193} Indeed, in the foreword to the last Statistical Annual released by the National Socialist government, the head of the Statistical Office Curt Godlewski stated that “in consideration of the circumstances of war, the Statistical Annual is released again only for internal use [\textit{Dienstgebrauch}].”\textsuperscript{194} This was also the case for the previously compiled annual, published in 1940 and containing crime figures for the previous year.

Despite the immense difficulties in their upkeep - for example the lack of manpower, the acquisition of additional territories, and a plethora of new laws, decrees and regulations criminalising a whole range of behaviour previously tolerated by law - they continued to be compiled. Even then, they only covered the period up to the second half of 1943.\textsuperscript{195} As will be demonstrated in chapter 4, the next available crime statistics are for 1948, published in the Journal ‘\textit{Wissenschaft und Statistik}’ of 1950. Indeed, publication through Annual Statistical Journals had ceased for ten years, the last being published in 1940.\textsuperscript{196} The almost complete cessation of statistical data collection arrived as a result of the simplification of administration after the unsuccessful German invasion of Russia in 1941, with Hitler taking out his frustrations on what he deemed the ineffectual institutions of the German State, singling out the civil service for particular scorn. The Reich’s Chancellery recorded in 1941: “The Führer would like a circular on the

\textsuperscript{192} Figures taken from Bruno Blau ‘Die Kriminalität in Deutschland während des zweiten Weltkrieges’ in: \textit{Zeitschrift für die gesamte Strafrechtswissenschaft}, Vol. 64 Nr. 1 (Berlin, 1952) pp. 31-81. Here p. 34.

\textsuperscript{193} Roland Freisler, \textit{Gegenwartsfragen der Jugendrechtspraxis} (Berlin, 1942), p.34.

\textsuperscript{194} \textit{Statistisches Jahrbuch für das Deutsche Reich}, ed. Statistischen Reichsamt, Vol. 59 (Berlin, 1942), Foreword by Curt Godlewski dated May 1942.


\textsuperscript{196} \textit{Wirtschaft und Statistik} 1940 (Data for 1939, p.557. Data pertaining to 1940, p.476).
restriction of (statistical) questionnaires from state authorities and party offices". A circular then ordered all party officials to immediately discontinue all unnecessary statistical work. A month later the Reich's Chancellery instructed the civil service to cease work on all statistics regarded as 'non-essential', though there appears to have been no guidelines for what was or was not to be recorded. It was clear though that crime statistics were to be discontinued. The table below shows overall sentences in Germany between 1937 and 1943:

<table>
<thead>
<tr>
<th>Year</th>
<th>Overall</th>
<th>Male adults</th>
<th>Female</th>
<th>Juveniles</th>
<th>Previously sentenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>1937</td>
<td>444,036</td>
<td>350,912</td>
<td>68,531</td>
<td>24,593</td>
<td>171,430</td>
</tr>
<tr>
<td>1939*</td>
<td>298,851</td>
<td>234,943</td>
<td>46,450</td>
<td>17,458</td>
<td>114,254</td>
</tr>
<tr>
<td>1940**</td>
<td>266,223</td>
<td>185,291</td>
<td>59,614</td>
<td>21,318</td>
<td>86,668</td>
</tr>
<tr>
<td>1941***</td>
<td>320,766</td>
<td>193,851</td>
<td>89,028</td>
<td>37,887</td>
<td>85,833</td>
</tr>
<tr>
<td>1942****</td>
<td>343,601</td>
<td>174,186</td>
<td>116,946</td>
<td>52,469</td>
<td>77,847</td>
</tr>
<tr>
<td>1943****</td>
<td>354,038</td>
<td>161,042</td>
<td>134,194</td>
<td>58,802</td>
<td>71,906</td>
</tr>
</tbody>
</table>

Source: Bruno Blau, „Die Kriminalität in Deutschland während des zweiten Weltkrieges“, in: Zeitschrift für die gesamte Strafrechtswissenschaft, Vol. 64 Nr. 1 (Berlin, 1952) p. 31-81, here p. 34.

It will be useful to elaborate here on an act committed by Kurt S., a sixteen-year-old apprentice tailor from the ‘Horst Wessel’ district of Berlin – a district today no longer named after the National Socialist ‘martyr’, but rather now referred to as Friedrichshain. According to the information collected by the legal actors involved in bringing the case before the 1st Criminal division of the Regional District Court, the incident took place on 25 August 1942 as two girls aged fourteen and sixteen made their way back home from

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198 *Old Reich area ** Old Reich area and OLGBezirk Leitmeritz *** Old Reich area and OLGBezirke Leitmeritz, Kattowitz, Danzig, Posen as well as the Judicial administrations in Boehmen and Maehren **** Greater German Reich minus the Donau and Alpen districts. Note: criminal statistics are available for the first half of 1943 only, with this figure (itself a minimum given the loss of court case files due to the impact of war) doubled for the purposes of statistical comparison.
an amusement park. As they were walking under the dimly lit underpass of Berlin’s S-Bahn station at Treptower Park, they were suddenly surrounded by a group of “young lads” (junger Burschen), whose hassling brought about the two girls being split up from each other. One was pushed to the side of the road bridge; the other, despite her resistance, was “touched impurely” in a violent fashion. Reacting to the girl’s screams, people came towards them with flashlights, at which point the assailants ran off. The girls then reported the incident to the police, and Kurt S. was subsequently arrested along with another two juveniles. Unfortunately, no information is provided (as is indeed very seldom the case in the criminal file’s police reports) as to how exactly the youths were arrested. Having been brought in for questioning, the boys admitted to such acts (also an admittance, it is written, that was backed up by police reports) occurring frequently at that particular underpass, due to (and this is the voice of the presiding judge, not that of the accused) “around that particular time of evening, there are often a large amount of young girls who consider such pushing and shoving (Handlungsreiflichkeit) to be fun, and who go there specifically to experience the like. The accused youths can then, in a certain sense, take it that they behaved not that badly; admittedly they came across girls who did not belong to this category.”

Here, Landgerichtsdirektor Rücker, as presiding judge in the case of Kurt S., adopts a milder stance towards the accused, and hands him a sentence of one month in a youth arrest facility. This is surprising given Kurt’s explanation to the police, as to why he did not join the Hitler Youth, was in terms of “having no time or inclination to perform the duties”. The sentence, which compared to other cases processed by this court, can be taken as lenient. The judge’s summary adopts a tone that makes explicit the guilt to be carried by the ‘wanton’ behaviour of this ‘category’ of girl. The typologising of ‘overly-sexed’ girls as a threat to the home front’s stability was an issue that shaped juvenile criminal discourses in the wartime period. In particular, this is evident when one considers cases involving ‘Prohibited association with Prisoners of War’. Within the general case study, there are four cases pertaining to this, spanning the period 1942 to 1944. The legal basis upon which such behaviour could be convicted was the ‘Decree for

199 Judge’s summary, in: BAB R/3001, III AG 5, Nr. 402343 [231].

200 For example, for the crime of looting from colleagues, the fifteen-year-old Gerhard B. received an indefinite sentence from the same court on 10 July 1944. See BAB R/3001 III AG 5, Nr. 103144 [235].
the Protection of the Defence of the German People' introduced on 25 November 1939, in conjunction with a 'Decree Concerning association with Prisoners of War' enacted on 11 May 1940. Of the four cases, one girl received a warning, two a jail term of six months, and one a sentence of ten months. Despite having been handed a term of half a year a the women's prison at Barnimstraße for having 'relations' with a French assistant labourer, in summing up her case, the judge proclaimed that due to the "favourable personal expression" made by the twenty year-old Elsa B. during her trial at the district court at Moabit, "it can be accepted that she acted out of youthful carelessness and indiscretion, without realising the severity and consequences of her act".201 Originating in the Sudetenland, and as such a member of the occupied territory of the Reich known as the 'Protectorate' she would have stood less chance of being leniently treated than the sixteen-year-old Pflichtjahrämädchen Elisabeth S. who came before the youth court in Spandau on 6 January 1942 for the same crime. Her father, a foreman who ran a firm near the family home in the Western Berlin district of Charlottenburg, would have witnessed her 'socialising' with French prisoners of war: behaviour that, according to her case file, was explained by Elisabeth S. as being connected absolutely to her wish to learn French. Though there was only evidence to suggest that she had at most kissed one of the French assistant labourers, this still constituted a breach of the decrees mentioned above. That she received a warning from the judge as opposed to a term in prison can be explained by the lack of evidence suggesting sexual intercourse, as well as the fact she was born in Germany automatically inducing a more respectful handling of the case by the German authorities. For the twenty-year old Frenchman Marcel D., relations with a group of prisoners of war – in conjunction with the 'unauthorised relinquishment of identity papers and the freeing of prisoners', led to the youth spending a combined ten months incarcerated at Berlin-Tegel and the Regional Court prison in Prenzlau.202

But what of the cases where sexual intercourse could be established through a police investigation? The term 'cohabitation theft' was included in an indictment that connected the French Solange B. with the pilfering of 500 RM, 5 Rubels, and 100 cigarettes from an Oberleutenant of the Wehrmacht's 'Spanish Division' during a stay at the “Berliner Hof” Hotel. This, in conjunction with two further crimes – that of taking

201 LAB A Rep. 341-02, Nr. 6889 [2/ 35]
202 LAB A Rep. 341-02, Nr. 7103 [2/33]
items of clothing from one person that “made up almost the entirety of [his] possessions” and “stealing in a base way” from another, led to her being sentenced to six months in prison. The ‘personal description’ of the accused included in the court case file mentioned simply that she was of “conspicuously French type, heavily made-up”.203

The 30 convicted foreign youths in wartime Berlin received a total of 9,154 days in prison. This means an average of just over 305 days, or ten months per person. Again, when compared to the average of 82 days for juveniles born within the Altreich, that a youth originated in a different country certainly brought about a more punitive sentence. In the justification for slapping the ‘pick-pocket’ (Taschendieb) Radivoje M. with a prison term of one year and six months, the Adviser to the district court (Amtsgerichtsrat) Seifert proclaimed that “pickpockets in the mould of the accused, who as foreign civil workers affect the security of commuters through breaching, by dint of such offences, those exclusive rights given to them as guest workers in Germany, are to be met by the full force of the law”.204 Radivoje M., a twenty-one year old machine-worker (Schleifer), was born in Serbia, but at the time of his offence was resident at a ‘Russian Camp’ located at Brandenburg/Havel. He was found guilty of one act of theft (in which he was stated to have robbed someone of 30 RM), and one count of attempted theft. His was an ‘exemplary’ punishment of one year six months imprisonment.

A further 76 criminal court case files involved German born youths alleged to have committed 14 offenses other than theft. They are not included in the case study’s comparative assessment of juvenile criminal practice, as many of the crimes involved only one or two files. Nevertheless, they provide useful additional viewpoints for an assessment of juvenile criminal discourse through their instigation of different correlatives between the ‘type’ of crime and the ‘type’ of criminal that has committed them. The number of cases studied for each separate type of crime follows in brackets:

- Public aggravation (Erregung öffentlichen Ärgernisses) (1),
- moral offences such as homosexuality (Unzucht/Sittlichkeitsverbrechen) (24),
- Work aversion (Güterabfertigung) (1),
- Forbidden relations with POWs (5),
- abortion (1),
- fahrlässige


204 Trial summary from AG Berlin 603 from 9 June 1943, in: LAB A Rep. 341-02, Nr. 7293 [2/10]
Tötung (1), drug consumption (1), fraud (1), the distribution of illegal propaganda (18), and offences against the Police Decree for the Protection of Youth (18).

There was recognition within the Hitler Youth leadership that for youngsters to be fully integrated into the Volksgemeinschaft, co-operation was required with the system of juvenile criminal law. This was referred to in Gerhard Klemer’s 1941 dissertation for the Law Faculty of Berlin’s Friedrich-Wilhelm University, though at the same time stressing that:

... independent from the educational duty of juvenile criminal law, [...] where the judicial system’s intervention serves in the first instance the judgement on guilt and atonement, it is only to be welcomed when the Hitler Youth as supervisor (Betreuerin) of the German youth takes a more active role in these court decisions that are capable of deeply influencing a young person’s life.  

As the Hitler Youth functionary and chief editor of Das Junge Deutschland Albert Müller unequivocally termed it in a programme paper from 1943, Germany’s youth are the “mirror image of the Volk”, and as such, youth politics should centre on the “care for the valuable and excision of worthless characteristics” through the “absolute strengthening of high quality genes (Erbträger) and the cleansing of the Volk body from persons incapable of community (gemeinschaftsunfähig)”. Gerhard Klemer, employed in the Reich Youth Leadership’s Legal Service department (Rechtsdienststelle) and a legal consultant to the Hitler Youth (Berlin District), stated the following in a 1941 dissertation entitled ‘Juvenile Criminal Law and Hitler Youth’:

All discussions concerning the regeneration of material and formal juvenile criminal law and juvenile advisory law cannot find their true logical realisation in legal reform alone. They require alongside this the presence of judicial personalities (Richterpersönlichkeiten) who know how to apply those possibilities available to them in a way demanded by their basic principles and which serve the whole Volk (dem Voksganzen) the most. The “mere-Jurist” is particularly out of place in juvenile law. The juvenile judge is not only a criminal judge; he is in the first instance an educator.

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205 Gerhard Klemer, Jugendstrafrecht und Hitler-Jugend (Dissertation; Berlin, 1941), p. 27.


207 Gerhard Klemer, Jugendstrafrecht und Hitler-Jugend (Dissertation; Berlin, 1941), p. 96.
Klemer continued by contending that the juvenile judge must essentially be not only a ‘soldier of the inner front’, but also a ‘leader of youth’ (Jugendführer).

The judge should not only generally ask themselves whether or not the accused standing before him is, according to his past and his personal impression (how easily this can deceive in just a few hours of the trial), the criminal type. That would be far too generalised and would lead to just as many unfair sentences as it would unfair acquittals. Rather, the judge should decide – through the most detailed examination of all existing symptoms – whether the offender (if only basically) exhibits the concrete Lebenszüge that the aims of the particular criminal law has in mind.208

Erich Schmidt-Leichner, in an article published in Deutsche Justiz on 6 June 1941, set out a guideline for how judges were to apply the idea of the criminal type in the courtroom. The requirement lauded by Schmidt-Leichner for criminal law to “judge people in all their strengths and weaknesses” is seriously impaired through the court’s necessary focus on the one particular criminal act of the accused and the corresponding legal norms it transgressed. The court apparatus is afforded only a brief glimpse into the juvenile’s life, framed by the singular event that resulted in their appearance before the judge. A correct application of the law demanded the application of the “normative, definite criminal type” as opposed to the “general criminological criminal type”. Essentially, this meant that the specific law (being aimed at specific Lebenszüge) must define the sentence, as opposed to a general typology of the offender. The following case, taken from the holdings of the Landesarchiv Berlin, will be instructive in showing how a general typology of the offender was formed.

On 19 November 1941, the fifteen-year old schoolgirl Freia K. was accused by the Berlin-Charlottenburg Youth Court of stealing five bottles of Cognac, five bottles of beer, apples and cigars from various bomb-damaged flats on the Rönnestraße, situated near the Charlottenburg train station in West Berlin, on 16 December 1940.

Her “real motive” for stealing was “not so much the intention of material gain, [rather]
the wish to satisfy primitive urges, to find admiration and recognition, as well as to
arouse interest”, the court psychologist stated in a 27-page report dated less than a
month before the trial took place. These “primitive urges”, primarily a particularly
strong “need for recognition” [Geltungsbedürfnis], were according to Professor Dr.
Müller-Heß of the Berlin University Institute for Legal and Social Medicine, “based on
hereditary disposition”. In the court psychologist’s opinion, Freia K. was biologically
disposed to commit the crime. In the trial summary, he proffered:

Such flawed characters are] on the whole not isolated in the families concerned. In this respect, the
personality of the patient’s father is of interest... [He] allegedly also possesses a strong need for
recognition and the tendency to satisfy it in improper ways, without the corresponding
performance [Leistung], alongside a certain moral weakness of character. Such characters
frequently commit criminal offences, often in similar ways to Freia K. The danger of this is
increased by a second fact that should be considered here: Freia has a clear [...] conception of moral
values, [and] knows exactly what is right and wrong, but she does not always feel it [my italics].
People with these types of characteristics are described as “insensitive” psychopaths. This
predisposition makes it often impossible for them to receive and nurture contact with their
surroundings, as is [...] the case here. They are indifferent to their fellow men. The lack of remorse
is [...] causally connected to this. Often inner inhibitions, that can prevent a strong need for
recognition taking on a form harmful to society, lapse due to the lack of emotional bonds to moral
values. 209

The above passage demonstrates some key characteristics of National Socialism’s
emphasis on the “criminal personality” (Täterpersönlichkeit) as defining factor in the
committing of criminal acts. The typology of Freia K. as an “insensitive psychopath” is

209 Professor Müller-Heß to the Berlin-Charlottenburg Youth Court, 27 October 1941; LAB, A Rep. 341-02,
Nr. 16625, Sheets 72-84, here S. 83. Victor Müller-Heß took over the position of Professor of Legal and
Social Medicine at Berlin’s Friedrich-Wilhelm University Institute for Legal and Social Medicine in
November 1930, remaining until early 1944; whereafter he was employed as a military doctor. After the
war he became director of the Institute for Legal and Social Medicine at Berlin’s Freien Universität until
1954. His main interests lay in the field of forensic psychiatry, in particular the treatment of addiction and
causes of youth criminality. For example, on the 10 March 1939 he gave a paper at his institute entitled
“The psychology of the juvenile criminal in particular consideration of sexual crimes”, to which numerous
judges and jurists, as well as HJ leaders, were invited. See NSDAP HJ Gebiet Berlin (3) Sozialabteilung to
Herrn Kammergerichtspräsidenten, 14 February 1939, LAB, A Rep. 339, Nr. 86: Allgemeine
Geschäftsunterlagen. For an overview of his medical career see Ingo Wirth et. al, Das Universitätsinstitut für
Rechtsmedizin der Charité 1833-2008 (Lübeck, 2008), pp. 76-84. Gregor Jeske, Die gerichtliche und soziale
Medizin in Berlin von 1930 bis 1954 unter Victor Müller-Heß, Diss. (Berlin, 2008) See also Elisabeth Nau,
firstly defined by biological traits – that criminality runs in the family, as demonstrated by her father *allegedly* having similar characteristics in his “need for recognition” and inability to act in a “proper” moral way.\(^{210}\) The insensitivity alluded to by Müller-Heß in his report was causally linked to the type of crime committed in this instance: plundering bomb-damaged houses - in this case whilst wearing a *Bund Deutscher Mädel* (BDM) air-raid helper’s uniform - was a clear sign that the person was unwilling – or, in the case of Freia K., unable to conform to the *Volksgemeinschaft*.

The presiding judge of the Berlin-Charlottenburg youth court, Local Court Advisor (*Amtsgerichtsrat*) Dr. Neumann, summed up the case as follows: “According to the report from expert witness Prof. Dr. Müller-Heß, the accused is indeed responsible for her crime. However the whole education and confused familial relationships of the accused – she suffers from considerable insensitiveness and a strong need for recognition [...] - constitute certain grounds for leniency, particularly since a certain hereditary burden played a role”.\(^{211}\) Freia K. received a sentence of one month’s internment in a youth arrest facility. The presiding judge’s summing up in the case of Freia K. leant heavily on the expert opinion of the court psychologist.

In 1941, the Youth Leader of the German Reich (*Jugendführer des Deutschen Reichs*) released an internal report by the Hitler Youth *Bannführer* Wilhelm Knopp entitled ‘The Criminality and Endangerment of Youth’. The report, marked ‘Top secret - Only for official use!’ provided information on various aspects in the development of crime and waywardness amongst juveniles, dealing chiefly with the period from the beginning of war up to the end of 1940. The data for this lengthy report was collected from various sources, including the Reich Justice Ministry, Reich Criminal Police Office, Gestapo, SD, the Reich Statistical Office, the German Institute for Juvenile Assistance and the German Institute for Juvenile Courts and Juvenile Court Assistance, and Hitler Youth. This data was assembled by the Supervisory office (*Personalamt – Überwachung*) within the Reich Youth leadership, within which the state and party (i.e. Hitler Youth) authorities were

\(^{210}\) Freia K.’s mother explained her husband’s continued statements that he was an engineer by his assertion that “he was once addressed as ”Herr Engineer“ by Dr. Goebbels”, LAB A Rep. 341-02, Nr. 16625 (79).

\(^{211}\) Sentence of 19 November 1941, Berlin-Charlottenburg youth court, LA A Rep. 341-02, Nr. 16625 (Sheet 105)
combined, an office with access to documentation from all of the abovementioned sources – particularly, according to the historian Arno Klönne in an introduction to Knopp's report, from the Hitler Youth Streifendienst. This organisation numbered around 50,000 members by 1940. The Reichsführer-SS Heinrich Himmler, who personally proposed an extension to 80,000 members, viewed this as insufficient. Their main task was the surveillance of those youths involved in 'bündisch' activities or other illegal, oppositional youth groups.

The ability of Knopp to document a true reflection of the level of youth criminality was hindered, not assisted, through access to these seven sources. The Reich Statistical Office, Reich Justice Ministry, Reich Youth Leadership, and German Institute for Juvenile Courts and Juvenile Court Assistance all possessed differing methods to register and collate data, as well as differing methods by which to present this information. For example, whereas the German Institute for Juvenile Courts and Juvenile Court Assistance assembled information from questionnaires completed by various Youth Offices and included juvenile misdemeanours (for example begging, truancy, gambling, visits to prohibited bars and clubs), the Reich Statistical Office did not. On the other hand, The RJF compiled their statistics through 'Monthly Crime Statistics Reports' (Kriminalstatistischen Monatsmeldungen) completed by each of the 36 Hitler Youth districts.

The report is an uneasy mixture of the purely statistical – whilst comprehensive, certainly somewhat confused given the numerous sources utilised– and the bulletin-style police reports concerning delinquent or criminal behaviour. The difficulty of marrying even different types of statistical aggregates together, let alone the more prosaic reports of the police or SD, suggests a wider problem for the National Socialist regime at this time. It was remarkably easy for an institution or particular social, political or legal actor to let one particular high profile case of juvenile crime, or one


phenomenon such as the existence of 'bündisch’ Cliques, to colour their entire stand regarding delinquent juveniles.

The author of this Hitler Youth report, despite certainly having accrued ammunition enough to despair for the moral state of Germany's youth, decided not to do so. In his concluding remarks, Knopp emphasised that “the young are not only the future of the Volk, but also the mirror of its moral bearing”.214 The increasing reports of deviancy and criminality amongst youth since the outbreak of war included within his report are therefore described as worrying, yet Knopp finishes in an optimistic frame by emphasising the “impeccable” behaviour of the majority of youth, as well as their “self-sacrifice on the home front as well as in the Wehrmacht”. Though admitting the level of criminality and waywardness is “not as favourable as one would wish”, he nevertheless stressed that, compared to the situation in 1932, there had been a marked improvement. This was to help offset what he termed a “strong tendency in recent times to judge German youth only in terms of their dark side (Schattenseite)” – a tendency the author saw as not only unjustified but also a dangerous defamation of the Volk's character.215

Unfortunately, Knopp does not state who exactly is responsible for these judgemental reports. However, one does not have to delve very deeply into the files of the Reich Justice Ministry concerning wartime youth crime to find such opinions. The moral outrage at 'degenerate’, 'layabout’ youths who are not only undermining the war effort but in some cases actively seeking to scupper it through behaviour in stark contrast to the 'heroic’, ‘self-sacrificial’ soldiers on the war front was considerable. The conclusion to Knopp's report, however, is singularly lacking in such invective.

The chapter will now provide further information on the micro-level in order to reveal how juvenile wayward discourse was deployed in the court practice; other cases such as juvenile theft - “the crime of the primitive” as one post-war jurist posited it- tried at


Berlin local courts during this period will be examined in order to pinpoint how the ‘criminal type’ examined in the previous chapter was defined in the courtroom.

As we have seen in the previous chapter, the onset of war in September 1939 saw National Socialist criminal law increasingly occupied with punishing not what an offender had done, but to punish what he is. Though the criminal personality had existed before, it was now more strongly emphasised by numerous Nazi jurists. According to the Munich based criminal law expert Paul Bockelmann:

> When someone who has already been sentenced twice brings about a prison term through a new deliberate offence, or has committed at least three deliberate offences, he is threatened - according to Section 20a of the criminal code - by severe punishment when the overall recognition (Gesamtwürdigung) of his offences shows „that he is a dangerous habitual criminal“ (gefährliche Gewohnheitsverbrecher). This order is without example in criminal law. With it, the legislator explicitly relinquishes the usual principle of making the act and its severity the measurements for punishment. It instructs the judge to not only consider the new offence, but also those previously committed offences. And it orders him to assess the offences not in themselves, but rather their meaning for the entire personality of the offender. This is what is valid for his sentence. The dangerous habitual criminal is punished not only for what he has done, but furthermore also for what he is.216

An offence, according to Bockelmann, is significant not only in being symptomatic, but also constitutive of criminal behaviour. „Here it does not matter that an illegal act has occurred, rather merely that the act was generally characteristic [of a criminal].217

Concerning juvenile law, he states that „(Section 3 of the Youth Court Law) views (the juvenile) as a type with his own conformity to the laws of life (Lebensgesetzlichkeit) that are understood in themselves, and are not merely to be seen and dealt with as smaller scale adults. He therefore cannot be prosecuted with the help of a narrowed concept of responsibility (Zurechnungsfähigkeitsbegriffs), rather he can only be held in order to obtain legal recognition for his own particular humanity. With this, the basis for a

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genuine offender-based regulation is laid.” However, there were problems with basing an offender-based law on the Youth Court Law. Bockelmann deemed Section 6, ruling out punishment when educational measures were deemed sufficient, as “having [a] predominantly negative character”. This was because in Section 6, the personal uniqueness of the offender was not the object for punishment, but rather a reason for the avoidance of punishment.

In an article entitled ‘Punish or educate? On the reorganisation of Juvenile courts and Juvenile Protection courts’ published in 1942, the author proudly states that despite considerable difficulties arising during the war (bigger pay packets, longer working hours, darkening of streets, rationing, and the influence of foreign workers) that could “easily increase the tendency to commit criminal acts”, the “curve of [juvenile] criminality moves on a line that neither calls for a state of alarm (Alarmstimmung) nor has the prospect of reaching the corresponding level of the [First World] war years”. The disciplinary jurisdiction (Disziplinargerichtsbarkeit) within the Hitler Youth consciously imitated the forms of criminal jurisdiction (Strafgerichtsbarkeit), whilst simultaneously vying for increasing primacy vis-à-vis the regular youth courts. Kathrin Kollmeier, in her study of disciplinary politics within the Hitler Youth, has referred to National Socialism’s “double-tracked” nature of juvenile criminal jurisdiction as one basically accepted by legal experts, demonstrated in the revaluation of disciplinary law over state jurisdiction within the 1943 Juvenile Court Law.

Central to the DPSYO (explored in the previous chapter) was the court’s ability to identify characteristics peculiar to a serious young offender in the perpetrator of a crime. Otto Thierack’s Letters to Judges (Richterbriefe) from 1 November 1943 provide an insight into debates surrounding this issue in its analysis of a particular case from the wartime period (the exact date of the trial is not given) concerning the sixteen year-old apprentice mechanic ‘P’. The details of this case illuminate the legal arguments


219 BA Berlin, R3001/alt R22/1157 (450).

surrounding whether or not the court could define an offender as a juvenile felon, not just within the court but also without.

The court’s character report noted that P. was an illegitimate child who was average in school, had stolen from his mother, and was banned from the Hitler Youth for being ‘disinterested’. One day, the report goes on to describe, he got involved in a hefty argument with his mother after failing to bring his wages home. The mother exclaimed: “The best thing would be, take a rope and hang yourself”. After this, he decided to take his own life by jumping in front of a train – but not before getting the idea to first ‘get up to something, in order to show a reason for his suicide’. He got an axe from home and followed a female worker (who was unknown to P.), whom he then struck over the head, causing severe injury to the skull and forehead. P. subsequently rushed to the station to throw himself in front of a train, which had already left the station. He went home and the next day gave himself in to the police. The female worker recovered from the attack, whilst P. was brought before a Special Court. The court initially attempted to ascertain whether or not he could be sentenced according to the DPSYO. This was finally ruled out, as the court could not prove “that the accused is comparable to an over eighteen year-old person in his moral development”. The sentence, as relayed in the Letters to Judges, included a brief (but rather confused) description of the expert opinion’s role in determining P.’s level of moral development: “The expert opinion, considering the lowest level of morals possessed by the accused, expected no further development in moral terms. According to this expert opinion, then, the accused “would possibly have acted the same way if he had been eighteen. On the other hand, the expert opinion considered it possible that the accused at eighteen years old would have valued the things differently than now”.

In lieu of these findings the court “could not establish that the accused was comparable to a normally developed person over eighteen”.221 This lack of clarity in the expert opinion meant the accused could not be defined as a serious young offender. The court found him guilty of attempted murder “as a violent criminal” (Gewaltverbrecher), and subsequently sentenced him to ten years in prison. This was the maximum sentence one could receive under juvenile law. In reviewing the ‘appropriateness’ of this sentence, the

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221 Heinz Boberach (ed.), Richterbriefe, p. 223.
Reich Justice Ministry viewed both the expert opinion’s report and the court’s handling of the case as particularly unsatisfactory:

The sixteen year-old apprentice lathe operator’s act, wanting to maliciously strike the young female worker dead in the manner of a highwayman and violent criminal, poses the question whether or not the offender was to be excluded from the Volksgemeinschaft as a serious young offender. The way the court analysed and decided on this question demonstrates that it firstly did not correctly ascertain the characteristics of the juvenile felon, and that on the other hand it was not courageous enough to reach its own verdict contrary to the questionable expert opinion. Regarding the application of the DPSYO, I have already... advised that serious young offenders are not only those who have already reached the maturity of an eighteen year-old, but also those who have already ended their development in such a way that one cannot expect a further development from him. This last type of juvenile felon is today (Section 20, Paragraph 2 of the Youth Court Law) designated as the deviant offender (charakterlich abartige Schwerverbrecher). Thus, when the court rejects the moral maturity of an eighteen year-old, it must bring itself to a clear decision - based on an admittedly difficult developmental prognosis – whether or not the possibility of post-maturation (Nachreife) comes into question.222

This demonstrates that the Reich Justice Ministry was clearly pushing for P. to be classified as a serious young offender, here emphasising its possible application even in the event that the accused demonstrates they have not reached the maturity of an eighteen year-old. Though admitting the establishment of moral maturity is difficult, it was clear to the Reich Justice Ministry that the court should have been braver to reach a decision regardless of the expert opinion’s shortcomings. Demonstrating the force of such criminological impulses, plans were drawn up by the Reich Justice Ministry to abolish the age limit for immunity from criminal responsibility altogether. Indeed, the preamble to the draft for a second DPSYO in June 1942 essentially confirmed that the protection of the Volk and the requirement of the Volksgemeinschaft for a just punishment demanded that moral and intellectual development, rather than age, was decisive in the prosecution of juvenile felons. A further lowering of the age of applicability for DPSYO was however seen as disadvantageous, due to fears that this would be seen abroad as a sign that criminality amongst fourteen to sixteen year-olds had increased significantly. This, according to the legal historian Christine Dörner,

would have been “tantamount to National Socialism admitting defeat on its aim to re-
educate youth”.223

The first case to be studied in depth concerns four youths accused of attempted
manslaughter in a trial dated 9 June 1943 after a sequence of events that began as all
four were serving time at the youth arrest facility located at Lichterfelde in the south-
west of Berlin. Indeed, one of the key witnesses in this case was a Herr Wirtzfeld,
Advisor to the district court and director of this Lichterfelde facility. The events leading
up to the trial can only be recounted through the dry, bureaucratic language of the court
authorities’ ‘attested copy’ (Beglaubigte Abschrift), deposited within the criminal court
case file.224 However, the considerable information contained within concerning the
particulars of the case differentiates it from the majority of other files examined within
the case study. This both reflects the importance of the case in question, and allows a
more in-depth examination of the language employed by the court authorities to both
explain these four individual’s deviant behaviour, as well as the reasoning behind the
punishment they assigned.

On Thursday, 25 February 1943, three of the subjects of this trial met in the cell of the
fourth, for the purposes of a lesson in picture framing, “one of the occupations
introduced by the institute”. However, their motives for meeting up were not merely of a
pedagogic kind. They spoke of escaping on the coming Sunday, particularly prescient for
the sixteen-year-old K who wanted to attend the confirmation of his cousin on that day.
For the sixteen-year-old D, who was soon to be transferred into a correctional education
facility, escape beforehand was also welcome in order to visit some friends before his
transferral– the court report stating here “both feared they would not be permitted the
necessary holiday for this”. K told of his being prepared to take the keys of the
supervisor as he slept – and if necessary, beat him over the head with a heavy object.
Indeed, this subsequently occurred as another internee alerted a nearby security guard
to loud noises at K.’s window – a consequence of K’s attempting to break out. In entering
the cell, K hit the guard hard with the iron leg of his bed. He then grabbed the shears
used to break out of the window in his right hand, and a pistol in his left. The guard,


224 LAB A Rep. 341-02 [NT, 0] (26-39)
before retiring home to dress his serious injury, notified the head security guard who managed to find K on the first floor, hidden behind a pillar. The youth was felled through a swift kick to the shin, and he was divorced from possession of the pistol that he still had in his hand before being locked in another cell. K was charged with attempted manslaughter as a violent criminal Gewaltverbrecher. “They that use such a tool against a 61 year-old man, be as it may a an immature, unformed (unreifer, unfertiger) juvenile, must reckon with the injured dying as a result of the consequences of the blow - even if [it was] carried out with the left hand. The accused, in the considered opinion of the court, had reckoned with and consciously accepted this possibility”.225 In terms of all four youths involved, the court ruled out the possibility of a ‘prisoner mutiny’ or ‘riotous assembly’ (Zusammenrottung, punishable through Paragraph 122 of the StGB), due to the other three still being in their respective cells as K. attempted to break out. The accused D denied that he knew of K’s intention to use an iron bedpost in carrying out the act, a denial accepted by the court report proffering “the contrary [to this statement] cannot be proved”, though it was clear that a complicity in the deed was evident. In terms of the other two youths involved, it was established that they were also involved in planning the deed, though similarly to D, they could not have known the exact course of action taken by K. Both were informed on Saturday evening of the plans to break out that night, and therefore “even had ample opportunity on the Saturday to report the affair”.226 There then follows the requisite legal reference to Section 3 of the Youth Court Law, in terms of determining whether the youths were able to “recognise the wrongfulness of their acts” according to their intellectual and moral development. It was decided that in their case, educational measures would not be sufficient as they together were “more or less wayward and already documented, sometimes numerously, with [having] youth arrests. Through their behaviour they have shown that they were not willing to integrate into the arrest facility. Neither educational measures nor the means of correction (Zuchtmittel) of further youth arrest can be considered, rather only palpable prison sentences”. Both juveniles K. and D. have, so the report continued, already demonstrated a ‘harmful disposition’ (schädliche Neigung).

225 Summary of judgement, 9 June 1943 in: LAB C Rep. 118, Nr. 107 (28)

226 Summary of judgement, 9 June 1943 in: LAB C Rep. 118, Nr. 107 (29)
George W. seemed to fit the description of a youngster obsessed with the desire to consume. His indictment sheet stated that his mother:

... has evidently lost all control over him since his father was conscripted – twice, she herself had to complain to the police about him”. Despite receiving between 6 to 7 RM pocket money a week from her, George W “is of the opinion that this – incredibly large – amount of money is “actually enough, but not sufficient for two cinema visits a week, six to eight beers, twelve cigarettes without points [ration cards, DM] with the corresponding surcharge, and the amusement arcade (Spielautomaten)”. In addition, he reads many Wild West and adventure novels.227

Cologne-born, seventeen-year old plumber (Installateur) was accused of looting cellars of foodstuffs, alcohol, blankets pillows, and motorcycle parts. He had already been convicted of car theft by the Cologne district court, crimes which consisted of “getting in to cars with other juveniles and leaving them somewhere after running out of petrol”. This was noted on 9 March 1943 by the presiding judge at a case brought before Special Court 3 of the Cologne Regional court. As George W was accused of carrying out these crimes during blackouts, he was to be sentenced according to Section 2 of the Decree against National Pests, and to be regarded as a ‘serious young offender. His accomplice, the similarly aged labourer Rudolf O., was stated to have been present at four of the crime scenes, and was subsequently handed an indefinite sentence that carried a minimum length of two years. George W. himself was imposed with internment in a penitentiary that was twice this amount.

The chapter will now focus on one more Special Court trial, this time not in Berlin, but rather the Sondergericht in Cologne. Central to this particular juvenile process was the ability of the legal actors involved to categorise those involved in eleven separate instances of theft as ‘serious young criminal offenders’, ‘National Pests’; or both.. This process resulted from the eleven counts of theft that a group of eight youths were accused of having committed in late 1942. That they had apparently been carried out during blackouts signified a breach of Section 2 and Section 4 of the Decree against National Pests, thus allowing them to be tried as adults. 228

227 R 3001, Ill Ag 6, 4/43
228 Section 2 corresponded to exploitations of measures to combat danger of air raids (Fliegergefahr); Section 4 to exploitation of the state of war (Kriegszustandes).
Their indictment sheet stated break-ins to clothes stores, food stores, and restaurants in which numerous items – in particular clothing and alcohol – were taken. The ringleader, according to the Cologne state prosecutor, was clearly Johann E. who was listed as having been present at all eleven crime scenes. The Oberstaatsanwalt, in his capacity as head of the Anklagebehörde, was expected to keep the Reich Minister of Justice in Berlin informed about the criminal proceedings. He submitted this report on 15 January 1943, proclaiming that the seventeen year old Johann E. should be treated as a ‘serious young offender’, and consequently recommended a penitentiary or prison term of between four and six years. In a further report compiled by the state prosecutor, this time to the Special Court in Cologne, he proclaims that the accused, “over and above his characterisation as a National Pest, is to be regarded as a serious young criminal offender in the sense of Section 1 of the Decree against serious young criminal offenders”. Furthermore, “as his participation in all reported crimes has proven, he was doubtless the head of these band-like youths”. The official went on to write that Johann E. was aware of the war decrees at the time of his offences, and had procured a gun from one of the other accused juveniles – though this was not present at any of the eleven break-ins. “All this, and the extraordinary frequency of crimes display such a considerable criminal tendency, [and] individually such a thought-out criminal technique, that it releases him from the circle of his age group in a way that makes it appear innate, and places him in the category of an over eighteen-year old”.

This report, having also been sent to the Justice Ministry, provoked a particularly displeased response from the Berlin authorities. They replied to the state prosecutor’s office in no uncertain terms that they considered there to be significant doubts as to whether any of the juveniles could be defined as ‘serious young criminal offenders’, and strongly recommended that the case be transferred to the Berlin Jugendkammer. This would have signified in practice their being tried as persons not possessing the full culpability for their actions.

That the case nevertheless came before the Special Court is certainly a damning indictment on the powers of the Reich Justice Ministry to influence key decisions within the wartime juvenile justice system. Just two weeks after the Justice Ministry’s admonition of the Cologne state prosecutors office, the nine ‘adults’ received a total prison time of just below eighteen years. Johann E., regarded as the main instigator, had
to bear the joint longest term of five years.\textsuperscript{229} Tragically for this group, the crimes were committed at a stage in the war where certain Nazi authorities, fearing the breakdown of ‘moral order’ on the home front, needed to ‘make an example’ of some. This group of nine happened to fall into the hands of a particularly reactionary legal authority that was well prepared to act outside of its jurisdiction. However, this was not the only wartime courtroom where such sentencing practice occurred.

What, then, would have happened had the case come before the juvenile criminal division (\textit{Jugendkammer})? The case study includes the criminal file of a certain Johannes S., who entered into the juvenile division courtroom within the Frankfurt am Main Regional Court on 31 March 1943. The eighteen-year old would have heard the presiding judge recount the crime of ‘looting’ (\textit{Plünderung}). He would have also heard an account that was intended to portray him as a dangerous criminal. Whilst on Reich Labour Service (\textit{Reichsarbeitsdienst}, or RAD) to extinguish fires and clear rubble after an air raid (\textit{Lösch- und Bergungsarbeiten}), Johannes S. was accused of stealing the watch and collection of jewellery that he had just recovered from a burning building. The sentence he received for this also took into account a judgement from the Regional Court in Wiesbaden that had convicted Johannes S. for “theft of comrades” (\textit{Kameradendieb}) at an RAD cantine. In having been found guilty of stealing almost 600 cigarettes, along with bottles of cognac, he had been dealt a one month youth arrest term.\textsuperscript{230} This, though, represented only one month of the four-year, one-month prison term given to him by the court in Frankfurt am Main.\textsuperscript{231}

It need not be mentioned that his behaviour is reprehensible (\textit{verwerflich}) in the highest degree, and proves [his] despicable convictions. The deed characterises a criminal inclination of the accused. It is all the more difficult to assess given that just before his entering the burning building, the witness W. had warned him in no uncertain terms that looting could be punished by the death sentence. He can only be thankful to his youthful age that this punishment cannot be imposed. \textsuperscript{232}

\textsuperscript{229} BA R 3001, III Ag 6, 3/43

\textsuperscript{230} Trial of 16 July 1942, Landgericht Wiesbaden.

\textsuperscript{231} BA R 3001, III Ag 6, Nr. 3017/43

\textsuperscript{232} BA R 3001, III Ag 6, Nr. 3017/43
The only true difference between the sentencing of the juvenile Johannes S and Johann E, aside from the slight variation in length of the prison terms handed to them, was that in the case we have just examined, there was never a question of Johannes S being typecast as a ‘serious young criminal offender’; the juvenile assessor terming him “characterologically not as mature as the average of those in his age range”. This case is worth investigating not only for its comparative use, but also in affording a rare insight into how this youth himself viewed the criminal cases against him. The first letter to his mother is dated 12 September 1942, around two months after the first trial in Wiesbaden had taken place. It is noticeably short, and includes “… I can only write a few more, then I will smuggle it out and the other [letter] will be checked”. After this, he was taken in for questioning under suspicion of theft from ‘comrades’. Unfortunately, its presence in the criminal court case file shows that it was not smuggled out successfully. Another two letters relate to the second crime committed, and is also addressed to his mother (to whom he had also – just after stealing it – sent the watch). He writes in one “I hope [the sentence] won’t be all that bad I was only seventeen years old at the time and thus a juvenile”. In the last, “… I am really scared that they’re going to put me up against the wall, that would be a little too early for me…” This gives one an insight, albeit only a small one, into both the prison conditions Johannes S would have endured – but more importantly his own take on what was happening to him at the time. As was briefly mentioned, the prison authorities performed checks on any correspondence sent by juvenile inmates outside. The way in which the system of censorship worked will be further illustrated through letters from Josef B. This is information gained from a letter written by the youth himself to the then Reich Youth Leader Artur Axmann on 3 March 1941. This is a case worth examining in detail, given the lack of sources written from the perspective of the juveniles themselves.233

Josef B. was transferred to a private ‘educational institution’ in 1937 on the grounds of petty thefts and truancy. Whilst interned at Landau-Quiechheim, a small city in the Rheinland-Pfalz region of Germany (close to the border with France), Josef B. experienced considerable hardships. The sister who taught them there:

233 Letter from Josef B (at the youth arrest facility in Waldfischbach) to Reichsführer Artur Axmann, 3 March 1941, in: BA R 3001/alt R22, Nr. 1307 (98-99).
...could do nothing other than beat [us] and used nothing other than stupid expressions...as I saw how rough and compassionless the sister indulged herself (sich austobten) on comrades (Kameraden) younger than myself, I almost wept. One day there was a lunch that was dreadful. Many comrades began to vomit. They left [the canteen] without asking [permission]. Then another started to vomit again. He was six years old. The sister did not let him leave... she made him eat the food he had just been sick into.234

After finishing his studies, Josef B. was placed in the group for ‘school graduates’. There, he was not allowed to talk to boys older than himself as “it was said we would only talk about bad things and bad films”. If they were caught conversing, “you got 10 whips and your hair was cut right down”. As the food continued to remain terrible, and whole Sundays were spent merely “walking around”- with the exception of a compulsory visit to the church – his release after three-and-a-half years was greeted with considerable glee. At this point, Josef B. moved to Ludvigshafen am Rhein in order to begin his apprenticeship as a cobbler. There, he suffered from homesickness to such an extent that he decided to steal 100 RM from his master, using the money to travel home to his parents in Saarbrücken. After arriving there, he did not dare visit his parents out of a fear that they would already know of his crime. So at this point, he decides to simply “wander around” the city – and in meeting his brother Julius, they spent some of the money he had. On returning to the home, he was “beaten like a piece of meat” by the director, who then grabbed his hair and started to drag him around the floor before starting to beat him. He was then made to have his hair completely shaved, and was given a uniform so thin that he was permanently cold. On 7 January 1941 he was brought before the court in Landau, where he was sentenced to three weeks youth arrest – at the point of writing this letter, Josef B. had served fourteen days. Here, the youth describes his fear of returning to the home in a week’s time. Now comes a request that the Reich Youth Leader sees to it

...that I am released back to my parents. I have spent almost four years at the institution. I like the youth arrest facility more than the home in Landau. Here, one is at least treated fairly. I have served my sentence, and find it unjust that I must return [to Landau]. From this, it is my own and my comrades' wish that you perhaps take care that another director is installed who does not belong to

234 Letter from Josef B (at the youth arrest facility in Waldfischbach) to Reichsführer Artur Axmann, 3 March 1941, in: BA R 3001/alt R22, Nr. 1307 (98).
the priesthood, in order that we can finally have humane and pleasant conditions [there]. The current conditions are almost unbearable at present.\textsuperscript{235}

The letter is signed off with “many German greetings to you: Heil Hitler!” Before we briefly examine the contents of a second letter sent to his parents, the fact that he was even allowed to send it points to the particular youth arrest facility he was being held in being of a more liberal nature than others. This much is clear through the bureaucrat within the Reich Justice Ministry who responded to the dispatching of this correspondence by writing something of their own; albeit in not quite as prosaic a style as Josef B. The brief report to the state prosecutor’s office in Zweibrücken states that although the letters from Josef B. and Franjo W. (whose situation we shall come to shortly) were forwarded to the Reich Youth Leader,

I do not consider it expedient (\textit{zweckmäßig}) on pedagogical grounds to give youths under arrest the opportunity to set down complaints about other educational institutions. Correspondence of juveniles is to be limited to the most urgent of cases, and only permitted regularly with parents. I request that the directors of youth arrest facilities are informed of this.\textsuperscript{236}

On the same day as the first letter, Josef B. was also able to send off a letter to his parents.

In it, he again described the circumstances surrounding his arrest, and his regret that “you believed, since my release from the home, I had been improved and had become a decent boy (\textit{anständiger Kerl})”. He also filled in some of the details as to how he came to be arrested after stealing the 100 RM from his master. After still not trusting himself to go home to his parents, he and his brother finally decided to visit their grandmother, and:

...as she found out that I had stolen 100 RM she became agitated […] Until you, dear parents, finally found out, and made you unhappy. Then after a few days I must really go with you, dear mother, to the police for an interrogation. Now, dear parents, you may not know that I then had to go before the juvenile judge. He told me that he did not want to give me a prison sentence, rather wanted to

\textsuperscript{235} Letter from Josef B (at the youth arrest facility in Waldfischbach) to Reichsführer Artur Axmann, 3 March 1941, in: BA R 3001/alt R22, Nr. 1307 (99).

\textsuperscript{236} RJM Berlin (author unknown) to Generalstaatsanwalt in Zweibrücken, ‘Schriftverkehr in Jugendarrestanstalten’, 9 May 1941 in: BA R 3001/alt R 22 (104).
send me back to the home in Landau-Quiechheim until the court in Ludwigshafen, where the crime was committed, orders me. 237

There then follows an account of what happened next, and will be instructive in shedding further light onto the journey (both figuratively and literally) that one youth took between initial arrest and the day of his trial. This is of course missing from the court case files, which exist almost exclusively in a legalistic, bureaucratic Amtssprache designed to register, designate, and categorise as quickly as possible the reasons behind a youth's acts, before coming to an 'appropriate' decision that will bring them back to the straight-and-narrow after their errant ways. The micro-histories created by such a process are nevertheless critical in terms of how they help us decipher the function and purpose of a juvenile criminal discourse that fluctuates continually between viewing youth crime as figures within a table or detailed, exaggerated demonisation of the callous, unfeeling, degenerate, wayward, endangered, incorrigible, dangerous, or indeed criminal youth.

The first night, Josef B. explains, was spent in prison. The following day, Herr Scherer, an employee of the youth office visited him, and brought him back to the home. Herr Scherer apparently treated him well, giving him something to eat and smoke during the journey; reading him extracts from the file compiled on his case, Scherer mentioned that it had been planned that Josef B would have been able to finally go home in December. “But after this act of stupidity (Dummheit) I must wait until the New Year, when the youth office will again ask after me. [Scherer] told me to keep my chin up, and to accept what comes”. Josef B. finally appealed to his parents to “do what you can to get me back home”.

The day before these letters were sent, another youth interned in the same institution, Franjo W., had already expressed similar sentiments to those above. He wrote of the home's rationing being “far underneath that decided on by the Reichsnährstand. To my knowledge, the home receives 35 RM from the youth office, whereby private pupils have to pay between 40 and 60 RM for the same food and the same treatment. Juvenile habitual criminals (Gewohnheitsverbrecher) are treated just the same as those who are

237 BA R 3001/alt R22, Nr. 1307.
there to learn a trade”. Here, it is telling that a certain stigmatisation of ‘habitual criminals’ was not just reserved for the juvenile criminal discourse of social, pedagogical and legal authorities, but rather also existed within juvenile circles. The difficult circumstances in this home, as described with alacrity by these two pupils, here acted to drive a wedge between juveniles of allegedly different ‘sorts’. The next passage by Franjo W describes:

When a bigger boy (Großer) is with a smaller (Kleiner), that reeks of Paragraph 175, and in such a case the director says “I’m not going to the penitentiary because of you”. It is strictly forbidden to use skin cream, hair oil or even wear a ring, then this is considered girlish (mädchenhaft). This is just as one is not allowed to have a knife, a watch or money, excursions do not happen at all, and one is only allowed a holiday after having been in the home for more than a year [...]. In mentioning to the director that I am a wrought-iron craftsman (Kunstschmied), he said that the job does not exist... [and that] I had the disposition of a conman (hochstaplerisch veranlagt). As I answered that my father was a wrought-iron craftsman, he said “all the biggest ragamuffins (Lumpen) are at the moment”.

Similarly to Josef B, Franjo W. was clearly pushing for the removal of this director. It is apparent that the above passage connects to similar fears of homosexuality employed by the forensic doctor we saw earlier in the chapter: the image of a brotherly, masculine youth here absolutely required the strict removal of any items that could in any way be deemed feminine. The expression used by Franjo W., that older boys in the company of younger ‘smelled’ of Paragraph 175, is a curious concoction of the tactile and the definite, and demonstrates that at least in his case – but very possibly also in others - the reference to such implied behaviour by its appearance in the criminal code was prevalent (gängig).

Werner Z, aged fifteen when put on trial by the 8th criminal division of Berlin’s Regional Court in late July 1941, was imposed with a prison sentence of one year, along with ‘educational measures’. This demonstrates the severity with which homosexual practices could be dealt with by the wartime courts –Werner’s young age here has very little bearing either on the logistics of the trial itself, or on the courts compilation of information relating to his case. Simply put, the court authorities viewed him as being...

238 Letter from Franjo W (at the youth facility in Waldfischbach) to Reichsführer Artur Amann, 2 March 1941, in: BA R 3001/alt R22, Nr. 1307 (100).
responsible for his actions (shown in particular in the final words of the judge’s trial summary, above); and as such his ‘juvenility’ had no bearing on his actions. Here, it will be useful to examine a further wartime ‘sexual offence’ involving a female youth, in order that an insight is gained into the role gender had to play in the courtroom discourse.

In early July 1941, the Frankfurter Volksblatt printed a communication of the criminal police that read “Rent fraudster - suitcase swindler...the convict S., who escaped from a hospital in this locality on 7 July 1941, has in recent days been predominantly wandering around the Frankfurt Altstadt and train stations committing crimes”. There then followed an appeal to find her that placed its emphasis on her being identifiable first and foremost through her ‘broken German’.\(^{239}\) Around two weeks later, the Reich Police Records Department (Reichserkennungsdienstzentrale) informed the Gestapo of Elisabeth S's previous run-ins with the law. The report submitted that, in addition to the crime of “intellectual fraud” (often staying in hotels under another name) and the one count of (briefcase) theft she was currently wanted for, she had previously been guilty of prostitution crimes in Salzburg and Vienna, carried out in the September and October of 1939 under assumed names. The court also knew of her conviction of aggravated forgery, wrongful registration (Falschmeldung) and fraud. For these crimes, she was sentenced to ten months, three weeks internment by the district court at Konstanz. The Slovakian-born Elisabeth S had, according to district court judge von Boscamp, “a very turbulent life behind her, despite her youth... many years ago she arrived in England, where she was allegedly sent on to the street and exploited by a man. She was then active partially as an artist, and partially lived from monies gained through prostitution (gewerbsmäßige Unzucht) and fraud...the accused’s latest crimes occurred after escaping from the prison hospital”.\(^{240}\) Though unfortunately the criminal court case file does not permit us to know exactly how she was apprehended, we know from her police protocol that she was brought to the main police station in Frankfurt am Main on 12 July 1941, just one day after the publication of the police’s public communication of the case in the Frankfurt newspaper. Despite the effectiveness of this effort to police Elisabeth S, the last entry submitted by the court authorities informed that she had escaped from the

\(^{239}\) Frankfurter Volksblatt Nr. 197, in: LAB A Rep. 341-02, Nr. 15694 (Sheet 3)

\(^{240}\) Trial summary, 19 December 1941, in: LAB A Rep. 341-02, Nr. 15694.
‘Horst Wessel’ hospital in central-eastern Berlin, and had not been found as late as November 1944.

In April 1942, 489 youths were interned in the Moringen Youth Protection Camp, most of which because of offences against discipline at work. How arbitrarily a youth could be interned is illustrated by the following report of a Guardianship Court Judge in Aachen:

Due to various offences, the juvenile was sentenced to a total prison term of one year. He partially served his sentence and around April 1940 was released to his parental home. He was immediately put on probation. After initially faultless conduct, he began to neglect his work, so that he was released from an apprenticeship post, according to the report of an assistant. The City Youth Office (Stadtjugendamt), who were sent the assistant's files to check, answered that the juvenile was 'registered with the Kriminalpolizei in order to be accommodated in a Youth Protection Camp' due to being a criminal and a social misfit (asozialer Mensch). The accommodation was carried out with the permission of the Reich Criminal Police Office (Reichskriminalpolizeiamtes) on the orders of the Reich Main Security Office (Reichssicherheitshauptamtes) in Berlin in accordance with decrees that are partially unpublished.

Neither the prerequisites for the accommodation nor the process that led to the accommodation in the Youth Protection Camp, as well as the appeal against such an ordinance, are known to the Guardianship Court. The length of accommodation is also unknown. I find it necessary that in future, the Guardianship Court should be made aware of all such requirements. I am further of the opinion that, in the interests of the security of the Reich, and in consideration of the Court's standing on such serious measures against juveniles who are under the supervision of Guardianship Courts, these requirements should not be met without the initial contact of the court.

Those interned within the Youth Protection Camp in Moringen during the later stages of the war were involved in a process of categorisation due to criminal-biological and supposedly racial characteristics. Professor Robert Ritter, Director of the Reich Main Security Office's Criminal-Biological Institute, had by 1944 developed a system of differentiation that involved firstly the youth’s admission into an “Observation Block”. From there, 5-10 percent were placed either in the so-called U-Block (“Untaugliche”, or

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241 For more information on Moringen, see for example: Martin Guse & Gedenkstätte KZ Moringen “Wir hatten noch gar nicht angefangen zu leben” (Moringen/Liebenau, 2004); Götte, Jugendstrafvollzug p. 234f.

242 Quoted in correspondence of the Oberlandesgerichtspräsidenten in Cologne with the Reich Justice Minister on 2. April 1941. In: BA R22 / 1176, p. 175f.
“the unsuitable”), where after coming of age were transferred to a sanitorium or care home (Heil / Pflegeanstalt), or a Probationary Home (Bewahrungsanstalt); or in the S-Block ("Störer", or “troublemakers”).

One of Ritter's projects concerned examinations performed at the youth re-education camp in Moringen “the [interesting] results of which he was kind enough to grant me [i.e. Mezger] access to”. Ritter examined 360 internees, finding around 7 percent to be ‘heavily defect’ (schwer Defekte), another 7 percent ‘pubertal failures’ (Pubertätsversager) and ‘educationally damaged’ (Erziehungs geschädigte); 35 percent were labelled ‘intellectually hindered’ (geistig Rückständige), a further 8 percent ‘simply weak characters’ (einfach Haltlos), around 35 percent ‘guileless (self-wayward)’ weak characters' ("artlose (selbstverwahrloste)" Haltlose), 8 percent ‘decidedly (insensitive, harmful to society) criminal youths (ausgesprochene (gemütsarme, gemeinschaftsfeindliche) jugendliche Verbrecher), thus “difficult youths” ("schwere Jungens").

Amanda S., listed as nineteen-year-old ‘gypsy’, came before the district court in Wedding on 18 April 1941. Though she was born in Westerhausen, near the German town of Magdeburg, she was nevertheless regarded as an alien ‘other’ who was unable to become a racially valuable member of the Volksgemeinschaft. She had been arrested two weeks previously for allegedly stealing a briefcase containing 580 Reichsmarks. The alleged victim of this crime, a caretaker at the Heilbronn Church in Schöneberg, reported the following to the Schöneberg district police after her arrest:

Today, around 12.30, an unknown woman selling laces and other articles appeared at my door. I wanted to buy a parcel of ornamental trimmings (Posamenten) from her. The woman asked for a glass of water, and managed to thereby get into my kitchen. As I did not have any small change in my briefcase, I went into a back room to get some. I placed my briefcase with contents in the kitchen or on a closet in the corridor. When I returned with the small change, the woman had disappeared and had taken my briefcase with her.


244 Police report from KJ Rev. 174 (Schöneberg), in: LAB A Rep. 341-02, Nr. 15648.
There then follows a police itinerary of the contents: 580 RM, military papers, and an NSDAP membership card. Unfortunately, it is not absolutely clear from the itinerary whether the police themselves ascertained this after recovering the briefcase. Perhaps this was a caretaker attempting to appear sympathetic to the police as a *Regimetreue*, though certainly given the stigmatisation around the accused, he need not have worried. The file states that the caretaker recognised Amanda S. through a police photograph (*Lichtbild*) he saw the next day. The accused youth was previously convicted by the district court in Magdeburg in March 1939, an act for which she received detention term of three weeks. In a further report filed by the police, it was noted that the caretaker divulged “further to this, she offered to have sex with me and touched me immorally (*unsittlich*) through grabbing my genitals over my trousers. I also touched the gypsy on her genitals, over her skirt. It did not result in sexual intercourse”.

The overtly sexual nature of this description would have played into the hands of those legal and criminological actors who were consistently forwarding the idea that the delinquency of female juveniles is based in their being ‘overly sexed’, an idea that will be dealt with further below.

Less than a week after this occurred, the Schöneberg police station filed a report that stated “the accused is a gypsy, [and is] therefore suspected of [potentially] escaping. As the potential for a black-out (*Verdunkelungsgefahr*) still exists, she will be brought before the judge. The accused is as yet unpunished, but known to the office as a refined pickpocket (*Trickdiebin*). Up until now, she could not be convicted, as the aggrieved parties (*Geschädigten*) had not been able to recognise her. In gypsy circles she has, however, gloated about stealing from old men on many occasions.”\(^\text{245}\) This demonstrates the acute stigmatisation of those deemed to be racially ‘other’ – first of all, the incredibly swift processing of Amanda S. is evident here. Only fifteen days had elapsed between her arrest and trial date. If we compare this to a case of theft brought before the youth court in Lichterfelde around the same date – a case involving the sixteen-year-old German born apprentice precision engineer Heinz H. – the punitive and reactionary nature of Amanda S.’s punishment becomes even more apparent. She was given a six-month prison sentence by the Wedding district court on 18 April 1941. Heinz H., who had been previously convicted for aggravated theft, was accused of illegally requisitioning

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\(^{245}\) Police report from KJ Rev. 174 (Schöneberg), in: LAB A Rep. 341-02, Nr. 15648 (15).
numerous items of clothing, as well as a bicycle from 'governmental inspector' Meyer between the period of December 1940 and February 1941 (the court case file unfortunately does not specify the exact date of the incidents). He was subsequently tried on 25 April 1941 – at least two months after the last crime was alleged to have been committed – and, being found guilty, was handed a detention term of one month.\textsuperscript{246}What is striking too is the descriptions attached to both juveniles – in Heinz H.'s case, the prefix 'apprentice precision engineer' appears before his name, and his father’s occupation is listed as “at present Gendarmerieoberwachtmeister in the Sudetenland”. In Amanda S.'s case, the prefix ‘gypsy’ constantly appears before her surname; indeed, in many instances throughout the file, is simply referred to as ‘the gypsy’. Furthermore, whereas the vast majority of juvenile criminal files included in the case study include job descriptions of their parents, in her case the parent’s occupation is simply termed 'gypsies'. That Amanda S. was the mother of a two-year-old child was only briefly mentioned.

Tragically, the situation for Amanda S. was to deteriorate even further. Though her file states that she had an alibi for her alleged crime, and that the case was discontinued on 24 December 1941, she remained incarcerated. She was sent from the Barnimstraße prison for females (\textit{Frauengefängnis}) to the custodial prison in Moabit on 21 February 1942, and then on to the Cottbus penitentiary for females (\textit{Frauenzuchthaus}) where she was interned from 21 May 1942.\textsuperscript{247} The court case file at this point reports that this was due to recidivism, though it appears there was no further offence after the one she was tried for in April 1941. Correspondence from the Berlin Regional Court State Public Prosecutor (\textit{Generalstaatsanwalt bei dem Landgericht Berlin}) to the Cottbus penitentiary on 20 June 1944 with the note “returned with the notice that Amanda S., born 21.8.1921, has been delivered to the \textit{Herrn Reichsführer SS} on 21.12.1942 as a result of the \textit{Reichsjustizministerium} enactment (\textit{Verfügung}) of 22.10.42.IV a 1665/42 g”. The final, brief document contained in her file is from the RKPA in Berlin, dated 12 July 1944, that stated, “S. is currently in the Auschwitz Concentration Camp”.\textsuperscript{248}

\begin{cases}
\text{246} & \text{LAB A Rep. 341-02, Nr. 16646.} \\
\text{247} & \text{Frauenzuchthaus Cottbus to the State Public Prosecutor, 20 June 1944, in: LAB A Rep. 341-02, Nr. 15648 (97).} \\
\text{248} & \text{RKPA Berlin, 12 July 1944 in: LAB A Rep. 341-02, Nr. 15648 (100).}
\end{cases}
The day after the Reich Justice Ministry enactment stated above, Reich Justice Minister Thierack sent a letter to Martin Bormann, personal adjutant to Hitler at the Führerhauptquartier. It is worth quoting at length, as a document that sheds light on the role of the justice system in the crimes perpetrated by the Nazis against such ‘peoples’ as Amanda:

With the thought of liberating the German Volk body (Volkskörper) from Poles, Russians, Jews and Gypsies, as well as freeing up those Eastern areas that have come into the Reich’s possession as settlements for the German Volksstum, I intend to relinquish criminal proceedings against Poles, Russians, Jews and Gypsies to the Reichsführer SS. I presume here that the judicial system can only minimally contribute to the rooting out of these peoples (Volksstums). Without doubt, the judicial system metes out very hard sentences against such persons, but that is not enough to fundamentally contribute to the carrying out of the thought mentioned above. There is no use in conserving such persons for years on end in German prisons and penitentiaries, even when – as happens today to a considerable extent – their labour is exploited for the purposes of war.249

This is the letter that sealed the fate of the particular young person discussed above. We cannot ascertain from the file the fate that finally befell her, or indeed her child; tragically, her final destination of Auschwitz almost certainly tells us that she would not have survived the war. Himmler’s ‘Auschwitz Decree’ of 16 December 1942 ordered the ‘assignment of gypsy half-castes, Roma gypsies and Balkan gypsies’ into a ‘gypsy camp’ within the Auschwitz concentration camp. According to Detlev Peukert, around 20,000 Roma and Sinti from eleven countries were subsequently deported to Auschwitz, and although at first no mass extermination took place, as the ‘gypsy camp’ was disbanded in August 1944 due to severe epidemics and the advance of Soviet troops, its inmates were murdered.250

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250 Peukert unfortunately does not state the source for this information. Detlev Peukert, Inside Nazi Germany. Conformity, Opposition and Racism in Everyday life. Trans Richard Deveson (St. Ives 1987), p. 212. Richard Evans has stated that 21,000 Roma and Sinti were killed at Auschwitz alone. This was taken from information found in Sybille Steinbacher, Auschwitz: A History (London 2005) p. 132-135. See also Richard Evans, The Third Reich at War (London, 2009), p. 304.
Clearly, the justice system’s authority was eroded through the ever-widening network of competencies assigned to (or, as was more often the case, self-claimed by) the SS. Here it is abundantly evident, as is the justice system’s blame for such atrocities committed during the war. In terms of the genocidal policies directed towards Roma and Sinti, there is a notable lack of historical research. In terms of the population shift of these communities, figures are also somewhat wanting. According to one source, of the 18,330 Roma and Sinti who lived within the *Altreich* in May 1940, less than 5,000 remained by the end of the Second World War. This, however, in only an estimation, as no ‘official’ statistics exist for the Roma and Sinti population of Germany for the mid-twentieth century period.\(^{251}\)

Richard Evans has stated that there were 26,000 Roma and Sinti included in the Nazi plans for racially reordering occupied territories in the East. Indeed, by September 1939, after being persuaded by the criminologist Robert Ritter that mixed-race ‘gypsies’ were a particular threat to society, Himmler had instructed every regional criminal police office to set up a special department to deal with the ‘gypsy problem’.\(^{252}\) Despite the persecution of the Roma and Sinti being above all racially motivated, those who were from this community that were persecuted during the Third Reich were precluded from claiming compensation from West Germany after the war. They belonged to a group that, according to the legal historian Ingo Müller, “were left empty-handed by the courts’ and bureaucracies’ extremely narrow interpretation of the law.”\(^{253}\) Müller stated that these bodies seized on the ‘official’ reasoning behind the killing of Roma and Sinti given by the Third Reich – the ‘prevention of crime’ – to deny those that had suffered persecution before 1 March 1943 any claim to reparation payments. Indeed, as late as 1956, the Federal Supreme Court decided “in spite of the occurrence of racial considerations, the measures taken were based not on race as such

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but rather on the gypsies’ asocial characteristics”. The continued use of this particular legal terminology after 1945, not only by a welfare officer in Schöneberg but right up to the very highest echelons of the judicial system, demonstrates the continuing prevalence of the ‘asocial’, divorced from any notion of its being employed for purely punitive reasons. Rather, the thought prevailed that this could still be a useful ‘sociological’ tool with which to prevent future crimes from occurring.

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Chapter Three: Waywardness and Total War, 1944 - 1945

The war has arrived at a high point that does not just pit weapon against weapon, but for those peoples involved, also deeply affects their moral and psychological substance, and leads them to the battle line (Gefechtslinie). The spiritual and physical image of youth is a form of barometer upon which one can measure the spiritual and psychological burden of today. In the First World War, the fourth year of war demonstrated an alarming degree of juvenile waywardness after the ideal framework of an organised youth movement no longer existed. The youth of 1914 followed the happenings of war with a sacred patriotism, only to be worn down and crushed after four years. Today, the situation of youth is a wholly different one. Although the fourth year of war has applied the hardest burdens, and inconspicuous virtues such as tenacity and endurance have had to replace enthusiasm and triumphant progress (Siegesschwung), a steady confidence [in the war effort, dpm] has not been questioned. In the name of this faithful confidence, the youth of the Reich stand tightly gathered, assembled and organised.255

The above is taken from an article entitled ‘Soldiers of the Next Hour’, published in the 1943 edition of the Reich Youth Leadership periodical Das Junge Deutschland. In the fourth year of war, the authorities viewed the propagandistic image of youth standing in line, ready and willing to fight as being of even more critical importance in the maintenance of a stable home front – as well as, as the title of the article makes clear, the next to fight for Germany on the war front. The First World War once again loomed large over such portrayals, serving as a warning that unless discipline was kept, a repeat of the so-called ‘internal revolution’ would occur, so often cited by the Nazis as the reason for Germany’s defeat in the Great War.

The author of this piece, Herbert Reinecker, was also a director, credited with co-writing the screenplay for a 1944 film entitled Junge Adler. This is a film telling the story of a young delinquent who is rehabilitated through working as a Hitler Youth labourer at his father’s aeroplane factory. Throughout the film an emphasis on the orderly, sober, stoic work of Germany’s wartime youth is constantly present, imagery certainly also present in Reinecker’s 1943 article. Junge Adler was a film very much appreciated by Joseph Goebbels, who stated in his diary the important propagandistic function played by “this group of schoolchildren enthusiastically assisting in the assembly of bombers” – and this amongst a host of swastika flags and Hitler Youth uniforms, imagery largely avoided by entertainment films during that period. Goebbels put the lack of interest shown in the film down the public “not being interested in political films at the moment”. Yet perhaps the public simply had no desire to watch a film portraying youthful behaviour so far removed from the reality.

This chapter assesses the difficulty experienced by the National Socialist regime in maintaining the image of a disciplined, willing youth, symbolising the stability and togetherness of the home front despite the increasingly perilous situation of the German army. As we have seen, this was of great importance to the National Socialist regime ever since their seizure of power in 1933, but became increasingly critical during a war that demanded of all civilians an absolute application and dedication to the war effort. The chapter will also investigate how the actions of youths outside of this image – namely delinquents and criminals – were at various junctures stylised, castigated, exaggerated or indeed rendered tame in order to suit the state’s contemporary requirements. To what extent was the Hitler Youth successful in producing a disciplined, responsible youth who carried out their orders obediently, even willingly? How was this affected by the various events of war? As will be demonstrated, with the war turning against Germany from 1943, a new phase in the treatment of wayward behaviour arrived – and concurrently, the ramping up of praise for ‘model’ young soldiers began.

Lothar G., a fourteen-year-old hairdresser’s apprentice living in the Berlin Grunewald district, was found guilty (along with his younger brother Wolfgang) of nine different

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counts of car theft – in two cases the vehicles in question belonged to foreign diplomats. Twice his brother was with him, who Lothar explained was a mechanic and who had given him the opportunity to learn how to drive with the cars that were brought to the garage. In one case, a Fiat 500 Cabriolet belonging to the Secretary of the Italian Embassy was stolen on 28 January 1943. The police officer included the following in his interrogation report:

Lothar G., who has made a particularly unfavourable impression here during his interrogation, took the car off the street. He explained, he is such an avid driver, that every time he sees a car, he can almost not stop himself from taking it away... If, in this particular case, the motive for the act could lie in a zeal (Leidenschaft) for driving, a tendency to property theft is obvious from the general behaviour of the brothers. In any case it must be observed that they are not imbued with any inhibitions whatsoever... recently it has mainly been cars belonging to foreign diplomats that have been pilfered. The impression that one is no longer in control of the situation (nicht mehr Herr der Lage) can develop through this. Police measures alone do not suffice to prevent such cases from occurring in the future. Truly deterrent sentences, possibly with subsequent publication, should contribute integrally to the reduction of car thefts by youths.257

The idea of the sentence as deterrent can be found frequently in the files. There is certainly a link between preventative and reactive measures to combat juvenile delinquency. The authorities were aware that for every youth caught and brought to justice, several would escape unpunished. Reactive measures to crime such as harsher sentencing would, it was hoped, decrease the amount of overall criminality through conveying a message that the regime would be tough on crime. Yet preventative measures – even to the extent of dealing with particular types of crime – were widely discussed by legal authorities. For example, a 1939 letter from Ministerial Adviser Dr. Krug in the Reich Justice Ministry to the Frankfurt Professor Dr. Hey at the ‘Gerichtsärztliches Institut’ attempts to involve him in an investigation into the causes of car theft:

Occasionally during different car theft procedures (in court – dpm) the thought emerges to investigate how these mostly very young criminals come to their act. How young people’s predispositions, environment and the like brought them to their criminal act would undoubtedly permit very interesting viewpoints in psychological as well as criminal-political respects.\footnote{Bundesarchiv Berlin R3001, alt R22, 1155 (F1 Bl. 7), dated 3 May 1939.}

Indeed, the letter also mentions the favourable response Dr. Krug received from a Professor Dr. Jungmichel in Göttingen, and that State Secretary Roland Freisler (who deals with juvenile car theft in articles for “Deutsches Strafrecht”) had expressly asked that a research team be assembled for the purpose of investigating car theft.

The explanation given to the police by Lothar G. was that he stayed away from work, because he “didn’t feel like going”, and in the afternoon “suddenly came to the idea of stealing a car, in order to go for a drive.”\footnote{LA A Rep. 341-02, Nr. 16758. Police interview dated 11 December 1942.} Lothar appeared to conform to the typical characteristics of a juvenile thief – described in his court file as lazy and prone to acting on impulse. It was also noted that the death of his father meant the increasing difficulty of his mother in maintaining work – that she appeared “weak-willed and soft” added to the difficulties in controlling her children. The educational home to which Lothar G. was sent in Struveshof (just outside Berlin) reported: ‘an ill bred youth, superficial, frivolous, slovenly, devious and insincere. Long-term disciplining in a home is urgently necessary.’\footnote{Struveshof Home educational plan dated 19 July 1943. LA A Rep. 341-02, Nr. 16758.} He was released almost a year after this report was written.

One case that resulted in a severe sentence involved the young (car) painter Hans B and two accomplices. Hans B was brought before the Special Court to the Berlin Regional Court (\textit{Sondergericht bei dem Landgericht Berlin}) on 1 June 1944.\footnote{LAB, A Rep. 003-02 Nr. 3/1 (106-113) The other accused juveniles were two seventeen-year-olds, an apprentice plumber named Heinz U and a bellboy (\textit{Pagen}) named Heinz K. Heinz U is mentioned in the file as ‘not indictable’ (\textit{insoweit nicht verfolgbar}), Heinz K is mentioned as having already dropped off the stolen goods but (as with Heinz U) did not specify the actual sentence afforded by the Special Court.} He was accused of repeatedly breaking and entering into air-raid shelters and cellars, and in doing so was deemed a National Pest (\textit{Volksschädlinge}) ‘[who] exploited measures introduced to defend against air-raids”, stealing “valuable air-raid protection goods” in one attempted
and four completed thefts. In addition he was accused (along with “another searched-for Ukranian”) of stealing money worth over 200 RM, shoes, clothes, ration cards, a Hitler Youth identity card, a comb and a match box from sleeping foreign workers in a hostel to which “he snuck in during the night, partly entering through open windows, partly barefoot through open doors, whilst the inmates slept”262.

The crimes were alleged to have been committed in the Berlin Schöneberg district between February and April 1944, and also included stealing two woollen blankets, one sheet, eighteen pairs of socks (Stuhlen), five pounds of sugar, two pounds of sausage, and one pound of margarine from a Reich Rail Young Helper’s Home (Reichsbahnjunghelferheim) “in which he had previously lived and whose environs he knew exactly”. This qualifying sentence is given in order to stress the rational, calculating nature of the offence, so that Hans B corresponds to the precocious, mature image of the juvenile felon as opposed to being merely a youngster who stole in the heat of the moment. His crimes also included breaking and entering into his accomplice Heinz U parents house (with the accomplice in tow) and of being a receiver of stolen goods. However, even before the charges are listed in an initial case report by the Higher Regional Court Public Prosecutor’s Office to the Berlin Special Court, he and his (still ‘at large’) accomplices are labelled as ‘National Parasites’ because of the claim they plundered air-raid shelters during the time a raid was occurring, thus taking advantage of wartime exigencies to satisfy their (in the prosecutor's eyes at least) obviously selfish and dangerously anti-patriotic leanings. In the report, the accused Hans B and his two accomplices are labelled as “juvenile felons, who according to their intellectual and moral development are comparable to eighteen year-old culprits and have demonstrated particularly reprehensible convictions...”263

Hans B was sentenced according to Section 2 of the Decree against National Parasites in connection with Section 1 of the DPSYO and Section 259 of the penal code (dealing with the handling of stolen goods). There appears to be some discrepancies in establishing the actual age of Hans B.: where the Public Prosecutor’s Office initially gives the date of birth as 1 February 1926 (i.e. over eighteen years old), the Senior Public Prosecutor’s

262 LAB, A Rep. 003-02 Nr. 3/1 (106-113)

263 LAB, A Rep. 003-02 Nr. 3/1 (106)
indictment proffers 22 January 1928 (making him just sixteen years-of-age at the time of the trial). This would of course fit into the prevailing ethos that a juvenile's age is not important, rather the severity of the offence or the reprehensible, asocial behavioural traits of the perpetrator. On 1 June 1944, the Berlin Special Court ordered the 'National Parasite and serious young offender' Hans B. to six years internment in a penitentiary. The judge also mentioned that his time interned whilst awaiting trial would be taken into account. Just over two months less, being as it was the extremely short period of time between the initial accusation and the trial’s completion, would have served as little consolation.

The sixteen-year old farmhand (Landarbeiter) Ferdinand G. received a sentence of six months imprisonment from the Juvenile Division to the Berlin Regional Court (Jugendkammer des Landgerichts) in May 1944 for stealing a jacket (as well as some smaller items) from a house partially destroyed during an air raid. In this particular case, the severity of the sentence depended on whether Ferdinand G.’s act could be seen as “looting in the sense of Section 1 of the Decree against National Pests, or as theft”. The court decided that though the offence was committed shortly after the raid, “the accused was not conscious that his action represented the serious crime of the looter. This can be believed of him. The accused, just sixteen years old at the time of the offence, had only just come to Berlin after a short stay in Dresden. Until then he had lived in the countryside of Gau Oberdonnau, where he had never heard anything about the idea of the ‘looter’ as laid out in the Decree against National Pests. Before being arrested, he was not informed of the severe wrongdoing of the looter and the subsequent death penalty this could have brought. He has a sluggish power of intellect. That from the beginning he made no secret of it leads us to believe that he did not see the deed as a serious crime.”

264 Here, then, the relative mildness of the sentence (considering the death penalty was applicable) was determined by the youth’s unawareness of the severity of his act, supported by his ignorance of the Decree and sluggish intellect Ferdinand G was therefore sentenced according to Section 242 of the Criminal Code. That he was not seen to correspond to the personality traits of a dangerous juvenile criminal and national parasite was due to “the personality of the juvenile, his mental and intellectual maturity, the way the crime was committed and due to his behaviour after the act negates the

264 R3001 III Ag 5 1036/44 (10). Trial Summary from 3 May 1944.
characteristics of a National Pest. In addition, the behaviour of the sentenced in the community, in particular his voluntary registration and service at the rallying point (Standarte) ‘Feldherrnhalle’ lead one to believe that he does not correspond to the National Pest type”. Yet the circumstances of the theft, argued the three advisors to the Regional Court in their summary of the trial proceedings, called for a strict sentence: “It should be considered that the accused carried out the theft in a bomb-damaged house whilst repair work was being done, and that he did it as a member of the SA-Standarte Feldherrnhalle, in uniform. His fault is in this way so large, that the need of the Volksgemeinschaft for protection and atonement requires a punishment (Section 4 of the Rechtsjugendgerichtsgesetz). Means of correction (Zuchtmittel) or educational measures cannot be viewed as sufficient.”

The fact that he could have been recognised as an SA member by the public whilst in the process of stealing the items was of particular concern here. In many other wartime reports concerning youth crime (for example from the SD and Gestapo), emphasis is placed on how far youth can be seen by the public to be carrying out the orders and wishes of the Third Reich – or at least, not being seen to be actively contradicting them. Crime itself could therefore be viewed as a purely political act, i.e. as a declaration of opposition to the aims of the Führer and his party. What often prevented it being viewed as such (in particular where petty or aggravated theft was concerned) was the oft-cited incapability of the youth, through inexperience, naivety or unintelligence, to recognise the seriousness of his or her actions. In Ferdinand G.’s case, his apparent ‘slowness’ was more than offset by his wearing of an SA uniform during the act of theft. The Regional Court (Landesgericht) in Berlin was obviously sensitive to the need of the regime, stated throughout the war years, for Germany’s youth on the home front to at least be seen to be ‘under control’. Ferdinand G.’s act, in his obvious disregard for this, received a harsh sentence. Here what was stolen was not of particular importance (the Jacket and other items such as pens and razor blades not being of much value), but the manner in which they were stolen.

265 This letter from Oberstaatsanwalt Dr. Preuss to the Reich Justice Minister on 21.05.1944 also states his (precautionarily submitted) appeal for a revision of the sentence passed by the Landgericht on 3 May 1944 stands no chance of success due to what he terms „the juvenile’s personality, his mental and moral maturity, the way in which the crime was executed and his behaviour after the act. See R3001 III Ag 5 1036/44, Bl. 6.

266 R3001 III Ag 5 1036/44, (11). Trial Summary from 3 May 1944.
More seriously dealt with were the five cases of robbery in Berlin-Köpenick committed by the seventeen-year-old joiner (Tischler) Helmut B. and the sixteen-year-old labourer (Hilfsarbeiter) Hans-Heinz S. during the months of June and July 1943. Both were involved in the reconstruction of various buildings in Köpenick that were damaged during raids. On the side of the buildings stood warnings that taking anything from inside could result in the death penalty being applied. They were also, it states in the case file, forewarned by their master not to indulge in theft during their work. Notwithstanding, the file records that Helmut B. and Hans-Heinz S. took items home on five separate occasions. These included a gramophone and records, revolvers, pistols and ammunition as well as the embezzlement of an army gas mask. The decision of the Berlin Regional Court 2nd Youth Chamber (Jugendkammer beim Landgericht) on 23 October 1942 to sentence Helmut B. (as the main instigator) to one year and three months imprisonment, Hans-Heinz S. to one-month youth arrest was later contested by the senior public prosecutor (Oberstaatsanwalt) Dr. Jaeger. He conveyed his disapproval in a letter to the Reich Minister for Justice, arguing that the court sentenced them both far too leniently. Giving one example, Hans-Heinz S. had presented a screwdriver to Helmut B. during one break-in, thus assisting him in breaking open a closet (Bibliothekschrank) of a policeman and taking a box of caps (for use in a toy pistol). This meant that he was guilty of providing assistance to an aggravated theft in connection with plundering, and hence should have received a more punitive sentence. Jaeger also contested that Section 1 of the National Parasite Law and Section 9 of the Youth Court Law were incorrectly (if at all) applied.267 This is but one instance of complaints from within the legal system that a law, particularly if recently introduced, was not being used – or indeed understood – properly by the court. Unfortunately we cannot know if a revision of their sentences was implemented, as the letter from Dr. Jaeger is the last entry in the case file of Helmut B. and Hans-Heinz S.

Another case of looting involved the sixteen-year old apprentice-carpenter Rolf B., who was sentenced to two years imprisonment by the Juvenile Division (Jugendkammer) on 19 April 1943. Amongst other offences, he was found guilty of ‘using an air raid to his own advantage’. It was noted by the State Prosecutor (in an indictment dated 17 May

267 R3001 III Ag 5 1051/43 (5).
1943) that one week before the crime occurred he had not been home, but rather had slept either in a train carriage stationed overnight at Grünau or in the stations Potsdamer Platz and Anhalter Bahnhof. In addition, he had stopped going to work, and spent his time ‘gadding’ (herumtreiben) around Berlin. On the night of 3 March 1943 he was arrested in the waiting room at Anhalter Bahnhof with a number of ration cards as well as the sum of 97 RM in his possession. He eventually conceded to the police the origin of these:

He came to the Behrenstrasse during the night of the air raid on Berlin, from the 1st to the 2nd March 1943. A house was burning. At first, he helped to save furniture. Then he saw how a man looted and slipped a camera in his pocket, as well him taking two packed suitcases and a cigar box. Seeing ration cards were in the box, and allegedly being hungry and not knowing how he could sustain himself, he threatened the looter with the words “You there, you’ll give the box to me, or I’ll report you!” At this, the man handed him over the box and it’s contents.268

That Rolf B. received a two-year prison sentence can be attributed not merely to the offences he committed, but rather to ‘certain harmful tendencies’ (gewisse schädliche Neigungen) he exhibited: “he has failed his traineeship and his work, visited pubs, gadded about and indulged (sich hingeben) in enjoyment of spirits and cigarettes. However, he has obviously been harmed more through his environment as well as through bad company, as opposed to being of bad character”.269

Again here is evidence that youths regarded as pleasure-seeking (usually involving the use or misuse of alcohol and tobacco) and/ or lazy were more strictly dealt with by the youth court judge in order to ‘set an example’. In this case, the judge found that these weaknesses were due to his environment as well as through ‘bad company’ as opposed to possessing a bad character. For example, Rolf B had befriended the forty-four year-old Max S.270 who had on occasion given him cigarettes (without the legally necessary ration cards). When Max S. could no longer provide him with cigarettes, he suggested

268 R3001 III Ag 5 1021/43 (3). Dated 17 March 1943.
269 R3001 III Ag 5 1021/43 (13). Trial Summary, 19 April 1943.
270 Max S. was charged (at the same trial as Rolf B.) with theft in connection with receiving stolen goods and offences against the Verbrauchregelung-Strafverordnung, and sentenced to six months imprisonment and a fine of 500 RM.
Rolf could sell him soap in exchange, easily available to him as the son of a salesman who was at the time selling, amongst other items, bars of soap. Having sold a few bars to Max S., Rolf B. proceeded to take a further 51 bars from his father which he then attempted to sell on the street – at which point he was caught. Around four months later he was caught again in Anhalter Bahnhof, with the trial then following six weeks afterwards.

After the same air raid on the night of 1 to 2 March 1943, the fifteen year-old Hans-Erich J. was helping a friend clear out a number of damaged houses. Instead of informing the leader of this particular operation of the goods taken, the two pupils shared out what they had found – watches and a pair of leather gloves. However, in contrast to the case of Ferdinand G., Hans-Erich J. “...himself admitted that the group leader... emphatically pointed out that nothing should be taken away, and that at school the illegality of such acts were mentioned many times”271 As it was clear that J. was fully aware of the law against the plundering of bomb-damaged houses, he received a prison term of one year and six months – one year more than Ferdinand G. Again, what was taken was of lesser importance than the manner in which it was taken. Generally those convicted of an offence such as plundering were given a harsher sentence than they would have received had they committed a theft under ‘normal’ conditions. As it was, to be seen to take advantage of the peculiar circumstances arising due to the war was punished fairly harshly – for example, the milder sentence of youth arrest was seldom applied in such cases. To be seen to have done this intentionally was of course treated even more seriously. Again, the classification of a juvenile as being a National Pest meant that the perpetrator could be sentenced according to healthy popular feeling (gesundem Volksempfinden) more punitively than the regular boundaries of punishment allowed. Again, the ability of a youth to make a good impression – as opposed to the court’s ability to scientifically prove what ‘type’ of juvenile offender he is, made the difference in terms of the leniency of punishment proffered.

On 4 November 1944 at around 8.30pm, on the Turmstraße/Wilsnackerstraße in the North-western Berliner district of Moabit, the police found five youths ‘loitering’ (herumtreiben) after nightfall; their behaviour apparently representing a ‘considerable nuisance’ (großen Unfug). They were accused of harassing (belästigten) two girls, holding on to them and stealing a handbag before throwing it into a nearby bush. In

271 R3001 III Ag 5 1020/43, Trial Summary, 21 April 1943.
doing so, they contravened Sections 1 and 9 of the Police Decree for the Protection of Youth (introduced in chapter 1), and were consequently taken to the nearest police station for questioning, along with the two girls and the mother of Heinz S, one of the five boys arrested. After statements were taken from the accosted girls, the police officer composing the charge sheet (Strafanzeige) recorded the following under 'further negotiation':

The housewife (Ehefrau) Berta S [mother of the accused Heinz S, DM]... resident Berlin NW 21, Lübecker Str. 8, reported voluntarily and stated:

This evening I went to the cinema. My fourteen year-old son Heinz said that he would like to meet me after the film. When I did not meet my son in front of the cinema, I went home. But he was not there either. In approaching the corner of Lübecker/Turmstraße, I saw him together with another boy and two police officers. I discovered then for the first time what had occurred, and followed them to the police station.

I have educated my son such that I do not believe and cannot accept that he can be connected to the handbag theft.

It was put (Auf Vorhalt) [to Berta S]: Are you aware as a mother that juveniles found on the streets after dark are up for grabs (zu sein haben), and that this, according to the Law for the Protection of German Youth, can also incur a penalty for their parents?

Answer: I am aware that juveniles found on the streets after dark are up for grabs. I have always been in favour of my son coming home punctually of an evening. Because today is Saturday, and he [Heinz S] can sleep in tomorrow, I told him that he should meet me after the film finishes. We would then have gone home together.272

The dialogue between policeman and Berta S is clearly contrived, her words being shifted into the language of bureaucracy (Amtsdeutsch). Though her statement that ‘Heinz said he would like to meet me’ does not quite tally with the later assertion ‘I told him that he should meet me’. The youth in question here was given an official warning from the police officer.

More importantly, it is telling that considerable time and effort was taken to deal with what was a fairly minor infraction – first by the police, then the state prosecutor to the regional court (Generalstaatsanwalt beim Landgericht). Considering the huge problems occupying Berlin’s authorities as a result of the increasingly lethal bombing raids by the Allies, this case hints at how the upkeep of an ordered, disciplined youth was still high on the agenda, despite the ever increasing difficulty of doing so. In terms of the

punishment received becoming harsher towards the end of the war than in the beginning, unfortunately a lack of sources for the period after 1942 held within the Landesarchiv in Berlin precludes any definitive judgement. The Youth Office in the Tiergarten district of Berlin described him as follows:

... In private he makes a really good impression. He is an apprentice at the Schöneberg District Administrative Office, and he found it extremely embarrassing, that he had to take time off work in order to make the appointment (at the youth office). The father has been away on duty in Guben for one year. The mother works. Heinz is a member of the Hitler Youth. He is the only child of his parents.273

In terms of the case study, there were twenty-five offences against the PolVO. Of these, only one was processed after 1942 – that of the sixteen year-old Bruno K, an apprentice hairdresser from the district of Friedrichshain in Berlin. In January 1944, he was found loitering the streets after dark, smoking in public, to have visited Variety shows, and to have physically abused a HJ member – thus contravening Sections 1, 4 and 9 of the PolVO. On his charge, it stated Bruno K.’s membership to a clique whose “excesses have reached such an extent that they have disquieted the whole neighbourhood. They directed their attentions to individuals, including Hitler Youth members, and attacked them without any reason in the most brutal way”. That he received one month’s youth arrest, as opposed to the other eighteen youths in the sample whose cases were processed pre-1942 and who received a maximum punishment of one week’s youth arrest or weekend detention, is perhaps indicative of a more punitive legal system as a result of the failing war offensive, though the other eighteen cases did not involve the attacking of Hitler Youth members. That a sentence was delivered and recorded in the file is certainly unusual, as predominantly the paperwork prepared for the court in such matters (if it did indeed come to court) was notably brief. The sentence, delivered by the 1st Youth Chamber to the Berlin Regional Court on 18 September 1944, relayed an abhorrence to the beatings administered to Hitler Youth members through Bruno K.’s clique “Knietief” (which can be translated as “Knee Deep”), “the constant visits to Café “Standard” and the events of the “Budenzaubers”... involving excessive drinking, smoking and dancing [to Jazz music, dpm] are of course to be sentenced as harshly as possible and point to a notable waywardness of the accused juvenile. He is

unfortunately, as regards the use of criminal law (strafrechtlich), untouchable”. This demonstrates there were still, even towards the end of the war, certain legal precedents that could not be traversed by some authorities, as the next chapter will demonstrate, alongside an investigation into the role of ‘criminal’ or ‘conspicuous’ cliques during the wartime period. However, to set the scene in terms of the relation between the police and cliques where the PolVO was concerned, the following may be illuminating.

The SD reported on the consequences on one particularly large police raid against youths carried out in the Schöneberg district of Berlin in March 1943. The raid, carried out after dark, concerned youths on the streets “unaccompanied by guardians, hanging around and harassing pedestrians”. This led to the arresting of 153 youths who were released after giving their details. However, 49 boys and 14 girls were as a consequence taken to a farmhouse over the weekend. There, under the supervision of a “particularly suited” Hitler Youth leader, they were to carry out labour duties, physical exercises and singing lessons, as well as being “ideologically schooled and instructed on the Police Decree for the Protection of Youth”. Unfortunately the report does not detail exactly how this was instructed. Whilst this sounds relatively tame in comparison to other tenets of National Socialist punishments for police transgressions, the report continued by noting the forming of a clique as a result of the police raid. Known as the ‘CDU’ (‘Club der Unheimlichen’, or Club of the Strange), their aim was to attack uniformed Hitler Youth members as revenge for their police and Hitler Youth-enforced “hindrance of movement”. One leader of the band was arrested and informed on other members of the clique, so that eighteen youths – of which four female – were arrested and sent to either to a ‘Youth Assistance Bureau’ (Jugendhilfsstelle) in Herberge or a Home for Girls at a Regional Youth Institute (Landesjugendanstalt). As a result of the investigation, four girls and nine boys were handed a warning, and the rest were handed over to a youth court judge. Unfortunately, a lack of sources concerning this particular clique prevents a more detailed examination of what punishment these youths received before the court, and why some were released while others detained. The report does however shed light on the dichotomy of dealings with youth, where some could be labelled incorrigible and

274 BAB, R 3001, III Ag 5, 1044/44.

275 Reichssicherheitshauptamt, Meldungen wichtiger staatspolizeilicher Ereignisse vom 30 April 1943 (Institut für Zeitgeschichte, Munich, Ma 442/2, (142-143).
others endangered. Where youths were labelled as incorrigible or ‘dangerous’, and as will be explained at the conclusion of the chapter, a very different type of ‘protection’ was afforded. The following section concerns the theory and practice, and importance to a National Socialist battle against youth criminality, of a measure that exposed certain youths to the full force of the law. Despite concerted attempts to crack down on such acts, offences in the workplace by German youths represented the second most frequent type of offence after petty theft, as the following table demonstrates:

Table 2: Sentences, also including offences against discipline at work

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of sentences</th>
<th>Total number of youth sentences</th>
<th>Sentences due to &quot;offences against discipline at work&quot; (Verstöße gegen die Arbeitsdisziplin)</th>
<th>Youth sentences due to &quot;offences against discipline at work&quot;</th>
<th>Share of these offences as percentage of total crime</th>
<th>Share of these offences as percentage of total youth crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>1939</td>
<td>298,851</td>
<td>17,458</td>
<td>36</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1940</td>
<td>266,223</td>
<td>21,318</td>
<td>2,808</td>
<td>345</td>
<td>1.1 %</td>
<td>1.6 %</td>
</tr>
<tr>
<td>1941</td>
<td>320,766</td>
<td>37,877</td>
<td>3,054</td>
<td>542</td>
<td>1.0 %</td>
<td>1.4 %</td>
</tr>
<tr>
<td>1942</td>
<td>345,15</td>
<td>52,469</td>
<td>15,828</td>
<td>4,842</td>
<td>4.6 %</td>
<td>9.2 %</td>
</tr>
<tr>
<td>1943</td>
<td>177,332</td>
<td>29,143</td>
<td>14,817</td>
<td>4,965</td>
<td>8.4 %</td>
<td>17.0 %</td>
</tr>
</tbody>
</table>

Source: Kebbedies, Außer Kontrolle, p. 208 (taken from Reichskriminalstatistik)

The share of offences against discipline at work as a percentage of the total amount of crime rose from 1 percent in 1941 to 8.4 percent in the first quarter of 1943. Where only youth were concerned, this trend was considerably more pronounced, as demonstrated by the jump from 1.4 % of total youth crime in 1941 to 17 percent in the first quarter of 1943. During 1942, almost every tenth sentence within the German Reich involved offences against discipline at work, while up to June 1943 it was every sixth.
In numerous criminal court case files from the Berlin Local Courts during the wartime period, juvenile absenteeism was given as evidence of their inability or indeed unwillingness to play their part in furthering the Volksgemeinschaft’s aims. Behaviour at work formed an integral part in an evaluation of the juvenile’s personality, the establishment of which was key in determining the sentence applied by the court.

Laziness, absenteeism, or indeed the lack of regular work can be found time and time again within the case files. It may be useful here to outline one particular case that highlights some of the key traits associated with the ‘work-shy youth’:

The accused has worked at Telefunken since February 1940. During this time, despite continual warnings and lectures, she continually arrived late for work [...] It has been proven that the accused has taken every opportunity to stay away from work. It is also beyond doubt that the accused was often ill, in particular suffering from stomach complaints. Nevertheless, her behaviour shows that she has never possessed the desire for punctuality. The illnesses do not excuse her absence or lateness - on one occasion she even called in sick pretending to be her mother. The regularity of her tardiness can, in addition, not be excused through an unfavourable journey to work. During her illness she was frequently seen at the Café Bristol [...] [Her] behaviour gives a bad example to all other loyal followers (Gefolgschaftsmitgliedern). The accused has seriously breached her duty to do everything in her power to work, and thus contribute to the Volk's final victory (Endsieg).

Nineteen year-old Ursula S., a shorthand typist from the Wilmersdorf region of Berlin was handed a 90 RM fine by the Charlottenburg local court on 20 January 1943. Given that she ‘regretted’ her behaviour and promised in future to ‘comply with her duty to work’, a fine was seen as sufficient to ensure better future conduct. The judge’s trial summary remarked on the ‘bad example’ to her other fellow workers, and the ‘gross violation of her duty to do everything within her power to work towards the final victory of our people’. The report conveys the image of a lazy, unmotivated youth who would rather sit in a Café than fulfil her ‘worthwhile duty’ to the state. Fears that such behaviour could become widespread played a central role in the employment of judicial measures as preventative steps to ensure such ‘wayward’ acts remained isolated cases as opposed to widespread occurrences. Again, we can see that maintaining the image of an upright, duty-conscious, morally healthy youth was more important to the National Socialist authorities than the actual moral condition of Germany’s youth. They should be

276 LA, A Rep. 341-02, Nr. 16684.
seen to comply with the state's rules and regulations, particularly given the duty and sacrifice demonstrated by the Fatherland's soldiers on the battlefield.

The nurturing of a ‘true work ethic’ was consistently emphasised by pedagogues such as Otto Schuerer von Waldheim, Director of the State Institute for the educationally needy (der Staatlichen Anstalt fuer Erziehungsbeduertige) in Hirtenberg (Niederdonau). “In direct correspondence to the aims of National Socialism”, he stated, “we desire to draw on a healthy and able youth and lead them to a true work ethic. This will substantially contribute to the prevention of every unnatural social derailment, and protect our Volksgemeinschaft from future criminality (Verbrechertum).” 277 As well as the obvious benefits for the war industry that employing juvenile labour brought, the attainment and maintenance of this employment was viewed as a particularly important method of instilling discipline and protecting youth against waywardness, but also as a gauge by which to measure the success of National Socialism’s all-encompassing education program. According to a Reich Youth Leadership report entitled ‘Die Betreuung der Jugend. Überblick über eine Aufgabe der Volksgemeinschaft’:

If men and women both day and night tirelessly manage to give the front the weapons it requires, then absenteeism is an offence against the nation’s life interests (Lebensinteressen) [...] The daily unromantic, sober work from early unil late is an acute test of the modern education of youth. This education must prove whether considerations of self-leadership and self-reliance within today’s youth have actually gained life and form (Leben und Gestalt gewinnen). 278

The emphasis on absenteeism as representative of not only criminal tendencies but also direct resistance to the regime was to a large extent misplaced. That working hours increased dramatically – with some youths experiencing 60 – 72 working hours a week – was cause enough for exhibitions of laziness, truancy, and disaffectedness to emerge without the need for such actions to be necessarily politically motivated, conscious acts of dissent. Yet it is important to note here that young people’s ability to perform ‘daily,

277 Otto Schürer von Waldheim, Jugendkriminalität und Beruf, Blätter für Gefängniskunde 72/1 (April 1941) pp. 3 – 42, here p. 42

unromantic, sober work’ was seen as demonstrative of the success of National Socialism in promoting self-discipline and responsibility for oneself – ‘a practical test of modern juvenile education’ as the above Reich Youth Leadership report termed it. In addition, that many labour placements were not chosen by young workers but rather allocated to them by the Labour Office led to disaffection amongst many who were unhappy with their lot. Mechanic and Businessman were two particularly well-liked professions – in contrast, Agriculture and Mining were occupations for which the authorities had great difficulty finding labour for.279

The reporting of offences in the workplace was sporadic, with only a portion of offences detected and reported to those institutions involved in the policing of labour – including the Police, the Gestapo, the Work office (Arbeitsamt), Reich Labour Front, Hitler Youth, the Welfare Office and Local Courts. There was an attempt by the Reich Trustees for Labour to control the labour force through administering on-the-spot fines (Ordnungsstrafen) - the ineffectiveness of which resulting in an increasing number of court cases filed – the backlog of which leading in turn leading to some district courts using summary justice in order to alleviate the situation280. Another method of instilling discipline in the ranks of juvenile labour was the National Socialist publication “Schaffende Jugend” which instructed young workers as to the benefits of maintaining an orderly work routine.281

Heinz B. was found guilty of nine separate offences against Paragraphs 175 and 175a, receiving a three year jail term from district court 603 in November 1943. The nineteen-year-old semi-skilled clerk began serving in Tegel prison (in Berlin) before moving to remand homes in Graudenz and Hahnoefersand (Hamburg), being released in March 1946. His case file includes a report from the executive committee of the Hahnoefersand remand home on 8 January 1946, written in response to his attempted exoneration. This


report quotes directly from a report first filed by the NSV Jugendhilfe in June 1944 that stated:

The juvenile Heinz B. comes from a family about which only good can be reported. (His) Father and Mother are seriously hard-working members of the community (Volksgenossen) who have educated their children well (they have in addition a daughter at home), always taking care of their further development. If Heinz B. becomes delinquent, it is not attributable to the parents influence, but rather that he acted carelessly, without overlooking the consequences of his misconduct… the guarantee that he has made a false step, and will not do so again, was accepted by his parents.282

That the post-war court could include, without the need for justification, a report made by a National Socialist youth organisation demonstrates the continuity in juvenile justice practice, even when considering that homosexuality was in general dealt with far more leniently after 1945. The report from January 1946 adds that “his offence is obviously not attributable to a homosexual disposition, but to the damaging influence of the company he kept; evidence of a diseased sexual disposition (eine krankhafte Geschlechtlicheveranlagung) could up to the present time in the penal system neither be observed nor proved with (him)”.283 Dr. Heinz Kümmerlein, a member of the Reich Justice Ministry and a key player in the formulation of the Youth Court Law of 1943, discussed the relationship between the judge and the court doctor extensively in an article published in December 1943:

The doctor is a particularly important source of knowledge for the youth court judge. However, the doctor can only really help when they have command in the areas of youth psychology, characterology and criminal biology. The youth court law (§ 28 section 3) references the “youth doctor trained in criminal biology”, meaning the youth psychiatrist. Due to such doctors only being available in limited numbers, there are already significant limitations to medical examinations. Such examinations are recommended when suspicion exists that the crime is connected to mental illness or emotional disturbances, when indications of a severe moral, mental or physical deformity (Abartigkeit) are presented, when the accused is considerably wayward without recognisable external causes, or when an extraordinarily serious crime is the object of proceedings. 284

282 LA A Rep. 341-02, Nr. 6721.

283 LA A Rep. 341-02, Nr. 6721.

284 Heinz Kümmerlein, Das neue Reichsjugendgerichtsgesetz. II. Jugendgerichtsverfassung und Jugendstrafverfahren, Deutsche Justiz Vol.105, 24 December 1943, pp. 553-564. Here p.557. Dr. Kümmerlein was in 1933 active as a Gebietsrechtsreferent in Essen, before moving to the legal department
As such, the youth arrest was not seen as adequate to restore the discipline of Germany’s juvenile labour. Hence the introduction on 4 December 1943 of a decree that allowed for a youth convicted of offences against work discipline to be transferred to a ‘work education camp’ (Arbeitserziehungs­lager). The Gestapo had, however, been transferring repeat offenders to work education or youth protection camps (Jugendschutzlager) as early as 1941, accomplished with the assistance of regional Reich Trustees.

The 1943 decree provided explicit instructions for how youth court judges were to formulate their final judgements. The term “interim correctional education” should be avoided in favour of “the accused has continually neglected their work. They will therefore be transferred to work education through provisional regulation (vorläufige An­ordnung) [...] no limit should be set on the duration of interim correctional education”. The legal historian Jörg Wolff has correctly viewed this decree as evidence of a “progressive Funktionalisierung” of the criminal-political agenda: “education had become a way of behavioural control towards the completion of contemporary aims”.\(^{285}\)

A commentary to this decree noted “the war demands the full employment of all youths. Offences against work discipline directly contravene the war effort [...] Truancies are in many cases an alarming sign of waywardness and a step towards - or accessory phenomenon to – criminal misconduct. Therefore the timely and correct treatment of offences against work discipline is of particular importance”. As the war progressed, the moralising tone adopted by the authorities when discussing this phenomenon increased, as did the punitive nature of the measures adopted to prevent it. Absenteeism, then, served as a “symptom for the general deficiency” (Unterwertigkeit) of youth.\(^{286}\) Unskilled labourers (ungelernter Arbeiter) were singled out as those most likely to commit


offences against work discipline.\textsuperscript{287} According to a 1942 article published in the journal *Deutsche Jugendhilfe*, these offences affected above all those involved in the war industry - particularly those large concerns involved in meeting the army’s requirements.\textsuperscript{288} Of particular concern was the increasing incidence of opportunistic theft committed at the workplace. Singled out for particular attention along with unskilled labour were foreign workers, classified by the wartime government as *Fremdarbeiter*.\textsuperscript{289} The welfare office in Neukölln submitted the following report on 16 October 1944:

> Previously, he has been a male prostitute [and possessed numerous homosexual acquaintances]...
> All in all, Werner K is a hard youth to educate, and one who permanently displays behaviour that is inimical to society (*gemeinschaftswidriges Verhalten*). If he should continue to develop so unfavourably, he shall have to be transferred to a police youth protection camp (*polizeiliches Jugendschutzlager*) after serving his prison sentence.\textsuperscript{290}

Werner K., an eighteen-year old car mechanic from Neukölln, had two previous convictions to his name, both administered by the Berlin Regional Court. The first was for a violation of Paragraph 175a in October 1941, for which he received nine months in prison. The second, from March 1943, involved the embezzlement of military post (*Feldpostpäckchen*) and brought about a spell of seven months in jail. The third, to which the above report refers, included a combined indictment for sexual offences and aggravated theft. This resulted in the imposition of a one-year prison term by the Moabit court on 21 July 1944. In fact, it was the theft (of numerous items of clothing) that made up the lions share of the sentence, accounting for nine months imprisonment. The sexual offence committed by Werner K was seen as secondary, reflected in this crime bringing a total of three months behind bars. Yet despite it being secondary where his sentence


\textsuperscript{288} Kurt Urban, Der Arbeitsvertragsbruch Minderjähriger, *Deutsche Jugendhilfe* Vol. 34, pp.53 – 58. Here p. 55 & 57.

\textsuperscript{289} For a general discussion of the foreign worker from 1933 to 1945 see Ulrich Herbert, *Hitler’s Foreign Workers. Enforced Foreign Labor in Germany under the Third Reich* (Cambridge, 1997) - in particular pp. 330 – 337 that deals with work-related offences during the Second World War.

\textsuperscript{290} LA A Rep. 341-02, Nr. 6572.
was concerned, the welfare officer’s report makes it clear that his previously having been a prostitute was a clear signal of behaviour that was “inimical to society”.

Some of the accused youths had known each other for a long time, the others had – according to the judge’s summing up of the case – got to know each other in a bar opposite the Beuthen train station. Through one of the accused, described in the protocol as a ‘habitual criminal’, they became acquainted with six Poles, who then apparently told the group to steal bicycles for them. In total, they managed to grab twenty-three - some of which were sold in pubs or at amusement parks (Rummelplätze). The court case correspondence pertaining to this case involves a debate as to whether the proposal to try the criminals as National Pests was viable. Though the state prosecutors at the Special Court had originally proposed not to try the juveniles as National Pests, the Reich Justice Ministry saw this as the incorrect decision:

I would...argue that not only does Paragraph 4 of the National Pest Decree apply to the narrowly defined characteristics of the case, but also to the total activity of the criminal will... that the haul was made easier through circumstances of war itself represents an exploitation of the circumstances of war. Then not only does this create a particular incentive (Anreiz) in the performance of the act, but it also directly eases the success striven for by the criminals... In any case, the accused must have been conscious that such a situation was beneficial to the situation.

That is the crux of the case.291

The Kattowitz Special Court (in the province of Silesia, present-day Poland) adjudged all eight juveniles to be National Pests, who ‘ruthlessly’ exploited the war for their own ‘criminal’ ends. The boy who was seen as the main protagonist in this case, August C, was handed a five-year jail term; the others obtained sentences ranging from (two) indefinite sentences, one four-year prison term, and the rest between two and one year. This particular case demonstrated the RJM’s influence was telling – as we have seen, their desire to determine how youths were criminally defined was not always taken on board by a Special Court system that saw itself as the vanguard of National Socialist legal politics, in terms of its primary function in dealing with political crimes. As Robert Gellately has noted, the competency of the courts originally set up in 1934 was increased significantly after the outbreak of war – demonstrated also in the number of

291 BA R 3001 III Ag 6, Nr. 17/43
Sondergerichte jumping from 26 to 74. This reflected their being established in occupied territories of the Reich, as well as the ever-expanding definition of ‘crimes’ such as those described above. As the case study is above all an investigation into offences that could be categorised as crimes in both the wartime and post-war periods (though as is demonstrated, in different ways and by different means), the role of these courts in disseminating ‘justice’ falls outside the study’s remit.292

According to the head teacher at the youth prison at Naugard, Werner was often “left at home to his own devices” and felt attached only to very few “valuable elements”. He visited amusement parks, and as he did so, saw how one boy [referred to henceforth as K.] managed to eke out a comfortable life as a prostitute. Apparently incited by another of his associates, he finally “became occupied by prostitution”. However, here the images of a ‘feminised’ youth are not apparent, with the prison worker commenting “it is to be assumed that Werner Z. will become a capable RAD-man, and later a good soldier. One can assign him a good prognosis for the distant future”. In summing up the case, the presiding juvenile judge is careful to mention the influence of this amusement park as a locality were the ‘criminal energies’ present in the series of events leading to Werner Z’s arrest converge. “Both of the accused”, he asserts:

...got to know a certain K. during separate times at an amusement park in the area of the Prenzlauer Straße... [K] never worked, was always dressed well, and constantly had money on him. This impressed the accused, who then found out that K. earned his money through offering sex to men in the Alexanderplatz area, and for this received around 3 to 5 RM a time. They were firstly taken along by K, and from the end of 1939 to the beginning of 1941, began to consistently do the same [as K]. Twice a week, they betook themselves (sich begaben) in the Alexanderplatz area, predominantly in the public convenience there (Bedürfnisanstalt), and moved there in such a way as to be addressed by men. They then went with these men to a nearby entrance hall [and] masturbated the men, or were masturbated by them, or both [occurred] at the same time... The court views the totality of the accused's actions in this way as a single, continued act. The accused have carried out this act on the basis of a decision made right at the start, which was to make money by these indecent means. 293

As we will see in chapter 4, the localising of a particular criminal activity performed an important role in juvenile criminal discourse in both the wartime and the post-war

292 For information about the role of the Special Courts, see Gellately, ‘Situating’, pp. 359-360.
293 LAB A Rep. 358-02, Nr. 10408 (20)
periods. In terms of the trial above, first the amusement park, then the area around the Alexanderplatz (in central-eastern Berlin) appear to be not merely passive backdrops for the furthering of homosexual practice, but rather an active participant in such ‘practices’. Indeed, right through to the post-war period, this particular area remained one where criminality was seen to ‘converge’.

The file compiled for Felix P., born in the Neukölln district of Berlin in early 1928, is testament to the considerable amount of attention afforded to his actions by the police, court, and welfare authorities over a period of more than eight years, spanning the wartime well into the post-war period from 1943 until 1951. He first comes into contact with the Charlottenburg youth court after a request to have him placed in a correctional education facility is lodged on 18 April 1943 – unfortunately the court case file does not state why this was viewed as necessary. Very shortly after this, due to his being found guilty of six counts of theft, the same court sentences Felix P. to a six-month prison term on 1 September 1943, and thereafter was sent to the Struveshof home after serving just over half his sentence on 13 December 1943. The director of this home reported on 10 March 1944 “the waywardness of the juvenile is extremely serious. He resists every strict discipline, law and order [and does] not want to adapt”. This was the final straw for his membership of the Hitler Youth – to which he was somewhat surprisingly still affiliated. On 20 April 1944, he was expelled from the organisation. After being released from the Struveshof home, Felix falls foul of the law once again and charged with two counts of joint petty and two counts of joint serious theft, as well as embezzlement, again by the Charlottenburg court on 10 May 1944. He receives an indefinite sentence (standing at a minimum of one year, and a maximum of four years) that is to be spent incarcerated at the Juvenile Prison at Naugard, which today lies in Northwest Poland and has been renamed Nowogard.

The evacuation of prisons within the whole German Reich had begun from the autumn of 1944. In March 1945, the Naugard prison was cleared, according to the file “as a result of happenings of war”. More specifically, it was the Soviet army that forced the German authorities to abandon the facility completely with an offensive on the city that began on 4 March. Felix P, though presumably happy about his escape, would nevertheless have had a long, arduous journey back to Berlin, very likely characterised by brutal hunger and the threat of disease amidst the shadow of ever-approaching Allied troops. To give a
brief idea of the rapid decline in prison populations, the example of Freiburg prison will be telling. On 1 April 1945, the number stood at 112 prisoners. Just twenty-one days later, as French troops reached the prison gates, this number had been reduced to just one.294 Felix P. made it back to the devastated capital city, where he found his elderly, ill mother at her home in Charlottenburg. Within just days of his return, Felix P. embarked on a number of cellar raids, stealing items of clothing worth 3500 RM along with ration cards worth a further 300 RM with the help of eight accomplices – three twelve-year-olds, a thirteen-year-old, a fifteen-year-old, and three adults. These break-ins occurred on 10, 13, and 23 March 1945, at a time when the Soviet Army was amassing troops around the outer districts of the city. Finally Felix was arrested and taken to the Schöneberg police station. It is not clear from the court case file what happened to his accomplices. The process of gathering information for the court case against Felix P included a report by the Charlottenburg welfare office dated 20 February 1946. The report stated unequivocally “the mother is in no way equal to the task of educating her wayward son [...] The fact that P. re-offended numerous times immediately on returning to Berlin demonstrates that neither correctional education nor the serving of a prison sentence have improved him...” The welfare officer essentially saw no positive effect whatsoever in his legal education, and concluded that this proves absolutely his “unstable character” and “complete waywardness”.295 On 17 April 1946 he was handed a punitive prison sentence of one year and six months. From the courtroom he was taken directly to the remand prison at Moabit. Just a little over a month later, however, Felix managed to escape, though was recaptured and sent back on 18 February 1947. Though seemingly an inopportune point for an attempt at clemency, the youngster attempted it nevertheless. The following is an extract from Felix P.’s letter to the Charlottenburg court prosecutor, dated 3 March 1947:

Dear Mr. State Prosecutor! Please do not think “Well, well. The kid has come up with a good story here!” Rather try to understand it from my position. I am the only child of my parents. My father went missing in the war. All my relations are in Poland, so my mother is alone with me. During the war my mother developed a kidney disease and is therefore not in the position to earn money. The state refused to support her, reasoning that she has a son who can care for her. The money that my mother has saved has almost run out, and then she’ll be faced with ruin. I, however, who can and

294 Baumann, Verbrechen, p. 118.

295 LAB A Rep. 341-02, Nr. 2716.
would like to care for her, sit in prison and can’t help her. During the many weeks a true change has occurred in me. I have thought about everything, and have discarded my whole life up until now, with all the wickedness I have done. I regret what I have done with my whole heart, and am ashamed of having brought so much scandal on my family in such early years...²⁹⁶

This attempt at clemency, reaching the Criminal Division of the Berlin Regional Court just over one week later, fell on deaf ears. The records show he partially served his sentence before a German Amnesty of 12 January 1950 resulted in his conditional release on 1 November 1950. Finally, a Charlottenburg welfare office report around one year later reported that the twenty-two year-old Felix now lived with his mother (who had found a job working for the emergency services), had a weekly wage of 50 RM from his occupation as an assistant locksmith, and was now someone who „makes a good impression“ and was „willing to learn more“. In the following chapter, the thesis investigates how constructions of youth were informed by a political, legal and societal system in a city divided up amongst the victorious Allied powers.

²⁹⁶ Ibid
Chapter Four: Locating wayward youth in occupied Berlin, 1945 - 1948

In May 1945, sixteen-year-old Harry L. managed to commandeer eight bottles of wine, an alcohol stove, three bars of soap, and seven packets of soap powder from an air-raid shelter. On a separate occasion he, along with his father, attempted to steal a “laundry basket that was full to bursting”. Dr. Blume stated that at the time the offences were committed, houses and flats were “very easily accessible for unbidden elements (unberufene Elemente), as the occupants stayed in cellars, or other houses, or who-knows-where due to fear of the Russians”. With regards the laundry basket, the judge noted that three witnesses had seen Russian soldiers enter the house from which it was stolen. Dr. Blume stated that “the possibility that Russian or German soldiers went into the house - searched it, and packed the basket with stolen goods in order to take it away at an opportune moment – is not to be discounted.” Due to a lack of evidence, Harry L. was pardoned from this count of petty theft. Police protocol recorded that he had been arrested four times previously as a minor. These offences included cutting a boy in the face with a knife, stealing bicycles, breaking a window with a stone, and armed robbery. In October 1945 he was given three months in jail by the Wilmersdorf district court, followed by provisionally being

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298 Ibid.

299 Ibid.
placed in a correctional education facility. Given Berlin's immediate post-war turbulence that followed the street-to-street fighting during the Battle of Berlin, Harry F.'s acquiring of a laundry basket is not surprising. This chapter assesses the effect of the Allied occupation on youth criminality. What impact did the chaotic circumstances of the immediate post-war period have on constructions of wayward youth? How did the agencies responsible for their policing cope with the various post-war difficulties such as a booming black market, the severe shortage of food, and a city divided into four separate sectors by the Allied occupation powers?

Berlin's twelve Amtsgerichte were located in the districts of Charlottenburg, Köpenick, Lichtenberg, Berlin-Mitte, Neukölln, Pankow, Spandau, Steglitz, Tempelhof, Wedding and Weißensee. After 1945 there were twenty-one district courts (Bezirksgerichte). Courts were newly established in Friedenau, Friedrichshain, Kreuzberg, Prenzlauer Berg, Reinickendorf, Tiergarten, Treptow, Wilmersdorf and Zehlendorf. The new term Bezirksgericht did not last more than three weeks, for the pragmatic reason that it would be far too time consuming to rewrite all the old forms and stamps - especially considering the lack of both personnel and paper. A divided jurisdiction (Gerichtsbarkeit) rendered the assembling of quantitative data impossible. Certain offences were dealt with only by the Allied authorities, and were not available to the German authorities (such as those dealing with ‘displaced persons’). In addition, the introduction of new offences to the statute book (such as the unauthorised crossing of the Allied sectors) caused further difficulties in obtaining an accurate overview of post-war criminality. A thorough assessment of criminal activity was impossible, particularly given each sector’s procedural and methodical differences. In the second half of 1945, the Amtsgericht Berlin could only employ 48 assistants, compared to 2,700 before the war. In March 1946, 25 judges could be called upon, as compared with 279 in 1941. In the seven months after the war, thirteen public prosecutors and thirteen assistants processed 35,000 criminal cases.


301 Police statistics from Baden-Württemberg-Baden showed that in the second half of 1946, there were 23,352 offences against Military Government laws, of which 13,141 were unauthorised border crossings (Grenzüberschreitungen). These statistics are from Karl Bader, Soziologie der deutschen Nachkriegskriminalität (Tübingen, 1949), p. 11.

In the immediate post-war period, there was a notable shift away from a concentration on conspicuous individuals, as was prevalent in the last years of the Second World War, towards conspicuous places. For many social analysts, the most concerning development was the evidence that youths frequented such locales with the active consent of their parents:

We find, in the first instance, those youths with an aversion to every sort of regular work and consistent performance (solide Leistung) in the well-known “juvenile black-marketeers” (jugendliche Schieber) (predominantly eighteen to twenty year olds) who, in particular areas of Berlin, mainly sit around with their girls and negotiate in cigarettes, alcohol and other forms of intoxication from morning until evening. Many of these youths carry out such business in agreement with their families or in team with fathers, mothers or siblings […] a large majority of youths enslaved in the black market come from families where the ordered structure and moral orientation are destroyed. It is partly leftover refugee families, thrown this way and that, who have started their lives again in Berlin under miserable conditions.303

Here, in the narrowest sense, those juveniles enduring miserable conditions are observed as those most likely to ‘slip down’ into criminal districts. This implies a socio-geographical model of criminality, where the spatial locality influences the behaviour of an individual. This model was informed by the rapid spread of the black market in Berlin. Of the 11,274 persons convicted by the Berlin criminal division (Kammergericht) between June 1945 and June 1946, around 10,000 had committed acts that directly or indirectly encompassed economic crimes.304

In the immediate post-war period, a comparison between the amount of criminality amongst adults and juveniles demonstrated some worrying trends. A census of 29 October 1946 registered a total of 3,187,470 persons living within the Berlin city limits. Of these, 120,213 (or 3.8 percent of the total population) were aged between fourteen and eighteen years of age, and therefore eligible to be tried under juvenile criminal

303 Hilde Thurnwald, Gegenwartsprobleme Berliner Familien (Berlin, 1948), pp. 140-141.
The youth crime figure for 1946 represented an 850 percent increase on 1937, with minor offences (Bagatellsdelikte) representing a large proportion of crimes committed. Total crime figures also increased dramatically – from 6,583 simple and 5,544 serious thefts in 1937 to 74,597 simple and 32,771 serious thefts in 1946. The same year a total of 2,439 youths were sentenced before the Berlin courts, corresponding to just over two percent of the juvenile population. In 1947, the number of youths sentenced reached 3,970 (or 3.3 percent). In terms of adult criminality, 20,413 (or 0.8 percent) of a total adult population of 2,511,511 were convicted in 1946, increasing to 29,354 (1.2 percent) in 1947.

In 1946, a total of 185,257 crimes were reported to the police, of which only 22,852 resulted in sentences. This corresponds to a success rate of only 12.3 percent. 1947 saw 191,611 reports filed with the police, of which 33,324 led to sentences, representing a success rate of 17.4 percent. Though an improvement over 1946, less than one in five crimes reported led to a conviction. Many youths slipped through institutional controls for preventing criminal acts, even considering the large numbers of those arrested, as the ‘British Zone Review’ reported in November 1946:

> Each month in (Berlin)…more than 2,000 juveniles are arrested for crimes which [sic] in the main arise from the existing economic deprivations and concern thefts of food, clothing, and urgently required consumer goods. (Compare the 1935 figure of approximately 3,000 cases for the year.) A proportion of this criminal activity may be traced to the misdirected application of the youthful desire for adventure. There has been, however, a large increase in the number of psychopathic offenders whose actions reveal sadly distorted moral values and emotional instability. Among the 1,000-odd juveniles awaiting trial in August this year were fifteen accused of murder, among them a girl of fifteen and another of sixteen years.

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307 The 1947 percentage figures for juvenile and adult crime are based on the Berlin population figure for 1946, given no census was carried out in 1947.

308 Unfortunately, no such figures for criminal reports filed against juveniles are available for the years 1946 and 1947, though we may suppose that the percentage of solved cases was also considerably less than those unsolved.

As the British Zone Review also noted, the theft of fossil fuels and foodstuffs had reached epidemic proportions. However, other more valuable items were often traded on the black market. On 19 March 1947, Günter-Joachim D., a sixteen-year old Berliner who lived in the south-central district of Kreuzberg, came before the district court in Schöneberg. He was accused of stealing clothes and a watch from his grandmother, then subsequently selling them on the black market for 225 Reichsmark. In Günter-Joachim D.’s own words, he did this merely “to get something to eat”.310 The second incident involved breaking and entering into a Café on the Hauptstraße in Schöneberg together with two accomplices— one of whom who remained unknown to the police, and the other a particularly sought-after Viktor G. Having forced their way into the establishment, they commandeered 60 RM in cash and a packet of Knorr soup. On 20 December 1946, the Neukölln police office recorded the following statement from him: “Viktor G, well-known under the nickname “Kohlenkau”311 [and] who stands opposite me today, was present at the break-in of the restaurant at Hauptstraße, Schöneberg”312

Having lost both parents, Günter-Joachim D. had lived at his grandmother’s apartment in Neukölln “from earliest childhood”. However, it was clear to the Neukölln youth office that “through her softness (Nachgiebigkeit), the grandmother is [...] a totally negative educational influence, and not in the position to steer the already apparent waywardness of Günter-Joachim D. [...] [He] is already known for his participation on the black market, in conjunction with his older brother, and lingers permanently in the worst locales in Neukölln”. After recommending his transferral to the youth assistance office (Jugendhilfsstelle), the welfare officer contended “a return to his grandmother’s house is out of the question due to the severity of [Günter-Joachim D.’s] waywardness”.313


311 Although generally associated with the requisitioning of coal during the ‘time of need’ (Notzeit) of Germany’s immediate post-war period, the term originated during the war as a propaganda campaign with the motto Kampf dem Kohlenklau (‘Fight the Coal Thief’). For its use as a propagandistic term, see Victor Klemperer, The language of the Third Reich: LTI, Lingua Tertii Imperii : a philologist’s notebook. Trans. Martin Brady (London, 2006), p. 81.

312 Police protocol (20 December 1946), in: LAB B. Rep 051, Nr. 10461 (Sheet 10).

313 Neukölln youth office to Schöneberg district court (14 March 1947), in: LAB B. Rep 051, Nr. 10461 (31).
As the jurist Rosemarie Marquard has noted in a thorough post-war study of youth crime, people's incredible material need after the war compelled even those who had previously had a “definite concept of right and wrong” into property theft. Ration cards often related to the acquisition of non-existent foodstuffs. Consumer goods began to flow from dark sources onto the black market, where they were sold for vastly inflated prices, as in the case of Günter-Joachim D. According to Marquard, “the question of whether this happened in a legal way was considered out-of touch with everyday life (lebensfremd). The “others” did it too. In this way, the few twinges of conscience (Gewissensbisse) were brought to silence.” The opportunity sate an acute hunger far outweighed any fears about falling foul of the law: “the selling of a bicycle could bring in the equivalent of a labourer’s half-yearly wage”. In the estimation of a leading authority within the British zone, around 95 percent of the population came into contact with the black market either directly or indirectly.

Several post-war court case files involve juveniles who had committed multiple thefts. One particularly telling example is Dietrich S., who committed a series of gang robberies around the West Berlin districts of Wilmersdorf and Charlottenburg between the months of March 1945 and January 1946. The seventeen-year-old, who at the time of the incidents was unemployed, was arrested in early February 1946 and taken to the Moabit prison in the bordering district to Charlottenburg. His thefts from numerous break-ins included guinea pigs, books, clothes, (drinking) glasses, shoes, rugs, food, and a total of fifteen bicycles. The indictment also included forgery and the attempted selling of cars. Before these incidents, Dietrich had been admitted into various juvenile correctional institutions since 1942. His admittance was due to “wracked” familial relations - that is,


his father and mother were divorced, yet still lived together. This resulted in an “extremely unstable” home environment. On 7 March 1946, the welfare office reported to the Charlottenburg district court that his education had met with little success:

[Dietrich’s] father is an irreconcilable, notorious malcontent, who perhaps is to be regarded as mentally ill; the mother is a good-natured woman who earns her living with tailoring... The milieu in which this young man spent his youth surely carries a large amount of blame for his development. Dietrich was brought into a home many times by us. There too he was consistently labelled as gifted and unstable. At home his mother pampers him, whilst his father swears at him with expressions not suitable to mention here. In this way, Dietrich became a derailed, weak young man with above average intellectual capabilities that have unfortunately not made him into a useful member of society. Educational measures are belated here. One can only hope that this first contact with the criminal law awakens him.

The social worker deployed the term *Gesellschaft* (society), instead of *Volksgemeinschaft*, a concept tainted by National Socialist ideology. Yet crucially, there is no differentiation made here between the educational measures implemented during the last years of the Third Reich and those carried out after the fall of the regime. There is an implicit lack of critical appraisal for the welfare policies of Nazi Germany. The blame for Dietrich’s wayward behaviour is explained by his difficult family life, not in the repressive methods of state care during the wartime period. The structure and personnel of the Wilmersdorf social office changed little after the *Zero Hour*. In a summary during Dietrich’s closed trial at the Charlottenburg youth court on 15 March 1946, the presiding judge Blume made no mention of this particular report, and concluded with Dietrich’s “never having bothered to learn a job in order to provide the basis for a respectable existence”. Furthermore, during the course of the investigation, it was reported that Dietrich had been a member of an “armed anti-fascist group” named *Illegale Kampfgruppe Fischer* during March and April 1945.

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317 Wilmersdorf welfare office to the Charlottenburg district court (7 March 1946), in: LA B Rep. 051, Nr. 2717.

318 Wilmersdorf welfare office to the Charlottenburg district court (7 March 1946), in: LA B Rep. 051, Nr. 2717.

319 There is little known about this group, aside from the self-proclamations of Karl Fischer, a clergyman, author and politician who claims to have directed the movement - named after himself - from Berlin and
The judge continued his summary of Dietrich S. by mentioning that despite the relatively short period of time he was active within this group (around six weeks), his acts nevertheless testified to a “considerable waywardness and brutalisation”. As an explanation for the punitive one-year prison sentence, the judge stated, “exactly these gang robberies have assumed such an extent in Greater Berlin, and have led to such damage, that only an exemplary punishment is appropriate here”. In addition, Blume remarked that “in the short time before [Germany’s] capitulation, despite being forced to live outside the ordered legal atmosphere (geordnete Rechtsatmosphäre) through his illegal activity, the crises of this time cannot have left such a big impression on him that he could not afterwards find his way back to orderly circumstances.”

Evaluating the last weeks of the war an “ordered legal atmosphere” is a startling assertion to make, and can only be explained by the requirement of a level legal landscape within the scope of his particular case. That is, the validity of the sentence rests on its corresponding to the narrative of one youth’s criminal history, a narrative that would be offset when factoring in the peculiar circumstances of the exact time at which the various crimes were committed. The last weeks of the war were of course anything but ordered, yet it was imperative to this particular judge to assert the primacy of a moral law common to both the last days of the Third Reich and the first days after the capitulation. Yet the...

Neubrandenburg. This was after allegedly going underground in 1942 to avoid his pending arrest due to an alleged breach of Paragraph 175. The group, again according to Fischer, obtained weapons, munitions and red armbands from anti-fascists in Glienicke, a Southwest suburb of Berlin. The armbands were to demonstrate solidarity with the Red Army who had reached Friedenau on the South-Central outskirts of the city by April 1945. Before they arrived, the Illegale Kampfgruppe Fischer had apparently already instigated acts of sabotage, with the group’s “revolutionaries” carrying out nightly burglaries of shops and stores in Berlin. Fischer also wrote that he was recognised as a partisan leader by the Soviets, who then brought him to the Headquarters of General Zhukov where Fischer proceeded to brief Soviet Officers on the military situation in the city, as well as how best to distribute food in Berlin. Finally, his offer to advance with the troops to Mecklenburg in order that he could mobilise his “resistance groups” was politely declined, at which point Fischer was apparently accommodated in a requisitioned Villa in Lichterfelde, where he was well cared for and provided with more than sufficient amounts of tobacco. As such, the actual political resistance proffered by the group Dietrich S belonged to must be called into question. His file demonstrates at least that the group did exist, albeit certainly as one carrying out isolated acts of vandalism and burglary as opposed to concerted anti-fascist resistance.

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landscape of criminal behaviour in Germany had altered significantly. As the jurist and criminologist Hans von Hentig stated in 1947, “the phenomenon of crime has taken on a form and extent that is without equal in the history of Western civilised peoples”. He continued by stressing that the “inner attitude” towards property, to both legal and moral norms, had shifted.\(^{321}\) In addition, Hentig wrote in terms of a “criminality of total ruin”, where “crime itself became a way of life”.\(^{322}\)

A questionnaire in 1947 also depicted a miserable situation: of the 11,000 schoolchildren living in Fürth (Bavaria), 60 percent had no proper shoes, 35 percent had to share a bed with two or three others, and 40 percent owned no winter clothes. In Kassel, 7.5 percent had no footwear whatsoever. In Berlin 125,000 children were counted who had not one pair of decent shoes. In Munich 20,000 lived separately from their parents, 17,000 had no bed of their own, and 14,000 had no toothbrush. In Mannheim 70 percent admitted that their parents had nothing to heat their homes; only half had a second suit, with 12 percent suffering from oedema due to malnourishment. Every night in Frankfurt, up to 100 youths could be found in the Main Railway Station bunker. On average, 60 percent of those sleeping there could only offer the certificate of release from a prison as a form of identification.\(^{323}\) In Munich, one third of the city was completely destroyed, as well as flats being taken up for other purposes (altogether representing a reduction of living space (Wohnraum) by one third). The three million German evacuees adding to the other eight million inhabitants exacerbated this already dire situation. In 1947, the Bremen youth office picked up 1,238 expellees and placed them in rough-and-ready accommodation (mostly air-raid shelters). For the Frankfurt youth office, this figure was 10,932.\(^{324}\) In the western zones, there were 14 million

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\(^{323}\) See Hermann Glaser, Kleine Kulturgeschichte der Bundesrepublik Deutschland (Bonn, 1991), pp. 72-3. The statistics are taken from an article in the 8 February 1948 edition of Die Neue Zeitung entitled 'Jugend zwischen gestern und morgen. Verwahrlosung und Kriminalität der Jugendlichen – Gefahr oder Zeitscheinung?'.

households but only 8 million habitable dwellings in 1946. As a result of the war, Berlin lost over 39 percent of its housing, five of the twenty city districts were missing over half of their habitable rooms, with only eight percent of all flats remained completely intact. The large majority of families in Berlin lived in at least partially damaged accommodation, with 80 percent having to share their place with others. Statistically, there was only 11.8 square meters of space available to every person in the city.

This certainly affected seventeen year-old apprentice chemist Erwin E. The Neukölln youth office, reporting on a case involving the theft of thirteen guinea pigs from a haulage contractor in late 1945 and early 1946, mentioned that the accused youth lived in a emergency accommodation (Notquartier), sharing a room with four others, after his earlier residence was destroyed during the bombing raids. Erwin’s mother was charged with taking care of the family. One of Erwin E.’s sisters was married to a man still interned in a Prisoner of War camp and had a daughter rendered deaf and blind during a bombing raid. His father had been rendered seventy percent disabled from injuries sustained during the First World War. The defendant cited hunger as the reason he carried out the two break-ins. Unlike the case of Günter L., whose step-parents (as will be shown later) were keen to stress the criminal nature of their boy after he relieved various Berliners of their potatoes and coal rations, Erwin’s parents insisted he led – the burglaries aside – an orderly life. The youth office in this case suggested Erwin’s accomplice, sixteen year-old baker’s apprentice Heinz M., had been the leading protagonist (citing his ‘educational difficulties’ and previous convictions for petty theft); recommending the court order a warning and protective custody in order that he complete his apprenticeship. The Neukölln youth court handed out a more punitive sentence to the youth, ordering one month’s internment in Plötzensee. Richard F., Erwin


326 A sociological study surveying the living conditions of 200 families in late 1946 found more than half in flats with 1.5 to 3 rooms. See Thurnwald, Gegenwartsprobleme, p. 40-41.


328 Neukölln youth office to the Neukölln district court (16 March 1946), in: LA B Rep. 051, Nr. 2248.
E.’s legal advisor, wrote to the Neukölln district court in order to plead his client’s innocence – as he wrote, the guilt of such crimes lies not with the youths, but elsewhere:

When one puts the current circumstances in which the German people live before their eyes, one cannot help, in such a case, but place the spirit under the caption: Youth in need. The wartime occurrences hardly let youths grow into an ordered people; they do not allow them – lacking an educated conscience (Gewissenbildung) – the capacity to know if what they do is good or bad. In view of the monstrous need for food (Hungernot) - a problem to solve for all the world’s statesmen – such children will never come to terms with themselves and their steadfastness. We all know, and do not need to keep secret, that families in Berlin hardly have any more potatoes in their cellars. Naturally the hunger of such young people, as with the accused, is not be halted, as such they try – as in this particular case – to obtain additional nourishment. Resistance is lacking, because (as already mentioned) of a lacking educated conscience, and thus such punishable actions come into being. One will not ascribe the young people great guilt under such circumstances - this rests on other shoulders... The state, the court, does not only have the duty to punish, but also to protect...329

Certain continuities in identifying the criminal type (as investigated in chapter 1) from the wartime into the post-war period are present in the case of the sixteen-year old Walter K., who when brought to the police station in September 1947 was found to be both unemployed and homeless. He was charged with breaking and entering, and had already served a four-month sentence for the same crime earlier in the year. He had burgled his grandmother’s apartment (on two separate occasions) - using a key stolen from her - taking a watch, a jacket, bed linen, clothes, 150 RM, and an apple. The stolen items he subsequently sold for the sum of 750 RM. In addition, he was found guilty of giving police in Leipzig (where he was discovered) a false name out of fear of being found by the Berlin authorities.330 The language deployed by the judge in this case bears a strong resemblance to that of the wartime period:

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From his behaviour, it is clearly apparent that the accused possesses harmful tendencies (schädliche Neigungen). Selecting the length of sentence necessary to bring him back from his current path and make him a useful member of the community is unforeseeable. It thus appears necessary to grant an indefinite sentence. Although the accused is already considerably wayward, it does appear possible that through serving his term, he will be brought far enough to see the societal harm caused by his crime.\textsuperscript{331}

The judge’s reference to make him a “useful member of the community” was a familiar term in the youth courts during the wartime period, though here society is substituted for Volksgemeinschaft. Furthermore, the term "harmful tendencies" had its origins in the early stages of the Second World War, as was explored in chapter 1. This particular term is in fact still in use today, as will be elucidated upon in the thesis’ conclusion.

The trial of Günter L. is illustrative of the additional problems Berlin welfare offices faced during the immediate post-war period. A report by the youth office in Reinickendorf concerning this seventeen-year old unemployed workman convicted of several group robberies in February and March 1947, stated him to be on the run (fluchtig). In mid-April he was sentenced in absentia by the youth court in Schöneberg to a term of three months imprisonment.\textsuperscript{332} Of the five youths mentioned in connection with the crimes, only Günter was (eventually) brought before the same court in early June 1947. His accomplice Harry J., a sixteen-year old apprentice mechanic from Klein-Schönebeck in the neighbouring region of Brandenburg, was arrested but subsequently released. The remaining three could not be found.

In the youth office report contained in the file, the living conditions of Günter were described as “primitive”, living as he did with his parents and five siblings in a two-room apartment in Wilhelmsruh, a northwest part of Soviet-controlled Berlin-Pankow on the border to the French occupied district of Reinickendorf. His parents – the father a builder who had returned from a Russian POW camp in January 1947 'incapable of work' and mother were labelled by the youth office report as 'lacking in social standards (Empfinden)’ – explained that since becoming unemployed [on 22 January 1947], he merely 'loitered' around, being active on the black market or

\textsuperscript{331} LAB B Rep. 051, Nr. 10714, (22).

\textsuperscript{332} Cases of juvenile property theft examined in this study were quickly processed by the post-war district courts; the time elapsing between committing the offence and being sentenced ranged between one and three months.
on foraging trips (*Hamsterfahrten*). This kind of juvenile delinquency, as numerous contemporary reports from the immediate post-war period testify, was certainly not unusual. That his parents gave a statement against him was also, as will be demonstrated, a fairly frequent occurrence. 333

After Günter’s arrest on 3 March, he admitted to an officer during his interrogation in the Neukölln district police station, located on the Boddinstraße, that he had carried out eighteen to twenty separate robberies on various cellars around the city. According to his statement, the haul included a bicycle, 60 pounds of potatoes, and 55 pounds of coal. 334 According to the other suspect arrested in connection with the crime, Harry J., Günter and his gang had performed a total of 96 break-ins. 335 On 3 February 1947 Harry’s stepfather, Karl R. went to the police and explained that he was “80 percent seriously disabled and [Harry] steals our last [possessions]”. According to his testimony, his stepson had taken a bicycle, 200 RM, potatoes and a rucksack. Along with Harry’s stepmother, Marie R., he filed a criminal complaint with the Neukölln public prosecutor’s office (*Staatsanwaltschaft*), sending a copy to the Neukölln youth office – as his stepmother put it - “in an attempt to apply correctional education on the juvenile, as imminent danger is apparent, that can only be averted through [its] ultimate application. How right we were was shown in the deplorable fact [my italics] that Harry also broke into the summer house of his stepfather, stealing a pair of top boots (*Langschäfter*), two large rolls of roofing paper and his complete tool set. Furthermore, [Harry] along with another youth, committed a robbery on an old woman in her home, where only their being disturbed prevented a holdup murder (*Raubmord*), instead of merely blows.” As a consequence of this, Marie R. went on to explain, the Neukölln criminal investigation


334 During the extremely cold winter of 1946/47 (with temperatures as low as – 15°C), the price per hundredweight briquettes on the black market was 50 to 80 RM; hundredweights of coal fetched from 60 to 80 RM. See Thurnwald, *Gegenwartsprobleme*, p. 46. Additionally: for details on the worsening sustenance situation during this winter, *Ibid*, pp. 53-55. According to one report: “The unusually hard winter of 1946/47 has demonstrated in all areas the fragile health of Germany. In Berlin, for example, 285 people froze [to death], 67 people died after amputation of frozen limbs, 1,376 people were taken to hospital suffering from frostbite, [and] 53, 300 people were treated for frost damage.” See Siegfried Heimann, ‘Das überleben organisieren. Berliner Jugend und Berliner Jugendbanden in den vierziger Jahren’, pp. 105-135. Here p.118.

335 Though it appears this figure owed more to youthful bravado and exaggeration than a reflection of the actual number of burglaries committed by the youths.
department based on the Nogatstrasse were deployed. In mid-February 1947, after a 
raid on Harry’s flat, he was arrested and sent to the Plötzensee youth prison.

On the same day the youth office report was filed on Günter, 14 April, Harry was 
released from Plötzensee. His stepmother complained to the youth court in Schöneberg 
“we were neither informed of [Harry’s] arrest or his release. In view of the 
circumstances (Sachlage), the release and behaviour of the authorities are a scandal. It 
appears to be good times for scamps and criminals in Berlin. Why does one not build 
nursing and recreation homes for them? Who is responsible? The offences, that the 
criminal youngster with his criminal accomplices will carry out in future – and it could 
be a murder – are on the heads of those who have set the criminals free on Berlin’s 
population. We will report this to the press, in order that the guilty cannot shift the 
blame onto someone else. So, who is responsible for their release?”336 Her complaint 
remained unanswered.

The former Hitler Youth member Harry J., who had also been deployed as an anti-
aircraft gun assistant (Flakhelfer), whose father was imprisoned for being a member of 
the NSDAP and whose current location was unknown, and whose mother was ‘incapable 
of work’, received a sentence of four weeks youth arrest. Günter L., meanwhile, was 
handed a three-month prison term. Despite the protests of the senior public prosecutor 
Dr. Preuß, the court did not impose a tougher sentence in a second trial that took place 
on 9 June 1947. 337 Instead, he was merely handed a ‘means of correction’ (Zuchtmittel) 
because he had not been previously been convicted, and had not sold any of the stolen 
goods. He simply needed to help his father recover and had acted out of necessity. In 
fact, Günter L. had a previous conviction of serious property theft, for which he received 
a four-and-a-half month internment in a youth arrest facility, in conjunction with 
supervision by a social worker (Schutzaufsicht) on his release.338

The following case is indicative of the myriad problems faced by the police, youth court, 
and welfare authorities in the divided post-war city. Firstly, we see the organisational 
disarray involved in processing complaints of property theft. The court case file of

336 Marie R. to the Schöneberg district court, 25 April 1947, LAB B. Rep. 051, Nr. 10505 (33).

338 Sentence of the Pankow district court, 4 July 1946.
Günter L. contains correspondence back and forth from three main regional districts: Schöneberg (where the trial took place), Reinickendorf (the responsible youth office), and Neukölln (the responsible police authority). Given Günter L. resided in the Pankow district of Berlin, his case should have been under the jurisdiction of the youth office located there. From the information afforded by the criminal file, we can only speculate as to why this was not the case, but the general melee surrounding juvenile criminal politics - in part due to over-worked, under-staffed welfare and court offices – was considerable. Juveniles were often transferred from one district authority to another due to a lack of time, space and money with which to adequately deal with a certain offender. Files were misplaced, lost, or non-existent which meant a drawn out, painstaking process for the responsible authorities. That the Schöneberg court could claim – wrongly – that Günter had no previous convictions and as such should be sentenced more leniently is further evidence of an ineffective juvenile justice system.

Of critical importance to this system was the ability to locate the responsibly parties involved, partially successful here in that two of the alleged culprits were apprehended, unsuccessful in their ability to evade questioning. This was what so enraged Harry L.’s stepmother, and what brought her to threaten to go to the press with her complaint. Yet the harsh portrayal of the youngster’s criminal acts is tempered by the leniency afforded by second trial of Günter L. on 9 June 1947 in which the judge stated his acting out of “need” and his wanting to help a father who was suffering from the effects of fighting the war. Despite the claim of Günter’s parents that he was “active” on the black market, the Schöneberg district court stated that none of the goods stolen were actually sold.

A Control Commission for Germany (CCG) report from 1947 concerning ‘Vagrant Youth’ in the British zone stated that the number of young people “without homes or care of any kind” were “steadily increasing […] no accurate figures of the numbers involved can be given but estimates vary from 5,000 to 40,000”. The situation was described in bleak terms, with youths sleeping “in air-raid bunkers or wherever they can find shelter, getting their food as best they can. They have no papers and must steal to live. Gangs of anything from 25 to 150 may make raids on trains, lorries, shops, etc. in order to get food or cigarettes or other goods which they can exchange on the Black Market”.339 Here,
the CCG operative's insertion of *may* concedes a lack of hard evidence that gangs of such sizes existed. However, that a large proportion of young people in Germany were stealing to survive was beyond question. The CCG report proffered that they were not delinquent *per se*, - indeed that among them there was “fine material”, but that tackling the problem effectively would require providing for at least 15,000 young people. This was something the operative thought “far beyond anything the Germans alone can achieve in present circumstances”. Switching immediately to a more positive tone, the report continued that the problem offered the British a “wonderful chance”:

> Not only could we be the means of saving these young people from misery and hopelessness and from being a potential menace to the whole country, but in the doing we could show the Germans how to use our own traditions in the handling and re-education of these youngsters. We have been greatly disturbed by what appear to us to be fundamental errors in the German approach to children generally and to the Approved School child in particular.  

The fundamental errors are not elucidated upon in the report, other than a reference to the collection of small number of youths by police, local authorities and voluntary agencies as “quite inadequate”.

Seventeen-year old unemployed labourer Klaus G. came before the Charlottenburg youth court on 6 February 1946 accused of stealing sugar, condensed milk, seven apples, a quarter-pound of clarified butter along with two candles and a box of matches from his widowed landlady Erna B, gave the excuse that he “was hungry”. This appeared to Blume, the presiding judge, to be scant grounds for a milder sentence, also influenced by a previous conviction in 1943 for truancy at work (*Arbeitsuntreue*) “the accused’s crime testifies to [his] despicable nature (*Verwerflichkeit*). He has seriously damaged the widow [Erna] B., as foodstuffs are rationed at present, and it is not possible for the widow B. to get substitutes. The accused also has a bad reputation. In the current case, “means of cultivation” (*Zuchtmittel*) cannot be seen as an adequate atonement for the crime... [He] must suffer a punishment, in order that the reprehensibility of his actions be made clear to him and that he will be prevented from committing further crimes”.

340 Vagrant Youth’, CCG, FO 1050/1183 (22).

Consequently, Klaus was handed a three-month prison sentence. This was despite the Charlottenburg youth office detailing the unfavourable conditions Klaus had to endure. Registered as unemployed since April 1945 due to injuries sustained during the war and the bombing of his workplace, he was looked after by his “incapable” grandmother who was unable to “effectively fight [Klaus G.’s] loafing about”.\textsuperscript{342} Ten days after the trial took place, the youth office reported that the legal process had made a significant impression on Klaus G., and that it was to be hoped that this, along with their intensive supervision of his working habits, would ensure his improvement. Furthermore, a period of probation was recommended and subsequently granted. Unfortunately, Klaus soon relapsed into “bumming” off work, including further thefts of food. As a result of his “inability to be taught (\textit{Unbelehrbarkeit}) and newly demonstrated work-shyness and dishonesty, the early execution of the three-month prison sentence is recommended.”\textsuperscript{343}

However, in attempting to locate Klaus, the police could only state “residence undetermined” in their report. The court case file on Klaus G includes, however, correspondence from the Stuttgart police to their counterparts in Berlin on 18 January 1947 informing them that Klaus had been arrested during an overnight stay and taken to the Ludwigsburg Regional Prison, where he was in detention awaiting trial.

On 15 April 1946, Herbert B. stood in the criminal commissariat in Wedding. He was an unemployed carpenter from the adjoining (French sector) district of Reinickendorf in North-west Berlin. The reason for his appearance was a practical demonstration of how to masturbate, delivered in front of a twelve-year-old boy - with whom he was alleged to have “played around with”. The boy then subsequently informed his mother of the act, leading directly to Herbert B.’s apprehension and the beginning of a comprehensive documentation by the youth court authorities.\textsuperscript{344}

The Reinickendorf youth office report into Herbert B.’s family background told of a youngster spoilt by his parents as a consequence of a recent kidney infection - an illness

\textsuperscript{342} Charlottenburg youth office to the Charlottenburg district court (4 February 1946), in: LAB B Rep. 051, Nr. 2713.

\textsuperscript{343} Charlottenburg youth office to the Charlottenburg district court (4 February 1946), in: LAB B Rep. 051, Nr. 2713.

\textsuperscript{344} LA B Rep. 051, Nr. 3002.
leading to his being medically diagnosed as unfit for work. His father, a *Wehrmacht* officer between 1940 and 1945, and his mother - who had to consistently work through the war years, ‘could scarcely contribute to the education and development of their son’. It was stated that he also had problems concentrating at school, leaving at fourteen years of age. This would have put the date of his departure somewhere between April 1944 and April 1945, during the last stages of ‘total war’ in Germany. During the devastating air raids over the city, he “used the opportunity of blackout measures to repeatedly steal cigarettes and cigars from his neighbours”. The tone of the social worker here strongly suggests that this should be seen as reprehensible behaviour, despite having been carried out under a different authority that became defunct shortly afterwards. Indeed, as we have seen, many of the ‘crimes’ committed during the war years were still regarded as crimes afterwards.

On further interrogation, Herbert B. admitted to have learnt how to masturbate during his relocation at a children’s relocation (*Kinderlandverschickung*) camp, stating “all the boys were doing it”. This was obviously not sufficient for the court authorities, sending the accused juvenile to see a doctor at an Institute for Forensic Medicine attached to the Berlin Magistrate Health Services Department. The doctor here submitted a report that stated Herbert B. was in good physical condition, despite also recording that he had one eye missing. His development was recorded as one “corresponding to his age”, and on asking Herbert B. for some of the images he had in his head when masturbating, received the reply “only girls”. The then sixteen-year-old boy would have presumably then been mortified on being asked the question as to whether he had yet slept with one, retorting with the answer that no, he had never even kissed one. The report submitted by the forensic doctor then went on to supply the court with the following:

> His sexual acts with boys were clearly a poor substitute for the realisation of his erotic wishful dream of normal sexual intercourse with girls. They mainly derived from the favourable situation and the delicate, girly appearance of the obviously very cuddly (*anschmiegsam*), willing and accommodating boys. Under consideration of the test results, it cannot be disproved that the accused was not [emphasis added] aware of the illegal nature (*Strafbarkeit*) of his actions [those for which he was charged with, DM]. I therefore have doubts regarding his ability to be accountable (*Verantwortungsfähigkeit*) in the sense of Paragraph 3 of the Youth Court Law. 345

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This forensic examination can only be understood within the wider context of a post-war debate that centred around the ‘feminisation’ of German youth; not only the lacking ‘strong, fatherly hand’ during the war years (as indeed was said to be the case for Herbert B.), but also in the immediate post-war period. After the end of the Second World War, the social worker submits, he did not return to work as a carpenter in Reinickendorf due to his criminal activities. The circumstances of Herbert B.’s post-war burglaries are not listed in the court records, only suggesting that the items were “presumably sold on the black market”.

The historian Jennifer Evans has studied the policing of so-called ‘Bahnhof boys’ in post-war Berlin. She has investigated how the police in both sectors of the city concentrated their efforts on main interchanges of traffic such as Zoologischer Garten in the western (British) sector, but also Friedrichstraße and Alexanderplatz in the eastern sector. 346

One case processed by the district court at Schöneberg in December 1947 involved Günter E’s transgressions of Paragraph 175 at the Zoo Station, who “received considerable [financial] reward” for a sex with a man “allegedly unknown to him”. This was labelled, as indeed it was during the wartime period, of an act constituting a “perverted sexual offence” (widernatürliche Unzucht). The defendant, an eighteen-year old apprentice locksmith from the district of Kreuzberg, admitted during police questioning that he went to Zoo Station three to four times per week for such a purpose.

The incident for which he was apprehended earned him 25 RM, even though he normally received 5 RM more from each of the thirty to forty men he had been with. Zoo station was not the only area where Günter E. was active, but as the youth informed the Charlottenburg police, “my area of activity was... also the Alexanderplatz. The sexual offences took place largely in ruins, station underpasses and sometimes in the [sexual] partner’s flat... this was carried out only through mutual masturbation”.347 Again, here it


347 KIM II/1 Charlottenburg police office, in: LA B Rep. 051, Nr. 10694 (2).
is clear that the language used by the juvenile has been filtered through the regulatory bureaucracy of the police station. Though this intrinsically precludes one from understanding how the youths themselves linguistically related to their own acts, one can nevertheless get a sense of the process by which the police and court authorities attempted to register, categorise and convict acts of juvenile criminality.

Here, the locations stated by Günter E. give a sense of the lack of order present in the post-war city, but for the contemporary legal authorities, they also served to increase the notion of such sexual crimes being driven by impulsive energies that labelled those such as Günter E as ‘layabouts’ and ‘morally bankrupt’. The police officer initially in charge of the case was at pains to note the critical situation Günter S found himself in. A report filed on 8 July 1947, around three months after his apprehension, submitted that he was “a very morally endangered person [...] in view of his mother possessing no educative hold (Erziehungsgewalt) over him, [we will] transfer him to the youth assistance bureau’s care. Further action will be taken after the State Prosecutor’s conclusions...”

One day later, the Kreuzberg youth office supplied further information pertaining to Günter S’s ‘moral endangerment’, noting that the juvenile “appears to have little inclination to work and uses his place of employment as a substitute for this (Scheinarbeitsverhältnis). He has been roaming around at Zoo Station for two months in order to work as a male prostitute (Strichjunge)”. On 17 December 1947, Günter S. stood before the Schöneberg district court: for these “repeated sexual offences”, he was given a four-week detention period alongside his transferral into correctional education, served at the youth home in Struveshof.

This case again confirms the importance of locating criminal activity in the post-war city. The prominence of Zoo Station throughout this criminal court case file - not only as crime scene, but also as a substitute place of work where his actions had derailed him from the proper moral line – was considerable. Whilst Günter S. was still in custody, another arrest (included in the case study) took place at Zoo station. On 7 October 1947,

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348 KIM II/1 to the Police youth assistance bureau (9 July 1947), in: LA B Rep. 051, Nr. 10694 (11).

the “male prostitute” Günter K. was apprehended for sexual offences relating to
Paragraph 176; the sixteen year-old admitting to police that he had performed mutual
masturbation and oral sex a total of forty-six times, averaging 25 RM per client. His
indictment sheet also stated the stealing and selling of potatoes. After first being taken
into the custodial prison at Plötzensee, he was brought to the Wedding district court in
North Berlin on 29 October 1947 – just twenty-two days after his initial arrest. In
summing up the reasons behind a decision of admittance into a correctional education
facility, district court advisor Döhrendahl was unequivocal. He termed the youth
“completely wayward”; a boy who had clearly “slipped out of his parent’s control and
“requires a particularly strict and determined education to bring him back to the
straight-and-narrow (auf den rechten Weg bringen).\(^{350}\)

These two cases not only point to the existence of a stabilised trade in male prostitution,
but also to the existence of a continuous policing of the area. In order to get a more
complete picture regarding post-war sexual offences, we will now move our study
further afield, to consider how certain other sexual offences that occurred outside of
such ‘notorious’ localities informed juvenile criminal discourse in Berlin. In addition, the
case file compiled for the following includes information pertaining to the juvenile’s
history (where this is seen as relevant to the case) within the wartime city. Finally, the
reasons given for his behaviour illuminate the ways in which wartime exigencies were
viewed by legal authorities as inducing an ‘unnatural’ relationship between boys and
girls.

A sociological study published in 1948 investigating the social and economic problems
faced by Berlin families found that only 38 percent of youths belonged to so-called
“complete” families (or 103 of the 278 juveniles studied), with only a few more (126, or
45 percent) in circumstances “that at least economically point to certain prerequisites
for an ordered work training.”\(^{351}\) Of the rest, seven percent (20 youths) had a father who
was unemployed in late 1946; thirteen percent (37 youths) possessed a father who had
to make do with a disordered or badly paid job (in some cases due to being a former

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\(^{350}\) LAB B. Rep 051, Nr. 11621.

\(^{351}\) Hilde Thurnwald, *Gegenwartsprobleme Berliner Familien. Eine soziologische Untersuchung an 498 Familien* (Berlin, 1948), p. 135. Yet even in the more ordered familial situations, Thurnwald found that the
lack of food, clothes and shelter had a definite negative impact on the child’s ability to learn in school.
member of the NSDAP). In only ten percent (28 youths) of the cases examined were the father and mother both in employment; a further twenty-four percent (67 youths) came from families where the mother was the sole breadwinner. A youth office report cited in the same study noted that “in the investigatory reports, time and again one finds: father not yet returned from the war, mother careless (leichtsinnig), a weak character (haltlos), or rather: juvenile orphaned, grandmother cannot stand up to them; or a step-brother returning from the war finds the younger left to his own devices. Very seldom does one encounter a stable background. The youths often gave hunger as their reason for committing a crime. In some cases the needs of the family are also cited.”352

There were considerable efforts made to prevent conspicuous youth becoming elusive, slipping through the supervisory system's net back towards the dim, rubble-strewn streets of the divided, decimated city. Social-geographical maps released by the Magistrate for Greater Berlin's Main Office for Total Planning in 1950 mapped cartographically the location of juvenile crime in West Berlin.353 On these maps, black spots - indicating a particularly high level of juvenile criminal activity - were shown to be primarily concentrated near the sector boundaries.

The study called for ‘comprehensive planning’. This meant, in theory, the close cooperation of all experts in various fields of work (such as the statistical, economic-scientific, sociological, historical, geographical) in rebuilding Berlin. The work not only mapped West Berlin in terms of youth criminality, but also the numbers of welfare recipients (Amtsmündel), those families provided for by the Youth Office and its representatives, and those receiving pensions from the Social Office (Sozialamt) in 1948.

The social-geographic study surveyed the Berlin population as it stood on 1 August 1948 according to various social criteria. The amount of convicted juveniles within the twelve West Berlin districts was given as 4787, or 2.3 per 1000 inhabitants. The second, surveying the number of welfare recipients, found there to be 21,307 (10.4 per 1000).


Families in care numbered slightly higher at 23,505 (11.5 per 1000), while the amount of female juveniles in care stood at 13,146 (6.4 per 1000). However, these figures needed to be qualified. In particular, the difference in the working hours of welfare workers from district to district was noted, as well as the fact that some Welfare Offices (Pflegeämter) had only become active within the last few months.

The social-ecological methods of collecting data on social phenomena was strongly influenced by the Chicago School of Sociology, which placed single case and statistical data in context through a consideration of the spatial context in which they occur. During a May 1949 ‘Berliner Tagung’, organised by the Main Youth Office of Greater Berlin (Hauptjugendamt von Groß-Berlin), Helmut Winz, the sociologist chiefly responsible for publishing the report, contended that “looking at the examples of numerous files and above all reports by welfare workers, one often gets the impression that mild cases demonstrate much more serious social disadvantages than those seemingly serious by definition”.

As the Berlin Main Youth Office (Hauptjugendamt) proclaimed in 1949, “The consideration of police as well as court measures on one side and the creation of a good educational situation on the other represent the particular difficulties in the youth assistance bureau”. The establishment of this office was essentially a product of the so-called ‘Nenndorf by-law’ (Nenndorfer Richtlinien) of 5 November 1945. This directive was followed by all youth offices within the British zone, enabling them to arrest all ‘migrant’ (wandernde) youths - without any kind of legal order or form of cross check - and place them in supervision. The youth assistance bureau was one of many institutions called into action in order to carry out this by-law, which operated through

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informal arrangements of the Regional Youth Offices within the British Zone, a procedure very similar to the unbounded inter-institutional agreements of the National Socialist polyocracy.\textsuperscript{358}

Welfare can be seen to operate on the boundaries of legality in terms of the ability of the authorities to detain a juvenile who, while not by definition criminal, is to some degree endangering themselves, their environment, or both.\textsuperscript{359} The reasons for their detention could be as necessary as providing emergency shelter and food for someone unable to provide for themselves, or as petty as their failure to display adequate on-the-spot identification. To give some figures, the first three months of 1949 saw 1375 youths brought to Berlin Youth Assistance Bureaus, 693 of whom by the police. Around 50 percent of these police cases involved the sentencing or investigation of criminal activity. That left another 50 percent for whom the authorities were unable to provide a concrete legal precedent by which to arrest them. Severe constraints of space did not however check the zeal in which the authorities transferred youths into supervisory care. Where the Youth Assistance Bureaus in Berlin were concerned, total capacity amounted to only 157 youths at any one time.\textsuperscript{360}

Tellingly, a 1949 report by the Berlin Main Youth Office entitled ‘Origins and Character of the Youth Assistance Bureau’ provides only that their subsequent separation in such youth assistance bureaus was a practice “largely renounced” by the National Socialist regime.\textsuperscript{361} After the war, work on the bureaus was resumed despite considerable difficulties, in the main arising due to the terrible condition of the town hall at Alexanderplatz in which the youth assistance bureau was located. The building was heavily damaged during bombing raids on the city, leading to insufficient space along with clearly below-par hygienic and health conditions. A notable improvement arrived in the first year of the Two-Year Plan when all the Youth Assistance departments were

\textsuperscript{358} Ibid, p.218.

\textsuperscript{359} “Nenndorfer Richtlinien” (5 November1945) in: BAK, Rep. Z 21 no. 865 (9-12). Taken from Kebbedies, Außer Kontrolle, p. 250.


\textsuperscript{361} Ibid.
transferred en masse to a new building on Magazinstraße 3/5.

Transferred by the police, the District Youth Offices or Main Youth Office, even in some cases by parents or legal guardians pleading to take their troublesome child, the following reasons meant potential internment in a Youth Assistance Bureau:

- Vagabonds (*Herumtreiber*), needing to be put into safe keeping until the question of their further accommodation is solved;
- Welfare pupils (*Fürsorgezöglinge*) for whom immediate accommodation is necessary but where space in a Home is not available;
- Youths who have been picked up by the police for punishable acts and must be available for the Criminal Services (*Kriminaldienststellen*) until their preliminary meeting with the Pre-Trial Judge (*Untersuchungsrichter*);
- Youths who have been sentenced to detention in a Home (*Heimerziehung*) in connection with a crime;
- Finally, as a necessity, children and youths from Berlin and elsewhere without a home or a family, for whom suitable accommodation is currently lacking.362

The police internment of a juvenile in a youth assistance bureau was implemented according to Section 45 of the 1943 Youth Court Law studied in the previous chapter. This stated the need to place the juvenile subject of a criminal investigation temporarily in arrest pending their subsequent trial (after a warrant of arrest was given). Regional Youth Offices, the Main Youth Office, and courts could also transfer in the case of a pending criminal trial where internment in a home was seen as necessary or where ‘welfare services were arranged’. In addition, transferral also occurred when the youth posed a suicide risk.

As a result of an increased frequency of police raids begun in December 1947, 50 youths were transferred out of the youth bureau on Dircksenstraße and into other institutions. This youth bureau, and the premises on Greifswalderstraße 34 (built as an overflow, completed in the summer of 1947 and able to hold an extra 40-45 youths) – both in the Prenzlauer Berg district of North-East Berlin – were designed only as temporary holding-houses for youths until somewhere more suitable was found. In practice, this

meant being returned to their parents (with the permission of the youth office), to a care home, or to another institution. In theory, youths should have only been in the youth assistance bureau for a few days. However, according to City Councillor (Stadtrat) Frau Ehlert, Head of the Berlin Main Social Office, there were those who ended up staying for weeks and months. The necessary relief intended was not forthcoming, however, as the new ‘overflow’ building was soon just as overflowing. The space in juvenile centres was so acute that those youths labelled difficult or indeed psychopathic could not be separated from the more ‘normal’ juveniles, resulting in considerable problems. As for the care homes, the problem of space was also considerable, if not quite to the same degree. Indeed, only five months after the war had ended, there was a call by the Berlin City Council’s Department for Public Education, Youth Committee (Magistrat der Stadt Berlin, Abteilung für Volksbildung, Jugendausschuß) to confiscate and remove the all-too-prevalent ‘places of enjoyment’ in order to make way for the building of apartment blocks.363

A Welfare and Refugees Committee of the Allied Kommandatura Berlin sent letter to the Berlin Main Social Office (Hauptsozialamt) requiring them to indicate the legal authority they possessed for operating the Youth Assistance Bureau located in the Police Headquarters at Dircksenstraße, given what they regarded as serious overcrowding and lack of activities offered to the youthful detainees.364 Their reply twelve days later is unapologetic; describing the desperate situation the city found itself in vis-à-vis troublesome youths, with many care homes and bureaus finding themselves full to bursting. In addition, the youngsters housed there were not always on their best behaviour. “Our previous efforts to occupy the young people”, wrote Frau Ehlert, “have brought about various difficulties. For a while, light metalwork was carried out. The boys however used the tools to try and break out, so we had to call it off. We are presently trying to introduce brushwork (Bürstenarbeit)...”365


Erich Schneider’s juvenile home at the Main Youth Office in Berlin (Jugendhofes des Hauptjugendamtes Berlin) had a maximum capacity of 420 Youths, currently standing at 320 inhabitants, “whose designation (Bezeichnung) as wayward or criminal or hard to educate is always insufficient”.366 In his concluding remarks, Schneider emphasises that only a pedagogy free from old-fashioned authoritarian ideas (veralteten Autoritätsvorstellungen) can bring the findings of modern psychology into line with the needs of education.) Fifty percent of the current cases are voluntary admissions (freiwillige Unterbringungen), forty percent youths transferred by a judge after the conclusion of a criminal case (Abschluß eines Strafverfahrens), and ten percent welfare pupils (Fürsorgezöglinge) according to Paragraph 63 of the Juvenile Welfare Law. “We can only stress again”, Schneider claimed, “that these groupings are only significant in a juridical-formal sense and says nothing of a particular case’s level of difficulty. In no way is the youth who has become criminal (straffällig gewordene Jugendliche) always a “difficult” case, and in no way is the voluntarily admitted always an “easy” case”.367 52 percent of the interns were either full or half orphaned (Voll/Halbwaisen), illegitimate children, or children from divorced parents. A further part is made up of those who come from parents not yet divorced, but live separately. Indeed, Schneider notes that only around one-fifth of the youths interned in the Berlin Main Youth Office Youth Centre are from a complete family.

Though a Directive on Military Government of September 1945 had determined the basic objective of the British occupation regime to be economic necessities (such as providing food), the longer-term goal was the establishment of democracy. As Richard Bessel has pointed out in his study of Germany in 1945, the British believed this could only be arrived at through correcting what they believed to be flaws in the German character - for example a presumed lack of independent thought, a lack of a sense of civic responsibility, and an attachment to an authoritarian state.368 Exactly what ‘youth’ constituted of remained vague and unfocussed after the war. This was partly because of


the massive influx of refugees into the city, and partly because of the lack of institutional structures with which to firstly locate, account for, register; and afterwards control, educate, and supervise. In addition, no uniform structure existed for dealing with wayward children, as the French, British, American and Russian forces - along with German institutions - often took entirely different positions concerning the effective control of Berlin's young population. A background of morally questionable acts committed by Allied soldiers, a rampant black market, a decimated, visibly unstructured city all acted to further blur distinctions for youth which found itself clearly very much outside of the hitherto traditional boundaries of patriarchal and paternal authority in 1945. The final chapter will examine the construction of wayward youth in the nascent West and East German states.
Chapter Five: Wayward youth in East and West Germany, 1949 - 1953

Every struggle for the inner recovery of youth is at the same time a fight against the adult generation’s egotism, passivity and ignorance. This struggle and this fight will be served if we attempt to portray the truth, without glossing over, from numerous real-life cases of German youth criminality, evaluated from [court] practice and records. We will only limit the exactness of the reports where an overly strong realism could perhaps be shocking.369

In his ‘final words to the reader’, the social worker K. F. Wilhelm Müller continued by asking: “Do you know that according to Federal Statistics, every fifth bicycle theft, every tenth robber and blackmailer, every twentieth murder or manslaughter was [committed by a] youth?”370

The playwright Carl Zuckmayer argued for a more nuanced account of Germany’s post-war young in a compelling 1949 report entitled ‘Youth in No-mans land’. He listed three particular accusations often seen in the post-war foreign press: Young Germans were overtly nationalistic, or had even neo-Nazi tendencies; and that they were cynical,


370 Ibid
amoral and nihilistic. As the Second World War ended, Zuckmayer noted, the whole world was convinced of finding a youth drenched in the propaganda ideals of the Nazis; a youth “who, like neglected young carnivores, could only be approached with a warning pistol and an iron bar, and who first needed to be slowly re-educated back in order that any basis for understanding be found at all”. However, Zuckmayer found the situation to be quite different. He described how the young streamed from the destroyed fronts, from bombed-out cities and now cut-off parts of Germany. They were a youth “sobered, hungry, despairing of their existence”, and who no longer “possessed any grip on the past, and could not catch a glimpse of a new, positive, and better [existence] anywhere”. However, they certainly did not conform to the bleak accounts of many post-war reports on Germany. The American sociologist Erwin Schepses commented in 1948 “children and young people without homes in all probability do not participate in the process of democratic re-education, [and] may well develop into centers of unrest and resistance”. Here, the distance between the author and his subject is particularly evident. Even those within the occupation forces on the ground level were some way from appreciating the everyday existence of those they were attempting to re-educate. Zuckmayer noted the acceptable work they had performed, but stated that:

... Only few can tell you about the average German house, about an overflowing apartment, a Massennotquartier, a Jugendbunker; the corridors of employment or housing office, the courtyard of a city school or station washroom – what they look like, how they smell.

Correctional education was regarded as a hard educational measure to take by the court, even in fairly serious cases such as that mentioned by the Local Court Director Dr. Karl Kluger (also a long-standing Chairman of the Berlin Juvenile Chamber (Jugendkammer)). The case in question involved a boy from a good family who received a ‘perfect’ education at home until the age of fourteen. In 1945 he was split up with his parents.


372 Carl Zuckmayer, Deutschlandbericht, p. 229.


374 Carl Zuckmayer, Deutschlandbericht, p. 80.
after they fled, and was not able to find them again. Living from place to place, and lacking the necessary support, he became a thief – racking up some 50 thefts and burglaries to his name within the space of two years. “One saw in the juvenile immediately...that he only committed these crimes out of the most abject need (Not), simply because, he found nobody to helpfully stand by him. He saw his wrongs and tearfully promised never again to commit a crime, as soon as he could be brought back to a stable [family] background”. In this case it was agreed that the best place would be in a juvenile community home (Jugendhof), as opposed to slapping him with a prison sentence or ascribing a dose of welfare education. The legal basis for this, as Kluger mentions, is found under Section 12 of the 1943 Juvenile Court Law. Here the personality of the offender played a key role in the District Court’s relatively lenient treatment.

As Helmut Schelsky contended in his popular and influential sociological study of German youth entitled The Sceptical Generation, conditions in the war and post-war periods led to the institution of the family being endangered “as never before in our social history”. The ties between family members had been destroyed or badly damaged through war service, the loss or imprisonment of loved ones, the loss of homes through bombings, displacement or forced eviction, and cramped living conditions after the war. These were factors that “shook the accustomed basis of family life to a high degree”. However, Schelsky stated that the most important social accomplishment of the family for post-war German youth was that the “widespread juvenile waywardness that was anticipated and feared by many was prevented and caught” due to the primacy and vitality of family values.

Schelsky mentioned the American sociologist Howard Becker as one who feared the worst for Germany’s youth after the war. In ‘German Youth: Bond or Free’, published in 1946 (but written during the war), Becker predicted a post-war fanatical underground movement of juvenile ‘Werewolves’, and a sharp rise in juvenile waywardness, criminality, and vagrancy. However, Becker came to the conclusion, after a prolonged period as a university official of the US occupation forces, that he had

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strongly over-estimated the amount of youthful fanaticism that would be present in post-war Germany. The general social and moral health of German youth, and the relative success in dealing with the enormous amount of displaced persons, orphans and the homeless, was largely due to "the stability of German family life and, where families were torn apart, the permanence of memories and traditions within the family".377

Was the German family really able to survive the stresses and strains of war intact, and did it prevent youth becoming (or remaining) wayward or criminal in the post-war period? If Schelsky is to be believed, neither National Socialism nor wartime exigencies managed to displace or alter key family values. Following his thesis, these values survived the Zero Hour intact, and had a key role in helping German youth avoid crime after the Second World War had ended. The younger generation was labelled sceptical, but not criminal.

In order to ascertain the continuities present in policing wayward youth from the wartime into the post-war period, it will be instructive to compare how preventative legal measures introduced after the end of the Second World War differed from those enacted in the last years of the Third Reich. For example, what are we to understand by the term ‘protection’, as deployed in a key piece of juvenile legislation from 1952? What exactly were young people to be protected from, and who was assigned the task of ensuring that they were protected? How different was this to Nazi legislation introduced under the mantle of protecting youth? Such measures predominantly targeted endangered or wayward youth. Bearing this in mind, were the same youths targeted after the war as those during the war? Did the definition of waywardness change after the Zero Hour?

Erwin Frey, in a 1951 study entitled “The precocious recidivist” (Der frühkriminelle Rückfallsverbrecher), characterised the Second World War as a “criminological experiment”. Wanting to prove that the totality of juvenile criminals was made up of “real, essentially constitutional (anlagebedingten) criminals” and “pseudo-criminals”, he studied 160 “precocious criminals” (frühkriminellen), - an “accumulation of multiple

377 Ibid, p. 113.
criminogenic high-grade forms of psychopathy” in order to establish a basic pattern for assessing the personality of “incorrigible” young delinquents. However, the notable increase in crime apparent during the war could not, due to the short period of time involved, be put down to a fundamental change in the juvenile population’s “biological” predispositions. Only the “social” relationships could be said to have altered. This was problematic for Frey, in his wish to link criminality to “criminal disposition”: he argued, therefore, that the increase in juvenile crime could only be accounted for due to those youths with “no […] endogenous disposition to criminality” becoming criminal.378

A comprehensive overview of the welfare situation in West Berlin is provided by a 1950 study from the Main Office for Central Planning in Berlin. The study, strongly influenced by the Chicago “socio-ecological” school of thought that sought to place statistics and single cases in their local context, surveyed the Berlin population as it stood on 1. August 1948 according to various social criteria. The first, the amount of convicted juveniles within the 12 West Berlin districts, brought up the figure of 4787, or 2.3 per 1000 inhabitants. The second, surveying the number in state care (Amtsmündel), found there to be 21,307 (10.4 per 1000). Families in care numbered a little higher at 23,505 (11.5 per 1000); while the amount of female juveniles in care stood at 13,146 (6.4 per 1000).379 However, these figures are qualified by the usual problems, with the number of juveniles in care in particular the difference in welfare workers shifts from district to district is noted, as well as the fact that some Welfare Offices (Pflegeämter) had only become active within the last few months. Thus, they received necessarily fewer juveniles in need of care.


The 1952 Law for the Protection of Youth in Public

The Federal Republic of Germany enacted a ‘Law for the Protection of Youth in Public’ (Gesetz zum Schutz der Jugend in der Öffentlichkeit) on 2 January 1952. This abrogated the 'Reich Police Decree for the Protection of Youth' (Reichspolizeiverordnung zum Schutz der Jugend) of 10 June 1943. However, it will be worth assessing to what extent this can be described as a true annulment. The Bundestag described the new law according to terms laid out in Article 6 Section 1 of the 1949 Grundgesetz, in which marriage and family were to be protected by the state system (staatliche Ordnung):

> The most valuable commodity of the family and the people is adolescent youth. In this sense, the Bundestag values assigning protection and help to this youth through preventive measures. For these reasons the law obligates parents, pedagogues, businessmen and organizers, as well as the responsible authorities, to protect youth from endangerment in public (Gefährdung in der Öffentlichkeit).

Endangerment in public was understood as visiting locales posing a moral danger to youth or intensifying the threat of waywardness without a parent or legal guardian in tow; primarily, this meant the policing of disreputable pubs, off-licences, clubs, cabaret and revue theatres, films, casinos, and areas associated with the black market. In addition, smoking and drinking in public was not permitted for youths aged below sixteen and eighteen respectively. Youths could also be arrested at any time of day, as opposed to merely after fall of darkness. The 1952 Youth Protection Law, in fact, bears a striking similarity to the Police Decree of 1943. In a legal commentary to the 1952 Youth Protection Law, Walter Becker, a public prosecutor based in Bielefeld, stated that the fundamental difference between the two measures lay in the 1952 Youth Protection Law’s “abandonment of a police state mentality (polizeistaatliches Denken) [...] Youth should no longer be made into the “object” of pedagogically ineffective police measures. One must differentiate between – on the one hand - the criminal (...) punishment (...)”

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380 Reichspolizeiverordnung zum Schutz der Jugend, RGBl I, p. 349 ff.

and the pedagogic punishment”.382 This question of whether to educate or punish is similar to the arguments deployed by National Socialist jurists we have examined in the thesis thus far.

There were academics that described the development of a ‘democratic mindset’ amongst youth as largely opportunistic. One such academic was Gerhard Baumert, who, with the assistance of Theodor Adorno and Max Horkheimer, conducted a sociological-psychological survey of 247 families in and around the largely destroyed city of Darmstadt, 25 kilometers south of Frankfurt am Main. The monograph, one of a series published by the Darmstadt Social Science Research Institute, investigated living conditions, family structure, child rearing and education, as well as the reactions of the children to their social environment.383 In the concluding remarks to this influential study published in 1952, Baumert argued that ever since the US army brought over much sought-after material goods to Germany, young people had connected the image of “democracy” with the image of “food, clothes, [and] wealth”. However, “now, after the flood of wealth - to which most youths came into contact with in some form or other - has lost its appeal, and after… the inconsequential “re-education” of youth by Western powers, democracy now stands in not-so-high regard”. Due to the lack of any other authority (Instanzen) upon which young people can hope, Baumert continued, “they are apathetic … the dispositions and latent inclinations of the majority of youth, in connection with political apathy, form the most dangerous feature of post-war German youth”.384


383 Dr. Nels Anderson of the Office of Labor Affairs (HICOG) provided the impetus for the Institut für sozialwissenschaftliche Forschung to be set up in February 1949. It was described in-house as being charged with deploying empirical social science research methods (little known in Germany up to 1949) in order to investigate “relationships between people and their institutions”. See Ibid, p. 207

However, Baumert did not go so far as to support David Rodnick’s assertion that “They [German youth] ... appear to be waiting for a new leader”. Rather, he agreed with Erich Fromm in stating that youth had adapted to the occupier’s democratic ways without changing their basic characteristics (Grundcharakterzüge). Only the particular rules and habits were taken on – a “static” adaptation rather than a “dynamic” one. These basic characteristics, Baumert concluded, are already pre-formed in the family and cannot be completely re-shaped through “political education” or “democratic renewal”. Rather, “they correlate to a specific social-psychological structure of the bürgerlichen family [...] fundamental change can only occur in the progressive transformation of this structure.”

The ‘Policlinic for nervous and incorrigible children and youth’ attatched to the Children’s hospital in Berlin (Poliklinik für nervöse und schwer erziehbare Kinder und Jugendliche am Kinderkrankenhaus der Stadt Berlin) was one of the very few post-war Berlin institutions able (with assistance) to conduct extensive medical and psychological examinations on young persons. In conjunction with outside doctors, psychologists, schools and the youth office, the Policlinic was able to examine over 500 cases per year. Gottschaldt, head of the institute since 1935, published the results of an investigation into 552 “educationally difficult” young persons carried out between the autumn of 1945 and the autumn of 1946. The vast majority of those investigated were from Berlin-Wedding, a working-class district in the French occupation sector. In Wedding, according to Gottschaldt’s figures, around 33 percent of all apartments were destroyed, and a further 27 percent “more or less” damaged.

Gottschaldt stated in his foreword from early 1950 “the conditions described [herein] can be regarded as mostly surmounted”. Here, Gottschaldt was referring to the hunger and lack of adequate shelter experienced by the vast majority of Berlin’s youth during

386 Erich Fromm, die Flucht vor der Freiheit (Zurich, 1945), p. 22f.
the immediate post-war period, leading to the widespread phenomenon of Notkriminalität. “In any case, today we encounter other forms of juvenile waywardness with other foundations (Grundlagen)”\textsuperscript{389} In his introduction, Gottschaldt was careful to stress that juvenile waywardness was, in the majority of cases, “not the inevitable expression of a primarily deviant personality (primär abwegigen Persönlichkeitsartung) but [...] result from a build-up of material-economic and socially unfavourable circumstances. We are therefore not dealing with “wayward children”, rather “wayward conditions” in the widest sense of the word”.\textsuperscript{390} Whilst not completely excluding the juvenile deviant’s existence, this clearly emphasises environmental conditions in causal explanations for waywardness.

A section devoted to the phenomenon of waywardness lists the most frequent symptoms and developmental difficulties. For example, almost 57 percent of the 552 youths included in the investigation were labelled as having “social difficulties”. Of these 314 youths, 194 (just over 35 percent) were “troublemakers” and 120 (almost 22 percent) were “failures”. This differentiation is not explained, however.\textsuperscript{391}

If one compares the general picture of the period dealt with by this report with the last years of the war and the pre-war period, so it appears that there have been less qualitative changes; rather it is characterised by its extent and widespread appearance in all levels of the population. There are many forms of waywardness that we find in this or that form in relatively stable, ordered times. But this unbridled tendency towards property theft, growing vagabondage and sexual waywardness among girls, the violent increase in bed-wetting, this increased willingness for conflict on the general social level and frequent failures regarding all that is demanded of them – it is characteristic of the situation of youth in this period. Not to mention the cases of serious crime such as murder, manslaughter, bodily harm and serious theft. It is, as such, obvious that all these symptoms of waywardness are connected to a general dissolving of the social order that characterised the first post-war years in particular, and whose consequences we are yet to fully overcome today.\textsuperscript{392}

\textsuperscript{389} Ibid, p. IV.

\textsuperscript{390} Ibid, p. 4.


Due to chaotic post-war conditions, youth offices were significantly overburdened in their ability to carry out their basic duties of welfare education and legal guardianship, let alone managing to forward a progressive strategy for educating Germany’s youth. One social worker at a Youth Office reported in 1953 that its three staff members (sharing one typewriter) had to attend between eight and ten trials, meet some 220 clients, and manage to write 86 letters every week.\footnote{Max Würfflein, ‘Das Jugendamt – Selbst ein Stiefkind’, in: \textit{Unsere Jugend} 5 (1953), p.140.} Acquiring, and meeting, additional requirements in the area of ‘youth improvement’ (\textit{Jugendförderung}) was next to impossible. In addition, there were those from the occupying forces – such as Americans – who did not entirely trust the youth offices to implement a fruitful policy of long-term youth education due to their being burdened with a National Socialist past.\footnote{Karl-Heinz Füssl, \textit{Die Umerziehung der Deutschen. Jugend und Schule unter den Siegermächten des Zweiten Weltkriegs 1945-1955} (Paderborn / Munich / Vienna / Zurich, 1994), p.109.} After all, it had allowed itself to fall under the influence of the NSV under pressure from above. As Chapter 2 has demonstrated, The NSV did not hold themselves to the ‘right to education’ laid down in the 1922 Youth Welfare Law. Rather, it was deployed as an agency promoting and maintaining a “healthy offspring”. There was, however, also general scepticism amongst the public as to the role of the Youth Office. In focussing on specific groups and intervening often only in “emergencies”, it was frequently perceived as of as a police agency, a youth persecution office (\textit{Jugendverfolgungsamt}), and as such were reluctant to call on its services.  


On 3 July 1949, Policemen forced their way into Schreinerstrasse 52, a house in the working-class area of Friedrichshain, East Berlin. They were looking for Werner Gladow. The eighteen-year-old opened fire immediately. A firefight ensued, resulting in one policemen being severely injured, Gladow receiving bullet wounds to the neck and leg. During the hour long exchange of bullets, a sizeable crowd gathered on the street

outside – their sympathies not necessarily lying with the police: the East German “Security Services” were not particularly liked in the area, and many knew Werner to be a somewhat wild, but nevertheless “nice” boy. Yet the police finally won out, and Gladow was sent to hospital, handcuffed to a bed and supervised around the clock by a policeman.397

Werner Gladow was the notorious leader of a group engaged in criminal activity in all four sectors of a Soviet-blockaded post-war Berlin over a period of thirteen months from April 1948 to May 1949. The largely juvenile gang were adjudged to have committed a total of 127 separate crimes – including two murders, fifteen counts of attempted murder and numerous armed robberies. Gladow, although at eighteen years of age technically still a juvenile and therefore liable under juvenile law to receive at most a ten year prison term, was eventually sentenced on 8 April 1950 according to adult law to death by guillotine.398 He was executed on 10 December 1950 in Frankfurt an der Oder.

The actions of the ‘Gladow-gang’ were, after their capture and subsequent trial in the Soviet Sector, subject to a considerable amount of attention from jurists, pedagogues, policemen and the media as well as a curious German public. Thousands of Berliners followed the police motorcade containing the ten chief suspects as they made their way to and from the Courtroom. The East German Berliner Zeitung outlined some of the reasons for their interest:

Every day of the trial brings an episode of cold-blooded criminality, the likes of which never before known in Berlin’s, indeed Germany’s criminal history. The Gladow Trial is a kaleidoscope of organised evil, whose images sometimes appear far removed from reality. A doubtlessly intelligent pupil, he studied crime at his leisure. Devoured by the mass, the questionable crime literature of the English-American world raised his stray emotions to excess, wanting to be(come) the greatest Gangster – the Al Capone of Berlin.399

397 This passage is influenced by Helfried Spitra’s account of Gladow’s eventual arrest: Helfried Spitra (ed.), Die grossen Kriminalfälle (Deutschland im Spiegel berühmter Verbrechen) (Frankfurt/New York, 2001) p.11

398 Sitting in prison awaiting his fate, Gladow is said to have commented that “two to five years would do me.”

Contemporary commentators focused largely on what could have led the youngsters to the ‘wild, debauched’ criminal behaviour demonstrated over the course of their criminal career. Singled out for particular blame by the Soviet administration was the allegedly harmful influence of American criminal films and literature that was seen to glorify the behaviour of gangsters and criminals, affecting the younger, more impressionable age groups especially. In 1957, East German authorities estimated that some 26,000 people a day were crossing over to West Berlin in order to see American Films banned in the East. The first day of the trial contained this interchange between Gladow and the presiding judge:

Dr. Krueger: Werner Gladow, you have explained to me, that American Gangster films and Crime novels alone drove you to carry out serious crimes. You have presumably also seen the bitter end of all criminals. Did you not think of your own fate? Gladow: No. I avoided all mistakes that the criminals made in the films and books, and sought out only the “good stuff”. What I tried afterwards always came off. It was all so easy…400

Yet again, the damaging effects of war and aftermath of fascist rule (for example the breakdown of family life), the desperate shortages of food, fuel and shelter in the city, a blossoming black market, and the administrative chaos resulting from the division of Berlin into four sectors were cited. The ‘sensational’ case of Werner Gladow involved all of these factors, with the public getting to hear, through the media, of the numerous crimes during the course of a two-week trial. In this way, the media utilised the Gladow case as one that enabled a – heavily simplified, of course - discussion of many of the usual causal factors that made up juvenile criminality. At the mid-point of court proceedings, Neues Deuschland, the communist SED’s central organ, reported:

...seven sober days of proceedings have passed by – and with them a long chain of brutal acts of violence and capital crimes – so brutal, so sadistic, as displayed daily for our youth in West Germany and West Berlin through American Gangster Films and Crime Stories... The trial has exposed the causes that led him and his young associates into the arms of criminality only too clearly: Fascism – the terrible events of the war -, the Poisoning of our youth through filmed and printed “educational material” made in USA. The pupil Werner Gladow and his pitiable victims are beyond help. He and his companions will not evade punishment. Today the trial has shown that this

400 ‘One Becomes Criminal – Poisonous imports on screen and paper’ (Gladow Trial, Day One), Neues Deutschland, 22.3.1950.
fundamental evil must be uprooted and eradicated. Our youth should know no more Gladow-gangs.401

This is demonstrative of the sensationalism present in many media reports concerning the Gladow trial. The 'Gangsters’ are presented as cold, clinical criminals demonstrating no remorse for their actions: rather seeming to take pleasure in the attention afforded them by the court case. The trial, according to this report, had 'clearly unearthed' the sources of their crimes. For them, Gladow could embody everything that was wrong with 'youth today', and as such an opportunity to shape the landscape upon which crime could be located. Much was made of Gladow's difficult past. In 1940, at nine years of age, his father was conscripted, and he, like thousands of other German children, was sent off to a child evacuation camp in the country. Changing schools nine times before the end of the war, he returned home to a rubble-strewn Berlin in 1945, finding his parents home almost completely bombed out. Sent to a Hitler Youth home, he was then, according to one newspaper article “systematically taught to kill”, being given a gun and shown how to fire it. 402 Regularly beaten by his father after his return, spoilt by his mother, almost never attending school, and increasingly involved in petty black market activity near the Alexanderplatz where he found it ‘easy’ to make money and the wrong kind of friends, he began to devote himself to gangster and crime novels. One newspaper described how Gladow's criminal acts were unconditionally guided by the books and films he consumed:

His courage, his attitudes about an invulnerable villa in Dahlem that is reinforced with steel, his dreams about cool bank robbing, his wish for a gunshot-proof auto; these are things he has simply taken out of American books about gangsters and criminals, and without being critical, he has adopted them to fit other kinds of relationship here in Berlin. And in his endless fantasies, he has built all of this up in a really grotesque fashion.403

401 'Zu Spät, Werner Gladow!’ Neues Deutschland, 31 March 1950.

402 ‘Der Fall Gladow’, National-Zeitung, 12 April 1950.

403 Quoted from John Borneman, Belonging in the Two Berlins: kin, state, nation (Cambridge, 1992), p.159.
Dr. Weimann, the chief medical officer from West Berlin involved in the court case, provided an ‘expert opinion’ outlining the aggravating effect gangster films and novels had on his already wayward inclinations:

He can be characterised as having a psychopathological drive for freedom and unboundedness, which was already apparent in his early childhood, and since then has vastly increased; this can be traced to his development as a youth, when his parents did not in the least provide any barriers to his behaviour...As a consequence of his mental ability and perceptiveness, he acquired considerable knowledge of criminal and gang life. From the classics that he started reading at school, he moved quickly on to criminal, adventure and spy novels, above all concerning American gangster life (One Becomes Criminal) that he obtained wherever possible, the contents of which he consumed in every detail, so that he could finally become a criminal and in the last year, as he himself concedes, could concern himself day and night with criminal acts, stepping up to play the role of the great bank robber himself. ⁴⁰⁴

The dilemma facing the soviet authorities was thus: If the blame for the youngster’s actions could be pinned on external influences, such as images propagated in harmful literature or the experience of war and fascist rule, then he cannot be entirely responsible for his actions, and can in this way be regarded as not yet possessing the capacity to fully understand the wrongfulness of his actions – thus precluding the application of adult law. East and West German commentaries concerning this particular issue diverged significantly. While the Eastern press constantly pressed for a harsh punishment as a necessary and justified warning that such criminal behaviour will not be tolerated, certain sections of the West Berlin media drew parallels between the East German courts and the judicial system propagated by the National Socialists:

The young gang leader’s offences doubtless deserve a severe punishment. When however the report of the court psychologist in such a difficult case is simply ignored by the State Prosecutor who explains, one should not act on the assumption of “individualistic and psychological points of view” but rather on the “social conception of guilt”, that is a dangerous sign. “Social conception of guilt” - that reeks a little too much of the “Pest of the Volk” used by Hitler’s judicial system...Of course, out of the requirement for protection (Schutzbeduerfnis) one can be easily inclined to demand the death sentence for Werner Gladow– but the art of jurisprudence lies in finding the happy medium between the offender’s personality and the general public’s requirement for

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protection. It is clear that with incorrigible criminals such as the mass murderer Kuerten, this requirement for protection justifies the offender’s death. It is however just as clear that with the still developing eighteen-year old Gladow, the requirement for protection can be satisfied with a lifelong imprisonment, after which time – around fifteen years – Gladow’s possible re-entry into society can be assessed (…) In the Federal Republic, the death sentence has been abolished. Where it still exists, as it does in the Eastern sector, it should only be applied as an exceptional instrument with crimes in which the character is irretrievable.405

The debate between the chief medical officer Dr. Weimann and State prosecutor Zwanzig highlights the diverging opinions conveyed over the course of the trial concerning the most suitable punishment for Gladow and his gang. Zwanzig wanted retribution for the damaged reputation of the East German ‘People’s police’, a number of which had been embarrassingly dispossessed of their weapons by the Gladow-gang over the course of their (armed) crime-spree. Dr. Weimann stated that it would be preferable to have 500 teachers and social workers present in the courtroom, instead of the 500 East German policemen who filled the court’s benches, and who reacted enthusiastically to calls for Gladow’s head. A Sozialdemokrat journalist described the encounter as follows:

Chief medical officer Dr. Weimann’s report labelled Werner Gladow as a hereditarily burdened psychopath; whose infantile, schilling-shocker and crime-novel influenced overheated, immature fantasies chased him like a homicidal maniac from crime to crime. Stuck in the period of puberty, he can in no way be judged to posses the moral maturity of an adult. However, The State Prosecutor declared simply: “I don’t believe in infantile influences!” adding threateningly: “Everyone who raises a hand against the “Peoples” Police, will meet the same fate as the accused.406

In summing up the case, Regional Court Director Dr. Krueger stated “the court gained the impression that a mature man stood before the judges”.407 That Gladow could be legally adjudged to be an adult was a result of the DSYO. As we have seen in chapter 2, section 20 of this law stated that juveniles above sixteen should be regarded as adults if

405 “People’s” justice on the trail of Hitler’s courts’. Sozialdemokrat from 5 April 1950. Peter Kuerten, the so-called ‘Vampire of Düsseldorf’ was alleged (but never proven to have) committed almost eighty offences, including a string of sex crimes against both adults and children. Charged with nine murders and seven attempted murders, Kuerten was sentenced to death by the Cologne Regional Court in 1932.

406 “People’s” justice on the trail of Hitler’s courts’. Sozialdemokrat from 5.4.1950

407 Trial summary of Gladow case, LAB B. Rep 013, Nr. 46.
it could be proved that "the culprit possessed the intellectual and moral development of an (over) eighteen-year-old" and "the action showed heinous criminal intent" or that prosecution of the juvenile as an adult was "required for the protection of the people". This demonstrates how the East German government drew on National Socialist legal practices not yet abolished in an attempt to regain some stability amidst the post-war chaos. In terms of cultural/political practice: whereas at first the western Allies focussed on Germany’s ‘re-education’ mainly through the press, the Soviet military administration (SMAD) concentrated their efforts primarily on rebuilding the film industry. Founded on 15 May 1945, just days after Germany's capitulation, it was charged with the central administration for education of the people (Zentralverwaltung für Volksbildung). A representative of SMAD stated at its founding ceremony that:

The film company DEFA has important tasks ahead. The greatest of which is the fight for the democratic building of Germany, wrestling with the German people’s education, especially the youth, in the sense of a real democracy and humanity, in order to awaken respect for other peoples and countries. The film as mass-produced art (Massenkunst) must become a potent and powerful weapon against Reaktion (italics are mine) and for a democracy that grows deep within, against war and militarism and for freedom and the friendship of all peoples in the whole world.408

The “Central Administration” as mentioned above played a key role in determining how a finished piece of art was to look. Where films were concerned, once filming had been completed, a panel of SMAD and SED representatives could still order the reshooting of scenes, along with alteration of dialogue or commentaries if they deemed it necessary.

In 1948, the DEFA film “...Und wenn's nur einer wär” (henceforth referred to as UWNEW) was at the centre of a debate concerning wayward youth.409 The film was based on a novel entitled Verwahrlost? by Sia di Scazziga, the Swiss director of an experimental Children’s Theatre Group. The film was billed by DEFA as a true picture of contemporary wayward youth, also receiving critical acclaim after its release. UWNEW’s strength lies


409 See Appendix I for a transcript of the opening sequence of the film.
in its quasi-documentary style: the director recruited most of his young actors from a police station near Schlesischen Bahnhof in Berlin (today's Hauptbahnhof) where a band of 25 youngsters had just been interned for activities on the black market. A contract, drawn up between the DEFA Chief of production and the sixteen-year-old leader of the group, included the stipulation that they were not to steal anything from the studio. There are many compelling close-up shots by the director Wolfgang Schleif, propelling the story onto its final conclusion. What of course is different here is that in all three cases of theft, the perpetrators were identified, caught, and brought before a juvenile judge. In practice this was far from obvious. The debate around the film from Sia Scanziga and SMAD centred around the portrayal of the Education Camp Director, who in the film turns out (after one of the youth’s finally recognises him as the murderer of one of his friends in 1945) to be a former SS guard. Scanziga strongly championed this role to be non-specific to Germany’s fascist (near) past, arguing the film could portray the attacking of democratic ideals in general, as opposed to something politically specific. Still, there were real-life cases where National Socialist politics re-emerged within the field of juvenile welfare.

Psychology also played an increasingly large role in post-war juvenile welfare politics. As Curt Bondy, Ordinarius for Psychology and Director of the University of Hamburg’s Institute of Psychology noted in 1952 “I contend: no educational work, either in the family or the school, can today be answered for without the application of depth psychological understanding!”\[410\] During a 1952 conference in Berlin, Bondy maintained the need for quicker intervention to prevent the onset or worsening of waywardness, with the use of depth psychology the only means of truly effective intervention. In order to do this, educators (meaning parents, teachers, kindergarten teachers – everyone involved in the education of children and juveniles) must be schooled in psychoanalysis, ‘otherwise the object of their efforts remains an unapproachable puzzle\[411\]’ (\textit{da ihnen sonst das Objekt ihrer Bemühungen ein unzugängliches Rätsel bleibt}). In the discussion


that followed Bondy’s paper, Dr. Gustav Brandt (himself to give a paper later in the congress) took issue with Bondy’s view that there was no possibility of depth psychology taking effect soon, mentioning that all twelve of the Educational Advice Centres in Berlin included psychologists well versed in the practice (including himself, in Berlin-Schöneberg). The prophylactic need to prevent the onset of waywardness, Brandt goes on, will be assisted through a closer (to some extent depth- psychological) collaboration with the network of School Directors, Parents and Teacher Associations, as well as individual educators and teachers through the Educational Advice Centres. To which Bondy answered that although it may be the case that there exist Advice Centres for inconspicuous juveniles, these are few and far between: a start has been made, but it must go much further.

Werner Hopmann explained that the Educational Advice Bureaus, the setting up of which begun by the Main Youth Office at the end of 1945, have in principle the same task as the rest of the youth office departments – namely to help those endangered (gefährdeten) or emotionally disturbed (seelisch Entwicklung gestört) youths (the so-called ‘disturbed and failing’ (Störern und Versagern)). The first of these after the war had considerable difficulties: Educational Advisors worked alone, even then only by the hour, operating almost exclusively on only the most severe of cases, even then mainly through the parents. Their influence was primarily limited to a parental advisory session. Fast-forward to 1951, and they are made up not just of one Educational Advisor, but also one female welfare worker (Fürsorgerin) and one Playgroup-leader (Spielgruppenleiter). It was the task of Educational Advisors - in six Berlin districts qualified psychotherapists, in four Psychagogien, in two Diplom-Psychagogogen, and in one a female Social Education Worker (Sozialpädagogin) – to decide on measures to take based on diagnoses and prognoses, through for example the ‘Sceno-Test’ (from Frau Dr. Staabs), 'Binet-Simon Test' or the ‘Hetzer-Test’. 1947 saw 1859 children brought to Educational Advice Bureaus, 1948 saw 2214; after the division of Berlin this increased

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412 Ibid, p.93.

again to 3074 children and youths in 1949. This number almost doubled in 1950, reaching a total of 6620.414

Hopmann points out this increase can be put down to the change in working habits of the Educational Advice Bureau, noting the impossibility of providing the same quality of care for those 6500 plus seen in 1950 as opposed to the 3000 or so in 1949, as the number of employees had not risen by the same level. The type of measure implemented, Hopmann explains, is influenced by the severity of the case. The most serious cases, where treatment is definitely needed, are generally transferred to the ‘Central Institute for Psychogenic Illness’ (Zentralinstitut für psychogene Erkrankungen), the ‘Psychiatric-Psychotherapeutic Observation Station’ (psychiatri sch-psychotherapeutische Beobachtungsstation) of the Main Youth Office (Hauptjugendamt) in Ruhleben, or the Psychiatric Clinic in Wiesengrund. In addition, the ‘Health Office Care Stations for Nervous and Mental Disorders’ (betreuungsstellen für Nerven-und Gemütsleiden der Gesundheitsämter) were notified by the Educational Advice Bureaus. This was in cases where organic illness was mooted in the course of their examination.

The Playgroup leaders deal with milder cases in a psychological framework, either singly or in groups. The female welfare workers have all attained a four Semester traineeship in depth psychology. Those that question whether it would be better to make Educational Advice Bureaus independent of Youth Offices (for example in Bremen) are missing the point, contends Hopmann. Youth Offices operate primarily with educationally difficult youths and children, thus they require the assistance of psychology and depth psychology in particular. The EB-S are working to assist the Youth Office in becoming an educational body, as opposed to a purely welfare-minded organisation. This, intones Hopmann, is both necessary and unavoidable:

> It is mistaken to think that Youth Offices are “only” a Welfare institution. The Youth Offices are in principle increasingly developing into an educational institution; this development can no longer be checked.415

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414 Ibid, p.103.

According to a survey conducted in March 1950, 117 out of 225 surveyed youths (52 percent) in the Plötzensee Remand Home had no occupation at the time of their offence. 136 (60.6 percent) had not finished their training (Lehre), 42 (18.5 percent) had completed this, while a further 47 (20.9 percent) were described as ‘unskilled’ (ungelernt). The figures for Youth Section of Moabit’s Remand Home are similar: out of those 109 interned, 70 (64.2 percent) were unemployed, 60 (55.4 percent) had failed to complete their training, 18 (16.4 percent) had done so, and 31 (28.2 percent) were listed by the authorities as unskilled. For the 38 surveyed in the Charlottenburg Remand Home for Female Youths, the figures were 29 (76.3 percent), 13 (34.2 percent), 3 (7.9 percent) and 22 (57.9 percent) respectively.416 Where girls were concerned, a commentary to the survey noted that here one could not speak of ‘real unemployment’, as they were at the time of their arrest ‘hanging around without seriously intending to concern themselves with work.’ It must also be born in mind that the figure for those unemployed would have also included those youths still at school. An additional survey undertaken in April 1952 for Berlin’s ‘Jugendhof’ found that at the time of confinement, 256 of 361 (70.9 percent) were without occupation, with 66 (18.3 percent) still at school and only 39 (10.8 percent) employed full-time. Perhaps even more worrying were the 85 (23.5 percent) of internees (not including pupils) without any kind of qualification.417

In the early 1950s, the upcoming introduction of a youth protection law initiated substantial debates within the youth welfare system. What was the relationship between its ‘educational’ and ‘punitive’ functions? The term protection was, just like the 1940 Police Decree for the Protection of Youth, central to both its title and its proposed practical deployment. Yet the meaning of who was to be protected, and from what, had shifted. In early 1951, the Schöneberg educational assistance (Erziehungsberatung) director Gustav Adolf Brandt posed the interesting yet overtly philosophical question of “what does the conception of man (Menschenbild) look like, the “norm” of man, that the aim of our educational work has in mind?” He follows this by asking [by] ”what methods do we follow this aim and prevent deviations? […] The concept of a universally binding norm is dependant on very concrete value concepts. However, we find ourselves in the


417 LAB B Rep. 013 Nr. 18: Statistische Erhebung über die Insassen des "Jugendhofes" (Stichtag 1 April 1952).
intellectual situation of a time where social, ideological, religious and moral values are in a great process of dissolving, recasting and rebuilding. In addition to this, Brandt also alludes to the idea of an exemplary “norm” being laden with different values or connected with different possibilities. In terms of value-associations of specific words, it is noted that the former Gustav Adolf Brandt has by this time shed ten letters, becoming G. A. Brandt. In terms of what this means regarding the policing of youth crime, Brandt is expressing concerns that would not have been out of place ten years previously. Then intrinsic to the idea of education is the attainment of knowledge – however, in turn, a prerequisite for this is the desire to attain the right kind of knowledge. A youth should, in (what Brandt would view as) an ideal world, ideally both learn and want to learn about the dangers of youth’s traditional pitfalls from a second hand source. This would mean, for example, listening to their parents describe the perils of drinking and smoking as opposed to the youth trying them out for themselves. Yet the exigencies and aftermath of war had brought about a damaged, if not completely severed, connection between child and parent. The necessity of both parties’ reconnecting as a method of preventing waywardness was a theme we can see time and again in social and pedagogical literature of the post-war period. This was also in evidence during the last years of the Third Reich, yet the “atomisation of everyday life” created a distance - subsequently nurtured by such organisations as the Hitler Youth – between parent and child. However, Allied proclamations on the moral health of the family between 1933 and 1945 were often tempered by a lack of knowledge about family practices, and the particularly black-or-white shades Hitler’s Germany was discussed in the period immediately following the formal unconditional surrender of the German army.

The Poggenhagen (Niedersachsen) camp, set up shortly after the currency reform in 1948, was set up specifically to deal with so-called border control offenders (Grenzgänger). From the period of its opening up to 1953, some 55,000 youths had

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419 For a good summary of the problems of registering and accommodating refugees from the Soviet Zone, see Curt Bondy 1953, ’Bindungslose Jugend : eine sozialpädagogische Studie über Arbeits- und Heimatlosigkeit’, in Unsre Jugend 4 (1953), pp. 9-14. Bondy, who on a three week journey observed 56 of the near-on 1000 camps and homes in the Western Zone, is nevertheless optimistic in ‘winning over’ with
been interned there, 20 percent of which were female. Including an additional Girls Home and ancillary camps in Hannover-Kirchrode and Loccum, the capacity of the camp was a mere 1000 places.420

A student from the Hamburg University Psychology Department who spent time in Poggenhagen gave his impressions of life there, in particular the differences between youth from the East and West, and how the experience of war had made purely materialistic concerns paramount for many. It is worth quoting at length:

In the last two weeks I was the senior in one of the ‘Babystuben’, in which only thirteen to fourteen year-olds lived. It was mostly here I experienced the boys living together, and it was astonishing for me to see how much they (those from the Eastern Block, dpm) differed from youths from the Western Zone. These youths had of course only experienced the war and post-war years; it was also interesting for me to find out how much they were similar to the former Hitler Youth. In the Eastern Zone one sees very often youths together in large groups, everything is done communally. Here in the camp it is no different. Within the groups, the feeling of communality is roughly just as strongly formed, everything is shared equally: the sense for ownership (Eigentum) is simply nonexistent. One should therefore also judge thievery differently, while it happens frequently; within the group nothing is ever stolen, from others admittedly all the more.

Whilst the youths on one hand are still almost childish in their playing and to a large extent in their mental development, on the other they are often amazingly precocious due to the difficult experiences of the post-war years; they are pure materialists. Many thefts are only made in order to get a few cigarettes. The stolen items are sold immediately. ‘Camp price’ for a two-piece Suit was at the time of my stay DM 3.50. The youth has become estranged from proper trading. They often come to me with the most unlikely of things, and the social worker (Betreuer) can hardly ward off the many inquiries.421

Despite the claim here that criminality was rife amongst youths from the Soviet Zone, a 1951 study by the Deutschen Jugendarchiv in Munich demonstrated that the structure of the refugee’s parent’s home was little different to its Western counterpart, pointing to the small number of entries of “difficult household relations” given as a reason for their

_ honesty those who have ‘learned the weaknesses of the western Republic from the SED-Staatsbürgerkunde’ (italics are mine). However, once again a lack of means meant the camps themselves were mostly dilapidated, primitive and ill-equipped to deal with such a large influx of juvenile refugees.


border crossing and the small amount of criminality present in such cases.\textsuperscript{422} Indeed, only one percent of all those who passed through Poggenhagen were classified as asocial or criminal.\textsuperscript{423} However, assessing ‘state of youth’ was of course dependent on the locality: certain Regional Youth Offices, such as the one in the Oldenburg (Niedersachsen) district, reported that only just over nine percent of youths in care were found to belong to a complete family ‘of which nothing disadvantageous is known to the authorities’.\textsuperscript{424} Unfortunately, no information is given here as to what constitutes disadvantageous, or what percentile of such cases make up the overall figure. Such statistics did nothing to quench the scepticism of some social commentators, who continued to write about a youth in danger of going off the rails completely, painting a bleak picture of an ‘unbounded’ (\textit{bindungslos}) youth:

\begin{quote}
Our great worry is that from the unemployed and homeless youth, completely unbounded people develop. That would mean that they lead a thoughtless, impulsive, unaccomplished life, that they become wayward and criminal only too easily and that later their children grow up just as the parents.\textsuperscript{425}
\end{quote}

Hoeltz was born on 7 April 1886 in Berlin-Charlottenburg to a “tradesman” father. He was first sworn in to the \textit{Staatsdienst} in 1909. Just after turning twenty-eight years of age, and just over three months before the outbreak of the First World War, he passes a \textit{Großen Staatsprüfung} with the notation ‘satisfactory’. In the period from 1914 to 1922, Hoeltz was occupied as an assistant by the department of public prosecution (\textit{Staatsanwaltschaft}) I/II in Berlin. The personal file, compiled by the RJM, is not clear as

\begin{footnotesize}
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\item \textsuperscript{422} See here H.J. Firgau, \textit{Verbleib und soziale Eingliederung der jugendlichen Grenzgänger aus der sowjetischen Besatzungszone seit Juni 1948} (Munich, 1951).
\item \textsuperscript{423} See statistics in Rudolf Lenhartz (ed.) \textit{Informationsrundbrief zur sozialen Lage der Jugend, 4 / Nr. 2}, p.5. According to Curt Bondy, the \textit{Informationsrundbrief} (released by the \textit{Bundesarbeitsgemeinschaft Jugendaufbauwerk} based in Munich) was the most important source and collection of material about the social situation of youth. See Curt Bondy, ‘Bindungslose Jugend : eine sozialpädagogische Studie über Arbeits- und Heimatlosigkeit’, in \textit{Unsre Jugend} 4 (1953), pp.14 – 77.
\item \textsuperscript{425} Curt Bondy, ‘Bindungslose Jugend : eine sozialpädagogische Studie über Arbeits- und Heimatlosigkeit’, in \textit{Unsre Jugend} 4 (1953), p.53. This scepticism was however not merely confined to Germany. An article in \textit{Time} magazine titled ‘The Younger Generation’ was similarly downbeat about the moral state of youth in the country. See the edition from 5 November 1951, p.26f.
\end{itemize}
\end{footnotesize}
to exactly when Hoeltz became a youth court judge, but it clear that this happened before the Nazi seizure of power. Then the file includes a newspaper article from the *Berliner Börsen-Zeitung* in November 1932 that reported Hoeltz as being the victim of an attack by two youths in front of the youth court on Stralauerstr, Berlin-Mitte. As a consequence of Hoeltz applying strict sentences to young members of suspected Nazi-affiliated organisations the day previously, it was presumed that the assailants belonged to the NSDAP circle. Unfortunately, the article does not elucidate further on the circumstances leading to Hoeltz’s strict application of the law – only that one of the accused was given a one-year penitentiary term. The *Börsen-Zeitung* commented “the attack on...Hoeltz is all the more regrettable as he was just beginning to enjoy wide acclaim for his humane character towards juveniles”. The RJM file on Hoeltz also contains a thirty-two-page imputation against him for not punishing juvenile sexual offences (*Unzucht*) harshly enough. This process, dating from 1938, ended in his receiving a warning from the disciplinary court. Similarly to the case of Flies that we have just seen, Hoeltz’s difficulties in judicially acting ‘towards the Führer’ resulted in his ability to find work as a judge after the war.

The judicial actions of Werner Hoeltz during seventeen cases of “illegal distribution of Propaganda” from 1950 and 1951 are enlightening in a study of crimes described as ‘politically motivated’ in Berlin’s post-war period. The criminal trials of these juveniles took place between 11 April 1950 and 5 December 1952 at the Schöneberg district court, within the American-occupied sector of the city. They involved persons aged between fourteen and twenty, though the vast majority of those accused were sixteen or seventeen years old at the time they committed the offences. The cases were processed relatively quickly, with the time between offence and trial ranging from 11 days to 6 months. On average, these cases could be closed after roughly two months. Regarding the sentencing practice of Hoeltz – who presided over each of these trials – we find in general a lenient courtroom practice. Two were acquitted completely, six received a warning, and the rest got youth arrests of between two days and three weeks.

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One offence committed against the ‘controlling of print, radio and film’ in the American sector of Berlin was carried out by the fifteen year-old unskilled labourer Werner V. The events and circumstances leading up to the event are described in detail within the judge’s summing up, and will be interesting to examine here in more detail. Firstly, a friend of Werner V.’s was given leaflets that were pro-communist at a FDJ (an organisation belonging to the Soviet sector’s SED) Heimabend. This friend then asked Werner V. to help him distribute the flyers. Relaying information taken from the subsequent police interrogation, Hoeltz took the leaflets, “not to distribute them as instructed, but rather to burn them at home, as their being circulated appeared dangerous to him”. On his way back home, Werner V. became aware of a man following him for a long stretch. Feeling he was being watched, the boy began crumpling up the flyers in twos and threes before throwing them onto the street. Unfortunately for him, this was an account not believed by Hoeltz: “if he contends to having done this to rid himself of them, the court cannot follow this. If this was indeed his intention, he could have dropped all of the leaflets at once”. In leaving them on the street, Werner “opened up the possibility that the brochures would be picked up and read by pedestrians – as was indeed the case”. Whether the judge’s decision to give two free-time arrests (Freizeitarrest) was affected by a Schöneberg youth office report stating that the family of Werner live in “extremely needy circumstances” is unclear – no mention is made of the family of five having to live in a badly damaged two-room flat, for example.

What exactly were contained in such FDJ brochures, and what kind of threat did they pose to the Western Allied powers? This is important to the question of exactly what kind of youth criminality it was seen to represent by the court authorities, but also to the role politics could play in representations of youth. A process that came before the Schöneberg district court in April 1951 will be instructive here. This case involved the distribution of FDJ brochures along the Karl-Marx-Straße in the American sector of Berlin. They contained a message concerning firstly the “responsibility of German youth”, and proclaimed that one should “tell the whole people the truth about the threat to our German Heimat by the American and English intervention troops, to whom the

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427 ‘Befehl der Militärregierung Deutschlands (amerikanische Sektor) über die Kontrolle von Druckschriften, Rundfunk und Film’, 1 February 1949. This case in: LAB B Rep. 051, Nr.1482.

first youthful victims have already fallen. Germany must not be allowed to become a second Korea”. The leaflet went on to stress that “the FDJ and all of West Germany’s patriotic youth will not allow themselves to be deterred by the old reactionaries in Bonn. The FDJ cannot be prohibited. It will only become stronger through its mass of work (Massenarbeit)”. The FDJ’s march down Karl-Marx-Allee involved Manfred S., a sixteen year-old mechanic from Leipzig who appears to have travelled to Berlin specifically for this demonstration. The event was observed by an apprentice (Lehrling), who subsequently informed a police officer near the Neukölln train station. This officer then arrested the FDJ group, including Manfred. Though the protocol does not permit knowledge of exactly how many were apprehended, Hoeltz’s summing up of the case demonstrates that where Manfred S. was concerned, the act was treated leniently. “In terms of his being from Leipzig, and therefore not knowing the conditions in Berlin”, Hoeltz proclaimed, “and in addition his being in protective custody since 15 August [ten days after the offence], a warning was the appropriate atonement for the deed”. Furthermore, similarly to the case of Werner V. above, Manfred S. was adamant that he had no idea that what he did constituted a criminal act. The youth was on the record as stating “I appeal to the court not to sentence me, as I actually did not know that one should not do such things. I am not a staunch member of the FDJ, but rather have yet to get to grips with the significance of the cause (Sinn der Sache), and for this reason allowed myself to be carried away by it”. As we have seen previously, the ability to assess whether a youth actually knew their act constituted a crime was a consistent factor in the sentencing practice of the Berlin district courts. In this case, Manfred S. was contravening Decree 501 of the Allied control commission.429 In other cases involving contraventions of the same decree, we find that after other juvenile arrests, police logged various different slogans directed at the Western powers. In a case from January 1951, a seventeen-year old ‘FDJler’, along with a group of others, was seen distributing leaflets containing the motto “Tommy go home”. Two persons who witnessed him doing so were keen enough to follow some of the ‘propagandists’ back home before reporting them to the police. The boy, not viewed as ‘wayward’ by the court, and seen as (up until this point) “behaving impeccably despite unfavourable economic conditions”, received two days youth arrest. As with the case of Manfed S. above, it was the willingness of other people to inform the police that brought about the youths being brought before

the court – the existence of criminality depends absolutely on key factors such as this.

Other slogans that were more obvious to see included the 60 centimetres high, five centimetre thick letters daubed in yellow paint onto the side of Görlitzer station on 10 March 1950. They spelled out “Forwards to the meeting of Germany” (Vorwärts zum Deutschland-treffen). For her trouble in authoring this, the fifteen-year old Christel M. received a warning.430 Less than two weeks after this, a sixteen-year old Günter N., who resided in the East Berlin district of Prenzlauer Berg, was brought in for questioning. As a member of the “ostsektoralen” youth organisation “Falken”, he was found guilty of distributing small notes containing the words “we Falken also want a situation of peace! For this we will demonstrate together with world youth (Jugend der Welt) from 27 to 30 May 1950 in Berlin”, a note signed by the Regional committee of the ‘Falken’.431 For this, Günter N. received one week’s youth arrest – actually representing the longest term given to any of the juveniles involved in ‘illegal propaganda’ within the case study.


It was not only members of the West Berlin public who brought about the apprehension of juveniles performing such tasks, but also the police. On 3 June 1951, a Neukölln police officer stopped a youth he considered to be ‘suspicious’. On instructing the then twenty year-old Reinhard R. to open his rucksack, the officer found around 160 stickers and a further 100 or so flyers concerning the “people’s census against remilitarisation” in the Western sector of Berlin. On interrogation of the suspect as to whether he was aware that what he was doing was illegal, Reinhard R. replied that because the contents were bundled together, he could not see the wording of fliers stamped with the motto “Import from the USA”. As for those flyers that apparently could be seen, concerning the “people’s census against remilitarisation”, the youth stated that he was not aware that on 1 June 1951 – just two days previously to this – a ‘Prohibition of the people’s census’ was enacted as part of a Police Decree. But both he, and the eighteen-year old student

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430 LAB B Rep. 051, Nr. 1485

431 LAB B Rep. 051, Nr. 1481

432 Ibid
Helmut S., replied (believably) that they had not heard about this particular prohibition. Hoeltz acquitted both Neuköllner juveniles. Werner V.’s excuse that such brochures were dangerous and therefore to be disposed of as quickly as possible would not have worked in the case of sixteen-year-old Teja S. He was found guilty of posting FDJ leaflets in the South-western Berlin suburb of Steglitz on 24 March 1950. The Steglitz youth office submitted the following report three months later:

He is still really boyish (jungenhaft), happy-go-lucky (unbeschwert) and imbalanced (unausgeglichen). Considering his immature (unausgereiften) person, he would not have thought about the criminal nature of his actions. Rather, the adventurousness of the situation would have excited him. As a further explanation we would like to draw attention to the following: nearby to Teja’s flat is a stomping ground for those involved in the black market (Tummelplatz von Schwarzhändlern) who do business with American soldiers and sometimes act as procurers [of goods, DM]. Furthermore, the meagre existence of a family that has seen considerably better days, in consideration of the very full display of goods [on the black market opposite, DM], obviously led him to the feeling that his family had been dealt a bad hand. Through all of the above, Teja appears to have been encouraged to overlook the existing decrees.  

The youth office here provides considerable reasons why Teja S.’s crime should not be dealt with in a punitive manner. Indeed, presiding judge Hoeltz would have taken this on board in his sentencing the boy to two sessions of ‘free time arrest’. The report above was keen to emphasise the destabilising effect of the black market on the accused. The observation that such black market activity often involved American soldiers can be viewed as a wry commentary of the hypocrisy involved in those that outwardly represented the maintenance of order really were involved in benefiting from the prevailing societal disorder. In terms of a specific relevance to Teja S.’s case, the youth office posits the thought: why should she follow the decrees of a military government that themselves openly break the law when it suits them? Of course, as we have seen, Berlin’s black market economy, still very much in evidence in 1950, had been in evidence even before the end of the war. For example, the jurist Götz Leonhard was...

433 Ibid


able to entitle a 1952 dissertation “Crime prevention in the National Socialist State and its lessons for the future”. In it, he contended that:

In the Third Reich, a clear belief in the “eradicability of crime” was decisively prevalent, the attaining of which was thought to be best achieved through both an ever more stringent exertion of punishments and a ruthless penal and custodial system [...] Within those institutions charged with fighting criminality, above all the judicial system, a just as dangerous tendency to fall into the opposite extreme still exists today, particularly recognisable in sentencing practice within the criminal justice system, in which human mildness often prevails that hinders as much as it helps. 436

Though Leonhard recognised a belief in the “eradication of crime” was false, he utilised relativist arguments to stress the usefulness of certain areas of National Socialist policing policy to post-war Germany – though as we have seen from the micro-level study in Section 4, leniency was not always a prevalent factor in the courtroom. In terms of welfare policy, despite attempts being made to restrict the court practice of applying correctional education measures to juveniles, the actual number of those interned increased. In 1939, Germany had 73,000 children in correctional education, compared to 75,000 in 1949. 437 Only in the fiscal year 1954-1955 did the number of children committed by Voluntary Educational Assistance Organisations (Freiwillige Erziehungshilfe) outstrip those committed by court order. 438

According to Professor Karl Peters, efforts to restrict correctional educational measures were to be commended - seeing the West German courts as needing to follow through successfully on the idea that correctional education should not be ‘tainted' by criminal proceedings. He gives statistics of those assigned correctional education by the Regional Juvenile Office to demonstrate his point: in the six months from April to October 1948,

436 Götz Leonhard, Die Vorbeugende Verbrechensbekämpfung im nationalsozialistischen Staat und ihre Lehren für die Zukunft, Diss. (Mainz, 1952), pp. 87-88. Leonhard cites his mentor Karl Bader twice here, first for the phrase “eradication of crime” and secondly after the last sentence. See Karl Bader, Soziologie der Nachkriegskriminalität (Tübingen, 1949), p. 186 & 196.


correctional education was employed in 530 cases within their province, with only 12 of these coming through the Juvenile Court.\textsuperscript{439} Peters notes that in ‘earlier times’ (presumably a somewhat euphemistic reference to the National Socialist period), welfare education was used by the Juvenile Courts ‘relatively frequently’. Here, no statistics are given to back his statement up: presumably the records of the Regional Juvenile Office in Wiesbaden were unobtainable, inexistent, missing, destroyed, or rather too sensitive to mention. Increasingly, the consensus was that children should be committed voluntarily, by their parents, rather than by court order. Indeed, this was a key demand of the General Conference of Correctional Education (\textit{Allgemeiner Fürsorgeerziehungstag}) at their 1950 meeting.\textsuperscript{440} However, as the chapter has shown, there was a long way to go before courts could abandon the practice completely. The ‘limits to educability’ remained after Germany’s capitulation.

\textsuperscript{439} Karl Peters, ‘Gegenwärtiger Stand der Jugendgerichtsbarkeit in Westdeutschland’, in Hauptjugendamt von Groß-Berlin (ed.) \textit{Stand und Neuordnung der Jugendgerichtsbarkeit. Bericht über die Berliner Tagung vom 22 Bis 26 Mai 1949} (Berlin, 1949), pp. 90 – 106; 98. Peters mentions in passing that other localities demonstrated similar tendencies in terms of how welfare education measures were assigned.

Conclusion

As the thesis has shown, the lines between ‘deserving’ and ‘undeserving’ victims of the Third Reich remained blurred decades after the end of the war. To further emphasise this point, a particular criminal case from more than fifteen years after the war will be useful. In August 1960, the Dachau district court sentenced a twenty-five year-old electrician for denigrating the memory of the dead, public endorsement of crime, and libel. During a visit to the crematorium of the former concentration camp at Dachau, he began to commit acts of vandalism, and swore violently at the supervisors – some of whom had been previously interned at the concentration camp. Furthermore, the electrician, at a memorial to the unknown concentration camp prisoner, exclaimed “why don’t you say that a bunch of criminals were burned here, and that it’s not a shame that they’re lying under the moss”. Firstly, it should be noted that the fact he was convicted of the offences listed above demonstrates recognition by the legal authorities that those dying at the Dachau concentration camp were of course victims, not perpetrators. Yet it also – on the part of the electrician - shows the ambiguity surrounding how those convicted of criminal offences during the period 1933 to 1945 were to be viewed.

A typology of the juvenile criminal was indeed still in evidence in the late 1960s, with moralistic language utilised that was not dissimilar to that employed during the wartime period. The crime of murder, for example, still possessed the ability for some of those involved in juvenile criminal politics to deploy very specific “types” of offender in their assessment of a particular case. Addressing the “Society for Criminological Disciplines”

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(Gesellschaft für die gesamten Kriminologie)\textsuperscript{442} in 1967, Paul Bresser gave a paper entitled “Typology of the Juvenile Recidivist” (Typologie der jugendlichen Rückfalltäter) in which he spoke of the “juvenile multiple murderer” Jürgen Bartsch:

The juvenile multiple murderer, who has as the so-called Fairground murderer (Kirmesmörder) so inflamed the public, is an absolutely classic example of one [...] young person who is animated to the very core of his structure by a satanic drive to kill. I cannot here portray this phenomenon of a juvenile child murderer in all the details of his extremely interesting life, though would like to mention, that before the completion of his fourteenth year there appeared an imperative need to kill, and that from around his 15\textsuperscript{th} year up to his arrest in his nineteenth year he used every free minute to abduct children using every precaution, in order to kill them and intoxicate himself on their flesh. These massive, but also decisive manifestations of an evident lust for cruelty (Quällust) are always to be seen as a prognostically unfavourable indication -and from this characteristic of a recidivist - that not infrequently already emerges in early and late adolescence (Jugend- und Heranwachsenalter).\textsuperscript{443}

Bresser’s highly moralistic stance, echoing some of the typological language of National Socialism, was however viewed with scepticism by other criminologists. Tilmann Moser described how Bresser had explained to the Regional Court in Wuppertal during the Bartsch trial that one need not understand too much of an offender’s biography, because in such a case firm characteristics are key. Commenting on the fact that Bartsch had displayed evidence of remorse during police interviews and in letters, Bresser was stated by Moser as exclaiming: “This remorse is an act and a façade. A psychopath is not capable of remorse!”\textsuperscript{444} Yet the general trend was a move away from such moralising language towards a more balanced view of criminal behaviour as a ‘normal’ product of society:

\textsuperscript{442} Formerly named “Criminal-Biological Society” (Kriminalbiologische Gesellschaft), founded in 1927 by Adolf Lenz, the 1967 Conference met for the first time under the new name of “Society for Criminological Disciplines”.


Crime as a ‘deviation from the norm’ (*Normabweichung*) consequently belongs to the essential structure of every society and culture. An average amount of deviancy and crime does not represent, as paradoxically as it sounds, the ‘abnormality’ of cultural development; rather it is a sign that the societal and cultural structure of an epoch is in ‘balance’. However, an above average increase in crime, for example during the ‘black market’ period, but also an above average decrease in crime, as for example in the first years of war, show that the balance of social and economic power of the time is considerably damaged; its cultural image (*Kulturbild*) simultaneously enduring ‘pathological’ strains. Crime, as ‘existential possibility’ (*existentielle Möglichkeit*), is furthermore connected inseparably with people’s existence. [...] There is therefore strictly speaking no ‘criminals’ in real opposition to the ‘normal’. Naturally, it cannot be disputed that within the law-breakers there are a number of individuals whose personality structure, as a consequence of psychotic or psycho-pathological characteristics, deviate to a greater or lesser extent from the ‘average norm’ of the people. In the past, since Lombroso, these so-called ‘classical’ criminals stood all too often in the foreground of scientific interest. When today, within criminological research, the Phalanx of Psychiatrists and Psychotherapists is being broken through by the influx of Sociologists and Social Psychologists, there is the prospect of the law breaker - being seen in future as a ‘normal’ or ‘average person’ in view of the large incidence of such – becoming the centre of scientific observation. 445

The traditionalist criminology of Würtenberger demonstrates a certain nod to the Durkheimian thesis that ‘there is no society in which criminality does not exist’: the emphasis on criminal-biology is here replaced by the idea that crime is to be understood as a product of aptitude (*Anlage*) and environment (*Umwelt*). As the criminologist Freidrich Geerds wrote in 1960, criminal-typology (*Tätertypologie*) should lead off from “average people”, stating “the criminal is not as such differentiated from those who do not break the law; [...] That is also true in certain circumstances [...] for chronic criminality. Recidivists too are not a particular type of person (*besondere Menschenart*), but rather differentiate from others only through their more constantly abnormal behaviour.”446


Certainly where wartime juvenile criminal policy was concerned, the Third Reich was a polyocracy, where the SS, Police, Justice Ministry and Courts often coming into conflict with each other. For example, if a youth court judge passed a sentence they regarded as too lenient, the Gestapo would (sometimes with, sometimes without the court’s consent) take the juvenile away after (or sometimes even before) the completion of their sentence and place them in Police Protection camps or even execute them summarily, thus undermining the previously exclusive authority of the court to interpret and execute the law.

This necessarily hampered the formation of a unified juvenile legal system that could be regarded as a true expression of National Socialist ideals, the creation of which an aim articulated in much of the wartime Reich Justice Ministry correspondence. Indeed, the Justice Ministry saw fit, in the third year of the war, to circulate memos to judges advising them as to the ‘proper’ interpretation of the law – reminding them to calculate their decisions not merely according to the letter of the law, but rather to ask in individual cases how the law could best be applied in order to secure and promote the best interests of the Volksgemeinschaft. Number 14 in a series of 18 was devoted entirely to Juvenile Criminal Law, though cases involving youths were also included in other series such as ‘looters’, ‘those harmful to the Volk, especially those committing crimes under cover of darkness,’ and ‘the fight against asocials’.

A number of previous cases where an appropriate sentence was handed to an offender were outlined, followed by a commentary by the then Reich Justice Minister Otto Thierack. The effectiveness of these letters has been much debated. However, that the Justice Ministry felt it necessary to introduce such guidelines demonstrates at least a minority of the judiciary were not convinced followers of the Nazi cause. On the other

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447 BAB R3001/alt R22.

448 Appointed in October 1942 to replace the provisionally appointed Franz Schlegelberger.


450 For example Amtsgerichtsrat Dr. Willi Seidel who, although a member of the NSDAP, refused to comply with directives from the Food Office he regarded as illegal. This resulted in reprobation from the Reich Minister for Justice, the retraction of his planned promotion and exclusion from the party. See Bruno Blau,
hand, they often did not shirk from applying the new more ideological clauses introduced into law. As Heinz Boberach noted in his introduction to a 1975 edition of re-printed *Richterbriefe*:

> Only a minority of German judges were prepared to ruthlessly act according to National Socialist convictions. On the other hand, there were only a very small number who absolutely refused to support the regime...the majority of judges stuck to the letter of the law, also where this was altered through new laws or amendments to represent a more National Socialist outlook. 451

This suggests that juvenile criminal policy remained to some extent outside of Nazi politics, with judges continuing to enjoy a certain amount of independence. However, there is also evidence many used elastic legal concepts such as ‘healthy popular feeling’ willingly in their reasoning behind the application of a certain sentence as a convenience for articulating their own predominantly conservative-authoritarian prejudices and for doing what they believed the Führer required of them, usually signifying a more punitive sentence. 452

As if to emphasise continuity after 1945, Rudolf Sieverts stated in 1953 that the recently enacted Youth Court Law "does not signify revolution, rather wants merely to cautiously carry on a long evolution [of the juvenile court movement *(Jugendgerichtsbewegung]*)". 453 The Youth Court Law of 1923 was, in his words, “a truly revolutionary act [...] the two following Youth Court Laws signify mere evolutions of the accomplishments achieved back then”. 454 Sieverts does go on to mention some

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drawbacks to the National Socialist redrafting of juvenile law: that the Youth Court Law of 1943 did suffer the “setback” (apparently at the last minute) of the police-enforced possibility to criminalise twelve and thirteen year-olds when a serious crime had been committed, though – in theory - every single punishment in such cases was subject to approval by the Reich Justice Ministry. Additionally, Sieverts conceded that the introduction and development of measures against serious young offenders was “very problematic [...] because [the measures] contained adverse tendencies to the fundamental idea of every Juvenile Criminal Law”, and that the establishment within the code of juvenile protection camps was “problematic”, though following this straight up with the caveat “even considering that a solution to the problem of protective detention [Bewahrungsproblem] had to be acknowledged as necessary”. Furthermore, he mentioned the “re-introduction” of lay courts (Schöffengerichte) - cancelled after the beginning of the war - had to be pushed back to peacetime. His final admittance was that the Wehrmacht rejected a clause admitting eighteen to twenty-one year-olds to juvenile law for the duration of wartime. Then the sentence “An achievement of the RJGG was however surely the possibility – taken from Italian juvenile law -of deleting criminal records [Strafmakel] by judgement and the introduction of judge-like enforcement officers [Vollstreckungsleiter] as legal protection at juvenile penitentiaries for indefinitely sentenced juveniles”. Finally, Sieverts claimed that “all in all, the RJGG was also certified by political opponents of National Socialism, that it was – a few systemfremd-working regulations and formulations notwithstanding – a well thought-out and formulated, purposeful law. It was then also kept on by the occupation forces in 1945.” This almost completely unchecked praise for the Youth Court Law of 1943 was tempered by Sievert’s motivation for saying it: he was heavily involved in its drafting.

To what extent were those youths classified as “asocial” and “criminal” by the National Socialist regime during the wartime period still considered to be such afterwards? In a retrospective from 1958, the former head of the Women’s Criminal Police (WKP) and supervisor of the youth protection camps Friederike Wielking emphasised that:

...one can take this institution as one wants, one thing deserves to be emphatically put on record: had it [the idea of the Police Youth Protection Camps] not been formed, these seriously endangered minors, who time after time came into conflict with the law and therefore also the police, inevitably
As has been demonstrated, criminal law during the Third Reich was increasingly occupied with the problem of identifying the “criminal type”. The language of legal tracts and courtroom proceedings on the home front reflected a justice system at obvious pains to categorise and render harmless (unschädlich machen) those who could be defined as “habitual” or “career” criminals: those who possessed an innate, and incorrigible, need to commit criminal acts. It was the belief of leading criminologists such as Franz Exner and Robert Ritter that the main source of criminality was represented in such characters. Where juvenile criminal law was concerned, there was a slightly more optimistic outlook, where the individual concerned was seen as still being in the stage of adolescence and could therefore yet be formed into a responsible, law-abiding citizen. In this sense, the preventative nature of juvenile criminal law – in its attempts to stop criminal acts before they happen – often resulted in draconian sentences handed to those young law-breakers who could be defined – through the still young proto-sciences of psychology, psychiatry, criminal-biology, and criminal-sociology – as being hopeless cases, innately pre-disposed to commit criminal acts through a lack of inhibitions and an inability to tame their “raw” senses, demonstrated through the way their crimes were committed. After the end of the Second World War, the “criminal type” remained a key tenet of the judicial system, though in a slightly altered form: the discipline of criminal-biology still remained, although its influence in the “fight against criminality” certainly waned in the years after 1953. However, the image of certain youths as possessing ‘harmful tendencies’ remains today. In early September 2013, the German television station ARD aired a programme concerning juvenile violence directly after the popular crime drama *Tatort*. Though appreciating the level of violent juvenile crime has decreased in the last few years, it was argued that the ‘harmful tendencies’ of the perpetrators involved in such crimes has increased significantly. The Federal Minister of the Interior, a juvenile court judge, and a victim of youth crime then came to the conclusion that Germany requires a tougher juvenile criminal law. This is in spite of

the upper limit for punishing young adults (Heranwachsende) found guilty of committing murder under juvenile criminal law having recently been increased from ten to fifteen years’ incarceration. Portraits of particularly brutal juvenile crimes, such as those described by the Berlin youth court judges Andreas Müller and Kirsten Heisig, have tended to overshadow crime statistics showing that the level of juvenile violence has actually been falling significantly since German reunification in 1990.456

456 Christian Pfeiffer, a leading criminologist and director of the Kriminologischen Forschungsinstituts (KFN) Niedersachsen, stated in an article concerning juvenile violence that murder and manslaughter have decreased significantly since German reunification. Per 100,000 of the population, the number of suspects here has decreased by almost half (minus 46 percent) since 1993, and robberies have fallen by 37 percent in the last 15 years. Although criminal assaults have increased since 2007 (due also to victims reporting said crimes more frequently), even here numbers of reports per 100,000 have decreased by 27 percent. See Christian Pfeiffer, ‘Mehr Liebe, weniger Hiebe’ in the Süddeutsche Zeitung, 14/15 September 2013. Kirsten Heisig, up to her death in 2010, was a juvenile court judge at Germany’s largest youth court, Amtsgericht Berlin Tiergarten. See Das Ende der Geduld. Konsequent gegen jugendliche Gewalttäter (Freiburg im Breisgau, 2010). Andreas Müller, known as “Richter Gnadenlos” (judge merciless), is a juvenile court judge at Amtsgericht Bernau bei Berlin.
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Appendix I: DEFA ‘Und wenn’s nur eine wär’ (1949), Opening sequence.

(01:34) OPENING SEQUENCE: WELL APPOINTED HOUSE, SOMEWHERE IN BERLIN.
MAID ENTERS, FOLLOWED BY MOTHER

CAMERA PANS TO RINGING TELEPHONE

MAID: You've reached Professor Aßman's residence. Karli? Yes, your Mum is here.

MOTHER: Yes? Karli! What is it? You're not coming home? Why not?

CUT TO KARLI IN TELEPHONE BOX

(HEARD FROM RECEIVER) Why ever not?

KARLI: I can't really explain it to you... I need to go...D...Don't worry, Mum. I'll be alright...I can't tell you anything else...Goodbye, Mother.

HANGS UP RECEIVER, CAMERA PANS TO HIS BAG LEFT ON PHONE BOX FLOOR

CUT TO SPEEDING CAR (VIEWPOINT FROM ROADSIDE THEN BEHIND WHEEL)

KARLI: Hey, if we go on up ahead, there's a dirt track on the left, we can get around the roadblock that way. I'll stop there for a second; we can then quickly rip off the number plates.

CUT TO POLICE OPERATOR

POLICE OPERATOR: Two youths of 14 and 15 years of age are wanted for repeated car theft. I repeat the number plate: GTA, Gustav Theodor Anton, 42136

SHOT OF DISCARDED NUMBER PLATES ON ROADSIDE, CAR SPEEDS OFF
CUT TO HOUSE, PROFESSOR (FATHER) PACES BACK AND FORTH, MOTHER SITS IN CHAIR, LOOKING WORRIED

CUT TO POLICE LIEUTENANT

POLICE LIEUTENANT: Dark Ford Saloon without licence plates, without licence plates, is travelling towards the West

CUT TO CAR (NIGHTTIME), SHOT OF 2 YOUTHS INSIDE

KARLI: How much petrol do we have left?

YOUTH #2: (LOOKING AT FUEL GAUGE) Nothing.

KARLI: And the car is still running...

YOUTH #2: Mmm-hm.

KARLI: What's that up ahead?

YOUTH #2: Police!

CAR SWERVES OFF ROAD TO AVOID POLICE ROADBLOCK

CUT TO POLICE MOUNTING MOTORBIKES

CUT TO PARENTS AT HOME, MOTHER WITH TISSUE IN HANDS, LOOKING VERY WORRIED

CUT BACK TO POLICE AND YOUTHS, CAR COMES TO A STANDSTILL. COP 1 HOLDS K'S HANDS BEHIND BACK AFTER BRIEF STRUGGLE, KARLI WIPES BLOOD AWAY FROM HIS NOSE AND LOOKS AT THE BLOOD ON HAND, STARING INTO MIDDLE DISTANCE. FADE OUT.
CUT TO COURTROOM (FULL SHOT), COURT STANDS FOR JUDGE’S SENTENCE

JUDGE: In the criminal proceedings against juvenile Karli Aßmann, the Juvenile Trial Court – on the authority transferred by the responsible Military Court – finds the accused guilty of theft in five cases, committed through the appropriation of an automobile belonging to the Allied administration, in one case by means of burglary. The court has refrained from taxation of costs (Kostenfestsetzung). The court orders the transferral of the accused into an education camp (Erziehungs­lager).

COURT SITS, FADE OUT

SCENE #2

(04:40) DARKNESS, A VILLAGE. FRITZE HOLDS A SACK OF FOOD, LOOKS AROUND SHIFTILY. THE SOUND OF A TRAIN CAN BE HEARD IN THE BACKGROUND. UNBEKOWNST TO FRITZE, HIS FATHER LURKS IN THE DARKNESS.

FATHER: Fritze!

FRITZE DROPS SACK AND BEGINS TO RUN OFF

FATHER: Fritze, stay here!

FRITZE: Father, what’s up?

FATHER: (LOOKS AT SACK) How much have you got?

FRITZE: Three-quarters of Tinder.

FATHER: Give ‘em here! (REACHES FOR SACK)

FRITZE: But Mother wanted them!
**FATHER:** Rubbish! Give ’em here!

FATHER GRABS SACK AND CARRIES IT INTO A PUB, EXCHANGING IT FOR FOOD

FRITZE STANDS STILL FOR A MOMENT, STALKS TOWARDS PUB, LOOKS THROUGH WINDOW AT GASTWIRT DEALING OUT BREAD TO FATHER. FRITZE WALKS IN WITH INTENT, BRIEFLY LOOKS AT SLICES OF BREAD ON THE PLATE BEFORE RUNNING OFF, STUFFING ONE SLICE IN HIS MOUTH AS HE DOES SO

**FATHER:** Fritze! You stay here!

CUT TO FATHER’S FACE

**FATHER:** Now the damn bugger is starting to steal!

FRITZE WALKS TOWARDS HOUSE, AND ENTERS (STILL EATING). MOTHER SITS WITH UNLIT CIGARETTE IN HER MOUTH.

**MOTHER:** Where have you been?

**FRITZE:** At the coal dump.

**MOTHER:** And?

**FRITZE:** Nowt.

**MOTHER:** What does that mean, nowt? I told you, nights between one and three when no one’s around.

**FRITZE:** There wasn’t anyone around.

**MOTHER:** So, what?

**FRITZE:** Father took them.
**MOTHER**: What, Father? Give me a bit of sandwich! (REACHES FOR BREAD, FRITZE DEFENDS)

**FRITZE**: Don't smoke as much, and then we can keep more.

FRITZE GETS UP AND MAKES FOR THE DOOR

**MOTHER**: Oh, jeez, just give me a bit of sandwich!

**FRITZE**: You sell your ration tickets (*Marke*) for cigarettes, and still you want something to eat. I'm happy that I've got some myself.

FRITZE LEAVES THE HOUSE, AND RUNS OFF

**MOTHER**: Fritze! Where are you going?

CUT TO COURTROOM, CAMERA BEHIND FRITZE'S HEAD, POINTING AT JUDGE'S DESK

**JUDGE**: In the disputed criminal case, the Regional Youth Court (*Bezirksjugendgericht*) has adjudged: the accused is guilty of theft in several cases, as well as transgressions against the Criminal Regulations for Consumption (*Verbrauchsregelungstrafverordnung*) and Price Freeze Regulations (*Preisstopfverordnung*), committed in several independent acts. The court, in refraining from punishment and charges, orders the accused's accommodation in an Education Camp (*Erziehungs[lager]*)

PANEL SITS, FADE OUT

**SCENE #3**

(07:11) AN UNIDENTIFIABLE U-BAHN STATION IN BERLIN. TRAIN PULLS UP TO THE PLATFORM, WE SEE IT IS HEADED FOR STETTINER BHF. A YOUTH ALIGHTS FROM THE TRAIN ONTO THE PLATFORM, CARRYING A SACK.
GUARD: Alight, please!

HANS LOOKS ABOUT, WALKS TOWARD THE U-BAHN UNDERPASS. HE REMAINS THERE AND LOOKS AT PEDESTRIANS WITH AVID INTEREST AS THEY WALK PAST. AN OLD MAN CARRYING HEAVY SACK COMES INTO VIEW. HANS CAREFULLY REMOVES A TOOL FROM HIS PERSON.

HANS: Please can I have a slice of bread?

OLD MAN: I don't have anything myself.

NOISES OF GUARDS AND TRAIN HISSES IN BACKGROUND. A WELL-TO-DO LADY AND MAN WALK BY, FOLLOWED BY AN OLD WOMAN BURDENED BY HEAVY BAGS OF FOOD. CUT TO SHOT OF HANS' FACE, LOOKING INTENTLY AT HER. AFTER SHE HAS WALKED PAST, HE RUNS AFTER HER, WE HEAR (BUT DO NOT SEE) HER BEING HIT. HANS RUNS TO THE U-BAHN EXIT WITH STOLEN BAGS OF FOOD, ONLY TO FIND THE GATE LOCKED. HANS LOOKS FRIGHTENED.

CUT TO COURTROOM, WIDE PAN. JUDGE ET AL STAND.

JUDGE: In the Juvenile Court Case against parentless Hans Müller, born on 15.10.1936 in Berlin, the Juvenile Trial Court adjudges: the accused is guilty of robbery and assault with the aid of a dangerous tool, committed in concomitance with the offence. Punishment and taxation of costs (Festsetzung von Kosten) will not be given. The court orders the accused's accommodation in an Education Camp (Erziehungs­lager).

COURTROOM SITS. FADE OUT.