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The Work of ‘Outsiders’: Conflicting Concepts of Prison Labour in the West German Democracy, 1950–1970

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The Western European prison reforms of the 1960s and 1970s were based, among other things, on the claim that prison labour should match the conditions of free labour as closely as possible. In reality, prison labour remained forced labour and thus followed its own logic, within which social security and remuneration did not correspond to the free labour market conditions. Prisoners were not and are not workers in the true sense of the word; rather, they oscillate between forced labour and non-work. This article deals with this contradiction, which is still inherent in prison labour in many Western democracies today. Using the example of West Germany, it historicises the relationship between work and punishment behind bars and attempts to show that although the punitive nature of prison work has changed since the late 1960s, it has ultimately never been lost – despite criminal policy objectives to the contrary. It was a normative question of values: how much equality did prisoners deserve?

In front of the four or five officials of the house punishment conference (Hausstrafenkonferenz) stands a middle-aged man in prison uniform. His face and posture express slack indifference; he hardly looks up once and gives the prison warden a clouded glance. ‘So you don’t want to work?’ he asks, interrupting the leafing through the prison files. ‘No.’ ‘Why not?’ ‘I don’t feel like it.’ After a pause in which everyone looks at the prisoner, who still seems to be sleeping with his eyes open, the warden announces: ‘Two weeks detention!’ This comes out soberly and without any sharpness, not at all like a judgement, more like reading the time from a clock. ‘You can go,’ he adds. As the prisoner opens the door, a uniformed supervisor becomes visible and immediately takes him into his custody. The man is a chronic refuser of work. ‘He only shuttles back and forth between his cell and the detention cells on the ground floor,’ is explained to the uninitiated afterwards.¹

This incident could have taken place in any West German prison in the mid-1960s. It illustrates, on the one hand, that prisoners, unlike people in free society, were obligated to work, and on the other hand, that refusing to work could result in severe penalties, in this case: confinement in a detention cell for two weeks. Even in a regular employment relationship within free society, an employer was not required to tolerate an employee’s unexcused absence from work. Employers, too, had the option of imposing sanctions. However, these were strictly limited to the employment relationship (dismissal, transfer or salary reduction) and did not affect the worker’s living conditions. Prison labour, though, was and is not a regular employment relationship. It is neither voluntary nor adequately remunerated. Additionally, it does not serve to provide the individual with income or secure

¹Quoted from Horst Schüler-Springorum, *Strafvollzug im Übergang. Studien zum Stand der Vollzugsrechtslehre* (Göttingen: Otto Schwartz & Co., 1969), 5. Templates for this ‘case’ are judgements of the Higher Regional Court of Schleswig–Holstein of 29 Nov. 1963 and the Higher Regional Court of Frankfurt/Main of 19 July 1965.

their livelihood. Instead, prison labour is associated with crime prevention purposes, a practice that remains unchanged in West Germany to this day.

Despite this continuity, the question of how prison labour should be carried out and what purpose it should serve has been reconsidered, starting in the mid-1960s. In the course of the emerging social-liberal institutional reform, the penal system was also to become the subject of increasingly liberal social policy and undergo fundamental changes. Prison reformers regarded the enactment of a penal execution law, in which the goal of resocialisation was to take precedence over retribution, as crucial to this process. Offenders were assigned a 'social integration status',² and prisons were no longer to serve only as penal institutions but rather as 'socialization institutions' in which a 'pedagogical climate' would put an end to the 'mere accustoming to order and work'.³ Nevertheless, in the reformed penal system, work was still to remain the primary occupation of prisoners, though its value in terms of criminal policy underwent a fundamental reinterpretation. Prison labour was now viewed as a form of 'social aid,' aimed at enabling prisoners to further their education and secure a decent living post-release. Accordingly, prison labour was no longer discipline⁴ but rather social support as a form of crime prevention.⁵ And yet, despite all the reform enthusiasm accompanying the process of social liberalisation since the mid-1960s, West German prisons did not fundamentally change their character. They remained, first and foremost, 'apparatuses for transforming individuals'⁶ (Foucault), to which prison work contributed. It was a production factor in the capitalist equation, yet not one the prisoners were able to capitalise on, even though many reformers called for the 'freedom-like design of prison labour'.⁷

This article addresses this contradiction, which continues to shape prison labour in Germany to this day.⁸ It historicises the relationship between work and punishment behind bars and attempts to show that, although the punitive character of prison labour has changed since the late 1960s, it has ultimately not disappeared – despite opposing criminal policy objectives. Prisoners were not and are not workers in the true sense of the word; rather, they oscillate between forced labour and non-work. Ultimately, it was a normative question of values: How much equality did they deserve?

Since social values, norms and ideals of behaviour become particularly visible where people are largely controlled and their everyday activities highly regulated, the historical study of prison labour serves as a magnifying glass for the society-structuring function of labour as a whole, in not only West Germany but also other Western democracies.⁹ An historical analysis of prison work as a special form of forced labour also helps reveal the possibilities and limits of state regulation of individuals in the paradoxical case when a person is excluded from society in order to teach him or her how to behave within it. Although work was at the centre of the modern idea of resocialisation and prisons

²Thomas Würtenberger, "Akzente des künftigen Strafvollzugsgesetzes", *Juristenzeitung* (1970): 452–456, at 454.

³Heinz Müller-Dietz, *Wege zur Strafvollzugsreform* (Berlin: Duncker & Humblot, 1972), 35.

⁴Fundamentally, Michel Foucault, *Überwachen und Strafen. Die Geburt des Gefängnisses* (Frankfurt/Main: Suhrkamp, 1977).

⁵Marcel Streng, "Prison Labour, Psy-Sciences, and the Government of the Inmate in Both German States since the 1970s", *Geschichte und Gesellschaft* 48 (2022): 220–46. With a focus on the relation of criminal prevention and social therapy, see Marcel Streng, "Sozialtherapie ist eine Therapie, die Sozial macht". Therapeutisierungsprozesse im westdeutschen Strafvollzug der langen 1970er Jahre', in *Das beratende Selbst. Zur Genealogie der Therapeutisierung in den langen Siebzigern*, ed. Sabine Maasen et al. (Transcript: Bielefeld, 2011), 265–90.

⁶Foucault, *Überwachen und Strafen*, 297.

⁷Ewald Bendel, "Berufliche Förderung, Arbeitsbedingungen einschließlich Arbeitsentgelt und Arbeitspflicht. Zu den Referaten von Regierungsdirektor Dr. Schmidt und Regierungsamtmann Gahlen", in *Tagungsberichte der Strafvollzugskommission*, Vol. 9: *Niederschrift über die Beratungen der neunten Arbeitstagung der Strafvollzugskommission vom 24–28 November 1969 in Hamburg*, ed. Bundesministerium der Justiz (Bonn, 1970), 1–49, at 7.

⁸Johannes Hillebrand, *Organisation und Ausgestaltung der Gefangenearbeit in Deutschland* (Mönchengladbach: Forum Verlag Godesberg, 2009); Evelyn Shea, *Why Work? A Study of Prison Labour in England, France and Germany* (Berlin: Duncker & Humblot, 2007); Hans Christian Lohmann, *Arbeit und Arbeitsentlohnung des Strafgefangenen* (Frankfurt/Main: Peter Lang, 2002).

⁹With an eye on Germany, England and France, see Shea, *Work*.

were supposed to prepare prisoners for working life after their release, paradoxically they mainly produced non-working people. Neither the work nor the working conditions corresponded to those in free society, undermining prison labour's purported goal of resocialisation. And as prisoners were rarely employed in any meaningful way, if at all, they generally took on the identity of inmates and not, as reformers had hoped, that of workers.

In this respect, the history of prison labour is not only useful for the history of labour, it is also a contribution to the history of democracy. The latter has become a much-discussed field of research,¹⁰ but the penal system has not featured in it so far, despite it serving as a litmus test for the implementation of democratic ideals.¹¹ However, the fact that the state's treatment of prisoners is particularly suitable for exploring the self-image of modern democracies is by no means a new idea. In fact, Ralf Dahrendorf wrote in his book *Society and Democracy in Germany*, published in 1965, that 'suitable witnesses' for the liberal-democratic constitution of West German society were not politicians or lawyers, but 'guest workers, the mentally ill and prisoners', because 'outsiders' are particularly good at documenting 'what is going on in a society'.¹² Prison inmates were 'outsiders' in a double sense. Not only were they physically confined outside of free society, but most of them had unstable employment patterns even before their incarceration. In addition, they often lacked vocational training and only had a rudimentary education, factors that typically contributed significantly to them becoming delinquent.¹³

In order to show the extent to which prison labour remained the work of 'outsiders' in the German liberal-democratic welfare state, the article will, after a review of the criminal-political purposes of prison work in the 19th century, deal with the new conception of prison labour as a form of social assistance in the context of prison reforms after the Second World War. In the second part, the interests of entrepreneurs who produced in prisons or employed prisoners in their companies are discussed from the perspective of the employers' associations, using the example of the Berlin prison Tegel. In this context, it becomes clear that the politically intended change in function of prison work from a punitive to a resocialisation role clearly paled behind the parameters of economic competition. Thirdly, the prisoners come into view. This section shows how their self-perception oscillated between categories of 'inmates' and 'workers' while also asking to what extent prisoners reflected on the socially and economically punitive character of their work situation as well as its inherent contradictions vis-à-vis the aim of resocialisation. Ultimately, the article seeks to illustrate, regarding the reform of prison labour, where the boundaries of personal freedom were drawn in a country that had elevated the freedom of the individual to its highest value. For what has been identified for labour in general applies to prison labour: affecting the slightest aspects of life in society, it can be viewed as a 'total social fact' (Marcel Mauss).

¹⁰ Anne Applebaum, *Twilight of Democracy: The Seductive Lure of Authoritarianism* (London: Allen Lane, 2020); Paul Betts, *Ruin and Renewal: Civilising Europe after the Second World War* (London: Profile Books, 2020); Martin Conway, *Western Europe's Democratic Age: 1945–1968* (Princeton: Princeton University Press, 2020).

¹¹ In this context see Annelie Ramsbrock, *Geschlossene Gesellschaft. Das Gefängnis als Sozialversuch – eine bundesdeutsche Geschichte* (Frankfurt/Main: Fischer, 2020). With an analytical focus on the treatment of sexual offenders in German penology and prisons since the 1920s, see Greg Eghigian, *The Corrigible and the Incurable. Science, Medicine, and the Convict in Twentieth-Century Germany* (Ann Arbor: University of Michigan Press, 2015). With a focus on establishing social therapy in prison, see Streng, *Sozialtherapie*. For a study on prison policy and criminal law between 1920 and 1960 in Hesse, which deals in particular with the US influence on the West German penal system, see Kai Naumann, *Gefängnis und Gesellschaft. Freiheitsentzug in Deutschland in Wissenschaft und Praxis 1920–1960* (Berlin: LIT, 2006). For a study on the development of criminology, see Imanuel Baumann, *Dem Verbrechen auf der Spur. Eine Geschichte der Kriminologie und Kriminalpolitik in Deutschland 1880 bis 1980* (Göttingen: Wallstein, 2006).

¹² Ralf Dahrendorf, *Gesellschaft und Demokratie in Deutschland* (München: Piper, 1965), 381. English edition: Ralf Dahrendorf, *Society and Democracy in Germany* (Garden City: Doubleday, 1967).

¹³ See Schüler-Springorum, *Strafvollzug im Übergang*, 160–2. Evelyn Shea discusses the fact that in this regard little has changed, in *Why Work?*, 8–11.

Work as Punishment: Prison Labour in the 19th and Early 20th Century

With the birth of the modern prison, work behind bars was primarily conceived as a means of intensifying the pain of imprisonment through additional, corporal punishment. The fact that prison work was thought of as a monotonous grind from which individuals could not escape and which regularly pushed them to their mental and physical limits is symbolised by the infamous treadmill, which began its existence as an atonement on the new conception of the prison work machine rather than as modern exercise equipment for physically underworked office staff.¹⁴ Since the end of the 18th century, the English and German penal systems received their main reform impulses for the redesign of prison work from the English philanthropist John Howard (1726–90). He called for systematic reform of state prisons and thus gave rise to new legislation in not only England but also other European countries, which differed from its predecessors in particular in its claim to be humane.¹⁵ At first, Howard endeavoured to improve the living and especially the hygienic conditions in the asylums. In addition, he encouraged the construction of so-called cell prisons. The Eastern Penitentiary in Philadelphia, opened in 1829, corresponded precisely to this ideal and became the model for many new prison buildings, such as Pentonville Prison in England or German prisons in Münster, Breslau, Bruchsal or Berlin-Moabit. Cellular prisons made it possible to isolate prisoners to a large extent, which, along with regular work, was seen as a prerequisite for their rehabilitation in the name of humanity. The focus on isolation was based on the belief that prisoners in solitary confinement could not negatively influence each other and that prison was therefore not a ‘school of crime’. Accordingly, reformers disagreed on the question of whether solitary confinement at night should be combined with communal work, or whether working hours should also take place in isolation. Regardless of this, prison reformers agreed that the underlying goal of improving prisoners was only achievable through a combination of moral education and habituation techniques, that is, a combination of prayer and work.¹⁶ Work as an additional corporal punishment gave way to the idea of a meaningful use of labour with its aim of making it easier for prisoners to find work after their releases. Although there was no talk of rehabilitation in this context, the economic dimension of prison labour, which emerged alongside the idea of humanising the penal system, corresponded at its core to the modern criminal policy objective of reintegrating offenders into society.

Despite the developments in the penal system in the 19th century, the importance of prison work in criminal policy had by no means diminished at the turn of the 20th century. In 1900, Franz von Liszt, professor of criminal and international law at the University of Berlin, explained that ‘organised compulsory work is the essence of the prison sentence, it is its life element, the element with which it stands and falls’. His justification: ‘Our modern prison sentence owes its origin to the idea that the person who is capable of work, but is work-shy, should be accustomed to regular work and thus be made a useful member of human society again.’¹⁷ On the one hand, prison labour was supposed to get the prisoner used to earning his living honestly in the future. This was a rather new idea. On the other hand, prison labour was still attributed the quality of being able to counteract prison as a

¹⁴On treadmills see Vybarr Cregan Reid, “Running Wilde: Landscape, the Body, and the History of the Treadmill”, *Critical Survey* 24 (2012): 73–91; U.R.Q. Henriques, “The Rise and Decline of the Separate System of Prison Discipline”, *Past & Present* 54 (1972): 61–93. See also J.M. Beattie, *Policing and Punishment in London, 1660–1750: Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001).

¹⁵John Howard, *The State of the Prisons in England and Wales* (Warrington: Eyres, 1777).

¹⁶See Désirée Schauz, *Strafen als moralische Besserung. Eine Geschichte der Straffälligenfürsorge 1777–1933* (München: Oldenbourg, 2008), 104–33. See also David Bentley, *English Criminal Justice in the Nineteenth Century* (London: The Hambledon Press, 1998).

¹⁷Franz von Liszt, ‘Die Gefängnisarbeit’, Lecture held 26 July 1900 (Berlin: 1900), 5. Liszt’s ‘brauchbares Glied der menschlichen Gesellschaft’ has morphed into the ubiquitous ‘nützliches Mitglied der Gesellschaft’. See, Richard F. Wetzell, Franz von Liszt und die internationale Strafrechtsreformbewegung; in *Die Schule Franz von Liszts. Spezialpräventive Kriminalpolitik und die Entstehung des modernen Strafrechts*, ed. Arnd Koch and Martin Löhnig (Tübingen: Mohr Siebeck, 2016), 207–27. This assumption also applied to the women’s penal system; see Sandra Leukel, *Strafanstalt und Geschlecht. Geschichte des Frauenstrafvollzugs im 19. Jahrhundert (Baden und Preußen)* (Leipzig: Leipziger Universitätsverlag, 2010).

supposed school of crime (this was already laid out as an idea in the solitary cell). If a prisoner was not kept busy, according to von Liszt, prison threatened to become a place ‘where he learns what he does not yet know, where he establishes criminal connections, perhaps for his whole life’.¹⁸ In this way, he linked prison labour with the idea of prevention, which is still at the centre of the discussion of criminal policy logic today. But regardless of how prison reformers thought about the connection between prison labour, crime prevention and humanitarian concerns, prisoners still perceived it as additional punishment and a means of their destruction, as can be seen, for example, in the memoirs of a former prisoner who was forced to work in Münster prison for eight years at the turn of the century: ‘I have the feeling’, wrote the man in 1900, ‘that the penitentiary treatment was intended to wear me out personally, destroy me spiritually and make me morally impossible for the world’.¹⁹

There is much to suggest that the contradiction between reform ideas and the reality of imprisonment that speaks from the prisoner’s experience was by no means resolved even after the founding of the Weimar welfare state.²⁰ However, a reform of the prison system was pursued independently of this, with the main aim of enacting a penal system law and making the concept of rehabilitation the goal of the prison system. Prison work was already thought of in this context as a resocialisation measure that was not intended to harm the body of the prisoner, but to ensure economic survival and social integration of the released inmate. But when the National Socialists came to power, most of the reform efforts came to an end.²¹ In particular, prison labour served as a means of systematic extermination, in not only concentration camps but also labour education camps (*Arbeitserziehungslagern*)²² and ordinary prisons.²³ The obligation to work was continually tightened; by the end of the 1930s, prisoners had to work six days a week from 7 am to 6 pm. There were hardly any breaks. With the beginning of the war, prisoners were increasingly needed for the war economy, which meant that the prison companies were more and more frequently converted into armament factories. Working hours were increased again, up to twelve hours.²⁴ In combination with a decidedly poor nutritional situation and mostly a lack of medical care, work in prison had once again become a kind of corporal punishment that contributed to the systematic extermination of those who did not belong to the ‘Volksgemeinschaft’.

The Social Impact of Labour: New Concepts of Imprisonment in the Federal German Welfare State

Prison labour as a specific form of forced labour remained legitimate after 1945, in Germany as well as internationally. The basis for this was laid by the International Labour Organisation (ILO) Convention No. 29 of 28 June 1930, which obliged member states to refrain from forced and compulsory labour but made an exception for prison labour as long as it was under public supervision and did not involve private individuals.²⁵ In this respect, the European Convention on Human Rights (ECHR)

¹⁸Ibid., 6.

¹⁹Sepp Oertner, *Acht Jahre Zuchthaus. Lebenserinnerungen* (Berlin: Verlag der Tribüne, 1908), 102.

²⁰See with an eye to the practical reformers Warren Rosenblum, *Beyond the Prison Gates: Punishment & Welfare in Germany, 1850–1933* (Chapel Hill: University of North Carolina Press, 2008) and Naumann, *Gefängnis*. With a focus on legal theorists and criminologists see Richard Wetzell, *Inventing the Criminal. A History of German Criminology, 1880–1945* (Chapel Hill: University of North Carolina Press, 2000).

²¹With an eye to the abolition of capital punishment, Richard Evans has noticed a marked turn against progressive ideas in the late Weimar years; Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany 1600–1987* (Oxford: Oxford University Press, 1996), 604–10.

²²Gabriele Lotfi, *KZ der Gestapo: Arbeitserziehungslager im Dritten Reich* (Frankfurt/Main: Fischer, 2003); Wolfgang Benz et al., eds., *Der Ort des Terrors. Geschichte der nationalsozialistischen Konzentrationslager Vol. 9, Arbeitserziehungslager, Ghettos, Jugendschutzlager, Polizeihäftlager, Sonderlager, Zigeunerlager, Zwangsarbeitslager* (München: Beck, 2009).

²³Nikolaus Wachsmann, *Hitler’s Prisons. Legal Terror in Nazi Germany* (New Haven: Yale University Press, 2004).

²⁴Naumann, *Gefängnis*, 167.

²⁵International Labour Organisation, *Forced Labour Convention, 1930* (No. 29).

of 4 November 1950 was even more generous and allowed prison labour in private companies.²⁶ Last but not least, the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955 also provided for compulsory work. 'All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.' However, the rules also stipulated that prison work must not 'be of an afflictive nature' and thus not constitute an additional punishment.²⁷ Although this meant that the use of prison labour was maintained at the international level, it was no longer to be used as a special form of corporal punishment.

In the case of West Germany, the possibility of using prisoners as forced labourers while simultaneously rejecting forced labour was enshrined in the 1949 German Basic Law. It states in article 12(2), one of the fundamental rights that opens the constitution and enjoys special protection against legislative change, that no one may be forced to do a particular job. Yet, its third paragraph, mirroring the ILO statutes, stipulates that forced labour was permissible in the case of a 'deprivation of liberty ordered by a court'. This was fleshed out in the principal legislative moment of correction reform, the 1976 German Prison Act (*Strafvollzugsgesetz*, *StVollzG*),²⁸ which deals with prison labour in relative detail. Section 37, paragraphs 1–5, explains:

(1) Work, occupational therapy employment, training and further education serve in particular the purpose of imparting, maintaining or promoting skills for gainful employment after release. (2) The prison authority shall assign economically productive work to the prisoner, taking into account his or her abilities, skills and inclinations. (3) Suitable prisoners shall be given the opportunity for vocational training, further vocational training or participation in other training or further training measures.

The ability to pursue paid employment after release is explicitly stated here as the purpose of prison labour in the context of resocialisation. However, the fact that successful resocialisation, at least in theory, requires the inmate's consent seemingly had no bearing on the obligation to work.

Regarding the obligation to work, paragraph 41, subsection 1, states:

The prisoner is obliged to perform work, occupational therapy or other employment assigned to him which is appropriate to his physical abilities and which he is capable of performing on account of his physical condition. He may be obliged to perform auxiliary work in the institution for up to three months per year, and with his consent also for longer periods. Sentences 1 and 2 do not apply to prisoners who are over 65 years of age and not to expectant and nursing mothers, insofar as statutory employment relationships exist for the protection of working mothers.²⁹

The fact that West Germany rejected forced labour on principle but upheld it in the case of a state-imposed prison sentences was justified by its framing of prison labour primarily as a tool for resocialisation. It was seen as a means of social integration and security, personal satisfaction, identity formation and the establishment of social status. This perspective aligned with the 'penal-welfare complex' (David Garland) of the late 1960s, which viewed work as a benevolent force shaping individual biographies.³⁰

²⁶Konvention zum Schutz der Menschenrechte und Grundfreiheiten (Europäische Menschenrechtskonvention) vom 4 Nov. 1950, Art. 4 Nr. 2 und 3a.

²⁷The United Nations Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 Aug. 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 71.

²⁸Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung (*StVollzG*) vom 16 Mar. 1976, Bundesgesetzblatt Teil I Nr. 28, 581.

²⁹*StVollzG*, §37, Abs. 1–5, §41 Abs. 1.

³⁰David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985), 159.

Although the 'humanitarian' function of prison labour only gained systematic importance in the context of prison reform in the late 1960s in West Germany, the first impulses for this development had already been formulated after the end of the war. The Office of Military Government for Germany (OMGUS) – the highest administrative body in the American occupation zone of Germany and the American sector of Berlin during the first four post-war years – proved to be particularly reform-minded in the field of the penal system. It established a prison branch with a prison officer in each of the four American-occupied countries and, shortly after the 'Control Council Directive No. 19' was issued, drafted the so-called Instructions for the German State Governments on the Administration of Prisons, which served as a framework for prison regulations to be issued in the states of Bavaria, Bremen, North Baden-Württemberg and Greater Hesse.³¹ The 'Instructions' primarily addressed the daily life of prisoners, including their working conditions. Work facilities in the US zone were to be equipped with modern machinery and operated according to economic principles. Monotonous occupations performed for their own sake, which primarily caused suffering for prisoners and did not qualify them for the free labour market, were therefore not intended. Finally, prisoners in the American zone were not to suffer from hunger, at least no more than the free population, which led to the decision to provide a regular food allowance of 1,550 calories per day.³² This instruction, while not explicitly stated, ensured that prison labour did not amount to corporal punishment.

Against this backdrop, it is not surprising that the US military government was committed to the abolition of the so-called *Zuchthaus* (Engl. penitentiary). Prisoners in a *Zuchthaus* were required to wear specially marked clothing, had longer waiting periods between writing letters and receiving visitors compared to regular prison inmates and lost their civil rights. Above all, however, they were subjected to longer and harder labour than other prisoners while receiving lower compensation for their work. This meant that labour, in this form of incarceration, was explicitly used as a means of intensifying punishment.³³

Even in the 'Draft of a penal code' (*Entwurf eines Strafgesetzbuches*) from 1962 – submitted after eight years of work by the 'Great Panel Law Commission' (*Große Strafrechtskommission*) to fundamentally reform the penal law of 1871 (*Reichsstrafgesetzbuch*), which had largely remained in effect in its original form – the concept of the *Zuchthaus* and the use of labour as a means of intensifying punishment were upheld.³⁴ However, this (along with other extremely restrictive positions of the government draft) were incompatible with the reformist spirit of West Germany. In response, fourteen German and Swiss lawyers presented an 'Alternative Draft for a Penal Code' (*Alternativ-Entwurf eines Strafgesetzbuches*) in 1966.³⁵ This alternative draft eliminated the idea of the *Zuchthaus* entirely and instead proposed a modern system of sanctions based on the idea of resocialisation. In November 1987, the *Freie Demokratische Partei* (FDP) fraction submitted it as a parliamentary bill to the Bundestag. Neither the government draft from 1962 nor the alternative draft from 1966 were adopted into the new penal code without modifications. However, as part of the 'Great Panel Law Reform' (*Große Strafrechtsreform*), the *Zuchthaus* was abolished through the 'First Criminal Law Reform Act' on 25 June 1969,³⁶ taking effect on 1 April 1970 – thus, at least formally, putting an end to prison labour as an additional form of punishment.

Subsequently, in the new West German Prison Act, which was enacted on 16 March 1976 and came into force in January 1977, meaningful employment that qualified the inmate was deemed crucial for

³¹ See Naumann, *Gefängnis*, 185.

³² Naumann, *Gefängnis*, 186. See also more contemporary Albert Krebs, "Die Durchführung der Kontrollratsdirektive Nr. 19 in den vier Besatzungszonen Deutschlands, insbesondere in der US-Zone", *Zeitschrift für Strafvollzug* 3 (1950): 17–29; and Albert Krebs, "Zur Erneuerung des Gefängniswesens (insbesondere in der amerikanischen Besatzungszone Deutschlands)", *Süddeutsche Juristen-Zeitung* 8/9 (1946): 209–13.

³³ Naumann, *Gefängnis*, 334.

³⁴ Deutscher Bundestag, Drucksache IV/650, eines Strafgesetzbuches (StGB) E 1962, §82 (1).

³⁵ Alternativ-Entwurf eines Strafgesetzbuches. Allgemeiner Teil, submitted by Jürgen Baumann et al., Tübingen 1966.

³⁶ Erstes Gesetz zur Reform des Strafrechts (1. StrRG) from 25 June 1969, Bundesgesetzblatt Teil I No. 52, 645–63.

resocialisation. Since most prisoners did not have any specialist knowledge, the main aim was ‘to provide, maintain or promote skills for gainful employment after release’.³⁷ Although a marked change, the statute did not satisfy reformers who demanded ‘to give the sentenced person the possibility to choose the job from the range of jobs offered by correctional institutions’, and thus comply with the ‘Minimum Principles of the United Nations’ as well as with the Basic Law’s stipulation that ‘the right to freely choose one’s occupation, place of work and place of training’ meant that no one could be ‘forced into a particular job’.³⁸ Moreover, only the free choice of job would counteract the impression that work is ‘part of the punishment and thus itself punishment’.³⁹ Finally, in West Germany the so-called principle of assimilation applied. This meant that ‘life in prison should resemble as closely as possible the general living conditions outside’.⁴⁰

Setting prison labour on equal terms with free labour was in line with what reformers wanted from modern prisons geared towards resocialisation. But the very same experts were by no means unanimous when it came to the purpose of labour. Some still saw work as a tool for maintaining order and discipline. ‘Unemployed prisoners’, one document explained, ‘by their very nature are particularly prone to insubordination, rebelliousness and violence, and thus pose a threat to prison security’.⁴¹ Furthermore, statistics in the West Germany showed a clear correlation between unemployment and crime.⁴² At the same time, the idea of order referred to the effects that regular work should have on the prisoners. This involved the demands of work on self-discipline, stamina, willingness to socialise and manage punctuality and, last but not least, the ability of the worker to subordinate himself (rarely: herself) to others.⁴³ The guiding assumption was that a prisoner managing to adapt to commercial routines would find it much easier later on to reintegrate into a society that followed very similar rhythms. For the business enterprise ‘educates the people living in it to certain ideas of order in such an intensive way that the entire modern consciousness of order is substantially influenced by it’.⁴⁴ Finally, reformers were convinced that resocialisation through work could only succeed if prisoners approached it with joy. ‘In a predominantly work- and performance-oriented society’, the argument went, ‘a positive attitude towards work can in many cases make it much easier to affirm society and its norms’. Any education through work should therefore be preceded by education for work.⁴⁵

In addition to this classic regulatory thinking, which is reminiscent of the penal system debates of the 19th century, the reform debates on prison work reflected the general developments towards the humanisation of working life.⁴⁶ A perception of increased rationalisation pressure and a concomitant

³⁷StVollzG §41.

³⁸Article 12, 1 and 2, German Basic Law. See also Robert Schmidt, “Berufliche Förderung, Arbeitsbedingungen einschließlich Arbeitsentgelt und Arbeitspflicht. Referat, gehalten auf der neunten Arbeitstagung der Strafvollzugskommission”, in *Tagungsberichte der Strafvollzugskommission*, Vol. 9: *Niederschrift über die Beratungen der neunten Arbeitstagung der Strafvollzugskommission vom 24. bis 28 November 1969 in Hamburg*, ed. Bundesministerium der Justiz (Bonn, 1970), 27–49, at 30.

³⁹In doing so, the Prison Commission turned against a ruling by the Federal Fiscal Court (BFH) on 14 October 1964, in which the punitive nature of the work was still demanded; in *Bundessteuerblatt* (BSt.BL.) 1965 III 95.

⁴⁰StVollzG §3 Art. 1.

⁴¹BArch, B 141/89, 649, Auszug aus der Niederschrift über die 30. Tagung des Strafvollzugausschusses der Länder vom 23–26 April 1968 in Frankfurt/Main.

⁴²Ian Crow et al., eds., *Unemployment, Crime and Offenders* (London: Routledge, 1989), 4; Hans-Jürgen Albrecht, “Kriminell weil arbeitslos? Arbeitslos weil kriminell?”, *Zeitschrift für Bewährungshilfe* 2 (1988): 133–47.

⁴³Martin Keilhacker, *Erziehung und Bildung in der Industriegesellschaft* (Stuttgart: Kohlhammer, 1967), 36.

⁴⁴Karl Abraham, *Der Betrieb als Erziehungsfaktor. Die funktionale Erziehung durch den modernen wirtschaftlichen Betrieb* (Freiburg/Breisgau: Lambertus, 1957), 33.

⁴⁵Paul Koch, *Gefangenearbeit und Resozialisierung* (Stuttgart: Ferdinand Enke, 1969), 87–8. For more on the relationship between work and therapy behind bars, see Streng, *Prison Labour*.

⁴⁶See Gina Fuhrich, *Humanisierung oder Rationalisierung? Arbeiter als Akteure im Bundesprogramm ‘Humanisierung des Arbeitslebens’ bei der VW AG* (Stuttgart: Franz Steiner, 2020); Nina Kleinöder, Stefan Müller and Karsten Uhl, eds., *‘Humanisierung der Arbeit’. Aufbrüche und Konflikte in der rationalisierten Arbeitswelt des 20. Jahrhunderts* (Bielefeld: Transcript, 2019); Anne Seibring, *Die Humanisierung des Arbeitslebens in den 1970er-Jahren. Forschungsstand und*

intensification of work and worsened working conditions – often if not always correctly identified with Fordist mass production and the Taylorist organisation models – had spread in the course of the 1960s. By the following decade, calls for making labour more humane were standard fare among trades union leaders, social democratic and Christian-social politicians,⁴⁷ and sociologists and industrial relations experts. Underlying their diagnosis was an appreciation that demands for shorter working hours, higher incomes and more leisure time had long overshadowed qualitative questions about the actual work process. ‘Humanising’ work therefore was supposed to (re)establish nothing less than ‘human dignity in the workplace’.⁴⁸ Specifically, the focus was on occupational health and safety,⁴⁹ the reduction of physical and mental stress, higher qualifications for employees⁵⁰ and more democracy. The research programme ‘Humanization of Working Life’ aligned with the debates on a more humane penal system in terms of not only its objectives but also in its specific content. Issues such as occupational safety, the design of workspaces and workstations and worker codetermination were relevant to not only male industrial workers but also forced labourers in prison.⁵¹

Despite these developments, however, it should not be overlooked that the idea of humanising working life behind prison walls had clear limits. The normalisation of work failed primarily because prison labour remained forced labour and violations of the work obligation could be punished accordingly with disciplinary measures.⁵² In West Germany, these disciplinary measures included various prohibitions, such as the right to read books, listen to the radio, watch television or receive visits; restrictions on leisure time, work or loss of earnings were also conceivable. Finally, there was ‘detention for up to four weeks’, which was presented as an appropriate disciplinary measure in the above-mentioned house punishment conference (*Hausstrafenkonferenz*). However, this measure could only be imposed ‘in cases of serious or repeated misbehaviour’.⁵³

Against this background, the draft of the resocialisation paradigm, in which labour, that is, work that sought to mirror free employment provisions, played a central role, appears as an ambitious domestic policy change and a typical reform project of the progressive Social-Democratic-Liberal Party coalition that governed from 1969 to 1982. However, a successful example of ‘daring more democracy’, as Chancellor Willy Brandt had promised in 1969, it was not. Rather, prison labour continued to operate on a paradox: while it was no longer to be understood as an additional punishment, it still governed the body and the psyche of the inmate, often in ways that were beyond his control. Although the reform debates addressed the fact that the prisoner’s social and economic existence was perilous at best in light of inadequate pay that neither allowed for savings nor covered social insurance such as retirement, healthcare, unemployment, child allowance or disability (but also because of predominantly unskilled work that was of little attraction to future employers), these concerns by no means determined the debate. In fact, none of these made it into the eventual reform bills, which meant that the inmates could not sue for equal opportunities.

Forschungsperspektiven’, in ‘*Nach dem Strukturbruch? Kontinuität und Wandel von Arbeitsperspektiven und Arbeitswelt(en) seit den 1970er Jahren*’, ed. Knud Andresen, Ursula Bitzegeio and Juergen Mittag (Bonn: Dietz, 2011), 107–26.

⁴⁷Under the aegis of Hans Matthöfer as Federal Minister of Science and Research, the slogan became government policy; see his *Humanisierung der Arbeit und Produktivität in der Industriegesellschaft*. Front Cover (Frankfurt/Main: Europäische Verlagsanstalt, 1977).

⁴⁸Horst Kern, *Kampf um Arbeitsbedingungen. Materialien zur ‘Humanisierung der Arbeit’* (Frankfurt/Main: Suhrkamp, 1979); Fritz Vilmar, ed., *Menschenwürde im Betrieb* (Hamburg: Rowohlt, 1973).

⁴⁹See Nina Kleinöder, ‘Humanisierung durch Arbeitssicherheit? Die Reform des Arbeitsschutzes als Ausgangspunkt der ‘Humanisierung des Arbeitslebens’ zwischen 1963 und 1979/80’, in Ibid. et al., *Humanisierung*, 91–3.

⁵⁰See Jan Kellershohn, ‘Aporien der Anpassung. Zur Humanisierung durch Bildung im ‘Strukturwandel’ der Arbeit, in ‘*Humanisierung der Arbeit*’. *Aufbrüche und Konflikte in der rationalisierten Arbeitswelt des 20. Jahrhunderts*, ed. Nina Kleinöder, Stefan Müller and Karsten Uhl (Bielefeld: Transcript, 2019), 137–59.

⁵¹Nina Kleinöder, Stefan Müller and Karsten Uhl, ‘Die Humanisierung des Arbeitslebens. Einführung und methodische Überlegungen’, in ‘*Humanisierung der Arbeit*’. *Aufbrüche und Konflikte in der rationalisierten Arbeitswelt des 20. Jahrhunderts*, ed. Nina Kleinöder, Stefan Müller and Karsten Uhl (Bielefeld: Transcript, 2019), 20.

⁵²StVollzG §102, Abs. 1.

⁵³StVollzG §103.

Economic Arguments for Prison Labour: The Perspective of Employers' Associations

Neither the assignment of work nor the types of sanction for violations of work obligations alone were what distinguished prison labour from free labour. Rather, the type of work available to prisoners was far more limited than in free society. Behind prison walls, the variety and personal opportunities that the Miracle on the Rhine (*Wirtschaftswunder*) offered on the West German labour market were nowhere to be felt. In the 1950s, the main focus was to maintain the principle of self-sufficiency in prisons through prison labour, which is why most jobs available to inmates were in domestic work, gardening and agriculture. In line with this, the Tegel Prison, for example, ran a pig farm in the 1950s and recruited the necessary workforce from among the prisoners.⁵⁴ To save costs, construction that arose both inside and outside of the facilities was also carried out by prisoners whenever possible. Additionally, tasks in other governing agencies, especially in welfare institutions, were often executed by inmates. Prisoners could even be called upon to assist during natural disasters, and they also worked in public sector agriculture, forestry and water management. Likewise, they were employed in road construction and the development of wasteland in the 1950s. At Tegel Prison, printing work for other authorities was carried out with the help of prisoners until the late 1950s. This included, among other things, 'Guidelines for criminal proceedings, as well as cover sheets for these' (*Richtlinien für das Strafverfahren, sowie Deckblätter hierzu*) or the 'Journal of the Prison Service' (*Zeitschrift für Strafvollzug*), which had been published by the Prison Staff Association since 1950. In the prison's locksmith workshop, locks, keys and cell windows for West German penal institutions were manufactured, while the prison carpentry workshop fulfilled government orders for a wide range of furniture. Tegel Prison also had a tailoring and a shoemaking workshop that produced prison uniforms. All in all, the head of Tegel Prison summarised the work situation in a letter to the president of the Berlin Corrections Office in January 1959, stating 'a consistently sufficient level of employment is guaranteed'.⁵⁵ Although manual and, indeed, more often than not unskilled or semi-skilled labour accounted for the bulk of professional activities, their variety indicated that prison labour was not designed to push the prisoner to his physical limits. Rather than punishment, it was an integral part of running penitentiaries in an economically viable way.

If these practices had a pre-modern smack of feudal holdovers and subsistence economy (aptly echoed in the term *Hand- und Spanndienste*, literally 'hand and hitch-up services', to which they are related),⁵⁶ the twentieth century witnessed the introduction of monetary economy and industrial production also within the penitentiary system. There were different work systems in West German prisons, including the entrepreneur system (*Unternehmersystem*), the contract system (*Auftragssystem*) and the direct labour system (*Regiesystem*). In the entrepreneur system, a private entrepreneur set up his machines and the associated workplaces within the prison and supplied all the raw materials necessary for production. The prisoners, who were made available to him by the institution in return for a fee, carried out the work, while the entrepreneurial risk lay solely with the entrepreneur. In the contract system, prisoners also worked for independent entrepreneurs who provided the raw materials, paid for the labour and managed distribution. However, in this case, the workplace was set up by the institution itself. The direct labour system consisted of the prison-run enterprises described above, where work was carried out under the aegis of the prison administration. The state was solely responsible for job procurement, cost calculation, distribution and risk. Although

⁵⁴ LAB (Landesarchiv Berlin), B. Rep. 070, No. 112., Fol. 19. Letter from the president of the Berlin Corrections Office to the head of Tegel Prison regarding 'pig farming' dated 16 Jan. 1958. To save costs, the pigs were to be fed 'to a greater extent than before' with kitchen scraps from Berlin correctional facilities, as stated in a letter from the president of the Berlin Corrections Office to the head of Tegel Prison. This measure aimed to limit the purchase of animal feed to a 'minimum'.

⁵⁵ LAB, B Rep. 070, No. 112, Fol. 212. Letter by the head of Tegel Prison to the president of the Berlin Corrections Office, 1 Jan. 1959, on the 'Awarding of contracts from federal authorities to penal institutions'.

⁵⁶ Günter Püttner and Klaus Brühl, "Naturalleistungen (Dienstleistungen)", in *Handbuch der kommunalen Wissenschaft und Praxis*, vol. 6: *Kommunale Finanzen*, ed. Günter Püttner (Heidelberg: Springer, 1985), 25–302, at 289–95.

prison labour primarily involved (often low-skilled) work in factories, it could also encompass domestic work. Within the institution, this included, for example, unskilled kitchen work, distributing meals or laundry, cleaning and (until the 1970s) heating. In addition, prisoners (provided they were qualified) could work as barbers or medical orderlies. With the approval of the supervisory authority, they could even do paperwork and accounting tasks in prison administration, a privilege granted only to few prisoners as a special sign of trust.⁵⁷

The legality of prison labour in entrepreneurial enterprises was the subject of political debate in the mid-1950s. The key legal standard in this context was the Forced Labour Convention of the ILO. In September 1955, it prompted the president of the Berlin Prison Office to ask the executive boards of the prisons in the city's western sectors how they were dealing with the Convention's requirement that prison labour was only permissible under state supervision. Indeed, Berlin's Senator for Justice (equivalent to a secretary of state in the other German *Länder*) commented that the actual employment of prisoners by business enterprises did not comply with this order in either Berlin or any other *Land*. Given that the Federal government intended to ratify the Convention, however, business as usual would no longer be an option. The solution that the Senator's office came up with illustrated a willingness to respect the Convention's letter rather than its spirit: instead of abolishing the allocation of prison labour to enterprises altogether, the municipal authorities intended to obtain a declaration of consent from the prisoners in order to circumvent the Convention, which, however, was rejected by the executive board of the Tegel Prison.⁵⁸ Any regulation, was the board's response, 'that consent declarations should generally be obtained from prisoners to work in entrepreneurial enterprises appears unacceptable for the implementation of the penal system'. The reason given for the rejection was the educational impact of prison labour and its essential role in 'resocialising' prisoners. If these were asked to consent, the members of the board feared, up to half of all inmates might refuse to work in enterprises, effectively making the entire scheme unworkable and leading to high non-employment rates.⁵⁹ As reform-minded as these words sound, it would certainly be a misunderstanding to see the reference to resocialisation as an anticipation of the socio-psychological reason of the Tegel executive board with its emphasis on voluntariness. Rather, a traditional paternalistic understanding of authority and very tangible economic interests are expressed here. However, despite such objections, the ratification of the ILO Convention on 1 June 1956 finally made such consent mandatory, which illustrates not least the dogmatic superiority of international law ('international law breaks national law'). Although West German prisoners still had to perform a special form of forced labour after the signing of the ILO Convention, they were at least given a rudimentary right to self-determination over their work.

Yet what this right amounted to in practice was contingent on factors on the ground, as refusal to provide labour could well lead to trouble with the prison authorities. Also, the Convention did not remedy the fact that prison labour remained punishment insofar as it put prisoners at a massive economic and social disadvantage. Their wage loss was the employer's gain and, indeed, a controversial competitive advantage, arguably as exploited labour. Commercial enterprises that did not employ prisoners saw themselves at an economic disadvantage because of the higher wage costs they had to pay to free labour. The General Association of the Plastics Processing Industry (*Gesamtverband Kunststoffverarbeitende Industrie e.V.*), for example, complained to the president of the Berlin Prison Office in early 1959 that W. Moebes, a local manufacturer, was distorting competition by means of producing at Tegel. In their reply, the Prison Office explained that out of forty-two employed prisoners, Moebes used thirty-four for unskilled, manual work such as sorting and packing. Only eight were machine minders, and the machines they were operating were so outdated that they could no

⁵⁷ Koch, *Gefangenearbeit*, 17–19.

⁵⁸ LAB, B Rep. 070, No. 114, 72 and 73. Letter of 3 Sept. 1955 from the President of the Berlin Prison Office to the executive boards of the prisons in the western sectors of Berlin.

⁵⁹ *Ibid.*, 74 and 75.

longer be used in modern plastics processing anyway; in other words, they were hardly competitive. Also, work done at Tegel amounted to no more than 3 to 5 per cent of Moebes' total output, which ruled out an advantage over other companies in the same sector.

Apparently, however, the president did not deem these arguments sufficient and therefore added another reason why the cooperation with Moebes was unproblematic. It was well known, he told the association, that 'prison labour is almost always inferior to the work done by free labourers'. If the company nonetheless chose to produce at Tegel, it must have been due to a willingness to help in 'the re-socialisation of prisoners'.⁶⁰ The reference to resocialisation was rather obviously opportunistic to ward off criticism. How tasks that were described by himself as monotonous or performed on outdated machines were to help prisoners find jobs was not discussed in the prison official's missive. Nor was it mentioned at any point that jobs such as packing and sorting in the 1960s were typically done by women in the open labour market, which meant that this type of employment was not suitable for resocialisation through work in a men's prison anyway due to its gender-specific classification.⁶¹ Indeed, his take on resocialisation through work bore the imprint of earlier notions of respectability and discipline rather than implying the acquisition of skills that would help people find work after release. In short, the correspondence in the Moebes affair illustrated that officialdom and (local) politics continued to conceive of prison jobs primarily in terms of work rather than economically and socially valuable and valued labour.

That is not say that the point of insufficient quality of prisoners' work was entirely wrong. Instances of companies that refrained from or stopped producing in prisons because of the poor quality of the work done can easily be found. About the same time the plastic producers association worried about unfair competition, their colleagues at the Association of the German Toy and Christmas Tree Decoration Industry (*Verband der Deutschen Spielwaren- und Christbaumschmuckindustrie*) informed the board of the Tegel Prison that the Berglas company intended to give up producing Christmas baubles in the penitentiary. Prisoners had had to blow glass baubles over a small gas flame from so-called blanks made in Berlin from discarded neon glass tubes, which were then painted and silver-plated. However, according to the association, the output was either too small or too poor, so that production behind bars proved unprofitable after two years and was discontinued.⁶² Another example is that of a shoe manufacturer who, in the mid-1960s, failed in his attempt to set up a modern assembly line in a prison. He planned to generate 80 per cent of the turnover that he could have achieved with free labour under the same technical conditions. However, this plan failed because it was apparently impossible to achieve a cooperative labour of the prisoners on the assembly line. According to a report on this case at a conference of the Association of Prison Officers in 1966, there was repeated friction both among the prisoners as well as between prisoners and the supervisory staff.⁶³ It seems that the idea of using prison labour for resocialisation did not invalidate market dynamics while the prison met its limitations precisely due to its closed nature (which, of course, was its very core) and the implications this had for quality and quantity of manpower. The baubles proved a point also conceded by contemporary observers: a business inside a prison could be established in a very similar way to a business venture outside, but it could not operate on a day-to-day basis in the same way as its counterpart beyond the prison walls, precisely because there was neither free recruitment nor qualification-based selection of the workforce.

⁶⁰ LAB, B Rep. 070, No. 112, Letter from the President of the Berlin Prison Service to the Gesamtverband Kunststoff verarbeitende Industrie in Frankfurt/Main dated 3 June 1959.

⁶¹ Christine von Oertzen, *The Pleasure of a Surplus Income: Part-Time Work, Gender Politics, and Social Change in West Germany, 1955–1969* (Oxford: Berghahn, 2007).

⁶² LAB, B Rep. 070, No. 112 und 114, Letter from the Management Board of Tegel Prison to the President of the Berlin Prison Service dated 5 Feb. 1959.

⁶³ A. Zelter, "Ausbildung, Arbeit und Entlohnung der Gefangenen (Referat gehalten auf der 7. Bundestagung des Bundeszusammenschlusses für Straffälligenhilfe vom 12–16 Oct. 1966)", in *Straffälligenhilfe im Dienste eines geordneten Gemeinschaftslebens*, ed. Bund der Strafvollzugsbediensteten (Bad Godesberg, 1966), 72–81.

Inmates as Employees or the Value of Occupation and Pay

Prisoners hardly played a role in the reform debates regarding prison labour, as – in Albert O. Hirschman's well-known terms – the institution not only curtailed their right to exit but also their voice.⁶⁴ However, they did use the few opportunities they had to express their opinions on the issue. The most important source for reconstructing the inmates' experiences and perceptions, however, is prison magazines. The primary source here is *Lichtblick* (ray of hope), a magazine published in Tegel Prison. The *Lichtblick*, which is still published today (now online), is the first and oldest prison magazine in West Germany. Founded in 1968, it was not subject to censorship by the prison administration, though it was read by them, which likely led writers to exercise a certain degree of caution. Moreover, the content of these magazines is not necessarily representative of all prisoners. Those who wrote for them and commented on everyday prison life were generally more educated than the majority of prisoners. This is not only supported by their confident command of language but also by the fact that many authoring prisoners were familiar with the criminological and political arguments for and against the penal reform, as well as the language used by the reformers. Nevertheless, the magazine provides at least an insight into how the inmates experienced prison life and what expectations they had regarding prison work.

One repeatedly appearing aspect in prisoners' accounts was the possibility of eventually entering the labour market with completed vocational training. Therefore, prisoners welcomed the so-called Employment Promotion Act (*Arbeitsförderungsgesetz*) enacted in 1969.⁶⁵ The new law was about 'individual promotion of further vocational training and retraining', with which the labour offices had been charged by the legislature to 'secure and improve occupational mobility or to enable occupational advancement or to counter looming unemployment as early as possible'. As the state's responsibilities did 'not stop at the gates of the penal institution', as a contemporary representative of the Labour Office explained, vocational training measures for prisoners were also increasingly promoted.⁶⁶

Although prisoners stood to benefit from the law, they had to accept certain restrictions. At Tegel, training was only offered for professions 'that were in short supply in Berlin and would therefore ensure satisfactory pay even after retraining'. Therefore, in 1972, training courses for painters, decorators and upholsterers were offered, each lasting four months, as well as courses for metal and machine workers, which lasted twelve to fifteen months. Courses for welders and stone setters/pavers were said to be in the planning stage. All prisoners who were physically able and whose release date was short after completion of the training could participate in the existing courses.⁶⁷ There were hardly any apprenticeships beyond manual trades at Tegel, despite reform ideas to the contrary. However, during a visit to the prison in 1972, representatives of the Labour Office assured the inmates that they were working on introducing further apprenticeships and training companies. In addition, the Senate also wanted to offer inmates with a background in commercial professions a job opportunity in accordance with their qualifications.⁶⁸ However, as far as placement prospects in the commercial sector or in public administration were concerned, the Labour Office cautioned the inmates not to get their hopes up too high: 'the type and extent of the delinquency significantly influence the prospects

⁶⁴ Albert O. Hirschman, *Exit, Voice, and Loyalty. Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970). Hirschman's terms, coined for voluntaristic contexts, have long been applied to prisons, camps and other closed or total institutions (Goffman), but also in labour history; cf. Mikaela Sundberg, *A Sociology of the Total Organization: Atomistic Unity in the French Foreign Legion* (London: Routledge, 2016), 4–6, and Marcel van der Linden, *The World Wide Web of Work: A History in the Making* (London: UCL Press, 2023), 274.

⁶⁵ Gesetz über die Leistungen und Aufgaben zur Beschäftigungssicherung und zur Förderung des Wirtschaftswachstums' (*Arbeitsförderungsgesetz*, AFG), 25 June 1969, Bundesgesetzblatt, Teil I, 1969, 582.

⁶⁶ "Berufliche Fortbildung und berufliche Umschulung", *der lichtblick* 2 (1972): 19.

⁶⁷ "Hier spricht die Arbeitsverwaltung. Hinweise zu Umschulungskursen", *der lichtblick* 2 (1972): 15.

⁶⁸ "Zur "Situation und Zukunft der Arbeitsbetriebe"", *der lichtblick* 5 (1972): 17–8, at 18.

of finding a corresponding job'. Despite formal qualification, job placement could only be offered on a 'case-by-case' basis.⁶⁹

Even though the job facilities at Tegel Prison improved continuously over the course of the 1970s, and prisoners were able to train as tailors, carpenters, locksmiths, upholsterers, saddlers or typesetters in addition to the professions mentioned above, it would be an exaggeration to claim that the offer of vocational training as a central means of work education, which had long been demanded by prison reformers and was well received and in some cases utilised by prisoners, can be said to be a success story. After all, another demand that was formulated even more passionately by the prisoners than the work and training opportunities was appropriate remuneration, which was not granted to them.

Remuneration had long come in the shape of so-called work rewards, a concept that had first been laid down in the 1879 'Draft of a Law on the Execution of Prison Sentences' (*Entwurf eines Gesetzes über die Vollstreckung von Freiheitsstrafen*).⁷⁰ The draft was based on the assumption that prison labour was part of the punishment and that the state was entitled to the proceeds. Although the meaning of prison labour underwent a reinterpretation after 1945, the Federal German 'Service and Correctional Regulations' continued to adhere to the principle of rewards. Lawsuits against the reward system were uniformly dismissed. The Hamm Higher Regional Court, for example, explicitly justified a corresponding ruling as late as December 1965 with the notion that work behind bars was 'itself punishment'. In principle, the judges argued, in what amounted to a return to standards applied before 1945, that forced labour did not justify a claim to wages at all.⁷¹ Westphalia, where the Hamm Court held jurisdiction, was in no way particular in this respect; the reward system, whereby the amount paid was subject to the discretion of the respective prison administrations and thus could vary from one federal state to the next, was practiced across West Germany. As a rule, there was a graduated reward system, depending on the diligence of the inmates and the standard of the work. Work rewards ranged from DM 0.40 to DM 1.00 per day. Rarely did prisoners earn more than DM 1.00 a day; monthly bonuses for special services hardly ever exceeded the 20.00 DM limit. The average total was 28.48 DM per month.⁷² By way of comparison, an unskilled worker in agriculture on average earned a monthly gross income of DM 812.00 in 1969.⁷³

Against that backdrop, critics of the way prison labour was organised continued insisting that its handling amounted to additional punishment. Since the 1960s, advocates of reform found support among social democratic politicians and activist lawyers who were willing to take up the issue in public, and this time indeed with the intention of taking Brandt's slogan of 'to dare more democracy' at its word – also behind bars. One of the critics from inside West Germany's *Justizvollzug* was John Gahlen, head of administration of a prison in southern Germany, who found clear words for what the bad rewards did to the inmates. At a professional gathering of prison officials, he explained:

I can assure you from my practical experience that we are at the eleventh hour when it comes to proper prisoner pay and, to put it quite brutally, we will experience the shock of our lives if quick and clean solutions are not actually practised here. After a series of student demonstrations in front of our prison, I witnessed for months the reactions of the prisoners resulting precisely from the dilemma of penny wages, which is played up again and again: a terrible hatred of us,

⁶⁹Landesarbeitsamt Berlin, "Kurzinformation über den Berliner Arbeitsmarkt im 4. 1969", *der lichtblick* 4/5 (1972): 36–7, at 37.

⁷⁰Entwurf eines Gesetzes über die Vollstreckung von Freiheitsstrafen § 25 Abs. 1, 2, printed in *Blätter für Gefängniskunde* no. 14 (1879): 1–5.

⁷¹Beschluss des Oberlandesgerichts Hamm vom 31 Dez. 1965, OLG Hamm, 31 Dezember 1965 – 1 VAs 105/65: Arbeitsentlohnung für Strafgefangene mit Arbeitszwang; "Entrichtung von Sozialversicherungsbeiträgen", *Neue Juristische Wochenschrift* 13 (1966): 607–8, at 608.

⁷²Heinz Müller-Dietz and Thomas Würtenberger (eds.), *Fragebogenenquête zur Lage und Reform des deutschen Strafvollzugs. Bericht erstattet von Heinz Müller-Dietz und Thomas Würtenberger* (Bad Godesberg, 1969), 45.

⁷³Hermann Berié, *Geschichte der Sozialpolitik seit 1945. Statistische Übersichten für die Bände West* (Bonn: Bundesministerium für Arbeit und Sozialordnung, 1998), 48.

the 'slave owners', 'exploiters', 'bloodhounds', etc., all expressions which were hurled at me again and again in fanatical hatred during my tour of the prison factories!⁷⁴

Even though Gahlen, in his position as administrative manager of a prison, will have placed great value on the disciplined behaviour of the prisoners, he obviously also understood their concerns and shared their view that the wage system was morally and legally wrong. Federal Minister of Justice Herbert Jahn also experienced an argument about this when he visited Tegel Prison at the beginning of 1971 and was questioned by the inmates about the planned reforms. The concerns with which the Minister was confronted related to the issue of remuneration and articulated a clear understanding among the inmates that they were being drastically and systematically disadvantaged. When asked directly when the conversion from a more or less arbitrarily settled payment to standard wage could be expected, Jahn found himself cornered, offering a weak plea for more time: "This is not something that will be given to you at Christmas 1971, but will take a longer period of time."⁷⁵ In that he was right. Changes in the reward system were not to materialise until five years later (and indeed around Christmas time), and even then a negotiated weekly or hourly wage rate was not in the offing. The government draft for a Prison Law justified the decision against the standard rate on the grounds that prisoners could not be expected to work as productively as free workers, with consequences for costs. Therapeutic measures during working hours, frequent changes of workers and the necessary security arrangements were cited as reasons for the inevitable gap in productivity.⁷⁶

Thus, the reform era left prisoner demands for standard wages unsatisfied in West Germany but also in the United Kingdom, France and other European states.⁷⁷ Ironically, prisoners were not granted the right to work either, another perennial issue in the reform debates of the time. For years, lawyers had argued that such a right should be granted for 'educational reasons'. The state's duty of care, they held, required such a legal title if the correctional goal of resocialisation and the associated idea of reintegration were to be achieved.⁷⁸ The fact that other European countries had granted such a right to work in the 1960s, including Denmark, Sweden, the Netherlands, France and Switzerland, was duly invoked – but failed to leave a mark on (Federal) German policy and regulation.⁷⁹ And even in these in some respects more progressive nations, fundamental inequalities that were deeply, indeed structurally, ingrained in prison labour were rarely tackled and even more rarely remedied. Ultimately, Western European prison regulations had it in common that inmates were denied employee status in the workplace because they could neither sign an employment contract out of their free volition nor put their labour on the market, selling it to the highest bidder. In short, they were no more fully capable economic subjects than they were free and equal citizens.

⁷⁴John Gahlen, "Gedanken zur Neuordnung des Arbeitswesens im Strafvollzug unter Einschluss der Frage des Arbeitsentgelts", *Zeitschrift für Strafvollzug* 1 (1970): 18–37, at 33.

⁷⁵Rechte und Pflichten. Bundesminister der Justiz diskutiert mit Insassen Tegels, *der lichtblick* 1 (1970): 7–8, at 8.

⁷⁶Entwurf eines Gesetzes über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung (StVollzG) vom 23 July 1973, *Deutscher Bundestag* 7/918, §40 – Arbeitsentgelt, 67–8.

⁷⁷For the specific differences in the British, French and German pay systems, see Shea, *Work*, 52–8.

⁷⁸As argued by Johannes Depenbrock, 'Erwachsenen-Strafvollzug' (PhD thesis (jur.), University of Bonn, 1960), 139; Heinrich Foth, 'Über das Recht auf Arbeit in den Gefängnissen', *Juristenzeitung* 13 (1961): 401–6; Klaus Tiedemann, *Die Rechtsstellung des Strafgefangenen nach französischem und deutschem Verfassungsrecht* (Bonn: Röhrscheid, 1963); Rudolf Schmitt, "Arbeit und Arbeitsbelohnung im künftigen Strafvollzug. Erläuterungen zu §39 des Alternativ-Entwurfs", in *Programm für ein neues Strafgesetzbuch. Der Alternativ-Entwurf der Strafrechtslehrer*, ed. Jürgen Baumann (Frankfurt/Main: Fischer, 1968), 93–9.

⁷⁹Vgl. Überblick bei Ludwig Stobbe, "Durchführung der Gefangenearbeit im Strafvollzug", in *Materialien zur Strafrechtsreform – Reform des Strafvollzugsrechts* – 8. Bd., *Rechtsvergleichende Arbeiten. Zweiter Teil* (Bonn: Bundesministerium der Justiz, 1959) 91–210, at 181–3.

Conclusion: The Value of Labour and the Work of ‘Outsiders’

While penal reformers were debating prison reforms around 1970, emphasising the special value of work for the resocialisation process, elsewhere, as described above, the reform agenda of ‘humanising labour’ was being drafted. Historians have mostly integrated this debate into the master narrative of the socio-cultural transformation of the time, as expressed in the emergence of new social movements in Germany, France and elsewhere, in ideas of extra-parliamentary opposition, anti-authoritarian protests or feminist and ecological thinking. The desire for individual recognition, participation and self-development in work led to a loud, publicly audible critique of health-endangering work processes and workloads, monotonous work content and authoritarian management styles. In fact, the concept was also attractive to employers, as it promised to depoliticise industrial relations while branding investments in the workplace as contributions to the ‘humanisation’ agenda.⁸⁰ Given the label’s ubiquity, it is all the more telling that working life behind bars rarely (if at all) figured in these debates. Clearly, the goal of humanising working conditions did not pertain to all workers. Prison labour remained the work of ‘outsiders’, betraying a notion of humanity and human rights that was far from universal but heavily status- and context-dependent.

This reflected the key unresolved tension in the objectives of imprisonment, with punishment and protection on the one hand and resocialisation on the other. While rhetorically the discursive and political trajectory was headed for the latter, the questions arising from prison work laid open the continuing significance of the former. Forced labour was prohibited, yet work in prisons was exempted; inmates faced disciplinary and material repercussions if they refused to work, yet were excluded from employee status and its ensuing rights; they were paid for their work, but not at market rates; they were expected to prepare for a world that revolved around labour, yet were not treated as the economic subjects they were supposed to become upon leaving the prison’s confines.

With these contradictions largely unresolved, the reforms of prison labour after 1945 failed, as the gap between resocialisation as paradigm and as practice was never truly bridged. If the idea of successful resocialisation was not tied to just any type of work (as defenders of minimal pay argue to the present, suggesting that remuneration is not the objective of prison work) but to what in Germany is described as a standard employment relationship (*Normalarbeitsverhältnis*), that is, a freely chosen, contract-based, steady, full-time employment, with negotiated, legally enforceable working conditions and adequate remuneration, decades of reform efforts had little to show by the time of reunification. Work done by prison inmates was (and still is) a far cry from these standards, and with little prospect of attaining them in the future either. It was not until 1998 that Germany’s Constitutional Court found that the operative system of payment for prison labour was in violation of the Basic Law: the meagre monies paid out – fixed at 5 per cent of average wages at the time – were obviously insufficient to make any meaningful contribution to resocialisation, which, the Court ruled, was a constitutional obligation.⁸¹

But the guardians of the constitution did not find that prisoners were entitled to equal wages either; it was left to parliament and the executive branch to figure out what sum would meet the standards of the Basic Law’s resocialisation mandate. While referring the matter back was obviously reflected the division of powers, the decision suffered from the equally obvious shortcoming that the same authorities had avoided its own mandate ever since the 1976 reform bill had become codified law in 1977, when it came to both raising prison wages and passing a law that would include prisoners in the

⁸⁰ See Fuhrich, *Humanisierung*; Kleinöder et al., *Humanisierung*; Paul Oehlke, *Arbeitspolitik zwischen Tradition und Innovation. Studien in humanisierungspolitischer Perspektive* (Hamburg: VSA, 2004), Dietmar Süß, ‘Stempeln, Stechen, Zeit erfassen. Überlegungen zu einer Ideen- und Sozialgeschichte der “Flexibilisierung” 1970–1990’, *Archiv für Sozialgeschichte* 52 (2012): 139–62.

⁸¹ Frieder Dünkler, ‘Minimale Entlohnung verfassungswidrig’, *Neue Kriminalpolitik* 10, no. 4 (1998): 14–15; Thomas Ullenbruch, ‘Neuregelung des Arbeitsentgelts für Strafgefangene – Sand in die Augen des BVerfG?’, *Zeitschrift für Rechtspolitik* 33 (2000): 177–82.

elaborate system of social security and benefits payments.⁸² Therefore, another generation of judges at the Court recently found the wages system in German prisons wanting yet again. Resocialisation was not to be had at such low prices, the opinion said; and neither did the previous raise to 9 per cent of the national wage average make any particular difference – as, indeed, scores of jurists and criminologists had commented over two decades.⁸³ The Court effectively sent the present law back to the legislators, giving them another two years to redress the deficits. Yet, as observers immediately noted, the commission explicitly failed to include welfare state provisions, especially old-age benefits, implying that the legislative gap of 1977 will remain unfilled and making old-age poverty ‘a long-term, resocialisation-defying consequence of prison sentences’.⁸⁴

With remarkable little change between 1949 and today, a look at prison labour, like few other areas of modern societies, drastically illustrates where the boundaries of social participation were and are drawn in states that have elevated the dignity of the individual to the highest good. Within its scope, the ability to use work as a foundation for social self-positioning, that is, to decide largely for oneself about public standing, wealth and social affiliations, and thus to take control of one’s own life – features prominently. Yet all this was denied to working prisoners. Their identity as workers was all but determined by their being inmates, which even the social reforms of the late 1960s, which explicitly aimed at integrating socially underprivileged groups, did not change. Despite all the reforms, planned or implemented, the work of prisoners was largely conceived of as having other functions than that of free workers. It was not a means of individualisation but, on the contrary, one of adaptation. In a larger view, the continuity therefore runs even deeper. For all the differences and details that sets today’s penitentiary system apart from its predecessors, prisons remain closed institutions that care little for universal rights as discussed outside their walls. ‘Democracies are never perfect’, Jakob Tanner rightly emphasised, ‘they only claim to be changeable, improvable’.⁸⁵ But the extent to which they live up to this claim to an ability to self-reform is tested, among other things, by the way they deal with prison labour as the work of ‘outsiders’.

Supplementary material. The supplementary material for this article can be found at <https://doi.org/10.1017/S0960777325100908>.

⁸²Axel D. Neu, “Gefangenentlohnung. Den verfassungsrechtlichen Vorgaben knapp entsprochen”, *Neue Kriminalpolitik* 13, no. 2 (2001): 22–6.

⁸³BVerfG, Urt. v. 20.6.2023 – 2 BvR 166/16, 1683/17; cf. Friederike Boll and Cara Röhner, “Resozialisierung durch Ausbeutung? Arbeit und Gewerkschaftsbildung in deutschen Gefängnissen”, *Kritische Justiz* 50 (2017): 195–206; and Laura Isabelle Marischen, “Arbeit und Arbeitsentlohnung in den Länderstrafvollzugsgesetzen – Vollzugsrechtliche, verfassungs- und menschenrechtliche Aspekte”, *Neue Kriminalpolitik* 30, no. 1 (2018): 51–62.

⁸⁴Mario Bachmann “Weckruf aus Karlsruhe: Verfassungswidrigkeit der Gefangenenvergütung”, *Kriminalpolitische Zeitschrift* 4 (2023): 302–9, at 308.

⁸⁵Jakob Tanner, “Freiheit und Zwang im Rechtsstaat”, in *Sich der Vergangenheit stellen. Zum Gedenk Anlass für Betroffene fürsorglicher Zwangsmaßnahmen und Fremdplatzierungen*, ed. Departement des Innern (Kanton St. Gallen: Departement des Innern, 2000), 32–45, at 32.

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