Chapter 6

"Your Honor Is Not My Honor"

Disenfranchisement and Rehabilitation as a Political Battleground from the War to the End of the Weimar Republic

This chapter describes the critique of felony disenfranchisement that erupted in the Weimar Republic. From the mid-nineteenth century, felony disenfranchisement had been criticized by some scholars as a severe hindrance to ex-convicts' reintegration and moral improvement, but during and after World War I, it increasingly came to be viewed as an "uncivilized" punishment—a relic that needed to be abolished. In the first months after the war, opposition to disenfranchisement clearly grew in scholarly circles. Plans to abolish the punishment suddenly became very serious and were actively debated in the circles of the Internationale Kriminalistische Vereinigung (IKV). This debate was novel in that it did not focus on judges' verdicts but on felony disenfranchisement itself, along with the fundamental distinction between "dishonorable" actions and morally permissible offenses.

This chapter also shows that, even though the debate was mostly confined to scholarly circles, the general public had likewise begun to feel that felony disenfranchisement served no purpose. Indeed, in the early Weimar Republic, critics of felony disenfranchisement were ascendent. The Reichstag was close to abolishing the punishment from the penal code, but in the mid-1920s, the mood shifted in favor of the punishment's advocates. The assassination of the influential politician Walther Rathenau and the subsequent introduction of the Republikschutzgesetz (Law for the Protection of the Republic) can be seen as a turning point. Following these events, influential scholars started to reevaluate felony disenfranchisement as a means of producing solidarity. The reform of penal law, which by that time was well underway and included the abolition of felony disenfranchisement, was put on hold in 1922. The idea that felony disenfranchisement enhanced a sense

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of community spread to several political parties, becoming part of their agendas. In the end, the Nazi Party also highlighted it in its agenda, but it importantly subordinated the notion of honor to that of the *Volk*. This would not have happened, however, had the notion of "dishonorable disposition" not already become a battleground in efforts to persecute revolutionaries after the war.

The Revolutionary Postwar Era

The immediate postwar era was a time of great political turmoil. In November 1918, Socialist Party members proclaimed the republic after the leader of the Majority Social Democratic Party of Germany (MSPD), Friedrich Ebert, had been appointed Reich Chancellor and Kaiser Wilhelm II had abdicated the Prussian and German crown. In the period that followed, Germany witnessed numerous violent confrontations between left-wing revolutionaries and right-wing paramilitary groups. In the midst of these, in January 1919, the government formally in charge announced that there would be elections for the "National Constitutional Assembly" (Verfassunggebende Deutsche Nationalversammlung). The National Assembly (afterward known as the Weimar Assembly) functioned as the provisional German parliament.

Holding elections for this assembly was, in many ways, a historical achievement in itself; for instance, they introduced women's suffrage, resulting in the voting procedure being ahead of its time from an international perspective.[1] Meanwhile, in the Prussian voting system, the MSPD had managed to abolish the *Dreiklassenwahlrecht* (see discussion in chapter 2), making the elections in Prussia more equal, too. Thus, in a short time, German politicians had achieved a great deal on the level of electoral policy. In the Social-Democratic press, the German electoral system was, indeed, often celebrated as the most liberal voting procedure in the world (*das freieste Wahlrecht der Welt*).[2]

What was innovative about the Weimar Constitution, which the National Assembly passed in August 1919, was that it explicitly listed the individual rights of all German citizens for the first time. As discussed in chapter 1, up until that time the civil privileges had been defined in the penal code. However, since the penal code remained unaltered in 1919, this created a peculiar parallel system: the civil privileges (*bürgerliche Ehrenrechte*) defined in penal law coexisted with the civil rights (*staatsbürgerliche Rechte*) defined in the constitution.[3] This explains why, in the case of franchise rights, for instance, the constitution did not guarantee an unconditional right to vote but relegated this to the voting law. Thus, despite its progressivism, the Weimar constitution had no real significance for the provisions on felony disenfranchisement. Consequently, it remained a harsh reality in many ways after the war: a wave of crime in the final year of the war led to many people having their rights suspended.

In fact, there were still initiatives to instrumentalize felony disenfranchisement for various political ideologies, for example the socialist ideology. In April 1919, during the second Reichsrätekongress, Arthur Crispien, at that time an influential member of the Independent Social Democratic Party of Germany (USPD), suggested that felony disenfranchisement be included in the voting policy for works councils, which emerged all across Germany in the aftermath of Word War I. Crispien argued that people who had acted dishonorably "from a socialist perspective" should be excluded from the voting procedure for the works councils; that is, those whose "socialist rights of honor" (*sozialistische Ehrenrechte*) had been suspended by a socialist court should be excluded from the franchise.[4] Although it is not clear what Crispien meant by "socialist rights of honor," the example shows that felony disenfranchisement was still a vivid element of political discourse in the postwar years, even in left-wing political circles.

Yet, the punishment's future was uncertain in the early Weimar Republic. In fact, social engineers who believed that "society" and "community" could be planned with tools from the applied sciences increasingly influenced Weimar politics between 1919 and 1924.[5] The sudden end of the war created an experience of a rupture, which numerous politicians welcomed as presenting a possibility of social and cultural renewal.[6] Many citizens perceived this time as a so-called *Traumland* (dreamland) phase—a period of free-floating utopian ideas about the organization of society.[7] The notion of a welfare state (*Sozialstaat*) was writ large in the Weimar Republic's constitution, prompting a large expansion of welfare policies that had already been introduced in the German Empire.[8] In the midst of politicians' and social engineers' attempts to build a new society from the ground up, the future of felony disenfranchisement was also debated, with more people feeling that felony disenfranchisement was incongruent with the idea of moral improvement.

Other historians of penal policy in the Weimar Republic have demonstrated the focus on welfare policy in the penal system of that time. Rosenblum, for instance, argues that there was a widespread consensus about the social function of penal policy in this era. The ideas of social engineers dominated the landscape of Germany's interwar criminal justice system. This was most visible in the institution of welfare assistance to courts, and the implementation of the "stages system," a system that prepared inmates for life in freedom by granting them gradual benefits inside the facility.[9] With the penal system so aligned with the philosophy of the social welfare state, the punishment of felony disenfranchisement was hotly debated. Two fundamentally opposed visions of its function and place in Weimar society existed in scholarly circles. One group was deeply critical of it and wanted to abolish it, while the other maintained that the punishment could benefit German society by boosting the morale of the people. Both sides, however, were motivated by the same objective: to create a stronger sense of community in the new republic.

Thus, advocates of felony disenfranchisement, whose opinions will be discussed further on in this chapter, believed that the punishment was indispensable to creating a much-needed sense of community in the deeply divided nation. Indeed, supporters of the republican form of government in the "improvised democracy" of Weimar tirelessly pursued a common narrative with a view to creating a sense of togetherness.[10] In this context, these advocates felt that "dishonoring" felons would unite Germans in their aversion to these common enemies and create a sense of national belonging. Indeed, several historians have emphasized Weimar leaders' efforts to create a collective sense of national community and to affirm the cultural authority of the republic.[11] Critics of felony disenfranchisement, however, believed that disenfranchisement undermined the sense of community as it generated disparities in society and frustrated the resocialization programs that were so central to many of Weimar's reform initiatives.

These two opposing ideas about the function of disenfranchisement, however, cannot simply be reduced to the disparity between the "classic" and the "modern" legal scholars. Even though advocates of felony disenfranchisement generally belonged to the circles of the "classics," the most vocal people on both sides were actually members of the progressive IKV, sharing its "modern" take on penal policy. Some strong advocates were just as convinced as the critics that welfare assistance and resocialization programs were crucial, above all, in helping "corrigible" convicts to reform themselves into productive citizens.

Among liberal scholars, there were two main arguments for abolishing the punishment: the first was informed by the broader ideology about the purpose of punishment and its connection to welfare policies; within this ideology, the stigmatization of disenfranchisement was seen as a hindrance to offenders' resocialization. The second pertained to more immediate concerns converging around the "politicization" of the punishment in the immediate aftermath of the war. In this context, liberal scholars believed that the notion of the "dishonorable disposition" had become too much of a battleground in courtrooms and in the media.

Liebknecht's Penitentiary Status as a Badge of Honor

As argued in previous chapters, a "dishonorable disposition" was crucial to disenfranchisement sentences. Yet, immediately after World War I, this notion came to be contested as never before. Many revolutionaries sought to renegotiate what was considered honorable even more emphatically, while the judiciary's application of the punishment seemed ever more arbitrary. All in all, this increased the politicization of the punishment.

An important moment in this politicization was the trial against Karl Liebknecht during World War I. In 1917, Liebknecht was tried for high treason for a second time; the first trial had taken place in 1907 (see chapter 3) and ended

in him being sentenced to open custody.[12] This time, he was charged with high treason after organizing a large demonstration to protest the war spending in June 1916. This famous trial ended differently than the 1907 trial as Liebknecht was sentenced with the very harsh punishments of penitentiary confinement and disenfranchisement. The large group of followers that had gathered around Liebknecht and Rosa Luxemburg was outraged,[13] seeing the sentence as a clear sign that the judges had instrumentalized the war to legitimate this excessive punishment in order to silence political protest. After the trial and his criminal conviction, Liebknecht insisted that the exact wording of the plea he made before the high court in Leipzig after hearing the verdict be included in the records. It read:

> You and I, we belong to two different worlds and speak two different languages. . . . "Penitentiary!" "Loss of civil privileges!" Yes, yes! Your honor is not my honor! But I can assure you that no general ever wore his uniform with as much honor as I will wear the penitentiary outfit.[14]

This statement became a banner for the political movement that had splintered from the SPD because of heightened frictions within the party about the level of support for the military spending, the issuing of war bonds and the so-called *Burgfrieden*. Like many Social Democrats before him, Liebknecht drew on typical criticisms of judges, accusing them of a lack of worldliness. However, apart from that, Liebknecht's way of protesting was novel: critics before him had always implicitly supported the "dishonoring" component of these sentences, but he instead called the punishment an "honor." By regarding the penitentiary sentence as honorable, he reversed the logic of the "honor punishment" of disenfranchisement.

Of course, the verdict against Liebknecht had one very practical consequence: he was no longer eligible to be a member of the Prussian House of Representatives or the Reichstag. This effect was also clear for his fellow party member, Rosa Luxemburg, who argued that this consequence had, in fact, motivated the punishment. In a pamphlet, she accused the authorities of politically instrumentalizing it: "Liebknecht certainly had to be sent to the penitentiary since the deprivation of his civil privileges is connected with this punishment, and he thus lost his seat in the Reichstag and Landtag!"[15] Independent Social Democratic Party founder Arthur Stadthagen likewise argued in the Reichstag that the sentence was clearly motivated by a desire to make Liebknecht ineligible for parliament, adding that this political instrumentalization reminded him of the reactionary era of the 1850s, when political offenders also received harsh sentences.[16] Even the board of the MSPD (despite Liebknecht's radical break from it) shared Luxemburg's and Stadthagen's criticism of the sentence—not because they felt that Liebknecht should not be punished but because they believed that disenfranchisement was not the appropriate way to go about punishing him.[17]

After the trial, Liebknecht's sympathizers, who demonstrated against the sentence under the threat of being detained themselves (sometimes even in front of the penitentiary where he was incarcerated), distributed numerous pamphlets with slogans such as "Long live the penitentiary convict Liebknecht!"[18] Liebknecht's followers thus turned his status as a penitentiary convict into a kind of praise and honor, as Luxemburg clearly underscored in one of the pamphlets: "Liebknecht's penitentiary uniform is the best testament to his honor and the fact that he served the people and their true interests and fought for the future of socialism."[19] Liebknecht's writings and actions surely contributed to making disenfranchisement a battleground after World War I, particularly since he openly inveighed against the existence of such punishments in his famous treatise *Gegen die Freiheitsstrafe,* which he wrote in 1918 after his release from prison.[20] Luxemburg and Liebknecht had actively sought to redefine the fundamental assumptions of the criminal justice system. Their movement purposefully appropriated the old symbols of some felons' morally reprehensible character, like penitentiary outfits and disenfranchisement, as badges of honor.

The "Dishonorable Disposition" Contested

The immediate postwar years witnessed several groundbreaking revolutionary moments: the Kiel Mutiny in November 1918, initiated by German Navy members protesting the planned mission against the British Navy, the proclamation of the republic that same month by Social Democrat Philipp Scheidemann, the Spartacist uprising in January 1919 culminating in the assassination of Liebknecht and Luxemburg by the paramilitary Free Corps, and several other separatist revolts across the German territory. In this time of social unrest, the contested nature of the notion of "dishonorable disposition" was apparent in a wave of high treason trials following the revolution of 1918/19. The judiciary's treatment of the political offenders in these events increasingly came under attack in several areas of the German Empire.[21]

The press and commentators interested in the question of political justice directed most of their attention to the situation in Bavaria. In November 1918, the Wittelsbach dynasty was forced to abdicate, which resulted in the founding of the People's State of Bavaria, which was led by the Independent Social Democrat Kurt Eisner. After Eisner was assassinated in February 1919, Munich saw a new wave of revolutionary activities leading up to the founding of the short-lived Bavarian Council Republic in April 1919.[22] The establishment and dismantling of the Bavarian Council Republic and the subsequent high treason trials against many of its leaders put a spotlight on this question of political justice.

The trials against people involved in the Bavarian Council Republic had all come to an end by late 1919. The most prominent people charged with high

treason—whose verdicts were the most discussed in the press—were the leaders of the Council Republic: Ernst Toller, Erich Mühsam, Otto Neurath, Tobias Axelrod, Arnold Wadler, and Eugen Leviné. Many observers considered these trials to be a "test" of the criminal justice system. Emil Gumbel's important critical treatise on political justice in the Weimar Republic, published by the Deutsche Liga für Menschenrechten (German League for Human Rights) in 1922, listed all the verdicts in these cases.[23] In each individual case, the judges had to assess whether the accused had acted out of an "honorable" or "dishonorable" disposition, but none of the trials clarified what these terms meant.

In the trial against Toller, for instance, the public prosecutor demanded that he be sentenced to open custody because the trial had proved to him that Toller had not acted out of a dishonorable disposition. Toller was lucky because many notable intellectuals had vouched for his honorable character during the trial. Karl Hauptmann, Thomas Mann, Romain Rolland, and Max Weber—all high-profile intellectuals from Munich—had testified to his good character. Thomas Mann and other artists, for instance, had stated that his poetry expressed a laudable ethos that could not possibly come from a person with a "dishonorable disposition."[24] Interestingly, Max Weber, taking a rather different tack, had remarked that Toller was "ignorant" about politics and "worldly affairs" and that his ideas were of a free-floating kind.[25] Thus, Weber tried to demonstrate that Toller had no dishonorable intentions not by pointing out his political idealism but by underscoring his youthful naiveté.

Whereas Toller received the kind of privileged treatment befitting political offenders, things looked quite different for the others. Tobias Axelrod and Arnold Wadler (other leaders of the Council Republic) were sentenced to the penitentiary and had their civil privileges suspended. The treatment of Eugen Leviné, who had been sent by the communist KPD in March of that year to reorganize the republic, generated the most controversy.[26] As the judiciary considered him most responsible for the radicalization of the Council Republic, he was sentenced to death and had his civil privileges suspended. Various media expressed outrage at the differences between these verdicts, mostly noting the marked contrast between the treatment of Neurath, Mühsam, and Toller, on the one hand, and that of Leviné, Axelrod, and Wadler on the other. Advocates for the abolition of the death penalty were also upset about Leviné being sentenced to death.[27] In the end, most commentators attributed the disparity to the right-wing stance of the judges in Munich, drawing attention to the often-arbitrary way in which they had applied the notion of the dishonorable disposition.

These verdicts would perhaps not have come under such fire if not for another trial that occurred in the aftermath of the Bavarian Council Republic—against the right-wing assassin of Kurt Eisner, the Minister-President of the People's State of Bavaria that preceded the Council Republic, Anton Graf von Arco auf Valley (Arco-Valley). Arco-Valley was a member of the *völkisch* Thule Society and saw

Eisner as the principal instigator of the revolution against the old monarchy. However, Arco-Valley claimed that he had acted alone out of his "hatred" for Eisner resulting from Eisner's treason to the "king and fatherland."[28] Tried a year after the assassination, he was initially sentenced to death but was not deprived of his civil privileges, meaning that it was, unlike Leviné's, an "honorable" death sentence.

In his defense, Arco-Valley argued that the assassination was "a matter of honor" and that he felt no remorse for committing it: "[Eisner] had made our so respected people ridiculous through childish political maneuvers in the German Reich and abroad. This is a matter of honor!"[29] Arco-Valley only expressed remorse for the "crafty" (*hinterlistig*) way in which he had assassinated Eisner. Interestingly, he stated that it conflicted with the demands of his own code of honor:

> I regret that I had to commit such an insidious attack, but I believed that I could cleanse the dishonor of this insidious attack with my blood. In general, I regret every human life lost, I regret that I shot some Englishmen, but they were sincere and honorable opponents. Eisner, however, was an insidious traitor and I could only counter him with insidiousness.[30]

By demonstrating his regret for his insidiousness, he tried to appeal to the judge's understanding of honorable conduct and further underscore his own attachment to his personal code of honor. Moreover, since he considered Eisner's actions to have been just as low, he thought that his methods were justified and that the harms were balanced out. Apparently, Acro-Valley's honor rhetoric persuaded the judge. Adding to the controversy of the initial verdict, the Bavarian Ministry of Justice turned Arco-Valley's sentence from death to open custody by an act of sovereign grace.

Socialist writers denounced the disparity between Arco-Valley's punishment and those of Leviné and Axelrod. But critics did not necessarily complain that Arco-Valley's sentence was too mild. Editors of the communist *Schlesische Arbeiter-Zeitung*, for instance, agreed with the "milder" sentence given to this political opponent of theirs because they stood by their opinion that political offenders should not be treated as "common criminals." However, they contended that people like Leviné and Axelrod should have been treated similarly, rather than being locked up like "common criminals" and not as privileged political offenders.[31]

Another important case that invited comparison with these verdicts was that of Alois Lindner, the man who had tried to assassinate the MSPD politician Erhard Auer the day Eisner was killed. This was presumably an act of vengeance as Lindner believed that Auer had ordered Eisner's assassination.[32] In contrast to Arco-Valley, Lindner was sentenced with lengthy penitentiary incarceration and deprived of his civil privileges. Opinions differed, though, about what sentence was just for this attempted assassin. A writer for the Social Democratic newpaper

Volksstimme, for instance, argued that assassination was never permissible and that the MSPD had always been against it. In his eyes, Lindner's attempt to assassinate Auer was not a truly Social Democratic act, and not even an act of political conviction, but resulted from a feeble-minded individual (*Schwachsinniger*) acting out of ignorance (*Unwissenheit*).[33] By applying the "No true Scotsman" fallacy to this case, he sought to disassociate the SPD from all political assassins by asserting that no true Social Democrat had ever tried to commit murder for political ends.

Overall, the diverging outcomes of such trials against political activists—which were most prominent in Bavaria but occurred all over Germany—turned the notion of the "honorable disposition" into a battleground. Against the backdrop of these verdicts' asymmetry, as Gumbel called it,[34] people increasingly accused the judges of abusing their discretion to determine whether an offender had acted out of an honorable or dishonorable disposition for political ends.[35] That judges had the privilege of tenure, meaning they could not be removed from office, only sharpened the criticism against them. This privilege, as Karl Dietrich Bracher has argued, enabled the judiciary to remain an important authoritarian element in the Weimar Republic.[36] It was not uncommon in the following years of the Weimar Republic for judges to be accused of constituting some kind of fifth column within the state.[37] At the same time, a new type of "political barrister" who often pursued a partisan ideological agenda emerged in this era, contributing to the more confrontational character of the Weimar system of justice.[38]

Fellow Travelers

As a result of the revolutionary moment after the war, the prison population of the Weimar Republic had entirely changed. Ever more people were sentenced for contributing to political protest. "Political crime," it seemed, had become a mass phenomenon, making the question of disenfranchisement more pressing. In March 1920, in many towns across Germany, people had participated in violent uprisings in opposition to or in support of the Kapp–Lüttwitz Putsch and the Ruhr uprising. The Kapp–Lüttwitz Putsch was the failed attempt of former general Walther von Lüttwitz, an ardent monarchist and commander of the Freikorps in Berlin, to launch a coup d'état with the assistance of the Prussian high civil servant Wolfgang Kapp. The Ruhr uprising grew out of large strikes initiated by the labor movement and was largely organized in reaction to the Kapp–Lüttwitz Putsch. The leaders of the Kapp–Lüttwitz Putsch received remarkably mild sentences while some striking workers received incredibly harsh sentences, often including disenfranchisement.[39]

Since many people were taken into custody after these events, they could not vote in prison. This immediately put the first Reichstag elections in 1920 under

serious tension. The records of the debate in the National Constitutional Assembly on the voting regulations for the Reichstag demonstrate the extent to which politicians tried to adjust disenfranchisement rules for their own political gain. Considering the mixture of offenders, from army members who had participated in a coup d'état to laborers who protested in reaction to it, the question had become whether this kind of mass disenfranchisement benefited one or the other political party too greatly.[40] Members of the USPD, who saw many party members stripped of their right to vote, vigorously attacked the system of felony disenfranchisement. But they simultaneously wanted to "depoliticize" the army by excluding army members from the right to vote. The franchise itself thus became a battleground, and felony disenfranchisement factored into its contested status.

Complicating matters, as many commentators reflected after the Kapp–Lüttwitz Putsch and the Rhine Strike, was the fact that so many people were now being punished for politically motivated crimes. This made it more problematic to distinguish between "political offenders" and "common criminals." Friedrich Kitzinger, a prominent legal commentator of the Weimar Republic, used these cases to openly criticize the underlying ideas of the penal code and to specifically address the unprecedented number of political offenders. In fact, he believed that there was a large middle group of "troublemakers" who were neither "serious criminals" nor selfless idealistic offenders but were, rather, psychologically triggered to commit these offenses by a mixture of political idealism and personal egotism. He described them as "recruited and voluntary fellow travelers; confluent latecomers; a motley crew with various motives: a lust for trouble making, naïveté, seduction and herd reflex, a combination of political conviction, personal egotism and opportunism."[41] It was novel, Kitzinger maintained, that so many people were committing political offenses—this had never occurred in the time of the German Empire. Furthermore, as one could not know the exact psychological state of all in these masses, he considered it absurd that there were only two kinds of punishments for such "political" offenders, and that these were at the extreme ends of the penal system: penitentiary with disenfranchisement or open custody without any loss of civil status. Kitzinger was therefore one of many scholars then recommending that the prescriptions in the penal code be changed to the effect that such "fellow travelers" could be sentenced with the "middle" kind of incarceration: regular prison.

Some commentators considered the addition of this middle category an insult to political offenders and a way of denying them their privileged treatment. Gustav Klingelhöfer, a journalist and active politician for the MSPD and USPD, for instance, responded to Kitzinger's suggestion by accusing him of doing exactly what many judicial authorities in the German Empire had tried to do: redefine "political" acts as "criminal" ones to deny political offenders their privileged status.[42] In doing so, Klingelhöfer presented himself as a fierce supporter of privileged punishments but argued that they were only possible if the authorities

upheld a clear distinction between "criminal" actions—motivated by personal and financial gain—and idealistic, political ones.[43]

Hans von Hentig, a young and promising criminologist who had made a name for himself with his refutation of the application of natural selection theories to the question of criminality, also tackled the problem of "pseudo-political" offenders.[44] He commented on this issue in response to the amnesty many participants had received, often due to a simple lack of judicial capacity. In the summer of 1920, after the Kapp–Lüttwitz Putsch had ended, the judicial system was too overburdened to deal with all the people charged with high treason. They could not be put on trial, and the prisons were overcrowded.[45] The government

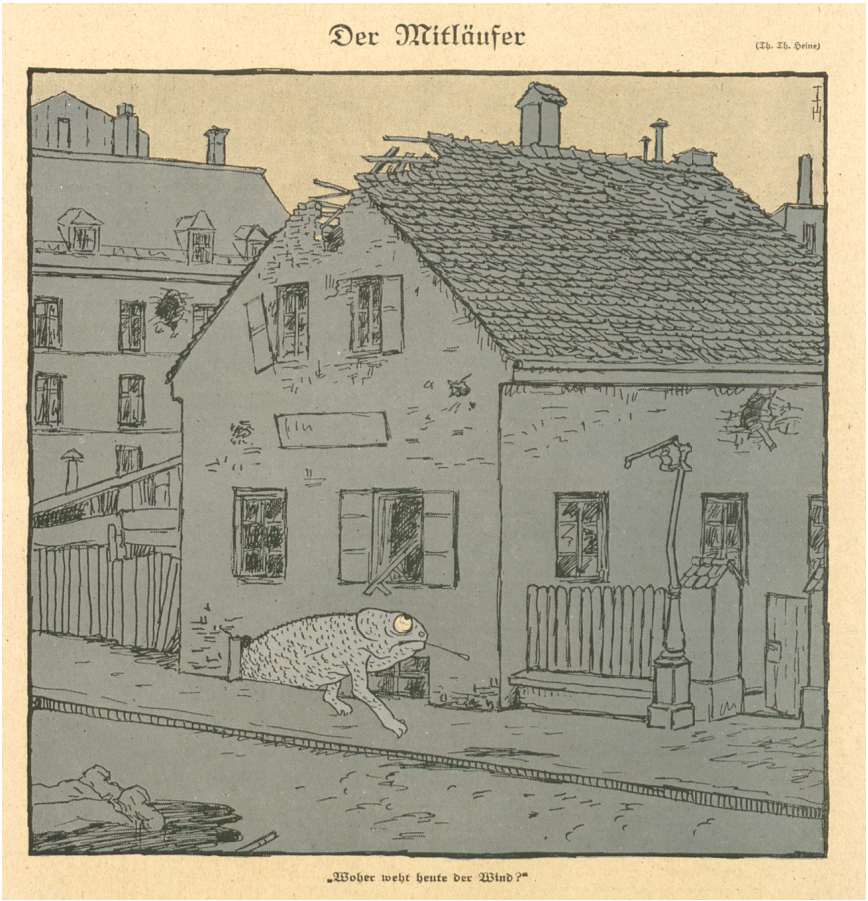

Figure 6.1. Cartoonist Thomas Theodor Heine depicts the political fellow traveler as a chameleon crawling out of a dilapidated house: "Which way is the wind blowing today?" Thomas Theodor Heine, "Der Mitläufer," *Simplicissimus* 24, no. 9 (1919): 117. Courtesy Klassik Stiftung Weimar.

therefore announced a broad amnesty affecting large groups of people, dropping charges against them and releasing them from prison. In fact, it had already issued the first amnesty in late 1918 for some participants of the November revolutions. It issued a much broader amnesty in August 1920 for participants of the Kapp–Lüttwitz Putsch and the Ruhr uprising.

Hentig, who had also participated in the Bavarian Council Republic, argued that these amnesties were, from a criminological standpoint, fully unwarranted measures since the authorities had no idea how to justify distinctions between "real political offenders" and "pseudo-political" ones. According to Hentig, many of the political offenders who, for instance, supported the Kapp–Lüttwitz Putsch had acted out of nothing more than selfish motives: "Just as there are ascetics who act out of self-interest, so there are not seldom criminals who act on an extreme political idea and do things like harm people for the revolution, while at the same time acting to their own personal advantage."[46]

With so many more people incarcerated for political crimes, the question of disfranchisement took on greater political significance. Even Fritz von Calker, a scholar who had always strongly supported the privileged treatment of political offenders (see chapter 3), agreed with Kitzinger and recommended sending most "political offenders" to a regular prison to avoid judges having to choose between harsh sentences for "common criminals" and mild ones for "political offenders."[47] Meanwhile, the authorities could keep these "fellow travelers" in custody so that they would not pose a serious threat to the new republic, as Hentig feared.[48] The notion of the "fellow traveler" was therefore a convenient instrument enabling legal authorities to both level up people labeled as "serious criminals" and to downgrade supposedly "political offenders."

The IKV

The trials against members of the Bavarian Council Republic and the mass nature of political crime became important fodder for discussion for penal justice experts. The work of one young legal scholar, in particular, proved crucial: Eduard Guckenheimer. In 1921, he finished a legal dissertation under the auspices of Moritz Liepmann on the "dishonorable disposition," in which he studied the trials against members of the Bavarian Council Republic, using them as a litmus test for the usefulness of the notion of the "dishonorable disposition" in criminal policy. In short, he concluded that the outcome of these trials demonstrated how empty and meaningless the notion had become.

In his assessment, Guckenheimer contrasted the use of the notion in his present time to its use in the German Empire. In the authoritative hierarchical state (*Obrigkeitsstaat*) of the Wilhelmine era, the "dishonorable disposition" had been useful, he maintained, as there was some consensus about what constituted "com-

mon criminal behavior" and what made up a political offense. Such a consensus about the concept was fundamentally missing in the early Weimar Republic, however. The disparities in the trials' verdicts bolstered his and others' suspicions that judges decided whether the accused had acted "dishonorably" on the basis of their political convictions. Disenfranchisement, he argued, was designed for peaceful times, but in heated political moments, humans lacked the cognitive ability to make neutral decisions about an offender's disposition.[49] In this sense, Guckenheimer framed the problem as one of descriptive psychology and judges' ability to make such decisions. His advisor Moritz Liepmann, by that time a prominent legal authority, felt that Guckenheimer's book persuasively demonstrated the shortcomings of the category of the "dishonorable disposition," particularly in the context of political crimes. Thus, Liepmann continued, Guckenheimer had provided the ultimate arguments for abolishing this notion from the penal code, and, by extension, the punishment of disenfranchisement, as well.[50]

In 1921, the IKV conference in Jena placed the issue of disenfranchisement high on the agenda. The political context of this punishment was hard to dismiss. After the war, the IKV had largely lost its international character because Germany's invasion of Belgium created a strong rift between the founders of the society, Franz von Liszt (who died shortly after the war) and Adolphe Prins.[51] Nonetheless, German IKV members still met annually. Furthermore, as many of them were active MSPD or liberal DVP members—that is, in parties that were prominent in the governments of the early years of the Weimar Republic—the IKV was able to influence criminal law reform significantly. During the conference in Jena, modern scholars seemed to fully agree that felony disenfranchisement was a flawed legal notion. Not since the Reich Penal Code was introduced had there been so much agreement about this punishment.

As mentioned in chapter 1, the Hessian judge Friedrich Noellner had argued as early as 1846 that felony disenfranchisement sabotaged the process of moral reform.[52] Even though several critics shared Noellner's appraisal of the system, most legal scholars of Imperial Germany supported disenfranchisement. At the first international conference on crime and crime prevention held in Rome in 1885, for instance, the (mostly progressive) scholars present unanimously agreed that felony disenfranchisement was well suited to penal purposes of modern nation states.[53] Only gradually did scholars grow worried about how the punishment's execution reflected on the civilization they lived in.

At the 1921 assembly in Jena, Moritz Liepmann was the most explicit critic of the punishment. He argued that felony disenfranchisement was a relic from medieval times that merely stigmatized offenders:

> Law should not distinguish between two categories of prisoners, between those with honorable and those with dishonorable dispositions. Rather, all prisoners remain

> humans who are more or less capable of or in need of improvement. Prisoners should only be treated in this way.[54]

His rejection of disenfranchisement was closely linked to his own suggestions for reforming the prison system as he vociferously advocated the "stages system" that aimed to help ease ex-convicts' transition from incarceration to freedom.[55] This system was based entirely on the idea there were two categories of inmates: "incorrigible" and "corrigible" ones; long supported by the "modern" criminological school, this distinction became important in the penal and policing systems of the Weimar Republic.[56] Independent of the reforms, many prisons introduced reforms to their internal regimes during the Weimar Republic, with the implementation of the stages system being the most dramatic of these. Nonetheless, the different facilities in Germany varied tremendously according to the ideas of the respective prison wardens.[57]

Liepmann, however, had come to believe that the distinction between "corrigible" and "incorrigible" could not be made compatible with the distinction between honorable and dishonorable offenders. He noted that many dishonored felons were, in fact, quite "corrigible," while many "habitual" criminals were indifferent to their privileges. In the end, he felt, the destructive effects of disenfranchisement merely demoralized corrigible offenders.

Liepmann's comments received almost universal approval and lots of applause. Prominent scholars like Siegfried Löwenstein, Robert Von Hippel, and Hermann Kantorowicz held similar views and pushed even harder for the abolition of disenfranchisement during this assembly. Kantorowicz, in particular, argued that the punishment undermined the morality of the people as a whole (*Volksmoral*).[58] Similar to arguments for the abolition of the death penalty, he held that the punishment brought about uncivilized inclinations in the punishers and had a negative overall effect on society.[59] Interestingly, all these scholars and Liepmann referenced the "medieval" character of this punishment; thus, the punishment often ridiculed for its insignificance in the time of the German Empire ironically became the primary example of cruel and "medieval" barbarism.[60]

Radbruch's Reform Plans

The critique of felony disenfranchisement voiced at the Jena conference found its way into important attempts at legislative reform. Gustav Radbruch, a prominent member of the IKV and one of Liszt's students, played a major role in this. As early as 1910, he was making influential comments on the reform proposals for criminal law.[61] During the Weimar Republic, he became an authority on legal matters and frequently contributed at IKV meetings, but he was also a salient member of the MSPD. Radbruch became Minister of Justice for the MSPD in

the second Wirth cabinet (1921–22) and remained in this post in the Stresemann cabinets (1923). One of his first actions as Minister of Justice in 1921 was to grant amnesty to a large group of people who were on death row and sentenced to the penitentiary, and whom, he explicitly mentioned, were regarded predominantly as "fellow travelers" rather than serious criminals.[62] Radbruch famously argued that amnesties were "milestones on the path to revolution."[63] At the same time, he was reluctant to grant amnesty to a large group of prisoners on hunger strike, which prompted criticism from the extreme left.[64]

As Minister of Justice, Radbruch was predominantly tasked with coming up with a new proposal for thorough reform of the penal code—the first comprehensive attempt to reform the penal code since the failed attempts of 1909/10.[65] As Minister of Justice, Radbruch presented his draft plan, which included the abolition of the punishment of disenfranchisement from the penal code. The controversy concerning the category of the "dishonorable disposition," as well as the renewed emphasis on properly reintegrating offenders into society, informed his program for this. Radbruch first presented his plan in 1922, the year he commissioned an official draft of a reformed penal code, stating that the abolition of disenfranchisement would do away with the "distrust" (*Mißtrauen*) of and "enmity" (*Übelwollen*) toward convicted citizens. The new penal code, by contrast, would no longer hinder convicts' reintegration into society through disenfranchisement.[66]

Radbruch was aware that disenfranchisement could not be abolished in isolation but that its abolition had to be part of a more overarching reform of the penal system. He therefore proposed to make former penitentiary inmates eligible to join the army. This would mean that penitentiary inmates would no longer be branded with the stigma of "dishonor."[67] Yet, even Radbruch was reluctant to eliminate all the penal system's means of exclusion. For instance, he adhered to the idea of preventing former penitentiary inmates from holding public office, though he added that this should not be understood as a punishment. Instead, he maintained that these convicts should be denied this privilege because they could not be fully trusted. Many commentators were puzzled as to how this differed from the former regulations. Conservative legal scholar Alexander Graf zu Dohna, for one, noted that the "lack of trust" had always been the basic reason for depriving ex-convicts of their privileges. In his view, Radbruch was merely putting old wine in new bottles without making any serious reforms.[68]

Following the publication of the draft reforms, the dominant progressive legal journals spearheaded a campaign to support Radbruch's plans. The most important advocates were two of Liszt's students: Max Grünhut and Eberhard Schmidt. In the articles in these journals, too, the main argument for the abolition of disenfranchisement was that the punishment was "uncivilized" and that the notion of the "dishonorable disposition" had become politically contested. According to Schmidt, the stigma associated with the loss of honorary rights

led to forms of "moral lynch mob justice."[69] Along the lines of the draft, both Schmidt and Grünhut argued that the punishment directly contradicted the aim of modern penal justice to reintegrate offenders into society as it interfered with the moral reformation of "corrigible" offenders. In Grünhut's words, "demeaning punishments conflict with the reformation of deviants and are an impetus for wrongdoing."[70] In Weimar society, he held, the existence of the punishment precipitated a kind of *Gesinnungsstrafrecht* in that the explicit connection between disenfranchisement and a convict's "dishonorable disposition" implied that convictions rather than actions were put on trial.[71]

As Radbruch translated the growing criticism of disenfranchisement into actual law, some advocates of "modern" ideas in criminal law found fault with these endeavors. Wilhelm Kahl, the president of the *Juristentag* and long-time member of the IKV, was one such skeptic, who chided Radbruch's plans for abolishing disenfranchisement when he presented them at the national assembly of the MSPD in Augsburg in 1922. Kahl, himself a member of Stresemann's German People's Party (DVP), regarded the repeal of the laws on felony disenfranchisement as a partisan issue and felt that it would not be beneficial to the entire nation.[72] In his view, the call for abolition was just a way for the MSPD to gain more votes.

Kahl's criticism has to be viewed in light of the debate on the "mass character" of political offenses: members of left-wing parties complained that their sympathizers were deprived of their civil privileges more often than right-wing sympathizers. Since they also believed this influenced the outcome of the elections, they saw disenfranchisement as a political tool that was being used by the right-wing parties. Iwan Katz, a member of the Communist Party, vehemently made this same argument in 1924, charging that the system of criminal justice (which he called *Schandjustiz, Klassenjustiz, Justizhure*) deliberately disenfranchised left-wing sympathizers for political gain:

> Have you ever heard of a profiteer or usurer losing his civil privileges? That has never happened. But almost every day, proletarian fighters, honest workers who struggle against the capitalist system, are punished with long sentences in the penitentiary and prison and stripped of their civil privileges. . . . Capitalists and fascists go unpunished and honest men, proletarians, are punished in the most brutal fashion and declared dishonorable.[73]

In contrast to these left-wing critics of disenfranchisement, however, Kahl argued that this punishment could have an important function for the success of the Weimar Republic: its prudent use could help generate support for the democratic constitution of the Weimar Republic. His argument boiled down to the idea that a clearly identifiable class of "dishonored" felons would forge a sense of unity among the German people, who would wish to distance themselves from them.[74]

Kahl and other politicians felt that such a sense of unity was urgently needed and, in this respect, Radbruch and Kahl were no opponents. They both stressed the importance of a sense of community among the citizens of the Weimar Republic. In his public lectures, Radbruch fiercely defended the republic's constitution, representing a kind of militant republicanism.[75] Yet, by the mid-1920s, the legitimacy of the Weimar Republic was increasingly called into question, sometimes with explicit reference to the idea that it had its origins in "dishonorable" crimes. In 1924, the Archbishop of Munich, Cardinal Faulhaber, for instance, claimed that the constitution of the Weimar Republic was founded in acts of perjury and treason.[76] Indeed, this statement came to define much of the Center Party's approach to the constitution after 1924; around this time, the party changed its stance toward the existence of the republic from mildly positive to more critical.

For politicians like Kahl, however, such arguments made the need to affirm the legitimacy of the Weimar Republic and to dissociate it from any "dishonorable crime" all the more pressing. In this context, the punishment of disenfranchisement could help distance "irreproachable" Weimar citizens from "real criminals" and strengthen ideas of the unity of the German people beyond partisan contestation.[77] Kahl thus wanted to restore the idea, so prevalent in Imperial Germany, that "dishonored" felons stood for everything model German citizens considered unworthy.[78]

Even though Kahl was considered a "modern" scholar, the long-time proponent of the "classical" school Friedrich Oetker defended the existence of disenfranchisement with similar arguments in an article for the *Juristische Wochenschrift*. In response to Schmidt's and Grünhut's articles, Oetker emphasized that, in his view, disenfranchisement was not a form of *Gesinnungsstrafrecht* since it was not directed at someone's disposition. The category of the "dishonorable disposition" was merely used to determine the measure of a punishment.[79] More importantly, however, he argued, along the same lines as Kahl, that disenfranchisement was one of the clearest expressions of the people's conscience (*Volksbewusstsein*): if "the German people" considered someone dishonorable, he should be punished accordingly.[80] This idea of the people's conscience would become more salient in the following years when the Nazi Party would appropriate it, along with the notions of honor and *Volk*. Overall, one can say that both the advocates and opponents of felony disenfranchisement shared the same ideal—the unity of the German people—but they differed in the role they saw disenfranchisement playing in forging or undermining that unity.

The Community Appeal of Disenfranchised Felons

As noted earlier, the Weimar years have often been depicted as a state of permanent crisis—economic, political, and cultural.[81] In the wake of the events

of 1918/19, various crisis narratives dominated contemporary commentaries.[82] After World War I, many German citizens experienced hunger, inflation, and unemployment, but there was also a crisis in the concept of masculinity. Many men had initially envisioned fighting in the war as a grand "duel of honor," but the reality was rather different.[83] Fighting men's negative experience of trench warfare, therefore, fueled a fundamental reappraisal of the notion of honor in German society. The outbreak of street violence after the war—particularly in the "second phase" of the revolution of 1918/19, during which many returned soldiers engaged in brutal acts of face-to-face violence—has been attributed to this crisis of masculinity.[84] The postwar years, however, also engendered a culture of self-reliance in which citizens often felt that unlawful action was their only reasonable option.[85] These circumstances, among others, prompted disenfranchised citizens to protest the nature of their sentence.

As argued in chapter 4, the mentality of disenfranchised felons had gradually changed in the first decades of the twentieth century. Many started to experience a sense of collective injustice and believed that they had similar concerns to each other. They also developed a new sense of entitlement, along with the idea that they could "pay" for their crimes by participating in society. At the same time, disenfranchised citizens felt that "society" had to help enable them to do this. In other words, what they (and society) had previously regarded as a purely individual affair between an offender and the law they now saw as an affair between ex-convicts and the community. They grew angry—less at the punishment, as such, than at society for not treating them like full citizens.

The postwar experience of crisis also generated a new awareness among German citizens that they possessed fundamental democratic rights.[86] German women's experience of subjecthood is an example of this. After many women had managed a significant amount of production in the wartime economy, women in general had not only gained the right to vote for parliament in 1919 but, more importantly, had also acquired a deeper understanding of citizenship as subjects, as Kathleen Canning argues.[87] This experience of subjecthood is evident in the arguments of disenfranchised ex-convict Maria M. from Dühren. In her 1930 petition for rehabilitation, she articulated the pride she felt in having always exercised her right to vote after she was granted this right, and felt it was an important duty in times of political turmoil. Consequently, she wished to have her voting right restored: "As a German woman with unquestioning loyalty to the constitution, I wish not to be excluded from the vote," she wrote, adding that she would vote for a "state-supportive" party.[88] Thus, Maria M., like many other petitioners in this period, combined a sense of loyalty to the state with a call for ex-convicts to be granted a better social and political position within it.

Does that mean that Weimar-era petitioners had a greater political consciousness than those in the time of the German Empire? This depends on the definition of "political." People petitioning for the restoration of their rights certainly

did not defend a particular political ideology, but they did "politicize" their arguments for rehabilitation. They truly viewed their punishment as an injustice not because they refused to accept the blame for their offense, but because they considered it disproportionate to the crime—that is, disenfranchisement seemed like an excessive payment.

Disenfranchised citizens' sense of entitlement clearly grew stronger in the postwar years. Influential thinkers and politicians propagated ideals of community to overcome the crisis of the postwar society, and these ideals fit well with disenfranchised felons' rhetoric of entitlement. The felons connected their desire for rehabilitation with the crisis in German society. Consider, for instance, this statement by Leo V., an electrical engineer from the city of Aachen:

> To subject a family father, a citizen of the city and a diligent worker—with an impeccable reputation—apart from the sentence caused by unfortunate times and family relations—to such difficulties is not in line with the sense of national community so needed today. The city council should be aware of the fact that the economic crisis already threatens enough lives and creates massive unemployment, and that it is unnecessary to hinder those willing and able to work with bureaucratic conniving and red tape.[89]

Leo V. wrote this in a letter to the district president of Aachen, who had previously refused to grant his request for rehabilitation. In his original request, he had explained that he wanted his rights restored to be able to establish a business as an independent electrician in 1925. As he had already been trained as an electrician by a certified master craftsman and had passed the examination for the master craftsman's diploma (*Meisterbrief*), the only thing he still needed was a permit from the city council—anybody who established an electrical plant needed one to connect it to the city network. To obtain this permit, Leo V. needed a certificate of good conduct, but he could not get one due to his conviction for trading in stolen goods in 1922. The criminal court of Aachen had given him a harsh sentence for this crime.

In Leo V.'s personal account of his offense, the postwar crisis played a large role. He maintained that he had been living in abject poverty due to the war and through no fault of his own. His wife, he explained, had "hung around" (*herumtreiben*) with French people while he fought at the front. She wasted their money, drove their children out of their house, and sold the house. Although they divorced during the war, she reported him afterward to the French authorities and he became a prisoner of war. In Leo V.'s words, these were the "unbelievable strokes of fate" (*unglaubliche Schicksalsschläge*) that preceded his offense.[90]

The story Leo V. told about his wartime conduct may seem irrelevant to his request since the sentence he wished to have expunged had been imposed four years after the end of the war. But for Leo V., this wartime affair was both proof of his loyalty to the nation (*treudeutsche Gesinnung*) and an ameliorating circum-

stance of his offense. Thus, he emphasized the postwar culture of self-reliance and argued that a lack of community forced him to commit the crime. Furthermore, he hoped to underscore this by contrasting his own "masculine" patriotism with the behavior of "feminine" deserters. He supplemented his petition with letters of recommendation proving his loyalty to the German cause. These letters were written by people he had met during his wartime captivity. One of them, Otto P., was a high-ranking civil servant in the district government, who backed up Leo V.s claim that he was completely without blame:

> In prison he always gave me the impression of being an honest and sincere human being. I am therefore convinced that the loose life of his ex-wife, her anti-German behavior, and the ruin of their family life are to blame for the applicant's lapse.[91]

Leo V.'s arguments—and the testimonials to support them—influenced the position of the district president of Aachen toward his case. In his letter to the Prussian minister, the district president noted that he had been unaware of Leo V.'s wartime story when he initially refused to support Leo V.'s request. Now that he knew the background, he fully supported Leo V.'s request.[92]

Even so, Leo V.'s depiction of his problems (as being with the local bureaucracy) contrasted sharply with the national authorities' view of his case. The office of the Minister of the Interior responded that this request should absolutely be rejected, above all because it concerned a very serious offense that had not been "atoned for in the way the judge considered necessary."[93] This demonstrates a disparity between local officials, who were willing to consider the circumstances behind the case, and the national authorities, who focused on the nature of the crime.

Clearly angry with the city authorities after this rejection, Leo V. then repeatedly referred to his identity as a citizen of Aachen while protesting the bureaucratic hindrances faced by people like him: people with the intention of transforming themselves into useful citizens who were working hard to find a secure place in society. The polemic Leo V. unleashed after this rejection highlighted the distinction between "public" and "private" affairs, which he felt the city council used to its own ends. It was the members of the city council who refused to grant him the permission to work as an independent electrician, and they had told him that his problem was of "private," and not "public," concern, using the label "private" as an easy way out. As the city authorities ruled by virtue of the trust the local population gave them, he argued, they should take not shirk responsibility in such a matter:

> The city administration, with the mayor and city council at its top, have the trust of the electorate. The city owes its municipal welfare institutions to the tax-paying citizen. And yet, irrespective of this, it treats the well-being of a family father who is struggling for his existence in such a way.[94]

When local authorities frustrated citizens' attempts to improve their standing with such "bureaucratic conniving," Leo V. continued, they fundamentally disrupted the bond of mutual dependency between the citizens and themselves. This statement underscores Leo V.'s conviction that the mutual dependency of citizens and authorities was fundamental to the thriving of the community as such. For him, German citizenship came down to one's personal development within the local or national community. Disenfranchisement was not just a personal problem but an "obstacle" for the community as it frustrated the free development of a citizen so punished.

Leo V. was not the only person to contend that disenfranchisement contradicted the fundamental entitlement of membership in a community. This idea was associated with a belief that the authorities had certain duties vis-à-vis the members of their community. Thus, it became common for disenfranchised felons to utilize the strategy of stressing their membership in a community and highlighting the duties and responsibilities they shared with its other members. In the period of "relative stability" in Weimar, between 1924 and 1927, most offenders turned to the authorities in the hope of profiting from the community.[95] Franz von D., who had been sentenced for robbery by a criminal court in Aachen (which he, like Leo V., had committed during the final months of the war) cast his request for rehabilitation as a duty shared by him and the local authorities: "It is not just my duty to make a useful human being out of myself; it is also that of the responsible authorities."[96] He supported this appeal with another appeal to the empathy of the reader. That is, he urged the reader to place himself in his shoes:

> Only a person who has been in the same situation as I can measure how difficult it has been for me and how frequently I was weakened. The strength needed to lead an orderly life as a discharged prisoner, to find a job without references, and to start a sincere existence from the ruins exceeds the power of even those with the best intentions.[97]

Indeed, notions of "suffering, entitlement, and victimization" were typical for subjects in the expanding welfare system of the Weimar period, as Greg Eghigian argues.[98] Appeals to the "duty" of the administration, as seen in Franz von D.'s petition, were never present in petitions written before 1914. The feelings of remorse and atonement so central to petitions in the time of the German Empire had given way to an emphasis on the common interests and duties of the entire community. These petitioners clearly expected more from the authorities. Furthermore, they did not rely on their biographies to support their honorable character (unless they were talking about military service during World War I), nor did they not talk about the honor of their profession or their class. Even Aloys R., a former police officer from Aachen, was not interested in the restoration of his former status as a civil servant and expressed no attachment to the notion of

honor. He merely wanted to meet the necessary requirements to get a visa and be able to move to southwest Africa and work on a farm.[99] Ideas about the honor of his former position were clearly not as central to his beliefs about his future life conduct as they had been to ex-convicts in the earlier era. These Weimar ex-convicts were concerned not with restoring a specific status but with a desire to be recognized as individuals with the potential for a productive future.

At the same time, many disenfranchised felons felt that the punishment had no purpose and lamented being transformed into "useless" subjects in the community. This sense of purposelessness echoed the appraisal of legal scholar Oswald Freisler, who, in 1921, pointed out how ridiculous disenfranchisement was: it created a whole charade of repealing a punishment that was redundant to begin with.[100] Eventually, petitioners themselves even started to ridicule the sentence. Jacob W., a day laborer from Eschweiler, for instance, wrote the local government in 1925 to ask whether his ten-year disenfranchisement also exempted him from paying taxes. Other people had suggested this possibility to him. He even added his salary of the previous months and the amount of income tax he had paid so that the authorities would know how much to refund him.[101] In his entirely serious answer, the district president indicated that he was not aware of such a regulation and referred him to the tax authorities. Whether Jacob W.'s question was serious, or whether he was playfully provoking the authorities, remains unclear, but his petition nonetheless illustrates the changing attitudes and the rising expectations disenfranchised ex-convicts had of the local authorities.

The Moralizing Framework of the Local Authorities

Ironically, disenfranchised felons' increased tendency to explicitly express their desire to be included as members of the community could also be seen as supporting the communal function of disenfranchisement (see Kahl's arguments above). If the punishment caused the disenfranchised to desire feelings of community more frequently than before, then it had achieved its intended goal of creating a sense of national unity. That is, it could be called a successful form of "reintegrative shaming."[102] In fact, despite petitioners' changing attitudes, the authorities were often more reluctant to offer petitioners the possibility of reintegration into the community than they had been before, stressing instead the importance of exclusion. Rehabilitation remained a matter of mercy.

Although the Expungement Law of 1920 allowed for "normal offenses" to be expunged, this changed nothing for disenfranchised citizens.[103] In most cases, therefore, petitioners' arguments stood in sharp contrast to the reactions of the authorities. Whereas the disenfranchised ex-convicts increasingly protested their treatment and fashioned themselves as members of a *Volksgemeinschaft*, or people's community, the authorities emphasized the need for moral atonement more

than ever before. This also demonstrates that legislative reforms did not necessarily align with the stance authorities took toward these ex-convicts. The introduction of the Expungement Law, one could even argue, strengthened their idea that disenfranchised felons were a special set of offenders whose punishment needed to be more severe to facilitate proper atonement.

For instance, the authorities' dismissiveness was quite evident in their rejection of Karl S.'s request for rehabilitation in November 1921. Sentenced to five years' loss of honor for pimping for prostitution, he explained that he had been naïve and never considered it "a real profession" (*Gewerbe*).[104] Karl S. felt that characterizing his crime as a "profession" would clearly make it dishonorable because that would imply that he had been motivated by financial profit (*gewinnsüchtige Absicht*). The district president took this case very seriously and stressed the importance of old dictums about the exclusion of dishonored ex-convicts. In his letter to the Minister of the Interior, he not only opposed Karl S.'s request but also added that a proven procurer like Karl S. should have to endure the full sentence. He wished to see the sentence upheld as a deterrent to other potential offenders (*zur Abschreckung anderer*).[105] Unaffected by the experiences of the war, the district president applied a discourse of exclusion to this case. Whereas others who had committed similar crimes during the war had been eligible to join the army, Karl S. was denied rehabilitation based solely on the nature of his offense. Moreover, the district president emphasized the emotional impact of the punishment on Karl S., using its deterrent effects to justify his decision: he added that refusal was especially to be recommended if the offender personally experienced his dishonoring as the most severe part of his sentence. In fact, the district president considered such statements by dishonored criminals to be proof of the punishment's effectiveness. Karl S.'s case shows that local authorities could justify their decisions based on their personal views of the purpose of punishment.

Joseph H.'s request for rehabilitation was rejected for similar reasons. He had been sentenced to three months in prison and five years' loss of honor for attempted manslaughter and violating game law. The loss of honor was added to his sentence because he had apparently shot at a fleeing man. The state prosecutor had two reasons to reject his request: Joseph H.'s dishonorable disposition was evident in his shooting at a fleeing man, and he did not understand how the loss of honor frustrated Joseph H. in his profession as a pavior.[106] Although Joseph H. repeatedly stressed his good conduct in his petition, the prosecutor hardly mentioned this. For him, it was important that dishonored criminals serve their full sentences.

Exceptions only seemed to be made for people with mental disorders. Andreas B., a mine worker from Aachen, for instance, was convicted of rape, but the public prosecutor restored his rights because he determined that he had a mental disorder. Andreas B. had also been intoxicated while committing the offense, and

the public prosecutor felt that the two factors indicated that the criminal did not have an "immoral character" but should be labeled "insane."[107] This case thus provides an interesting example of how ingrained the belief still was that "honor" was a moral category based on the free will of rational subjects and should not be applied to "degenerate" people. Other "recidivist" petitioners, by contrast, like Wilhelm S. and Wilhelm P., both of whom the authorities described as "recidivist thieves," received responses similar to those of "dishonored" offenders. In Wilhelm P.'s case, the public prosecutor even argued that he did not like to work and parasitized his wife's income.[108] This clearly did not testify to an "honorable" character for a self-sufficient man in this era. In rejecting petitions, authorities also held that offenders were more concerned about their public reputation than about genuinely reforming their moral character. The state prosecutor wrote exactly that in rejecting the petition of arsonist Josef H.: "It creates the impression that it is not the illegal act (the crime) that causes his mental pains, but that it is the embarrassing effects (of the punishment) in public life."[109]

In the end, local authorities, in their assessments of individual cases, drew upon various reasons to oppose rehabilitation, but judging an offender's moral character as lacking was the most important one. This demonstrates that, at least on this level of bureaucratic decision-making in the penal justice system, there was no evidence of criminal policy becoming "medicalized" or penal welfare taking precedence. On the contrary, authorities aimed to prevent such "degraded" citizens from developing a genuine collective identity by stressing the idea of individual guilt. They were not punished as political opponents, the authorities averred, but as individual felons guilty of egoistic and insidious crimes, and they had breached the trust put in them as citizens.

The Rise of Nazism

To return now to the level of political decision-making, it was politics that prevented the reformed penal code Radbruch presented in 1922 from ever being ratified. In fact, Radbruch found himself, after the murder of Foreign Minister Walther Rathenau in June 1922, forced to introduce a law that contradicted his own opinions on crime and punishment and the treatment of political offenders: the Law for the Protection of the Republic (*Republikschutzgesetz*).[110] This law prescribed penitentiary confinement and death penalty sentences for political offenders, particularly people who had joined an organization that aimed to assassinate politicians. In his academic texts, Radbruch would later argue that political offenders were people with different views (*Andersdenkenden*) of the legitimacy of social norms who did not, however, break those norms for egoistic ends, as "common criminals" did.[111] By calling these political offenders *Überzeugungsverbrecher*, or criminals out of conviction, Radbruch tried to make

the case that a neutral democratic state cannot argue about the moral legitimacy of such criminals' convictions.

Yet, despite Radbruch's own opinions, he complied with the wishes of the Reichstag and introduced the Law for the Protection of the Republic. Many politicians afterward claimed and acknowledged that the law was biased against right-wing offenders. Historian Gotthard Jasper argues that it was more a measure to guarantee the safety of the authorities than to safeguard the Weimar constitution as such.[112] That is, it did not entail a definitive idea of just punishments for political offenders but was rather a temporary deterrence measure. Ironically, although there were numerous debates on criminal law reform in the first half of the twentieth century, serious reforms, such as the abolition of felony disenfranchisement, were hardly ever ratified. The penal code of 1870 remained largely unchanged over a longer period. Even under Nazi rule, the old penal code continued to apply.

The Law for the Protection of the Republic did nothing to eliminate the "asymmetry" in verdicts against political offenders. Consequently, legal scholars continued to debate the purpose of disenfranchisement and the use of the notion of "dishonorable disposition" in judicial verdicts. The notorious trial against Felix Fechenbach, held at the Bavarian "People's Court" in 1924, provided ample fodder for such debates. In the final years of World War I, Fechenbach had sold confidential information from the Bavarian state administration to a foreign news agency. The judge ruled that he clearly displayed a "dishonorable disposition" as he acted purely out of financial interest. This verdict (combined with the question of the legitimacy of the People's Court) prompted a great deal of debate. Prominent lawyers, even Radbruch himself, protested the reference to Fechenbach's "dishonorable disposition" because they believed he had acted out of a desire to put pressure on the peace negotiations. In other words, his motive was clearly political rather than financial.[113]

After the 1930 elections six years later, when the NSDAP had become one of the largest parties in the Reichstag, the chances that disenfranchisement would be removed from the penal code were even smaller. National Socialists focused heavily on the proper use of disenfranchisement and the question of political offenders in their discussions of penal law. In fact, they believed that this part of penal law, in particular, would enable the Nazi regime to show what it meant to be a genuinely "authoritarian" state.[114] The ideological support for felony disenfranchisement in the service of the Nazi Party program first became evident in 1930, when its members promoted a bill in the Reichstag called Law for the Protection of the German Nation (*Gesetz zum Schutz der deutschen Nation*). This bill aimed to punish people guilty of "miscegenation" (*Rassenverrat*) with long-term penitentiary sentences combined with the deprivation of their civil privileges.[115] Such dishonoring essentially sought to equate people who committed miscegenation with the lowest kind of untrustworthy criminals. The 1930 proposal already

Figure 6.2. Cartoonist Thomas Theodor Heine deliberately deprives the political assassin of the status as an "honorable" political offender by depicting him as a sneaky robber after the murder of Walther Rathenau. Thomas Theodor Heine, "Der politische Mord," *Simplicissimus* 27, no. 16 (1922): 229. Courtesy Klassik Stiftung Weimar.

hints at the way the Nazi Party started to tamper with an important principle of disenfranchisement, namely, that loss of privileges constituted part of criminals' payment for their offenses within the norms of citizenship. The Nazi Party, by contrast, disconnected the punishment from the norms of citizenship, aligning it instead with the notions of *Volk* and race.

From the moment National Socialists became a prominent political force in Germany, legal scholars who supported the Nazi Party engaged extensively with the question of how criminal law could be made to conform to Nazi ideology. Such scholars deemed this necessary since the Nazi Party up until that time had said little about penal law apart from the fact that they advocated the use of the death penalty (§18) against "*gemeine Volksverbrecher*" (vulgar criminals against the people).[116] The notions of *Volk* (the people) and race took center stage in these debates, fully subordinating the notion of an individual's honor in these scholars' philosophy of penal law.[117] Nazi legal scholars and officials increasingly referred to "the honor of the German *Volk*," introducing the notion of "social honor" for this purpose. This was partially inspired by the works of one of the most prominent Nazi ideologists, Alfred Rosenberg, who completely subordinated the notion of honor to that of race in his book *Der Mythus des 20. Jahrhunderts* (The Myth of the Twentieth Century).[118] Later, some pieces of Nazi legislation actively endorsed the idea of "social honor." The Work Order Act of 1934, for instance, which aimed to protect the "Aryan" working classes from capitalist employers, did so most prominently in invoking the "social honor" of labor.[119]

After the Nazi Party came to power in 1933, with the so-called Reichstag Fire Decree of 28 February suspending many of the civil rights stipulated in the Weimar constitution, Nazi party ideologues and legal scholars who sympathized with the party immediately started working on reforming criminal law according to the party's principles. In their writings, these legal scholars made no fundamental distinctions between law and morality.[120] They held that the state derived its power to punish from the moral judgments of the *Volk*, so it exerted its authoritarian rule on behalf of the *Volk*, not against it.[121] In their view, this implied a thorough "moralization" (*Ethisierung*) of penal law.[122] In other words, they contended that National Socialism was founded on a "moral idea," so any person acting against this idea should, by definition, be deemed immoral and should thereby have no civil privileges. Indeed, they repeatedly claimed that a clear and indisputable idea about "moral rights and moral wrongs" finally held sway in German society.[123]

Georg Dahm and Friedrich Schaffstein, both prominent theoreticians of the National Socialist philosophy of criminal law, for example, asserted that the "neutrality" of political offenders implied in the "liberal" philosophy of felony disenfranchisement was a typical symptom of the "pale" (*blass*) and "empty" ideology of the liberal state. In this context, Radbruch's idea of *Überzeugungsverbrecher*—which urged jurists to refrain from making any *moral* judgments about political offenders' actions—constituted the epitome of this liberal philosophy of criminal justice.[124]

This alignment of law and morality did not, in the end, precipitate the annulment of distinctions between different kinds of incarceration. Rather, it prompted the Nazi state to think of a dual system of punishment based on two different

kinds of offenders: those who committed their crimes in the service of the *Volk*, and those who acted against the *Volk*. This system transformed the "asymmetry" in verdicts into a cornerstone of Nazi criminal policy. Consequently, the commission responsible for redesigning the penal system under Nazi rule, headed by scholar Franz Gürtner, retained the distinction between "dishonoring" and non-dishonoring sentences.

In fact, this Nazi Party stance had already become apparent in 1932 in the context of the notorious "Potempa murders." Under the auspices of the (second) Law for the Protection of the Republic, the SA stormtroopers who brutally murdered a communist worker and his family were sentenced to a "dishonorable" death.[125] Hitler himself immediately declared that these men should not be sentenced as "dishonorable" murderers and openly praised them for their actions. Moreover, party ideologue Rosenberg explicitly endorsed a dual system of criminal sentences in relation to this sentence: "This judgment of the court contradicts the elementary sense of national self-preservation of the nation . . . For us one soul is not like another; one human is not like another."[126]

This shift in perspective, irrespective of any change in criminal legislation, revealed the Nazis' goals for felony disenfranchisement. By applying a logic similar to Kahl's, they sought to use it to generate an image of people who acted against the interests of the national society. Yet, their replacement of the notion of "citizenship" with that of the "*Volk*" shows that it was not their aim to use the penal law to disenfranchise people who did not belong to the *Volk*. After all, once the Nazi Party had seized power, Nazi officials immediately drafted laws that disenfranchised—or, even better, denaturalized—citizens on racial grounds. These eventually culminated in the Nuremberg Laws, which were drafted separately from the debates about penal reform. Penal law played no role in this process.[127]

In short, the Nazi state aimed to denaturalize people who did not belong to the *Volk* by depriving them of their citizenship status altogether, while felony disenfranchisement remained a punishment for members of the *Volk* who acted against its interests. A new penal code was not introduced under the National Socialists, but they did increasingly use disenfranchisement in ways that aligned with their ideology of race and *Volk*. For example, the Blood Protection Law (*Blutschutzgesetz*), when it was introduced, arranged for disenfranchisement to be imposed, in principle, primarily on people guilty of miscegenation.[128]

The revocation of people's civil rights based on their race, which the Reich Citizens Act effected as part of the Nuremberg Laws in 1935, narrowed the application of disenfranchisement. The Nuremberg Laws effectively took away both Jewish citizens' rights and their entitlement to "civil honor" because the punishment only applied to people who had "honor" to begin with. Even so, the 1871 penal code remained principally in place during the Nazi regime, and criminal courts could still strip Jewish citizens of their civil honor. These practices did not correspond with the ideological intention of National Socialism, which

explains Himmler's discomfort with disenfranchising sentences against Jewish citizens, discussed in the introduction of this book. From the start, the Nazi Party aimed to denaturalize Jewish people based on their race, ultimately ending in the program to annihilate European Jewry. The punishment of disenfranchisement, however, only remained in place for people who were entitled to civil honor but acted against the basic interests of the German *Volk*.

In the early years of the Weimar Republic, disenfranchisement came to be hotly debated. Liberal scholars and social engineers claimed that it undermined a sense of community, generated disparities in society, and frustrated resocialization programs for released prisoners. The arbitrariness many perceived in relation to the "dishonoring" sentences reinforced modern scholars' complaints about the punishment. Above all, disenfranchisement conflicted with liberal tendencies that emphasized prisoners' basic rights. These negative appraisals of felony disenfranchisement found their way into important attempts at legislative reform. However, ideas about ex-convicts' rights did not resonate with local authorities, who showed little inclination to think of reforming or resocializing ex-convicts. The moral categories of honor, culpability, and atonement still dominated their assessment of rehabilitation petitions, even though ex-convicts appealed ever more often to the idea of community and community members' mutual dependence.

Once it came to power, the Nazi Party, like other political parties before it, instrumentalized felony disenfranchisement for its political agenda. The National Socialists were able to combine two elements associated with disenfranchised felons in this instrumentalization: the moral vocabulary of the authorities and the community-centered appeals of petitioners. On the one hand, Nazi ideologues promoted the moralization of penal law by reasserting the importance of categories such as honor and moral accountability. On the other hand, though, they simultaneously subordinated these notions to the *Volk* and introduced the notion of "social honor" to underscore honor's dependence on community.

Notes

1. Kathleen Canning, "Das Geschlecht der Revolution. Stimmrecht und Staatsbürgertum 1918/19," in *Die vergessene Revolution von 1918/19*, ed. Alexander Gallus, 84–116 (Göttingen: Vandenhoeck & Ruprecht, 2010).
2. *Freiheit*, 2 January 1919; *Vorwärts*, 14 January 1919; *Vorwärts*, 19 March 1919.
3. Fritz Stier-Somlo, *Die Verfassung des Deutschen Reichs vom 11. August 1919. Ein systematischer Überblick* (Bonn: Marcus & Weber, 1925), 135–36.
4. Arthur Crispien, "Das Rätewahlrecht," *Freiheit*, 2 June 1919.
5. Thomas Etzemüller, *Die Ordnung der Moderne. Social Engineering im 20. Jahrhundert* (Bielefeld: Transcript, 2015), 1–39.

6. Peter Fritzsche, "Landscape of Danger, Landscape of Design: Crisis and Modernism in Weimar Germany," in *Dancing on the Volcano: Essays on the Culture of the Weimar Republic*, ed. Thomas W. Kniesche and Stephen Brockmann, 24–46 (Columbia, SC: Camden House, 1994).
7. Wolfgang Schivelbusch, *Die Kultur der Niederlage: Der amerikanische Süden 1865 –Frankreich 1871—Deutschland 1918* (Berlin: Rowohlt, 2012).
8. Gerhard A. Ritter, *Der Sozialstaat: Entstehung und Entwicklung im internationalen Vergleich* (Munich: Oldenbourg, 1989), 115–16.
9. Rosenblum, *Beyond the Prison Gates*; idem, "Welfare and Justice"; Wachsmann, "Between Reform and Repression."
10. he notion of improvised democracy comes from Theodor Eschenburg, *Die improvisierte Demokratie* (Munich: Piper, 1963).
11. Anthony McElligott, *Rethinking the Weimar Republic: Authority and Authoritarianism, 1916–1936* (London: Bloomsbury, 2014), 133; Nadine Rossol, "Repräsentationskultur und Verfassungsfeiern der Weimarer Republik," in *Demokratiekultur in Europa, Politische Repräsentation im 19. und 20. Jahrhundert*, ed. Detlef Lehnert, 261–80 (Cologne: Böhlau, 2011).
12. For more on Liebknecht's first trial, see chapter 3.
13. Emil Barth, *Aus der Werkstatt der deutschen Revolution* (Berlin: Hoffman, 1920), 17. Carl E. Schorske, *German Social Democracy, 1905–1917: The Development of the Great Schism* (Cambridge, MA: Harvard University Press, 1955), 296–312; Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte*, Vol. 4: *Vom Beginn des Ersten Weltkriegs bis zur Gründung der beiden deutschen Staaten 1914–1949* (Munich: Beck, 2003), 205–15.
14. *Das Zuchthausurteil gegen Karl Liebknecht. Wörtliche Wiedergabe der Prozeßakten, Urteile und Eingaben Liebknechts* (Leipzig: Frankes Verlag, 1919), 108.
15. Rosa Luxemburg, "Was ist mit Liebknecht? (1916)," https://www.marxists.org (last accessed 4 April 2017).
16. *Stenographische Berichte Verhandlungen des Reichstages*, vol. 308 (Berlin, 1916), 1844–48.
17. *Protokoll der Reichskonferenz der Sozialdemokratie Deutschlands* (Berlin: Vorwärts, 1916).
18. "Flugblatt mit Aufruf zum Proteststreik gegen die Verurteilung Karl Liebknechts," *Deutsches Historisches Museum, Berlin*, Do 56/2197.1.
19. Rosa Luxemburg, "Wofür kämpfte Liebknecht, und weshalb wurde er zu Zuchthaus verurteilt?" (1916).
20. Karl Liebknecht, "Gegen die Freiheitsstrafe," in *Gesammelte Reden und Schriften*, 3rd edn., vol. 9, 391–96 (Berlin: Dietz, 1974).
21. Reinhard Baumann, ed., *Die Revolution von 1918/1919 in der Provinz* (Konstanz: Universitäts Verlag Konstanz, 1996).
22. Allan Mitchell, *Revolution in Bavaria, 1918–1919: The Eisner Regime and the Soviet Republic* (Princeton, NJ: Princeton University Press, 1965).
23. Emil Julius Gumbel, *Vier Jahre politischer Mord* (Berlin: Verlag der neuen Gesellschaft, 1922).
24. Stefan Grossmann, *Der Hochverräter Ernst Toller. Die Geschichte eines Prozesses* (Berlin: Rowohlt, 1919), 23.
25. Max Weber, "Zeugenaussage im Prozeß gegen Ernst Toller," in *Gesamtausgabe*, vol. 16, 485–91 (Tübingen: Mohr Siebeck, 1988).
26. Martin H. Geyer, *Verkehrte Welt. Revolution, Inflation und Moderne. München 1914–1924* (Göttingen: Vandenhoeck & Ruprecht, 1998), 82–83.
27. Evans, *Rituals of Retribution*, 489.
28. Hans von Pranckh, *Der Prozeß gegen den Grafen Anton Arco-Valley, der den bayer. Ministerpräsidenten Kurt Eisner erschossen hat* (Munich: J. F. Lehmann, 1920), 8.
29. Ibid., 10.
30. Ibid., 12.
31. *Schlesische Arbeiter-Zeitung*, 20 January 1920.

32. Norman Dankerl, *Alois Lindner. Das Leben des bayerischen Abenteurers und Revolutionärs* (Viechtach: Lichtung, 2007), 86ff.
33. "Der Mörder Eisners," *Volksstimme*, 18 January 1920.
34. Gumbel, *Vier Jahre politischer Mord*.
35. Heinrich Hannover, Elisabeth Hannover-Drück, and Karl Dietrich Bracher, *Politische Justiz 1918–1933* (Frankfurt a.M.: Fischer, 1966).
36. Karl Dietrich Bracher, "Vorwort," in Hannover, Hannover-Drück, and Bracher, *Politische Justiz*, 12–21.
37. Anthony McElligott, *Rethinking the Weimar Republic: Authority and Authoritarianism, 1916–1936* (London: Bloomsbury, 2014), 111.
38. Henning Grunwald, *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials* (Oxford: Oxford University Pres, 2012), 48–51.
39. Gotthard Jasper, "Justiz und Politik in der Weimarer Republik," *Vierteljahrshefte für Zeitgeschichte* 30, no. 2 (1982): 167–205, 172–73; cf. Dirk Schumann, *Political Violence in the Weimar Republic, 1918–1933. Fight for the Streets and Fear of Civil War*, trans. Thomas Dunlap (New York: Berghahn Books, 2009), 35–41.
40. See the debate in *Verhandlungen der Verfassunggebenden Deutschen Nationalversammlung*, vol. 333 (Berlin 1919), 5330–40.
41. BA-BL, R 3001/6028, Friedrich Kitzinger, "Die Bestrafung der politischen Verbrechen," *Frankfurter Zeitung*, 4 September 1920.
42. Gustav Klingelhöfer, "Politische Verbrecher," *Die Zukunft*, no. 111 (1920): 42–48.
43. Klingelhöfer wrote this response from the fortress in Niederschönenfeld, where he was incarcerated for his participation in the Bavarian Council Republic and served his time alongside other prominent members thereof, such as Toller and Mühsam.
44. Hans von Hentig, *Strafrecht und Auslese. Eine Anwendung des Kausalgesetzes auf den rechtbrechenden Menschen* (Berlin: Springer, 1914).
45. Jürgen Christoph, *Die politischen Reichsamnestien, 1918–1933* (Frankfurt a.M.: Lang, 1988), 65.
46. Hans von Hentig, "Politische Verbrechen der Gegenwart," *Deutsche Strafrechtszeitung*, no. 6 (1919): 218–22.
47. BA-BL, R 3001/6028, "Festung oder Zuchthaus für politische Verbrecher?," *Kölnische Zeitung*, 19 October 1920.
48. Cf. Hans von Hentig, *Aufsätze zur Deutschen Revolution* (Berlin: Springer, 1919), 8.
49. Guckenheimer, *Begriff der ehrlosen Gesinnung*, 78.
50. Moritz Liepmann, *Die Reform des deutschen Strafrechts. Kritische Bemerkungen zu dem "Strafgesetzentwurf"* (Hamburg: Gente, 1921), 123.
51. D. Simons, "Franz von Liszt," *Tijdschrift voor Strafrecht* 30 (1919): 333–36.
52. See chapter 1.
53. Paul Köhne, "Die Arbeiten des internationalen Kongresses für Gefängniswesen in Rom, 1885," *ZStW* 8, no. 3 (1888): 439–64.
54. *Mitteilungen der Internationalen Kriminalistischen Vereinigung* 22 (Berlin, 1924), 22.
55. Nikolaus Wachsmann, "Between Reform and Repression. Imprisonment in Weimar Germany," in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell, 115–36 (New York: Berghahn Books, 2014); Schauz, *Strafen als moralische Besserung*, 333–43.
56. Schauz, *Strafen als moralische Besserung*, 388; Patrick Wagner, *Volksgemeinschaft ohne Verbrecher. Konzeptionen und Praxis der Kriminalpolizei in der Zeit der Weimarer Republik und des Nationalsozialismus* (Hamburg: Christians, 1996), 20.
57. Wachsmann, "Between Reform and Repression," 123–24.
58. *Mitteilungen der Internationalen Kriminalistischen Vereinigung* 22: 30–32.
59. Evans, *Rituals of Retribution*, 515.

60. The Nazi legal scholar Greinert also mentioned this in his notes on the "Nebenstrafen und Nebenfolgen an der Ehre" that he drafted for the penal reform commission of the National Socialist Party; BA-BL R 3001/20933.
61. Gustav Radbruch, "Das System der Freiheitsstrafen im Vorentwurf," *MKS* 7, no. 4 (1910): 207–12.
62. Christoph, *Reichsamnestien*, 118.
63. Cited in ibid., 75.
64. Friederike Goltsche, *Der Entwurf eines Allgemeinen Deutschen Strafgesetzbuches von 1922 (Entwurf Radbruch)* (Berlin: De Gruyter, 2010), 45.
65. Ibid.; Ulfried Neumann, "Gustav Radbruchs Beitrag zur Strafrechtsreform," in *Gustav Radbruch als Reichsjustizminister (1921–1923)*, ed. Irina Mohr, 49–62 (Berlin: Mohr, 2004).
66. *Entwürfe zu einem Strafgesetzbuch (1919, 1922, 1924/25 und 1927)*, ed. Werner Schubert (Berlin, 1995), 191, 284.
67. At the meeting of the IKV in Hamburg in 1924, Liepmann noted the following about the treatment of prisoners in ideal circumstances: "In their treatment, which should be serious, just, but above all humane, their sense of honor should be preserved and strengthened," *Mitteilungen der Internationalen Kriminalistischen Vereinigung*, 22, 35.
68. Alexander Graf zu Dohna, "Der innere Konnex von Freiheitsstrafen und Ehrenstrafen," *MKS* 17 (1926): 352–59, 353. See chapter 1 on the importance of trust in the justification of felony disenfranchisement.
69. Eberhard Schmidt, "Die Gestaltung der Ehrenstrafen im künftigen Strafrecht," *ZStW* 45 (1925): 10–43, 28. Cf. James Q. Whitman, "What Is Wrong with Inflicting Shame Sanctions?," *Yale Law Journal* 107, no. 4 (1998): 1055–92.
70. Grünhut, "Die Abschaffung der Ehrenstrafen," 261.
71. Ibid., 265. On the notion of *Gesinnungsstrafrecht*, see chapter 2.
72. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 358 (Berlin, 1923), 9652.
73. GStA PK, I. HA Rep. 84a Nr. 7870, 177. Landestag in Preussen, 03.04.1924.
74. Wilhelm Kahl, "Ehrenstrafen," *DJZ* 28 (1923): 507–12.
75. Nicole Rossol, "Weltkrieg und Verfassung als Gründungserzählung der Republik," *Aus Politik und Zeitgeschichte* 50–51 (2008): 13–18.
76. Thomas Ruster, *Die verlorene Nützlichkeit der Religion. Katholizismus und Moderne in der Weimarer Republik* (Paderborn: Schöningh, 1994), 74. This was, in fact, one of Adolf Hitler's favorite quotes, which he used in several of his speeches: cf. Paul Hoser, "Hitler und die katholische Kirche," *Vierteljahrshefte für Zeitgeschichte* 42 (1994): 473–92, 490.
77. Kahl, "Ehrenstrafen." Cf. Weinrich, *Statusmindernde Nebenfolgen als Ehrenstrafen*, 120.
78. Compare this to the notion of the "counter-world" of criminal groups; Becker, *Verderbnis und Entartung.*
79. Friedrich Oetker, "Die Ehrenstrafen nach dem Entwurf von 1919," *Juristische Wochenschrift* 55, no. 5 (1924): 254–60, 255.
80. Ibid.
81. Horst Möller, *Die Weimarer Republik. Demokratie in der Krise* (Munich: Piper, 2018); Peukert, *Die Weimarer Republik*.
82. Moritz Föllmer and Rüdiger Graf, eds., *Die "Krise" der Weimarer Republik: Zur Kritik eines Deutungsmusters* (Frankfurt a.M.: Campus Verlag, 2005).
83. Ute Frevert, "Die Ehre der Bürger im Spiegel ihrer Duelle," *Historische Zeitschrift* 249, no. 1 (1989): 545–82, 579; Ute Planert, "Kulturkritik und Geschlechterverhältnis. Zur Krise der Geschlechterordnung zwischen Jahrhundertwende und drittem Reich," in *Ordnungen in der Krise. Zur politischen Kulturgeschichte der Zwischenkriegszeit*, ed. Wolfgang Hardtwig, 191–214 (Munich: Oldenbourg, 2007).

84. A pro argument can be found in Mark Jones and Karl Heinz Siber, *Am Anfang war Gewalt: Die deutsche Revolution 1918/19 und der Beginn der Weimarer Republik* (Bonn: Bundeszentrale für politische Bildung, 2017); George L. Mosse, *Fallen Soldiers: Reshaping the Memory of the World Wars* (New York: Oxford University Press, 1990), 156. An argument against can be found in Schumann, *Political Violence in the Weimar Republic*.
85. Geyer, *Verkehrte Welt*.
86. Föllmer and Graf, eds., *Die "Krise" der Weimarer Republik*.
87. Kathleen Canning, "Das Geschlecht der Revolution. Stimmrecht und Staatsbürgertum 1918/19," in *Die vergessene Revolution von 1918/19*, ed. Alexander Gallus, 84–116 (Göttingen: Vandenhoeck & Ruprecht, 2010).
88. LAV NRW R, BR 0007, no. 22780, petition from Maria M. to the Reichspresident, 23.08.1930.
89. LAV NRW R, BR 0007, no. 22779, letter from Leo V. to the District President of Aachen, 14.06.1926.
90. Ibid., petition from Leo V. to the Minister of the Interior, 12.12.1925.
91. Ibid., statement from Otto P. on the case of Leo Leo V., 22.01.1926.
92. Ibid., letter from the District President of Aachen to the Minister of the Interior, 21.01.1926.
93. Ibid., letter from the Ministry of the Interior to the District President of Aachen, 30.03.1926.
94. Ibid., letter from Leo V. to the District President of Aachen, 14.06.1926.
95. Eberhard Kolb, *Deutschland 1918–1933: Eine Geschichte der Weimarer Republik* (Berlin: De Gruyter, 2012), 109.
96. LAV NRW R, BR 0007, no. 22779, petition from Franz von D. addressed to the Minister of the Interior, 14.09.1926.
97. Ibid.
98. Greg Eghigian, "Pain, Entitlement, and Social Citizenship in Modern Germany," in *Pain and Prosperity: Reconsidering Twentieth-Century German History*, ed. Paul Betts and Greg Eghigian, 16–34 (Stanford, CA: Stanford University Press, 2003).
99. LAV NRW R, BR 0005, no. 22779, petition from Aloys R. to the District President, 26.03.1926; ibid., petition from Aloys R. to the Minister of the Interior, 24.09.1926.
100. Friesler called it "complicated legislation on rehabilitation, which today offers us the spectacle of revoking inappropriate punishments after a certain period of time as inappropriate, which would have been better left unacknowledged [to begin with]." Oswald Freisler, "Die Ehrenstrafen und ihre Berechtigung," *ZStW* 4, no. 1 (1921): 438–42, 442.
101. Ibid., letter from Jakob W. to the District President of Aachen, 25.08.1925.
102. John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge: Cambridge University Press, 1989).
103. Timon de Groot, "The Criminal Registry in the German Empire: The 'Cult of Previous Convictions' and the Offender's Right to Be Forgotten," *German History* 39, no. 3 (2021): 358–76.
104. LAV NRW R, BR 0005, no. 22778, petition from Karl S. to the District President, 24.11.1921.
105. Ibid., letter from the District President to the Minister of the Interior, 06.03.1922.
106. LAV NRW R, BR 0005, no. 22780, statement from the public prosecutor on the case of Joseph H., 14.12.1927.
107. Ibid., documents from the state prosecutor: request from Andreas B., 11.10.1929.
108. Ibid., documents from the state prosecutor: requests from 4.12.1927 and 18.04.1928.
109. Ibid., documents from the state prosecutor: request from Josef H., 29.01.1929.
110. Günter Spendel, "Gustav Radbruchs politischer Weg," in *Gustav Radbruch als Reichsjustizminister (1921–1923)*, ed. Irina Mohr, 24–34 (Berlin: Mohr, 2004), 32.

111. Gustav Radbruch, "Der Überzeugungsverbrecher," *ZStW* 44 (1924): 34–38. Cf. *Verhandlungen des 34. Deutschen Juristentages* (1926), 353ff.
112. Gotthard Jasper, *Der Schutz der Republik. Studien zur staatlichen Sicherung der Demokratie in der Weimarer Republik, 1922–1930* (Tübingen: Mohr Siebeck, 1963); Martin Sabrow, *Der Rathenaumord. Rekonstruktion einer Verschwörung gegen die Republik von Weimar* (Munich: Oldenbourg, 1994), 200–5.
113. Max Hirschberg and Friedrich Thimme, eds., *Der Fall Fechenbach. Juristische Gutachten* (Tübingen: Mohr, 1924).
114. Georg Dahm and Friedrich Schaffstein, *Liberales oder autoritäres Strafrecht?* (Hamburg: Hanseatische Verlagsanstalt, 1933).
115. Lothar Gruchmann, "'Blutschutzgesetz' und Justiz," *Vierteljahrshefte für Zeitgeschichte* 31 (1983): 418–42, 418.
116. Alfred Rosenberg, *Wesen, Grundsätze und Ziele der Nationalsozialistischen Deutschen Arbeiterpartei. Das Programm der Bewegung* (Munich: Boepple, 1930).
117. Helmut Nicolai, *Rasse und Recht* (Berlin: Hobbing, 1933).
118. Alfred Rosenberg, *Der Mythus des 20. Jahrhunderts. Eine Wertung der seelisch-geistigen Gestaltenkämpfe unserer Zeit*, 4th ed. (Munich: Hoheneichen, 1934). Cf. Arnold Zingerle, "Die 'Systemehre'. Stellung und Funktion von 'Ehre' in der NS-Ideologie," in *Ehre. Archaische Momente in der Moderne*, ed. Ludgera Vogt and Arnold Zingerle, 96–117 (1994), 103ff.
119. Alfred Hueck, Hans Carl Nipperdey, and Rolf Dietz, *Gesetz zur Ordnung der nationalen Arbeit. Kommentar* (Munich: Beck, 1934). Cf. James Q. Whitman, "On Nazi 'Honor' and the New European 'Dignity,'" in *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and Its Legal Traditions*, ed. Christian Joerges and Navraj Singh Ghaleigh, 243–66 (London: Bloomsbury, 2003), 252.
120. Helmut Nicolai, "Nationalsozialismus und Erneuerung des Deutschen Strafrechts," *Deutsches Recht. Zentralorgan des National-Sozialistischen Rechtswahrerbundes* 3 (1933): 5.
121. Wilhelm Sauer, "Aufgaben und Gefahren der Strafrechtsreform," *Deutsches Recht. Zentralorgan des National-Sozialistischen Rechtswahrerbundes* 3 (1933): 176–215, 177.
122. Hans Dieter von Gemmingen, *Strafrecht im Geiste Adolf Hitlers* (Heidelberg: Winter, 1933), 25; Alfred Balzer, *Die ehrlose Gesinnung im geltenden und zukünftigen Strafrecht* (Coburg: Tageblatt-Haus, 1934), 29–32.
123. Cf. Pamela E. Swett, "Political Violence, Gesinnung, and the Courts in Late Weimar Berlin," in *Conflict, Catastrophe and Continuity: Essays on Modern German History*, ed. Frank Biess, Mark Roseman, and Hanna Schissler, 60–79 (New York: Berghahn Books, 2007), 73–74.
124. Dahm and Schaffstein, *Liberales oder autoritäres Strafrecht?*, 26.
125. Dirk Blasius, *Weimars Ende: Bürgerkrieg und Politik 1930–1933* (Göttingen: Vandenhoeck & Ruprecht, 2005), 89–95.
126. Cited in Paul Kluke, "Der Fall Potempa," *Vierteljahrshefte für Zeitgeschichte* 5 (1957): 279–97, 285.
127. Gruchmann, "'Blutschutzgesetz' und Justiz," 418–20.
128. Alexandra Przyrembel, *"Rassenschande". Reinheitsmythos und Vernichtungslegitimation im Nationalsozialismus* (Göttingen: Vandenhoeck & Ruprecht, 2003), 399–409. Przyrembel, however, also notes that these sentences were not imposed that frequently. Meanwhile, non-legal actions such as public shaming were indeed very common in the early years of the Nazi era. Cf. ibid., 64.