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‘One always looks for a compromise…’: Senior prison managers views of law, human rights and oversight in Germany

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ABSTRACT
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'One always looks for a compromise…': Senior prison managers views of law, human rights and oversight in Germany[1]

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Abstract

German prison legislation is praised as comprehensive and based on a fundamental rights approach, with prisons considered to be highly regulated by law. There has been little examination of how those who should be instantiating a culture of rights in penal regimes – prison staff – view such laws and rights. In this paper, we seek to contribute to the literature on human rights in the context of punishment by examining how senior staff in German prisons view legal regulation, prisoners' rights, and a mechanism which international law requires to protect them: complaints. Drawing on 24 in-depth interviews conducted in four prisons across two Länder, we find that the principle of resocialisation, considered to be a core feature of German prison law, is also a strong influence on prison managers. Managers also valued the law as a form of guidance though were more positive about legal regulation when it was used by them rather than against them or the prison system, with some seeing legal precepts as useful ways of defending themselves against threats of litigation or blame. The study finds that law is highly present and influential in prison manager culture in Germany, however, the principle of resocialisation as instantiated in prison management practice may have created a view of prisoners as people to be protected, rather than worthy of rights.

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Introduction

Prisons are places where human rights are vulnerable. Over recent years, international human rights law has placed increasing emphasis on mechanisms to protect human rights in prison, with governance by the rule of law and legal regulation and the use of complaints procedures as two key facets of a human rights-based approach. The UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules oblige states to use legal regulation to guide many aspects of prison life, and specifically recognise complaints mechanisms as a key way to reduce the risk of human rights violations. The extent to which such processes fulfil these objectives in practice is contestable. Human rights over the years has become a focus within penological scholarship (Bergmann 2003, Müller-Dietz 2005, Snacken 2015, Piacentini and Katz 2016, Xenakis and Cheliotis 2018, Armstrong 2018, 2020), with this focus being evident in German scholarship in earlier years than that seen in English language scholarship. Much of the more recent work questions the fundamental ability of human rights structures to diminish the use and pains of imprisonment. It argues that penology must examine the lived experience of rights, as well as the role rights may play in the legitimation and perpetuation of punishment and poor penal regimes.

Such exploration is undoubtedly necessary given the sharp effects imprisonment have on the rights of those in detention. We argue that it is also valuable to study the views and experiences of prison staff concerning human rights protecting mechanisms, and, in particular the perspectives of prison managers. The ways in which prison managers implement and respond to the demands of human rights norms and legal governance have the potential to shape the experience of punishment profoundly. In this study, we seek to explore how prison managers in German prisons understand and conceive of the legal regulation of prisons and complaints systems. Researching staff perceptions of these phenomena provides an opportunity to examine an underexplored aspect of prison staff culture: the influence of law and the demand for account. The article examines how responses to legal regulation influence the work of prison managers, and what they find acceptable and helpful to do their work. It also shows how prison managers view the rights of people in prison – an understudied area which has important implications for

how we understand the manifestation of human rights standards in detention. In doing so, we seek to contribute to a greater understanding of the work of senior prison staff, but also to develop scholarship on the impact of human rights protecting mechanisms in the prison context.

Human rights protections in prison, the law, and the role of prison managers

Scholars are increasingly turning their attention to the role of human rights in punishment van Zyl Smit and Snacken 2009, van Zyl 2010, Morgenstern 2015). While there is growing analysis – and critique – of the ability of human rights standards to improve prison conditions and the experience of punishment (for example Armstrong 2018, 2020), much less attention has been given to how prison staff encounter and engage with human rights (Murphy and Whitty 2007; Whitty 2011; Bennett 2016).

Much of our understanding of how senior prison staff experience measurement of performance against the benchmark of human rights standards comes from Bennett (2007, 2016), who argues that managerialist approaches to prison, emphasising 'efficiency, and value-for-money, performance targets and auditing' (Loader and Sparks 2002: 88) have become dominant in the lives of prison managers in England and Wales. Loader and Sparks (2002) and Liebling, Price and Shefer (2012) also mark the rise of managerialist practices in the management of prisons. From the point of view of managers, this turn is often felt by staff mainly as never-ending reporting duties, with a multiplicity of sources seeking to hold them to account, usually through the means of paperwork. Owers (2007) has cautioned that as a result of this, managers could focus on the 'virtual prison', which may bear no reality to how imprisonment is experienced in daily life. Murphy and Whitty (2007) show that, in such a context, human rights compliance can become yet another box-ticking exercise, divorced entirely from the purpose and spirit of such norms. We see increasing interest within criminology on the regulation of prisons (Tomczak 2021; Padfield 2018), which can be defined as steering or checking prison practice (Braithwaite 2003; Tomczak 2021). In this article, we focus on two aspects of such regulation: the restraint or guidance offered by prison law, and the specific instance of complaints structures for prisoners as bearers of rights.

Our perspective is that such mechanisms are human-rights-protecting processes, and how managers view them is of critical importance for their implementation in practice.

While the interaction between prison staff culture and human rights law remains poorly understood, but literature on staff culture suggests that regulation by law and its related scrutiny from outside bodies is, in general, resisted. As Barry (2019) notes, prison staff culture can view demands for account as opportunities to assign blame, and, as such, these opportunities can be seen in highly negative terms. Other literature has assessed the ways in which legal regulation affects the use of discretion (Haggerty and Bucerius 2020) how oversight and performance cultures have had influence in particular on the work of senior staff (Bryans 2008, Liebling and Crewe 2012) or looked at the limited and sometimes counterproductive function of courts in penal oversight (Bergmann 2003, Behan and Kirkham 2016). This scholarship suggests that human rights-based demands for account may be subject to considerable push-back, or at least suspicion.

At present, however, we know little about how prison managers react to human rights obligations and legal standards. Prison managers are confronted with complex accountability demands on topics such fundamental questions about dignified treatment of prisoners to fulfilling penal objectives to the exigencies of a modern administration that is cost and resource effective. This study explores how managers in prisons in German respond to these demands. It examines how legal regulation is viewed by prison managers, and its effects on the use of discretion, how those managers conceive of the human rights of people in prison, and how they experience a particular form of human rights-based oversight, the complaints systems. As such, we seek to provide a new perspective on human rights in the context of punishment: that of prison managers in Germany, as well as contribute to our understandings of prison manager culture more generally by exploring its interaction with legal regulation. We also offer a much-needed (Tomczak, 2021) empirical base for understanding the potential of prison oversight, effected by law in this case, to shape prison practice. Here, we focus on prison managers' encounters with legal regulation and complaints structures for people in prison.

German prisons – Law, Policy and Practice

Germany provides a useful context in which to study the interaction of prison manager culture and human rights because it is well-recognised as having a legal culture which embraces a strong rights-based approach (Lazarus 2004, van Zyl Smit and Snacken 2009). The German *Grundgesetz* (Basic Law, BL) of 1949 is the constitutional basis for all legislation, the execution of state decisions and jurisprudence. Articles 1-19 BL comprise a charter of individual human rights. The authors of the Basic Law drafted it 1948 under the impression of the dictatorship and gross human rights violations in the Third Reich. Being aware of the weaknesses of its predecessor, the Weimar Constitution of 1919, not only the protection of human dignity was foregrounded, but also strong mechanisms were put in place to control that the executive respects fundamental rights. For this paper, the guarantee of effective legal protection in Article 19 (4) BL is of importance. It states: "Should any person's rights be violated by public authority, he (sic) has recourse to the courts."

Federal and state actions in Germany usually are based on detailed statutory legislation and a sophisticated regulation of administrative procedures. They are – following Art. 19 (4) BL - subject to judicial review. Despite this approach, effective and independent oversight over prisons was not effectuated until the 1970s when a reformatory mood to tackle various social problems prison reform progressed. Retributive punishment was discredited, and the aim of social reintegration (*Resozialisierung*) gained more and more popularity. Notwithstanding an ongoing critical discourse, this became and remained the leading principle for sentence enforcement (Morgenstern 2015). One important facilitator was the Federal Constitutional Court (FCC), who in 1973 argued that every offender has a right to resocialization that accrues from his or her constitutional rights to personal liberty and respect for human dignity.[2] Simultaneously, a serious impediment for proper prisoners' rights to appeal against decisions of the prison administration was removed: the prevailing concept of a special – lesser – legal status of prisoners that had

[2] So-called Lebach decision, in the official collection of the FCC decisions (BVerfGE 35, 202).

created a so-called 'special power relationship' between this kind of citizen and the state (*besonderes Gewaltverhältnis*). Under this concept, restrictions of fundamental rights were justified as such by the objectives of punishment and the 'nature of the institutionalised relationship'.[3] The FCC outlawed this practice and ruled that prisoners, as any other citizen, have and retain all rights unless they are restricted by statutory law. This decision was a landmark in German prison history as it ultimately forced the legislator to pass a statutory Prison Law in 1977.[4] In September 2006, a major Constitutional Law Reform was enacted that redistributed the legislative competences for prison legislation to the Federal States (*Länder*). Based on the substance of the 1977 Act, 16 new Prison Acts were adopted. The changes did not affect the complaints system as this part of the PA 1977 remained in force

Complaints and accountability structures in the German prison system

A key aspect of German prison law concerns the regulation of complaints by people in prison. The PA 1977 introduced a comprehensive system of complaints procedures and judicial review in a dedicated chapter on "legal remedies". In addition to an internal complaints procedure, according to which every prisoner can directly 'apply to the head of the institution with requests, suggestions and complaints on matters concerning himself' (sec. 108 PA 1977) a judicial complaint was introduced (sec. 109 PA 1977) and a designated chamber of the Regional Court was created (*Strafvollstreckungskammer*). Following the basic approach of Art. 19 (4) BL each and every decision taken in prison and even simple actions of prison guards such as not knocking at the prisoner's cell door can be made subject of a formal judicial complaints procedure. The idea behind creating a specialised chamber was to establish the jurisprudence of specialized judges who know the situation in the prisons located near to the court. The decision can be appealed to the Higher Regional Court, the possibility of appeal exists for prisoner and prison. As such, Germany has an unusually strong role for judges in dealing with prisoner complaints. This includes the FCC to which prisoners can turn with a so-called constitutional complaint

[3] Eg. Kammergericht Berlin, Neue Juristische Wochenschrift 1969, 672; this reminds of the term 'carceral logic' in the subtitle of the book by Calavita and Jeness, 2015.
[4] BVerfGE 33, 1.

(*Verfassungsbeschwerde*) once all other judicial remedies have been exhausted. The court has issued several decisions which impact on practical aspects of prison life, e.g. the costs of telephone calls, prison leave or other prison release measures.[5] While practitioners and politicians sometimes have been critical of this far-reaching jurisprudence, scholars have considered the impact of cases taken by prisoners on prison practice to have been considerable (Müller-Dietz 2005; Morgenstern and Dünkel 2018). Nevertheless, this high court jurisprudence may rather be seen as an accountability mechanism that helps to shape a prison practice in conformity with the rule of law gradually and in the long run, than an effective remedy for the individual prisoner.

German prisons thus can be 'characterized by a highly legalized culture' (van Zyl Smit 2010: 503). German scholars in the 1980s saw German prison legislation as an example of the 'worldwide tendency to humanisation and juridification' of prisons (Kaiser and Schöch 1987: V); interpreting the strong legal basis and with it the possibility of judicial oversight as important achievement. Social theorists tend to be more sober and understand 'juridification' (*Verrechtlichung*) as an ambiguous development. They describe it critically as the proliferation of law (Habermas 2011) and generally see it as characteristic of legal modernity that tends to colonise the modern lifeworld (Habermas 2011, Teubner 1987, Müller-Dietz 2005). As well as statutory law, scholars have highlighted an concomitant increase in administrative and bureaucratic regulation of prisons, and 'judicialisation', or the creation of norms by the judiciary (Papendorf 2012: 290).

The formalised, tightly regulated nature of the governance of prisons in Germany has been explored by penologists (Diepenbruck 1981, Koeppel 1999, Bergmann 2003). Bergmann described its effect on the relationships between staff and people in prison as a form of 'conflict expropriation' (Bergmann 2003: 145, drawing on Christie 1985), with staff losing discretion and focusing more on making decisions 'courtproof' or invulnerable to litigation by prisoners instead of trying to resolve a particular issue (Böhm 1992, Müller-Dietz 2005). The move towards legal

[5] BVerfG, 23 May 2013 – 2 BvR 2129/11; BVerfG, 19 January 2016 - 2 BvR 3030/14, BVerfG, 8 November 2017 – 2 BvR 2221/16

regulation of prison management in Germany has, on the contrary, also been considered to have done too little to reduce unpredictable and unfair uses of discretion (Feest and Lesting 2009), with some deference by the courts to prison authorities still in evidence.

It is not clear that managerialist approaches have permeated German prisons to any great extent and it is debatable how far regimes of a regime of efficiency, value-for-money performance targets and auditing (Loader and Sparks, 2002, Bennett 2016, Liebling, Price and Shea 2012) are accepted and implemented. This kind of governance, in Germany usually labelled 'New Public Management' (Fleck 2004) often take the form of ministerial orders making specific requirements e.g. on the issue of prison leave. While they represent the technocratic side of the above mentioned juridification, purely managerial techniques are only slowly introduced. We find examples such as the use of Balanced Score Cards (BSC), but the introduction of economic performance management tools happens at different pace in the different States.

While there is general consensus that prisons in Germany are highly regulated by law and regulation, and that much of the law on prisons tends to favour a rights-based approach which promotes reintegration (Lazarus 2004; van Zyl Smit 2010, Morgenstern and Dünkel 2018), this position has been adopted largely on the basis of analysis of its legal provisions, rather than how laws are instantiated in practice by prison staff. In particular, there has been no exploration of how managers experience complaints made by people in prison, the role of the courts, or the activities of oversight bodies. This gap is concerning and such views of German law need a more robust empirical base.

Doing such work has, however, much wider relevance. International human rights law has increasingly turned its attention to prisons, setting minimum (though non-binding) standards for many aspects of prison life, including material conditions, contact with the outside world, and release procedures. This activity has generally been viewed positively, with European human rights norms and practices considered to have led to important improvements in how prisons are run (van Zyl Smit and Snacken 2009, Simon 2021). How these standards have actually been

implemented on the ground has, however, received much less attention. Increasingly, we see analysis of the impact of European human rights structures on national prison regimes (Daems and Robert 2017, Morgenstern and Dünkel 2018). It is only very recently that the interaction of these norms and bodies with the experience of punishment has come in for academic attention (van der Valk and Rogan 2020), following calls for greater criminological assessment of human rights (Snacken 2015, Piacentini and Katz 2016, Armstrong 2018).

Context, data, and methods

The present study is the first empirical assessment of how human rights protections and legal regulation translate into the lives of senior prison managers in German prisons. As a federal state, with responsibility for prisons lying in the hands of the 16 Länder, or states, it is difficult to speak of *the* German prisons system. In order to gain different perspectives, we chose to conduct this research in two states: Mecklenburg-Western Pomerania (MP) in the North East, once part of the German Democratic Republic, and North-Rhine Westphalia (NRW) in the West. While the first is rural, the latter as the most populous German state, has a large urban population. In the first, we find relatively few non-German inhabitants, in the latter they form a large share of the population. More precisely, MP has 1.6m inhabitants, and a prison capacity of 1400 in three prisons for adults while NRW has a general population of ca 18m and a prison capacity of 18,500 places (about 25% of all prison places in Germany) in 36 prisons for adults. By including both these states, we sought to provide perspectives from both urban and more rural settings and strengthen our claim to be able to speak of a 'German' approach. Within each federal state, we selected two prisons to avoid limiting our explorations to a single site. In MP, both prisons house only adult male prisoners, while in NRW, one prison houses adult males only, while the other houses female adult prisoners also. This study focused on male prisoners only.

Formal invitations to participate in interviews were issued to prison directors, deputy directors, section managers and wing managers. In the course of preparing for fieldwork, it was clear that the latter were important decision-makers. Though uniformed staff and without formal sign off power when making decisions (unlike the other grades), they are viewed as having considerable

de facto influence, especially for informal issues. Participants were provided with information sheets and informed consent forms. Ethical approval was provided by [redacted as identifying] Research Ethics Committee and the relevant German authorities (Ministries of Justice and Data Protection Agencies of the Länder). In total, 24 participants agreed to participate. Given the positions of the participants involved, it is acknowledged that confidentiality of the data was a particular challenge. Identities have been protected by using participant numbers and removing identifying information. Where relevant, we note differences between the perspectives in both federal states, but do not identify participants by state.

As can be seen from information compiled in Table 1, participants were mostly experienced senior staff with a higher education background from four distinct levels in the upper hierarchy of a prison. There was, however, a group of younger and more recently appointed senior staff. The regional sub-samples differed in so far as in MP three females and seven males were interviewed while the gender ratio in NRW was different with eight females and six males. The age mean in MP was 48,6, in NRW the interviewees were a little younger with 42,6 years of age. The years of experience in the prison system were 20,2 in MP and only slightly less in NRW with 19,7.

	N = 24	
Gender	Female: **11** Male: **13**	
Age (mean: 45,1)	< 40: **6** 40-45: **8**	46-55: **5** 56-65: **5**
Educational background	Higher Education (- Law: **6** - Psychology/Social Work/Social Pedagogy: **5** - Administration of Justice (*FH Rechtspflege*): **6**	Training as Prison Officer: **4** Other: **3**

Years in the prison system (mean: 19,9)	5-9 years: **6** 10-19 years: **6** 20-29 years: **8**	> 30 years: **4**

Table 1: Demographic background of interview participants.

Interviews were conducted using a semi-structured interview guide (Appendix A) that had been adapted from a related study ([details redacted as identifying], Appendix B) by the first author along with the creators of that original guide. Pre-testing of the research instrument was completed through a formal feedback process with a particular focus an language and translation issues from experts, including prison managers and gatekeepers. The questions sought to provide an opportunity to senior staff to reflect on their experiences of using and responding to legal requirements, and, in particular their experiences of three intertwined mechanisms for the protection of rights: complaints procedures, inspection and monitoring, and access to the courts. The interviews were conducted by the first author between May and December 2019 and lasted between 45 and 112 minutes, typically 60-75 min. Verbatim interview transcripts were thematically coded and analysed, using the software NVivo. Our analytical approach is based on Thematic Analysis (TA) as described by Braun and Clarke (2006). It has to be acknowledged that many variations of TA exist – the same is true for the German Qualitative Inhaltsanalyse (QA) which exists in several, partly varying forms (Kuckartz 2016) and informed the German analysis. The relevant aspect of TA and QA for our research is that these method(s) provide a robust, yet flexible way of structuring and explicating manifest and latent contents of the interviews keeping in mind the context and setting of the interviews in a prison administration context.

The authority of the law: responding to the guidance offered by legal regulation

A key finding to emerge was that participants situated their discussions of what constitutes decent treatment and fair procedures within the parameters of legal regulation. Prison legislation was, across the board, a strong and highly present source of guidance for how to act. When asked what constituted fair treatment in prisons, participants tended to turn immediately to the law, and to the Prison Act specifically, to describe what such treatment means. It was not only those

participants who were legally trained who responded in this manner; participants from all disciplinary backgrounds replied in this way. As such, the Prison Act provided the parameters for fair treatment in the eyes of prison managers. It was a strong source of the language, behaviour and attitudes which constitutes the instantiation of fair treatment amongst this group, at least in how they described their approach. Interestingly, the legislation was even used as a way to support what might be their initial or gut reaction to a problem or issue. As such, participants engaged in a kind of translation process, taking their desired way of managing a problem, or their options for responding, and shaping that response into a way prescribed by law. As one participant put it:

> When I have a request, by a prisoner, often you just have a gut feeling. You think, okay, I would decide this and that, but in reality, I still look into the Act and ask myself the question: Can I justify it like that? Is it supported by the law? Can I do it like that?" (Interview 15).[6]

This implies that the Prison Act has authority for prison managers and guided their work. For some, especially managers with fewer years of experience, the it was almost a kind of instruction manual. Across all ages and stages of experience, the Prison Acts were generally thought of in a positive way and considered a legitimate and convincing reference system. Two its most valuable features in their eyes were the fact that social reintegration is the stated main aim of the legislation and, secondly, that the use of the legislation supported a consistent and transparent practice:

> [The Prison Act in] North-Rhine Westfalia still has managed to put resocialisation first. And we don't have to say that we have to decide between security and resocialisation. (Interview 21) .

[6] The interviews were conducted in German. These are translations by the first author that seek to keep the characteristics of the original, such as the use of colloquial language.

> There we have our legal prescriptions, the Prison Act, the Remand Prison Act, and I find it important that you stick to this basis; […] that it is clear and comprehensible *why* we do something, and therefore transparent, and that every prisoner and also the society knows what we are doing here and that we keep to it. And not, to put it bluntly, somehow fiddle or mumble… (Interview 2).

For senior managers in Germany, having a code to refer to when making decisions or taking actions was a valuable asset, and not an undue or disproportionate restriction on discretion. This is in considerable contrast to the literature on how prison staff view legal prescriptions in other settings (Liebling, Price and Seher 2012, Haggerty and Bucerius 2020). This was, in part, because of the manner in which prison managers saw legislation. Participants largely felt that the law actually offered flexibility, rather than restricted it. One important element of the acceptance of the law was that it was seen to adopt a reasonable balance between the aims of security and rehabilitation. As managers responsible for security and order, their views on how security should be implemented in practice aligned closely with those expressed in the Acts. Particularly relevant, however, for participants, was the flexibility they saw as present in the legislation. This flexibility was viewed as an aspect of fairness, which was understood by them as allowing them to do justice in individual cases rather than applying the law uniformly or mechanistically. The use of discretion has been long documented as important in literature on prison work (Haggerty and Bucerius 2020, Liebling 2008, Liebling, Price and Shefer 2012), with the latter authors describing its "centrality" (Liebling, Price and Shefer 2012: 121). The present study shows, however, that prison managers in Germany see legislation not as a barrier to the use of discretion but a resource for the use of discretion. This presents something of a paradox: senior prison managers in this study speak of legal principles that *can* or cannot be adhered to, rather than something which *must* be followed. In other words, legal obligations and requirements are aids to action in their work rather than sources of strict obligation to behave in particular ways. Legal prescriptions, therefore, are not a dogma, but a guideline. Participants seemed unaware of this contradiction:

> Okay, the Prison Act MV, I find it very fair, because it is even more individualised, in that it is more directed towards individual possibilities for prisoners. […] And this means already that you have a good basis there, that you can build on, and there are always possibilities where you can say, yes, we do it always like that, but in special cases, with particularities, we can deviate. And this is what is legitimate for me. (interview 1)

This need for flexibility, and to be allowed some creativity, was of central importance in nearly all interviews. As has been found in other contexts, whenever the rules become too rigid or too detailed, participants felts that this impedes their work. The German participants mentioned in particular detailed directives from the Ministries of Justice as Higher Prison Authorities as an example of such restrictions. They stressed that the flexibility they found in the law was to be exercised in favour of individualised treatment for a prisoner and stopped short of saying that they are sometimes bending the law, but rather characterised their actions as a balancing act:

> Where discretion is possible, within the limits of these rules, I find it important, not only to look at the rule with one eye but also to look sharply at it with the other eye, to whom and to what do I apply the rules. And then: give him the benefit of doubt… […] there is always a spectrum. I can say in good faith: No, you don ‘t get it. But I can squint both eyes and say: Yes, we do it. And I tend to do that: yes, we try. Even with the risk that the person concerned fails, that he takes advantage… (Interview 12).

> It is important, that they are treated individually, that they experience that they are not a number, you see? And you give the feedback to them, that we personally also feel that this is difficult, […] but that the rule is like that. This is difficult for the individual officer, when he has no possibility … okay, not to break the law, but to actually take the prisoner into consideration. […] One always looks for a compromise, but this depends strongly on the prison director. When there is this idea: “No we stick to all the rules, and we are not looking at the individual but at the breach”, then it is difficult. (Interview 1).

Others, however, stressed that discretionary decision-making needs to be transparent as well, to be fair, which makes it more complex and time-consuming. In explaining how decisions are discussed in the various prison team meetings including frontline officers, social workers and senior staff, and how they had to be documented, they insisted that discretion does not mean arbitrariness.

It is likely that participants wished to present themselves in a favourable light during interviews in seeking to emphasise that their use of the law was in the best interests of the prisoner. What is more interesting, however, is that staff did not demonstrate discomfort with the level of discretion they have or how they use it. Participants' self-conceptions were that discretion and the legislation were to be used to support the prisoner in some way. This can be analysed in two highly contradictory ways. The first supports the idea that prison legislation in Germany supports the implementation of a rehabilitative approach and one which favours the promotion of human rights and individualisation. The other way to conceive of this is to view it through the perspective of the human rights-scepticism of Armstrong (2018; 2020), i.e. that the discretion and flexibility built into the law, used ostensibly in aid of the prisoner, exacerbates the dependence of the prisoner on prison staff and thus extends penal power. While the law should be applied fairly and equitably, and give guidance as to how a particular matter should be decided or resolved, the manner in which it is in fact used reintroduces the role of the individual decision-maker and how they wish to personally resolve a matter. While efforts to come up with a solution which is seen to favour the person in prison over the strict requirements of the law are viewed as ways of being humane or fair, they, perhaps inadvertently, still emphasise the crucial dependence of the prisoner on the position of the decision-maker. As such, penal power and the 'rule of man' or the rule of the individual remains, even in a system which prides itself as being highly regulated by law.

Another finding lends credence to this position. While the existing legal framework for running prisons with its discretion and flexibility was valued by prison managers, some legal regulation was met with ambivalence or even fierce criticism. This perspective appeared when discussing

directives issued by more senior entities, particularly the Ministries for Justice. Requirements for documenting activities, felt as a 'documentation duty' manifested through paperwork were strongly criticised. Some participants rejected these requirements for account by the Ministry outright:

> We are all controlled somehow… there is this [documentation system], where they [the Ministry] are looking at … nonsense in my opinion'. (Interview 6).

Others expressed a kind of resignation towards these demands for account by more senior bodies. As one participant put it there is: 'a lot of paper … but there is a habituation effect'). (Interview 1). Usually, the bureaucratic requirements and prescriptions were located in the sphere of the Ministry, which was the target for a lot of criticism. The source of frustration was less the paperwork as such but that the participants were not always sure what the ministerial bureaucracy was interested in and why documentation was required to the extent experienced. They suspected political and financial reasons and generally doubted that there was genuine interest or understanding what the required data or documentation meant:

> This is what I would have wished – that the Ministry sets clear targets. This, of course is useful for our management, you know, we want to know what do they want from us, what do they expect from us? And that there will be an understanding how these targets can be met. […] but this is difficult when […] they make no secret of the fact that there is nobody that actually has thought about it, what actually is the prison concept? Where do we want to go? (Interview 13).

> There is no substance. No substance. Nothing. NOT AT ALL. These are admin people, who do not understand the substance at all (laughs). It is all about facts and numbers: Have we got those right? (Interview 16).

In contrast to the use of legal regulation which was exercised in respect of the management of people in prison, regulation which had the prison management as its target came in for a lot of resistance. Bennett has found evidence of high levels of annoyance and concern with the 'audit explosion' (Bennett 2014) accompanying the adoption of managerialist policies in prisons in England and Wales, in this study we see similarly strong feelings amongst prison managers in Germany, as well as a common experience that prison work is something unique and impossible for 'outsiders' to understand (Crawley and Crawley 2013, Bennett 2016). All participants expressed scepticism that their work in prisons could be quantified in ways they perceived regulation by the ministries required:

> The feeling that you are measured statistically, with purely objective, statistically seizable data, […] this is, I would say, perhaps one third of what represents our job here. (interview 8)
>
> And I wonder how you want to measure it – when you grant 20 prisoners leave, is this a good thing or a bad thing? (interview 23).

The reasons given for being critical about both administrative and managerialist prescriptions for their work overlapped to a remarkable degree. Senior staff also feared that 'the human being falls by the wayside … it is wrong to believe that inmate A needs the same amount of time and attention and care as inmate B' (interview 18) or that 'there is a risk that prisoners are reduced to numbers' (interview 1).

As mentioned above, managerial tools such as BSC or other forms of performance measurement have found their way into the German prison system, but the Federal States differ in the degree they apply them. In our study we find differences between NRW and MP, the latter making more use of these instruments. Participants in NRW emphasised that they were glad that performance indicators were not used regularly, and we find several remarks like 'Thank God, no', or 'Fortunately not'.

As such, we see considerable difference in attitudes towards the use of law and regulation by law when such controls are exercised *by* or *on* senior staff. When using the law to decide on matters

concerning people in prison, participants felt that they could use the law in ways which suited their purposes, and that law was a resource rather than a burden. By contrast, when regulation was used by superior authorities in ways which had impacts on prison managers, law and regulation was viewed much less favourably, and as a constraint on their action rather than a support.

Following the rules as a way of neutralising threats

As well as using law in a flexible way to support their goals, participants also used law and following the rules as a way to defend themselves against review or scrutiny, especially in circumstances where they may be subject to blame for their actions and held accountable before a court in a judicial complaint procedure initiated by a prisoner. Under this perspective, following the rules was a useful defence mechanism, a form of insulation from problems which might arise where the decision or action to be questioned.

> […] you know that there are clear rules. That there is, in principle, the law that you can stick to. That you know, okay, in principle there is a rule for everything. And, what we later will turn to, that you know that it is reviewable. It is simply that a third person can look at basically everything we are doing and say: 'Okay, they stick to the rules'." (interview 24)

I have to justify before the court why we have taken a measure in the way we have. […] Yes, I do not experience this, erm, as negative or so. Rather as a confirmation of my work. (interview 1). Many participants used terms like hedging, covering or guarding against (*absichern*) and even found the above-mentioned paperwork ('documentation') acceptable As one stated:

> … to put is casually: With the documentation I want to cover my ass, this is what I always say. So, when somebody asks. Why do you document so much? I really want… although I am relatively young and not so long [working in] prison, I have undergone quite a lot,

> where one wanted to ... yes, indeed … attribute guilt. And then I was always glad when I had really documented an incredible lot. (Interview 20).

This view was also expressed by another participant, who felt that documentation had become excessive because of the need to provide evidence for decisions, in case of challenge:

> Perhaps we already have gone a little too far, what concerns the rights of prisoners. So, we are often in the position to justify ourselves although I say: From the legal point of view, everything is clear, we did what we could for him, and we know what we are allowed to do and what not. (interview 9)

While many participants, especially those with less experience, felt that documentation was a bulwark against reproach, and a strategy to avoid blame, some participants criticised the courts in this context and spoke of ever-increasing demands by the courts on them. As one put it, increased scrutiny by the court had:

> … some advantages, but also clear disadvantages. … and one wants the right thing, you know, one wants to strengthen prisoners' rights, but for in-prison togetherness, and also for the development of prisoners in prison, one achieves the opposite. (Interview 13).

The perspective displayed here, that legal regulation can be a way of neutralising threats of litigation, blame or some other negative consequence, has been seen in both prison and non-prison contexts (Calavita and Jenness 2014). There, the complaints or grievance procedures were viewed by senior staff as forms of protection from and defence in actions before the courts. The process, rules, and documentation needed were, in this context, viewed favourably, as they were tools by which a person could prove that they had done the right thing in terms of following procedure. Similar perspectives have been found in literature on the oversight of policing (Bottoms and Tankebe 2012, Bradford and Quinton 2014, Okulicz-Kozaryn and Bouška 2016).

The findings show a a complex and even inconsistent picture: On the one hand, the right to complain is generally accepted and with it the judicial or other oversight procedures. On the other hand, some participants imply that rule-following by officers is self-evident and in principle makes court (or other) oversight mechanisms largely superfluous. If at all, court procedures were valued as confirmation of prison decisions. In the following section, these findings are supplemented by senior staff's attitude on the stakeholders – in how far is a generally accepted legal position in practice accorded to real people in real prisons?

Views of prisoners: persons with needs, bearers of rights?

Thus far, we have seen law and legal regulation viewed by prison managers as a positive source of empowerment in how to manage people in prison, a constraint on their own work when imposed from higher authorities, and something that provides cover from negative consequences. In this section, we explore how prison manager see the rights of people in prison, and their position as holders of rights. Nevertheless, amongst virtually all participants, prisoners were predominantly viewed as people *in need*.

> Yes, we do work with human beings, not with 'material'. We must be loyal, must go up to people, show understanding, be professional. Yes, and of course the aim of imprisonment is also to change people. They have offended, they are in prison and we try to understand their deficits and then … get them on track again. (interview 7)

> We have people here, where I think, there really went a lot wrong in their lives. And basically, you know, they have a good core, you know? But this simply is not enough, even if we check and do and do. Erm, … there we would like to achieve more, more development for him. But in the end, he can't do it, you know? So, I always have to look: What is my claim and what can he actually achieve. (interview 9)

While nobody denied that prisoners had and must have rights, attitudes to prisoners' rights differed. For some – as in interviews 7 and 9 - not rights but needs were in the foreground. For others, prisoners explicitly had rights, and this was described in such terms. The rights that people in prison hold, for this group, were tied closely to those which exist within the Prisons Act, or those which were most directly connected with the principle of resocialisation. These rights were translated into specific and concrete demands, including for enough opportunities for rehabilitative work and accompanied prison leave. These rights were also framed as matters which prisoners were not getting enough access to, and were situated within the very practical context of staff and financial shortages, with participants admitting and criticising the fact that opportunities are limited. It was important to this group that prisons, and prison managers, implemented the Prison Acts:

> They don't manage to have enough staff, you know, I find that shoddy, these things, one denies them something, you know and then prisoners do not have enough means [to stand up against that]. (Interview 6).

A third group, partly overlapping with the first one, equally spoke of rights, partly when prompted in the interview with regard to the right to complain (see below). These voices, however, added that the law may have gone 'a little too far' (interview 7) or is 'too fair, if you ask me' (interview 11) in conceding prisoners several different possibilities to complain. Even if these statements were rare, it is interesting that the are almost identical to some of those found by Calavita and Jenness (2015: 106 et passim).

It was also a notable feature of interviews that, amongst those who discussed rights, rights were tied to the practicalities of running the prison, and the objectives of the Prisons Acts – to resocialisation work, and to reintegration. What we might consider to be the 'classic' civil and political rights: the right to privacy, the right to family life, the right to communication or free speech did hardly appear in the discussion.

This distinction is interesting as it suggests, first, that the Prisons Acts in Germany are influential on the thinking of senior prison managers when it comes to conceptualising the types of rights people in prison have. As mentioned above, prison legislation in Germany has been both noted and praised for its emphasis on resocialisation (Lazarus 2004, van Zyl Smit 2010, Morgenstern 2015) which is stipulated in the Prison Acts as main aim of imprisonment. The present study suggests that such prioritisation in the law matters, and influences how, at least some, prison staff view the rights of people in prison. Here, we see rights being discussed in ways directly connected to the prison legislation, with almost identical language on display. As noted above, the Prisons Acts were, in many instances, the boundaries within which prison managers saw the purpose of prison and their work. In the case of rights, these acts formed the limits of those rights. This may explain why prison managers did not refer to other rights, including freedom of expression. When these rights have not been heavily juridified or placed in legislation directly, they do not become the central focus for prison managers. This may be a finding limited to Germany, given the strong emphasis on legal regulation found there, but it does suggest that international human rights standards need to be transposed into domestic legislation in more detail in order to become salient in the minds of those tasked with implementing them. Secondly, it is also notable that, amongst these participants, rights were framed as sources of obligations to take practical steps to provide e.g. access to particular programmes. This is in considerable contrast to the perspectives on rights found by Murphy and Whitty (2007), where senior prison managers in England and Wales saw rights as things which could trip them up and be the source of criticism. This further reinforces the perspective that there is a culture which favours rights protection in Germany which does not exist to the same degree in England and Wales, and that the strong position of the Prison Acts may, in part, account for this difference.

The framing of people in prison as people with *needs* by prison managers should also be taken into account when considering the influence of the right to resocialisation. On the one hand, the right to resocialisation inherently casts people in prison as having deficiencies which need to be remedied – to be *re*-socialised. The high priority placed on this in German prison law may explain why senior managers, who, as we have seen are influenced by the terms of the law, conceive of

prisoners in this way. It may also be, however, that senior managers are displaying elements of a paternalistic approach to people in prison. The implications of this perspective are deep, at both philosophical and practical levels. First, it suggests that penal-welfarist approaches to punishment are, or remain, strong in Germany. As Garland (1985) notes, the 'modern' penal approach involved a view of people who had committed crime as in need of the review and intervention by the then new disciplines of the social and psychological sciences; uniformity of treatment was not the goal, but responding to the individual needs of the prisoner was prioritised, with educative labour a central plank in such work. A new language of reform, correction and normalisation came to the fore, which sought to support the 'inadequate' (Newburn 2003: 12), and de-emphasise personal responsibility. Writing of senior civil servants in the United Kingdom, Loader (2006) finds similar sentiments, which he calls 'platonic guardianship', and that such officials viewed the rehabilitative ideal as part of a broader civilising project.

Penal-welfarist sensibilities are found in German prison legislation, and, as this research shows, these sensibilities are also displayed by prison managers. This suggests that, at the very least, there is a shared conception of the purpose of punishment between the law and practice amongst prison managers. While penal-welfarist approaches are often contrasted favourably with those of a more punitive style, as Armstrong (2020) reminds us, rehabilitation can be a cloak for the exercise of profound power. In this respect, it is notable that the language of rights was not as prevalent in interviews as the language of need, though, intriguingly, some participants thought having enforceable duties placed on prisoners to cooperate in rehabilitation would be valuable. Casting prisoners as having rights offers prisoners more power than portraying them as people in need. This characterisation of people in prison as in need rather than rights-holders was also found in discussions about complaints-making by prisoners. This is so even though participants largely acknowledged that prisoners must be able to complain, and used the term 'right'.

> Well, everybody has this right, to complain, you know? (interview 17)

> Yes, I tell him – go and complain, you have every right! (interview 2)

> Then, often, when things were left unclear in the past, if I can say so, in uncertain discretionary spaces, and the prisoner sees that and seeks his right, then he gets it. And then it is okay. (Interview 12)

Participants, however, considered complaints as a kind of legitimate communication, an approved way of bringing issues and problems to their attention, and a mechanism for sorting things out, especially in grey areas. While the language used was of 'rights', this was seen more as a permission, or something granted by the authorities and arising by virtue of their status as a thus accepted the right to complain as form of legitimate communication. This perspective is supported by the fact that only one participant explicitly acknowledged the need for procedural safeguards in the making of complaint, saying:

> Documentation secures the rule of law, you know? So that it is clear why this decision has been taken and why, and only then the prisoner can reflect and see if he wants to take action against it or not. […] so that it is amenable to control, whether it was lawful, possibly. What does the right to complain serve him, when we have not kept a file and all can tell a story, just as it suits us? (interview 10).

However, for most participants, being held accountable through the use of complaints was something taken for granted, a necessary element of their work and something they were comfortable with. While managers in Californian prisons (Calavita and Jenness 2014) also saw complaints as a form of communication, they rather viewed the legal mechanisms as protections against liability, reflecting a litigious culture, senior managers in Germany saw complaints as manifestations of the rule of law. As one person put it:

> Basically, I think it is good. It just is the rule of law, you know? It is just part of it. It just is something – that one can be controlled and thinks: Okay, I cannot make a blunder. […] Sometimes one thinks: Oh no, not again. I can't deny that myself. But when I think about it objectively … This is the RIGHT of prisoners, and we should be glad that we have that. We have, well, I mean, the Third Reich was not so long ago. We could just be glad that we have this opportunity. And even if it is annoying and bothersome, we should be under no illusion – it is just like that and we should all be glad to live under the rule of law. (Interview 24)

This perspective is both revealing and important. For prison managers to be comfortable speaking in terms of the rule of law shows a high level of maturity and reflection - something that was, however, not found across the board.

Conclusion

This study provides a rare examination of how legal regulation and human rights are viewed by people who are in a critical position to implement them: senior prison managers. It indicates that senior prison managers in Germany in this study accepted and actively used the Prison Acts as a resource, suggesting that they view these Acts are a legitimate framework and guideline for their work. They felt self-confidence and trust in their own ability to fill the discretionary space conceded to them. Importantly, prison legislation was felt to be supportive in how they used discretion, rather than an impediment to it. When exercising power in the case of prisoners, the law was a guide and a help. Participants insisted on their need for discretion, arguing that it enables them to work with prisoners humanely, doing justice to individual cases. This contradicts earlier research characterising the system as overly 'juridified' (Bergmann 2003). This study provides support for the contention that German prison law is based on the principles of individualisation and resocialisation (Lazarus 2004, van Zyl Smit 2010, Morgenstern 2015), but, it also shows that prison managers' favourable view of the law was derived from their belief in the flexibility it offered them (Feest and Lesting 2009).

While participants accepted the 'reviewability' of their decisions as a necessary part of their work, there was less acceptance of legal regulation when it was imposed on them, rather than something they could impose. Only a few interviewees found oversight by the ministries helpful because they thought of it as technical and interested in formal details rather than substance Regarding the oversight by courts, there was evidence that senior managers considered such review to be a way of ensuring practice complied with legislation and validation of their actions, but equally, review and scrutiny led in some cases to court-proofing and risk averse handling of problems.

Senior managers' views of the rights of prisoners revealed a strong ethos of penal-welfarism and a characterisation of prisoners as people in need, hardly referring to their position as holders of rights. While this is in contrast to punitive perspectives, a lack of recognition of rights suggests a view of the prisoner as being quite different to themselves. This was particularly apparent in discussions of complaints, which were seen as a kind of communication or management tool, rather than a right. At the same time, however, there was also a matter-of-factness in how participants discussed the legitimacy of complaining, viewing it as a central element of the rule of law, and a welcome one. What does this contribute to our understanding of prison staff, and of human rights in prison? A comprehensive legal framework based on the rule of law, the respect for human dignity and human rights can serve as a reliable and legitimate coordinate system in which senior prison staff navigate. It has become clear, however, that the right to resocialisation that is deeply engrained in the German system does not necessarily alter the power gap between staff and people in prison: While the orientation towards the *needs* of prisoners can be characterised as benevolent and is rooted in a welfare approach rather than a particularly punitive one, it still implies the dependence and even inferiority of people in prison. The 'right to resocialisation' is a human right that is based on the respect for human dignity (Morgenstern 2015). 'Human dignity' itself is a multifaceted concept (Badura 1964, Snacken 2015, Morgenstern and van Zyl Smit 2020) – these facets include freedom from humiliation (Hörnle 2008), the acknowledgement of a person's vulnerability and social needs (Nussbaum 2008, FCC in BVerfGE

33,1), but they importantly also include autonomy and self-determination (Snacken 2015). This research has shown that understanding for the latter – and the corresponding freedoms and rights – was underdeveloped amongst senior prison staff in Germany. To respect the autonomy of people in prisons is, however, necessary for a penal system in which human rights are respected in substance and not only in procedure.

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Appendix A: Interview guide (German)

Demographische Informationen

- Alter
- Geschlecht
- Genaue Bezeichnung der beruflichen Position bzw. Tätigkeit
- NEU: Ausbildung/beruflicher Hintergrund
- Seit wann sind Sie im Strafvollzug tätig?
- Seit wann sind Sie in dieser JVA tätig?
- Wo (im Vollzug) waren Sie zuvor beschäftigt?

Persönlicher und Organisatorischer Hintergrund

In diesem Abschnitt würde ich Ihnen gerne einige – wenige - Fragen zu Ihren persönlichen Erfahrungen im bzw. Einschätzungen zum Vollzugsdienst stellen.

- Warum haben Sie sich für eine Tätigkeit im Vollzug entschieden?
- Wie würden Sie den Strafvollzug in NRW/MV einem Außenstehenden beschreiben? Was ist typisch?
- Und wie würden Sie allgemein die Arbeit in einem Gefängnis beschreiben? Worum geht es, was sind die Prioritäten?
- Wie würden Sie die Rolle eines leitenden Bediensteten (Anstaltsleitung, Vollzugsdienstleitung…) in der Anstalt beschreiben? Was macht einen guten Vollzugsdienstleiter (…) aus?

Legitimes Handeln

In diesem Abschnitt möchte ich Sie zu Ihren Auffassungen zu legitimem Handeln im Justizvollzug befragen. Es ist ja sehr umstritten, was "Legitimität" alles bedeuten kann; nach unserer Arbeitsdefinition ist Legitimität dann gegeben, wenn es einen Umgang und eine Machtverteilung zwischen zwei Parteien gibt – Bediensteten und Gefangenen, aber auch Strafvollzug und Gesellschaft -, die beide Seiten als angemessen und gerecht empfinden können.

- Wie würden Sie ein faires und gerechte Strafvollzugssystem beschreiben?
- Können Sie mir ein Beispiel nennen, wo das funktioniert, wo der Strafvollzug fair ist? Und umgekehrt, wann ist das nicht der Fall ist, wo es im Strafvollzug unfair oder ungerecht zugeht?

- Wenn Sie die Frage jetzt aus Sicht der Gefangenen betrachten, wie können Bedienstete Legitimität erzielen? Können Sie mir hier auch ein Beispiel nennen?
- Gibt es Aspekte Ihrer Arbeit, die Sie oder Ihre Kolleginnen/Kollegen an der Fairness oder Gerechtigkeit Ihrer Arbeit zweifeln lassen?
- Wo kommt die Autorität eines Vollzugsleiters oder der Anstaltsleitung her, warum kann er oder sie Macht ausüben?
- Gibt es auch persönliche Aspekte oder Merkmale, die eine solche Autorität unterstützen?
- Was gibt Ihnen das Vertrauen, dass Ihre Entscheidungen richtig und gerecht sind?
- Werden Sie gebeten, Ihre Entscheidungen zu begründen, d. h. kommt es vor, dass Ihre Entscheidungen hinterfragt werden?
- Können Sie mir wieder ein Beispiel geben?
- Ist schon einmal gegen Sie persönlich eine Beschwerde erhoben worden (entweder als Dienstaufsichtsbeschwerde oder auch mittelbar, wenn vor Gericht eine Beschwerde erörtert worden ist)? Wenn es in Ordnung ist, darüber zu sprechen – wie fühlt sich das an?
- Hatten Sie das Gefühl, dass Sie Ihre Sicht der Dinge darstellen konnten?
- Fühlen Sie sich damit wohl, wenn Sie Entscheidungen oder das Verhalten von einer Kollegin/einem Kollegen kritisieren, in Frage stellen?

Accountability - Rechenschaft

In diesem Abschnitt möchte ich Sie zu Ihren Erfahrungen mit Rechenschaftspflichten als Teil Ihrer Aufgabe und Rolle im Vollzug befragen. Wieder haben wir es mit einem nicht eindeutigen Begriff zu tun, der derzeit in der sozialwissenschaftlichen und politischen Diskussion besonders im anglophonen Bereich eine sehr große Rolle spielt – man könnte sagen, dass „accountability" dort ein Modebegriff ist. Er ist auch im Englischen umstritten, bedeutet für jeden etwas Anderes, und ist schon einmal gar nicht so leicht zu übersetzen. Wichtige Aspekte sind Transparenz, Verantwortung (tragen, übernehmen), Haftung... Mich würde interessieren, wie Sie dieses von mir als "Rechenschaft" zusammengefassten Konstrukt für Sie bedeutet, im Allgemeinen, aber vor allem im Vollzugskontext und im Zusammenhang mit Ihrer Tätigkeit und Rolle.

- Was also bedeutet Rechenschaft in Ihren Augen? Was ist ihr Zweck?

- Ist der Justizvollzug ein besonderes Umfeld für Rechenschaftspflichten? Gibt es besondere Anforderungen und Überlegungen, oder ist es letztlich eine Umgebung wie andere – Behörden, Firmen, Schulen… - auch?
- Wem gegenüber sind Sie rechenschaftspflichtig?
- Und wem gegenüber ist der Strafvollzug als Ganzes rechenschaftspflichtig? Würden Sie da einen Unterschied sehen?
- Haben Sie das Gefühl, dass die Ziele, die der Strafvollzug erreichen soll, für Sie bzw. das Strafvollzugssystem als Ganzes, erreichbar sind?
- Können Sie das wieder an einem – oder mehreren - Beispielen erklären?
- Wie sehr ist die Leistungskultur (performance culture) – z. B. durch Leistungsindikatoren, Jahreszielvorgaben, bestimmten Handlungsvorgaben – im Strafvollzugssystem in MV/NRW zu finden?
- Wenn ja: Woher kommt diese Entwicklung? Begrüßen Sie sie?
- Wie sehr ist dieses "Rechenschaft-Ablegen" Teil ihrer Tätigkeit und Rolle? Ist es für Sie ein positiver oder ein negativer Aspekt Ihrer Arbeit?
- Wie ist es für Sie als leitendem Strafvollzugsbeamten persönlich, einer solchen Kontrolle (scrutiny) unterworfen zu sein? Fühlen Sie sich unter Druck? Oder ist die Tatsache, Rechenschaft abzulegen auch eine Gelegenheit, die eigene Arbeit zu validieren und zu unterstützen, indem man sie erklärt? Oder ist das einfach Teil des Jobs?
- Haben Sie das Gefühl, die leitenden Beamten sind in den letzten Jahren mehr unter Rechtfertigungsdruck geraten?
- Wenn wir etwas konkreter werden: Inwiefern beeinflussen die modern Herausforderungen des Vollzugs – viele ausändische Gefangene, Drogen, psychische Störungen, Bandenkriminalität etc. – diese Rechenschaftspflichten; erhöhen sie den Druck, die eigene Arbeit zu verantworten und zu erklären?
- Glauben Sie, dass diese Themen und Sachzwänge – oder die Arbeit im Gefängnis ganz allgemein – von außenstehenden Gremien, denen Rechenschaft zu geben ist, ausreichend verstanden werden?

- Welche Faktoren können in Ihren Augen die Bereitwilligkeit zu und Empfänglichkeit für Kontrolle und Aufsicht fördern?
- Falls Sie den Vergleich haben: Gab es vielleicht Vollzugsanstalten, in denen es einfacher oder schwieriger war, mit solchen Rechenschaftspflichten umzugehen als in anderen?
- Gibt es Diskussionen über Rechenschaftspflichten, oder den dadurch entstehenden Druck unter den Kolleginnen und Kollegen?

Beschwerdesystem

Jetzt habe ich ein paar Fragen mit Blick auf das Beschwerdesystem nach dem Strafvollzugsgesetz, zunächst mit Blick auf das vollzugsinterne Beschwerdesystem.

- Wie sehen Sie die die derzeitigen Regelungen zu den Beschwerden von Gefangenen?
- Wie sieht für Sie eine „gute“ Beschwerde aus?
- Wann wird eine Beschwerde in der Regel erfolgreich sein?
- Woran scheitern Beschwerden?
- Wie sieht es mit denjenigen aus, die sich nicht gut artikulieren können? Ausländer, Menschen mit intellektuellen Defiziten oder solche, die kaum schreiben können?
- Sind Gefangenenbeschwerden regelmäßig berechtigt? Was sind die häufigsten Beschwerdetypen bzw. – gründe, die Sie bekommen?
- Wie würden Sie sich als Gefangener mit einem Beschwerdeanliegen im derzeitigen System fühlen?
- Wie sind Ihre Erfahrungen, wenn Sie auf Beschwerden reagieren? Wie sollten Bescheide oder Antworten aussehen?
- Wenn Sie auf eine Beschwerde reagieren bzw. sie bescheiden, haben Sie da im Kopf, dass eine Antwort anderen Institutionen, d. h. dem Gericht, der Aufsichtsbehörde, dem CPT oder dem Justizvollzugsbeauftragten (NRW) bekannt werden kann?
- Ist es schwierig zu erklären, warum einem Anliegen oder einer Beschwerde eines Gefangenen nicht stattgegeben werden kann?
- Werden Daten oder Erkenntnisse aus den Beschwerdeverfahren genutzt um Veränderungen in der Anstalt oder im Vollzugssystem als Ganzem anzustoßen? Falls ja – wie?

Untersuchungen, Kontrollbesuche (inspections)

Nun würde ich Sie gerne zu Ihren Erfahrungen mit und Ansichten über Kontrollbesuche befragen – hier kann es um Besuche des Anti-Folter-Komitees des Europarats, von U.N.-Gremien, von Europäischen Menschenrechtskommissar, des Nationale Stelle zur Verhütung von Folter oder des Justizvollzugsbeauftragten (NRW) / Bürgerbeauftragten (MV) gehen. Wie wäre das hier mit parlamentarischen Gruppen? Wie mit der behördeninternen Aufsicht d.d. Ministerium?

- Wie interpretieren Sie die Rolle der Aufsichtsbehörde? Wie die des Strafvollzugsbeauftragten /Bürgerbeauftragten?
- Wie interpretieren Sie Rolle und Aufgabe des Europäischen Komitees zur Verhütung von Folter (CPT)?
- Haben Sie in Ihrem Bereich schon Besuch einer der genannten Organisationen gehabt, oder hatten Sie in einer anderen Rolle schon mit einer solchen Inspektion zu tun? Wie sind Ihre Erfahrungen?
- Haben Sie den Eindruck, dass die Standards, nach denen solche Kontrollbesuche ablaufen bzw. die Standards, die dann auf die besuchten Einrichtungen angewendet werden, klar sind und den Strafvollzugsbehörden ausreichend kommuniziert werden?
- Halten Sie die später gegebenen Empfehlungen für nachvollziehbar?
- Unter welchen Bedingungen können solche Empfehlungen sinnvoll umgesetzt werden?
- Wäre es gut, wenn der Strafvollzugsbeauftragte / der Bürgerbeauftragte eigene Durchsetzungsmöglichkeiten für die von ihm angemahnten Änderungen hätte?
- Haben die erörterten Kontrollbesuche zur Arbeit im Strafvollzugs sinnvoll beigetragen? Gibt es Änderungen, die Sie im Gefolge solcher Aktivitäten beobachtet haben?

Gerichtliche Entscheidungen

In folgenden Abschnitt des Interviews soll es um die gerichtlichen Rechtsmittel gehen, um § 109 ff. StVollzG, d. h. um die Rechtsmittel gegen Entscheidungen der Anstalt (aber nicht um die anderen Entscheidungen der Strafvollstreckungskammer, d. h. nicht um die vorzeitige Entlassung).

- Haben Sie mit gerichtlichen Entscheidungen in Vollzugssachen zu tun, wenn ja, inwiefern, welche Rolle nehmen Sie ein?

- Wie erleben Sie die Tatsache, dass Sie die JVA – ggf. auch das Strafvollzugssystem insgesamt – repräsentieren?
- Ist, insbesondere verglichen mit den bisher besprochenen Formen der Kontrolle und Überprüfung, das gerichtliche Verfahren nach Ihrem Empfinden eine schärfere und intensivere Form?
- Nehmen Sie das Verfahren mitunter "persönlich"?
- Inwiefern ist es für Sie akzeptabel, dass vollzugsfremde Richterinnen und Richter Entscheidungen für den Vollzug treffen – empfinden Sie das manchmal als übergriffig? (Grds. zur Rolle der Strafvollstreckungskammern)
- NEU: Rolle der AnwältInnen?
- Glauben Sie, dass externe Kontrollen, wie wir sie vorhin besprochen haben, die Wahrscheinlichkeit von Rechtsstreitigkeiten erhöhen?
- Inwiefern sind Vollzugsbedienstete bzw. ihr Verhalten der Grund für gerichtliche Beschwerden? Inwiefern sind es eher Probleme in der Sache?
- Wie schätzen Sie die Auswirkungen von gerichtlichen Entscheidungen auf die Vollzugspraxis ein? Wie werden gerichtliche Entscheidungen umgesetzt?

Abschlussfragen

Nochmals herzlichen Dank für Ihre Zeit und Teilnahme. Bevor wir ganz zum Ende kommen, habe ich noch zwei Abschlussfragen:

- Abgesehen von Ihrem freundlichen Entgegenkommen – warum haben Sie am Interview teilgenommen; gibt es ein Anliegen, dass Sie selbst mit den hier aufgeworfenen Fragen verbinden? Wenn ja, kam es zur Sprache?
- Möchten Sie mich gerne noch etwas zu unserer Forschung oder zu deren Hintergrund fragen?

Appendix B: Interview guide (Original Version)

Personal and Organisational Background

To begin with, I want to ask you a few questions about your personal experiences with the Irish Prison Service and your observations on prison work.

- What attracted you to this line of work?
- How would you describe the Irish Prison Service to someone from the outside?
- How would you describe prison work? What are the priorities?
- How would you describe the role of Governor / Chief Officer? What do you think are the characteristics of a good Governor / Chief Officer?
- Personally, how did you find the transition into this role?

Legitimacy

In this section, I want to ask your opinions on power, authority, and fairness in the prison context. Prisons inevitably involve an imbalance of power between staff and prisoners. With this in mind…

- What would a fair and just prison regime look like to you? What do prisons need to have in place to maintain fairness?
- How can staff build fairness in the eyes of prisoners? Can you give me some examples?
- Likewise, how can you build fairness in the eyes of staff? Can you give me some examples?
- Where does your authority in this role come from, and what gives a Governor / Chief Officer the right to hold power? Are there any personal elements to this authority?
- How would you describe good power and good authority in a prison setting? Can you give me an example?
- What do you feel undermines or threatens your power or authority in a prison? Can you give me an example of when you may have felt like that?
- The role of Governor / Chief Officer entails considerable power and authority, and can have a substantial impact on the lives of others. On a personal level, how do you feel about this aspect of your work?
- The Governor is often expected to act as a role model to both staff and prisoners. How do you view this aspect of your work?

Accountability

In this section, I want to ask you about your experiences of accountability. Accountability means a lot of things to different people – transparency, responsibility, answerability, liability. I'd like to

understand what accountability means to you, generally, in the prison context and how it relates to your role.

- In your role as Governor / Chief Officer, to whom do you think you are accountable?
- To whom do you think [redacted] is accountable?
- What does accountability mean in your eyes? What is the purpose of accountability?
- Is prison is a unique environment for accountability? Are there extra demands and considerations, or is it a setting like any other?
- To what extent do you feel giving account, or explaining your decisions and actions to others, is a part of your role as Governor / Chief Officer? Do you consider it a positive or negative aspect of your work?
- To what extent is performance culture – such as performance indicators, annual targets, and actions – prevalent at [redacted: institution]? If yes, is this a welcome change? If yes, where does this push for change come from?
- Do you feel accountable to prisoners themselves or to any bodies, agencies, or audiences external to the prison?
- Is this form of accountability, or obligation to explain, different in any way?
- How does giving account or explaining your conduct to others – whether internal or external to the prison - support your work as Governor? What, if anything, does fulfilling this obligation give you in return?

Complaints

I have a few questions now regarding the [redacted: institution] complaints system. [redacted]I as it is currently place…

- How do you view the complaints system?
- What makes for a good complaint?
- Are prisoners' complaints always justified?
- When responding to complaints, what should a response contain? Can you talk me through the process you use to arrive at your decision?
- When responding with your decision, how conscious would you be that external bodies - such as the courts, or Visiting Committees, or the Inspector - may one day see it?

- How does the complaints process support your own work as Governor, if at all? Is information gathered from the complaints system ever used to inform change in the prison or the wider prison service? How so? Are there any changes you would like to see implemented?Inspection

Inspection

I'd like to ask you about your experience of inspection, both in relation to the [redacted] and the CPT.

- How do you view the role of the Inspector of Prisons?
- Likewise, how do you view the role of the CPT?
- Has your prison ever been the subject of an inspection, or have you been present for an inspection in another role? Can you tell me about that experience?
- Where, or how, did you learn how to navigate the inspection process as a manager? Did you receive any guidance or support?
- How well do you feel the [redacted] and CPT's standards, expectations, and evaluation criteria are communicated to the Prison Service?
- At present, both inspection bodies do not have powers of enforcement. What is the motivation for managers, or the Prison Service generally, to act on their recommendations?
- What do you think makes an inspection recommendation likely to be implemented?
- What positive changes have you witnessed arising from inspection findings either by the [redacted] or the CPT?
- How do you feel the process of prison inspection has supported your work as a Governor / Chief Officer, if at all?

Litigation

I'd like to ask you now about litigation against the Prison Service, specifically in respect cases taken by prisoners concerning prison conditions or treatment, or a particular decision - as opposed to things like warrants.

- Have you ever been involved in litigation action taken by a prisoner against the prison? What was your role in this process?

- As a manager, can you take me through your thought process when a case like this arises? What are your concerns?
- Personally, how does it feel to take part in this process?
- Is the prospect of litigation a real fear for the Prison Service? What do you think poses the greatest risk that litigation may arise?
- Do you feel that prisoners make good use of their rights? Can prisoners' rights present a source of risk to the organisation?
- Have you witnessed any positive changes arising from litigation?

Concluding Questions

Thank you very much for agreeing to participate. Before we wrap up, I have a few final questions.

- What made you decide to take part in this research?
- Do you have any questions for me about this research?