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PRISON REFORM IN GERMANY—1933

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I.

While the German Republic was experiencing the travail of a new-born country torn socially, politically, and economically and living through a revolution and the disrupting effects of its inflation (1923), a few progressive spirits in the various Ministries of Justice succeeded in putting through a series of radical measures. This was possible because the attention of the parliaments and the press was fixed upon what they considered to be the major economic and political problems of the time.

Revolutionary periods are favorable times for reform since the proposed measures are not dependent upon the will of conservative and slow-moving parliaments. Under similar circumstances, however, reaction can also follow. The type of leader will determine the character of the law. The past fifteen years in Germany illustrate both points of view. Until 1932 the members of the several ministries of justice were progressive. Under Herr Hitler the progressive elements in Germany's penal administration have been all but extirpated. A brief description of several important reformatory measures of the past years is necessary for an understanding of what has happened in the past year.

The present German Reich Penal Code took effect in 1871. It was not altered in any radical respect until 1923 when the first juvenile delinquency law in Germany was established, and when the law permitting extensive use of money fines went into effect in 1924. The juvenile delinquency law changes the character of the proceedings against children between the ages of 14-18 from criminal to social protection. The present proceedings are analogous to the American form of juvenile delinquency hearings, that is, they are equitable in character. The 1924 law relating to money fines permits the court to impose such fine in place of the short term of imprisonment provided for numerous minor offenses and misdemeanors. The student

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of penal administration in Germany knows what a curse these short sentences have been.² Both reforms were the work of liberals.

Of even greater importance than this reform of the Penal Code were the efforts to unify the principles of penal administration in all the states of Germany. It should be noted that each of the several states or "lands" of Germany has sole jurisdiction over its prisons. No federal law governs penal administration although there is only one Federal Penal Code governing the entire country. Each one of the German states has jealously guarded its independence in penal affairs. Confusion has been the result. No consistent attempt toward reform has been attempted; especially in the more conservative of the dozen or more states. Finally, after years of agitation, certain advanced penologists influenced their respective state governments to send delegates to a conference and on June 7, 1923, a body of principles of penal administration was drawn up which although not binding upon the states was to serve as the basis for their respective prison programs.

II.

On August 1, 1923, Prussia, the largest German State, issued its "Dienst-und-Vollzugs-Ordnung," the set of rules governing prison administration which incorporated the principles of 1923. In the following year or two most of the other states issued similar regulations. The next logical move would have been the adoption of these rules by the Federal government thereby assuring uniformity of practice and experimentation. This was attempted but without success. The proposed bill for a *Strafvollzugsgesetz* was tabled or referred to a committee of the Reichstag every time it was re-introduced. By the time it was reworked and ready for discussion the old Reichstag had been dissolved and the newer body was not prepared to take it up in its newer form.

In the meantime, between the years of 1923-1932, several of the states attempted independent reforms. A description of the two outstanding experiments, one in Prussia and the other in Thuringia, will indicate the spirit with which the movement began and the present tendency.

The Prussian Ministry of Justice issued an "Order of June 7, 1929, The Grade System in Prison Administration in Prussia." This Order was a further development of earlier 1923 regulations. "The

²In 1930 two out of every three convictions in the criminal courts (in that year there were close to 600,000 convictions) were disposed of by money fines

aim of the Grade System in prison administration is to educate the prisoner towards living a law-abiding and well-ordered life. . . . To advance this aim there is a separation of those prisoners to whom it is intended to apply the Grade System from those to whom it is not applicable, i. e., prisoners suffering from severe mental deviation, prisoners with less than nine months sentence and confirmed recidivists who are unlikely to yield to educational influence." A differentiation of institutions was planned. Grade I prisoners were sent to the Admission Institution. This Admission Institution was to have been subdivided into several types, a separate building for first offenders, one for minors, one for those previously convicted for unimportant offenses, one for confirmed recidivists and a separate building for the mental defectives. Grade II prisoners chosen, after a certain period of "good behavior," from Grade I were sent to the Institution for the Advanced. The third type of Institution, the Discharge Institution received those prisoners who had conducted themselves properly in Grade II for a definite period. Each succeeding grade carried additional privileges and responsibilities with the promotion.

In addition crimino-biological laboratories had been established in the larger Prussian prisons. The prisoners were examined physically and mentally. The data gathered over a period of years was to have served as the basis for evaluating the relative effect of heredity and environment in crime careers. For the time being such physical, mental and social history was to have aided in a better classification of the prisoner and to have afforded a sounder prognosis.

The Prussian project remained largely a paper plan. Due to the financial exhaustion of the country the required institutions have not been built or the existing ones altered to fit in with the June Order. The several prison districts into which Prussia is divided have simply not carried out the plan. There is only one prison for the psychotics, in Berlin, which is overcrowded. One prison which I visited for several weeks has an inmate population of close to 500, forty per cent of whom had been in some kind of an institution for the mentally unwell at one time or another. The differentiation of institutions has progressed little farther than naming them. The prisons in the province of Brandenburg (the chief province of Prussia) had carried the scheme a longer way but here, too, its application was largely formal:

Lack of funds cannot altogether account for this situation. The lack of a trained prison staff is of greater importance. The Prussian Ministry of Justice had issued several Orders requiring certain train-

ing for the higher prison officials and a several months course has been arranged. My own impressions gathered from attendance at some of the lectures were far from favorable. The problem of preparing officials to administer a plan as proposed by the Prussian Ministry of Justice lies deeper than a superficial course. It can be solved only by the creation of a well-organized Institute of Criminology whose function it would be to define the problems, establish valid methods of research, and conduct prison experiments. After years of effort, or during the earlier stages of its development, such Institute might conduct more effective courses for the prison personnel. Such Institute has, in fact, been proposed by Dr. Werner Gentz, formerly of the Prussian Ministry of Justice. (Dr Gentz was the author of the June, 1929, Order, the Grade System.)

III.

In 1924 the State of Thuringia began a series of independent prison-reform measures. Its prison directors first introduced self-government for inmates and Sunday excursions for the prisoners of the upper grade. At Untermassfeld, where the only State Convict Prison is located, prisoners' representatives were members of the prison's court. Thuringia had developed a plan similar to the System of Prussia. There were three stages through which a prisoner might pass in the *same* institution. Every prisoner entered the Observation class. After six months he could be promoted to the Treatment class. After a definite period in this class the prisoner could be advanced to the Protection group which was the self-governing class. Each grade had its *Fürsorger*, an official who was both the teacher and social worker of the group. This worker participated in all the activities of his group. He knew every member intimately. With a population around 250 this was possible, especially when the average sentence was five years. The *Fürsorger* attended all conferences of the prison officials, passed upon all requests of his group, supervised their visits, read all mail, passed much of his time in the social room of the group and was ready at all time to discuss any problem with his charges. The development of this type of official, *who was in no sense a prison guard*, was, I believe, one of the most important developments in European penal practice.

I spent almost a month at Untermassfeld observing the work of the 36 year old director, a trained pedagogue. "Individualization of treatment" was more than a theory at this prison. His spirit was shared by his workers. The prisoners, naturally, had the highest re-

gard for him. The work at Untermassfeld had attracted the attention of penal students throughout Germany and other European countries. In the latter part of October, 1932, the Thuringian Ministry of Justice issued a circular note to all of its prison officials congratulating them upon ten years of splendid work.

Suddenly something happened. Dr. Lothar Frede, the Minister of Justice, who had been one of the outstanding leaders in German penal reform for ten years was summarily removed from the Ministry (January, 1933). This was the beginning of the end of present penal progress in Germany. As the National Socialist Party gained in strength during the first few months of 1933 the influence of the few remaining progressive spirits was submerged. To make certain that such influence would forever disappear the several state governments "purged" the ranks. Not a single outstanding figure in penal reform was left in power. Dr. Krebs, Director of the Untermassfeld Prison, was declared unfit to be a public servant. Dr. Werner Gentz of the Prussian Ministry of Justice and Dr. Starke of the Dresden Ministry of Justice, two of the ablest men in the reform movement who had been public servants a quarter of a century, were removed. Dr. Radbruch, one of the greatest of European scholars in the field of criminal law and penal philosophy, and formerly Minister of Justice for the Reich, was dismissed from Heidelberg University. Professors in the Universities who showed by their previous writings or their present attitudes their adherence to the reform movement were thrown out. The able juvenile court judges were granted indefinite leave of absence.

The free city of Hamburg under the able leadership of Dr. Koch, who had devoted his entire life to penal reform, had built up an integrated penal system. The splendid penological museum on the top floor of the *Untersuchungsgefängnis* in Hamburg which served to educate the public to the newer penal concepts was in large measure due to his untiring efforts. He was "kicked out" and a national socialist, by profession a stone-mason, placed at the head of the system.

The new ministers of justice have expressed their absolute disapproval of the work of their predecessors. The present policy, they state in their radio talks and public addresses, must fit in with the new iron state. The slobbering sentimentalism of the reformers must give way to a ruthless attack upon the criminals. In the words of the present Reich Minister of Justice, Franck, "We shall hound the criminal until he learns to tremble."

A glance at the new prison regulation⁸ reveals the new spirit. Execution of the death penalty is generally by means of an axe. (Sec. 2.) Prisoners may be chained in their cells if there is danger of escape. (Sec. 14.)

The living conditions of the prisoner *must* be below that of the unemployed German citizen and therefore must be most simple. (Sec. 17.) The *Zuchthausgefangene* (prison inmates) may write or receive a letter once every two months. (Sec. 19.)

Of greatest significance is the exclusion of *all* recidivists (*Zuchthausgefangene*) from the progressive system. (Sec. 24.) This means that *any* inmate who has committed a previous offense is automatically excluded from any reformatory regime. This, in turn, implies that *thousands of present prisoners have lost the privileges of sport, music, singing and social communication*. Nor can such prisoners buy a few pfennings worth of food to get relief from the revolting monotony of prison diet. (Sec. 145.) Even smoking is now absolutely prohibited. (Sec. 71.)

In the past decade Germany had developed the *Sozialgerichtshilfe* (social case work auxiliaries to the court). These organizations through case work investigation aided the courts in interpreting the backgrounds of the defendant so that the sentence might be "individualized." In twelve years time over six hundred such organizations had been established throughout Germany. The new regulations by a single sentence simply wipe out of existence this important movement. (Sec. 22, paragraph 1.)

It is contrary to the idea of prisoner's aid societies to lift the cares of the prisoner with reference to his future after release, off his shoulders. It is more important that the prisoners' own powers and initiative be awakened. (Sec. 33, paragraph 4.)

The newly proposed German penal code⁴ definitely states that the protection of the State must be the central aim of both the criminal and penal law. The more recent literature in keeping with this spirit emphasizes that individual rights are no longer of importance.⁵ What matters first and last, is the security of the State.⁶

⁸*Dienst-und-Vollzugs-Ordnung für die Gefangenenanstalten der Preussischen Justizverwaltung*. August 1, 1933.

⁴*Nationalsozialistisches Strafrecht*. *Denkschrift des Preussischen Justiz-Ministers*, Decker's Verlag, Berlin, 1933.

⁵As is known, even the most important civil liberties have been suspended. Articles 114, 115, 117, 118, 123, 124, and 153 of the German Constitution which guarantee free speech, free assembly, freedom from arrest and freedom from search and seizure have been wiped out.

⁶See, for example, the works of the younger writers: Wolf, Erik, *Krisis und Neubau der Strafrechts reform*, Mohr, Tübingen, 1933, and Dahm, Georg

In a word, until 1933, under the social-democrats, the rights and liberties of the individual were emphasized as against the power of the State. With the growth of the Nationalist Movement in Germany the rights of the individual are trampled beneath the Juggernaut of the State. The *punitive* or *retributive* theory of punishment is again placed in the foreground. The shades of Kant and Hegel have again darkened the path of penal progress.⁷

und Schaffstein, Friederick, *Liberales oder autoritäres Strafrecht?* (Hanseatische Verlagsanstalt, Hamburg, 1932). Nicolai, Helmut, *Die rassengesetzliche Rechtslehre*, Verlag, Franz Eher, München, 1932. Gemminten, Freiherr von, *Strafrecht im Geiste Adolf Hitlers*, Heidelberg, Carl Winters, Heidelberg, 1933. A diametrically opposite point of view is presented by Dr. Werner Gentz in "Rechtspflege und Wohlfahrtspflege," *Deutsche Zeitschrift für Wohlfahrtspflege*, November, 1932, pp. 241-252.

⁷One may grant that the supremacy of State authority (which, if intelligible, must mean the social welfare of the group), is a rational end of both the criminal law and penal treatment without agreeing on the methods of penal administration devised to attain such end. Germany employs repressive measures while the Soviet Union utilizes educative means although both countries assert the supremacy of the State as against the individual.