

# 'In John Howard's Footsteps'

*History of The Untried (Remand'<sup>1</sup>) Prisoner in England and Germany*

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As part of my research into remand prisons in England and Germany, I was interested to find out about the history of the untried prisoner in both countries and when the word 'remand' was actually introduced<sup>1</sup>. I was fortunate enough to gain access to the original *Prison Commissions'* records at the HM Prison Service College at Love Lane, Wakefield, where I found a wealth of primary sources yet unresearched, including the first edition of John Howard's 'bible', *The State of Prisons* of 1777. Moreover, his descriptive chapters on German Gaols of his time were fascinating for me since I had visited and researched the very same prisons during 1993-94 as part of my fieldwork. Hence, I can proudly state: I followed in Howard's footsteps! - not on horseback mind, but similarly self-motivated and self funded, to investigate whether conditions for prisoners had actually improved. This account constitutes the historical background to the treatment of the 'prisoner awaiting trial'; it follows the history of prisons under local government and the first steps towards nationalisation of prisons in 1835 and will cover approximately the same period in time for the German prisons<sup>2</sup>.

The reader will see that the idea of private prisons is not a new one, neither is the idea of paying a 'realistic wage' to the prisoner who is working or indeed making him pay for his keep an innovative one - it has all been done or thought of before and history shows that policy makers are merely re-inventing the wheel. Apart from John Howard's attempts to create better conditions for prisoners, James Neild's (1812) endeavour to do the very same is noteworthy, particularly when he describes the humane conditions for prisoners at Lincoln County Gaol, a prison which even today

Neild would be very impressed by.

## **John Howard and his quest for the untried prisoner**

Though John Howard's work is well known, I would like to refer to him briefly with regard to his involvement with untried prisoners.

In 1773, John Howard was appointed High Sheriff for the County and though not himself a Justice of the Peace, he proposed to give the entire administration of the prisons to the Justices in Quarter Sessions, who were to employ the gaoler and his warders as their salaried servants. In the ensuing years, the gaolers, warders, surgeons and chaplains became salaried servants, not of the High Sheriff, but of the Quarter Sessions. Thus the connection of the High Sheriff with the County Gaol became, by 1835, purely honorary.

He found himself as an *ex officio* member of a visiting committee of Justices, reporting to, and receiving instructions from, Quarter Sessions.

For instance, it was ordered in Surrey, as early as 1798:

*that the High Sheriff for the time being, and eight named magistrates, 'be... visitors of the County Gaol... to carry into execution certain rules and orders now established... pursuant to Act 31 George III'*<sup>3</sup>

Being High Sheriff, John Howard noticed the inhumane conditions and specific injustice at Bedford Gaol for the untried prisoner. He discovered that prisoners who were acquitted, often after spending many months in custody

- 1 A distinction needs to be made here between the Prison Service's or rather 'Commissions' administrative use of the term 'remand' and its use as a legal meaning which dates back to 1643 where the term 'remand' is used as a verb by court/ magistrates. The Oxford English Dictionary gives 1888 as the first use of 'remand' as a noun to mean a 'remanded prisoner'.
- 2 For further information on German prisons today, refer to *'Prisons in England and Germany'*, in: *Prison Service Journal*, No. 97, January, 1995, pp.48 - 53.
- 3 cf. MS. Minutes, Quarter Sessions, Surrey, 10th July, 1798.

awaiting trial, were dragged back to gaol and locked up again until they could pay the fees claimed by the gaoler. Howard applied to the county justices for a salary to be paid to the gaoler, so that he need no longer rely upon what he could extort from the prisoners. But the bench demanded a precedent, and ordered Howard to find examples of 'better' practices. When Howard examined the gaol system in neighbouring counties, he found, to his dismay, that the injustice incurred to prisoners, especially to those awaiting trial, was the general rule.

### **'Untersuchungshaft' - Remand in Germany and John Howard's view of the German prisons**

*The Germans, well aware of the necessity of cleanliness in prisons, have very judiciously chosen to build them in situations most conducive to it; that is, near rivers, as at Hanover, Zell (Celle), Hamburg, Berlin, Bremen, Cologne (Köln), Mentz (Mainz) and many other places*<sup>4</sup>.

Due to the fact that John Howard also visited and included the German 'gaols' ('Gefängnisse') in his fourth edition of *The State of Prisons*<sup>5</sup>, I would like to summarise his major findings in this section. His reports are also helpful since there are no prison inspection reports, as those undertaken in England and Wales by the Prison Inspectorate, for the German prisons to this very day. In these prisons particularly in the ports of Hamburg and Bremen, John Howard actually found few prisoners, but what he called 'galley slaves' [sic]. One surprising reason for this was the speedy trial after commitment. These 'galley slaves' were put to work on the roads or fortifications or other public services for four to twenty years according to their crimes.

What surprised Howard even more was the fact that they were clothed and fed by the government; at Wesel Prison, for instance, prisoners received two pounds of bread and an allowance of three halfpence every day from the King of Prussia. Whilst there are separate prisons for short-term petty criminals, there are some which house prisoners sentenced to death which

usually took place within 48 hours; this inmate then had a choice of food, wine and better accommodation where he was in the company of the minister during all of his remaining hours.

Since I too went on a visit to Osnabrück and Celle prisons (Lower Saxony *Niedersachsen*), it is with fascination that I read Howard's account of 'Osnaburg' (Osnabrück) and 'Zell' (Celle) prisons near Hanover in the North of Germany. He comments on the miserable conditions and suffering of the prisoners in both prisons only to draw possible attention of the then ruling Prince and Bishop in June 1778. For Celle, Howard quotes the Latin inscription above the gate of the prison, most of which still stands today and accommodates mainly remand prisoners, erected in 1756, 'for the purpose of public justice and utility, by confining and punishing the wicked.'<sup>6</sup>

At the time of Howard's inspection there Osnabrück Prison had fifteen cells with no light but a small aperture over the door. Furthermore, he found the 'Osnaburg Torture'<sup>7</sup> in many of the North German prisons. He found many men, women and children in squalid conditions with poor clothing and no shoes.

Howard, like myself, visited *Bremen* Prison; this prison forms part of my fieldwork research prisons. He visited Bremen twice, once in 1776 and then again in 1781 to establish whether the conditions in the debtors' prison had improved. It seems to me that things have not changed much since Howard was there, certainly where conditions and types of criminals are concerned; above the gate he found the inscription '*Hic fraudum terminus esto*'. The debtors of that era have become fraudsters and tax evaders, calling themselves investment consultants ('*Unternehmensberater*') nowadays, whom I met and interviewed at the Bremen and other German local, remand prisons from December 1993 to late 1994.

The ruling then, particularly in large prisons such as Hamburg and Bremen, that prisoners were not allowed to see their families or have any kind of amusement or diversion, are still in many cases prevailing today, according to the remanding judge's order as to whom the prisoner is allowed to see on visits with the general ruling of one 30 minute visit every fortnight. Howard too, as I had

4 cf. Howard, J. *The State of Prisons*, pp. 66-75. 1777.

5 cf. Howard, J. *The State of Prisons*, 1777, pp. 66-75, *ibid*.

6 Rather depressingly, Celle Prison, some 250 years old now, bears some of the conditions which I would class as too degrading for any human being nowadays. Celle is a high security prison, for long-term prisoners, where one wing is still devoted to in-cell labour, often sleeping four men to a cell (1995).

7 According to Howard's account, a criminal who had to suffer the 'Osnaburg Torture' was usually taken down the dungeon cells at 2 o'clock in the morning; his hair would be torn off his head and chest until the 'Keeper' would force the confession out of him; after that the prisoner would usually be executed. On such occasions, a secretary of state, doctor and surgeon would also be in attendance. If the criminal fainted, strong salts were given to him so that he 'experience' the full torture consciously.

to, had to apply to the magistrate or Ministry of Justice ('Landesjustizministerium') of each German state or city for permission to visit each prison.

When Howard revisited the Bremen gaol, he found the same poor state of cells and conditions as five years previously; the only good point made about the prison was that there had been 'no execution in this city for twenty-six years'. He comments on the prison or 'House of Correction' ('Zuchthaus'), situated on the river Weser as 'indeed a house of industry and very quiet'<sup>8</sup>. In 1776, there had been 11 men and 28 women, and in 1781 at Bremen jail, 9 men and 19 women, all at work. Most of them, according to Howard, had been weaving carpets. The women's quarters were then reported to be very clean and their work was confined to spinning cows and goats hair, knitting and weaving. The diet for men and women varied only in quantity. Everybody had meat only on Sundays and public holidays.

The 'Keeper' was described as having a decent salary. Howard mentions that the Bremen prison doctor Dr. Duntze, had visited a friend in London in 1754, and together they had visited Newgate Prison to observe the effects of the 'ventilator', where they were struck by an offensive smell. Whilst the doctor developed jaundice a few days later, his friend died of 'Gaol fever' a short time afterwards.

In the same year of 1776, after Bremen, Howard visited the near-by Hanover Prison, still one of the most feared prisons in Germany today. He found prisoners' beds of solid stone, the cells being on two levels. The upper rooms were more comfortable and designated for debtors. When he revisited the prison also in 1781, he found 29 prisoners, many of whom had been confined for six months to one year. The lower rooms were kept for 'more atrocious criminals'. He found the prisoners chained to the walls, and irons on their wrists with a bar of some two feet long in-between. The inmates received two 'Groschen' per day's work equivalent to 2 1/2 d. Six soldiers plus one paid keeper were stationed at this prison day and

night. As in the other prisons he visited, he saw various edicts and regulations posted on walls.

In Hamburg gaol which Howard visited four years later, in 1780, he found 13 slaves in chains supported by iron girdles around their waists, working on the fortifications of the prison<sup>9</sup>. Though the prison itself was clean, Howard left with some apprehension, since the gaoler was unwilling to show him the torture cells or dungeons for fear that he might write or publicise the fact. Howard knew that, of all the prisons he had seen in France, Italy and Germany:

*...one of the most excruciation (torture engines) is kept and used in the deep cellar of this prison. It ought to be buried ten thousand fathom deeper<sup>10</sup>.*

Prisoners here too were put to spinning and weaving work. Their diet was rye bread with butter for breakfast, and at dinner and supper they were allowed peeled hot barley, oats or buck-wheat with milk and meat on Sundays and public holidays. It is interesting to note that German prison industries still rely on the ancient 'Master Craftsman' and 'Guild' system, hence, carpentry, iron and smithy work, leathercraft, printing and bookbinding are to be found in most of the German longterm (training type) prisons<sup>11</sup>.

It is worth noting that Howard did not include any architectural drawings in his 'State of Prisons' for the German prisons. Whilst he did so for the English prisons, he was not able to do so for Germany; the reason for this is that many architectural plans for prisons were either simply not publicly available, or that to some extent, they were non-existent.

The 'work-houses' ('Arbeitshäuser') were introduced in parts of Germany, an idea which was taken directly from the 'Bridewell' tradition in England where the prisoners were put to work in order to learn to repent through the form of hard labour<sup>12</sup>; the 'Bridewells' were then the basis for the German equivalent, also known as 'Zuchthaus'

- 8 Regrettably, during my research visit to Bremen-Oslebshausen prison in December 1993, I did not find much work offered to remand prisoners, or indeed note-worthy prison industries. I did harbour the thought, that it was, indeed, resembling the time of John Howard's visit over 200 years earlier!
- 9 I briefly visited the JVA Hamburg Am Holstenglacis remand prison in December 1994, and found conditions for prisoners very poor indeed. This prison accommodates adult men and women on remand. Whilst the prison's CNA is 715 (incl. hospital), the average number of prisoners is around 850, of whom 530 are on remand and 200 are sentenced prisoners. But in the past, the average prison population has been as high as 1000. There are only 250 workplaces available for prisoners with very little educational facilities, thus the majority of remands is locked up 20+ hours a day. The present prison building was erected in 1878 on the site of the original prison visited by John Howard. It was built according to the 'panoptic' architectural design by Jeremy Bentham.
- 10 cf. Howard, J. *The State of Prisons*, 1777, pp. 66-75, *ibid*.
- 11 For further information, refer to 'Prison Industries in Germany', a Report for the HM Prison Service Board by Ursula Smartt and Robert Fulton (Head of Prison Enterprises and Activities).
- 12 Early references in German archives go back to the English Bishop Ridley who in 1555 under King Edward VI installed the first 'House of Correction' at his Bridewell Castle, where beggars, thieves and vagrants were introduced to hard labour and the idea of a meaningful life.

(House of correction) from the 16th century onwards. Just as was the tradition in England, the governing of the 'House of Correction' was shared by rich city officials and their wives. Apart from the governor and his wife, there was a works supervisor, a teacher and a doctor. Accommodation was in dormitories for four to twelve prisoners; the prisoner remanded by the police stayed on average several weeks, whereas the prisoner convicted by the courts, remained there for many years. Those with a longer sojourn were paid higher, incentive wages and thus the labour output was high. This paid partly for their keep and partly for their savings after release.

The first copy of a 'Bridewell' was introduced in Germany in the towns belonging to the 'Hanseatic League' (*Die Hanse*) of Bremen in 1609, followed by Lubeck in 1613, and Hamburg in 1622 and Danzig in 1629. Wien (Vienna) in 1670, Leipzig in 1671, Frankfurt in 1679 and Munchen in 1682 followed suit. None of these prisons, however, followed one and the same pattern with regard to architectural design or governing style of its prisons. Some were meant for police custodial the others for court purposes. The houses of correction ('*Zuchthäuser*') were completely overcrowded due to the fact that not only prisoners, but also the insane, the poor and orphaned children were accommodated therein. The hygienic conditions were described as 'inhumane', vermin and jail fever were taking many lives a week.

The prison workshops were closed due to the fact that the dukes or bishops who ruled the various German states were 'renting' the prisons or houses of correction to private owners. The private owner or keeper who was now taking over the prisons during the late 17th and early 18th centuries was only interested in making a profit due to prisoners' labour, rather than taking care of conditions or the upkeep of the law. The state of the food and hygiene at that time is said to have been appalling and was equally commented upon by John Howard in his '*State of Prisons 1777*'. The warders ('*Wärter*') were often drunk and frequently used corporal punishment ('*Prügel*')<sup>13</sup> and the means of 'dungeon arrest' where the prisoner was kept in complete darkness.

Germany was not the only country in Europe where prisoners' conditions, particularly the ones held on pre-trial detention were intolerable during

the late 18th century. The original aims of reforming a criminal character in the 'Bridewells' had been completely abandoned. The German penal historic literature goes on at length about the work of John Howard and greatly influenced the German reformatory prison development.

### **The historic development of conditions for untried prisoners in England**

Unconvicted prisoners arrived at the 17th century gaol in the custody of the constable in the first instance, and in the custody of the gaoler after sentence at Quarter Sessions or Assizes. Before 1330, sheriffs and gaolers had sometimes refused to accept prisoners brought by the constables 'without taking great fines and ransoms of them for their receipt'<sup>14</sup>. Shortly thereafter, Parliament decided that prisoners should be received without any entrance fee, and thereafter prisoners had no difficulty in gaining admission to jails! Apart from retaining prisoners in gaols overnight, the constables also used other places, such as the stocks or the parish cage.

The 18th century treatment of the untried prisoner was marked by the invention of the '*Clerical Justices of the Peace*', whereby clergymen were made magistrates due to their greater knowledge of English law. Much has to be attributed to the Clerical Justices who took it upon themselves, a good ten years before John Howard, to protect the helpless and comment on the appalling standards of the gaols and '*Houses of Correction*' at that time.<sup>15</sup> Conditions were extremely harsh for the prisoner 'awaiting trial' which, of course, meant the majority of prisoners, men, women and children in the gaols of that time. In county after county, we find the rectors and prebendaries coming to the front as magistrates or 'Chairmen of the Quarter Sessions', where charges were brought to the Grand Jury.

According to a local historian from West Yorkshire, Horsfall Turner (1904)<sup>16</sup>, prisoners from the '*Wakefield House of Correction*' were marched in chains and neck irons to the Quarter Sessions which were often miles away; for instance Skipton was 25 miles away from Wakefield<sup>17</sup>. Horsfall Turner's account is supported one hundred years later by James Neild's observations on Wakefield Gaol:

13 '*Prügel*' was referred to as '*Der Willkommen*' which ironically has little to do with the present word of 'welcome', but meant six to forty beatings which were given to the prisoner upon reception. Release from prison was dealt with by similar torture.

14 cf. Stockdale, E. *Study of Bedford Prison 1660-1877*, p. 19.

15 There were '*Houses of Correction*' and '*The King's Gaols*' at that time.

16 cf. Horsfall Turner, J. *Wakefield House of Correction*. 1904, p. 82.

17 Other courts were in Knaresborough, Keithley, Skipton, Bradford, Rotherham, Leeds, Doncaster and Wetherby.

*The Quarter Sessions are held as follows: In the Spring, at Pontefract only; in the Summer, at Skipton, Bradford and Rotherham; in Autumn, at Knaresborough, Leeds and Rotherham; and in Winter, at Wetherby, Wakefield and Doncaster. The irons used in this Prison are of the very lightest kind, being, as I conceive, not more than five or six pounds in weight. But I saw here one pair, that weighed **fifty-two** pounds; and which the Turnkey told me a refractory Prisoner had on for a fortnight, **by way of punishment.**<sup>18</sup>*

From about 1773 onwards, John Howard began systematically to visit gaols in England and all over Europe, to investigate the injustices incurred by pre-trial detainees and prisoners having to pay subsequent fees to gaolers which they could not afford. He met the horrors of gaol-fever, and the fact that some prisoners were transferred unnecessarily from county gaols to Houses of Correction, which he subsequently included in his investigations. As he himself explains:

*The work grew upon me insensibly. I could not enjoy my ease and leisure in the neglect of an opportunity offered me by providence of attempting the relief of the miserable.*<sup>19</sup>

Eventually, John Howard called for the abolition of private gaols, yet they continued to retain their medieval characteristics. Imprisonment remained a punishing institution not one of reform.

The seeds for prisons for profit were sown in late 18th century (1794) by Jeremy Bentham who introduced the famous panopticon. He arranged for prisoners to be put out to labour. By 1835 it was rare to find a county without a standing 'Prisons Committee'. The county of Gloucester was one of the forerunners to establishing this special committee who would deal only with matters concerning the gaols and report to Quarter Sessions. Other counties followed suit, notably Lancashire, the West Riding and Northumberland. Though, James Neild observed that 'much has been done in many places', there were still conditions which were completely inhumane especially where untried prisoners were concerned, as he describes the 'Town Gaol in Leeds, Yorkshire':

*This Gaol is for temporary confinement. It stands nearly in the centre of the Town; and consists of four rooms, about 12 feet long by 9...No fire-places: No court-yard: No water: No sewer.*<sup>20</sup>

However, the 'County Gaol in Lincoln' received a glowing report by him spanning a report over six pages; here male and female prisoners were kept apart in 1811, had adequate washing facilities and were treated humanely by the Gaoler John Merryweather, the Chaplain, Rev. George-Davies Kent and the Surgeon, Mr. Charles Franklyn. As for the untried prisoners, conditions at Lincoln gaol were equally good:

*Four day-rooms, with fire-places, are here also assigned to Prisoners of different descriptions; viz. No. 1, of 20 feet by 11, and 11 feet high, for Male Prisoners before Trial.*<sup>21</sup>

Neild was appalled by the cruelties inflicted on tried and untried prisoners:

*By loading them with Irons, or fastening them one to another with heavy Chains; by bolting them to the walls or floors of the prison; and by shutting them up, at the discretion of the Gaoler, in dark loathsome Cells, void of almost every necessary to support life.*<sup>22</sup>

He concludes his admirable masterpiece with a praise for his predecessor John Howard and an appeal to the 'distinguished Readers' to try to, 'soften the trials and alleviate the sorrows of Imprisonment', and echoes my sentiments when he states, 'that many Prisons proved to be difficult of access; that the information which I sought was not easily obtained; and that this massy collection of particulars is not published for general entertainment.'<sup>23</sup>

The first step towards the nationalisation of prisons was established by the *Prison Act of 1835*. The newly set-up *Inspectorate of Prisons* was deeply concerned about the lack of uniformity of labour, diet and treatment of prisoners tried and untried throughout the country, and their main aim was to set up a uniform prison and criminal justice system. The prisons' administration was made subject to rules framed by the Home Secretary, with which they were meant to comply, at the

18 cf. Neild, J. *State of Prisons*, 1812, pp. 568-569.

19 cf. Howard, J. (1777) 'The State of Prisons'.

20 cf. Neild, J. *State of Prisons*, p. 333. *ibid.*

21 cf. Neild, J., *ibid* p. 347

22 *ibid.* pp. viii

23 cf. Neild, J., *ibid.* p. 617.

bidding of 'Government Inspectors of Prisons'. From 1828 to 1835, there was, in fact, hardly an alteration of the law, touching any branch of local government which did not include some diminution of the authority of the county magistracy. The prison inspections revealed numerous scandals of varying degrees, as to the state of prisons and the criminal justice system at the time. The need for the government to take an active role in the management of the prisons and the clarification and unification of the various laws governing them, became only too evident. The introduction of 'hard labour' was the *Inspectorate's* answer to fight the war against hardened criminals. This was particularly appealing to German Ministries at the time, who were fast adopting English prison standards and were looking at the new architectural idea of the 'Pentonville' model. Whilst the 'Separate and Silent' system also appealed to the Germans, the *Inspectorate* at that time stressed that it was:

*Illegal to enforce the Silent System upon the Untried. All that the law aims at in the imprisonment of a person, to whom an offence is only imputed, is his safe keeping until the day of trial. But the interdiction of communication between persons placed together in a day-room, is a punishment.*<sup>24</sup>

The *Inspectorate* pointed out the illegality enforced on untried prisoners of silence and separation when it was an already stressful time to the accused; furthermore they deplored the enforcement of prison regulations on them. The committee did, however, recommend that the 'Separate System' ought to be allowed and administered to the 'untried', to ensure their not being placed together with hardened criminals. They recommended that the untried prisoner's 'feeling and necessities be consulted' and that:

*... they be provided with a commodious, well-lighted, and well-ventilated cell, fitted with everything necessary to supply their real wants; that they are supplied with a sufficiency of good food; they are protected from the sight and hearing of all their fellow prisoners; they can, at any time, have the attendance of an officer of the prison, or of the governor, chaplain or surgeon. They can see their friends and legal advisers; they can, without impediment or interruption, calmly*

*deliberate upon their defence, and take all proper means to meet the trial that awaits them. They may send or receive letters; they may read unobjectionable books; they may, if they desire it, be furnished with suitable employment; they have the privilege of public worship; can take exercise daily in the open air; may receive food other and beyond the prison diet; they are exempt from perplexing regulations...they are spared the infliction of prison penalties.*<sup>25</sup>

The *Prison Act of 1877* saw the introduction of the '*Commissioners of Prisons*'<sup>26</sup> and made important and special provision for unconvicted prisoners and also set up a special '*Visiting Committee*' who would deal with the accommodation and conditions of these untried prisoners. The '*Eleventh Report*' of the '*Commissioners of Prisons*' (1888) stated:

*Whereas it is expedient that a clear difference shall be made between the treatment of persons unconvicted of crime, and in law, presumably innocent, during the period of their detention in provision for safe custody only, and the treatment of prisoners who have been convicted of crime during the period of their detention in prison for the purpose of punishment.*<sup>27</sup>

The *Prison Act of 1877*, required that certain special rules should be made for prisoners awaiting trial, to prevent unnecessary hardship to those who are confined for purposes of security only, but who are not in the eyes of the law, guilty. Debtors and unconvicted prisoners were held together and kept apart from the convicted criminal. There was, however, a trend towards creating the 'local' prison which would, in future, house both kinds.

In my continued research into the history of remand prisons and prisoners, I tried to find out when the term 'remand' had come about. Eventually, I came across my first official reference with the '*Fifth Report*' of the *Commissioners of Prisons* in 1882, where the term 'remand' is applied in connection with the cost of Government versus local expenses:

*The decision of the Secretary of State in 1878 as to the part of the costs of removal of prisoners which were properly chargeable as prison expenses, and so transferred to*

24 cf. *Tenth Report*, *ibid.*, p. v.

25 cf. *Tenth Report*, 1845, p. V.

26 The members of the First Committee were E.F. Du Cane, Lieut.-Col., R.E. (Chairman). W.W. Hornby, J.W. Perry Wallington, W.J. Stopford who presented their first report in 1878 to the Secretary of State for the Home Department.

27 cf. *Eleventh Report*, 1888, pp 6-7.

*Government under the Prison Act 1877, and that part which remained chargeable as a local expense, was that the liability of the Government did not commence until the prisoner had been delivered at the prison either on remand or under sentence; so that, though the prison was liable for the expense of bringing up remanded prisoners, the expense of removal from court to prison remained with the local authorities.<sup>28</sup>*

Remanded prisoners were still the responsibility of local authorities; the financial liability of the government for each prisoner commenced with his conviction, from the time he stood committed by the court to the rest of his prison sentence. The reasons for the decline in cost for nearly every prison were given as better management of funds and a more centralised system. At common law the custody of all prisoners committed for trial, or convicted in respect of indictable offences, was with the sheriff and the gaoler was his officer. Notably, the power of the gaoler over untried prisoners had not changed with the *Prison Act of 1877*. The Act had also not made any provision for the treatment or accommodation of the untried prisoners; cells were often part of the shirehalls or court-houses in which prisoners were awaiting trial.

A special and for its time extraordinary report was published as the '*Report of the Committee on the Accommodation in Court Houses and other places for Prisoners awaiting Trial at Assizes and Sessions*' (1887), since thereafter no such Committee was set up again. The Rt Hon Hugh Culling Eardley Childers, one of Her Majesty's Principal Secretaries of State, together with a team of five other committee members, among them Sir Edmund Du Cane, were appointed to inquire into the provision made in buildings wherein courts of

assize and of quarter sessions were sending their prisoners awaiting trial<sup>29</sup>. The inquiry into the conditions of some of the worst gaols and court houses is well recorded in the *1887 Committee's Report*. It covers the period from 24th June - 21st December 1886, examined a variety of court-houses or gaols where prisoners, men, women and children were awaiting trial. The total number inspected amounted to 189 prisons in 1886. Among the detailed inspection were the following prisons which bore the worst conditions the inspection committee ever saw:<sup>30</sup>

- Carlisle Shirehall
- Haverfordwest
- Derby Townhall<sup>31</sup>
- Marlborough
- Warminster
- Dorchester<sup>32</sup>
- Hull<sup>33</sup>
- Bury St. Edmunds
- Ipswich County<sup>34</sup>
- Newcastle Guildhall
- Norwich Shirehall
- Nottingham Shirehall
- Oxford City<sup>35</sup>
- Oxford County<sup>36</sup>
- Newcastle- Under- Lyme
- Monmouth
- Northallerton<sup>37</sup>

In the vast majority of the above court-houses or gaols, men, women and children were intermingled. Lighting 'enough to read by', heating and ventilation were insufficient or completely lacking. The *Committee* recommended that the unconvicted prisoner ought to have a dry cell, with something to sit on, which should be neither metal, stone or brick. Yet, many of the cells were either overheated by water pipes or gas

28 cf. *Fifth Report*, 1882, p. 6. *ibid*.

29 The five members of the Committee (1886) were:

The Hon. Sir Alfred Wills, Judge of the Queen's Bench Division of the High Court of Justice. Chairman  
Sir Robert Nicholas Fowler, Bart. M.P.

Colonel Sir Edmund Frederick Du Cane, K.C.B., Chairman of the Prison Commissioners (England and Wales), Surveyor General of Prisons.

Thomas William Evans, Esquire.

William Layton Lowndes, Esquire, one of the visitors of the Convict Prison at Dover.

30 cf. *Report* 1887, p. 3ff.

31 In Derby County Hall, 20 prisoners were held in a cell of 18ft by 9ft. Men and women were held together in the same cells.

32 In Dorchester Prison, 3 prisoners were held in a cell of 6ft. by 3ft.

33 In Hull, 15 in a room containing 965 cubic feet, equivalent to 12ft by 10ft by 8ft high.

34 In Ipswich County, 20 to 30 prisoners were held in a room of 11ft 10in. by 5ft 2in. by 6ft 3in. high.

35 Oxford City Gaol held men and women in the same cells.

36 At Oxford County Gaol there were 12 in a room of 9ft by 8ft 6in. Due to the fact that the gaol was linked by a tunnel to the County Court, the Committee recommended that no more than six prisoners at a time could be put in one of these cells awaiting trial. The Inspector's Report stated:

'these cells are not warmed, and only lighted by a small circular window near the top of the cell; they are consequently almost dark, and are quite unfit for the purpose required. The Governor also informed me that the county authorities are aware that the cell accommodation is inadequate'.

37 In Northallerton there were 27 in a room of 12ft. by 14ft.

burners, whilst others bore the temperature of 40 - 45 degrees Fahrenheit in winter. The floors were damp, stone floors with often no seating at all for, example, Newcastle-Under-Lyme, or a set of bricks to sit on as was the case in Dorchester or Lancaster. The 'offices of nature' often had to be performed in public; such was the case in the court-house in Manchester, where this had to be performed in front of eight to ten spectators. In Hereford City Court, where four prisoners were held in one cell, there was merely an earth closet in the room<sup>38</sup>.

The *Committee* further suggested that such work on the existing gaols ought to be carried out by the local authorities and that the various *Prison Commissions* ought to regularly inspect their prisons. Yet, reality, with regards to the duties of the local authorities appeared rather different; they had neglected their duties and responsibilities which included gaols. Therefore, the *Committee* recommended to the Home Office that regular inspection teams should be set up, so that the necessary control could be exercised over the conditions in the gaols. For instance, to certify decent accommodation or to state where accommodation and conditions were inadequate. They demanded the right for the Secretary of State to be able to interfere in cases where local authorities were about to build new court-houses or gaols, or alter the existing ones. The *Inspectorate to the Home Office* would then have the right to inspect the gaols unannounced; yet, at that time the inspectors of the *Prison Commission* had had no right even to see places in question or to interfere in any way. In the rare cases where these 'PC Inspectors' had been successful in bringing about changes in conditions for untried prisoners they had relied almost completely on the courtesy of the local justices or municipal authorities. Above all the committee recommended separation of prisoners and that untried prisoners ought not to 'associate' with convicted inmates.

### **... Meanwhile, back in Germany in the late 19th century:**

With the English prison model and Howard's proposals firmly in mind, prison reformers such as Wagnitz demanded that imprisonment would be '*veredeln und für die Zukunft brauchbar machen*' (improved and made more useful for the future), so that the prisoner would no longer endanger the state and lead a more useful and meaningful life after imprisonment. He stressed that prison

personnel ought to be adequately trained and that the education for a more meaningful life ought to start inside prisons.

Due to the divided nature of the country which called itself Germany, made up of many hundreds of little states, duke- and bishopdoms, there was only one larger North German state, that of Prussia in existence. I will mainly refer to the laws and edicts passed by the state of '*Preußen*', since it is this state which has mainly influenced German penal policy then, and most of these laws are still operated in the Northern German states today.

German prison reformers also started to take an interest in the American ideas of incarceration such as the practical help for prisoners which was promoted by the Quakers, chiefly by William Penn (1644-1718) who had left Roman Catholic England with his religious friends as 'dissenters' for the Delaware region (Penn-sylvania), to seek religious asylum. Penn's idea was to make prisoners repent through the strict teachings of the gospel and thus to 'lead them to God'. Germany's and indeed England's prison architecture was henceforth greatly influenced by the erection of the first two state penitentiaries, the '*Eastern Penitentiary*' in Pittsburgh (1818) and the '*Western Penitentiary*' in Philadelphia (1825).

The '*Western Penitentiary*' was built in circular form, did not prove to be successful and was pulled-down in 1833, whilst the star-shaped '*Eastern Penitentiary*' of Philadelphia, designed and erected by Edward Hariland, became the most popular shape for the prisons in the 19th century<sup>39</sup>. The solitary and silent systems, inherited from England, were kept, yet overthrown by the Governor or the State of New York, in Auburn (1816-1825) who abolished the silent and solitary systems and introduced communal workshops. The so-called '*Auburn System*' bore the concept that committing a prisoner to silent or solitary confinement would increase or encourage suicides or be the basis for permanent psychological damage.

Thereafter, in 1842, '*Pentonville*' prison was erected in London, according to the principles of the '*Pennsylvanian System*' in Philadelphia, the only architectural difference being that instead of seven wings, the prison was designed with only five to discourage the communication between the cell windows. The solitary, cellular system was used for the first 18 months of imprisonment, and to categorise the prisoner according to his criminal offence, thereafter he was sent on the prisoners'

<sup>38</sup> cf. *Report 1887*, p. 73. *ibid*.

<sup>39</sup> The '*Eastern Penitentiary of Philadelphia*', built between 1823-25, was star-shaped, with a central observatory from which seven wings lead off. Each wing was closed off and had 38 cells, 19 on each side. The size of each cell was 3.60 by 2.30 metres. At the head entrance of the prison was the 'tower', which included the living quarters for the governor.



ships to the penal colony in Australia.

The 'Generalplan of 1804' of the Prussian Ministry of Justice introduced the special order for penal courts and the concept of better conditions for prisons and prisoners. It meant more cautious and meaningful imprisonment, an adaptation to social life as it was on the outside and the first suggestions of rehabilitation<sup>40</sup>. The first indication of criminal policy and criminology was imparted to Germany. One of the then radical recommendations imparted by the 'Generalplan' was the classification of prisoners into those who could be rehabilitated and those who could not be educated as such, these categories were, 'Strafklasse, Probeklasse und Besserungsklasse' (punishable trial and rehabilitative categories). The introduction of the so-called 'Inquisitorial Prisons', 'Inquisitoriat gefängnis' (today: 'Untersuchungsgefängnis') was then the first time a purpose-built pre-trial or remand prison concept was inaugurated in German penal history<sup>41</sup>. After these 'Wars of Liberation' ('Freiheitskriege') this 'socially constructive' thought of the 'Generalplan' was still not continued, partly because the Thirty Years War had emptied the financial resources of Prussia, and partly because a new philosophical thought, that of Kant (1724-1804) and Hegel (1770-1831)<sup>42</sup> was influencing German penology<sup>43</sup>.

The run-down prisons were, at least outwardly, shaped and cleaned-up and the Prussian Military was employed to undertake this task. Without delay, officers were taken from the military ranks to run the prisons in order to apply their disciplinary tactics to the prisons which had suffered under the recent wars. The treatment of prisoners was henceforth rather military, with marching drills and the introduction of the 'Rawiczzer Reglement of 1835' which signified the approach of a two-category form of soldier, and now also a dual form of imprisonment, i.e. the 'better prisoner' (first-time offenders and untried

prisoners) and the other category comprising the 'other delinquents' (in the main re-offenders and previously convicted). The identification of the 'first class' was a cloth cap whereas the 'second class' had to wear a paper-cap bearing a number which signified the previous offences. The 'Reglement' allowed the governor to apply up to 30 beatings ('30 Streiche'), which was equally implemented to women prisoners<sup>44</sup>. The prisoner was only addressed by his number and the prison warden's role became merely that of a 'turn-key' ('Schließer').

Prisoners were kept together and John Howard's principles of the separate and silent system and his reformatory ideas had been abandoned; thus the prisoners could talk to each other and influence each other as:

*Lehrling der Schurkerei und des Gaunerhandwerks beim Eintritt zur Haft, verläßt [der Gefangene] als vollendeter Meister den Kerker. (As an apprentice of deceit and roguery upon entry into imprisonment, he leaves the prison as a fully-fledged master of the trade)*<sup>45</sup>.

Shortly after the ascension to the throne in 1840 of King Friedrich Wilhelm IV., the prison surgeon Dr. Nikolaus Heinrich Julius had visited the English 'Mustergefängnis' (model prison) of 'Pentonville' [sic] (built between 1840-42) and in his 'Vorlesungen zur Gefängniskunde' (lectures on prisons and penology) he stressed the importance of such a building style and the positive influence which the English penal system could have on the Prussian one. The King was so impressed that he issued plans to build a 'Pentonville-style' prison in Berlin, namely 'Moabit' in 1848.

Thereafter, the state of 'Baden' erected a similar star-shaped prison on 'Bruchsal'<sup>46</sup> and both prisons are very much in existence to date. The

40 cf. Schmidt, Eb., 1960.

41 cf. Sieverts, 1967.

42 Hegel believed that a man who had committed a crime, was committing the 'deed' or the offence against his better self ('gegen sein eigenes besseres Ich'). He saw imprisonment only as a 're-finding of the better self' ('...der allgemeinen Vernunft in ihm').

43 According to Kant, man only acts 'good and proper' ('gut und sitlich') when he acts according to his own autonomous will. The state is not allowed to interfere in the free actions of mankind, otherwise man's actions and behaviour will be tarnished.

44 Corporal punishment ('Prügelstrafe') against women in Prussia was abolished in 1867 and against men in 1918.

45 Quoted in: Muntau, J., 1961, p.26. from the 'Rheinisch-Westfälische Gefängnisgesellschaft', which was founded in 1826 by Pastor Theodor Fliedner according to the principles of the 'Philadelphia Society'. It was the society's aim to bring about similar penal reform in Germany at that time. Its motto was to reduce the recidivism and to rehabilitate by the better educational and religious treatment of the prisoner. Thus teachers and chaplains of both catholic and protestant denominations were employed to undertake this form of rehabilitative education in the German prisons. Ministerial supporters of the time were the King himself, Friedrich Wilhelm III., the State Minister Freiherr von Stein and his colleague Ernst Moritz Arndt.

46 I visited the JVA Bruchsal in February 1995 as part of my Home Office visit with the Head of 'Prison Service Enterprises' to examine the prison industries' provisions. The prison wall and buildings are extremely well preserved and probably the best historical example of the 'Pentonville' style of star-shaped prison I have seen to date.

approach to the handling of the prisoners was very much the Pennsylvanian model of single-cell confinement. 'BerlinMoabit', 'Bruchsal' and 'Straubing' (Bavaria) remain as the only star-shaped prisons, since it was thought too costly to build in this architectural style<sup>47</sup>. The prison establishments which were built thereafter only infrequently bore the ideas of Howard or Wagnitz.

The new concept of prison buildings was to deter the outsider by its austere appearance. Another German prison reformer and Howard follower writes in 1828:

*Fest, sicher, dauerhaft, aber wie schon Howard bemerkte, keineswegs einladend, sondern immer ernst, düster und zurückschreckend muß dieselbe seyn [sic]*<sup>48</sup>.

Whilst enjoying the archives of the HM Prison Service at Love Lane, Wakefield, recently, I came across some most (for me at least) exciting 19th century records entitled 'International Penitentiary Congress of 1872' which was held in the 'Hall of the Middle Temple' in London from 3rd July to the 13th July 1872. It involved over one hundred delegates from ministries and penal establishments all over the world, including the German delegation from the states of 'Sachsen' (Saxony), 'Baden' and 'Preussen' (Prussia). The objective of the Congress was:

*To collect reliable prison statistics, to gather information and to compare experience as to the working of different prisons systems; and the effect of various systems of penal legislation...To compare the deterrent effects of various forms of punishment and treatment, and the methods adopted both for the repression and prevention of crime*<sup>49</sup>.

The proposal for such a Congress reminded me of my own fieldwork and questionnaires when I visited German and English prisons during the years 1993-95; each of the 22 representing nations present had been given one specific questionnaire, involving the detailed answers to 69 questions, as

to the size and type of prison establishment, the type and conditions of cellular confinement, daily regimes, and the final question reminded me, almost word for word, of my last question which I would put to staff of each establishment - it read:

*Question 69: Are you satisfied with the penitentiary system of your country? What defects, if any, do you find in it? What changes or modifications would you wish to see introduced?*<sup>50</sup>

For Germany there was a special footnote to the questionnaire which underlined the separate state system existent at that time? To point out to other nations that there was no such single country called 'Germany':

*The order of arrangement of the countries is alphabetical, except that the smaller States of Germany are placed under the head of Germany...that in the case of Denmark, Italy, the United States and Saxony, a different arrangement has been adopted in consequence of modification of the original form suggested in a circular letter from the United States National Committee*<sup>51</sup>.

Consequently, the report does not cite one entire summary of a 'Germany penal' system, but quotes examples from five German states and their sometimes very different penal systems, that of Baden, Bavaria, Prussia, Saxony and Württemberg. The 'Grand Duchy of Baden' ('Großherzogtum Baden')<sup>52</sup> reported that all the prisons were at that time under the control of the Minister of Justice and Foreign Affairs who exercised complete administrative power<sup>53</sup>. There was, however, a 'Council of Inspection' for all the largest penitentiary establishments. This Council comprised an 'Officer of the Magistracy', appointed by the minister, who discharged as inspector the duties of the 'President of the Council', of the superior officers of the prisons, and of three private individuals named by the minister. The 'Council of Inspection' had the following functions which remind us possibly of

47 I visited the JVA-Berlin Moabit in March 1993 and again in July 1995, the JVA Bruchsal in the 'Land Baden-Württemberg' and the JVA Straubing in the 'Land Bayern' with the HM Prison Service Head of Enterprises in February 1995 in order to study the prisons' industries (see: Reports in the appendices). The JVA Bruchsal was the best preserved in its original 'Pentonville' style.

48 cf. Julius, N.H., 1828, pp. 189ff. Translation: 'Fortress-like, secure, ever-lasting, but as Howard already noted, above all inhospitable, bearing a permanent air of seriousness to be austere and deterring, such must be [a] prison.'

49 cf. 'Prisons and Reformatories at Home and Abroad', 1912, Preface, p. xiiiff.

50 cf. 'Prisons and Reformatories', 1912, p. 5, ibid.

51 cf. 'Prisons and Reformatories', 1912, Part I, p. 1, ibid.

52 Baden was represented at the Congress by the representatives from the Government Gustav Ekert, Herr Rittner, and the Baron von Holtzendorff.

53 cf. 'Prisons and Reformatories', 1912, p. 102 ff, ibid.

the *HM Inspector of Prisons* or the role of the recently appointed *Ombudsman* as part of the English Prison Service today:

- a) 'It decides on the complaints of prisoners
- b) On the admissibility of administrative proceedings against the inferior prison officers when such proceedings are beyond the cognizance of the director
- c) It confirms the contracts entered into by the administration for the supply of the prison
- d) It gives the necessary order if it is desirable in any case to substitute collective for solitary imprisonment'<sup>54</sup>

*Baden* reported that the punishments of hard labour and imprisonment were undergone on the cellular system not beyond three years, as was also that of arrest. Young prisoners aged twelve to eighteen were imprisoned to a maximum of six months.

The prisoners were supported by the payments of the prisoners who have property (these payments, however, amounted to very little), by the product of the prisoners' labour and the trades carried out in prison and by the subsidies of the state<sup>55</sup>. The prisoners were allowed to write a letter once a month with the permission of the director of the prison who would, in turn read the incoming and outgoing letters together with the chaplain. Visits take place once a month under the supervision of a prison officer; visitors and prisoners remained separated and their conversation was controlled. Men were obliged to attend school until the age of 35, women until the age of 30. The subjects of instruction were those of primary school level. Punishment was the primary aim of the state and the labour was merely penal. Work lasted in the summer months from 5.30 a.m. to 6.30 a.m. and from 7 a.m. to 12 noon. Then again from 1 p.m. to 7.30 p.m. In winter from 6 - 7 a.m., and from 7.45 until noon. In the afternoon from 1 p.m. until 7.30 p.m. The overall working day was registered at an average of 10 hours, with interruptions for church, education and exercise.

When answering the questionnaire question No. 69 the State of *Baden* concluded:

*The quantity and quality of food are very good. Yet in certain cases an addition can well be made to the regular quantity. We are satisfied with the penitentiary system of our country, particularly as the cellular system is as a rule adopted. Strictly to carry out and complete this system, an additional establishment is necessary. The construction of it now engages our attention*<sup>56</sup>.

In the case of the prison establishments of the state of Bavaria (*'Bayern'*), all prisons, classed as 'Houses of Correction', prisons for 'grown-up criminals sentenced to a term exceeding three months', 'youthful prisoners whose terms exceeded one month', district prisons of courts of justice for 'Grown-up Criminals for a term of less than three months', 'youthful prisoners for a term of less than one month', and 'Police prisons for arrest' were under the jurisdiction of the Ministry of Justice of Bavaria<sup>57</sup>. All inspections were carried out exclusively by the Ministry without any intermediate authorities.

For the cellular prison at Nürnberg, there existed a special council of inspection, consisting of state officials, judges, district attorneys and prison officials, together with private persons belonging to Nürnberg. Bavaria had at that time four cellular prisons, one for 400 men at Nürnberg, and three district prisons of courts of justice, principally for persons awaiting trial (remand). All other prisons were under the so-called 'collective system'. The report stated that 16-18 per cent of the funds for the support of prisoners were obtained from the sale of prison labour, 28 - 32 per cent from the fines to which persons capable of paying them were condemned, and the state paid the remaining balance. Governors and administrators were appointed for life by the King of Bavaria; they were required to have studied the subjects of philosophy and jurisprudence at university. There were no special training schools for governors or prison officials in

54 cf. *'Prisons and Reformatories'*, 1912, p. 102-103, *ibid.*

55 The prison with extensive trade, work and training facilities was (and still is today, see: Appendix Report on JVA Bruchsal February 1995) in *Bruchsal* (today in the combined *'Land Baden-Württemberg'*) which had sufficient moneys to pay for the whole of the Baden prison system. The average value of the results of twenty years, had been 50.79 kreuzers per head per day, or 309 florins 48 kreuzers per head per annum. It was the only prison in the country where men were placed with very long-term sentences to hard labour. The grant to it from the State varied from 75 to 172 florins per head per annum. The average grant for twenty years had been 132 florins. *ibid.* p. 104.

56 *ibid.* p. 108-109.

57 The delegates at the Congress of 1872 from *Bavaria* were:

Representatives from the Bavarian State Government, Herr Mess, Dr. Heinrich Marquardsen and the State Prosecutor (*'Staatsanwalt'*) Herr Peterson. It has to be noted that 'Bavaria' was **not** listed under 'Germany' at that time, but as a *'Freistaat'* (free state) under the King of Bavaria. Today, the prison officers' uniform still bears the emblem and coat of arms of the bavarian *'Freistaat'* symbol.

Bavaria. Chaplains, doctors, teachers, stewards and technical instructors were appointed by the Ministry of Justice. Warders ('*Wärter*') and clerks were appointed by the governor of each prison.

A system of prisoner-classification existed in Bavaria; according to the prison rules, the governors were obliged to keep the 'ordinary' prisoners apart from those who had shown by their past conduct that they gave little hope of improvement, or who by example and communication exerted a 'hurtful influence on others'<sup>58</sup>. Whilst Bavaria had its own Prison Rules, the Penal Code of the German Empire prevailed above all other jurisdiction.

Any petition for the release or shortening of a sentence could only be granted by the King.

There was a reward system in place, whereby each prisoner would receive four kreuzers daily for hard labour, permission to buy extra articles for consumption, permission to receive more frequent visits ('*feierliche Belobung*'), receive better and more lucrative work and receive school book prizes.

The most frequent offence against the Prison Regulations in Bavaria were:

*The intercourse with other prisoners...exchange of articles of food and snuff, disobedience and brutality, such as opposition to officials, attacking fellow-prisoners, refusal to work, swearing, noisiness and quarrelling*<sup>59</sup>.

It is perhaps worth noting that the causes of crime as given by the Bavarian Ministry of Justice at the time were as follows:

1. Want of religious teaching
2. Defective education. According to a law that existed up to the year 1868, marriage between persons who possessed no landed property was exceedingly difficult, and, in consequence, illegitimate births were very numerous. As a result of the want of the beneficial influence which a family life exercises, illegitimate born form a considerable proportion of all prisoners.

3. Neglected education, especially in those parts where children are employed in the guarding of cattle or in working in manufactures.
4. Rough manners and customs. In some parts of Bavaria it is still a custom of the peasants to carry their own stiletto-like knives when visiting public-houses and dancing places, and thus on Sundays and holidays the smallest cause often leads to violence.

The Bavarian report summarised rather self-critically for the '*Penitentiary Congress*':

*The system of collective imprisonment which exists in most of our prisons cannot be considered as satisfactory, the more so as most of our prisons are old castles or convents, which are not well adapted for the purpose they are used for. Old offenders take the lead, and the bad spirit which, under the existing defective arrangements, may indeed be fought against but not eradicated, often brings to nought the best efforts of the prison officials, and is opposed to a lasting improvement of the prisoners. One ought to be satisfied when prisoners do not leave their prisons worse than when they entered them. These defects can only be remedied by building new prisons on the cellular system*<sup>60</sup>.

The subsequent German state reporting extensively about its state of prisons at the 1872 Congress was Prussia ('*Preussen*')<sup>61</sup>. The Prussian prison and penal policies system was probably most akin to the one in England at the time. All the Prussian prisons were at that time under a central prison authority<sup>62</sup>, similar to the prison system in England. The local prisons, used exclusively for preventive imprisonment and for short punishments, were under the Minister of Justice the large penitentiaries or 'Central Prisons' were under the Minister of the Interior (equivalent to the Home Office, or Home Department in England at that time).

The tribunals, in accordance with the *Penal Code of the German Empire*, could inflict hard

<sup>58</sup> *ibid*- pp. 110-113

<sup>59</sup> *ibid*. p. 113.

<sup>60</sup> *ibid*. pp. 119-120.

<sup>61</sup> The Prussian delegation comprised one Privy Councillor Herr Steinmann, Dr. Bartling, Dr. Heim, Herr Elborough, Dr. Wiesenhahn, Herr Herrmann, Dr. Varrentrapp and Dr. Spiess, by far the largest delegation from any one of the participating nations.

<sup>62</sup> One of the few remaining prison departments in Germany, in the state of Lower Saxony ('*Zentrales niedersächsisches Vollzugsamt in Celle*') was disposed of in May 1994, shortly after I had organised the Lower Saxony ministerial and prison governors' visit to English prisons and the HM Prison Service College, Newbold Revel; the delegation of 15 German participants, had included the president of the Lower Saxony prison service ('*Präsident des niedersächsischen Vollzugsdienstes*') who shortly after the visit to England in April 1994, was made redundant; thereafter, the Lower Saxony Ministry of Justice in Hanover governed the 29 prisons in that 'Land'.

labour, imprisonment in general, or in a fortress or simple detention<sup>63</sup>. The Prussian prisons held 26,500 prisoners at that time. 47 prisons were designed for solitary confinement with a total number of 3,247 cells. It was interesting to learn that the Prussian penal authorities had undertaken some research into the reformatory use of cellular solitary confinement, and the conclusions were state in the report as:

*After remarkable experiments in Prussia, everything being taken into account, there is no reason to conclude that the number of recidivists has been lessened by the cellular treatment. Yet, these experiments show some examples of the lasting reformation even of hardened criminals, by cellular imprisonment; and it may be doubted whether this reformation would have been effected by imprisonment in common. The reforming influence of the cellular system, can only be demonstrated with certainty in regard to criminals who, excited by opportunity, or carried away by passion, have fallen into crime. It is indisputable that a large proportion of criminals of this class after undergoing cellular imprisonment, are restored to society completely changed and reformed<sup>64</sup>.*

The Prussian report discussed at length the two forms of punishment at that time, cellular solitary confinement versus the associated system, and remarked on some excellent discipline, prisoners' health and industry in the latter type of prison. However, it was quite evident from the delegation's report that Prussia preferred the solitary cellular system of penal establishments which 'allows an intermediate state between imprisonment and liberty'. With regards to personal hygiene the Prussian report stated:

*Every Saturday he [the prisoner] has to wash the upper part of his body and his feet. Once a month at least he is obliged to take a*

*complete bath. Prisoners are shaved twice a week. Their hair is cut as often as necessary. Their body-linen is changed weekly, their bed-linen monthly. Every four months their mattresses are changed. Their woollen counterpanes are washed as often as it is deemed requisite<sup>65</sup>.*

Prisoners had to work from 6 - 8 a.m. in the mornings, in the summer season work started at 5 a.m. At 7 a.m. prisoners were allowed a quarter of an hour's rest<sup>66</sup>. The principle meal was from 12 - 1 p.m. Work was interrupted by school and catechising. The hours of sleep were from 8 p.m. to 4.45 or 5.45 a.m. (winter and summer sessions). Special infirmaries existed in all the prisons with special medical staff and infirmary attendants.

The prison industries in Prussia were well developed; for example, the trades practised by male prisoners were cigar-manufacture, joiners' and carpenters' work, shoe-making, bookbinding, curtain-rod and picture-frame manufacture, net-making, tailoring, saddlery, trunk and box-making, basket-making, brush-making, locksmithery, brass-casting, metalturnery, manufacture of clasps and coins, wood-carving, manufacture of wooden fancy-work, manufacture of machines and edge-tools, manufacture of lace, ribbons, sashes and manufacture of toys and nail and chain-making, wadding and felt manufacture, lithography, engraving, illuminating, manufacture of corks, leather dressing and tanning, button manufacture, the art of turning in horn and ivory, manufacture of walking-sticks, umbrellas and combs, the cutting crystals and glasses for spectacles, straw-mat making, glove manufacture, marble-cutting, cooperage, and, for women, embroidery, tapestry, knitting, sewing, glove-making, cigar-making, spinning, feather-paring and scraping. In addition to the above trades, men were occupied on farms and in industrial works. Most of the labour was contracted out<sup>67</sup>.

The Prussian report concluded:

63 The Prussian prisons of that time were divided thus:

Prisons exclusively for hard labour: 29

Prisons for simple detention: 15

Prisons of a mixed character: 11

'Arbeitshäuser' (workhouses): 16

these were meant for slight offences such as begging, prostitution, vagrancy and were maintained by the provinces and not by the State.

64 *ibid.* p. 122.

65 *ibid.* p. 131.

66 When I visited the Lower Saxony high security prison in Celle, dating back to 1721, the regime had hardly changed, compared with the report of the 1872 congress. Conditions for long-term prisoners in February 1995 (see: Report on the JVA Celle, Appendix) were extremely severe, the wings had not been refurbished for approximately a hundred years, and one whole wing undertook in-cell tailoring labour with mostly four men to one cell.

67 These trades are still very much in situ today in most of the German long-term prisons.

*The principle aim in Prussian prisons is to satisfy justice, and to make the prisoners feel their punishment is an expiation of their crime...Efforts are made to give them habits of order and work, and their minds are influenced by scholastic instruction, spiritual consolation and moral precepts.*

When we consider the number of recidivists, we should be inclined to think the prisoners left prison worse than they entered. This, however, all things being considered, would not be a just conclusion. We might more truly say that, in general, privation of liberty has no great influence on the majority of prisoners, and that their relapse is due to the same causes as lead to their first crime, for after the restraint of imprisonment is removed, old influences naturally regain dominion over them. There is no doubt that associated imprisonment tends to make prisoners worse<sup>68</sup>.

They even reported the Prussian penal system to be 'perfect' with the prison administration especially ordered and well-run. The discipline was said to be severe but just; short-falls were recorded in the poor upkeep of the prison buildings and the need for a complete rebuilding programme of penal establishments. Cellular imprisonment in all cases of new or refurbished establishments was highly recommended.

The Congress Report for Germany continues with the the Saxony Government ('Sachsen') report. Saxony at that time was the most densely populated of the German states, having within 272 German square miles about two and a half million inhabitants, or 398 inhabitants per one square mile. Thus the most popular crimes were recorded against personal property. Saxony reported that 'for more than twenty years there had been a conviction that sentences of imprisonment should be undergone only for the expiation of crime, the protection of society and to deter the prisoner from the commission of subsequent offences<sup>69</sup>'.

Since 1850, the penitentiary of Zwickau had been specially distinguished by successfully applying the principle of reformation by means of 'individual treatment'. Furthermore, the then

government resolved in 1854 that all the Saxony prisons should adopt the new regulations for internal management and the treatment of prisoners.

Accordingly, there was in Saxony no penitentiary where either solitary or collective imprisonment was exclusively employed; both modes were used according to prisoners' individual needs. At that time, there were eleven 'Houses of Correction' ('Zuchthäuser') where such penitentiary measures were carried out<sup>70</sup>.

In 1871 the average prison population in Saxony was 1,153 prisoners in prison for severe punishment, 1,001 in prisons for less severe punishment, 1 prisoner in a fortress, 684 prisoners in Houses of Correction and 1,800 in prisons attached to courts or police buildings. There was no central authority for the administration of the prisons as had been, for instance, in the state of Prussia. The overall authority rested with the Ministry of the Interior, except for those prisons belonging to the courts and the police. The Ministry of Justice took full responsibility for the 'Commissioners' and the Ministry of the Interior appointed all prison officers. By an order dated March 10, 1864, disciplinary corporal punishment was greatly reduced<sup>71</sup>.

With regards to recidivism, Saxony recorded excellent results: on 1 January 1872 of 415 prisoners dismissed, only 11 (or 2.65 per cent) relapsed. The same mode was adopted throughout Germany by the *Confederate Penal Law* (Penal Law of the German Empire) 31 May, 1870, with the difference that the probationary period could only be set aside by royal pardon or the highest judicial authority. Additionally, Saxony was one of the most industrial of the German states, and produced a variety of industries and trade at its prisons. Profits gained from the prisoners' work covered about one-third to one-half of all the prisons' expenses. The Saxony report concluded:

*The prisoners are in general better when leaving the prison than they were when they entered it... Crimes and offences against the rights of property are by far the majority. The motives leading to the commission of them*

68 *ibid.* p. 135.

69 *ibid.* p. 137.

70 The various Saxony prison establishments were:

1. Prisons for severe punishment: 2
2. Prisons for less severe punishment: 3
3. Prisons in a fortress: 1
4. Reformatories: 5
5. Prisons belonging to Courts of Justice: no number recorded
6. Prisons belonging to Police Courts: no number recorded

71 The report stated merely that 'Corporal punishment with a rod or thin stick, up to thirty strokes or punishment on laths is under certain restriction and can only be applied after mature consideration and deliberation on the part of the officers.' *ibid.* pp. 139-140.

*are to be looked for in sensuality, unwillingness to work and social evils caused by the density of the population*<sup>72</sup>

The Congress Report of 1872 on 'Germany' was completed by that of 'Württemberg'<sup>73</sup>. These prisons were at that time controlled by a central authority which also exercised the supervision over the district prisons for preliminary detention, for those sentenced to minor punishments and to arrest. The central authority was subordinate to the Minister of Justice. It comprised members of the departments of justice, of the interior and of finance<sup>74</sup>. The state was said to contribute about 35 per cent to the maintenance of the prisons, the rest was born by prisoners' labour. The 'Directors' and 'Chief Officers' were appointed by the King of Württemberg. Prisoners were classified according to their conduct; their class was shown in the distinction of their dress. The distribution of different classes of prisoners into their cells ('localités') was equally undertaken upon reception.

The daily routine was dominated by hard labour started at 4.45 a.m. and ended at 7.30 p.m. All the 'Master Crafts' were, once again represented. The report of Württemberg concluded that there was no imprisonment for debt in the state; the number of women prisoners averaged 20 per cent of the total number of prisoners and that special care was taken with youthful prisoners to 'apprentice them, or to place them in asylums which exist in the kingdom for the reception of youths who have fallen into crime or have been neglected'<sup>75</sup>.

With regards to the English representation at the 1872 Penal Congress, the account was given by Major E.F. Du Cane<sup>76</sup>. Whilst I do not wish to elaborate on the report, since it summarises my findings and the Prison Commissions Reports which I covered in my previous section, Du Cane stated:

*We now carry out a system involving a moderate period of isolation, followed by a period during which prisoners live in absolute separation, but work in association. The considerable success which our efforts have met with, figures will easily show*<sup>77</sup>.

Du Cane concluded the Congress:

*I do not think that either an increase or a decrease in crime is affected by prisons systems, nearly to such an extent as it has been asserted that they are, unless, indeed, the prisons are very bad indeed, such as our convict prisons have not been for many years. The prosperity of the country... the efficiency of the police – all contribute to affect the statistics of crime. But certainly an effective penal system bears its parts, and that an important part, in attaining the object*<sup>78</sup>

**Germany's penal reforms and legislation affecting the rights of the untried prisoners ('Untersuchungshäftling') during the late 19th and early 20th centuries**

I could not find any significant or noteworthy penal reforms in Germany between the founding of the German Empire ('Deutsches Reich') on 18 January 1871, to the end of World War I (1918); yet the reformatory ideas of the treatment of all prisoners being equal were paramount at this time. The 'Reichsstrafgesetzbuch of 1871' (RStGB) (Penal Code of the German Empire) made no consequential impact on penal reform and legislation did not affect the rights and custody of the prisoner remanded in custody; it did not include any code or regulation for the prison establishments at that time. The RStGB merely kept the categorisation of the various types of prisons such as 'Zuchthaus' (House of Correction), 'Gefängnis' (prison), 'Festungshaft' (imprisonment in a dungeon, castle or fortress, and the use of irons) and gave vague directions as to the incarceration of the prisoner according to his offence. The only difference between the 'Zuchthaus' and the 'Gefängnis' was that the 'Zuchthäusler' (prisoners in the House of Correction) **had** to work. Each category of prisoner had the choice of solitary confinement ('Einzelhaft').

The 'Strafprozessordnung vom 1.2.1877' (Penal Proceedings Law Code) brought some form of unified custodial legalisation to the whole of the German empire, 345 years after the edict of the 'Constitutio Criminalis Carolina'. The reasons

<sup>72</sup> *ibid.* pp.142-143.

<sup>73</sup> No representative from the State of Württemberg was present at the Congress of 1872. A report and answers to the questionnaire was sent to the Congress by the Ministry at Stuttgart, dated: April 10, 1872. *Ibid.* pp. 144-150.

<sup>74</sup> Today, the two states of Baden and Württemberg are joined to one 'Land Baden-Württemberg'.

<sup>75</sup> *ibid.* p. 150.

<sup>76</sup> E.F.Du Cane, Royal Engineers; Surveyor-General of Prisons; Chairman of Directors of Convict Prisons; Inspector-General of Military Prisons. *ibid.* pp. 299-362.

<sup>77</sup> *ibid.* pp. 299-300.

<sup>78</sup> *ibid.* pp. 310-312.

for imprisonment before trial, i.e. detention on remand (*Untersuchungshaft*) were then, as they are today, the fear of absconding (*Fluchtgefahr*) and the interfering with witnesses (*Verdunklungsgefahr*). The time for remand in custody was limited thus to one week, with the possibility for a two week extension by application of the state prosecutor. The public trial had to take place within four weeks. Yet, in practice, this law was persistently violated.

During the German Empire ('Kaiserreich'), each 'Land' continued to have its own prisons and prison regulations; consequently, the RStGB was interpreted differently by each Ministry of Justice<sup>79</sup>. Hence there was increasing pressure to introduce a '*Reichsvollzugsgesetz*' (a common penal custody law code for the whole of the empire). The '*Reichsregierung von 1879*' (government of the time) suggested the first drafts of a '*Gesetz über die Vollstreckung einer Freiheitsstrafe*' (Law code for the custodial measures for the deprivation of liberty) in 1878/79, which had the categorisation and differentiation according to the type of offence as a central notion. Furthermore, the prisoner himself was to gain certain rights, such as payment for his labour, the right to complain and the exercise in the open air. Yet, this first draft did not pass the powerful legislation of the then '*Reichskanzler*' Bismarck in the state parliament; his major argument against such reforms were of a financial nature. Bismarck figured that 23,000 new cells would be added to the existing prisons, or new prisons would have to be built, in order to facilitate single cell accommodation<sup>80</sup>.

Ever new drafts were forwarded to the '*Reichstag*', until, in 1897, there was a consensus of all the '*Länder*' to agree on a common procedure for imprisonment which would be adhered to by all the states ('*Bundesratsgrundsätze*'). This code of conduct for all prisons remained in existence until the end of the Kaiser-era, yet only concentrated on administrative codes, rather than the treatment of and cellular conditions for prisoners. According to the '*Gefängnisordnung [sic] für die Justizverwaltung des Landes Preussen vom 21. Dezember, 1898*' there were special codes for the safe custody of the remanded prisoner<sup>81</sup>.

The not-guilty principle was highlighted and that he was only to be put in chains if he was particularly dangerous (§ 91). There was the requirement, that the remanded prisoner did not have to work (§ 92), that he was allowed his own clothes (§ 93), that the '*Beköstigung*' (feeding) was to be undertaken by the prison and not by the

prisoner or his relatives (§ 94). However, the special code for the prisoner on remand included the regulation that the overall rules and regulations for the safe-keeping on remand in prison were dictated by the remanding judge (§ 95 '*Verfügung des Richters*'); this legislation still exists today.

### Conclusion

As my account of penal developments in England and Germany has shown, no great noteworthy development of penal reform with regards to the remand prisoner can be accounted for during the 18th or 19th century in any of the German states. Penal policies were copied from England and the English 'model prison' of Pentonville copied many times over in various German states. By chance, the Baden-Württemberg high security prison of Bruchsal, which is a beautifully preserved copy of the Pentonville-model, celebrates its 150th anniversary in October 1995.

With regard to the untried prisoner's rights and conditions in England, the 1886 '*Prison Inspection Committee for Untried Prisoners*' found conditions in the 189 gaols and court-houses inhumane for warders and prisoners alike. They recommended an immediate start of a building or renovation programme which would see to the most basic of human needs to ensure that men and women should be kept 'decent and private'. Regrettably, in the rare cases where these PC inspectors had been successful in bringing about changes in conditions for untried prisoners, they had relied almost completely on the courtesy of the local justices or municipal authorities. Above all the committee recommended separation of prisoners and for untried prisoners not to 'associate' with convicted inmates.<sup>82</sup>

What remains most fascinating, in the whole comparative study of German and English prisons, is the fact that Germany looked to England's prisons and penal policies with greatest respect and copied the 'Pentonville' model and the '*Separate and Silent*' system – copies of which can still be found in excellent working order in forms of Bruchsal Prison (State Baden Württemberg), Straubing Prison (Bavaria) and Berlin-Moabit to date ■

79 cf. Müller-Dietz, 1963, *ibid*, p. 39.

80 cf. Frede, 1975.

81 cf. Wulff, C. '*Die Gefängnisse der Justizverwaltung in Preußen*', 1900, pp. VII ff, Abschnitt III, §§ 91-95 '*Besondere Vorschriften über die Behandlung der Untersuchungsgefangenen*'.

82 cf. Report 1887, pp. 9ff. *ibid*.