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# THE PROBLEM OF PUNISHMENT IN GERMANY<sup>1</sup>

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In punishment lies a copious yet evasive problem. This is immediately apparent to the layman, who concerns himself no further with such problems. Few things in our current literature are so lively discussed, so adversely criticized as the development of our punitive methods in the last ten years. What appears to one to be black, another paints in the most vivid colors. One must go into the field of "Weltanschauung," or into the arena of political strife to encounter as vehement a partisanship. A partisanship which is effectively seen in Parliament and in the daily press.

Thus it goes, aside from all attempts at publicity, into the very heart of professional literature. We hear of fears, complaints, reproaches on all sides. The administration of justice is undergoing a rapid osteomalasia. Criminality is triumphing along the whole line—nowhere is one as well off as in prison—the penitentiaries are clean sanitariums. The prisoners are provided with concerts and lectures; they have plenty to eat; they amuse themselves the whole time with radio, music, or with sport and play. The layman, who reads such criticisms and then sees the photographs which appear periodically in the illustrated weekly publications—photographs perhaps, of the hygienic conditions of our institutions, their schools and social halls, their athletic organizations, is prone to believe that the old saying of Hutten is still true for the penitentiary. "It is a joy to live."

On the other hand—Gumbel, the well-known social statistician of Heidelberg, has lately published a penetrating statistical probe of the German prisons in a series of essays in "Justice."<sup>3</sup> He closes his observations with the following words, "The prevalent belief in the existence of a modern punishment is impossible when the statistics of punishment are known. Even the most radical critics of penology do not approach the real state of affairs. The future of punishment of the present will be what the Carolina<sup>4</sup> is for us today—a barbarism."

<sup>1</sup>Special Considerations of Graded Punishment Under the Prussian Penal Code of June 7, 1929. Translated from the German by Joseph A. Grade, Member of the Chicago Bar.

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<sup>3</sup>Die Justiz, Bd. I s, 69off; 738ff; Bd. VI 521ff.

<sup>4</sup>The Carolina is the criminal code of Emperor Carl V (1533).

I believe the acuteness and passionateness of this dispute is really involved with the fact that, fundamentally, the contrasts, in the "Weltanschauung," in the political thought, of ancient and modern times, revolved around value and authority. Formed to the accompanying music of the political struggle, the picture, that is painted in the mind of reader and critic, burdened with preconceived prejudices and clouded throughout with "ressentiments," becomes more unfortunate. I obeyed the invitation of the publishers of this JOURNAL, to impart to the American reader, something of the spirited workshop of German penal methods, how practitioners have shaped it, how far, in a conscious sober judgment of the thing, it is from Utopia, what defects our Punishment has, and what potentialities it conceals, and then, finally, establish its limits.

When one talks about the meaning of punishment one establishes, in advance, a quite definite position to the question—what end, in a general way, does punishment pursue? I am able to formulate my own position to this question as follows: Punishment involves this problem, to protect society from its asocial and anti-social members; to remove their danger from society. This is possible in two ways; that the member be isolated from society; or, that the member be adapted to that society. With many asocials, our skill is exhausted in isolation; with the majority it pays us to attempt their adaptation, or, as one would say, their education.

I do not adhere to the idea of requital and of expiation that the classical school of criminal law stands for, wherever it speaks of legal obedience—still less, to so-called ideas of fear.

General prevention, in spite of all frequent contrary evidence, is constantly overemphasized, not only in lay circles but also in writings and practice.

I am convinced that these ideas belong to an intellectual era that is approaching its close, and that the present conception of punishment is undergoing a change in meaning that is being irresistibly accomplished, despite all disagreement and resistance—from a standard, namely, of measured requited justice to a standard, which, when stripped of all "ressentiments" against act and actor, will serve the social welfare; which will eliminate the deficiencies in the personalities of the actors who will strive against their classification in the societal organism, and, when it is not impossible, will make him harmless during his permanent exclusion from society. Criminal politics is seen as a species of social politics; criminal law, as a species of protective law, will be a subdivision in the welfare statutes of the future. Or

as Bensch in his great speech at the Prague Congress in August, 1930, stated: Criminology as a Science—a species of sociology.

The sources of all speculations concerning punishment in Germany are those generally accepted ideas about the methods of imprisonment in the German states since June 7, 1923.<sup>5</sup> In section 48 the following aim of punishment is set out:

“Through imprisonment the prisoners should, as far as necessary, become accustomed to order and work, and become so fixedly moral as to never again relapse.”

Exactly the same sentiment is found in the penal code (sec. 64) under the heading, “Purpose of Imprisonment.”

And the latest of all codifications of penal methods, the Prussian enactment concerning graded punishment of June 7, 1929,<sup>6</sup> says in paragraph 1, sec. 3, still more accurately and clearly:

“The end of graded punishment is the education of the prisoner to a lawful and orderly life.”

All this brings the expert nothing new. He, who knows the history of punishment, knows that the idea of the education of the criminal to a steady, respected man, is such an idea to which, speaking generally, imprisonment, in its present form, owes its origin. The first institution in which imprisonment, as a method of punishment, has been tried out for a good three hundred years, still bears the designation “Tuchthuis” “Zuchthaus” “Erziehungshaus.” It has been a long and thorny path from the statute that established the Amsterdam House of Correction in the year 1595 and the poignant saying that stands over the entrance of the penal institution of Valencia in Spain. “Prison seizes the man, the criminal it leaves before the gate.”

Today, when we speak of education in punishment as a modern problem, it is not alone the idea of education as such, but also the form, the method, the system with the help of which we are attempting to realize this idea. We believe that we have placed this education on a new, fertile basis. And what is perhaps more significant, and coming closest to the spirit which guides us here, we have revealed the boundaries which systematic education as such has established.

We have indeed acquired the philosopher’s stone when system can accomplish the happiness that education has always offered.

<sup>5</sup>R. G. Bl. Teil II S. 263ff.

<sup>6</sup>The text of the code, which has been translated into English by Cl. M. Liepman can be obtained from the “Strafgefängnis Berlin-Tegel” for 0.80 RM.

When the great English prison reform, at the end of the 18th century began, the expression of its famous leader, Howard, was urged, "Make men diligent and they will be honest." Having forced the prisoner to exhaustive and harder work, one was, then, very surprised to still find the opposition of exasperated enemies of society.

In the 19th century solitary confinement was the universal remedy. Thousands of cells were built, in which the prisoners were isolated from the outer world and friends until sterility. It was believed by this to check all evil and prepare the way for all good influences; especially, those influences, one would imagine, the officials themselves exerted—but, still, stupid, shattered, weak men came out.

And today, methods of graded punishment and self government are deprecated. Has the situation, therefore, become any better?

A proper nucleus is found in the working idea of Howard, as well as in the Pennsylvania discovery of solitary confinement. But a belief that the spirit can be pressed into a mould fails its purpose. In the modern idea of graded punishment, also an American discovery, and in the system of self-government, lies great promise. But these, too, will change to naught should they fail to loosen themselves from schematic and mechanical application. Punishment never was and never will be a technical problem, but it always was, and still remains, a psychological problem; not a problem that can be mastered with schematic structures and prison systems, but a problem that can be solved only through personal attention, and in the direct and constant influence of man to man.

I hope that, after these reservations, I am not misunderstood, when I presently unfold the system with the help of which we hope to come nearer the educational and social limits in punishment which we have placed before us.

"Educate to a lawful and orderly life," so says the Prussian Penal Code.

We have involved here three problems, namely, the question as to the proper limit of education; as to the proper method of education; and as to the practicability of the limit and method of education on the object of our work, i. e., the prisoners.

The simplest of these three problems is that concerning the limits of education. This conception has changed manifoldly with the passage of time. This change can be characterized shortest, perhaps in three common phrases. The Good Christian; the Good Man; the Good Citizen. Today many penal institutions are called "Penitentiaries." The largest prison in Oslo is called "Bootsfensplit." To the

name clings the idea of the first reform period of the 18th century—to bring the man to his penance, to his religious revival, to his reconciliation with his God. Then in the 19th century, one spoke with preference about the “betterment” through punishment. It is the century of societies and associations “for the betterment of convicts” and, even as late as 1924, Hamburg passed a criminal code which entrusts to its institution the problem of so influencing the prisoner that he is a better man after his discharge, than he was before his imprisonment. Fundamentally, we are modest. We believe, accordingly, that we are as unable, by the means of an authoritative apparatus, to influence and fathom the depths of a human soul, just as we are unable to ask for the limits of religion and ethics. And we believe, in addition, that we are not even justified to demand this change from the man—the prisoner—in the frame of a governmental function. The religious position of a man is as much his private affair as his moral tendency. Therefore, what the State should demand from all its citizens is not more restraint, a restraint that the political community respects, but, as I have set out—a lawful and orderly life and the motive which brings the individual to this point lies without the political ken. We may soon find that the individual will act from his inner convictions in the way the law demands. But we are satisfied, when he guards himself from violating the law through self examination, calculation or fear. Brought to an impressive Formula, we have the central point of the morality of his restraint placed on its legality. Therein, we see, in a general way the final aim of punishment and the improvement of the prisoner during his imprisonment.

Naturally, one must not be drawn to the false conclusion that we must renounce the moral force and value in our punishment. Were this the case, we would not be able to speak of education, let alone training. We know very well that clean, pointed deliberations, considerations or even fear are weak and chalky pillars, when the psychological equilibrium of a man is shocked. We know that the correct citizen's attitude is certainly guaranteed, when it grows from the pure conviction, the conscious duty, the conscience of a man. We therefore view our penal institution in the light of these thoughts. But this has nothing to do with the established end for, it involves method. And of this we have still to speak.

Between end and method stands man, for whom these have value. Or speaking concretely, the question is raised, how far have we to do

in respect to our prisoners, with practical objects for our purposes? To that extent are they capable of education.

It is difficult at this point to answer ever so correctly. The answer can be given only in connection with end and method, in dependence on these, corresponding with these, and growing out of the fact that imprisonment is the transplanting of a man.

Once the idea of temperate education is seen, the prisoner is no longer the conception of a peculiar type—a criminal or delinquent. There is conceived asocial stubborn men, men that come to prisons with their asociality both inside and outside the confines of the Penal Code; according to the goal in life they pursue. They are, in their makeup, in no way different from those that we meet everywhere outside the prisons; with whom we have to do daily; yes, that we ourselves are; and we recognize that at the bottom of it all, educational influences are so multitudinous and less accessible to them than to us. The important question is—for what can they be trained? How can they be adjusted?

The thesis of the educativeness of our prisoners means, basically, nothing more than this capacity of adjustment, which characterizes man, as long as he is in possession of his intellectual and physical powers. It does not presume to solve the difficult problems, as to what extent the character of a developing man (which is a question with the majority of our prisoners) is still capable of adjustment, of alteration, after he has passed a definite age limit.

The second commonly accepted conclusion is this; definite limits are established for us in these various ends of adjustment. We are shown, that the men, whom we may be able to bring to desired position in society have themselves the Will to do so. This Will, however, usually lies dormant. How we can awaken this Will is, again, a question of the right method. But without this Will nothing can be done. Because of this, our efforts, with those who do not have it, necessarily fail. Translated into the terms of punishment, the prospect of accomplishing our end is small or null with all mentally oppressed delinquents; with prisoners burdened by oppressive constitutional deficiencies. Speaking less accurately, or medically, with the "oppressed psychopathic." And hope is also small with that group of prisoners one is accustomed to designate as professional and habitual criminals. With regard to both groups our criminal justice and our punishment have equally failed. We need for the psychopaths an asylum, for the professional and habitual criminal indeterminate prison terms, life if necessary. And now a third statement of more general character,

itself a truism: Education takes time. The deeper a man has fallen into asocial habits, the more time it takes to educate him. For that reason the effort to educate the prisoner will always fail, when his term is so short that the process of assimilation has barely started, let alone completed. In our entire criminal law there is hardly one feature which is so asocial, so uneconomical, so inhuman as the flood of short prison terms with which the courts inundate our penal institutions.

These limitations for our educational work in punishment must be emphasized. Only within these limitations can we expect to accomplish something; only within these limitations can we be held responsible for failures and only within these limitations those statements are justified which we are about to make about the third great problem we are trying to solve; I am referring to the method of education, above all graded punishment.

Whoever wants to educate a person, or, what is the most essential factor, influence him in a certain direction, must clearly realize two things: The personality of the individual whom he shall educate and the effects of the surroundings within which he shall educate him. Applied to punishment this means: Before we start to educate a prisoner we must have as complete a conception of his personality as possible, of all his physical, mental and psychic superior and inferior qualities, his development and his being, his way of reaction. And second we must be well informed as to the more or less well defined reaction taking place in that person by his surroundings, in this case, by the fact that he is deprived of his freedom, that he is a prisoner.

About the second feature, the fact of being imprisoned, a few preliminary remarks.<sup>7</sup>

To do it justice one has to start from a very simple basis, the fact that man is by nature a social being.

The fact of being imprisoned is violating the most primal feeling of a human being, and for that reason the reaction to this situation is bound to be just as primal and violent. All living animals have acquired or adopted in the course of their development certain means of protection, without which they would not be able to hold their own in the struggle for life. The turtle has its armour plate, the skunk its gland, the beasts of prey have their teeth, the running an-

<sup>7</sup>See also: Herbertz, *Das Seelenleben des Strafgefangenen*, Schweizerische Zeitschrift fuer Strafrecht, 44. Jahrgang Seite 36ff.

Von Hentig, *Zur Psychologie des Gefangenen*, ebenda, page 452ff. Siewerts, *Die Wirkung der Freiheitsstrafe und Untersuchungshaft auf die Psyche der Gefangenen*, Mannheim, Berlin, Leipzig 1929.



imals their speed, the insects their fecundity. A specific kind of adjustment of the species to living conditions is the gregarious instinct. The weak individuals are forming a multitude of parts and by acting collectively manage to survive in the struggle for life. This forming of a clan and, afterwards of a tribe, is the specific form of protection used by man.

The more necessary a certain function is for the survival of a living being the stronger is its instinct of functioning. This means for the human being, his natural instinct to be together and work together with other human beings. That explains why every man strongly resists every attempt to separate him from the herd. That also explains a strong, fundamental, hostile reaction to the fact of being imprisoned. I stated above that for the success of our educational work we depend on the good will of the prisoner. That alone explains why the forced isolation which offends very severely the instinct of self preservation, is a serious obstacle in the way to the will of the prisoner.

The same applies to the motive instinct which we shackle and the sexual instinct which we prevent from functioning. Prevented function, hostile reaction and serious obstacles in the way to the prisoner's will must result in disgust on the prisoner's part.

These prison reactions result directly from the prevented function, that is from strained psychic condition of the prisoner. They affect the prisoner indirectly through the physical atmosphere, since the unnatural situation disturbs the functional balance of the body and thus depresses the spirits of the prisoner.

This effect has to be considered all the more, the stronger the prison paralyzes the prisoner's senses, and affects his organs. For our entire mental life is based on impressions which we receive with our senses. If the balance of the organic function is disturbed, there is also a disturbance of the mental balance. And if we force the prisoner's mental development into a wrong channel, we necessarily affect unfavorably his entire social function.

All this creates an artificial atmosphere in prison. The lack of direct impressions deprives the prisoner of things which we need in order to keep the proper viewpoint towards events. It causes him to overemphasize the importance of the events of his prison life; causes him to gossip and to grumble; makes him irritable and nervous; depresses him—and all that is like a barricade to the Will of the prisoner.

If the prisoner is isolated for a longer period, the entire complex of his thoughts becomes unreal. He develops into a day dreamer, his imagination becomes exuberant. Desires gain control of his thinking and feeling. He has no worries. Eating, drinking, sleeping, a room, clothing, rest and work, everything comes to him automatically. He never has to make a decision. The prison rules take care of everything, think of everything, think for him. And where there is a deficiency, it is filled by the order of an official. The prisoner lives in a completely automatic state, regulated by orders. Rules and regulations become his conception of life.<sup>8</sup> Self-sacrifice, self-deception and shadow living<sup>9</sup> are the results of this mental and physical desolation. The extent of these results becomes apparent when the prisoner leaves the institution and steps out into a new state of freedom which overwhelms him and cruelly destroys his illusions.

For that reason we are trying to end the mental isolation of the prisoner. Unless we eliminate, or at least, neutralize its noxious effects, we shall fail to find the necessary cooperation for the constructive work in punishment. It is because of these noxious effects that we no longer approve of solitary confinement for any length of time. For that reason we are trying to make the prisoner more susceptible to impressions, to give him an opportunity for physical exercise. In our institutions we have lessons, lectures, gymnastics and sports; we cultivate music; we show them motion pictures and let them hear the radio. These are the things which are held against us, which are called luxuries and the diluting of criminal law. The public is under an entirely false impression about our work, due to the warped reports in our illustrated press. It is not a fact that the daily routine in these institutions consists of singing and music, listening to the radio, looking at the movies and producing amateur theatricals, while, occasionally, a little actual work is done. All these methods of recreation and mental impulsion are within such narrow limits, that; for no other reason, than lack of funds, there is not enough done in this direction, rather than too much.

One must be familiar with the prison atmosphere. One must know how the very loss of freedom restricts the personality; one must realize that the prisoner is never his own master; he can never go where he wants to go; he never can stay where *he* wants to stay; that there is always somebody who gives him orders. One must have read it in letters and memoirs; one must have seen and felt how

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<sup>8</sup>Herbertz a . a . 0.

<sup>9</sup>See Bjerre, *About the psychology of murder*, Heidelberg, 1925.

none of these so-called luxuries can take the pressure of imprisonment away from the prisoner. On the contrary, this continuous arousing and awakening of his senses makes him all the more conscious of the fact that he is imprisoned. Even if one thinks that the aim of punishment is to make the prison term as hard and pressing for the prisoner as possible, in order to reform him by that method (which by the way is a delusion) even then it remains a fact that most prisoners personally find it much more agreeable to do a number of months or years in dull indifference than to look continuously with hungry eyes upon the walls which separate them from the world of free men.

We do not pamper the prisoner by making his life more eventful; we only want to create the state of mind which is necessary to arouse the prisoner to activity. It is the preliminary condition for constructive education, which is after all the most important thing.

Of course the critics of such methods are right when they claim that luxuries in prison may have an unpedagogical effect; indeed, they will always have that effect, when they are nothing but luxuries. In this case, the same holds true as in all other cases. The methods in themselves are neither good nor bad; it is their practical application which causes success or failure.

And thus we come back to the principal question, the proper educational method.

Above I made the remark that punishment is a psychological problem which can only be solved by personal influence of man to man. This is correct, and it has been stated by hundreds before me. But it is also true that all affection and sacrifice devoted to punishment will fail, if there is nothing but affection, if knowledge and methodically trained judgment are missing.

The individual problem which every prisoner represents is imbedded in the collective problem. We have not a hundred educators, each of whom could take a prisoner by the hand and walk with him into the land of Utopia. Instead of that we have, on the one hand, a small number of officials, more or less talented and trained, and on the other hand, a great heterogeneous amorphous mass of uneducated human beings. Unfortunately there has been no classification of prisoners except for the rude and psychological separation into inmates of houses of correction and prisons. Young and old men (I omit in this case the houses of correction for juvenile delinquents) decent fellows and rascals, brutal and nice people, old veterans of crime and novices, weak minded and strong minded ones,

all these are confined in the same building, in the same work shop, in the same dormitory.

The first problem for the pedagogue is the separation of this mass, which cannot be shaped, into a number of groups which are somewhat homogeneous. More we cannot do. The individual we can only handle as member of a group, and through the medium of the group. From the technical point of view we cannot do otherwise; from a pedagogical standpoint we must not. For our educational problem is to make the prisoner capable of being inserted into a social community. We shall have more about this a bit later.

These two fundamental ideas have been adopted by the Prussian regulation of graded punishment. In its first paragraph, it provides for a separation of those prisoners who may at all be considered for graded punishment; and within this class it provides for a separation of prisoners into two classes, the ones with a bad record, and the ones with a comparatively good record.

The first group, that is, those prisoners who are not considered for graded punishment are:

- a. Prisoners of a strongly abnormal nature.
- b. Professional and habitual criminals.
- c. Short term prisoners.

By separation is meant not a label of different color at the cell door, but housing in different institutions, or in different buildings within the same institution.

All terms below nine months are too short for graded punishment. We think it impossible to exert in less than nine months lasting pedagogical influence upon a grown up person, who has started on a criminal career. All the "roomers" in our penal institutions find accommodation in institutions set aside for short term prisoners.

Graded punishment begins with the prisoner's entrance into the so-called entrance institution. In the regulation of graded punishment, provision is made for separate entrance institutions for those with a bad record and for those with a comparatively light record. It tries to separate the prisoners according to their degree of asociality. This is done with a double purpose in mind: First to foster the formation of educational communities, second to protect the novices and those under slight social aberrations from the 'demoralizing influence which is usually exerted upon them by the prisoners with a bad record; or, medically speaking, to protect them from moral . . . infection.

The entire system had to be organized on a double basis, which made four entrance institutions necessary because we still have in German criminal law the useless distinction between houses of correction and prisons. That the separation of prisoners into those with a record and those without a record is very superficial, is obvious. In receiving institution B (for those with a record) there will always be some prisoners who are morally and otherwise superior to the inmates of receiving institution A (for those without or with a light record). On the other hand, the fact that a man has no criminal record is no guarantee of his higher ethical level. But after all it is some sort of separation. In general, the average moral standard of receiving institution B will be considerably lower than that of A. Further and more effective separation will be accomplished by promotion to the second and third grade.

The selective principle in punishment is based on the proper investigation into the prisoner's personality. This is a matter of greatest importance which, in German punishment today, is unfortunately not sufficiently attended to. One would like to depend on the judgment of the warden and his officials in regard to human nature and on the impression the prisoner makes; on his conduct in the institution, and have him classified according to these observations. But even if the officials of our penal institutions were better psychologists than they are, it would not be sufficient. The essential thing is to find out, why the prisoner, or generally speaking, why the asocial person has developed into an asocial personality; what the real causes of his crime are, and not the visible causes, or the last motive; to find out where in the prisoner's childhood is the crack that runs through his personality; where the shock happened, which set his development in the wrong direction. To accomplish that, it is not sufficient to make a cross section of the prisoner's personality at any time whatever, for instance, when he committed the crime or when he entered the penal institution. We need a sketch of his entire personality, a cross section of his development. The Americans express this very clearly by making a difference between static and dynamic methods. This implies the idea that it is necessary, not only to investigate the present personality and the development of a particular person, but also to follow what I would like to call his functioning—I think it is plain without further explanation how such a method will make it easier for the educator to vitalize the system, the scheme of individual treatment of the different prisoners.

The Prussian regulations about graded punishment emphasize the importance of this penetration into the personality. It does not only demand it as a matter of principle, but it also gives detailed instructions for its accomplishment. It demands that the institution makes use of all records which may contribute to the proper judgment of the prisoner's personality, for instance, the former prison records, reports of *Gerichtshilfestellen*, *Gefangenenfuersorgestellen*, *Wohlfahrtsaemtern*, juvenile courts etc. This material, as a rule rather summary and incomplete, is to be supplemented by inquiries of such authorities as may be able to give information about the physical, mental and social development of the prisoner, for instance *Wohlfahrtsaemter*, *Jugendaemter*, health authorities, hospitals and clinics, reformatories, *Gerichtshilfestellen*, *Entlassenenfuersorgestellen*, ministers and other authorities and institutions which have to deal with asocial beings. The regulations about graded punishment demand from the institutions, that they expand and deepen this social diagnosis, as it is called in welfare circles, to such an extent that they are able to obtain, if possible, a complete picture of the mental and psychic character of the prisoner, of his career and his family connections. Thus a solid basis for a social prognosis is obtained, that is, for the answer to the question, whether and to what extent the prisoner may be influenced; in what direction lie his talents, faculties and inclinations; what moral and social values are invested in him and whether they can be developed and by what means.

Very important help can be rendered by criminal biological research offices, which were established in Prussia last year after the Belgian and Bavarian example. These research offices are not immediately interested in graded punishment. It is not their real purpose (an erroneous impression which I wish to correct at this opportunity) to produce practical results of direct value; they are research offices, that is scientific institutions, as the name clearly implies. It is their task to develop scientific methods to understand the characteristics of a criminal personality, and the methods for his treatment. It is the old idea which, in principle, is to be found in Lombroso's work, to establish types, and to find certain symptoms which can be measured and described and by which it would be possible to reduce the individual case to a type. The aim is, of course, to use the knowledge of the typical for the treatment of the individual case for better diagnoses, prognosis and therapy.

In this respect, Prussia differs from Bavaria and Belgium. There we have given, in practical application, that which in my opinion is

based on unfounded optimism. We are more skeptical. I intimated already that it is wrong, in my opinion, to talk about a criminal personality. The premise is that the asocial or antisocial personality, the trend towards criminal or non-criminal activity, or in other words, the conduct against, or in compliance with, the paragraphs of the criminal law is purely of an accessory character, and that the personality is much more the result of education and environment than of character. In this I fully agree with the careful attitude of Gruhle<sup>10</sup> at the convention of the criminal biological society in Dresden. Experience will show whether our Prussian research work is not too strongly psychiatric and static, too much inductive of a purely descriptive method, to produce valuable results.

What one wishes to find are structural formulas of human characters.<sup>11</sup> One overlooks, however, that that does not furnish the key for the action in which the character structure projects itself into the external world. One cannot have this key because the action is not to a great extent dependent on the structural formula. For this action Spranger has created the well chosen designation "forms of life." That is the essential point. Forms of life, however, are neither character types nor do they reveal character types. The same character structure can adopt quite different forms of life, and behind the same form of life there can be quite different character structures. Therefore, the most important problem is: what relations, if any, exist between forms of life and character types? And if one comes to the conclusion that crime is such a form of life, that is an asocial form of life of a certain tendency, then we would have to investigate whether and to what extent this form of life is of biological or constitutional origin, or to what extent it has been created by purely external conditions.

I believe, that if we try to solve this problem successfully we must place, notwithstanding the fact that the psychiatric and anthropological-biological methods are justified to a certain extent, the emphasis upon psychological research. Of course, not in the sense of experimental psychology, or through analysis of conscious soul life, but, above all, through analysis of the unconscious soul life. Even the professional psychiatrist is no longer principally opposed to this. In this connection I think of the very fair and impartial attitude

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<sup>10</sup>See Gruhle. *Mitteilungen der Kriminalbiologischen Gesellschaft*. Vol. 2, page 15ff.

<sup>11</sup>Id.

of Mueller Hess.<sup>12</sup> From enlightenment as the effects of the unconscious soul life upon the conscious part, we progress into the realm of instincts. Here biology and psychology merge and criminal biology gets a new meaning. I believe here lies the way to successfully lift the veil with which personality is still surrounded, the way to disclose the criminal personality and to arrive at a psychological-biological type of personality which is scientifically correct.<sup>13</sup> In graded punishment we find the following tendencies: To ease the imprisonment, the physical and mental isolation; to enrich the amount of their impressions, visualizations and events and to create thereby a more favorable educational basis, an atmosphere that is, at all events, not anti-educational. Furthermore we find a tendency to separate the prisoners into small homogeneous groups according to their degree of active and passive danger (classification of prisoners to society). The third tendency is to analyse, psychologically, the individuals within these groups, to find the starting points for the educational work. And thus we arrive at the real problem of punishment: what do we mean by educating the prisoner and how do we expect to proceed?

There is an abundance, an immense literature about education of children. But there has been said and written, comparatively little, about mass pedagogy. What we know about educating grown-ups is very little, especially, the educational treatment of grown-up asocials. Only in psycho-analytical and psycho-therapeutic literature we find fragments for a future scientific system of that kind.

When the regulations for graded punishment were worked out, it was not an easy decision for the Prussian administration of justice to introduce new aims into punishment.

It is wrong to expect lasting effects from the habit of order, work and obedience. That was the somewhat primitive form of the older prison psychology. But even in a child these things which, of course, it has to learn, and which we must cultivate in prisons, this urging to a certain conduct, produces the pedagogic stimulus. The value of intelligence is also frequently overestimated. It lies, just like obedience created by habit, exclusively, at the circumference of the character. The roots of the character building forces reach much deeper. From generative relations; from childhood relations;

<sup>12</sup>Mueller-Hess and Wietbold: "Psychoanalyse und Strafrecht" in Jahreskurse fuer aertzliche Fortbildung, Verlag, L. F. Lehmann, Muenchen, September 1930.

<sup>13</sup>See Wulff: The importance of biological personality types for criminal law in "Die Polizei". Volume 1927, No. 8, page 185ff.



from all the sentimental impulses which have their source there; from these alone grows the will power in the child, the strength and devotion to the chosen aim.

This intelligence we also have to keep in mind for the pedagogic treatment of the grown-ups. Here the most essential thing, which cannot be emphasized too often, is to penetrate to the will of the prisoner. This will cannot be reached by forced conduct, nor by a conduct which must be exercised in a narrowly limited situation because there, there is no room or inducement for other sensible activity. In other words, we must try to fasten the stimuli, which we want to arouse in the prisoner, in a sphere where they become part of his personality. We must try a different method than the one offered by the couple situation (Paar Situation). Instead of the love relation which is effective between child and parents, and, to a certain extent, between educator and pupil, we must create a community relation. It seems to me that it is the essence of all pedagogic effects within and towards a group, a community, a mass, that it can grasp the individual only by means of the group. That is by appealing to the social instinct, to the community instinct. Here we must get a hold of the prisoner and make him productive. This instinctive, unreflected reaction must be protected and strengthened by promoting conscious relations within the group. It is quite different from the couple situation. We have not the relation to the educator who is above the pupil, nor the relation to an adviser, but we have the relation of the strong inspiring enthusiasm of the collective spirit, and, may be, the leader who is rising from the group. And if an outsider wants to gain influence upon this development, it can only be done if the adviser, the leader places himself in the group, identifies himself with it.<sup>14</sup>

Hence we have to study the sociological laws of community building which are most clearly visible in the rise and fall of political groups and parties (because in the passion of political struggle, personal feeling is strongly prevailing). These laws, according to which all naturally grown communities form themselves, are also effective, although in a lesser degree, in the artificial structures of prison communities. They, too, have an effect to assimilate, have a tendency to create a type. The situation of being together changes rather rapidly into a situation of depending upon another. The individuals begin to consider each other, come to an agreement with each other,

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<sup>14</sup>See Bernfeld "Strafe und Schulgemeinde in der Anstaltserziehung." Arbeiter wohlfahrt. Vol. 4, Heft 17. Page 513ff.

understand each other; common mental standards develop. There appear common aspirations. And under favorable conditions in the originally amorphous mass there grows a strong sentimental tie among the members of a community to themselves and to their common fate.

This sociological law forms the basis for the pedagogic efforts in the Prussian regulation of graded punishment. The aim is, to arouse in the prisoner a positive attitude towards state and society. The regulation tries to arouse the forces and the inclination in that direction by making the prisoner responsible to the community in which he lives, that is the institution, to which he belongs, or still narrower, the department, the group, the cell to which he has been assigned. The more he is willing and able, to perform community tasks, the more opportunity he must be given, and the more responsibility he must feel. If one wants a man to accomplish something, one must show that one expects it from him. Civic sentiment does not manifest itself in silence and obedience, but in the responsible and sympathetic participation of the citizens in public enterprises. This responsibility we are trying to arouse in the prisoners. This is the essence of educational work in prison. Therefore the Prussian regulation of graded punishment starts with the following programmatic sentence:<sup>15</sup>

"In order to influence the prisoner's attitude towards state and society it is necessary to call his attention, not only to the advantages which he may expect in the higher grades, but to arouse his interest in the work which the prison is trying to do for him. For that purpose it is necessary to grant him responsibility and to allow him to participate in shaping his fate."

That is what the regulation means by self government. It defines it as follows:<sup>16</sup>

"The purpose of self government is to make the prisoners under the leadership of their chosen leaders gradually assume an attitude towards the institution which finds its meaning in the cooperation of the prisoners among themselves and with the official of the institution for the best of all inmates."

This self government is, of course, not an automatic device which can be made to function by simply pressing a button. It is an instrument which can be mastered only after it has been studied. In America, where the system of self government was first introduced,

<sup>15</sup>I 3 der Verordnung ueber den Strafvollzug in Stufen v. 7 6 29. (V. St., i St.)

<sup>16</sup>VII 3, V St. i St.

it has produced very satisfactory results. In other countries the results were anything but satisfactory.<sup>17</sup>

If self government would be introduced into a reformatory or prison of the old style, everything would be promptly and completely disorganized. Self government is only possible in a community from which the destructive elements have been eliminated. Otherwise the brawlers and demagogues will get control and pervert the aims of the institution. Self government can only function under a level headed, ever watchful and intelligent warden, who inspires, who knows how to restrain and how to encourage, who prevents exaggeration, advises the leaders of the self government and confers with them, who makes the self government group feel, that one takes an active interest in it, that one does not watch it like one watches children at play, but that their existence is taken seriously, that they are recognized as a necessary and indispensable part of the entire organism of the institution.

Since Prussia had no experience whatever with this institution, self government was only introduced for the second and third grade. In the first grade, the human material of the two receiving stations appeared to be too raw, not sufficiently sifted for an experiment of that kind. I intimated above that the separation into inmates with and without a record is rather raw, and that the first grade has above all, the task of making a better separation possible. The prisoner whose personality has been gauged is, in the receiving station, under the continuous, watchful care of one particular official, a guardian, as he is called in many institutions. If, after a certain period of time, the body of officials, judging from the guardians report, comes to the conclusion that the prisoner is susceptible to educational influence, that he realizes the asocial factor in his crime, and that he is willing to live according to this intelligence, he is promoted to the second grade.<sup>18</sup> Here the separation into prisoner with and without record is dropped. It has lost its meaning. The separation according to purely mechanical principles is replaced by separation according to character. First the prisoners are divided in two classes, those who are presumably susceptible to education and those who are not. Those of the first are again, in the receiving stations A and B, divided according to their degree of asociality. Then the promotion into the institution for advanced prisoners is

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<sup>17</sup>See: C. M. Liepman, *Die Selbstverwaltung der Gefangenen*, Mannheim 1928, Bensheimer, publisher.

<sup>18</sup>See IV 1 V St. i St.

made for the purpose of building a flood gate to separate the prisoners who show themselves open to education and those who do not.

For the treatment of prisoners in the first grade, comparatively primitive methods are used. They resemble old fashioned prison methods. Their purpose is to arouse the prisoners initiative. It is a policy of inducement. For good conduct and industrious work the prisoner is promised certain privileges after six months, which are about equal to the privileges granted under the old system. These privileges are the right to buy from their wages, food or luxuries, especially the coveted tobacco; to hang pictures of relatives or a calendar in the cell; to have the time when cell may be lighted, extended; to attend entertainments, etc.; all highly appreciated by the prisoners. It may be mentioned that all regulations for physical development or mental and moral improvement of the prisoners are granted to all prisoners from the first day of their prison term, for instance, religious service and lectures of purely educational character, physical exercise, reading of the house organ, reading of books, use of writing material for educational purpose, for instance learning of a language, shorthand, bookkeeping, etc.<sup>19</sup>

All these regulations are intended to counteract the bad effects of isolation, which have been described above; to bring to the surface the forces dormant in the prisoner, his good and bad qualities, his talents and shortcomings; to activate him. When the officials have observed the prisoner sufficiently, they are in a position to decide whether or not he has met the conditions for his promotion into the institution for advanced prisoners.

Here, in the second grade, the prisoner may expect a greater amount of privileges. This, too, is inducement policy to a certain extent. But these are not the real characteristics of this institution. I am tempted to say, they are a pious fraud. They are to bait the prisoner, and after he has been baited by them and promoted into the institution for advanced, then, he is to realize that these privileges are not actually privileges, but that with each privilege there is loaded upon him a certain responsibility, that now he has to depend much more on himself, that the danger of backsliding is much greater than in the receiving station with its narrow barriers; that he has to watch his step every day and every hour if he expects to keep pace with his comrades. And the acid test, in this direction, is self government, which is granted to the second grade, although within carefully defined limits.

<sup>19</sup>III 1, 2 and 5 V St., i St .

There are steps taken to see that the prisoner does not grab the privileges of the second grade, without shouldering its responsibility. If the prisoner does not come up to expectations, he is sent back to the receiving station. Thereby he loses everything he has accomplished since he entered the institution. He has to start all over again; he is in the same position, as when he entered the prison. This extraordinarily severe punishment is, of course, not lightly decided on. Only in case of a severe offense can the prisoner be sent back immediately. Otherwise, the leader of the group is informed to pay particular attention to that prisoner, to try through his personal influence and that of the group to reform him. Only when that proves futile, and the prisoner shows himself stubborn in spite of two written warnings, he will be sent back.<sup>20</sup>

In this institution for advanced inmates, the officials must adapt their attitude toward the prisoners, to this psychological appeal of educational leadership. Its aim must be to show the prisoner confidence in his good will. Orders and inhibitions must be reduced. Also the continuous guarding. That is the only way to give the prisoner an opportunity to justify the confidence placed in him and to subject his personal inclinations to a self imposed discipline.<sup>21</sup>

I do not want to reproduce the list of privileges around which life in the second grade is grouped. I only wish to call attention to two pedagogically important and interesting provisions in the regulations for graded punishment. In each institution for advanced prisoners there must be community rooms, where the prisoners may congregate socially after working hours. Here they should take their meals, and, every evening, one of the higher officials of the institution, occasionally the warden himself, should take part.<sup>22</sup> This provision is of particular importance because the officials cannot find a better opportunity to come into personal touch with the prisoners, to make them speak their mind; and because there is nothing so apt to overcome the prisoner's mistrust, to restore their self respect and to convince them, how sincerely their cooperation is appreciated.

The other important provision is the one about vacation. After the prisoner has been six months in the institution for the advanced and has done half of his time, the warden may give him a vacation, for instance, to see his family or for some other purpose as long as it serves the educational aim. The vacation must not exceed one week per year. If the prisoner prefers to take seven vacations of

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<sup>20</sup>XV 1, 3 11 V St. i St.

<sup>21</sup>VII 1 V St. i St.

<sup>22</sup>VIII 6—10 V St. i St.

one day each, he may do so. This vacation is part of the prisoner's term and will not be added to it.<sup>23</sup>

In my opinion this is the strongest possible test of confidence for the prisoner. Imagine a man who after one or two years in prison is given the coveted liberty and, after a few days, has to force himself to return to prison and rob himself of his liberty for many months to come, until he again gets a short leave of absence. This shows clearer than anything else that the privileges of the second degree are anything but soft snaps for the prisoner. The experiences which have been made with these vacations in one year and a half, have fully proved their educational value and shown all objections to be without foundation. From hundreds of prisoners who got these vacations more than 97 per cent have promptly, and in good order, returned to their prisons and thus have stood the test of confidence. It may be remarked that by such vacations the problem of sexual abstinence may be solved, not completely, but at least, partially.

From the institution for advanced inmates the prisoner may be promoted to the highest grade, the so-called discharging station. As a rule, the prisoner is to remain in the institution for advanced inmates, for one-half of the time he had to serve when he entered it. Therefore, a prisoner with a four year term, after entering the institution for advanced inmates, may be promoted to the discharging station after two years. The condition for promotion to the second grade was that the prisoner showed himself willing to insert himself into the social order. If he wants to be promoted into the third grade, he must also prove himself capable of it. As the regulation<sup>24</sup> expresses it, "he must justify the confidence that he will make proper use of the privileges which await him in grade 3, that he will proceed to improve himself in the sense of social insertion, and that he, when discharged, offers the guarantee of good social conduct."

The discharging station is the apex of the great pyramid of graded punishment. The effort towards psychological and pedagogical leadership has been still more deepened in this institution. The prisoners are completely treated, after a method of self education, within a community based on mutual responsibility. Not after their discharge, are the prisoners asked to stand the test, whether they will make the proper use of their freedom; this test has been placed in the last period of their prison term, where there is still an opportunity to make corrections.

<sup>23</sup>VIII 11—13 V St. i St. u. A. V.

<sup>24</sup>V St. i St. IX 1.

The control by the officials is completely relegated to the background in the discharging station. Their principal task is now to support and advise the leaders of the different groups. The idea of self government is here practiced to a degree, which is unknown in any other penal institution in Germany, or any other country. The prisoners have to regulate their work under their own responsibility. They may employ their free time as they choose. Through their leaders, they take part in the conferences of the officials in which all affairs of immediate interest to the prisoners are discussed, especially the inflicting of disciplinary measures. There are no locked doors in this institution no windows with cross bars. The prisoners may even work outside the institution and are only requested to return in the evening. These are only a few instances of the liberal spirit which prevails during this period of the prison term. Of course, this is an experiment. But all progress is inseparable from the courage to experiment. If one cannot have the confidence in the prisoners of the third grade, that they will make proper use of their freedom and their privileges, that would be tantamount to a declaration of bankruptcy in the entire educational method.

The first Prussian discharging station, where the system has been tested with good results has been organized 4 or 5 years in Cottbus.

What is done today in Germany is not the last word in punishment. Many things could be done more systematically, if we were not cramped by the bars of obsolete laws. We are also badly handicapped by our hopeless economic situation. We are still hesitating to take important steps, which have been taken long ago, in other countries. I mean the introduction of indeterminate sentences, a parole system, as is prevailing in English and American law; a welfare organization for discharged prisoners, which is worthy of the name, provisions for the rehabilitation of prisoners and many other things.

Everything in punishment is dependent upon time. In the future better insight will show new aims and develop new methods. There is only one society which is hopelessly dead, the society that sees no more problems. To courageously attack the problems of the present means to smooth the path of the future.