Introduction

In 1941, the special court in Berlin convicted several Jewish people of illegal trade using ration cards. They each got different sentences, some of which included the death penalty, and in most cases the sentence also included the deprivation of their civil privileges. Many Germans were astonished by these sentences. Jewish citizens had, after all, already long been deprived of most of their rights.[1] Word of people's astonishment about these disenfranchisement punishments reached the Ministry of Justice, where an internal discussion then unfolded.[2] In response to the consternation, Heinrich Himmler, in his function as Reich Commissioner for the Consolidation of German Nationhood, ordered that these sentences not be handed down to Jewish people for the simple reason that they did not have these rights to begin with, so they could not be deprived of them.

Himmler's decision was in line with the directives of the Polenstrafrechtsverordnung, a penal policy introduced for subjects of the Nazi empire living in the eastern occupied territories who were not on the so-called Deutsche Volksliste.[3] The Polenstrafrechtsverordnung denied the possibility of disenfranchising subjects who had already been stripped of most of their civil rights. According to Himmler, the same principle should have applied to the verdicts of the judges in Berlin.[4] Yet Himmler's orders were not accepted without critique from legal experts at the Ministry of Justice, some of whom noted that the German penal code prescribed the withdrawal of a felon's civil privileges in numerous cases and that judges could not willingly neglect these legal prescriptions. They also noted that these prescriptions applied not only to people with German citizenship rights but to every person residing on German soil. It was territory that determined the law's jurisdiction and not the status of the subjects; consequently, the punishment should be applied even to travelers temporarily staying on German territory.

What was it about these verdicts that upset Himmler so much? In essence, he was disturbed not by the verdicts themselves but rather by the wording of the official name of the privileges they revoked. In German, they were called one's

Notes from this chapter begin on page 14.

"civil rights of honor" (*die bürgerlichen Ehrenrechte*). The notion of honor was indeed intimately connected with the punishment of disenfranchisement; this punishment was in fact more colloquially known as an "honor punishment" (*Ehrenstrafe*).[5] When newspapers reported on this punishment being carried out, they commonly used the phrase "loss of honor" (*Ehrverlust*). This terminology had its origins in legal thought of the early nineteenth century in which citizenship, crime, and honor were crucially connected. Himmler thus believed that stripping Jewish people of their "honor" basically implied that they were entitled to a certain kind of "honor" to begin with.

Himmler urged judges to avoid these verdicts at all costs.[6] He could not accept the idea that Jewish people without a criminal record were entitled to respect and were supposed to be viewed as "honorable." In the end, the Minister of Justice, Franz Schlegelberger, came up with a compromise: all verdicts that included §34 (the section that regulated the deprivation of civil privileges) and applied to Jewish people (or others not on the German *Volksliste*) should thenceforth omit the phrases "loss of honor" and "deprived of their civil privileges." In other words, judges had to state that §34 applied to these offenders without mentioning the contents of this paragraph. In this way, the Nazi authorities could uphold the fiction of abiding by a rule of law while avoiding the implication that Jewish people were entitled to a certain "honor." Officials of the Ministry of Justice were satisfied with this compromise.

Felony Disenfranchisement in German Society

Even if this was a trivial moment in the persecution of Jewish citizens in Nazi Germany (since the legal status of Jewish citizens had already been decimated), the internal discussion in the Ministry of Justice in 1941 illustrates the peculiar connection between the punishment of disenfranchisement and the notion of honor in German legal thought. This book is about the history of that punishment and its significance in German society in the long nineteenth century. It aims to explain the rationale behind the punishment and show how it functioned satisfactorily—in the eyes of the authorities—during the era of the German Empire (1871–1918) before it became heavily politicized in the time of the Weimar Republic (1918–33).

Felony disenfranchisement (*die Aberkennung der bürgerlichen Ehrenrechte*) emerged in several of the newly introduced German penal codes in the early nineteenth century, roughly in the period between the dissolution of the Holy Roman Empire in 1806 and the end of the so-called *Vormärz* period in 1848. Eventually it was codified in §34 of the 1871 Reich Penal Code of the German Empire.[7] The punishment was handed down to all sorts of offenders up to 1969, when it was abolished from the law. During the time of the German Empire,

criminal courts deprived, on average, about fifteen thousand German citizens of their civil privileges annually. Surely, however, the significance of this punishment lay not in the number of sentences in which it was handed down. Compared to the death penalty, it was meted out very frequently, but it was added to only 5 percent of all prison and penitentiary sentences, making it a marginal punishment compared to incarceration.[8]

There are many ways to look at the significance of a punishment. One way is to look at its emotional impact. However, one segment of German society clearly believed that felony disenfranchisement had no emotional impact on German citizens at all. Satirists of the German Empire, for instance, often lampooned the indifference convicted felons felt toward this punishment and the apathy with which the lower classes regarded their civil privileges. For example, in 1897, during the heyday of bicycle mania, a reporter for the satirical magazine *Kladderadatsch* jokingly wrote that the Reichstag was contemplating the introduction of a law that would prohibit disenfranchised felons from riding a bicycle. After all, the author argued, this would increase the emotional impact of the punishment as riding a bicycle was something that all members of society genuinely enjoyed (whereas they did not care about their voting rights).[9] Furthermore, class perceptions often played a role in such humor. The satirical magazine *Fliegende Blätter* regularly published cartoons mocking people from lower economic classes who were deprived of their civil privileges. One cartoon from 1907 depicted a farmer standing next to his award-winning ox with the caption: "Don't be so proud, Scheck! Back then I done lost my rights 'cause I set a couple little things on fire, but in a year we'll be equal same as ever!" (see Figure 0.1). In this case, farmers deprived of their privileges were the object of ridicule; in other cases, vagrants were mocked in cartoons with similar captions (see Figure 0.2). In yet another cartoon, a judge reads a sentence to a defendant, who answers: "no problem—I wasn't planning on voting next time around anyways!"[10]

Even though these satirists mocked the ineffectiveness of this punishment, their cartoons represented its significance in political discourse. These jokes asserted that some members of German society were indifferent to their civil privileges, enabling the authors to address fundamental issues about social stratification and civil morality. In other words, authors instrumentalized the critique of the ineffectiveness of a punishment to address broader class issues in German society.

Legal scholars also criticized felony disenfranchisement's ineffectiveness. The most important of these critics was Otto Mittelstädt, a trained legal scholar who held many important positions in the Prussian bureaucracy and wrote some influential commentaries on the German legal system.[11] In 1879, when he was a judge in Hamburg, he published a book titled *Gegen die Freiheitsstrafen*, in which he revealed himself to be one of the most vehement critics of the German penal system. He believed that punishments should primarily be about deterrence and should therefore principally strive to bring humiliation and disgrace (*Schmach*

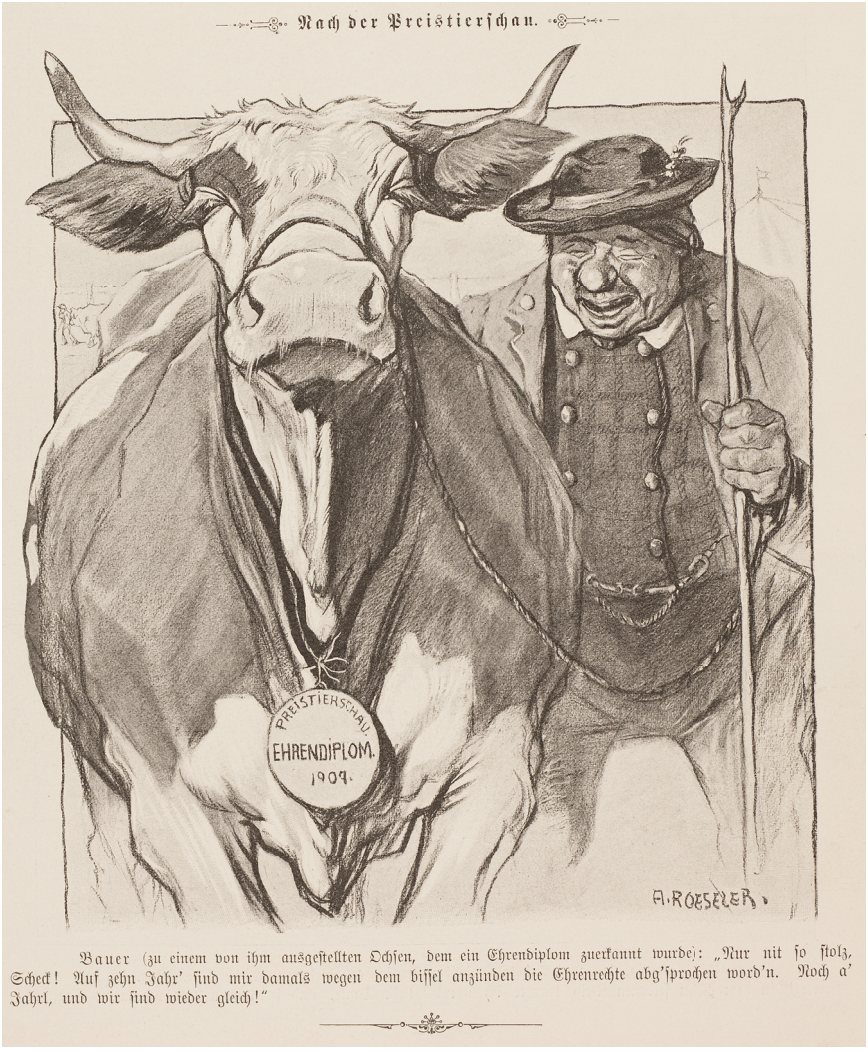

Figure 0.1. Cartoon by August Roeseler. Image reads in slang: "Don't be so proud, Scheck! Back then I done lost my rights 'cause I set a couple little things on fire, but in a year we'll be equal same as ever!" August Roeseler, "After the animal show," *Fliegende Blätter* 127 (1907): 84. Courtesy Heidelberg University Library.

und Schande) upon offenders.[12] The modern penal system, he argued, utterly failed in its mission to deliver the message that crimes are impermissible acts that constitute a moral harm.

Depriving offenders of their civil privileges was one example of an ineffective punishment for Mittelstädt. Disenfranchisement did not humiliate and disgrace offenders as much as he thought it should. Even though its whole purpose was

Figure 0.2. Cartoon by Adolf Oberländer. Image reads in slang: "At first they sentenced me to four months in prison and three years without my civil privileges. After I appealed, they withdrew the loss of civil privileges. I would rather have them withdraw the four months; what am I supposed to do with civil privileges?!" Adolf Oberländer, "Superfluous mercy," *Fliegende Blätter* 68 (1878): 192. Courtesy KB, national library.

to damage offenders' "sense of honor" (*Ehrgefühle*), he argued that offenders did not genuinely experience the shame of the punishment.[13] These words resonate with American legal scholar James Q. Whitman's definition of penal degradation: the "treatment of others that makes them feel inferior, lessened, lowered."[14] In other words, a punishment was supposed to have a crucial emotional effect, but Mittelstädt believed this effect was seriously lacking.

Even though some felons seemed indifferent to the punishment, as Mittelstädt observed, his claim about the emotional impact of felony disenfranchisement ought not be overgeneralized. Mittelstädt wished to reintroduce corporal punishment in the German penal system, so he contrasted the apathy surrounding disenfranchisement with the actual pain people felt as a result of corporal punishment. Even so, the emotional impact that disenfranchisement had on citizens might have been more diverse and nuanced than Mittelstädt and other critics believed. Therefore, in this book, I aim to address the emotional impact of the

punishment once again, going beyond people's mere interest or disinterest in the civil privileges suspended by this punishment. In fact, I will show that German people interacted with this punishment in multifaceted ways, with authorities utilizing it as an instrument for reinforcing societal hierarchies, while others used it to fight for reforms.

By focusing on German citizens' emotional attachment to this punishment, I aim to shed light on what it meant to them to be German citizens and what constituted "civil morality." Following the American moral philosopher Martha Nussbaum, I view emotions as "judgements of value and importance," judgments reflecting the core beliefs of moral agents.[15] The emotional experience of people affected by the penal system thus informs us about their broader moral beliefs, what they believed constituted a good life as a citizen, and how much their ideas of civil morality converged around the notion of honor.[16] Importantly, I thus not only engage with the emotions of those who were punished but also with the emotions of the broader German public, for instance, in reacting to a public verdict. This is fundamental to fully assessing the impact of punishment on society.

The Uncontested Existence of Felony Disenfranchisement

Many scholars of the history of criminal policy have emphasized the disciplining aspect of legal punishment. One representative of this approach is the famous French historian Michel Foucault, who argued that the type of power exercised in prisons played a part in the way modern subjects were formed through a process of disciplining bodies and normalizing deviance. Foucault's theory views punishment as one of many ways in which power is exercised and embodied in modern societies.[17] In addition, criminal justice is often connected with welfare policy in modern societies. For example, British criminologist David Garland speaks in this context of the penal-welfare complex—a historical entanglement between welfare programs and penal measures; in modern penal regimes, in fact, the act of punishing is not much different from educating or curing individuals.[18]

Recent scholarship on Germany's history of crime and justice has also explored the contributions of criminal justice to welfare policies, education, and medical treatment. German historian Desirée Schauz, for instance, studied the growing influence of welfare organizations in German prison facilities and argued that these organizations set up welfare programs based on individuals' need for resocialization, among other things, through work distribution. The implementation of these programs was often accompanied by conflict, and the results were often disappointing as there was a high rate of recidivism. Schauz regards this development as evidence that punishment was increasingly considered a form of applied social knowledge.[19] Describing similar developments in the German penal system, American historian Warren Rosenblum even argues that the emergence

of welfare assistance in courts in the Weimar Republic—despite the controversy surrounding its practical application—demonstrates that there was a consensus among penal experts in favor of a "social approach" to criminal justice.[20] Many other scholars of German criminal justice, furthermore, point out the important influence of medical doctors in the German penal system and the spread of the idea that criminality could be cured like a mental illness, which predominantly arose in the second half of the nineteenth century and the first half of the twentieth.[21]

Notwithstanding the crucial insights these authors have had into the educational and disciplinary aspects of modern penal regimes, nineteenth-century observers regarded disenfranchisement as important on account of its symbolic function. According to them, the significance of the punishment lay not only in its emotional impact on the person being punished but also in its emotional expressiveness for the governing body inflicting it. The punishment was designed by nineteenth-century lawmakers both to penalize wrongdoers and to safeguard the honor that came with German citizenship. Felony disenfranchisement was thus essential to sustaining a moral order in society since it helped demarcate the boundary between permissible offenses that did not affect the honor of citizenship and morally reprehensible crimes that offended against the "honorable trust" bestowed on citizens.

This resonates with the ideas put forward by the famous French sociologist Émile Durkheim, who wrote in his 1893 key work *The Division of Labor in Society* that "punishment is above all intended to have its effect upon honest people . . . [I]t serves to heal the wounds inflicted upon the collective sentiments."[22] Punishment, he argued, "consists of a passionate reaction graduated in intensity, which society exerts through the mediation of an organized body over those of its members who have violated certain rules of conduct."[23] Moreover, in Durkheim's theory, punishment had a communicative function, sending a message to all members of society: it was "a sign indicating that that the sentiments of the collectivity are still unchanged."[24] By inflicting a punishment, the governing authorities attempted to reinforce the collective morality by giving voice to the collective sentiments about the wrongfulness of a certain act. The ritualistic execution of punishment was therefore central to his theory as it helped to create social cohesion within a community. Indeed, many nineteenth-century German advocates of felony disenfranchisement thereby indirectly and unwittingly supported Durkheim's view that punishment had such a communicative function by which it reflected the moral order a society tried to uphold.[25]

Durkheim crucially argued that the authority of a governing body to execute a punishment stemmed not from the actual harm a crime did to a society but from the "common consciousness" of a society being offended. Underlying this theory was the idea that there was something like a "common consciousness": a certain consensus within a society about the moral categories that could be offended. In other words, when applied to the case of felony disenfranchisement, there had

to be some agreement about circumstances that would justify a felon's disenfranchisement. As I argue in this book, however, social agreement about the execution of this punishment was frequently lacking; defendants, courtroom observers, and politicians often heavily criticized or protested verdicts. Such conflict about verdicts undermined Durkheim's theory about the "collectivity" sanctioning its members. In reality, it is not "society" that punishes but specific authoritative figures who impose punishments on specific people, with a great deal of dissent among both subjects and observers of these punishments.[26] This was without a doubt also the case in Imperial Germany.

Still, the idea of social consensus converging around this punishment should not be dispensed with completely. Protests against felony disenfranchisement often had one thing in common: they were based on the belief that the punishment had an emotional impact on more people than just the person being punished. Indeed, commentators believed that it "functioned" by reinforcing hierarchical relations in German society and reasserting concepts of "honorable" and "dishonorable" actions. However, this did not mean that every disenfranchisement was a way for the authorities "to give voice" to collective sentiments. Rather, given the emotional power of disenfranchisement, one could say that the authorities frequently instrumentalized the idea that punishment stemmed from certain collective beliefs by disenfranchising certain offenders. In this way, they hoped to manipulate collective sentiments about certain people and certain crimes.

People constantly tried to renegotiate the conditions under which felony disenfranchisement should be imposed and actively debated what constituted "honorable" conduct. Even so, people did not consider the punishment redundant but rather believed that disenfranchisement was a vital component of Germany's penal system. That is, there was at least consensus that felony disenfranchisement added value to the German penal system. If people truly believed that it was a superfluous punishment, there would not have been so much resistance to it being carried out in specific cases, and verdicts to punish people with disenfranchisement would not have sparked that much controversy. In fact, in the German Empire there was almost no protest about the simple existence of this punishment, there was only occasional protest when it was handed down to specific people in specific cases (as discussed in chapter 3). Although this changed after World War I, when it became too deeply politicized, before that time it was an immutable aspect of German criminal policy that could be instrumentalized and incorporated in the reform agendas of politicians, criminal justice experts, and other members of civil society.

Historicizing the Notion of Honor

As noted before, the emotional impact of felony disenfranchisement derived from its intimate association with the notion of honor. Thus, it is not surprising

that many historians interpret this punishment as a relic of early modern or even medieval European criminal policy.[27] In some ways, this interpretation is understandable since it was common practice in feudal society and in the European *Ancien Régime* to exclude certain people from guilds, to bar them from practicing certain crafts, and to banish and brand them as "*unehrliche Leute*" (dishonest people).[28] Such people, one could argue, constituted an early class of precarious workers.[29] Accordingly, Franz von Liszt, in the 1932 edition of his *Lehrbuch des deutschen Strafrechts* (one of the most influential German textbooks on criminal justice of the nineteenth century), unambiguously placed felony disenfranchisement in the medieval tradition and dismissed it as "a doomed, final remnant of the medieval penal arsenal."[30]

The characterization of felony disenfranchisement as archaic broadly supports the thesis of James Q. Whitman, who has done some of the most compelling work on the importance of honor in the history of punishment in the nineteenth century. In his view, the "mild" treatment of offenders in the modern criminal justice system in Germany can only be explained as the result of a process of "leveling up." Over the course of time, he argues, "regular" offenders came to be treated like the privileged, "honorable" offenders and were entitled to the same "honor" as the aristocrats, while all degrading elements were abolished from penal law.[31]

Even so, one can dispute whether the notion of honor in late nineteenth-century penal policy really had the same meaning as it did in the early modern era. The notion of honor, after all, was complex, not only because it entailed a description of the "objective" qualities of a person (that is, one's rights, privileges, and membership in certain groups), but also because it contained a crucial subjective dimension. As German sociologist Georg Simmel famously observed in his *Soziologie*, honor forges a strong connection between the objective categories of membership and privileges and personal beliefs about moral value and entitlement.[32] Furthermore, honor is a kind of "symbolic capital," as described in the theory of Pierre Bourdieu: something that people constantly need to reproduce and utilize through their bodily postures and stances.[33]

Historians have thus noted how an appeal to one's honor was an important motivator for action. German historian Birgit Aschmann, for instance, showed in her study of the three wars between Prussia and France that appeals to the honor of the national leaders of both states influenced their decision to go to war.[34] The subjective dimension of honor also changes over time.[35] The historicity of the notion of honor is illustrated by its use in the context of dueling. For instance, it is well known that the German bourgeoisie adopted the aristocratic practice of dueling, which its members had not previously been entitled to, from 1848 onwards. Some historians have claimed that this adoption was proof of the militarization of German society and an expression of the premodern beliefs about honor that German imperial subjects held, in particular, members of the bourgeoisie. Yet, as German historian Ute Frevert has argued, the bourgeois culture of

dueling was more an expression of the modern bourgeois values of masculinity, individualism, anti-materialism, and self-restraint, and thus helped to constitute the liberal identity of the German bourgeoisie.[36] These observations confirm that just because bourgeois citizens had a notion of honor did not necessarily mean that they had an early modern mindset.[37]

A German Trajectory

In fact, most nineteenth-century legal experts did not associate felony disenfranchisement with early modern criminal law. On the contrary, they generally justified the punishment as serving the aims of an entirely modern penal system. It is therefore interesting to note that in the original 1880 version of the above-mentioned textbook, Franz von Liszt listed four legal goods (*Rechtsgüter*) that punishments in modern societies could potentially restrict or destroy: life, liberty, property, and honor.[38] Furthermore, depriving people of their privileges, Liszt argued, was a punishment perfectly suited to damaging a citizen's honor. Honor, in this context, was intimately connected to citizenship, which really distinguished this punishment from the early modern punishments of banishment and branding. Unlike those punishments, disenfranchisement was not supposed to affect criminals' commercial affairs and their place, for instance, in the job market but only their legal status in relation to the state. It commonly deprived an offender of the rights to join the army, to vote, to sign important legal documents, and to testify in court. This concept was made explicit in a 1909 draft for a reformed penal code for the German Empire: "The honor punishments should leave the private rights and social position of the convicted untouched and should only affect the guilty person's public rights."[39]

The difference between the older and modern "honor punishments" can thus be traced back to two important shifts that took place over the course of the eighteenth and nineteenth centuries: the emancipation of the free market from guilds and corporations, and the expansion of state bureaucracy and its growing monopoly on all kinds of penalization. In other words, whereas corporate institutions used to sanction their members, they lost this right as punishment gradually became the primary prerogative of the state.[40] Thus, there were two modern aspects of felony disenfranchisement: it was egalitarian, in that it was imposed on people based solely on the nature of their crime, unlike the penal system of the *Ancien Régime*, in which status differences often determined a punishment's harshness;[41] and it was connected to the emerging ideas of citizenship in the German states. The logic of the connection with state citizenship worked in two ways. First, the punishment ensured that people deemed "morally unworthy" were excluded from civil privileges so that the "honor" of citizenship remained protected from their negative influence. Second, all defendants who were not

officially stripped of their privileges were entitled to a certain "honor." In this way, the punishment became intrinsic to "the age of citizenship."[42]

Disenfranchisement was not unique to German law. Compared to other countries with similar punishments, however, Germany did pursue a unique trajectory. It is safe to say that this punishment was an import from the French legal system. The punishment known as *dégradation civique*, which entailed the withdrawal of one's political rights (*droits politiques*), was first introduced in the First French Republic and mainly targeted the enemies of the revolution.[43] This political aspect was lost on German lawmakers, though. As in the legal reforms under Napoleon, the German codes reserved disenfranchisement for crimes with an explicitly apolitical character in the eyes of the legislative power. Time and time again, this apolitical character was defended as one of the core characteristics of this punishment in Germany.

In addition to the French *Code Pénal*, disenfranchisement is also known in the common-law tradition. In fact, it became—and still is—an important part of American penal law. As American historian Pippa Holloway argues, this punishment had the function (as it had in Germany) of safeguarding respect for citizenship as "suffrage by degraded individuals would undermine the dignity of their [i.e., other citizens'] own citizenship."[44] Nevertheless, in the United States, the punishment was increasingly instrumentalized, especially during Reconstruction, to disenfranchise a specific part of the American population.[45] This happened above all in the South and was directed against former slaves. Such racial profiling in the execution of this punishment was not common in Germany. In fact, the example at the start of this Introduction illustrated the opposite: people in Nazi Germany were excluded from this punishment on racial grounds. These two ways of instrumentalizing felony disenfranchisement demonstrate a crucial difference between two twentieth-century racial states. Whereas the American state aimed to make a certain group into second-class citizens by disenfranchising them, the Nazi state aimed to denaturalize a group by depriving them of their citizenship status altogether. In short, one can say that the German punishment of disenfranchisement differed from the French version in its apolitical pretension, and it differed from the American version in its egalitarian pretension, whereby all citizens were equally subjected to the punishment—provided they were citizens.

The Structure of the Book

In this book, I describe the history of the punishment of disenfranchisement from multiple perspectives. To do so, it was necessary for me to consult various kinds of sources and media. Governmental statutes and laws, bureaucratic decrees, important verdicts, transcripts from trials, newspaper articles, and academic treatises are all included in this study. I began my research in the archives of justice

ministries of the German Empire and the Prussian state, which are stored at the Bundesarchiv in Berlin and the Geheimes Staatsarchiv Preussischer Kulturbesitz in Berlin. In addition, the files of the local administrations of Aachen and Düsseldorf in the Landesarchiv Nordrhein-Westfalen yielded important insights. From there, I continued to analyze the intellectual debates in the most important academic journals of the time, important verdicts, political debates in the Reichstag, and broader media discussions in Imperial Germany.

Alongside the more "traditional" sources, I studied several petitions written by people who had been deprived of their rights and wanted them restored. I did this to include offenders' "voices," particularly since, as many scholars have noted, these are often ignored in the history of crime and justice. German historian Philipp Müller pointedly called this the "*longue durée* of silence."[46] For this book, this research into offenders' voices was not an end in itself but allowed me to better grasp the dialectics of inclusion and exclusion pertaining to citizenship, as well as the emotional impact of the punishment. These voices also provide concrete evidence of the ways in which convicts reflected on their crimes and punishments. I will compare several individual cases of German citizens who sought to have their rights restored and analyze the discursive resources they used in their petitions. This will render a fuller picture of the experience of citizenship in the German Empire and how various conceptions of citizenship related to perceptions of the moral permissibility of particular offenses.[47]

In presenting the different roles punishment played in German society, I engage in this book with many issues discussed in Warren Rosenblum's book *Beyond the Prison Gates* and Desirée Schauz's *Strafen als moralische Besserung*. For example, the book addresses prejudices against discharged prisoners in the German Empire and welfare workers' efforts to help reintegrate them into society. However, I am less concerned here with the "irresistible reform wave" that made its way through the German criminal justice system and led, in the end, to the system of welfare assistance for ex-convicts in the Weimar Republic. Whereas Rosenblum and Schauz emphasized the execution of punishment—the disciplinary techniques applied inside prison facilities and social programs that were implemented to assist (ex-)convicts—I argue that the legal categories and the content of verdicts also mattered. The sentence itself affected people, irrespective of what penal officers and welfare workers had to say about it.[48] In this book, I therefore focus more on the history of ideas about citizenship, honor, and trust in the long nineteenth century.[49] The book ultimately seeks to understand what stripping offenders of their "honor" tells us about the relationship between citizens and the law. It prioritizes the perspectives of offenders who sought to have their rights restored—in many cases without the assistance of welfare workers, but always in direct contact with judicial authorities.

This book also builds on many excellent historical studies on the emergence of the science of criminology in the German Empire that focus on the discursive

strategies employed in this field in constructing the notion of "the criminal." These studies elucidate the shifts that took place in the nineteenth century: from an emphasis on depraved people who willfully neglected their moral duties to an emphasis on "degenerates" who became "criminals" due to socioeconomic or biological factors. Although these insights provide important context for my study, felony disenfranchisement often proved challenging to scholars of legal studies and criminology. This is because the decision to impose the punishment of disenfranchisement was frequently based not on the offenders' reform potential—that is, whether they were "corrigible"—but on the seriousness of the offenses.[50] However, as I will show, these two ways of characterizing offenders were not always seen as conflicting with each other. In fact, when contemporary criminological works increasingly highlighted the reform potential of offenders, scholars began to explicitly contemplate whether these categories could coexist with the punishment of disenfranchisement and the underlying distinction between "honorable" and "dishonorable" behavior. Social theories of criminal justice thus stood in a complicated relationship to felony disenfranchisement. For a long time, scholars believed that the punishment might be compatible with their "modern" theory. This demonstrates how ingrained the punishment was for nineteenth-century scholars but also that the punishment could be carried out and instrumentalized in several ways.

The book is divided into six chapters. The first chapter, which deals with the time before 1871 (the year the Reich Penal Code was implemented), discusses the intellectual and political origins of the punishment of disenfranchisement. It engages with the ideas of prominent legal thinkers and philosophers from several of the German states and looks at the general intellectual justification of the punishment of disenfranchisement from the time of the Napoleonic Wars onwards. Central to the chapter are the way that notions of honor and trust were connected to disenfranchisement and how the idea of "civil honor" became the hegemonic understanding of honor.

The second chapter seeks to place the punishment of disenfranchisement in the more explicit context of the introduction of the Reich Penal Code and other legislation of Imperial Germany. It specifically looks at the interests of social groups in the codification of disenfranchisement and subsequent debates about how it should function. To do this, it analyzes why legislators and other authorities felt it was important to exclude disenfranchised felons from certain institutions and explains how some later appeals were intended to advocate more egalitarian membership in these institutions.

Whereas chapter 2 discusses the exclusionary effects of disenfranchisement and legislators' justifications for this, chapter 3 looks at the actual sentencing. Sentencing criminals to disenfranchisement was essentially a performative act that transformed citizens into dishonored felons. Chapter 3 therefore seeks to explain the political significance of these sentences by showing how the author-

ities utilized them to determine who could be viewed as a "political" agent. Chapter 4 then focuses on the individual experiences of disenfranchised felons. Against the background of the notions of stigma, passing, and rehabilitation, the chapter analyzes petitions by people who wanted their rights restored, examining their motivations by considering the ways in which disenfranchisement affected them. This chapter truly makes the case that the punishment was more than a relic from premodern times.

The final two chapters seek to uncover why felony disenfranchisement fell out of favor and was ultimately abolished from the penal code in the early German Federal Republic. Chapter 5 discusses the period of World War I and highlights how ex-convicts' petitions gradually became more political and how authorities, under pressure as a result of the war-time economy, started letting "dishonored" ex-offenders join the army, thereby abandoning a cherished principle. The final chapter gives an overview of some uses of the punishment in the Weimar Republic and describes major controversies such uses of the punishment engendered among politicians and legal scholars, which finally prompted them to believe that the punishment was too easily misused and should thus no longer be a part of penal law. The political use of felony disenfranchisement became clearest during the Nazi era. However, as the final two chapters make clear, it was not only the politicization of the punishment but also the failure of those on whom it had been imposed to internalize ideas of "dishonor" that made it controversial. This ultimately enabled people sentenced with disenfranchisement to band together and protest their sentences rather than simply "atone" for their crimes.

Notes

1. This effectively started with the Civil Service Law of 1933 and reached its peak with the Reich Citizens Act as part of the Nuremberg Laws in 1935. See Dieter Gosewinkel, *Einbürgern und Ausschließen: Die Nationalisierung der Staatsangehörigkeit vom deutschen Bund bis zur Bundesrepublik Deutschland* (Göttingen: Vandenhoeck & Ruprecht, 2001), 380–93.
2. This exchange is preserved in the files of the Ministry of Propaganda: BA-BL, R 55/1423.
3. See Diemut Majer, *"Fremdvölkische" im Dritten Reich: Ein Beitrag zur nationalsozialistischen Rechtssetzung und Rechtspraxis in Verwaltung und Justiz unter besonderer Berücksichtigung der eingegliederten Ostgebiete und des Generalgouvernements* (Boppard am Rhein: Boldt, 1981), 744–59.
4. This thought was also explicitly endorsed by the man who drafted this policy, State Secretary Roland Freisler, in a series of articles for the official legal journal of the National Socialist regime: Roland Freisler, "Das Deutsche Polenstrafrecht," *Deutsche Justiz* 103 (1941): 1139–42; *Deutsche Justiz* 104 (1942): 25–33, 41–46. He remarked that the deprivation of people's civil privileges was not included as a punishment since they did not possess these privileges to begin with (31).
5. Consider also the titles of the following treatises on the topic: Oswald Marcuse, *Die Ehrenstrafe. Eine rechtsvergleichende Darstellung nebst Kritik unter besonderer Berücksichtigung des*

geltenden Deutschen Strafrechts (Breslau: Schletter, 1899); Hermann-Victor Kießlich, *Die Ehrenstrafen* (Berlin: Siemenroth, 1911); Friedrich Behrendt, *Die Ehrenstrafen und ihre Weiterbildung* (Heidelberg: Rößler & Herbert, 1914); Irene Fuchs, *Die Ehrenstrafen der Vergangenheit und Gegenwart* (Cologne: Studentenburse, 1929); Emil Kühne, *Die Ehrenstrafen* (Würzburg: Triltsch, 1931).

5. Franz von Liszt, *Lehrbuch des deutschen Strafrechts*, 10th edn. (Berlin: De Gruyter, 1900), 253.
6. BA-BL, R 55/1423, message of Heinrich Himmler, 22 January 1942.
7. The research in this book is limited to punishments codified in the official Reich Penal Code. It is important to note that the German Empire was a legally pluralistic society with several "honor courts," each of which also had the power to punish people, and the Military Penal Code was especially important. Nevertheless, the punishments meted out by these special "honor courts" will not be taken into consideration here. A good account of the multinormative consequences of these honor courts is provided in Peter Collin, "Ehrengerichtliche Rechtsprechung im Kaiserreich und der Weimarer Republik. Multinormativität in einer mononormativen Rechtsordnung?," *Rechtsgeschichte—Legal History* 25 (2017): 138–50. On the honor courts of medical professionals, see Andreas-Holger Maehle, *Doctors, Honour and the Law: Medical Ethics in Imperial Germany* (Basingstoke: Palgrave Macmillan, 2009). On the honor courts of reserve army officers, see Hartmut John, *Das Reserveoffizierkorps im deutschen Kaiserreich 1890–1914* (Frankfurt a.M.: Campus, 1981), 368–430.
8. See the discussion of crime statistics in chapter 3.
9. *Kladderadatsch* 50.47 (21 November 1897), 190.
10. *Fliegende Blätter* 114 (1901), 92.
11. Hans Hattenhauer, "Justizkarriere durch die Provinzen. Das Beispiel Otto Mittelstädt," in *Preußen in der Provinz*, ed. Peter Nitschke, 35–62 (Frankfurt a.M.: Peter Lang, 1991).
12. Otto Mittelstädt, *Gegen die Freiheitsstrafen. Ein Beitrag zur Kritik des heutigen Strafensystems* (Leipzig: Hirzel, 1879), 84.
13. Ibid. As an alternative, he advocated "modern" forms of public punishment, like pinning an offender's name and picture to a pillory. He believed that this would have a greater deterring effect, which, according to his theory, would make it a more adequate form of punishment.
14. James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford: Oxford University Press, 2005), 20.
15. Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001). See specifically the discussion on pages 49–56. The connection between emotions and moral values also forms a central part of Hans Joas's theory of the genesis of values: Hans Joas, *The Genesis of Values* (Chicago: University of Chicago Press, 2000). Even though analyzing the emotional significance of punishment inevitably draws our attention to conceptions of "the self," it is good to keep in mind that the values these emotions express can (or must) be shared. Evidently, people also deal with norms and expectations about emotional expression, which is a central aspect in Barbara Rosenwein's concept of "emotional communities." See the introduction to Barbara H. Rosenwein, *Generations of Feeling: A History of Emotions, 600–1700* (Cambridge: Cambridge University Press, 2016). I will also address conflicts over the question of whether the expression of certain emotions is justified in the context of punishment and rehabilitation, but in general I will analyze these questions in light of how these expectations reflected a person's attachment to a certain moral code.
16. This is particularly interesting in the context of the German Empire as the question of common citizens' adherence to the general category of citizenship in the German *Obrigkeitsstaat* is still a pressing issue. See Sven Oliver Müller and Cornelius Torp, *Das deutsche Kaiserreich in der Kontroverse* (Göttingen: Vandenhoeck & Ruprecht, 2009), specifically James Retallack's chapter, "Obrigkeitsstaat und politischer Massenmarkt," 121–35.
17. Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1975).

18. See David Garland, *Punishment and Welfare: A History of Penal Strategies* (London: Gower, 1985), 131–57. A similar view of the entanglement of welfare policy with penal elements and ideas about natural selection is central to Detlev Peukert's analysis of welfare policies in the German Empire and the Weimar Republic; see Detlev Peukert, *Grenzen der Sozialdisziplinierung. Aufstieg und Krise der deutschen Jugendfürsorge von 1878 bis 1932* (Cologne: Bund-Verlag, 1986); idem, *Die Weimarer Republik. Krisenjahre der klassischen Moderne* (Frankfurt a.M: Suhrkamp, 1987), 132–48.
19. Désirée Schauz, *Strafen als moralische Besserung: Eine Geschichte der Straffälligenfürsorge 1777–1933* (Munich: Oldenbourg. 2008).
20. Warren Rosenblum, *Beyond the Prison Gates: Punishment and Welfare in Germany, 1850–1933* (Chapel Hill: University of North Carolina Press, 2008); idem, "Welfare and Justice," in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell, 158–81 (New York: Berghahn Books, 2014).
21. Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880–1945* (Chapel Hill: University of North Carolina Press, 2000).
22. Émile Durkheim, *The Division of Labour in Society*, trans. W. D. Halls (London: Macmillan, 1984), 63.
23. Ibid., 52.
24. Ibid., 63.
25. Cf. David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon, 1990), 23–47.
26. See Garland's criticism of Durkheim: David Garland, "Sociological Perspectives on Punishment," *Crime and Justice*, no. 14 (1991): 115–65.
27. Many scholars present felony disenfranchisement as a remnant of earlier punishments. See, for example, Mareike Fröhling, *Der moderne Pranger. Von den Ehrenstrafen des Mittelalters bis zur Prangerwirkung der medialen Berichterstattung im heutigen Strafverfahren* (Marburg: Tectum Verlag, 2014). It is also discussed as such in Albert Esser, *Die Ehrenstrafe* (Stuttgart: Kohlhammer, 1956). Consider, too, the title of this book: Ludgera Vogt and Arnold Zingerle, *Ehre. Archaische Momente in der Moderne* (Frankfurt a.M.: Suhrkamp, 1994). Otherwise, this punishment is seldom mentioned in historical research on crime and criminal justice in Imperial Germany. The available examples do not attribute much importance to it: Alexandra Ortmann, *Machtvolle Verhandlungen. zur Kulturgeschichte der deutschen Strafjustiz 1879–1924* (Göttingen: Vandenhoeck & Ruprecht, 2014), 202; Rosenblum, *Beyond the Prison Gates*, 132–33. An exception is Sylvia Kesper-Biermann, *Einheit und Recht. Strafgesetzgebung und Kriminalrechtsexperten in Deutschland vom Beginn des 19. Jahrhunderts bis zum Reichsstrafgesetzbuch von 1871* (Frankfurt a.M.: Klostermann, 2009). Kesper-Biermann's study focuses on the development of German legislation, whereas the present study also aims to examine how the punishment was carried out.
28. Karl Härter, "Security and 'Gute Policey' in Early Modern Europe: Concepts, Laws, and Instruments," *Historical Social Research* 35, no. 4 (2010): 41–65. See also Richard van Dülmen, *Der ehrlose Mensch. Unehrlichkeit und soziale Ausgrenzung in der frühen Neuzeit* (Cologne: Böhlau, 1999).
29. Marcel van der Linden, "San Precario: A New Inspiration for Labor Historians," *Labor: Studies in Working-Class History of the Americas* 10, no. 1 (2014): 9–21, 13.
30. Franz von Liszt, *Lehrbuch des Deutschen Strafrechts*, ed. Eberhard Schmidt, 26th edn. (Berlin: de Gruyter, 1932), 398. This phrase was not found in one of the earlier versions of the textbook.
31. Whitman, *Harsh Justice*, 9–12.
32. Georg Simmel, *Soziologie. Untersuchungen über die Formen der Vergesellschaftung* (Leipzig: Duncker & Humblot, 1908), 600–3.

33. Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge: Cambridge University Press, 1977), 10–30.
34. Birgit Aschmann, "Ehre—Das verletzte Gefühl als Grund für den Krieg," in *Gefühl und Kalkül—Der Einfluss von Emotionen auf die Politik des 19. und 20. Jahrhunderts*, 151–74 (Stuttgart: Steiner, 2005).
35. See Friedrich Zunkel, "Ehre, Reputation," in *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. 2 (Stuttgart: Klett-Cotta, 1975), 1–63; Ute Frevert, "Ehre—Männlich/Weiblich. Zu einem Identitätsbegriff des 19. Jahrhunderts," *Tel Aviver Jahrbuch für deutsche Geschichte* 21 (1992): 21–68; Martin Dinges, "Die Ehre als Thema der historischen Anthropologie. Bemerkungen zu Wissenschaftsgeschichte und zur Konzeptualisierung," in *Verletzte Ehre. Ehrkonflikte in Gesellschaften des Mittelalters und der Frühen Neuzeit*, ed. Klaus Schreiner and Gerd Schwerhoff, 29–62 (Cologne: Böhlau, 1995); Birgit Aschmann, *Preußens Ruhm und Deutschlands Ehre. Zum nationalen Ehrdiskurs im Vorfeld der preußisch-französischen Kriege des 19. Jahrhunderts* (Munich: Oldenbourg, 2013); Ann Goldberg, *Honor, Politics, and the Law in Imperial Germany, 1871–1914* (Cambridge: Cambridge University Press, 2010).
36. Ute Frevert, *Men of Honour: A Social and Cultural History of the Duel* (Cambridge: Polity Press, 1995).
37. A prominent defense of the thesis of the "feudalization of the bourgeoisie" is found in another study of the duel: Kevin McAleer, *Dueling: The Cult of Honor in Fin-de-Siècle Germany* (Princeton, NJ: Princeton University Press, 1994). For another rebuttal of the feudalization theory, see David Blackbourn, *The Long Nineteenth Century: A History of Germany, 1780–1918* (Oxford: Oxford University Press, 1998), 367.
38. Franz von Liszt, *Lehrbuch des deutschen Strafrechts*, 10th edn. (Berlin: De Gruyter, 1900), 253. Consider also Josef Kraus, *Das Rechtsgut der Ehre vom kulturgeschichtlichen und legislativpolitischen Standpunkte dargestellt* (Vienna: Manz, 1905), 34.
39. *Vorentwurf zu einem deutschen Strafgesetzbuch* (Berlin: Guttentag, 1909), 162.
40. This, of course, is a typical model depiction of the relation between the rise of state bureaucracy and the deregulation of the market, which developed differently in different countries in Europe. See Lutz Raphael, *Recht und Ordnung. Herrschaft durch Verwaltung im 19. Jahrhundert* (Frankfurt a.M.: Fischer, 2000), 41–75. For the German states more specifically, see Bernd Wunder, *Geschichte der Bürokratie in Deutschland* (Frankfurt a.M., 1986), 21–23. The idea of the "punitive state" emerging simultaneously with the creation of the liberal market is inspired by the works of Loïc Wacquant and Bernard Harcourt, who focus mostly on France and the United States; Germany was different in many respects. Nonetheless, the deregulation of the market also played an important ideological role in the modern justification of the punitive powers of the state in Germany. See Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge, MA: Harvard University Press, 2012); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham, NC: Duke University Press, 2009).
41. *Allgemeines Landrecht für die Preußischen Staaten* from 1794 was a case in point as it made clear distinctions between the norms that were applied to the noble estate and to members of the other estates.
42. The famous Dutch statesman Johan Rudolf Thorbecke used this term in an 1844 lecture on this topic: "Over het hedendaagsche staatsburgerschap," in *Historische schetsen*, 84–96 (1872). As his biographer pointed out, Thorbecke's thinking was firmly rooted in German philosophy and legal thought: Jan Drentje, *Thorbecke: een filosoof in de politiek* (Amsterdam: Boom, 2004).
43. Anne Simonin, *Le déshonneur dans la république. Une histoire de l'indignité 1791–1958* (Paris: Grasset, 2008), 52.
44. Pippa Holloway, *Living in Infamy: Felony Disenfranchisement and the History of American Citizenship* (Oxford: Oxford University Press, 2014), 15.

45. Not much has changed since then. As Jeff Manza and Christopher Uggen argued, if disenfranchised felons had been allowed to vote, the electoral outcomes of the 2000 presidential election would likely have been different: Jeff Manza and Christopher Uggen, *Locked Out: Felony Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006), 192.
46. Philipp Müller, "'But We Will Always Have to Individualise'. Police Supervision of Released Prisoners, Its 'Crisis' and Reform in Prussia (1880–1914)," *Crime, Histoire & Sociétés / Crime, History & Societies* 14, no. 2 (2010): 55–84. See Rebekka Habermas, "Von Anselm von Feuerbach zu Jack the Ripper," *Rechtsgeschichte—Legal History* 3 (2003): 128–63.
47. One of my key assumptions in this book is that petitions can be interpreted as ego-documents that provide essential information about the subjective experience of historical agents, even if they were written with a specific purpose in mind. See Otto Ulbicht, "Supplikationen als Ego-Dokumente. Bittschriften von Leibeigenen aus der ersten Hälfte des 17. Jahrhunderts als Beispiel," in *Ego-Dokumente. Annäherung an den Menschen in der Geschichte*, ed. Winfried Schulze, 149–74 (Berlin: Akad.-Verl., 1996). Like any text, petitions have multiple layers and contain traces of the subjective experience of the ex-offenders who wrote them. To help examine these layers, I was inspired by the method of "responsive reading," which has been applied mostly to early modern history by historians like Ulinka Rublack: Ulinka Rublack, "Interior States and Sexuality in Early Modern Germany," in *After the History of Sexuality: German Genealogies with and beyond Foucault*, ed. Scott Spector, Helmut Puff, and Dagmar Herzog, 43–62 (New York: Berghahn Books, 2012). The basic idea is to repeatedly read through a statement to identify the different features of the account the author gives of herself. Particularly important are the "voice of the 'I' speaking" and the ways petitioners speak about relationships and how they "experience themselves in the relational landscape of human life"; ibid., 55.
48. In their comprehensive studies of imprisonment in German history, Desiree Schauz and Thomas Nutz both explicitly acknowledge that the development of legislation is not their central concern. They point out that the absence of a Code of Prison Administration meant that it was largely welfare organizations and penal experts that determined how punishments were carried out in the nineteenth century. Legal scholarship and penal policy are separate universes, one could argue. See Thomas Nutz, "Strafrechtsphilosophie und Gefängniskunde. Strategien diskursiver Legitimierung in der ersten Hälfte des 19. Jahrhunderts," *Zeitschrift für neuere Rechtsgeschichte* 22 (2000): 95–110. Notwithstanding this important insight, an important aim of this book is to show that penal law ultimately played an important role in how crimes were evaluated in debates about what just punishments for them could be.
49. Rosenblum, *Beyond the Prison Gates*, 2. In this study, the author only briefly mentions the laws on felony disenfranchisement in the chapter on World War I (132–33). Curiously, he writes that these regulations were laid down in §44 of the Reich Penal Code, but, in reality, it was §34. Presumably Rosenblum was referring to §44 of the *Vorentwurf zu einem deutschen Strafgesetzbuch* of 1909, but this proposal was never ratified as law.
50. Studies on the history of criminology focus on how the notion of "the criminal" was constructed within the discipline. These studies shed light on the shift that took place in the nineteenth century from an emphasis on depraved people who willfully neglected their moral duties to an emphasis on "degenerates" who became "criminals" due to socioeconomic or biological factors. Most important in this regard is Wetzell, *Inventing the Criminal*; Peter Becker, *Verderbnis und Entartung. Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis* (Göttingen: Vandenhoeck & Ruprecht, 2002); Christian Müller, *Verbrechensbekämpfung im Anstaltsstaat. Psychiatrie, Kriminologie und Strafrechtsreform in Deutschland 1871–1933* (Göttingen: Vandenhoeck & Ruprecht, 2004); Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (Durham, NC: Duke University Press, 1992).