Chapter 3

Political Offenders vs. Common Criminals

Challenging the Distinction

In their daily practice of trying and sentencing offenders, state prosecutors and judges in the German Empire could draw on precedents compiled in manuals made for precisely that purpose. And, of course, the books contained sample verdicts that entailed the punishment of disenfranchisement. A case tried in Kassel in 1899 is representative of the kind of cases described in the books. A trial by jury, the case involved Johann Groß, a plumber from Wabern, and Wilhelm Schmidt, an engraver from Bebra. The jury found both men guilty of counterfeiting, and the judge sentenced Groß and Schmidt to five and three years in the penitentiary, respectively. He also sentenced both men to deprivation of their civil privileges for five years and ordered them to pay all the legal costs. The manual instructed that it was important to give reasons for such a verdict and to explain, for example, why one received a harsher sentence than the other. The reason in this case was that Groß had orchestrated the criminal scheme. Judges also had to justify the convicts' disenfranchisement. In accordance with §32 of the Reich Penal Code, they did so by explicitly mentioning that the culprit showed a "dishonorable disposition" in his actions.[1] As argued in previous chapters, "the dishonorable disposition" was the crucial concept justifying the existence of the punishment of disenfranchisement. By pronouncing the judgment, the judge transformed the accused into a dishonorable felon.

Disenfranchisement was thus not only a tool for excluding criminals from participation in society; disenfranchising someone was a performative act of transforming a citizen into a dishonored felon. Arguably, however, counterfeiting was one of the least controversial crimes associated with a "dishonorable disposition," which is presumably why this case was chosen for the instruction manual. Furthermore, it was not necessary for the judge to elaborate further on

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the verdict, which demonstrated the dishonorable disposition of the accused by definition. In the German Empire, however, there were many criminal cases that were much more controversial than this one and the application of the notion of the "dishonorable disposition" was contested in such cases. Frequently, these were cases in which political ideology played a major role. Controversy often erupted when a court ruling turned a politician into a disgraced criminal.

The punishment of disenfranchisement had an "apolitical" claim, meaning that it was only supposed to be imposed only if the act reflected the offender's "dishonorable disposition." It was not supposed to be used to silence political opponents out of partisan interest—something the German political scientist Otto Kirchheimer later defined as "political justice."[2] Precisely because this punishment was allegedly apolitical, however, it sparked a great deal of controversy whenever seemingly "political offenders" were sentenced with disenfranchisement for having a "dishonorable disposition." In criminal procedures of the German Empire, the concept of a "dishonorable disposition" thus crucially helped to draw the line between "political offenses" and morally condemnable, criminal behavior.

The function of disenfranchisement—to demarcate the line between political offenses and condemnable criminal conduct—is central to this chapter. As anthropologists Jean and John Comaroff expounded, "sovereign power" resides "in the capacity to authorize and enforce" the distinction between political and non-political crime.[3] This chapter therefore outlines the extent of sovereign power in the German Empire by looking at instances in which the authorities tried to redefine certain "political" offenses as "common criminal activity." The chapter also scrutinizes the instances in which a mutually accepted consensus on the distinction between "common criminals" and "political offenders" limited the state's options for punishing political opponents. Whereas a consensus about "mutually accepted rules of the game" regarding how to treat political prisoners "enabled other societies to contain their political quarrels," historian Alex Hall argues, the German Empire lacked such a consensus, resulting in frequently harsh sentences against them, particularly if they advocated socialist ideas.[4] Nevertheless, this chapter seeks to show that there was, in fact, a consensus in the German Empire about criminal law and its relation to political offenders, with disenfranchisement being a central component to this consensus.

But it is crucial to distinguish between two levels here. The first level is the debate about the very idea that political offenders should be entitled to privileged treatment. The second level concerns the question of which offenses should be considered political. I argue that there was a delicate consensus on the first level, whereas the second level was more problematic. It is, therefore, important not to take the concept of political crime at face value. Thus, the chapter seeks to analyze how judges and public prosecutors defined "political crimes" in their actual sentencing practices, as well as seeking to determine the grounds they used to grant some defendants consideration as political offenders while denying it to others.

The 1890s was a crucial period: the Anti-Socialist Laws had recently been repealed and the authorities repeatedly attempted to include political activists in the category of "serious criminals." These attempts sparked tremendous outcry as they ran counter to the consensus that political offenders should be entitled to privileged treatment. This consensus that political offenders should be punished "mildly," therefore, was an indispensable condition of many commentators' criticisms of the policy of the 1890s, which, in turn, helped to lend these disputes their controversial air.[5] This chapter does not aim to dismiss the sometimes severe criticisms of Imperial Germany's legal system, including allegations of "class justice" and an often-proclaimed "crisis of trust" in the judiciary. But it does aim to show that criticism did not mean there was no consensus.

A "Perjury Plague"?

It is clear from the crime statistics of the German Empire that disenfranchisement was not usually imposed for offenses normally classified as political ones. In fact, disenfranchised felons were sentenced for a variety of offenses: from perjury to statutory rape, and from embezzlement to manslaughter.[6] Convictions for nearly all offenses could prompt disenfranchisement if the judge decided that the criminals had committed their crimes due to their "dishonorable dispositions." This was a major consequence of the judicial discretion introduced with the Reich Penal Code. However, the legal and historical literature on criminal law in the German Empire presents a broad consensus that disenfranchisement was only to be imposed in cases of perjury.[7] Yet, in reality, only 2 to 5 percent of all people sentenced with disenfranchisement were convicted of perjury. Of course, this did not change the broad perception of perjury as a dishonorable crime; 60 to 80 percent of people found guilty of perjury annually were deprived of their civil privileges, which meant that they were generally perceived to have acted out of a dishonorable disposition.

According to the crime statistics, the largest percentage of disenfranchised felons were those sentenced for theft (most of them either recidivist thieves or those convicted of "grand theft").[8] As seen in figure 3.1, theft constantly dominated statistics of felony disenfranchisement from 1882 to 1914. The numbers also show interesting changes, including, for instance, that disenfranchisement was increasingly imposed on people sentenced for sexual assault (especially against minors). This was a direct result of the implementation of the so-called *Lex Heinze* in 1892/1900, which defined sex offenses and other crimes against public morality more rigorously and instituted harsher penalties for these crimes, particularly soliciting sex from a prostitute. More generally, this can be interpreted as arising from criminal experts' shifting their focus away from "malicious" individuals and toward "perverted" people, as well as a growing awareness that society

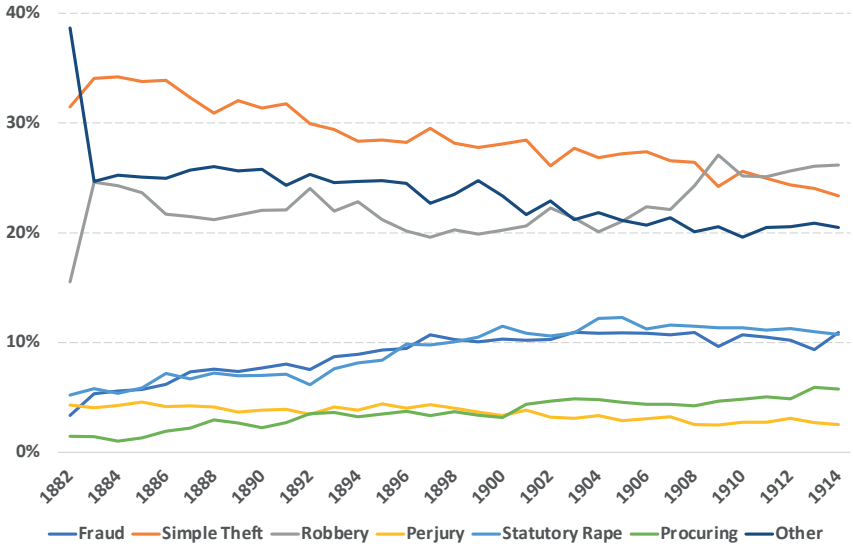

Figure 3.1. Sentences of disenfranchisement divided by criminal offense, 1882–1914. Source: *Statistik des deutschen Reichs, 1882–1914*. © Timon de Groot.

had a duty to protect children from sexual abuse.[9] In other words, the public increasingly condemned these immoral crimes, and the legislature supported this shifting perspective.

For perjury, however, the number of convictions does not necessarily reflect citizens' judgment of its seriousness. In fact, perjury was an emotionally laden subject in the German Empire.[10] Traditionally, the oath one took (and still takes) before testifying was meant to protect the judicial system against double-crossing and dishonorable behavior, and while jurists were supposed to trust that it deterred people from lying, in practice it often did not work. People still committed perjury, a fact that contemporaries generally ascribed to diminishing respect for the sanctity of the oath and the honor of the court. This implied a decline in people's moral credibility, which was frequently attributed to the diminished piety of German society.[11] Perjury remained the paradigmatic offense against public trust, so criminal experts saw it as clearly reflecting a dishonorable disposition, and, almost by definition, regarded the perjurer as a malicious individual intentionally trying to con the system. Consequently, they strongly correlated the number of perjury convictions with the "honor" and moral character of the German citizenry.

Nevertheless, the total number of people convicted of perjury during the German Empire actually declined, with only a little more than a thousand such convictions occurring in 1882. The rate steadily dropped to between five hundred and six hundred between 1905 and 1913. These statistics potentially support the

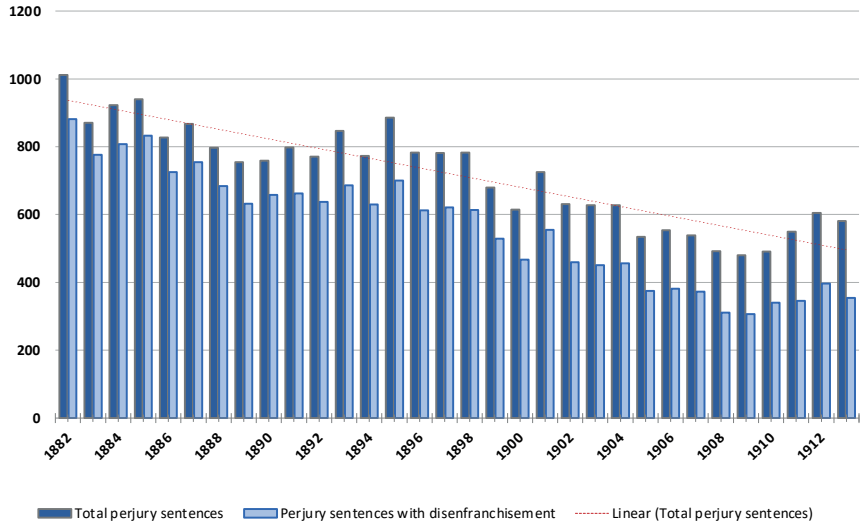

Figure 3.2. Annual number of perjury sentences, 1882–1914. Source: *Statistik des deutschen Reichs, 1882–1914*. © Timon de Groot.

view that the German authorities lost interest in perjury. Paradoxically, though, many people, including Ulm judge Gustav Pfizer writing in the *Grenzboten* in 1886, felt that a "perjury plague" was threatening the empire's judicial system, even though there were fewer convictions.[12]

However, the statistical evidence was somewhat controversial. Although "dark numbers" were not part of German criminal experts' crime statistics (until 1908, when Japanese/German mathematician Shigema Oba used the German equivalent *Dunkelziffer* in his book, which influential statisticians like Georg von Mayr then picked up), they had long been aware that statistical knowledge of crime had its limitations.[13] Indeed, this awareness underlay a great deal of anxiety about criminals passing as normal citizens and perjurers double-crossing the judicial system.

The intellectual father of so-called *Moralstatistik* in Germany, Alexander von Öttingen, had already pointed out these limitations in crime statistics in an article he published in the first volume of the *Zeitschrift für die gesamte Strafrechtswissenschaft* in 1881. Öttingen argued that one should not focus too much on the number of actual criminal convictions if one wanted to make claims about the nation's "public morality" (*öffentliche Moral*). Instead, he believed that assessment of a nation's moral development had to include the "great number of illegal acts that are not prosecuted, that take up the energies of the entire people but are never dealt with in court."[14] Similarly, Otto Mittelstädt (commenting on Wilhelm Starke's book *Verbrechen und Verbrecher in Preußen 1854–1878*) pointed

out that only a small portion of the "mass of criminal substance" was prosecuted and urged criminal experts to be cautious when interpreting crime statistics: "The statisticians, who despite this fact continue to work with these inconclusive, arbitrary numbers, cannot be warned enough to use caution."[15]

Experts also exhorted caution in relation to the official numbers. Alfred Kloss, an influential state prosecutor from Halle who authored an official textbook for his profession, found the official crime statistics for perjury unconvincing; he presented his own alternative findings based on his experiences at the criminal court in Halle in a 1904 lecture for the Saxon Prison Society. He believed that, in a year, he had witnessed six cases of false testimony in which the perjurer had been acquitted or not prosecuted. Based on the number of oaths annually sworn in German criminal courts, he concluded that the real number of perjurious acts that year was about 11,321—almost twenty times the number of convictions for such acts.[16] In other words, even though conviction rates were dropping rapidly, the panic about perjury hardly subsided. Paradoxically, the publication of the numbers actually heightened anxiety about perjury as people became more aware of the large number of cases that went unpunished. Some even argued that the more oaths people swore, the more people committed perjury.[17]

The Public's "Excitability about Crime"

Crime statistics were both a sign and a signifier in the public debate on the magnitude and seriousness of crime in German society. Perjury statistics played an important role in this debate because they could easily be manipulated to discredit an entire group for its lack of moral credibility. Given the perceived religious nature of the judicial oath, it could, for instance, be used to discredit Christians of other denominations. Indeed, some people claimed that crime statistics proved Catholics' greater tendency to commit perjury, an allegation often made in the context of the *Kulturkampf*.[18] Antisemitic sentiments also crept into this discussion.[19] Jewish citizens were overrepresented in perjury statistics, which antisemites exploited to argue that Jews were less trustworthy than others on racial grounds. The influential author and active member in the *Wandervogel* movement, Heinrich Sohnrey, for instance, used these statistics to turn the perjury discussion into an entirely Jewish problem.[20] Most commentators, however, provided different explanations for these statistics, pointing out that Jewish people usually practiced professions in which perjury and fraud were more commonly encountered.[21] The Jewish organization Verein zur Abwehr des Antisemitismus shared this view.[22]

In general, there was no indication in the crime statistics that one ethnic or religious group was disenfranchised significantly more than others. An overview by the statistical bureau of Prussia of criminality among different confessions in

1911, for instance, indicated an overrepresentation of Jews within certain typical "dishonorable" crimes, such as fraud and forgery, but a significant underrepresentation in crimes such as theft and robbery.[23] In fact, statistician Rudolf Wassermann argued that one would expect an even higher rate of crimes (what he called *soll-Kriminalität*) with a profit-seeking motive among Jewish Germans than the current numbers (*ist-Kriminalität*) showed, given the fact that Jews were more represented in professions where these crimes were more common.[24]

These discussions surrounding perjury and perjury convictions show that the official publication of crime statistics reinforced anxiety about "unknown" aspects of crime and punishment, and vice versa. The more statistics generated knowledge about crime and prosecution, and the more this knowledge was published and distributed via the national media, the more anxiety people had about offenses going unpunished.[25] This cycle created a demand for more knowledge about "actual" crime and was, in the words of the influential law professor Herman Seuffert, a result of the German public's "excitability about crime." In his view, one testament to this growing nervousness was the rise in denunciations.[26] In short, crime statistics did little to calm the panic around crime and criminals passing as "normal" citizens. Instead, they often fueled these anxieties in unforeseen ways.

Consequently, when, according to the Reich crime statistics, the total number of people sentenced with disenfranchisement dropped after the founding of the German Empire, this prompted an anonymous public prosecutor from southern Germany to express his dismay about the empire's "mild" penal policy. Calling for "more honor punishments!," he complained in a letter to the *Deutsche Tageszeitung* in July 1914 (shortly before the outbreak of World War I) that this punishment had grown less significant after the Reich Penal Code was introduced.[27] Indeed, there had been a steady decline in the imposition of disenfranchisement in Germany since 1882.[28] In 1882, the civil privileges of 20,507 individuals were suspended, mostly for robbery convictions.[29] In 1900, the number was 14,029, and it reached a low point in 1907, when 11,506 individuals lost their civil privileges. The number increased slightly after 1907 (12,552 in 1911), but it never reached the same level as in 1882.[30]

However, in this case, too, one must be suspicious of the conclusion, based on a decline in convictions, that "honor punishment" had lost its significance. Despite the drop, the rate of people sentenced with disenfranchisement stood at 8.5 percent in 1882 and remained around or above 5 percent in the decades thereafter (except during World War I).[31] In fact, throughout the empire's existence, disenfranchisement was imposed more frequently than the penitentiary. Therefore, when compared to the total number of penitentiary sentences, it is evident that disenfranchisement certainly had a prominent place in the penal system of the German Empire.

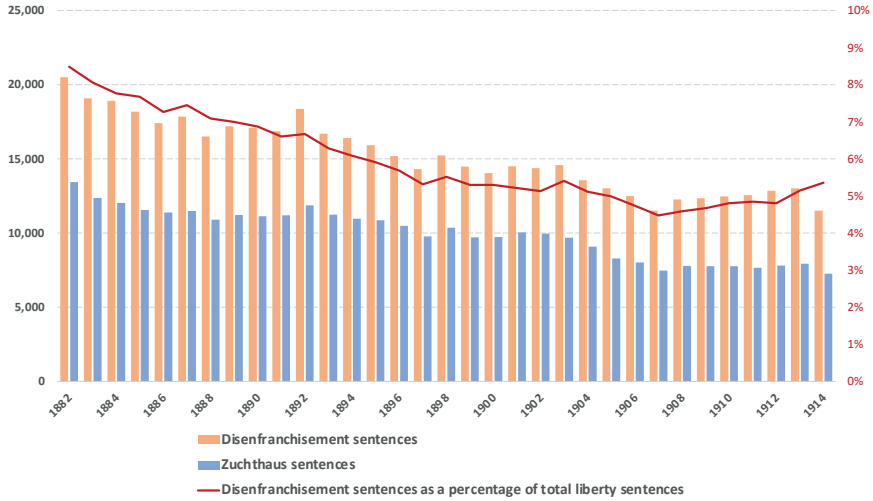

Figure 3.3. Annual number of disenfranchisement sentences compared to penitentiary (*Zuchthaus*) sentences, 1882–1914. Source: *Statistik des deutschen Reichs, 1882–1914*. © Timon de Groot.

This is peculiar since disenfranchisement and the penitentiary had long gone hand in hand. In the Prussian Penal Code, disenfranchisement was still codified as an automatic consequence of a penitentiary sentence (see chapter 2). The permanent suspension of civil privileges after a penitentiary sentence bolstered the dishonorable nature of the latter. The Reich Penal Code, by contrast, stipulated that the decision to deprive an offender of his civil privileges should be left to the judge's discretion. Thus, this penal code officially disconnected the two punishments. The statistics suggest that judges frequently exercised their discretionary powers because they often supplemented regular prison sentences with dishonoring punishments. From this perspective, the anonymous public prosecutor seems to have been misguided in concluding that fewer disenfranchisement sentences in the crime statistics meant that the punishment was falling into disuse.

The anonymous public prosecutor, however, had a much larger concern. Beyond the drop in disenfranchisement, he was worried that certain types of offenders—especially procurers, sex offenders, and, most notably, political offenders—were all too frequently coming off unscathed. He felt that this was a clear sign of the German penal system's "mild" treatment of such offenders compared to how they had been treated the past. Yet the data did not really support this claim since the rate of procurers and sex offenders being sentenced increased. Even though the prosecutor was mistaken about certain facts, though, the article confirms that people generally ascribed a moral function to the punishment of disenfranchisement: it should be used to punish those convicted of

the most morally condemnable of crimes. This article was also remarkable in that the anonymous prosecutor broke with a long-standing consensus about the use of disenfranchisement by singling out political offenders for harsher punishment—a position that was only very gradually beginning to take hold. In fact, most legal scholars at that time conceived of disenfranchisement as "apolitical" by its very nature: it was not to be used against political offenders but only against those considered dangerous to the public whose actions had indicated that they were somehow lacking in morality.

"Opinion as Such Is Not a Crime"

As mentioned, the crucial notion in disenfranchisement was that offenders so sentenced presumably had a "dishonorable disposition." But the legal literature hardly ever explained exactly what this was. As a result, the only point of universal consensus was that political offenses should not suggest that the offenders had such a "dishonorable disposition." That is, a "dishonorable disposition" was considered a politically neutral category; political crimes—despite being illegal actions—were, thus, typical "non-dishonoring" offenses.

A famous trial often mentioned in this context was that of lèse-majesté against Johann Jacoby in 1842. After he had published his critical treatise *Four Questions Answered by an East Prussian*, he was found guilty and sentenced to two years of fortress confinement—not penitentiary confinement—and his privileges remained intact. The presiding judge defended his decision to sentence him to fortress confinement with the following remarks:

> Questions of politics, principles of the general welfare, debates on the utility or reprehensibility of state institutions and constitutions . . . cannot be made into an object of juridical decision. Such discussions belong to a domain from which the judiciary is excluded and thus from which it must maintain its distance. . . . Opinion as such is not a crime.[32]

At the time, the sentence was controversial; in fact, it led Friedrich Wilhelm IV to be stricter with criminal judges.[33] But in the subsequent decades, legal experts commenting on political trials frequently cited it to argue that political offenders, particularly people convicted of high treason, were supposed to be treated in a more privileged manner than other offenders were.[34]

Legal scholars' general attitude toward political offenders was not just based on the case against Jacoby but was, in fact, derived from Immanuel Kant's philosophy of the nature of positive law and a distinction drawn between it and morality. Prussian legal philosopher and politician Julius Kirchmann prominently drew upon this distinction:

> The distinction between the two is clear to all. Legal duties have a compulsory character, while such a compulsion cannot be brought to bear on moral duties, not even when it concerns the most important and holy of things. Another distinction is that the law does not consider one's conscience or one's inner motive to act. It only sees the external action, whereas morality also encompasses the motive.[35]

Such arguments implied that political offenders had to be punished for transgressing the norms dictated by positive law, but that the state had to refrain from making moral judgments about such offenders' general disposition. In this sense, the state basically claimed it would not pass judgment on the political ideas that motivated a transgression of the law. The opposite of this idea was called *Gesinnungsstrafrecht*—sentencing people for having a certain conviction—a type of law that was heavily contested, mostly by liberal legal scholars.[36]

An important consequence of this distinction between positive law and morality was that it allowed scholars to view disenfranchisement as a punishment that clearly expressed a strong moral judgment about the motivation of the offender beyond the sphere of legality.[37] The legal scholar Richard John expressed this view pointedly in 1869. Punishing an offender with disenfranchisement, he argued, entailed "a judgment against his honorability, his morality."[38] In other words, depriving offenders of their civil privileges suggested that they had served their time but had not yet "morally" atoned for their crimes. The punishment thus formed a vital part of the moral economy of the German Empire, making those regarded as morally reprehensible pay more to atone for their crimes than political offenders did.[39]

Fritz von Calker, a law professor at the University of Strasbourg, championed this idea of treating "malicious," morally reprehensible criminals more harshly.[40] A consequence of this view was that it gave more weight to the character of the offender than it did to the nature of the criminal act. For this reason, Calker fiercely opposed the Reich Penal Code's statutes, claiming that certain offenses testified to a dishonorable disposition by definition (perjury being the prime example).[41] He argued that disposition should be judged on a case-by-case basis as judges should individually assess the moral convictions behind each offender's actions.

The difficulty for many scholars was that several other conclusions could be drawn from such a distinction between positive law and morality. Some scholars, for instance, started arguing that the philosophical distinction between law and morality actually meant that the state only had the legitimate power to punish transgressions of the law and was not entitled to make judgments about the moral character of serious felons, as this would constitute another form of *Gesinnungsstrafrecht*. Calker, on the other hand, did not think that focusing on offenders' character contradicted the principle of punishing only actions. Instead, he viewed it as a more thorough way of determining culpability.[42]

This idea of a deeper understanding of culpability came up in the context of the *Schulenstreit* between the "classic" and "modern" schools of law.[43] With his

emphasis on the question of culpability, Calker presented himself as an adherent of the "classic" school. In Liszt's modern school, however, safeguarding society from potentially dangerous individuals was a key point on the agenda. This prompted modern school adherents to place more emphasis on assessing individuals' character, but they also advocated that the moral distinction between "honorable" and "dishonorable" dispositions should be abolished.

This idea only gradually took hold in Liszt's own writings. In his 1889 and 1890 essays on the tasks of criminal policy, he wrote that the distinction between dishonoring and regular punishments was crucial to the German system of criminal justice.[44] Six years later, however, he argued to the contrary that judges should be careful about passing judgments on an offender's morality or the degree to which a crime should be viewed as morally reprehensible.

By this time, he considered it wrong to replace a purely legal judgment with both moral and "aesthetic" ones, arguing that it was a mistake to use the supposedly honorable or dishonorable disposition of the offender in determining the severity of a punishment: "The times in which honor and right were closely related concepts are long gone."[45] One of Liszt's suggestions was to replace the notion of the "dishonorable" disposition with an "anti-social" disposition, because he believed that "anti-social" did not imply a judgment about a person's intrinsic moral character but only conveyed a judgment about the risks that person posed to society.

Proponents of the "classic" view frequently accused the modern school of propagating a form of *Gesinnungsstrafrecht* by focusing on an offender's character and the protection of society.[46] They worried, for instance, that the "modern" position led to people being punished without having actually committed a crime. In the end, however, both arguments placed weight on the character of the offender. Yet, it was mostly "classic" school adherents who combined this with the idea that certain crimes testified to a morally reprehensible disposition, which they used, in turn, to justify harsher punishments.[47] For the same reason, those of the classic school were more supportive of existing regulations in the Reich Penal Code, while the moderns pushed more for its reform. Erik Wolf, a twentieth-century philosopher of law, depicted the difference between the two schools as the difference between Berlin—the seat of legislative power—and Leipzig—where the imperial court of justice resided. Liszt was a professor at the University of Berlin and Binding was a professor in Leipzig. According to Wolf, the conflict was between the joy of persistence (*beharrungsfreude*) that characterized the power of jurisdiction (Leipzig) and the pleasure in progress (*fortschrittslust*) that characterized the power of legislation (Berlin).[48]

Academic Literature on High Treason

The distinction between positive law and morality was arguably the dominant mode of justifying harsher punishments for "serious" criminals and lighter pun-

ishments for political offenders, but this proved to be much more difficult in practice than in theory. It was not always easy for jurists to determine where the line between a political and a dishonorable crime should be drawn. The regulations in the Reich Penal Code did not help much in answering this question since the code stated that the special category of offenses listed as high treason (*Hochverrath*) could be punished in various ways. Only one act of high treason—assassination of the head of state—prescribed a single possible sentence: the death penalty.[49] For all other forms of high treason, the law stipulated that offenders were either to be punished with a stay in the penitentiary, or, if there were special circumstances, in fortress confinement. The penal code did not provide for the possibility of depriving these offenders of their civil privileges. Given this fact, one might argue that high treason was not dishonoring by definition.[50]

However, this was problematized by the definition the code provided for extenuating circumstances, with §20 being most crucial in this matter: "where the law offers the choice between the penitentiary and open custody, the penitentiary may only be chosen when it is clear that the punishable act arose out of a dishonorable disposition."[51] This article exacerbated the dishonoring nature of the penitentiary sentence. In chapter 2, I discussed the problematic definition of the penitentiary sentence and its relation to the notion of honor; it was problematic because the penitentiary sentence made ex-offenders ineligible to hold public office or to join the army or marines. In reality, the penitentiary sentence still had an element of disenfranchisement to it. But this article made it even more problematic. During debate on the law in the Reichstag, many members argued that fortress confinement should be the standard punishment for political offenders, implying that political offenders generally acted out of an honorable disposition and that they should thus only be sentenced to the penitentiary in exceptional cases.[52] Yet, despite the reflections on this notion in academic literature, lawyers had few formal legal prescriptions for deciding what was "dishonorable."[53]

In a 1921 book devoted to the topic of the "dishonorable disposition," law student Eduard Guckenheimer, who was trained in Liszt's "modern" school and supervised by Liszt's protégé Moritz Liepmann, addressed the lack of a satisfactory definition of a dishonorable disposition. Neither the law nor jurisprudence had provided one. He also pointed out that members of the Reichstag, while discussing the Reich Penal Code, had in fact actively supported leaving the notion undefined. Influential Reichstag member Eduard Lasker, for instance, justified this by arguing that judges were not supposed to base their decisions on some kind of template but should proceed on a case-by-case basis, trusting their intuition about what motivated the act.[54]

The only consensus about the definition of dishonorable disposition found in the legal literature was that the notion of honor was explicitly to be understood not as a form of estate honor but as a truly ethical notion.[55] Given the charged nature of these decisions, trial by jury was often prescribed for offenses that could lead to these harsh punishments. In such cases, a group of the defendant's peers

could assess his motives and character and secure a fair sentence.[56] But these jurors, too, essentially had to trust their moral instincts in making such decisions. This meant that it was truly up to judges and juries to determine which crimes suggested a dishonorable disposition. In some cases, this meant that they had the power to really determine the distinction between "politics" and "crime."

"Insidious Attacks" and "Catchphrases about Class Struggle"

The question of how the system should handle political crimes became especially relevant in the political struggle during the first two decades of the German Empire. Amid a protracted economic recession that began in 1873, when authorities grew more concerned about the expansion of Social Democracy, Chancellor Bismarck launched a campaign to severely suppress the actions of its adherents. This suppression manifested itself in several important measures: the creation of the "political police" in 1873 and, after two failed assassination attempts on Chancellor Bismarck, the introduction of the Anti-Socialist Laws of 1878. The Anti-Socialist Laws remained in force for twelve years, an era of intense political persecution and the state's struggle against Social Democrats. During this time, the concept of what constituted a "political crime" was also seriously questioned. Importantly, though, despite the strict policies of oppression targeted at Social Democracy, the Anti-Socialist Laws by and large continued the policy of "mildly" punishing political offenders: the possibility of disenfranchisement was not included in these measures. Only after the Anti-Socialist Laws were repealed in 1890 did the German authorities try more actively to get Social Democrats convicted as "common criminals."

The first high treason trial against Wilhelm Liebknecht and August Bebel in 1872 was clearly conducted on the assumption that they were to be treated "mildly" as political offenders. In 1872, they were put on trial for founding the Socialist Party, and the principle of privileged punishments for political offenders was applied without reservation. The judges never truly considered the idea that Liebknecht and Bebel should be disenfranchised, nor did the public prosecutor seek this punishment.[57] Even though they were the most prominent victims of Bismarck's politics targeting Social Democrats in the early years of the German Empire, the judiciary treated them according to the consensus among legal scholars. Liebknecht and Bebel were thus sentenced to open custody for high treason and were detained in the Hubertusburg fortress for two years. It turned out to be quite significant for the two that they were not sent to the penitentiary, nor deprived of their civil privileges. They did not lose their eligibility to be representatives in any of the German houses of parliament, and they were thus able to remain members of the Saxon Landtag and the Reichstag, respectively, after they had served their time.

Even as the persecution of Social Democrats grew more intense when the "political police" force was founded and the Anti-Socialist Laws of 1878 were introduced, general ideas about the punishment of political crimes did not seem to change that significantly.[58] For example, no offense in the Anti-Socialist Laws was punishable with a penitentiary sentence or with the deprivation of civil privileges: membership in an outlawed socialist organization could be punished with a stay in a "regular" prison of up to three months (§17), while the distribution of illegal pamphlets could lead to a sentence of up to six months of imprisonment (§19).[59] In fact, legal commentators commonly evaluated the nature of punishments in the Anti-Socialist Laws in different terms than the punishments in the actual Reich Penal Code. The Anti-Socialist Laws were often described as "police measures," whereas punishments from the actual penal code were termed "criminal punishments."[60] The state could thus argue that the policy against Social Democrats was justified because the "mild" sentences were proportional to the political nature of their offenses.

Because political offenders enjoyed privileged treatment in accordance with contemporary discourse on penal law, they initially seemed willing to accept their punishment without much consternation. This explains why Wilhelm Liebknecht and other leaders of the Social Democratic movement chose law-abiding tactics in the early years of the Anti-Socialist Laws; hoping this would lead to a more lenient execution of the law, they thought it reasonable that people who violated the laws should be punished in accordance with them.[61] However, Liebknecht did not foresee the severity with which the Anti-Socialist Laws would be implemented, including the suppression of the main socialist media outlets, the dissolution of socialist unions, and the imposition of the Lesser State of Siege. After the emperor proclaimed a period of "mild practice" for the Anti-Socialist Laws in 1881, compliance again seemed a reasonable tactic for the Social Democrats. This ended in 1886, though, when the laws were more rigorously enforced once again.[62]

Despite the "mild" punishments in the Anti-Socialist Laws, however, the judges and public prosecutors still had the important power to determine who was considered a "political" offender and who had committed a "dishonorable" crime. They had this authority especially in their judgments about high treason. After the introduction of the Code of Criminal Procedure in 1877, cases of high treason came under the jurisdiction of the highest court of the German Empire (the Reichsgericht), so the judges of this court were responsible for distinguishing whether high treason was committed out of "political" motives, or, rather, "criminal" ones.[63] The importance of this power became clear in high treason trials following the introduction of the Anti-Socialist Laws. These trials showed that defendants could be categorially denied the privilege of being treated as "political" offenders, and this was pertinent to the publicly accepted definition of "dishonorable disposition."

In 1881, the Reichsgericht tried a group of people from Frankfurt and Berlin who had allegedly formed a secret society to plan attacks on police officers who were actively persecuting anarchists. The group from Frankfurt, which received the most media attention, was led by a shoemaker named Joseph Breuder; another prominent member was the Belgian intellectual Victor Dave. The public prosecutor officially charged the organization with conspiring to violently attack the state in several different ways, including plotting to attack the notorious Frankfurt police officer Ludwig Rumpf (the man popularly described as the "anarchist eater") with acid.[64] It was Rumpf, in fact, who had been responsible for their arrest. He had people infiltrate the group and had key witnesses who could testify that the group had been plotting against the authorities. The accused had also been in possession of material that supported anarchistic ideals, which was used as evidence in the case. The most important documents were copies of the magazine *Freiheit* and other works by the prominent anarchist Johann Most, which wholeheartedly promoted the propaganda of the deed. Furthermore, the state prosecutor also argued that the group was organized along the lines that David Most had outlined in his pamphlets.[65] All of the defendants pleaded not guilty, contending that their organization had different aims than those they were accused of pursuing. However, the judge considered it proven beyond doubt that the organization wanted to "destroy the social order."

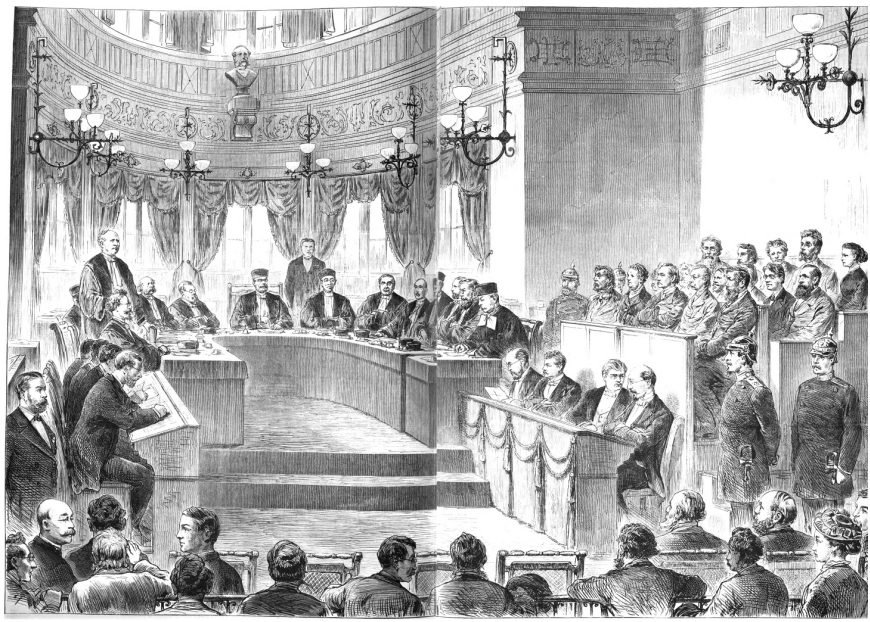

Figure 3.4. The trial of high treason against Joseph Breuder and accomplices before the supreme court in Leipzig in 1881. Fritz Waibler, "Der Socialisten-Hochverrathsproceß vor dem Reichsgericht in Leipzig," *Illustrirte Zeitung*, 29 October 1881.

Besides the question of guilt, the question of whether the offenders should be disenfranchised played a crucial role in the trial. In the end, although some of them were acquitted due to lack of evidence, most of them were sentenced to time in the penitentiary and deprived of their civil privileges. The public prosecutor had argued that the criminals had been motivated by ideas so morally reprehensible that the judiciary needed to highlight the offense's dishonorable nature—that it was not an "honorable" political offense. When exercising violence against the state constituted an integral part of offenders' political philosophy, the disposition of those acting upon it could no longer be deemed honorable, he had said. The distinction between violent action and mere attempts to practice political ideas was crucial for determining whether offenders had acted honorably.[66] Karl Braun, a state attorney from Leipzig who provided a detailed commentary on the case in the newly established journal *Das Tribunal*, maintained that the convicts' sentences, including the penitentiary and disenfranchisement, were not controversial but regarded as the just deserts for their crime.[67]

Did this constitute a break with the philosophical consensus about political offenders? It is possible to argue that it did. However, the judges and the prosecutor wanted to ensure that this verdict would not be understood in this way. Thus, they did everything in their power to argue that the accused had not been trying to translate political convictions into practice, but were simply low-life criminals motivated by their "dishonorable dispositions." The prosecutor's own account of the case shows how he actively sought to depict this group as a criminal organization, drawing on popular descriptions of the criminal underworld and the discursive resources provided by the criminal sciences. He used notions like rogue deeds (*Schurkenstreichen*) and insidiousness (*Heimtücke*) and contrasted them with the "German virtues" of manliness and courageousness:

> in a sense, this insidious assault, this lying in wait in the dark to attack an unsuspecting person taking a walk, is much more dishonorable and reprehensible than the use of means of violence in an uprising, in struggles at the barricades, in the honest face-to-face fight.[68]

In other words, the prosecutor made sure to say that overt, public political opposition was not dishonoring, but that the actions planned by the anarchists should not be confused with political action. The definitive attribute for the prosecutor was the distinction between public and secretive action: secrecy was the key feature that allowed him to associate the anarchists with "common" criminal organizations. Secrecy combined with the aim to subvert the state order was indeed a common trope in criminological treatises of the time that depicted criminal organizations as a "counterworld" (*Gegenwelt*) within society.[69]

The authorities' suspicion that the group was a criminal organization and not a legitimate political organization was bolstered by the notion that political ideologies could be used as a cover-up for "normal" crime. Public prosecutor Gustav

Otto articulated this belief in his popular book *Berlin's Criminal World* of 1886. Criminal organizations that were determined to subvert the order of society, he argued, occasionally embellished their "insidious" attacks on society with catchphrases about class struggle:

> what used to be a simple struggle for one's own existence only need be deemed a good thing, a justified war against capital, and use other nice catchphrases to be brought into good form and the monsters like Stellmacher and Kammerer are ready-made.[70]

Hermann Stellmacher and Anton Kammerer were Viennese men who shot a police officer in 1884. The media typically interpreted attacks on police officers as anarchistic because police officers were responsible for keeping an eye on anarchist and socialist organizations. What Otto observed in this passage was what he believed to be the thin line between ideological action and common criminality; his greatest worry was that "common" criminals would cunningly make use of this slippery slope. In other words, Otto believed that many "common" criminals pretended to be ideologically inspired champions of good causes when they were in fact acting out of selfish motivations. This thought had clearly inspired the judges and prosecutors in the trial against Breuder and his Frankfurt group.

For precisely the same reason, prominent Socialist Party members were mostly supportive of these verdicts against anarchist offenders. Many of them actively tried to distance themselves from anarchists and the so-called propaganda of the deed by deploying similar tropes of the "criminal" and dishonorable nature of anarchism.[71] Wilhelm Liebknecht, for instance, used such arguments in his speech at the 1887 convention of Social Democrats in St. Gallen, incorporating words that recall Otto's descriptions in *Berlin's Criminal World*:

> People who commit robbery, homicides and arson are common criminals, even when they justify their crime under the guise of anarchism. The fact that common criminals tout themselves as bearers of higher ideas is nothing new.[72]

Although Liebknecht did not group people who supported the propaganda of the deed together with "common criminals" who masked their deeds behind a political ideal, he did point out the slippery slope of the propaganda of the deed. He also used other notions, like "phrase revolutionaries" (*Phrasenrevolutionären*)—that is, revolutionaries in word only—on some occasions to attack the hypocritical nature of such groups.[73] It is thus significant that many prominent members of the Socialist Party approved of the verdict against Breuder and Dave, reinforcing the image of anarchists as "common criminals."

Otto's description of common criminals using political phrases as a cover-up underscores another key attribute of the so-called dishonorable disposition: selfishness. This category, in fact, played a dominant role in the verdict against Victor

Dave. Because of Dave's rather exceptional status in this trial, the public prosecutor had a more difficult time justifying sentencing him to the penitentiary. Dave's lawyers explicitly argued that it was unjust for him to be sent to the penitentiary because they believed that this would have a much more detrimental effect on him than on the other members of this organization due to his being a more educated person. The state prosecutor, however, used Dave's Belgian citizenship to accuse him of a specific kind of egoistic opportunism. Dave, he argued, belonged to a group of people who traveled to other countries to mobilize working-class people but returned to the safety of their home countries once they were prosecuted, while the actual protesters were punished for their actions.[74] The kind of egoism and opportunism that this behavior reflected, the prosecutor claimed, was all the more reason to view Dave as having been motivated by his dishonorable disposition.[75] Thus, while his lawyers tried to emphasize Dave's intellectual character—implying that he was not a man of action but of "spirit"—the judge had a different opinion and declared that Dave was not just an "idealistic fanatic" but truly a man capable of "dishonorable" action.[76]

Indeed, the contrast between acting selfishly or idealistically became a prominent part of the distinction between political offenses and "dishonoring" crimes. As the prominent Swiss legal scholar Carl Stooß argued in his 1892 textbook on criminal justice: "The person convicted of high treason who acts selflessly in the name of ideals may not be punished as a common criminal."[77] Guckenheimer also drew on this distinction when he later argued that the one juridical notion that defined the dishonorable disposition was egoism.[78] In fact, Guckenheimer argued that the judges in the trial against Breuder and his group believed that many of the defendants had indeed been motivated by personal profit, which made them even more "dishonorable."[79]

The trial against Breuder and his group became notorious in many ways. The controversial methods Rumpf had used to get the members of the organization arrested were widely criticized and denounced, even by more conservative commentators. The use of *agents provocateurs*, in particular, was regarded as being unworthy of the dignity of the state.[80] Many saw Rumpf's assassination four years later as an act of revenge for the whole debacle.[81] But the trial was extremely significant in determining how "dishonorable disposition" was defined in the jurisprudence of the German Empire because it marked the first time that the Reichsgericht had used its discretionary powers to define the extent of political crime. Consequently, the verdict created a precedent for treating anarchism and the propaganda of the deed as a form of common, dishonorable criminality rather than political action. This judicial precedent, together with the assassination of Rumpf, contributed to the state's growing persecution of anarchists and to them being portrayed more starkly as true "criminal" enemies of the state. The Reichsgericht itself drew on the precedent again in another high-profile high treason trial it heard in 1886.[82]

The Lawyer and the Anarchist

In the end, the mere suspicion of anarchism was enough to prompt many prosecutors to treat the accused as people with "dishonorable dispositions." All in all, however, surprisingly few cases of high treason were brought before the Reichsgericht in the German Empire.[83] Yet, the judicial consensus about the "dishonorable" nature of anarchism also influenced the process of legislation, for instance, the law on explosives that was introduced in 1884, which was clearly inspired by the fear of anarchist attacks. In contrast to the Anti-Socialist Laws, this law included dishonoring sentences like the penitentiary, disenfranchisement, and the death penalty.[84] Prominent champions of the anarchist cause, like Sepp Oerter in 1893, were sent to the penitentiary after being accused of violating the new law.[85]

This prompted controversy about whether the attribution of the term "anarchist" was justified. Sometimes, two people were put on trial for a similar offense, but one was considered an anarchist and the other was not. This happened, for instance, in 1907 and 1908, when the Reichsgericht in Leipzig heard two other prominent trials for high treason. The context of these trials was that left-wing commentators increasingly criticized what they saw as the "militarization" of German society. Leftists and Social Democratic politicians often wrote about the maltreatment and physical abuse suffered by low-ranking soldiers at the hands of their commanding officers, and they frequently combined their criticisms with a call for general disarmament, arguing that the army was one of the most pernicious elements of modern society.[86]

A prominent figure in this opposition was the young defense attorney Karl Liebknecht, the son of Wilhelm Liebknecht, who published many articles on the topic for the magazine *Die junge Garde*. In an article from 22 September 1906, titled "Goodbye Recruits," Liebknecht had argued, for instance, that conscription should be seen as a form of modern slavery. In light of the assault on soldiers and the roughness of the barracks, enlisted proletarians would soon come to view their former lives in poverty as a "symbol of freedom," he held.[87]

Government officials and conservative politicians had become concerned about the "hostile agitation against the army," which they felt gravely threatened the stability of the army and society. They were particularly worried about the influence this kind of agitation might have on adolescents ready for conscription. In 1897, for instance, Prussian War Minister Heinrich von Goßler argued in the *Kreuzzeitung* that Social Democrats had contributed to the coarsening of manners among the German youth, with statistics revealing a remarkable percentage of conscripted soldiers with criminal records.[88] He claimed that these youngsters were inspired by anti-military rhetoric and undermined army discipline. Moreover, the number was increasing, and he unambiguously blamed Social Demo-

cratic political ideas for this—an accusation that August Bebel fiercely rebuked in the Reichstag.[89] Nonetheless, *heeresfeindliche agitation* (hostile agitation against the army) concerned many people, and even prominent criminal experts wrote about its dangers.[90]

The defendant in one case was a resident of Kiel named Rudolf Oestreich, the editor of the anarchist journal *Freier Arbeiter*, who was charged with high treason for publishing an article titled "Anarchism and Antimilitarism." The article dealt with the International Anarchist Congress organized in Amsterdam in 1907, where the international politics of anti-militarism had been discussed. The charge against Oestreich was allegedly based on one specific sentence from the article stating that his group believed that there were men among their ranks who were prepared to put these decisions into action and thus "to get rid of one of the worst institutions of today's social order."[91]

The defendant in the other case was Karl Liebknecht himself, who published his treatise *Militarism and Anti-Militarism*, which brought together all his views on the detrimental effects of German militarism. He was charged with high treason and brought before the Reichsgericht in 1907. Justus Olshausen, a high-profile lawyer whose interpretation of the Reich Penal Code was seen as authoritative, was assigned as the prosecutor.[92] Olshausen saw Liebknecht's treatise as a piece of "anarchistic writing," so he was eager to argue that Liebknecht's publication of this essay clearly expressed his dishonorable disposition. In his introductory remarks, Olshausen stated:

> I have no problem saying that the acts of the accused are without honor, because he, a grown man, a jurist who himself wore a uniform and is still a member of the military, should not have agitated against the military in this way. . . . The spitefulness of the accused's agitation and the dangerousness of his action make the matter all the graver.[93]

The judge, Ludwig Treplin, however, explicitly stated the opposite opinion in his verdict, arguing that Liebknecht had no doubt acted out of nothing more than his political conviction. He therefore sentenced Liebknecht to two years in open custody.[94]

For Liebknecht personally, this verdict was of great significance. When some of his fellow lawyers tried to get him banned from practicing law by bringing him before the honor court for lawyers, Liebknecht defended himself by arguing that he was sentenced to open custody, which meant that the judge had officially decided that he had acted out of an honorable disposition. "The only important thing here is the moral appraisal," he noted in his defense, which demonstrated his acceptance of the distinction between law and morality.[95] In fact, he used it to justify his categorization as a political offender, not a dishonorable criminal.

The trial against Oestreich, however, ended differently. The judge and jury considered Oestreich's article evidence of his anarchistic ideology and believed that his writing represented a serious threat to the army. He was thus found guilty of conspiracy to commit high treason. The prosecutor was clear in his assessment of Oestreich's dishonorable disposition: "When somebody negates the existence of the legal order as such, then he cannot be considered honorable within this legal order."[96] He had demanded that Oestreich be sent to the penitentiary for two years, but the court president, Karl von Bülow, went above and beyond and sentenced Oestreich to four years in the penitentiary and deprived him of his civil privileges for another four years.[97]

After he was released from the penitentiary, Oestreich said that the judges and prosecutor clearly acted out of bias:

> As far as my disposition goes, there was no doubt as to its baseness, [because the common wisdom is that] whoever brings the dear German fatherland in danger acts without honor and he must be sent to the penitentiary.[98]

Although there were hostilities between Social Democrats and anarchists, many Social Democratic politicians were critical of the verdict against Oestreich in light of the patently obvious similarities between the Liebknecht and Oestreich trials. Arnold Stadthagen, a Social Democratic Reichstag member, vehemently opposed the verdict in a Reichstag session in 1908. He even noted how an expert witness had stated under oath that the *Freier Arbeiter* was not a magazine that actively professed the propaganda of the deed. But what outraged Stadthagen most was the sentence. Stadthagen believed that Oestreich had clearly acted unselfishly, so the penitentiary sentence and deprivation of civil privileges was nothing more than *Gesinnungsstrafrecht*: "He is only deemed dishonorable because he has a different political conviction," he cynically remarked.[99]

Stadthagen's argument and his use of the penal code to support it underscore his adherence to the general consensus that political offenders should be treated with privilege. But commentators gradually became convinced that members of the German Empire's judiciary were systematically refusing to accept this consensus in their judgments. Liebknecht himself was one of these commentators. He argued that this verdict against Oestreich would have long-term negative effects on the judiciary. In fact, he predicted in response to the verdict that "the value of judicially recognized honor will sink for all independent-minded citizens because of such verdicts."[100] To be sure, the judiciary had the power to define the line between political and common crime, and this happened at first with little criticism, but gradually, when these cases were compared with others, it became more problematic. However, the pertinent question for commentators was whether judges misused this power for political ends. When it appeared that they did, a heightened sense of them being biased against people from lower classes and with other political ideas reinforced this criticism.

After the Anti-Socialist Laws: Criminalizing Political Opposition

Disenfranchisement sentences were not supposed to provoke major controversies. After all, the punishment was understood by its very nature as "apolitical," so sentences had to be based on a common understanding of who was a "common criminal" (*gemeiner Verbrecher*). An assumption that often underlay this philosophy was that upstanding members of society had by definition such an understanding. Even so, controversies about these sentences arose, not least because it was sometimes very difficult to determine what constituted a political crime, aside from the fairly clear-cut matter of high treason. In general, there were three ways the "dishonorable disposition" notion generated political controversy: 1) when it was used to depoliticize certain affairs, 2) when using it created certain new privileges, and 3) when the government tried to impose penitentiary confinement and disenfranchisement for acts that had never prompted such sentences before.

Political crime and the treatment of political offenders—particularly socialists—grew more significant in the 1890s after the Anti-Socialist Laws had been repealed. In this period, the German authorities were becoming increasingly anxious about all kinds of people that they believed wished to subvert the state order, and they no longer had the punitive instrument of the Anti-Socialist Laws at their disposal. Furthermore, there was a series of terrorist attacks across Europe, the labor movement was growing more popular, the SPD won many Reichstag seats in the 1890 elections, and a national strike seemed ever more likely. In this context, all three grounds for controversy emerged.

Punishing Political Agents as Common Criminals

As I argued in chapter 1, disenfranchisement was intended to be both inclusive and universal, meaning that all citizens could be so punished if (and only if) they were found guilty of crimes that exhibited a "dishonorable disposition." Unfortunately, the official statistics did not register the professions of those sentenced with disenfranchisement until 1911, so it is impossible to know how many upper-class people were deprived of their privileges. Nevertheless, the numbers from 1911 show that all kinds of people were so sentenced: working-class men and women as well as bourgeois businessmen and civil servants.[101] Although few were diplomats and higher civil servants, such people could, in principle, be subjected to this punishment too.

For instance, in one of the major political conflicts in the early years of the German Empire—between Chancellor Bismarck and the German consul in Paris, Harry von Arnim—a high-ranking politician was threatened with disenfranchisement, which would have made him a "dishonored" felon. After the Franco-

Prussian War and the fall of the Paris Commune, Arnim became a prominent adversary of Chancellor Bismarck. When Arnim supported France becoming a republic, in contrast to Bismarck, who favored a monarchy, their rivalry intensified.[102] Meanwhile, Arnim had started a public campaign against Bismarck's policies, attempting to publicize information from diplomatic documents. Bismarck ordered Arnim to stand trial for stealing official state documents. Although Arnim was convicted, his crime was not deemed to have resulted from a dishonorable disposition.[103] His lawyers, the prominent scholars Emil Wahlberg and Franz von Holtzendorff, convinced the jury that Arnim had not suppressed and stolen any material from the embassy, which would have been a "dishonorable" crime.[104] Arnim was, nonetheless, sentenced to time in regular prison for a breach of trust in his position at a foreign embassy. Three years later, however, after he had fled to Switzerland and published the anonymous treatise *Pro Nihilo!* containing state secrets, he was sentenced to the penitentiary and deprived of his civil privileges for the act of high treason.[105]

In a commentary on the case, an anonymous professor of law argued that Arnim's actions reflected his base character—he had acted deceitfully. Consequently, the professor believed that Arnim deserved disenfranchisement as he had to be seen as a "common criminal" (*gemeiner Verbrecher*); his status as a nobleman and higher civil servant was irrelevant.[106] Certainly, stifling political opposition was one of Bismarck's main motives for instigating these trials. But Bismarck and his supporters cunningly made use of legal categories to "depoliticize" the conflict. By charging Arnim with crimes that testified to a dishonorable disposition, they could persuasively argue that he had violated the norms of acceptable political behavior. Arnim's case demonstrates that one could instrumentalize the "dishonorable" quality of certain offenses to depoliticize a particular affair. This was only possible because of the penal code's distinction between "dishonoring" and "non-dishonoring" crimes.

Such depoliticization was most successful in cases of perjury. When political defendants were charged with perjury, they came to be cast as "common criminals." This could completely change the outcome of a trial, prompting critics to very frequently argue that perjury trials were used for political ends.[107] Trying people for perjury was thus one of the most prominent ways of stigmatizing political offenders as criminals; even perjury charges could discredit a political opponent.[108] Something like this happened to socialist Reichstag member Karl Ibsen in 1880 when he tried to protect a party-affiliated book printer accused of distributing Bebel's book *Woman and Socialism*. Ibsen was sentenced to three years in the penitentiary and deprived of his civil privileges for five years.[109] The judges, enraging members of the Socialist Party, did not accept Ibsen's attempt to protect another man from being convicted as an excuse.

The government increasingly used this tactic after the socialist laws were repealed in 1890. Critics of socialism more generally started depicting socialist

parties as criminal organizations by arguing that they tended to disrespect the oath and encouraged their members to commit perjury. This strategy aimed to delegitimize them as "political" parties. In fact, many criminologists sought a connection between political ideology and crime. They analyzed cases of perjury to support the idea that socialist ideology justified "regular" crimes like perjury, as evident in socialists' attacks on religiosity. An example of this theory can be found in Wilhelm Starke's influential statistical study of the development of crime patterns in Prussia from 1854 to 1878. In the book, Starke identified the spread of socialist ideas as a cause of rising crime because socialist ideas "have disturbed the moral and religious convictions that hold society together, mock veneration and piety, confuse the legal sense of the masses and destroy the respect of the law."[110] In his mind, the growing number of perjury convictions was a strong indicator of the spread of socialism as its godlessness led people to disrespect the sacred oath.[111] While jurists insisted on a strong distinction between political opposition and criminal activity, perjury crimes led to political ideas and morally reprehensible behavior becoming closely associated.

Several scholars and commentators pointed out this association between Social Democrats and perjury. For example, prominent member of the Social Democratic Party of Germany (SPD) Karl Frohme, in his study of the political police of the German Empire, dedicated an entire part of the study to elucidating how the police campaign against Social Democrats deployed perjury.[112] Frohme noted that conservatives and liberals had even started referring to the SPD as the "perjury party," quoting people like the former editor of the influential magazine *Die Grenzboten* Hans Blum as evidence. Blum had argued that Social Democrats actively supported the use of perjury if it was in the party's best interest:

> This mark of shame of the party is the result of their conscienceless rejection of all divine and human discipline and order. Godlessness and lawlessness meet in the soul of the perjurer and lead him to both earthly and eternal punishment and damnation.[113]

The Hamburg prosecutor Anton Romen became another prominent figure in the campaign to portray the SPD as a "perjury party" with the publication of his *Perjury and Social Democracy* in 1892.[114]

Social Democrats grew increasingly worried about this political use of perjury (occasionally called a *Meineidshetze*), which had effects both inside and outside the courtroom. Frohme had no doubt that the political police strategically prosecuted Social Democrats for perjury. He argued that police witnesses systematically distorted the truth in trials against Social Democrats, in which jury members were always hostile to the Social Democratic political ideology, and that the "perjury party" propaganda had two important effects. First, it caused judges and public prosecutors to prejudge the testimonies of Social Democrats as unreliable and dishonest. When there were conflicting accounts in a trial, judges

thus usually decided that civil servants spoke the truth and that the other party must necessarily have committed perjury. This made it easy to convict Social Democrats of perjury. Second, the judiciary used the oath as a means of extortion to deter Social Democrats from giving testimony.[115] The abovementioned public prosecutor Romen in Hamburg frequently used both of these strategies, Frohme maintained.[116]

The perjury cases against Social Democrats generated a great deal of public concern and debate.[117] One of the causes célèbres that upset Social Democratic politicians was a trial against the president of the socialist workers' union in Dortmund, Ludwig Schröder.[118] The case was complicated, having begun when libel charges were brought against a journalist who had accused a police officer of beating Schröder to the ground after Schröder had allegedly refused to obey his request to remove himself from a meeting of the Christian miners' union in Bochum. In the ensuing trial, the police officer testified under oath that he had never hit Schröder and was ultimately acquitted. The journalist was found guilty of libel, which led the state prosecutor to charge Schröder and seven other witnesses who had claimed that the police officer had hit Schröder with perjury.[119] This trial, known as the Essen perjury trial, became notorious.

When Schröder and the other witnesses were accused, national media outlets immediately portrayed the trial as a political one in the authorities' struggle against Social Democrats.[120] Victor Niemeyer, the state prosecutor on this case, however, actively tried to reframe the nature of the trial: in his statement before the court, he reminded the jury of the "criminal" nature of perjury, emphasizing that the case against Schröder should be seen as a "simple" perjury trial and nothing more.[121] In other words, Niemeyer strategically used the distinction between "common criminality" and political opposition to deny the defendants the possibility of being treated as "political" offenders.

Furthermore, to support the idea that Schröder had committed perjury, the prosecution actively contrasted the immorality of the socialist workers' union with the piety of the Christian miners' union. Niemeyer emphasized the Christian mine workers' great respect for religion and the sacredness of the oath, in contrast to which socialist workers despised religion and did blasphemous things like comparing the conviction of a fellow worker with the suffering of Christ. Moreover, Niemeyer added that the local magazine of the Socialist Union had actually defended committing perjury to save fellow mine workers from being sentenced.[122] He therefore ultimately tried to make the charge of perjury plausible simply by associating the accused with socialist ideology. Schröder was found guilty of perjury, sentenced to three-and-a-half years in the penitentiary, and deprived of his civil privileges for five years. In response to this verdict, the SPD put Schröder up for election to the Reichstag, but the petition was rejected as he had been deprived of his civil privileges.[123] The verdict against Schröder was only revised in 1911 after investigations proved that the police officer had been

lying.[124] In the legal constellation of the German Empire, it was unclear if trade unions were considered "political" organizations, but what is clear is that verdicts like that against Schröder played an important role in state prosecutors' attempts to deny political consideration to union members.[125]

Along with union members, many politicians were charged with perjury, too, and not only members of the SPD. Against the background of the legal authorities' struggle to have Social Democrats convicted of criminal behavior, accusing political opponents of perjury became a common strategy for discrediting them as it seemed a proven method of turning political disagreements into questions of moral character. The leader of the Christian Social Party, Adolf Stöcker, was

Figure 3.5. Mockery of judges considering membership of the Social Democratic Party as an aggravating circumstance. A lawyer pleads: "Even if the crime of robbery and murder, which my client carried out, may be so despicable, I still plead for mitigating circumstances – the accused is namely not a Social Democrat." Hans Gabriel Jentzsch, *Wahre Jacob*, Aug. 1, 1899. Courtesy Klassik Stiftung Weimar.

repeatedly accused of perjury by his political opponents, and Hans Leuss, a member of the notoriously antisemitic German Social Reform Party, was convicted of perjury and sentenced to the penitentiary.[126] In both cases, political opponents played an important role in the persecution of these politicians as "perjured criminals."

A similar mix of political opposition and criminal prosecution seems to have taken place in the infamous Eulenburg affair in 1908, when prosecutors charged the confidant of the German emperor Prince Philipp of Eulenburg with perjury for denying having had sexual relations with multiple men. In newspapers and magazines, however, people actively associated this persecution with Eulenburg's attempted treason. The charge of perjury against Eulenburg cannot be dissociated from a widespread aversion to the politics he and the German emperor stood for at the time. The failure to convict him prompted outcries about class justice and the mild treatment of upper-class citizens.[127] As this case attests, attempts to discredit political opponents as "ordinary criminals" by accusing them of perjury were not always successful. Yet, when used effectively, the strategy took perfect advantage of the philosophical line between political and immoral crimes.

Lèse-majesté Controversies

In addition to perjury charges, the number of charges of lèse majesté—that is, insulting the monarch—exploded in the 1890s, and many of those accused were members of the socialist press.[128] An average of two to three German citizens was charged with lèse-majesté every day.[129] Just as with the perjury trials, the trials for these charges can be viewed, Alex Hall argues, as the continuation of the struggle against Social Democrats "by other means" after the repeal of the Anti-Socialist Laws.[130] However, an important difference between the lèse-majesté and perjury trials was the possible sentences: convictions for lèse-majesté could not lead to disenfranchisement or penitentiary sentences. This meant that critics mostly used other criteria to question these trials. The length of a prison sentence was the most important measure of severity in these cases. One heavily criticized trial, for instance, was that against August Müller, the editor of the *Magdeburger Volksstimme*, who was sentenced to four years in prison for committing lèse-majesté; most in the socialist press considered this excessively long.[131] Together with the arbitrary treatment of prisoners, as well as abusively long periods of pretrial custody for many people accused of lèse-majesté, cases like these contributed to growing anger about such charges and trials.[132] Such abuses contributed to the emergence of the concept of *Klassenjustiz*, or class justice, and the rising number of lèse-majesté charges also gave rise to tremendous distrust in the German judiciary.[133]

Ultimately, however, observers remained interested in the disposition of the accused and whether convicts could be deemed "dishonorable" in cases of lèse-majesté as well. For example, when Maximilian Harden, the famous editor of *Die Zukunft* (who would later break the story of the Eulenburg affair), published a mockery of the German emperor Wilhelm II in the form of a fable about a "poodle monarch" in 1898, his subsequent trial for lèse majesté precipitated a controversy. Although Harden had not explicitly referred to Wilhelm II in the fable, the judge still regarded it as insulting the German emperor.[134] After Harden had been convicted, the judge declared that Harden's actions did not testify to a "dishonorable disposition," so he sentenced him with open custody instead of regular prison.[135] The Reich Penal Code's laws on lèse-majesté left the matter to the judge's discretion, stipulating that this choice was possible given mitigating circumstances. Even so, it did not define these circumstances, nor did it expressly indicate that convicts who had acted out of an "honorable disposition" should receive reduced sentences. Thus, when the judges justified the mild punishment in light of Harden's still "honorable disposition," they implied that all other people convicted of lèse-majesté who were sentenced to regular prison were "dishonorable"—or at least this was the conclusion many commentators drew.

An editor of the *Hamburger Anzeiger* made precisely this point: he believed that one's disposition should never be a determining factor in cases of lèse-majesté.[136] In his view, the laws against lèse-majesté were not aimed at punishing opinions but at sanctioning the form in which they were expressed. Thus, he argued, judges were supposed to refrain from making any judgments about the offender's disposition or moral views and stick to judging the act itself. Harden's disposition, whether "honorable" or "dishonorable," was beside the point. The case illustrates how privileged sentences prompted people to believe that others who were not so treated were implicitly "dishonorable." In addition, when law-breakers seemed to create a new group of "honorable" political criminals, they themselves were more likely to be suspected of serious crimes. After Harden's trial, convictions for lèse-majesté were immediately seen in a different light. By imposing such a sentence, the critics argued, the judge had changed the penal code's stipulations about the honor of persons convicted of this crime.

The Sedition and Penitentiary Bills: Imposing Disenfranchisement for New Forms of Sedition

As Harden stood trial, the German government was trying to redefine certain offenses more actively as crimes that testified to a "dishonorable disposition." This would enable it to strip certain acts of their political dimension. Notably, it employed this strategy against people who organized and participated in strikes or any other forms of collective action. According to §152 of the Reich Com-

mercial and Industrial Code, strikes were not punishable by law.[137] However, the penal code still had plenty of articles that the judiciary could utilize to prosecute strikers. For instance, if a judge deemed that a strike had gotten out of hand, the participants could be charged with disturbing the peace or public order, that is, with *Landfriedensbruch*. Moreover, they could also be charged, according to §130 of the penal code, with "incitement to engage in class struggle."[138] Nonetheless, the Reich Penal Code stipulated that convictions for these offenses should lead to regular prison sentences.

The authorities' worries about strikes grew in the years around 1890, when a series of strikes was organized across the German Empire.[139] Initially, the government seemed willing to meet many of the labor movement's demands by passing new, socially minded legislation.[140] But this policy changed around 1894, when the more conservative Hohenlohe administration replaced the Caprivi administration. At the same time, the emperor held two speeches warning of the danger of people who wanted to "subvert the order of society." All of this led the government to take a new approach to strikes; it proposed the notorious so-called Sedition Bill (*Umsturzvorlage*), a set of laws designed to protect society from attempts to subvert the state order, particularly on the part of Social Democrats.[141] The Sedition Bill would have entailed revisions to the penal code that would have stipulated penitentiary sentences instead of prison for certain offenses if they involved a conspiracy to "subvert the state order."

As some commentators in the socialist press remarked, "people with the aspiration to subvert the state order" could basically be translated as "Social Democrats."[142] The bill failed to pass the Reichstag in 1895, but it set the tone for the persecution of people who participated in strikes. After the Hamburg dockers' strikes of 1896 and early 1897, bricklayers' strikes in Leipzig, and many other strikes across the German Empire, the Hohenlohe administration grew more fearful of the violent repercussions of strikes.[143] In particular, they were anxious that some workers might force others to join a coalition. This led to another hotly debated proposal in the Reichstag, the so-called Penitentiary Bill (*Zuchthausvorlage*).[144] Vice-Chancellor Arthur von Posadowsky-Wehner brought this bill before the Reichstag in 1898, but the emperor had already established the mood earlier that year in his "penitentiary speech" in Oeynhausen.[145] The use of "penitentiary" in the title of this bill was clearly vital since it marked these workers' actions as "dishonorable" rather than political.

The Penitentiary Bill explicitly sought to give harsher sentences to people who "obstructed" other workers from exercising their occupation. Some historians describe the Penitentiary Bill as a reckless solo effort by the emperor to further suppress Social Democracy, mobilizing the "weak" government of Hohenlohe for his personal vendetta against the Social Democrats.[146] It should be pointed out, however, that Vice-Chancellor von Posadowsky-Wehner took great pains to justify this policy to the Reichstag. He carefully set out his justifications in a

memorandum handed to the Reichstag on "disturbances during labor conflicts" (*Ausschreitungen bei den Arbeitskämpfen*).[147] The language in this memorandum clearly aimed to convince other politicians that such disturbances should be treated as "dishonorable crimes" instead of as actions motivated by moral or political convictions. Importantly, the draft contained about twenty references to "terrorism" committed by strikers against the "people who are willing to work" (*Arbeitswillige*).[148] By using the notion of "terrorism" so frequently, Posadowsky-Wehner sought to associate such strikers with anarchist criminals.

The threat of penitentiary sentences and the repeated use of the notion of terrorism clarifies why the proposed legislation provoked public outrage. The bill's opponents sought to convince others that participation in workers' coalitions was based on moral principle and not on criminal intent. In fact, the entire debate about the "compulsion to join a coalition" (*Koalitionszwang*) was dominated by questions of moral obligations. The authorities argued that strikers obstructed people who only wanted to fulfill their moral duty to work (in their opinion, the notions of *will* and *duty* were closely associated), and that such obstruction constituted an offense against their moral duties, making it "dishonoring." Carl Legien, a union leader and influential SPD member who had drafted another memorandum on this issue, argued that milder punishments were, in fact, more appropriate for these agitators since they were acting out of moral conviction; they had the moral right to form a coalition as workers, and these actions were motivated by their feelings of mutual solidarity.[149] Legien and others stressed the moral righteousness of protesting against labor contracts and stressed the need for a sense of solidarity in such endeavors.[150] Neglecting this moral duty was more "dishonorable" than acting in accordance with it. They often drew comparisons between feelings of solidarity among workers and the feeling of solidarity in the army. After all, the "honor" of military comradeship was beyond dispute. They hoped this comparison would help persuade government officials that strikers had an "honorable" character.[151]

When penitentiary and disenfranchisement sentences were then, in fact, imposed on workers charged with coercing other workers to strike, there was great outrage. An 1899 trial in a Dresden court provides an example. Even though the penitentiary bill had not been ratified, the court seemed to anticipate it passing as it imposed harsh sentences on seven employees of a construction firm from the Saxon town of Löbtau for allegedly obstructing other workers: in total, the group members were sentenced to fifty-three years in the penitentiary and seventy years of disenfranchisement. The very harshness of the sentences made the case into something of a cause célèbre.[152] Immediately after sentencing, a *Vorwärts* editor wrote: "the era of the Penitentiary Bill casts its shadow upon us."[153] The socialist press covered the trial extensively, repeatedly emphasizing that it underscored the "penitentiary course" of the empire's rulers.[154] The media interest illustrates the sense of injustice many commentators felt about sentencing "honest" workers with penitentiary confinement and disenfranchisement.

Figure 3.6. The Penitentiary Bill was meant to protect the people who are "willing to work" by severely punishing people who blocked their access to work. An anonymous Cartoonist depicts the Penitentiary Bill here as a malfunctioning scarecrow, scaring away the wrong things. Anonymous, *Wahre Jacob*, 17 January, 1899. Courtesy Klassik Stiftung Weimar.

In the end, the Penitentiary Bill never passed. Opposition to it was too great, not least because the criticism was not limited to Social Democrats. Among the critics were people like Max Weber, who argued that hampering workers' ability to strike would only worsen the legal position of working-class people.[155] The rejection of the Penitentiary Bill was vital to maintaining the consensus about the function of penitentiary and disenfranchisement sentences. After all, once this bill was rejected, these punishments could not legally be applied to offenders largely regarded as having acted "honorably." In consequence, penitentiary sentences remained the most important way of distinguishing between "political" and non-political offenders.

That the authorities sought to impose more and more "dishonoring" punishments on Social Democrats from 1890 means that the same struggle against Social Democracy was not just being waged "by other means," as Hall argues. Rather, the authorities tried to break with the preexisting consensus on the treatment of political offenders by promoting the idea in public discourse that Social Democrats were not political opponents but serious criminals. This means that the authorities' goals were different, too: they wished not only to repress the activities of Social Democrats but also actually to convict them like common criminals. One should therefore not underestimate the significance of lawmakers' failure to pass both the Sedition and Penitentiary Bills. It shows the limits of the government's powers to punish its political opponents like common criminals.

Social Democrats' Appropriation of Disenfranchisement

The important conclusion to be drawn from the evidence presented in this chapter is that these dishonoring sentences—regardless of whom they were imposed upon, be they high public officials or members of workers' unions—never resulted in a full-blown rejection of disenfranchisement or penitentiary punishments as such, despite the often very fierce public criticism of them. In the end, the criticism remained directed toward the people making the verdicts and sentences, the judges and jurors, whose biases, critics claimed, often ran contrary to the basic principles of the penal code. Accordingly, the most common criticism was that judges displayed a certain "otherworldliness."[156]

Members of the SPD and the media touted the party-made allegations of *Klassenjustiz* and "otherworldliness" more than anyone else. Before the outbreak of the First World War, however, they never explicitly protested the existence of the dishonoring punishments. In fact, one could argue that they not only passively accepted the punishments of disenfranchisement and penitentiary but also even actively supported them. Unfortunately, however, apart from August Bebel's famous remarks in *Woman and Socialism* that there was no crime in the utopian socialist state, it is difficult to reconstruct the SPD's stance on issues of criminal

law, and, by extension, to identify its position on disenfranchisement. Still, there is reason to believe that members of the SPD in principle supported the idea of certain felons being considered "dishonorable." As *Vorwärts* editors argued in 1909 in a twelve-part editorial on criminal reform, criminal law was an instrument not just for exercising power over political opponents but also for battling crime.[157] This was also why the SPD was generally positive about police action; the party supported much of the active police policy against deviant members of the working classes.[158]

In addition, one should not forget that the concept of "dishonorable disposition" was used and contested within the SPD. There were frequent battles within the SPD about whether strikebreakers and pieceworkers could be accused of having a "dishonorable" disposition. For example, in 1901 in Hamburg, the local trade unions and Social Democratic Party actively fought over the application of the term "dishonorable," eventually drawing the national party leadership into the fray. A group of around two hundred bricklayers had agreed to work at a piece rate. This initiative violated the collective agreement to abolish piece wages that the local bricklayers' union had made earlier that year. The union leaders of Hamburg viewed the pieceworkers' initiative as a form of backstabbing and "scabbing," fearing, among other things, that the authorities would portray these workers as "willing to work" and the union members opposed to them as obstructers. As the unions were aligned with the German Social Democratic Party, many party members demanded that these pieceworkers be dismissed for their "dishonorable" actions. The interesting thing is that the 1890 bylaws of the SPD said the following: "He who has acted against the principles of the party program or has made himself guilty of dishonorable deeds shall not be admitted."[159]

With this, the SPD membership statutes highlighted the notion of "honor," although it was problematic that "dishonorable actions" were not defined further. Unlike some unions' statutes, it did not explicitly refer to disenfranchisement or any other "dishonoring" sentence. As a result, a special arbitration board had to be appointed to determine whether the incentive workers could be excluded from the party. This special board, chaired by Ignaz Auer, declared that "strikebreaking" was clearly "dishonorable" as it undermined workers' solidarity but that the particular action of the incentive workers did not constitute strikebreaking since members of the local union were not on strike. In the board's verdict, then, these workers' actions were deemed objectionable but not "dishonorable."[160]

Nonetheless, the pieceworkers controversy gave rise to a debate within the party about the meaning of "dishonorable" and prompted some members of the SPD to raise their objections to this verdict at the party congress that year. The president of the Hamburg union, Theodor Bömelburg, declared: "I can't imagine anybody so bad as these people. If their actions are not dishonorable, then I don't know what dishonorable is."[161] Carl Legien, a union leader and prominent party

member, also supported this position when he defended a motion to reject the board of arbitration's findings.[162] In the end, the case instigated a debate among several left-wing media outlets about the definition of the "honor of the worker" and whether it differed from the honor of other citizens.[163]

Despite the debate, the arbitration board's verdict was not overturned but was, rather, supported by the party congress. The case of the Hamburg bricklayers demonstrates how the definition of "dishonorable action" was disputed, and not only on the level of penal law: even a political organization that had frequently and vehemently criticized the German Empire's execution of justice used the category. The most interesting aspect, however, was that the arbitration board's definition aligned with the basic principles of the penal code by refusing to regard political opposition and "differences of opinion" as signs of a "dishonorable disposition."

In a similar vein, Alexander Parvus, another prominent SPD party member, considered it unnecessary to label these bricklayers "dishonorable" since, he argued, this notion was reserved for "real criminals": "There is a difference between the bricklayers' lack of discipline and a dishonorable disposition."[164] To his mind, opposition and disagreement were not reasons to declare a person "dishonorable." He added that it would be highly excessive to exclude these workers from the party if the Hamburg conflict resolved itself within a few days. "Dishonorable action," he argued, was a notion that was used to distance themselves (Social Democrats) from the so-called *Lumpenproletariat* and not one for questions of political opposition.[165]

In some cases, national SPD politicians even explicitly supported the use of dishonoring punishments to make sentences more severe. For instance, when the Reich Industrial and Commercial Code was being revised in 1891, Bebel stated that employers making false statements in employees' letters of reference should be punished by being stripped of their civil privileges. In his eyes, these were the most low-life, insidious crimes imaginable.[166] On another occasion, in 1897, Bebel advanced a bill to punish people who trafficked women and participated in prostitution—particularly border agents—with disenfranchisement; the bill ultimately passed.[167] Unsurprisingly, both proposals targeted people who abused the power that came with their privileged position.

"Without Character or Spine": Political Conviction as a Sign of Honor

In the end, what was most pressing was the question of which defendants were entitled to be treated as "political" offenders and thus were able to maintain their right to participation in politics. In many cases, the judiciary drew the distinction. Certainly, the state had a powerful deterrent tool in "dishonoring sen-

tences." But it would be going too far to argue that judges could make unlimited use of them. They were restricted by a consensus about their intended purpose. These sentences were meant to separate "common" criminals from "political" ones. As a result, the notion of honor became increasingly associated with certain moral and political convictions. As Ute Frevert observed, the concept of honor became more and more individualized in the German Empire; people appealed less to lineage and social position and more to personal characteristics in their claim to honor.[168] Adherence to a political belief therefore became a clear indicator of one's worthiness of honor in public discourse.

This view was endorsed from several sides of the political spectrum, both socialist and liberal. In an editorial written for the *Hamburger Echo* in 1908 titled "The Notion of Honor from a Capitalist and a Socialist View," socialist publicist and member of the SPD Franz Laufkötter, whose pseudonym was Brutus, explicitly endorsed the idea that honor mainly consists in one's faithfulness to one's convictions. He argued that people in capitalist society seemed to believe that honor was something exterior, something the authorities could give and take. Yet, honor "in the true sense of the word," he wrote, was really a matter of a person's subjective sense of self-worth and the degree to which he was loyal to his own convictions: "Socialism bases honor on the inner worth of people," and people who only cared about external honor, he argued, were "the most characterless people, without conviction or spine."[169] By pointing out how even Christ had been viewed as dishonorable in the eyes of his peers, he argued that these "external" honor codes were merely relative; he equated these so-called honor codes with time-dependent conventions.

From a different political angle, a liberal judge from Breslau, Paul Albers, made a similar argument in the *Berliner Tageblatt* in 1907. He drew on another example to emphasize how relative the "exterior" definition of honor could be—that of Gottfried Kinkel, a professor and revolutionary activist in the 1848 revolutions whom judges deemed dishonorable after the 1848 revolution but who was later heralded as a national hero. Kinkel was exemplary of someone who was faithful to his beliefs and honorable.[170] These discussions about the concept of honor contributed to it remaining so powerful when invoked.

People could appropriate the often-proclaimed "dual nature" of honor (referring to its exterior and interior aspects) to recover their honor against the claims of the judiciary. But the more this happened, the more it seemed impossible to find common ground for using the notion. At the same time, the suspicion that political ideology could be used to cover up the real motives of a base criminal action influenced the judiciary. Thus, most legal scholars seemed to agree that the difference between a dishonorable and an honorable disposition could be equated with the difference between "real" idealism and egoism. In the German Empire, there seemed to be some common ground in the denouncement of certain "dishonorable" people, but it was gradually crumbling away. For the public

prosecutor quoted in the beginning of this chapter, it was self-evident that political offenders should receive harsher sentences. This demonstrates that political offenses were also viewed with more suspicion. Increasingly, because of individual claims to honor, it became harder to find a definition of honor on which the consensus could be based.

Notes

1. Hermann Lucas, *Anleitung zur strafrechtlichen Praxis. Ein Beitrag zur Ausbildung unserer jungen Juristen und ein Ratgeber für jüngere Praktiker* (Berlin: Liebmann, 1902), 286–88.
2. Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton, NJ: Princeton University Press, 1961).
3. Jean Comaroff and John L. Comaroff, *The Truth about Crime: Sovereignty, Knowledge, Social Order* (Chicago: University of Chicago Press, 2016), 26.
4. Alex Hall, "By Other Means: The Legal Struggle against the SPD in Wilhelmine Germany 1890–1900," *Historical Journal* 17, no. 2 (2009): 365–86, 386.
5. In *Surveiller et punir*, Foucault thematized the "politicized body" of the criminal. My use of the notion of the "apolitical" might be confusing in light of Foucault's use of politicization. For Foucault, the politicized body is the body that is branded as a "social enemy"—in other words, as an enemy of the political community as such. Cf. Michel Foucault, *On the Punitive Society: Lectures at the Collège de France 1972–1973*, ed. Bernard E. Harcourt (London: Palgrave Macmillan, 2015), 21–42. To make Foucault's use of "politicization" compatible with my argument, it is best to distinguish between "political enemies," that is, members of the "criminal counterworld," and "political opponents." I would, however, also argue that "politicization" is better defined as a process that transforms something into an item of political debate in the public sphere. This aligns more closely with German philosopher Jürgen Habermas's theory of the public sphere and how, for instance, Claus Offe used the notion in his *Contradictions of the Welfare State*, trans. John Keane (London: Hutchinson, 1984). With this definition of politicization, the strategy of depoliticization I describe later in this chapter makes more sense. Within this process, depoliticization presupposes that criminal policy was often viewed as a subsystem of society that was not open for political debate.
6. This picture is clearly confirmed by looking at the crimes people from the Northern Rhine region who were deprived of their civil privileges and wanted their rights restored had been sentenced for. See chapter 4.
7. Henze, Klippel, and Kesper-Biermann, "Ideen und Recht," 384; Ortmann, *Machtvolle Verhandlungen*, 202.
8. The penal code distinguished between 1. *Einfacher Diebstahl* (simple theft), 2. *Einfacher Diebstahl im wiederholten Rückfalle* (repeated instances of simple theft), and 3. *Schwerer Diebstahl* (grand theft).
9. For the *Lex Heinze*, see Otto Müller, *Die lex Heinze* (Freiburg: Lehmann, 1900); Edward Ross Dickinson, *Sex, Freedom, and Power in Imperial Germany, 1880–1914* (New York: Cambridge University Press, 2014), 121–24. On the protection of children from sexual seduction, see Tanja Hommen, *Sittlichkeitsverbrechen. Sexuelle Gewalt im Kaiserreich* (Frankfurt a.M.: Campus, 1999), 53–60. For the shift in focus from criminal experts from the *Gauner* to the sex offender, see Becker, *Verderbnis und Entartung*, 21.

10. Cf. Ortmann, *Machtvolle Verhandlungen*, 200–3.
11. Alexander von Öttingen, *Die Moralstatistik. Inductiver Nachweis der Gesetzmässigkeit sittlicher Lebensbewegung im Organismus der Menschheit* (Erlangen: Deichert, 1868), also argued that diminishing levels of piety explained rising levels of crime.
12. Gustav Pfizer, "Die Meineidspest," *Die Grenzboten* 45 (1886): 344–59 and 392–406.
13. Shigema Oba, *Unverbesserliche Verbrecher und ihre Behandlung* (Berlin: Bahr, 1908). Cf. Georg von Mayr, *Statistik und Gesellschaftslehre*, vol. 3 (Tübingen: Mohr, 1917), 517.
14. Alexander von Öttingen, "Über Die Methodische Erhebung und Beurteilung Kriminalstatistischer Daten," *ZStW* 1 (1881): 414–38, 419.
15. Otto Mittelstädt, "Kulturgeschichte und Kriminalstatistik," *ZStW* 4 (1884): 391–414, 404. For the wider criticism that was expressed on the methods of Starke, see Galassi, *Kriminologie*, 103–5.
16. Alfred Kloss, "Der Meineid in Strafsachen, seine Häufigkeit und verhältnismässig seltene Bestrafung. Die Vorschläge zur Abhilfe," *Jahrbuch der Gefängnis-Gesellschaft für die Provinz Sachsen und das Herzogtum Anhalt* 21 (1905): 1–18.
17. Cf. Bernhard Bauer, *Der Eid. Eine Studie* (Heidelberg: Winter, 1884); "Die Eidesnot," *Die Grenzboten* 53 (1894): 256–61; Wilhelm Kulemann, *Die Eidesfrage* (Eisenach: Thüringische Verlagsanstalt, 1904), 35–37. Cf. Ortmann, *Machtvolle Verhandlungen*, 200–3.
18. See, for instance, Erich Wulffen, *Psychologie des Verbrechers*, vol. 2 (Berlin: Langenscheidt, 1908), 324.
19. Cf. Ortmann, *Machtvolle Verhandlungen*, 30–31.
20. Heinrich Sohnrey, *Der Meineid im deutschen Volksbewußtsein* (Leipzig: Werther, 1894), 53.
21. Bruno Blau, *Die Kriminalität der deutschen Juden* (Berlin: Lamm, 1906), 9–10; Franz von Liszt, *Das Problem der Kriminalität der Juden* (Giessen: Töpelmann, 1907); Georg von Mayr, *Statistik und Gesellschaftslehre*, vol. 3 (Tübingen, 1917), 831–32.
22. Verein zur Abwehr des Antisemitismus (Berlin), *Die Wirtschaftliche Lage, soziale Gliederung und die Kriminalstatistik der Juden* (Berlin: Das Verein, 1912).
23. *Statistisches Jahrbuch für den Preussischen Staat*, vol. 12 (Berlin, 1915), 508–9.
24. See, for instance, Rudolf Wassermann, *Beruf, Konfession und Verbrechen. Eine Studie über die Kriminalität der Juden in Vergangenheit und Gegenwart* (Munich: Reinhardt, 1906), 40–41.
25. This was also noted in the editorial piece in *Vorwärts* on the penal law reform: "Der Vorentwurf zum neuen Strafgesetzbuch," *Vorwärts*, 12 November 1909.
26. Hermann Seuffert, *Die Bewegung im Strafrechte während der letzten dreißig Jahre* (Dresden: Zahn & Jaensch, 1901). Cf. Joachim Radkau, *Das Zeitalter der Nervosität. Deutschland zwischen Bismarck und Hitler* (Munich: Econ, 2000).
27. GStA PK Rep. 84a, Nr. 8028, "Mehr Ehrenstrafen!," *Deutsche Tageszeitung*, 4 July 1914.
28. The official statistics were published from 1882.
29. *Monatshefte zur Statistik des Deutschen Reichs* 59, no. 2 (1883): 71, 81.
30. Cf. Carl Heinrici, "Aberkennung der bürgerlichen Ehrenrechte," *Deutsches statistisches Zentralblatt* 5 (1914): 163–66.
31. I calculated the rate based on the total number of regular prison and penitentiary sentences as disenfranchisement could normally only be added on top of a prison/penitentiary sentence.
32. Verdict of the appeal court in Berlin of 19 January 1843. Reprinted in Johann Jacoby, *Vier Fragen beantwortet von einem Ostpreußen* (Leipzig: Hoff, 1863), 43–44.
33. Koselleck, *Preußen zwischen Reform und Revolution*, 411–14.
34. For instance, this quote was cited by SPD politician Arnold Stadthagen in a speech before the Reichstag in 1911: *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 263 (Berlin, 1911), 4385.
35. Julius Hermann von Kirchmann, *Die Grundbegriffe des Rechts und der Moral als Einleitung in das Studium rechtsphilosophischer Werke* (Berlin: Heimann, 1869), 105.

36. In principle, positive law aimed first to support the idea that only actions could be punished, not intentions. As a classic 1847 handbook by Heinrich Luden stated: "But the mere will, which has not yet become action, does not belong to the realm of law." Heinrich Luden, *Handbuch des teutschen gemeinen und particularen Strafrechtes* (Jena, 1847), 18. Cf. Gustav Radbruch, *Einführung in die Rechtswissenschaft* (Leipzig: Quelle & Meyer, 1910), 9–10.
37. Of course, this thought was already expressed in Wick's philosophy of the punishment of disenfranchisement, but, as I also indicated in chapter 1, many penal codes still looked at class background in determining the nature of one's disposition by using such categories as the *gebildete Stände* (educated classes), who were presumed to have acted out of honorable dispositions. Increasingly, however, scholars argued that the assessment of a person's disposition was an individual moral judgment. Cf. Whitman, *Harsh Justice*, 132–35.
38. Richard Eduard John, *Entwurf mit Motiven zu einem Strafgesetzbuche für den Norddeutschen Bund* (Berlin: Guttentag, 1868), 126. Cf. Marcuse, *Die Ehrenstrafe*, 29–30.
39. Whitman, too, noted that German lawyers became more preoccupied with morality in the second half of the nineteenth century: Whitman, *Harsh Justice*, 132.
40. Fritz van Calker, *Strafrecht und Ethik* (Leipzig: Duncker & Humblot, 1897); Fritz van Calker, *Ethische Werte im Strafrecht* (Berlin: Liebmann, 1904).
41. Calker, *Strafrecht und Ethik*, 28–29.
42. Calker, *Ethische Werte im Strafrecht*, 36–42.
43. See chapter 2.
44. Franz von Liszt, *Der Zweckgedanke im Strafrecht* (Marburg: Pfeil, 1882), 40; Franz von Liszt, "Kriminalpolitische Aufgaben," *ZStW* 10 (1890): 51–83, 62.
45. Franz von Liszt, "Die psychologischen Grundlagen der Kriminalpolitik," *ZStW* 16 (1896): 477–517, 496n. Similarly, Ernst Sichart, a prison director from Ludwigsburg, argued in a 1901 essay for the *ZStW* that disenfranchisement was a necessary element of German criminal policy, but in a 1905 article for the same journal, he argued that the moral disqualification of offenders only compromised their attempts to reintegrate into society: Ernst von Sichart, "Ein Beitrag zur Revision des Strafgesetzbuches für das Deutsche Reich," *ZStW* 21 (1901): 151–96, 178; Ernst von Sichart, "Fehler und Mängel des deutschen Strafgesetzbuches, welche einem wirksamen Strafvollzuge im Wege stehen, samt Besserungsvorschlägen," *ZStW* 25 (1905): 191–218, 205.
46. Adolf Wach, *Die Kriminalistischenschulen und die Strafrechtsreform* (Leipzig: Duncker & Humblot, 1902), 16; Karl von Birkmeyer, *Schuld und Gefährlichkeit in ihrer Bedeutung für die Strafbemessung* (Leipzig: Meiner, 1914), 116–32.
47. It was important to "classic" adherents that judges made these distinctions, whereas it was important to the "moderns" that several experts determined the individual treatment of prisoners—for example, prison wardens.
48. Erik Wolf, "Gustav von Radbruch," in idem, ed., *Grosse Rechtsdenker der deutschen Geistesgeschischte*, 713–67 (Tübingen: Mohr, 1963), 716.
49. In the years before the introduction of the Reich Penal Code, Wilhelm I had *de facto* abolished the death penalty in Prussia by commuting all death sentences with an act of sovereign grace. When Max Hödel and Karl Nobiling both attempted to assassinate the emperor in 1878 (attempts that Bismarck later instrumentalized to introduce the Anti-Socialist Laws), Bismarck had pressured Wilhelm I into executing Max Hödel (Karl Nobiling committed suicide) just as the penal code dictated. The death penalty was thus reinstated for the offense of assassination of the head of state. Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany 1600–1987* (Oxford: Oxford University Press, 1996), 351–61.
50. For the case of the death penalty, this is more complicated. There had always been a distinction between the dishonoring and non-dishonoring execution of the death penalty, but it had generally been abandoned in the nineteenth century. In general, the death penalty came to

be increasingly seen as dishonoring. However, it could be executed in combination with civil degradation or without, which implied that the distinction could still be made.

51. RSTGB §20.
52. Cf. Kesper-Biermann, *Einheit und Recht*, 337–39.
53. It is important to remember that an "honorable disposition" was also often attributed to people sentenced for dueling. In fact, 92 percent of the people sentenced to open custody in 1904 were convicted of dueling. The dueler, after all, was considered to be acting out of a strong emotional attachment to the code of honor. See James Goldschmidt, "Strafen (Haupt- und Nebenstrafen) und verwandte Maßregeln unter Berücksichtigung der den Inhalt der Strafe bestimmenden Grundsätze des Strafvollzugs," in Karl Birkmeyer et al., eds., *Vergleichende Darstellung des deutschen und ausländischen Strafrechts. Vorarbeiten zur deutschen Strafrechtsreform*, vol. 4, 81–470 (Berlin, 1908), 261.
54. Eduard Guckenheimer, *Der Begriff der ehrlosen Gesinnung im Strafrecht. Ein Beitrag zur strafrechtlichen Beurteilung politischer Verbrecher* (Hamburg: Gente, 1921), 18.
55. Consider also the following quote by a legal scholar: "Dishonorable are ways of thinking incited by low and selfish passions that dispense with the qualities of a better character"; Ludwig Fuld, "Das Motiv im deutschen Strafgesetzbuch," *GAS* 31 (1883): 321–25. In a similar vein, one could find the following phrase in August Köhler's handbook on criminal law: "The dishonorable disposition means the moral contempt that one's character traits bring about." August Köhler, *Deutsches Strafrecht. Allgemeiner Teil* (Leipzig, 1917), 593. Cf. Calker, *Ethische Werte im Strafrecht*, 37–38.
56. Helmut Klaere, *Die Entstehung der Schwurgerichte im 19. Jahrhundert*, http://jesz.ajk.elte.hu/klaere3.html (last accessed 29 March 2022).
57. Blasius, *Geschichte der politischen Kriminalität*, 56–57.
58. On the founding of the political police, see Albrecht Funk, *Polizei Und Rechtsstaat: Die Entwicklung des staatlichen Gewaltmonopols in Preussen 1848–1918* (Frankfurt a.M.: Campus, 1986), 257–60.
59. "Gesetz gegen die gemeingefährlichen Bestrebungen der Sozialdemokratie," *Deutsches Reichsgesetzblatt*, vol. 34, 351–58 (Berlin, 1878).
60. One such instance can be found in Wilhelm Kulemann, *Die Sozialdemokratie und deren Bekämpfung. Eine Studie zur Reform des Sozialistengesetzes* (Berlin: Heymann, 1890), 204–5.
61. Vernon L. Lidtke, *Outlawed Party. Social Democracy in Germany* (Princeton, NJ: Princeton University Press, 1966), 78–80; Annelies Laschitza, *Die Liebknechts. Karl und Sophie—Politik und Familie* (Berlin: Aufbau-Verl., 2009), 28–29.
62. Jonathan Sperber, "The Social Democratic Electorate in Imperial Germany," in *Between Reform and Revolution. German Socialism and Communism from 1840 to 1990*, ed. David E. Barclay and Eric D. Weitz, 167–94 (New York: Berghahn Books, 2002), 171–73; James Retallack, *Red Saxony. Election Battles and the Spectre of Democracy in Germany, 1860–1918* (Oxford: Oxford University Press, 2017), 133–35.
63. Kai Müller, *Der Hüter des Rechts. Die Stellung des Reichsgerichts im Deutschen Kaiserreich 1879–1918* (Baden-Baden: Nomos, 1997).
64. E. Künzel, *Der erste Hochverratsprozess vor dem Deutschen Reichsgericht* (Leipzig: Hesse, 1881), 67–73; cf. Heinz-Gerhard Haupt, "Gewalt als Praxis und Herrschaftsmittel. Das deutsche Kaiserreich und die Dritte Republik in Frankreich im Vergleich," in *Das Deutsche Kaiserreich in der Kontroverse*, ed. Sven-Oliver Müller and Cornelius Torp, 154–64 (Göttingen, Vandenhoeck & Ruprecht, 2009), 160–61.
65. Cf. Malte Wilke, *Staatsanwälte als Anwälte des Staates?: Die Strafverfolgungspraxis von Reichsanwaltschaft und Bundesanwaltschaft vom Kaiserreich bis in die frühe Bundesrepublik* (Göttingen: Vandenhoeck & Ruprecht, 2016), 51–54; Joachim Wagner, *Politischer Terrorismus und Strafrecht im Deutschen Kaiserreich von 1871* (Heidelberg: v. Decker, 1981), 332–38. These two

studies give a more complete overview of the grounds on which they were accused and discuss the problems of finding evidence against this group based on §86. The question about the kind of punishment, however, is only marginally addressed in these works.

66. Wagner, *Politischer Terrorismus*, 334.
67. Karl Braun, "Die beiden großen Hochverratsprozesse vor dem RG," *Das Tribunal. Zeitschrift für praktische Strafrechtspflege* 1 (1885): 65–97, 96–97.
68. Künzel, *Der erste Hochverratsprozess*, 71.
69. For a description of the criminologists' ideas of criminal gangs as a *counterworld* to normal society, see Becker, *Verderbnis und Entartung*, 177–254.
70. Gustav Otto, *Die Verbrecherwelt von Berlin* (Berlin: J. Guttentag, 1886), 85.
71. Andreas Fleiter, "Strafen auf dem Weg zum Sozialismus. Sozialistische Standpunkte zu Kriminalität und Strafe vor dem Ersten Weltkrieg," *Mitteilungsblatt des Instituts für soziale Bewegungen* 26 (2001): 105–38, 117.
72. *Verhandlungen des Parteitags der deutschen Sozialdemokratie St. Gallen* (Zürich, 1888), 40.
73. See, for example, Wilhelm Liebknecht, *Hochverrath und Revolution* (Zürich: Verlag der Volksbuchhandlung, 1887), v. Cf. August Bebel, *Attentate und Sozialdemokratie* (Berlin: Vorwärts, 1905).
74. The Kingdom of Belgium was still one of these sanctuaries at that time.
75. Braun, "Die beiden großen Hochverratsprozesse," 164.
76. Ibid.
77. Carl Stooss, *Die Grundzüge des schweizerischen Strafrechts* (Basel: Georg, 1892), 407.
78. Guckenheimer, *Begriff der ehrlosen Gesinnung*, 61–62.
79. Ibid., 62.
80. The outcome of this trial was also debated in the Reichstag, and the use of the statements by the *agent provocateur* Mr. Horsch, especially, provoked controversy. The issue was whether this witness was indeed an *agent provocateur* and how much his statements influenced the judges' verdict. Even the conservative authorities, however, seemed to agree that the use of *agents provocateurs* was illegitimate. As the Prussian Minister Robert von Puttkammer stated, only secret agents were worthy of and necessary for state action, and he believed Rumpf made legitimate use only of these; *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 66 (Berlin, 1882), 317ff.
81. August Bebel, *Aus meinem Leben*, vol. 3 (Stuttgart: Dietz, 1914), 220.
82. Wagner, *Politischer Terrorismus*, 329.
83. See the files of the office of the highest public prosecutor at the Reichsgericht: BA-BL, R 3003.
84. "Gesetz gegen den verbrecherischen und gemeingefährlichen Gebrauch von Sprengstoffen," *Deutsches Reichsgesetzblatt* (1884): 61–64.
85. Sepp Oerter, *Acht Jahre Zuchthaus. Lebenserinnerungen* (Berlin: Verlag der Tribüne, 1908).
86. Hartmut Wiedner, "Soldatenmißhandlungen Im Wilhelminischen Kaiserreich (1890–1914)," *Archiv Für Sozialgeschichte* 22 (1982): 159–99.
87. BA-BL, R. 3003 C3/07, Karl Liebknecht, "Rekrutenabshied," *Die Junge Garde*, 22 September 1906.
88. Cited by Bebel: *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 148 (Berlin, 1897), 4692.
89. Ibid., 4691–701.
90. The influential progressive prison reformer Carl Krohne, for instance, also warned of *heeresfeindliche agitation* among the youth in a memorandum for the penal reform of 1909. See BA-BL 3001/5909, "Freiheitsstrafen und sichernde Maßnahmen des Vorentwurfs."
91. Cited in *Lübecker Volksboten*, 3 March 1908.
92. Olshausen, *Kommentar zu den Strafgesetzen des Deutschen Reiches*, vol. 1. See also the Introduction.
93. *Der Hochverratsprozeß gegen Karl Liebknecht* (Berlin: Dietz, 1907), 47.

94. Ibid., 79.
95. Laschitza, *Die Liebknechts*, 61.
96. Cited in "Das rettende Zuchthaus," *Volksstimme*, 29 February 1908.
97. Rudolf Oestreich, *Wegen Hochverrats im Zuchthaus* (Berlin: Verlag der Tribüne, 1913), 10. Cf. Ulrich Linse, *Organisierter Anarchismus im Deutschen Kaiserreich von 1871* (Berlin: Duncker & Humblot, 1969), 36–40.
98. Oestreich, *Wegen Hochverrats im Zuchthaus*, 9.
99. *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 232 (Berlin, 1908), 4469.
100. Karl Liebknecht, "Kritische Betrachtungen," in *Gesammelte Reden und Schriften*, vol. 2 (Berlin: Dietz, 1985), 29.
101. *Statistik des Deutschen Reichs*, vol. 257 (Berlin, 1911).
102. George Otto Kent, *Arnim and Bismarck* (Oxford: Clarendon Press, 1968), 89–95; Otto Pflanze, *Bismarck and the Development of Germany*, vol. 2 (Princeton, NJ: Princeton University Press, 1990), 230–33.
103. Kent, *Arnim and Bismarck*, 144–75.
104. Franz von Holtzendorff, *Rechtsgutachten erstattet zum Process des Grafen H. v. Arnim* (Munich: Oldenbourg, 1875).
105. Harry von Arnim, *Pro Nihilo! Vorgeschichte des Arnim'schen Processes* (Zürich, 1876).
106. *Der Proceß Arnim. Dargestellt von einem alten Juristen* (Heidelberg: Bassermann, 1877).
107. Hall, "By Other Means," 369–70.
108. Kirchheimer defined this as the "derivative political trial" in his *Political Justice*, 46.
109. Ignaz Auer, *Nach zehn Jahren*, 224–32. Wilhelm, *Das Deutsche Kaiserreich*, 288.
110. Wilhelm Gustav Karl Starke, *Verbrechen und Verbrecher in Preußen 1854–1878. Eine kulturgeschichtliche Studie* (Berlin: Enslin, 1884), 84. There are more examples of crime statisticians defending this thesis, such as in a law student's book on the origins of crime from 1899: "In the numerous class of laborers, more generally than heretofore class and power consciousness have awoken, which often drives them to raw violent acts." Heinrich Wilhelm Müller, *Untersuchungen über die Bewegung der Criminalität in ihrem Zusammenhang mit den wirtschaftlichen Verhältnissen* (Halle a.S.: Kaemmerer & Co., 1899), 56. This thesis was fiercely disputed by Marxist criminologist Willem Adriaan Bonger in his "Verbrechen und Sozialismus," *Die Neue Zeit* 30 (1912): 801–67.
111. Starke, *Verbrechen und Verbrecher*.
112. Karl Frohme, *Politische Polizei und Justiz im monarchischen Deutschland. Erinnerungen* (Hamburg: Auer, 1926), 117–41.
113. Hans Blum, *Die Lügen unserer Sozialdemokratie. Nach amtlichen Quellen enthüllt und widerlegt* (Wismar: Hinstorff, 1891), 385. Cited in Frohme, *Politische Polizei*, 128.
114. Antonius Romen, *Meineid und Socialdemokratie. Ein Beitrag zu einer brennenden Tagesfrage* (Berlin, 1892).
115. Frohme, *Politische Polizei*, 122–24.
116. Ibid., 129–32.
117. Frome cites many critics of these practices, not all of whom were affiliated with the SPD, such as liberal politician Eugen Richter: ibid., 134.
118. For more details about Ludwig Schröder and his role as the delegate to the emperor, see Hans Georg Kirchhoff, *Die staatliche Sozialpolitik im Ruhrbergbau 1871–1914* (Cologne: Westdeutsche Verlag, 1958), 56–59.
119. Franz Lütgenau, *Der Essener Meineids-Prozeß vom 14. bis 17. August 1895. Geschichte und Glossen* (Berlin: Vorwärts, 1895), 3–6.
120. Hall, "By Other Means," 382. Cf. Lütgenau, *Essener Meineids-Prozeß*, 30–33.
121. Lütgenau, *Essener Meineids-Prozeß*, 16.

122. Ibid.; cf. *Berliner Volkszeitung*, 19 August 1895.
123. Ignaz Jastrow, "Die Lehre des Essener Meineidsprozesses," *Das freie Wort* 10, no. 23 (1911): 892–901, 900.
124. Hall, "By Other Means," 384.
125. For a discussion of the legal debate about this question, see Carl Legien, *Das Koalitionsrecht der deutschen Arbeiter in Theorie und Praxis. Denkschrift der Generalkommission der Gewerkschaften Deutschlands* (Hamburg: Verlag der Generalkommission der Gewerkschaften Deutschlands, 1899), 33–75.
126. This case was extensively narrated in Hugo Friedländer, *Interessante kriminal-prozesse von kulturhistorischer Bedeutung*, vol. 8 (Berlin, 1913), 104–75. Cf. *Adolf Stöcker und die Angriffe seiner Gegner im Lichte der Wahrheit* (Berlin: Warneck, 1901).
127. Norman Domeier, *Der Eulenburg-Skandal. Eine politische Kulturgeschichte des Kaiserreichs* (Frankfurt a.M., 2010), 269–326.
128. Lèse-majesté was not a form of high treason, so it was tried in lower-level courts.
129. Wilhelm, *Das Deutsche Kaiserreich*, 335. Cf. Kirchheimer, *Political Justice*, 35.
130. Hall, "By Other Means."
131. Goldberg, *Honor, Politics, and the Law*, 101.
132. Andrea Hartmann, *Majestätsbeleidigung und Verunglimpfung des Staatsoberhauptes* (Berlin: Berliner Wissenschafts-Verlag, 2006), 165–66. The architect Ludwig Feuth expressed very strong criticism of the use of pretrial detention in the German Empire. See Ludwig Feuth, *Humanität und Strafverfolgung im XX. Jahrhundert* (Berlin, 1908).
133. Cf. Wilhelm, *Das Deutsche Kaiserreich*, 386–93.
134. Gary D. Stark, *Banned in Berlin: Literary Censorship in Imperial Germany 1871–1918* (New York: Berghahn, 2009), 91–92; Hartmann, *Majestätsbeleidigung*, 136.
135. The verdict was published in the *Volkszeitung*, 5 November 1898.
136. "Die Krücken der Ehrfurcht," *Hamburger Anzeiger*, 8 November 1898.
137. Thomas Vormbaum, *Einführung in die moderne Strafrechtsgeschichte* (Berlin: Springer, 2011), 84.
138. Rainer Schröder, "Die strafrechtliche Bewältigung der Streiks durch Obergerichtliche Rechtssprechung zwischen 1870 und 1914," *Archiv für Sozialgeschichte* 31 (1991): 85–102, 91.
139. Gerhard A. Ritter, *Arbeiterbewegung, Parteien und Parlamentarismus* (Göttingen: Vandenhoeck & Ruprecht, 1976), 71–73.
140. Klaus Saul, "Der Staat und die 'Mächte des Umsturzes.' Ein Beitrag zu den Methoden antisozialistischer Repression und Agitation vom Scheitern des Sozialistengesetzes bis zur Jahrhundertwende," *Archiv für Sozialgeschichte* 12 (1972): 293–350.
141. Ibid.
142. Advocatus, "Der Umsturz des Strafrechts," *Die Neue Zeit* 13 (1895): 780–87, 780.
143. Cf. Margaret Lavinia Anderson, *Practicing Democracy: Elections and Political Culture in Imperial Germany* (Princeton, NJ: Princeton University Press, 2000), 246–49.
144. Cf. Nipperdey, *Machtstaat vor der Demokratie*, 714. The official title of the bill was "Gesetz zum Schutze des gewerblichen Arbeitsverhältnisses" (Law for the Protection of Commercial Employment).
145. Ernst Johann, *Reden des Kaisers* (Munich: Dtv-Verlag, 1977), 79–81.
146. John C. G. Röhl, *Wilhelm II.: The Kaiser's Personal Monarchy, 1888–1900* (Cambridge: Cambridge University Press, 2015), 873–83.
147. "Denkschrift, betreffend die Ausschreitungen bei den Arbeitskämpfen der letzten Jahre," in *Stenographische Berichte über die Verhandlungen des Reichstages*, vol. 174 (Berlin, 1899), 2248–98.

148. An example of the phrases used in the memorandum translates as follows: "Repeatedly, the terrorism of the non-residents has repeatedly been directed against the relatives of workers willing to work," ibid., 2263.
149. Legien, *Das Koalitionsrecht*.
150. Support of the moral entitlement of workers to protest their contract was also found in scholarly works on contract law, most notably in Philipp Lotmar, *Der unmoralische Vertrag. Insbesondere nach gemeinem Recht* (Leipzig: Duncker & Humblot, 1896); Philipp Lotmar, *Der Arbeitsvertrag nach dem Privatrecht des Deutschen Reiches*, vol. 1 (Leipzig: Duncker & Humblot, 1902), 116–19; Emil Steinbach, *Die Moral als Schranke des Rechtserwerbs und der Rechtsausübung* (Vienna: Manz, 1898), 73.
151. Max Weber noted this in his review of Lotmar's book: "Rezension von: Lotmar, Philipp, Der Arbeitsvertrag," in Max Weber, *Gesamtausgabe*, vol. 8, 37–61 (Tübingen: Mohr Siebeck, 2005), 51.
152. A collection of the reactions of the press can be found in BA-BL R 1501/106846.
153. BA-BL R 1501/106846, *Vorwärts*, 2 February 1899.
154. BA-BL R 1501/106846. *Vorwärts*, 8 February 1899, and 13 February 1899.
155. Wolfgang J. Mommsen, *Max Weber und die deutsche Politik, 1890–1920* (Tübingen: Mohr Siebeck, 2004), 122.
156. Wilhelm, *Das Deutsche Kaiserreich*, 386–93; Gerd Linnemann, *Klassenjustiz und Weltfremdheit, Deutsche Justizkritik 1890–1914* (Kiel, 1989), 134–35.
157. BA-BL, R. 3001/6035, "Der Vorentwurf zum neuen Strafgesetzbuch," *Vorwärts*, 12 September 1909.
158. Raphael, *Recht und Ordnung*, 141–44.
159. *Protokoll über die Verhandlungen des Parteitages der Sozialdemokratischen Partei Deutschlands abgehalten zu Halle a.S. vom 12. bis 18. Oktober 1890* (Berlin, 1890), 5.
160. "Die Hamburger Accordmaurer vor dem Parteigericht," *Sozialistische Monatshefte* 5 (1901): 728–30. See also Eduard Bernstein, *Die Geschichte der Berliner Arbeiter-Bewegung* 3 (Berlin: Vorwärts, 1910), 147.
161. *Protokoll über die Verhandlungen des Parteitages der Sozialdemokratischen Partei Deutschlands abgehalten zu Lübeck vom 22. bis 28. September 1901* (Berlin, 1901), 218.
162. Ibid.
163. An example was H. Schadebach, "Der Ehrbegriff der Arbeiterschaft," *Vorwärts*, 14 September 1901.
164. "Die Hamburger Akkordmaurer und der Parteitag," *Lübecker Volksbote*, 28 August 1901.
165. See Andreas Fleiter, "Strafen auf dem Weg zum Sozialismus. Sozialistische Standpunkte zu Kriminalität und Strafe vor dem Ersten Weltkrieg," *Mitteilungsblatt des Instituts für soziale Bewegungen* 26 (2001): 105–38, 118.
166. Cf. August Bebel, "Die Gewerbeordnungs-Novelle," *Die Neue Zeit* 9 (1891): 364–74, 406–15, 406–7.
167. Ernst Francke, "Das deutsche Auswanderungsgesetz," *Archiv fur Sozialwissenschaft und Sozialpolitik* 11 (1897): 181–214, 187–89.
168. Frevert, *Men of Honor*, 136–49.
169. Reprinted in *Lübecker Volksboten* (supplement), 9 March 1908. In a way, these remarks are quite similar to the critique of the dueling aristocracy mentioned in chapter 1. In this case, however, these remarks were not as saturated with anti-statism as the criticism of these commentators was.
170. Paul Albers, "Der Ehrverlust," *Berliner Tageblatt*, 15 December 1907; cf. De Groot, "Politieke Misdadigers of Eerloze Criminelen?," 40–43.