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PIONEERS IN CRIMINOLOGY: KARL ROEDER—A FORGOTTEN PRISON REFORMER

KLAS LITHNER

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I am firmly convinced that the belauded system of solitary confinement attains only false, deceptive, external results. It drains the man's vital sap, enervates his soul, crows and enfeebles it, and then holds up the morally withered mummy, half imbecile, as a model of penitence and reformation. Fyodor Dostoyevsky, THE HOUSE OF THE DEAD

Karl David August Roeder was born on June 23, 1806, in Darmstadt in Germany into an officer's family. In 1822 he entered the University of Goettingen and later continued to Heidelberg. After his law studies he worked for a couple of years in the public service of his native state, Hessen, but returned to his studies. In 1830 he earned his doctor's degree at the University of Giessen with a dissertation *De usuris in futuris acceptis*. He taught a private course on the theory of criminal law, but was prohibited from lecturing in political science, as his theories were considered revolutionary. He became "Dozent" of criminal law at Heidelberg in 1839 after having written another book on criminal law in the same year, *Commentatio de questione an poena malum esse debeat*. In 1842 he became Assistant Professor of the same subject at the same university and stayed there for the rest of his life. In 1879 he was appointed honorary professor. His main inspiration came from the German philosopher Karl Christian Friedrich Krause (1781-1832), whose *System der Rechtsphilosophie* he finally edited in 1874. In the preface Roeder relates that although he heard Krause lecture only once he still (more than 40 years later) remembered the deep impression the lecture had made upon all those present. Already in 1837 he started his authorship on political theory, legal philosophy, and criminal law, which continued without inter-

ruption to his death. After some years, however, he specialized in penology and became the main propagandist in his generation of the Pennsylvania system in Germany. He had very lively relations with legal philosophers and penologists abroad and participated in several international congresses. He was also a member of several societies for prison reform. Roeder died in Heidelberg on December 20, 1879.

In order to give Roeder's philosophical starting-point, a few words on Krause will be necessary. The latter was a kind of academic nomad, who for 30 years moved from one German university to another, without ever getting a definite appointment, and in constant economic distress. He was a prolific writer on many subjects, but his main subject was philosophy. In the latter field he was inspired by Schelling and Fichte, but worked out a system of his own. The main idea is advancement on one analytical way from human self-consciousness to the absolute, and on one synthetical way via rational theology, psychology, natural philosophy and anthropology to religious philosophy. On the next level follow the "formal sciences", mathematics, logic esthetics, ethics and laws. The uppermost level in his system is represented by the philosophy of history. Because of his personal, rather complicated terminology his sys-

tem is difficult to grasp. Besides Roeder he found some disciples in Belgium and Spain.

In his introduction to Krause's *System der Rechtsphilosophie* Roeder paints a lively picture of the present bad state of the prison question and suggests that the solution should be sought in Krause's writings.

In the book itself Krause criticizes the school of repression and argues for reformation through educative measures as the only possible way to influence the criminal through changing his spirit. He found the causes of crime not in an evil will, but in lack of education, need, overpowering urges or madness. His program against crime included the destruction of the inner foundations of evil in the mind of the offender, the abolition of external conditions of evil and unjust character, the influence upon the mind of the offender through rational reasons in order to make him mend his ways and application of sufficient force on behalf of the state to keep evil designs from becoming realized. A basic idea is also that the right to punish is only a right to educate, which is the same towards children and adults. The lectures that founded the basis of the book were originally given during the beginning of the century, and Krause hailed the American penitentiary system as the only hope for the future.

The discussion of Roeder's theories will be divided into three parts, the first and shortest on general legal theories, the second on theories of criminal law, and the third, as well as most important, on penal questions.

Roeder's main ideas on general legal questions are embodied in his *Grundzüge des Naturrechts oder der Rechtsphilosophie*, which originally appeared in 1846, but was completely rewritten in a new edition of 1860-63. His basic ideas were in great part based upon the old theories of natural law, and his starting point is that the realization of justice must not depend upon the character and strength of the individual will, but that it is an unalienable right of the society that the will of a law-breaker must not be realized. In another connection he characterizes justice as primarily a social and external relation between different human beings, but also as an internal relation between the same human beings, a relation that is rational, inclusive and individual. It is also evident from all of his writings that he was a definite adherent of the theory of free will.

The next section is a report of Roeder's theories

of criminal law. Although he wrote a large number of books on the subject during his life, there seems to be no special growth or change of his ideas, but we find the same theories in his earliest as in his last books. He also often used the same material in arguing his case, and covered the same grounds, although some of his books were written as scientific treatises and others were aimed at the general enlightened public.

In his *Die herrschenden Grundlehren von Verbrechen und Strafe* he states that the book is based upon a series of lectures, given already in 1830-31, and that he had worked on them more or less continuously since then, but that it had been no use to publish them, as long as Anselm Feuerbach's theory of punishment as a psychic force still reigned in Germany. Now he intended, however, to describe and disprove all other theories of punishment than the corrective one, and thus prove that this was the only possible one. He also expected to be either refuted and proved wrong, or recognized if he was right. Roeder then runs through all known or imaginable theories of punishment and disproves them, one after another. As he hardly started from an impartial position, there is no use trying to criticize him in detail, because he succeeds to his own satisfaction to prove what he already believed in. His discussion becomes more important, when he reaches the theory of reformation. The latter sees in punishment the reasonable and necessary measure to help a citizen, whose will is unjustly directed, to self-determination, because (and to the extent that) the disharmony that stems from this wrong will disturbs the harmony of the whole reasonable organism of the state. This defined object of punishment is based upon a chain of reasoning with the following links: Justice is the concept of the fulfilment of human destiny through the free will of creating conditions. It must be realized independently of faulty or disturbed wills. If a man's will has become immoral in an externally visible way and intends to destroy the social order, this becomes intolerable for society. As far as the individual through this character of his will has proved himself incapable of good use of his full external freedom, he must lose his right to use this freedom, i.e., must be considered incapable of using it and in need of after-education. Every legal procedure against a law-breaker has the necessary stamp of a guardianship, and all measures that are found necessary because of his act must be used against him, no matter how

unpleasant and painful they may seem to him personally. Only the theory of reformation is good both for the state and its individual offending members, and thus it solves the forced conflict of the present criminal law. Nothing can create such respect for the state and its laws in the eyes of the criminal and the whole world as a general opinion of the inner justice of a punishment, that looks not to an immoral repaying of evil with evil, but with good. Under such conditions the victim of the crime will forgive and forget the offender, and the latter will regain his self-esteem and also the confidence of his fellow-citizens, and thus the path back to the free society is cleared to him. Roeder also attempts to refute the criticisms against his theory through running through all of them and concludes his review with the pious hope that he has persuaded the thinking reader of the deficiencies of the present criminal law and of the only possible way to reach humanity and justice in the future.

He expresses the same ideas in a different way in another of his books, *Grundzüge des Naturrechts*, where he states that if the original lack in the will of the criminal proves itself in an illegal act, it is not enough to repair the damage done through the act. For a real reinstatement of the legal position it is necessary to heal the will of the criminal through what we call punishment. But in doing so, it is always necessary to remember that the criminal is also a human being, who must not lose his human rights. Consequently he cannot be treated as a wild animal or mad dog. Only such measures that are fit to wake up his human qualities and influence him to a change may be used. He must, however, be considered as morally and legally a minor, who, while being punished, still has a right to an opportunity to change his will for the better. The only useful measure to produce this is a strict regime of guardianship and after-education, adapted to the condition of moral illness in the individual case. If the criminal has shown himself unworthy of his external freedom through misusing it, this freedom must be limited in several ways. The just punishment must never lose its character of education, which is already recognized for juvenile delinquents. The difference between punishment and other educational measures is that the former is much more difficult to apply. The common factor for all criminals is lack of moral resistance. In our days the previous misunderstanding has disappeared that punishment is an evil, and it has been generally understood that it is

only intended to procure the true good of the criminal and that its true character is beneficent. Through true repentance and reformation the criminal is reconciled to himself, God, and the world. In this way he pays his moral debt and restores the confidence to his morally reborn self.

A contemporary friend, disciple and commentator of Roeder in Spain, Francisco Giner, gives a good concentrated description of the concept of punishment according to Roeder: Restriction of the liberty of the individual in order to keep him away from the elements that had contributed to his downfall, educational discipline of his habits and medical treatment of inferior subjects. It is of no importance if the criminal, because of the state of his individual will, considers this punishment as an evil. The serving of a prison sentence must be seen as a beneficent and regenerating treatment.

The same concepts about the necessity of a guardianship for the criminal, as in any other abnormal individual state, have been expressed in another way:

"... not only in its restrictive sense of decreasing the criminal's exterior freedom, so as to diminish the stimulus and the opportunities that cause him to persist in his condition, to relapse and to grow worse; but also in its positive sense—which is always the first—of protecting the development of his freedom, the regeneration of the sense of justice in his soul, and his energy and strength in the realization of his deeds."

Before going over to Roeder's most important contributions—as propagandist of the Pennsylvania system of solitary confinement in Germany and the rest of Europe—it is necessary to spend some time describing its spread from America to Europe.

The origin and growth of this system in the United States, its characteristic traits and the fight between the Auburn and Pennsylvania systems are so well known that it seems superfluous to use any space for a closer description of it. Let it suffice to say that the idea of solitary prison confinement as a punishment, intended to produce an inner reformation, is a very old one and can be found already in Plato. It is also well known, that a great number of foreign visitors, especially from Europe, came to Philadelphia and other places with prisons after the same system in order to study them and report upon them to their governments or to interested organizations. An extensive literature upon the subject exists and consequently only a few of the

most important of these visitors can be mentioned. One of the most important visits was made in 1831 by two Frenchmen, Gustave de Beaumont and Alexis de Tocqueville, who wrote a calm and judicious report, contrasting the two competing systems. This appeared in print in 1833 under the title *Système Pénitentiaire aux Etats-Unis*. It evoked great interest and was translated into English the same year by Francis Lieber under the title *On the Penitentiary System in the United States* with an additional essay by the translator, strongly arguing the case of the Pennsylvania system. A German, and more impartial translation was also undertaken in the same year, by Nicolaus Heinrich Julius under the title *Amerikas Besserungssystem*. When the English edition had appeared, Julius found it necessary to write an article, *Das amerikanische Besserungssystem*, in his journal *Jahrbücher der Straf- und Besserungs-Anstalten*, in which he reported upon Lieber's English translation and additional essay. The French report appeared in its third edition in 1845 together with a *Rapport de M. de Tocqueville sur le projet de Réforme des prisons etc.* During the meantime the latter had changed his original impartial opinion and now presented a strong recommendation of the Pennsylvania system. Another important visitor was the English philanthropist William Crawford in 1832. He became a strong adherent of the same system, and his laudatory report contributed to the decision to build Pentonville as an English "model prison", completed in 1842.

A strong link between the United States and Germany on this field was Francis Lieber, who originally had emigrated from Germany in 1827 from political reasons, and finally became professor of political science, first in 1835 at South Carolina College, and then in 1857 at Columbia College. Like most other great men of that day his interests and his authorship were very wide. Lieber met de Beaumont and de Tocqueville in 1831 and visited the Eastern State Penitentiary in the same year. He then became a decided adherent of the Pennsylvania system and completed his prison studies through visiting all penitentiaries in the Eastern States. Lieber had a highly personal reason to recommend the solitary system; in 1819 and in 1824 he himself had spent 10 months in all in solitary prison in Germany because of his political activities. He had, however, been able to receive visits from his friends, and became so deeply influenced by this experience that he considered it advan-

tageous. His translation of the French report on the American prison systems has already been mentioned. Already in 1835 he wrote to the Prussian Minister of Justice Karl von Kamptz and suggested the establishing of a penitentiary on the solitary plan near Bonn "as a moral clinicum for criminalists and government officers in general". In 1838 he published his most important writings within the field of penology, a term which, by the way, was invented by him and used for the first time in the book in question, *A Popular Essay on subjects of penal law and on uninterrupted solitary confinement*. The book was intended as a contribution to the present discussion on the merits of the Pennsylvania system. When closely enumerating its often-described advantages he found that they amounted to 19, while the disadvantages were only 4. Lieber had occasion to continue his propaganda for the system in 1844 when he visited Prussia and met King Frederick William IV, to whom he strongly argued its advantages. A chair of penology for Lieber, combined with a post as prison inspector, was also suggested at the same occasion, but did not materialize. During the same trip to Europe Lieber also visited his correspondent since several years, K. J. A. Mittermaier, famous professor of criminal law at Heidelberg, which was also Roeder's university.

The man who probably had contributed most to the spread of knowledge of the Pennsylvania system in Germany was Nicolaus Heinrich Julius (1783-1862). He was trained as a doctor, had held posts as poor-house doctor in Hamburg and had thus become interested in prisons. In the footsteps of John Howard he made a long travel around Europe for prison studies. Upon his return to Germany he gave 12 lectures to the public on prison questions in Berlin in 1827. His lectures were published in 1828 as *Vorlesungen über die Gefaengnis-Kunde* and dedicated to Frederick William, who was then still crown-prince of Prussia. A French edition was published in 1831 as *Leçons sur les prisons*. He also exerted strong influences through his *Jahrbücher* which he published in 10 volumes 1829-33. In 1834 he traveled to the United States for prison studies, during which he also visited Philadelphia, and returned in 1836. He went as an adherent of the Auburn system but came back as a pronounced believer in the Pennsylvania system. His experiences during the years in the United States were recorded in his *Nordamerikas sittliche Zustände*, where he also gives his reasons for pre-

ferring the Pennsylvania system and argues for its speedy introduction in Germany. From 1840 to 1849, he held a semi-official post as prison inspector of Prussia without connection with the administration but based upon a personal appointment by the Cabinet. He also continued working for prison reform through publishing *Jahrbücher der Gefängnis-Kunde und Besserungsanstalten* in 11 volumes from 1842 to 1849.

Finally, another German author in this field should at least be mentioned, as Roeder refers to him several times. This was G. M. Obermaier (1789-1885), a Bavarian prison official. In his books *Anleitung zur vollkommener Besserung der Verbrecher* (1835) and *Die amerikanische Poenitentien-systeme* (1837), he criticized both the Auburn and the Pennsylvania systems and argued for a system of his own that intended to abolish the disadvantages of both of them.

As a result of all these influences Germany, still divided into a great number of small states, got its first solitary prison in Insterburg in Prussia in 1832. King Frederick William, who took a strong interest in prison questions, visited Pentonville some time around 1840. His favorable impressions contributed to his decision in 1842 to override the opinion of the administration and introduce the Pennsylvania system into Prussian prisons. This principle-decision became reality in 1849 with the new Moabit prison in Berlin. Lieber's visit to the King in 1844 probably also was of some importance in the same general direction.

The spread of the Pennsylvania system over Europe and its lasting impressions there are so well-known that they have to be mentioned only in passing.

These were consequently the influences that produced an interest in penology in Roeder's mind and also gave him that definite opinion of the superiority of the Pennsylvania system, in which he never seemed to vary. Over and over again he expressed in his various books the reasons for the supremacy of solitary confinement. Both the same reasons and the same steps in his logical reasoning came back in more or less detail, depending upon the size of the book in question. Only three of his books will be mentioned in this connection.

The first of them is *Die Verbesserung des Gefängniswesens mittelst der Einzelhaft*, written in 1855 at the wish of the Prussian Government for use in official discussions on prison reforms. It is based mainly upon experiences from the Bavarian prison

Bruchsal. The advantages of the solitary system are given as the possibility of influencing the inner life through waking and developing the thinking, feeling and will, the very strong influence upon the spiritual development of the prisoner from the educative measures, the possibility of individualizing the treatment, and the changed relationships between personnel and prisoners. Among these educative measures were counted church and school in prison, the influence of talks with warden and visitors, and finally the reading of good books. When discussing the purported weakening of the intellectual abilities through the Pennsylvania system Roeder heatedly denied their existence and pointed to the many praising reports from visitors to Philadelphia as proof of the opposite. On the other hand he strongly criticized attempts to change the solitary prison system into a system of complete isolation and proposed that dark cells or temporary isolation should be used only as disciplinary measures to uphold the internal discipline.

A much more detailed treatment of all these questions was given in his next book, where he makes a basic demand in order to justify solitary confinement, i.e., that the state must recognize its duty as the guardian of a criminal, who has lost his liberty because of a criminal act, and not to let him suffer spiritual or bodily need. Roeder also tries a diplomatic approach in order to catch the adherents of the old strict theories through pointing out that the solitary system is in many respects harder than the old common prisons. Finally, he also expressed the conditions that work in prison must fulfill; it must not damage the health of the prisoner but should, if possible, strengthen his body and soul, give him a good future, and only in the last place economic considerations may influence the choice of work.

In the last of the three books mentioned in this section Roeder characterizes imprisonment, especially the solitary system, as suddenly tearing wild men loose from their urges, from their previous barren ways amongst bad company and overwhelming temptations, placing them in good surroundings and relating them to a totally opposite moral way of life, which gradually becomes a second nature. In the last part of the book he once more runs through the reasons for the Pennsylvania system, traces its spread through Europe, points to the small German state of Baden as a pattern for the whole world in this respect, and

gives a good description of the prison conditions of many other small German states.

Roeder also made active contributions to the propaganda for the Pennsylvania system through participating in congresses and corresponding with international organizations or friends and colleagues in other countries. Thus he participated in the First International Penitentiary Congress in Frankfurt am Main in 1846, although he does not seem to have taken part in the discussions. President of the Congress was Mittermaier, already mentioned, and among the participants were many internationally known penologists and prison administrators, like Ducpétiaux, Louis Dwight, the prophet of the Auburn system, Julius Moreau-Christophe and Obermaier. The latter, also mentioned previously, was the dominating member of the Congress. Several resolutions in favor of the general use of solitary confinement were adopted practically unanimously. As this Congress had settled the question which prison system should be introduced in Europe, the next Congress, in Brussels in 1847, could limit itself mostly to questions of prison architecture. Roeder attended this Congress, too, but, according to the proceedings, he only took part in the discussions on one small point, where he argued in favor of small prisons and deemphasized the economic viewpoints. In a later article in a professional journal, which contains his contribution to the Congress, Roeder came back to the Congress and polemized against some persons who had participated in the discussions on more general questions. He also tries to give some important conditions that must be fulfilled if the Pennsylvania system was to live up to the expectations. Among them are that the institution must be managed in a true reformative spirit, that it must not contain more than 300 prisoners, that the prisoners shall work for the prison itself, not for contractors, and that all unnecessary penal or judicial aggravations of the punishment must be abolished. The solitary system should also be used for all categories of prisoners, even during the pre-trial stage, because of its general beneficent influence. The only other types of punishment for which there is any use besides the solitary system, are temporary banishment, fines and loss of the right to occupy certain important positions. As a consequence of the reformative influence of the Pennsylvania system he also argued strongly for not only a reduction with at least one third of the length of the sentence, but also an indeterminate sentence, so that the court once more goes over the

case and changes the length of the punishment according to the more or less complete reformation of the prisoner during the first part of his stay in prison. The reasons given for this proposal seem to be the same that have occurred in the more modern discussion on indeterminate sentences. Roeder was, however, prepared to make a few exceptions from the all-embracing character of the solitary system—for children and young persons under 14 years of age, very old people, invalids and mentally defectives, but they must not be kept together with other prisoners and should immediately be transferred to specialized institutions for these various categories.

The Third Congress, dedicated to Charities, Correction and Philanthropy, was also held in Frankfurt, but not until 1857 because of the intervening revolutionary years. One of the three sections was dedicated to penal reform and one of the three subjects in this section was the cellular imprisonment system. Roeder, who attended this Congress, participated very actively in the discussions of the section. He protested against the official designation of three objects of punishment, expiation, deterrence and reformation, and recognized only the last one. He suggested the possibility of special rules for political prisoners and offenders, who were not real criminals. He spoke of the beneficent influence of work and education. He also argued that there must be no exception from the rules of complete solitary confinement other than for ill or dying prisoners, or for children below 12 years of age, and he wanted to adjourn the discussion of conditional release. Generally, he found himself in the minority on all points.

Besides this participation in Congresses, Roeder was also active in prison discussions and belonged to the leading group among those teachers of criminal law who had great influence on penology around the turn of the century. That he evidently sometimes could lose his temper a little on these questions is indicated by a quotation from his *Die Verbesserung des Gefaengniswesens*, where, in mentioning a temporary minor change in the English adaptation of the Pennsylvania system, which he evidently considered as heresy, he said: "these changes have been made, since the head of the prison system became a Mr. Jebb, an engineer (!) and by the way quite well-meaning and personally known of me". The poor Sir Joshua Jebb seems to have had somewhat better qualifications than what Roeder's words indicate. He had started as an officer in the Royal Engineers, where he had reached

the rank of first captain, when in 1837 he became surveyor-general of prisons in order to serve as technical adviser to the Home Office on the construction of prisons. In 1842 he became a commissioner of Pentonville Prison, which he had helped to construct, in 1844 inspector-general of military prisons, and in 1850 chairman of the Board of convict prisons.

Roeder believed that he had at least contributed to some extent to the Prussian King's decisions on prison issues through his several times mentioned book *Die Verbesserung des Gefaengniswesens* (1856). His contributions have also been noted by at least one German penologist, who has pointed to his importance in spreading the theory of reformation.

Among the results of the writings of Roeder and others were the building of the first new German prison after the true Pennsylvania system, Bruchsal in Bavaria, ready in 1848 but not placed into use until 1851 because of legal obstacles. A whole literature grew up around this prison, to which both officials, visitors, and a couple of prisoners contributed. Two other later milestones on the road to victory of the Pennsylvania system in Germany were the resolution of the German Congress of Jurists in 1869, demanding the solitary system as the regular way of serving a prison sentence, and the new German Criminal Code of 1871, in which the solitary system became the rule at least during the three first years of a prison sentence. And as late as 1889 the distinguished penologist Krohne spoke in favor of the solitary system. That this idea still had not lost all of its original impact much later is indicated by the fact that both the Sixth International Penal and Penitentiary Congress in Brussels in 1910 and the Tenth Congress in Prague in 1930 seemed to consider it still important.

Among the results in other parts of Europe, Spain must be singled out for special mention. The reason for this is that Roeder had a rather strong influence there. To his importance in Spain another factor also contributed, namely that his teacher Krause had influenced several Spanish philosophers and professors of criminal law, who were at least partly interested in penology. The most important and influential of these men was Francisco Giner de los Ríos, who on several occasions expressed ideas on the character of crime and punishment of the same kind as Roeder's. He also spoke of social education as a function and duty of the government. Several of Roeder's works were also translated into Spanish by Giner or Romero Giron. Thus his *Grundzüge der Politik der Recht* was trans-

lated as *Principios de Derecho natural*. In 1873 Roeder wrote an original work, *Necesaria reforma del sistema penal español*, where he argued for a complete reform of the Spanish penal system after the Pennsylvania pattern. Probably because of the interest that this and his earlier books had evoked, he was in the same year commissioned by the Spanish Minister of Justice to write some expert reports on penal reform. One of these was published as an appendix to the translation that appeared in 1877 of his *Die herrschenden Grundlehren* under the title *Las Doctrinas fundamentales reinantes*. The appendix was called *Reforma del sistema penal español mediante al regimen celular*, and contains nothing that is not mentioned already.

Finally, in 1885, another book of Roeder's appeared as *La idea del derecho*. Through this literature and through his correspondence with Giner and others Roeder had a marked influence on the growth of the so-called correctionalist school in Spain during the latter part of the last century. One of those who became influenced by him was Pedro Dorado Montero, professor of criminal law in Salamanca, although he later worked out a penal philosophy of his own. Through these contributions from various sources Spanish penology at the end of the last century and the beginning of this one got its special character of a mixture between metaphysicism and positivism. That a certain influence from Roeder still exists in both Spain and in the Latin American countries (whose prisons were mostly patterned on Spanish models) is evident through the importance that solitary confinement still has in several of these countries, especially in the big central prisons in the capitals.

When trying to get a composite picture of Roeder's work and importance, it is perhaps best to start with his contemporaries. For some reason he never found any special following in Germany, but his theories became rather important in several other countries. Besides Giner and others in Spain, among his disciples were Gabba in Italy, Moddermann in Holland, and Vargha in Austria. Many of his German colleagues did not mention his work at all, much to his great chagrin. On the other hand he encountered his sharpest critique, during his lifetime, from two Italian authors, Carrara and Buccellati, in an article in *Rivista penale* in 1875, to which he answered with a spirited defense.

Among those legal scientists who have evaluated Roeder, one, Heinze, has criticized his theory of reformation as a mixture of penal and moral

philosophy, which does not cover a great number of persons who have committed criminal acts. This number includes both those who act through a conflict of duties and those who have already reformed during the period from the criminal act to the sentence. Furthermore, the theory can only be used to justify medium or long prison sentences.

Another author, who covered the same field, was Ludwig Laistner, a private German author and man of science. His assertions are that the whole basic concept of legal and moral incapacity is only a fiction which leads the observer to the conclusion that all criminals are children; moreover, the need of a possible after-education of criminals cannot be compared with education of children.

A man of probably greater importance than these two, Karl Ludwig von Bar, who was professor of criminal law in Goettingen, has also had his say on the question. He offers a new argument, namely that the reformatory theory offers the prisoners goods that perhaps are unavailable to the great mass of the population, and also calls the whole theory an exclusive cult of the individual.

Another author in the German language is Julius Vargha, an adherent of Roeder and professor of criminal law in Austria. He limits himself to praising Roeder's contributions as a reformator and stressing the importance of continuing his fight for the future.

Von Lilienthal in his biographical evaluation mentions that Roeder was lacking in the fields of philosophy and criminal law, and that his interest in the fight against the conservative penological schools made him specialize upon the practical aspects of prison reform. The resistance that he met and the difficulties he experienced during this fight made him concentrate his theories so much upon the reformatory aspect of the criminal that his theory became virtually impossible to realize.

Finally De Quiros, who a priori was on Roeder's

side, speaks of his importance in contributing to the transformation of the character of punishment into a new concept with non-punitive aspects.

In attempting a personal evaluation of Roeder it should be pointed out that he is neither mentioned in Gabriel Tarde's *Penal Philosophy* nor Barnes and Teeters' *New Horizons in Criminology*, although both of these basic works otherwise seem to include practically everyone who has had any influence on penal or penological theories. As Teeters has pointed out in another connection, many persons who are well known in European literature seem to be unknown in the United States.

It is impossible to judge Roeder without setting him in relation to that prison system of solitary confinement that he fought so strenuously to introduce. Seen in retrospect, its obvious disadvantages are perhaps too distinct, but compared with the conditions at the time when the system broke through, it must be considered a definite progress and its importance is still far from extinct.

Besides his contributions in the field of practical penology it is also important that Roeder, in many connections, pointed to the legal character of the relation between the State and a person serving a sentence in one of its prisons. In this way he has contributed to the improvement of the legal position of prisoners. That Roeder's theory of the guardianship character of the punishment is not wholly extinct is indicated in a recent book by a noted American psychiatrist, Philip Q. Roche, who expresses the same attitude in a totally modern setting.

From all these reasons it seems unjust, if criminology and especially penology were to completely forget Karl Roeder. He should be entitled to at least a niche in the gallery of those who have contributed in advancing criminology in different ways and towards varying goals.