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РАЗМЫШЛЕНИЯ О ПЕНИТЕНЦИАРНОЙ ПЕДАГОГИКЕ В ГЕРМАНИИ

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В статье рассматриваются проблемы демократического переустройства современного общества. Теоретическое осмысление основных тенденций его развития и поиск возможных путей их практического воплощения. Важнейшим направлением уголовно-исполнительной политики Германии является не исправление, воспитание осужденных.

Пенитенциарная система Федеральной республики Германии и ее опыт обращения с осужденными с точки зрения демократических начал и отдельных институтов уникален и является одним из самых признанных в Европе.

В учреждениях, предназначенных для применения мер исправления и безопасности, которые представляют собой социально-терапевтические учреждения, содержатся лица с психическими заболеваниями и отклонениями, а также осужденные, лечащиеся от наркомании и алкоголизма. К этой же категории относятся учреждения, в которых содержатся после отбывания наказания рецидивисты, проходящие стадию адаптации к жизни на свободе. Анализируется опыт работы учреждений для осужденных несовершеннолетних и амбулаторное и стационарное исправление, пенитенциарные учреждения открытого типа.

На организацию исполнения и отбывания наказания оказывают значительное влияние концепция и идеи классической школы правовозмездия за содеянное. Персонал тюремной системы ФРГ строго придерживается заповеди: не отнимать у человека больше прав, чем это нужно, приучить осужденного подчиняться закону и быть ответственным за свои поступки. Выполняются эти задачи при помощи различных институтов системы, и, прежде всего, усилиями социальных работников.

Большое значение социальные работники придают изучению личности осужденного в тот период, когда он помещается на 6 недель в тюрьме в отделение для временного содержания. В этот период психологи, юристы, педагоги, представители биржи труда внимательно наблюдают за осужденным, после чего на каждого из них составляется характеристика. После «обследования» осужденного направляют в учреждение, в котором ему легче адаптироваться в соответствии с общими характеристиками среды, в которую он будет помещен для отбывания наказания в виде лишения свободы.

Ключевые слова: расширение прав и возможностей, поощрение, генеральное управление пенитенциарной службы, основные формы образовательной деятельности, профессиональная этика.

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THOUGHTS ABOUT AN ETHICAL MANAGEMENT OF PENAL INSTITUTIONS

Abstract

Both, the German Prison Act and the Youth Courts Law empower a life in freedom without committing offence as well as social responsibility. In particular the employees of the General Penal Service accompanying the detainees in their everyday life are granted an essential pedagogical role with regard to the basic forms of educational activities and the perpetual life-long development of each human. Being officials, they are required to represent the basic values of democracy and human rights. In many cases the employees' occupational choice cannot be attributed to a pedagogical motivation as it runs the risk of pedagogy and encouragement fading into the background. This is why the prison practice has to be enriched with professional ethics.

Keywords

Empowerment, encouragement, general penal service, educational methodologies, basic forms of educational activities, value systems, professional ethics

Behaviours patterns that deviate from the norm, that harm other persons, objects or abstract values – these behaviour patterns have always existed in human communities. Sometimes they are marginal, sometimes irritating, sometimes they are as disastrous and horrifying that they go beyond our imagination. There will never be a final answer to the question of how to deal with deviant behaviours. And **that is a good thing** because if we had the key to perfectly manipulating human beings, our freedom would be past. **Unfortunately**, one does not pay as much attention to the question of how to encourage, support and reinforce positive, democratic and legal behaviour in adolescents and young adults. But **especially in times of unstable values**, this would be essential for the preservation of the normative principles of our communities. The **prison**, the ‘penal institution’, is **one of the places**

where we attempt at integration and reintegration – following legal guidelines and premises.

The **origin** of my thoughts is the objective of imprisonment which is written down in **§ 2 of the German Prison Act** [1] (Deutsches Strafvollzugsgesetz, StVollzG). § 2 states that the objective of imprisonment is the empowerment of detained people to lead a socially responsible life in freedom without committing crimes. **One can debate for a long time** whether prisons are the appropriate place for education, encouragement, support and treatment of young adolescents under impeded circumstances. **In any case**, imprisonment should be a new constructive start, whether it is the first, second, third, fourth or twentieth chance to start over. It is about people whose **lives** have been troubled in a way that **no one** of us would want for himself or herself. (This is not supposed to be an excuse but is supposed to help understanding.) Often, these young adults do not



only have a troubled past but the troubles will continue in their **future** as well. To use the chance of starting over in prison is an ambitious **goal** – the **circumstances, challenges and the place are demanding** – that even “upper-class” adults would not always attain.

In an empirical-prognostic view, there are only few hopeless cases. This fact given, we need **special guidelines and aid for imprisoned adolescents** with their special biographies, offenses and irresponsibilities. These guidelines and aids are **debated controversially**. There is **not THE one** penalty institution but a broad variety of institutions, ways of managing these, and attitudes. **Probably, each one is justifiable** but often the personnel feels **constrained** by guidelines, goals, few resources, conventional structures, diverse personnel groups and special service with differing motivations. Additionally, the **directors of prisons are surrounded by** researchers of any kind who are “know-it-all” but who never have to be the one to implement the suggestions. Sometimes, **media and critical public invade**, focusing on dramatic failures rather than positive aspects. Moreover, the directors are regularly **confronted by** new generations and new cultures/subcultures. They are challenged by new security regulations and by protecting their staff and detainees from attacks. The directors are **disillusioned with** the – not uncommon – breach of faith and trust by detainees (and sometimes by the very own staff). They **fear** that “something might happen or go wrong” - since mistakes can easily become a political issue.

Above the direction, there are the ministries who often have opposing interests. Sometimes, it would be helpful if their pedagogical knowledge was greater than their juridical knowledge. And sometimes one wishes that the

ministries would be as supportive as they are supposed to be...

What are the outcomes of such a work for the directors and **leaderships** of penal institution, what are the outcomes for the **personnel**? How do you become an employee in a penal institution? Which criteria do job candidates have to meet? How do new employees learn how to fulfil their task? **What do employees have to endure? What idealism** does the leadership have to have in order to lead a juvenile or adult penal institution with their diverse, sometimes contradicting missions? **How can one stand up** to ministries or colleagues? For how long can one sustain a **pedagogical sense of mission**? Is it possible to motivate the own personnel again and again? How does one cope with **aging**? **When does one reach the point where the private life suffers** too much?

In any case, these institutions do exist. We all have to **appreciate the personell** that works there responsibly. And we have to make sure that their work yields more profit than it does harm. The **personnel’s human potential** is – amongst others – a pivotal, helpful and protective aspect.

In the decree of 31st of May 2006, the **Federal Constitution Court** [2] meritoriously confirmed that the education of juvenile offenders is both valid and important and that education describes the **support** given to juvenile offenders that empowers them to conduct a life in freedom, social responsibility and without offences. This **empowerment/support** builds on the diagnosed initial learning status, specifies the content of support laid down in law, for example in the form of individual educational plans, and is implemented in all ranges of action, like school, vocational training, home group, sports or leisure time.

In view of educational science, professional educational acts are **always linked to the purpose of supporting** the arrested person. This

is valid for **both the youth and adult penal institutions**. The purpose is to **preserve and extend** existing positive behaviour patterns (those that conduce to a legal life) of arrested persons. Furthermore, the purpose is to **learn new skills** and ways of perception/awareness, processing, behaviour and knowledge, in order to **prevent, limit and lower negative behaviour patterns**.

Following Herrmann GIESECKE [3], the **basic forms of educational activities** are **teaching** (preferably but not exclusively the task of pedagogical services), **informing** and **consulting** (preferably but not exclusively the task of pedagogical services and social services), and moreover **arranging** and **motivating** (task of the whole staff in penal institutions).

The primary and most effective **means to guide behaviours** are the **encouragement and promotion** of target-aimed behaviour (this applies to both the arrested persons and the staff). A subsidiary means are **rational counteractions** upon the breach of rules or norms.

In order to support the detainees, it is a must that involved professionals base their actions on **hope** and on the **morale** that support inalienable, ethically imperative and that development is always possible. **Failures are not a reason to cease supporting** the adolescent but should lead to self-criticism and further development of the educational plan and actions – the penal institution as a learning institution.

Nowadays, **modern developmental psychology** stopped discussing development as a phase of childhood, adolescence or young adulthood. Instead, developmental psychology is now related to **life spans and the entire adulthood** [e.g. 4, 5]. This is a contrast to previous models of growth and maturation which discussed adulthood as a sort of “final state” where changes do only happen as degradation.

From the modern point of view, delinquent persons have the **potential to change and develop themselves their whole life**. During all life spans, the following subjects have to be dealt with again and again – and therefore have to be dealt with in the institutions:

- **social relationships**
- **socialisation**
- **transitions, life events, crises**
- **individual goals for life.**

These subjects in addition to the **imprisonment’s target of reintegration**, result in the task of **promoting development** and preparing the detainees for their **future**. This task is common for juvenile as well as adult penal institutions. The realization is expected to be according to Prison Acts’ goal settings, possibilities and indicated topics. Another target is to arrange a **promoting environment for development here and now**, in accordance with the German Prison Act’s principles of convergence and counteraction. Still, educational targets and activities are hold against the target of punishment. Following to LAUBENTHAL [6, 155], it is the **General Penal Service** (“Allgemeine Vollzugsdienst”) which has to work between the conflicting priorities of support and promotion on the one hand and of security and counteraction on the other hand.

It is still controversially and ideologically discussed, how the promotion of development can work in a **closed setting and under constraint**. If one applies the results of studies about therapy under constraint to the setting of penal institutions, it seems that the **constraint per se** does not have much effect on the success. The **personell’s dedication**, the **management** as well as the **educational programs** seem to have a greater impact on the effectiveness. As early as in the twenties, HERRMANN [7, 23] spoke of a **special “pedagogical atmosphere”** being the most relevant

prerequisite for every promotion in prisons. This understanding is conform to the latest research on schools that emphasize the “human factor” as being relevant to working with young persons.

High expectations, animating leadership, and a climate/atmosphere promoting learning have proved to be especially effective [cf. 8].

All of these factors are man-made and influenceable. **Prisons’ work** is – above all and like the work in residential education, hospitals, care facilities or schools – **work of people FOR people**.

These people are:

- **Professionals** who work within the penal institution, carrying out executive functions in a division (school, everyday life, workshop, therapy, sports and leisure activities, pastoral care).

- **Freelance workers** and workers who are sent to work in the penal institution by outside organizations.

- **Relatives** who – at least in a number of cases – care for their detained partners, parents or relative.

- **Volunteers** who care for the detainees out of individual, ideational dedication.

Besides the institution’s leadership, the **General Penal Service** (“Allgemeiner Vollzugsdienst”) and the “**Werkdienst**” (meaning people who are skilled craftsmen) probably are the two staff groups who have the most impact on the detainees’ everyday life and their development [cf. 9, 7; 10, 57]. BÖHM [11, 275; 10, 57] stated that the of the General Penal Service employees do not only carry the keys but that **they are the key** to influencing the detainees and to improving penal institutions. The “**Werkdienst**” employees are skilled craftsmen and highly re-

spected by the detainees who admire their professional competencies and regard them as role models, too. Often, the craftsmen have better relationships with the detainees, since they meet in the setting of work which is less fraught.

The **General Penal Service** however shares the detainees’ everyday life, worry and distress, happiness and joy. They are **responsible for material supplies**, as well as for the daily routines/structuring of the day and the division’s atmosphere; **they can** encourage, correct, guide and limit daily group processes and daily learning arrangements within the residential group/division; they can structure processes, develop ideas for the day, the week, the month or the year; they can nourish a humane culture of a structured togetherness in the team; they can live together with the detainees.

The fact that the employees wear uniforms is disputable. Nevertheless, the **uniforms represent** that they are civil servants who are firm believers in **democracy**, its **core values** and its underlying belief in human rights and duties. The employees should convey this belief proactively. **BUT: Is every professional really aware of this?** How are the employees supported in these ethical beliefs that come along with their profession?

The general public service is confronted with **lows of human life**, with disappointment, belied trust and expectations, broken promises, non-performances, regression to old behaviour patterns, and recidivism.

In the case of conflicts between detainees, the general public service functions as a sort of “**lightning conductor**”. At the same time, the employees are supposed to intervene prudently and de-escalate calmly and supportingly. With good reason, one of the **essential tasks** is to **ensure se-**



curity inside the institution (e.g. by the use of examinations, hindrance of offences and attacks inside the institution or hindrance of escape when detainees have pass; or by ensuring a living and learning environment free of fear). In so far, they have many unpleasant tasks within the penal system. At the same time, the penal systems' totalitarianism becomes bearable and human, only if the general service does not always follow every rule. Instead, the employees sometimes have to do their **work negligently** – and they do so on purpose [cf. 10, 55].

During in-service trainings focussing on pedagogical ways of organizing daily routines, it is consistently pointed out that the work is often impeded not only by the detainees, but by the very own staff, **the very own colleagues**, too. Employees seem to have the attitude that a certain work load should not be exceeded by individual, **over-eager colleagues**. They seem **threatened**, they fear that the division's average workload will exceed, i.e. that they, too, will have to work more and show more effort. This leads to group processes in which **new, questioning colleagues** are under the **pressure to adapt** themselves to the (not questioning) old-established colleagues.

These processes often do not take a long time. Regarding these negative adaptation processes, the director can often do nothing but to stand idly by [cf. 12, 156]. In so far, depending on the institution, there are not only subcultures among the detainees but **subcultures between the employees**, too. These subcultures have varying influence on the realization of penal systems' targets. It remains an open question whether the employees work **based on the same values**; the values that our constitution prescribes and that are necessary to realize the penal systems' targets.

BÖGEMANN [13, 86f.] found out that penal institutions' **employees are dissatisfied with a variety of aspects:**

- the **leadership**
- the institution's **atmosphere**
- the latent **lack of interest** in the very own work
- the **resignation** as well as the own **dissociation**
- the **flood of regulations** and the impossibility to realize them
- the fact that colleagues **mistrust** the director (and that this mistrust affects the relationships inside the institution)
- **being wounded and harmed** when trying to improve the institution
- **low ambitions** to be proactively involved in improvement processes
- here and then the **lack of power to communicate** due to many unresolved conflicts between the staff and the leadership – sometimes belonging to the past; at the same time the distinct, major **need to discuss and to be listened to**, the need to affection and support.

In contrast to residential education staff, one cannot assume that General Penal Service employees chose the job due to the **pedagogical motivation to help** disadvantaged adolescents. The General Public Service has been and remains to be a typical **second job**. One of the essential motivations for choosing this job often is the job security one has as a civil servant.

This is legitimate but **risks** that required pedagogical activities are pushed into the background. Pedagogical activities are always based on the **decision and attitude to be willing to invest additional, more intense work**, to get involved with the detainees and to build relationships. These activities involve risks that not every employee is willing to take.

The **central idea of “support” / “encouragement”** is to give **development aid**, to convey **democratic values**, to let detainees experience on a daily basis what it means to **live together in in decent conditions**, to provide them aid to be viable, to teach them **cultural knowledge**, to actively organize their leisure time, to structure their living environment while giving them the feeling to be appreciated.

In this range of action it is especially important to convey a solid motivational working basis. This working basis should not only consist of **knowledge and methodological knowhow** but of a **reliable professional ethics**, too. The professional ethics implies **moral and ethical principles** which are an indispensable help and orientation in pedagogic fields of work.

If employees adjust their own actions to **positive professional ethics**, there is a greater possibility (in some circumstances) to discover promising support measures [14, 181].

BREZINKA [14, 181] compiles **four indispensable positive attitudes** of a professional ethics for teachers:

1. a **positive attitude** towards pupils and their well-being
2. a **positive attitude** towards the own community and its educational target
3. a **positive attitude** towards the teaching subjects
4. a **positive attitude** towards the activities that come along with the profession.

These basis statements can be employed on juvenile and adult penal institutions without hesitation since schools and penal institutions are

both settings aiming at creating a learning environment.

Is it true that penal systems' employees who have an **intrinsic motivation** and interest in the work of the institution in general and in colleagues who are involved in the treatment **constitute an exception**? Their expectation seems to be acquisitive – the next promotion and pay improvement seem to be more motivating than an interesting and diversified field of activity [12, 157]. **And is it true** that the pluralistic, democratic state has the assignment to promote **basic common ideals** (in the sense of minimal virtues) that seem to be absolutely **essential** for individuals to exist decently and for the community to live together? If so, then it is equally indispensable that the work and support measures in penal systems as well as the employees' training, further training and professional practice are based on a **professional ethics** that is compliant with the above stated.

Looking ahead, the addressed issues can lead to the conclusion that **the penal system should be enriched to a greater extent by ideas and reflections on professional ethics**.

I want to close by quoting Gustav RADBRUCH (1906; Legal philosopher and Reich Minister of Justice during Weimar Republic) [15]:

„Es gibt kein besseres Mittel, das Gute in den Menschen zu wecken, als sie so zu behandeln, als wären sie schon gut.“

(There is no better means to arouse the good in man than to treat them the way you would if they already were good)

(Written in a letter to Lina Götze, 8.12. 1906 in Heidelberg > Gustav Radbruch, Briefe)

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