Chapter 1

"Rights of Citizenship Are Conditional Rights"

Disenfranchisement, Honor, and Trust in the Criminal Codes before German Unification

In 1866, shortly after the end of the Austro-Prussian War, a number of people who resided in the Duchy of Nassau and the Free City of Frankfurt (both annexed by the Kingdom of Prussia after the war) appealed to the Prussian king to have sentences handed down by local courts reversed.[1] One of them was a crop farmer named Johannes Wagner from Weiperfelden, a village in the territories of the Duchy of Nassau. For years, Wagner had functioned as the head (*Gemeindevorsteher*) of his local community. However, he had also served time in the penitentiary (*Zuchthaus*) as he had been found guilty of forging official documents (*Urkundenfälschung*) on multiple occasions. In addition to time behind bars, his sentence included the lifelong suspension of his political rights, which implied that he was no longer eligible to hold public office. Nonetheless, after his release from the penitentiary, he had served as the head of his community for years without any objections.

This situation changed when representatives of the Duke of Nassau in Usingen found out about Wagner's conviction. The central government had apparently not been aware of it previously, and, upon its discovery, Wagner was immediately removed from office and denied the further exercise of his function. After the annexation of Nassau by Prussian forces, though, Wagner quickly sent a request to the Prussian king to have his sentence reversed so that he could once again take up his office in his local community.[2] What is interesting about Wagner's case is that the deprivation of his rights (imposed on him by a local court) was only enforced after the state government of Nassau interfered in the affairs of this rural community. Before that time, his local community seemed uninterested in his criminal past.

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Johannes Wagner's story, therefore, offers an insight into the complex relationships that existed in the German states between legal punishments, the right to political participation, state power, and local politics. This chapter investigates why states in the early nineteenth century had a strong interest in enforcing the suspension of civil privileges for people like Wagner, as well as what the purpose of this type of punishment was. The suspension of rights as punishment played a crucial—yet often overlooked—role in the history of the German states' formation. In fact, the provisional character of citizens' rights to political participation was a quintessential element of states' efforts to create a moral order among their citizens, which, in turn, was supposed to safeguard the institutions through citizens' exercise of their civil privileges.

Civil Privileges as Provisional

According to the Prussian Penal Code of 1851 (which was still in effect in 1866), felons had to forfeit several of their rights to public participation after their release from prison. This measure, designed to turn felons into second-class citizens, was an important element of the penal system of the German states before unification. The specific rights listed in the code included, among others, the right to wear the state's cockade, the right to join the army, the right to hold public office, the right to vote or be elected to positions pertaining to public affairs, the right to be a witness for notarial records, and the right to be the guardian or custodian of a child.[3] Together, these rights belonged to a special category: the "civil privileges" (*bürgerliche Ehrenrechte*).[4] All German states had criminal codes with similar regulations enabling judges to strip offenders of their civil privileges.

It is important to note, in relation to the context of these codes, that political citizenship was never associated with a stable set of privileges in the first half of the nineteenth century. The regulations on the distribution of privileges of citizenship varied greatly across the various European legal regimes, and the different German-speaking states did not have a uniform notion of the rights of political citizenship in the first half of the nineteenth century.[5] The privileges enumerated in the Prussian Penal Code of 1851, for example, were only gradually introduced during the period of the Restoration. Nonetheless, a common characteristic of nearly all the codes regulating the distribution of these privileges was an emphasis on their provisional character.

The provisionality of civil privileges first emerged, as Andreas Fahrmeir argues, in the regulations of the First French Republic (1792–1804). This code generated a body of "respectable and independent adult men" with the privilege of participating in the political affairs of the republic.[6] This body of men was first and foremost defined by their privileges: their rights to political participation. It might be tempting to focus on the notions of "independent" or "adult" in

this description of political citizenship, but equally important is the notion of "respectable." The inclusion of this term, after all, indicates most clearly that the rights to political participation were essentially granted on provisional grounds; political citizenship was dependent on one's respectable reputation. Hence, the French regulations on political citizenship included the provision that one could lose these rights "by forfeiting one's honor through a criminal conviction or temporarily through servitude or bankruptcy."[7] Felony disenfranchisement therefore characterized much of the politics of both the First French Republic and the Restoration monarchy.[8]

In many European states, political rights were gradually expanded to include a larger class of citizens, particularly in the German-speaking world, where changes tended to derive from reform from above rather than revolution from below.[9] The most important differences in the historical development of regulations between France and the German states in the period of the *Vormärz*, however, was that the German debates strongly emphasized citizens' rights to participate in the political life of the local community, the so-called *Gemeinde*. This contrasted sharply with the more state-oriented regulations in France.[10] For instance, citizenship in Prussia was heavily influenced by the idea of "local autonomy," which was endorsed in the important Stein-Hardenberg Reforms of the first decade of the nineteenth century and the introduction of the Municipal Ordinance in 1808. This ordinance, designed by Baron Karl vom und zum Stein, reformed traditional citizens' law (*Bürgerrecht*) and was intended to strengthen the autonomous administration (*Selbstverwaltung*) of local communities by giving male residents of towns (who had a certain amount of property at their disposal) the right to political participation (*Teilnahme*). As German historian Reinhart Koselleck argues, the ultimate aim of this policy was to create a "local rule of the common man."[11]

Yet the notion of civil privileges (*bürgerliche Ehrenrechte*) was not included in Stein's Municipal Ordinance. The notion of Bürgerrecht discussed in the ordinance mostly concerned the wealthy inhabitants of cities, but this was not yet civil privileges as they later came to be defined. The Bürgerrecht was rather an expansion of the liberties that inhabitants of cities had been granted ever since the Middle Ages.[12] In fact, the rights of state citizens (*Staatsbürger*) in the nineteenth century emerged out of a combination of the municipal rights granted to inhabitants of the cities and the rights to participation in state affairs.[13] After all, the state reforms in the German states from the onset of the modern era (the so-called *Sattelzeit*), especially the reforms in the German client states of the French Empire in the Confederation of the Rhine from 1806 onwards, mainly aimed to expand a large bureaucratic system of government.

For instance, during this period, public officials were increasingly appointed on the basis of their individual competence (the *Leistungsprinzip*) instead of their hereditary privileges.[14] They started functioning as servants of the state (*Staatsdiener*) rather than as servants of princes (*Fürstendiener*), as Max Weber distin-

guished the two kinds of civil servants, and for the first time people who were not members of the traditional aristocracy became eligible to hold public office.[15] In this sense, a new class of privileged citizens emerged in these states.[16]

Alongside the privileges of participation in government (either as a civil servant or as a representative), yet another civil privilege was fundamental to the discussion of felony disenfranchisement: the right to join the army. In 1807, Prussia created a national army for the first time; modeled on the French revolutionary armies (the Jacobin model), it was comprised of national citizens.[17] From that period onwards, most German states introduced conscription for their own citizens; most soldiers had previously still been recruited from foreign nations.[18] The right (and the duty) to join the army—together with the right to wear the state cockade—thus became one of the central privileges of state citizenship. Nearly all young male citizens were required to join the army, though they were carefully inspected before they enlisted.[19] This, too, demonstrates how civil privileges were not just an expansion of the privileges that inhabitants of the German cities enjoyed but a combination of the rights granted to the wealthy citizens in towns (such as election rights) and other privileges that concerned participation in the (nation-)state. All in all, these privileges granted a large set of men something quite new: "state citizenship" (*Staatsbürgerschaft*).[20]

In the nineteenth century, however, none of these civil privileges were listed in a bill of rights or in any of the German constitutions.[21] As mentioned above, Stein's Municipal Ordinance included regulations about privileges for landowning men who resided in Prussian towns, but these were not yet civil privileges proper. The contents of the civil privileges were also left unmentioned in the 1850 Prussian Constitution and in the revised Prussian municipal ordinances. Hence, it is crucial to note where these civil privileges were commonly defined, namely, in the penal codes, as in the case of both the 1851 Prussian Penal Code and the 1855 Saxon Penal Code.[22] There is no better evidence that, in the minds of the German authorities, the question of civil privileges was intimately connected with the topic of crime and punishment. Every legal codification of citizenship rights was in one way or another combined with a discussion of the criminal acts that might cause someone to lose these rights: a clear sign that these civil privileges were essentially understood as provisional.

Indeed, according to most natural law accounts of the notion of privilege, the fact that rights could be suspended was one of the key aspects of the definition of privilege.[23] "Citizenship right is a conditional right," the prominent legal scholar Karl Salomo Zachariae argued, for instance, in his influential *Vierzig Bücher vom Staate* of 1842: "he who enjoys a right only conditionally loses this right as soon as the condition on which the right is based ceases to exist."[24] Of course, there was a certain paradox in the fact that most of the privileges of state citizenship were also duties—something Zachariae also pointed out.[25] Another paradox was that all people—men and women—could be disenfranchised since the penal

law applied to all subjects. The influential Wilhelmine legal scholar Karl Binding considered this a contradictory element of the policy of disenfranchisement when he wrote about it in his legal textbook.[26] However, one could argue that this element—the punishment also being handed down to subjects who were not in possession of these privileges—supports the idea that the punishment had a larger aim. Beyond stripping people of their privileges, it was also designed to have a greater emotional impact on the punished subjects and on the society that administered it.

Nonetheless, the character of these rights as privileges dominated most of the discussions of state citizenship in this period. It is striking to see how closely the topic of crime and punishment was related to the discussion of the nature of civil privileges—much more than it was in the twentieth century, when civil rights increasingly came to be understood as unconditional.

The Broken Trust Argument

In the legal configuration of the German states of the Restoration and *Vormärz* (1813–48), there was an intimate connection between civil privileges and penal law, but the logical nexus between criminal offenses and the revocation of civil privileges is perhaps puzzling to present-day observers: why were people deprived of their rights to vote and join the army if they were guilty of a criminal offense? This connection was particularly difficult to justify from the perspective of the penal theory of retribution: what was proportional about stripping a person's right to join the army if he committed perjury? Such questions demanded a more thorough philosophical grounding of the stripping of civil privileges that described the damage of crimes like perjury, robbery, and usury in more abstract, state-related terms.

Lacking clear statistics about the people whose civil privileges were revoked, it is best to look at why people believed felony disenfranchisement was crucial to the penal systems of the German states. In this context, it is problematic that few legal scholars felt the need to justify its existence; felony disenfranchisement was apparently rather uncontested in German penal policy. One Hessian judge, Friedrich Noellner, however, did critique felony disenfranchisement, and in the foreword to his book on this punishment, he called it one of the most neglected topics in German academia precisely because it seemed so self-evident to many legal scholars that serious offenders were deprived of the right to participate in political life.[27]

During the 1830s and 1840s, a small but increasing number of scholars, like Noellner, began suggesting that disenfranchisement should be implemented differently, or even abolished. The overarching aim of these scholars was to highlight the "moral reform" of offenders.[28] Noellner's argument, for instance, was that dis-

enfranchisement implied ex-convicts were still morally condemnable after they were discharged from prison, so their disenfranchisement sabotaged their process of moral reform.[29] Nevertheless, most such criticism fell on deaf ears where the German authorities were concerned.[30] In fact, after the revolutions of 1848–49, legal scholars increasingly emphasized the fundamental importance of elements in the penal system that dishonored the criminals.[31]

Only after such critics suggested that the policy of disenfranchisement required serious readjustment did some scholars feel the need to remind the German scholarly community of why the punishment existed in the first place. Before 1848, there was one author who made significant contributions to this debate and defended the policy of felony disenfranchisement in its most extreme forms: Adolf (sometimes spelled Adolph) von Wick, an auditor serving in the judicial government of the Duchy of Mecklenburg, who was occupied with penitentiary reforms in the municipality of Bützow.[32] Wick wrote an exhaustive account of the policy of felony disenfranchisement titled *Über Ehrenstrafen und Ehrenfolgen der Verbrechen und Strafen*, which he published anonymously in 1846. In it, he tried to justify this punishment for a certain class of offenders and unambiguously defended it as having an important function in modern society.

Wick published his treatise when several authors were beginning to criticize aspects of this punishment. Not surprisingly, the debates regarding its purpose went hand in hand with debates on the distribution of civil privileges. For instance, when law professor Carl Hepp, an influential commentator of the penal code of Württemberg, started agitating against the "wretched condition" of the penal system in the 1840s, he complained about both the confusion surrounding what political citizenship entailed exactly and the need to define the grounds for suspending civil privileges more clearly. In his view, these problems were intimately connected because political citizenship entailed more privileges than it had previously. By then, for instance, it also included the right to be member of a jury, or, in some cases, the right to take up arms as part of a civilian militia (a right granted to the citizens of Württemberg in 1848).[33]

In Wick's treatise defending the punishment, one notion clearly stands out: trust. It played a crucial role in Wick's entire understanding of civil privileges as provisional and accounted for the theoretical connection between criminal behavior and felony disenfranchisement. Civil privileges were granted to certain residents of the German states, he argued, as a token of the trust these states had put in them; consequently, the bestowal of these privileges had to be understood as nothing short of an "honor." Clearly, in his account, the notions of honor and trust were closely intertwined: "all honor and respect are in their deepest foundations based on trust."[34] Or elsewhere:

> Honor is trust in man and common honor or, more correctly, civil honor is the form of civil trust that develops a society of men. Every people and every estate is permeated

> by a common spirit, and this spirit is accompanied by a common trust in which each individual participates without having to prove his worthiness.[35]

In other words, Wick characterized civil privileges as something a sovereign awarded citizens not on the basis of some accomplishment but as a benevolent (albeit provisional) gesture. This meant that the citizens' relationship to the state was neither one of complete submission nor one of unconditional entitlement. Rather, the state put its trust in its citizens by granting them the privilege to participate in its administration and elections, or to join its army.

Wick was not unique in drawing this connection between citizenship and trust. In fact, many authors emphasized the crucial importance of trust for the exercise of citizens' civil privileges.[36] Likewise, political commentators in the German states frequently made the connection between trust and civil participation before unification. A clear example of this is the definition of citizenship (*Staatsbürgerschaft*) that Julius Merkel, the burgomaster of the Saxon town of Zwenkau, gave in 1863: citizenship was "the honorable trust" (*das ehrende Vertrauen*) the state places in citizens and subjects by letting them participate in public affairs.[37]

The difference between this way of thinking about political trust and that of current political theory is significant. Nowadays, the question is often approached from the perspective of citizens trusting their government with the discretionary powers they grant it.[38] Early nineteenth-century German debates about political citizenship, however, emphasized that the state (however unclear the definition of that concept was) put its trust in its subjects—especially when "common" citizens got the right to participate in several aspects of public decision-making. Evidently, this theory fit well with the model of constitutional monarchy dominant at the time. It was, in the end, the monarchs who bestowed privileges on their citizens.[39]

In debates on the expansion of civil and political rights from the late eighteenth century to the period of German unification, the notion of public trust figured prominently in citizens' demands for more rights to political participation. The Prussian statesman Johann Gottfried Frey, for instance, argued in 1808 that it was impossible to have a good political administration without "mutual trust and reciprocal respect" between the state and its citizens.[40] Furthermore, during the revolution of 1848, the notion of the "trust state" (*Vertrauensstaat*) was actively deployed by citizens demanding more political rights.[41] Hence, in both cases, the notion of trust was not used to strengthen the discretionary power of the government but to demand more political rights for its citizens.

Civil privileges were thus commonly seen as privileges awarded on the basis of a relation of trust between citizens and the state. In turn, this meant that the principal justification for revoking these privileges for criminals was the idea that they were being punished for breaking the trust upon which their citizenship status was based. Wick's depiction of the relation of trust was thus infused with

arguments that were common in contract theories of government, namely, that trust was an essential resource for the functioning of the contract. Nonetheless, he added the extra dimension of "honor" to secure this connection. In other words, felony disenfranchisement restored the foundation of trust on which the political community was based by excluding persons who had offended against these terms.[42]

Dishonorable Crimes: Perjury as a Prime Example

Wick gave considerable weight to the question of which offenders should be subjected to felony disenfranchisement. He concluded that it should be specifically reserved for people who had committed offenses against the public trust.[43] It is important to keep in mind that Wick intended for his theory to serve as a comprehensive account of the existing laws in the several German states, suggesting that his ideas could also be traced back to many of the actual laws. To mention one example, the text accompanying the Municipal Ordinance of the Kingdom of Saxony from 1837 stated that people who committed a "disgraceful crime were to be denied all public trust."[44] In short, Wick was not defending a merely abstract utopian idea but a theory based on his understanding of the laws.

One defining aspect of Wick's theory was that he conceived only of some criminal offenses as breaches of trust. As the text of the Saxon law showed, there was a special category of so-called disgraceful crimes, which felony disenfranchisement specifically targeted. In Wick's account, for instance, excessive violence or crimes of passion committed in public were not seen as offenses against public trust: "He who inflicts bodily harm on his enemy by open violence is not generally considered dishonored; but if he does it insidiously, he is committing a dishonorable act."[45]

So, what *was* an offense against public trust? For Wick, the offender's intention (or, more precisely, disposition) was the ultimate criterion for determining whether a crime also offended against public trust, so the distinction could not be made on the basis of the act alone. Although punishable, violent behavior resulting from genuine passion was not in itself an offense against public trust, but if the action also brought some kind of private advantage to the perpetrator, this would testify to a so-called dishonorable disposition (*ehrlose Gesinnung*).[46] Again, this was not just Wick's opinion; the concept of "dishonorable disposition" was included in most German penal codes.[47]

This notion of disposition (*Gesinnung*) is crucial to understanding the system of criminal justice in nineteenth-century Germany. Although it was also often used to refer to one's general political worldview and membership in a political association, the concept was especially fundamental to the moral-philosophical discourse that determined most of the ideas on the origins of criminal behavior

for a good part of the nineteenth century.[48] This discourse helped shape the dominant image of "the criminal" in scholarly works on criminal policy from the early nineteenth century. According to historian Peter Becker, the general image of the criminal at that time was that of a bourgeois man who voluntarily chose a life of crime.[49] "The criminal" refused to obey the maxims of action dictated by good conscience, thus indicating that he had an "evil disposition." Within this framework, a criminal career was essentially seen as a self-imposed destiny as the criminal presented the diametric opposite of the model citizen who listened to the voice of his conscience and was bestowed with an "honorable" disposition.[50]

In his study of early nineteenth-century criminologists, Becker discussed the notion of crime as an overarching category and made little distinction between different crimes.[51] For Wick, however, there were three types of offenses that had to be understood as breaches of public trust by definition and therefore unconditionally testified to a dishonorable disposition. Wick believed this principle should be upheld regardless of one's social rank. Thus, in his view, people belonging to the aristocracy or the educated classes (*die gebildete Stände*) should also be subject to felony disenfranchisement if found guilty of committing any of these offenses.[52] His analysis highlighted all offenses that included any form of deceit: "It is natural, then, that nothing so much opposes honor as that which undoes faithfulness and trust, namely, deceit."[53] This category included swindle, forgery, and counterfeiting, but the key offense in this category was perjury: a breach of the oath that was crucial to many public affairs. The oath, after all, was the clearest sign of the trust that the state put in its citizens, so perjury was conceived as the ultimate breaking of this trust. As Wick put it, every act of perjury presupposed a "total depravity of disposition" (*totale Verworfenheit der Gesinnung*).[54]

For this reason, a more detailed examination of the function of the laws on perjury in the conceptual relation between states and their citizens is enlightening. In fact, it is very likely that the centrality of "public trust" in Wick's theory of felony disenfranchisement derived from debates on punishments for committing perjury, which had occupied the minds of many legal scholars in the German states since the mid-eighteenth century.

For most of European legal history, perjury was understood as an offense against God and was treated in roughly the same way as blasphemy.[55] For example, a definition of the act of perjury as a religious offense can be found in the *Constitutio Criminalis Theresiana* (henceforth *Theresiana*), the criminal code for the territories of Austria and Bohemia that the Habsburg monarch Maria Theresia introduced in 1769: "Perjury is when one knowingly and with deceptive intent takes God as witness of an untrue statement."[56] This code further described offenses against God as the worst kind one could commit.[57] For many nineteenth-century legal scholars, this definition served as the primary example of false testimony in the early modern period.[58]

However, over the course of the eighteenth century, the conception of perjury underwent a fundamental shift in Western Europe. The conception of perjury as a religious offense was seriously challenged under the influence of the Enlightenment. Many influential Enlightenment thinkers argued that perjury should no longer be understood as an offense against God but should rather be understood either as an offense of people against other citizens (a civil offense) or as an offense against the state in general (a public offense). For instance, in their prize-winning essay, Enlightenment scholars Hans Ernst von Globig and Johann Georg Huster described the witnesses' breach of their duty to tell the truth as "the greatest injury to public fidelity and trust." Considering it an egregious offense, they believed that it deserved a very harsh punishment.[59] Many authors subsequently took up the phrase "public fidelity und trust" (*öffentliche Treue und Glauben*) as the primary good damaged by the act of perjury.

Enlightenment thinkers like von Globig and Huster thus redefined what had previously been viewed as acts concerning the relation between men and God as acts concerning the relation between the state and its citizens. This was not only part of the general turn away from the influence of religion in criminal law; more importantly, it was also part of the complete redefinition of the relation between people and the state envisioned by these Enlightenment thinkers.

The influence of Enlightenment ideas on legislation concerning perjury can be seen in what happened with the *Theresiana*. Although the *Theresiana* succeeded in unifying the Austrian system of criminal justice, it also elicited a great deal of controversy. It was widely perceived as a reactionary move against the spirit of Enlightenment in Europe, with its descriptions of the proper use of torture being regarded as particularly regressive. The code did not last long: the *Theresiana* was only in effect in Austria for seventeen years; it was replaced by the code of Emperor Josef II in 1787. This code, which quickly gained a reputation for being very progressive, took a completely different approach to the question of perjury. According to the so-called *Josephina*, one could speak of perjury when a person deceived another person "with base intention in order to damage or infringe upon the other's property, honor, freedom or rights."[60] It is no coincidence that this change occurred under Josef II's reign—he also introduced the most drastic bureaucratic reforms of the era.[61] Although perjury was not defined as a public offense per se, the *Josephina* broke completely with the traditional idea that perjury was an offense against God. Hence, Liszt, in his 1876 academic treatise on the history of the legal concept of perjury, argued that it was hard to find a more dramatic change in criminal law (or even in central European culture, in general) than the shift from the *Theresiana* to the *Josephina*, particularly in this respect.[62]

The two interpretations of perjury as a civil offense and a public offense coexisted for a long time. But, in the end, the idea that perjury was a public offense gained greater currency in German legal scholarship. The most important contribution to the debate in Germany came from the Heidelberg professor of law Carl

Joseph Anton Mittermaier, who believed that perjury was undoubtedly a crime directed against the state and, thus, belonged to the category of crimes against "public fidelity and trust." Mittermaier, in fact, placed perjury on the same conceptual level as counterfeiting: "The state, which bases its most important claims on statements under oath and on money, loses the most important means standing at the foundation of its trustworthiness."[63] Consequently, Mittermaier cast public trust as the primary foundation of the state, with money and the oath of its citizens being the two principal symbols of this trust. In essence, forging money or breaking an oath endangered the very foundations of the state.

Mittermaier's position became the dominant opinion in legal literature toward the middle of the nineteenth century. In his lengthy book on all crimes contained in the German penal codes, Carl Hepp, mentioned above, listed crimes against public trust as one of the six major categories of criminal offenses.[64] Furthermore, the influence of scholars like Mittermaier led other German states to quickly follow the *Josephina* and drop the religious description of the act of perjury in favor of describing it as an offense against public trust. The most telling example of this can be found in a criminal code drafted for the Kingdom of Bavaria in 1828:

> Violating such a sign (namely, of the truth) is no longer simple deception limited to a particular case. Rather, it undermines all possible statements that are dependent upon the trustworthiness of the perjurer. Indeed, they do violence to the believability of the oath in general because a demeaned instrument loses its value in all arenas.[65]

This definition also clarifies why people believed depriving perjurers of their civil privileges seemed commensurate with their crimes: perjurers had offended against the general trust of their political community. This belief was also included in several modern German penal codes, which clearly distinguished this offense from other criminal offenses, for example, against property. Ultimately the offense was included in the Reich Penal Code as one of the offenses against "public order."[66] The type of punishment reserved for it (disenfranchisement) was additionally meant to stigmatize offenders as people who had disrespected the moral order of the state.

Other Dishonorable Offenses: Profit-Seeking Crimes

The example of perjury is particularly informative since it clearly demonstrates the legal rephrasing of the definition to fit the "broken trust" theory of criminal offenses that Wick emphatically supported.[67] It is, nonetheless, important to consider that perjury was not the only offense categorized as an offense against public trust. As mentioned above, Wick grouped it together with other forms of deceit like swindle, forgery, and counterfeiting, yet he saw these crimes only

as the first category of offenses testifying to a dishonorable disposition by definition. The second group he mentioned were offenses directed against property, primarily theft.

The inclusion of crimes against property was based on the idea that property rights were an essential component of the social contract. For Wick, it was self-evident that property and trust were two sides of the same coin. He argued that property was the basis of all contracts in society and that people had to trust one another to know what belonged to whom.[68] Consequently, Wick made no exception for people who appropriated things that did not belong to them out of poverty or misery, claiming that theft and robbery were categorically offenses against public trust. Indeed, public perceptions of robbery underwent a significant shift after the seventeenth century. As historian Peter Spierenburg argues, "taking pride in not being considered a thief was the earliest manifestation of a new masculinity."[69] Spierenburg explains this change by pointing out that "economic solidity" had become a primary source of honor for men. In other words, honor increasingly came to be associated with property ownership. Indeed, many historical works on the rise of modern penal regimes point to the growing preoccupation of the middle classes with property crimes during the eighteenth century.[70] Historian Rebekka Habermas also demonstrates that in nineteenth-century Germany, litigants in robbery trials were ultimately more concerned with honor than with anything else.[71] This illustrates that robbery was constructed as the ultimate example of a transgression against the norms of respectable citizenship.

Interestingly, though, Wick did not generally distinguish between robbery (*Raub*) and theft (*Diebstahl*) but regarded both simply as forms of disrespect against the sanctity of private property. In this respect, Wick's words echoed the regulations of most of the penal codes of his time. But other thinkers had different opinions. A few decades earlier, the influential proponent of German Idealism, Johann Gottlieb Fichte, for example, distinguished theft and robbery in his political philosophy in terms of their honorableness: one was dishonorable and the other was not. Someone who appropriated something in secret, Fichte argued, committed theft, whereas someone who openly (and often violently) appropriated something committed robbery; the secrecy of theft abused people's trust, making theft dishonorable, while the openness of robbery prevented such abuse of trust, so it was not inherently dishonorable: "Robbing is vigorous; it counteracts open violence with a force that never trusts; theft is cowardly; it uses the trust of the other to hurt him."[72] Fichte's distinction, however, was relatively old-fashioned; most penal codes from the first half of the nineteenth century differentiated between the two crimes on the basis of the degree of violence involved rather than the degree of secrecy. Nonetheless, it is interesting to see how the notion of trust figured prominently in Fichte's account of penalties for crimes against property. Furthermore, the notion that certain crimes were more

dishonorable because they abused someone's trust remained a vivid element of legal thought in nineteenth-century Germany.

The last category in Wick's account of crimes that unconditionally testified to a dishonorable disposition were all offenses with a profit motive. It was a rather complicated category since Wick clearly did not believe that all forms of financial benefit were indicative of a dishonorable disposition. He thus made a distinction between the notion of "acquisition" (*Erwerb*) as the compensation an individual received in exchange for labor or goods and the notion of "profit" (*Profit* or *Gewinn*), which he defined as any gain at the cost of others.[73] The most central of profit-motivated offenses was usury. Nonetheless, Wick was also suspicious of "normal" acts of acquisition. In modern society, he argued, acquisition often degenerated into profit, which is why he considered crimes with the aim of profit-seeking quite characteristic of modern society, rendering efforts to combat usury and curb all forms of excessive acquisition the modern state's primary pursuits.[74]

The most important part of Wick's elaborations on dishonorable crimes was this notion of the pursuit of profit (*Gewinnsucht*). Wick used it to identify which offenders should ideally be punished with felony disenfranchisement, and it is no coincidence that his ideas were in line with most penal codes of the German states. Many German penal codes used this concept as a measuring stick for determining whether a crime was dishonorable or not. Beyond this, Wick thought that the condemnation of a pursuit of profit was important for maintaining the estate-based social order. In his view, someone who acted in pursuit of profit moved away from their traditional place in society.[75] The nobility and civil servants should not engage in commerce, he argued, and craftsmen were not supposed to exercise crafts other than their own. People only left their position in society to pursue profit, according to Wick, and such profit-seeking behavior fundamentally disrupted the social order. After all, there was "no profit estate," he emphasized.[76] Thus, Wick believed that felony disenfranchisement and its condemnation of profit-motivated action clearly contributed to maintaining a certain kind of moral economy in German society.

The survey of offenses that Wick considered dishonorable by definition raises the question of whether he also believed that some offenses were not dishonorable by definition. Fichte's abovementioned comments on the distinctions between robbery and theft, in fact, already suggest an answer as the underlying distinction between the secrecy and openness of an offense determined whether it was dishonorable. According to this theory, the paradigmatic example of an overt offense was the political offense: the political offender openly protested against the government and made no secret of his convictions. There was nothing clandestine about political crimes as they were considered clear acts of conscience.[77] As a result, many people argued that political offenders need not display a sense of remorse for their actions. This was a point the liberal professor Karl Bieder-

mann strongly emphasized when he covered the trial of the conspirators of a Polish uprising in 1847, the so-called *Polenprozess*, which was one of the first political trials on such a large scale in the state of Prussia: "Everybody knows that political crimes do not necessarily require a dishonorable disposition to be carried out; one cannot therefore assume that political offenders will always redeem their offenses with expressions of remorse."[78] Indeed, political offenses were the most important crimes omitted from Wick's set of dishonorable crimes. Like Fichte and many others, Wick also seems to have believed that political crimes were not dishonorable, consistently discussing them alongside dueling, another crime typically motivated by a supposedly honorable disposition.

The list of offenses not deemed dishonorable crimes very frequently coincided with a certain class privilege as upper-class citizens were seldom subject to felony disenfranchisement. Some of the penal codes of the early nineteenth century even explicitly excluded the "educated classes" from felony disenfranchisement.[79] Accordingly, these regulations expressed a certain prejudice that people from these classes were not capable of committing dishonorable offenses. In practice, an "honorable disposition" could signify both a privileged class position as well as an individual moral disposition in the penal codes.[80] Wick made no clear distinction between an individual's disposition and class privilege since it would otherwise have made no sense for him to describe citizenship as a privilege. One had to maintain traditional ideas about estate privilege for the broken trust argument to work. In the end, this was also the criticism he raised against critics of felony disenfranchisement: they failed to understand that citizenship and the privileges it entailed were a form of estate honor (*Bürgerehre*): "The modern notion of honor is in essence estate honor."[81] Hence, by focusing on the fact that citizenship (*Staatsbürgerschaft*) was an estate privilege, Wick managed to combine modern ideas about government and trust with traditional, feudalistic ones.

Sustaining a Moral Order

Wick's defense of felony disenfranchisement as a sensible form of punishment highlighted its key features. By repeating that the perjurer, above all, deserved to have his civil privileges revoked, for instance, he distinguished the citizens who abused the trust bestowed upon them from professional robbers (*Gauner*), the malicious bane of bourgeois society.[82] Clearly, felony disenfranchisement primarily aimed to punish those who had enjoyed these privileges and failed to respect them: being barring from taking up a public office, wearing the state cockade, or signing legal documents would obviously be irrelevant to people who did not enjoy these privileges in the first place.

The function of felony disenfranchisement was undeniably communicative:[83] it symbolically differentiated between dishonored and respectable citizens. In the

eyes of many, this distinction was crucial for maintaining the positive image and respectability of the privileges of citizenship. As a result, the counterpart of the broken trust argument was that citizens had a duty to respect their civil privileges. If law-abiding citizens shared the same privileges as dishonest people, the value of these privileges would be undermined, many claimed. The influential German criminal law scholar Gallus Aloys Kleinschrod, for example, wrote in 1799: "The honest, law-abiding citizen cannot have respect for his own honor and that of others if he sees that serious criminals enjoy the same privileges as he himself."[84] This argument came up again and again in various formulations when penal codes were discussed in the several German states. During the debates about the introduction of a penal code for the Kingdom of Hanover, for instance, Hanoverian politician Johann Carl Bertram Stüve remarked: "The degree to which one leaves the honor of the criminal unscathed is the same degree to which one diminishes the honor of law-abiding citizens."[85] Thus, Stüve, too, presented felony disenfranchisement as a symbol of the moral order of society.

This idea of punishment as a communicative practice fits well with Émile Durkheim's ideas about punishment as a "reaction of passionate feeling."[86] For Durkheim, as he explained in his theory, punishment was not a utilitarian or goal-driven exercise for combatting particular crimes but a way of upholding the moral order of society as a whole. This is also why Durkheim felt that punishment had a "sacred" element to it: "acts that it punishes always appear as attacks upon something which is transcendent."[87] In the French context, historian Anne Simonin therefore used the term *éthocratie* to describe the application of these kinds of punishments.[88] The concept of dishonored citizens served to maintain the fiction of society having a well-defined order. After all, a society that believed itself free of crime "would fall into chaos bereft of the signs of its own existence as an authoritative order."[89] This explains why this punishment was not introduced to penalize people who did not have any civil rights in the German context: it explicitly served to reinforce the moral order for citizens of the German states.

Wick defended this communicative function of the punishment, and other eminent scholars shared this view, as evidenced by this remark from the influential conservative Prussian scholar Julius Friedrich Stahl:

> Losing the respect of others and one's respectable position in society is the worst punishment for a crime committed. Even if this respect is something internal, something that the state has no power over, the simple act of making the crime public and carrying out the punishment diminishes the criminal's respectability. However, taking away certain rights, which diminishes not only the criminal's respectability but also his legal possibilities, does lie within the sphere of the state's power.[90]

Nevertheless, this moral function of the punishment of depriving offenders of their civil privileges may have had little impact on many offenders who were likely indifferent to the consequences. In fact, Wick and many other legal schol-

ars acknowledged this. Why would people of the lower classes care about their honor, especially if they did not even enjoy these civil privileges? Consequently, class perceptions were quite significant in the evaluation of the effects of felony disenfranchisement.

Of course, as mentioned, punishment in Durkheim's theory serves not just to correct certain wrongdoers but to reinforce the cohesion of society. Nonetheless, Wick also clearly had in mind a notion of which people should be most affected by the punishment. Wick's focus on offenses like perjury and forgery made it clear that he primarily had people who abused civil privileges for their own ends in mind. Given that this legal punishment marked offenders as essentially untrustworthy, it had a very direct and sometimes severe effect on members of specific classes of society, such as civil servants. This is also the reason legal scholars who found felony disenfranchisement too severe argued against it by referring to stories such as that of Johannes Wagner about people who held a public position but were exposed as "dishonored" offenders.[91]

Civil servants were people who had actively enjoyed civil privileges before they were sentenced. Of course, civil servants also enjoyed special protection from criminal law, meaning that the exercise of their profession was often safeguarded from criminal investigation, but only to a limited extent. If they undermined the trust of their position, their sentences were as harsh as those of other citizens.[92] Certain lower civil servants (including the *Subalternbeamten* and *Unterbeamten*), especially postal employees, were deprived of their civil privileges much more frequently if they seriously broke the trust endowed in them. After all, they were entrusted with important official documents, so a breach of this trust was severely penalized.

Apart from lower civil servants like postal employees, however, Wick argued that this punishment particularly impacted members of the so-called serving classes (*die dienende Classe*), better known as the class of the *Gesinde*.[93] In fact, he argued that felony disenfranchisement affected them the most severely, and in great numbers. The notion of the serving classes was rather vague, particularly in the first half of the nineteenth century when German society (Prussian society, above all) was in the midst of a great transition—especially concerning the place of "the family" in state affairs. This was because during the *Sattelzeit*, before the bureaucratic reforms, Prussian politics made no clear distinction between state and family affairs. Toward the end of the eighteenth century, however, family affairs were gradually transferred to the private domain, with considerable consequences for the serving classes.[94] In particular, this meant that the number of household servants grew while the number of more highly educated servants who took care of education and administration decreased. Nonetheless, at the beginning of the nineteenth century, the concept of *Gesinde* still included both less and more highly educated servants.

The criminal offenses of servants often had a special status in the penal codes. As with civil servants, they were seen as standing in a special relationship of loy-

alty to their masters (*Treueverhältniss*). This automatically rendered many of their offenses special ones, which meant that they often faced more severe punishment compared to other people for the same crimes (especially theft). Nonetheless, there was some ambivalence concerning servants' status in the penal codes: in certain instances, servants' offenses resulted in milder punishments since minor offenses were still considered to fall under the remit of the master's disciplinary powers (*Züchtigungsrecht*). Criminal law, after all, had only recently begun to apply to "family matters."[95]

As there is no meaningful data about the number of servants incarcerated in the Restoration and *Vormärz* period, it is hard to assess the accuracy of Wick's assertion that felony disenfranchisement affected this class in great numbers. Even so, some prison wardens made similar observations. For instance, Friedrich Wick, the warden of the penitentiary in Bützow (it is unclear whether he was directly related to Adolf Wick), pointed out that one-third of his inmates were from the serving classes.[96] Among the female population, this percentage was probably even higher. In 1844, 80 percent of the women incarcerated in the Saxon prison of Hubertusburg, for example, were former servants.[97] During the first half of the nineteenth century, public outrage about the decay of morality and loyalty among the "serving classes" also stimulated the discussion about the sanctioning of servants. Many believed that servants were less trustworthy and loyal than they had been in former times. Numerous essay contests about how to combat this problem underscored how important this question was perceived to be.[98]

Felony disenfranchisement as a form of punishment seriously affected the serving classes because they depended on certificates of good conduct for employment. Codified in the 1794 General State Laws for the Prussian States (Allgemeines Landrecht für die Preußischen Staaten), these certificates became even more important when the so-called *Gesindebücher* were introduced in 1846. From then on, servants had to register all their penalties in a journal that they were to carry with them.[99] Hence, the problem was not that they were so attached to their civil privileges (in fact, they often did not have them) but that such punishments undermined their future employment prospects. Thus, contrary to Wick's argument, one cannot deny that the punishment had a deterrent effect because most needed to be increasingly flexible and mobile for their employment and could not afford to have such penalties listed in their journals.[100]

Restoring Rights: Possibilities for Rehabilitation

As one of the staunchest supporters of the punishment of felony disfranchisement, Wick was also firm about how long it should last. He argued that disenfranchisement should always be for life: "It is essential to honor as a common

trust that its consequences on the criminal are indelible."[101] In most German penal codes, this was indeed the case, but regulations varied from state to state. Wick's view was rooted in his belief that felony disenfranchisement truly constituted a loss of honor, which was not just a bureaucratic label but something that sprouted from the judgment of the people. In fact, in his mind, there was no conceptual difference between infamy before the law and infamy before the court of public opinion. Thus, his radical conclusion was that no judge or other public authority should be allowed to decide that someone's honor had been restored; this power belonged solely to the "jurisdiction" of public opinion:

> If by public opinion one understands the pure, original voice of the people that speaks in our customs and institutions and their historical development, then one can correctly say that this *vox populi* exerts the highest judgment over right and wrong, honor and dishonor.[102]

Before further discussing the possibilities for rehabilitation, it is perhaps important to point out certain differences between the Prussian and Saxon codes as they each expressed different views of who determined a person's unworthiness for office. The Saxon penal code of 1856 automatically imposed felony disenfranchisement after any penitentiary sentence but left open felons' worthiness to hold public office. In Prussia, unworthiness to hold office was a *de jure* consequence of the law. Nonetheless, people could be restricted in exercising their civil privileges in a different way in Saxony. This was in fact covered by the Saxon Municipal Ordinance: an addendum from 1837 stipulated that the Municipal Council had the final decision concerning whether an offender would be denied the right to exercise civil privileges.[103] In this sense, the decision was much more of a communal affair than in Prussia, where it was made by a single judge.[104] This shows the difference in the ways this punishment could be approached and how jurists believed it was connected to the moral beliefs of the people.

Wick's arguments regarding the possibility of rehabilitation echoed certain phrases from guidelines distributed by the Prussian state, particularly concerning the question of returning a person's right to wear the state cockade. Prussian Minister of the Interior Otto Theodor von Manteuffel clarified an important condition for a citizen to regain his right to wear the state cockade in an 1845 circular: "The person seeking restoration of rights has fully recovered the respect and trust of his fellow citizens."[105] This formulation helped Wick argue that there was no room for rehabilitation in the law since it was impossible for a judge to decide if somebody had indeed recovered the respect and trust of his fellow citizens.

In this regard, Wick's beliefs nonetheless deviated from the penal practices of many German states, where the rehabilitation of rights was often possible for people who were severely affected by their disenfranchisement. In fact, the notion of rehabilitation was as prominent in discussions about felony disenfranchisement as was the notion of honor. In the 1865 edition of Carl Theodor Welcker

and Carl von Rotteck's *Staatslexicon*, lawyer Karl Buchner defined the notion of rehabilitation as "The cancellation of all legal incapacities resulting from a sentence."[106] Buchner's entry was largely dedicated to the topic of felony disenfranchisement. As this punishment was the primary legal hindrance resulting from criminal convictions (next to police supervision) in the German penal codes, Buchner viewed rehabilitation and felony disenfranchisement as two essentially related notions.

In the end, the main question concerning rehabilitation was who should be responsible for making the decision? The answer to this question was clear: it could only be given as a pardon from the head of the state and was, thus, a form of *landesherrliche Gnade*, or mercy on the part of the sovereign. Such mercy intimately connected rehabilitation to monarchical rule, which reinforced the notion that the rights of public participation were truly privileges, that is, something the head of state determined. There was also the question of the criteria for determining whether someone was eligible to have his rights restored in the first place. Monarchs delegated this decision to a state bureaucracy, as is clear from the guidelines of the Prussian state codifying a procedure for the restoration of the right to wear the state cockade. An 1822 decree stated that anyone within Prussian jurisdiction was permitted to petition to restore this right. The only requirement was that the petitioner append to his letter of petition a certificate of good conduct during his time in the penitentiary.[107] The local police commissioner would collect all the information about the petitioner and was expected to report his findings to the Ministry of the Interior and the Ministry of Justice, both of which subsequently advised the monarch. In other words, although the restoration of the privileges was a form of monarchical grace, it was organized on the principles of the bureaucratic state.

Wick repeated his arguments against the possibility of rehabilitation in an 1851 article for the *Archiv des Criminalrechts* and ended up in a debate with the Privy Councilor of Karlsruhe, Wilhelm von Brauer.[108] Brauer's opinion was the opposite of Wick's. He advocated that it was the judge's duty to decide whether an offender had improved his conduct. This meant that Brauer also opposed rehabilitation as a form of sovereign mercy and saw it rather as a part of bureaucratic governance. Brauer believed that local authorities played an important role in determining whether one's conduct had improved. The judge, he argued, had to rely on the reports of pastors and local authorities to make his decision.[109] In fact, this was already common practice in some German states. In the Kingdom of Württemberg, for instance, offenders had been able to petition the judge for the restoration of their civil privileges since 1849.[110]

In fact, many of the penal codes implemented after Wick had published his treatise in 1845 also introduced the deprivation of civil privileges for a limited period of time (for instance, in the 1851 Prussian code it was limited to a maximum of ten years), together with the possibility of rehabilitation. This gave Wick

occasion to republish his book in 1853: he wished to remind the German public that this form of punishment was a genuine expression of German public opinion, underscoring the morally reprehensible character of certain crimes, and that the current laws failed to take this seriously.

"Civil Honor Rests on Irreproachableness"

The concept of honor, in combination with the notion of trust, was the central term around which the entire policy of felony disenfranchisement revolved. Whoever violated the general trust that stood at the foundations of the political community was dishonored from that moment on. Conceptually speaking, this also meant that the notions of honor and trust were no longer seen as purely individual qualities. Rather, they took on more abstract definitions around the turn of the nineteenth century.[111] German historian Ute Frevert has shown that the verb "trust" gradually came to be used as an independent noun and that the concept also became invested with emotional values during this period.[112] Indeed, one of the most influential texts on criminal law from the first half of the nineteenth century, Konrad Franz Roßhirt's *Geschichte und System des deutschen Strafrechts*, defined public trust as a "common sentiment."[113]

The emergence of another concept in legal discourse was crucial in this respect, too: the notion of *Rechtsgut*, from the two German words *Recht* and *Gut*, meaning a legal good.[114] Historical inquiry into the origins of the term has shown that the concept of *Rechtsgut* was developed by nineteenth-century legal scholar Johann Michael Franz Birnbaum, who introduced the term to criticize the idea (defended by the famous Enlightenment legal scholar Anselm Feuerbach and others) that criminal offenses should be defined as violations of other people's rights. Birnbaum argued that penal law was supposed to be about more than just the protection of people's individual rights; it was about the protection of certain goods that make society function: legal goods.[115] The term *Rechtsgut* was therefore meant to encompass more than just a person's individual rights—it was really a good that circulated in society. As a result, honor and trust were quintessentially seen as goods that were more abstract than individual rights that could be damaged by criminal acts. Indeed, the introduction of such categories as transcendent individual rights and feelings resonates with Durkheim's statement that punishment "continues always to bear a stamp of religiosity."[116]

This indicated that part of the state-building process of the nineteenth century involved German states' effort to transform "civil honor" (*staatsbürgerliche Ehre*) into the hegemonic understanding of honor and to have it coexist with other notions of honor. One could encounter this idea—that several interpretations of the notion of honor coexisted but that one was hegemonic—in important Wilhelmine legal commentaries that discussed what kind of "honor" disenfranchise-

ment actually targeted. There were a few alternative voices, such as that of the liberal Prussian journalist Ernst Rethwisch, who argued that there was just one kind of honor and that disenfranchisement targeted this "general human honor": "whenever someone denies another person the capacity to develop those virtues that are shared in essence by all . . . injury is done to human honor."[117] However, the influential Wilhelmine legal scholar Otto von Gierke held a more common understanding of this specific kind of honor, placing it in a hierarchy extending from general human honor to the specific individual honor awarded to people through decorations and promotions. "Honor as a citizen" stood above general human honor and below "special" honor, which was the honor of belonging to a certain group, like the army or a private guild.[118]

Of course, this layered definition of the notion of honor coexisted with the gendered concept of honor. For instance, in Johann Caspar Bluntschli's 1858 *Staats-Wörterbuch*, the Bavarian lawyer and Germanist Konrad von Maurer argued: "When thinking of the high honor of the respectable lady, most weight is given to sexual chastity."[119] Yet, this "high honor" was also supposed to be distinguished from the "regular" honor of man and woman, which, in his mind, consisted in respect for their life and property.

In this way, the notion of "civil honor" became part of the moral vocabulary of citizenship and a powerful rhetorical device for exalting the ideal citizen. "Civil honor rests on irreproachableness by virtue of which someone is given full trust within a state," a commentator noted in 1851.[120] Honor thus became highly associated with the question of whether someone was a law-abiding, "irreproachable" (*unbescholten*) citizen, something the historian Friedrich Zunkel called the "civil equation of positive law and honor."[121] However, this use of the notion of honor and the attempt to make it the hegemonic understanding of honor also sparked much controversy. Intellectuals of the German Empire vehemently debated the differentiated definition of honor, often leading to outcries about the "confusion in honor concepts."[122] To put it another way, honor was a "fluid" concept.[123]

This meant that not all members of German society equated being honorable with being a law-abiding citizen; this was especially true of those who claimed that the law should have no say in determining their honor. For instance, German aristocrats and bourgeois individuals often regarded their honor as an expression of their unique individuality, contrasting it with the "boring" uniformity of the modern state. In fact, they frequently defended their personal honor in unlawful duels, thereby protesting "against everything they disliked about civil society."[124] Hence, upper-middle-class individuals commonly defined their honor in opposition to the development of the ubiquitous state and the idea that citizenship itself conferred "honor." The Prussian aristocrat Herrmann von Gauvain, who fiercely defended dueling in an essay for the *Berliner Revue* in 1865, argued that the progressivist and liberal creed in which every individual was subsumed under the category of citizenship was diametrically opposed to the "Germanic" honor

that belonged to the unique individual.[125] In other words, the uniformity that modern ideas of citizenship engendered destroyed the "personal independence for which honor is willing to fight," as German philosopher Georg Wilhelm Friedrich Hegel once put it.[126]

One must bear this idea of honor in mind when considering the remarks of one of the earliest critics of felony disenfranchisement, Wilhelm von Humboldt. In his reflections on penal law in his 1792 book *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staats zu bestimmen*, Humboldt argued—before it was even introduced in German penal codes—that the idea of depriving someone of honor as a punishment should be completely rejected. It was not the harshness of the punishment that drove his view, as many later critics would claim, but rather his understanding that "real honor" could not be subjected to state power: "the honor of a man, his fellow citizens' good opinion of him, is in no way something that the state has the power to affect."[127] The idea that the state could damage or protect one's honor thus fundamentally contradicted the personal beliefs of many "honorable" members of German higher classes, such as Humboldt's. Resistance to this idea would long endure. German chancellor Otto von Bismarck, for example, famously stated before the Reichstag in 1881: "My honor lies in no one's hand but my own, and it is not something that others can lavish on me."[128]

The discrepancy between both Humboldt's and Bismarck's statements and the hegemony of the state concept of honor partially derived from the "dual" nature of their elitist notion of honor. In much of the literature on the topic of honor—especially in the literature from the nineteenth century—one encountered the distinction between "internal" and "external" honor.[129] This distinction sought to capture the difference between honor as the mere "external" recognition of one's value and honor as an "internal" subjective entitlement and sense of worth. In many respects, this individual and subjective element of the notion of honor contradicted the idea that the laws could regulate who was considered honorable. After all, according to this understanding, the individual was considered the measure of his or her own honor. On these grounds, the dueling German bourgeoisie emphatically distanced themselves from civil honor laws that regulated the distribution of honor and adhered instead to its own "code of honor."[130]

Despite the strong opposition of the higher classes in the German states to equating honor with citizenship, the rise of the notion of *staatsbürgerliche Ehre* was inexorable. Irreproachableness (*Unbescholtenheit*) came to be a symbol of the Prussian politics of citizenship, with this notion coming up occasionally in regulations on the exercise of political rights. Whenever people criticized the dominance of the model of national citizenship over traditional aristocratic privileges, irreproachableness always played a central role.[131] The penal law of the state and

the local administrators of criminal justice thus gradually became the sole authorities in questions of honor and dishonor. All of this has to be seen as part of a broader attempt to make people primarily subjects of the state and to make the state the only arbiter in these questions.

Notes

1. GStA PK, I. HA Rep. 77 tit 1001, no. 8.
2. GStA PK, I. HA Rep. 77 tit 1001, no. 8, letter from 19 July 1867.
3. *Strafgesetzbuch für die Preußischen Staaten* (Berlin 1851), §12.
4. The different German states had different names for these privileges. In Saxony, for example, they were called "political privileges" (*politische Ehrenrechte*). Prussian *bürgerliche Ehrenrechte*, however, were taken over in the Reich Penal Code. The content of these privileges is not easily covered by the notion of "political rights" or "civil rights," as T. H. Marshall famously defined them (T. H. Marshall, "Citizenship and Social Class," in *Sociology at the Crossroads and Other Essays*, ed. T. H. Marshall, 67–127 [London: Heinemann, 1963]). For this reason, I use the notion of civil privileges rather than civil rights.
5. Andreas Fahrmeir, "Nineteenth-Century German Citizenships: A Reconsideration," *Historical Journal* 40, no. 33 (1997): 721–52.
6. Andreas Fahrmeir, *Citizenship: The Rise and Fall of a Modern Concept* (New Haven, CT: Yale University Press, 2007), 227–32.
7. Fahrmeir, *Citizenship*, 40.
8. Cf. Anne Simonin, *Le déshonneur dans la république. Une histoire de l'indignité 1791–1958* (Paris: Grasset, 2008).
9. The historical debate on the question of citizenship is often characterized by a strong interest in the questions of belonging, inclusion, and exclusion. This interest started with Rogers Brubaker's comparative study of the French and German regulations on citizenship, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992). In relation to nineteenth-century Germany, these themes have mostly been taken up by historians Andreas Fahrmeir and Dieter Gosewinkel, whose primary focus is on the laws regulating the acquisition of citizenship status. The German notion used in this context is often that of *Staatsangehörigkeit*—citizenship, nationality—literally, belonging to a state. Nonetheless, I prefer to look into the question of the privileges that state citizenship entailed. Whenever I use the word "citizenship," therefore, I mean the notion of *Staatsbürgerschaft* rather than *Staatsangehörigkeit*. Cf. Dieter Gosewinkel, "Staatsbürgerschaft und Staatsangehörigkeit," *Geschichte und Gesellschaft* 21, no. 4 (1995): 533–56; Andreas Fahrmeir, *Citizens and Aliens: Foreigners and the Law in Britain and the German States, 1789–1870* (New York: Berghahn Books, 2000); Dieter Gosewinkel, *Einbürgern und Ausschliessen: Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland* (Göttingen: Vandenhoeck & Ruprecht, 2001); idem, *Schutz und Freiheit? Staatsbürgerschaft in Europa im 20. und 21. Jahrhundert* (Berlin: Suhrkamp, 2016); Eli Nathans, *The Politics of Citizenship in Germany. Ethnicity, Utility and Nationalism* (Oxford: Berg, 2004).
10. Fahrmeir, *Citizenship*, 28–29.
11. Reinhart Koselleck, *Preußen zwischen Reform und Revolution. Allgemeines Landrecht, Verwaltung und soziale Bewegung von 1791 bis 1848* (Stuttgart: Klett, 1967), 571. Nonetheless, the traditional nobility still had a powerful position in the municipal governments after Stein's reforms

and during the *Vormärz* period. Cf. Bernd Wunder, *Geschichte der Bürokratie in Deutschland* (Frankfurt a.M., 1986), 25–26.

12. Emil Siegert, *Die im Vollbürgerthum enthaltenen bürgerlichen Ehrenrechte nach deutschem Reichsrecht* (Greifswald: F. W. Kunike, 1895), 12–13; Franz von Holtzendorff and Felix Stoerk, "Das deutsche Verfassungsrecht," in *Encyklopädie der Rechtswissenschaft in systematischer und alphabetischer Bearbeitung*, ed. Franz von Holtzendorff, 5th edn., 1041–153 (Leipzig, 1890), 1084.
13. Gérard Noriel, "Der Staatsbürger," in *Der Mensch des 19. Jahrhunderts*, ed. Heinz-Gerhard Haupt and Ute Frevert, 201–27 (Essen: Campus, 2004), 204.
14. Bernd Wunder, "Die Reform der Beamtenschaft in den Rheinbundstaaten," in *Reformen im Rheinbündischen Deutschland*, ed. E. Weis, 181–93 (Munich: De Gruyter, 1984), 188.
15. Max Weber, "Wirtschaft und Gesellschaft," in *Gesamtausgabe*, vol. 22.4 (Tübingen: Mohr, 2001), 157. Cf. Stefan Brakensiek, *Fürstendiener, Staatsbeamte, Bürger. Amtsführung und Lebenswelt der Ortsbeamten in niederhessischen Kleinstädten (1750–1830)* (Göttingen: Vandenhoeck & Ruprecht, 1999).
16. Koselleck, *Preußen zwischen Reform und Revolution*, 114.
17. Ute Frevert, "Das jakobinische Modell. Allgemeine Wehrpflicht und Nationsbildung in Preußen-Deutschland," in *Militär und Gesellschaft im 19. und 20. Jahrhundert*, 17–47 (Stuttgart: Klett-Cotta, 1997).
18. Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte*, vol. 1, *Vom Feudalismus des Alten Reiches bis zur defensiven Modernisierung der Reformära 1700–1815* (Munich: Beck, 1987), 249; Ute Frevert, *A Nation in Barracks: Conscription, Military Service and Civil Society in Modern Germany* (Oxford: Berg, 2004), 11.
19. Frevert, *A Nation in Barracks*, 48–49; Thomas Nipperdey, *Deutsche Geschichte 1800–1866: Bürgerwelt und starker Staat* (Munich: Beck, 1983), 54–56.
20. Fahrmeir, *Citizens and Aliens*, 16. Peter Franke, "Stadt und Bürgerrechtsentwicklungen im 19. Jahrhundert. Das Beispiel Preußen," in *Agrarische Verfassung und politische Struktur. Studien zur Gesellschaftsgeschichte Preußens 1700–1918*, ed. Wolfgang Neugebauer and Ralf Pröve, 123–43 (Berlin: Spitz, 1998), 124. In the Prussian configuration, however, this also still entailed "traditional" rights to exercise certain crafts and acquire property in the town.
21. Fahrmeir, *Citizens and Aliens*, 20.
22. *Das Strafgesetzbuch und die Strafproceßordnung für das Königreich Sachsen* (Leipzig, 1855), §36.
23. Diethelm Klippel, "Das Privileg im deutschen Naturrecht des 18. und 19. Jahrhunderts," in *Das Privileg im europäischen Vergleich*, ed. Barbara Dölemeyer and Heinz Mohnhaupt, vol. 2, 329–45 (Frankfurt a.M.: Klostermann, 1997), 336.
24. Karl Salomo Zachariae, *Vierzig Bücher vom Staate*, vol. 6 (Heidelberg: Winter, 1842), 219.
25. Ernst Friedrich Iphofen, "Ueber politische Ehrenrechte II," *Zeitschrift für Rechtspflege und Verwaltung* 25 (1864): 314–48, 330.
26. Karl Binding, *Grundriß des deutschen Strafrechts. Allgemeiner Teil*, 6th edn. (Leipzig: Engelmann, 1902), 205.
27. Friedrich Noellner, *Das Verhältniss der Strafgesetzgebung zur Ehre der Staatsbürger. Ein Beitrag zur Reform der deutschen Strafsysteme, vom philosophischen, legislativen und praktischen Standpunkte* (Frankfurt a.M.: Bayrhoffer, 1846), vi.
28. On the dominance of this penal discourse, see Désirée Schauz, *Strafen als moralische Besserung: Eine Geschichte der Straffälligenfürsorge 1777–1933* (Munich: Oldenbourg, 2008).
29. Friedrich Noellner, *Das Verhältnis der Strafgesetzgebung*, 66.
30. Ideas similar to Noellner's can be found in Dietrich Georg Kieser, *Zwei akademische Reden. Ueber das Verhältniß der Philosophie der Natur zur Religion und über die Emancipation des Verbrechers im Kerker* (Jena: Cröker, 1845), 35; Carl Joseph Anton Mittermaier, *Die Strafgesetzgebung in ihrer Fortbildung. Geprüft nach den Forderungen der Wissenschaft und nach den Erfahrungen über den Werth neuer Gesetzgebungen, und über die Schwierigkeiten der Codifikation*

(Heidelberg: Winter, 1841); Ludwig Hugo Franz von Jagemann, "Die Bürgerliche Ehre im Verhältnisse zum Strafgesetze," *Archiv des Criminalrechts* 4 (1838): 248–72; Ferdinand Carl Theodor Hepp, *Das Strafen-System des neuen Entwurfs eines Strafgesetzbuches für das Königreich Württemberg vom Jahr 1835. In Vergleichung mit dem gemeinen Rechte, dem Strafedicte und neueren Legislationen* (Heidelberg: Mohr, 1836), 48.

31. Timon de Groot, "Politieke misdadigers of eerloze criminelen?," *Tijdschrift voor Geschiedenis* 132, no. 1 (2019): 21–47. Chapter 2 contains more on the context of the revolutions of 1848–49.
32. René Wiese, ed., *Vormärz und Revolution: Die Tagebücher des Grossherzogs Friedrich Franz II. von Mecklenburg-Schwerin 1841–1854* (Cologne: Böhlau Verlag, 2014), 115.
33. Ferdinand Carl Theodor Hepp, "Die Reform des Infamiesystems," *Der Gerichtssaal* 2, no. 1 (1850): 416–38, 416.
34. Adolf von Wick, *Über Ehrenstrafen und Ehrenfolgen der Verbrechen und Strafen. Eine Abhandlung aus dem Gebiete der Strafgesetzgebung* (Rostock: Stiller, 1845), 32.
35. Ibid., 163.
36. Cf. Martin Reulecke, *Gleichheit und Strafrecht im deutschen Naturrecht des 18. und 19. Jahrhunderts* (Tübingen: Mohr Siebeck, 2007), 332.
37. Julius Merkel, "Ueber Verlust der bürgerlichen Ehrenrechte und über Wiederherstellung derselben," *Allgemeine Gerichtszeitung für das Königreich Sachsen* 7 (1863): 1–24, 4.
38. Marc de Wilde, "Just Trust Us: A Short History of Emergency Powers and Constitutional Change," *Comparative Legal History* 3, no. 1 (2015): 110–30.
39. During the nineteenth century, Austrian and Prussian citizenship was only granted to foreigners as an act of sovereign mercy. This also underlines the character of citizenship as a privilege. See Gosewinkel, *Einbürgern und Ausschließen*, 35, 97.
40. Cited in Ute Frevert, *Vertrauensfragen. Eine Obsession der Moderne* (Munich: Beck, 2013), 161.
41. Ibid., 160.
42. In the literature on electoral theory, this is also known as the "broken contract" argument for felony disfranchisement. See Claudio López-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (Oxford: Oxford University Press, 2014), 110–12.
43. Adolf Wick most frequently used the notions of common trust (*Gemeinvertrauen*), public loyalty and faith (*öffentliche Treue und Glauben*), or the Latin phrase *publica fides*.
44. Cited in Ernst Friedrich Iphofen, "Ueber politische Ehrenrechte," *Zeitschrift für Rechtspflege und Verwaltung* 24 (1863): 299–342, 315.
45. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 233. Wick mentioned "hate" and "revenge" as motives that did not make an act dishonorable.
46. Wick emphatically distinguished disposition from intention or motive; ibid., 230.
47. Cf. *Motive zum Entwurf des Strafgesetzbuchs für die Preussischen Staaten* (Berlin, 1851), 9–10.
48. Nipperdey, *Deutsche Geschichte 1800–1866*, 290, 377–80.
49. Peter Becker, *Verderbnis und Entartung. Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis* (Göttingen: Vandenhoeck & Ruprecht, 2002), 12, 38, 47–49.
50. Ibid., 44–53.
51. Becker called these early criminologists "criminalists" (*Kriminalisten*) and distinguished their later counterpart through the use of the term "criminologists" (*Kriminologen*).
52. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 225. Nonetheless, Wick did not completely do away with estate privilege in his theory: for less serious crimes, he believed that *custodia honesta* could be a "surrogate" punishment for people from the higher classes. Wick therefore took a middle position between those who argued that *custodia honesta* should be a surrogate for all offenders from the higher classes and those who argued that *custodia honesta* was an alternative punishment for people who had committed an offense despite having an honorable disposition. Cf. Karl Richard Sontag, *Die Festungshaft* (Leipzig, 1872), 74–118.

53. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 232.
54. Ibid., 173.
55. For an example of the significance of the religious interpretation of the act of perjury and its relation to the exercise of power in an early modern German village, see David Warren Sabean, *Power in the Blood* (Cambridge: Cambridge University Press, 1984), 144–73, in particular, 172: "What is interesting here is the way in which the issue was hung on conscience and the way state officials used conscience in the practice of authority . . . individual responsibility and public confession were the central theological concepts buttressing state power."
56. *Constitutio Criminalis Theresiana* (Vienna, 1769), part 2, art. 59.
57. Ludwig von Bar, *Geschichte des deutschen Strafrechts und der Strafrechtstheorien*, *Handbuch des deutschen Strafrechts*, vol. 1 (Berlin: Weidmann, 1882), 156.
58. Franz von Liszt, *Meineid und falsches Zeugnis. Eine strafrechts-geschichtliche Studie* (Vienna: Manz, 1876), 128–35; Franz Grünberg, *Zur systematischen Stellung des Meineides* (Berlin: A. Hendebett, 1900), 15.
59. Hans Ernst von Globig and Johann Georg Huster, *Abhandlung von der Criminalgesetzgebung. Eine von der ökonomischen Gesellschaft in Bern gekrönte Preisschrift* (Zurich: Füessly, 1783), 222.
60. *Allgemeines Gesetzbuch über Verbrechen und derselben Bestrafung* (Vienna, 1787), §149. Cf. Liszt, *Meineid und falsches Zeugnis*, 136.
61. Helmut Reinalter, "Aufgeklärter Absolutismus und Josephinismus," in *Der Josephinismus. Bedeutung, Einflüsse und Wirkungen*, ed. Helmut Reinalter, 11–21 (Frankfurt a.M.: Peter Lang, 1993); Charles W. Ingrao, *The Habsburg Monarchy, 1618–1815*, 197–200 (Cambridge: Cambridge University Press, 2000). Wunder, *Geschichte der Bürokratie in Deutschland*, 18–19.
62. Liszt, *Meineid und falsches Zeugnis*, 129.
63. Carl Josef Anton Mittermaier, "Ueber den Meineid nach dem gemeinen Rechte und den Bestimmungen der neuesten Strafgesetzbücher," *Neues Archiv des Criminalrechts* 2 (1818): 85–120, 110.
64. Ferdinand Carl Theodor Hepp, *Die politischen und unpolitischen Staats-Verbrechen und Vergehen nebst angränzenden Amtsverbrechen und Polizei-Uebertretungen* (Tübingen: Zu-Guttenberg, 1846).
65. Cited in Grünberg, *Zur systematischen Stellung des Meineides*, 19.
66. "Verbrechen und Vergehen wider die öffentliche Ordnung"; RStGB, §153.
67. French Enlightenment philosopher Jean-Jacques Rousseau used a similar "broken contract" argument in his defense of criminal punishment, but he explicitly discussed it in the context of the crime of murder and to justify the exercise of the death penalty: Jean-Jacques Rousseau, *Discourse on Political Economy and the Social Contract*, trans. Christopher Betts (Oxford: Oxford University Press, 1999), 71–72. Wick's account clearly differs from this since he regarded breaches of public trust as so much more important than violent crimes like murder.
68. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 234.
69. Pieter Spierenburg, *Violence and Punishment: Civilizing the Body through Time* (Cambridge: Polity, 2013), 7.
70. Classic accounts of this thesis include Douglas Hay et al., *Albion's Fatal Tree: Crime and Society and Eighteenth-Century England* (London: Allen Lane, 1975); E. P. Thompson, *Whigs and Hunters* (London: Allen Lane, 1975).
71. Rebekka Habermas, *Diebe vor Gericht. Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert* (Frankfurt a.M.: Campus, 2008), 69–74.
72. Johann Gottlieb Fichte, *Grundlage des Naturrechts nach Principien der Wissenschaftslehre*, vol. 2 (Jena: Gabler, 1797), §19, H.
73. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 236.
74. Ibid., 238.

75. Cf. Becker, *Verderbnis und Entartung*, 196–201.
76. Ibid., 236.
77. Dirk Blasius, *Geschichte der politischen Kriminalität in Deutschland, 1800–1980* (Frankfurt a.M.: Suhrkamp, 1983).
78. Karl Biedermann, "Der Polenprozeß in Berlin," *Unsre Gegenwart und Zukunft* 9 (1847): 205–53, 211.
79. Cf. Sylvia Kesper-Biermann, "'Nothwendige Gleichheit der Strafen bey aller Verschiedenheit der Stände im Staat'? (Un)Gleichheit im Kriminalrecht der ersten Hälfte des 19. Jahrhunderts," *Geschichte und Gesellschaft* 35, no. 4 (2009): 603–28.
80. Cf. James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford: Oxford University Press, 2005), 135.
81. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 29–30.
82. Becker, *Verderbnis und Entartung*, 180–82.
83. Cf. Joel Feinberg, "The Expressive Function of Punishment," in *Doing and Deserving: Essays in the Theory of Responsibility*, ed. idem, 95–118 (Princeton, NJ: Princeton University Press, 1970).
84. Gallus Aloys Kleinschrod, *Systematische Entwicklung der Grundbegriffe und Grundwahrheiten des peinlichen Rechts nach der Natur der Sache und der positiven Gesetzgebung* (Erlangen: Johann Jakob Palm, 1799), 143.
85. Cited in Iphofen, "Ueber politische Ehrenrechte," 345.
86. See Introduction.
87. Émile Durkheim, *The Division of Labour in Society*, trans. W. D. Halls (London: Macmillan, 1984), 56.
88. Simonin, *Le déshonneur*, 307–15. The notion of *éthocratie* is a reference to Baron d'Holbach's 1776 book *Éthocratie ou le Gouvernement fondé sur la morale* (Amsterdam, 1776).
89. Cited in Carol J. Greenhouse, "Solidarity and Objectivity. Re-Reading Durkheim," in *Crime's Power: Anthropologists and the Ethnography of Crime*, ed. Philip C. Parnell and Stephanie C. Kane, 269–91 (New York: Palgrave Macmillan, 2003), 276.
90. Friedrich Julius Stahl, *Die Philosophie des Rechts*, vol. 2 (Heidelberg: Mohr, 1846), 543.
91. Mittermaier, *Die Strafgesetzgebung*.
92. Cf. Julius Friedrich Heinrich Abegg, *System der Criminal-Rechts-Wissenschaft mit einer Vorrede über die wissenschaftliche Behandlung des Criminalrecht* (Königsberg: Unzer, 1826), 255–58.
93. Wick, *Über Ehrenstrafen und Ehrenfolgen*, 37.
94. Jürgen Kocka, *Arbeitsverhältnisse und Arbeiterexistenzen. Grundlagen der Klassenbildung im 19. Jahrhundert* (Bonn: Dietz, 1990), 112–13; Dieter Schwab, "Familie," in *Geschichtliche Grundbegriffe. Historisches Lexikon zur Politisch-Sozialen Sprache in Deutschland*, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. 2, 253–301 (Stuttgart: Klett-Cotta, 1975).
95. Thomas Vormbaum, *Politik und Gesinderecht im neunzehnten Jahrhundert vornehmlich in Preußen 1810–1918* (Berlin: Duncker & Humblot, 1980), 109–11.
96. Friedrich von Wick, *Über Fürsorge für entlassene Sträflinge, insbesondere über Organisirung einer kirchlichen Fürsorge für dieselben* (Rostock: Hirsch, 1856), 15.
97. Falk Bretschneider, *Gefangene Gesellschaft. Eine Geschichte der Einsperrung in Sachsen im 18. und 19. Jahrhundert* (Konstanz: Universitätsverlag Konstanz, 2008), 483.
98. Oscar Stillich, *Die Lage der weiblichen Dienstboten in Berlin* (Berlin: Akademie Verlag, 1902), 32.
99. Kocka, *Arbeitsverhältnisse und Arbeiterexistenzen*, 126.
100. On the fear of increased mobility in relation to crime, see Becker, *Verderbnis und Entartung*, 186–93.
101. Wick, *Über Ehrenstrafen und Ehrenfolgen,* 33–34.
102. Ibid., 3.

103. "Gesetz, die Abänderung einiger Bestimmungen in der allgemeinen Städteordnung betreffend, 09.12.1837," in *Gesetz- und Verordnungsblatt für das Königreich Sachsen* (Dresden, 1837), 140–41.
104. Cf. Iphofen, "Ueber politische Ehrenrechte," 311–13.
105. LAV NRW R, BR 0007, no. 8895, *Amtsblatt der Regierung zu Düsseldorf*, 28.11.1845.
106. Carl Theodor Welcker and Carl von Rotteck, *Das Staats-Lexicon. Encyklopädie der sämmtlichen Staatswissenschaften für alle Stände in Verbindung mit vielen der angesehensten Publicisten Deutschlands*, 3rd edn., vol. 12 (Leipzig: Brockhaus, 1865), 423.
107. LAV NRW R, BR 0005, no. 2278, ministerial order of the Ministry of the Interior, 05.03.1822.
108. Adolf von Wick, "Zur Gesetzgebung über die Ehrenfolgen der Verbrechen," *Archiv des Criminalrechts* 32, no. 1 (1851): 1–39, 14.
109. Wilhelm von Brauer, "Ueber die Rehabilitation Verutheilter," *Der Gerichtssaal* 11 (1857): 321–39, 333.
110. Ibid., 326–27.
111. Reinhart Koselleck, "Einleitung," in *Geschichtliche Grundbegriffe*, ed. Otto Brunner, Werner Conze, and Reinhart Koselleck, vol. 1 (Stuttgart: Klett-Cotta 1979).
112. Ute Frevert, "Vertrauen—eine historische Spurensuche," in *Vertrauen. Historische Annäherungen*, ed. idem, 7–66 (Göttingen: Vandenhoeck & Ruprecht, 2003), 14; Frevert, *Vertrauensfragen*, 154–56.
113. Konrad Franz Roßhirt, *Geschichte und System des deutschen Strafrechts*, vol. 3 (Stuttgart: Schweizerbart, 1839), 13.
114. The German word *Gut* could also be translated as "commodity," although, in this context, "good" is simply more accurate. The notion of *Rechtsgut* is most commonly translated as "legal interest," but this use has been criticized by Markus Dubber and others. The translation "legal good" is therefore to be preferred for its straightforwardness.
115. Markus D. Dubber, "Theories of Crime and Punishment in German Criminal Law," *American Journal of Comparative Law* 53 (2006): 679–707, 684–89.
116. Durkheim, *The Division of Labour in Society*, 56.
117. Ernst Rethwisch, *Ueber den Werth der Ehrenstrafen. Juristischer Essay* (Berlin: Puttkammer & Mühlbrecht, 1876), 20.
118. Otto von Gierke, *Deutsches Privatrecht*, vol. 1 (Leipzig, 1895), 427–29. Cf. Justus von Olshausen, *Kommentar zu den Strafgesetzen des Deutschen Reiches*, 4th edn., vol. 1 (Berlin: Vahlen, 1892), 692.
119. Konrad Maurer, "Ehre," in *Deutsches Staats-Wörterbuch*, ed. Johann Caspar Bluntschli and Karl Brater (1858), 226–87, 227; cf. Ute Frevert, "Ehre— Männlich/Weiblich. Zu einem Identitätsbegriff des 19. Jahrhunderts," *Tel Aviver Jahrbuch für Deutsche Geschichte* 21 (1992): 21–68.
120. "Die Ehrenstrafen nach dem neuen preußischen Strafgesetzbuche beleuchtet von einem practischen Juristen," *Hitzig's Annalen der Deutschen und Ausländischen Criminal-Rechtspflege* 27 (1851): 1–23, 8.
121. "Die staatsbürgerliche Gleichheit von Recht und Ehre," in 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, 1–63 (Stuttgart: Klett-Cotta, 1975), 32.
122. For example, in Ernst Delaquis, *Die Rehabilitation im Strafrecht* (Berlin: J. Guttentag, 1907), 123.
123. Paul Felix Aschrott and Franz von Liszt, *Die Reform des Reichsstrafgesetzbuchs* (Berlin: Guttentag, 1910), 311. Cited in Ann Goldberg, *Honor, Politics, and the Law in Imperial Germany, 1871–1914* (Cambridge: Cambridge University Press, 2010), 45.

124. Ute Frevert, *Men of Honour. A Social and Cultural History of the Duel* (Cambridge: Polity Press, 1995), 138.
125. Herrmann von Gauvain, "Das Duell," *Berliner Revue* 43, no. 4 (1865): 138.
126. Georg Wilhelm Friedrich Hegel, *Vorlesungen über die Aesthetik*, vol. 2 (Berlin, 1843), 167.
127. Wilhelm von Humboldt, *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staats zu bestimmen* (Breslau: Trewendt, 1851).
128. "Meine Ehre steht in niemandes Hand als meiner eigenen und niemand ist Richter darüber und kann entscheiden, ob ich sie habe," *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 66 (Berlin 1881), 61. Translation: Frank Henderson Stewart, *Honor* (Chicago: University of Chicago Press, 1994), 52.
129. Cf. Aschmann, *Preußens Ruhm und Deutschlands Ehre*, 28–29; Zunkel, "Ehre, Reputation."
130. The irony and complexity of the fact that they were subordinated to this code while they were distancing themselves from it is discussed in Frevert, *Men of Honour*, 169–71.
131. Zunkel, "Ehre, Reputation," 31.