

INTRODUCTION

Crime and Criminal Justice in Modern Germany

Richard F. Wetzell



Historians of nineteenth- and twentieth-century Germany have been relative latecomers to the history of crime and criminal justice. In both modern British and French historiography, crime and criminal justice have been major topics of research since the 1970s: in France, research in this area was pioneered by Michel Foucault, in Britain, by E. P. Thompson and other social historians.¹ In the field of German history, the significance of this subject was first recognized by historians of the early modern era, who developed a rich literature on this topic over the last twenty-five years.² Historical research on crime and criminal justice in nineteenth- and twentieth-century Germany, by contrast, has only begun to flourish in the last ten years. It is the aim of this volume to make some of the results of this recent boom in research accessible to a general audience.

There is a notable asymmetry between the early modern and modern German historiographies of crime and criminal justice. Whereas most early modern studies have focused on the criminals themselves, their socioeconomic situations, and the meanings of crime in a particular urban or rural milieu, late modern studies have tended to focus on penal institutions and the discourses of prison reformers, criminal law reformers, criminologists, and psychiatrists. Simplifying somewhat, one might say that early modernists have studied crime and criminal justice primarily with the tools of social history and historical anthropology, while late modernists have most often used the tools of cultural history, intellectual history, and discourse analysis.³ To some extent, this difference in approaches reflects the effect that the “scientization of the social” began to have on criminal justice in the last third of the nineteenth century.⁴ Compared with what we know about the

Notes from this chapter begin on page 21.

early modern era, our knowledge of the history of crime and criminal justice in the various German states in the first two-thirds of the nineteenth century is very limited. Although we are beginning to learn more about the important transformations of criminal justice that took place in this period,⁵ most late modern research on crime and criminal justice picks up after the German unification of 1871, a fact that is reflected in this collection.

The essays collected here do not just provide pioneering contributions toward a history of crime and criminal justice in Germany from about 1871 to the 1950s, but connect the history of criminal justice to the larger questions of German political history from the Kaiserreich to the two postwar Germanies, examine the increasingly close but difficult relationship of criminal justice to psychiatry and social welfare, analyze the representations of crime and criminal justice in the media and literature, and also use criminal justice history to illuminate German social history, gender history, and the history of sexuality.

Criminal Justice in Imperial Germany

A central part of the founding of Imperial Germany in 1871 was the ambition to establish a uniform legal system throughout the German Reich. This ambition manifested itself in the quick passage of a Reich Penal Code (*Reichsstrafgesetzbuch*, 1871), which superseded the penal codes of the individual German states and was modeled on the Prussian Penal Code of 1851,⁶ a Reich Law on the Organization of the Courts (*Gerichtsverfassungsgesetz*, 1877), and a Reich Code of Criminal Procedure (*Strafprozessordnung*, 1877).⁷ Despite wide-ranging support for the establishment of a unified prison system, the goal of a *Reichsstrafvollzugsgesetz* (Reich Prison Law) remained elusive, and prisons continued to be administered by the individual states.

From the 1960s until quite recently, Imperial Germany's criminal justice system was often portrayed as an instrument of authoritarian rule and class justice. Studies that advanced this interpretation tended to focus on the use of criminal justice to persecute Social Democrats during the era of the Anti-Socialist laws (1878–1890) and drew heavily on contemporary Social-Democratic critiques of “class justice.”⁸ Many were primarily interested in criminal justice in the Weimar Republic or Nazi Germany and were therefore looking for continuities that would explain the left/right disparities in Weimar political trials or the complicity of the judiciary in the crimes of the Nazi regime.⁹ This interpretation is currently undergoing vigorous revision. Kenneth Ledford has argued that the Prussian Supreme Administrative Law Court brought “meaningful rule of law” to Germany. In a series of cases, the Prussian court protected individual rights by ruling against the state in challenges to police actions such as prohibitions of assembly directed against Social Democrats and the Polish minority in Eastern

Prussia. To be sure, as the embodiment of a procedural and formalist conception of the rule of law, the court also frequently upheld police powers in these kinds of cases. Nevertheless, within the limits of legal formalism, Ledford concludes, the court “provided a lively and capacious stage for Prussian citizens to vindicate their individual rights.”¹⁰ Likewise, in his work on literary censorship in Imperial Germany, Gary Stark has shown that public prosecutors who prosecuted publishers or authors for libel or obscenity were frequently disappointed by the verdicts: agile defense attorneys, impartial judges, and press coverage of the proceedings ensured that in over two-thirds of press trials the sentences imposed were lighter than prosecutors had requested, and in 20–30 percent of all cases the defendants were acquitted. In Prussia, Saxony, and Baden administrative law courts set important limits on police censorship of theaters by frequently allowing the performance of dramas that the local police had tried to ban.¹¹ Ann Goldberg’s study of *Beleidigungsprozesse* in Imperial Germany has demonstrated that defamation lawsuits served not only to protect state power and social hierarchies, but were also used by social outsiders such as Jews and people interned in lunatic asylums to protect their honor. Imperial Germany, she has argued, had a “hybrid legal culture” that combined authoritarian elements with the liberal legal principles of the rule of law so that “the traditional idiom of honor” could be harnessed to “a democratic politics of rights.”¹² In sum, while Imperial Germany’s authorities did use the judicial system, even after the expiration of the anti-Socialist law, for political purposes (through prosecutions for libel or *lèse majesté*, for instance), recent work has shown that such efforts were frequently stymied by independent judges, increasingly assertive defense attorneys, the due process guarantees of German criminal procedure, and the influence of public opinion. The Kaiserreich’s judicial system was characterized by the rule of law and therefore imposed significant limitations on the power of the authorities.

Benjamin Hett’s opening chapter provides two important arguments for the revisionist position that the Kaiserreich’s criminal justice system came much closer to the ideal of the *Rechtsstaat* (rule of law) than that of authoritarian justice. First, Hett shows that a significant number of the Kaiserreich’s critics of criminal justice—most of them criminal defense lawyers, who could hardly be suspected of authoritarian leanings—did not think that the problem with German justice was authoritarianism or class justice; instead, they criticized the randomness of verdicts and the influence of public opinion, an assessment confirmed by Hett’s analysis of two major turn-of-the-century criminal trials. Second, the critics’ increasing concern with the influence of public opinion derived from the fact that the 1877 Code of Criminal Procedure had instituted most of the items on the liberal reform agenda, such as public trials and the use of juries.¹³

In other words, far from criticizing an authoritarian justice system, a substantial number of liberal jurists were beginning to grow uncomfortable with some of the achievements of liberal penal reform. In particular, some liberal defense

lawyers were becoming quite critical of juries, doubted the reliability of witnesses, and thought that the oral proceedings overtaxed most judges.¹⁴ Whereas some thought that solutions to these problems would be found in better use of psychology and forensic science (such as fingerprinting, blood tests, or photographic evidence) in the courtroom, others stressed the need for procedural reforms, such as abolishing juries or replacing them with mixed panels of lay and professional judges, as well as curtailing oral proceedings by using more documentary evidence. Far from functioning as an instrument of the authoritarian state, Hett argues, the Kaiserreich's criminal justice system was "moving out of control of the state" both because the liberal features of German criminal procedure increased the influence of public opinion and because German prosecutors, judges, and defense lawyers were eager to harness public opinion for their own purposes.¹⁵

The insight that the Kaiserreich's liberal jurists were not concerned about its legal system's being too authoritarian, but about the unintended consequences of the liberal penal reforms that had been achieved, applies not only to Imperial Germany's debates on criminal procedure but also to contemporary debates on the reform of substantive criminal law. The penal reform movement that was led by criminal law professor Franz von Liszt starting in the 1880s was not concerned that punishments were too arbitrary (the classic liberal charge against authoritarian justice) but that they were too uniform. When the reformers demanded that criminal sentences ought to be calibrated to the personality of the offender rather than the severity of the offense, they were taking aim at a key feature of liberal criminal justice that nineteenth-century liberal reformers had regarded as a guarantee against judicial arbitrariness: namely, the imposition of uniform prison sentences for any given offense, as prescribed in the penal code, regardless of the person of the perpetrator.¹⁶

Both the "literature of judicial error" examined in Hett's chapter, which focuses on reforming criminal procedure, and Liszt's "modern school of criminal law," which called for the revision of substantive criminal law (the penal code), were movements of middle-class legal professionals. The literature of judicial error was mostly penned by practicing criminal defense lawyers, whereas the penal reform movement was led by criminal law professors. Although these middle-class critics failed to detect a class bias in the Kaiserreich's judicial system, the charge of "class justice" was frequently raised by the socialist labor movement.¹⁷ As Andreas Fleiter's chapter shows, however, the Social Democratic Party's (SPD) attitudes toward criminal justice were more complex than the rhetoric of class justice suggests. To be sure, the Anti-Socialist Laws passed in 1878 blatantly instrumentalized criminal justice for the purpose of political persecution and resulted in the imprisonment of thousands of Social Democrats.¹⁸ It was above all this political persecution that was branded as "class justice" by the SPD. While prominent party leaders were usually sentenced to *Festungshaft* (minimum-security detention with numerous privileges designed for offenders of

conscience), rank-and-file party activists were often sentenced to regular prison. The experience of detention in regular prisons did not, however, lead socialists to declare their solidarity with common criminals as fellow victims of class justice. On the contrary, although socialists demanded the abolition of private property, they condemned individual lawbreaking and drew a sharp distinction between socialist “political prisoners” and “common criminals,” whom they disparaged as members of the *Lumpenproletariat*.

During the period of the Anti-Socialist Laws (1878–1890) and into the 1890s, the SPD party leadership’s interest in criminal justice was mainly limited to two issues: the treatment of political prisoners and the regulation of prison labor. By the turn of the century, however, the criminal law reform movement had firmly placed penal reform on the national political agenda, so that the SPD had to take a position on criminal justice and penal reform in general. The party’s new interest in penal reform also resulted from the rise of a revisionist wing within the SPD. Whereas orthodox socialists such as August Bebel expected that a crime-free socialist future was close at hand, the revisionists did not regard the revolution as imminent and therefore argued that the party must take a position on penal reform in the present political system and were generally inclined to support key elements of the “modern school’s” penal reform agenda.

Germany’s late-nineteenth-century penal reform movement, which was very much part of an international movement, called for a fundamental transformation of the criminal justice system.¹⁹ Instead of retributive justice, criminal justice was to serve the purpose of defending society against crime. The penal reformers around Franz von Liszt meant this quite literally: the criminal justice system was to take whatever measures were necessary to ensure that each individual offender would not break the law again in the future. Therefore the reformers’ key demand was the individualization of punishment. During the sentencing phase of criminal trials (that is, after the accused had been found guilty of having committed a criminal offense), the offender’s sentence should no longer be determined by that criminal offense but by the person of the offender, more precisely, by the offender’s future dangerousness. If a first-time offender and a multiple recidivist committed the same crime, they should therefore receive different sentences. Whereas for a first-time offender a suspended sentence (probation) might be sufficient, a recidivist ought to receive an indeterminate sentence whose duration would depend on the progress of his rehabilitation.²⁰

The reformers’ shift in focus from offense to offender inescapably led them to become interested in criminological research on the causes of crime.²¹ Only if one understood what caused someone to commit a crime, could one hope to prevent that person from committing future infractions. Although some reformers were quite interested in the social causes of crime, the reform movement’s goal of protecting society through individualized penal sanctions meant that individual causes of crime loomed larger than did social ones. Hence

criminology increasingly came to study “the criminal” rather than the causes of crime more generally.

But where could the criminal be studied? Most easily, of course, in prison. Starting with Cesare Lombroso, the Italian founder of criminal anthropology, almost all criminological studies of criminals were conducted on prison populations by prison doctors or by psychiatrists who worked in the psychiatric wards of prisons.²² As a result of the “criminological turn,” prisons became much more than institutions of detention; they became places of scientific observation: criminological laboratories.²³ This transformation of prisons into sites of scientific discovery lent new authority not only to prison doctors and psychiatrists but also to regular prison officials, who argued that their experience with prisoners gave them unique expertise in a range of issues including how to categorize criminals, how to rehabilitate different types of criminals, and how to combat crime. To be sure, prison officials had claimed special expertise since the beginnings of modern prison reform in the early nineteenth century.²⁴ What changed at the century’s end, however, was that prison reform became more closely connected to the general reform of criminal justice.

The reason for this change was simple. In classic nineteenth-century criminal justice, judges pronounced sentences according to the penal code’s provisions for the offense committed and did not have to think about the administration of the punishment in prison or the personality of the offender. By the turn of the century, however, penal reformers were demanding that judges impose the penal sanction that offered the best chance of preventing the individual offender from committing future offenses, so that judges had to start thinking about the offender’s personality and the administration and probable effect of the punishment. Even though the penal reformers’ agenda met considerable resistance, the demand for the individualization of punishment began to inflect sentencing practices in German courtrooms. As a result, what happened in the courtroom and what happened in prison (or, as we shall see, in homes for delinquent youth or psychiatric wards for abnormal offenders) was becoming much more closely connected. And by the same token, prison reform, criminal law reform, and criminology were becoming more integrated as part of what Franz von Liszt called “die gesamte Strafrechtswissenschaft” (the penal sciences).

By the late nineteenth century, therefore, prison officials regarded themselves as experts not just on matters of prison administration and prison reform, but on the larger subjects of penal reform and criminology. Having fully absorbed the penal reformer’s shift in focus from offense to offender as well as the demand for the individualization of punishment, they began to divide offenders into different categories. Not surprisingly, one of the most important criteria for categorizing offenders was gender, the central focus of Sandra Leukel’s chapter. As Leukel shows, prison officials’ newfound interest in female criminals and the treatment of women in prison was closely related to the changing social position of women

in German society, which gave rise to fears of an increase in female crime. There were calls for separate prisons for women and the hiring of female staff to supervise female prisoners, but both of these were long-standing if largely unrealized demands. What was new in the turn-of-the-century debates was the demand that women's treatment in prison be adapted to women's special nature. Whereas earlier calls for separate facilities had primarily reflected disciplinary strategies, now these demands became the starting point for developing a gender-specific penal regime adapted to the "peculiarities" of women that would include different dietary, work, and rehabilitation regulations for female prisoners. As Leukel demonstrates, the Kaiserreich's debate over the proper treatment of women in prison was shaped by the confluence of the penal reformers' call for the individualization of punishment and the larger phenomenon of women's emancipation in German society. Perceiving the latter as a threat, some prison reformers sought to stabilize the gender hierarchy by transforming the penal system's treatment of women.

Penal Reform

The penal reform movement's demand for the individualization of punishment based on each offender's dangerousness was a call to break the prison's near monopoly as the standard penal sanction (the death penalty was very rarely imposed)²⁵ by introducing a spectrum of other sanctions from the realms of education, medicine, and welfare. Whereas in classic criminal law, prison sentences represented *Freiheitsstrafen*—deprivations of liberty for the purpose of retribution and general deterrence—the reformers insisted that an offender's penal sanction ought to transform the individual offender in such a way that he or she would not commit further crimes. As a first step, this meant dividing offenders into categories and assigning each category the most appropriate sanction from an array of penal, educational, medical, and welfare measures. The reform movement divided offenders into five main categories: (1) first-time "occasional" offenders were to have their prison sentences suspended on probation or replaced by fines, on the expectation that such measures were sufficient to deter them from future crimes; (2) "habitual" offenders (recidivists) who appeared "corrigible" were to serve a prison term during which they would undergo rehabilitation; (3) habitual offenders who appeared "incorrigible" were to be detained indefinitely (with periodic review) to "incapacitate" them for the protection of society; (4) mentally abnormal offenders were to receive therapeutic treatment in psychiatric facilities instead of prison sentences; (5) juvenile offenders were to be sentenced to correctional education (*Fürsorgeerziehung*) in special homes for wayward youth instead of prison.²⁶

The penal reform movement was thus pursuing a radical agenda: seeking to replace standard fixed prison sentences with a range of individualized preventive

measures drawn from a variety of non-penal forms of state intervention, including education (for juvenile delinquents), medical treatment (for abnormal offenders), and the workhouse (for incorrigible habitual criminals). Depending on the category of criminal, this transformation of the penal sanction could result in less punitive sanctions (such as suspended sentences or fines instead of prison for first-time offenders) or harsher, more repressive punishments (such as indefinite detention for habitual criminals). In short, the modern school's penal reform agenda was, from the outset, Janus-faced. For certain categories of criminals, it could, in fact, be hard to determine whether or not they were better off under the modern school's proposals: for whereas juveniles or mentally abnormal offenders were now to be spared imprisonment, their correctional education or psychiatric treatment might be more interventionist than a prison term. Because of this ambivalence, the penal reform movement's agenda could be and was attacked from both left and right: whereas left-liberal critics accused the reformers of reintroducing the police state, conservative critics charged them with undermining retributive justice and individual responsibility.²⁷

The revision of the penal code therefore turned out to be a drawn-out project that began with a first reform commission in 1906 and continued through several reform commissions and draft codes during the Weimar Republic and the Nazi regime, without a comprehensive revision of the penal code coming to pass before 1945. In West Germany, the reform process ultimately resulted in the *Grosse Strafrechtsreform* (Comprehensive Penal Reform) of 1969–1970. In the meantime, however, beginning in late Imperial Germany and intensifying during the Weimar Republic, significant parts of the penal reform agenda were implemented through piecemeal reforms. The modern school's demand that first-time occasional criminals should not go to prison was realized through the introduction of suspended sentencing and the increased use of fines. Suspended sentencing was first introduced administratively in most German states between 1895 and 1903; and in 1920, Germany's largest state, Prussia, authorized judges to suspend sentences at their discretion. In 1923, the *Geldstrafengesetz* (law on fines) drastically increased the use of monetary fines for minor offenses. The reformers' demand that juvenile offenders should be subject to education rather than punishment resulted in the creation of special Juvenile Courts (*Jugendgerichte*) in Berlin and other cities starting in 1908, which led to the passage of a comprehensive Juvenile Justice Act (*Jugendgerichtsgesetz*) in 1923. Finally, even though the modern school's demand for the indefinite detention of incorrigible criminals was only realized after the Nazi seizure of power, its call for the differential treatment of corrigible and incorrigible habitual criminals was reflected in the 1923 passage of new prison guidelines, which introduced the so-called progressive system in all German prisons.²⁸

These transformations of criminal justice during the Weimar years are examined in the chapters by Wachsmann (on prisons), Finder (on juvenile justice),

and Rosenblum (on the role of *Gerichtshilfe* in suspended sentencing). As Wachsmann shows, the development of the Weimar prison was significantly influenced by social and political forces. In the early Weimar years, for instance, the hyperinflation triggered a crime wave, which provided a strong impetus for prison reform. During the 1920s, German prison reformers made significant progress in transforming the prison into an educational institution committed to prisoners' rehabilitation and reintegration. But their reforms also met with considerable resistance from prison personnel and fully succeeded only in the few institutions that were run by reform-minded wardens. The new prison guidelines of 1923 introduced the "progressive system" (*Stufensystem*), in which prisoners could advance through three stages, with increasing privileges in each stage. But although the progressive system was originally conceived as a tool for rehabilitating prisoners, it turned out that it could also be used to institutionalize the distinction between supposedly corrigible and incorrigible prisoners. Whereas most prison reformers insisted that prisoners must not be labeled incorrigible unless rehabilitation efforts had failed, other prison officials began to assess corrigibility at the outset and excluded supposedly incorrigible prisoners from advancing beyond the first stage of the progressive system. The assessment of corrigibility at the intake point increasingly took the form of criminal-biological examinations. These examinations gathered extensive data about the prisoner's body, mental health, life history, family, and milieu, but their concluding "social prognoses" (assessments of corrigibility) were usually little more than moral judgments dressed up in medical terminology.²⁹ The bifurcation of the prison system, in which supposedly incorrigible prisoners were excluded from rehabilitative programs, accelerated after the world economic crisis of 1929, when conservative prison officials found it convenient to argue that scarce resources must be reserved for reformable prisoners.³⁰

The penal reformers' call for the individualization of punishment was also reflected in the development of juvenile justice, which is the subject of Gabriel Finder's chapter.³¹ As Finder shows, the juvenile courts' abridgment of normal judicial procedures as well as their focus on the *person* of the offender (rather than the *offense*) made these courts unusually hospitable for forensic psychiatric experts, who regarded juvenile delinquency as a medical rather than a moral condition. Already in the Wilhelmine period the rate of forensic examinations increased, and forensic psychiatry gradually became entrenched in the juvenile courts. In a dozen large cities every juvenile defendant underwent a psychiatric examination. Nevertheless, psychiatrists' lobbying efforts to make psychiatric examinations mandatory for all juvenile defendants failed. Instead, the Juvenile Justice Act of 1923 gave juvenile court judges discretionary authority to order psychiatric examinations "in appropriate cases" and to impose "educative remedies" (*Erziehungsmassregeln*) instead of punishment where they saw fit. Whether this discretionary authority should be interpreted broadly or

restrictively remained the subject of dispute. Thus, even though the Juvenile Justice Act gave forensic psychiatry and educative measures a firm foothold in juvenile justice, it also circumscribed both. Weimar juvenile judges limited the role of psychiatry and education in juvenile justice not only because they wished to defend the principle of retributive justice or to uphold their authority against the encroachments of psychiatrists but also, as Finder argues, because they were committed to the rule of law, that is, to the principles of individual responsibility and due process.³²

The penal reform movement reconfigured not only the relationship between criminal justice and psychiatry but also that between criminal justice and welfare.³³ As part of this reconfiguration, the boundary between criminal justice and welfare was eroded in two ways: First, some types of delinquents could now be sentenced to welfare measures instead of prison terms. This was the case for juvenile delinquents, who could be placed in homes for wayward youth (*Fürsorgeerziehung*), and for first-time offenders, who could be sentenced to probation under the supervision of local welfare offices; in the reformers' agenda, it would also eventually apply to incorrigible habitual criminals, whose indefinite detention was to resemble internment in a workhouse rather than prison. Second, because the shift from offense to offender in the sentencing phase of criminal trials necessitated the collection of information about the offender's background and personality, criminal courts began to turn to welfare agencies to help them collect this information. These efforts resulted in the development of *soziale Gerichtshilfe* (social court assistance), which is examined in Warren Rosenblum's chapter. Pioneered in Bielefeld during World War I and more widely introduced after the war, *Gerichtshilfe* sought to bring the expertise of private and public welfare agencies to bear on criminal justice. In 1920, the Prussian Ministry of Justice gave judges the power to suspend the prison sentences of offenders who seemed capable of rehabilitation under the supervision of a welfare agency. To help the judge decide whether a defendant should be eligible for the suspension of his or her sentence, the *Gerichtshilfe*'s "court assistants" were to provide the court with a "social diagnosis" of the offender by gathering information about his or her personality and milieu from family, school, church, and other sources. Ideally, the *Gerichtshilfe* agents would also provide the offender's welfare supervision during the probationary period.

As Rosenblum shows, the introduction and development of *Gerichtshilfe* was closely connected to broader critiques of the criminal justice system from the left and the right. When leftist critics argued that the judiciary's "remoteness from life" (*Lebensfremdheit*) and legal formalism had created a "crisis of trust in justice" (*Vertrauenskrise der Justiz*), *Gerichtshilfe* seemed to offer the ideal remedy because it sought to bring the facts of defendant's actual lives to bear on their legal treatment.³⁴ But when conservative critics charged that excessive lenience had emasculated (*verweicht*) Weimar criminal justice, *Gerichtshilfe* became a

major culprit because these critics blamed the increase in suspended sentences on the “social diagnoses” delivered by Gerichtshilfe agents and criticized the welfare supervision of defendants as no more than a slap on the wrist. Because Gerichtshilfe was implicated in these opposing critiques, the struggle over who would control the new institution became highly contentious. This struggle eventually turned on the alternative whether Gerichtshilfe should be controlled by municipal welfare offices or the prosecutor’s office. In Rosenblum’s analysis, this battle developed into a conflict that pitted judges and prosecutors who defended retributive justice and judicial supremacy against welfare officials who advocated a welfarist approach that focused on social diagnosis and rehabilitation. Unlike Finder, then, who explains the judiciary’s resistance to forensic psychiatry primarily as a defense of the rule of law, Rosenblum interprets the judiciary’s resistance to the intrusion of welfare offices as a defense of judicial supremacy and retributive justice. This difference in interpretation may be attributable to the difference in the samples of judges: whereas Finder focuses on juvenile court judges, Rosenblum looks at regular judges and prosecutors. But it also nicely illustrates the fact that the penal reform movement’s push for the integration of criminal justice into the broader arenas of medicine, education, and welfare was criticized and resisted from two rather different perspectives: on the one hand, by jurists who were concerned that the reforms were undermining important rule-of-law principles, especially the due process guarantees designed to protect the individual against the power of the state, and on the other hand, by jurists who regarded the reforms as a threat to the principle of retributive justice, the supremacy of the law, and the control of jurists (rather than psychiatrists or welfare workers) over criminal justice.

Constructions of Crime in the Courts, Media, and Literature

Crime and criminal justice attracted considerable public attention during the Weimar years, especially in the Berlin press. Berlin reporters such as Paul Schlesinger, Moritz Goldstein, and Gabriele Tergit transformed court reporting into a prominent journalistic genre and made it a major feature of the capital’s daily press. Their reporting was strongly influenced by the “criminological turn,” that is, by the endeavor to understand the causes of crime. But whereas Weimar-era criminology was characterized by a strong tension between searching for genetic explanations of crime and recognizing the role of environmental factors, Weimar Berlin’s court reporters tended to attribute the deeds of the accused primarily to social factors. As Daniel Siemens has demonstrated, although the reporters were generally deferential toward psychiatric expert opinions presented in court, they did not usually adopt their conclusions and, instead, presented sympathetic portraits of the defendants as normal people who fell victim to circumstances.³⁵

Two sorts of trials attracted particular attention at the time (and have likewise attracted special attention from historians): political trials and murder trials, especially those involving sexual crimes. The political violence of the early Weimar years, which ranged from communist insurrections on the left to Hitler's Beer Hall Putsch on the right, resulted in a great number of trials for political crimes. These trials quickly gave rise to contemporary criticism from leftist authors who criticized the judiciary for "being blind on the right eye," that is, for imposing much harsher sentences on left-wing than on right-wing political criminals.³⁶ Starting in the 1960s, this line of argument was taken up by historians who seized on the Weimar judiciary's right-wing bias as an explanation for the subsequent complicity of the judicial system in the crimes of the Nazi regime.³⁷ This long-standing focus on the reactionary political views of Weimar judges has recently been challenged by studies that approach the history of Weimar political justice from a broader perspective. In his study of the left-wing lawyer Hans Litten, Benjamin Hett has pointed out that Weimar judges were part of a larger judicial system that included the parliament, the justice ministries, a critical press, and highly skilled private lawyers, all of whom significantly affected judicial culture. Especially in political cases, aggressive defense lawyers made use of the extensive right to call witnesses and mobilized the press and lobby groups.³⁸ In his work on Weimar political trials, Henning Grunwald has called for studying the entirety of the proceedings rather than just the verdict and shifting the focus from the judges to the ideologically committed defense lawyers on the left and the right, who often radically redefined their roles. Instead of serving the interests of the client (working toward an acquittal or a minimal sentence), these lawyers stage-managed the trials to generate maximum propagandistic impact for the benefit of their political party. From this perspective, purposely provoking the court into rendering a harsh verdict could be counted as a *victory* for the defense.³⁹

Despite the prominence of political trials, the most famous trials of the Weimar era were those involving *Lustmord* (sexual murder). The most sensational among these were the trials of several serial sexual murderers, including Carl Grossmann, the "Blue Beard" of Berlin (1921–1922), Fritz Haarmann, the "butcher of Hannover" (1924–1925), and Peter Kürten, the "vampire of Düsseldorf" (1930–1931), on whom Fritz Lang's famous film *M* was based.⁴⁰ The chapters by Sace Elder, Eva Bischoff and Daniel Siemens, and Todd Herzog all examine famous murder trials from the Weimar era by analyzing the narratives about perpetrators and victims that were constructed in court, in medical expert testimony, in the press, and in literary works.

Arrested in August 1921 and tried a year later, Carl Grossmann was accused of having murdered as many as twenty women in his apartment; it was widely concluded that the murders had been sexually motivated. By focusing on the gap between press narratives and witness narratives, Sace Elder's chapter illuminates the social history and the cultural construction of crime, gender, and class in

postwar Berlin. Whereas the press marginalized Grossmann's victims as prostitutes or hapless country girls, the narratives of female witnesses reveal that Grossmann's victims represented a cross-section of women from his neighborhood, including married women and mothers. The fact that these women accompanied Grossmann to his apartment in the hope of employment, a handout, or trading sex for money thus reveals working-class women's dire circumstances rather than a criminal subculture of pimps and prostitutes. As Elder shows, the neighbors' failure to intervene when they heard screams coming from Grossmann's apartment also reveals a broad cultural acceptance of violence against women among the urban working class.

Whereas Elder's study of the Grossmann case focuses on the narrative constructions of the victims, Eva Bischoff and Daniel Siemens's analysis of the 1928 murder trial of Karl Hussmann centers on the narrative constructions of the perpetrator. The Hussmann trial presents an interesting case because unlike Grossmann, Haarmann, and Kürten, Hussmann was acquitted.⁴¹ To explain why, despite considerable circumstantial evidence, Hussmann was not regarded as a sexual murderer (*Lustmörder*), Bischoff and Siemens examine the trial's press coverage and the psychiatric expert opinions. The press coverage was very different from that of the Grossmann and Haarmann trials. To prevent sensationalist coverage, the court had agreed to cooperate with the press in return for the press's refraining from reporting on the case's sexual aspects. This clearly worked to Hussmann's advantage. According to Bischoff and Siemens, the main reason why the medical experts did not construct Hussmann as a psychopathic homosexual *Lustmörder* was that they could not envision a member of their own social class as a sexual psychopath. (Grossmann, Haarmann, and Kürten were all working class.) As this chapter demonstrates, the medical explanations of crime that were making inroads into Weimar's courtrooms remained amazingly malleable because psychiatric definitions of abnormality were often little more than bourgeois moral judgments couched in medical language.⁴²

The portrayal of crime in literature and film was no less influenced by the criminological turn than the court reporting in the popular press.⁴³ In his 1924 novella *Die beiden Freundinnen und ihr Giftmord*, the distinguished Weimar novelist Alfred Döblin went further than Weimar's newspaper reporters in exploring the tensions involved in identifying the causes of crime. Döblin's "case history" was based on the 1923 trial of Ella Klein and Margarete Nebbe for the murder of Klein's husband and the attempted murder of Nebbe's husband.⁴⁴ Döblin spent much of his book recounting the arguments presented at trial, at which experts who attributed the women's crimes to certain physiological or psychological abnormalities, such as childhood traumas and homosexuality, clashed with those who found the causes in social conditions, such as spousal abuse, poverty, and society's stigmatization of homosexuality. But as Todd Herzog shows in his chapter, Döblin then went on to argue that it was in fact impossible to construct

a coherent narrative or causal explanation of the case. Connecting the Weimar Republic's crisis of faith in justice to a larger modernist crisis of narrative, Döblin was suggesting that the traditional case history failed to explain the cause of criminality because, in Herzog's words, its emphasis on the individual "fails to look beyond the borders of individuality, fails to look precisely at this border that goes into crisis in modernity." In short, Döblin was trying to come to grips in literary terms with the same tension that characterized criminological research in the Weimar years, namely the great complexity of the interaction of biological and social factors, whose unraveling was becoming more, not less, elusive the more criminologists studied the subject.⁴⁵

Criminal Justice under the Nazi Regime

The history of criminal justice under the Nazi regime poses the problem of continuity and change with particular starkness. Until quite recently, the historiography of law under National Socialism was characterized by two strands of interpretation.⁴⁶ Presenting the Nazi seizure of power as a radical break in German legal history, the first interpretation argued that the Nazi regime "perverted" the judicial system and transformed Germany from a *Rechtsstaat* (state governed by the rule of law) into an *Unrechtsstaat* (state governed by injustice). Early apologetic versions of this interpretation portrayed the legal profession in the Nazi era as a passive "tool" (*Werkzeug*) that was "defenseless against the penetration of state-sponsored injustice into the judicial realm";⁴⁷ later, critical versions presented German jurists as having played an *active* role in the process of perverting justice.⁴⁸ While the apologetic version was clearly counterfactual, even the critical version of the "perversion of justice" thesis greatly underestimated the continuities across 1933. Stressing these continuities was the hallmark of the second strand of interpretation, which we might call the "continuity thesis." In an early version of this thesis, Social-Democratic legal scholar Gustav Radbruch (who had served as justice minister in the early Weimar Republic) argued that the German judiciary's willingness to enforce unjust Nazi laws was best explained by German legal positivism, in the sense that legal positivist jurists accepted the laws passed by the legislator without any reference to natural law or other norms.⁴⁹ This thesis, however, proved hard to maintain in the face of considerable evidence that, far from merely implementing Nazi law in a legal-positivist manner, German judges had frequently used their judicial discretion to push Nazi policies beyond what was dictated by strict adherence to the law. This critical view of the judiciary formed the basis of a new version of the continuity thesis, which attributed German judges' participation in Nazi injustice not to their supposed legal positivism but to their ideological affinity for Nazism, which this version of the thesis traced back to right-wing, anti-Republican attitudes among the German judiciary in the

Weimar period.⁵⁰ The problem with this interpretation, which virtually became orthodoxy in the 1980s and 1990s, is that it concentrates almost exclusively on the continuities in right-wing ideology among the judiciary without examining the broader but more complex continuities in German legal history across the 1933 divide.

Moving beyond these two master narratives, the most recent work on the history of criminal justice under the Nazis paints a complex picture of ruptures and continuities.⁵¹ There can be no doubt that the Nazi seizure of power brought about a number of significant changes in criminal justice. First, the Nazis used the justice system for the persecution of their political opponents, whose activities were criminalized, and the racial persecution of the Jews, through laws such as the Nuremberg Laws (1935), which, among other things, criminalized sexual relations between Jews and Gentiles as *Rassenschande* (race defilement).⁵² Second, the Nazis attacked the Weimar penal reform movement for having emasculated criminal justice and called for the strengthening of retribution instead of rehabilitation.⁵³ Over time, especially after the outbreak of the war, this emphasis on retribution led to ever more draconian punishments, including the escalating use of the death penalty even for minor offenses.⁵⁴ Third, the Nazis made a clear break with legal tradition by eroding several of the due-process guarantees that were at the core of the rule of law. In particular, they permitted the use of analogy in criminal law, thus making it possible to prosecute acts that were not mentioned in the penal code but could be construed as “analogous” to acts that were illegal under the code.⁵⁵ Finally, the Nazi regime created an extra-legal detention system under the control of the SS and the police: the concentration camps. The concentration camp system allowed the regime to circumvent the remaining due-process guarantees of regular criminal justice by detaining people indefinitely without charges or trial.⁵⁶ The categories of people interned in concentration camps expanded over the course of the Nazi regime and included the regime’s political enemies (socialists and communists), racial minorities (Jews, Sinti and Roma), homosexuals, Jehovah’s Witnesses, people labeled as “asocials” (vagrants, beggars, and the so-called work-shy) as well as certain categories of criminals (“habitual criminals”).⁵⁷ Even defendants who were acquitted in a regular criminal trial were sometimes rearrested by the Gestapo for detention in a concentration camp immediately after their acquittal. In all these ways, the Nazi seizure of power brought about drastic changes in criminal justice and completely destroyed the rule of law.

Despite these ruptures, however, there were also important elements of continuity across 1933. Chief among them was the continuity in personnel. With the exception of those dismissed for racial or political reasons, most German judges, prosecutors, and lawyers continued to serve under the Nazi regime and enforced Nazi laws, often with enthusiasm. Their support of the Nazi regime is best explained not by their adherence to legal positivism, but by the same

combination of factors that explain why most members of the German elites supported the Nazis, including conservative nationalism, anti-Communism, and anti-Semitism as well as conformity and careerism.

Just as important, however, is another line of continuity that is often overlooked, namely that connecting Nazi penal reforms to the pre-1933 penal reform movement. For even though the Nazis attacked Weimar penal reformers as weak-kneed humanitarians who had undermined criminal justice, they actually implemented parts of their penal reform agenda. Perhaps the clearest example of this was the Law against Habitual Criminals of November 1933, which introduced the indefinite detention of “dangerous habitual criminals,” a measure the penal reformers had been calling for since the turn of the century. The same law also introduced medical treatment for mentally abnormal offenders, another one of the reformers’ long-standing demands.⁵⁸ More generally, the Nazis pushed the logic of the modern school’s demand that punishments should depend on the personality of the offender (rather than the offense) further than anyone previously had: Nazi legislation started to define certain “criminal types” (*Tätertypen*) that were to receive particular punishments. This strategy became especially prominent in the rapid succession of decrees and laws passed after the outbreak of the war. The “criminal types” that were created in these decrees included the *Volksschädling* (national parasite) of the *Volksschädlingsverordnung* of 5 September 1939, the *jugendlicher Schwerverbrecher* (juvenile serious criminal) of the *Verordnung zum Schutz gegen jugendliche Schwerverbrecher* of 4 October 1939, and the *Gewaltverbrecher* (violent criminal) of the *Gewaltverbrecherverordnung* of 5 December 1939;⁵⁹ the trend found its culmination in the catchall criminal type of the *Gemeinschaftsfremder* (community alien) in the 1944 draft for a *Gemeinschaftsfremdengesetz*, which, however, never became law.⁶⁰ To be sure, all these criminal types were in part defined by certain acts, but their definitions included attempts to describe personality types whose antisocial tendencies supposedly warranted especially draconian punishment. That the definitions of these personalities sometimes drew on criminal-biological categories fit in well with Nazi eugenics and biopolitics.

The observation that Nazi criminal law was gradually shifting from a *Tatstrafrecht* (offense-based criminal law) toward a *Täterstrafrecht* (offender-based criminal law) is not meant to suggest that Nazi criminal law was the logical outcome of the modern school’s penal reform agenda. At least two crucial differences between the penal reform movement and Nazi criminal justice must therefore be pointed out. First, Franz von Liszt and his fellow reformers were fully committed to the due-process guarantees that nineteenth-century liberals had fought for (Liszt famously called the criminal code the “Magna Carta of the criminal”); the Nazis, as we have seen, were not. Second, the Nazis realized only the repressive side of the penal reform agenda, whereas the pre-1933 reform movement had always combined its call for the indefinite detention of incorrigible habitual

criminals with a commitment to rehabilitating everyone who could be reformed and to replacing punishment with educational and therapeutic measures for juveniles and abnormal offenders. That said, the experience of Nazi criminal justice certainly revealed the enormous danger posed by the increase in judicial discretion that the modern school's agenda required.

Robert Waite's chapter on juvenile justice in Nazi Germany presents a revealing case study that illustrates many of the key features of Nazi criminal justice.⁶¹ Focusing on the *Verordnung zum Schutz gegen jugendliche Schwerverbrecher* (Decree for the Protection against Juvenile Serious Offenders) of October 1939 and its implementation during the war, Waite's analysis demonstrates the ambivalent relationship of Nazi legal reform to the pre-1933 penal reform movement. On the one hand, the 1939 Decree was a blatant attempt to roll back the special treatment for juvenile offenders that the penal reform movement had fought for and achieved in the Juvenile Justice Act of 1923; for the 1939 Decree made it possible to try certain juvenile offenders as adults to impose adult punishments on them. On the other hand, the very strategy by which this rollback was accomplished, namely, the invention of the criminal type of the *jugendlicher Schwerverbrecher*, employed the penal reform movement's strategy of individualizing punishment by matching penal sanctions to the offender rather than the offense. The chapter's account of juvenile justice between 1939 and 1945 also illustrates the process of cumulative radicalization by which criminal justice became ever more draconian and ultimately escalated into state terror.

Postwar Criminal Justice

In some respects, Germany's defeat and the fall of the Nazi regime utterly discredited the country's criminal justice system. Everyone knew that most German jurists—whether prosecutors, judges, or professors of law—had eagerly cooperated with the Nazi regime in almost every conceivable way. And yet Germany's criminal justice system survived the war relatively intact and quickly began functioning again, mostly with the same prosecutors, judges, and law professors. Whereas the major war criminals were tried by the Allies at the Nuremberg War Crimes Trial of 1945–1946 and a number of successor trials, the task of prosecuting lower-level Nazi crimes fell to German courts.⁶² Their reluctance to prosecute the crimes of the Nazi regime was, of course, closely related to their disinclination to face up to their complicity in the Nazi regime.⁶³ As mentioned earlier, the question of how to explain that complicity found its first answer in Gustav Radbruch's thesis that German jurists' legal positivism had rendered them defenseless against the Nazis' arbitrary and criminal laws. This thesis was eagerly endorsed by the legal profession because it provided an impersonal explanation that conveniently avoided the sensitive questions of jurists' ideological affinities

to Nazism and their personal responsibility. The fact that Radbruch was a Social Democrat who had been dismissed from his professorship by the Nazis only strengthened the exculpatory power of the “legal positivism thesis.”⁶⁴ This thesis also played an important part in the renaissance of natural law that took place in postwar West Germany. For if the Nazis’ crimes had been made possible by legal positivism, so the argument went, then the remedy must lie in an appeal to the eternal values of natural law, which were often given a Christian inflection. This renaissance of natural law had a tangible effect on judicial practice. When German courts judged Nazi crimes after the war, they often did so on the basis of natural law arguments.⁶⁵

Even though most German jurists gave themselves an easy pass for their participation in the Nazi regime, the Allies were initially quite intent on denazifying both Germany’s jurists and its criminal laws. Whereas denazification authorities in the Soviet zone of occupation conducted a serious purge of jurists, most jurists in the Western zones of occupation and later West Germany survived the denazification proceedings virtually unscathed. Only one German professor of criminal law permanently lost his professorship as a result of denazification; for all others, denazification brought at most short interruptions of their careers.⁶⁶ The task of purging criminal law of Nazi elements proved to be a difficult one because it was not always easy to decide whether Nazi-era changes in criminal law were specifically National Socialist or in line with pre-1933 legal traditions. One of the questions, for instance, was whether the 1935 changes made to the penal code’s article 175, which aggravated the criminalization of male homosexuality, should be considered National-Socialist in content and therefore voided or not. In 1957 West Germany’s highest court decided that the 1935 version was fine and should be kept on the books.⁶⁷

As Petra Gödecke shows in her chapter on the beginnings of penal reform in West Germany, the legacy of the Nazi period and the denazification process had a depoliticizing effect on professors of criminal law. Most retreated from politics and penal policy and turned toward “pure scholarship” in the form of jurisprudence and legal philosophy. As a result, only a minority participated in the resumption of penal reform efforts in the postwar years. Law professors who had been closely associated with the Nazi regime generally stayed out of these debates altogether. This did not mean that those who participated were untainted; many had also been complicit with the Nazi regime. The postwar penal reform debates reproduced the conflict between the supporters of retributive justice and the advocates of the individualization of punishment that had characterized German penal reform since the Kaiserreich. As Gödicke demonstrates, the triumph of retributivism in postwar penal reform discourse was due to a confluence of factors: First, the general renaissance of natural law made it easier to base criminal justice on the metaphysical foundation of retributive justice. Second, postwar

jurists wrapped their return to retributive justice in the flag of democracy by arguing that the West German constitution's (*Grundgesetz*) protection of human dignity was an endorsement of free will, individual responsibility, and retributive justice. Finally, the retributivists sought to discredit the modern school's penal reform agenda by associating it with Nazism. That this smear was disseminated by criminal law professors who had themselves been deeply implicated in the Nazi regime is one of the great ironies of German postwar legal history. To be sure, as we have seen, Nazi criminal justice did indeed draw on parts of the modern school's agenda; but it was also strongly shaped by retributivism. Presenting Nazism as the logical outcome of the penal reform movement was therefore a gross distortion. Gödecke's story ends in the late 1950s. When West Germany passed a set of comprehensive reforms of the penal code ten years later, in 1969–1970, that set of reforms did indeed implement significant elements of the modern school's agenda: individualizing punishment, strengthening rehabilitation, and increasingly replacing prison sentences with alternative sanctions. Nevertheless, these reforms remained constrained by a criminal justice system based on the general principle of retributive justice.

Whereas Petra Gödecke's chapter examines the discourse of legal academics in the Western zones of occupation and West Germany, Jennifer Evans's chapter focuses on the practitioners of juvenile justice in Berlin-Brandenburg and the Soviet zone of occupation, later the GDR.⁶⁸ The social dislocations of the early postwar years made juvenile waywardness and petty crime a widespread and pressing social problem, especially in large cities like Berlin.⁶⁹ The response of the East German authorities abandoned the punitiveness of Nazi juvenile justice in favor of a renewed focus on rehabilitation and reintegration. In doing so, however, they drew on the established institutions and approaches of juvenile justice as they had coalesced during the Weimar years. The turn toward rehabilitation did not signal a retreat of state power but brought with it an intensification of the state's intervention in the lives of individual youths. Even though the two German states sometimes sought to use penal policy as a tool in the Cold War, juvenile justice in both states was quite similar. Despite the East German state's revolutionary rhetoric it was just as wedded to bourgeois sexual norms and gender stereotypes as the West German state. The gendering of juvenile justice was perhaps most evident in the role of sexuality in the definitions of male versus female waywardness and delinquency. For girls, sexual promiscuity by itself was considered evidence of juvenile delinquency or at least waywardness. For boys, juvenile delinquency was usually defined in terms of petty theft and shirking work; only if boys were suspected of homosexuality or homosexual prostitution did sexuality become an issue. Similarly, although GDR juvenile justice policy touted its lofty goal of creating socialist citizens, in practice it was just as focused on inculcating a strict work ethic as juvenile justice in the capitalist West.

Conclusions

The history of criminal justice in modern Germany has become a vibrant field of historical research. The chapters in this volume not only lay the groundwork for writing a history of crime and criminal justice from the Kaiserreich to the early postwar period, but demonstrate that research in criminal justice history can make important contributions to other areas of historical inquiry. Thus the conclusion that Imperial Germany's criminal justice system came much closer to the liberal ideal of the rule of law than historians have long assumed sheds new light on long-standing debates about the Kaiserreich's political culture. Criminal justice forms an essential element of political rule. Yet penal codes, institutions, and practices also represent great forces of inertia that tend to survive political regime changes with only minor modifications. This paradoxical combination of political relevance and inertia makes criminal justice an excellent lens for examining the complex mixture of continuity and change across different political regimes. As we saw, the study of criminal justice and penal reform under different political regimes demonstrates that it can be difficult to distinguish a legal system's "progressive" or "liberal" features from its supposedly "repressive" ones. Many features of criminal justice, and indeed of the modern state, are politically ambivalent, harboring both emancipatory and repressive potentials, whose activation depends on the political circumstances.

The study of the influence of criminology, psychiatry, and other human and social sciences on criminal justice elucidates the larger process of the "scientization of the social," that is, the increasing use of scientific expertise in almost all areas of social life.⁷⁰ As several chapters show, the history of modern criminal justice is inextricably interwoven with the history of psychiatry, in particular with the ambition of psychiatrists to provide medical remedies for social problems. Private and public welfare agencies, too, sought to harness scientific expertise to find better solutions to social problems. Since penal reformers integrated welfare services into the work of the courts as well as the spectrum of penal sanctions, criminal justice became so closely intertwined with welfare that it seems fair to say that the history of the modern welfare state cannot be written without studying the history of criminal justice. Yet the "scientization of the social" must not be understood as a one-way street of science penetrating criminal justice. The history of modern penal reform is not one of criminal jurists simply ceding authority to medical doctors, for instance, but one of disciplinary boundary disputes. Most of the time, jurists kept the upper hand as they learned to integrate scientific, especially medical, knowledge into penal reform proposals, legislation, judicial practice, and the administration of punishment. Although over the first half of the twentieth century medical doctors and welfare workers came to play a larger role in criminal justice than ever before, criminal jurists were remarkably successful in assimilating new

types of knowledge in order to buttress their dominant position in the criminal justice system.

Criminal trials reflect the society in which they take place and therefore provide an important source for the social and cultural history of their times. Several chapters demonstrate how the study of criminal trials illuminates the social and cultural history of the Weimar Republic, for instance. Others show that the history of criminal justice can profitably be combined with media history and the history of literature because the representations of crime and criminal justice in the press, literature, and other media provide a rich topic of research that sheds new light not only on criminal justice but on social and cultural history more generally.

Much remains to be done, not only in fleshing out the history of criminal justice in modern Germany but in unlocking the power of criminal trials as historical sources. The records of vast numbers of criminal trials remain unexplored, ready to be discovered—to teach us not only about courtroom practices and legal culture but about a great variety of historical topics ranging from the history of sexuality to economic history. Finally, more comparative work in the history of crime and criminal justice should help us better discern which aspects of the story were specifically German.

Notes

1. Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975); translated as: *Discipline and Punish: The Birth of the Prison* (New York: Pantheon, 1978); for a lucid analysis and critique of Foucault's book, see David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990), 131–175. The first British studies dealt with the eighteenth century: E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon, 1975) and Douglas Hay, Peter Linebaugh, John Rule, E. P. Thompson, and Cal Winslow, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York, Pantheon, 1975); but British research on crime and criminal justice quickly expanded to include the nineteenth and twentieth centuries: see Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1850* (New York: Pantheon, 1978), David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985), Clive Emsley, *Crime and Society in England 1750–1900* (Harlow: Longman, 1987; 2nd ed., 1996); W. J. Forsythe, *Penal Discipline, Reformatory Projects and the English Prison Commission 1895–1939* (Exeter: University of Exeter Press, 1990). For a recent comparative survey, see Clive Emsley, *Crime, Police, and Penal Policy: European Experiences 1750–1940* (Oxford: Oxford University Press, 2007).
2. See Gerd Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt am Main: Campus, 2011); Andreas Blauert and Gerd Schwerhoff, eds., *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne* (Konstanz: UVK Universitätsverlag Konstanz, 2000).
3. See Rebekka Habermas and Gerd Schwerhoff, "Vorbemerkung," in *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, ed. Habermas and Schwerhoff, (Frankfurt am Main: Campus, 2009), 10–12.

4. See Lutz Raphael, "Die Verwissenschaftlichung des Sozialen als methodische und konzeptionelle Herausforderung für eine Sozialgeschichte des 20. Jahrhundert," *Geschichte und Gesellschaft* 22 (1996): 165–193; Kerstin Brückweh, Dirk Schumann, Richard F. Wetzell, and Benjamin Ziemann, eds., *Engineering Society: The Role of the Human and Social Sciences in Modern Societies, 1880–1980* (Houndmills: Palgrave Macmillan, 2012).
5. Recent studies on the nineteenth century include Rebekka Habermas, *Diebe vor Gericht: Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert* (Frankfurt am Main: Campus, 2008); Desiree Schauz, *Strafen als moralische Besserung: Eine Geschichte der Straffälligenfürsorge 1777–1933* (Munich: Oldenbourg, 2008); Sylvia Kesper-Biermann, *Einheit und Recht: Strafesetzgebung und Kriminalrechtsexperten in Deutschland vom Beginn des 19. Jahrhunderts bis zum Reichsstrafgesetzbuch 1871* (Frankfurt am Main: Vittorio Klostermann, 2009). See also Rebekka Habermas, "Rechts- und Kriminalitätsgeschichte revisited—Ein Plädoyer," in *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, ed. Habermas and Schwerhoff, (Frankfurt am Main: Campus, 2009), 19–41.
6. Excellent introductions to Imperial Germany's criminal justice system are provided in Benjamin Hett, *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge: Harvard University Press, 2004), 11–54, and in Eric Johnson, *Urbanization and Crime: Germany 1871–1914* (New York: Cambridge University Press, 1995), 15–51. On the 1871 German penal code (*Reichsstrafgesetzbuch*) and its origins, see Sylvia Kesper-Biermann, *Einheit und Recht*, 270–371, and Werner Schubert and Thomas Vormbaum, eds., *Entstehung des Strafesetzbuchs*, 2 vols. (Baden-Baden, 2002; Berlin, 2004). An analysis focusing on public criticism of the judicial system (*Justizkritik*) is provided by Uwe Wilhelm, *Das Deutsche Kaiserreich und seine Justiz: Justizkritik—politische Strafrechtssprechung—Justizpolitik* (Berlin: Duncker & Humblot, 2010). For a survey of German criminal justice in the nineteenth and twentieth centuries, see Thomas Vormbaum, *Einführung in die moderne Strafrechtsgeschichte* (Berlin, 2009). The classic work on the history of German criminal justice, first published in 1947 but still worth consulting, is Eberhard Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*, 3rd ed. (Göttingen: Vandenhoeck, 1964). A good collection of sources, with commentary, is Wolfgang Sellert and Hinrich Rüping, *Studien- und Quellenbuch zur Geschichte der deutschen Strafrechtspflege, vol. 2: Von der Aufklärung bis zur doppelten Staatsgründung* (Aalen, 1994).
7. See Kenneth Ledford, "Lawyers, Liberalism, and Procedure: The German Imperial Justice Laws of 1877–79," *Central European History* 26 (1993), 165–193.
8. For the contemporary charges of class justice, see Detlef Joseph, ed., *Rechtsstaat und Klassenjustiz: Texte aus der sozialdemokratischen "Neuen Zeit" 1883–1914* (Freiburg: Rudolf Haufe, 1996); Karl Liebknecht, "Rechtsstaat und Klassenjustiz" [1907], in Liebknecht, *Gesammelte Reden und Schriften* (Berlin: Dietz, 1958–1971), 2, 17–42; Erich Kuttner, *Klassenjustiz* (Berlin, 1913).
9. See Heinrich Hannover and Elisabeth Hannover-Drück, *Politische Justiz 1918–1933* (Frankfurt: Fischer, 1966), 22–26; Bernt Engelmann, *Die unsichtbare Tradition: Richter zwischen Recht und Macht 1779–1918* (Cologne: Pahl-Rugenstein, 1988), 1, 187–318, esp. 233; Johnson, *Urbanization and Crime*, 26, 29, 39–40.
10. Kenneth F. Ledford, "Formalizing the Rule of Law in Prussia: The Supreme Administrative Law Court, 1876–1914," *Central European History* 37 (2004): 203–224, quote 224; see also Ledford, "Lawyers, Liberalism, and Procedure."
11. Gary D. Stark, *Banned in Berlin: Literary Censorship in Imperial Germany, 1871–1918* (New York: Berghahn Books, 2009), 1–20.
12. Ann Goldberg, *Honor, Politics, and the Law in Imperial Germany, 1871–1914* (Cambridge: Cambridge University Press, 2010), 11.
13. See also Hett, *Death in the Tiergarten*, 1–5, 220–228.
14. On German lawyers see Kenneth Ledford, *From General Estate to Special Interest: German Lawyers 1878–1933* (Cambridge: Cambridge University Press, 1996).

15. For a broader analysis of the culture of the criminal courtroom in Imperial Germany, see Hett, *Death in the Tiergarten*; on the press coverage and public resonance of the era's criminal trials see Philipp Müller, *Auf der Suche nach dem Täter: Die öffentliche Dramatisierung von Verbrechen im Berlin des Kaiserreichs* (Frankfurt am Main: Campus, 2005); an illuminating study of a ritual murder case is provided by Helmut Walser Smith, *The Butchers Tale: Murder and Anti-Semitism in a German Town* (New York: Norton, 2002).
16. On the penal reform movement, see 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: Louisiana State University Press, 2004), 59–77; Christian Müller, *Verbrechensbekämpfung im Anstaltsstaat: Psychiatrie, Kriminologie und Strafrechtsreform in Deutschland 1871–1933* (Göttingen: Vandenhoeck, 2004), 125–169; Wetzell, *Inventing the Criminal: A History of German Criminology, 1880–1945* (Chapel Hill: University of North Carolina Press, 2000), 31–38; Silvana Galassi, *Kriminologie im Deutschen Kaiserreich: Geschichte einer gebrochenen Verwissenschaftlichung* (Stuttgart: Steiner, 2004), 339–414; Monika Frommel, "Internationale Reformbewegung zwischen 1880 und 1920," *Erzählte Kriminalität: Zur Typologie und Funktion von narrativen Darstellungen in Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920*, ed. Jörg Schönert (Tübingen: Niemeyer, 1991), 467–495; Schmidt, *Einführung*, 355–399. On the broader context of social and moral reform see Andrew Lees, *Cities, Sin, and Social Reform in Imperial Germany* (Ann Arbor: University of Michigan Press, 2002).
17. Joseph, ed., *Rechtsstaat und Klassenjustiz*; Liebknecht, "Rechtsstaat und Klassenjustiz."
18. On libel prosecutions of the Social-Democratic press see Goldberg, *Honor, Politics, and the Law*, 81–114; on the history of political criminal justice, see Dirk Blasius, *Geschichte der politischen Kriminalität in Deutschland, 1800–1980* (Frankfurt: Suhrkamp, 1983). The standard account of the SPD during the era of the antisocialist laws remains Vernon Lidtke, *The Outlawed Party: Social Democracy in Germany, 1878–1890* (Princeton: Princeton University Press, 1966).
19. On the international aspect, see Sylvia Kesper-Biermann and Petra Overrath, eds., *Die Internationalisierung von Strafrechtswissenschaft und Kriminalpolitik (1970–1930): Deutschland im Vergleich* (Berlin: Berliner Wissenschaftsverlag, 2007), and Peter Becker and Richard F. Wetzell, eds., *Criminals and Their Scientists: The History of Criminology in International Perspective* (Cambridge/New York: Cambridge University Press, 2006).
20. Wetzell, "From Retributive Justice"; Müller, *Verbrechensbekämpfung*, 125–141; Wetzell, *Inventing the Criminal*, 31–38; Schmidt, *Einführung*, 370–381. The penal reform movement's seminal programmatic text is Franz von Liszt, "Der Zweckgedanke im Strafrecht," *Zeitschrift für die gesamte Strafrechtswissenschaft* 3 (1883), 1–47.
21. On the history of German criminology see Wetzell, *Inventing the Criminal*; Peter Becker, *Verderbnis und Entartung: Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis* (Göttingen: Vandenhoeck, 2002); Galassi, *Kriminologie im Deutschen Kaiserreich*; Mariacarla Gadebusch Bondio, *Die Rezeption der kriminalanthropologischen Theorien von Cesare Lombroso in Deutschland von 1880–1914* (Husum: Matthiesen, 1995); Ylva Greve, *Verbrechen und Krankheit: Die Entdeckung der "Criminalpsychologie" im 19. Jahrhundert* (Cologne: Böhlau, 2004); Karsten Uhl, *Das "verbrecherische" Weib: Geschlecht, Verbrechen und Strafen im kriminologischen Diskurs 1800–1945* (Münster: Lit, 2003). Especially on post-1945 criminology, see Imanuel Baumann, *Dem Verbrechen auf der Spur: Eine Geschichte der Kriminologie und Kriminalpolitik in Deutschland 1880 bis 1980* (Göttingen: Wallstein, 2006). On the international context, see Becker and Wetzell, eds., *Criminals and Their Scientists*.
22. On Lombroso see Mary Gibson, *Born to Crime: Cesare Lombroso and the Origins of Biological Criminology* (Westport, Conn.: Praeger, 2002).
23. The history of German prisons in the period 1870–1918 is not well researched; one of few works that includes coverage of this period is Sandra Leukel, *Strafanstalt und Geschlecht:*

- Geschichte des Frauenstrafvollzug im 19. Jahrhundert (Baden und Preussen)* (Leipzig: Leipziger Universitätsverlag, 2010). On the general history of German prisons, see Silke Klewin, Herbert Reinke, and Gerhard Sälter, eds., *Hinter Gittern: Zur Geschichte der Inhaftierung zwischen Bestrafung, Besserung und politischem Ausschluss vom 18. Jahrhundert bis zur Gegenwart* (Leipzig: Leipziger Universitätsverlag, 2010); Norbert Finzsch and Robert Jütte, eds., *Institutions of Confinement: Hospitals, Asylums and Prisons in Western Europe and North America, 1500–1950* (New York: Cambridge University Press, 1996); Thomas Krause, *Geschichte des Strafvollzuges* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1999).
24. See Thomas Nutz, *Strafanstalt als Besserungsmaschine: Reformdiskurs und Gefängniswissenschaft 1775–1848* (Munich: Oldenbourg, 2001); Martina Henze, *Strafvollzugsreformen im 19. Jahrhundert: Gefängnis-kundlicher Diskurs und staatliche Praxis in Bayern und Hessen-Darmstadt* (Darmstadt und Marburg: Hessische Historische Kommission Darmstadt, 2003); Falk Bretschneider, *Gefangene Gesellschaft: Eine Geschichte der Einsperrung in Sachsen im 18. und 19. Jahrhundert* (Konstanz: UVK, 2008).
 25. On the history of the death penalty, see Richard Evans, *Rituals of Retribution: Capital Punishment in Germany 1600 to 1987* (Oxford: Oxford University Press, 1996), and Jürgen Martschukat, *Inszeniertes Töten: Eine Geschichte der Todesstrafe vom 17. bis zum 19. Jahrhundert* (Cologne: Böhlau, 2000).
 26. Wetzell, “From Retributive Justice”; Müller, *Verbrechensbekämpfung*, 125–169; Wetzell, *Inventing the Criminal*, 31–38; Wetzell, “The Medicalization of Criminal Law Reform in Imperial Germany,” in *Institutions of Confinement*, ed. Finzsch and Jütte, 275–284; Schmidt, *Einführung*, 370–381; Liszt, “Der Zweckgedanke.”
 27. Wetzell, “From Retributive Justice,” 71–74, 76.
 28. On penal reform during the Weimar Republic see Müller, *Verbrechensbekämpfung*, 180–227; Vormbaum, *Einführung*, 153–183; Schmidt, *Einführung*, 405–424.
 29. On the criminal-biological examinations, see Thomas Kailer, *Vermessung des Verbrechers: Die Kriminalbiologische Untersuchung in Bayern, 1923–1945* (Bielefeld: Transcript, 2011); Oliver Liang, “The Biology of Morality: Criminal Biology in Bavaria, 1924–1933,” in *Criminals and their Scientists*, ed. Becker and Wetzell, 425–446; Wolfgang Burgmair, Nikolaus Wachsmann and Matthias Weber. “‘Die soziale Prognose wird damit sehr trübe . . .’ Theodor Viernstein und die kriminalbiologische Sammelstelle in Bayern,” in *Polizeireport München*, ed. Michael Farin (Munich: Belleville, 1999); Liang, *Criminal-Biological Theory, Discourse and Practice in Germany 1918–1945* (Ph.D. diss., Johns Hopkins University, 1999).
 30. On the history of German prisons in the Weimar era (and beyond), see also Kai Naumann, *Gefängnis und Gesellschaft: Freiheitsentzug in Deutschland in Wissenschaft und Praxis 1920–1960* (Münster: Lit, 2006). On the history of German prisons during the Nazi era, see Nikolaus Wachsmann, *Hitler’s Prisons: Legal Terror in Nazi Germany* (New Haven and London: Yale University Press, 2004).
 31. On the history of German juvenile justice and youth welfare, see Edward Ross Dickinson, *The Politics of German Child Welfare from the Empire to the Federal Republic* (Cambridge, Mass.: Harvard University Press, 1996); Christine Dörner, *Erziehung durch Strafe: Die Geschichte der Jugendstrafe 1871–1945* (Weinheim and Munich: Juventa, 1991); Elizabeth Harvey, *Youth and the Welfare State in Weimar Germany* (Oxford: Clarendon Press, 1993); Marcus Gräser, *Der blockierte Wohlfahrtsstaat: Unterschichtjugend und Jugendfürsorge in der Weimarer Republik* (Göttingen: Vandenhoeck, 1995); Detlev Peukert, *Grenzen der Sozialdisziplinierung: Aufstieg und Krise der deutschen Jugendfürsorge von 1878 bis 1932* (Cologne, 1986).
 32. On the relationship of psychiatry to criminal justice, see also Richard F. Wetzell, “Psychiatry and Criminal Justice in Modern Germany, 1880–1933,” *Journal of European Studies* 39 (2009): 270–289. On the role of experts in criminal justice, see Desiree Schaub and Sabine Freitag, eds., *Verbrecher im Visier der Experten: Kriminalpolitik zwischen Wissenschaft und Praxis*

- im 19. und frühen 20. Jahrhundert (Stuttgart: Steiner, 2007); Alexander Kästner and Sylvia Kesper-Biermann, eds., *Experten und Expertenwissen in der Strafjustiz von der Frühen Neuzeit bis zur Moderne* (Leipzig: Meine-Verlag, 2008).
33. See Warren Rosenblum, *Beyond the Prison Gates: Punishment and Welfare in Germany, 1850 to 1933* (Chapel Hill: University of North Carolina Press, 2008); Young Sun-Hong, *Welfare, Modernity, and the Weimar State, 1919 to 1933* (Princeton: Princeton University Press, 1998).
 34. On the *Vertrauenskrise*, see Daniel Siemens, "Die 'Vertrauenskrise der Justiz' in der Weimarer Republik," in *Die Krise der Weimarer Republik. Zur Kritik eines Deutungsmusters*, ed. Moritz Föllmer and Rüdiger Graf (Frankfurt am Main: Campus, 2005), 139–164; Siemens, *Metropole und Verbrechen: Die Gerichtsreportage in Berlin, Paris und Chicago, 1919–1933* (Stuttgart: Steiner, 2007), 114–144; Henning Grunwald, "Die 'Vertrauenskrise der Justiz' in der Weimarer Republik: Justiz als Krisendiagnostik," in *Krisis! Krisenszenarien, Diagnosen und Diskursstrategien*, ed. Henning Grunwald and Manfred Pfister (Stuttgart: Fink, 2007), 177–199; Robert Kuhn, *Die Vertrauenskrise der Justiz, 1926–1928: Der Kampf um die "Republikanisierung" der Rechtspflege in der Weimarer Republik* (Cologne: Bundesanzeiger, 1983); Claudia Schöningh: "Kontrolliert die Justiz". *Die Vertrauenskrise der Weimarer Justiz im Spiegel der Gerichtsreportagen von Weltbühne, Tagebuch und Vossischer Zeitung* (Munich: Fink, 2000).
 35. Daniel Siemens, *Metropole und Verbrechen: Die Gerichtsreportage in Berlin, Paris und Chicago, 1919–1933* (Stuttgart: Steiner, 2007), esp. 213–214, 221–223; Siemens, "Explaining Crime: Berlin Newspapers and the Construction of the Criminal in Weimar Germany," *Journal of European Studies* 39 (2009): 336–352; Sling [Paul Schlesinger], *Richter und Gerichtete* (Berlin: Ullstein, 1929); Moritz Goldstein, *George Grosz freigesprochen: Gerichtsreportagen aus der Weimarer Republik* (Hamburg: Philo, 2005); Gabriele Tergit, *Wer schießt aus Liebe? Gerichtsreportagen* (Berlin: Das neue Berlin, 1999); Kathrin Kompisch, "Gewaltdarstellungen in der Massenpresse der Weimarer Republik am Beispiel des Falles Fritz Haarmann (1924)," in *Repräsentation von Kriminalität und öffentlicher Sicherheit: Bilder, Vorstellungen und Diskurse vom 16. bis zum 20. Jahrhundert*, ed. Karl Härter, Gerhard Sälter, and Eva Wiebel (Frankfurt am Main: Klostermann, 2010), 487–508. On press representations of crime in the Imperial period see Johnson, *Urbanization and Crime*, 53–107.
 36. Emil Julius Gumbel, *Vier Jahre politischer Mord* (Berlin: Verlag der neuen Gesellschaft, 1922).
 37. Hannover and Hannover-Drück, *Politische Justiz 1918–1933*.
 38. Benjamin Carter Hett, *Crossing Hitler: The Man Who Put the Nazis on the Witness Stand* (Oxford/New York: Oxford University Press, 2008), esp. 121–127; Hett, "Hans Litten and the Politics of Criminal Law in the Weimar Republic," *Modern Histories of Crime and Punishment*, ed. Darkus Dirk Dubber and Lindsay Farmer (Stanford: Stanford University Press, 2007), 175–197. For another important study of an anti-Nazi lawyer, see Douglas G. Morris, *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany* (Ann Arbor: University of Michigan Press, 2005).
 39. Henning Grunwald, *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials* (Oxford: Oxford University Press, 2012); Grunwald, "From Courtroom to 'Revolutionary Stage': Performing Ideology in Weimar Political Trials," in *Das Gericht als Tribunal oder: Wie der NS-Vergangenheit der Prozess gemacht wurde* (Göttingen: Wallstein, 2009), 41–52; Grunwald, "Der Gerichtssaal als 'revolutionäre Tribüne': Ideologische Selbst-Inszenierung im Medium politischer Prozesse der Weimarer Republik," *Paragrana* 15 (2006): 211–225.
 40. See Sace Elder, *Murder Scenes: Normality, Deviance, and Criminal Violence in Weimar Berlin* (Ann Arbor: University of Michigan Press, 2010); Hania Siebenpfeiffer, "Böse Lust": *Gewaltverbrechen in Diskursen der Weimarer Republik* (Cologne: Böhlau, 2005); Kerstin Brückweh, *Mordlust: Serienmorde, Gewalt und Emotionen im 20. Jahrhundert* (Frankfurt/Main: Campus, 2006); Maria Tatar, *Lustmord: Sexual Murder in Weimar Germany* (Princeton: Princeton

- University Press, 1995); Kathrin Kompisch, "Wüstling—Werwolf—Teufel: Medienbilder von Serienmördern in der deutschen Massenpresse 1918–1945" (Ph.D. diss., University of Hamburg, 2008); Amber Marie Aragon-Yoshida, "*Lustmord* and Loving the Other: A History of Sexual Murder in Modern Germany and Austria (1873–1932)" (Ph.D. diss., Washington University in St. Louis, 2011). On Fritz Lang's film *M*, see: Anton Kaes, *M* (London: BFI, 2000) as well as Christoph Bareither and Urs Büttner, eds., *Lang: "M—Eine Stadt sucht einen Mörder": Texte und Kontexte* (Würzburg: Königshausen & Neumann, 2010). See also the forthcoming dissertation by Kathrin Kompisch (Hamburg).
41. Haarmann and Kürten were convicted and executed; Grossmann committed suicide before his trial concluded. All of them confessed to at least some of the murders.
 42. See Wetzell, *Inventing*, 136–137, 168–178, 297–300.
 43. On literary representations of crime, see Todd Herzog, *Crime Stories: Criminalistic Fantasy and the Culture of Crisis in Weimar Germany* (New York, 2009); Isabella Classen, *Darstellung von Kriminalität in der deutschen Literatur, Presse und Wissenschaft: 1900 bis 1930* (Frankfurt am Main: Lang, 1988); Birgit Kreuzahler, *Das Bild des Verbrechers in Romanen der Weimarer Republik: Eine Untersuchung vor dem Hintergrund anderer gesellschaftlicher Verbrecherbilder und gesellschaftlicher Grundzüge der Weimarer Republik* (Frankfurt am Main: Lang, 1987); Klaus Petersen, *Literatur und Justiz in der Weimarer Republik* (Stuttgart: Metzler, 1988); Joachim Linder and Claus-Michael Ort, eds., *Verbrechen—Justiz—Medien: Konstellationen in Deutschland von 1900 bis zur Gegenwart* (Tübingen: Niemeyer, 1999); Jörg Schöner, ed., *Erzählte Kriminalität: Zur Typologie und Funktion von narrativen Darstellungen in Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920* (Tübingen: Niemeyer, 1991); Stefan Andriopoulos, "Die Zirkulation von Figuren und Begriffen in kriminologischen, juristischen und literarischen Darstellungen von ›Unfall‹ und ›Verbrechen,‹," *Internationales Archiv für Sozialgeschichte der deutschen Literatur* 21 (1996), 113–142; Karsten Uhl, "Die Gewaltverbrecherin im kriminologischen und literarischen Diskurs des frühen 20. Jahrhunderts," in *Frauen und Gewalt: interdisziplinäre Untersuchungen zu geschlechtsgebundener Gewalt in Theorie und Praxis*, ed. Antje Hilbig, Claudia Kajatin, and Ingrid Miethe (Würzburg: Königshausen und Neumann, 2003).
 44. On the trial and the larger subject of *Giftmord* (murder by poison) in the Weimar era, see Siebenpfeiffer, *Böse Lust*, 95–150.
 45. See Richard F. Wetzell, "Criminology in Weimar and Nazi Germany," in *Criminals and Their Scientists*, ed. Becker and Wetzell, 401–423.
 46. For surveys of the historiography, see Thomas Roth, *Verbrechensbekämpfung und soziale Ausgrenzung im nationalsozialistischen Köln: Kriminalpolizei, Strafstuzist und abweichendes Verhalten zwischen Machtübernahme und Kriegsende* (Cologne: Emons, 2010), 19–34; Jürgen Zarusky, "Walter Wagners Volksgerichtshof-Studie von 1974 im Kontext der Forschungsentwicklung," in Walter Wagner, *Der Volksgerichtshof im nationalsozialistischen Staat*, 2nd, expanded edition (Munich: Oldenbourg, 2011), 993–1023; Joachim Rückert, "Justiz und Nationalsozialismus: Bilanz einer Bilanz," in *Fünfzig Jahre Institut für Zeitgeschichte: Eine Bilanz*, ed. Horst Möller and Udo Wengst (Munich, 1999), 181–213; Michael Stolleis, "Recht im Unrecht," in Stolleis, *Recht im Unrecht: Studien zur Rechtsgeschichte des Nationalsozialismus* (Frankfurt am Main, 1994), 7–35, translated into English as "General Introduction," Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany* (Chicago: University of Chicago Press, 1998), 5–24; Gerhard Werle, *Justiz-Strafrecht und polizeiliche Verbrechensbekämpfung im Dritten Reich* (Berlin: de Gruyter, 1989), 5–56; Michael Stolleis and Dieter Simon, "Vorurteile und Werturteile der rechtshistorischen Forschung zum Nationalsozialismus," in *NS-Recht in historischer Perspektive* (Munich: Oldenbourg, 1981), 13–51, translated into English as "Biases and Value Judgments in the Study of National Socialist Legal History," in Stolleis, *Law under the Swastika*, 25–39.

47. Hermann Weinkauff, *Die Deutsche Justiz und der Nationalsozialismus* (Stuttgart: Deutsche Verlags-Anstalt, 1968), 19, 30–31, also esp. 37–38. In the same vein: Hubert Schorn, *Der Richter im Dritten Reich* (Frankfurt am Main: Klostermann, 1959). On Weinkauff see Daniel Herbe, *Hermann Weinkauff (1894–1981): Der erste Präsident des Bundesgerichtshofs* (Tübingen: Mohr Siebeck, 2008).
48. See Martin Broszat, “Zur Perversion der Strafjustiz im Dritten Reich,” *Vierteljahrbefte für Zeitgeschichte* (1958), 390–441; Ilse Staff, ed., *Justiz im Dritten Reich: Eine Dokumentation* (Frankfurt: Fischer, 1964); Redaktion Kritische Justiz, ed., *Der Unrechtsstaat: Recht und Justiz im Nationalsozialismus*, vol. 1 (Frankfurt: Europäische Verlagsanstalt, 1979); vol. 2 (Frankfurt, 1984). Closely related to the perversion thesis is the topos of “degenerated law”; see Bernd Rüthers, *Entartetes Recht: Rechtslehren und Kronjuristen im Dritten Reich* (Munich: Beck, 1988); Rüther also speaks of the “perversion of the law” (13). For critical appraisals of the perversion thesis, see Werle, *Justiz-Strafrecht*, 5–7, and Wolfgang Naucke, “NS-Strafrecht: Perversion oder Anwendungsfall moderner Kriminalpolitik?” *Rechtshistorisches Journal* 11 (1992): 279–292, reprinted in Naucke, *Über die Zerbrechlichkeit des rechtsstaatlichen Strafrechts* (Baden-Baden: Nomos, 2000), 361–376.
49. Gustav Radbruch, “Gesetzliches Unrecht und übergesetzliches Recht,” *Süddeutsche Juristenzeitung* 1 (1946): 105–108; reprinted in *Gustav Radbruch Gesamtausgabe*, vol. 3, *Rechtsphilosophie III* (C.F. Müller, 1990), 83f.
50. See Ingo Müller, *Furchtbare Juristen* (München, 1987), translated as Ingo Müller, *Hitler’s Justice: The Courts of the Third Reich* (Cambridge, Mass: Harvard University Press, 1991); Ralph Angermund, *Deutsche Richterschaft 1919–1945* (Frankfurt: Fischer, 1990); Udo Reifner and Bernd-Rüdeger Sonnen, eds., *Strafjustiz und Polizei im Dritten Reich* (Frankfurt am Main: Campus, 1984).
51. A recent overview is provided in Thomas Roth, “Kriminalpolitik im NS-Regime: Ein Überblick,” in Roth, *Verbrechensbekämpfung*, 44–69; see also Vormbaum, *Einführung*, 183–218. Two foundational works are Lothar Gruchmann, *Justiz im Dritten Reich 1933–1940: Anpassung und Unterwerfung in der Ära Gürtner* (Munich: Oldenbourg, 1988) [2d ed. (1990)] and Werle, *Justiz-Strafrecht*. See also Joachim Vogel, *Einflüsse des Nationalsozialismus auf das Strafrecht* (Berlin: Berliner Wissenschafts-Verlag, 2004). On the later period, see Sarah Schädler, *‘Justizkrise’ und ‘Justizreform’ im Nationalsozialismus: Das Reichsjustizministerium unter Reichsjustizminister Thierack, 1942–1945* (Tübingen: Mohr Siebeck, 2009). On the Volksgerichtshof (People’s Court) see the 2011 edition of Walter Wagner, *Der Volksgerichtshof im nationalsozialistischen Staat*, which includes a report on recent research by Jürgen Zarusky.
52. See Cornelia Essner, *Die “Nürnberger Gesetze” oder die Verwaltung des Rassenwahns 1933–1945* (Paderborn: Schöningh, 2002), and Alexandra Przyrembel, *“Rassenschande”: Reinheitsmythos und Vernichtungslegitimation im Nationalsozialismus* (Göttingen: Vandenhoeck, 2003).
53. Wetzell, *Inventing*, 179–180.
54. On the death penalty under the Nazi regime see Evans, *Rituals of Retribution*, 613–737.
55. Wolfgang Naucke, “Die Aufhebung des strafrechtlichen Analogieverbots 1935,” in *NS-Recht in historischer Perspektive* [1981], 71–108, reprinted in Wolfgang Naucke, *Über die Zerbrechlichkeit des rechtsstaatlichen Strafrechts* (Baden-Baden: Nomos, 2000), 301–335.
56. See the section on “polizeiliche Verbrechensbekämpfung” in Werle, *Justiz-Strafrecht*, 481–618. On the police, see Patrick Wagner, *Volksgemeinschaft ohne Verbrecher: Konzeptionen und Praxis der Kriminalpolizei in der Zeit der Weimarer Republik und des Nationalsozialismus* (Hamburg: Christians, 1996); Patrick Wagner, *Hitlers Kriminalisten* (Munich: Beck, 1992); Deutsche Hochschule der Polizei et al., eds., *Ordnung und Vernichtung: Die Polizei im NS-Staat* (Dresden: Sandstein, 2011).
57. On the concentration camps, see Jane Caplan and Nikolaus Wachsmann, eds., *Concentration Camps in Nazi Germany: The New Histories* (London: Routledge, 2010). On the targeted groups,

- see Robert Gellately and Nathan Stoltzfus, eds., *Social Outsiders in Nazi Germany* (Princeton: Princeton University Press, 2001) as well as Michael Burleigh and Wolfgang Wippermann, *The Racial State: Germany 1933–1945* (Cambridge: Cambridge University Press, 1991).
58. Christian Müller, *Das Gewohnheitsverbrechergesetz vom 24. November 1933* (Berlin: Berliner Wissenschafts-Verlag, 1997), Nikolaus Wachsmann, “From Indefinite Confinement to Extermination: ‘Habitual Criminals’ in the Third Reich,” in *Social Outsiders in Nazi Germany*, ed. Gellately and Stoltzfus, 165–191; Wachsmann, *Hitler’s Prisons*, 128–144; Werle, *Justiz-Strafrecht*, 86–108.
 59. On these Verordnungen see Werle, *Justiz-Strafrecht*, 233–280, 284–302. On the Verordnung zum Schutz gegen jugendliche Schwerverbrecher, see Robert Waite’s chapter in this volume. On the role of *Tätertypen* in Nazi criminal justice, see, for instance, Vormbaum, *Einführung*, 185–88, 204.
 60. On the Gemeinschaftsfremdengesetz see Werle, *Justiz-Strafrecht*, 619–680; Schädler, ‘Justizkrise’ und ‘Justizreform’, 280–316; Walter Fuchs, *Franz Exner (1881–1947) und das Gemeinschaftsfremdengesetz* (Berlin: Lit, 2008); Matthias Willing, *Das Bewahrungsgesetz (1918–1967)* (Göttingen: Mohr Siebeck, 2003), 187–208; Wolfgang Ayass, ‘Asoziale’ im Nationalsozialismus (Stuttgart: Klett-Cotta, 1995), 202–209.
 61. On juvenile justice under the Nazi regime, see Frank Kebbedies, *Ausser Kontrolle: Jugendkriminalpolitik in der NS-Zeit und der frühen Nachkriegszeit* (Essen: Klartext, 2000); Jörg Wolff, *Jugendliche vor Gericht: Nationalsozialistische Jugendstrafrechtspolitik und Justizalltag* (Munich: Beck, 1992); Ulrike Jureit, *Erziehen, Strafen, Vernichten: Jugendkriminalität und Jugendstrafrecht im Nationalsozialismus* (Münster: Waxmann, 1995).
 62. A good introduction to the Nuremberg Trial is provided in Michael Marrus, *The Nuremberg War Crimes Trial 1945–46: A Documentary History* (Boston: Bedford Books, 1997).
 63. See Marc von Miquel, *Abnden oder amnestieren? Westdeutsche Justiz und Vergangenheitspolitik in den sechziger Jahren* (Göttingen: Wallstein, 2004), and Miquel, “Juristen: Richter in eigener Sache,” in *Karrieren im Zwielficht: Hitlers Eliten nach 1945*, ed. Norbert Frei (Frankfurt am Main: Campus, 2001), 181–237; Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland* (Paderborn: Schöningh, 2002).
 64. On Radbruch’s biography, see Arthur Kaufmann, *Gustav Radbruch* (Munich: Piper, 1987).
 65. See Jörg Requate, *Der Kampf um die Demokratisierung der Justiz: Richter, Politik und Öffentlichkeit in der Bundesrepublik* (Frankfurt am Main: Campus, 2008), 43–56.
 66. See Petra Gödecke’s chapter in this volume.
 67. See *Die Geschichte des § 175: Strafrecht gegen Homosexuelle*, ed. Freunde eines Schwulen Museums (Berlin: Verlag Rosa Winkel, 1990).
 68. See also Verena Zimmermann, *Den neuen Menschen schaffen: Die Umerziehung von schwererziehbaren und straffälligen Jugendlichen in der DDR (1945–1990)* (Cologne: Böhlau, 2004); Wolfgang Hofmann, Kristina Hübener, and Paul Meusinger, eds., *Fürsorge in Brandenburg* (Berlin: be.bra Wissenschaft Verlag, 2007). On juvenile justice in postwar West Germany, see Kebbedies, *Ausser Kontrolle*.
 69. See Jennifer V. Evans, *Life among the Ruins: Cityscape and Sexuality in Cold War Berlin* (London and New York: Palgrave Macmillan, 2011).
 70. See Raphael, “Verwissenschaftlichung”; Benjamin Ziemann, Richard F. Wetzell, Dirk Schumann, and Kerstin Brückweh, “The Scientization of the Social in Comparative Perspective,” in *Engineering Society*, ed. Brückweh, Schumann, Wetzell, and Ziemann, 1–40; Raphael, “Embedding the Human and Social Sciences in Western Societies, 1880–1980: Reflections on Trends and Methods of Current Research,” *ibid.*, 41–56.