

CONCLUSION



This book aimed to elucidate the significance of the punishment of felony disenfranchisement in nineteenth- and early twentieth-century Germany. It did so by analyzing the lawmakers' views of the intended purpose of the punishment; the commentaries of judicial experts; the ways in which the execution of the punishment was sometimes challenged and contested by several subgroups in German society; and how the authorities instrumentalized the punishment to turn a certain group into "dishonorable" felons. In the process, one of my key considerations was that observers regarded the punishment as significant not only because of its emotional effects on the person so sentenced but also because they believed it reinforced collective sentiments about the proper use of the notion of honor. A wrongful execution of the punishment, by contrast, harmed the community's understanding of honor.

In the early nineteenth century, the authorities designed felony disenfranchisement in principle as an instrument for promoting a notion of honor that related to state institutions, trustworthy citizenship, and compliance with the law. Their aim was to make this "civil" concept of honor hegemonic and to thus discard feudal, estate-based notions of honor. The provisional character of rights of political participation was key to nineteenth-century states' efforts to create a moral order among their citizens. By maintaining the power to withhold civil privileges, they aimed to safeguard the institutions based on them. Lawmakers designed felony disenfranchisement to contribute to forging respect for the rule of law and to give the penal system the sole authority to determine what was honorable or dishonorable. Although the German higher classes strongly opposed this development, the notion of honor did indeed come to be increasingly equated with citizenship in nineteenth-century Germany. "Irreproachable" and "law-abiding" became core characteristics of honorable conduct. Actions in the legal sphere especially, such as telling the truth before the court, were crucial examples of the norms of modern citizenship. All of this was part of a broader attempt to make people subjects of the state first and foremost, with the state functioning as the only arbiter in questions of honor and dishonor.

In the early decades of the nineteenth century—a period still characterized by the ongoing process of state formation, the codification of criminal law, and the development of the system of civil privileges—some influential scholars criticized the punishment, either for harming offenders’ process of reintegration and robbing too many citizens of their right to participate in state affairs, or for putting too much emphasis on the “civil” notion of honor. These criticisms, however, largely faded away when the codification of the punishment reached its final stage in the period of the German Empire. Hardly any commentator in Imperial Germany openly expressed doubts about the existence of this punishment. In fact, representatives of several subgroups of Wilhelmine society defended it in their pleas to have membership in certain institutions be opened up to a broader group of people. Meanwhile, time and time again, the authorities emphatically underscored the need to exclude “dishonored” felons from important state institutions.

The preoccupation with the notion of honor in the context of felony disenfranchisement apparent among Imperial Germany’s authorities and citizens should certainly not be seen as a sign of legal backwardness, or as a way of protecting the interests of feudal elites. In fact, the notion of honor was highly intertwined with the idea of the rule of law. Thus, even though Imperial Germany’s criminal justice system has often been described as authoritarian and biased, citizens’ relation to felony disenfranchisement, as well as their engagement with it, also points to certain liberalizing features in the system that existed alongside these authoritarian elements. People’s civil privileges, and by extension their “civil honor,” could only be suspended as a consequence of legal punishment, and that principle was actively defended. The existence of felony disenfranchisement thus appeared to protect the rights and honor of citizens who had not been in contact with the law. In other words, it allowed “law-abiding” citizens to claim their rights and their entitlement to a certain kind of honor, thereby also limiting state power within certain bounds.

Felony disenfranchisement was an undisputed element of Imperial Germany’s penal policy. Almost nobody challenged its existence; only its proper execution was a topic of debate, largely related to people’s inclusion in or exclusion from certain, usually imperial, institutions. Although there was pressure for institutions to become more inclusive, several politicians, political commentators, and social activists instrumentalized felony disenfranchisement in the public debate to stress the need for some exclusion to defend the honor of these institutions. Even the workers’ movement—a bastion of opposition against state-imposed ideas—applied the notion of honor in similar ways and emphasized the need to exclude “dishonored” felons. Thus, the notion of “civil honor” was prominent in several layers of German society.

The consensus about the intended purpose of felony disenfranchisement in Imperial Germany increasingly led to an association between honor and the possession of a certain moral and political conviction. If someone had acted out of political or moral conviction, that person was considered honorable. This was based on the premise that individuals always expressed their political opposition against state authorities overtly. The punishment was thus crucial in criminal procedures against political offenders that occurred during the time of the German Empire. The “dishonorable disposition”—a key notion in the execution of felony disenfranchisement—helped define the lines between morally permissible political offenses and serious crimes. According to the most authoritative interpretations of the Reich Penal Code, the punishment of felony disenfranchisement was only to be imposed if the criminal act had resulted from the defendant’s “dishonorable disposition.” In other words, it was not supposed to be used “politically” or to punish people who had acted out of an “honorable” political conviction. This consensus about the appropriate use of disenfranchisement went beyond partisan divisions, which was why disenfranchising sentences against “political offenders” sparked so much controversy in the German Empire. The magnitude of these protests showed that this consensus limited the state’s power to use this punishment for political ends.

However, political agents more often instrumentalized the subjective, individual aspect of the notion of honor to recover their honor against the claims of their opponents. The more this happened, the more difficult it became to find common ground in the use of the notion of honor: everybody could claim to have acted out of a certain political conviction. At the same time, the judiciary came to suspect that some criminals instrumentalized political ideology to cover up their real motives for base criminal actions, making it hard to distinguish between “real political convictions” and criminal intentions. Consequently, the authorities actively tried to undermine certain offenders’ claims that they had acted “politically,” arguing instead that they had acted in a secretive manner rather than in an overtly honorable way. Indeed, most legal scholars of Imperial Germany seemed to agree that honorable and dishonorable dispositions marked the difference between overt, “real” idealism and sly selfishness.

Without a doubt, stigmatization was a decisive aspect of disenfranchisement, giving it a communicative, public function. Consistent with Durkheim’s theory of punishment, this communicative function was not just directed at the person being punished but at the community as a whole, with the aim of reinforcing what was considered honorable conduct. Even though the stigma was invisible to direct observers, as it was not imprinted on the offenders’ body, its effects worked in many ways in the bureaucratic state of the German Empire. For an extended period, disenfranchisement found support in circles of penal experts and politicians if it fulfilled two important criteria: it had to be applied apolitically, that is,

only to people who had committed an offense clearly identifiable as “dishonorable”; and it had to be applied to all citizens equally. Imposing this punishment, after all, implied that those subject to it had, in principle, been entitled to the honor of citizenship before they were stripped of it.

Even though the prison reform movement grew during the time of the German Empire, and even though many prominent progressive legal and criminological experts started to argue that ex-convicts could experience moral improvement, supporters of these movements did not immediately fully reject felony disenfranchisement. Scholars and activists from the “modern approach” to criminal policy increasingly emphasized that offenders had the potential to reform themselves and that penal measures only designed to exclude citizens could thwart offenders’ resocialization process. However, they hardly objected to the existence of felony disenfranchisement. Instead, they continued to try to appropriate the vocabulary of honor and exclusion by integrating felony disenfranchisement into their own reform agendas for a long time thereafter. This appropriation revealed that felony disenfranchisement was, in fact, a pliable and adaptable punishment that could fulfill various functions. The important emotional impact of felony disenfranchisement—that it appealed to German citizens’ sense of honor—could reinforce its function within a comprehensive, modern penal policy.

Meanwhile, in contrast to modern scholars’ emphasis on the resocialization of offenders, the authorities often vehemently extolled the notion of retribution and “just deserts” and emphasized the need to exclude those convicted of serious offenses as a way for them to atone for their crimes. World War I proved how entrenched official government policy concerning disenfranchised felons was—particularly concerning inclusion in the army. Disenfranchised felons were excluded from the army, regardless of any ideas about the reformatory effects of the army on ex-convicts. Although amnesty was extended to many in the first months of war, this did not fundamentally change this circumstance for disenfranchised felons but rather confirmed their exceptional status. Whereas other historians have focused on the questions of age and citizenship as basic categories determining the inclusion of citizens in the German army during World War I, I have argued in this book that a citizen’s status as an ex-convict was equally important to the authorities in deciding on suitability for military conscription. Only in the second phase of the war, when politicians increasingly perceived the need for more manpower, did the army command reconsider this fundamental principle. Disenfranchised felons could finally be enlisted, but their character was still seriously scrutinized and their entrance to the army was treated with much suspicion.

Furthermore, over the course of World War I, the German criminal justice system increasingly failed to meet the standards of neutrality and equality. Actions that had previously been considered political offenses committed by “honorable” individuals now often led to felony disenfranchisement. This happened even

more often after the war as the punishment became highly politicized. In the Weimar Republic, the argument about “neutrality” was more contested than it ever had been in the time of the German Empire. Revolutionary upheavals, political assassinations, coup d’états, the trials that followed, and the government’s use of amnesty all contributed to the increasing politicization of this punishment. Moreover, the unprecedented mass character of political action and protest made it more difficult to draw clear distinctions between the political and the nonpolitical, as well as between honorable and dishonorable offenders. Protests against judges thought to be abusing this punishment swelled as they were alleged to be using it to silence political protest. In the Weimar Republic, however, such protest resulted in a fundamental questioning of the idea that “neutrality” was even possible.

This politicization continued after the Nazi Party rose to power. The *Blutschutzgesetz* was the Nazis’ first way of instrumentalizing the punishment for their ideology. However, by declaring that people who did not belong to the German *Volk* could not have this sentence imposed on them, they also purposefully rejected the idea of inclusiveness. By no longer imposing this sentence on Jewish and Polish individuals, Nazi officials explicitly denied them the basic honor that came with German citizenship. The idea of equality—that all citizens were in principle entitled to a certain honor—was thus eliminated for certain individuals who were fundamentally denied the right to even be considered trustworthy on racial grounds. The politicization and instrumentalization of the punishment in relation to the notion of the *Volk* are the most important reasons that the punishment lost its utility as a part of penal law after World War II.

In the end, it is hard to argue that the punishment was abolished after World War II due to penal reformers’ efforts to ensure that ex-offenders were granted a fair chance at reintegration. Plans to reform the criminal justice system in Weimar Germany often remained on the level of good intentions—this was particularly true for legislative change and the abolishment of felony disenfranchisement. What happened instead was that this legal punishment, long considered a self-evident part of the penal system, gradually fell out of favor due to an intensely contested and politicized understanding of the sentiments that the punishment was supposed to communicate and protect.

Even so, the punishment’s increasing politicization was surely not all that characterized its development in the first half of the twentieth century. Dishonored felons also began to experience a sense of collective political concern in consequence of changing ideas about punishment, resocialization, and entitlement. Around 1900, the frustration expressed by disenfranchised felons about the impacts of this punishment took on a new quality. Formerly, disenfranchised felons who had petitioned to have their rights restored had appealed to their biographies and their former honorable conduct as reasons why they should be entitled to

citizens' privileges. Now, many more ex-convicts began instead to stress their wish to become useful citizens in the future. In their experience, full citizenship was not just a privilege awarded for honorable life conduct but something one was entitled to by virtue of membership in a community—both local and national. Armed with this conception of citizenship and entitlement, they sought to hold the state accountable for their misery and criticized what they perceived to be an entirely unjust penal system.

In the traditional nineteenth-century idea of rehabilitation and entitlement, lawmakers' focus was on atonement and remorse. If one believed that one could "pay" for transgressions against the norms of citizenship, one implicitly signaled agreement with the idea behind the punishment. For instance, when ex-convicts appealed to their honorable, upstanding biography, they showed that they had effectively internalized the norms of moral and honorable citizenship. Expressions of shame and remorse crucially belonged within this rhetorical framework. In other words, as long as people believed that convicts deserved disenfranchisement for having transgressed the norms of moral citizenship, the effects of the punishment were consistent with lawmakers' intentions. Within this view of rehabilitation and entitlement, it was inconceivable that something like service to the community could pay for one's "dishonorable" crimes. In being disenfranchised, offenders were not paying for the damage they had done to others or to society at large but for the moral duty they had neglected, as well as for the harm they had caused to "collective sentiments" surrounding the notion of honor, to put it in Durkheim's terms.

The alternative to this traditional idea of rehabilitation and entitlement revolved around the notion that one could "pay" for one's crime by participating meaningfully in society. People who supported this notion started to argue that army service, for instance, could allow offenders to atone for their crimes. This new attitude toward punishment and entitlement enabled ex-convicts to protest their disenfranchisement without trying to deflect blame for their crimes or giving up on the notion of having to "pay" for them. Consequently, ex-convicts increasingly measured the seriousness of their crimes in terms of the harm they had caused rather than the norms they had failed to obey. Even "dishonored" felons demanded that their time be spent in a way that was useful to the nation; they expressed much less remorse and much more anger at the unjust penal system, increasingly regarding the punishment as disproportionate to the crime.

In light of these trends, I have tried to demonstrate in this book how the history of felony disenfranchisement in Germany informs us of the history of ideas and norms of citizenship there. In the Weimar Republic, ex-convicts' changing attitudes seemed to collide with those of the local authorities: the authorities still supported most of the traditional ideas of atonement and remorse, whereas many ex-convicts entertained new ideas of entitlement. The negotiations between ex-convicts and authorities about the justness of the punishment and the pos-

sibility of rehabilitation thereby show how controversial the penal system had become, and how much space there was for historical agents in this contested sphere to argue for their own interpretation of “just deserts.”

In this book, I have argued that felony disenfranchisement was a significant part of the German penal policy, but I have also aimed to urge political historians to take the actual form and execution of punishments seriously in their research. The crucial differences between certain kinds of punishment and their impact on citizens are often not thematized in political history; researchers most often only focus on the fact that political agents are punished, and not *how* they are punished. Meanwhile, detailed analyses of different forms of punishment and rehabilitation are often treated as a subdiscipline of social history. The actual form of a punishment, however, could have political consequences, as I have aimed to show here. The execution of felony disenfranchisement over time certainly demonstrates this. The execution of this particular punishment had an emotional impact, and contemporary observers really cared a great deal about whether felons were deprived of their civil privileges.