Summer 1937

Georg Michael Von Obermaier--A Pioneer in Reformatory Procedures

Friedrich Hoefer

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Friedrich Hoefer, Georg Michael Von Obermaier--A Pioneer in Reformatory Procedures, 28 Am. Inst. Crim. L. & Criminology 13 (1937-1938)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

GEORG MICHAEL VON OBERMAIER—A PIONEER IN REFORMATORY PROCEDURES*

FRIEDRICH HOEFER†

Introduction

The beginning of the development of adult reformatories in the United States, marked by the Cincinnati Prison Congress in 1870 and by the establishment of the New York State Reformatory at Elmira,¹ was preceded by various earlier experiments in the treatment of adult offenders, made in various parts of the world between 1830 and 1860. The Irish system, established by Sir Walter Crofton, may be called the immediate forerunner of Elmira, but the pioneers, among whom Obermaier is counted besides Montesinos and Maconochie² preceded Crofton. The founders of Elmira were acquainted with published accounts of the accomplishments of these men, and were strongly influenced by them. This historical connection makes it interesting to study the ideas and practices of Obermaier, who reorganized several penal institutions on reformatory lines, chiefly in Bavaria, where he was a prison warden from 1830 to 1862. In many respects his methods resembled those practiced by Montesinos in Valencia.

This study attempts to give a critical account of Obermaier's ideas and work. Like most historical studies, it is based on various sources which often contradict one another; as for instance the statements of friends and adversaries, evidence from English sources and German sources, official prison rules and the practice which visitors described.

Attention is called to the relation of Obermaier's prison regime in Munich and of his own ideas to the Bavarian criminal law which he used advantageously, sometimes observed unwillingly and sometimes evaded successfully. The chief advantage of the Bavarian law was that, as far back as 1813, it provided indeterminate sen-

* Paper prepared for Professor Sheldon Glueck's course in Criminology as related to Criminal Law and Procedure, at Harvard Law School.

† J.U.D., University of Berlin, Research Fellow, candidate for the degree of S.J.D., Harvard Law School.

¹ Created by acts of 1869 and 1870, actually opened in 1876.

² Sheldon and Eleanor T. Glueck: *Five Hundred Criminal Careers*, pp. 14, 17, 22, 23. (See also further references given there.)

tences and the shortening of fixed terms on account of good behavior.

Altogether Obermaier's prison work in Bavaria was a pioneer effort of great importance. It was on the whole successful, in spite of much unfavorable criticism by his German adversaries. Details of this criticism referring to Obermaier's methods of discipline, his inmate superintendent system, the health conditions in the Munich prison, and his claims of success will be discussed. In part their criticism was justified but, as will be shown, it does not substantially affect his contribution to the field.

I—Obermaier's Life.³

Georg Michael von Obermaier was born in 1789 in Neukirchen, Bavaria, the son of a castellan. After having obtained a good education he chose the profession of a soldier and served several years in the Napoleonic wars with the Bavarian troops fighting on the French side. At the end of Napoleon's unfortunate Russian campaign, 1812, Obermaier, then a lieutenant, was captured and kept as a war prisoner in Russia for a year under harsh treatment. After the conclusion of peace he entered the civil service and became a tax collector. In 1825 he was appointed as accountant in the newly built state prison (Centralgefaengnis) in Kaiserslautern. This town is the capital of a district of the Bavarian Pfalz. In 1829 a prison riot broke out in consequence of inhuman treatment of prisoners. On this occasion Obermaier distinguished himself by his courageous conduct.

In 1830 he was appointed prison warden in Kaiserslautern. Between 1830 and 1836⁴ he reorganized the state prison in Kaiserslautern completely in accordance with reformatory ideas. His regime became so successful, that the Bavarian government planned to introduce his methods in all Bavarian prisons.⁵ He was appointed warden of the state prison (Zuchthaus und Strafarbeitshaus) in the Au at Munich (in this paper called the Munich prison for the sake of brevity), in 1842. He reorganized it within three years, turning it into a model prison. Here his reformatory regime was equally successful. Apparently other Bavarian prisons tried to imitate Obermaier's methods; for instance, school instruction of prisoners became more or less common. Obermaier was strongly supported

³ See the necrology by *Leffler* in *Blaetter fuer Gefaengniskunde*, Vol. 24, p. 410.

⁴ Obermaier, quoted by *M. D. Hill*, *Suggestions on the Repression of Crime*, p. 549.

⁵ *v. Hermann*, *Beitraege zur Statistik des Koenigreichs Bayern*, Vol. 4 (1855), preface.

by public opinion in Bavaria and by the Bavarian government,⁶ but was antagonized by most of the German penologists. He was occasionally called to help in organizing other prisons; from 1856 to 1858 he conducted a juvenile reformatory in Wasserburg, Bavaria, and during the 1850's he was twice called to Modena, Italy, where he organized a prison on his principles. About the same time his prison at Munich was seen by some prominent English visitors, who made it known in England.⁷ In 1858 the Munich prison was strongly attacked in the Bavarian parliament on account of disciplinary difficulties which suddenly turned public opinion against Obermaier.⁸ He lost the support of his government. At once his system of inmate superintendents was prohibited. The new Bavarian criminal code of 1861, although progressive in general, made the continuation of Obermaier's regime impracticable because it abolished the indeterminate sentences and the shortening of fixed terms for good behavior.⁹ At the same time a solitary confinement system was tentatively introduced against Obermaier's strong objection. Obermaier retired in 1862. He died in 1885 at the age of 95.

II—Background: Penology and Prison Reform in Germany.—The Bavarian Law and the Bavarian Prisons.— *Philosophy of Punishments.*

In Germany the time between 1830 and 1860 was generally favorable to the reform of prisons. A well educated middle class existed which believed in humanity and progress. The political movement of liberalism was based on this middle class and was represented by many of the best scholars and writers. Liberal writers paid much attention to the humanization of criminal punishment; Mittermaier was perhaps most outstanding in this group.¹⁰ More conservative were the North German circles of clergymen,

⁶ See the debates of the chamber of deputies of April 30, 1846, reprinted in *Jahrbuecher der Gefaengniskunde*, Vol. 9, pp. 232-234. In 1847 Obermaier was raised to nobility.

⁷ See below, footnote 80, and Spencer, *Prison Ethics*, in: *Essays, Moral, Political and Aesthetic*, New York, 1865, p. 233.

⁸ See below, p. 25.

⁹ See below, pp. 25 ff.

¹⁰ On Mittermaier's importance as a legal writer, teacher, law reformer and parliamentarian see Stintzing-Landsberg, *Geschichte der Deutschen Rechtswissenschaft*, Vol. 3, 2, pp. 413-437. Some of his views on prisons and punishment are discussed below, also his antagonism to Obermaier.

The encyclopedia of German liberalism was published at that time: *Das Staats-Lexikon*, edited by Rotteck and Weckler, Vols. 1-15, 1834-1843, and later editions by Welcker. It contained articles on prisons and punishment by Welcker, v. Mohl, Mittermaier, and others.

noblemen, high officials and others which formed the first prison society in Germany, the *Rheinisch-Westfaelische Gefaengnis-Gesellschaft* (1826).¹¹ This was followed soon by a number of others.¹² The prison societies aimed at prison reform and at the reformation of prisoners within the limits of the law; they appointed teachers and clergymen to prisons and paid their salaries; they took care of discharged prisoners. About the same time a science of penology was begun by physicians, jurists and others, such as *Julius, Noellner, Varrentrapp, Mittermaier, v. Jagemann, Tellkampff*. Comparative or single descriptions of many European and American prisons were published; those of Pennsylvania and Auburn were mostly discussed. One after another the governments of the German states recognized the evil condition of the existing prisons and started experiments with new model prisons. The chief difficulty in all these efforts was lack of money and lack of capable officials.¹³ Shortly after 1800, the Bavarian government inaugurated measures intended to reform prisoners,¹⁴ but its efforts had been frustrated partly by the same circumstances as above, partly by the severe law on punishments.

The greater part of Bavaria was governed by the Bavarian penal code of 1813; one district, the Pfalz,¹⁵ had the French code pénal of 1810. The two codes were similar in many respects. They were a result of rationalistic ideas of the 18th century. Both codes are historically important for their strict legal definitions of crimes and punishments by which they excluded the previous arbitrary discretion of courts ("nulla poena sine lege"). Both codes, however, were based on the principle that the chief aim of punishment should be its deterrent effect, and therefore provided for imprisonment beginning with simple detention and ending with the atrocious chain punishment for life time or "travaux forcés à perpétuité."¹⁶

¹¹ Its chief founder was *Theodor Fliedner* (1800-1864), an Evangelical minister who also established the *Diakonissenhaus* in Kaiserswerth, in the beginning an asylum for discharged women prisoners. The prison society was interdenominational and was equally supported by Catholics and Protestants. See *von Rohden und Just, Hundert Jahre Geschichte der Rheinisch-Westfaelischen Gefaengnis-Gesellschaft 1826-1926*.

¹² See *Handwoerterbuch der Kriminologie*, Vol. 1, p. 544.

¹³ *Krohne, Lehrbuch der Gefaengniskunde*, 1889, pp. 144 ff, 157 ff.

¹⁴ As prison labor with a wage system and police supervision of ex-prisoners which included certain social responsibilities; see below, p. 36.

¹⁵ Kaiserslautern belonged to the Pfalz. The French code was apparently applied with some local modifications.

¹⁶ Part 1, Arts. 4, 7-9 of the Bavarian code; Arts. 7-9, 15-20 of the French code. The Bavarian chain punishment and civil death were imitations of the French *travaux forcés à perpétuité* and *mort civile*.

For the sake of penology the most important difference between the two codes was that the Bavarian code made certain concessions to the idea of reformation of offenders which the French did not have. They consisted in indeterminate sentences for certain serious crimes and in earlier release on account of good conduct in case of sentences pronounced for a definite time.

Indeterminate sentences occurred in several German States between the 18th and the middle of the 19th century. But these sentences were executed in prisons of the old type; real correctional institutions were not established.¹⁷

The Bavarian code was chiefly the work of Anselm Feuerbach and based on his theories.¹⁸ As Feuerbach taught it,¹⁹ the law by its threat of punishment should exert psychological compulsion on everybody for the sake of protecting organized society. This is achieved if everybody knows that the commission of a crime is followed by an evil greater than the pain he suffers from restraining himself.²⁰ Several subsidiary aims of punishment were admitted, among them the "legal" (not moral) reformation of offenders.

The system of punishments of the Bavarian code was in accordance with these ideas. The three severest classes of imprisonment were those executed in the state prisons, including the Munich prison but excepting that in Kaiserslautern.²¹ These were the "chain punishment," penal servitude and punishment of the workhouse,²² all of them reserved for the more serious types of crime.

The chain punishment (Kettenstrafe, Art. 7-9)²³ took the place

¹⁷ Freudenthal, *Vergleichende Darstellung des deutschen und auslaendischen Strafrechts*, Allg. Teil, 3 (1908), pp. 248-250; v. Liszt, *Strafrechtliche Aufsätze und Vorträge* (1905), 2, pp. 154-157.

¹⁸ On the relations between Feuerbach's theory and the provisions of the code see Gruenhut, *Anselm Feuerbach und das Problem der strafrechtlichen Zurechnung* (Hamburgische Schriften zur gesamten Strafrechtswissenschaft), Vol. 3, pp. 214-220.

¹⁹ Feuerbach, *Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts* (1801), 9-23, 157.

²⁰ Bentham had the same idea; see *Traité de Législation Civile et Pénale* (edition by Dumont, 1802), Vol. 2, p. 385. Both Bentham and Feuerbach may have been influenced by Beccaria, who gave a hint of it. See Gruenhut, l. c., p. 62. Certainly the rationalistic psychology of the 18th century is underlying.

²¹ The prison in Kaiserslautern executed the following sentences pronounced according to the French code in its local form: Kettenstrafe (travaux forcés) for life time and for fixed terms from 5 to 20 years; Einsperrung (réclusion) for 5-10 years; Gefaengnis (emprisonnement) for 1-10 years.

²² Punishment of the workhouse is a literal translation of the German word "Arbeitshausstrafe." The translation is not satisfactory because "workhouse" has another meaning in this country, but it would be difficult to give a better one. The term "House of Correction" (Hill, *Suggestions for the Repression of Crime*, p. 568) is equally confusing.

²³ These and the following numbers refer to the articles of part 1 of the penal

of the death penalty in many cases which formerly had been punished capitally.

It was applied to murder, treason or other capital crimes for second degree principals, accessories before the fact and for those guilty of an attempt (60, 75).²⁴ It was also applied to aggravated robbery (238), arson (249, 253), and other crimes, and in case of recidivism after a previous sentence to indefinite penal servitude (114).²⁵

The sentence to the chain was always for life; prior to 1849 it was automatically accompanied by civil death.²⁶ The chain prisoners, if kept in a state prison, were to be separated from other prisoners and had to do the heaviest work. They were fettered at both feet by a long chain carrying a heavy iron ball (Art. 7); in clothing and diet they were kept as in ordinary penal servitude.

Penal servitude (Zuchthausstrafe, Art. 10-14) was inflicted either for indefinite time or for fixed terms.

Penal servitude for indefinite time was applied to capital crimes, as above, as a more lenient substitute (60, 75), to murder under extenuating circumstances (157), killing upon sudden passion (151),²⁷ aggravated robbery (238), aggravated extortion (243), recidivism after a previous fixed term of penal servitude (114),²⁸ etc.

The prisoner sentenced for indefinite time (12) could "expect his pardon" after 16 years, if he for at least 10 years had shown continually distinguished industriousness, had not incurred disciplinary punishment for "malice" or disobedience and had otherwise shown indisputable evidence of an improved character.

The fixed terms of penal servitude (13) were not less than 8 and not more than 20 years. The articles of the code usually authorized the court to choose a term between 8 and 12 or between 12 and 16 or 16 and 20 years. Under conditions corresponding to

code of 1813. Part 1 contained the substantive criminal law and the provisions on punishments.

²⁴ The legal terms used in the Bavarian code cannot be translated. This study therefore tries to apply those English terms which are nearest to the Bavarian concepts.

²⁵ Chain punishment and indefinite penal servitude on the ground of recidivism were abolished by a Bavarian statute of Aug. 29, 1848, *Gesetzsammlung*, p. 218.

²⁶ A person civilly dead could not have any property nor be legally married; he was succeeded by his heirs; his marriage was dissolved; he could not be a party or witness in a legal procedure. Civil death was abolished by law of No. 18, 1849, *Gesetzsammlung*, p. 18. The chain punishment remained in force until 1862.

²⁷ Replaced by penal servitude for fixed terms of 8-12 years, statute cited above, note 25.

²⁸ See above, note 25.

those above, the prisoner could be pardoned after having served at least three-fourths of his term. Recidivists (those who had already served one term of penal servitude or one term in the house of correction) were excluded from the privilege.

The prisoner in penal servitude carried a lighter chain attached to his feet, unless his special dangerousness necessitated heavier fetters (10). He had to do hard work and was kept in convict clothes and on a meager diet. Penal servitude could be aggravated by special penalties pronounced in the sentence (14); yearly confinement in a dark dungeon for 3-8 days on a bread-and-water diet upon the anniversary of the crime; and, prior to 1849, public exhibition and corporal punishment when entering the prison.²⁹

The workhouse punishment was inflicted for aggravated larceny (215), aggravated frauds (265 ff.) which included perjury (269), for rape (187), abortion (172-173), mayhem (180), etc.

Sentences to the workhouse (15-17) were pronounced for fixed terms from 1 to 8 years and could be shortened by good conduct in the same way as the fixed terms of penal servitude. The prisoners were not fettered, except those in special danger of escape. For the rest they were kept as in penal servitude, with slight differences.

This was the Bavarian law from 1813 to 1861. Evidently it made the position of a prison warden extremely difficult. The law aimed at the reformation of prisoners, but by its exaggerated severity it made every reformatory effort practically impossible. With average wardens and rude uneducated sub-officials even the mere task of maintaining discipline could not be fulfilled. The evil of chaining and fettering was still aggravated by the use of corporal punishment.³⁰ The large groups of prisoners which were kept together under this brutal regime naturally formed a mental alliance against the prison government, and the most hardened criminals became the natural leaders.

In the long run this state of affairs could not escape the attention of the Bavarian government, which, regardless of its political denominations, was by no means inhuman.³¹ When Obermaier pub-

²⁹ Abolished by statutes of 1848 (*Gesetzsammlung*, p. 34) and 1849 (*Gesetzsammlung*, p. 18).

³⁰ See the description of the Munich prison below, p. 25.

³¹ From 1837 to 1847 the Bavarian cabinet was led by Karl von Abel, minister of the interior. This was a militant cabinet which fought for absolute monarchy and for the Roman Catholic church. It was bitterly opposed by liberals and Protestants, *Treitschke, Deutsche Geschichte im 19. Jahrhundert*, Teil 5, 3. Aufl. 1895, pp. 305-315.

Nevertheless this cabinet favored Obermaier and his methods and made him warden of the Munich prison (in 1842).

lished his theories³² and proved his practical success in Kaiserslautern he was readily recognized and soon he was chosen to reorganize the Munich prison which was intended to serve as a model for other prisons.

By about 1840 the philosophy of punishment prevailing in Germany had changed. The theory of deterrence was in the main rejected. There was a great variety of opinion on the justification and aims of punishment.³³ There was a strong tendency to combine a metaphysical "justification" with utilitarian "aims" or "side aims" of punishment. The justification was seen in retribution or expiation; the Kantian and Hegelian views converged towards this point, however they otherwise differed. Outstanding liberal legal writers³⁴ were influenced by Kant's idea that the individual, even when being punished, should not be regarded as the mere object of utilitarian aims, but as an end in himself; justice had to be done for justice's sake under strict legal limitations. The Hegelians reached almost the same result on the ground that punishment was the "negation" of crime by which law reestablished itself. But among both groups compromising was not uncommon;³⁵ once the retributive, or expiatory basis was accepted, one tried to consider the more inferior questions of utility as the reformatory or deterrent effect of punishment. Consequently, the reformation of offenders became possible within the narrow limits of a legally restricted retribution.

III—Obermaier's Ideas on the Aim of Punishment. *His Legislative Suggestions.*

In contrast to this general trend Obermaier's ideas were radical. He did not create a philosophical system but made and defended a number of practical suggestions; he partly discussed the ideas

³² "Anleitung zur vollkommenen Besserung der Verbrecher in den Straf-Anstalten" was published in 1835; "Die amerikanischen Poenitentiarsysteme" in 1837.

³³ v. Liszt-Schmidt, *Lehrbuch des Deutschen Strafrechts*, 25 ed., 1927, pp. 62 ff. v. Hippel, *Deutsches Strafrecht*, Vol. 1, 1925, pp. 302-310.

³⁴ As Waechter and, partly, Mittermaier. See Dannenberg, *Liberalismus und Strafrecht im 19. Jahrhundert*, 1925 (Abhandlungen des kriminalistischen Instituts an der Universität Berlin, IV, 1) pp. 5-14, 23-24.

³⁵ For various combinations of retributive, expiatory, reformatory and other ideas see: Mittermaier in Feuerbach, *Lehrbuch des Peinlichen Rechts*, 14. ed. 1847, p. 43; Mittermaier, *Der gegenwaertige Zustand der Gefaengnisfrage*, 1860, p. 60; Welcker, *Die letzten Gruende von Recht, Staat und Strafe*, 1813, pp. 249 ff, 257 ff; *Staats-Lexikon*, 1. ed., 1843, Vol. 15, pp. 242 ff; 3. ed., Vol. 2, 1858, pp. 630 ff. Other combinations by Hegelian writers: Abegg, *Lehrbuch der Strafrechtswissenschaft*, 1836, pp. 71-74, 195-196; Koestlin, *Neue Revision der Grundbegriffe des Criminalrechts*, 1845, pp. 633 ff. See v. Liszt-Schmidt, l.c., p. 74.

underlying these suggestions; otherwise they may be deduced from the nature of the proposed measures.

According to his practices, the chief aim of punishment was the reformation of offenders.³⁶ In addition one finds a hint that incorrigible criminals and disorderly persons should be kept in preventive custody for indefinite periods.³⁷

The deterrent effect of punishment became a side problem. Obermaier considered it as solved by the necessary deprivations of a reformatory regime as he proposed it. He stated that the evildoer does not fear anything as much as the compulsion to good orderly habits of life. This statement will be understood in view of the harsh discipline to which his prisoners were actually subjected for rather long terms. But deterrence, Obermaier held, should not become a direct aim of punishment. Where a prison is ruled by the deterrent principle, the inmates are only hardened and resort to gang relations within the prison walls; they are neither deterred nor reformed. He also denied the deterrent effect of severe punishment on the population at large; not even the death penalty had such an effect. But long terms of imprisonment should keep the memory of friends and neighbors awake; the purpose of reformation, followed by the state in an impressive way, would influence the spirit of the people at large.³⁸

Obermaier did not discuss expiative or retributive theories. He probably took expiation for granted in a similar way as deterrence; he therefore called his prisoners "Buesser" ("penitents"). But he was far from approving retributive standards of punishment in the meaning of a "just proportion" between crime and punishment; instead, he suggested an augmented use of indeterminate sentences and even proposed that judges, when determining the

³⁶ Obermaier's books on the whole were based on this idea. The title of the "*Anleitung*" means "Introduction into the perfect reformation of criminals in penal institutions." It is expressed throughout the book, for instance, pp. 8-11, 45-49.

³⁷ *Anleitung*, pp. 29-30. There is no clear statement on this point. The text says that recidivist criminals, beggars, vagabonds, prostitutes, etc., should be confined in the "second class reformatory," without mentioning a time limit. "By this measure an infinite amount of evil and many a crime would be prevented, because the beggar, the vagabond, the idler and the loose woman would either return to the legal and moral order or submit to this method of rendering harmless." The text then explains that this class of asocial people constitute a training school for criminals; they should therefore be confined in reformatory institutions. Otherwise Obermaier insisted that recidivist offenders should not be given up but be treated according to the circumstances; many relapses could be explained by the fact that previous terms had been too short, etc., *Poenitentiarsysteme*, pp. 24, 27.

³⁸ *Anleitung*, pp. 8-11, 20-21, 132-133.

length of sentences, should regard the probable chances for reformation and the time probably needed for correctional treatment, rather than the gravity of the crime.³⁹

The following legislative suggestions for a future penal code were published by Obermaier in 1835:⁴⁰

The death penalty should be abolished.⁴¹ The complicated system of punishments of the code of 1813 should be replaced by two kinds of reformatory imprisonment⁴² and by fines.

The first class reformatories should confine offenders sentenced for one year or more. All sentences above three years should be indeterminate sentences, in four groups:

1. 15 years minimum to life time maximum.
2. 10 years minimum to 15 years maximum.
3. 5 years minimum to 10 years maximum.
4. 3 years minimum to 5 years maximum.

A fifth group of sentences, Obermaier added, should have fixed terms between 1 and 3 years. These short terms should be fixed, as he explained, because their full length was needed for correctional efforts.⁴³

The second class reformatory should confine everybody sentenced for less than one year; in addition, those persons classified above.⁴⁴

³⁹ *Poenitentiarsysteme*, pp. 24-25; footnote, p. 25. With this idea Obermaier was far ahead of his time. But it expressed such a disrespect for individual freedom and of legal security that his German contemporaries could not accept and did not even discuss it. It could not be reconciled with the philosophy described above. The whole contrast is shown by Mittermaier's statement that reformation could not be the exclusive aim of punishment because that would lead to indeterminate sentences; mere psychological opinion would take the place of a legal judgment—evidently an impossible idea for Mittermaier. See Mittermaier, *Der gegenwaertige Zustand der Gefaengnisfrage* (1860), pp. 70-71.

⁴⁰ *Anleitung*, pp. 12-49.

⁴¹ Chief reasons: the great possibility for reforming murderers and other capital offenders; the effect of long term imprisonment; death penalty not needed to "eliminate" or to "deter." In the Bavarian Pfalz every death sentence had been commuted into imprisonment by the pardoning power for years, and no increase of murder or other capital crimes had been observed. *Anleitung*, pp. 20-24.

⁴² *Anleitung*, pp. 12-15, 24-31.

⁴³ *Anleitung*, p. 27. Two years later, in *Poenitentiarsysteme*, p. 25, Obermaier corrected this statement: at least three full years were needed for the treatment of a person not entirely corrupted but "roh" and neglected.

⁴⁴ See above, note 37. Accordingly those two classes of persons would have to be separated; Obermaier did not expressly say it. Such a separation did not require legislation but could be decreed by administrative rules. See Stammer's review of the "Anleitung," in *Monatsschrift fuer Kriminalpsychologie und Strafrechtsreform*, Vol. 11 (1914-1918), p. 38.

Concerning those prisoners whose sentences are included in the first four groups, the same procedure of release should be used which was practiced under the Bavarian code of 1813: the prison warden should recommend improved cases to the King for pardon after they finished the minimum term of their class; others should continue serving until they finally improved or reached the maximum term of their group.

Obermaier was not able to obtain legislation according to his suggestions; indeed at that time there could not be anything as unpopular as a system of indeterminate sentences; even that of the code of 1813 was criticized as administrative despotism⁴⁵ and had to disappear soon.⁴⁶ But in his practice in Munich and Kaiserslautern Obermaier realized much of his ideas, as will be shown in the description of Munich prison below. He observed those provisions of the Bavarian law which favored his ideas and succeeded in evading certain other, unfavorable, rules. Thus he practically abolished most of the distinctions between chain punishment, penal servitude and workhouse, when, contrary to the law, he removed the chains and put all prisoners under equal discipline and similar labor conditions. In Kaiserslautern he got around the rigidity of the French law by obtaining frequent pardons for well-behaved prisoners. On the whole he succeeded in shifting the accent of punishment from deterrence to reformation. Naturally he met certain resistance when he did so. Although the Bavarian government favored his work, it was still more conservative in its philosophy, and it frequently insisted that the law then in force should be observed. Compromises between those different points of view were a frequent result.

IV—Obermaier's Methods of Treatment.

Obermaier did not build up a complete system of his ideas; as we may assume, partly because he was not a scholar; partly because his practical work kept him busy; partly because he did not believe in rigid prescriptions. He changed his approach according to the needs of individual cases and relied much on his resourcefulness. How prisoners must be treated, Obermaier stated, can only be hinted at, but not be prescribed, and in every case a trial-and-error method must be applied anew.⁴⁷

His German contemporaries therefore mostly attributed his

⁴⁵ As by Varrentrapp, *Jahrbuecher der Gefaengniskunde*, Vol. 10, pp. 293, 303.

⁴⁶ See below, p. 49.

⁴⁷ *Anleitung*, p. 50.

success to his unusual personality.⁴⁸ While this was true, it did not explain anything. Indeed he was a powerful man of a "leader" type, an educator as well as a practical administrator. We may, however, derive certain principles of treatment from his writings and from the reports of visitors who saw him and his prison, as follows:

1. Criminals are mostly infantile personalities, "roh," uneducated and ill-treated offsprings of the lower classes. They must be taken as such.⁴⁹
2. Prisoners have to be trained for normal social life. This involves:
 - a) occupational and elementary school instruction;⁵⁰
 - b) habit formation relating to hard work, normal companionship, etc., or in Obermaier's words: the requirements of a decent existence have to become his habits, his "second nature;"⁵¹
 - c) moral and religious education, leading to sound realistic morals and a healthy self-reliance rather than to self-reflection and exaggerated penitence.⁵²

Therefore community among prisoners is absolutely indispensable; solitary confinement and silent systems are rejected.⁵³

3. There should be an educational atmosphere. The prison educator has to obtain the confidence and personal attachment of the prisoners by convincing everyone of his personal interest in his well-being, thereby bringing about voluntary obedience. He has to substitute self-restraint for external restraint, to encourage them and to strengthen their sense of honor. In this connection the following passages are quoted from *Townshend's* narration on what Obermaier told him when the former visited the prison in Munich:⁵⁴

"Convinced that all restraint is inefficient which is not accepted by the will of the criminal himself, we try to lead everyone of our prisoners to a conviction of the excellence of our measures, and of the benefits

⁴⁸ At the prison congress in Frankfurt in 1846, *Mittermaier* stated that Obermaier's system was nothing but Obermaier himself. (*Verhandlungen der ersten Versammlung fuer Gefaengnisreform, zusammengetreten im September 1846, in Frankfurt am Main*; Frankfurt, 1847, pp. 125 ff.) This statement has been frequently repeated.

⁴⁹ *Poenitentiarsysteme*, pp. 16, 17; *Anleitung*, pp. 51, 52.

⁵⁰ *Anleitung*, pp. 108 ff, 117 ff. *Poenitentiarsysteme*, p. 26.

⁵¹ *Poenitentiarsysteme*, pp. 19, 16 ff, *Anleitung*, p. 54.

⁵² *Poenitentiarsysteme*, pp. 17, 19. The penitent has to be led to the good and ethical gradually, without noticing it himself. Compare the description of the prison library below, p. 43.

⁵³ Discussed in *Poenitentiarsysteme*; particularly see p. 16: "Nature herself leads man to community, therefore he belongs to community"; Obermaier also believed that in community life only the individual character can be studied (*ibid.*, pp. 18, 19). He did not fear the danger of contamination which was so much discussed by his contemporaries; instead he tried to make the better prisoners help the others in rehabilitating themselves. See below, pp. 29 f.

⁵⁴ Rev. Chauncy Hare Townshend, *A Visit to the Great Prison at Munich, The Zoist*, Vol. 13 (1856), p. 420.

which will accrue to himself by cordially embracing them. In fine to produce *self-government, not a government ab extra*⁵⁵ . . . a subjective, not an objective obedience and acquiescence, is our end and aim."

"That must be difficult," I remarked.

"I have not found it so," replied the Governor. "Occupation in the present, an object of interest set before a man in the future, the idea of something still to be lost or still to be gained. These springs of action judiciously set in motion are adequate, we find, in every case, to restore or develop the principle of self-government. Of course the chief difficulty is at first. Many a newcomer is necessary idle, brutish, ferocious even. But this I have ever found with the worst of criminals: once convince him of your interest in him and he is pervious to your influence.⁵⁶ The great source of crime . . . undoubtedly is the belief in the lower classes that they are cared for by neither God nor man. How much of this belief is the fault of the higher and governing classes, God only knows. At any rate, we, in this place, try to remove that unfortunate impression. There, at least, the criminal sees that much is done, and disinterestedly done, for his benefit and reclaiming."

The consequences of the application of those principles were numerous. Obermaier proposed to amend the law so as to abandon all punishments and measures which tend to discourage the prisoner permanently or to kill his sense of honor: chains, corporal punishment, civil death, occupation on public roads, striking convict clothes; the odious name of "Zuchthaus" (penal institution) should be replaced by "Besserungsanstalt" (reformatory). The hope of earlier release should be used to encourage the prisoners. Prison security and discipline should be maintained by moral authority and by rewards and penalties rather than by mere intimidation and by the force of arms.

The following description of the Munich prison attempts to show how these and similar ideas were carried out in practice.

V—*The State Prison at Munich.*

The state prison at Munich was in an utterly neglected and demoralized condition when Obermaier was called to conduct it. Its official purpose was to execute sentences to the chain, to penal servitude and to the workhouse, pronounced according to the Bavarian penal code of 1813. It listed an average of 609.9 men and 133.3 women prisoners in the nine years preceding Obermaier's regime (1833-34 to 1841-42), including those coming and going during the year, while 520.2 prisoners on the average were actual in-

⁵⁵ Italics by Townshend.

⁵⁶ See below, note 82.

mates.⁵⁷ The prisoners came from those districts of Bavaria having the rudest population. They were insubordinate and unmanageable and were considered as the worst types of criminals.⁵⁸ The chain prisoners and those in penal servitude were chained in the manner prescribed.⁵⁹ They were most troublesome. The department of chain prisoners could be visited only under armed guard. The prison was guarded by about a hundred soldiers, who did duty not only around walls, gates and passages but even in the workshops and dormitories. Twenty or thirty large bloodhounds were let loose at night in the passages and courts.⁶⁰ Corporal punishment was a common measure of discipline and even well-meaning observers approved it in the belief that the inmates could not be managed otherwise.⁶¹

Obermaier was appointed warden of this prison in 1842. In the same year the Bavarian government decreed a new scheme under which different state prisons were reserved for men and women classified as Catholics, Protestants and Jews.⁶²

The government apparently planned this as a beginning of prison reform; the separation of sexes was made to promote better discipline; the separation of religious groups was introduced in order to appoint a full-time minister to each prison without increasing the expenses.⁶³ Hereby the Munich prison became an institution for Catholic male convicts. First a few Catholic women prisoners

⁵⁷ These numbers are based on the prison statistics for 1833-34 to 1847-48, compiled by the statistical bureau of the Bavarian government and published in *Beiträge zur Statistik des Königreichs Bayern*, Vol. 4, 1855.

⁵⁸ Arnold, *Archiv des Criminalrechts* 1844, pp. 439-440. Friederich Christian (von) Arnold was a judge and later became president of the court of appeal in Munich.

⁵⁹ The statement of Baillie-Cochrane that all the prisoners were chained together seems to be erroneous (Baillie-Cochrane, abstracted by Hill, *Suggestions for the Repression of Crime*, p. 545; quoted by Wines-Lane, *Punishment and Reformation*, ed. 1919, p. 202; Glueck, *Five Hundred Criminal Careers*, p. 14.) Probably at least one-half of the prisoners were sentenced to the workhouse and therefore not chained; see below, p. 27. The Bavarian prison wardens apparently disliked the chain articles of the code and sometimes failed to carry them out, as an admonishing decree of the government indicates; decree of Jun 25, 1842, *Doellinger-v. Strauss*, Vol. 29 (1853), pp. 144-145.

⁶⁰ Baillie-Cochrane at Hill, l.c.

⁶¹ Arnold, l.c.

⁶² January 15, 1842; *Doellinger-v. Strauss*, Vol. 29, pp. 182-183.

⁶³ Thus motivated by the Bavarian government. Later the government was criticized on account of the separation of Catholics and Protestants in a session of the chamber of representatives. See the preamble of the decree, cited in previous note, and *Jahrbuecher der Gefaengniskunde*, Vol. 9, (1847), pp. 286. The decree followed Obermaier's terminology in calling the prisoners "Buesser," as did several other decrees in the following years. This however does not necessarily mean that the content of the decree of 1842 was due to Obermaier's influence.

were kept at work in the prison kitchen;⁶⁴ after 1850 there is no further mention of them.⁶⁵

Obermaier started in Munich with a yearly average of 635.8 men and 20.3 women prisoners, or 456.2 prisoners of both sexes simultaneously counted.⁶⁶

The prisoners were sentenced for:⁶⁷

Aggravated larceny including burglary.....	48.6%
Intentional homicide	16.64%
Robbery	12.32%
Fraud, aggravated cases.....	4.65%
Arson	2.67%
Rape	.74%
Various other crimes.....	14.31%

The prison statistics do not cover the length of the sentences.⁶⁸ One may roughly assume that at least about half of Obermaier's prisoners were sentenced to the workhouse, while the rest were sentenced either to penal servitude (above 8 years and indefinite time) or to the chain punishment (life time). This assumption is based on the fact that more than 53% of the inmates were sentenced for aggravated larceny and aggravated frauds,⁶⁹ which only in exceptional cases involved more than a workhouse sentence.

The age distribution on the average for the years 1842-43 to 1847-48 was:

⁶⁴ Decree cited above.

⁶⁵ Writers after 1850 stated that women were not kept at all; the kitchen work was done by male inmates. *Combe at Hill*, p. 578; *Townshend, Zoist*, Vol. 13, pp. 419, 429.

⁶⁶ These and the following numbers refer to the average of six years from 1842-43 to 1847-48, based on the Bavarian prison statistics, i.e. Prison statistics for 1848-49 and following years are not available.

⁶⁷ For a rough comparison: out of 1,587 prisoners sentenced to the Massachusetts State Prison in Charlestown from Oct. 1, 1929 to Jan. 1, 1935, there were 9.96% sentenced for murder, manslaughter, mayhem or assault with intent to murder; 32.77% for larceny, burglary or possession of burglars tools; 25.20% for robbery including armed robbery. This is based on the *Annual Report of the Commissioner of Correction* for the year ending Nov. 30, 1930, pp. 14-15; 1931, pp. 54-55; 1932, p. 57; 1933, p. 52; 1934, pp. 52, 165. Naturally only a rough comparison is possible because neither the methods of compiling these statistics nor the legal definitions of these crimes can be harmonized with the Bavarian methods and definitions.

⁶⁸ *Von Hermann*, official editor of these statistics, stated in the preface (1855) that nobody was confined in the Munich state prison for less than 4 years. The Letter from Munich Prison (1856) printed by *Hill*, i.c., p. 568, said that prisoners sentenced to the workhouse were sent to Munich only if sentenced for more than 4 years. But it is not known in what year this rule was introduced; in 1848 Obermaier still stated that the prisoners discharged between the years 1843 and 1845 had been sentenced for periods from one to twenty years (English quotation, *Hill*, p. 549).

⁶⁹ From 1833-34 to 1841-42 the average was 55%.

9.67% of the inmates were 16-20 years old.⁷⁰
 73.83% of the inmates were 21-40 years old.
 15.40% of the inmates were 41-60 years old.
 1.09% of the inmates were older than 60 years.

VI—New Ways of Discipline.

With this set of prisoners Obermaier inaugurated new ways of discipline. He reduced the number of military guards to about twenty, which he kept outside the rooms of the institution,⁷¹ abolished corporal punishment⁷² and the use of bloodhounds⁷³ and began to educate the prisoners and the prison staff. His greatest handicap was the law which required the chaining of prisoners. Obermaier managed to remove the chains from most prisoners; those of the remainder were replaced by lighter ones.⁷⁴

Sections 55-56 of the Munich prison rules of 1845 provided that the legally prescribed fetters should be applied to chain punishment and penal servitude, however so as not to disturb the freedom of movement required for the work, and with the usual exception in case of sickness and of special pardon. Apparently the paradoxical wording was chosen to stretch the law as far as possible. Under this new rule Obermaier by degrees replaced the old heavy chains and iron balls by lighter ones, then, in most cases, removed them entirely. Whether he obtained special pardons or perhaps did it illegally, is not known. The general trend of

⁷⁰ According to these statistics children under 16 years of age were not kept in the prison. This would be in harmony with the code of 1813 which, though permitting penal servitude in case of offenders between 12 and 16 years, ordered their strict separation from adult prisoners and a more educational treatment. (Part 1, Arts. 99, 101.)

Nevertheless paragraph 50 of the official prison rules of 1845 for Munich prison, formulated either by Obermaier or under his influence, mentioned "young people of 16 years and less." They should be

"separated always so as to be supervised uninterruptedly in such a way that they are safe against any corruptive influence. The greatest diligence has to be employed for their moral improvement, their education and for a useful occupation which will be serviceable in their later career.

"Equal diligence has to be extended to older penitents, because reformation is possible for everybody with discipline and treatment to the purpose."

Later it was stated by *Townshend* (*Zoist* 13, p. 426) that prisoners under 18 years of age were not kept when he visited the prison (about the early 1850's). If this was true, the prisoners between 16 and 18 years may have been transferred to another place sometime around 1850, when the government reserved special prisons or special departments in certain prisons for young prisoners.

The rules of 1845 for Munich prison were published in *Doellinger-v. Strauss*, Vol. 29, pp. 289 ff.

⁷¹ *Baillie-Cochrane at Hill*, p. 546. Compare *Anleitung*, etc., p. 99, *Hill*, p. 568.

⁷² *Arnold*, l.c., p. 440, and see below, note 105.

⁷³ One of Obermaier's strongest adversaries, *Varrentrapp*, then a leading penologist, recognized that he had shown how to rule the prison without dogs, loaded guns and whipping (*Jahrbuecher der Gefaengniskunde*, Vol. 10, p. 201; see also *Triest in Staatslexikon*, 3rd ed., Vol. 6, 1862, p. 185).

⁷⁴ *Combe*, *Baillie-Cochrane* and *Townshend at Hill*, p. 583-4, 546-7, 552.

the time was humane, and Obermaier was supported by public opinion; the Bavarian government did not interfere because it was now convinced that chains were a useless cruelty and planned to abolish the chain punishment.⁷⁵ Only a part of the "chain prisoners" and those considered especially dangerous were kept in chains.

Townshend states he was told that dangerous and violent criminals entered the prison in heavy fetters whose removal they earned by good conduct.⁷⁶ The details of *Townshend's* description are dubious, but it may be true that the removal of chains served as a reward for good conduct. Obermaier has done so, in Kaiserslautern before he came to Munich.⁷⁷ A similar method was practiced by Montesinos in Valencia about the same time.⁷⁸

Obermaier won the confidence of some of the best of the prisoners. He brought these men together and relaxed the severity of prison rules as far as they were concerned. These men in their turn exercised a very gradual but marked influence over others, until they formed a body willing to cooperate in his schemes of improvement.⁷⁹ Thus he came to conduct the prison with the help of convict superintendents, foremen and teachers working under the direction of a few prison officials. A new atmosphere was created: in spite of close supervision and strict disciplinary rules, a quiet cheerfulness and civility of manners came to prevail. About 1845 Obermaier was able to write:⁸⁰

⁷⁵ Statement of the minister of the interior in the chamber of representatives, 1846, *Jahrb. d. Gef.*, Vol. 9, p. 288. It finally was abolished in 1861, effective in 1862 about the time when Obermaier retired. The chain punishment was dropped in the draft code of 1854, but (art. 16, 2) it kept the chaining of prisoners sentenced to more than 10 years of penal servitude. This was abandoned in the code of 1861.

⁷⁶ *Zoist*, Vol. 13, p. 423-424. According to *Townshend* those prisoners were fettered and handcuffed in addition to the chains on their legs . . . "one after another of the irons is removed. The handcuffs are the last to be taken away." . . . "On any outbreak on the part of the criminal, the fetters are proportionately replaced, and he is told 'Thou seest we cannot trust thee!'" . . . It is, however, improbable that handcuffs or other fetters not required by law were regularly used. Obermaier's chief effort was even to remove those required by law. Only as an extraordinary penalty such fetters could be inflicted for a limited number of hours on a limited number of days; this was hardly ever done. It was against all the principles of Obermaier; besides, handcuffs would make every manual work impossible. If there were no such fetters they could not be proportionately replaced. Only the chains could perhaps be renewed. The latter was possible in extreme cases (*Anleitung*, pp. 123-124).

⁷⁷ *Anleitung*, p. 33: In 1835 there were in Kaiserslautern 99 "chain prisoners," legally supposed to wear heavy chains with iron balls; but those of them who had morally improved did not wear any chains, among them murderers and highway-robbers.

⁷⁸ *Hill*, l.c., p. 554, quotes *Hoskins* on the prison in Valencia: "When first the convict enters the establishment he wears chains, but on his application to the commander they are taken off, unless he has not conducted himself well. Among some hundreds I only saw three or four with irons on their legs."

⁷⁹ *Baillie-Cochrane*, *Combe*, at *Hill*, pp. 546, 583.

⁸⁰ Letter to Mr. Varrentrapp, *Jahrb. d. Gefaengniskunde*, Vol. 10, pp. 314-315. Obermaier's achievements have been disputed, chiefly by *Mittermaier* and *Welcker*

"The battle uninterruptedly fought between the officials and the prisoners has been finished now. The officials are not allowed to abuse the prisoners by either word or deed. They have to observe a modest and discreet behavior in all occurring cases; they have to serve as a good model in all matters"⁸¹ . . . "by far the greater part of the population has already been won for the good cause . . . therefore the less corrupt ones are protected against contamination" . . . "the former leaders are watched very strictly."

"The convict, once brought back to the right feeling, wants an equal and just treatment in all matters and, if he has obtained it, he undergoes willingly every deserved penalty. The less barbarities prevailing, the more modest, manly and quiet the behavior of the officials toward the penitents, the more obedient, complaisant and faithful is the behavior (of the penitents) toward the just superiors."

The secret of Obermaier's success seems to have been that he was able to convince the majority of his prisoners of his genuine personal interest in their well-being⁸² while he was carrying out the correctional ideas stated above. The following is quoted from *George Combe*⁸³ on his dialogue with Obermaier in 1854:

"How do you," said I, "deal with a rough, passionate, proud, determined character, who spurns your authority, and means to defy you if he can?" "Every prisoner," he replied, "is brought before me on his entrance, and I converse with him. I ask him if his father or mother be alive; if he has a wife and children, brothers or sisters? And how they must feel degraded by his crime and sentence. I appeal to him through

(see the discussion of the inmate superintendent system, below, and note 98'. But there is overwhelming testimony on the conditions observed in Munich prison by English and German visitors. The reports of *Townshend*, *Baillie-Cochrane* and *Combe* quoted by *M. D. Hill* were verified later by *Hill* himself in 1858 after his visit to Munich (*Rosamond and Florence Davenport Hill; The Recorder of Birmingham. A Memoir of Matthew Davenport Hill*, 1878, pp. 212, 338 ff). He also observed the difference between prisoners who had served under Obermaier and newcomers who were transferred from other prisons: the latter looked as if life had been crushed out of them, while Obermaier's prisoners looked normal. *Arnold* wrote in 1844: "The hanging faces, the rude airs, the timid sly looking around have disappeared. Seriousness and a modest frank behavior expresses itself on almost all faces, and while once the department of chain prisoners was visited only under the protection of armed guards, one goes now among those bad criminals without any arms and without any guard."

⁸¹ Also in the prison rules for Munich, l.c., p. 225, rules for prison employees, paragraph 55; for Kaiserslautern in *Anleitung*, p. 78, p. 56, p. 62, paragraph 8.

Similar observations were made in Kaiserslautern, where *Ristelhueber* found a devotion and mental calmness rarely observed in a convict prison (*Ristelhueber, Wegweiser zur Literatur der Waisenspflege*, etc., Vol. 2, p. 293).

⁸² Just as *Montesinos* did in Valencia. See *Hill*, p. 558; *Wines-Lane*, l.c., p. 194; *Glueck, Five Hundred Criminal Careers*, pp. 14-15. It certainly helped Obermaier to win the confidence and cooperation of his men. The power of suggestion perhaps attributed to the result; "moral magnetism" was ascribed to Obermaier (*Suringar, Verhandl. d. Versamml. f. Gefaengnisreform*, 1847, p. 127; compare the story, *ibid.*, pp. 126-27).

⁸³ *Hill*, p. 580.

them; I tell him that I am his friend and not his enemy. That I regard him as sent to me to be reformed, and not merely to be punished. I explain to him the rules of the house, and tell him that they are all calculated, for the improvement of the prisoners; that if he will be my friend I shall be his: and that suffering and misery will overtake him here only in consequence of his own fault. The rudest natures," he continued, "can rarely resist such an appeal. The big tears often roll down cheeks that were never wet with weeping before, and I soon make them feel, that my words are not speeches, but the expression of actual things. I give the newcomer into the charge of the superintendent of the department for which he is most fitted, and I appeal to the other men in his behalf. Should the new convict, as frequently happens, not believing in the reality of the law of kindness, begin to behave ill to his fellow-convicts, they soon check him and set him right. The public spirit among them is in favor of obedience and steady conduct, and they say to him, 'That conduct will not do here: Herr von Obermaier is our friend, and we shall not allow you to act contrary to the rules of the house.'"

By this moral authority Obermaier was able to reduce the ordinary prison precautions to a minimum which amazed his contemporaries. *Baillie-Cochrane*⁸⁴ reported that he saw

"the prison gates wide open, without any sentinel at the door, and a guard of only twenty men idling away their time in a guard-room off the entrance hall; from this hall two long corridors led right and left to the various offices and workshops; the apartments of the governor were on the first floor, and immediately adjoining them, and in the same passage, were the dormitories and workshops. These workshops of various dimensions, capable of holding from twenty to sixty men;⁸⁵ none of the doors were provided with bolts and bars, the only security was an ordinary lock, and, as in most of the rooms the key was not turned, there was no obstacle to the men walking into the passage. . . ."

Combe wrote:⁸⁶

"The bars on the windows are so slight, and so many tools are entrusted to the convicts, that escape could be easily accomplished, for outside there is only one soldier, and he cannot see a fourth of the windows."

The visitors may have overlooked the fact that every prisoner was constantly supervised, at least by a fellow-prisoner. Obermaier's first improvement was to discard the more oppressive physical means of restraint. This would not have been possible without substituting some form of careful supervision, with such large groups of men confined together. Still it was not the mere fact of

⁸⁴ *Hill*, p. 546.

⁸⁵ Ten to thirty, according to *Combe, Hill*, p. 579.

⁸⁶ *Hill*, p. 579.

supervision that worked under the new system. Obermaier's moral authority was supported by a favorable group spirit based on individual feelings of honor among the better prisoners. How far this support went, is shown by the fact that 200 prisoners were once ordered to extinguish a fire outside the prison at night without any prison guard, solely under Obermaier's direction. After having successfully done the work, the prisoners, all orderly, returned to the prison; among them 30 sentenced to penal servitude, i. e., for more than 8 years at least, and 2 sentenced to the chain, i. e., for life (apparently not chained); nobody made any attempt to escape. This happened in November, 1843, little more than a year after Obermaier had started to reorganize the prison.⁸⁷ Obermaier even believed that with the aid of group discipline he suppressed immoral sex conduct among prisoners;⁸⁸ nevertheless that is questionable.

Convict Superintendents. Obermaier's convict superintendents were much discussed in his time. They certainly formed a basic pillar of his regime; adversaries called them its basic weakness.⁸⁹ He seems to have used them in Kaiserslautern first;⁹⁰ then they helped him in Munich to effect all these improvements of discipline. Prisoners had to give school instruction and to teach the trades in the workshops; those considered most trustworthy had to superintend workshops and dormitories. These inmate superintendents had to report everything they found wrong or dangerous, and were therefore sometimes taken for spies; but their actual duties were those of substitute prison officials and did not include secret denunciation or anything unworthy.⁹¹ As described above, every incoming prisoner was given in charge of such a superintendent,⁹² who had to explain to him the rules of the house, to be his friendly

⁸⁷ Arnold, l.c., pp. 440-441; *Suringar*, l.c. Similar things happened in Prussia, when after the Napoleonic wars prisons were put in charge of former officers and soldiers from the army under a semi-military discipline. Indeed the Prussian prisoners also extinguished fires, and one prison had regularly to furnish firemen (*Krohne, Lehrbuch der Gefaengniskunde*, 1889, p. 157-159).

Stories on the reliability of prisoners were also told in reference to Valencia under Montesinos, see Hill, p. 555. They have been surpassed by the experiences which Thomas Mott Osborne had in this respect under his inmate self-government system.

⁸⁸ *Anleitung*, p. 107. Hill, p. 580. *Poenitentiarsysteme*, p. 22.

⁸⁹ Mittermaier, *Der gegenwaertige Zustand der Gefaengnisfrage*, 1860, pp. 39, 110, 111; Triest, *Gefaengniswesen*, in: *Staatslexikon*, 3d ed., Vol. 6, 1862, p. 185, and others.

⁹⁰ *Varrentrapp*, *Jahrb. d. Gefaengniskunde*, Vol. 9, p. 330.

⁹¹ Arnold, *Gerichtssaal*, Vol. 12 (1860), p. 530, note 1. Their duties were laid down in special rules published by Obermaier in 1847 in *Jahrb. d. Gefaengniskunde*, Vol. 10, pp. 323-325.

⁹² Rules, l.c., nr. 4, 12-16; Hill, p. 580 (*Combe*), 546 (*Baillie-Cochrane*).

monitor and to keep him from doing wrong; the prisoners had to follow the directions given by their superintendents; they were punished if they insulted them; they could complain against them to the regular prison officials. The whole idea had its counterpart in the system of Montesinos, who appointed his prisoners as sergeants, inferior officers, etc.⁹³ Under the Bavarian penal code its legality may have been rather dubious; the government tried to forbid it but later gave its tacit approval, as it seems.⁹⁴ The inmate superintendent system apparently worked well in Munich for a period of about 15 years. *Townshend* especially described these monitors there; he had a very good impression. He was told that the rules of the place were so well understood by the prisoners, and their object so plainly known to be good, that the prison officials did not observe ill will generated by a monitor doing his duty.⁹⁵ Nevertheless, some friction may have existed between monitors and prisoners.⁹⁶ Suddenly, in 1858 two monitors were murdered by their fellow-prisoners, probably because they were suspected of being informers or traitors. Today it is difficult to say whether that was the fault of Obermaier or his methods; but public opinion turned against him immediately and the monitor system was abolished.⁹⁷

It would certainly be unjust today to judge the monitor system merely according to the accident or accidents⁹⁸ which discredited it at that time, although similar unfair criticism has destroyed more than one promising correctional experiment in our own day. Under entirely different systems prison riots as well as individual assassinations have been committed by desperate prisoners,⁹⁹ and, it even happened that a good prison official in a model prison and after

⁹³ *Hill*, p. 552 ff.

⁹⁴ See below, note 122.

⁹⁵ *Zoist*, Vol. 13, p. 428.

⁹⁶ In *Kaiserslautern* disciplinary punishments were much more frequent for insults and disobedience against monitors than against regular prison officials (*Jahrb. d. Gefaengniskunde*, Vol. 9, p. 338). Whether this was so in Munich, is not known.

⁹⁷ *Mittermaier and Triest*, l.c.; *von Duhn*, *Die Gefaengnisfrage mit der Zeitentwicklung betrachtet* (1862), p. 33.

⁹⁸ The more radical ones among Obermaier's enemies spoke of "repeated" murder cases or of an "increasing number," without substantiating these statements. Thus did *Mittermaier* (*Transactions of the National Association for the Promotion of Social Science, London Meeting*, 1862. London, 1862, pp. 419-420) and *Welcker* (*Staatslexikon*, 3. ed., Vol. 2, 1858, p. 643); the latter also took the inmate superintendents for paid spies and informers. Both were prejudiced, chiefly because they tried to prove the solitary confinement doctrine then prevailing in Germany; see *Wines*, 25. Annual Report of the Executive Committee of the Prison Association of New York, p. 381; *Hill*, p. 568, nr. 12.

⁹⁹ *v. Duhn*, l.c., pp. 30-33.

many years of spotless service lost his temper and killed a prisoner.¹⁰⁰ The inherent unnaturalness of any prison situation, as well as individual failures, may always produce "atmospheric" disturbances with terrible consequences. For a better understanding one has to remember that inmate superintendents were appointed in Munich after every other means of maintaining discipline had broken down. The exaggerated severity of the law and the inferior quality of the staff had led to that hopeless battle between prison officials and inmates described above. Considering the obvious impossibility to obtain better personnel from outside, it was an ingenious device to resort to the prisoners themselves. Considering time and place, an inmate self-government system was naturally unthinkable. The monitors rather had to be tools of a benevolent despotism.¹⁰¹ As such they did more than merely restore order; developing mutual understanding, they helped to establish moral authority and supplied a pre-requisite for reformatory work. They probably knew their fellow-prisoners better than many regular officials,¹⁰² and therefore were able to manage them. Monitors as well as inmate teachers by their functions may have learned to take social responsibilities, while at the same time their self-confidence was developed, both being important things for their future outside life.¹⁰³ But the effect of the system depended almost entirely upon the selection of the right persons. Any mistake of the prison director in this respect could make the potential disadvantages of the system appear. Then the monitors would not be respected because they were merely prisoners; they would be taken for informers and traitors by their fellow-prisoners, the more so because they enjoyed certain privileges. It can only be guessed that mistakes in the selection of inmate superintendents in Munich may have occurred which led to these conditions and thereby to the final failure. Nevertheless the system had done much good; it certainly did not deserve the exaggerated criticism of Obermaier's enemies.

¹⁰⁰ This happened in Moabit at Wichern's time; see Wichern's letter Dec. 8, 1859, in *Gesammelte Schriften*, etc., Vol. 4, pp. 439-447.

¹⁰¹ Varrentrapp called Obermaier's regime an enlightened absolutism without law; (*Jahrb. d. Gefängniskunde*, Vol. 10, p. 293); Similar terms have been used today referring to the "trusties" in modern prisons: Thomas Mott Osborne, *Society and Prisons*, 1916, pp. 211-215. There are some parallels between Obermaier's inmate superintendents and modern "trusties" although the former had a more responsible position with clearly defined duties.

¹⁰² Compare Hill, p. 553, on the regime of Montesinos.

¹⁰³ See the discussions of the "trusty" problem: Osborne, l.c.; *Lekkerkerker, Reformatories for Women in the United States*, 1931, pp. 451, 452; Haynes, *Criminology*, 2. ed., 1935, p. 348.

VII—*Rewards and Penalties.*

Rewards and penalties had been used in the Bavarian prison system before Obermaier's time; chiefly it must be remembered that the release or the earlier release of prisoners for good behavior was established by the code. Obermaier took a farther step along that line. When he removed the more brutal methods of restraint he had to look for more refined means of maintaining discipline. He encouraged good behavior by small daily rewards, in addition to the final reward of releasing the prisoner.¹⁰⁴ Even a general improvement, such as the removal of chains, was made to serve as a reward. The use of the library for recreational reading served as a reward (see below p. 43). Certain other privileges were granted to well-behaved prisoners: to buy certain quantities of extra food or weak beer; snuff was allowed to old persons. Better and more interesting work could be awarded.

The penalties also became smaller. While corporal punishment was abolished¹⁰⁵ and the temporary application of fetters as a punishment became almost unknown,¹⁰⁶ solitary confinement was used as a disciplinary punishment in extreme cases. The more usual penalties were additional work and deduction of wages; losses of the privileges previously awarded; deductions from the ordinary diet. In rewards and penalties, Obermaier tried to approach the treatment of children. Pleasure also meant moral approbation and pain meant the loss of approbation.¹⁰⁷ Penalties should not disgrace or defame the prisoner; the human being should be respected even in the choice

¹⁰⁴ On the use of rewards see *Townshend*, Zoist 13, pp. 426-429; *Hill*, pp. 550, 581; *Doellinger-v. Strauss*, Vol. 29, p. 215, paragraph 163; *Jahrb. d. Gefaeng.*, Vol. 10, p. 322, 20.

¹⁰⁵ The official prison rules still allowed corporal punishment under certain conditions, but it was never used. See above, notes 72, 73, and on the use of this and other penalties: *Obermaier*, *Anleitung*, pp. 119-125; *Jahrb. d. Gefaeng.* 10, 305 (*Obermaier*), 9, 336 ff. (*Varrentrapp*); *Townshend*, Zoist 13, pp. 419-421; Munich prison rules, *Doellinger-v. Strauss*, Vol. 29, pp. 215-217, paragraph 169. *Ristelhueber*, l.c., pp. 292-293.

¹⁰⁶ The official rules allowed the tying of a prisoner hand and foot for no more than 6 hours daily and no more than 20 days, with the approval of the state government and only under medical control. *Obermaier* denied that he used that penalty in Munich (*Jahrb. d. Gefaeng.*, 10, 305). *Varrentrapp* (l.c.) quoted a discharged convict, to the effect that it was still practiced, but he believed that it had been gradually abolished.

¹⁰⁷ *Townshend*, Zoist 13, 421, 426, stated that the penalties were based on the idea that prisoners were motivated by their love of acquisition, their desire for some small daily pleasure and stimulus, their thirst for instruction and knowledge, their love of approbation and fear of blame. *Obermaier* probably did not express himself so systematically, but it was perhaps a good interpretation of his practice in terms of English psychology.

of penalties.¹⁰⁸ No violation of the rules of the establishment should be overlooked, but first only admonitions should be applied. Only the prison warden himself could apply any penalties; other officials were not entitled to do so.¹⁰⁹ One should expect that such rules tended to keep down the number of disciplinary punishments, but there were doubts about it;¹¹⁰ generally it was believed that group confinement offered more chances for friction than solitary confinement, and therefore required more disciplinary measures.

VIII—Prison Labor.

Obermaier organized prison labor on educational as well as business lines. His principles were as follows:¹¹¹ Prison labor should be useful to the penitent and to the state; it should be adapted to local conditions and should not interfere with the free labor market. Every prisoner should learn at least one trade¹¹² and no trade should be taught which does not have chances for outside use after release. The work should be hard but not ruinous to health. Prison wages, as far as possible approaching the outside wages, should stimulate the penitent to industry, and his savings should help him after his release. The work should therefore be exclusively conducted under the prison authorities.

Bavaria already had a certain system of prison labor, including wages and savings.¹¹³ But there was little variety of occupation, and little attention was paid to the prisoner's health or to his training for a future living. In most places the work was limited to one or two occupations, like the spinning of wool and flax.¹¹⁴ Obermaier provided a large variety of occupations in Munich, as he had

¹⁰⁸ *Anleitung*, p. 119.

¹⁰⁹ Munich prison rules, l.c., p. 228, rules for employes, paragraph 70. It was probably the same in Kaiserslautern, according to *Anleitung*, p. 73, paragraph 43.

¹¹⁰ No numbers are available for Munich. The group spirit in Munich was said to prevent many violations (*Hill*, pp. 546, 580), but on Kaiserslautern a few numbers were published which were rather high (*Varrentrapp*, *Jahrb. d. Gef.* 9, 336 ff.). Compare above, note 96.

¹¹¹ *Anleitung*, etc., pp. 37-40, 108-115; *Obermaier*, *Jahrb. d. Gef.*, Vol. 10, pp. 319-323.

¹¹² In Kaiserslautern from 1833 to 1847 about 90% of the prisoners released had learned a trade (based on the prison statistics l.c.).

¹¹³ Decrees of 1807, 1822, 1835, *Doellinger*, Vol. 13, 1, pp. 437-8, 402, 408 ff. The prisons took one part of the wages in return for maintaining the prisoner; one part was credited to the prisoner and handed to him on release. The prisoner could dispose of another small part of his earnings during his term. He was not allowed to have money in his possession.

¹¹⁴ Prison statistics l.c. Munich had textile and tailoring and shoemaking shops. Obermaier reduced tailoring and shoemaking to the uses of the prison in order to protect outside business. *Jahrb. d. Gefaengniskunde* 10, p. 309.

already done in Kaiserslautern.¹¹⁵ One part of the prisoners was employed in a cloth factory for army use.¹¹⁶ Another part was engaged in providing everything needed by the prison itself,¹¹⁷ including furniture and tools for the factory. Thus bricklaying, carpentry, forging, cabinetmaking, painting, tailoring, shoemaking, cooking and baking, etc., each occupied a few men. Finally it seems that a few goods were produced for sale in neighboring countries.¹¹⁸ Work which merely concerned the household, as housecleaning, heating, washing and repairing of the prisoner's clothes was not considered as regular occupation but was done by all prisoners in rotation and without pay.¹¹⁹ The wide variety of occupations served the double purpose of permitting a greater occupational choice and keeping competition with free labor down to a minimum.

Industries were conducted by two to four workmasters¹²⁰ appointed and discharged by Obermaier and working under his directions. Among other duties they had to care for an expedient distribution of work with regard to the ability of the individual.¹²¹ Under their direction there worked inmate foremen and inmate trade teachers and finally the other prisoners.¹²² It cannot be estab-

¹¹⁵ On prison labor in Munich see the prison rules of 1845, pp. 126-150, in *Doellinger-v. Strauss*, Vol. 29, pp. 209-213.

In Kaiserslautern the inmates partly worked for prison use as described in the text; a textile manufactory also existed. Fifty-one kinds of occupation were counted. See the prison statistics for 1833-34, 1847-48 l.c. and *Anleitung*, etc., p. 110.

¹¹⁶ *Townshend, Hill*, p. 551; *Zoist*, Vol. 13, p. 419.

¹¹⁷ *Obermaier* in *Jahrb. d. Gefaengniskunde* 10, p. 309.

¹¹⁸ *Hill*, pp. 547, 579. Prison rules l.c., pp. 126, 127. *Townshend* mentions the making of boxes, candlesticks, napkin rings, etc., *Hill*, p. 500.

¹¹⁹ Prison rules l.c., p. 144; *Instruction fuer die Gefangenen der kgl. Strafanstalt Muenchen* (*Jahrb. d. Gefaengniskunde* 10, pp. 319 ff), paragraph 10. The rule was very wise because of the absence of vocational value in this type of work; see *Dean, Industrial Training for the Prisoner*, in: *Jaffray, The Prison and the Prisoner*, 1917, pp. 134-137.

¹²⁰ Prison rules for Munich, 1845, l.c., p. 190, paragraph 3; pp. 218 ff, paragraphs 35-48. Letter from Munich Prison, *Hill*, p. 568. Compare *Anleitung*, pp. 56-57, and the prison rules for Kaiserslautern, *Anleitung*, pp. 66-71. According to *Anleitung*, pp. 54, 56-57, there should be one or two workmasters. A workmaster should know all the usual trades of everyday life and have some technological education; only an unusually experienced man could fulfill these requirements. The prison rules for Munich provided for three or four workmasters, but the Letter (written by the prison administration in 1856) stated that there were only two.

¹²¹ Prison rules for Munich, paragraph 35; for Kaiserslautern, *Anleitung*, p. 66, paragraph 21.

¹²² Rules for prison employees; the official prison rules of 1845 provided (paragraphs 131, 132, l.c., p. 209) that inmates especially skilled in any of the trades conducted in the prison should teach the others and be credited proper wages for that. But paragraph 36 expressly ordered that no prisoner should be allowed any longer to superintend a workshop. This prohibition obviously was inserted by the government against Obermaier's will. But Obermaier apparently obtained

lished whether there was any difference between inmate trade teachers and inmate foremen; perhaps the same prisoners served in both capacities, as would be most natural. Theoretically every prisoner having especial skill in his trade could be employed to teach it, but only those who had worked their way up by good conduct and won Obermaier's confidence were chosen to superintend their fellow prisoners.

If a new prisoner had already practiced one of the trades conducted in the prison, he was set to work in that trade.¹²³ Otherwise he had to start with one of the lowest classes of work, the spinning of tow and hemp, and had to stay there until he had given evidence of industry and good conduct.¹²⁴ If the workmaster found a prisoner capable enough to be transferred to another class of work or later if he found a change from one trade to another advisable, he had to suggest it to the prison governor, who had the final decision.¹²⁵ For the rest, prisoners were employed according to their individual ability and partly according to their conduct. *Townshend*¹²⁶ reported that the better class of criminals—those sentenced for minor offenses or having a long record of good conduct—were drafted to the more congenial types of work, work in the bakery or kitchen and in the cloth factory; the least intelligent ones were given a simple manual occupation, such as the winding of flax on reels.

The working conditions on the whole were hard, perhaps harder than Obermaier wanted them to be. He considered work as a chief factor in prison education; the prisoner should acquire a deep-rooted habitual desire for work.¹²⁷ Prison labor should not be a punishment in itself;¹²⁸ it should rather approximate outside life. But the

either a change of this rule or perhaps unofficial tolerance. In 1847 he published rules for inmate superintendents (*Jahrb. d. Gefaengniskunde*, Vol. 10, pp. 323-325), on his own authority. The English visitors after 1850 described how they saw all the work shops conducted by inmate foremen: *Townshend*, Zoist 13, pp. 419, 428; *Hill*, p. 551; *Baillie-Cochrane*, *Combe*, *Hill*, pp. 546, 579.

¹²³ *Townshend*, Zoist 13, p. 419.

¹²⁴ Munich prison rules, *Doellinger-v. Strauss* 29, p. 218, par. 36; also the rules for Kaiserslautern, *Anleitung*, p. 66, par. 22. Compare *Holtzendorff-v. Jagemann*, *Handbuch des Gefaengniswesens*, Vol. 2 (1888), pp. 236, 237, note 3, for similar ideas in other European prison systems.

¹²⁵ Munich prison rules, l.c., pars. 36, 37; Kaiserslautern rules, l.c., Pars. 22, 23.

¹²⁶ *Hill*, pp. 550, 551; Zoist 13, p. 419. Chain prisoners were legally supposed to do the hardest work (above, p. 18). The prison rules of 1845 divided the textile work, so as to provide unpleasant occupations for penal servitude and the hardest for the chain prisoners (126, l.c.) *Obermaier* did not like that rule (*Anleitung*, p. 38); he apparently modified it in his practice by allowing the better classes of work to chain prisoners and those in penal servitude as a reward for good conduct.

¹²⁷ *Anleitung*, p. 112.

¹²⁸ The severity of punishment should rather consist in the length of the prison term; *Anleitung*, pp. 38, 24 ff.

Bavarian government insisted that prison labor should be made a punishment; this view was in harmony with the penal code as well as with the prevailing doctrine on the aims of punishment.¹²⁹

The Kaiserslautern prison rules, published by Obermaier as a model, said about the amount of work required from every prisoner: "The amount, however, has to be measured out with wisdom, and the physical possibility has to be regarded, lest the work become a torment."¹³⁰

In contradistinction, the official prison rules for Munich decreed: "The work, in order to effect also a punishment, shall be of such large amount that it can be done only by straining every nerve; in any case, however, the task shall be adapted to the physical faculties and the ability of the worker."¹³¹ This wording was probably a compromise between Obermaier's ideas and the government's point of view. It is, however, doubtful whether this change in the rules affected the prison regime in actual practice. The new rule still allowed Obermaier to adapt the amount of work to the individual ability.

The hours of work were about equal to those of free labor at that time in Germany; as far as the textile industry was concerned, the hours in the prison may have been more humane than outside.¹³²

Every prisoner worked from 5 to 7 and 7:30 to 11 a. m. and 1 to 7 p. m. weekdays during 8 summer months; one hour less during 4 winter months. School instruction for those having it was held on weekdays from 12 to 1 p. m.; for the rest the intervals were reserved for meals and recreation and partly for the delivery of raw material and products.¹³³

As far as the character of the work permitted, every prisoner was required to do a certain daily amount of work, fixed according to his individual capacity by the workmasters subject to Obermaier's approval.¹³⁴ Whoever by neglect failed to carry out his task, lost his wage for the day and had to make up for it in his vacant time. If he continued doing so, admonitions would be followed by disciplinary penalties, such as losses of food and eventually solitary confinement. The prisoner could complain to the warden if his task was too hard, but he would be punished if he made any false statements.¹³⁵

The prisoners had to work silently,¹³⁶ but this rule was not strictly enforced.¹³⁷

¹²⁹ See above p. 20.

¹³⁰ *Anleitung*, p. 67, par. 24.

¹³¹ *Doellinger-v. Strauss*, Vol. 29, p. 211, par. 134.

¹³² On hours of work in Germany during the first half of the 19th century see *Handwoerterbuch der Staatswissenschaften*, 4th ed., vol. 1, 1923, p. 896.

¹³³ Prison rules, l.c., pp. 141, 142, 150. *Jahrb. d. Gefaengniskunde*, vol. 10, p. 312.

¹³⁴ Prison rules, l.c., pp. 133, 135, 139; also *Instruction fuer die Gefangenen*, etc., *Jahrb. d. Gefaengniskunde*, vol. 10, p. 319, pp. 4, 5.

¹³⁵ Prison rules, l.c., par. 136.

¹³⁶ Prison rules, l.c., pp. 164, 165.

¹³⁷ *Townshend, Hill*, p. 550; *Zoist* 13, p. 428.

The system of wages already existing was changed very little, it seems. No deduction was made for the prisoners' board; instead, the wages were probably calculated on a lower basis.¹³⁸ One-half the wages were credited on the prisoner's savings account, available at the time of his release; he could buy extra food or other minor articles with the other half but only if he was allowed to do so as a reward for good conduct; the unexpended remainder was added to the savings account. Chain prisoners did not earn wages, but could obtain money assistance if they were pardoned.

The effect of the wage system¹³⁹ was great industry on the part of the prisoners and a satisfactory business efficiency of the institution.¹⁴⁰ Obermaier's statement that the total expenses of the prison were comparatively little was disputed in his time,¹⁴¹ but they are verified at least partly by the available statistical figures.¹⁴²

IX—Physical and Health Conditions.

Obermaier paid particular attention to a regular moderate diet, which had to be neither overstimulating nor undernourishing.¹⁴³ Certain quantities of extra food, including weak beer, were permitted as a reward for good conduct and had to be bought by the prisoners from their wage accounts.¹⁴⁴ The food ration could also be shortened temporarily as a disciplinary penalty; similarly, the extra food privilege could be lost.¹⁴⁵ On the whole the diet was good

¹³⁸ Prison rules, l.c., par. 143-149.—In Kaiserslautern a different system was practiced: one third was deducted for board, one third was credited on savings account, one third could be disposed of by the prisoner for his minor wants (*Anleitung*, p. 111). The same distribution was introduced in Bavaria only for prisoners awaiting trial if they worked voluntarily in the place of detention, by a decree of 1822 (*Doellinger*, vol. 13, 1, p. 412, par. 28).

¹³⁹ According to the prison statistics, l.c., every prisoner in Munich had savings under Obermaier as against about half of them before his time. The total amount of savings diminished under Obermaier; nevertheless the accumulated savings of released prisoners increased. How far this may be due to an increased length of average sentences or to other factors, is not known.

¹⁴⁰ Townshend, *Zoist* 13, p. 422; *Baillie-Cochrane*, *Hill*, p. 547; Letter from Munich Prison, *Hill*, p. 567.—On Kaiserslautern see *Anleitung*, p. 111-115, and *Ristelhueber*, *Wegweiser zur Literatur der Waisempfleger*, etc., vol. 2, p. 292.

¹⁴¹ *Hill*, p. 547.

¹⁴² Prison statistics l.c. If one divides the yearly expenses by the yearly number of prisoners, the expenses of Munich 1844-1848 were smaller than those of the other Bavarian state prisons and smaller than the expenses of Munich prison before Obermaier's time.

¹⁴³ Townshend, *Zoist* 13, 425-426. *Obermaier*, *Anleitung*, p. 102-106.

¹⁴⁴ Quotations of previous note and Munich prison rules, l.c., 77, 78.

¹⁴⁵ Munich prison rules, p. 169; *Obermaier*, *Jahrb. d. Gefaengniskunde*, vol. 10, p. 305.

and probably better than the official prison rules of 1845 wanted it to be.¹⁴⁶

The institution included an infirmary; a physician and a surgeon were permanently appointed to treat the patients and to supervise sanitary conditions.¹⁴⁷ The cleanliness of the rooms and the condition of the prisoner's clothes and beds satisfied the visitors. But the ventilation of the building was bad and the sleeping rooms were overcrowded;¹⁴⁸ both evils apparently were caused by the architecture of the building, an old convent.¹⁴⁹ Obermaier probably was not able to improve these conditions because it would have required a new building.

Judging from the few available statistics on the mortality of prisoners the health condition was unsatisfactory.¹⁵⁰ The death rate in the Munich prison had been terrible under the administration preceding Obermaier's; it decreased very strongly during the first few years of his regime, but by 1848 it was still higher than in Kaiserslautern or in other Bavarian prisons. It is impossible today to base any judgment on the numbers, but one may guess that the insanitary building contributed to the bad result; a part of the prisoners were still kept in chains; besides, some evil consequences of the previous regime with its inhuman methods, such as prison tuberculosis etc.,¹⁵¹ could not be remedied.

X—Religious Work, School and Recreation.

Without being a religious fanatic, Obermaier paid proper atten-

¹⁴⁶ According to the rules meat should be allowed twice a week, beer should never be allowed at all. The actual practice probably allowed meat three times a week and allowed beer among the extra food privileges, etc. *Townshend, Hill*, p. 551, *Zoist* 13, pp. 425-426; see also *Anleitung*, p. 105.—In Kaiserslautern the diet of the prisoners was somewhat better than that of free day laborers, according to *Ristelhueber, l.c.*, p. 293.

¹⁴⁷ Munich prison rules, pp. 106-125; *Hill*, pp. 552, 568.

¹⁴⁸ *Hill*, p. 579.

¹⁴⁹ Obermaier in *Jahrb. d. Gefaengniskunde* 10, p. 301, and quoted by *Hill*, p. 549; v. Hermann, *Jahrb. d. Gefaengniskunde* 9, p. 292.

¹⁵⁰ The yearly average of mortality in Munich prison, based on the average daily number of prisoners living in the prison, is said to have been 15.68% from 1833 to 1842 (prior to Obermaier) as against 8.48% from 1843 to 1845 (under Obermaier). *Varrentrapp, Jahrb. d. Gefaengniskunde* 10, p. 371. One may calculate similar averages from the official Bavarian prison statistics, based on the number of prisoners counted at the beginning of each year: 14.09% 1837/8-1841/2, 8.91% 1843/4-1847/8.

But the mortality in other Bavarian prisons was less than half of those numbers and decreased in similar proportions.

Varrentrapp (l.c., pp. 372-373) pointed out that mortality in Munich prison even under Obermaier compared very unfavorably to that of more than 60 prisons abroad.

¹⁵¹ *Varrentrapp, l.c.*, p. 371.

tion to the spiritual needs of his penitents. He stated that religious work in a prison can be really fruitful only if the entire institution is conducted in an educational spirit; in a prison of the old punitive type, religion would remain an outsider and would not be accepted by the inmates.¹⁵² Apparently a capable clergyman was appointed in the Munich prison, one who held regular service on Sundays and holidays and combined pastoral work with superintending the elementary school and the library of the prison.¹⁵³ The arrangement of the school and the library were practically due to Obermaier's efforts, although some school instruction seems to have existed previously for a few of the youngest prisoners.¹⁵⁴

According to Obermaier¹⁵⁵ those prisoners had to attend school

- 1) who, being under 30 years of age, were illiterate or had only a poor education;
- 2) who were guilty of a rude, immoral conduct in the institution;
- 3) who entered the institution as highly corrupt persons (those who had relapsed several times or led a vicious life).

The instruction should furnish approximately the education of a grammar school with the aim to prepare the prisoner for daily life and to lead him to insight and moral feelings. The school curriculum should cover reading, writing, arithmetic, religious instruction, history, natural history, and ethics—all on the level of uneducated pupils. The first school arrangement¹⁵⁶ consisted of three classes, each one studying under an inmate teacher; inmate teachers were selected by the clergyman subject to the warden's approval; they were directed and supervised by the clergyman; discipline was maintained by the clergyman and the teachers with the assistance

¹⁵² Obermaier in *Jahrb. d. Gefaengniskunde*, vol. 10, pp. 310-211.

¹⁵³ Obermaier, l.c., pp. 310-312; prison rules of 1845, pp. 93-105. The prisoners should not be overfed with church activities, their natural religious want should rather be kept awake: *Anleitung*, p. 116.

On the whole Obermaier's principles were worldly and realistic rather than mystical; compare above p. 24 and below p. 44. Religious ideas were much more emphasized by the famous Wichern, a North German protestant clergyman, educator and prison reformer who established an educational prison system based on solitary confinement in the Prussian model prison of Moabit a few years later (1856-1863). See: *Gesammelte Schriften D. Johann Hinrich Wicherns*, vol. 4, *Zur Gefaengnis-Reform* (Hamburg, 1905). Krohne, *Lehrbuch der Gefaengniskunde*, 1889, pp. 164-166.

¹⁵⁴ Obermaier, l.c., p. 312, stated that there was no school established when he started in Munich.—The prison statistics l.c., counted some thirty or forty students yearly, including those coming and going during the year. Under Obermaier the number rose to more than three hundred, i. e., more than 40% of the male prisoners.

¹⁵⁵ *Jahrb. d. Gefaengniskunde*, vol. 10, p. 213; Munich prison rules, p. 100. On the principles and aims of the school see also *Anleitung*, pp. 117-119; *Poenitentiar-systeme*, pp. 25-27.

¹⁵⁶ *Jahrb. d. Gefaengniskunde* 10, p. 312.

of a prison guard.¹⁵⁷ Later a regular teacher was employed from outside.¹⁵⁸ In the beginning, each class had 6 hours weekly (4 on weekdays, 2 on Sunday); later it was increased to 9 hours (probably 6 on weekdays, while 3 hours were held on Sunday¹⁵⁹).

Thus gradually the prison school became well established¹⁶⁰ by simple means; in spite of its limited facilities,¹⁶¹ it served its purposes very well. Soon Obermaier was able to report salutary results; the pupils were desirous of knowledge and there was a good spirit of emulation.¹⁶² These results in Munich were quite in harmony with those obtained in Kaiserslautern, where a difficult problem had been solved by the providing of school instruction.¹⁶³ Apparently the school—besides its official aims—helped to establish that relation of confidence between prisoners and prison administration for which Obermaier was famous; moreover it worked as a stimulus to mental activity and relieved the prisoners more or less from the deadly monotony of prison routine; this, again, solved disciplinary problems by providing natural outlets.

The prisoners' library¹⁶⁴ supplied school books; for the rest it served the prisoners' recreation. Books were distributed on Sundays and holidays according to the prisoners' individual needs under the direction of the clergyman. *Townshend*¹⁶⁵ stated that the use of the library for recreational reading was made a privilege awarded

¹⁵⁷ *Ibid.* and prison rules, p. 101.

¹⁵⁸ *Hill*, p. 568 (Letter from Munich Prison).

¹⁵⁹ *Jahrb. d. G.* 10, 312; prison rules, p. 100. According to the rules 3 hours weekly should be taken for religious instruction, 6 for elementary subjects. Obermaier considered 9 to 10 hours of school instruction as the necessary minimum, but more than that was probably impossible with the long work hours which were required.

¹⁶⁰ *Townshend's* statement—*Zoist* 13, p. 426—that there was no school in the prison, is a mistake. See the 6 previous footnotes.

¹⁶¹ *Varentrapp* stated that there was more instruction provided in Pentonville, etc.; compare the description of the prison in Bruchsal; *Jahrb. d. Gefaengniskunde* 10, p. 313, note 19, pp. 340ff.

In the prison of Moabit under *Wichern* the instruction included drawing and singing; *Wichern*, l.c., pp. 196, 213, 215.

¹⁶² *Jahrb. d. Gefaengniskunde* 10, pp. 312, 317, 319.

¹⁶³ *Poenitentiarsysteme*, pp. 25-27; *Anleitung*, p. 118. The women prisoners in Kaiserslautern had been unmanageable; their conduct became excellent after Obermaier had arranged school instruction for them.

According to the Bavarian prison statistics, l.c., Kaiserslautern was the first prison in Bavaria which provided a regular school for adult criminals. In the yearly average from 1833/4 to 1847/8, based on those statistics, 36.27% of all prisoners in Kaiserslautern attended school.

Instruction was introduced into other Bavarian state prisons: Lichtenau 1835, Schwabach 1837, Speyer 1839, St. Georgen 1846.

¹⁶⁴ Munich prison rules, l.c., pp. 105, 151; *Obermaier*, *Jahrb. d. G.* 10, pp. 312ff. *Anleitung*, p. 117.

¹⁶⁵ *Zoist* 13, p. 427.

for good conduct and that Obermaier maintained that rule in order to make reading more attractive. The following is a description of what *Townshend* saw on his visit:¹⁶⁶

" . . . the prisoners' library, by no means an uncheerful room either. Being in the center nearly, and looking into a court, it had not the obligatory bars and wooden vents or boxes (like hencoops turned topsy-turvy), that made you feel you were in a prison, when you were in the apartments looking upon the street. So knowledge was made attractive every way. A few mild-looking prisoners, chiefly invalids I was told, were reading in this book-room as intently and silently as the studious in the British Museum. I looked at some of the books. They consisted chiefly of popularly instructive books. Sketches of astronomy or geography, history, travels, and the like. Not one mystically religious book did I see among the well-chosen collection. A few straight forward moral treatises or tales, inculcating love to God and man, that was all; and this in a Catholic country, too! But Bavaria has many Protestant subjects, and, at the time I speak of, had a Protestant queen."

The description of the books conforms well to Obermaier's general principles.¹⁶⁷

The prisoners' days were thus divided between much work, some instruction and a little recreation. The usual daily hour in the open air (courtyard) was provided;¹⁶⁸ the prisoners could talk to one another outside of work hours;¹⁶⁹ games, singing, improper or too loud talking were strictly forbidden.¹⁷⁰ Sundays were devoted to church service, a few hours of school and reading individually or reading aloud in groups.¹⁷¹

XI—Release and Supervision After Release.

The release of prisoners sentenced to indefinite terms, and the earlier release of those having fixed terms on account of their good conduct, were widely practiced. In Munich as well as in other Bavarian prisons east of the Rhine¹⁷² the great majority of prisoners were released in this way, only a few had to serve their full terms.¹⁷³ Under the government rules,¹⁷⁴ the state prisons had to keep ac-

¹⁶⁶ Zoist 13, p. 429; Hill, p. 551.

¹⁶⁷ *Anleitung*, p. 117, and see above note 153.

¹⁶⁸ Prison rules, par. 151.

¹⁶⁹ Prison rules, par. 164, 166, and see above notes 136, 137.

¹⁷⁰ Prison rules, par. 157, 158, 166.

¹⁷¹ Prison rules, par. 151.

¹⁷² This means the prisons of Bavaria except the Bavarian Pfalz, to which Kaiserslautern belonged. The Pfalz was governed by French law; there was no shortening of imprisonment.

¹⁷³ Bavarian prison statistics for 1833/4-1847/8, 1.c.

¹⁷⁴ Decrees of 1814, 1815, 1817, 1819, 1829, 1849; *Doellinger*, vol. 13, pp. 447-452; vol. 29, pp. 168-171.

count of all prisoners and had to hand their opinions to the pardoning authorities on every prisoner shortly before the completion of his minimum term; the prison warden had either to apply for a pardon and state his reasons or give his reasons why he did not recommend the prisoner. This practice naturally became more useful under Obermaier, who fitted it into a regime which aimed solely at the reformation of prisoners. He could recommend those prisoners for release who could be considered as ready for freedom, while his predecessors did not have an adequate basis for judgment, and therefore had to rely on mere outward appearances.

Another advantageous practice was the official supervision and care of released prisoners in Bavaria. Since 1805 those released from penal servitude were under police supervision;¹⁷⁵ the code of 1813 added those released from the workhouse punishment or minor imprisonment in cases where the prisoner, by his mode of life, or by his character or conduct, had created the impression of being especially dangerous to society.¹⁷⁶ The parish in whose district a prisoner had his home had to care for his maintenance and employment, and was notified of his release six weeks in advance.¹⁷⁷ In 1837 Obermaier suggested the establishment of prisoners' aid societies, partly after the model of those which had been organized a few years before in other parts of Germany.¹⁷⁸ In 1842 such a society was founded in the Bavarian Pfalz and after 1844 in each province of Bavaria one was founded.¹⁷⁹ The government actively sponsored these organizations and published model statutes for them. These societies enlisted volunteer work of the community to supervise and care for the released prisoners morally and economically, provide work for them and protect their families, and particularly their children, against social and economic ostracism. They cooperated with police and parishes as well as among themselves.

¹⁷⁵ *Doellinger*, vol. 13, pp. 280-285.

¹⁷⁶ Part 2, art. 401, of the penal code, whose content is stated at *Hill*, p. 569 (Letter from Munich Prison).

¹⁷⁷ *Hill*, p. 569; *Doellinger*, vol. 29, pp. 173, 179-181. Railroad transportation to the home town was provided in 1853 when railroads had been established.

¹⁷⁸ *Poenitentiarsysteme*, pp. 30-32. See above p. 16.

¹⁷⁹ Decree of 1844, *Doellinger-v. Strauss*, vol. 29, pp. 173-178; Letter from Munich Prison, *Hill*, pp. 570-571. The duties of police and parishes remained the same but were supplemented by the work of those societies. According to the Letter, i.e., the establishment of asylums for prisoners not fully reformed or unable to find employment and a home was considered in 1856. Such an asylum was later established in Munich; see *Holtzendorff-Jagemann, Handbuch des Gefaengniswesens*, vol. 2, p. 361, note 7.

XII—Obermaier's Reformatory Successes.

Obermaier claimed a high number of reformatory successes. His statistics were compiled in the following way:¹⁸⁰ Every year he ascertained the whereabouts and the conduct of those prisoners whom he had released one year before and, during a few years, of those released two years before, by inquiring on every case to those local authorities who were in charge of police supervision and had also to care for the employment of released prisoners. The answers were classified into cases of good conduct, cases of relapse into crime, cases concerning released prisoners of dubious conduct (who did not work industriously, came home late at night or drank but were not known to the police to have committed a new offense) and cases of those who died, emigrated or could not be located. A reclassification after the second year was apparently made for those prisoners released from Munich prison between 1843 and 1848,¹⁸¹ with the result that a certain part of the "dubious" cases became "good" because conduct had improved during the second year. Almost all released prisoners were definitely located. The final result for those years was that out of 985 prisoners released from 1843 to 1848 almost 800 (or about 81%) showed good conduct. The sentences of those prisoners had varied (see above p. 27) between 4 or 1 and 20 years; among the success cases there were 4 sentenced for Mord (murder in the first degree), 24 for Totschlag (killing on a sudden passion), 42 for robbery and 386 for aggravated larceny.

Hill obtained numbers for five years, 1850-1854,¹⁸² which were based on only a one-year period after release. Out of 298 prisoners, 206 (about 69%) had shown good conduct, 48 (about 16%) were

¹⁸⁰ Obermaier, *Anleitung*, pp. 127 ff.; *Jahrb. d. Gefängniskunde*, vol. 10, pp. 304-3-5; Hill, 549-550 (quoted from Obermaier), p. 566 (Letter from Munich Prison).

¹⁸¹ Obermaier described in his letter to Varrentrapp, *Jahrb. d. Gefängniskunde* 10, 305, how he reclassified the cases from 1843 to 1844. In the same place he gave the numbers for the next year which had not been reclassified yet. A comparison with Hill, pp. 549-550 (quoted from a paper of Obermaier published one year after his letter to Varrentrapp) shows that the numbers for 1844-45 have also been reclassified, although this was not expressly stated in the quotation given by Hill. (The original paper is not available.) Again, the numbers for 1843-1848 were shortly stated by F. W. von Hermann in his preface to the official prison statistics, i.e., without mentioning the length of the period of control used. But a comparison between those numbers and the others makes it highly probable that the figures for 1845-1848 were reclassified in the same way as those from 1843-1845.—Von Hermann, whose figures are quoted in the text, was a statistician and economist, professor at the University of Munich, member of the ministry of the interior and director of the statistical bureau of the Bavarian government. (*Allgemeine Deutsche Biographie*, v. 12, pp. 170 ff.)

¹⁸² Letter from Munich prison, Hill, p. 566.

doubtful, 26 (about 8.7%) had relapsed, 18 (about 6%) had died or emigrated or could not be located.

Similar numbers with still higher success rates were published about Kaiserslautern.¹⁸³

The reliability of these statistics was questioned by his critics even in Obermaier's time. It was said that information supplied by the local authorities was not sufficient, because they did not make thorough investigations;¹⁸⁴ further it was pointed out that one-year or two-year periods after the release of the prisoner were too short for a final judgment on his reformation.¹⁸⁵ The first of these objections was probably unfounded: the administrative control of released convicts in Bavaria at that time was very thoroughgoing, as described above; the way in which Obermaier obtained his information was certainly the best possible way at that time. But the second objection is legitimate. We know today that many success statistics of modern correctional institutions have been unreliable, because, among other reasons, the periods of control after the inmates' release have been too short, and that a period of five years may bring results greatly different from those obtained on the basis of one or two years.¹⁸⁶ Under the Bavarian decree of 1805 the special supervision of the police¹⁸⁷ lasted only two years if the ex-prisoner conducted himself well; afterwards a general supervision was continued, i. e., a looser form of control which still included observation of his conduct and care for his maintenance and employment; no time limit was prescribed for the activities of the prisoners' aid societies.

It seems to be impossible today to ascertain the practical value of this continued observation and care, or to know how the change from a stricter supervision to a looser one may have affected the conduct of the discharged prisoners (although the principle was certainly plausible in theory). One may draw the conclusion that Obermaier's success statistics had a limited significance. They show

¹⁸³ Hill, p. 549-550; *Anleitung*, pp. 127 ff.; *Poenitentiarsysteme*, p. 23: 132 prisoners were released between 1830 and 1836 after having served between 5 and 20 years; 123 of them were said to have been reformed, the proportion remaining nearly the same until 1842.

¹⁸⁴ Varrentrapp, *Jahrb. d. Gefaengniskunde*, vol. 10, p. 305, note 14.

¹⁸⁵ Dietz, *Jahrb. d. Gefaengniskunde* 10, p. 354; Dietz, director of the prison in Bruchsal, believed that a period of three to five years after release should be used in order to obtain reliable figures.

¹⁸⁶ Glueck and Glueck, *Five Hundred Criminal Careers*, 1930, pp. 4-7, p. 266.

¹⁸⁷ The strictest form of supervision; a person subjected to it could not change his residence without special permission, etc. The leaders of the village or two other members of the parish were made personally responsible for his behavior, his economical progress and his not leaving the parish.

that the great majority of his "penitents" conducted themselves well for one or two years after they had been released, and this refers not only to the absence of criminality but also to industry and the outward appearance of an orderly life. The accumulation of these symptoms may indicate a lasting success in many or most cases. We have no means for ascertaining the final result. Still there are other facts which may be adduced as corroborative evidence. The terms of imprisonment pronounced by the courts were rather long; they made it possible to give most of the prisoners a vocational training and to obtain some influence on their general habits of life. Obermaier's ingenious approach to win the cooperation of his prisoners, his skillful use of encouraging devices, his wise judgment on what was really important for the penitent's future outside life as well as, on the whole, his tactful realism and his extraordinary talent for human education—all were factors probably making for success. It is, therefore, not unreasonable to assume that Obermaier's successes were real ones. Nor would this assumption be disproved by a temporary failure of the inmate superintendent system; this indicated only a disciplinary difficulty which may have concerned very few of the prisoners. An unsatisfactory health condition, as indicated by high mortality figures, could form an unfavorable factor directly concerning the reformatory success; but this would have been compensated by much stronger favorable factors.

XIII—Reasons Why Obermaier Was Defeated in Germany. *Conclusions.*

The opposition against Obermaier in Germany had its deeper roots in the doctrine and thinking of that time. Unfortunately his prison regime, as well as the law on which it was based, were objects of a clash of principles in penology and in legal philosophy. The penologists who opposed Obermaier, such as *Mittermaier*, *Varrentrapp*, *Dietz* and others, more or less believed in systems of solitary confinement. By criticizing Obermaier's regime they tried to prove the superiority of these systems and to disprove the possibility of a prison discipline based on "intercommunion" of prisoners. Their views prevailed in Germany; in 1846 they were adopted almost unanimously by the prison congress at Frankfurt am Main.¹⁸⁸ Nevertheless, the principle of intercommunion was the better one, as was recognized in England and the United States; afterwards, in the 20th century, German penologists adopted it too. Another hindrance to Obermaier's success in Germany was the fact that he did

¹⁸⁸ *Verhandlungen*, pp. 112, 171, 214, 271 ff.

not organize his ideas into a teachable system; consequently most penologists said that his reformatory success was due solely to his unusual personality, implying that nobody else could imitate him. *F. W. v. Hermann* defended Obermaier's case:¹⁸⁹ The adversaries, he said, tried to mechanize human behavior and its guidance into narrow rules and systems; they reminded *von Hermann* of rationalistic school systems which expected everything from certain arrangements and methods of instruction; in reality the personal approach of the educator and his regard for the individual was more important in school as well as in prison. This was a good defense, but it is true that Obermaier could not gain much ground outside of Bavaria, as long as his practice was not brought into a teachable form. The accounts given by English visitors, such as *Townshend*, *Baillie-Cochrane* and *Combe*, and endorsed by *Matthew Davenport Hill*, *Herbert Spencer* and others, add psychological interpretation; in this way the whole was made more understandable to English and American readers. This fact may partly explain why Obermaier found more adherence in England and America than in Germany.

The antagonism from the side of legal philosophy in Germany was still more severe than that from the penological side; it definitely dominated public opinion while among penologists Obermaier still had a few friends. As shown above, the prevailing doctrine was that of retributive punishment fixed by law in advance; the individual should not be delivered to an arbitrary power of justice. The few indeterminate sentence laws existing in Germany were (not without reason) considered as remainders from the time of benevolent despotism and as a matter of course they were abolished about the middle of the 19th century.¹⁹⁰ Naturally the Bavarian law went the same way. The abolition of indeterminate sentences and of the shortening on account of good conduct in 1861 was a fatal blow to the regime of Obermaier, worse than the prohibition of inmate superintendents and the tentative introduction of solitary confinement.

For all these reasons Obermaier's regime was abandoned in Munich after he had resigned in 1862. To a certain degree his influence lasted in Bavaria, particularly in the field of prison labor, school instruction, prison libraries and the diet of prisoners.¹⁹¹

¹⁸⁹ Preface to the Bavarian prison statistics, l.c. He quoted *Maconochie* as an authority against solitary confinement.

¹⁹⁰ See *Freudenthal* and *von Liszt*, quoted above note 17.

¹⁹¹ *Blaetter fuer Gefaengniskunde*, vol. 24, p. 413.—Corporal punishment was abolished in Bavaria and several other German states; it was still permitted in Prussia.

Meanwhile achievements of this kind had become more common in Germany. But the reformatory spirit, the skillful approach to gain the will of the convict, the educational atmosphere, the more delicate psychological methods which gave real life to Obermaier's regime, were not recognized nor imitated.

On the whole, Obermaier was soon forgotten, so completely in Germany that even his necrology was not published until four years after his death.¹⁹² Only after American reformatories¹⁹³ became known and the idea of indeterminate sentence laws reappeared in Germany under the influence of *von Liszt*, *Freudenthal* and others, was Obermaier remembered. *Herr*, *Freudenthal*, *Kriegsmann*, and other writers mentioned Obermaier in this connection.¹⁹⁴ Since the world war the interest in Obermaier was revived by *Stammer*, *Gruenhut*, *Liepmann*, *Aschaffenburg*, and others.¹⁹⁵

From this study one may secure a glimpse of the wide variety of penal practices and ideas which existed under the European criminal codes of the 19th century. Such examples as the Bavarian code of 1813 and the correctional experiment made under that code show how early the roots of modern institutions, such as reformatories, indeterminate sentences and the shortening of prison terms by good behavior, may be found. It should be noted how much such correctional experiments depended upon current trends in legal and social philosophy and psychological doctrine.

Public opinion has been a great stimulus to prison reform as well as a great hindrance. Obermaier's fate was typical in this respect. He became popular and obtained the support of his government by giving visible proof of his practical success. He lost popularity and support on account of accidents which were taken for visible proof of his failure. His German contemporaries did not realize that such accidents could happen everywhere and were due to inherent difficulties which every prison regime has to meet; nor did they recognize the ingenious methods by which he had conquered such difficulties for many years. Lastly, this shows that in the field of correctional treatment successful work can be done only

¹⁹² *Blaetter fuer Gefaengniskunde*, vol. 24, p. 410, footnote.

¹⁹³ See *E. C. Wines, Punishment and Reformation*, 1895 and 1910, pp. 193, 195; revised ed. by *W. D. Lane*, 1919, pp. 200, 202, on the influence of Obermaier's prison regime on the creation of American reformatories.

¹⁹⁴ *Herr, Das moderne amerikanische Besserungssystem*, 1907, pp. 49-50; *Freudenthal*, l.c., pp. 250, 252; *Kriegsmann, Einfuehrung in die Gefaengniskunde*, 1912, pp. 62, 294.

¹⁹⁵ *Stammer, Monatsschrift fuer Kriminalpsychologie und Strafrechtsreform*, vol. 11, 34 ff. *Gruenhut*, l.c., p. 220. *Liepmann, Zeitschrift fuer die gesamte Strafrechtswissenschaft*, vol. 48, p. 536; (the new edition of Obermaier's "Anleitung" with preface by *Liepmann* is not available). *Aschaffenburg, Psychiatrie und Strafrecht* (Koelner Universitaetsreden, 19, 1928) p. 28.

if public opinion and state governments are educated to the degree of appreciating the practical problems and difficulties of such work and not merely looking to the outward appearance of success and failure.

REFERENCES

The following sources of information have been most important for the purposes of this study:

1. Obermaier's writings.

- a) *Anleitung zur vollkommenen Besserung der Verbrecher in den Strafanstalten*. Kaiserslautern, 1835. Cited as "Anleitung."
- b) *Die amerikanischen Poenitentiarsysteme in Vergleichung mit der im Centralgefängnisse zu Kaiserslautern eingeführten Besserungsweise, und ihre gegenseitigen Folgen*. Kaiserslautern, 1837. Cited as "Poenitentiarsysteme."
- c) Obermaier's letter to Varrentrapp, published in "Jahrbuecher der Gefaengniskunde und Besserungsanstalten," vol. 10, pp. 295-323.
- d) The following was not available: *Die Verhandlungen ueber Gefaengnisreform in Frankfurt a.M. v.J. 1846 oder die Einzelhaft mit ihren Folgen*.—1848.

Certain quotations in English translation, found in M. D. Hill, *Repression of Crime*, etc., are quoted in the text.

An unfavorable review of the paper by Kleinfeller in his bibliography "Die bayerische Literatur ueber den Vollzug der Freiheitsstrafe," Muenchen, 1886, p. 25.

2. Description and criticism by his contemporaries.

A. Favorable.

In English:

Matthew Davenport Hill, *Suggestions for the Repression of Crime*, contained in *Charges Delivered to Grand Juries of Birmingham*, etc. London, 1857. Particularly pp. 544-585. Rev. Chauncy Hare Townshend, *A Visit to the Great Prison at Munich*, *The Zoist*, vol. 13 (1856), pp. 419-440.

In German:

Various writings of von Hermann, Ristelhueber, Arnold, Suringer and others quoted in footnotes.

B. Unfavorable.

Writings of Mittermaier, Welcker, Varrentrapp, Dietz, Triest and others, quoted in footnotes.

3. Collection of Bavarian government decrees:

Doellinger, *Sammlung der im Gebiete der inneren Staats-Verwaltung des Koenigreiches Bayern bestehenden Verordnungen*, vol. 13 (1839); vol. 29, by von Strauss (1853).

Cited as Doellinger and Doellinger-v. Strauss.

4. Bavarian Prison Statistics for the Years 1833-1848: *Beitraege zur Statistik des Koenigreiches Bayern*, vol. 4, 1855, with preface by von Hermann.

Quotations from German sources have been translated by the writer, unless otherwise indicated.