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for Wilson, The State
Sovereign, Cmp. Admin Law

Looking
Shaffer's Introd
pages

Studies in German Prison Administration. 1901

The "Comparative method" of study rests on the implicit belief that persons and peoples can learn from each other; that civilized races have some things in common; that, making all necessary allowance for differences in character & disposition, there are general causes at work and general principles which may be relied upon for the guidance of conduct and management.

The following study rests on this belief, but the facts will be set down in such form that they will be available for use even by those who do not reach the same conclusions as the writer of these studies.

Division of the subject.

Part I

~~Chapter I~~ The German Criminal Code: so far as it most directly affects the administration of prisons.

Part II

~~Chapter II~~. The Rules of Administration.

German

others (so far as they can be studied in them)

Part III

~~Chapter III~~ Experiments in Prison Management and ~~unsolved~~ Problems under discussion.

~~Chapter~~ Part I.

~~I.~~ The Principles of Prison Administration found in the Criminal Code of the German Empire.

One of the earliest achievements and services of the German Empire was the formation of a criminal code. In all the states of this great nation one law prevails. In a small volume of 201 pages, which can be bought for a few cents, any citizen can discover an exact statement of his obligations and dangers in the sphere of penal conduct. [In the United States we have as many systems of definition and penalty as we have states; and ~~from~~ such confusion of mind, as well as feeling of injustice and inequality, arise from this fact.]

German Administration of Prisons

On the Ministries in German States see
Goodnow, Comparative Administrative Law
I, 139-142.

Meyer, Lehrbuch des Deutschen Verwaltungsrechts, 62.
Schulze,
Meyer, Staatsrecht, 184.

Zorn. I 201.
Bornhak, Preussisches Staatsrecht. II, 389.

cf Wilson The State
sec. 438-504

Classes of ~~offenses~~ forbidden acts. The Code distinguishes three forms or grades of criminal actions, somewhat corresponding to our terms felony, misdemeanor and offense; and these are primarily distinguished from each other by the character of the penalty.

1/ Thus a felony (ein Verbrechen) is an action which ~~exposes~~ makes its responsible author to the penalty of death; or to penitentiary (Zuchthaus) or fortress prison (Festungshaft) more than five years in duration. §

2/ A misdemeanor (ein Vergehen) is an unlawful act which exposes its author to ~~a~~ the fortress prison up to five years, or to an ordinary prison (Gefängnis), or to a fine of more than 150 marks.

3/ An offense (eine Uebertretung) is an act which makes its doer liable to incarceration (Haft), or to a fine up to 150 marks.

§1. of Strafgesetzbuch.

The death penalty

§ 13. The death penalty is inflicted by beheading (Enthauptung).

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§ 14. The penitentiary imprisonment (Zuchthaus-Strafe) is either for life or for a term. The longest term is fifteen years and the shortest one year.

§ 15 Ordinary prison (Gefängniss). Here the longest term is fix years and the shortest one day.

§ 17 Arrest prison. The term of incarceration may be for life or for a ~~term~~ limited period, ranging from one day to fifteen years.

§ 18 Simple incarceration (Haft) is for a period from one day to six weeks; it is merely deprivation of liberty for the time.

§ 21. Equivalence. Eight months of a penitentiary equals one year of ordinary prison, and eight months of ordinary prison equals one year of fortress imprisonment.

[The theory here is that life in a penitentiary is a) more disagreeable b) harder work c) worse fare than in ordinary prison, and so eight months is equal to 12 months of the ordinary prison. Some doubt whether this does not lead actually to milder sentences for worse crimes, since it is impossible to make the conditions harder in penitentiaries without transgressing the hygienic rules established to prevent loss of health.]

Labor in prisons.

The code (§ 15) provides for penitentiaries that their inmates are both required to labor at the tasks there imposed. They may also be employed at labor outside the prison, especially on public works, but only when convicts are separated from other and free workingmen.

Those who are condemned to ordinary prison (Gefängniss) may be occupied with work suitable to their capacity in the institution; they can not be set to work outside the institution without their consent (§ 16).

Cellular ("Separate") ("Solitary") confinement.

§ 22. The penitentiary (Zuchthaus) and punishment of the ordinary prison (Gefängniss) may be carried out for all the term of sentence or for a part of it, in separate confinement (Einzelhaft), so that the prisoner may be kept isolated from other prisoners.

This separate punishment cannot exceed three years without consent of the prisoner.

"Good time" law. Provisional or Conditional release (die vorläufige Entlassung).

§23 Those who are sentenced for a long term to penitentiary or ordinary prison may be released before the end (vorläufig entlassen) when they have completed three-fourths of the term of sentence, at least one year, & during that time have conducted themselves well.

§24 This release before the end of sentence term (die vorläufige Entlassung) may, in case of bad conduct, be recalled at any time; & this recall has the effect, that the time elapsed between the release & the re-arrest shall not be reckoned in the length of the sentence.

N.B. §25. The decision upon the conditional release, as well as upon the recall proceeds from the highest judicial authority (von der obersten Justiz-Aufsichtsbehörde). Before the decision relating to release the prison administration is to be heard.

The temporary arrest of the conditionally released convict, for urgent reasons of public welfare, may be made by the police authorities of the place where the released prisoner is staying. But a final decision is to be asked of me.

Fines . Reparation

§ 27. The minimum fine for felony or misdemeanor is one (1) mark; for offenses one (1) mark.

To be distinguished from the fine (Geldstrafe) is the compensation (reparation / Busse), i.e. a sum of money to be paid by the criminal court to the injured party at his request, instead of further damages.

[E.g. in case of ~~theft~~ diebstahl, physical injury, infringement of patent- + copy rights.]

Dishonor as a penalty.

§ 31.

Condemnation to the penitentiary carries with it permanent incapacity for service in the German army & the imperial marine, & to occupy certain offices.

§ 34. Condemnation to an ordinary prison may be accompanied & loss of certain civil rights & honors for a limited time.

9/§§ 33, 34.

Surveillance by police

§ 38. Supervision by local police is authorized for certain crimes, for definite period, and security for years.

§ 39 (cf. § 361)

Minors; children

§ 55. Under 12 years a person cannot be criminally prosecuted. If the law is broken the child may be handed over to reformatory agencies

§ 56 Youth bet. 12 & 18 years, if it is found that they have not insight into the criminal nature of the act, & they may be handed over to the family or some reformatory agency.

§ 57. Youth (bet. 12 & 18) who are capable of understanding the criminal nature of the act are punished with shorter sentences than adults for the same acts.

Simple dispersion (Hyp) for minor offences. (4)

§ 361 } [Very important sections]
§ 362 } Tramps or

Men who violate pass under police
surveillance;
vagrants (Landstreicher);
beggars;
men who neglect to provide for their families,
drunkards etc.
prostitutes who violate sanitary rules of
police;
persons to be sent at request of town authorities
for persons receiving aid.

Some of them may be required to work in the
prison, or (if supported from the workhouse) at the
institution (drunkards, beggars, prostitutes etc)
Tramps.

Surveillance of police may, in some cases, be added.

Minors (under 18) cannot be held in work house

Crimes & Penalties.

Most of the Code is made up of definitions of Crimes and Statements of Sanctions or penalties.

These are not taken into account in prison administration.

The directors of prisons have not concerned with the nature of the offence but only with executing the sentence, no matter for what crime the sentence was rendered.

I have already called attention to the doctrine which has most directly on prison administration.

The Administration of Justice. — Prussia

Wilson, p. 296.

Above all the Landgericht.

In each Province there is a Supreme District Court (Oberlandesgericht); & next below it, a District Court (Landgericht). In each respective District there is an Amtsgericht.

[For Prussian Justice see Gerichtsverfassungsordnung, adopted in 1877]

"Minor criminal cases are tried in Sheriffs' Courts (Schöffengerichte) sitting in the respective Districts; more serious offenses by the criminal Chambers of the District Court; all grave crimes by Special Jury-Courts (Schwurgerichte) which sit under the presidency of three judges of the District Court.

"The appointment of all judges rests with the King: but the appointment is for life & the judges stand in a position of substantial independence. The Minister of Justice, however, completely controls all criminal prosecutions."

Justice: Courts Wilson The State p. 271

The Empire supervises and systematizes.

The court of last resort is the Imperial Court (Reichsgericht) at Leipzig, created in 1877.

The state governments appoint the judges of the state courts & determine the judicial districts; but uniform laws fix the qualifications required of the judges, as well as the organization that the courts shall have. The decisions of the court at Leipzig give uniformity to the system of laws."

[Cf. Strafprozessordnung]

The Central Executive Departments (Ministeria).

Wilson, The State p. 281

In Prussia there are nine: (1) Foreign Affairs, (2) Interior, (3) Ecclesiastical, Educational, & Sanitary Affairs, (4) Trade & Commerce (5) Agriculture (6) Public Works (7) Justice (8) Finance (9) War.

The Staatsministerium (Ministry of State) or College of Ministers is composed of the heads of the 9 ministries & meets once a week.