The Historical Journal, 45, 2 (2002), pp. 411–432 © 2002 Cambridge University Press
DOI: 10.1017/S0018246X02002455 Printed in the United Kingdom

BETWEEN REFORM AND REPRESSION: IMPRISONMENT IN WEIMAR GERMANY*

NIKOLAUS WACHSMANN
Downing College, Cambridge

ABSTRACT. *This is the first account of the prison in the Weimar Republic (1918–33), set in the context of the evolution of German social policy. In the early years, the Weimar prison was characterized by hunger, overcrowding, and conflict. At this time, leading officials agreed on a new approach to imprisonment, influenced by the demand for the 'incapacitation of incorrigibles, reformation of reformables'. This principle was championed by the modern school of criminal law, designed to replace traditional policy based on deterrence and uniform retribution. The policy of reform and repression shaped the Weimar prison. Most prison officials supported the indefinite confinement of 'incorrigibles'. While this did not become law, many prisoners classified as 'incorrigible' (increasingly after 'objective' examinations) received worse treatment than others, both in prison and after their release. Regarding the 'reformables', some institutions introduced measures aimed at prisoner rehabilitation. But such policies were not fully implemented in other prisons, not least because of resistance by local prison officials. During the collapse of the Weimar Republic in the early 1930s, measures aimed at rehabilitation, only just introduced, were cut back again. By contrast, the repression of 'incorrigibles' was pursued with even more vigour than before, an important legacy for Nazi penal policy.*

I

The prison, at least as we know it today, is a rather recent invention. It was only in the course of the late eighteenth and nineteenth centuries that institutions designated solely for locking up criminal offenders, dominated by rigid discipline and hidden from the gaze of the public, became key means of punishment in the western world. This 'birth' (or, more accurately, the 're-birth') of the prison has caught the eye of historians and social scientists, and has been the subject of several celebrated studies dealing with France, Britain, and the USA, among other states.[1] The focus on the late eighteenth and

* I wish to thank the participants of the May 2001 workshop of the German Historical Institute (Washington DC) on crime and criminal justice, organized by Richard Wetzell, where an earlier draft of this article was presented.

[1] Among others, see D. J. Rothman, *The discovery of the asylum: social order and disorder in the new republic* (Boston, 1971); M. Foucault, *Surveiller et punir: naissance de la prison* (Paris, 1975); M. Ignatieff, *A just measure of pain: the penitentiary in the Industrial Revolution, 1750–1850* (New York, 1978). The term 're-birth' of the prison is introduced in N. Finzsch, 'Elias, Foucault, Oestreich: on a historical theory of confinement', in N. Finzsch and R. Jütte, eds., *Institutions of confinement* (Cambridge, 1996), pp. 3–16.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

nineteenth centuries is also reflected in scholarship on the German prison.[2] By contrast, the German prison in the twentieth century had long been ignored. The landscape has only begun to change very recently. But research has generally been limited to the Nazi years and the period immediately after the Second World War.[3] The prison in the Weimar Republic (1918–33), by contrast, has remained uncharted territory and many thousands of files on the prison service are still waiting to be discovered in archives all over Germany. This article presents the first overview of the history of the Weimar prison.[4] Such an examination has obvious relevance for historians interested in crime and punishment and contributes to the still meagre literature on the operation of the criminal justice system in the turbulent and short life of the first German republic. But it also has a wider bearing on debates about German history.

Historians have been aware for some time that the study of the treatment of those excluded from society because of their non-normative behaviour can give important insights into the often unclearly stated values of society itself. One of the most important works on marginal groups in 1920s Germany has been the study of deviant youths by the late Detlev Peukert. Here, and in his general work on Weimar and Nazi Germany, Peukert presented highly original arguments, which continue to stimulate historians of German social and penal policy.[5] Peukert claimed that the study of Weimar was vital as it saw 'the emergence of the world we inhabit today'. 'In less than a decade and a half', Peukert noted, 'virtually every social and intellectual initiative we think of as modern was formulated or put into practice. And yet … no sooner had modern ideas been put into effect than they came under attack, were revoked or began to collapse.' Looking at modern social policy, Peukert argued, the human sciences and the emerging social professions held out the promise that state intervention based on scientific advances in criminology and pedagogy would

[2] T. Berger, *Die konstante Repression: Zur Geschichte des Strafvollzugs in Preußen nach 1850* (Frankfurt a.M., 1974); D. Blasius, *Bürgerliche Gesellschaft und Kriminalität* (Göttingen, 1976); F. Mecklenburg, *Die Ordnung der Gefängnisse: Grundlinien der Gefängnisreform und Gefängniswissenschaft in der ersten Hälfte des 19. Jahrhunderts in Deutschland* (Berlin, 1983); P. Sauer, *Im Namen des Königs: Strafgesetzgebung und Strafvollzug im Königreich Württemberg von 1806 bis 1871* (Stuttgart, 1984); R. J. Evans, *Szenen aus der deutschen Unterwelt: Verbrechen und Strafe, 1800–1914* (Reinbek, 1997); H. Berding, D. Klippel, and G. Lottes, eds., *Kriminalität und abweichendes Verhalten: Deutschland im 18. und 19. Jahrhundert* (Göttingen, 1999).

[3] For an overview of the literature, see H. Jung and H. Müller-Dietz, eds., *Strafvollzug im 'Dritten Reich'* (Baden-Baden, 1996); N. Wachsmann, 'Reform and repression: prisons and penal policy in Germany, 1918–1939' (PhD thesis, London, 2001).

[4] Four out of five penal institutions in Germany were small local jails for fifty or fewer inmates, which generally held offenders serving sentences of three months or less. The focus in this article is on larger penal institutions, where longer sentences were served.

[5] D. J. K. Peukert, *Grenzen der Sozialdisziplinierung: Aufstieg und Krise der deutschen Jugendfürsorge von 1878 bis 1932* (Cologne, 1986); idem, *The Weimar Republic* (London, 1993); idem, *Inside Nazi Germany* (London, 1993). For Peukert's influence, see P. Wagner, *Volksgemeinschaft ohne Verbrecher: Konzeptionen und Praxis der Kriminalpolizei in der Zeit der Weimarer Republik und des Nationalsozialismus* (Hamburg, 1996); Y.-S. Hong, *Welfare, modernity and the Weimar state, 1919–1933* (Princeton, 1998); D. F. Crew, *Germans on welfare: from Weimar to Hitler* (New York, 1998); E. R. Dickinson, *The politics of German child welfare from the empire to the Federal Republic* (Cambridge, MA, 1996).

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help to eradicate 'social illnesses' such as deviance, just as modern medicine had made immense progress in the cure and prevention of physical illnesses. This modern social policy, Peukert claimed, had a Janus-face: 'care for the reformables and exclusion of the incorrigibles'. However, Peukert suggested that during the 1920s the question of selection and exclusion had still been marginal. Instead, this period was characterized by 'pedagogical dreams of omnipotence'. The reigning paradigm was that of the 'universality of provision and correction'. It was only during the disastrous crisis in the last years of Weimar, according to Peukert, that this utopian vision was reconceptualized in negative terms, 'identifying, segregating, and disposing of those individuals who were "abnormal" and "sick"'. This paradigm of selection and eradication, Peukert concluded, then shaped the approach towards social outsiders in Nazi Germany, where it gained 'unprecedented operational licence'.[6] This article will evaluate to what extent the development of the German prison system fits into this general picture of social policy in the Weimar Republic drawn by Detlev Peukert.

II

The German prison system emerged from the First World War in a dire state. Inmate mortality in the 1,700 or so penal institutions had increased in the last years of the war and many prisoners were ravaged by disease. In some institutions, more than one in ten inmates had died in the last twelve months of the war, often due to malnourishment.[7] But there was no time to take stock after the German defeat as the prison system was immediately plunged into a succession of unprecedented crises. Following the collapse of the imperial order in November 1918, life in Germany was dominated for five years by dramatic political, economic and social upheaval. This had a direct impact on penal institutions, not least due to the blatant bias of the largely anti-Republican German judiciary. Judges often cracked down with extreme vigour on radical left-wing activists. At the same time, right-wing counter-revolutionaries were let off very lightly.[8] Penal institutions filled up with left-wing radicals, and the Weimar prison soon became a political battleground. Inside, highly politicized inmates were pitched against reactionary governors and warders. And in the public arena, the prison became a symbol for what communists and socialists called 'class justice'. Attacks on penal institutions by activists from the outside, and riots by the inmates on the inside became familiar events. Officials in fifteen larger penal institutions recorded no fewer than fifty-one riots and serious attacks on warders between 1919 and 1924. Thousands of inmates escaped or

[6] Quotes in Peukert, *Weimar*, pp. 276, 282; idem, *Sozialdisziplinierung*, pp. 259, 307; idem, 'The genesis of the "final solution" from the spirit of science', in D. F. Crew, ed., *Nazism and German society* (London, 1994), p. 289.

[7] See, for example, Untermaßfeld penitentiary to state ministry, 31 Dec. 1918, Thüringisches Staatsarchiv Meiningen (ThSTA Mgn.), HSM Staatsministerium, Abteilung Justiz, Nr. 990.

[8] H. Hannover and E. Hannover-Druck, *Politische Justiz, 1918–1933* (Frankfurt a.M., 1966), passim.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

were freed. Most local prison officials reacted to the unrest in the only way they knew: even minor disturbances were answered with extreme brutality. A number of inmates were severely injured or killed during such incidents. Hundreds more were sentenced to further terms of imprisonment for rioting.[9]

The tensions inside penal institutions were intensified by the very poor living conditions. The food supply was particularly bad, sparking off further unrest. For instance, on 28 March 1920, most of the inmates of the Brandenburg penitentiary fled. Several were shot dead and the recaptured prisoners were tried in June 1920. Asked about his motives, one prisoner replied: 'The food was appalling. For weeks, we got no potatoes and the fish that was dished up all the time stank seven miles up wind.'[10] Nutritional standards only started to improve in the early 1920s. By that time, penal institutions were already engulfed in another crisis: massive overcrowding. During the war, prisoner numbers had remained rather low. This soon changed, as the catastrophic hyper-inflation triggered a wave of crime. The desperate circumstances which led many Germans to break the law are all too manifest in the state in which they arrived in the penal institutions: of 100 men committed to the Plötzensee prison in Berlin in 1921, 50 arrived without a shirt, 60 without shoes, and 80 without socks.[11] By 1923, crime figures for theft were three times higher than before the war.[12] The dramatic rise in recorded crime resulted in a rapid increase of state prisoners. From 1920, penal institutions all over Germany were reporting lack of space, and by 1923, the daily number of state prisoners in all probability exceeded 100,000. Overcrowding, with five or more inmates forced into a single cell, further aggravated the poor hygienic conditions inside penal institutions, which often lacked running water, proper heating or a sewer system. One penitentiary inmate complained in 1921 that he had not had a bath for over a year. 'The underpants are only changed every eight weeks', he added.[13]

But unrest and chaos were not the only features of the post-war prison. This period also saw far-reaching reform impulses. During the German empire, prison regulations had often remained unchanged for years. This contrasts sharply with the flurry of activity in the individual German states (the prison service was run by the federated states until 1935) in the early Weimar years. Some measures, such as the abolition of corporal punishment for male penitentiary inmates in Prussia in late 1918, concluded long-term trends which

[9] Bund der Gefängnisbeamten Deutschlands, ed., *Der Aufsichtsbeamte im Strafvollzuge* (n.p., n.d.), pp. 32–4. In 1921, 649 state prisoners were sentenced to further imprisonment of three months or more for their participation in riots; Reichsjustizministerium and Statistisches Reichsamt, eds., *Kriminalstatistik für das Jahr 1921* (Berlin, 1924).

[10] 'Revolte im Zuchthaus', *Berliner Tageblatt*, 29 Mar. 1920, Bundesarchiv Berlin (BA Berlin), 61 Re 1/1527, fo. 163; 'Das Schwurgericht im Zuchthaus', *Berliner Tageblatt*, 19 June 1920, ibid., fo. 167.

[11] 'Das Elend der Strafgefangenen', *Vorwärts*, 17 Apr. 1923, BA Berlin, R 3001/5606.

[12] Wagner, *Volksgemeinschaft*, p. 31.

[13] Complaints by inmates of the Untermaßfeld penitentiary, 15/16 Dec. 1921, ThSTA Mgn., HSM Staatsministerium, Abteilung Justiz, Nr. 985, fos. 187–200.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

had begun in the second half of the nineteenth century.[14] But such piecemeal measures no longer seemed enough. Most leading legal officials agreed that a more decisive shake-up of the prison system was necessary. While they disagreed about the extent to which they wanted to break with the pre-war prison (largely based on uniform retribution and military discipline), the officials did accept that a new approach was called for. Their main impetus was arguably the dramatic crime wave in post-war Germany, which clearly demonstrated that the old-style prison failed to deter criminal behaviour. The call for prison reform was part of a much wider search for innovative social policies during the post-war crisis. New approaches were needed, many observers argued, to deal with the plethora of real and imagined problems which appeared to threaten Germany, including the increase in sexual promiscuity, venereal disease, youth delinquency, 'trashy literature', divorce rates, and illegitimate births.[15]

The post-war proposals to reform penal policy were influenced by the ideas of the so-called modern school of criminal law, which had emerged during the German empire under the leadership of the liberal law professor Franz von Liszt. Famously, Liszt had rejected the established system of criminal law based on general deterrence and uniform punishment. Instead, he argued that criminal justice should aim at the protection of society and the future prevention of crime. Following Liszt, different types of offenders required different treatment, depending on their future danger. He summarized his demand for special prevention as the 'incapacitation of incorrigibles, reformation of reformables'. According to Liszt, 'reformable' offenders should be rehabilitated. By contrast, 'incorrigible habitual criminals' had to be isolated indefinitely, in most cases until their death. It was madness, Liszt exclaimed, to ever again let such an offender 'loose on the public like a wild beast'. This dual approach of reform and repression already left its mark on German penal policy during the empire, and later had a significant impact on the various Weimar drafts for a new criminal code.[16] It also influenced prison regulations in the Weimar years.

The principle of rehabilitation, rather marginal in the pre-war prison, was emphasized for young offenders in the Reich Juvenile Court Law (16 February 1923). Soon, it was extended to adult prisoners, enshrined in the national prison guidelines agreed upon by the individual German states (7 June 1923). The prison regime based on solitary confinement and absolute silence, popular

[14] For corporal punishment in nineteenth-century Germany, see Evans, *Szenen*, pp. 141–98.

[15] For the wider context, see R. Bessel, *Germany after the First World War* (Oxford, 1995), pp. 220–53; Peukert, *Weimar*, pp. 129–44, 263–73.

[16] F. von Liszt, 'Der Zweckgedanke im Strafrecht', in idem, *Strafrechtliche Aufsätze und Vorträge* (2 vols., Berlin, 1905), I, pp. 126–79, here 169, 173. See also R. Wetzell, *Inventing the criminal: a history of German criminology, 1880–1945* (Chapel Hill, 2000), pp. 33–8, 75–90; idem, 'Penal reform in modern Germany, 1880–1945', *Bulletin of the German Historical Institute Washington*, 28 (2001), pp. 83–9; M. Grünhut, *The development of the German penal system, 1920–1932* (Cambridge, 1944), p. 28.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

before the war, was rejected in these new guidelines and particularly cruel disciplinary punishment such as detention in a dark cell was also abolished. The aim of imprisonment was that 'the prisoner, as far as necessary, is accustomed to order and work and morally strengthened in such a way that he does not re-offend'. The introduction of the so-called progressive stages system was encouraged in order to aid the inmate's 'moral advancement'. The stages system rewarded individual inmates for their 'progress' by transferring them to a higher stage, where they enjoyed more privileges. Some states had already introduced the stages system in the early 1920s (it had been pioneered in Imperial Germany in the Wittlich prison for juvenile delinquents just before the war, as part of a wider reform catalogue, which had a lasting influence on the debate in the 1920s). By 1926, it had been introduced in all the German states.[17]

But many officials did not regard the stages system only as a tool of rehabilitation. Rather, they believed that it helped to institutionalize the distinction between 'reformable' and 'incorrigible' offenders, the fundamental principle of Liszt's modern school of criminal law. At the beginning of their sentence, all prisoners would be held on the strict conditions of the lowest stage (stage one). Once the 'reformable' inmates had demonstrated their 'inner change', they advanced to the higher stages (two and three). The 'incorrigibles', by contrast, remained on the lowest stage. The Bavarian directive which had introduced the progressive system for adult prisoners in 1921 urged that against 'incorrigible prisoners ... the greatest sternness is called for; during their treatment the aim of retribution and deterrence in punishment cannot be stressed enough'.[18] In the long run, most prison officials and criminologists agreed, it was not enough merely to treat these 'incorrigibles' harsher than others during their sentence. After all, this would not stop them from reoffending once they were released. What was needed, following Franz von Liszt, was the indefinite detention of dangerous 'incorrigibles' in security confinement, a measure which had already commanded significant support before the war and was included in all the Weimar drafts for a criminal code, starting in 1919.

Clearly, then, prison regulations in Weimar Germany were influenced by the demands of the modern school of criminal law. It should be noted at this point that the division of offenders into 'reformable' and 'incorrigible' was not

[17] Only inmates with longer sentences, generally one year or more, were eligible for the stages system. For the general background, see 'Grundsätze für den Vollzug von Freiheitsstrafen vom 7. Juni 1923', *Reichsgesetzblatt*, part II; H. Schattke, *Die Geschichte der Progression im Strafvollzug und der damit zusammenhängenden Vollzugsziele in Deutschland* (Frankfurt a.M., 1979), pp. 150–7. For experiments with the progressive stages system in nineteenth-century Germany, see R. Plischke, 'Historische Rückblicke ins 18. und 19. Jahrhundert zum Stufenstrafvollzug', *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* (*MSchriftKrim*), 19 (1928), pp. 417–29.

[18] Ministerial decision Nr. 57911, 3 Nov. 1921, in Bayerisches Staatsministerium der Justiz, ed., *Der Stufenstrafvollzug und die kriminalbiologischen Untersuchungen der Gefangenen in den bayerischen Strafanstalten* (Munich, 1926), pp. 10–18, here 15.

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peculiar to Germany. It was very much an international phenomenon of the late nineteenth and early twentieth centuries. A number of officials in Europe and the USA experimented with policies which tried to turn the prison into a rehabilitative institution. At the same time, there was widespread agreement that protective measures were necessary against 'habitual' criminals, and states such as Australia and New Zealand actually introduced indefinite confinement. Similarly, harsh treatment inside penal institutions was not unique to Germany. Indeed, disciplinary punishment was often harsher elsewhere, as several western states continued to practise corporal punishment long after it had been abolished in Germany.[19]

Until now, the focus in this article has been on the general attempts to transform the prison in the early years of the Weimar Republic. But how did this affect the lives of individual inmates inside prisons and penitentiaries? This question will be addressed in the following sections, which examine the reality of policies directed at 'reformables' (section III) and 'incorrigibles' (section IV) in German penal institutions between 1923 and 1930.

III

Conditions in German penal institutions in the second half of the 1920s were often still poor. But they were better than before, thanks largely to the improving economic climate. Following the end of hyper-inflation, criminal convictions declined sharply and judges passed slightly shorter prison sentences. As a result, prisoner numbers fell drastically. By 1929, the average daily number of prisoners in the whole of Germany had fallen to about 50,000 – about half as many as six years earlier. Much less space was now needed for locking up offenders and a number of dilapidated penal institutions were shut down. Also, more resources could be distributed among the remaining prisoners. The daily amount of money spent by the Prussian authorities on food for each penitentiary inmate increased by half between 1924 and 1929. There were also improvements in the health care of prisoners and some penal institutions set up specially equipped cells for women giving birth behind bars. It was partly thanks to these developments that the death rate in penal institutions declined significantly.[20]

Life in many penal institutions in the second half of the 1920s was also influenced, to some extent, by the concept of the prison as an educational institution. The most coherent proposals for rehabilitation were put forward by

[19] For a good introduction to the history of the prison, see N. Morris and D. J. Rothman, eds., *The Oxford History of the Prison* (New York, 1995).

[20] *Statistik über die Gefangenenanstalten der Justizverwaltung in Preußen 1924* (Berlin, 1927); *Statistik über die Gefangenenanstalten der Justizverwaltung in Preußen 1929* (Berlin, 1931); H. Stepenhorst, *Die Entwicklung des Verhältnisses von Geldstrafe zu Freiheitsstrafe seit 1882* (Berlin, 1993), pp. 41–57; C. von Gélieu, *Frauen in Haft* (Berlin, 1994), p. 68. The estimate of prisoner numbers is based on the Prussian statistics for 1929. Prussia held about 60 per cent of all German inmates.

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the Study Group for Prison Reform, formed in 1923 by university teachers, prison officials, and civil servants. Their political background was rather diverse, including supporters of the liberal and catholic parties, as well as Social-Democrats and socialists. What united many of them was their belief in the ideals of the German youth movement and in the new approaches to education pioneered in reform pedagogy before the First World War – ideas which also influenced schools, social work, reformatories, asylums, and adult education in the 1920s. Thus, the Study Group demanded that character-building exercises and creative stimulation by inspirational teachers were to take the place of purely mechanical and military forms of discipline. Only by awarding prison inmates more freedom and personal responsibility, it was argued, could they become law-abiding citizens after their release. One leading figure of the Study Group was Lothar Frede, who had been appointed by the progressive left-wing government in Thuringia in 1922 as head of the prison service, a position he retained even after power shifted to the right two years later. Thuringia soon became one of the centres of prison reform in Germany. A case study of the Untermaßfeld penitentiary, the second largest Thuringian penal institution which was often singled out in the 1920s as a 'model' institution, will highlight the aims and achievements of the Study Group.

The Untermaßfeld penitentiary, still in use today, lies on the edge of a small village in the Werra valley. Originally a medieval castle, Untermaßfeld was rebuilt after 1813 as a penal institution, resulting in a convoluted construction quite removed from the nineteenth-century ideal of rational prison architecture, the panopticon. Many of the policies championed by the Study Group were introduced here. Following the demand by the Study Group that trained pedagogues be recruited, the Untermaßfeld prison chaplain was removed and replaced by three social workers (one for each of the three stages of the new progressive system). They were subordinated to the newly appointed, reform-minded governor. On arrival, inmates were put on stage one, which also contained those demoted from higher stages for disciplinary offences, and those who, in the officials' eyes, had not yet responded to the educational measures. Over one third of inmates were held on this stage. They spent their spare time in solitude in single cells and did not qualify for any privileges. As Lothar Frede put it, they had to feel 'the full sternness of the penalty'. Once promoted to stage two, the prisoners acquired greater freedom and responsibility. Stage two was open to most prisoners, as the criteria for promotion were not applied very strictly. About half of the inmate population were held on stage two, including prisoners who had lengthy disciplinary records because of disobedience and physical violence. On stage two, school lessons were conducted by the social worker in small groups and the inmates spent some of their spare time unsupervised, playing board games, singing in the choir, playing in the orchestra, listening to the radio, or performing plays. Sports were also popular and the inmates sometimes played local teams from the outside. The prisoners were also actively involved in writing and producing the prison newspaper, a

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unique innovation in Germany. On stage three, seen as a preparation for life at liberty, inmates were given an even larger degree of autonomy. Their leisure time was unsupervised, their cells were unlocked and had no iron bars. Among the most controversial innovations were the walks of prisoners in the woods outside the prison walls, accompanied only by the unarmed governor (and sometimes a social worker).

Life in Untermaßfeld changed in many other ways, too. The Study Group argued that prisoners were imprisoned citizens and should be awarded legal status, a demand which had been championed before the First World War by the Frankfurt law professor Berthold Freudenthal, a leading figure in the Study Group. Before the war, inmates were almost entirely subjected to the whims of the prison administration. To redress this problem, disciplinary tribunals were set up in Untermaßfeld, consisting of prison officials and inmate representatives (elected by prisoners on stage two and three). Previously, the governor had not even been required to hear the inmate's side of the story in disciplinary cases. Now, the court listened to witness statements by the accused, other prisoners, and the warders. True, the final decision still rested with the governor. But he often appears to have followed the views of the other members of the court. The leading prison officials in Thuringia also opposed the military atmosphere, which still characterized most German penal institutions. Lothar Frede ordered that inmates should no longer jump up, click their heels and place their hands on the trouser seam when he entered a cell or a workshop.

Finally, the Study Group demanded that compulsory prison labour, around which the inmates' day was structured, had to be transformed. Most inmates were employed in their cells with repetitive and dirty labour, or in workshops where they used out-dated equipment. Modern machinery was widely absent, partly due to opposition from employers, unions, and politicians against competitive prison labour, and partly because prison officials feared that the use of machines would lessen the suffering of the inmates and undermine the deterrent effect of imprisonment. By the early 1920s, it was not unusual for male inmates to be occupied with turning a great wheel that powered a chainsaw, even though it could easily have been operated with a small motor. The Study Group demanded that this approach to prison labour should be replaced with measures aimed at helping the largely untrained prisoners to develop skills useful on the labour market after their release. To realize this aim, a limited company was set up in Untermaßfeld, with the governor acting as company director. Modern machines were introduced into agricultural production and some workshops, supervised by trained craftsmen. Some inmates could now learn a trade.[21]

[21] For the Study Group and Untermaßfeld, see *Gefängnisse in Thüringen: Berichte über die Reform des Strafvollzugs* (Weimar, 1930); A. Krebs, 'Die Selbstverwaltung Gefangener in der Strafanstalt', *MSchriftKrim*, 19 (1928), pp. 152–64; idem, 'Die GmbH als Betriebsform der Arbeit in der Strafanstalt', in H. Müller-Dietz, ed., *Freiheitsentzug: Entwicklung von Praxis und Theorie seit der*

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The reform project in Untermaßfeld was never uncontested. It came under immediate attack from some local politicians and journalists, who charged that the inmates were being pampered. More worryingly, a number of Untermaßfeld warders systematically tried to derail the project. Repeatedly, warders attempted to engineer a crisis by encouraging prisoners to escape or to start a riot. This, they hoped, would prove that the reforms undermined the safety in the institution. The motives for the warders' opposition were complex. To start with, the warders had often worked in Untermaßfeld for decades. Largely, they were former soldiers, used to enforcing and obeying strict military discipline. Almost overnight, the inmates were now to be treated as individuals with specific educational needs, a task for which many warders had neither sympathy, nor training. In addition, the warders felt threatened by the change of the prisoners' status and resented being held accountable in prison tribunals. Also, the reforms increased their workload. Under the old system, prisoners could be treated by the rulebook. But individualisation was labour intensive and the warders, who were poorly paid and overworked, were now expected to take on further duties. Finally, the experienced warders deeply resented the influence of the much younger social workers, fresh out of university. The Thuringian branch of the Association of Prison Warders insisted in 1925 that the battle-scarred warders had more to offer than the young social workers: 'knowledge gained from experience alone is decisive for the practice of the prison service'. In the Thuringian prison Ichtershausen, the harassment campaign against the young reformers by veteran prison officials contributed in 1925 to the dramatic suicide of the twenty-four-year-old social worker, Dr Otto Zirker.[22] The prison administration in Thuringia was not passive in the face of this opposition. The most disruptive Untermaßfeld warder was transferred to a small local jail, training courses for the other warders were

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Aufklärung (Berlin, 1978), pp. 498–508; L. Frede, 'Der Strafvollzug in Stufen', in L. Frede and M. Grünhut, eds., *Reform des Strafvollzuges* (Berlin, 1927), pp. 102–36; idem, 'Der Strafvollzug in Stufen in Thüringen', *Zeitschrift für die gesamte Strafrechtswissenschaft* (*ZStW*), 46 (1925), pp. 233–48, quote on p. 236. For archival material on Untermaßfeld, see the files of the Thuringian ministry of justice in the Thüringisches Hauptsstaatsarchiv Weimar (ThHStAW). Secondary sources include the only two studies of Weimar penal institutions: U. Sagaster, *Die thüringische Landesstrafanstalt Untermaßfeld in den Jahren 1923–1933* (Frankfurt a.M., 1980); K. Witter, 'Funktion und Organisation der Zuchthäuser im kapitalistischen Deutschland, dargelegt am Beispiel des Zuchthauses Untermaßfeld' (Diplomarbeit, East Berlin, 1982). For prison labour in general, see P. Borchers, 'Die Gefangenenarbeit in den deutschen Strafanstalten', *Blätter für Gefängniskunde* (*BlGefK*), 54 (1921), pp. 7–146.

[22] Association of prison officials in Thuringia to state ministry, 14 Feb. 1925, ThHStAW, Thüringisches Justizministerium Nr. 423, fos. 4–5. See also disciplinary procedure against the inmate Alfred S., 10 Nov. 1925, ThHStAW, Thüringisches Justizministerium Nr. 1719, fos. 76–8; memorandum by L. Frede, 15 June 1931, ibid., Nr. 1683, fo. 167; Association of prison officials in Thuringia to ministry of justice, 16 Apr. 1928, ibid., Nr. 423, fos. 45–6; Untermaßfeld penitentiary to ministry of justice, 7 June 1933, ThHStAW, Personalakte Dr A. Krebs; memorandum by L. Frede, 5 Feb. 1925, ThHStAW, Personalakte Dr O. Zirker.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

set up and it was decided that new applicants were to be judged in part according to their ability to treat inmates. By the late 1920s, a number of Untermaßfeld warders had been won over and public criticism also became more muted.

For many years, the history of the prison was written as a success story, progressing from primitive cruelty to enlightened benevolence. Only in the 1970s did authors like Michel Foucault, David Rothman, and Michael Ignatieff challenge this narrative.[23] This critique has to be taken into account when evaluating the reforms in Untermaßfeld in the 1920s. Untermaßfeld should certainly not be depicted as an unmitigated triumph of humane policies. Disciplinary punishment often remained strict and the general living conditions were still poor. Half of the cells lacked heating. In winter, prisoners went to bed fully clothed and often could not wash in the morning as the water in their bowls had turned to ice. The inmates also still used worn-out buckets as toilets. The characteristic smell of Untermaßfeld continued to be that of urine and excrement.[24] Nevertheless, the impact of the reforms was impressive and transformed the lives of many inmates, who enjoyed previously unheard-of privileges and rights.

The Untermaßfeld experience was not typical for imprisonment in the rest of Germany. Not many leading prison officials proved to be as adventurous as Lothar Frede in Thuringia. And a large number of local prison officials – governors, chaplains, teachers, and warders – remained sceptical about the aims of the Study Group. Occasionally, they used progressive language to present their policies as modern, but they often clung to the traditional prison regime based on strict punishment, military discipline, and moralizing lectures. Finally, at least in the case of Prussia, size also mattered. In 1927, there were over 1,000 penal institutions in Prussia, compared to only 69 in Thuringia. The size of the Prussian prison service posed serious administrative problems, one of the reasons why Prussia was slow to implement new policies. When the Prussian prison administration did try to introduce an extensive reform package in 1929, it quickly ran into trouble. The measures included the election of prisoner representatives and prisoner leave on the higher stages. Inmates on stage three could even be allowed to take up ordinary jobs in the free economy for normal pay, introducing the 'half-open' principle already in place in some reformatories. However, the impact of these regulations was very limited. The regulations were only introduced fully in the Berlin district, and even here they were never properly put into practice. One problem was timing, as the new regulations were introduced only months before the start of the collapse of the Weimar Republic in the early 1930s. In

[23] See n. 1.

[24] Untermaßfeld penitentiary to ministry of justice, 8 Dec. 1927, ThHStAW, Thüringisches Justizministerium Nr. 1339, fos. 129–30; Untermaßfeld penitentiary to ministry of justice, 20 Nov. 1924, ibid., Nr. 1683, fos. 30–5.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

addition, the regulations were undermined by open criticism from local prison officials, who dismissed them as impractical.[25]

As a result, changes in many German penal institutions in the second half of the 1920s were significantly less pronounced than in the Untermaßfeld penitentiary. To be sure, the stages system offered more privileges. Some institutions also introduced more innovative measures such as sports, theatre, music, and radio-rooms. But the Study Group's call for more prisoner autonomy, prisoner representatives, and prison tribunals was not widely realized. The same was true for the supposedly educational thrust of the stages system. In practice, it became nothing but a disciplinary tool, as governors realized that lifting an inmate to a higher stage as a reward for conforming, and the threat of demotion for breaking the rules, functioned as an effective control mechanism. Finally, only limited attempts were made to recruit reform-minded officials. In 1927, the reform strongholds of Thuringia, Saxony, and Hamburg, which together only held some 12 per cent of all German state prisoners, employed fifty-five of all the fifty-eight social workers in German penal institutions. By contrast, Prussia, which held well over half of all German prisoners, engaged only one social worker. Instead, the Prussian authorities continued to put their faith in the traditional guardians of the inmates' spiritual guidance: more than 700 chaplains were still working in Prussian penal institutions in 1927.[26] Open and sustained opposition to new policies by local prison officials remained limited to the states like Thuringia which had introduced more extensive changes. Elsewhere, internal criticism was largely limited to individual aspects of prison policy. Most of this grumbling by local officials centred around the claim that inmates were treated too leniently. Among the most controversial issues were prisoner complaints. Before the war, senior civil servants had generally dismissed complaints passed on by the governors. But in the Weimar Republic, they were reviewed more conscientiously, resulting in an increase of prisoner complaints, as more and more inmates believed that it was worth raising their voices.[27]

This development was closely linked to the growing influence of the public sphere. Weimar was obsessed with crime and criminals, and this fixation was reflected in newspaper articles, novels, plays, and films about imprisonment, which mostly painted a bleak picture of life inside penal institutions. Publishers

[25] R. Sieverts, 'Die preußische Verordnung über den Strafvollzug in Stufen vom 7. Juni 1929', *MSchriftKrim*, Beiheft 3 (Heidelberg, 1930), pp. 129–51; B. Koch, 'Das System des Stufenstrafvollzugs in Deutschland' (PhD thesis, Freiburg, 1972), pp. 63–71; '20. Mitgliederversammlung des Vereins der deutschen Strafanstaltsbeamten', *BlGefK*, 62 (1931), pp. 1–332, here 201, 229, 293–6.

[26] For the role of prison chaplains, see B. Oleschinski, '"Ein letzter stärkender Gottesdienst …": Die deutsche Gefängnisseelsorge zwischen Republik und Diktatur, 1918–1945' (PhD thesis, Berlin, 1993).

[27] In 1924, one in every fifteen penitentiary inmates in Prussia submitted a written complaint. By 1929, this figure was down to one in every eleven inmates; *Gefangenenanstalten der Justizverwaltung 1924; Gefangenenanstalten der Justizverwaltung 1929*.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

rushed more prisoner memoirs into print than ever before, often penned by former left-wing inmates who were also active in pressure groups such as the German League for Human Rights.[28] There can be no doubt that the public spotlight on the prison had some impact on the civil servants in the prison administration, who ultimately decided about inmate complaints. This was deeply resented by many local prison officials. According to the radical left-wing prisoner Max Hoelz, the governor in the Groß-Strehlitz penitentiary 'went completely berserk' as soon as anyone as much as mentioned the League for Human Rights.[29] However, the public sphere did not function exclusively as a check on the disciplining power of officials. To start with, a number of articles in right-wing newspapers pictured penal institutions as five-star hotels, an image which was to feature heavily in the attacks on German prisons in the early 1930s. In addition, a number of articles raised the spectre of the 'incorrigible' prisoner. This issue was not confined to the right-wing press, but occupied a central place in the Weimar discourse about crime and punishment.

IV

Most Weimar prison officials and criminologists were convinced that some individuals were destined to reoffend, and that biological factors played an important role in creating these 'incorrigibles'. To be sure, not everybody agreed. Some members of the Study Group argued that it was absurd to speak of 'incorrigibles' as long as no attempts were made to rehabilitate inmates. When explaining persistent criminal behaviour, they pointed instead to poor social and economic circumstances on the outside and the widespread prejudice which ex-convicts faced from the population.[30] But most commentators dismissed these arguments as the delusions of naive theoreticians and attacked them for ignoring the demand for the 'incapacitation of incorrigibles', one of the core principles of Franz von Liszt and the modern school of criminal law. 'Let's return to Liszt!', one leading criminologist exclaimed in 1927.[31] While there was never an agreed definition of the 'incorrigible', German criminologists constructed two types of offenders who were often described as 'incorrigible'. The first were the 'habitual' (or 'asocial') criminals, characterized as drifting into small-time criminality such as theft and begging because they were supposedly weak and driven by primitive urges. Their frequent

[28] Memoirs include F. Fechenbach, *Im Haus der Freudlosen* (Berlin, 1925); E. Toller, *Justiz* (Berlin, 1927); M. Hoelz, *Vom 'Weissen Kreuz' zur Roten Fahne* (Frankfurt a.M., 1969 edn); K. Plättner, *Eros im Zuchthaus* (Berlin, 1929); E. von Salomon, *Die Geächteten* (Berlin, 1931).

[29] Hoelz, '*Weißen Kreuz*', p. 362.

[30] See, for example, B. Freudenthal, 'Maßregeln der Sicherung und Besserung', in P. F. Aschrott and E. Kohlrausch, eds., *Reform des Strafrechts* (Berlin, 1926), pp. 153–72; C. Bondy, 'Zur Frage der Erziehbarkeit', *ZStW*, 48 (1928), pp. 329–34; Liepmann, *Krieg*, passim.

[31] F. Exner, 'Der Vollzug der bessernden und sichernden Maßnahmen', in L. Frede and M. Grünhut, eds., *Reform des Strafvollzuges* (Berlin, 1927), pp. 244–60, here 257.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

recidivism was often taken as a sign of their 'incorrigibility'. The second type associated with the 'incorrigible' was the 'professional' (or 'anti-social') criminal, a construction which was popularized in numerous books and films such as Fritz Lang's 1931 masterpiece *M*. 'Professional criminals', the criminologist Robert Heindl claimed in his lurid book on the subject, did not drift into crime, but actively pursued it as their chosen profession. Between photos of gruesome crime scenes and public executions, which no doubt contributed to the book's popularity, Heindl presented his particularly unrefined typology of dangerous, trained, and highly specialized criminals.[32]

Most commentators believed that many 'incorrigibles' had to be interned in security confinement after their prison or penitentiary sentence, in order to protect society. They would have to be held either until they died or until they posed no more risk to society, for example because their health had seriously deteriorated. It was not clear how many offenders would be targeted by security confinement. The various drafts for a criminal code described it vaguely as a measure against 'dangerous habitual criminals', and much would depend on what was considered 'dangerous'. Robert Heindl argued that only about 1,000 or so 'professional criminals' should be locked up.[33] But most observers showed less restraint, arguing (in line with Franz von Liszt) that security confinement should target not only the supposed criminal elite, but also a number of 'habitual criminals', including small-time thieves. German prison officials largely supported this more repressive approach.

Security confinement was never realized in the Weimar Republic, because the parties in the *Reichstag*, increasingly paralysed in the early 1930s, failed to push through the new criminal code. Nevertheless, the heated debates about the 'incorrigible' did influence the lives of criminal offenders in Weimar Germany. Many prison officials agreed that, as long as security confinement had not become law, 'incorrigible' inmates should at least be excluded from most benefits. As we have seen, the stages system was ideally suited to fulfil this demand. 'Incorrigibles' could be left on the harsh conditions of stage one, and 'reformables' could be promoted. This meant that prison officials had to distinguish between these two criminological 'types'. Apparently, most officials relied on their gut-feeling. But in July 1923, the hard-line Bavarian prison administration announced that a 'scientifically reliable basis' was required for the classifications. Prison doctors were asked to conduct detailed examinations of inmates, which soon became known as criminal-biological investigations – a mix of various scientific theories popular at the time, including criminal-anthropology, psychiatry, criminal-psychology, genetics, and racial hygiene (rather similar examinations were carried out in Saxony, too). At the centre of the examinations stood the question whether the inmate was 'reformable' or not. Those prisoners regarded as 'incorrigible' often faced the harsh conditions on stage one during their entire sentence. It is hardly surprising, then, that

[32] R. Heindl, *Der Berufsverbrecher* (Berlin, 1926).

[33] Ibid., pp. 191–5.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

some of them tried to undermine the examinations by lying about their family background, keeping silent when asked whether they came from 'broken homes' or whether their parents were alcoholics.[34]

By the late 1920s, criminal-biological investigations had spread to other German states. In Prussia, they were introduced in the context of the new prison regulations of 1929, which are a good example for the connection between reform and repression in Weimar penal policy. While the regulations introduced policies intended to rehabilitate prisoners, such as prisoner leave, they also stipulated that new institutions for 'incorrigibles' be set up. A wing of the Plötzensee prison was set aside 'for the most antisocial elements, with a particularly bleak social prognosis', as they were described by the head of the Berlin prison administration, a member of the Study Group.[35] The formal criteria for transfer to Plötzensee was that the prisoner was older than twenty-three, had been sentenced to at least three months and had three or more previous convictions of at least one year. Additionally, experts had to confirm the inmate's lack of 'reformability'. For this purpose, prisoners were taken to the Moabit prison, where they were examined by warders, chaplains, and teachers. The final decision was made by the prison doctor, who carried out a criminal-biological investigation.

The examinations of prisoners in Moabit and in the Bavarian penal institutions give an important insight into the construction of the 'incorrigible' in the Weimar Republic. The authority of the examinations derived from the claim that they were based on neutral, scientific observation. In reality, as some critics already charged at the time, the opposite was true. Under the veneer of scientific objectivity, the examinations were largely determined by the prejudices of the prison officials. In common with reports by social workers written in this period, the investigations were characterized by unproven allegations, moralizing assumptions, and the reduction of deviant behaviour to biological determinants. Prison officials were particularly inclined to write off those inmates who had most manifestly failed to conform to the moral, political, and social values of bourgeois society. Most of the inmates judged 'incorrigible' had grown up in unstable families in urban centres, which had long been regarded by prison officials as cesspools of depravity and degeneration. The officials highlighted the offenders' unsettled life-style and their 'abnormal' sexual appetite. One prisoner, a Moabit official complained in 1930, talked with 'almost cynical openness of his marriage to a prostitute who … continued to pursue her trade even after the wedding'. The classi-

[34] Ministerial decision Nr. 32222, 7 July 1921, in Bayerisches Staatsministerium der Justiz, ed., *Stufenstrafvollzug*, pp. 26–38. For criminal-biology in Bavaria, see W. Burgmair, N. Wachsmann, and M. M. Weber, '"Die soziale Prognose wird damit sehr trübe …": Theodor Viernstein und die Kriminalbiologische Sammelstelle in Bayern', in M. Farin, ed., *Polizeireport München* (Munich, 1999), pp. 250–87.

[35] 'Die einschneidenste Gefängnisreform West-Europas', *Berliner Tageblatt*, 11 July 1929, BA Berlin, R 3001/5631, fo. 139.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

fications were also strongly influenced by the offence committed. Property offenders were much more likely than any others to be judged 'incorrigible'. They were seen as dangerous threats to the established social order, part of the 'asocial' and 'degenerate' sub-proletariat. Their offences were often petty, consisting of minor thefts rather than white-collar crimes. As these offenders received comparatively short sentences of imprisonment, they had accumulated many convictions. On average, each inmate examined in Moabit had fourteen previous convictions. With recidivism often seen as one of the signs of the 'incorrigible', petty property offenders were thus particularly vulnerable to be singled out. By contrast, prison officials showed greater consideration for sex offenders or violent criminals.[36]

The classification as an 'incorrigible' could not only influence the treatment of prisoners during their sentence. The label also stuck after their release. First of all, help for ex-convicts was restricted to those regarded as 'reformable'. For example, the Lichtenau institution in Bavaria (founded in 1927) provided a temporary home for ex-convicts. But it was open only to 'deserving' offenders. The authorities reassured potential private donors that the assumption that resources were 'squandered on the unworthy, habitual, and professional criminals, incorrigibles and dangers to security, is completely false'. These ex-convicts did not deserve support but security confinement.[37] Secondly, many 'incorrigible' ex-convicts in Germany were put under strict police supervision. Continual checks by police officials often resulted in the dismissal of former inmates from their jobs or the eviction from their lodgings, leading some ex-convicts to commit further offences which were then taken by police officials and judges as further proof of their 'incorrigibility'.[38] Thirdly, some 'incorrigible' inmates were detained even after the end of their sentence of imprisonment. In 1926, the Bavarian diet passed the 'Law for the fight against Gypsies, travellers, and the work-shy'. Article ten introduced 'correctional post-detention' for up to two years in a workhouse for 'incorrigible habitual criminals'. The Bavarian prison administration welcomed this measure and instructed governors to provide the police with statements about 'incorrigible' offenders who were coming to the end of their sentence.[39] Most Bavarian prison officials were happy to comply, as can be illustrated by the case of Johann W.,

[36] I have examined the investigations carried out in Moabit between 1 May 1930 and 29 Dec. 1930, collected in Landesarchiv Berlin, Rep 5 Acc 2863, Nr. 97 (for the quote, see the examination of the inmate Erich B., 12 Nov. 1930, ibid., fo. 134). For Bavaria, see O. Liang, 'Criminal-biological theory, discourse, and practice in Germany, 1918–1945' (PhD thesis, Baltimore, 1999), pp. 141–57. For contemporary criticism of the Bavarian examinations, see W. Petrzilka, *Persönlichkeitsforschung und Differenzierung im Strafvollzug* (Hamburg, 1930).

[37] Bayerisches Obsorge Amt, ed., *Die Gefangenenobsorge* (Lichtenau, 1928), p. 18.

[38] W. Luz, *Ursachen und Bekämpfung des Verbrechens im Urteil des Verbrechers* (Heidelberg, 1928), pp. 243–6; Wagner, *Volksgemeinschaft*, pp. 146–8.

[39] Law for the fight against Gypsies, travellers, and the work-shy, Bayerisches Hauptstaatsarchiv (BayHStA), MInn 71579; ministerial decision regarding the implementation of the law for Gypsies and the work-shy, ibid.; ministry of justice to penal institutions, 16 Feb. 1927, ibid., MJu 22525.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

an unskilled labourer with numerous convictions for property offences. In 1929, when W. reached the end of his most recent sentence in the Straubing penitentiary, the Munich police asked the Straubing officials for an assessment of W.. In response, the Straubing officials compiled a detailed report, concluding that W. was an 'incorrigible habitual criminal … who leads a parasitic existence'. Following this devastating assessment, Johann W. was interned by the police for sixteen months in the workhouse in Rebdorf, even though he was not guilty of any new offences.[40]

V

Germany was hit harder than any other western state by the dramatic global economic crisis following the New York stock exchange crash of 29 October 1929. The economic collapse exposed the frailty of a political system which had lacked legitimacy even during the preceding brief period of relative stability. It also led to the dismantling of the Weimar welfare state: unemployment benefits, pensions, welfare payments, and expenditure on deviant groups were all reduced. The prison service was also immediately affected. Living conditions for inmates deteriorated once more, as the budget for food, clothing, electricity, and health care was cut. Furthermore, just as during the inflation of the early 1920s, the economic collapse contributed to an increase in property crime, with recorded figures for 'serious theft' almost doubling between 1928 and 1932. Combined with the fact that German courts at the height of the depression passed almost as many prison sentences as fines, reversing the long-term trend towards more fines of the previous decades, inmate numbers began to rise again. The average daily number of inmates in Germany increased to about 63,000 in 1932.[41] Many of these prisoners were recidivist property offenders, as former convicts found it harder than most to find subsistence. As Maria B., a prisoner in the Aichach penal institution with numerous convictions for pickpocketing, told the prison officials in August 1930: 'I don't yet know how I shall avoid my offences in future, as I don't yet know what I shall live on.' She was released in July 1931 and recommitted to Aichach only four months later, following another sentence for theft.[42]

The economic crisis brought about a strong attack on the Weimar prison. But this backlash was not just a reaction to the economic hardship. Just as the crisis served as a pretext for political and economic elites to abolish innovations which conflicted with their interests, local prison officials used the cover of

[40] Straubing penitentiary to Munich police, 24 May 1929, BayHStA, MInn 71560.

[41] Wagner, *Volksgemeinschaft*, p. 215; Stepenhorst, *Entwicklung*, p. 42; E. Schmidt, 'Aus der Statistik der preußischen Gefangenenanstalten', *Deutsche Justiz* (*DJ*), 96 (1934), pp. 1023–6; idem, 'Die Kosten des Strafvollzuges', ibid., pp. 1346–7. The estimate of prisoner numbers is based on the Prussian statistics for 1932 in Schmidt (see above).

[42] Curriculum vitae of the inmate Maria B., 22 Aug. 1930, Staatsarchiv München, Justizvollzugsanstalten Nr. 1820.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

economic arguments to attack some of the new policies they had opposed in the past. What united the attacks on the prison service was the claim that prisoners were pampered and that precious resources were being squandered on 'incorrigibles', who should instead be locked away indefinitely under harsh conditions. Already in 1930, the head of the Bavarian prison administration announced that he would restructure the stages system, to prevent the waste of time, effort, and energy on 'unnecessary ballast'.[43] Soon, the vast majority of Bavarian inmates were held on stage one, where penitentiary inmates were banned from buying extra rations and from talking to one another during work, and could only write one letter every two months. The shift in Bavaria was profoundly influenced by the prison doctor Theodor Viernstein, a key figure in the criminal-biological movement and a fanatical racial-hygienist. Viernstein claimed in 1930 in several high profile lectures that half of all inmates were 'incorrigible', mostly on hereditary grounds. This signified a dramatic turn-around, for Viernstein had previously declared that at least two-thirds of all inmates were 'reformable'. What had led him to revise his figures was not any more refined methodology, but the crisis which had began to engulf Germany: 'The state in its present financial and political situation can and must deal, in terms of education and welfare, unreservedly only with those elements … who really offer hope for resocialization … There is absolutely no room today for sentimentality! Strictest selection is a duty to state and community.'[44] Viernstein was not the only local prison official who demanded a change of direction. Many others claimed that 'exaggerated and dangerous humanity' (such as walks outside the prison walls and theatre productions) had to be rooted out, to be replaced by a renewed emphasis on discipline, obedience, and religion. The officials also hoped that restrictions of the right to complain would restore their total power over inmates.[45] The attack on the prison system went far beyond local prison officials, and involved right-wing journalists and politicians, as well as judges and state prosecutors, who joined in the call for cuts in prisoner provisions and a 'limitation of exaggerated measures of education and reform'.[46]

The Study Group was too weak to put up any meaningful resistance. To start with, the attacks coincided with growing doubts by the reformers regarding their own methods. Social workers in Thuringia acknowledged that they were still 'very much at sea' regarding the best way to treat prisoners. They also

[43] Conference of the federal officials responsible for the prison service on 18 Jan. 1930, ThHStAW, Thüringisches Justizministerium Nr. 1337.

[44] Report by Dr Viernstein and Dr Trunk, 4 Feb. 1930, BayHStA, MJu 22507; Statistical material of the report, 3 Feb. 1930. For Viernstein, see Burgmair et al., '"Die soziale Prognose"'.

[45] For the quote, see H. Seyfarth, 'Der Humanitätsgedanke im Strafvollzug', *Monatsblätter des deutschen Reichszusammenschlusses für Gerichtshilfe*, 5 (1930), pp. 67–82.

[46] 'Ersparnisvorschläge des Preußischen Richtervereins', *Juristische Wochenschrift*, 61 (1932), pp. 916–17; 'Anregungen der Vereinigung der Preußischen Staatsanwälte zu Ersparnissen auf dem Gebiet der Justizverwaltung und Rechtsprechung', ibid., pp. 917–18.

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faced occasional resistance from the prisoners themselves against some measures that had been introduced. The officials became painfully aware that some prisoners did not agree with the aims and methods used to 'reform' them. In addition, the reformers badly missed their two most influential supporters, Moritz Liepmann (a liberal professor for criminal law in Hamburg) and Berthold Freudenthal, who had died in 1928 and 1929 respectively. Finally, the political and economic upheaval undermined many of the principles the reformers stood for. Prison labour, seen by the reformers as central for rehabilitation, was in deep crisis as unemployment quickly spread to penal institutions during the depression. In some states, well over half the inmates were without work by 1932. The aim to rehabilitate convicts by training them in productive work methods became completely unrealistic.[47] The members of the Study Group knew that the tide had turned against them and were weighed down by pessimism and despair.

The backlash was also influenced by the changing political climate in Germany. The sharp turn to the far right, with the Nazis (NSDAP) becoming the largest party in the July 1932 national elections, was accompanied by demands for a more authoritarian approach to punishment.[48] The NSDAP had no coherent programme for prison policy, but remarks by the party leadership left no doubt about its general outlook. 'Marxism', Hitler charged in 1929, 'had made its baleful influence felt in the German judicial system in that humanitarianism was misused and blindly applied to penal policy'.[49] The party attacked all 'weakness' and 'sentimental humanitarianism' towards common criminals, employing terminology popular among the critics of the Weimar penal system.[50] The Nazis aimed to roll back some of the recent prison reforms, which had actually benefited some of their own supporters. For example, Rudolf Höß, later the first commandant of Auschwitz, had profited from new regulations favouring 'delinquents motivated by conviction'. According to his own testimony, Höß, committed to the Brandenburg penitentiary in 1924 for his part in a gruesome sectarian killing, was the first inmate in the penitentiary to reach the coveted third stage. The light in his cell was kept on until ten p.m., he was allowed to write a letter every two weeks and got an easy job in the administration of the institution.[51]

[47] H. Brandstätter, 'Zur Situation der Strafvollzugsreform', *MSchriftKrim*, 23 (1932), pp. 431–2; E. Hapke, 'Landesstrafanstalt Untermaßfeld: Die Behandlung in der Gemeinschaft der II. Stufe', in *Gefängnisse in Thüringen* (Weimar, 1930), pp. 96–105. See also C. Bondy, 'Fortschritte und Hemmungen in der Strafvollzugsreform', *MSchriftKrim*, Beiheft 3 (Heidelberg, 1930), pp. 90–102.

[48] See K. Marxen, *Der Kampf gegen das liberale Strafrecht: Eine Studie zum Antiliberalismus in der Strafrechtswissenschaft der zwanziger und dreißiger Jahre* (Berlin, 1975), passim.

[49] Cit. in R. J. Evans, *Rituals of retribution* (London, 1996), p. 625.

[50] Janus, 'Rückblick – Ausblick', *Der Strafvollzug*, 22 (1932), pp. 169–75.

[51] See Höß's prisoner file in Landeshauptarchiv Brandenburg, Pr. Br. Rep. 29, Zuchthaus Brandenburg Nr. 691. See also M. Broszat, ed., *Kommandant in Auschwitz: Autobiographische Aufzeichnungen des Rudolf Höß* (Munich, 1963).

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The Nazi call for a stricter prison service was more than rhetoric. This became clear even before 1933. Following their victory in the Thuringian state elections of 31 July 1932, the Nazis took over the prison administration in the state which for a decade had been dominated by the Study Group. The Nazis quickly dismantled the Thuringian prison service. As one Nazi deputy argued, the prison reformers had to 'disappear'.[52] It only took the Nazis six months to get rid of the three senior officials in Thuringia associated with the Study Group. By mid-January 1933, the governors in Untermaßfeld and Eisenach (Albert Krebs and Curt Bondy) had been removed and the architect of the Thuringian prison service, Lothar Frede, had been transferred to a different position in the judiciary. Events in Thuringia were soon replicated in other German states, after the Nazis had taken control of the whole of Germany in 1933. Those penal institutions which still pursued progressive policies were quickly transformed: prison tribunals and social workers were abolished, the right of inmates to complain was cut back, and the stages system was effectively abandoned. It took several decades before some of the measures championed by the Study Group and pioneered in states like Thuringia were reintroduced into German penal institutions.

VI

The picture that has emerged of imprisonment in the Weimar period is a complex and dynamic one. Carceral institutions have sometimes been described as 'total institutions', seemingly divorced from the outside world.[53] While this perspective offers a valuable insight into the institutional relationship between inmates and authorities, it can take no notice of the way in which the prison was shaped by wider social forces. Looking at the Weimar prison, the life of inmates was profoundly influenced by social, economic, and political developments on the outside, such as the revolution of 1918, the hyper-inflation, the expansion of the welfare state, the depression, and the rise of the Nazis. The experience of imprisonment depended on many different factors, such as when the prisoner was held. Location was also crucial, as the ability and willingness of senior officials to introduce new policies differed from state to state. The life of an inmate in Thuringia in 1929 was different in many ways from that of a Bavarian prisoner three years later. There was no typical Weimar prison.

Some aspects of the general development of imprisonment in the Weimar Republic fit well into the evolution of Weimar social policy as sketched by Detlev Peukert. The measures introduced in institutions such as Untermaßfeld did contain many of the seeds of the contemporary prison. This is evident in the

[52] K. Rompel to Dr Weber, 13 Nov. 1932, ThHStAW, Thüringisches Justizministerium Nr. 1707, fos. 32–5.

[53] See E. Goffman, *Asylums: essays on the social situation of mental patients and other inmates* (London, 1971).

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

gradual relaxation of strict military discipline, the introduction of more prisoner autonomy, the emphasis on sport and recreation, the growing recognition of the legal status of the prisoner, the influx of social workers at the expense of chaplains, and the attempts to ease the inmates' transition into society by teaching them practical skills in workshops and in school. In the last years of Weimar, progressive penal institutions like Untermaßfeld were hit by a backlash, which can be seen as part of what Peukert described as the 'crisis of classical modernity', when policies which had only just been introduced were attacked and started to crumble. Similar developments occurred in other carceral institutions at the same time. In workhouses, policies pioneered in the 1920s, including the employment of social workers, were abolished, and new measures in mental asylums, such as outpatient care and 'active therapy', were also scaled down.[54]

However, the history of the Weimar prison also runs counter to some of Peukert's claims. The Weimar prison was certainly never dominated by the optimistic belief that new educational measures could rehabilitate the inmates. Few prison officials had 'pedagogical dreams of omnipotence'. On the contrary, many officials continued to put their trust largely into the traditional and authoritarian prison regime based on military discipline and retribution. But these officials cannot be described simply as conservatives, for they strongly supported the persecution of the 'incorrigible' – the repressive side of the dual policy advanced by the modern school of criminal law. True, this 'dark side' of modern penal policy was pursued with more vigour than ever before during the depression. But it had not been hidden in the shadows in the previous years, as Peukert has suggested in his work on social policy. On the contrary, it was out in the open and played a central role in the 1920s, both in the drafts for a new criminal code and inside penal institutions.

The support for the 'incapacitation of the incorrigible' was one of the most important legacies for the Nazi prison. Security confinement for 'dangerous habitual criminals' was introduced less than one year after the Nazi 'seizure of power', drawing heavily on the criminological debates of the Weimar years. The Nazi prison was influenced above all by the prison policy which had emerged in the early 1930s, just as the backlash against the Weimar welfare state during the depression laid the ground for the Nazi racial state.[55] Thus, from 1933, measures against 'incorrigible' prisoners went hand in hand with the stricter treatment of all inmates, while the call for the rehabilitation of 'reformable' prisoners was largely ignored. This approach was very much in line with the wishes of many local prison officials. It comes as no surprise that there was a strong continuity among local officials from Weimar to the Third Reich. There was no need for the Nazis to purge the prison service. To be sure,

[54] W. Ayass, *Das Arbeitshaus Breitenau* (Kassel, 1992), pp. 253–8; M. Burleigh, *Death and deliverance: 'euthanasia' in Germany, 1900–1945* (Cambridge, 1994), pp. 33–4.

[55] See Crew, *Germans*, p. 208.

https://doi.org/10.1017/S0018246X02002455 Published online by Cambridge University Press

prison policy after 1933 contained crucial new elements indebted to Nazi ideology, including the discrimination of Jewish state prisoners and the exploitation of inmates for the Four-Year-Plan. Still, it was only during the Second World War, when penal institutions became deeply involved in the killing of 'habitual criminals', Jews, Poles, Gypsies, political opponents, disabled and sick prisoners, that the Nazi prison broke more decisively with the past.[56]

[56] See N. Wachsmann, 'From indefinite confinement to extermination: "habitual criminals" in the Third Reich', in R. Gellately and N. Stoltzfus, eds., *Social outsiders in Nazi Germany* (Princeton, 2001), pp. 165–91; idem, '"Annihilation through labor": the killing of state prisoners in the Third Reich', *Journal of Modern History*, 71 (1999), pp. 624–59.

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