

WAR AND CRIME

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TO
R. S. T. CHORLEY

FOREWORD

THE present book is an expanded version of a course of lectures on "War and Crime" delivered during February and March, 1940, at the invitation of the London School of Economics and Political Science, first in Cambridge to members of London and Cambridge Universities, and subsequently repeated as public lectures in London. To the Director of the School I am very grateful for having once more given me an opportunity of treating criminological problems before wider audiences than can be reached in ordinary courses. My sincere thanks are also due to those friends of the School whose generosity made these lectures possible. Finally I would like to acknowledge my great indebtedness to Professor R. S. T. Chorley, who has for many years not only taken a keen personal interest in the promotion of criminological studies in this country, but has also succeeded in securing practical support for them.

Since the lectures were delivered barely six months after the outbreak of the present War they could include no detailed observations on its influence upon the crime situation. Even now it seems still too early for such an appreciation.

The author has therefore limited himself to a general introduction to the problems concerned and to some observations of a historical character, hoping that later on it might become possible to deal more fully with the criminological aspects of the present situation.

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PART I
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CONTRASTS

CHAPTER I

INTRODUCTION

WE have it on the authority of Sir Norman Angell's "John Smith" that something like ten thousand books have been written about war.¹ To these may safely be added at least an equal number dealing with the various aspects of crime. The prospect facing the criminologist who proposes to deal simultaneously with these phenomena is therefore indeed formidable. On the other hand, when discussing problems of war he need not fear that he may be advised to mind his own business. There should be, in fact—apart from his own particular sphere—no other field where he may speak with so much justification. This does not mean that the author views every war as a crime and therefore *a priori* as a fit subject for the criminologist. The reader will look in vain here for such a line of argument. The principal point to require our attention will, of course, be the *influence of war upon crime*.

This particular aspect cannot, however, be segregated from the fundamentals of the complex relationship between war and crime in general. While lawyers and sociologists will stress the contrasts between these phenomena, anthropolo-

¹ *The Unseen Assassins*, p. 30.

gists and historians will point to their common origin. Others will claim certain similarities in the psychological, social, and economic causes responsible for both. Social philosophers, political reformers and pacifists, in their fight against the scourge of war, are inclined to turn to the history of crime, hoping therein to find some support for the view that the final suppression of war is not entirely unattainable. Just as personal violence between individuals or groups, so it is said, has largely been eliminated by the evolution of strong national States, so will war between nations eventually become a thing of the past through the evolution of the super-State. This idea finds its analogue in the belief, formerly cherished by Bolshevik lawyers, that crime would automatically disappear after the abolition of private property. Surely a feeble argument when one considers how questionable is that presupposition itself: Is crime really disappearing, or is it merely undergoing certain changes in phase? But let such an actual decline in crime even be taken for granted, is it not perhaps this very fact—the “inadequacy” of the existing amount of crime, at least of crime of violence, within the State—that leads to the criminal urge in certain nations being turned against their neighbours?

Moreover, at least part of the argument in favour of Federal Union largely centres round the idea that actions now bound to involve nations in war could, in a Federal Union, be treated as crimes of individuals.¹ This would seem to indicate that

¹ See Clarence K. Streit, *Union Now* (1939), pp. 202 *et seq.*

in the course of history the following trends dominate the relationship between crime and war :—

The Past : Weak States—abundance of individual crime, but no organized war.

The Present : Strong national States—frequent wars and a lower rate of crime.

The Future : Federal Union—no war, and consequently a high proportion of crimes of violence.

This rather gloomy scheme may be put forward not as a foregone conclusion, but solely as a point for further discussion. There exists, however, still another parallelism between war and the conceptions which come under the scope of the criminologist. Whereas analogies between war and crime must largely be restricted to unjust wars, it is likewise obvious that the just war may in many ways be comparable with the second fundamental conception of criminology—that of *punishment*. And it is therefore not surprising to find that all those statesmen, international lawyers, and political philosophers who have in recent times been making unsuccessful attempts to eliminate war have also been seeking a way of adapting the traditional methods of punishment to the treatment of criminal nations. Is it possible to treat an aggressor nation exactly like a criminal individual? Or is not, as argued by the supporters of Federal Union, the impossibility of doing so just one more argument in favour of such a Union?

There thus arise a multitude of problems for discussion in the following chapters. Firstly two

essential points of contrast between war and crime must be briefly clarified in this introductory chapter of Part I: Crime is an individual action, war a group action; crime is always a wrong, war is wrong only according to circumstances. There is, secondly, the question of how far the various factors likely to produce crime may also be held responsible for the causation of wars, or *vice versa* (Chapter II). Closely related to this is the further question of how far war is itself a causative factor of crime (Part II). The final chapters (Part III) will deal with the attitude of existing International Law towards the distinction between just and unjust wars, and with certain analogies between war aims and aims of punishment.

At first sight the contrast between war and crime seems as obvious as it is profound. First, while crime is regarded as the action of individuals—even where gangs or crowds of individuals are involved—war requires a struggle between groups as such; not necessarily between States, as the example of civil war proves, but at least between groups. In the closest connection with this first point stands the second: while the very term crime implies *wrongness*, implies an anti-social, unlawful character, war—except to the extreme pacifist—may, according to circumstances, be right or wrong. Consequences of the highest importance, ideological as well as practical, might well have been drawn from these alleged contrasts. In particular it might have been argued that, just as group interests are of greater importance to the

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world at large than individual interests, struggles between groups can also be expected to stand on a higher ethical level than individual quarrels. Human beings fighting for their groups might be supposed to act from motives less selfish than those which actuate them when pursuing their personal aims only. To supplement and to strengthen this part of the argument the very conception of war might have been limited to wars fought for just causes and for lofty purposes, whereas unjust wars might, from the very beginning, have had to be regarded as a particularly heinous form of crime. Unfortunately—not only for the material well-being, but also for the good reputation of the human race—a clear-cut distinction of this kind has not recommended itself to those responsible for the upholding of that reputation.

Let us consider the first point in some detail—crime an *individual* action; war a *group* action. How far does this classification hold true, and how far can it claim universal recognition?

If our imagination will allow us to conjure up a state of society where there are only two human beings, A and B, living happily together at a given place (two males, in order to avoid any unnecessary complications—perhaps Robinson and Friday), can there be any distinction between war and crime in their mutual relations? We may assume that they have solemnly established a State and formally introduced a Constitution, a Civil and a Penal Code, based on the traditional principles, and have placed the entire government and the

administration of the law of the land in the hands of a body consisting of two supreme ministers and judges—again A and B, or Robinson and Friday—whose decisions must be unanimous. To add to the improbability of this state of affairs, we may further assume that they are indeed able to reach such unanimity in each case of difference that no difficulties of mere procedure will have to be overcome. If now, all this having been settled, A, without any justification, should attack and wound B and take his property by force, what would be the decisive criterion for the Court to judge whether such actions should be interpreted as crimes or should be regarded as acts of warfare?

Would an explicit declaration of war on the part of A have any significance? Probably not, and the Court would have to decide that A had been guilty not of honourable warfare, but of crime, for the simple reason that his actions had been directed against a member of his own group, and there could be no war within the group. It might perhaps have been civil war if A had planned to upset the Constitution by force; this, however, as he solemnly declares, was entirely outside his intention, which had been in no way directed at the commission of a political crime but solely at the acquisition of some articles of food belonging to B. The unfortunate A would therefore have to accept the fact that he was deprived of the possibility of making war on B, unless he should sever his group connection with him and wish to become the founder of a new State of his own.

We have now to pass from this purely fictitious

example of a two-member society, where there cannot exist any difference between the one group and other groups, to normal conditions, and to enlarge the circle so as to have on either side a family, or a clan, or a tribe, or whatever we may call such groups. And by doing so we place ourselves in a position where we are able to distinguish between two categories of injurious actions—first, those directed against the actor's *own* group or against a member of his group, and, secondly, actions by a group or its individual members directed against *another* group or its members. According to modern conceptions the term war is applicable only to hostile actions of one group against another group, while corresponding actions of one individual against an individual member of another group would fall under the category of crime. Not so in primitive society. It is, of course, neither possible nor necessary to discuss in any detail the organization of primitive society and the mutual relations between its members. It may even be questionable how far it is safe here to generalize on such matters. Nevertheless a few facts seem to stand out fairly clearly. Though we have to take every care not to exaggerate the extent of collectivism and communism—in its original sense—in primitive society,¹ it is beyond doubt that the line of demarcation between individual and group action and—what is perhaps even more important—between individual and

¹ See, e.g., H. Ian Hogbin, *Law and Order in Polynesia* (1934), pp. 76 *et seq.*, and Prof. Malinowski's Introduction, p. xli.

group responsibility, used to be drawn in primitive communities somewhat differently from the way it is drawn to-day—at least in non-totalitarian States. In other words the sphere of group activities and group responsibilities was then comparatively wider. One of the many reasons for this may have been the smallness of the groups which were formerly involved in such activities. The smaller the circle in which an individual moves the more likely is he to overstep the boundaries of this circle, and the greater is the probability that he may involve his fellow-members in his adventures. On the other hand it is true that members of large communities, conscious as they are of the strength of their group, may tend to increase their aggressiveness and try to implicate the group in their individual quarrels.

In short, if we leave out of consideration injuries inflicted within the group, which used to be rather embarrassing to all those concerned and are of little interest for our present purposes, we are faced with a state of affairs which may be described approximately as follows: Homicide and other injuries inflicted outside the group are, as a rule, neither regarded as crimes nor disapproved, often even regarded as praiseworthy, though there are important exceptions to this rule.¹ There is hardly anything dishonourable in crimes like theft, brigandage, or piracy, if committed at the expense of other groups, even if no armed force is used to make them appear more warlike. The alien sea-

¹ E. Westermarck, *The Origin and Development of Moral Ideas*, 2nd ed. 1924-6, Vol. I, p. 331.