

Chapter 6

WELFARE AND JUSTICE

The Battle over *Gerichtshilfe* in the Weimar Republic

Warren Rosenblum



Soziale Gerichtshilfe was a pivotal institution in Weimar visions of criminal policy reform. Started in Bielefeld by a coalition of reformers, *Gerichtshilfe* was a vehicle for introducing social knowledge and technologies into criminal justice. Under *Gerichtshilfe*, welfare auxiliaries known as “court assistants” (*Gerichtshelfer*) produced a “comprehensive portrait” of accused offenders and their milieu. Their sources included interviews with the accused and his or her family, friends, employers, teachers, and clergy. The court assistants might also examine records and files from welfare associations, government agencies, and perhaps medical and psychological examinations. This material was then distilled into a social diagnosis and prognosis that could be used for sentencing and pardoning decisions and provided the guidelines for probation or parole. In some cases, the court assistants themselves supervised the offenders after their return to society.

Promising to build a bridge between the worlds of justice and welfare, *Gerichtshilfe* caught the imagination of reformers in both realms. The enthusiasm for this institution reflected a broad consensus in the early Weimar Republic that criminal policy must do more than simply enforce the law and protect society: it must actively contribute to producing disciplined and productive citizens. Justice, it was argued, required an apparatus to evaluate and sort the varieties of “human material” in relation to their social context. As one reformer wrote, “treating the criminal according to his type” was now recognized as the “essential task [of criminal justice], beginning with the first investigation of a crime and ending only when the criminal—so far as possible—is placed into ordered society.”¹

The success of *Gerichtshilfe*, however, opened up a set of difficult questions about who should control the social investigation of criminals and how social knowledge should be used in criminal justice. Judges and states’ attorneys argued

Notes from this chapter begin on page 177.

that *Gerichtshilfe* should be placed under the authority of the prosecutor's office. The function of the court assistants, in their view, was to provide raw data to the prosecutors about the social world of the accused. They stressed that *Gerichtshilfe* was not about advice or aid to the accused, but first and foremost about assistance *to the court*. This vision of *Gerichtshilfe* was emphatically rejected by the proponents of public welfare. Thus Prussian state welfare officials argued that *Gerichtshilfe* should perform a wide range of independent welfare tasks under the administration of city welfare offices. For some members of the left, even for some within the Prussian government, *Gerichtshilfe* raised hopes of a fundamental transformation of justice: piercing and eventually dismantling the walls that separated justice from social policy. A third perspective on *Gerichtshilfe* was represented by private prison societies and associations for prisoner and ex-prisoner welfare. In the early years of the Republic, these charitable associations sought a compromise position between the judges and the public welfare officials. Although they recognized many of their own traditional ideals in the demands of public welfare advocates, the advocates of private charity feared the consequences of state control over penal welfare, especially with the socialists in control of the Prussian state government.

Eventually, the concerns of the judges and the charitable associations converged around the fear that state-controlled *Gerichtshilfe* would undermine the integrity and the severity of justice. Welfare assistance, it was feared, would become a *right* for all criminals, rather than a *privilege* reserved for the repentant and morally deserving minority of offenders. The possibility that justice could be submerged in social policy—that punishment could be dissolved into welfare—seemed very real to conservatives at the end of the Republic. For Prussian judges and Protestant charities, *Gerichtshilfe* was a battleground in the struggle to rein in and contain a dangerous trend in reform.

This essay tells the story of *Gerichtshilfe*, from its origins in the Bielefeld System during World War I to the crisis that engulfed it in the latter years of the Weimar Republic. Following the trajectory of this institution, one can track both interwar Germany's consensus in favor of a social approach to criminal justice and the origins of a conflict, as a domain of social intervention was mapped out and brought into practice. In the last years of the Weimar Republic, disagreements over *Gerichtshilfe* animated the leading law and welfare reform societies, political parties, and the press. Ultimately the debate over this once-obscure institution helped define two irreconcilable visions of social order.

“Justice and Charity Kiss”: The Origins of the Bielefeld System during World War I

The origins of *Gerichtshilfe* lay at the confluence of diverse streams in German social reform. Christian charitable organizations, progressive jurists, socialists, and feminists all contributed to the making of *Gerichtshilfe*. The Weimar officials

who promoted the institution were usually students of the so-called modern school of criminal law reform, which emerged under the leadership of legal scholar Franz von Liszt in the last decades of the previous century. By contrast, the men and women who established *Gerichtshilfe* agencies in towns and cities across Germany were more likely to be disciples of the Christian social reform movement or professional welfare workers, committed to the expansion of social rights to the underclass. So many groups put their stamp on *Gerichtshilfe*, it is perhaps not surprising that ownership of the institution would soon be a subject of lively dispute.²

The father of *Gerichtshilfe*, Judge Alfred Bozi, was a reformer with wide-ranging interests and an extraordinarily large network of contacts. Bozi was the scion of a leading Westphalian textile family and the author of numerous essays on civil law, legal reform, and the role of the judiciary in Imperial Germany. During World War I, Bozi formed a Committee for the Discussion of Social Issues, along with his fellow Bielefelder and friend, socialist leader Carl Severing. The committee included employers and union leaders, teachers, and doctors, and also representatives from the nearby Bethel Asylum, a famous facility led until 1911 by the great Christian social reformer Pastor Friedrich von Bodelschwingh and thereafter administered by his son. While the Bielefeld Committee addressed issues such as labor relations, crime, and prostitution on a local level, Bozi worked on questions of national reform with the Society for Social Law, an organization that he had helped to establish a few years before the war.³

In 1915, the Bielefeld Committee spawned the forerunner to *Gerichtshilfe*, the Bielefeld System for the regulation of vagrants and beggars. According to the penal code, such “vagabonds” were sentenced to a few months in prison and then transferred to the state police at the discretion of the presiding judge. The police then incarcerated the offenders for up to two years in a workhouse or placed them under police supervision, in which case they were required to accept certain conditions for their freedom, including possible police visits at their home or workplace.

The Bielefeld System introduced alternative measures for these offenders. It was essentially an arrangement between the Bielefeld City Court, the Bielefeld Prison Association, and the Bethel Asylum. Members of the prison association were called to the court whenever defendants stood accused of vagabondage. These volunteers then investigated whether particular vagabonds could be deemed adult children, that is, persons “incapable of supporting themselves through consistent, orderly labor, because of their weakness of will.” The so-called adult children were then given the option of placing themselves under protective supervision (*Schutzaufsicht*) at the worker colony at Bethel, rather than being transferred to the custody of the police. The offenders were required to stay at Bethel for a defined period, not to exceed two years, with the threat of the police workhouse looming over them if they transgressed the asylum’s rules and regulations.⁴

The worker colony at Bethel was considered a more humane environment than the police workhouse, but it would be wrong to see this reform principally as an attempt to ameliorate the condition of the vagabonds. The Bielefelders turned to Bethel because of the Christian reformers' supposed expertise in categorizing and treating socially marginal, criminally at-risk individuals. "Father Bodelschwingh" had created the worker colony as a "port of security for all of those small crafts damaged on the high seas . . . who needed long and basic repairs."⁵ The colony offered hot meals, a structured environment, and hard, physical, productive labor, usually outdoors. Such work, according to Bodelschwingh, was both the "ancient touchstone" of men's character and a lever for moral improvement. Those who survived two years in the colony had supposedly proven themselves ready and deserving of full participation in society.

Since its inception in 1884, the worker colony primarily took in wayfarers who came of their own accord. The Bielefeld System gave Bethel a new form of coercive power over some of its charges. The individuals convicted of vagrancy or begging still officially entered the worker colony by choice, but the threat of the police workhouse was obviously a strong incentive. Once they arrived at Bethel, the possibility of being cited for rule-breaking—and therefore being sent to the police—was a Sword of Damocles hanging over the offenders' heads. If they were transferred to police custody, they could be subject to the full two-year workhouse sentence, regardless of how much time they had already spent under protective supervision at Bethel. According to Bozi, the Bielefeld System actually expanded the net of social control in Bielefeld. Due to the notoriety of the workhouses, the courts had previously been reluctant to transfer any but the most hardened offenders to the police. Under the Bielefeld System, scores of petty offenders who would previously have been freed after a few weeks in prison were now essentially placed under the authority of a welfare organization for up to two years.⁶

The Bielefeld System was embraced by the wartime Prussian state government as a way to modernize the fight against vagabondage. German officials believed that the coming peace (and peace was always "around the corner") would bring a flood of vagrants comparable to previous postwar demobilizations. Meanwhile, as the Great War dragged on, there was increasing public dissatisfaction with the workhouse. Critics pointed to the high cost of incarceration and the wasted labor power at a time when workers and soldiers were desperately needed for the war effort. The director of the Prussian Department of Prisons, Karl Finkelnburg, told the head of Bethel that he "welcomed any measure leading to limitations upon corrective custody."⁷

Late in 1916, the Bielefeld reformers adapted the principles of their system to aid in the fight against "sexual immorality." The city's female police assistant recruited female volunteers to investigate women accused of unlicensed prostitution or violations of the police codes on venal sex. These welfare advisers helped

determine whether the accused would benefit from protective supervision. As with vagrants and beggars, the judge could then force women offenders to accept protective supervision as a condition for avoiding the workhouse. In this case, however, protective supervision included a range of possible measures. Only the most “depraved” women were sent to enclosed institutions comparable to the worker colonies. Most were sent to urban halfway houses or were supervised at home and encouraged to seek employment in industry or domestic labor. Others were allowed to live with their own families, but remained subject to visits by supervisors and restrictions on their lifestyle. Overall, as was the case with the vagabonds, the Bielefeld System helped increase the number of women subjected to supervision, even as fewer women were sent to the workhouse. Welfare again offered a gentler form of supervision, but cast a far wider net—and the police power was still there, in case women offenders failed to meet the demands of their welfare overseers.⁸

For Bozi, the most significant result of these measures was mobilizing a diverse group of individuals and organizations to work with the courts in regulating women’s behavior. In implementing the Bielefeld System and propagating its spread, Bozi collaborated with prominent moral reformers such as Pastor Friedrich Onnasch of Berlin and Pastor Walter Thieme of Frankfurt, as well as advocates of women’s social and political equality such as Anna Pappritz and Margarethe Bennewitz.⁹ At the end of 1918, Bozi brought together a remarkably diverse group of reformers in a movement to harness women’s “particular sensibilities” on behalf of criminal justice. For a brief moment, radical feminists and arch-conservatives were united in an effort to make women’s special skills and knowledge available to judges. In Bozi’s view, such participation was key to his larger vision of constructing a bridge “between the social and the juridical.”¹⁰

In the long run, Bozi’s reform coalitions in the city of Bielefeld and across the Reich could not be sustained.¹¹ Nevertheless, the energies that produced the Bielefeld System inspired the belief that the “New Germany” emerging from the crucible of war could and should develop new forms of social control. Left, right, and center agreed that welfare supervision, built upon the broadest possible forms of popular participation, was vital to establishing domestic security and maximizing the productive labor power that resided in the *Volk*.¹²

The next logical step for Bozi was to expand the Bielefeld System to all categories of criminals, including felons. He wanted welfare organizations to advise the courts on whether to recommend a conditional pardon for convicted offenders and to arrange protective supervision for the period of their probation. The ultimate decision on the pardon would be made by the state penal authorities. The worker colony at Bethel was expected to play a key role in housing the offenders and in guaranteeing the integrity and reliability of the system.

The war seemed an opportune time for such reform. State administrators were using the pardon power liberally but unsystematically to address a pair of

dilemmas. First, the state needed laborers and, of course, soldiers for the war effort. According to German law, however, anyone who served time in a penitentiary (*Zuchthaus*) was stripped of the privilege of serving in the Emperor's army. If a sentence could be reduced from the penitentiary to prison (*Gefängnis*) or, better yet, suspended in its entirety, then a potential soldier was saved. Meanwhile, the state could deflect mounting public criticism concerning the cost of incarceration and the shirkers who allegedly enjoyed warm rooms and hot meals while the best and bravest fought and suffered at the front. Another source of headaches for the Prussian state involved the thousands of ordinary, otherwise law-abiding Germans who faced prison terms due to the growing number of "war-related offenses" added to the books. The pardons given to such "normal" citizens had become important for addressing the popular sense of fairness and the public's support for the legal system.¹³

Bozi's reform promised to rationalize the granting of pardons—a "horribly ceremonious process" of dubious juridical legitimacy. An element of arbitrariness clung to the pardon almost by definition. The pardon (*Gnade*) was an act of mercy in which the sovereign power intervened in the machinery of justice. Historically, mercy might arrive for no reason beyond the king's celebration of a birthday or wedding, and it could be denied without any explanation at all. In more recent times, mercy was bureaucratized and, at least in principle, dispensed with an eye toward individual justice and public concerns with fairness. Bozi and others sought to give the pardon a social meaning and justification and a firmer legal foundation.¹⁴

In trying to expand the Bielefeld System to ordinary criminals, Bozi faced new obstacles. Pastor Bodelschwing of Bethel worried that taking in large numbers of convicted felons would transform the character of his worker colony. His fellow directors from other colonies were even more skeptical toward Bozi's proposal. They had no trouble seeing vagabonds and prostitutes as hybrid penal-welfare subjects, as these groups were traditionally objects of both juridical regulation and administrative measures, including police, medical, and welfare intervention. By definition, the so-called adult children were not taken to be fully responsible for their actions. Felons, on the other hand, were presumed to be fully responsible for their crimes and thus subject to retributive measures that were the exclusive task of the state. It was asked whether welfare had *any* role to play in treating criminals until after the punishment was finished.

Bozi's most significant obstacle, however, was the law itself and the German tradition of granting judges relatively little discretion in sentencing. Bozi believed that judges should be "bound by the law, but only as a natural scientist works with received principles which are constantly extended and refined on the basis of methodical experience."¹⁵ The dominant school of jurisprudence in Imperial Germany started with very different assumptions. Judges were taught to ignore the social particularities of a criminal case and to follow "the naked letter of

the law.” That law was built essentially upon principles of retribution and deterrence: the judge’s first and essential duty was to uphold the majesty of justice by punishing the criminal act. There was no place for cost-benefit analysis or other pragmatic considerations based on empirical observation. The war was an ally for pragmatists like Bozi, who argued that criminal justice must change to meet the desperate need for manpower. But even in the last years of the war, the Reichstag blocked initiatives by socialist and left-liberal deputies to give the courts the power of conditional sentencing.¹⁶

Bozi’s experiment in Bielefeld nevertheless moved forward during the last year of the war and the chaotic first months of 1919. He found new allies in the campaign to expand judicial discretion and to empower welfare organizations on both sides of the political divide. Socialist jurists like Wolfgang Heine and Hugo Heinemann, who would each serve briefly as Prussian Justice Minister in 1919, made the case for the Bielefeld reforms and conditional sentencing to the National Assembly in Weimar and to the new government. At the same time, politically arch-conservative clergymen involved in charitable associations for released prison inmates worked with Bozi to develop institutions modeled on Bielefeld’s. Pastor Heinrich Seyfarth, the Director of the Deutscher Hilfsverein in Hamburg, played an important role in mobilizing interest among prison societies nationwide. Seyfarth was a disciple of Father Bodelschwing who had become known as an advocate of bold, experimental approaches to welfare for criminal offenders, including the organized resettlement of German criminals overseas and in rural communities at home. Seyfarth told Bozi that the “only difficulties” in his own charitable efforts were that former offenders “could *not be forced* to make use of [the] welfare institutions.” Pastor Hermann Hage, the head of the venerable Prison Society of Sachsen-Anhalt, worked with Bozi to establish a system of welfare advisers for the city courts in Halle, as well as a halfway house for offenders on protective supervision.¹⁷ Although socialists like Heine and Heinemann and conservatives like Seyfarth and Hage did not necessarily work together after 1919, they remained—thanks to Bozi—strange bedfellows in the movement to transform criminal court practice.

Critique from the Left: The Crisis of Trust in Justice

In the heady months following the collapse of the Imperial government, the dominant call of reformers was to increase popular participation in justice. Max Alsborg, a celebrated author and defense attorney, argued that “we can no longer do without the lay element in criminal justice.” He saw opportunities for a new era of popular participation in justice resulting from the fact that so many otherwise respectable Germans were prosecuted under wartime black-market laws. “The sphere of those touched by the punishing power of the state has moved closer to

the general consciousness,” he wrote.¹⁸ Hugo Heinemann and others associated with the new Prussian state government promised prison advisory boards, a jury system, and expanded use of lay judges (*Schöffen*). Journalist and activist Hans Hyan argued that greater public involvement would create a scientific foundation for penal policy. Only those who knew and understood the “life experiences” of the people, he wrote, could gather social data from the private sphere and adapt it effectively to criminal justice.¹⁹ In its historic Görlitzer Program of 1921, the Social Democratic Party (SPD) distilled such populist assumptions about justice into an agenda for moderate reform.²⁰

Much of this impulse for reform in the early Weimar Republic was a reaction to the so-called crisis of trust in justice (*Vertrauenskrise der Justiz*). Since the *fin de siècle*, the Prussian judiciary—once a great symbol of modernization and the rule of law—was increasingly perceived as an obstacle to progress. Critics accused judges of being *lebensfremd*, distant, from the *Volk* and trapped in a “dry and bloodless” formalism. Even Judge Bozi, a fierce defender of the judiciary, routinely invoked such images to describe the majority of his colleagues. Judges, he wrote in 1896, were overly specialized and ignorant of the important changes in society, economics, and ideas. In 1917, he suggested there were good reasons why so many Germans “perceived the law as an alien mechanism of coercion.”²¹

In the postwar era, it was on the left—but by no means only on the left—that this discourse was articulated most forcefully. The moderate socialist Gustav Radbruch warned the Reichstag in 1920 that “there is deep mistrust, deep exasperation among the people, among the working class, against our justice system.”²² In his inaugural address as Reich Minister of Justice, he referred to a “state of war” between the people and their courts. The very qualities that had once made German judges into heroes of the left now made them into subjects of ridicule and contempt. “Our judges are utterly and completely incorruptible,” declares Herr Peachum in Brecht’s *Three-Penny Opera* (1928). “No amount of money could corrupt them into doing justice.”²³ By the late 1920s, conservatives were infuriated by such assertions, but in the early Weimar years they implicitly and even sometimes explicitly acknowledged the *Vertrauenskrise* as a real and pressing issue.

From 1919 to 1923, the sense of urgency and opportunity kept jurists and welfare activists working on a common reform project, even as politics increasingly tugged them apart. The new Prussian state government first enacted sweeping reforms of the prisons and penitentiaries.²⁴ In 1920, Hugo am Zehnhoff, a conservative lawyer from the Catholic Center Party, joined the government as Minister of Justice. Zehnhoff, whom one subordinate remembers as “especially pardon-happy,” focused the Ministry’s attention on how to integrate the pardon process into ordinary court practice and give it a strong social component.²⁵ The result was a series of government decrees giving judges the authority to suspend sentences in certain cases where offenders promised to place themselves under welfare supervision. If the offenders made “an actual demonstration of overall

satisfactory behavior” during probation, then judges would arrange for a total pardon.²⁶ The duration of the probationary period was set by the judge and did not depend upon the seriousness of the crime. In many cases, supervision could last longer than the original sentence, and once it was over, there was no guarantee that the sentence would be forgiven. Simply staying out of trouble, the Ministry made clear, was not enough.²⁷

To provide a foundation for the successful use of the pardon, the Ministry turned to Bozi. Working with the Prison Society of Silesia, Bozi had developed general principles for the role of welfare advisers in the criminal court and rechristened the “Bielefeld System” *Soziale Gerichtshilfe*, or Social Court Assistance. The name harkened back to a similar institution developed for the investigation of juvenile offenders and thus underscored the fact that criminals would be treated less as independent, fully responsible legal subjects possessed of free will and more as products of their social environments, broadly defined.²⁸ Prussian officials hoped that *Gerichtshilfe* would help judges determine the precise contours of protective supervision, insure the “educational” character of these measures, and, perhaps more importantly, screen out dangerous individuals and others who should not be considered for pardon.

In announcing state support for *Gerichtshilfe*, Minister am Zehnhoff praised the institution as an antidote to the crisis of trust in justice. He noted the “conviction among wide sectors of the working class that the judiciary cannot properly judge their circumstances and their struggles, because they are cut off from the people and therefore do not possess sufficient knowledge of their life conditions.” Although the Minister defended the judges, he declared it was “nevertheless vitally necessary that we prove to the public that the state is doing everything in its power to provide for the insight of judges into all social conditions.”²⁹ This sentiment would be echoed repeatedly over the next several years. In the words of the legal scholar Wolfgang Mittermaier, *Gerichtshilfe* had the same purpose as that of the lay judges: its “popular perspective” supplemented the one-sided, routinized perspective of the professional judge.³⁰

The Spread of *Gerichtshilfe*

Over the next three years, dozens of *Gerichtshilfe* agencies were founded across Prussia, while the Ministry continually extended the terms under which judges could exercise their new power of discretion. While the state helped fund *Gerichtshilfe*, the initiative for the agencies always came from below. Bozi insisted that *Gerichtshilfe* should be “adapted to the conditions of local welfare organizations.”³¹ As a result, the institution took on different forms, depending upon the configuration of local forces. Many cities followed the Bielefeld model, creating independent offices to mediate between the courts and welfare associations.

Towns with especially strong prison societies tended to follow the example of Halle, which established *Gerichtshilfe* under the auspices of the Prison Society for Sachsen-Anhalt. Finally, a number of larger cities, starting with Berlin, set up *Gerichtshilfe* as a part of the public welfare office.

Both the Halle model and the Berlin model differed from Bielefeld *Gerichtshilfe* in that the court assistants did not simply investigate cases and arrange for welfare intervention, but actually practiced welfare themselves. Their goal, in fact, was “continuous welfare,” which meant that one welfare adviser was assigned to an individual from the first moment of conflict with the law, through the trial and imprisonment, and into the period of conditional freedom and protective supervision. In Halle, *Gerichtshilfe*’s court assistants helped accused offenders spiritually and even financially, visited prisoners and advised their families, and helped released prisoners to find jobs and housing. Having moved beyond mere investigation and mediation, as one social worker argued, the purpose of *Gerichtshilfe* in Halle was to pursue “every art of binding the individual to his environment.”³²

In Berlin, *Gerichtshilfe* was closely associated with juvenile justice and welfare for sexually at-risk girls.³³ The court assistants in Berlin were principally female police assistants, who worked under the direction of Else von Liszt, the director of welfare for youth offenders and the daughter of the great legal reformer.³⁴ In a sense, Berlin’s *Gerichtshilfe* piggybacked on the legitimacy and prestige of the juvenile justice movement, promising to inject pedagogical rhetoric into the discourse of adult punishment. Indeed, the female police assistants were principally trained in welfare for children and sexually “endangered” girls.³⁵ In the words of one reformer, Berlin *Gerichtshilfe* embodied an ideal of the judge as “people’s educator.” There was no real difference between youth and adult supervision, another Berliner claimed, except that juvenile institutions aimed to transform the offender’s underlying character (*Bildung*), while adult institutions focused upon the more modest goal of adjusting a person’s behavior to real existing conditions, especially to the demands of modern working life.³⁶

The spread of *Gerichtshilfe* accelerated after 1926 when another ordinance of the Prussian Justice Ministry called for the social diagnosis of *all* defendants in criminal prosecutions—even in cases where a pardon was unlikely. The Ministry ordered judges and prosecutors to consider the relationship of a criminal act to the personality of the offender. They were to determine “to what extent the act was based upon a reprehensible mentality [*verwerfliche Gesinnung*] or inclination of the will, and to what extent it rested upon causes which cannot be blamed upon the offender.” This ordinance obligated the courts to assess the offender’s early life and personal and economic relations at the time of the criminal act; the impact of mental disease or disturbance; the motive, incentive, and purpose of the act; the level of remorse; and the offender’s present condition and the likely impact of punishment upon the offender and any family relations.³⁷ Judges were required to marshal the special knowledge of welfare organizations and reach into

the everyday lives of offenders and their milieux. *Soziale Gerichtshilfe*, or some equivalent, was henceforth indispensable to the regular Prussian judicial process.

***Gerichtshilfe* and Municipal Welfare**

In the wake of the Prussian ordinance of 1926, government officials and reformers began to address the question of how to formalize the place of *Gerichtshilfe* in law and administration. In particular, there was concern that the Prussian state must choose a single *Gerichtshilfe* model. For many, the increasing scope and complexity of *Gerichtshilfe's* tasks was a clear argument in favor of putting the institution under the authority of the municipal government, as in the Berlin model, rather than depending on relatively unschooled and often inexperienced volunteers. Civil servants, under the administration of the cities' welfare authorities, would be accountable to the public and would have easy access to the welfare, police, and medical histories of individual clients. Advocates of placing *Gerichtshilfe* under the authority of the municipal welfare offices (*Kommunalisierung*) also pointed to the so-called Frankfurt numbers which indicated that 65 percent of the offenders who came before one *Gerichtshilfe* agency were previously clients of the city's regular welfare office. If "continuous welfare" was the goal, then the state seemed best positioned to unify the various existing forms of welfare oversight.³⁸

Moreover, socialist and progressive reformers increasingly hoped and expected that protective supervision would become a responsibility of the state rather than private associations. To be sure, as late as 1926, Werner Gentz, a prominent reformer and SPD official in Kiel, declared that charitable organizations were necessary to "supplement and animate" state welfare. To bureaucratize charity work [*Liebesarbeit*], he wrote at that time, "is to remove the love [*Liebe*]. Welfare without love is control."³⁹ Within two years, however, Gentz, like many SPD officials, was insisting that the state must oversee penal welfare to insure that it protected both the security of the public and the rights of offenders.⁴⁰ As the Reich government became increasingly interested in protective supervision, national leaders seemed to agree. In 1927, the Reich Minister of Justice declared that "it can no longer be doubted that a well-ordered and thorough welfare for released prisoners is the most successful means for the battle against criminality." He called for the Reich government to develop its own institutions to supervise ex-offenders and, in the meantime, to gain a "determinative influence" over the prison societies.⁴¹

In the late 1920s, many on the left came to see the communalization of *Gerichtshilfe* as a first step in fundamentally revising the relationship between justice and welfare. It became customary to argue that welfare and justice had essentially the same function. Both were concerned, as Gustav Radbruch argued,

with the individual “embedded in society, with all his intellectual and social constraints, with his total class-determined character.”⁴² Reformers wanted to see the courts take true cognizance of their social task, and this was only possible, they argued, if welfare experts were given a more prominent role in the analysis and determination of cases. As Werner Gentz argued,

[T]he criminal act is not a social phenomenon *sui generis* but rather only a special case of asocial behavior more generally. . . . One cannot pull the individual who has manifested this onto two different tracks: to attack the social distress by means of welfare . . . and the criminal act by means which are utterly indifferent to these matters. The conceptual distinction between these modes of procedure must not be allowed to grow into a discrepancy between the measures. *It concerns one and the same individual person.* He is not separable into an object of criminal justice and one of welfare.⁴³

The only way to insure that criminal policy operated, as it were, on a single track was to build *Gerichtshilfe* into an institution that independently, forcefully, and systematically brought social perspectives into the courtroom. Clearly, such an outcome could only be realized with state backing for *Gerichtshilfe*. In describing the courtroom of the future, Socialist reformers even envisioned a “working group” (*Arbeitsgemeinschaft*) or round table at which judges, welfare-officials, doctors, and prison wardens would discuss criminal cases as equals. “The judge,” Wolfgang Mittermaier argued, “will thereby climb down from his somewhat elevated seat,” whereas the remaining contributors will “climb up from the position of consultants.”⁴⁴

Critique from the Right: The Weakening of Justice

From its beginnings, *Gerichtshilfe* faced an ambivalent, if not actually hostile, reception from many Prussian judges. Individual judges rarely stated their feelings openly, but public and private *Gerichtshilfe* agencies complained of passive resistance from the bench. In cities where *Gerichtshilfe* investigated cases on its own initiative, conservative judges simply ignored the welfare reports or refused to allow the agencies to participate in the main proceedings. In some other locales, *Gerichtshilfe* was simply underutilized, as the judges rarely asked for the agencies’ intervention. Tensions between judges and the *Gerichtshilfe*’s court assistants could be especially acute in cities like Berlin, where the agencies were administered by the municipal authorities.⁴⁵

The principal reason for judicial resistance to *Gerichtshilfe* was the judges’ concern with the so-called *Verweichlichung* of justice—the softening or weakening of justice—which was blamed upon the penetration of alien ideas and the politicization of criminal policy. *Verweichlichung* referenced both the courts’ diminished institutional integrity and the decline in the severity of punishment.

Trained to see themselves as agents of retribution and deterrence, many judges were inherently mistrustful of the effort to force social concepts into legal reasoning. The very notion of judicial discretion, in some views, was a Trojan horse for nonjuridical (welfare, medical) institutions to infiltrate and eventually co-opt criminal justice.

The judges' underlying fear of foreign elements within legal discourse was exacerbated by growing evidence of a trend toward mildness in German justice since before the First World War. Two studies published in 1926 argued that the courts had become excessively lenient. Law professor Franz Exner offered a statistical analysis of long-term patterns in sentencing practices, arguing that serious felons were increasingly spared the *Zuchthaus* (penitentiary) and sent to regular prison for shorter terms instead. The trend toward reduced sentences, he argued, began in the late nineteenth century, but accelerated in the postwar era, even as the frequency of many offenses increased. Part of the reason for this, Exner noted, was that the courts took postwar deprivation and the effects of hyperinflation into account when sentencing offenders. He rejected the idea, however, that social trauma was sufficient to explain or to justify this change in practice. He noted that multiple recidivists also received lighter sentences and that the trend toward mildness continued even after economic conditions improved.⁴⁶

In a more polemical attack on sentencing practices, the criminologist Robert Heindl argued that justice institutions were increasingly infected by a “meaningless, exaggerated sentimentality.” Heindl originally rose to prominence as a critic of Wilhelmine schemes to rehabilitate German criminals through resettlement in colonial environments. In the Weimar era, he again attacked the so-called utopian belief in corrigibility. Rejecting the welfarist conception of criminals as weak-willed, vulnerable individuals who could be transformed through supervision, he insisted that a substantial percentage of offenders were professionals—that is, individuals who were committed to crime as a vocation and thoroughly socialized into a criminal lifestyle. The increase in pardons and the reduction in sentences, Heindl charged, simply consolidated the position of a powerful criminal underworld.⁴⁷

The evidence of more lenient sentencing produced a simmering discomfort with reform among many judges and prosecutors. During the era of “relative stability” in the mid-twenties, conservatives complained of a steady decrease in conviction rates, the increased use of monetary fines in lieu of prison terms, and the increasing neglect of police supervision for released prisoners.⁴⁸ Advocates for the judiciary were particularly caustic in regard to the perceived meddling of state administrative bodies in judicial affairs. Even after the momentous reforms in the practice of suspended sentencing based on conditional pardons, it was still up to the state judicial authorities to make the final, official decision of whether to grant a pardon. Critics accused the Prussian state of “politicizing” justice through its interest in the outcome of individual cases. Alongside these

administrative pressures, judges complained about more diffuse cultural pressures, the “softness of the times,” which subtly but consistently pushed them toward mildness. Even criminologist Gustav Aschaffenburg, a longtime advocate of flexible sentencing, argued in 1926 that the courts now “yielded too much to popular sensibilities.”⁴⁹

The discourse of *Verweichlichung* also reflected intense skepticism concerning protective supervision as a model of social control. In truth, protective supervision remained a poorly defined and chronically neglected institution throughout the Weimar years. To be sure, the Prussian state periodically considered upgrading welfare for released prisoners and establishing specialized asylums and half-way houses (*Übergangsheime*) for former offenders.⁵⁰ Welfare associations likewise explored the possibility of developing closed facilities specifically for ex-offenders or of getting the worker colonies to supervise more offenders on probation. The directors of many asylums, however, resisted segregating ex-offenders from the larger population of persons in need of welfare. In their view, the essential task of welfare for released prisoners was to bring them into the mainstream and shelter them from social stigma.⁵¹

The persistence of high unemployment in the 1920s undermined both the moral and the practical arguments in favor of welfare for criminal offenders. Critics asked why ex-criminals should receive special benefits and job assistance while millions of ordinary, law-abiding Germans were forced to fend for themselves. Underlying the growing discomfort with protective supervision was the dilemma known as the “principle of less eligibility”: for punishment to maintain its deterrent effect, it must always be more unpleasant than ordinary living conditions of the law-abiding poor. If punishment, in its overall effect, improved the condition of the poor, then people would have an incentive to commit crimes.⁵² With the onset of a new economic crisis after 1929, prison societies became increasingly focused on restricting the pool of offenders who were eligible for protective supervision. “The burning question is that of selection,” wrote the prison association in Berlin in an annual report that boasted of a drop in clients. Not surprisingly, many associations looked to criminal biology in hopes of finding a scientific method for excluding the unwanted.⁵³

In Bozi’s original plan for *Gerichtshilfe*, the growth of welfare supervision was supposed to offset the inevitable decline in incarceration. With the failure to expand or even sustain the work of the prison societies, state welfare offices or worker colonies, a generation of released criminals now allegedly went unsupervised. Critics claimed to see the disintegration of traditional social controls, pointing to such developments as a piece of Weimar legislation that limited the length of time during which information about offenders could be maintained in the criminal register. They also pointed to state and local decrees that restricted the scope of police supervision in such ways that the authorities could no longer banish ex-convicts from certain locales or even visit them at their homes or their

places of employment. The 1927 draft of the penal code envisioned abolishing police supervision entirely.⁵⁴

Critics of reform claimed that criminal offenders who were granted a conditional pardon or early release had few obligations beyond filling out forms and dropping by the police station now and then. Unless they sought direct financial assistance, the welfare agencies allegedly lost sight of them. Professional criminals were said to have become mocking and contemptuous of the Weimar justice system. A well-known saying of the Berlin underworld, according to Theodor Noetzel, was “[E]rst klau’ ick, dann bewähr’ ick mir” [[F]irst I heist somethin’, then supervise meself].⁵⁵ Critics claimed that offenders now saw a sentence of protective supervision as equivalent to an acquittal. “I was acquitted for three years,” was another supposed saying from Berlin. Since first offenses rarely led to prison terms, criminals believed that the first offense, in essence, “did not count.”⁵⁶ By the late 1920s, the softening (*Verweichlichung*) of justice was as much a keyword of right wing politics as “crisis of trust” (*Vertrauenskrise*) in justice was for the left. When Prussia appointed a new justice minister in 1928, even the liberal *Berliner Tageblatt* urged the minister to treat the question of *Verweichlichung* as the first topic of discussion during his introductory press conference.⁵⁷

Controlling *Gerichtshilfe*: Judiciary versus Welfare Authorities

To contain the threat of *Verweichlichung* and protect the integrity of the courts, judges and prosecutors sought to assert control over *Gerichtshilfe*. A leading force in mobilizing the judiciary in this respect was Theodor Noetzel, the chief prosecutor in Kassel as well as founder and director of one of the first *Gerichtshilfe* agencies. Kassel’s *Gerichtshilfe* was created on the Bielefeld model, whereby an independent association, dominated by jurists, oversaw the institution. Noetzel, however, went further than the Bielefelders in subjecting *Gerichtshilfe* to the direct control of the court. Not only did Prosecutor Noetzel personally select and train the *Gerichtshelfer*, but, in contrast to its Bielefeld counterpart, the Kassel *Gerichtshilfe* could intervene in criminal cases only if specifically authorized by Noetzel’s office. Its reports were submitted directly to the prosecutors, who summarized them for the judges and assessed their implications for a given case. In sum, the Kassel *Gerichtshilfe* reports were shaped to correspond to the interests and concerns of the prosecution.⁵⁸

In many ways, Noetzel was a more compelling advocate for reform among Prussian judges than Bozi. In contrast to his Bielefeld colleague, Noetzel had never been a critic of the judiciary, nor had he ever worked closely with questionable allies such as socialists and feminists. Even though he urged judges to embrace *Gerichtshilfe*, he was solicitous regarding judges’ misgivings toward the penal reform movement. Noetzel was also sharply critical of welfare organizations,

citing their mistrust of the judiciary and their tendency to empathize too much with the accused. In a speech at a gathering of Christian reformers, Noetzel began by summarizing the arguments of *Gerichtshilfe's* critics. He asked rhetorically:

In a time of the deepest moral decline [and] extraordinary indifference to justice and law do you want to support the criminal against the suffering, innocent national comrade [*unbestrafter Volksgenosse*]? Do you want to take away the last vestige of the criminal's sense of responsibility through the punctilious investigation of the intellectual, spiritual, and economic foundations of a crime? Can you answer for the progressive weakening of criminal justice and, resulting from that, the reduction and the effacement of the internal restraints upon those national comrades with an asocial predisposition?

Noetzel responded that "correctly practiced" *Gerichtshilfe* would not constitute aid and support for criminal offenders *against the court*, but rather assistance *to* the court against criminals. This approach, he argued, was consistent with Bozi's original vision of *Gerichtshilfe*, and it was the only form in which the institution would not undermine justice and public security.⁵⁹ *Gerichtshilfe*, he declared, must provide facts and descriptive information "unclouded" by one-sided concern for the criminal's "well-being." The *Gerichtshilfe's* court assistants were to serve as the eyes and ears of the prosecutors and judges within the social realm. Their principal concern had to be the purpose of the punishment.⁶⁰

Noetzel thus offered Prussian judges a vision of *Gerichtshilfe* in which romantic, utopian ideals of popular justice were contained by the steadying hand of the prosecutor. The court assistants in the Kassel *Gerichtshilfe* included a factory director, two factory workers, an artisan, "ladies" from the Jewish, Catholic, and Protestant welfare associations, and one woman from the public welfare office. These voices of the people, however, along with the voice of the criminal were introduced into the court record only after being analyzed, interpreted, and reformulated by the prosecutor's office. They impacted the proceedings only within the context of the prosecutor's case.⁶¹ Over and over, Noetzel argued that *soziale Gerichtshilfe* was *not* a welfare institution, but a mediating institution working on behalf of the court. To avoid any confusion about the purpose of *Gerichtshilfe*, he even argued that its official name should be changed, dropping the modifier *soziale* (social) and calling the institution adult *Gerichtshilfe* or, better, simply *Gerichtshilfe*. At best, he asserted, referring to *Gerichtshilfe* as a social institution was redundant or obvious. More often, he asserted, the name encouraged the misconception that *Gerichtshilfe's* principal loyalties were to the social realm.

Largely owing to his leadership, Prussian judges soon mobilized around the issue of *Gerichtshilfe*, encouraging its growth, but insisting that it serve "the interests of the court" and "not the interests of the accused." The symbolic valence of the *Gerichtshilfe* issue was such that it reinvigorated a largely moribund organization called the Prussian Judges Association (Preussischer Richterverein, PRV)

after 1927.⁶² In that year the PRV established principles on *Gerichtshilfe* and, one year later, proposed legislation authored by Noetzel to formally establish the institution as an arm of the prosecutor's office. This intervention, in turn, became the centerpiece of fierce controversies over the future of German penal policy.

Charitable Prison Societies: Between Welfare and Justice

The debates over *Gerichtshilfe* were also significantly shaped by the charitable prison societies. The very concept of *Gerichtshilfe* as welfare owed a great deal to the Christian social tradition. The Prison Society of Sachsen-Anhalt had basically invented the idea of *Gerichtshilfe* as the fulcrum for an all-encompassing welfare system, whereas other local charitable associations had continued to play often leading roles in shaping this combination of investigatory, custodial, and spiritual functions.

The close connection between *Gerichtshilfe* and welfare was also reflected in the title of the Weimar Republic's new umbrella organization for prison societies, the Deutscher Reichsverband für Gerichtshilfe, Gefangenen- und Entlassenenfürsorge (National Association for Gerichtshilfe, Prison Welfare and Welfare for Released Prisoners). The Reichsverband was formed in 1926 under the leadership of Pastor Seyfarth of the Deutscher Hilfsverein, who had insisted that a new organization was necessary to represent the expanding role of charitable societies in Weimar criminal justice. This new organization replaced the National Association of Prison Charitable Societies (Verband der deutschen Schutzvereine für entlassene Gefangene) founded in 1892. Criticizing the older association as inextricably tied to the outdated notion that "welfare . . . starts only after the punishment has ceased," Seyfarth argued that the new Reichsverband would "take a position on all problems encompassed by guilt and atonement . . . [and] stimulate changes . . . through which the entire penal system will be saturated with welfare ideals."⁶³ A key element of the multipronged social agenda of the Reichsverband was the establishment of *Gerichtshilfe* agencies across Prussia. As a first step, Seyfarth founded and edited a new journal, the *Monatsblätter für Gerichtshilfe, Gefangenen- und Entlassenenfürsorge*, which served as a forum for the discussion of practical issues in the border areas between punishment and welfare.

As an advocate of the prison societies, Seyfarth's Reichsverband should have been a natural ally of the public welfare advocates in their effort to establish *Gerichtshilfe* as a welfare institution. Whereas the Prussian Judges Association insisted that *Gerichtshilfe* must not provide "aid and comfort" to the accused, the prison societies had traditionally stressed compassion and empathy for offenders. For Seyfarth, a disciple of Father Bodelschwingh, the essential purpose of protective supervision was to create "a connection between the criminal and the circles

of people constituted as religious, professional or social communities.” In the inaugural issue of the *Monatsblätter*, Seyfarth described accused offenders as persons “torn suddenly from their professional and family life.” A key goal of prison welfare, he argued, was to help respectable society overcome its natural prejudice against and revulsion toward criminals.⁶⁴ Another pastor echoed this theme at a Reichsverband conference. Penal welfare, he declared, was essentially “care of the community [*Gemeinschaftspflege*] . . . an effort to awaken the sense of co-responsibility among the public.” Its purpose was to “anchor the consciousness of responsibility for offenders in public life.”⁶⁵

Many rank-and-file Protestants active in local prison societies also clung to an image of *Gerichtshilfe* embedded in this tradition of custodial care and oversight. Sharing this outlook, the leaders of the Innere Mission searched for a synthesis between Noetzel’s insistently juridical viewpoint and the extreme social perspective of the proponents of public welfare.⁶⁶ Some charitable organizations feared compromising the traditional ideals of the prison societies by becoming too closely associated with the court’s prosecutorial apparatus.⁶⁷ Of particular concern was how prison societies could build and maintain the trust of criminal defendants if they were to become tools of the court. Paradoxically, however, the Inner Mission argued that the defendants’ trust in the court-assistants was endangered when criminal defendants had access to the *Gerichtshilfe* reports—something that was required by law once *Gerichtshilfe* reports were placed among the prosecutor’s evidentiary materials. In some German towns, *Gerichtshilfe* court assistants faced harassment and threats of retaliation from the families of defendants subjected to negative reports. A certain Pastor Oehlert of Rinteln vividly described a mother’s anger over his role in her son’s *Gerichtshilfe* report. The woman cursed him as “black police” and allegedly rallied support from “radical political elements.”⁶⁸ The Inner Mission feared that under the judges’ plan for *Gerichtshilfe*, the helpers themselves would be subject to more such confrontations, and indeed, could even be called as witnesses to testify against the accused.⁶⁹

Despite such reservations about judicial control of *Gerichtshilfe*, however, Christian charitable associations chose to ally themselves with the judges and mobilized against the welfarist interpretation of *Gerichtshilfe*. Seyfarth and the Reichsverband stood firmly alongside Noetzel, and the *Monatsblätter* increasingly adopted the tone of the Prussian Judges Association. Prison societies boasted of their efforts to purge excessive sentimentality from their ranks and to train welfare advisers to be coolly detached and skeptical toward the claims of their charges.⁷⁰

The charitable associations’ retreat into the arms of conservative judges derived from fears that public welfare advocates were set to make suspended sentences coupled with protective supervision into a *right* for all criminals, rather than a *privilege* reserved for the deserving few. By rejecting the very principle of retribution, socialist and progressive reformers had allegedly decoupled punishment

from its moral purpose. Once punishment became just another aspect of social policy, the decision to suspend sentences through a conditional pardon was based purely upon the criminal's capacity to be socialized, to live peaceably and labor productively in the future. Criminals would be let loose upon society without showing remorse, performing restitution or being subject to the "knowing eye" of Christian love.⁷¹

Noetzel's and Seyfarth's most important recruit to their cause was Alfred Bozi, who was given a seat of honor as the "father of *Gerichtshilfe*" at Reichsverband functions. Bozi had originally supported communalization in Bielefeld and only grew disillusioned with municipal control after socialists on the welfare council objected to the use of public funds to support private charities.⁷² Throughout his most active years as a reformer, Bozi had refused to take sides in the debate between proponents of public welfare and the private charities, and in fact had encouraged experimentation at the local level. It thus marked a rather abrupt change of position in 1928, when the physically ailing and retired judge endorsed Noetzel's view that *Gerichtshilfe* was "assistance to the court, but not a welfare measure."⁷³ In explaining his views, Bozi expressed alarm at the politicization of justice, which, he claimed, inevitably resulted from the municipal administration of *Gerichtshilfe*. As was generally the case with such accusations, the charge was vague and unsubstantiated. To him it seemed self-evident, and even a decade later he would cite the "politicization of justice" as a key experience that drove him to embrace Hitler's promise of "national renewal."⁷⁴

Conclusion

Over time, the debate over *Gerichtshilfe* became a proxy for a more fundamental conflict about the nature of punishment and the locus of authority in criminal justice. "Perhaps hardly an area of the penal sciences is as controversial as soziale Gerichtshilfe," declared the *Berlin Börsen-Courier* in 1929.⁷⁵ The Congress of German Municipalities and the Association of German Juvenile Courts helped mobilize indignation against the Prussian Judges Association's proposal to subordinate *Gerichtshilfe* to the judiciary. The Reich Conference of Socialist Jurists accused the judges of "an attempted coup against the social state."⁷⁶ Judges and prosecutors fought back at professional meetings and in the press, accusing welfare proponents of trying to make *Gerichtshilfe* a Trojan horse with which to infiltrate and manipulate court procedure.⁷⁷ "Between the judges and the representatives of public welfare," observed a participant at the Internationale Kriminalistische Vereinigung (IKV) in 1929, "there were utterly divergent viewpoints concerning the relationship between welfare and punishment."⁷⁸

The jurist Wolfgang Mittermaier noted wearily that there was something "typically German" in having allowed an institution to develop informally without ever

agreeing upon who would participate, what it would do, or even what it would be called. Such haphazard, grassroots development was possible and perhaps necessary in the context of postwar Germany, where the essential appeal of *Gerichtshilfe* was precisely in its organic roots and its populist character. By the late 1920s, however, *Gerichtshilfe* had matured, and control of its stake had become a central issue in two rival and apparently irreconcilable visions of penal policy.

Notes

This chapter, written especially for this volume, draws on material from the author's *Beyond the Prisons Gates: Punishment and Welfare in Germany, 1850–1933* (Chapel Hill: University of North Carolina Press, 2008).

1. Wolfgang Mittermaier, "Grundgedanken der Gerichtshilfe," *Die Justiz* 6, 1 (October, 1930), 7.
2. On the modern school of criminal reform, see Richard F. Wetzell, "From Retributive Justice to Social Defense: Penal Reform in Fin-de-Siècle Germany," in *Germany at the Fin de Siècle: Culture, Politics, and Ideas*, ed. Suzanne Marchand and David Lindenfeld (Baton Rouge, 2004), 59–77; idem, *Inventing the Criminal: A History of German Criminology 1880–1945* (Chapel Hill, 2000), 33–38. There has been surprisingly little historical work on the private prison societies. See Andrew Lees, *Cities, Sin, and Social Reform in Imperial Germany* (Ann Arbor, 2002), 182–185.
3. Stadtarchiv Bielefeld, Nachlass Bozi, A. Bozi, *Lebenserinnerungen*, unpublished manuscript (1937), 145–147; and Nachlass Bozi, Nr. 37.
4. Hauptarchiv der von Bodelschwingschen Anstalten Bethel, Entwurf. 2/12-16, Entwurf. F. 705. Minister of the Interior von Loebell to Regierungspräsidenten and Polizeipräsidenten, 23 November 1916.
5. Friedrich von Bodelschwingh, "Die Arbeiterkolonien und Verpflegungsstationen," *Die Arbeiter-Kolonie* 1, 3 (1884), 85; and "Bericht über die erste Hauptversammlung des Deutschen Herbergsvereins," *ibid.*, 170.
6. Geheimes Staatsarchiv Preussischer Kulturbesitz, Rep. 77, Tit. 1104, Nr. 18, Adh. III. Fürsorge für die willenschwachen Wanderarmen und ihre Unterbringung in Arbeiterkolonien, 1916–1919.
7. Nachlass Bozi, Nr. 37, Bodelschwingh to Bozi, 15 May 1915. On the actual decline of the workhouse during the war, see Wolfgang Ayass, *Das Arbeitshaus Breitenau* (Kassel, 1992), 241–243.
8. Georg Steigerthal, *Grundriss der Anstaltsfürsorge* (Berlin, 1933), 147, 157–158.
9. Onnasch and Thieme were disciples of Adolph Stoecker who were active in the morality movement. Correspondence in Nachlass Bozi, no. 23.
10. Nachlass Bozi, no. 23, Bozi to Professor W. Mittermaier, 5 November 1918.
11. The women's committee fell apart in the spring of 1919 after the feminist members started publicly advocating for the admission of women into the judiciary. A little later, reformers in Bielefeld divided along political lines over a dispute concerning funding for private welfare. Nachlass Bozi, no. 23. Bozi to Leyen, 11 July 1919.
12. Alfred Bozi, ed., *Recht, Verwaltung, und Politik im neuen Deutschland* (Stuttgart, 1916). On the role of the war in forging new reform coalitions, see Ursula Ratz, *Zwischen Arbeitsgemeinschaft*

- und Koalition: Bürgerliche Sozialreformer und Gewerkschaften im Ersten Weltkrieg, (Munich, 1994).
13. "Neue Gnadenerweise für Kriegsteilnehmer," *Deutsche Strafrechtszeitung* 2 (1915); *Stenographische Berichte über die Verhandlungen des Reichstages*, 164. Sitzung, 13 May 1918; *ibid.*, 82. Sitzung, 23 February 1917, Anfrage no. 107.
 14. Nachlass Bozi, no. 34. Bozi to Schiffer, 24 April 1918. On pardons, see James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Gap Between America and Europe* (Oxford, 2003).
 15. Bozi's thinking was often aligned with the "free law movement," though he did not consider himself to be a part of any school. See Alfred Bozi, *Die Weltanschauung der Jurisprudenz* (Hannover, 1907); *idem*, *Lebendes Recht: Ein Ausblick in den Probleme der Justizreform* (Hannover, 1915); *idem*, "Das Rechtsgesetz als Naturgesetz," *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* 15 (1924), 166–169. On criminal justice and the free law movement, see Benjamin Carter Hett, *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge, 2004), 20, 170–171.
 16. *Stenographische Berichte über die Verhandlungen des Reichstages*, 164. Sitzung, 13 May 1918. On conditional sentencing, see Eberhard Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege* (Göttingen, 1947).
 17. Nachlass Bozi, no. 38, Seyfarth to Bozi, 19 August 1919, emphasis in the original; Hage, "Die Übergangsstation im Dienste der Fürsorge an den entlassenen Gefangenen," in *Jahrbuch der Gefängnis Gesellschaft für die Provinz Sachsen und Anhalt* 32, 41–52.
 18. Max Alsberg, "Vorwort," in *Berliner Gefängnisse*, ed. Hans Hyan (Berlin, 1920), 11–12. Alsberg was apparently much less enthusiastic about popular participation prior to World War I; see Hett, *Death in the Tiergarten*, 161–178.
 19. Hans Hyan, *Verbrechen und Strafe im neuen Deutschland: Flugschriften der Revolution, Nr. 4.* (Wiesbaden, 1919), 23.
 20. Behrle, *Stellung*, 57; Klaus Marxen, *Der Kampf gegen das liberale Strafrecht* (Berlin, 1975), 76–77.
 21. Alfred Bozi, *Die Angriffe gegen den Richterstand* (Breslau, 1896); *idem*, *Soziale Rechtseinrichtungen in Bielefeld* (Stuttgart, 1917), 32.
 22. Quoted in Robert Kuhn, *Die Vertrauenskrise der Justiz (1926–1928): Der Kampf um die "Republikanisierung" der Rechtspflege in der Weimarer Republik* (Cologne, 1983), 44.
 23. Bertolt Brecht, *Die Dreigroschenoper* (orig. 1928, Suhrkamp, 1982), 71. Weimar playwrights and novelists made an important contribution to the negative image of judges and prosecutors. See Jakob Wassermann, *Der Fall Maurizius* (orig. 1928, Munich, 1988), and Ricarda Huch, *Der Fall Deruga*, (orig. 1917, 1992).
 24. "Allgemeine Verfügung über Milderungen im Strafvollzuge vom 19. Dez. 1918," in Alfred Behrle, *Die Stellung der deutschen Sozialisten zum Strafvollzug von 1870 bis zur Gegenwart* (Leipzig and Berlin, 1931), 25–27; Nikolaus Wachsmann, "Between Reform and Repression: Prisons in Weimar Germany," *Historical Journal* 45 (2002), 413–414.
 25. Fritz Hartung, *Jurist unter Vier Reichen* (Cologne, 1971), 34–40.
 26. Bundesarchiv, Rep. 30.01, no. 6109. Staatsmin.-Erlaß, 2 August 1920; and Allgemeine Verfügung, 19 Oct. 1920; Theodor Noetzel, "Bewährungsfrist," in *Handwörterbuch der Kriminologie*, ed. Alexander Elster and Heinrich Lingemann (Berlin and Leipzig, 1933), 160. The original decree limited use of the pardon to criminals facing a sentence of six months or less.
 27. Hartung, *Jurist*, 38–39.
 28. Nothing in the 1920s understanding of "the social" precluded the consideration of imminent, biological factors as influences upon individual behavior. In fact, such factors were presumed an essential part of the social fabric.

29. Geheimes Staatsarchiv, Rep. 84a, no. 8511. Am Zehnhoff to Minister of Finance, 30 June 1922.
30. Mittermaier, "Grundgedanken," 7.
31. Else Bozi, *Gerichtshilfe für Erwachsene* (Stuttgart, 1925), 19.
32. Magdalene Deimling-Triebel, *Die Eingliederung von Rechtsbrechern in Wirtschaft und Gesellschaft als Aufgabe der Gerichtshilfe* (Durlach, 1932), 127.
33. Brandenburgisches Landeshauptstaatsarchiv, Potsdam, Rep. 12A. Neuruppin, "Erklärung" von M. Neumann, 15 July 1925, Bericht über die Tagung der Gerichtshilfe für Erwachsene in Halle Mai 1925. See also, E. Bozi, *Gerichtshilfe*, 22–26.
34. Eventually, Gerichtshilfe work in Berlin would constitute over 50 percent of the female police assistants' activities. See Patrick Wagner, *Volksgemeinschaft ohne Verbrecher* (Hamburg, 1996), 107–109.
35. Ursula Nienhaus, "Einsatz für die 'Sittlichkeit': Die Anfänge der Weiblichen Polizei im Wilhelminischen Kaiserreich und in der Weimarer Republik," in "*Sicherheit*" und "*Wohlfahrt*": *Polizei, Gesellschaft und Herrschaft im 19. und 20. Jahrhundert*, ed. Alf Lüdtke (Frankfurt, 1992).
36. Brandenburgisches Landeshauptstaatsarchiv, no. 1338, Vortrag von Herrn Obermagistratsrat Knaut, gehalten am 17. Juni 1926.
37. Geheimes Staatsarchiv, no. 8512, "Allgemeine Verfügung des Preussischen Justizministers vom 8. März 1926 über die Strafzumessung"; Böhmert, "Rechtliche Grundlagen," 26–27.
38. Gröschner, "Die Frankfurter Gerichtshilfe," *Monatsblätter des deutschen Reichsverbandes für Gerichtshilfe, Gefangenen- und Entlassenenfürsorge* (hereafter *Monatsblätter*) 2, 11/12 (November/December 1927); *Mitteilungen der Internationalen Kriminalistischen Vereinigung* (hereafter *Mitteilungen der IKV*), (1930), 33–34; Bundesarchiv, no. 5726, Bericht an Preuss. Just. Min., 1929; Archiv des Diakonischen Werkes der Evangelischen Kirche (hereafter: ADW), no. 1308. Fritze, "Abschrift," 19 October 1926.
39. Werner Gentz, "Der Fürsorgeanspruch des entlassenen Gefangenen," *Monatsblätter* 1, 3 (March 1926); and "Gefangenenfürsorge als wirtschaftliches Problem," *Monatsblätter* 1, 4 (June/July 1926).
40. See also Otto Krebs, *Straffälligenfürsorge*; Karl Finkelnburg, *Berliner Tageblatt*, 27 October 1928; Magdalene Deimling-Triebel, *Die Eingliederung von Rechtsbrechern in Wirtschaft und Gesellschaft als Aufgabe der Gerichtshilfe* (Durlach, 1932); criticism in Max Grünhut and Hugo Pfefferkorn, *Die Gerichtshilfe*, (Heymann, 1930).
41. Bundesarchiv 5683, Reichsministerium des Innern to Reichsjustizministerium (RJM), 12 June 1926; RJM to Reich Minister der Finanzen, Aus Haushalt 2/1 (1927); Abschrift zu RJM no. VW. aus den Akten Haushalt 2/1 (1927).
42. Gustav Radbruch, "Sozialismus und Strafrechtsreform," *Sozialistische Monatshefte* (1927); also Muthesius in *Mitteilungen der IKV* (1930), 27.
43. Werner Gentz, "Die Gerichtshilfe: Wohlfahrt im Strafrecht," *Vossische Zeitung*, 23 May 1929, original emphasis. See also the review of Buerschaper, *Soziale Strafrechtspflege in Vossische Zeitung*, 8 August 1929.
44. Mittermaier, "Grundgedanken," 8; *Mitteilungen der IKV* (1930), 36–37. The debate over the communalization of Gerichtshilfe paralleled a more widely known debate over the communalization of welfare; see Young Sun Hong, *Welfare, Modernity, and the Weimar State* (Princeton, 1998).
45. Brandenburgisches Landeshauptstaatsarchiv, 1338, "Vortrag"; Charlotte Meyer, "Entwicklung und Probleme der Berliner Sozialen Gerichtshilfe," *Berliner Wohlfahrtsblatt* 5, no. 24; Geheimes Staatsarchiv no. 8511, Vortrag, Oberlandesgerichtspräsident Köln, 30 April 1923; E. Bozi, *Gerichtshilfe*, 11; extensive evidence for the Province of Brandenburg in Brandenburgisches Landeshauptstaatsarchiv, no. 1338.

46. Exner, "Zur Praxis der Strafzumessung," 372. For a detailed discussion of Exner's larger impact on German criminology, see Wetzell, *Inventing*, 107–124.
47. Robert Heindl, *Der Berufsverbrecher: Ein Beitrag zur Strafrechtsreform* (Berlin, 1926). On Heindl's influence, see *Mitteilungen der IKV* Neue Folge 3 (1928), 38.
48. Monika Frommel, *Präventionsmodelle in der deutschen Strafzweckdiskussion: Beziehungen zwischen Rechtsphilosophie, Dogmatik, Rechtspolitik und Erfahrungswissenschaften* (Berlin, 1987), 19; Adeline Rintelen, *Die Polizeiaufsicht und ihre Ersatzmittel im Entwurf 1928* (Würzburg, 1929).
49. Aschaffenburg in the discussion at the 1926 meeting of the IKV, in *Mitteilungen der IKV*, Neue Folge 2 (1927), 100–101.
50. Frede, "Richtlinien für die Ausübung von Schutzaufsicht über Volljährige," *Monatsblätter* 4, 10/11 (October/November 1929).
51. The Inner Mission conducted a survey of worker colonies in 1924–1925 concerning whether they would be willing to admit larger numbers of former prison inmates, particularly cases requiring formal, i.e., "protective," supervision. Responses collected in ADW, no. 325.
52. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York, 1939); see David Garland, *Punishment and Modern Society* (Chicago, 1990), 83–110.
53. *Tätigkeitsbericht der Berliner Gefangenenfürsorge für die Zeit vom 1. Januar 1928 bis 31. März 1929*. See also Hans Hein, "Gefangenen-Fürsorge am Ende: Berliner Gefangenen-Fürsorge erklärt sich selbst bankrott," *Welt am Abend* (24 September 1932).
54. The number of cases in which judges authorized police supervision of released offenders fell with remarkable consistency over the course of the Kaiserreich and the Weimar Republic. There were 8,238 cases in 1882. By 1928, there were only 791. *Kriminalstatistik für das Jahr 1932*, (Berlin, 1933), 69.
55. Cited in Noetzel, "Gerichtshilfe," 33; "Bewährungsfrist," 162; and Baumbach, "Das Bankrott der Strafjustiz," *Deutsche Juristenzeitung* (1928).
56. Biesenthal, "Der Zusammenbruch des Strafvollzuges," *Archiv für Kriminalanthropologie* (1926), 139–40; Albert Hellwig, "Kriminalbiologie und Strafzumessung," in *Mitteilungen der Kriminalbiologischen Gesellschaft* 2 (1928), 92–99; Exner, *Studien über die Strafzumessungspraxis der deutschen Gerichte* (Leipzig, 1931).
57. Geheimes Staatsarchiv, no. 3994, untitled document, with questions and themes submitted in advance for conference with the press, 22 September 1928.
58. The role of the German state's attorney is very different from the English or American prosecutor. In contrast to the adversarial system, German criminal procedure calls upon the prosecutor "to investigate not merely the circumstances incriminating, but also those exonerating the accused." In spite of his accusatory function, he was technically a neutral, objective arbiter of interests among the defendant, victim, and the public. Peter Badura et al., eds., *Das Fischer Lexikon: Recht* (Frankfurt, 1987), 216–231.
59. "Tagung des Deutschen Reichsverbandes für Gerichtshilfe, usw., in Düsseldorf am 16. und 17. Juni 1926," *Monatsblätter* 1, 8/9 (August/September 1926).
60. Theodor Noetzel, "Gerichtshilfe," *Monatsblätter* 1, 1 (January 1926).
61. Noetzel, "Über den derzeitigen Stand der Gerichtshilfefrage," *Monatsblätter* 3 (June 1928), 114.
62. The PRV met for the first time since the war in October 1926, with a relatively diffuse agenda, *Deutsche Juristenzeitung*, 31, 19 (1926).
63. Seyfarth, "Aufgaben und Ziele des Deutschen Reichsverbandes für Gerichtshilfe, Gefangenen- und Entlassenenfürsorge," *Monatsblätter* 1, 1 (January 1926).
64. Archiv des Diakonischen Werkes der Evangelischen Kirche (hereafter ADW), no. 1329/5, Seyfarth, untitled manuscript.

65. ADW, no. 1329/5, Bericht, Tagung, "Rechtspflege und Fürsorge," 18 October 1927. The first quote is from D. Mahling's speech at the conference.
66. ADW, no. 1308, Bäcker to D. Ulrich. Bäcker noted that Catholic penal reformers in Caritas were quicker to support the judges' standpoint. Bäcker, "Bericht."
67. ADW, no. 1308, Bericht des Leiters der Magdeburger *Gerichtshilfe*, Müller. (1928); Hermeline Bäcker, Bericht, "Über die evangelische Mitarbeit in der Sozialen Gerichtshilfe," (1931) H. Bäcker to D. Ulrich, 19 June 1931.
68. ADW, no. 1308, Elli Proebsting (Westfälischer Provinzialverband für Inneren Mission) to Evangelische Konferenz Für Straffälligenpflege, 12 April 1932, Pfarrer Oehlert to Evangelische Konferenz Für Straffälligenpflege, 24 December 1932.
69. ADW, no. 1308, Aktenmäßige Behandlung der Gerichtshilfe Auskünfte," 26 April 1928.
70. Geheimes Staatsarchiv, 84a, Nr. 8517, Gerichtshilfe, Sammelberichte.
71. Bundesarchiv, no. 5683, Entschliessung des 26. Deutschen Caritastages 1925.
72. Nachlass Bozi, no. 38.
73. ADW, no. 1329/5, Bericht, Tagung, "Rechtspflege und Fürsorge," 18 October 1927, Brandenburgisches Landeshauptstaatsarchiv, no. 1338; Bozi, "Richtlinien." Bozi played only an intermittent part in the reform movement after 1926 because of poor health, especially eye disease. Bozi, "Lebenserinnerungen."
74. Bozi, "Die soziale Gerichtshilfe als Rechtseinrichtung," *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* 19 (1928), 658–662. Nachlass Bozi, Bozi, "Deutschlands Erneuerung," (1938), unpublished manuscript.
75. Werner Peifer, *Berlin Börsen Courier*, 18 July 1929.
76. "Konferenz sozialdemokratischer Juristen: Beratung über Soziale Gerichtshilfe," *Vorwärts*, 28 May 1929. Albert Hellwig, "Soziale Gerichtshilfe und Strafrechtsreform," *Königsburg: Hartungsche Zeitung*, 2 June 1929; Gentz, "Gerichtshilfe."
77. Richard Messerer, "Soziale Gerichtshilfe," *Münchener Zeitung*, 29 April 1930.
78. Dr. Böhmert, in *Mitteilungen der IKV* Neue Folge 4 (1930).