

Chapter 5

“THE BLESSING OF THE WAR”

World War I as a Chance for Rehabilitation



Disenfranchised felons used the formal rehabilitation process to negotiate how they could “pay for their crimes,” deploying various rhetorical strategies in doing so. They either pointed out their upstanding character or stressed their deep sense of remorse. Meanwhile, the authorities could also express their sympathy in relation to a request, for instance, if an ex-convict enjoyed a good reputation locally. In their deliberations about rehabilitation cases, the local authorities assessed both the seriousness of the crimes and the character of the felons, weighing them against one another, as well as various social interests. Most often, they found enough reasons to deny a request, with many stressing the need for a legal penalty to be carried out in full and for felons to “serve their time.” Yet, others were convinced that social cohesion was important and that disenfranchisement could disrupt the sense of local community. Generally, there was a contrast between the stance of the local and national authorities. Whereas the local authorities were more open to different social interests, the national authorities were more adamant about denying rehabilitation requests out of respect for the penal code. This suggests that the clash between modern scholars’ focus on resocialization and moral improvement and lawmakers’ emphasis on justice and retribution was more trenchant on the national level than on the local one.

The outbreak of World War I seriously impacted these deliberations. Both prison officials and ex-convicts increasingly conceptualized alternative ways of “paying for a crime,” and reconsidered the local and national interests of excluding or including ex-convicts in the army. Interestingly, welfare agents also started to assist disenfranchised felons get enlisted in the army for the sake of both the national community and the individual offenders. Historian Warren Rosenblum has previously argued that World War I “hastened the assimilation of the penal question into the social question.”¹ One example was the pardon policy, which

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was implemented to support the mobilization for total war and also helped to produce new welfare support initiatives for ex-convicts. Yet, while I, in part, draw on sources similar to those Rosenblum consulted for his study, I wish to highlight in this chapter how much disenfranchised felons, even at the height of war, were still treated as exceptional offenders with no entitlement to enlistment.

In this chapter, I will analyze the attempts of formerly incarcerated and disenfranchised citizens to join the ranks in the early war years, as well as the attempts of policymakers to convince people that the war could help to rehabilitate them. I will demonstrate that these attempts largely failed; the national authorities could not be convinced that these offenders could join the military. This illustrates that the national authorities adhered tenaciously to the principle of excluding “dishonored felons” from the army. I will conclude the chapter by showing that only in the final year of the war did the national authorities gradually set aside this “fundamental” principle, even though local authorities had already long been suggesting this change.

Remorse for a Momentary Lapse

Before World War I began, local authorities decided individual rehabilitation cases based on the nature of the offense and the character of the offender, debating each time which of these was more important. Sometimes the local authorities would even have completely diverging opinions about this. Carl H. from Werden, for instance, was sentenced in 1880 to six years in the penitentiary for a sex offense and was deprived of his civil privileges for ten years. His case was peculiar in that he had no trouble finding employment after his release: he was immediately employed at a factory in his hometown. Nonetheless, he petitioned for the restoration of civil privileges, focusing predominantly on the notion of remorse:

I do not want to expound on how much I regret my misstep, how deeply it hurts me every day, how I still suffer from the deprivation of my civil privileges, how much I wish that His Majesty's mercy would restore them to me . . . So long as this [punishment] still afflicts me, it will be impossible for me to improve my situation, and yet, my large family necessitates that I do so.²

In response to this petition, the burgomaster of Werden highlighted Carl H.'s good character, noting his respectability in his community.³ The state prosecutor, however, found the character of the offender irrelevant and emphasized the reprehensible nature of Carl H.'s crime, even adding, “Considering the case, the punishment even seems mild.”⁴

Remorse was a key notion in the image of the “typical criminal” that criminologists (*Kriminalisten*) had in the first half of the nineteenth century.⁵ They

regarded criminals as human beings who had originally possessed a moral sense but turned to crime when they failed to obey the voice of their conscience. Since criminologists believed that this fall from grace was self-imposed, they also held that criminals' return to a "normal" life should be an autonomous choice resulting from genuine remorse. Accordingly, many ex-convicts tried to cast their crimes as momentary lapses and to express their remorse in their petitions. They hoped this would convince the authorities of their character as respectable citizens and make them eligible for rehabilitation.

Carl H. repeatedly used the notion of remorse (*Reue*) in his petition to show that his crime was not a sign of anti-authoritarian sentiment. His expression of remorse, in fact, signaled loyalty to the state. Peter J., an offender mentioned in chapter 4, similarly argued in his petition that his offense did not arise from any form of rebellion against the state and its institutions. Rather, his offense resulted from his wretched circumstances, which he even called a "stroke of fate" (*Schicksalsschlag*). Like Carl H., Peter J. also repeatedly expressed his remorse.⁶ All in all, most of the civil servants who petitioned for the restoration of their rights downplayed their offenses, portraying them as unique events or momentary lapses that did not truly reflect their character. The concept of remorse (*Reue*) comes up frequently in these requests to indicate that a person's moral conscience was stronger than his status as a one-time offender.

Peter J. also compared himself to other offenders in his petition: "I believe that I have been treated worse than a robber or murderer because at least they do not lose their civil privileges."⁷ This raises the question of why this man was sentenced to the penitentiary in the first place. As his petition detailed, he was dealing with a lot of money in his job and also loaned money to various people. In the end, he loaned more money than was readily available and was eventually arrested and convicted of fraud. Even though he considered his punishment just, he emphasized that he had never pursued any form of "pecuniary advantage." Evidently, Peter J. knew that this was crucial because "pursuit of profit" (*Gewinnsucht*) was a fundamental legal category that judges used to determine whether a crime was dishonorable.

Peter J. instead tried to convince the kaiser that he had committed his crime not for himself but for the benefit of others. Interestingly, Peter J. argued that he used the money to good ends and that he believed that his punishment was deserved. In other words, he did not try to downplay the seriousness of his offense but rather sought to change the perception of how it reflected on his character. He considered his actions a crime and a breach of the trust bestowed on him, by which he showed that he had internalized the norms of professional conduct and compliance, but considered his actions permissible as he believed he had acted for the good of others.

In reflecting on their crimes, ex-convicts used the fact that their offenses had not caused harm as ammunition. Albrecht Stein, the journalist no longer allowed

to use his doctor's title (see chapter 4), averred that there were no excuses for forgery and that he deeply regretted his crime. Yet, he also noted in passing that it had harmed no one (except himself), which he believed softened its seriousness. All in all, his petition displays a tension between his loyal remorse and his own judgment about his crime.

Judgment of both character and the crime were important. Some ex-convicts were able to count on a great deal of sympathy because their character was valued. Adolf M., for instance, was a civil servant employed in the municipal government of Müllheim as a bookkeeper for the public gas and waterworks. In 1891, he was convicted of embezzlement and sentenced to two years and nine months in the penitentiary, combined with a three-year suspension of his civil privileges. Attenuating Adolf M.'s crime, Müllheim's burgomaster remarked that he liked "to live briskly" (*flott*) and simply could not resist appropriating some of the money he had to manage for his work. He thus seemingly suggested that Adolf M.'s offense was excusable and added that Adolf M. had always been an outstanding civil servant for the municipality. In fact, the burgomaster was very involved in the case: he had assisted Adolf M. after his release from the penitentiary and was also trying to help him find good employment. Yet, because this seemed nearly impossible, the burgomaster advised Adolf M. to petition for the restoration of his civil privileges.⁸ In general, the local governments seemed to place more emphasis on an offender's character, whereas the state prosecutors gave more weight to the nature of the crime. Therefore, as was also visible in the case of Carl H., Adolf M. found it difficult to get his sentence reduced. Even though he was clearly a valued member of his community, embezzlement was too serious a crime to be pardoned.

Nevertheless, local authorities also often used the accused's character to highlight the reprehensible character of certain offenses. This became clear, for instance, in the case of Johann C. from the town of Crefeld, who was convicted of manslaughter. Crefeld's burgomaster wrote a lengthy statement reflecting on Johann C.'s general character. Johann C. had conducted himself very well after his release, he believed, but he still considered his crime unforgivable and exacerbated by Johann C.'s violent temperament. Moreover, he believed that Johann C. was more interested in getting his trade license back than in his civil privileges *per se*—a fact he felt spoke against the granting of Johann C.'s request. In other words, the burgomaster concluded that his strong interest in material matters was not a sign of good character.

War Pedagogy

Despite the prevalence of the notion of remorse in these petitions, some scholars expressed doubt about its function in criminal reform. At the end of the eigh-

teenth century, penologists had already voiced such doubt, but around the turn of the twentieth century, such arguments resurfaced in academic journals.⁹ For instance, Moritz Liepmann, a proponent of the "modern school," argued in a 1902 essay for the *Zeitschrift für die gesamte Strafrechtswissenschaft* that emphasis on remorse in writings on solitary confinement and moral reform in the first half of the nineteenth century had been counterproductive: it had paved the way for hypocrisy since many convicts faked remorse and it was impossible to prove whether they were being "authentic."¹⁰ Because many penal experts tried to deal with this problem of hypocrisy, however, Liepmann focused on arguing that the premises of these former administrators had been wrong.¹¹ What society needed, he held, was not people continuously reflecting on their past decisions and thus experiencing constant conflict (*friedlos*) but people who could do their jobs normally and enjoy a peaceful life.¹² With this societal need in mind, penal administrators should approach offenders they considered capable of reform. His line of reasoning aligned well with the modern school's distinction between "corrigible" and "incurable" offenders.¹³

Interestingly, the outbreak of World War I prompted many people involved in the penal system to reconsider the importance of atonement and remorse and to find alternative ways for offenders to "pay" for their crimes. The war even revived Schmölder and Küppers's idea of putting (former) penitentiary inmates in the army.¹⁴ These suggestions arose in the context of more general debates about the war's pedagogical effects and the opportunities it generated to reform the educational system.

Inspired by the enthusiasm in the early months of the war, many renowned German pedagogues regarded the conflict as having the potential, as a source of moral education, to boost the spirit of the people.¹⁵ One such pedagogue was philosopher Rudolf Eucken. In a lecture at the University of Jena in 1914, he addressed the idea of the war's "moral powers" (*sittliche Kräfte*), suggesting that it could destroy the "selfish inclinations" of people who participated in it by creating a much-needed sense of mutual fellowship among the German people.¹⁶ The famous drafter of the "Ten Commandments of Wartime Pedagogy," Theobald Ziegler, expressed similar thoughts in a lecture in the war's early months, referring to the war as an "educator" of the people.¹⁷ Although he conceived of the war as an unwelcome event, he held that the war could create a stronger sense of comradeship,¹⁸ bolstering this argument with a comparison to the war of 1870. The experiences of the soldiers during the German wars of unification and the Franco-Prussian War were crucial to generating a sense of mutual citizenship in the German Empire. In his words, this war created a set of "extraordinary Germans" that could thereafter serve the German nation.¹⁹

Thus, an important question of the so-called "War Pedagogy" was whether the experience at the front had a function in the moral education of German citizens.²⁰ Earlier, Ziegler had expressed more nuanced beliefs about warfare. In his

influential book *Das Gefühl*, a book on people's sentiments in general, he painted a diverse picture of the influence of war on the moral senses of its participants. He argued in two directions: on the one hand, war could disrupt people's feelings of selfishness and could create enthusiasm for the common good, but, on the other hand, the experience of war made people blunt, "one-sided, narrow, rough and cruel."²¹ At the outbreak of the war, Ziegler left out this second aspect, but other commentators did argue for a more diverse understanding of the effects of war on the participants. Based on his own experiences with warfare, the German art critic Erich Everth, for instance, wrote that war always had "polar" effects on its participants; it had the potential to strengthen the strong and weaken the weak.²²

This debate about the war's impact on the sentiments of the people figured particularly prominently in the question of convicts. Some penal experts adopted Ziegler's and Eucken's wartime views about the conflict's positive effects and applied it to questions of criminal justice. They believed that the war would not only make "normal" citizens better people but also ex-convicts. Enlistment could thus truly become a "school" for degenerate citizens. A governor from Zwickau suggested, remarkably, that convicted felons be sent off to the front immediately, even before they were incarcerated.²³ Yet, in this debate, as in others, the distinctions between types of offenders proved crucial. For instance, this governor only wished to apply his suggestion to offenders who had acted out of "youthful naiveté," not to serious habitual offenders.

Many people who worked with convicts and ex-convicts were also convinced that the war could positively impact them. The German prison societies, like the Berlin-based Society for the Reformation of Convicts (*Verein zur Besserung der Strafgefangenen*) or the Prison Society of the Rhineland and Westphalia (*Rheinisch-Westfälische Gefängnisgesellschaft*), supported ex-convicts seeking rehabilitation. In fact, as the president of the Hamburg Prison Society, Heinrich Seyfarth, argued in 1915, it was the key priority of these societies to help annul the secondary sentences of formerly incarcerated individuals.²⁴ Consequently, prison societies actively contributed to the increase in rates of petitions seeking the restoration of people's right to join the army. The annual account of the Society for the Reformation of Convicts from 1914 indicated that a large population of ex-convicts utilized the same rhetoric about military service in the hopes of getting rehabilitated: "Many ex-convicts turned to us to help them be allowed to join the army. One can say with certainty that most were less inspired by financial distress than by patriotism and the fiery desire to rehabilitate themselves in the war."²⁵

The members of the society were very supportive of ex-convicts' efforts to join the army. They even stated that these individuals' "brave conduct" on the front indicated that prison societies' assistance had succeeded, thus endorsing the quality of their work. Moreover, they presented this success as an argument for their professional point of view—that the best way to combat crime was to release

ex-convicts into society, with participation in the army being one component of active involvement in society. Just like the Berlin Society for the Reformation of Convicts, the West-Prussian Prison Society estimated that most of these petitioners aimed to get rehabilitated in the war because they saw the war as an opportunity to pay for their offense in another way.

“From the Military Perspective”

Even though penal experts actively sought to convince officials that ex-convicts were both enthusiastic about joining the war and could contribute meaningfully to it, it remained unconventional to integrate penal policy and army discipline in the conflict's early years. Army officials still insisted that recruiting such individuals would threaten the “honor of the army,” and the amnesties granted in the first months of the war did little to change their stance. The first of wave of amnesties in Germany on 4 August 1914 immediately pardoned German citizens convicted of acts of resistance against the state power and attempts to create public disorder, among others, and dropped ongoing legal proceedings for the same crimes. As a result, numerous Social Democrats convicted for public disturbance or insulting the authorities were released. This amnesty was partly due to the outbreak of the war, as part of the politics of the so-called *Burgfrieden*: partisan rivalries were set aside to support the government in its war aims.²⁶ The kaiser's official text accompanying the decree noted that the amnesty would encourage Germans' patriotism, promoting their willingness to make sacrifices for the greater cause.²⁷

This large-scale amnesty was not unique to Germany but was also granted in other countries during the war, mainly to reduce labor shortages and to mobilize additional soldiers.²⁸ Nonetheless, the kaiser's granting of amnesty raised questions. Could participation in the war actually serve to rehabilitate the offenders? Also, what would happen to the charges that had been dropped after the war had ended? A prominent Augsburg lawyer, Joseph Fischer, asked precisely this in an article in the *Berliner Tageblatt*. After all, the decree had not made it clear whether this amnesty constituted a permanent acquittal or just a postponement of prosecution. Fischer argued that it would be fair for the accused not to have to stand trial after the war, essentially recommending that war participation function as a form of legal rehabilitation for these offenders.²⁹

It is important to stress that this amnesty did not address the possible reversal of convicts' stripped rights, so a significant group of ex-offenders remained excluded. Soon after the first amnesty had been granted, it became clear that the authorities were firmly adhering to their principle of excluding such “serious” offenders. In fact, when the Minister of the Interior learned that many disenfranchised felons were sending petitions for the restoration of their rights, he sent a circular to local state attorneys urging them not to treat the amnesty as an

occasion to rehabilitate former penitentiary inmates or other people deprived of their civil privileges. He considered it extremely important that the local authorities maintain this rule because rehabilitation “from the military perspective . . . is fundamentally unwanted.”³⁰

“Even the Social Democrats!”

Nonetheless, local state attorneys also had to think about the potential added value of ex-convicts in relation to their wartime ambitions. Each petition for a disenfranchised felon that reached the office of the district president in Aachen prompted the state attorney to individually assess the ex-convict and, when rehabilitation was not granted, to provide a detailed explanation. One case was that of Wilhelm A., a factory worker from Aachen. Having been sentenced at least twelve times for petty theft and other offenses, he was denied rehabilitation in December 1915 even though his petition mentioned that he was eager to join his brothers, who had been decorated with the Iron Cross for their service, in fighting the war. He even added that the only place he really felt happy was at the front.³¹ The state attorney of Aachen denied Jacob H.’s request on the grounds that he repeatedly made unfounded criminal reports, was involved in many “dubious” lawsuits, and regularly engaged in legal proceedings to insult his fellow citizens: “Jacob H. is a malicious, spiteful and ruthless human being, who enjoys upsetting his opponents with denunciations and such things.”³²

In rejecting these requests, the state attorneys supported the idea that the enlistment of such individuals would endanger the army’s honor. In denying Jakob P.’s request, the state attorney even made this point explicitly: “it is in the interest of the army and the reputation of Germany that convicts and people like them are forbidden from becoming soldiers.”³³ These examples show that the local authorities actively appropriated the notion of exclusion of ex-convicts in their day-to-day deliberations because they felt that the army (and thus the reputation of the German Empire in general) needed to be safeguarded from their influence.

The amnesty, however, was important to many ex-convicts as it prompted reflection on their own situation. One such ex-convict was Karl H., a resident of Roelsdorf, who wrote a petition for his right to join the army to be restored on 1 August, the very day Germany declared war on France. A 32-year-old former soldier convicted of embezzlement, he had been deprived of his civil privileges (including the right to join the army) for a period of five years by a local court in 1912. He strongly opposed his exclusion from joining the troops: “I have atoned a lot for my actions, and have borne much discrimination, but the expulsion from the army is too much. I was always a good soldier and want to be one today. I give and sacrifice my life for your majesty.”³⁴ Karl H.’s tone in his petition to the kaiser was both very patriotic and desperate.

After Karl H. heard about the amnesty, and when the authorities failed to react quickly, he continued to write petitions, not only addressed to the kaiser but also to his wife Augusta Victoria and his children. In the end, he wrote four petitions, underscoring his desperation. In his second letter, Karl H. directly commented on the imperial amnesty of 4 August, specifically comparing his own offenses to the types of charges the amnesty had caused to be dropped. In his mind, embezzlement was not worse than many political offenders' crimes (public disturbance, *lèse majesté*). The release of "Social Democrats" was particularly hard for him to bear ("... even the Social Democrats!"). His own offense had solely harmed a "private individual," he argued—harm he felt he was capable of repairing—whereas Social Democrats had harmed the entire nation.³⁵

On 21 August, he wrote another petition, this time addressed to the eldest son of Wilhelm II (Crown Prince Wilhelm). With the inclusion of the following remark, he left no doubt that the war was his main motivation for writing: "In this difficult time, when the motherland is under attack by its enemies to such a degree and everything depends on the kaiser's call to sacrifice our comforts and our blood, I am unhappy not to be worthy to take up arms with the others."³⁶ When this third petition failed, he wrote the Duchess of Braunschweig, the kaiser's youngest daughter, making nearly the same request.³⁷ In these four petitions, Karl H. sought to renegotiate the seriousness with which his crime was perceived compared to others and believed one should distinguish between crimes that harmed the interests of the nation and those that only hurt other individuals.

In many other petitions for the restoration of rights, petitioners expressed a clear desire to fight for the nation, particularly out of solidarity with other war participants (often friends and family members). In addition, they infused their statements with a sense of strong masculinity and an emphasis on their physical characteristics, which gave their requests a bodily dimension.³⁸ For example, Joseph S., a 38-year-old former coachman from Aachen, wrote in his petition: "As a young and strong single man, my heart bleeds in my body as I sit by and watch my comrades march into the battlefield and I have to stay behind."³⁹ Many also brought up past experience in the army to underscore their competence and their added value to the cause. Jacob H., for instance, a former non-commissioned officer deprived of his civil privileges for a period of five years, focused in his petition on his inability to fulfill (what he believed to be) his "duty" to fight for Germany's honor.⁴⁰

Quirin P. echoed ex-convicts' wish to join the war in order to pay for their offenses in his petition from 1921, several years after the conflict was over. Although his immediate cause for petitioning was to obtain a trade license (*Freihandelserlaubnis*), which he could not do without the restoration of his rights, the war played an important role in his narrative. He had been convicted for assisting a married couple to obtain an abortion in 1912. He stated that his crime had not been motivated by profit, but that he did it out of "genuine human charity," since

the woman was threatening to attempt suicide if he refused to help. Quirin P. used the oft-repeated argument that his offense was a one-time lapse to convince the authorities that he was a law-abiding citizen. He underscored this by referring to his offense as a misdemeanor (*Vergehen*), although it was unequivocally regarded as a felony (*Verbrechen*) in the legal vocabulary of that time.⁴¹

As noted, Quirin P.'s petition of 1921 focused on the war. The history of his case helps clarify why. When his offense became public knowledge, Quirin P. fled the country, but he returned to Aachen when the war began in 1914 and enlisted voluntarily. In his 1921 petition, he recalled that he had wanted to fight in the war "shoulder to shoulder" with his sons, and concluded that he could pay for his crime with his military service: "I preferred a heroic death over a ticket to the penitentiary as atonement for my offense."⁴² Although he returned injured from the battlefield in 1915, he was convicted and sentenced to two years in the penitentiary and ten years without civil privileges. Quirin P.'s hope for rehabilitation as a citizen through military service was a false one since he was nonetheless sentenced for his crime. Quirin P.'s case is interesting since it demonstrates how ex-offenders, even so many years after the war, still entertained and expressed their own ideas about "paying" for a crime in battle.

During the war, some experts in academic journals complained about dishonored ex-convicts' "phantasm" of paying for their offenses in this way. "Even though they believe that they have their duty to fulfill," Ernst Kleeman, a prison minister from Leipzig, commented in the *Archiv für Kriminalanthropologie*, "they stand under extra scrutiny and will be immediately eliminated if they enlist."⁴³ Nonetheless, petitioners continued to draw on the idea that the war could be viewed in various ways as a chance for rehabilitation. The petitioners either evoked their interest in joining the army as proof of their good and honorable intentions, or they argued that the front allowed them to atone for their sins by being useful to the nation. In another sense, the war experience itself was supposed to be seen as a form of atonement. These ideas, in fact, constituted an alternative idea of punishment and rehabilitation that both former prisoners and welfare workers set against the traditional idea of remorse and atonement as possible grounds for rehabilitation.

Able Bodies in Search of Rehabilitation

Although the idea of paying for their crimes in alternative ways motivated some convicts to petition to join the army during World War I, some cited other reasons as well. One reason addressed in the petitions was that enlistment could provide a decent living. Nonetheless, members of prison societies favored the atonement argument for wartime participation. Therefore, they were eager to present evidence that war participation had a positive effect on people who had previously chosen a path of crime.

But what constituted such evidence? Although crime statistics were occasionally brought up to support the benefits of war participation on criminals, they were seriously flawed.⁴⁴ Nevertheless, this did not stop some from utilizing these statistics well after the war to argue that war enthusiasm had led to decreasing crime rates.⁴⁵ One salient development in the statistics was the tremendous decline in the German prison population. Of course, this was largely due to the broad amnesties the kaiser granted on several occasions. The amnesty from August 1914 was one of three in the first month of World War I, and many more followed.⁴⁶ In light of the large numbers of freed prisoners and charges dropped, commentators like Joseph Fischer justifiably raised the question of what would happen to these ex-convicts who had enlisted once the war ended.

Ernst Kleeman, by contrast, feared that the prison exodus was only temporary and that prisons would fill up immediately after hostilities ceased.⁴⁷ In other words, he believed the war would not seriously impact the morality of most German convicts in the long term. Once crime rates, especially youth crime rates, started to rise again in the second half of the war, many people warned in the national and local media that the prison exodus presented a frightening scenario.⁴⁸ Criminologist Robert Heindl, for instance, in the *Leipziger Neueste Nachrichten*, wrote that criminals should be detained even more securely during the war rather than set free because they could cause more trouble. He also feared their biological impact: setting criminals free, he argued, meant providing them with the opportunity to procreate. Thus, he even proposed to organize concentration camps to prevent them from procreating while free.⁴⁹ Many of these commentators likewise found it reprehensible that (ex-)prisoners could be recruited for the war. For instance, urging policymakers to dismiss this idea immediately, a journalist for the *Leipziger Neueste Nachrichten* actively contrasted the German "purity" regulations in conscription policy to the enlistment policies in France, where the French army had enlisted a regiment of Zwawa Berbers (Zouaves). Although the Zouaves were not a group of ex-convicts, they were "aliens," highlighting France's less protective policies. In essence, this journalist equated ex-convicts with foreigners. The German army, by contrast, protected its honorable nature by excluding ex-convicts from the ranks: "We want to leave Zouave regiments to the French."⁵⁰

Welfare agents and prison officials, on the other hand, based their counterargument initially on the war enthusiasm they claimed to have observed in the German prisons during the first months of the war. A pastor employed at the penitentiary in Insterburg in Eastern Prussia, for instance, recalled that the mobilization of August 1914 had seriously improved the general mood among the inmates:

At this moment, one thought touched the hearts of all: that the sounds of mobilization, which tore so many sons of the fatherland loose from their normal environment and occupation, would also bring fundamental changes for prisoners, in other words,

that it would mean freedom for them. After all, there is a large portion of the 450 inmates who had worn the royal army uniform in honor (or dishonor) and who on the battlefield hope to restore their human dignity for their fatherland.⁵¹

According to this prison pastor, the *Augusterlebnis* that so many people recalled from the first month of the war was not only experienced on the streets of bigger cities in Germany but could also be found in the country's institutions of confinement.⁵² Of course, we should be careful not to conclude from these remarks that all prisoners were eager to join the army; they are better understood as the pastor's way of arguing for the importance of the pedagogical principles of criminal policy. If prisoners were so enthused by the war, he reasoned, perhaps they could even become useful in the war and join the troops to fight for "the honor of the German nation."

Prison governors and welfare society members frequently used this "enthusiasm" to argue that the war brought out human beings' better sentiments, even among detained criminals. Rudolf Franz, a pastor in the women's prison in Voigtsberg, spoke in this context of "the blessing of the war" for convicts.⁵³ Franz, however, did find that the situation was somewhat different among female inmates. In his view, immediate war enthusiasm was clearly a masculine reaction, whereas women were more inclined to react with fear and anxiety. Gradually, though, female prisoners also showed their willingness to support the war, he argued. Through this contrast, he could also emphasize the strong masculinity one could still find in the male prisoners. Yet the question remained whether the prisoners' enthusiasm constituted mere opportunism or a genuine manifestation of moral improvement.

Following Ziegler and Eucken's pedagogical principles, experience on the front was the most significant aspect of the war that people believed could stimulate goodness in people. The ultimate proof of this, however, had to be found in the personal accounts of former inmates who had joined the fight. Some prison officials possessed letters from former prisoners who had fought on the front and used them as testimonials to persuade people that war had a pedagogical effect on ex-convicts and that they did not undermine the army's honor.

Similarly, presidents of welfare societies for prisoners were eager to demonstrate the honorable intentions of many of their clients. The annual account of the Prison Society of the Rhineland and Westphalia, for example, referred to a letter it had received from a man the society had assisted in his efforts to join the ranks. The former convict had expressed his gratitude to the welfare society but also shared his belief that he had now truly atoned for his crime(s) after fighting for his nation in the war.⁵⁴ Welfare societies for ex-convicts enthusiastically welcomed testimonials like these.

Heinrich Seyfarth, a key figure in the German welfare organizations for discharged prisoners, also used such testimonials to make a similar point in a 1916

article for the *Blätter für Gefängniskunde*.⁵⁵ He was a strong advocate of the idea that prisoners should be enlisted in the war, even those deprived of their civil privileges and those still in prison, since fighting for the nation helped them become better human beings more effectively than incarceration. Furthermore, he argued, many former prisoners wished to participate in the war: "even among the offenders with lengthy criminal records are people who have a burning desire to rehabilitate themselves in the war."⁵⁶

To underscore prisoners' wish to serve in the war, Seyfarth elaborated on a correspondence he had with one of the former convicts he had represented, Hugo B. from Hamburg. Convicted of multiple crimes, such as embezzlement, theft, and causing mayhem, Hugo B. still had the right to enlist, so he voluntarily joined a regiment in Bavaria the moment the war broke out. Though injured repeatedly during battle, he remained at the front to fight for the German nation, even receiving the Iron Cross for the courage he demonstrated. Seyfarth cited a letter Hugo B.'s captain had sent to the ex-convict's mother, who spoke of the "courage and intrepidity" her son had displayed during the war. Seyfarth also mentioned that he had personally met with Hugo B. after a serious injury had forced him to return from the front and that Hugo B. had proudly showed him his decorations.⁵⁷ Seyfarth used this story, one of many he claimed to know, to demonstrate the positive contribution formerly incarcerated individuals could make to the war cause.

In an article published the previous year, Seyfarth had already mentioned that he had personally helped fifteen former prisoners from Hamburg join the ranks, none of whom had had a damaging effect on the morale of the troops, and eight of whom had even received the Iron Cross for their courage at the front.⁵⁸ Seyfarth reinforced the positive effects the war had on them by referring to some of the letters they had sent him. Seyfarth also contrasted these stories with examples of excluded ex-convicts and prisoners deprived of the right to join the army. One, for instance, had become seriously depressed and mentally unstable.⁵⁹

The question of whether the use of (former) prisoners in the war was advantageous to the military or the prisoners themselves was not a real dilemma for the people involved in this debate. In fact, most saw it as mutually beneficial: what was good for the war was also good for these ex-convicts and vice versa. However, the ex-convicts' physical constitution was of primary importance to many, making their usefulness to the army a key concern. Hence, many of the prison officials, including Seyfarth, often resorted to talking about the "bodies" that could be made useful in the war.

Thus, the welfare agents combined two rhetorical strategies in their effort to convince officials to accept ex-convicts into the ranks. On the one hand, they argued that the prisoners' moral disposition was not as bad as was often believed, and that participation in the war could only improve their disposition. On the other hand, they shifted attention away from prisoners' moral disposition to

their physical strength, maintaining that manpower needs outweighed concerns about the honor of the army. Seyfarth, as one representative of this group, even believed that forty thousand or even fifty thousand extra men could be recruited for the war if the government followed his recommendations.⁶⁰ Sometimes, again stressing prisoners' bodily strength, welfare agents even argued that they could be used in labor units if they were still not considered fit to fight at the front.⁶¹ Thus, even this kind of labor, indirectly supporting the war effort, could be conceived of as a form of atonement.

A Legal Breakthrough

All in all, the war prompted many ex-convicts to try and change their situation, with many welfare agents and prison officials supporting them in their efforts. On the national political level, however, the authorities only gradually shifted their perspective. The high number of ex-convicts in German society was a frequent topic during the war, but some commentators argued that this crisis only arose out of the circumstances of the war, whereas others believed that the war, in fact, presented an opportunity for long-needed reforms. Ernst Mamroth, a lawyer of good reputation from Breslau, for instance, wrote an open letter to the *Berliner Tageblatt* in August 1915, a year after the war broke out, arguing that the government could finally revise the general system of civil privileges and their possible suspension as it was untenable in wartime.⁶² Many German academics, too, echoed this idea that the war constituted an opportunity to reform the legal system; one of their "wartime ambitions" was to find a solution to the problem of citizens being legally excluded from war participation.⁶³

In the second half of 1916, after Field Marshal Paul von Hindenburg and General Erich Ludendorff assumed command of the German forces, the situation for disenfranchised offenders started to change. In a renewed attempt to win the war, these commanders put more emphasis on extracting manpower for it.⁶⁴ In December of that year, a true break with the prior policy occurred—one clearly motivated by this growing need for manpower: the High Command pushed the kaiser to issue a new decree; this time, however, the decree did not grant amnesty, like the ones before it, but enabled "dishonored" ex-convicts to regain their eligibility to join the army. Delaquis emphasized the decree's significance by highlighting its reversal of the "sacred and inviolable" legal measure of excluding dishonored citizens.⁶⁵

After the decree of December 1916, local authorities were asked to actively search for people sentenced with the loss of honor. In May 1917 in the district of Aachen, fourteen people whose civil rights had been suspended were found and voluntarily enlisted; the public prosecutor considered them eligible for the restoration of their right to join the army. These people had been sentenced for

various offenses, including robbery, trespassing, begging, and smuggling. One of them, Josef S., was sentenced for pimping in combination with physical abuse.⁶⁶ It is striking that someone with these offenses on his record was included in the public prosecutor's list of potential recruits as pimping was often explicitly mentioned by legal scholars as a primary example of a dishonorable offense. That such an individual was deemed eligible to join the army shows that the mentality regarding exclusion had truly changed within a short period of time.

Nonetheless, the authorities were likewise repeatedly asked to be consider "dishonored" ex-convicts' eligibility for the war very carefully. The decree presented an obvious conflict to some conservative leaders. Although many were still attached to the idea of exclusion, they also saw prisoners' potential usefulness for the war. The *de facto* commander-in-chief Erich Ludendorff was one such conservative. In a letter to Chancellor Georg von Hertling in December 1917, he tried to raise awareness of the "social evil" ex-convicts who were not active in the army generated in Germany. Ludendorff expressed his belief that the policy of excluding ex-offenders, combined with the wartime circumstances, created a social and economic problem and wasted a great deal of potential manpower.

At the same time, he did not wish to dispense with the idea of dishonoring a certain class of ex-convicts. Thus, Ludendorff tried to persuade Hertling to make a change in policy that could fulfill the ideas of punishment, retribution, and rehabilitation, but likewise address German people's "rightful discontent." This discontent derived from ex-convicts being employed in other sections of the German economy, receiving considerable money for little output, while soldiers at the front endured tremendous "stresses and strains" (*Strapazen*) for less payment. Clearly, Ludendorff felt that this discontent was "rightful" as it conflicted sharply with his own ideas about the moral economy of the German Empire, wherein "dishonored" convicts should not be better off than soldiers: "Former penitentiary inmates enjoy the protection of the fatherland just as much as any other person. I do not see why they could not be made useful for the fatherland with the same pay as the soldier."⁶⁷

Consequently, Ludendorff urged Hertling to find a way to make "dishonored" ex-convicts useful for the war while upholding their demeaned status. His own suggestion was to employ them in the army but "without any honorable appearance" (meaning without a uniform and with less pay). Ludendorff clearly disagreed that serving in the war could morally improve offenders but still tried to utilize their manpower in a way that aligned with traditional ideas of punishment, retribution, and rehabilitation by creating several new distinctions within the army. In other words, unlike welfare agents who advocated that former prisoners could restore their honor in the war by joining the ranks, Ludendorff tried to mobilize their labor while retaining their "dishonored" status with the argument that this would help repay their "normal" debt to society.

Despite Ludendorff's (and others') wishes to the contrary, most of the "dishonored" ex-convicts were called to join the troops at the front in the final year

of the war. The Ministry of Justice estimated that approximately 1,500 (ex-)convicts availed of this opportunity.⁶⁸ Although this recruitment (probably) did not change the course of the war, it did mark a crucial change in ideas about punishment and rehabilitation in the German Empire. The war challenged many of the seemingly entrenched ideas about crime and punishment, paying off one's debt to society, and the possibility of moral improvement. Various people involved in the penal system or conscription policy reinterpreted these ideas, dramatically revising the fundamental separation between the army and penitentiary inmates that had marked the moral economy of punishment, retribution, and rehabilitation before the outbreak of World War I. Yet, this was only possible in an alternative moral economy that either defined "honor" and "rehabilitation" in different moral terms or conceived of paying off one's debts in a new way.

The historiographical debates about the practices of inclusion and exclusion in the German army during World War I have been dominated by questions of age and citizenship. Yet, the question of including ex-convicts in the army was just as important to the historical actors deciding on matters of military conscription during this period.⁶⁹ Initially, the official policy concerning disenfranchised felons remained clear: they were to be excluded from joining the army—regardless of any possible reformatory effects army service might have had. The granting of several waves of amnesty during the first months of war did not change anything about this situation. Only in the final one and a half years of the war did perspectives begin to shift. The amnesty of December 1916 clearly played an important role in this change as it encouraged people to justify the temporary lifting of legal rules in ways that aligned with their beliefs about punishment and rehabilitation. Nonetheless, this did not mean that the legal constellation at the end of the war was completely new. The amnesty had temporarily raised hopes that ex-convicts could be rehabilitated after the war in accordance with official legal procedures, but no such "right to rehabilitation" was introduced. Even so, the changing understanding of the moral economy did make it easier for people to argue in favor of such legal reform in the postwar period.

Notes

1. Rosenblum, *Beyond the Prison Gates*, 121.
2. LAV NRW R, BR 0007, no. 30722, 62–63.
3. *Ibid.*, 64.
4. *Ibid.*, 65.
5. Peter Becker, *Verderbnis und Entartung*, 35–74. Becker distinguishes *Kriminalisten* (criminologists) from the first half of the nineteenth century, whose focus was on the model of "biogra-

- phy,” from those from the turn of the twentieth century, who focused more on the model of “genealogy.”
6. LAV NRW R, BR 0005, no. 22776, petition from Peter J. addressed to Kaiser Wilhelm II, 17 August 1891.
 7. Ibid.
 8. LAV NRW R, BR 0007, no. 30722, statement from the burgomaster of Mülheim on the request of Adolf M., 12 February 1895.
 9. Nutz, *Strafanstalt*, 59–61.
 10. Moritz Liepmann, “Die Reue vom kriminalistischen Standpunkt,” *ZStW* 22, no. 1 (1902): 72–98, 81.
 11. On combating hypocrisy in prisons, see Schauz, *Strafen als moralische Besserung*, 184–86.
 12. Liepmann, “Die Reue.”
 13. Wetzell, *Inventing the Criminal*, 36; Müller, *Verbrechensbekämpfung im Anstaltsstaat*, 131.
 14. See chapter 2.
 15. Fritz K. Ringer, *The Decline of the German Mandarins* (Cambridge, MA: Harvard University Press, 1969).
 16. Rudolf Eucken, *Die sittlichen Kräfte des Krieges* (Leipzig: Gräfe, 1914).
 17. Andrew Donson, *Youth in the Fatherless Land: War Pedagogy, Nationalism, and Authority in Germany, 1914–1918* (Cambridge, MA: Harvard University Press, 2010), 243–44.
 18. Theobald Ziegler, *Der Krieg als Erzieher* (Frankfurt a.M: Knauer, 1914).
 19. Ibid., 8.
 20. Donson, *Youth in the Fatherless Land*, 59–67.
 21. Theobald Ziegler, *Das Gefühl. Eine psychologische Untersuchung*, 5th edn. (Berlin: Göschen, 1912), 321.
 22. Erich Everth, *Von der Seele des Soldaten im Felde. Bemerkungen eines Kriegsteilnehmers* (Jena: Diederichs, 1915), 45.
 23. Freund, “Strafvollzug und Krieg,” *BfG* 49 (1915): 167–71, 168.
 24. Heinrich Seyfarth, “12. Jahresbericht des Deutschen Hilfsvereins für entlassene Gefangene in Hamburg für das Jahr 1915,” *BfG* 50 (1915): 93.
 25. *Bericht über die Wirksamkeit des Vereins zur Besserung der Strafgefangenen* (Berlin, 1914), 9.
 26. Jeffrey Verhey, *The Spirit of 1914: Militarism, Myth, and Mobilization in Germany* (Cambridge: Cambridge University Press, 2000), 52–57.
 27. Cited in *Berliner Börsen-Zeitung*, 5 August 1914.
 28. Andrew Novak, *Comparative Executive Clemency: The Constitutional Pardon Power and the Prerogative of Mercy in Global Perspective* (London: Routledge, 2016), 10.
 29. *Berliner Tageblatt*, 12 December 1914.
 30. LAV NRW R, BR 0005, no. 22781, circular from the Minister of the Interior, 4 November 1914.
 31. Ibid., petition from Wilhelm A. addressed to Kaiser Wilhelm II, 25 December 1915.
 32. LAV NRW R, BR 0005, no. 22777, statement from the public prosecutor on the case of Jacob H., 19 October 1914.
 33. Ibid., statement from the public prosecutor on the case of Jakob P. A similar phrase was used by the public prosecutor in the case of Joseph S.
 34. LAV NRW R, BR 0005, no. 22777, petition from Karl H. addressed to Kaiser Wilhelm II, 1 August 1914.
 35. The full quotation in translation reads as follows: “His Majesty the German Kaiser has heartily forgiven even the Social Democrats, who have done a lot of evil to his Majesty, and so I can expect that I will also receive forgiveness since I only inflicted something on a private man, which I can still make good in my life.” Ibid., petition from Karl H. addressed to Victoria Augusta, 5 August 1914.

36. *Ibid.*, petition from Karl H. addressed to Crown Prince Wilhelm, 21 August 1914.
37. *Ibid.*, petition from Karl H. addressed to Victoria Louise, the Duchess of Braunschweig, 24 August 1914.
38. On strenuous masculinity, see Donson, *Youth in the Fatherless Land*, 229–30.
39. LAV NRW R, BR 0005, no. 22777, petition from Joseph S. addressed to Kaiser Wilhelm II, 1 October 1915.
40. *Ibid.*, petition from Jacob H. addressed to Kaiser Wilhelm II, 3 August 1914. See also the petition of Jakob P., who was a reservist who felt it was his “duty” to fight for Germany. *Ibid.*, petition from Jakob P. addressed to Kaiser Wilhelm II, 4 July 1915.
41. LAV NRW R, BR 0005, no. 22779, petition from Quirin P. to the Minister of the Interior, 26 August 1921.
42. *Ibid.*
43. Ernst Kleeman, “Kriegserfahrungen im Gefängnis,” *AfK* 67, no. 1 (1915): 1–24, 3.
44. Hugo Hoegel, “Die Kriminalstatistik,” *Deutsche Strafrechtszeitung* 3 (1916): 3–10; Ernst Delaquis, “Strafrechtliche Kriegsziele,” *ZStW* 39, no. 1 (1918): 276–99, 283.
45. See, for example, Franz Exner, *Krieg und Kriminalität* (Leipzig: Wiegandt, 1926), 3. Wetzell, *Inventing the Criminal*, 109–15.
46. Cf. Carl Falck, “Der Krieg und die Staatsanwaltschaft,” *DJZ* 20 (1915): 374–75; *idem*, “Die Gnadenerlasse vom 27. Januar 1916,” *DJZ* 21 (1916): 36–39.
47. Ernst Kleeman, “Kriegserfahrungen im Gefängnis,” *AKK* 67 (1915): 1–24, 5.
48. Cf. Donson, *Youth in the Fatherless Land*, 162–66.
49. Cited in “Eine gute Zeit für Zuchthäusler,” *Leipziger Neueste Nachrichten*, 21 October 1916.
50. *Ibid.*
51. Pastor Lenkeit, “Kriegserinnerungen aus dem Zuchthaus,” in *Kriegserlebnisse Ostpreussischer Pfarrer*, ed. Karl Moszeik, 169–78 (Berlin: Runge, 1915), 169. Cf. Freund, “Strafvollzug und Krieg.”
52. On the question of whether the *Augusterlebnis* was reality or a myth created after the war for propaganda purposes, see Verhey, *The Spirit of 1914*.
53. Rudolf Franz, “Der Segen des Krieges für die Strafgefangenen,” *BfG*, 49, no. 2 (1915): 221–25.
54. *Jahresbericht der Rheinisch Westfälischen Gefängnisgesellschaft* (Düsseldorf, 1915), 5.
55. Rosenblum, *Beyond the Prison Gates*, 133–35.
56. Heinrich Seyfarth, “Aus den Akten des deutschen Hilfsvereins für entlassene Gefangene Hamburg,” *BfG* 50 (1916): 71–74.
57. *Ibid.*
58. Heinrich Seyfarth, “Strafvollzug und Kriegsdienst,” *BfG* 49 (1915): 185–202, 192.
59. *Ibid.*, 186–89.
60. *Ibid.*, 197.
61. Schwandner, “Heeresdienst und Strafvollzug mit besonderer Berücksichtigung der Zuchthausstrafe,” *BfG* 49 (1915): 198–200.
62. Ernst Mamroth, “Die bürgerlichen Ehrenrechte in der Kriegszeit,” *Berliner Tageblatt*, 28 August 1915.
63. Cf. Meyer, “Gesetzgebung und Krieg,” *DJZ* 19, no. 21 (1914): 1229–32. An interesting example of such a “wartime ambition” was the introduction of a unified Central-European Penal Code for Germany and the Habsburg Monarchy: Franz von Liszt, “Einheitliches mitteleuropäisches Strafrecht,” *ZStW* 38 (1917): 1–20. Cf. Kubiciel, “Einheitliches europäisches Strafrecht und vergleichende Darstellung seiner Grundlagen.” These legal scholars’ war ambitions have not yet received much scholarly attention, as Kesper-Biermann has also noted: Sylvia Kesper-Biermann, “Die Internationale Kriminalistische Vereinigung. zum Verhältnis von Wissenschaftsbeziehungen und Politik im Strafrecht 1889–1932,” in *Die Internationalisierung von Strafrechtswissenschaft und Kriminalpolitik (1870–1930). Deutschland im Vergleich*, ed. Syl-

- via Kesper-Biermann and Petra Overath (Berlin: BWV, Berliner Wiss.-Verl., 2007), 85–107, 98.
64. Martin Kitchen, *The Silent Dictatorship: The Politics of the German High Command under Hindenburg and Ludendorff, 1916–1918* (New York: Holmes & Meier Publishers, 1976), 56.
 65. Delaquis, “Strafrechtliche Kriegsziele,” 298.
 66. LAV NRW R, BR 0005, no. 22777, register of ex-convicts residing in Aachen who had voluntarily enlisted in the army, 9 May 1917.
 67. LAV BW, S: M 1/7 Bü 29, copy of letter from Erich Ludendorff to Georg von Hertling, 28 December 1917, 29, 66.
 68. Ernst von Wrisberg, *Heer und Heimat 1914–1918* (Leipzig: Koehler, 1921), 96–97.
 69. Gosewinkel, *Schutz und Freiheit*, 98–134.