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18th Century Studies in Austria,
1945–2010

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Unchristian Violence, Bestial Sexuality, Werewolves and Compassion in a Crisis Historical Criminology in Austria since 1945

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Ten years ago, an overview of Austrian research on the History of Crime would have needed to explain in some detail what is actually meant by the discipline; today, by contrast, this special field within Medieval and Modern research, "delayed" in Austria as in other countries, can be considered established. University theses (at M.A. and Ph.D. level), a relatively large number of relevant monographs on the subject, as well as contributions by individuals with an interest in history, have now been published.¹ Within a broader public, the history of crime is often seen as a type of barely analytical collection of *Moritat*-style criminal deeds, where a lengthy and overdetailed retelling of the criminal *exemplum* is intended to illustrate the difference from the "less gruesome" present. The Modern History of crime regards itself as intersecting History, Cultural Studies and Legal History, and attempts to clarify the connections between rulership, society and culture in the Later Middle Ages and the Early Modern era. The distinction between Historical Criminology and Legal History, which is often normatively orientated, also emerged due to a clearer Social- and Cultural-Historical perspective on criminality. The History of Crime – which for a long time was a field competed for by different research disciplines claiming sole representation – focuses on the various sources on criminality² and the formal preconditions for their existence (printed forms, written court records).³ The History of Crime as a sub-discipline of Social History deals with a wide spectrum of topics ranging from witch research to social protest and sexual offences, but also, for example, public order offences (such as begging). By circumventing the manifold difficulties in defining Historical Criminology, it is possible to describe the field of this interdisciplinary branch of research: "Whilst the triangle of laws, divergent behaviour and sanctions forms the core of an imaginary scientific map of Historical Criminology, the diversity of the landscapes recorded there has meanwhile become far

1 As research overviews primarily of the close to Austria connected German research landscape: SCHWERHOFF, *Kriminalitätsforschung*; EIBACH, *Recht – Kultur – Diskurs*; HÄRTER, *Von der "Entstehung"*; HABERMAS, *Recht und Kriminalität*; KRISCHER, *Neue Forschungen*.

2 VALENTINITSCH, *Strafvollzugsakten*; SCHEUTZ, *Gerichtsakten*, GRIESEBNER, *Konkurrierende Wahrheiten*, 107-143; SCHWERHOFF, *Gerichtsakten*.

3 BECKER, "Recht schreiben".

richer"⁴: the History of Communication, Gender History, Linguistics, Legal History, the Philologies etc. are all interested in the source material of Historical Criminology.

While older Regional Historical research concentrated on criminal-legal monuments (such as the pillory, the gallows), Historical Criminology attempts to evaluate the framework conditions under which violence, honour and gender were negotiated in villages and cities, and their legal "reflection" in court records, penal books and court receipts. For a long time, an insurmountable disciplinary rift gaped between Legal History, which was oriented towards material criminal law and the penal system, and History Studies (focusing from a Cultural-Historical perspective on penal practice) or European Ethnology. In Austria too, this rift was slowly filled through interdisciplinary discussion forums, such as the "Arbeitskreis historische Kriminalitätsforschung" (founded by Andreas Blauert, Gerd Schwerhoff, Dieter Bauer), which has existed at the "Akademie der Diözese Rottenburg-Stuttgart" in Stuttgart-Hohenheim since 1990 (till 2010). Put simply, and without elaborating on the differing concepts of Gender History, Sociology or Cultural Studies, Criminology⁵ with its almost ethnological interests was concerned with portraying the social environment of the Pre-Modern era, the development of the monopoly on violence, and local governance, or rather uncovering rulership's mode of action. Unlike Legal History research, Historical Criminology examined the connection between criminality, prosecution and criminal justice. Through the evaluation of court records, classic fields of Legal History such as the emergence of public criminal law and the institutionalisation of the state (for example, through a nascent police organisation) attained a new dimension, since these processes were no longer investigated from the perspective of central government, but micro-historically "bottom up". The examination of petty crime in particular shows how flexibly the law was handled in the Pre-Modern era. The standard texts favoured by Legal History tell us little about how these were interpreted in practice – the examination of the numerous instances of theft reveals, for example, that besides the use of corporal and capital punishment,⁶ a diverse spectrum of damages and compensatory payments was also applied. The court adjusted its financial resources in relation to the specific person accused and his/her network; reacting sensitively to such circumstances, it imposed punishments or subtly revealed the possibility of mercy.⁷ However, the court records also show that "Justiznutzung" or the "use of justice" (Martin Dinges) greatly varied. In the 18th century too, many people af-

4 SCHWERHOFF, Aktenkundig, 13 (translated from German).

5 For the 16th century, see HEIDEGGER, Soziale Dramen.

6 AMMERER, Ende.

7 GRIESEBNER, "In via gratiae".

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affected by crime attempted to obtain justice not only through the courts, but also dealt with conflicts "face-to-face".⁸

In terms of methodology, the discipline of the History of Crime,⁹ – highly successful at Austrian universities, for example at the level of M.A. theses – is frequently oriented towards a micro-history that qualitatively evaluates court records. The approaches of qualitative micro-history – a "history in the villages" – greatly differ with respect to the value of the court records as sources. While the "model" of the American historian Natalie Zemon Davis seems to assume a high level of stylization, even in court records, a different "stylite" of micro-history assumes a large degree of authenticity in his records.¹⁰ An opposition between adventurous and cautious research methods emerged:¹¹ while the latter slowly probed a limited field of investigation under the microscope,¹² taking into account many individual questions relating to the persons concerned (family, clothes, social networks, etc.), the former ventured to tackle with a "fisheye lens" larger topics (such as state formation, globalisation, international trade etc.), which were reflected in the small world. The "cliometricians" among the micro-historians,¹³ who carry out evaluations with the help of databases and serial sources, are clearly in the minority in Austria. A cross-linking of various source genres from the perspective of the History of Crime has so far barely taken place – unfortunately, financial assistance in the form of scholarships or research projects for this purpose is rare. Statistical evaluations of central government court archives are still extremely uncommon.¹⁴

I From Regional and Legal History to Historical Criminology

In Austria, the investigation of particular areas of the History of Crime acquired a type of pacesetter role for the development of historical special disciplines. The highly successful regional exhibition of 1987 at Riegersburg (Styria), organised by the Graz historian and legal historian Helfried Valentinitzsch¹⁵ – one of the initiators of a new Legal History in Austria – on the topic of "witches and wizards", prompted an increased volume of research in the field of the History of Crime.¹⁶ Up to that point, the history of criminal law had long been almost the exclusive domain of Austrian Legal History that, due to the requirements of the university

8 SCHEUTZ, *Zwischen Schlägen*.

9 SCHEUTZ / WINKELBAUER, *Diebe*.

10 SCHEUTZ, "irgendwie Geschichte".

11 See the overview in ULBRICHT, *Mikrogeschichte*, 9-60.

12 On the microscope as a symbol of micro-history, see BURKE, *Kulturgeschichte*, 66-70.

13 For a study that also deals with the history of crime, see BECKER, *Leben und Lieben*.

14 Using the example of a court of appeal: HAMMER, *Kindsmord*.

15 See the collected essays VALENTINITZSCH, *Hexen*.

16 See the research overview of the History of Crime (as of 2001) in SCHEUTZ, *Alltag und Kriminalität*, 42-63.

system, took a strong interest in the development of the legislature and the constitution as well as in the differentiation of the Austrian judicial system.¹⁷ In particular the development of criminal law provisions, including the Theresian criminal court regulation of 1769 and the Josephine penal code, was already the subject of intensive research at the beginning of the 20th century, as was the fabled "Räuberhauptmann" (robbers' leader) Johann Georg Grasel (1790-1818).¹⁸ At a normative level, the Viennese constitutional historian Ernst C. Hellbling made an ordered compilation of the various regional court regulations with respect to criminal law and according to the different offences.¹⁹ In addition, Legal History studied Vienna's criminal court in greater detail: the Viennese Legal Historian Friedrich Hartl analysed around 2.888 criminal acts from the capital and residence city and between 1793 and 1800.²⁰ Alongside Legal History and Ethnology,²¹ however, Regional Historians also repeatedly dealt with the topic of criminality, often without an overriding concept, mostly positivistically in the manner of a "Moritat" and often in only brief "notices". The librarian and regional historian Walter Pongratz, for example, studied the organisation of the court as well as the variation of offences in regard to the city and monastery of Zwettl in Lower Austria.²²

Over many years, various concepts shaped the approach to Historical Criminology. In the wake of Gerhard Oestreich, the theory of social disciplining ("Sozialdisziplinierung") and related concepts (such as the civilisation theory of Norbert Elias) long assumed a dominant position. It was precisely the repressive approach of the Early Modern state towards fringe groups and the lower classes that excluded the mobile fringe groups from 18th-century society. However, studies of court personnel reveal that those in the service of the courts (such as ushers) themselves were directly threatened with social relegation and in the case of rule violations could be discharged at short notice.²³ The village and town courts of the Early Modern era still attempted to a large extent to make decisions themselves in committees that were recruited from officials employed by local rulers (in some cases including farmers). It was only in the 17th century that the Early Modern state intervened here and forbid the "private" settlement of disputes. The

17 See the overview in NESCHWARA, *Verfassungsgeschichte*; KOHL / BRAUNEDER, *A jogtörténeti kutatás Ausztriában* [Legal History Research in Austria], 29-35 [Gerald Kohl provided me with a German version].

18 BARTSCH, Grasel; on the "hero of the Waldviertel", see HITZ, Grasel.

19 HELLBLING, *Strafrechtsquellen*. As an important contribution to the history of norms from a research-historical perspective LEITICH, *Maßnahmen*.

20 HARTL, *Kriminalgericht*.

21 Representative for the numerous, scattered contributions by this author: STEININGER, *Bagsteine*; ID., *Delikt*; ID., *Belege*.

22 PONGRATZ, *Aus den Gerichtsprotokollen*.

23 See the contributions of JOSEF PAUSER, SUSANNE PILS and MARTIN SCHEUTZ in: HOLENSTEIN et al., *Policey*.

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courts increasingly took on a disciplinary tone.²⁴ The economic side of jurisdiction in the 18th century was essentially loss-making,²⁵ but the possession of a legal jurisdiction ("Gerichtsherrschaft") was an additional instrument of power for controlling subjects.

Particularly with regard to the lower class the courts acted as a means of rulership instrumentalised by the powerful and serving to civilize the subjects.²⁶ Those who were established were represented at the courts and punished the delinquents – this would be one view of Pre-Modern courts. The research of the last few decades, on the other hand, has also demonstrated that the courts were less interested in a punitive approach than in the creation of social control and the implementation of laws. A clear realisation of norms in practice is thus ruled out, and yet this no longer concerns a bipolarity, but rather a field of forces in which power is to be asserted. Both the ruling and the ruled are caught in this field and, despite differing conditions, are nevertheless bound to its rules.²⁷ How clearly gender, social standing, religion, age and ethnicity were reflected in the dispensation of justice – often in an implicit manner, barely tangible in the sources – is also shown by the fact that from 39 trials at Perchtoldsdorf only three persons received the proper punishments stipulated by the regulations.²⁸ Despite the centralisation of jurisdiction, the courts nevertheless were crucially important, as they were able to present petitions for mercy or explicitly requested that the accused seek mercy from the "Landesfürst". Due to the distinctions with regard to "gender" and "sex" and their interactions before the courts, the court records manifest themselves as a main research area of Gender History in the Early Modern era. However, criminal law of the Pre-Modern era not only oscillated between repression and settlements achieved between the counterparties, but also between crime and sin. In the 18th century, secular and spiritual jurisdiction were not yet coextensive, which is illustrated, for example, by marriage jurisdiction, the discussions surrounding suicide victims (and their burial), or the "crushing" of children (for example in bed).²⁹

II *Various Areas of Crime and the Penal System*

Delinquency towards the authorities, understood by English research of the 1960s in terms of the "moral economy", can be well observed particularly in the

24 On this topic SCHEUTZ, *Alltag und Kriminalität*.

25 On the economics of courts, in particular AMMERER, *Funktionen*; SCHEUTZ, *Alltag und Kriminalität*, 179-188.

26 SCHWERHOFF, *Zivilisationsprozeß*.

27 LANDWEHR, *Absolutismus*, 213.

28 On the concept of "interacting differences" GRIESEBNER, *Konkurrierende Wahrheiten*; cf. also the author's contribution in this volume.

29 With a focus on the 16th century TROPPEL, *Bestrafung von Verbrechern*; EAD., *Kindeserdrückung*.

18th century. The study of poachers³⁰ in the Archdiocese of Salzburg in the second half of the 18th century by Norbert Schindler construes this crime, connected with masculinity rituals, as a social protest against the ruling practice of Enlightened Absolutism which negated the resistance of its subjects. The bitter conflicts that took place between hunters and subjects, who were mostly of sub-farmer status, are interpreted as part of the archbishop's crumbling power and as an expression of the "moral economy" (E. P. Thompson) of rural society, which took here what it was denied elsewhere. Poaching is seen by Schindler not primarily as an expression of need, but is understood as a political "seismograph of rural dissatisfaction"³¹, applied by farmers and sub-farmer classes in a differentiated manner. Farmers hunting chamois thus injured the crisis-shaken "statehood" in the age of the Enlightened Archbishop Colloredo to a greater extent than the "small-scale" hunting of martens and deer. According to the author's interpretation, this poaching appears as a farewell to the Salzburg mini-state, comparable for example with the recruitment rebellions flaring up throughout the archbishopric. The high mountain poaching represented a clear provocation of the authorities; the archbishop transformed "the question of fighting poaching into a fundamental question of the existence or non-existence of aristocratic hunting privileges" and closely associated "complete protection for hunters with the maintenance of state order"³². As conflict over wildlife, poaching appears here as merely one problem facing a crisis-stricken state, and suggests the imminent end of the archbishopric in the Napoleonic Wars. "The shots of the poachers injured the abstract body of the absolute prince, who claimed to be the land that he had representatively incorporated."³³ But not only the poachers protested against the Enlightenment of their "Landesfürst" – the subordinate officials also increasingly abandoned their archbishop; the downfall of the Ancien Régime cannot be written without the frustrated history of disappointments for the petty officials.³⁴ Also the cases of "petty" thieves and regionally operating bands of thieves can only be understood conditionally as "social crime". The "robbers", who originated from the lower class and hardly corresponded to an ideal image of the Romantic period, came together in order to raid a particular target.³⁵ Besides presbyteries, mills, courtrooms and taverns, it was often people affected by poverty themselves who became the target of attacks and theft. The highly mobile beggars did not come from a "romanticised" anti-society, and corresponded little to the "social banditry thesis" introduced by Eric J. Hobsbawm and today

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30 SCHINDLER, *Wilderer*; see ID., *Mehrdeutige Schüsse*.

31 SCHINDLER, *Wilderer*, 323: "Seismograph der bäuerlichen Unzufriedenheit".

32 *IBID.*, 252 (translated from German).

33 *IBID.*, 260.

34 *IBID.*, 321.

35 SCHEUTZ, "Galgenvögel"; WEINGAND, Kramer; FISCHNALLER, "Sterzinger Komplizität"; ID., Gschnell; HEINZLE, "mein herz".

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seen as outdated in research-historical terms.³⁶ Rather the analysis of court records reveals that the deprived society of the 18th century increasingly excluded the vagrant population groups. The marginal culture of the beggars and journeymen, along with youth culture, were in many cases only able to stay afloat economically with the help of crime (theft, burglaries). The consolidation of the state in the 19th century, the establishment of the police and improved search methods brought an end to the "band system" of the Ancien Régime, whose dimensions have been overestimated.

The majority of the cases negotiated before the courts in the Early Modern era were property offences, whereby older Historical Criminology research identified the transition from property to violence delinquency ("violence-au-vol" theory) above all in the second half of the 18th century – which in principle is correct.³⁷ Besides classical theft and robbery, one could also cite arson³⁸ or the illegal deforestation that was widespread in the 18th century – i.e. the unlawful acquisition of forest products such as wood or resin.³⁹ The significance of property offences for 18th-century criminality is indisputable, but unfortunately there has so far been no coherent study covering a relatively large area. Special examinations of iron, sheep or clothing theft⁴⁰ make it possible to identify the larger context: pauperism and impoverishment, hunger crises, but also social protest (for example, in the case of poaching) played a large part in property offences.

The long-term implementation of the state monopoly on violence was spurred on significantly by public criminal law and its visualisation by means of the pillories, gallows and public executions. Violent crimes – under which can be subsumed manslaughter, murder⁴¹ and infanticide, but also cases of defamation of character, which often led to violence, mostly ranked far behind property offences in the Early Modern era.⁴² While murder was prosecuted by the regional courts, the lower courts dealt with physical injuries that had not proved fatal. An investigation initiated by Jakob Wührer into five infanticide trials that came before the Lambach Regional Court (between 1727 and 1745) questions the relationship of role models, social environment and the "realities of life" for the accused persons. "Infanticide was a crime of the female lower classes standing at the end of a chain of events where the realities of these women's lives constantly conflicted with the rules of the authorities and sometimes with those

36 HOBBSAWM, Sozialrebellien.

37 SCHWERHOFF, Eigentumsdelikte.

38 ROTTMAIR, "brenner".

39 GAILBERGER, Bestrafung.

40 SCHEUTZ, Alltag und Kriminalität, 375-429; PFISTER, "Schwabenland"; HIPFINGER, "über grosse sachen".

41 NIETSCHE, Mord und Todsschlag.

42 SCHWERHOFF, Gewaltkriminalität.

of their social environment, which criminalised infanticide and made it into a serious crime."⁴³ The killing of small children was the result of strict social control on the part of the village, the fear of disgrace, the fear of a lack of marriage prospects – i.e. a mixture of social and economic motives, but macro-historical motives (labour market, legal situation, economic situation) should also be considered.

Confessional conflicts between the authorities and crypto-Protestant (underground-Protestant) subjects gained particular relevance in the Austrian territories. While the central authorities introduced and supported counter-reformatory measures in the sense of the "Pietas Austriaca" (such as pilgrimages, brotherhood organisations, monastery foundations), dissident Protestant groups in Styria, Carinthia and Upper Austria, as well as in the Archdiocese of Salzburg, went underground. The radical Catholic reform provoked subjects, also in other parts of the Habsburg Monarchy, to purposely commit blasphemy; church theft (stealing monstrances) was a relatively common crime.⁴⁴ Austrian crypto-Protestantism was intensively persecuted by means of the criminalisation of religious practices, particularly between 1730 and 1750. As the American historian Mack Walker⁴⁵ was able to show in his analysis of the *Salzburger Handel* ("Salzburg Transaction") of 1731, this persecution can be observed most clearly in the great Salzburg emigration of the same year, which became known throughout Europe. While the farmers and sub-farmer social classes living in intra-Alpine valleys saw the ban on religious practises as chicanery that violated the Peace of Westphalia, from the perspective of archbishop Leopold Anton von Firmian and his court chancellor Rall the same event represented a foreign policy problem and confessional media war, which was waged between the Catholic imperial court, the closely connected diocese of Salzburg and the Protestant powers united in the "Corpus Evangelicorum".

Besides the convictions of the crypto-Protestants for heresy and perjury, there were also deportations ("Transmigration") from the Austrian territories to Transylvania and compulsory recruiting of so-called crypto-Protestants.⁴⁶ Between 1733 and 1736, Protestants were deported to Transylvania from several Carinthian manors, as Stephan Steiner demonstrates. A micro-analysis in the Patternton manor of such deportations, which lay somewhere between internal colonisation and punishment, also reveals the high degree of kinship of those

43 WÖHRER, *Der verweigerte Himmel*, 269 [with a case published in the appendix]. Cf. AMMERER, "Die Steinerne Agnes".

44 SCHWERHOFF, *Gotteslästerung*. On the basis of the reports of the *Wienerisches Diarium* HEHENBERGER, "Ehre Gottes"; VALENTINITSCH, *Hostienschändung*; HAMMER-LUZA, "Crimen sacrilegii".

45 WALKER, *Salzburger Handel*. See also MARSCH, *Salzburger Emigration*.

46 As an overview LEEB / SCHEUTZ / WEIKL, *Protestantismus*. The Protestant Church historian Paul Dedic (d. 1950) carried out important groundwork in this field.

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deported.⁴⁷ This indicates the way in which Protestantism, which had been massively persecuted since the 1620s, was able to “survive” underground. The fascinating “thick description” on the one hand reveals the authorities’ surveillance strategies (denunciation, prison, a system of informers, the censorship of letters), and on the other hand also illustrates the various options for persons accused of this “crime”: secret emigration into the Empire, public conversion to the “true faith”, or deportation to Transylvania, which was interpreted as a test of faith. The relationship between the lord of Paternion and the ringleaders, which was becoming increasingly violent but was covered up by the state, is presented in great detail.

Sexual offences – including in particular fornication,⁴⁸ which was predominantly dealt with by the lower courts – indicate, in addition to social discipline, among other things, the economisation of criminal law in the 18th century.⁴⁹ While church punishments still had to be carried out personally, penalties for secular crimes were converted into money, which contributed to the increasing revenue of the Early Modern state. Tension existed between ecclesiastical and secular jurisdiction, as was revealed precisely by the implementation of the authoritarian marriage consensus and the criminalisation of extramarital sexuality.⁵⁰ Sexual deviance, in particular same-sex practices and sodomy, were punished with extraordinary severity as “unnatural unchastity” and “abhorrent sin”; in the 18th century the offenders were increasingly rarely killed, as were the animals involved (mostly cows, mares or sheep).⁵¹ Village gossip, conflicts in the village or with the local rulers, or even denunciation were the triggers for the sodomy trials, which reveal the convergence of ecclesiastical and secular law.

Besides the many publications of Helfried Valentinitzsch, the Viennese medievalist Heide Dienst and above all the regional historian Manfred Tschalkner⁵² in Vorarlberg studied the history of Austrian witch and wizard trials more intensively, in which the priority was evaluating the source material.⁵³ It becomes clear that the witch trials were as much an instrument for controlling the lower classes as a means of conflict regulation in general.⁵⁴

Whilst with the exception of a few larger series of trials the heyday of witch-hunting slowly faded during the first half of the 18th century with a temporal delay from west to east, cases of deceitful dealings with magic in particular –

47 See the study, also successful in terms of language, by STEINER, *Reisen ohne Wiederkehr*.

48 FORSTER, “Unzucht”; BAUMGARTNER, “zeige an”.

49 ERLACH / REISENLEITNER / VOCELKA, *Privatisierung der Triebe*.

50 For a study based on a longitudinal section, see KLAMMER, “In Unehren beschlafen”.

51 HEHENBERGER, “Unkeusch wider die Natur”, 159-168.

52 TSCHALKNER, *Magie und Hexerei*; ID., *Der Teufel*; ID., *Hexenprozesse*; ID., *Hexenverfolgungen*; ID., *Schatzgräberei*.

53 DIENST, *Hexenforschung*, in which there are research overviews for Vorarlberg, the Tyrol, Carinthia, Styria, Salzburg and Burgenland.

54 SCHEUTZ, *Bettler – Werwolf – Galeerensträfling*.

the so-called "Schatzbeter-" ("treasure-prayer offerer") and "Schatzgräberprozesse" ("treasure-seeker trials") -, experienced a significant upswing.⁵⁵ The structure of these treasure trials was often very similar. As a rule, a male or female magic specialist claimed to be able to conjure treasure guarded by a demon. A relatively large praying community formed around the specialist, which over a long period said prayers and, finally, often after handing over extremely substantial sums of money, turned out to have been deceived, by which time the magic specialist had disappeared over the mountains.

The most impressive example of Austrian research into the lower classes is the book by Gerhard Ammerer, which attempts to systematically record for Social History the highly heterogeneous population groups living "on the streets".⁵⁶ The lives of the vagrants were shaped by economics; countless crimes arising from destitution such as theft, robbery and sex offences were an integral element of a begging society, within which day-to-day life was defined by multiple jobs and division of labour (men/women). In addition to the causes of vagrancy, the key issues from a Social-Historical perspective (age, gender, socialisation), measures taken by the state (such as "Bettlerstreifen" or "beggar strips", the expulsion of beggars) and the developing penal system, the author in particular provides a meticulous portrayal of life on the "begging tour". By evaluating collections of "wanted posters" ("Steckbriefe"), he was thus able to study the mechanisms by which face-to-face-names (vulgate names) were assigned: occupation (such as "Wurzengräber Toni" - "Rootdigger Tony") and place of origin ("Neustädter Müller" - "Miller from Neustadt") played a large part, but physical-mental defects and appearance were also very important for the awarding of names. "Einfalthänsel" ("Simplicity Hänsel") was as popular as "Mohren Köpfl" ("Black Head"), whereas crimes committed ("Diebsnandl" - "Thief Nandl") and character traits - such as the nickname "Sechs-pfennig Dierndl" ("Six-Pfennig Lass") for prostitutes - seemed to be less important. The mental maps of the beggars can also be determined through close reading of the court records: the summer tour differed from the autumn tour; the begging society had a map of the compassionate and the hard-hearted houses in their heads and planned their route accordingly. The willingness of the resident population to provide support was increasingly criminalised; the traditional "compassion" in supporting beggars was replaced by a new determination of the Early Modern state to enforce discipline.

If the sources relating to the history of crime are divided into laws, criminal trial records and penal system records, then it was above all the state-led

55 With an overview SCHEUTZ, *Hoffnung*; ID., *Raub, Magie und Hexerei*.

56 AMMERER, *Heimat Straße*. See also WEISS, *Leben und Tod*; on poverty and the lower classes ID., *"Providum"*; VEITS-FALK, *"Zeit der Noth"*.

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penal system that has demanded much attention as early as the 18th century,⁵⁷ in particular the executioners/knackers⁵⁸ and their marginal position within society. Far from being closed "total institutions", these establishments represented attempts to discipline the lower classes with a work concept. Vienna Penitentiary, founded in 1671/73 as a type of factory, was soon followed by punishment and work institutions in Innsbruck (1725), Graz (1734),⁵⁹ Klagenfurt (1754), Salzburg (1755) and Linz (1777); prison sentences in the 18th century increasingly replaced corporal punishment. On the basis of the "imprisoned society", extensive public discourse emerged during the "Aufklärung" about reforming the prisoners and/or work discipline in the prisons. The social practice of disciplining is still inadequately researched for Austrian prisons. A separation of personnel and inmates was only partly successful; the separation of the genders functioned badly, as numerous pregnancies verify. There cannot be talk of a "great confinement" (Foucault) – this is clearly proven by the countless breakouts and the hiring out of workers outside the prisons. The flogging that was common into the 19th century and the obligatory work demonstrate the close interlocking of socio- and criminal-political objectives. It was only in the second half of the 18th century that the previously multi-functional houses (a "common house") gradually began to be broken up into orphanages, prisons and workhouses. With Joseph II's monastery dissolution, a far-reaching discussion emerged in the Austrian Hereditary Lands surrounding the conversion of former monastery space into poorhouses, garrisons and prisons.⁶⁰ The replacement of the death penalty by alternative forms of punishment ("poena extraordinaria") only appeared to be humane: out of 1.200 persons condemned to towing ships between 1784 and 1789, 740 (!) died a terrible death.⁶¹

The stricter deportation law⁶² and search techniques developed in the 18th century, which were by this point coordinated by the central government, also enabled the state to curb the mobility of the lower classes, as is illustrated, for example, by the beggar strips ("Bettlerstreifen") created as part of a dragnet investigation method, and the ensuing expulsion of beggars – the forced return of beggars to their home towns.⁶³ At the same time, however, the expulsion protocols demonstrate how mobile the lower class of the 18th century must have been. But also the source material in the area of expert legal reports,⁶⁴ which is

57 STEKL, Arbeitshäuser; AMMERER / BRETSCHNEIDER / WEISS, Gefängnis; AMMERER / WEISS, Strafe; AMMERER, "Ich wollte mich lieber".

58 PUTZER, Scharfrichtertagebuch; MATSCHEK, Der verfernte Beruf; SCHEFFKNECHT, Scharfrichter.

59 HAMMER-LUZA, Das Grazer "Kriminal".

60 HAMMER-LUZA, Vom Konvent.

61 MACHO, Joseph II.

62 With brief reference to the 18th century REITER, Ausgewiesen, abgeschoben.

63 SCHEUTZ, Ausgesperrt und gejagt.

64 GRIESEBNER / HEHENBERGER, Entscheidung über Leib.

difficult to interpret, as well as the court records of the appeal courts – text types that deal with the negotiation of punishment – attracted a large amount of attention from researchers. On the basis of 771 appeal court records from Inner Austria (between 1787 and 1849), the Styrian historian Elke Hammer-Luza was able to show not only the social backgrounds of child murders, mostly committed by maidservants, but also the judgment practice of the appeal court. Around 43% of the accused persons were not convicted by the court because of a lack of evidence; for more than half of the women, the trial before the court ended with a conviction.⁶⁵

III *The Dissolution of the Disciplines from the 1990s*

While the public image remains of a cruel, haphazard dispensation of justice and an unjust, unregulated and class-oriented justice system in the Pre-Modern era⁶⁶ – before the legal-historical consequences of the 1848 revolution the research on the history of crime in the 18th century shows a differentiated picture: in the conflicting relationship between the accused and the court, there was a surprisingly large amount of room for negotiations, even though the bias of the courts was clearly directed against the mobile lower class and marginal groups (Roma/Sinti, beggars). In particular 19th-century Criminology at last clearly formulated as a “science” the connection emerging in the 18th century between illness/health and lower class in the concept of the criminal person.⁶⁷

In the last 15 years, Criminology, which originally was strongly rooted in Regional History, Legal History and Legal Ethnology, has increasingly become a topic within the field of History Studies⁶⁸ – numerous masters theses and already several doctoral dissertations clearly demonstrate the successes of the sub-discipline History of Crime.⁶⁹ The History of Crime, located between Social History and Cultural Studies and also successful at university level, has, in approximately the last 20 years, significantly broadened our knowledge of local governance. In practice, it is in fact often no longer relevant whether an author is trained as a jurist, an ethnologist, a Germanist or a historian; the discipline of the History of Crime has established itself as a broad basis for interdisciplinary research. Historical Anthropology, Discourse History, Gender History and classical Legal History flow together – admittedly not always in complete harmony. Various conferences on the History of Crime have been held and research connections have been made between different areas,⁷⁰ but nevertheless it is often the

65 HAMMER, *Kindsford*, 293f. (fig. 15).

66 HABERMAS, *Rechts- und Kriminalitätsgeschichte revisited*.

67 BECKER, *Verderbnis*.

68 SCHEUTZ / WINKELBAUER, *Diebe*; GRIESEBNER / TSCHANETT, *Ermitteln*.

69 See as an example RATH, *Aspekte*; JUST, *Lieber Barthel*; SCHILLER, *Von armen Sündern*.

70 GRIESEBNER / SCHEUTZ / WEIGL, *Justiz und Gerechtigkeit*; AMMERER / BRUNHART / SCHEUTZ / WEISS, *Orte der Verwahrung*.

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case that special research areas (such as witch research) are not tied in to Historical Criminology. Several offences within Austrian Criminology such as infanticide, witchcraft and sodomy have been investigated relatively well, while on the other hand essential areas such as property offences or, for example, arson, have thus far barely been the subject of in-depth studies. Due to a lack of research funding in Austria, many Austrian contributions on the history of crime – often M.A. and Ph.D. theses – employ a highly descriptive approach with little or no integration into larger historical concepts, which impedes the international connectivity of Austrian Criminology. Statistical assessments of crime in the Pre-Modern era,⁷¹ which are admittedly difficult for the era before statistics were gathered, a cartographical record of legal monuments (such as gallows) and inter-regional studies on individual crime categories have so far barely taken place. Much research has been concentrated on the options of the accused before the court and on the settlement of disputes; the activity of the courts (as a place of jurisdiction) and the fields of activity of court personnel to a large extent remain obscure. Which means that in this interdisciplinary research field there is still a lot to be done!

71 For the 19th century DIETRICH, Übeltäter.

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