Chapter 2

Institutions of Honor

A Leveling Society Seeking to Protect Its Institutions

Felony disenfranchisement was essentially an instrument of exclusion: it aimed to exclude serious offenders from participating in certain aspects of society. Crucially, however, debate about the function of this punishment often occurred in the broader context of discussions about greater inclusion in certain institutions. This chapter deals with the dynamics of exclusion/inclusion in questions of membership in important institutions in Imperial Germany. It shows how felony disenfranchisement frequently came to occupy a pivotal role in the debates about the honor of these institutions. Modern demands for inclusion often conflicted with ideas about honor and honorability. Many politicians, political commentators, and social activists instrumentalized felony disenfranchisement to stress the importance of exclusion and defend the honorability of these institutions against these demands.

This chapter looks specifically at the dynamics of inclusion/exclusion in the context of two important leveling trends in German society: the expansion of the system of military conscription and the implementation of universal male suffrage. The chapter then explores other contexts in German society in which disenfranchisement played an ambivalent role in privileges being granted to an extended group of citizens, for instance, in the emerging welfare state and in the existing legal regime as modern penal policy was adapted to make it compatible with it.

The demand for inclusion was also a prominent aim of the bourgeoning field of criminology and the prison reform movement, in which offenders' reform potential was increasingly emphasized.[1] The exclusion of felony disenfranchisement often conflicted with the aim of reintegrating and resocializing "corrigible" offenders, yet modern scholars hardly rebelled against it. Rather, they tried to appropriate the vocabulary of honor and exclusion that underpinned the policy

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of felony disenfranchisement—and they tried to make felony disenfranchisement appropriate within their own agenda.

Barring Criminals from the Army

In 1905, Robert Schmölder, a conservative commentator and judge at the supreme court of Hamm, published an article in the *Deutsche Juristenzeitung* in which he urged army officers to deploy the army in the social battle against crime. He suggested that the army could function as a "school" that could reform criminal youths by teaching them the core principles of military discipline. His proposal was born of an anxiety about the influence of modern city life on German youths as the average age of offenders was rather young: official statistics in the German Empire showed that men between the ages of eighteen and twenty-one were most inclined toward criminal behavior. Consequently, Schmölder believed that the best solution to this problem was to force young offenders to join the army after their release from prison (that is, if they were still in the eligible age range). The army could teach them manly discipline and discourage them from choosing a life of crime. He concluded that, with this solution, "the army and navy would become in a wider sense the educators of the people, and this educational function would be of the greatest imaginable importance to criminal policy."[2]

Forcing offenders to join the army after their release from prison, however, was legally impossible if offenders had been incarcerated in a penitentiary (*Zuchthaus*) or had otherwise lost their civil privileges. Schmölder's plan thus ran completely counter to the aspirations of lawmakers who wanted ex-convicts excluded from the military. Schmölder's most important recommendations for the penal policy of the German Empire was, therefore, that §31 should be abolished from the Reich Penal Code and that the policy of felony disenfranchisement should be reconsidered. This article stated that all persons sentenced to the penitentiary permanently lost their rights to serve in the military and to take up public office. By contrast, he argued that former penitentiary inmates should be required to fulfill active military duty just as other male German citizens were.

Reactions to Schmölder's proposal were vehemently negative. The intensity of these reactions demonstrates how little army officials were interested in questions of criminal policy. Most trenchant in his criticism was Heinrich Dietz, a member of the war council who was highly dismissive of Schmölder's essay. In his view, Schmölder's suggestions did not promote the interests of the state at all—on the contrary, they seriously threatened them. In his response, Dietz presented the conflict between the interests of the army and those of criminal policy as a zero-sum game: he agreed that Schmölder's suggestions might contribute to reducing the crime rate among adolescent men, but this advantage would not outweigh

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the harm this would cause the army and (by implication) German society in general. The moral authority of the army, Dietz argued, existed in the virtues of "loyalty, subordination, companionship, and self-denial." Every member of the army needed to possess these qualities because, "as history teaches us, it is the moral soundness of an army that is frequently decisive."[3] If a greater number of ex-convicts joined the ranks, these virtues would be in grave danger and the honor of the army would be damaged. The army needed to be safeguarded from these morally incompetent soldiers in order to remain "honorable."[4]

Thus, for Dietz and other army officials, the honor of the military existed by virtue of its exclusivity. This idea is important to the militarization thesis in German history, whose significance for the historiography of the Wilhelmine Empire can hardly be overstated. It might be—as historian Benjamin Ziemann argued—the final bastion of the German *Sonderweg* thesis: that Germany's history in modern times deviated significantly from that of other Western European countries.[5] One component of this thesis is that the army, and specifically army officers, had a privileged position in German society.[6] From 1871 onwards, the army did, indeed, stand outside of the legal sphere of the German constitution, and until 1890 officers came exclusively from the nobility. The army functioned as something of an autonomous power in the German Empire, with its officials frequently being regarded as constituting a genuine "caste" (*Kaste*)—an important stratum in German society with its own code of honor.[7] The army's loyalty to the crown strongly influenced the military establishment. After 1890, when restrictions keeping "normal citizens" from becoming officers were dropped, the army still demanded that officers have a certain character and claimed that only those with "nobility of temperament" (*Adel der Gesinnung*) could successfully become officers.[8] The notion of honor thus served to mark the army's exceptionalism.

Military officials in Imperial Germany also frequently argued that it took a certain sense of honor—one that was somehow different from that of normal citizens—for someone to become a member of the army. Without this, they claimed, the army could not function properly. When universal conscription was introduced, however, officials could be less restrictive in their recruiting, so people could be selected even if they lacked this "special sense of honor."

The militarization thesis also includes the idea that the German military militarized all aspects of society. That is, many German citizens adopted the behavioral norms central to army discipline; the normal male "habitus" derived from army discipline—a process captured in the notion of German *Sozialmilitarismus*.[9] Indeed, the German/Prussian army was increasingly valued for its pedagogy, often being described as a "school" of masculinity.[10] In most European countries, army discipline pervaded specific parts of society, such as the internal governance of the institutions of confinement, as Michel Foucault (among others) convincingly demonstrated, but in Germany, army discipline infiltrated nearly all parts of society.[11]

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As the army began to recruit a wider range of people and its ideology increasingly pervaded other aspects of society, one might suspect that the importance of the notion of honor in German society would have diminished. This development theoretically could have prompted the army to also open its doors to ex-convicts. After all, a certain current of sociological literature suggests that the less a society reinforces existing hierarchies with its policies and the more leveled it becomes, the less room there is for a notion of honor; this sets ideas of "honor" in opposition to modern egalitarianism.[12] The case of conscription policy in the German Empire, however, disproves this theory. In fact, the opposite happened: suggestions regarding the broadening of membership in official institutions, such as the suggestion made by Schmölder that former inmates should serve in the army, often triggered reactions that emphasized protecting those institutions' honor even more. This dynamic is discussed in more detail below.

The Economy of Punishment

The debate about whether "dishonored felons" should be barred from the army started in the context of discussions surrounding the introduction of the penal code for the North German Confederation (1869), the code preceding the German Empire's penal code of 1871. The contentious point pertained to whether the code should include "dishonoring" elements. Questions of population management were central to the discussion, as when the young legal scholar Karl Binding spoke of the "economy" of punishment.[13] In his view, a legal punishment was an evil perpetrated on the culprit because it damaged what people hold most dear: life, liberty, property, and honor. Yet, he continued, punishments were also an evil for the society that administered them because they damaged the legal products that made society function, often in ways that were unmeasurable to the general observer. The physical and moral ruin of offenders, for instance, could be an unintended effect of punishment, and society ran the risk of disintegration if this happened to too many of its citizens. Thus, Binding argued that lawmakers should seek to strike a balance between the damage caused by punishment and the need for retribution and concluded that society had to be "economical" in administering punishments. This conclusion echoed the liberal creed of the legal philosopher Rudolf Jhering, who famously stated that the history of punishment was that of its demise.[14]

The influential legal scholar Carl Mittermaier—famous for his opposition to the death penalty, among other things—had criticized felony disenfranchisement for "robbing" too many offenders of their honor in the early 1860s. Because of the automatic connection between penitentiary (*Zuchthaus*) sentences and felony disenfranchisement in the penal codes of many of the German states, all persons who had served time in the penitentiary were permanently deprived of their civil privileges. He argued that this state of things created an enormous class of

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"frightening enemies" (*furchtbare Feinde*) of the state.[15] Reducing the application of this punishment, he asserted, was essential for maintaining a sense of order in the German-speaking countries.

The political climate of the era made the matter even more pressing as rates of incarceration grew significantly from the 1840s onward. At first, this rise resulted from increasing social unrest punctuated by occasional riots.[16] This social unrest had a lot to do with the "double crisis" of the 1840s: the combination of a low economic cycle in supply and demand and consecutive bad harvests.[17] The increase in incarceration not only filled penitentiaries beyond capacity but also stripped many more people of their civil privileges. Later, in reaction to the revolutions of 1848 and as a consequence of the new penal code of 1851, Prussia incarcerated more people than ever before.[18]

The number of disfranchised citizens also became an urgent political matter during the debates in the Frankfurt Parliament in 1849. A year earlier, a pamphlet by Eduard Forsberg, an active participant in the 1848 March revolts in Berlin, had already pointed out the injustice of "dishonoring" such a large number of people, as well as the political consequences. Among other things, the pamphlet highlighted the suffering of 300,000–400,000 people excluded from voting in the national assembly elections in 1848 due to criminal convictions.[19] Forsberg criticized the automatic connection between incarceration and the loss of civil privileges precisely because it created this large class of "dishonored criminals." As a result, the debate among members of the Frankfurt Parliament on a bill about the franchise for a national German parliament (Reichsgesetz über die Wahlen der abgeordneten zum Volkshause) was contentious. Many participants felt that the number of political offenders that would be disenfranchised, according to regulations in many of the individual states, would be too large.

Before the Frankfurt Parliament, Mittermaier (who, in addition to being a professor of law, was also a member of this parliament) emphasized that if every person sentenced to a "dishonoring" punishment were to be excluded from the national elections, this would effectively encompass an enormous group of citizens: both political offenders and "common criminals." He suggested that only those convicted of "really dishonoring" crimes, such as theft, embezzlement, and fraud, should be excluded.[20] Although Wilhelm Zimmermann (a delegate from Stuttgart) and Carl Esterle (Trentino) also supported Mittermaier's view, the bill kept the formulation that everyone deprived of their civil privileges was excluded from the franchise.[21] Bruno Adolph Sturm, a delegate from Sorau, represented the other side of the argument: he stressed the importance of felony disenfranchisement for retaining the "honor" of the franchise. He claimed that it would help to create the necessary respect for participation in these elections:

> If you wish to get rid of the indifference that has shown itself during all the elections so far, then you should help make it such that every person considers it the highest

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> honor to participate in elections. You would accomplish this directly by excluding all unworthy subjects. Make the right to vote the pride of good citizens and an incentive to reform for those gone astray and you will achieve a victorious feat for morality.[22]

The conflict between Mittermaier and Sturm illustrates the problem with disenfranchisement. Although the exclusion of serious offenders was supposed to uphold the honor of the franchise, the idea of the popular will was undermined when so many men were barred from voting. Consequently, the policy contradicted the "economical" administration of punishment.

Disenfranchisement was considered particularly problematic in the case of "political offenders." After the revolutions of 1848/49, many people who had participated in the revolts were incarcerated in local penitentiaries and disenfranchised. Afterward, many people could clearly recall the image of incarcerated "honorable" political offenders. For example, at the time of German unification in 1871, a journalist recalled in the *Flensburger Zeitung* how both "professors" and "youthful zealots" had been sent off to penitentiaries after the uprisings of 1848/49—in his mind, there was nothing dishonorable about having "misplaced love of the fatherland" or engaging in "political enthusiasm."[23] Likewise, August Bebel recalled in his personal memoirs that many of the penitentiaries in Saxony (especially Waldheim in Zwickau) were filled beyond capacity with political offenders after the 1848/49 revolutions. This left a great impression on him.[24]

The fact that so many people were deprived of their civil privileges without having committed a crime that people considered dishonorable prompted the debate to revise the penal system and sever the automatic connection between a penitentiary sentence and felony disenfranchisement.[25] Nonetheless, some people retained a vivid interest in excluding people from certain privileges. This conflict was debated during the codification of the Reich Penal Code.

Codifying Penal Law in the Context of German Unification

In the early 1860s, the legal integration of the different German countries became a high priority for legal scholars. These scholars often had a twofold relationship with the state and its laws. On the one hand, they frequently acted as consultants for politicians in the design of penal codes. But, on the other, they were also required to explain and criticize the content of the penal code and its underlying principles. At the same time, legal scholars comprised a peculiar stratum of Germany society. As classical examples of the German *Bildungsbürger*, they were often employed as high officials in the Prussian and other German governments. As university degrees were required for high-ranking civil servant positions after 1817, German universities largely came to be regarded as training grounds for public officials.[26]

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Legal scholars from the different German states shared a common interest in legal integration—an interest that manifested itself during a remarkable event in 1860: on the initiative of the prominent legal scholar Franz von Holtzendorff, a conference for legal scholars from all the German states was organized with the aim of debating the possibilities for legal integration. This came to be known as the Juristentag and was a great success from the outset.[27] Its pan-German agenda became immediately clear: in preparation for the discussion during the Juristentag, Rudolf von Kräwel—a Prussian jurist—drafted a design for a pan-German criminal penal code.[28] The Juristentag's pan-German ambition was made most explicit in 1862 when the third conference was hosted in Vienna; this choice of location showed that the Austrian Empire was conceived as an important part of this ambition, too.

This third conference in Vienna was the first to put felony disenfranchisement on the agenda. The conference organizers suggested that participants prepare by reading the articles written by Austrian scholar Emil Wahlberg for the Österreichische *Gerichtszeitung*.[29] One of Wahlberg's most important points was that felony disenfranchisement should be temporary; lifelong consequences for incarceration should be abolished. At that time, the 1857 Penal Code of the Grand Duchy of Oldenbourg was the only code that placed absolute limits on how long felons could be deprived of their civil privileges; the Prussian Penal Code, by contrast (like most others), still allowed for the possibility of permanent sentences (although these were not required).[30] At the Vienna conference, Austrian minister Anton Hye von Glunek introduced the topic and defended the then provocative thesis that all forms of disenfranchisement should be abolished from the penal codes.[31] Although his idea found little resonance, the assembled scholars agreed with Wahlberg's suggestion that offenders should never be stripped of their rights permanently but always only for a limited period of time.

The course of the scholarly debate on penal law and codification was, however, closely interwoven with international developments. After the Austro-Prussian War of 1866 and Bismarck's reconciliation with parliament in the wake of a budget conflict that year, the integration of Austria into a pan-German legal code was further away than ever.[32] The conflict thus ruined the ambitions of the scholars gathered in the Juristentag, and when Austria introduced its reformed penal code in 1867, the two empires took divergent paths once and for all. Even so, the idea of a German penal code gained momentum in the North German Confederation, with its members deciding to continue developing one. In 1866, Bismarck and Adolph Leonhardt (the Prussian Minister of Justice) appointed a committee headed by the high Prussian official Heinrich von Friedberg and the influential judge Ernst Traugott Rubo to develop such a code. They presented their first draft in June 1869.[33]

The draft clearly acknowledged the influence of the Prussian Penal Code but also noted that there were some radical changes—most significantly in the treat-

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ment of honor and dishonor connected to criminal convictions. Underlying the commission's propositions was the general idea of distinguishing the crime from the punishment, which they expressed as follows:

> public opinion holds that the place where a person sits out his punishment must serve as the measure for whether the punishment itself should be viewed as dishonorable or not, and [the public] generally associates the penitentiary with dishonor. . . . It behooves the legislator to prohibit such a popular notion from becoming law. It is his task to show that a punishable act is not dishonorable because of the type of punishment meted out, nor because of where the culprit does his time.[34]

The prison system of the German states before unification distinguished between several forms of imprisonment, with the distinctions between prisons being based on how "infamous" they were.[35] A penitentiary (*Zuchthaus*) was considered inherently dishonoring, while a normal prison (*Gefängnis*) had no legal effects on the honor of the convict. Fortress confinement (*Festungshaft*), furthermore, was a sentence for people convicted of offenses motivated by an "honorable disposition" (*ehrenhafte Gesinnung*)—in general, people who were sentenced for dueling.[36] As James Whitman put it in his comparative history of penal culture in the United States and on the European continent, "German prisons were, strikingly enough, differentiated according to their degree of 'dishonorability'."[37]

Since the end of the eighteenth century, multiple attempts had been made to abolish such associations with certain punishments from the law, but a penitentiary sentence retained the stigma of "dishonor."[38] An important element of this was the codification of disenfranchisement as an automatic consequence of such a sentence. For instance, this was the case in the Prussian Penal Code of 1851, which stipulated that a penitentiary sentence entailed the legal suspension of one's "civil honor."[39] The permanent suspension of one's civil privileges after this sentence bolstered the dishonor associated with being sent to the penitentiary.

Cutting loose from this aspect of the Prussian Penal Code, the drafters of the penal code for the North German Confederation left it to a judge's discretion whether an offender was to be deprived of his privileges; it would no longer be an automatic consequence of a certain type of incarceration.[40] To the experts on the commission, this was the only way to do justice to the principle of distinguishing between the crime and the punishment. Still, they maintained the distinctions between different prison sentences, allowing the dishonoring aspect of the penitentiary to eventually slip back in through the backdoor.

The General Staff Intervenes

As simple as the recommendation to disconnect the punishment of felony disenfranchisement from the penitentiary sentence sounded, it turned out to be one

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of the most controversial issues in devising the penal code for the North German Confederation and the later code for the German Empire. The conflict became clearest in the contrast between the original design for the penal code and its form upon implementation in 1869. Since the legal scholars on the commission constantly had to make compromises with each other and with members of parliament, all of whom wanted to see their own ideas included, the result differed significantly from the initial draft. A closer inspection of how the regulations surrounding disenfranchisement were justified during the drafting process therefore also shows that penal codes were not just the ideas of legal scholars put into practice.[41]

The second and final draft of the penal code for the North German Confederation added an extra article on the suspension of civil privileges. The additional article (§31 both in the penal code for the North German Confederation and in the Reich Penal Code) stated that all persons sentenced to the penitentiary permanently lost their rights to serve in the military and to take up public office. This diverged significantly from the intention expressed in the first draft, namely, the abolition of all automatic connections between a type of incarceration and the offender's "loss of honor." Even though this much-disputed paragraph did not explicitly use the notion of honor, and it was isolated from the "actual" punishment of disenfranchisement, it still (potentially permanently) stripped criminals of two core civil privileges (the rights to join the army and to hold public office) after a penitentiary sentence.

The course of the debate suggests that army officials decisively influenced the introduction of §31, especially since most support for the measure came from delegates who were directly involved with the Prussian army. The Prussian Field Marshal Helmuth von Moltke, for instance, strongly endorsed this addition to the code and defended it as a self-evident principle. He held it to be a traditional Prussian (perhaps even Germanic) principle for dishonored members of society to be ineligible for military service.[42] Moltke feared that the inclusion of former penitentiary inmates would not only exert a negative influence on army discipline but also undermine the army's general self-esteem (*Selbstgefühl*) because it was an institution "that lives by honor and [whose members] do not deserve to have to serve with those who do not have it."[43] Prussian War Minister Albrecht Theodor von Roon had expressed similar sentiments in a letter to Bismarck in 1869, arguing that German soldiers would consider it a huge disgrace to have to serve with former penitentiary inmates.[44]

The opponents of the introduction of §31, who were mostly members of the National Liberal Party, felt that this article granted the army a privileged position and feared that it implicitly constructed a difference between the honor of army membership and the honor of exercising other civil privileges.[45] This framing of the debate put the definition of honor at stake. Another important Prussian army officer, Karl von Steinmetz, disagreed in particular with opponents of the

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article who argued that the implied divide between types of honor would grow wider. He rejected the idea that the article implied a distinction between types of honor because citizenship and the army stood in close relation to one another as everybody with citizenship rights was expected to join the army. Moreover, he affirmed one principle especially—"dishonorable (*ehrlos*) = defenseless (*wehrlos*)." In stating this principle in this way, he was playing on the catchphrase "defenseless = dishonorable," which was used to defend the necessity of a large standing army. Believing that it took honor for someone to be able to defend himself and his country, Steinmetz held that it was equally in the interest of the army and the German nation to exclude dishonored ex-offenders from military service.[46]

What is important in both Steinmetz's and Moltke's positions is that the two men used the popular association between the penitentiary and "dishonor" to support them, regardless of whether the penitentiary was connected to the deprivation of an offender's civil privileges. As long as people believed the penitentiary to be dishonoring, they advocated that ex-convicts should be excluded from the army. Many other prominent conservative members of the Reichstag, like Botho zu Eulenburg, backed Steinmetz and Moltke.[47] Even Heinrich von Friedberg, the head of the commission that drafted the original text, later acknowledged that §31 was in the nation's best interest despite being inconsistent with the principle of distinguishing the crime from the punishment.[48]

In the end, the intervention of army officials in the Reichstag debate suggests that they were inspired to promote the addition of §31 by their fear that requirements for participating in state institutions like the army would be made less rigorous. Hence, their support for §31 should be viewed in the context of the movement toward universal conscription. At the time, the criteria for eligibility to join the army were already being softened, and a growing number of young men were being recruited.[49] This change was not as sudden as the introduction of universal male suffrage for the Reichstag (introduced in 1871), but the army increasingly took on the character of a national institution consisting of all (male) citizens of the nation. Around 1870, there was already something close to universal conscription.

That the move toward universal conscription largely motivated army officials in their push to exclude former penitentiary inmates from the army became even clearer in a speech by Helmut von Moltke at the Reichstag in 1872, when a new military code was under discussion:

> When everybody takes up arms, it is only natural that the bad people—and every nation has some—also take up arms. We have to take everyone, every man who is of the right age, who is healthy and of such and such physical stature. The recruitment commission cannot vet the morals of the recruits. Thus, we get people who might belong in the penitentiary if strict military discipline did not keep them from this misfortune.[50]

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Even though he acknowledged that the times demanded universal conscription, Moltke clearly expressed his discomfort with the idea. He likewise remained fiercely opposed to the army having officers from a middle-class background.[51] However, the new criteria made it difficult to preserve the exclusive character of the army, leaving only one ground for exclusion: having served time in the penitentiary. Moltke believed that excluding dishonored felons would, at the very least, uphold the honor of the army. In this way, the German government could still safeguard the army from the influence of "morally inferior" people.

"The Army Is Not an Institution of Moral Reform"

The debate over §31 shows how discussions regarding the expansion of institutions like the army and the lowering of eligibility hurdles triggered reactions that highlighted the notion of honor. Advocates of policies for maintaining honor, however, no longer focused on the personal status of high-born individuals, focusing instead on the abstract honor of the army as an institution needing protection. Despite this difference in the notion of honor, its advocates defended it with just as much passion. This way of protecting the honor of the army continued to exist in the German Empire. As illustrated by the vehement reactions to Schmölder's suggestion that felons be included in conscription (described in the opening of this chapter), army officials cherished the principle of excluding "dishonored felons"—even thirty years after the Reich Penal Code was drafted.

At that time, combating crime was a top priority for conservative imperial authorities. They believed that they could unify the populations of this newly founded state with harsh punishments, surveillance methods, and the expulsion of minorities, but few thought of the army as bearing any responsibility in the prevention of crime.[52] The idea that the army could reform ex-convicts was completely unheard of. In a way, this is striking because the military had already permeated many aspects of society in the German Empire. The militarization of society manifested itself, for example, in the penal landscape as prison wardens were often recruited from the pool of former army officers.[53] Therefore, the application of severe army discipline to prisoners was not the point of contention. Furthermore, in this period of German history, under the influence of the "modern school" of criminal law, the idea that punishment should have a social purpose increasingly took hold; the focus gradually shifted from retribution to the reform potential of criminals. Thus, questions arose more often about how the army could contribute to this aim.

In fact, criminal policy at that time was engaged in an intellectual dispute about the nature and purpose of criminal law that came to be known as the *Schulenstreit* (the school dispute) between the adherents of the "classic" school

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and those of the "modern" one. The precise difference between the two schools is a matter of debate. Historian of crime and criminology in modern Germany Richard F. Wetzell argues that the "classic" movement largely focused on protecting the individual from the state "by limiting the state's penal power."[54] This group was associated with the works of the devout legal positivist Karl Binding and scholars like Karl Birkmeyer and Friedrich Oetker. The purpose of criminal law, they argued, was to administer retribution to deter people from criminal behavior. The notion that there was a "classic school," however, emerged in reaction to a group of scholars who started to actively fashion themselves as "moderns."[55] The "modern" movement had a more holistic, scientific approach to criminal justice and sought to integrate the disciplines of criminology and moral statistics. The journal *Zeitschrift für die gesamte Strafrechtswissenschaft* functioned as the main platform for this movement.[56]

The idea that offenders could be reformed by recruiting them for the army arguably fit well with the ideas of the modern school about offenders' reform potential. Some scholars who identified with this movement had, in fact, pointed out the counterproductive and criminogenic effects of excluding former penitentiary inmates from the army. Legal scholar Julius Medem, for instance, observed in an 1887 essay that people were motivated to "visit" the penitentiary in order to avoid conscription.[57] Franz von Liszt, the main advocate of the modern movement, had remarked in one of his many programmatic essays that he wanted §31 abolished for that very reason.[58] Yet, in both Medem's and Liszt's case, their dismissal of felony disenfranchisement was not connected with thoughts about the pedagogical function of the army, and they put little effort into actively encouraging the abolition of these punishments.

Like Medem and Liszt, Schmölder pointed out the paradox of young people, in particular, being motivated to engage in criminal activity by "dishonored" felons' exclusion from the army, arguing that they often preferred a stay in the penitentiary over military conscription.[59] However, Schmölder was the first scholar up until then to seriously argue that the army should take responsibility for combating crime in society and one of the few commentators to point out the overlapping interests of the army and the prisons.

Curiously, Schmölder identified with the "classic school" in the *Schulenstreit*. In 1904, he published an article in the *Preußische Jahrbücher* on "modern" ideas of imprisonment, expressing many concerns about these. Prisons, he argued, were neither "sanatoria" nor "boarding schools" but primarily institutions of punishment. Inmates were thus supposed to experience incarceration as malicious, not as a comfort. The growing influence of "modern" scholars on the actual management of local prisons, he believed, was to blame for this development.[60] Yet serious offenders should have to face something they really fear: the military. As he stated, "The young rowdies and pimps of our big cities fear nothing more than the iron discipline that awaits them in the military."[61] Schmölder's stance

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shows that it was not only adherents of the modern school who entertained ideas about moral reform.

Meanwhile, the rhetoric that army officials used to justify the exclusion of dishonored felons became more medicalized, focusing on the "hygiene" of the army and similar institutions. Conservative army officials, who were arguably more inclined toward "classical" ideas of punishment, were influenced by modern ideas about the connection between medical issues and the causes of crime. In this framework, moral incompetence was regarded as a form of physical degeneration.[62] In the second half of the nineteenth century, hygiene discourse—with a focus on preventing sickness and creating the conditions for healthy living—increasingly dominated debates over social questions, including policing and criminal law.[63]

In this context, Hermann Simon, a medical scholar and army physician, classified former penitentiary inmates together with psychiatric patients, advising against allowing either into the army. In his argument, the connection between physical and mental degeneration and the moral unworthiness of ex-convicts was very clear:

> The ideal purpose of our standing army is to bring the best of our people together to forge a strong and reliable defense of the fatherland. It is not supposed to be an institution of moral reform and education for feeble-minded, morally degenerate youths.[64]

In his response castigating Schmölder's reform suggestions, discussed above, war council member Heinrich Dietz also presented many arguments based on statistical research into the ever-growing rates of offenses recorded within the Prussian army of the German Empire. In particular, he tied growing number of offenses to the growing amount of sick leave.[65] Judging by sick-leave statistics, the labor divisions were the most underachieving ones in the army because sick leave was six times as high as in other divisions, he argued. In fact, the labor divisions consisted mainly of people who were considered unworthy of joining the armed forces, mostly ex-convicts, who were nevertheless eligible to join the labor divisions. He concluded from this that if more former convicts joined the ranks, morale among the soldiers would decline dramatically.[66] Thus, his final argument was that ex-convicts would only contribute to the further degeneration of the army.[67]

Schmölder's only real supporter was Alexis Küppers, a professor from Bonn who shared his concerns about the criminogenic effects of ex-convicts being exempt from military service. In a 1912 article for the progressive *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, Küppers wrote that offenders favored the penitentiary sentence over a normal prison sentence in certain respects since the former precluded them from having to fulfill the compulsory military service after their release.[68] Küppers's article reiterated much of what

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Schmölder had argued six years earlier, but unlike Schmölder's classic school orientation, he was a scholar of Liszt and based his ideas on "modern" principles. These scholars with opposite backgrounds and conflicting ideas about criminal policy eventually found common ground in the idea of using the army to morally reform ex-convicts. Nonetheless, Küppers, even as an advocate of the modern school, was very careful about protecting the honor of the army, which showed that supporting ex-cons' participation in the institution required a delicate balance.[69] Army officials dismissed Küppers's suggestions just as vehemently as they had Schmölder's.[70]

The opposition of the General Staff and others to recruiting ex-convicts was echoed in journals and newspapers criticizing the French policy of enlisting such individuals. The Foreign Legion was often raised as a negative example for German army policy because of the immoral character its soldiers displayed.[71] German commentators also highlighted the French policy of recruiting ex-convicts for regular army units.[72] The German policy, by contrast, decidedly isolated the prison from the army. The army authorities stubbornly adhered to their core principle that only law-abiding citizens in full possession of their civil privileges were eligible for the specific honor of serving in the army and defended it with vigor.

Disenfranchisement for the Benefit of Electoral Policy

The previous sections show that the stipulations on disenfranchisement in the Reich Penal Code constituted a complicated trade-off between the opposing demands of inclusion and exclusion. In other words, it codified the expansion of civil privileges to include a larger group of citizens only insofar as a certain class of "degenerates" remained excluded. Therefore, disenfranchisement played a crucial and ambivalent role in the leveling trends within the German Empire, both in the expansion of military conscription and in the development of suffrage rights.

The expansion of the privilege of voting to achieve universal male suffrage generated similar anxieties as the introduction of universal conscription, particularly among the higher classes, who feared that this gave the "rougher" crowd coveted state powers. Anthropologist Otto Ammonn, a vehement critic of expanding voting rights, summed up this sentiment in 1895: "the most common screamers and gossipers are the privileged people of universal suffrage; troublemakers will return from the ballot box adorned with the laurel of victory, something that was in the past considered a moral impossibility."[73] To safeguard the "honor" of this institution, he maintained, dishonored offenders had to remain excluded.

Interestingly, the exclusion of dishonored felons from the ballot box was hardly ever contested in the public arena of Imperial Germany.[74] Schmölder, for instance, in arguing that ex-convicts should be conscripted, emphasized that this

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certainly did not mean that their voting rights should be restored as well. For him, this issue was beyond debate.[75] Even Social Democrats, who were generally highly critical of the German suffrage system, hardly ever criticized this aspect of German penal policy. In the state of Prussia, this lack of fundamental criticism was likely due to critics of the electoral system having other, more fundamental concerns, including the *Dreiklassenwahlrecht* (the three-class franchise system) that had existed in Prussia since 1849. Many liberals and Social Democrats criticized it as gravely unjust because it marginalized ethnic minorities and the poor. In this system, the votes of low-income people carried very little weight, so people presumably felt that making a case to restore voting rights to disenfranchised felons would not be worthwhile. In fact, opponents of Prussia's three-class franchise system generally favored the implementation of the electoral system for the Reichstag in Prussia, which included provisions for felony disenfranchisement.[76]

Prussia's three-class franchise system even inspired mockery in satirical magazines, whose cartoons suggested that the system equated Prussia's lower-class people with "dishonored" felons. For example, a 1908 cartoon in the Bavarian satirical magazine *Simplicissimus* depicted a man sentenced with disenfranchisement. As he does not know what this means, the judge explains that he has lost his right to vote, to which he responds, "Alas, I shall become a Prussian."[77]

The publication date of 1908 was significant: that year, the outcry about the electoral system reached a high point in Prussia.[78] Efforts to change electoral policy prompted renewed support for felony disenfranchisement, which was used to make a case for including the "law-abiding" poor in the franchise.

Sociologist Ferdinand Tönnies, for instance, argued in an article for the progressive magazine *Das freie Wort* that stricter enforcement of felony disenfranchisement could compensate for an expansion of the right to vote: "As is well known, people can be deprived of their civil privileges as a secondary punishment. But society could and should make more drastic use of this, not for the benefit of criminal policy, but for the benefit of electoral policy."[79] Tönnies argued that felony disenfranchisement was a political necessity in response to opponents who feared that the franchise would lose its "honorable character" if the electoral system were reformed. A stricter policy of felony disenfranchisement, he maintained, would safeguard the honor of the franchise while reversing the "disgrace" of the poor being excluded from it.

The punishment of disenfranchisement was included in arguments concerning the expansion of civil privileges on other occasions as well, such as in the struggle for women's suffrage. Ottilie Baader, a pioneer of the socialist feminist movement, for example, argued that women's exclusion from the franchise was disgraceful in that, among other reasons, it treated them as equivalent to "dishonored felons."[80] These dynamics of inclusion and exclusion demonstrate what French philosopher Étienne Balibar calls the "antinomy of citizenship": citizenship, he argues, can essentially be understood in two senses, one exclusive and

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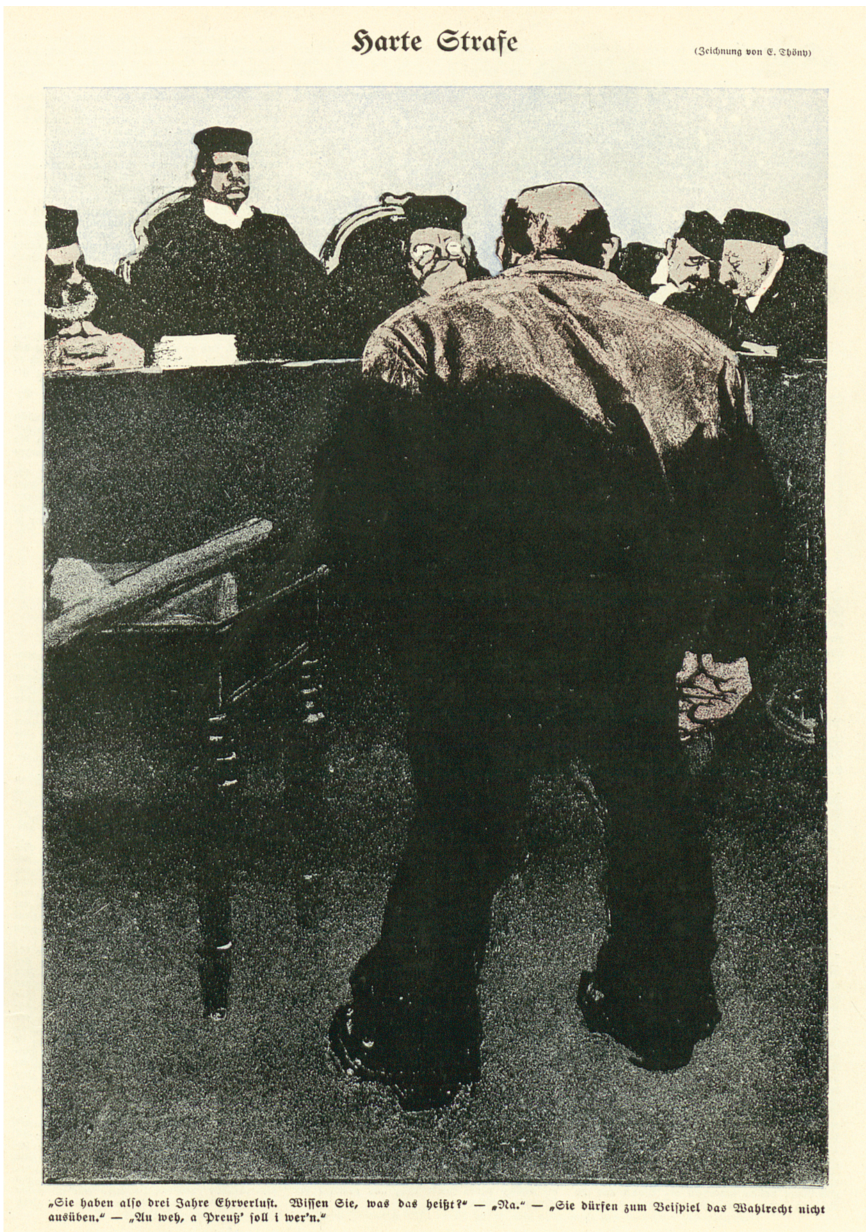

Figure 2.1. Cartoon by Eduard Thöny. Image reads: "So you've lost your honor for three years, do you know what that means? – No – For example, you are not allowed to exercise the right to vote – (in slang) Alas, I shall become a Prussian." Eduard Thöny, "Harte Strafe" (Harsh Punishment), *Simplicissimus* 13, no. 2 (1908): 23. Courtesy Klassik Stiftung Weimar.

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the other inclusive. "Statutory" citizenship is exclusive in that the state limits access to it; it primarily revolves around one's membership in and obligations to the state, and citizens are primarily understood as its subjects. In an inclusive understanding of citizenship, on the other hand, people who claim citizenship contribute to the process of constituting the state. In this way, they themselves determine the boundaries of citizenship.[81]

Membership, Eligibility, and State Honor

Importantly, the dynamics of inclusion and exclusion applied not only to the right to join the army and the right to vote for state parliaments. Disenfranchisement, in particular, had many exclusionary effects that transcended the provisions in the penal code. In a sense, one could argue that the policy of disenfranchisement pervaded all of German society. For instance, it was interwoven into the emerging German social state in many ways. In the 1870s, a state-regulated social security system was first set up in Germany, which, for the most part, mandated privately organized insurance funds. This was an important first step in the creation of a welfare state.[82] Social insurance policy was founded on a regime of trust based on objective data and the expertise of medical authorities.[83] In this context, "moral hazards" were considered a great threat to the insurance funds because as these grew larger, they became potentially easier to abuse.[84] Disenfranchisement then served as an important objective criterion for (partially) excluding "dishonored" felons to prevent this moral hazard.

Most of the miners' insurance funds (*Knappschaften*), for instance, required "the full possession of civil privileges" for "first-class" membership,[85] which provided full entitlement to benefits. The mine workers' insurance fund of Bochum, for instance, stipulated this condition in its statutes.[86] The Prussian government's general directives on miners' insurance funds also included the possibility of refusing membership to dishonored felons.[87] Furthermore, the punishment of disenfranchisement was included in the second version of the national health insurance law of 1892 as a criterion municipalities could use to deny benefits to possibly fraudulent applicants.[88] In many ways, therefore, disenfranchisement nullified one's entitlement to benefits in the emerging social security state.

The condition of being "in full possession" of one's civil privileges was found in the statutes of many more organizations that operated in the domain between private initiative and state regulation, such as social clubs, workers' unions, and political organizations. The Christian Workers' Union of Essen, for instance, included such a provision, and even unions that included mostly women, such as the Gewerkverein der Heimarbeiterinnen für Kleider- und Wäschefabrikation, had similar rules.[89] In such organizations, disenfranchised citizens might be excluded from membership entirely, stripped of the right to vote during assem-

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blies, or prevented from joining a board.[90] Disenfranchised citizens were also excluded from the works councils that arose in this period.[91]

Similarly, the Reich Commercial and Industrial Code (Reichsgewerbeordnung), introduced by the North German Confederation in 1869, stipulated civil privileges as a condition for many types of employment.[92] For many professions, it was mandatory for applicants to have an official certificate licensing them to practice a certain craft (predominantly in the trades) that they could only obtain if they were in full possession of their civil privileges. In this sense, the distinction between state and market affairs was more an idea than a reality. As I argued in the Introduction, the punishment of disenfranchisement rested on the strict separation of state affairs and the free market. Many penal reform proposals emphasized that disenfranchisement was not supposed impact people's position in the market.[93] In legal terms, this meant that it was only supposed to have consequences in public law and not in private law. Thus, one could easily conclude that these regulations frustrated the intended function of the punishment as they failed to fully implement the ideological emancipation of the market from the state.

Yet, one could also argue that these examples show that the state-centered notion of honor truly became hegemonic at this time as it penetrated many realms of German society. After all, unions and semi-private organizations relied on these penal provisions for determining social insurance and employment eligibility, which suggests that these organizations had largely transferred their sanctioning powers to the state. In this sense, the state became the sole arbiter of who was "honorable enough."

Disenfranchisement in a Cluttered Penal Landscape

Even within the prison system, the presence of disenfranchised felons had complicated and ambivalent effects. In writings on prison administration in the German Empire, there was a broad consensus that the distinctions in the Penal Code between "dishonored" offenders and regular convicts had no bearing on the way these people were treated inside prison facilities. In fact, whether criminals were sentenced to a deprivation of their civil privileges or not, they were often sent to the same facility, be it a prison or a penitentiary. This went against the clear-cut distinction behind dishonoring sentences that stipulated incarceration in a penitentiary, separate from those who were not so dishonored, as was succinctly formulated by Carl Mittermaier as early as 1843: "the distinction between dishonorable and non-dishonorable punishments must be made clear by the building itself."[94] In Wilhemine Germany, however, it was usually only long-term penitentiary convicts (above one year) who were sent to larger penitentiaries, like the bigger facilities in Moabit, Bruchsal, or Rawicz. Other convicts were usually placed together in smaller institutions across Germany.[95]

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In this context, it is important to note that the German penal landscape was diffuse; there was no uniform code of prison administration, so few regulations were upheld on a national level.[96] As penal expert Karl Krohne argued in 1881, the institution in which one was incarcerated made all the difference.[97] Liszt, adding to Krohne's observation, noted that one could witness every imaginable method of incarceration being applied at the same time across the German Empire.[98] Nobody could guarantee that the distinctions between prison and penitentiary inmates would be upheld in all the facilities, and gradually prison experts started to argue that the distinction between a penitentiary and a prison was merely a difference in words.[99]

Interestingly, however, the mixing of inmates made the question of differences in treatment more significant. From several discussions that took place in the *Blätter für Gefängniskunde* (the official journal for prison wardens) in the 1890s and 1900s, one can conclude that many prison wardens at least tried to treat "dishonored" offenders differently from "regular" inmates. A frequent topic was how "dishonored" felons should be addressed. Although the practice varied from prison to prison, many prison wardens used disenfranchisement as their criterion for using the informal *du* instead of the formal *Sie*. Disenfranchised prisoners were addressed more frequently with *du*, while other inmates were addressed with *Sie* out of respect for their untainted status.[100]

What often happened in mixed facilities, moreover, was that penitentiary convicts and regular prisoners were assigned different uniforms (traditionally regular prisoners wore blue ones and penitentiary inmates wore brown ones). Adolf Streng, a prison warden from Hamburg, described the clothing policy as an integral part of the system of dishonor because he considered the prison garment a form of *capitis deminutio*, a measure to deliberately demean the convict. At the same time, he noted that some prison wardens had become more liberal in assigning the outfits to inmates and also in placing inmates in different wings of their facilities.[101]

In the context of labor supply, the question of distinguishing different kinds of inmates was particularly pertinent. A governmental tract from 1897 titled "Die Grundsätze welche bei dem Vollzuge gerichtlich erkannter Freiheitsstrafen bis zu weiterer gemeinsamer Regelung zur Anwendung kommen" (The Principles which Are Applied in the Execution of Judicially Enforced Custodial Sentences until Further Arrangements Are Made; hereafter "Grundsätze") was an attempt to introduce a uniform prison policy in Prussia. The tract stated that inmates still in possession of their privileges were entitled to milder treatment, particularly where labor was concerned.[102] This tract elaborated on the rather unclear regulations in the Reich Penal Code: §15 and §16 of the Reich Penal Code stipulated that penitentiary inmates were to be subjected to forced labor, whereas regular prisoners could be assigned to work "that fit his or her qualities."[103] The 1897 tract, however, stated more explicitly that people in possession of their civil privileges deserved "individualized" treatment. Their work should fit their health status,

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their competencies, their future ambitions, and their level of education. They should be able to choose how they wanted to be occupied.[104] Finding "fitting work" was thus seen as a sign of respect for their status as "regular" prisoners.

A circular from the Prussian Minister of Justice that same year made it clear that the stipulations in the "Grundsätze" were partly motivated by worries about some "regular" inmates having a damaged "sense of honor":

> It has been noticed that more highly educated and upstanding inmates, who have not been convicted of dishonorable crimes and have not been stripped of their civil privileges, are instructed to do work of the most inferior kind. I do not underestimate the difficulties of finding appropriate occupation, but I do find it necessary and feasible that the individual characteristics of prisoners be taken into proper consideration in the distribution of labor.[105]

Apparently, the structurally demeaning treatment of prisoners from a higher educational background worried the Prussian Minister of Justice. This document gave prison officials a tool both for justifying privileges for some prisoners and for treating others more harshly.

The organization of labor was, in fact, one of the greatest difficulties prison wardens faced, as prison expert Hermann Kriegsmann acknowledged in his handbook of 1912.[106] In the smaller mixed institutions, in particular, it was difficult to find tasks for the inmates, which made the requirements stipulated in the "Grundsätze" even more problematic. Sometimes the inmates had no work at all.[107] According to a statistic from 1905, almost 14 percent of the inmates of smaller institutions were not engaged in any form of labor.[108] This is partly explained by the critical attitude toward prison labor, which was seen as spoiling the national economy. Many German political parties, for instance, made curtailing prison labor a core issue in their programs.[109]

Most often, prisoners were given work that was easy to organize, like the upkeep and maintenance of the facility. But more highly educated prisoners who had not been dishonored considered this sort of work demeaning. This also applied to tasks like basket weaving and garment manufacturing. Some critics of the penal system at that time decried the "feminine" nature of the prison labor as damaging to male convicts' masculine honor.[110]

One possible solution to the labor problem was "prisoner leasing," that is, sending prisoners out to work for a wage for an outside company or the government. In the German Empire, this gradually became more accepted but happened mostly for state enterprises.[111] In this context, too, however, the division between "honorable" and "dishonoring" work was carefully maintained. In 1902, for instance, although the local welfare society for prisoners in Aachen had advocated that prisoners be employed for road and railway maintenance, the authorities of the governmental district were reluctant to employ prisoners thus because they feared doing so would diminish the reputation of this kind of work. As the

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District Commissioner of Düren stated, since prisoners had committed crimes, they must have a "dishonorable" or "rough" disposition and be excluded from this kind of work. The police commissioner of Aachen, too, worried about the adverse effect on the reputation of public enterprises.

Figure 2.2. Cartoonist Thomas Theodor Heine mocking the reverence for people working in public service: "Can you please tell the way to the Grimmaische Strasse?" – (in slang) "You, listen, a decent man keeps his hat in his hand when he's talking to a royal official." Thomas Theodor Heine, "Durchs dunkelste Deutschland 9: der Beambte," *Simplicissimus* 6, no. 42 (1901): 329. Courtesy Klassik Stiftung Weimar.

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The District Commissioner of Aachen, for his part, suggested that prisoners could be employed in this sector after they had served their sentences. If these prisoners knew that the state enterprises wanted to employ them after they served their time, it might inspire a sense of honor of the prisoners who were willing to work, he argued.[112] Despite their diverging opinions, these authorities were all clearly concerned about the "honor" of such prisoner leasing. They believed that state service clearly had a more "honorable" character than other kinds of work and that the exclusion of dishonored felons from such "honorable work" was essential for the protection of its honor.

Two Penal Reform Proposals

As these individual cases show, German penal authorities thought less about properly "dishonoring" serious felons than they did about protecting "regular" inmates. This was largely motivated by their ambition to reintegrate "corrigible" offenders as they felt that it would be more difficult to resocialize offenders whose sense of honor had been damaged. This also explains why many legal scholars, instead of lobbying to abolish the "empty" distinctions in the penal code, believed that the factual erosion of the distinction between different prisoners and between different institutions was a problem that needed to be solved. In fact, better observance of the distinction in prisoners could boost the spirits of prisoners whose honor was not legally damaged. Consequently, the spatial separation and differentiated treatment of "dishonored" convicts and "regular" prisoners needed to be restored.

During their annual meetings from 1887 to 1889, members of the Northwest German Prison Association (Nordwestdeutscher Gefängnisverein) also concluded that the legal distinction between "dishonored" and regular offenders needed to be maintained. In their view, it corresponded to the legal consciousness, or *Rechtsbewusststein*, of the common people, who held that a distinction between certain crimes—and thus between certain kinds of imprisonment—was of great moral value.[113] The association's refusal to support the abolition of the hierarchical differentiation in prisons and prisoners demonstrates the enduring appeal the idea still had to many prison experts and other citizens of the German Empire. Even the progressive legal scholar Liszt, in his earlier work, had advocated a clearer distinction between the two kinds of prisoners and proposed that the contemporary practice of putting penitentiary inmates and other convicts in the same institution be prohibited.[114]

In the first decade of the twentieth century, the German government had decided that, after more than thirty years, it was time for the Reich Penal Code to undergo a thorough revision. This gave many experts an opportunity to propose solutions to the problem of blurring boundaries in the penal landscape. The com-

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mission responsible for the reform presented its first draft in 1909, preceded by a massive scholarly work that systematically compared the penal systems across the world, the nine-volume *Vergleichende Darstellung des deutschen und ausländischen Strafrechts*.[115] The draft for the new penal code largely maintained the ideas of the "classic" school, only marginally adopting some of the ideas of the "modern" school.[116]

The "classic" school orientation manifested itself in, among other things, the draft's strong emphasis on the legal distinction between the types of incarceration. Some journalists observed that tightening up regulations was a main aim of this legal reform,[117] which may have motivated the clarifications. It is very likely that public debate about the general "intensification" (*Verschärfung*) of penal measures also played a role. For instance, many German newspapers, and particularly conservative ones like the *Deutsche Tageszeitung* and the *Hamburger Nachrichten*, called for corporal punishment to be reintroduced.[118] Numerous conservative commentators and politicians saw this as essential as a potential harsher punishment for "dishonored" offenders.

Yet, prison wardens objected that such "disciplinary measures" were not really fit for people deprived of their privileges because they believed there was no hope of inciting a sense of honor in such individuals. Corporal punishment, they believed, only had a pedagogical effect on youthful offenders as it could strengthen their weak sense of honor. However, youths were not commonly deprived of their privileges.[119] In the end, corporal punishment was not included in the draft of the reformed penal code.

Even though the commission did not include corporal punishment, its members took the idea seriously. They acknowledged that there were good justifications for it but argued that greater emphasis on the separation between "regular'" prisoners and penitentiary inmates could help to achieve the same goals as it would protect the honor of "regular" inmates while making the harsher punishment of "serious criminals" more feasible.[120] Thus, it was important for penitentiary sentences to be carried out in institutions specifically designed for that purpose.[121]

Even "modern" legal scholars' counterproposal, which was published a year after the 1909 draft, left the regulations between "dishonored" felons and regular inmates unchanged.[122] They did suggest that the legal distinction should be based on an offender's character rather than the nature of the offense. This would grant prison wardens more power to judge how sentences would be carried out by personally assessing the character of the offender. This was a way for "modern" school adherents to introduce the categories of the "incorrigible" and "corrigible" offenders and make them compatible with the traditional legal distinction between "dishonored" felons and regular prisoners in the penal code.[123]

In the end, however, the penal code was not reformed, and the laws remained as they were. Unlike Foucault, who observed that imprisonment was a "gray"

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and "uniform" sentence,[124] nineteenth-century commentators and penal experts believed in the possibility and use of differentiating offenders inside penal facilities, even if Foucault was evidently right that these differences were hardly considered in practice. Consequently, the idea of differentiation greatly influenced their debates about penal reform.

The Right to Be Trusted and Not to Be Stripped

In many ways, the presence of "dishonored" felons could function as an argument for granting more privileges to other convicts. Thus, debates about the possibility of expanding privileges for prisoners were always accompanied by a plea for stricter rules for disenfranchised felons. The previous section showed how this worked in the context of the internal administration of prisons, but it also happened outside prison facilities. Chapter 1 already laid out how the penal code was the primary place where civil privileges were defined and argued that the question of civil privileges became intimately connected with the topic of crime and punishment. A consequence of this was that penal law also became an important instrument for protecting German citizens' civil privileges. In other words, criminals who were not disenfranchised could insist on certain rights and privileges.

For instance, the "right to be trusted" played a role in the introduction of an indemnity law that passed the Reichstag in 1905. This law regulated the financial compensation that citizens who were later deemed innocent could claim from the government after being held in pretrial detention (*Untersuchungshaft*).[125] One effect of this law was that state prosecutors had to be more cautious about detaining citizens suspected of criminal activity.[126] However, the law also stipulated that these regulations did not apply to all citizens equally. People who were not in possession of their civil privileges or who had been discharged from the penitentiary within one year prior to their detention were not eligible. This important clause clarified that authorities believed that their previous conviction alone constituted a reasonable suspicion to justify detaining them. As the official text of the law declared, "[in these cases], the suspicion that led to their arrest is the unavoidable consequence of their previous criminal activity, which has not yet been erased from the minds of their fellow citizens."[127]

Initially, the law stipulated that people were not eligible to make an indemnity claim if they had been sentenced for a felony any time in the five years prior to being taken into custody or if they had been sentenced for begging, vagrancy, "refusal to work," or similar offenses. However, many Reichstag representatives criticized the unjust nature of this exception, and Social Democrat Adolf Thiele, who otherwise supported the law, harshly criticized its many limitations.[128] In the end, the Social Democrats voted against the law, even though they had long

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been advocating for it.[129] But after the debate in the Reichstag, the eligibility limitations were narrowed so that only disenfranchised citizens remained excluded. This satisfied everyone. The lawmakers granted falsely convicted citizens in possession of their civil privileges the right to restitution while maintaining part of their policy of "reasonable suspicion" against the dishonored segment of the population.[130] It is clear from the Reichstag's broad consensus that disenfranchisement was universally accepted as a measure justifying a person's detention.

The Problem of Overlapping Jurisdictions

In the rather confusing landscape of overlapping jurisdictions in the German Empire, the punishment of disenfranchisement also created legal protection against the arbitrary loss of one's privileges. As argued in chapter 1, civil privileges were only listed in the article of the penal code that concerned their possible suspension. As a result, the Reich Penal Code constituted the primary source upon which to base decisions to deprive German citizens of their civil privileges. For instance, one important stipulation was that disenfranchisement could only be imposed in combination with a "primary" punishment (that is, imprisonment); disenfranchisement was thus only a "secondary punishment" (*Nebenstrafe*).

An example helps to clarify how this protected one's privileges. Adolf Jacobsen, a leather manufacturer and member of the Reichstag for the Freisinnige Volkspartei, was placed in legal detention for approaching insolvency in 1899. A great deal of debate ensued in academic journals about whether this affected his mandate. However, a novelty of the Reich Penal Code was its distinction between "simple" and "fraudulent" bankruptcy: only in the latter case was the culprit disenfranchised.[131] Moreover, Jacobsen had not officially been declared bankrupt but had only been detained. Nonetheless, another Reichstag member, Julius Kopsch, petitioned for Jacobsen to be dismissed from the Reichstag. The members of a commission tasked with deciding on this, however, saw it differently. They voted against dismissal since they pointed out that Jacobsen was still in full possession of his civil privileges.[132] Legal scholars used this opportunity to reflect on the legal principles underlying this question. And, indeed, many argued that—even though it was questionable whether a bankrupt person could remain a member of the Reichstag—there was no legal reason to rescind Jacobsen's mandate.[133]

Disenfranchisement was also prominently relevant for honorary titles. In the Reich Penal Code, §33 entailed the permanent suspension of all titles, orders, and decorations for offenders convicted of dishonorable crimes. Some scholars believed that, since honorary titles were awarded as a special act of sovereign grace (*landesherrlicher Gnade*), dishonored criminals should be stripped of them as well,[134] but this position was highly disputed. This was particularly problematic

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in the case of army officers on reserve; they comprised a large segment of society, and their legal status was not always clear.

At the turn of the century, numerous inactive officers were summoned before military courts of honor for allegedly insulting other (former) army officers in public. One officer so charged was the Bavarian military officer Rudolf Krafft, who had published a book entitled *Shining Misery*, a vehement critique of soldiers' maltreatment by officers in the Bavarian army.[135] After his hearing in the military court of honor, he was stripped of his titles and pension and deprived of his right to wear his uniform.[136] Another example was the inactive officer Fritz Hoenig, who wrote historical accounts of the Franco-Prussian War after completing his military service. His tracts, however, prompted the General Staff to accuse him of insulting former officers by implying that their cowardice had caused the loss of the Battle of Villepion in 1870. Like Krafft, Hoenig was stripped of his titles and his pension because he refused to apologize or to grant the officer's son satisfaction for the insult to his father.[137] These dishonoring sentences were controversial in that they were meted out alone, even though the penal code stated that they could only supplement prison sentences.

A journalist for the left liberal journal *Berliner Tageblatt*, Richard Gädke, an inactive army officer who had himself been expelled from army service without being sentenced for a crime punishable by imprisonment,[138] took up with the fate of these former officers in several articles. Highly critical of these sentences and the policy of stripping the titles of officers on reserve, Gädke argued that these proceedings enabled the General Staff to dishonor former officers simply for their opinions.[139] The words of this journalist did not impress the military authorities.

However, the military authorities were impressed when Paul Laband, one of the greatest authorities on constitutional law during the Wilhelmine period, devoted an article to the matter in the *Deutsche Juristenzeitung* in 1907.[140] In it, he argued that honorary titles ought not be arbitrarily stripped since they had been awarded as an "honor." Laband contended that even though titles were granted by a special act of grace, they still became a subjective right immediately upon bestowal and were therefore protected by law.[141] The Reich Penal Code, he concluded, protected these people from the suspension of their titles as long as they had not been sentenced for a crime that prescribed their rescission. Thus, he backed up Gädke's criticism of this practice and pointed out the injustice of these sentences. Laband's doctrine thereafter became generally accepted among legal scholars. As another journalist of the *Berliner Tageblatt* remarked, the laws on disenfranchisement were primarily intended to guarantee the protection of people's honor, and that of soldiers, in particular.[142] Combined with the generally accepted rule of *nulla poena sine lege* (no punishment without a law), these legal debates about the loss of privileges and honors could be interpreted as another sign that the legal system in the German Empire increasingly allowed citizens to more effectively defend their rights before a court of justice.[143]

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In a short treatise on the legal status of honor from 1892, Karl Binding shared his thoughts about the motivation behind the codification of felony disenfranchisement in the Reich Penal Code: "Disenfranchisement does not take one's honor but takes the rights of him who has already lost his honor."[144] In other words, the punishment was nothing more than the symbolic expression of a loss of honor that had already occurred, in his view. This statement highlights that German authorities considered disenfranchisement important as one means of making citizenship exclusionary: people who had disgraced themselves had no entitlement to the privileges of citizenship. Yet other citizens and social activists considered felony disenfranchisement important on account of its inclusionary function. It elevated the character of "ordinary citizenship" by clarifying who did not belong to that group. The philosopher and pedagogue Friedrich Paulsen argued along these lines when he stated that the mere existence of honor punishments proved that "ordinary" citizens (*Staatsbürger*) were a privileged political class with a specific kind of honor; all who had not disgraced themselves were worthy of this honor.[145]

All in all, disenfranchisement in the German Empire was remarkable as a result of both its inclusionary and exclusionary functions. It not only excluded dishonored criminals from various memberships but also provided a stronger argument for granting privileges to those who had not received such a sentence. In the German Empire, society was growing more inclusive; larger groups of citizens were gaining access to certain institutions, such as the army, the franchise, certain labor regulations, and insurance funds. In debates about inclusion, the interests of population management and state institutions were often weighed against one other. People who emphasized the "honor" of official institutions and the privileges they entailed nearly always resisted suggestions to broaden membership. Meanwhile, several scholars critical of exclusionary practices feared that excluding too many citizens from certain occupations, state enterprises, and other institutions would disturb the "economy" of honor. They sought to find a balance between shielding the honor of state institutions while insisting on the "dishonored" status of ex-convicts without labeling too many people dishonorable and thus contributing to social disintegration. This dialectic was an essential part of many reforms that affected the core components of German citizenship.

Control over membership in these institutions fully relied on "civil honor" as stipulated in the penal code. Although this notion belonged more to the vocabulary of conservative authorities and traditional scholars, even scholars who sought to distinguish between corrigible and incorrigible offenders and to resocialize the former did not dismiss it outright. In fact, the many penal reform proposals that "modern school" adherents shared with those of the "classic school" in the early twentieth century showed that even modern-leaning legal experts believed in the compatibility of the categories of honor and dishonor with modern ideas about criminal policy and rehabilitation. This underscores the truly hegemonic status of the German Empire's notion of honor.

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Notes

1. Richard F. Wetzell, "Introduction," in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell, 1–28 (New York: Berghahn Books, 2014); Christian Müller, *Verbrechensbekämpfung im Anstaltsstaat: Psychiatrie, Kriminologie und Strafrechtsreform in Deutschland 1871–1933* (Göttingen: Vandenhoeck & Ruprecht, 2004), 125–70.
2. Robert Schmölder, "Die Wehrpflicht der Verbrecher," *DJZ* 10, no. 21 (1905): 982–85, 985. On urban youth in the German Empire, see Klaus Tenfelde, "Großstadtjugend in Deutschland vor 1914. Eine historisch-demographische Annäherung," *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 69, no. 2 (1982): 182–218.
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4. Heinrich Dietz, "Keine Wehrpflicht der Verbrecher!," *GAS* 53, no. 4 (1906): 225–35.
5. Benjamin Ziemann, "Sozialmilitarismus und militärische Sozialisation im deutschen Kaiserreich 1870–1914," *Geschichte in Wissenschaft und Unterricht* 53, no. 3 (2002): 148–64.
6. Ibid.
7. Thomas Nipperdey, *Deutsche Geschichte 1866–1918. Machtstaat vor der Demokratie* (Munich: Beck, 1992), 224.
8. Gordon A. Craig, *The Politics of the Prussian Army, 1640–1945* (Oxford: Clarendon Press, 1955), 235.
9. Ziemann, "Sozialmilitarismus und militärische Sozialisation," 153.
10. Ute Frevert, "Das Militär als Schule der Männlichkeit. Erwartungen, Angebote, Erfahrungen im 19. Jahrhundert," in *Militär und Gesellschaft im 19. und 20. Jahrhundert*, ed. Ute Frevert, 145–73 (Stuttgart: Klett-Cotta, 1997).
11. Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris: Gallimard, 1975); see the section on "*le carcéral*," 343–60, in particular; Thomas Nutz, *Strafanstalt als Besserungsmaschine. Reformdiskurs und Gefängniswissenschaft 1775–1848* (Munich: Oldenbourg, 2001), 95.
12. Peter Berger, "On the Obsolescence of the Concept of Honor," *Archives Européennes de Sociologie* 11 (1970): 339–47.
13. Karl Binding, *Der Entwurf eines Strafgesetzbuchs für den norddeutschen Bund in seinen Grundsätzen* (Leipzig: Engelmann, 1869), 9–10.
14. "Die Geschichte der Strafen ist ein fortwährendes Absterben derselben," cited in ibid.
15. Carl Josef Anton Mittermaier, "Die entehrenden Strafen," *Allgemeine deutsche Strafrechtszeitung* 1, no. 12 (1861): 177–82, 180.
16. Richard H. Tilly, *Kapital, Staat und sozialer Protest in der deutschen Industrialisierung. Gesammelte Aufsätze* (Göttingen: Vandenhoeck & Ruprecht, 1980), 154–55.
17. Wolfram Siemann, *Die Deutsche Revolution von 1848/49* (Frankfurt a.M.: Suhrkamp, 1985), 46.
18. Carl Krohne, *Die Strafanstalten und Gefängnisse in Preußen* (Berlin: Heymann, 1901), xxi; Dirk Blasius, *Geschichte der politischen Kriminalität in Deutschland, 1800–1980* (Frankfurt a.M.: Suhrkamp, 1983), 49–50.
19. Eduard Forsberg, "Gerechtigkeit für den Bestraften," 1848; *Sammlung Deutsches Historisches Museum*, Do 69/258 I.
20. Franz Wigard, *Stenographischer Bericht über die Verhandlungen der deutschen Constituirenden Nationalversammlung zu Frankfurt am Main*, vol. 7 (Frankfurt a.M.: Sauerländer, 1849), 5367.
21. *Reichsgesetz über die Wahlen der Abgeordneten zum Volkshause* (Frankfurt a.M., 1849), §3.
22. Wigard, *Verhandlungen der Deutschen Constituirenden Nationalversammlung*, vol. 7, 5370.
23. GStA PK, Rep. 84a, Nr. 8028, *Flensburger Norddeutsche Zeitung*, 1871, 128.
24. August Bebel, *Aus meinem Leben*, vol. 1 (Stuttgart: Dietz, 1910), 56.
25. For a comparison between Dutch and German codifications of dishonoring sentences, see: Timon de Groot, "Politieke Misdadigers of Eerloze Criminelen?," *Tijdschrift voor Geschiedenis* 132, no. 1 (2019): 21–47.

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26. Wunder, *Geschichte der Bürokratie in Deutschland*, 38–39; Koselleck, *Preußen zwischen Reform und Revolution*, 398–404.
27. Esther Hartwich, *Der deutsche Juristentag von seiner Gründung 1860 bis zu den Reichsjustizgesetzen 1877 im Kontext von Nationsbildung und Rechtsvereinheitlichung* (Berlin: Berliner Wissenschafts-Verlag, 2008), 20–22.
28. Rudolf von Kräwel, *Entwurf nebst Gründen zu dem allgemeinen Theile eines für ganz Deutschland geltenden Straf-Gesetzbuchs unter besonderer Berücksichtigung der geltenden deutschen Straf-Gesetzbücher, sowie des baierischen und Lübeck'schen Entwurfs* (Halle: Buchh. des Waisenhauses, 1862).
29. See *Wiener Zeitung*, 28 June 1862.
30. Franz von Holtzendorff, "Strafarten," in *Deutsches Staats-Wörterbuch*, ed. Johann Caspar Bluntschli and Carl Ludwig Theodor Brater, vol. 10, 279–314 (Stuttgart, 1867), 310.
31. *Verhandlungen des dritten deutschen Juristentages* (Berlin, 1862), 406–43.
32. Thomas Nipperdey, *Deutsche Geschichte 1800–1866. Bürgerwelt und starker Staat*. (Munich: Beck, 1983), 749–70.
33. Werner Schubert, *Entstehung des Strafgesetzbuchs*, vol. 1 (Baden-Baden: Nomos Verlag, 2002), xv.
34. *Entwurf eines Strafgesetzbuches für den Norddeutschen Bund* (Berlin: Decker, 1869), 51.
35. See Kesper-Biermann, *Einheit und Recht*, 20–21.
36. Local terminology sometimes varies, but I use these translations as an analytical distinction. The meaning of the words "penitentiary" and "prison" are as historically variable as *Haft, Gefängnis*, and *Zuchthaus* were in German. See Pieter Spierenburg, *The Prison Experience. Disciplinary Institutions and Their Inmates in Early Modern Europe* (Amsterdam: Amsterdam University Press: 2007), 8–10. The Prussian Penal Code also drew a distinction in criminal acts between contraventions (Übertretungen), misdemeanors (*Vergehen*), and felonies (*Verbrechen*). In general, only felons were deprived of their civil privileges.
37. Whitman, *Harsh Justice*, 132.
38. Nutz, *Strafanstalt als Besserungsmaschine*, 60–61.
39. *Strafgesetzbuch für die Preußischen Staaten* (Berlin, 1851), §11: "Die Verurtheilung zur Zuchthausstrafe zieht den Verlust der bürgerlichen Ehre von Rechtswegen nach sich."
40. This constituted a remarkable contrast not only with the Prussian Penal Code but also with the Austrian Penal Code of 1867 as the Austrian Penal Code was widely regarded as restricting a great deal of a judge's discretionary powers in comparison with other codes. Fifty years later, during World War I, when legal scholars started arguing for a common "Central European" criminal code, these differences remained one of the biggest obstacles to legal integration between Germany and Austria-Hungary. "Die Freiheit des richterlichen Ermessens [ist] der 'Zentralnerv'," James Goldschmidt argued during World War I: James Goldschmidt, "zur mitteleuropäischen Strafrechtsvereinheitlichung," *ZStW* 38, no. 1 (1917): 417–36, 429. See Michael Kubiciel, "Einheitliches europäisches Strafrecht und vergleichende Darstellung seiner Grundlagen," *Juristenzeitung* 70, no. 2 (2015): 64–70.
41. Diethelm Klippel, Martina Henze, and Sylvia Kesper-Biermann, "Ideen und Recht. Die Umsetzung strafrechtlicher Ordnungsvorstellungen im Deutschland des 19. Jahrhunderts," in *Ideen als gesellschaftliche Gestaltungskraft im Europa der Neuzeit. Beiträge für eine erneuerte Geistesgeschichte*, ed. Lutz Raphael and Heinz-Elmar Tenorth, 372–94 (Munich: Oldenbourg, 2006).
42. *Verhandlungen des Reichstages des Norddeutschen Bundes*, vol. 10, 207.
43. Ibid., vol. 10, 208.
44. Cited in Klippel, Henze, and Kesper-Biermann, "Ideen und Recht," 385.
45. This criticism was voiced most prominently by Eduard Lasker, Friedrich Meyer, and Hugo Friedrich Fries: *Verhandlungen des Reichstages des Norddeutschen Bundes*, vol. 10, 208–10.
46. Ibid., vol. 10, 211.

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47. Ibid.
48. Ibid., vol. 10, 209.
49. Frevert, *A Nation in Barracks*, 149.
50. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 2 (Berlin 1872), 815.
51. Frevert, *A Nation in Barracks*, 158.
52. Eric A. Johnson, *Urbanization and Crime: Germany, 1871–1914* (Cambridge: Cambridge University Press, 1995); Silviana Galassi, *Kriminologie im deutschen Kaiserreich. Geschichte einer gebrochenen Verwissenschaftlichung* (Stuttgart: Steiner, 2004), 89–104; Matthew P. Fitzpatrick, *Purging the Empire: Mass Expulsions in Germany, 1871–1914* (Oxford: Oxford University Press, 2015).
53. Schauz, *Strafen als moralische Besserung*, 170–71.
54. Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880–1945* (Chapel Hill: University of North Carolina Press, 2000), 34; Müller, *Verbrechensbekämpfung im Anstaltsstaat*, 126–40.
55. Monika Frommel, *Präventionsmodelle in der deutschen Strafzweck-Diskussion* (Berlin, 1987).
56. Sylvia Kesper-Biermann, "Wissenschaftlicher Ideenaustausch und 'kriminalpolitische Propaganda'. Die Internationale Kriminalistische Vereinigung (1889–1937) und der Strafvollzug," in *Verbrecher im Visier der Experten. Kriminalpolitik zwischen Wissenschaft und Praxis im 19. und frühen 20. Jahrhundert*, ed. Désirée Schauz and Sabine Freitag, 79–97 (Stuttgart, 2007), 81–82; Wetzell, *Inventing the Criminal*, 16.
57. Rudolf Medem, "Strafzumessung und Strafvollzug," *ZStW* 7 (1887): 135–74, 143.
58. Franz von Liszt, "Kriminalpolitische Aufgaben," *ZStW* 10 (1890): 51–83, 63.
59. Schmölder, "Die Wehrpflicht der Verbrecher," 984.
60. Robert Schmölder, "Die alte und die neue Kriminalistenschule und der Strafvollzug," *PJ* 115, no. 9 (1904): 489–96.
61. "In unseren großen Städten fürchten die jugendlichen Rowdies und Zuhälter nichts auf der Welt so sehr wie die eiserne Disziplin, die ihrer demnächst beim Militär harrt," Schmölder, "Die Wehrpflicht der Verbrecher," 983.
62. Richard F. Wetzell, "The Medicalization of Criminal Law Reform in Imperial Germany," in *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America, 1500–1950*, ed. Finzsch and Jütte, 275–84 (Cambridge: Cambridge University Press, 2003); Müller, *Verbrechensbekämpfung im Anstaltsstaat*, 64–71.
63. Greg Eghigian, *Making Security Social: Disability, Insurance, and the Birth of the Social Entitlement State in Germany* (Ann Arbor: University of Michigan Press, 2000), 60.
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65. The statistical data came from Ewald Stier, *Fahnenflucht und unerlaubte Entfernung. Eine psychologische, psychiatrische und militärrechtliche Studie*. Halle: Marhold, 1905.
66. Dietz, "Keine Wehrpflicht der Verbrecher!," 231.
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69. Ibid., 634.
70. Ewald Stier, "Die Wehrpflicht der Verbrecher," *MKS* 9 (1913): 272–77.
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72. "Der ungenügende Bevölkerungszuwachs in Frankreich und sein Einfluß auf die Armee," *PJ* 142 (1910): 143–49.

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83. Eghigian, *Making Security Social*, 65–66.
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85. Adolf Arndt, *Bergbau und Bergbaupolitik* (Leipzig: Hirschfeld, 1894), 126–27. See Gierke, *Deutsches Privatrecht*, 430.
86. *Statut des Allgemeinen Knappschafts-Vereins zu Bochum* (1890), §15.
87. "Zur Frage wegen der Arbeiterversicherungskassen," *Die Post*, 28 October 1880, cited in *Quellensammlung zur Geschichte der deutschen Sozialpolitik: 1867 bis 1914*, vol. 1.6, ed. Karl Erich Born, Peter Rassow, and Florian Tennstedt (Stuttgart: Fischer, 2002), 430–39.
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95. Karl Krohne, *Lehrbuch der Gefängniskunde unter Berücksichtigung der Kriminalstatistik und Kriminalpolitik* (Stuttgart: Enke, 1889), 223–29.
96. Christina Schenk, *Bestrebungen zur einheitlichen Regelung des Strafvollzugs in Deutschland von 1870 bis 1923. Mit einem Ausblick auf die Strafvollzugsgesetzentwürfe von 1927* (Frankfurt a.M.: Lang, 2001). See also Martina Henze, *Strafvollzugsreformen im 19. Jahrhundert. Gefängniskundlicher Diskurs und staatliche Praxis in Bayern und Hessen-Darmstadt* (Darmstadt: Selbstverlag der Hessischen Historische Kommission, 2003).
97. Karl Krohne, "Der gegenwärtige Stand der Gefängniswissenschaft," *ZStW* 1 (1881): 53–92, 71. See Berthold Freudenthal, *Die staatsrechtliche Stellung des Gefangenen* (Jena: G. Fischer, 1910), 20.
98. Franz von Liszt, "Preussen, Königreich Sachsen und die übrigen Norddeutschen Staaten," in *Handbuch des Gefängnißwesens*, ed. Franz von Holtzendorff, 161–84 (Hamburg: Richter, 1888), 165.
99. See, for instance, Adolf Schrenk, *Die bedingte Verurteilung* (Erlangen: Jacob, 1892), 4; Otto Mittelstädt, "Die Reform des deutschen Gefängniswesens," *PJ* 40 (1877): 425–35 and 487–99, at 490.
100. F. Szuhany, "In welcher Weise sollen die Strafgefangenen angeredet werde," *BfG* 2 (1867): 264–69. See Richard Braune, "Die Freiheitsstrafen einst und jetzt," *ZStW* 42, no. 1 (1922): 14–32, 17–18; Krohne, *Lehrbuch*, 226–27.
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102. "Die Grundsätze welche bei dem Vollzuge gerichtlich erkannter Freiheitsstrafen bis zu weiterer gemeinsamer Regelung zur Anwendung kommen," *Central-Blatt für das Deutsche Reich* 25 (1897): 308–13, §17.
103. "Die zur Gefängnißstrafe Verurtheilten können in einer Gefangenanstalt auf eine ihren Fähigkeiten und Verhältnissen angemessene Weise beschäftigt werden; auf ihr Verlangen sind sie in dieser Weise zu beschäftigen," RStGB §16.
104. Report from prison warden Michaelis (Aachen) at the general assembly of prison governors in Darmstadt 1898, in *BfG* 32 (1898): 116–23, 119.
105. See Verfügung 13.02.1897, *Zeitschrift des Rheinpreussischen Amtsrichter-Vereins* (1898).
106. Hermann Kriegsmann, *Einführung in die Gefängniskunde* (Heidelberg: Winter, 1912), 206.
107. Franz von Liszt, *Die Gefängnisarbeit* (Berlin: Guttentag, 1900), 6.
108. Cited in Leonore Seutter, *Die Gefängnisarbeit in Deutschland mit besonderer Berücksichtigung der Frauen-Gefängnisse* (Tübingen: Laupp, 1912), 26.
109. For example, the Christlich-Soziale Partei (conservative), the Deutsche Volkspartei (progressive liberal), and the Nationalliberale Partei (conservative liberal) all explicitly mentioned the strong reduction of competition by prison labor as part of their political programs in 1909. See Karl Mahler, *Die Programme der politischen Parteien in Deutschland* (Leipzig: Gracklauer, 1909).
110. For instance, in Max Treu, *Der Bankrott des modernen Strafvollzuges und seine Reform* (Stuttgart: R. Lutz, 1904), 11. Prisoners who were engaged for multiple years in a row in these "feminine" forms of occupation could only display feminine and childish behavior, Treu argued: "Just observe these prisoners, how vain they have become, how they comb their hair and use every windowpane as a mirror, tie their scarf and shirt-collar—indeed, how they even often play the part of the woman when engaging in sexual excesses!"
111. Liszt, *Gefängnisarbeit*.
112. LAV NRW R, BR 0005, no. 24172.
113. GStA PK, I. HA. Rep. 84a, *Nordeutsche Algemeine Zeitung*, 6 November 1889.

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114. Liszt, "Kriminalpolitische Aufgaben III," 60–61.
115. Karl von Birkmeyer and Oscar Netter, eds., *Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Vorarbeiten zur deutschen Strafrechtsreform*, 9 vols. (Berlin: Liebmann, 1905–9).
116. BA–BL, R 3001/6035, Karl Birkmeyer "Strafrechtsreform," *Münchner Neuesten Nachrichten*, 9 November 1909.
117. See the collection of newspaper articles in BA–BL, R 3001/6027 and BA–BL, R 3001/6035.
118. This is most prominently defended in BA–BL, R. 3001/6035, "Die Prügelstrafe," *Hamburger Nachrichten*, 7 December 1909. Some legal scholars also defended the idea in academic journals. For instance, see Langer, "Gedanken über neue Strafarten," *DJZ* 11 (1906): 456–60.
119. Report from prison governor Böhmer (Zwickau) in *BfG* 27 (1893): 175–91, 187.
120. See "Der Strafvollzug im neuen Gesetzentwurf," *Neue Preußische Zeitung*, 12 November 1909.
121. *Vorentwurf zu einem Deutschen Strafgesetzbuch*, vol. 2 (Berlin: Guttentag, 1909), 82ff.
122. Wilhelm Kahl et al., *Gegenentwurf zum Vorentwurf eines deutschen Strafgesetzbuchs* (Berlin: Guttentag, 1911).
123. Liszt, *Der Zweckgedanke im Strafrecht*, 24.
124. Foucault, *Surveiller et punir*, 119.
125. See Eduard Burlage, *Die Entschädigung der unschuldig Verhafteten und der unschuldig Bestraften* (Berlin: O. Liebmann, 1905).
126. This effect of the law was discussed but rejected by the state prosecutor Oskar Hamm in his "Der Entwurf eines Gesetzes betreffend die Entschädigung für unschuldig erlittene Untersuchungshaft," *DJZ* 9, no. 4 (1904): 177–85.
127. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 206 (Berlin: J. Guttentag, 1904), 858–59.
128. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 200 (Berlin: J. Guttentag, 1904), 2889–91. See *Protokoll der Verhandlungen des Parteitages der Sozialdemokratischen Partei Deutschlands abgehalten zu Bremen vom 18. bis 24. September* (Berlin: J. Guttentag, 1904), 95–96.
129. Karl Frohme had already placed a petition for this in the Reichstag in 1882: Burlage, *Die Entschädigung*, 1. For more on the excessive use of pre-trial detention by the German police in that period, see Wilhelm, *Das deutsche Kaiserreich*, 454ff.
130. See Max Treu, "Vorbestraft," *Der Türmer* 6, no. 9 (1904): 290–97; J. A. Amrhein, *Strafprozess-Reform* (Zürich, 1908).
131. Klaus Tiedemann, *Konkurs-Strafrecht* (Berlin: De Gruyter, 1985), 16.
132. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 176 (Berlin: J. Guttentag, 1900), 3354.
133. Julius Guttmann, "Geht ein Abgeordneter durch Eröffnung des Konkursverfahrens über sein Vermögen seines Mandats verlustig?" *DJZ* 5 (1900): 40–42; Guido Leser, *Untersuchungen über das Wahlprüfungsrecht des Deutschen Reichstags* (Leipzig: Duncker & Humblot, 1908), 15.
134. E. Braun, "Die Zurückziehung von Titeln, Orden und Ehrenzeichen nach dem Verwaltungsrecht Preussens," *Archiv für öffentliches Recht* 16 (1901): 528–74, 564.
135. Rudolf Krafft, *Glänzendes Elend* (Stuttgart: Lutz, 1895). See Nicholas Stargardt, *The German Idea of Militarism: Radical and Socialist Critics, 1866–1914* (Cambridge: Cambridge University Press, 1994), 40.
136. Richard Gädke, "Offiziersehre und Militärehrengerichte," *Berliner Tageblatt*, 31 January 1905.
137. Fritz Hoenig, *Mein Ehrenhandel mit dem Oberst und Flügeladjutant v. Schwartzkoppen und dem Oberst und Abteilungschef im Generalstabe von Bernhardi* (Berlin: H. Walther, 1902), 13–15.
138. "Offiziersehre und Militärehrengerichte," *Berliner Tageblatt*, 31 January 1905.
139. "Ein Ritter der Standesehre," *Berliner Tageblatt*, 5 November 1905.

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140. Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, vol. 2, *Staatsrechtslehre und Verwaltungswissenschaft: 1800–1914* (Munich: Beck, 1992), 343.
141. Paul Laband, "Das Recht am Titel," *Deutsche Juristenzeitung* 12, no. 4 (1907): 200–7, 203.
142. "Professor Laband über Entziehung von Titeln," *Berliner Tageblatt*, 17 February 1907.
143. The Prussian constitution of 1851 had already stipulated that "Strafen können nur in Gemäßheit des Gesetzes angedroht oder verhängt werden." On the development of the rule of law in the German Empire, see Kenneth F. Ledford, "Formalizing the Rule of Law in Prussia: The Supreme Administrative Law Court, 1876–1914," *Central European History* 37, no. 2 (2004): 203–24.
144. Karl Binding, *Die Ehre und ihre Verletzbarkeit* (Leipzig: Duncker & Humblot, 1892), 9.
145. Friedrich Paulsen, *System der Ethik mit einem Umriss der Staats- und Gesellschaftslehre*, vol. 2 (Berlin: Hertz, 1900), 88–89.

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