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978-0-521-19832-5 - Honor, Politics, and the Law in Imperial Germany, 1871-1914
Ann Goldberg

Excerpt

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Introduction

Germans have long been a thin-skinned people, easily insulted and, when provoked, exceptionally ready to sue. Three anecdotes, spanning the seventeenth and twentieth centuries, give a sense of what was at stake in their lawsuits. The first is of a Saxon blacksmith in 1671 whose wife was called a “whore” (allegedly she had had sex for money with her male servant).¹ For the dishonoring remark, made by a drunken tanner, the blacksmith filed charges and the tanner was called to court to account for his insult (though eventually acquitted). The second case, over 300 years later, is of the Berlin court actor Siegwart Gruder, a man whose successful career peaked during the Kaiserreich (1871–1918). Now, in 1927, aging, ill, and living off a meagre pension, he goes to the telephone exchange to complain about service, and has a fit when the woman at the desk fails to treat him with the respect he thinks he deserves (allegedly she didn’t heed the sign he had made (*Blinkzeichen*) calling for her attention). Having called in her supervisor, Gruder blusters, “I am an academic [sic] and I don’t have to let myself be treated like this by an uneducated vagrant street girl and daughter of a [mere] postman [*Postschaffner*].” This tiny moment of rancour became the basis subsequently of a court case, the state charging and convicting Gruder of insulting a civil servant (*Beamtenbeleidigung*).² The third case took place in the 1950s in West Germany between an agricultural worker, who had recently moved from East Berlin, and his employer, a farmer who was also the worker’s landlord. During a disagreement over rent

¹ Eileen Crosby, “Claiming Honor: Injury, Honor, and the Legal Process in Saxony, 1650–1730” (PhD diss., Cornell University, 2004), pp. 264ff.

² I. HA Rep. 84a, Nr. 58224, GStPK.

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and wages, the farmer called the worker a “jailbird” (*Zuchthäusler*) and a “Communist.” The worker promptly turned around and sued for insult (whether he prevailed in court is unknown).³

Despite some important differences,⁴ what is most striking about these cases is the continuity – the tenacity over centuries and within vastly different settings – of an honor culture litigated in the courts. Honor was serious business. The time and monetary risk of bringing a lawsuit over even a trivial insult was taken in stride by many Germans because, as the anthropologists tell us, what they were defending went to the heart of their sense of self and social identity, honor being “the value of a person in his own eyes and in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgment of that claim, his excellence recognized by society, his *right* to pride,” – namely, respect and deference.⁵ And that value, symbolic as it was, translated into all the important material things in life – social status, jobs, credit, marriage, and power – honor being a kind of currency that could be turned into goods and services, or, to the contrary, squandered and lost. The extravagant disproportion of Gruder’s reaction to an inattentive telephone employee, strange as it seems, did have a certain logic and pathos, that of a man whose world no longer recognized him – a man of honor and status – as he saw himself.

Neither the devotion to honor nor the use of defamation law for policing speech was unique to Germany. To this day, England’s notoriously restrictive libel statutes continue to inhibit free speech in that country and, via a globalized publishing industry, increasingly in the US as well. The French were obsessed in the nineteenth century with issues of honor and respect, and elite men dueled just as avidly there as in Germany.⁶ But legally and historically, the honor cultures

³ Hans-Georg Doering, *Beleidigung und Privatklage* (Göttingen, 1971), pp. 41–42.

⁴ For example, it would have been illegal for a seventeenth-century worker to bring an honor lawsuit against his master.

⁵ Julian Pitt-Rivers, “Honour and Social Status” in J. G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (Chicago, 1966), p. 21.

⁶ Robert Nye, *Masculinity and Male Codes of Honor in Modern France* (Berkeley, 1993); William Reddy, *The Invisible Code: Honor and Sentiment in Postrevolutionary France, 1814 – 1848* (Berkeley, 1997); Edward Berenson, *The Trial of Madame Caillaux*

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of those countries developed along different lines – both from each other and from Germany. The result was that in France the mechanisms regulating civility and respect (i.e. behavior according with a person’s honor and status) developed outside of the court system – in the schools and bourgeois voluntary associations, according to a recent study⁷ – and thus did not juridify interpersonal conflicts as they did in Germany. In England and the US, a property-oriented view of defamation had long largely decoupled honor and the law of slander, setting, accordingly, high standards of legal proof (a plaintiff was required to show evidence of material harm to his or her financial existence) that minimized such lawsuits.⁸ And, in the US, particularly since a 1964 Supreme Court decision, defamatory speech has been significantly narrowed in order to protect First Amendment rights.⁹

By contrast, since at least the late Middle Ages, Germans have been successfully suing one another for not only public speech that harms reputation, but for insults (*Beleidigungen*) that make them *feel* disrespected, irrespective of whether their reputations have actually

(Berkeley, 1992). On Italian honor, see Steven C. Hughes, *Politics of the Sword* (Columbus, OH, 2007).

⁷ James Whitman, “Enforcing Civility and Respect: Three Societies,” *Yale Law Journal* 109 (2000), 1279–398. Whitman’s comparative study of France, Germany, and the US is extremely useful and thought-provoking. I do take issue with a number of his factual assertions and interpretations (see Conclusion). For more details on French and British libel statutes, see below (ch. 1).

⁸ Very good discussions of comparative defamation law can be found in Mittermaier et al. (eds.), *Vergleichende Darstellung des deutschen und ausländischen Strafrechts: Besonderer Teil* vol. 4 (Berlin, 1906). For a recent analysis of British and US law, see Paul Mitchell, *The Making of the Modern Law of Defamation* (Oxford and Portland, OR, 2005). For comparison of German and US defamation law, see Georg Nolte, *Beleidigungsschutz in der freiheitlichen Demokratie* (Berlin, 1992); Pawel Lutomski, “Private Citizens and Public Discourse: Defamation Law as a Limit to the Right of Free Expression in the US and Germany,” *German Studies Review* 24 (2001), 571–92.

⁹ The majority ruling in this case, *New York Times v. Sullivan*, raised the bar very far for plaintiffs, requiring them to “prove actual malice on the disseminator’s part”: Ian Loveland, *Political Libels* (Oxford, 2000), p. 69. The case derived from a lawsuit brought against the *New York Times* for publishing an advertisement (containing minor factual errors) critical of Alabama’s harassment of civil rights activists.

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or potentially been harmed.¹⁰ Indeed, in modern German insult law – a kind of “rudeness regulation”¹¹ – no knowledge of the insult by a third party is required for the complainant to sue (as in the worker-farmer case above) and to do so successfully. In the Kaiserreich, moreover, such lawsuits became actionable in criminal law – a situation that in effect “criminalized” disrespectful behavior¹² – and Germans were given the right to bring these actions themselves in private prosecutions (*Privatklage*). This *Privatklage* provision of German law, perhaps more than any other single factor, kept honor intensely alive in popular culture and ensured that the interpersonal conflicts of daily life became lawsuits on an unparalleled scale. To this day, Germany is a country that guarantees in its *Grundgesetz* a “right” to honor; it still has an “insult” provision of its defamation laws regulating respectful treatment such that, under certain circumstances, one can be prosecuted for, say, giving the finger to a driver as he cuts you off on the road.¹³

The nineteenth century played a critical role in perpetuating Germany’s juridified honor culture. Indeed, judging by the numbers, it was the Kaiserreich in particular that massively expanded that culture. An epidemic of libel litigation characterized this era. There were 52,645 criminal indictments for libel in 1883. By 1910, that figure

¹⁰ For early-modern German defamation litigation, see, in addition to Crosby, “Claiming Honor,” in Ralf-Peter Fuchs, *Um die Ehre: Westfälische Beleidigungsprozesse vor dem Reichskammergericht, 1525–1805* (Paderborn, 1999); Klaus Schreiner and Gerd Schwerhoff (eds.), *Verletzte Ehre: Ehrkonflikte in Gesellschaften des Mittelalters und der frühen Neuzeit* (Cologne, 1995); Martin Dinges, “Die Ehre als Thema der Stadtgeschichte: Eine Semantik im Übergang vom Ancien Regime zur Moderne,” *Zeitschrift für historische Forschung* 16 (1989), 409–40; idem, *Der Mauermeister und der Finanzrichter* (Göttingen, 1994).

¹¹ Whitman, “Enforcing Civility,” 1295. ¹² Ibid., 1296.

¹³ Whitman, “Enforcing Civility,” Doering, *Beleidigung und Privatklage*, and Rüdiger Koewius, *Die Rechtswirklichkeit der Privatklage* (Berlin, 1974) are sociological studies of insult litigation in West Germany. On East German honor litigation: Paul Betts, “Property, Peace, and Honor: Neighborhood Justice in Communist Berlin,” *Past and Present* 201 (2008), 215–54.

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had grown to 84,058.¹⁴ This was an increase of over 59 percent at a time when the population, itself rapidly expanding, grew at a rate of 41 percent. These figures, moreover, do not include the tens of thousands of libel actions that were settled out of court each year. Indeed, contemporaries estimated that in Prussia, for example, more than half of all insult proceedings were settled through pretrial mediation.¹⁵ The comparable figures for France, for example, are miniscule by comparison, even when one factors in that country's smaller population.¹⁶ Finally, it was the Kaiserreich that granted almost all Germans the extraordinary right of the *Privatklage*.

This should not have been happening according to a body of scholarship on honor reaching back to the turn-of-the-century work of sociologist Max Weber. Honor was central to Weber's typological distinction between traditional corporate and modern class societies.¹⁷ Corporate societies, according to Weber, categorize people according to hierarchically ranked, exclusive estates (*Stände*) in which membership and status is determined by honor, a quality displayed in a particular lifestyle (*Lebensführung*) – dress, comportment, titles – that distances and elevates higher, more honorable estates and individuals from lower ones. By contrast, modern market

¹⁴ 1883 is the first year for which there are libel suit figures in the Reich's official statistics. I calculated the rate of increase using the years 1883, 1890, 1900, 1910. In all of these decades, libel indictments outstripped population growth, but the gaps varied by decade. 1890–1900 saw the smallest gap – ca. 1.5%; the period of 1883–1890 saw the largest (ca. 9%). *Statistisches Jahrbuch für das deutsche Reich*, vols. 6, 13, 23, 33.

¹⁵ Heinrich Gerland, "Die systematische Stellung des Privatklageverfahrens im Strafprocess," *Der Gerichtssaal* 60 (1902), 161. The numbers are opaque in some respects. For example, they do not normally tell us what proportion of these cases were prosecuted by the state. They also do not reveal much about the litigants' social backgrounds.

¹⁶ France recorded its defamation statistics somewhat differently and thus the comparison is not exact, but the French figures for 1897 give a sense of the wide gap between it and Germany. In that year, the French criminal courts (*cours d'assises* and the *tribunaux correctionnels*) adjudicated ca. 2,400 cases of public defamation and insult; an additional 4,017 cases of private insult were brought at a lower level as police misconduct charges (akin to a parking ticket violation) in the *tribunaux de simple police*: *Annuaire Statistique* 20 (Paris, 1968), 117, 129.

¹⁷ Max Weber, *Wirtschaft und Gesellschaft* vol. 2 (Tübingen, 1956), pp. 534ff.

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societies are governed by “objective criteria” and have “no idea about honor,”¹⁸ grouping people instead in social classes that are purely economic, determined by a person’s “relations to production.”¹⁹

Weber’s distinction between modernity and honor entered recent scholarship via the work of anthropologists in the mid-twentieth century. Their ethnographic studies of Mediterranean societies closely associated an abiding attachment to the values of honor with rural, preindustrial settings.²⁰ As Peristiany put it, “Honour and shame are the constant preoccupation of individuals in small scale, exclusive societies where face to face personal, as opposed to anonymous, relations are of paramount importance ...”²¹ It is such settings, structured by rank and the power of the social group, where reputation and respect, displayed and fought over through the rituals of honor, are of paramount importance.²² In this view, by contrast, modernization erodes the value of honor by developing differentiated, complex structures and non-overlapping social roles that undermine the power of the small group over the individual. An external and group-defined sense of self, status, and respect is replaced by an individualized, internal identity that makes “honor,” as a social value, less relevant or irrelevant.²³ Accordingly, urban gangs, the

¹⁸ *Ibid.*, p. 538.

¹⁹ Weber’s historical (as opposed to theoretical and ideal-typical) analysis of market societies was in fact much more nuanced and complex, viewing honor-estatist values as continuing to coexist and be intertwined with economic classes: for example, *ibid.*, p. 535. For a historical narrative, based on Weberian ideas, on how modernization “brought about the decline of honour and its replacement by the notion of dignity,” see Peter Berger et al., *The Homeless Mind: Modernization and Consciousness* (New York, 1974); Pat O’Malley, “From Feudal Honour to Bourgeois Reputation. Ideology, Law and the Rise of Industrial Capitalism,” *Sociology* 15 (1981), 79, offers a critique of modernization theory that continues to use the dichotomy of modernity and honor but reformulates it within a Marxist paradigm.

²⁰ Classic work done by Pitt-Rivers, Peristiany, and others. See, e.g., Peristiany, *Honour and Shame*.

²¹ *Ibid.*, p. II. ²² *Ibid.*, pp. 21ff.

²³ An influential analysis of the development of Western honor within this Weberian modernization mode is Peter Berger’s “On the Obsolescence of the Concept of Honor,” *Archives Européennes de Sociologie* II (1970), 339–47. A modernization view applied to German honor in the nineteenth century can be found in Ute Frevert, “Ehre – männlich/weiblich. Zu einem Identitätsbegriff des 19.

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Sicilian Mafia, and immigrant Turks²⁴ in the modern West, groups whose values continue to be structured around honor, have a whiff of archaism about them, being seen as holdovers from the past or displaying signs of deprivation and underdevelopment.

It is difficult to fit Germany's honor culture into this schema, given that it continued unabated even as the country rapidly modernized, developing in the nineteenth century social and political structures – impersonal cities, bureaucracies, industrial workforce, mass voting and mass press – that should have undermined the role of honor. Even as far back as the sixteenth and seventeenth centuries, honor in Germany was not progressing along the lines set out by modern anthropologists. In her study of early-modern guild honor, the historian Kathy Stuart found that, contrary to the “anthropological assumption ... that the significance of honor recedes as societies become more complex and diversified,” in Germany “the larger the city, the more stringent the honor code” among municipal craft guilds.²⁵

Perhaps the contradiction in Germany is reflective of the continued strength of traditional values and preindustrial elites? This is the conclusion one inescapably gets from studies of the duel, which dominate the scholarship on nineteenth-century honor. A dramatic but minor phenomenon compared to the defamation lawsuit, the duel in Germany was nevertheless spreading downward before World War One via university student fraternities and the reserve officer corps to encompass wide swaths of the educated bourgeoisie. This development, to be sure, was occurring elsewhere, most notably in republican France and liberal post-Risorgimento Italy. It thus does not, as one scholar clarifies, signal any uniquely illiberal features on

Jahrhunderts,” *Tel Aviver Jahrbuch für deutsche Geschichte* 21 (1992), 22, 28; and, implicitly, in Whitman, “Enforcing Civility.”

²⁴ Clementine van Eck, *Purified by Blood: Honour Killings amongst Turks in the Netherlands* (Amsterdam, 2003), a fascinating anthropological study that traces present-day honor killings among Turkish immigrants to the Mediterranean values they are bringing and re-adapting from rural Turkish village culture.

²⁵ Kathy Stuart, *Defiled Trades and Social Outcasts: Honor and Ritual Pollution in Early Modern Germany* (Cambridge, 1999), p. 11.

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the part of the German bourgeoisie that would support the notion of a German *Sonderweg* – a pathological departure from the developmental norms of the West.²⁶ And yet, given the duel's aristocratic-military ethos, it is hard to interpret this form of honor (whether in Germany, France,²⁷ or the US South²⁸) as anything but a reflection of the persistence of preindustrial norms and practices of old elites into the modern era.

Perhaps, as in one recent study,²⁹ the modern German defamation lawsuit should be seen, accordingly, as an anachronism reflecting the continued power of traditional hierarchical values? Certainly, there were strong links in Germany between honor and premodern or even anti-modern values. One sees this in the defense of entrenched corporate interests in the military and the civil service, and in the way professional disciplinary courts (*Ehrengerichte*) defined honor in opposition to the maligned values of the marketplace (chapter 2). The authorities' use of defamation prosecutions on a massive scale to censor political dissent (chapter 3), furthermore, certainly reflected resistance to a modern liberal state guaranteeing freedom of speech and opinion.

This said, the notion of a dichotomy between honor and modernity is far too simplistic.³⁰ It does not begin to capture the complexity of how Germany's honor culture interacted with the transformations

²⁶ It is "doubtful whether it is possible to interpret [German bourgeois dueling] as a drive towards feudalization on the part of the middle class." Ute Frevert, *Men of Honor: A Social and Cultural History of the Duel*, trans. Anthony Williams (Cambridge, 1995), p. 7. By contrast, a *Sonderweg* argument is explicitly the point of Kevin McAleer, *Dueling: The Cult of Honor in Fin-de-Siècle Germany* (Princeton, 1994).

²⁷ Robert Nye's study of French honor in the nineteenth century, *Masculinity and Male Codes of Honor*, shows that the French bourgeoisie were just as passionate about dueling as their German counterparts.

²⁸ The literature on honor for both the antebellum and postbellum South is too large to cite here. A good starting point is the work of Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (Oxford, 1983) and *The Shaping of Southern Culture: Honor, Grace, and War, 1760s–1880s* (Chapel Hill, 2001).

²⁹ Whitman, "Enforcing Civility."

³⁰ Weber himself understood this and wrote about a complex overlapping of the values and practices of corporate and class societies. See fn. 17.

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of modern life. This culture was woven into the social fabric as an idiom of social relations with multiple functions and tremendous adaptability to new conditions and interests. Honor codes were flexible, multipurpose, and, far from anachronistic, being incorporated into the modern state, industrial capitalism, and mass politics in the age of democracy. Professional honor courts, for example, were not holdovers from the past but the creations of the late nineteenth century and part of the professionalization (modernization) of medicine, law, and other areas of professional life. The state's draconian libel prosecutions of its opponents were tremendously controversial, producing, in the age of parliaments and a mass press, a vigorous and "modern" debate about state power, free speech, political and administrative accountability, and the role of honor in a Rechtsstaat (constitutional state). Even the conservative courts were of different minds on these issues. Finally, the institution most responsible for maintaining and expanding insult and libel litigation, the *Privatklage*, far from being an extension of aristocratic "private prosecutions,"³¹ was the product of the liberalization of Germany's criminal justice system in the nineteenth century.

Privatklagen, which made up the majority of libel actions, were breathtakingly pervasive and multifunctional. Anywhere one looks at German society at the turn of the twentieth century – politics, business, the Churches, professions, press, daily life, gender and labor relations – one finds clashes over competing honor claims that ended up in court. No social interaction, no gesture or statement, however trivial, seemed immune from denunciation and litigation. The motives and interests behind these lawsuits were extremely varied: revenge, rage, jealousy, setting the record straight, restoring one's reputation, defeating an opponent, shaming an enemy. So were the circumstances that brought people to litigation: land disputes, rude behavior, drinking and gossip, bad reviews, contested business deals, hostilities between strikers and strikebreakers, to name just a few.

What underlay all of these suits was the propensity of Germans to turn their disputes into lawsuits, and what this entailed was the

³¹ Whitman, "Enforcing Civility," 1321.

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articulation of material and symbolic interests within a language of honor, an idiom embedded in the legal terms of the defamation lawsuit itself. The political and social flexibility of this idiom is striking, providing as it did a language of dispute at all levels of society and among both reactionaries and socialists, defenders of corporate interests and rebels against those interests, the powerful and the powerless.

On the one hand, there was the continuation of traditional corporate notions of identity and honor and sharp class distinctions. On the other hand, industrial capitalism and the democratization of German society were undermining the paternalistic and deferential relations that had been the basis of a hierarchical corporate society. Indeed, the fact that so many Germans were feeling disrespected suggests a society in massive transition where firm markers of status were being undermined or challenged, and where geographical mobility, urbanization, and industrial capitalism were bringing more and more strangers and mixed classes into contact, causing anxiety and confusion about social roles and the norms of behavior.

Accordingly, many of these suits, particularly those of the middle classes, were shot through with status anxiety. As early as the 1850s, at least one legal expert was making precisely this point, arguing that “the loosening of the firm fundament of the bourgeoisie is gradually making necessary a more touchy honor and strengthening its weight in public opinion,” with a resulting “epidemic” of defamation litigation.³² Still other lawsuits were from marginalized or outsider groups – Jews, workers, women, psychiatric patients – people (with the exception of the latter) who had long defended their honor in court, but who were doing so now in new ways, filing suit against superiors, organizing in political groupings as pressure groups, adopting and reshaping honor ideas for new purposes related to the claims of citizenship rights. They were also addressing the public in new ways with a barrage of inventive pamphlet writing that appealed in print to the court of public opinion.

³² C. Reinhold Köstlin, *Abhandlungen aus dem Strafrechte* (Tübingen, 1858), pp. 71, 79.