

Department of History and Civilization

Normalising Diversity

PETER BECKER (ed.)

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DEPARTMENT OF HISTORY AND CIVILIZATION

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Normalising Diversity

Based on a Workshop held on 2-3 June 2002

Edited by
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Normalising Diversity: Introductory Remarks

Peter Becker

The articles of this collection emerged from an extramural seminar organised by the Department of History and Civilisation at the European University Institute, the History Departments of the Universities of Basel and Graz, and the Max-Planck-Institute für europäische Rechtsgeschichte in Frankfurt/Main. Connected via an Internet-platform, the seminar groups exchanged, communicated, debated and elaborated upon common themes. This exchange was intensified during a two-day workshop held in Florence in June 2002. The working paper on *Normalising Diversity* includes contributions to the workshop as well as presentations prepared for the seminar sessions. As our experience was extremely encouraging, we hope that the EUI and other universities will continue to develop their infrastructure towards collaborative teaching and research on an international level.

The seminar *Normalising Diversity* departed from contemporary debates on governance and on discursive and institutional forms of in- and exclusion. The research of individual members of the seminar groups provided the basis for our debates on discursive strategies of normalisation and bureaucratic practices of exclusion and marginalisation. These debates were, however, not intended to rehash historical evidence from the perspective of new theoretical explorations of social and political processes. They are a dialectical engagement with theoretical reflections and the reconstruction of historical processes and configurations.

Michel Foucault, François Ewald, and Jürgen Link analyzed the shift from a liberal to an interventionist state, the medicalization and scientification of social, economic, and – to some extent – even of political problems, and the emergence of a statistical concept of normality. These three processes challenged normative assumptions about patterns of behaviour and attitudes and influenced the development of new strategies for social inclusion and political participation. This shift was instrumental in the creation of new administrative structures aimed at managing the undesirable, but unavoidable consequences of urbanisation, industrialisation, and the increasing political influence of an organised workforce.

The papers of this collection develop the considerations of Ewald, Foucault, and Link in three directions: They reflect on norms and normality

within a changing system of governance (Link and Vec et. al.), explore various fields of discourses and their connection to changing institutional practices (Möhring, D'Antonio, Djajic-Horvath, Marques, and Becker), and, finally, look closely at specific institutions and their practices of defining, defending, and promoting historically specific concepts of normality (Dehli, Brändli and Schaffner et. al.).

The first two papers explore the two primary dimensions of our theme – the normal and the normative – from different perspectives. Jürgen Link presents a brief outline of his historical-theoretical concept of *normalism* shedding new light on social and political integration. He argues that 'integration' is today orchestrated less through coercion than a statistically based and flexible concept of normality and its extensive dissemination in media providing points of reference for the self-stylisation of individuals. The paper by Miloš Vec et. al. questions a stable concept of norms and the normative in the 19th century and reconstructs the different actors and sites of norm production as a consequence of accelerating and intensifying industrial production and its risk management techniques. Based on these two papers, one can arrive at a first conclusion for the entire collection: Normalising diversity was a central issue during the 19th and 20th centuries; its strategies and dispositives changed significantly between the mid-19th century and the end of the Second World War. It was, nevertheless, inscribed from the very beginning into an increasingly complex network of institutions, discourses and practices.

A second set of papers analyses changing modes of (self-) governance and institutional strategies of in- and exclusion in the late 19th and early 20th centuries. The papers by Maren Möhring and Emanuele D'Antonio examine different discursive, social, and political practices of self-reform. According to Möhring, the nudist movement aimed at the implementation of new standards and practices of hygiene and fitness to mould bodies into the form of idealised beauty standards of Antique Greek statues and to contribute to a betterment of the Aryan race. The Jewish intellectuals, which are the main focus of D'Antonio's paper, pursued similar strategies in order to arrive at a "true emancipation", that is, an emancipation also from the religious imperatives of their own "Jewish past". They linked their political project to the collection of empirical evidence on Jewish people – following thus the same statistical dispositive for the reconstruction of 'normality' as gentile scholars used for the identification and solution of social problems. The paper by Djajic-Horvath shifts the perspective and traces the construction of identity of cross-dressing women in the Balkans by Western European travellers who, in turn, used this ethnographic encounter to reflect upon their own gender roles. In her contribution, Djajic-Horvath develops a theme of crucial importance to the discussions in the seminar and the working paper as a whole: the problem of continuity

and discontinuity between the self and the other. The evolutionary master narrative of the travelogues allowed the authors to pursue two different strategies, establishing a clear discontinuity between their own world and contemporary Balkan society and, at the same time, identifying contemporary Balkan society as representative of their own mythical past which established a continuum within a diachronic process.

The papers by Marques and Becker continue this line of reasoning by investigating discursive and institutional practices of in- and exclusion in the criminological discourse. Criminological discourse is for obvious reasons closely linked to the binary set of legal norms; normalistic arguments based on a continuity between law abiding citizens and criminals emerge therefore not from the penal law side of the criminological discourse, but from its sociological, ethnographic, and anthropological dimensions. As Becker argues, the discursive space for normalising crime and criminals, that is, the constructions of continuities between respectability and deviance underwent significant changes throughout the 19th century. Marques develops this reflection on discursive strategies of inclusion and exclusion with a meticulous analysis of criminological texts. Following Möhring's and D'Antonio's reflection on the importance of the body as the target of "dividing practices" (Foucault), Marques looks at criminologists' use of bodies for the development of a system of criminal classification. Each of the five contributions to this second set of papers confronts the interrelation between discursive and institutional practices, as positions of authority and expertise transform, in the constructions of continuities and discontinuities between the self and its many others. The evolutionist discourse in the late 19th and early 20th centuries offered a temporal dimension to contemporary reflections on the connectedness and disconnectedness of the self and the other. This dimension in the confrontation with attitudes, behaviour, and physical appearance judged to be abnormal was far more relevant to discursive than institutional practices, as is made clear in the third set of papers.

This last group of papers investigates medical institutions – public health officials, counselling services, and psychoanalysis – in an effort to better understand the rationale and functioning of these modern gatekeepers of normality. These three papers confront many of the issues raised in the discursive analytical section, such as the importance of "dividing practices" for defining the borders between acceptable diversity and non acceptable deviance, the questions of expertise for making authorised judgements, and the problem of discipline and self-discipline in the process of adaptation. The papers by Dehli and Brändli focus primarily on this last aspect, the role of psychoanalysis and psychosocial counselling for the normalisation of diversity in the service of better integration into society. Dehli pursues this question by looking at Alexander Mitscherlich and his

concept of a politicised medicine. In his conclusion, Dehli emphasises the dialectical character of medicalization: political problems are understood as medical ones, while medical problems, such as the availability and goals of psychotherapy, gain political significance. Brändli focuses on the mundane practices of psychosocial counselling in the city of Basel, through which she reconstructs the interplay between discourses, practices, and effects on the objects of this psychological-administrative treatment. The final paper of the collection, Schaffner et.al. analyses psychiatric evaluations by medical officers in turn-of-the-century Basel. This adds a microanalytical perspective to our approach. The authors' institutional, social, and linguistic analysis of public health officials and their role as gate-keepers challenges a number of assumptions developed in the discourse analytical studies. Even though the concept of medicalization and the so-called scientization of the social ascribes authority for the solution of social problems to medical experts, their expertise turns out to be merely the result of their position within a bureaucratic service. Their evaluations and reports don't translate lay perceptions, but transpose them into the bureaucratic sphere.

These ten papers are not intended to be conclusive statements, but rather as results of work in progress and contributions to an ongoing debate.

This working paper would not exist were it not for the efforts of Tatiana Kokkori. I would like to offer my heartfelt thanks for her invaluable contribution.

Concerning Two Normalistic Strategies:

Regulating Inclusion and Exclusion

Jürgen Link

In the following, I would like to present considerations about a specific system of inclusion and exclusion in modern societies. I call this system “normalistic” because according to the criterion “normal/not normal,” it either in- or excludes. One might say that this criterion is neither specific nor specifically modern, since all societies apparently regulate their in- and exclusion according to criteria of “normality” – this seems to be true for archaic tribal societies as well as ancient Egyptians, Jews, Chinese, Greeks and medieval Catholics. It can’t be denied that this is a very broad understanding of normality which is utilized not only in everyday life, but also in a number of scientific disciplines.¹ In the interest of analytic and historical clarity, however, I would like to stress the need for systematic limitation and historical specificity. I warn against equating the categories normativity and normality, and intermingling them simplistically.

If someone were to note that the prophet Ezekiel was not “normal,” or that he had challenged “normality” in Israel,² I would say the following: Everything that we can know about the prophet revolves around the

¹ See for example Ethnomethodology and Goffman’s framework analysis, where ‘normal’ is everything which fits in a given framework: Erving Goffman, *Rahmen-Analyse. Ein Versuch über die Organisation von Alltagserfahrungen*. Frankfurt/Main (Suhrkamp) 1977, 331ff, 352, 529, 554, 617, and Aaron Cicourel, „Basisregeln und normative Regeln im Prozeß des Aushandelns von Status und Rolle“, in: Arbeitsgruppe Bielefelder Soziologen (Hg.), *Alltagwissen, Interaktion und gesellschaftliche Wirklichkeit*, Bd. 1: *Symbolischer Interaktionismus und Ethnomethodologie*, dt. Reinbek (Rowohlt) 1973, 147-188, esp. 152, 175.

² See Jürgen Ebach, “Genie und Wahnsinn der Propheten? Suchbewegungen am Beispiel Ezechiels”, in: Bernd Effe/Reinhold Glei (ed.), *Genie und Wahnsinn. Konzepte psychischer ‘Normalität’ und ‘Abnormalität’ im Altertum*, Trier (Wiss. Verlag Trier) 2000, 25-44. Ebach’s well-informed article relativates the panchronic use of the category of normality, as he documents at length the abuse of this category by theologians and psychiatrists since the 19th century (38ff). I would argue that typical ‘normalists’ have anachronistically reprojected normalism into the distant past. (Similar to the contribution of Ebach, other chapters in this collection present evidence which cautions against the use of the concept of normality with respect to antiquity. Any religious view of insanity as expression of metaphysic instances in unrelated to abnormality).

religious, therefore normative, prescriptive norms. Thus it can ultimately be reduced to normativity. We can safely assume that a broad spectrum of empirical expectations existed, even at that time, and that this spectrum was not yet explicitly regulated as normative. This is what Goethe characterized as “Kleinigkeiten / Außerhalb der Grenze des Gesetzes” (“trivial matters / beyond the limits of law”) with respect to medieval Persian society.³ Such expectations appear to dwell in the shadow of a normative dispositive. They were therefore not normalistic.

To further pursue reflection on the differences between the normative and the normal, I would like to discuss an example of inclusion/exclusion that is currently hotly debated in Germany. The controversy concerns the legal recognition of homosexual life-partners. Two distinct groups can be identified as opponents of this bill: Although both groups reject the normative, i.e. legal equation of homosexual partnerships with heterosexual marriage, only one, represented by Johannes Dyba, the recently deceased charismatic Archbishop of Fulda, disputes the normality of homosexual partnerships. I would like to quote from Dyba's confrontation with Volker Beck, the Green representative who inspired the law:

Dyba: *Whatever you do, the Church will never say: Homosexuality is just as normal as heterosexuality. (...) Even if this was repeated thirty times during the television broadcast of the Gay Parade: “Das, was an Köln mir so gefällt, es ist der geilste Arsch der Welt” (“The best thing about Cologne is that it has the world's hottest piece of ass”), I don't see that as normal.*

Beck: *(...) That is a phenomenon of a new youth culture. But because you are in Fulda, you might be a little distant from all that. In Cologne this is entirely normal.*

Dyba: *That is not normal for me.*⁴

The primacy of normalism in Western society today is evidenced by the fact that even Dyba, a traditional bishop, doesn't openly use pre-normalistic or normativistic arguments, but one that is protonormalistic. This 19th century position, which I will soon elaborate, reveals itself typically with the repeated warning that the proposed law can be seen as a “step towards degeneration.” (*Spiegel*, 88)

It is difficult to statistically assess the recognition of homosexual lifestyles as “normal” in contemporary Germany. Nevertheless, some data implies that the majority of the population – as opposed to Dyba – finds homosexual lifestyles normal. To me it is telling that even mainstream media coverage does no longer treat the topic as a “break of taboo.” The conservative woman's magazine *Laura* published an article with the title, “A Completely Normal Family?”⁵ It featured a large photo of the singer Patrick Lindner with his life partner and their adopted son Daniel. The

³ See Goethe's poem “Fetwa” in his lyric cycle “West-östlicher Divan”.

⁴ *Der Spiegel*, July 17, 2000, 89.

⁵ See *Laura* (edition of January 26, 2000).

article states that Lindner's fame might have simplified the adoption. The author then pleads for an easing of adoption procedures for lesbian couples, as 900,000 lesbian mothers are already successfully raising children from earlier relationships. Under the heading "For Children, Being Different is Normal," the article presents interviews of people who grew up in lesbian households and developed into heterosexuals. Above all, their higher level of tolerance and "emotional stability" are stressed.

This sort of media coverage, which is not at all an exception, can be judged as proof of a strong tendency towards inclusion. This would have been impossible a hundred years ago; its success is primarily due to the dispositive of "normality." The necessity to analytically distinguish this dispositive from that of normativity, is revealed in the conflict concerning the legal equation of homosexual partnerships with heterosexual marriage. This conflict also demonstrates that inclusion in modern societies, primarily and frequently, is centred upon positive or negative interaction between normality and normativity: For the precise analysis of these interactions, the above mentioned categorical separation between the normative and the normal is of crucial importance.

Two normalistic strategies

This brings me to the definition of my concept of normalism, upon which I elaborate in "Versuch über den Normalismus".⁶ "Normalism" signifies the sum of all discursive and practical-interventionist procedures, dispositives, instances and institutions through which "normalities" are produced and reproduced in modern societies. Statistical dispositives, i.e. the mass collection and processing of data about social, cultural, economic, and political realities, are constitutive for the production of normality. These dispositives include the use of questionnaires on the level of data collection, mathematical-statistical theories of distribution on the level of analysis, and strategies of re-distribution on the level of political intervention. Normalities, produced and reproduced by these dispositives, essentially follow "average" statistical distributions and approach the ideal of a "symbolic Gaussian distribution." "Average" distributions feature a wide middle range, i.e. the "normal range," and two symmetrical, "anormal" extreme zones with little data.

I argue that continuous, systematic and all-encompassing data collecting and processing represents the historical *a priori* of normalism. This did not appear before the 18th century. As in ancient Israel one could not possibly ask whether the prophet Ezekiel held opinions or took action that was supported by less than 1 percent of the population, or tolerated by

⁶ See Jürgen Link, Versuch über den Normalismus. Wie Normalität produziert wird, Opladen (Westdt. Verlag) 1996, 2d ed. 1999.

more than 5 percent, I consider it both anachronistic and ignorant to subject the prophet to the category of normality.

Normalism provides a simple, and apparently effective, set of tools for the regulation of in- and exclusion: Within Gaussian distributions, boundaries of normality are established to the right and left of the normal range, at the transitional points to the two extremities which represent anormal observations. All attitudes, actions, roles, individuals, etc. within the normal boundaries are included, precisely because they are “normal,” and everything beyond these boundaries is excluded, precisely because it is “anormal.” What seems so simple upon first glance turns out to be more difficult. This is due to the fact that both the Gaussian normal distribution and all similar curves are continuous, and that no mathematical criterion exists which establishes the boundaries of normality.

According to Georges Canguilhem⁷ the discovery of the continuous transition between normality and anormality played a constitutive role in the “crystallization” of normalism as an institutional network. The question of continuity was first asked by medical experts in their attempts to differentiate between health and sickness. Until John Brown presented his thesis, 18th century medicine defined sickness to be a phenomenon *sui generis*, i.e. metaphorically a foreign entity in a state of war with the healthy body, occupying it as would a foreign power. Contrarily, François Broussais, following Brown’s theory, characterized sickness as a particular condition of healthy organs. Sickness was the result of the transgression of an organ’s upper or lower threshold values.

The structural analogy of this medical model and the mass distribution model of normalism, formulated at approximately the same time by Quetelet, is obvious.⁸ In both cases, a wide normal range flanks the mean and is framed by two normality-boundaries which mark the limit of the two zones of anormality. I propose this model as the “Principle of Broussais and Comte,” because it was first formulated explicitly as a theoretical axiom by Auguste Comte who applied it to social conditions and mass phenomena. The principle of continuity between normality and anormality, as well as its uninterrupted and reversible transition, promised the possibility of normalization and more generally of inclusion. Auguste Comte, for his part, was relieved to have experienced anormality as reversible after a fit of insanity. Similarly, this logic must also have triggered an “anxiety of denormalization,” because normal conditions could hypothetically become anormal. The “principle of Broussais and Comte” had therefore both optimistic and ominous implications.

⁷ See Georges Canguilhem, *Le normal et le pathologique*, Paris 1966.

⁸ See Canguilhem, and see Ian Hacking, *The Taming of Chance*, Cambridge/Mass. (Cambridge Univ. Press) 1990.

With respect to in- and exclusion, this principle of continuity has historically allowed for two diametrically opposite strategies which define the boundaries of normality. The first strategy consists of narrowing the normal range to its limits and then defending it through symbolic and pragmatically robust boundaries of normality. This alleviates anxieties of denormalization resulting from the transgression of boundaries. In my book, I called this strategy “protonormalistic” because it was prevalent through the entire 19th and the up to the middle of the 20th century, when “flexible normalism” was finally established. Tightening the normality boundaries generally implies an exploitation of pre-normalistic ideologies such as “natural law.” Homosexuality is excluded as “anormal,” because it is considered “unnatural.” Within this framework, the “unnatural” character of homosexuality can be explained by referencing humanistic, Darwinian, or even degenerationist theories (as does Archbishop Dyba). Institutionally and practically, tightening of normality boundaries is achieved with the help of either legal normativism (exclusion of certain varieties of “anormality” as “criminal” and internment behind the walls of a prison as real existing boundaries of normality) or medical diagnostics in the most broad sense (exclusion of other varieties of “anormality” as “insanity or psychological illness” behind the walls of a psychiatric institution). Thus, homosexuality can only be excluded as either insane or criminal. As the normal range narrows, the areas of “anormality” expand. As I demonstrate later, theoretical and practical reference works of a protonormalistic nature have almost nothing to say about normality. They tirelessly describe varieties of “anormality.”

Broussais’ and Comte’s principle also allows for a diametrically opposite strategy: A continuous, constant and flowing transition between normality and anormality can shift the boundaries of normality towards the periphery, i.e. as far as possible from the “median.” It results in a maximal breadth of the normal range. This is a strategy of maximal inclusion, incorporating a large number of individuals and groups that are labeled as “anormal” under protonormalistic premises (such as homosexuals). This strategy, which I call “flexible-normalistic”, was implemented above all in the so-called “welfare states” of the West during the second half of the 20th century. I will refer to this later.

Case studies

I would like to present a series of case studies which exemplify the analytic possibilities of the theory of normalism to study the phenomenon of in- and exclusion. I will use the example of homosexuality to reflect on the general normalistic structures. For this purpose, one could have chosen one from

many other cases of in- and exclusion, such as physical disabilities, extreme social deviation, ethnic minorities, criminality, addictions, etc.⁹

I will first present Richard von Krafft-Ebing's famous *Psychopathia sexualis* and will focus on its assessment of homosexuality.¹⁰ The book's first edition appeared in 1886. The explicit position of the author is decisively protonormalistic. This can be seen both in the introductory essay "Fragments of a Psychology of Sexual Life," in Krafft-Ebing's comments on specific cases, and in the advice he gave to clients. Lombroso's theories of degeneration preoccupy Krafft-Ebing. He argues against the criminalization of homosexuality in Paragraph 175 of the German Criminal Code, exclusively because he considers homosexuality to be an inborn psychic "abnormity" (thus anormality) and not a criminal act.

I will demonstrate that Krafft-Ebing did indeed employ normalistic strategies, and that the problematic of in- and exclusion has a dominantly normalistic structure. As argued in the above, the crucial feature of both protonormalism and flexible normalism, i.e. normalism in general, is Broussais' and Comte's recognition of the continuity and the fluid transition between normal and anormal. This principle becomes evident under the following circumstances, even if it is not explicitly referenced: a reflection on the width of the normal range, on statistical distribution, on gradualism, on gray zones between normality and anormality, and on the reversibility between these two areas. All these phenomena determine the discourse of Krafft-Ebing.

The extent of a normal range

"Hair fetishists represent an interesting category. The line that separates an admirer of women's hair within the range of physiological normality from a pathological fetishism is fluid. The first cases in the pathological range are one's in which a woman's hair simply makes a sensuous impression and stimulates the desire for sex, a next case would be one in which potency exists only with a woman who possesses the individual, magical fetish (. . .) At the end of this series, we find degenerates for whom a woman's hair is alone sufficient, detached from her body, thus so to speak no longer a part of a living body, but instead mere material and a commodity, for the stimulation of the libido and for satisfaction via physical and psychic masturbation, perhaps even with the genitals coming into contact with the fetish object. (189f.)

Krafft-Ebing uses "physiological range" as a synonym for "normal range" as was typical in the 19th century. The German concept of "Breite" ("range") in the original text clearly signals the statistical saturation of the

⁹ Following the passing of a Euthanasia law in the Netherlands in April 2001, the media presented the Netherlands as the exemplary case of flexible normalism. They surveyed all fields in which flexible normalism was already applied, among them the legalization of 'soft' drugs and the recognition of homosexual marriage.

¹⁰ My quotations follow the reprint: Richard von Krafft-Ebing, *Psychopathia sexualis*. München (Matthes und Seitz) 1993 (based on the 14th edition, 1912).

normality zone on both sides of the median as well as their distribution. This normalistic distribution, which has been incorrectly referred to as a “norm,” stands in clear opposition to the normative norm. The latter is characterized by its binary structure. Only the legal question, as to whether a punishable act has been committed according to Paragraph 175, can be answered by yes or no. Although Krafft-Ebing does not offer any examples for the variation of the normal range, his differentiated gradualism of anormality suggests that he assumed a similar differentiation within the normal realm (the existence of various degrees of “physiological,” thus normal enthusiasm for beautiful hair).

Gradualism

Krafft-Ebing quotes statistical figures for homosexuality within the total population: Ulrichs (about 0.1%; 267) and the autobiography of a homosexual (about 0.5%; 288). I will later argue that the flexible-normalistic inclusion of homosexuals and the increase in their statistical proportion (culminating in the Kinsey reports) ran parallel.

“Within the so-called contrary sexual disposition, the extent of visibility parallels the measure of an individual’s burden, insofar as psychic hermaphroditism in milder cases as well as the homosexual sensitivity and instinctual direction of the more difficult cases appear limited to the vita sexualis. In more difficult cases the entire psychic personality and the physiological mode of sensation are transformed under the influence of sexual perversion, in the most difficult cases the physical habitus itself is reconfigured correspondingly.” (226; see also 257, 301).

According to the same logic, numerical scales would later be developed, with which individuals could identify their degree of bisexuality or homosexuality. These scales attempted to statistically organize the gray area between normality and anormality which was already considered by Krafft-Ebing, when he spoke about fluid borders between normality and anormality, as quoted in the above. The possible reversibility of homosexuality, as another feature of Krafft-Ebing’s normalistic approach, was related to its supposedly “acquired” forms, ascribed to “obstacles” such as the fear of syphilis or the practice of masturbation: “Normal sexual practice is immediately resumed as soon as the obstacles disappear.” (227) Krafft-Ebing does not consider “inborn” homosexuality (resulting from “degeneration”) to be reversible. This would require genetic manipulations, which would not become possible until the last third of the 20th century.

Paradoxes of Protonormalism

I have already mentioned the paradox that protonormalistic discourses determine normality only in more general terms, while circumscribing anormality with a wealth of differentiated data. This can be directly related to the contracting strategy of protonormalism: The wide representation of anormalities can have an intimidating and deterring effect by scaring, so to

speaking, and driving normal individuals together at the narrow space around the average and the symbolic middle. This could be understood as a contribution to the formation of protonormalistic "compulsory neurotics."

Although Krafft-Ebing openly argues protonormalistically for exclusion, the logic of his discourse has opposite implications. The sheer richness of data, especially concerning anormality, combined with his consideration of a more gradual transition from normality to anormality invites us to ask, whether it would not be possible to shift the boundaries of normality towards the extremities to achieve more inclusion. This implicit orientation on a normalistic level is opposed by Krafft-Ebing's strategies of distancing, featuring homosexuals as "pathological." Was this distancing just a discursive-tactical trick? Actually, the reader was confronted with the following argument:

Whenever a Dioning (a heterosexual man, J.L.) seeks satisfaction for his sexual drive, he can always find it easily; this is not the case for an Urning (a homosexual man, J.L.)! He sees men who attract him, but he is not permitted to say anything or even to openly display what he feels. He thinks that he alone in the entire world has such abnormal sensations. (...) Instead he resorts to masturbation to achieve sexual pleasure which he otherwise would never find. (...)

When a breakdown of the nervous system occurs after a certain time, the pathological appearance is not a result of the Urning's nature, but is a consequence of the fact that the Urning, according to the dominant perspective, could not find what was for him the natural and normal satisfaction of his sexual urges, and thus resorted to masturbation. (431).

Ultimately in such passages Krafft-Ebing's discourse implicitly demands an extension of the spectrum of normality, thus for inclusion through means of normalistic strategies. Differently said, early flexible-normalistic tendencies are articulated in the middle of this dominantly protonormalistic text.

Early flexible-normalistic tendencies expanded around 1900 to the degree that protonormalistic counter-movements such as moral crusades abounded ("Schund-und-Schmutz Kampagnen").¹¹ From my perspective, it is indicative that the initiatives aimed at including homosexuals using concepts like "intermediate sexual stages" or "third gender," exploited the basic normalistic ideas of continuum between normality and anormality.

Psychoanalysis produced the most important theories for the victory of flexible-normalistic strategy in the realm of sexuality. I entitled my - rather short - chapter on Freud "The Normal errs into Quotation Marks." The use of quotation marks can be understood to signify the outset of a dissolution of protonormalistic boundaries of normality. Accordingly,

¹¹ Cf. Jutta Kolkenbrock-Netz: « Der Mann als Statthalter des Normalen. Kriterien literarischer Zensur von der Jahrhundertwende bis zum Ersten Weltkrieg », in: kultuRRevolutio. zeitschrift für angewandte diskurstheorie, Heft 9/1983, 15-21.

Freud argues in the 23rd lecture in *Einführung in die Psychoanalyse* ("Introduction to Psychoanalysis") from 1916-17:

Both of these costs (i.e. for compulsive neurotic acts and their defense, J.L.) can result in an extraordinary impoverishment of the person in terms of resources of psychic energy, so that there is an immobilization of the same for all important life tasks. Since this primarily regards the quantity of the energy claimed for this success, you can easily recognize that "being sick" is essentially a practical concept. But if you take a theoretical standpoint, then you will have to admit that we are all sick, i.e. neurotic, because the conditions for the formation of symptoms are also latent with the normal individuals. (StA Volume 1, 350)

Freud locates the structural cause of these symptomatic risks even for normal individuals in the "polymorph-perverse" predisposition of the baby. This paradoxical and even today somewhat shocking concept can be considered to be Freud's attempt at a kind of discursive-tactical putsch (coup-d'état). Had he been successful, the normality boundaries would have been made radically more flexible. If we are all anormal (or even "perverse") to a certain degree, then the boundary of normality must be radically extended. Freud avoids this implication in his ontogenetic model of evolution: Insofar as "polymorph perversity" is filtered through the Oedipus Complex, a more narrowly defined normality emerges, which Freud, in a cultural-historical sense, specifically ascribes to modernity. The boundary of this newly conceived normality is per definition no longer a protonormalistic separation, but rather a precarious, porous and flexible boundary that is constantly subject to negotiation.

This was also Freud's contribution to the normalization of homosexuality. Whether he explained the genesis of male homosexuality through the identification with the mother, the attachment to the phallic mother, the fear of the castrated woman, or through bisexuality and narcissism – he always referred to a predisposition latent in normal men. Freud emphasized the universal bisexuality and the frequent subdominant homosexuality in normal individuals. This is apparent in his study on Leonardo, where we can find a clear reference to homosexuality:

We no longer believe that it is possible to cleanly differentiate between health and sickness, or between normal individuals and nervous individuals. Similarly, we also don't believe that neurotic characteristics have to be judged as proof of a general inferiority. We know today that the neurotic symptoms are a replacement formation for the results of certain repression, which we have to achieve in the course of our development from child to a civilized human. We also know that we all produce such replacement formations, and that only the number, intensity and distribution of these replacement formations justify the practical concept of being sick and the end of constitutional inferiority. (Eine Kindheitserinnerung des Leonardo da Vinci ("A Childhood Memory of Leonardo da Vinci"), 1910; StA Volume 10, 153)

Many Freud critics would consider my reading to be one-sided. They could refer to lines of argumentation in Freud's oeuvre that – especially from a

contemporary perspective – have a distinct protonormalistic meaning. These objections cannot be ignored. This contradiction itself permits me to further clarify the relevance of my reflections on the theory of normalism. I believe that it was not just psychoanalytic theory that catalyzed the breakthrough of flexible normalism. At the end of the 19th century, rather simple normalistic discourse-complexes and discourse-dispositives were part of a general code. They contributed to a ‘discursive universal currency’ for all sorts of theories and practical initiatives through which protonormalism was questioned. We know that Freud considered his ontogenetic and psychological-based theories on the sexual spectrum to be radically innovative and different from earlier phylogenetic theories including the hereditary and somatic-based model of Krafft-Ebing.

On a theoretical level, these two theories could hardly be more divergent. Both theories utilize, however, the same common logic of flexible normalism. They both employ the normalistic continuity principle of Broussais’ and Comte’s and tend to liquefy the boundaries of normality by including earlier protonormalistic “abnormalities” into the “normal range” with their “normal varieties.” Freud was more clearly involved in this shift to flexible normalism than Krafft-Ebing. Foucault did not satisfactorily acknowledge this, Freud’s “epistemological break”.¹² This may have been related to the interrelationship of Freud’s theory with the normalistic discourse-complexes and discourse-dispositives. This interrelationship intensified later in the American eclectic therapeutic institutions that disappointed Lacan. But this was just how inclusion through normalization could be achieved and implemented in practice.

Flexible Normalistic Perspectives

Marcel Proust supplies a highly relevant example illustrating this interference between normalism and refined poetic and mythical concepts of homosexuality. This is most evident in the later volumes of his *Recherche*,¹³ beginning with *Sodome et Gomorrhe*. In the essay about “inversion” that follows the first sexual encounter between Charlus and Jupien, various registers – in the refraction of multiple perspectives – are employed, among others a mythopoetic-biological register of hermaphrodite plants and animals. One of these registers – and surely not the least relevant – is that of normalism (including its terminology and its statistical dispositives). I am particularly pleased to cite Proust in support of this, the least accepted of my arguments which deals with the historical specification of “normal” and its limitation to Western modernism:

¹² This was much to the disappointment of Jacques-Alain Miller. Cf. The debate in Vincennes „Le jeu de Michel Foucault“, in: ders., Dits et Écrits, Bd. 3 Paris (Gallimard) 1994, 298-329, hier 314ff.

¹³ Pléiade-edition, vol. II, Paris (Gallimard) 1954.

(..) si bien que, tout en niant qu'ils soient une race (dont le nom est la plus grande injure), ceux qui parviennent à cacher qu'ils en sont, ils (les "hommes-femmes," J.L.) les démasquent volontiers, moins pour leur nuire, ce qu'ils ne détestent pas, que pour s'excuser, et allant chercher, comme un médecin l'appendicite, l'inversion jusque dans l'histoire, ayant plaisir à rappeler que Socrate était l'un d'eux, comme les Israélites disent de Jésus qu'il était juif, sans songer qu'il n'y avait pas d'anormaux quand l'homosexualité était la norme, pas d'antichrétiens avant le Christ [...].

Proust uses both biogenetic and socio-genetic registers, which he – as in the concept of "race" – integrates and overdetermines. "Race" is a biogenetically based, but nevertheless through the process of stigmatization socio-genetically and historically constituted category. Therefore "Jews" as well as the "inverted" were constructed in modern Western societies as "races". Using the reference to stigmatization, Proust was an early proponent of the labeling approach. As homosexuality was a cultural "norm" in ancient Greece and thus belonged to cultural normativity, the dispositive "normal/anormal" is not applicable to Ancient Greek sexual activity; similarly the dispositive Christian/non-Christian cannot be applied. A consequence of this approach is Proust's implicit and indirect lack of argumentation for flexible normalism. Instead, he favours a new sort of culture, a polyeurythmic culture, in which homosexuality could again be a "norm".

Despite this reading, Proust's discourse about "inversion" could be linked to normalism as well. A case in point is the usage of statistics by Proust. One of the most important narrative threads of the *Recherche* is the ever-increasing proportion of "inverted individuals" within the total population. The first person narrator, who is consciously fictionalized as naïve, gullibly falls for the superficial normality of his Parisian environment during his youth. Yet with time, he learns to see through disguises, until he is finally forced to recognize that inverted individuals exist *en masse* ("foules"):

Contrairement à ce que je croyais dans la cour où je venais de voir Jupien tourner autour de M. de Charlus comme l'orchidée faire des avances au bourdon, ces êtres d'exception que l'on plaint sont une foule, ainsi qu'on le verra au cours de cette ouvrage, pour une raison qui ne sera dévoilée qu'à la fin, et se plaignent eux-mêmes d'être plutôt trop nombreux que trop peu. (631)

Not only do new inverted figures appear in the novel – increasingly heterosexuals are shown to be inverted. Furthermore, their practices are characterized by an escalating degree of anormality. As such, an additional normalization effect with respect to 'simpler' practices is achieved. Later in the novel, "statistics" literally become a narrative event, as Charlus proposes to the Sorbonne Professor Brichot a thesis that anticipates, indeed, even outdoes Kinsey:

Sans cela le taux des saints, si vous voyez de la sainteté là-dedans, se tient en règle générale entre 3 et 4 sur 10." Si Brichot avait transposé dans le sexe masculin la question des mauvaises réputations, à mon tour et inversement c'est au sexe féminin, et pensant à Albertine, que je reportais les paroles de M. de Charlus. J'étais épouvanté par sa statistique, même en tenant compte qu'il devait enfler les chiffres au gré de ce qu'il souhaitait (...) "Trois sur dix! secria Brichot. En renversant la proportion, j'aurais eu encore à multiplier par cent le nombre des coupables. (La Prisonnière, Pléiade Vol. III, 1954, 297f.)

At this point in the novel, a lengthy conflict concerning the statistics of homosexuality begins. It constitutes an informative object for normalism research. The interpretation of this part of the novel is not without risk: Does Charlus really want to claim that 70 percent of the male population supposedly has homosexual "taste"? This is apparently the way he is understood by the participants of the conversation in the novel. The percentage mentioned above could, however, in this context only refer to those who are accused of homosexuality in gossip. In that case, merely 30 percent of the victims of gossip would be "holy" in the sense of slander, and accordingly, 70 percent of those "accused" would be actually introverted. Proust intentionally exploited this ambiguity, especially with reference to his audience. In any case, I don't find it exaggerated to claim that this argumentation in Proust's *Recherche* anticipates the great historical process of inclusion of homosexuality through flexible normalism in the course of the 20th century.¹⁴

I have taken this Proustian detour to refine my concluding argument on the final success of flexible normalism. Ulrichs estimates the proportion of homosexuals at 0.1%, the highest number mentioned by Krafft-Ebing amounts to 0.5% and Magnus Hirschfeld increases the percentage to 2.3 (plus 3.5% bisexuals).¹⁵ Havelock Ellis presents statistics on homosexuals that lie between 2 and 5 percent.¹⁶ Shortly before the Kinsey Report was published, the curve had already reached 6 percent.¹⁷ Researchers have, so

¹⁴ Michel Leiris stressed this radical innovation in a text on „Notes sur Proust“ written in 1956 but not published until 1997: „Mais pour l'un de ces thèmes la nouveauté va plus loin, car le fait même de le traiter comme un thème ordinaire (übersetzbar mit « normal », J.L.) était une innovation. Avec Proust en effet, c'est pour la première fois que le thème de l'homosexualité est traité ouvertement et longuement dans un roman français qui l'associe à d'autres thèmes littéraires en le plaçant sur le même pied. C'est d'un point de vue essentiellement social que Proust traite ce thème (...). » (Magazine littéraire Nr. 350, Jan. 1997, 56-62, hier 59) Thus Leiris recognized the sociological normalizing effect of Proustian narration.

¹⁵ S. Alfred C. Kinsey/Wardell B. Pomeroy/Clyde E. Martin, *Das sexuelle Verhalten des Mannes*, Frankfurt/Main (Fischer) 1970, 577.

¹⁶ Cf. Kinsey et. al., 576.

¹⁷ Cf. Kinsey et. al., 576.

to speak, recapitulated what the narrator of *Recherche* experienced in fiction.

The basic preconditions for the success of flexible normalism, just to name two, were the consolidation of world hegemony by the USA and the defeat of Hitler's radical fascism, which with respect to homosexuality surpassed protonormalism using terrorist methods. I would connect the final phase of normalization, or, to express it differently, the normalistic inclusion of homosexuality in the West to the first Kinsey Report. Its powerful effect still awaits a careful analysis as an overdetermined event, for which I lack both the space and the competence. What needs to be emphasized, however, is its essentially normalistic, and indeed flexible-normalistic base structure.

I have already mentioned the normalistic function of therapeutic eclecticism that is prevalent in the USA. This eclectic character on the theoretical level, combined with normalistic implications, can be identified in the Kinsey reports as well. Kinsey's theoretical presumptions are based on biological models developed in zoology and closely related to protonormalistic views. He combines them with a colourful *pot pourri* of psychological and sociological theories. They include elements, which he calls "psychoanalysis" although they are hardly recognizable as such. The normalistic inclusion of diversity in sexual orientation was not a result of the Kinsey report's theoretical eclecticism. It resulted from the presence of a "discursive universal currency," whose authority was based on the availability of high statistical percentages of different types of sexual behaviour. Even if they remained doubtful, they could not but have a normalizing effect and hence favour inclusion. Kinsey increases the proportion of homosexual (and bisexual) behavior to 37 percent (and 50% of younger singles, thus practically agreeing with Charlus, if one reads the novel liberally).¹⁸ Sceptics might then maintain that the statistics lie somewhere between the previously assumed 6 percent and 37 percent, for example at 10 percent, as is frequently claimed today. Even this figure can guarantee the normality of homosexuality on a bell curve.

Under the pressure of normalization paragraph 175 of the penal code in Germany was first revised and then annulled. The current law concerning the recognition of homosexual partnerships represents an additional step on the path to the adaptation of normativity to normality. Normal couples gain financial and legal advantages through a formal ceremony. If homosexual couples are considered to be normal, then it would be logical to allow them a formal ceremony and access to the commensurate advantages. Opponents of this law who do not deny the normality of homosexuality emphasize the importance of biological

¹⁸ Cf. Kinsey et. al., 582.

reproduction for society. Demographic evidence reveals, however, that reproduction is no longer necessarily part of the normality of marriage and even homosexual couples can adopt children. Under these circumstances, the argument of Archbishop Dyba has particular significance. He argues that children adopted by homosexuals are subject to the risk of pedophilia. This argument evidences the normality boundaries even of flexible normalism. Flexible normalism, too, must be bound to maintain differentiation between normal and anormal. Under these conditions, the boundary of the flexible normalism is equally a paradox: It can never be specified with certainty within a gradualist spectrum, it can only be located "somewhere far out there". Thus every flexible-normalistic continuum and every corresponding normal field differentiates itself by means of an absolutely extreme symbolic complex. This complex clearly defines anormality. In the case of the normal field of sexuality, it is pedophilia. Seen logically, Dyba should have considered the risk of children adopted by heterosexual couples as well.

The Bundestag has since legislated the possibility of official homosexual partnerships without granting them full equal financial rights. The Supreme Court has even approved the law. The demand for equal financial rights continues to be raised. The continuing debate promises to be interesting. In these remarks my role was to demonstrate that the consideration of the difference between normality and normativity, as well as the use of the theoretical model of normalism, promote our analytical and historical precision.

Standards, Norms, and the Law:

The Impact of the Industrial Revolution*

Milos Vec, Margrit Seckelmann, Tilmann J. Röder

In the context of multi-disciplinary conferences, legal scholars are often expected to set up precise definitions of key terms pertaining to the topic of discussion. Out of reasons that will become apparent in the course of our text we have decided not to fulfil this expectation.

Instead, we will begin with Niklas Luhmann who set up the most far-reaching definition of a legal norm, which has a great influence on the current scientific discourse: A legal norm is a binary coded system defined by the main distinction between “legal” and “illegal”.¹ These norms may or may not be written, and they can, but need not be enforced by the threat of penalties. What matters is the fact that the actors identify them as belonging to the semantic field of legality.

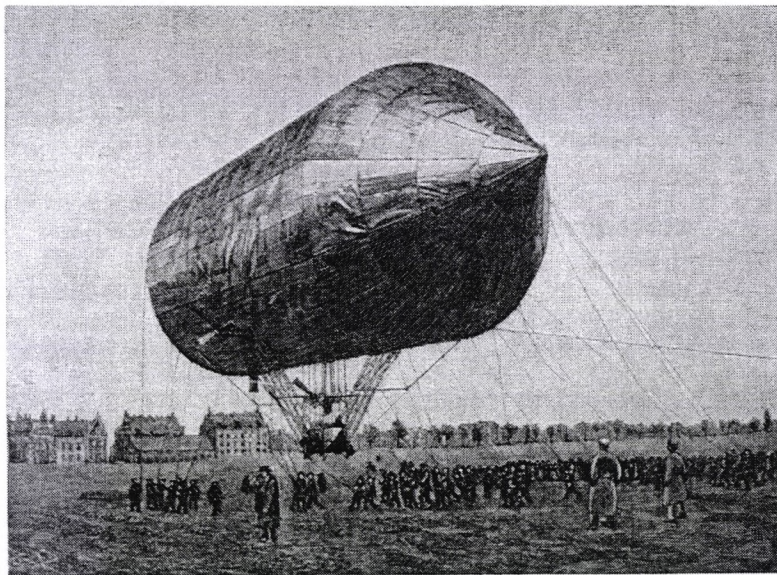
This rather broad definition is very helpful if one tries to analyze the modern society and its various forms of regulation, its different types of norms and of normalization. There are various institutions, which act as lawmakers and norm-givers, and they generate an astonishing variety of legal qualities. The origins of this complex and entangled system of the modern industrial society and its specific forms of normativity stem from the nineteenth century and the Industrial Revolution.

In the course of the Industrial Revolution the cultural structures of one country after another changed fundamentally. These upheavals have traditionally been described socio-economically: The populations grew all over Europe. Agriculture and forestry were pushed out of their leading positions by the mining and manufacturing industries and, during the second phase of the Industrial Revolution, by chemical and electronical engineering. In the new economic sectors, mass production, the division of

* Since early 1999, an Independent Junior Research Group at the Max-Planck Institute for European Legal History has analyzed how legal structures changed during the period of the Industrial Revolution. See our homepage www.mpiet.uni-frankfurt.de/vec/

¹ Niklas Luhmann (1981), „Kommunikation über Recht in Interaktionssystemen“. In: Niklas Luhmann, *Ausdifferenzierung des Rechts. Beiträge zur Rechtssoziologie und Rechtstheorie*, Frankfurt am Main, 53–72.

labour, specialization, and mechanization took command. The number of national products increased. Urbanization and the formation of new social classes went hand in hand with these transformations. Sigfried Giedion has shown how everyday life changed along with these processes.² For example, the products people produced, used and got used to gradually became standardized. Their lives followed the rhythms of the new economy.



ILL 1: *Manoeuvrable Aluminium Airship by Schwarz.*

From exhibitions, markets and public demonstrations, people learned the miracles of new technologies. In the course of these expositions and in popular journals,³ engineers displayed their spectacular innovations such as the use of electricity. The famous Encyclopedias like *Chambers* in England and *Brockhaus* in Germany, and in France the „*Grand dictionnaire du XIX^e siècle*“ by Larousse, reported about the success of science and technology

² Sigfried Giedion (1948), *Mechanization takes command: A Contribution to Anonymous History*, Oxford.

³ Klaus Plitzner (1998), „»The Amazing Magic that Lives in a Wire.« Eine Gegenüberstellung der Welt der Elektrizität in der deutschen ‚Gartenlaube‘ und im amerikanischen ‚Ladies‘ Home Journal‘ bis Mitte der 1920er Jahre mit spezieller Betrachtung des elektrischen Kochens, in: Plitzner (ed.), *Elektrizität in der Geistesgeschichte*, Bassum, 87-103.

in an enthusiastic way.⁴ Their illustrations claimed that the machines gave man control over the world in a most marvellous way: precisely and without any room for error.



⁴ Andreas Daum (1998), *Wissenschaftspopularisierung im 19. Jahrhundert. Bürgerliche Kultur, naturwissenschaftliche Bildung und die deutsche Öffentlichkeit 1848 bis 1914*, München; Mitchell G. Ash (2002), *Wissenschaftspopularisierung und Bürgerliche Kultur im 19. Jahrhundert*, in: *Geschichte und Gesellschaft* 28, 322-334.

But the seeming triumph of precision soon turned out to be an illusion. The increasing number of steam engine explosions, of river and air pollutions and of railway and car accidents proved that technology did not totally fulfil the promise of perfection. At that point, legal regulations and administrative controls were called for in order to govern the risk attached to the new technologies. One of the related aspects was the question of compensation for workers injured or killed in the explosions.⁵ Another aspect was the regulation of boilers.⁶ But it might have been objected at that time that state controls and regulations would disturb the way towards a better future. Fears were uttered that such laws would only help the competing industries in foreign countries. Other questions arose: Would the lawyers and legal scholars understand the new technologies well enough to assess their scope adequately?⁷ Would they not rather impede technological innovation and economic success?⁸

Laws and standards could hinder, but they could also pave the way for technological and economic progress. Having experienced technical standardization in the precise new world of the engineers, the states themselves intensified their efforts to standardize the law and the society throughout law,⁹ e.g. many national governments standardized measures and weights.¹⁰

⁵ François Ewald (1993), *Der Vorsorgestaat*, Frankfurt.

⁶ Ina vom Feld (2004), *Kontrollierte Staatsentlastung im Technikrecht – Dampfkesselgesetzgebung und Dampfkesselüberwachung in Preußen 1831-1914*, (forthcoming).

⁷ D[agobert] Landenberger (1910), Weltfremde Juristen auf dem Juristentag in Danzig, in: *Zeitschrift für Industrierecht* 5, 279.

⁸ Hörschelmann (1908), „Juristen und Techniker“, in: *Der Deutsche* 8, 166-171, (168).

⁹ Michael Stolleis (1992), „Innere Reichsgründung“ durch Rechtsvereinheitlichung. 1866-1880, in: Christian Starck (ed.), *Rechtsvereinheitlichung durch Gesetze – Bedingungen, Ziele, Methoden* - 5. Symposium der Kommission „Die Funktion des Gesetzes in Geschichte und Gegenwart“ am 26. und 27. April 1991, Göttingen, 15-41; Karl Otto Scherner (1992), *Rechtsvereinheitlichung für grenzüberschreitende Leistungen: Eisenbahnen, Banken, Versicherungen*. 5. Symposium der Kommission „Die Funktion des Gesetzes in Geschichte und Gegenwart“ am 26. und 27. April 1991, in: Christian Starck (Hrsg.), *Rechtsvereinheitlichung durch Gesetze – Bedingungen, Ziele, Methoden* - Göttingen, 42-80.

¹⁰ Victor Wang (2000), *Die Vereinheitlichung von Maß und Gewicht in Deutschland im 19. Jahrhundert. Analyse des metrologischen Wandels im Großherzogtum Baden und anderen deutschen Staaten 1806 bis 1871*, St. Katharinen.

This movement began on a national level, but it soon expanded. International standardizations¹¹ allowed the development of an internationally linked commerce, which included the possibility to travel easier. The movement for the harmonization of meters and standards was so successful that by the end of the 19th century, the world standard time,¹² as well as global trade and global traffic¹³ were among the most modern and advanced symbols of industrial societies. In the course of this development, we would like to point out 5 elements which we regard as decisive for this era and to present some fields of our research.

Plurality of norms

Not only state acts but also other forms of regulation – and, prominently, self-regulation – emerged in the industrialized society. Acts generated by constitutional legislature and state administration represent but one of many forms of law in the Industrial Revolution. We can see a rapid increase of international treaties, of regulations promulgated by governmental agencies or semi-private institutions, of normative cartel arrangements, and of private contract law using the pattern of standardization. Beyond these, the immense sphere of non-legal technical standardization begins.

Private attempts to act like a parliamentary lawmaker are of particular interest. Factory ordinances published in offices and factories constitute a part of these sort of regulations. They became part of every individual contract, imposed almost law-like upon any employee of the related firm.¹⁴ In fact, they looked quite like laws. In their form, they also imitated state acts. They had a preamble and then stated clear rules. The factory ordinances created law (almost) autonomously. Their emergence provoked reactions from the part of the official legislators. In Germany, the Reichstag decided in 1891 to limit the possible contents of the factory ordinances in order to protect the rights of the employees.¹⁵

¹¹ Milos Vec (2003), „Kurze Geschichte des Technikrechts. Von den Anfängen bis zum Ersten Weltkrieg“, in: Martin Schulte (ed.), *Handbuch des Technikrechts (Enzyklopädie der Rechts- und Staatswissenschaften)*, Heidelberg, 3-60, 38-43; Thomas Wölker (1993), *Der Wettlauf um die Verbreitung nationaler Normen im Ausland nach dem Ersten Weltkrieg und die Gründung der ISA aus der Sicht deutscher Quellen*, in: VSWG 80, 487-509.

¹² Clark Blaise (2001), *Time Lord. Sir Sandford Fleming and the Creation of Standard Time*, London.

¹³ *Der Weltverkehr und seine Mittel. Rundschau über Schifffahrt und Welthandel: Industrie-Ausstellungen und die Pariser Weltausstellung im Jahre 1878*, Band 9 (Teil 1) und 10 (Teil 2) aus: *Das Buch der Erfindungen, Gewerbe und Industrien*.

¹⁴ Claudia Hohmeister (2004), *Die Standardisierung von Fabrik-/Arbeitsordnungen*, (forthcoming).

¹⁵ For further reference on the development of the law of social security in the 19th century: Michael Stolleis (2001), *Historische Grundlagen. Sozialpolitik in*

Similarly decentralized was the process of standardization of technical products. This process was in part formalized by administrative or private institutions who decided which norms were the ones to be followed.¹⁶ In Germany, this led in 1917 to the foundation of a private institute called *Deutscher Normenausschuß*.¹⁷ Another crucial institution in the field of technical standardization was the war industry.¹⁸ Unfortunately, the importance of the military for the institutionalization of normative structures and its influence on the law of the industrial societies cannot yet be estimated.

Technical norms, which were originally not separated from legal norms, could be incorporated into the legal system.¹⁹ The legislators relied on private standard-setting organisations. Technical norms seemed to belong in the hands of the technical experts, by whom and for whom they were created. Thus, the states delegated their regulatory competences in parts to more or less private organizations.

Finally, certain norms were indeed of no legal relevance at all. The standardization of the typewriter shows that they could still be very effective. The Remington typewriter displayed better results in any fast typing competition than alphabetical systems did. In 1888 already, a stenographical congress in Toronto declared it the universal keyboard. But later innovations showed that the „qwerty“ order of the keys was not the ergonomically perfect system. Its final success stemmed rather from the use of all ten fingers while typing and from the company's strong market position, not from its better quality.²⁰

Deutschland bis 1945, in: *Grundlagen der Sozialpolitik (Geschichte der Sozialpolitik in Deutschland seit 1945*, vol. 1), Baden-Baden, 199-332, 257; Michael Stolleis (2003), *Geschichte des Sozialrechts in Deutschland. Ein Grundriss*, Stuttgart, 36-110.

¹⁶ Raymund Werle (1995), „Staat und Standards“, in: Renate Mayntz; Fritz W. Scharpf (ed.), *Gesellschaftliche Selbstregelung und politische Steuerung*, Frankfurt/New York, 266-298.

¹⁷ Thomas Wölker (1991), *Entstehung und Entwicklung des Deutschen Normenausschusses*, Berlin; Peter Berz (1995), *Der deutsche Normenausschuß. Zur Theorie und Geschichte einer technischen Institution*, in: Armin Adam und Martin Stingelin (ed.), *Übertragung und Gesetz: Gründungsmythen, Kriegstheater und Unterwerfungstechniken von Institutionen*, Berlin, 221-236.

¹⁸ Peter Berz (2001), *08/15. Ein Standard des 20. Jahrhunderts*, München.

¹⁹ Peter Marburger (1979), *Die Regeln der Technik im Recht*, Köln.

²⁰ Delphine Gardey (1999), *The Standardization of a technical practice: Typing (1883-1930)*, in: *History and Technology* 15, 313-343; S.J. Liebowitz/ Stephen E. Margolis, „The Fable of the Keys“ (1990), in: *Journal of Law & Economics* XXXIII, 1-25; Paul A. David (1985), „Clio and the Economics of QWERTY“, in: *The American Economic Journal* 75, 332-337. Milos Vec (2002a), „Zehn Finger für QWERT ZUIOPÜ. Die Standardisierung der Schreibmaschinentastatur (1867-1905)“, in: *Historische Bürowelt. Magazin für Interessenten, Museen und Sammler historischer*



ILL 3: Typo Keyboard

Of particular importance for the development of the system of technical security was the control of steam engines in 19th century Europe. In Prussia, after 1831 the use of steam engines was forbidden unless the factory owner had state permission for it. On the contrary many of the state officials who controlled the engines did not have the technical knowledge needed for their job. The administration seemed often unable to implement the regulation their government had decided to be necessary (e.g., in the field of labour law²¹). Thus, industrialists like the Krupp family tried to take the safety controls into their own hands. They were successful. An 1871 law, entrusted steam engine safety to the factory owners. The Prussian state gave a certain legal frame to the question, and within this frame, the industrialists were responsible for the safety of their machines. In the case of accidents, they could be punished by civil and penal law. It was this serious threat which urged them to form a private organization which realized a high standard of control.²²

This mixture of government and private, and of legal and non-legal regulation is highly characteristic of the modern interventionist state.²³ As a new phenomenon, it arose in the second half of the nineteenth century. There is a remarkable increase of provisions of public law. Non-

Bürotechniken, insbesondere Schreib-, Rechen- und Büromaschinen, Nr. 62, September 2002, 11-12.

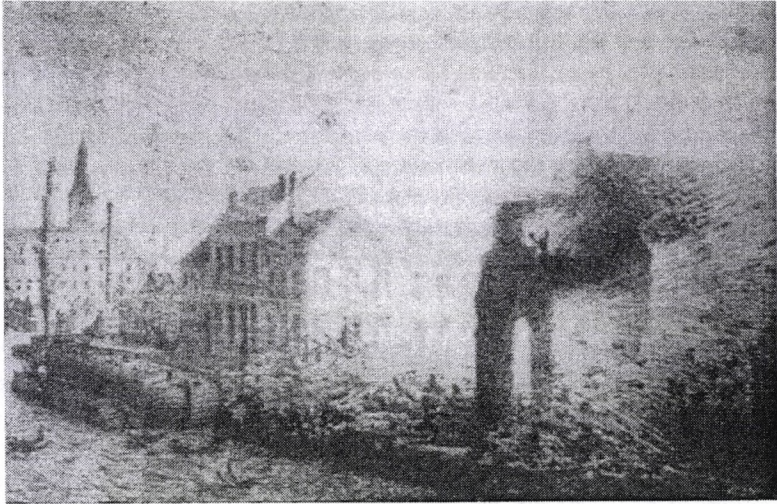
²¹ Hubert Treiber (1995), *Kooperatives Verwaltungshandeln der Gewerbeaufsicht (Fabrikinspektion) des 19. Jahrhunderts, Eine verwaltungswissenschaftlich-historische Betrachtungsweise aus dem „Geist“ der Reportage*, in: Nicolai Dose, Rüdiger Voigt (ed.), *Kooperatives Recht*, Baden-Baden, 65-88.

²² Ina vom Feld (2004), 98ff.

²³ Michael Stolleis (1989), „Die Entstehung des Interventionsstaates und das öffentliche Recht“, in: *Zeitschrift für neuere Rechtsgeschichte*, 129-147.

compliance with a number of these provisions of public law is treated as a criminal offence; a new area of criminal law thus emerged.²⁴

In summary: certain essential questions of the regulation of technology and economy were neither regulated by parliamentary acts nor by state ordinances in the late 19th century.



ILL 4: A Steam Boiler Explosion

²⁴ Robert Weber (1999), *Die Entwicklung des Nebenstrafrechts 1871-1914*, Baden-Baden.



ILL 5: Official Seal of Krupp Steam Engine Supervision Department

Plurality of actors

Besides the parliament, actors like private associations appeared and tried to create their own legal frameworks.²⁵ The increasing influence of private interests on state actors was most dominant in areas where economic interests were pursued by business organizations. Modern forms of „lobbying“²⁶ emerged. From the 1870s on, we find complete drafts of laws written by private authors, for example in the field of patent law.²⁷ Other provisions developed in the private associations themselves and did not

²⁵ Milos Vec (2004), „Das selbstgeschaffene Recht der Ingenieure. Internationalisierung und Dezentralisierung am Beginn der Industriegesellschaft“, in: Adrienne Héritier, Michael Stolleis (eds.), *European and international regulation. Different scopes and multiple levels*, Baden-Baden (forthcoming).

²⁶ Fritz Machlup and Edith Penrose (1950), „The Patent Controversy in the 19th century“, In: *The Journal of Economic History* X, 1 – 29, 5.

²⁷ Verein deutscher Ingenieure (1864), „Prinzipien für ein allgemeines deutsches Patentgesetz, aufgestellt vom Vereine deutscher Ingenieure in seiner Hauptversammlung am 2. September 1863 zu Braunschweig“, in: Verein deutscher Ingenieure (Hrsg.), *Zur Patentfrage. Zwei Denkschriften nebst für ein allgemeines deutsches Patentgesetz wie sie vom Verein deutscher Ingenieure in seiner Hauptversammlung zu Braunschweig am 2. September 1863 aufgestellt wurden*, Berlin, 89–92. Further refer to: Alfred Heggen (1975), *Erfindungsschutz und Industrialisierung in Preußen, 1793 – 1877*, Goettingen.

need any recognition by any formal act of the state (for instance the standardizations of the threads and screws in 19th century Europe).²⁸

New élites

Defining themselves as the promoters of scientific and technical progress, the engineers did not only construct previously unimagined machines and made suggestions for safety provisions.²⁹ They also claimed their share in the regulation of the modern industrial state.

Conflicts arose among the engineers on one hand and the traditional lawyers and legal scholars on the other.³⁰ The latter still possessed the official power and social status. The comparison of the high number of lawyers in parliament with the small one of engineers felt like an injustice. After all, the engineers had been the group who had claimed to have the most effective answers to the challenging questions of the time. The engineers promised a lot: Shelter from the dangers brought by machines, the solution of problems of infrastructure,³¹ water supply, gas, electricity, and more.³² New professional models emerged. Technical universities

²⁸ Wilhelm Treue/Rudolf Kellermann (1962), *Die Kulturgeschichte der Schraube*, 2nd ed., München; see the historical approaches to standardize the screws and threads: G. Schlesinger (1913a), „Vereinheitlichung der Schraubengewinde. Denkschrift, erstattet im Auftrage des Vereins deutscher Ingenieure, der Vereines deutscher Maschinenbauanstalten, des Vereines deutscher Werkzeugmaschinenfabriken und des Vereines deutscher Schiffswerften“, in: *Mitteilungen über Forschungsarbeiten auf dem Gebiete des Ingenieurwesens insbesondere aus den Laboratorien der technischen Hochschulen*, hg. vom Verein Deutscher Ingenieure 142, 1-40; Schlesinger (1913b), Die Vereinheitlichung der Schraubengewinde, in: *Zeitschrift des Vereins Deutscher Ingenieure* 57, 1840-1841; Schlesinger, *Die Normung der Gewinde-Systeme. Verfaßt im Auftrag des Normenausschusses der Deutschen Industrie*, Berlin o.J.; Paul Meyer (1913), „Zur Frage der Vereinheitlichung der Schraubengewinde“ [letter to the editor], in: *Zeitschrift des Vereins Deutscher Ingenieure* 57 (1913), S. 2087.

²⁹ Peter Lundgreen (1981), Die Vertretung technischer Expertise „im Interesse der gesamten Industrie Deutschlands“ durch den VDI 1856 bis 1890, in: Karl-Heinz Ludwig (ed.), *Technik, Ingenieure und Gesellschaft. Geschichte des Vereins Deutscher Ingenieure*, Düsseldorf, 67-132; Lothar Burchardt (1981), Standespolitik, Sachverstand und Gemeinwohl: Technisch-wissenschaftliche Gemeinschaftsarbeit 1890 bis 1918, in: Karl-Heinz Ludwig (ed.), *Technik, Ingenieure und Gesellschaft. Geschichte des Vereins Deutscher Ingenieure*, Düsseldorf, 167-234.

³⁰ Milos Vec (2002b), „Technik oder Recht? Steuerungsansprüche in der Zweiten Industriellen Revolution“, in: Michael Kloepper (ed.), *Kommunikation – Technik – Recht. Strukturen und wechselseitige Beeinflussungen* (Schriften zum Technikrecht 6), Berlin, 111-138.

³¹ As to the reflections of legal scholars concerning the development of municipal infrastructure see: Lorenz Jellinghaus (2004), *Infrastrukturtheorien. Untersuchung zum Funktionswandel von Verwaltung in der zweiten Hälfte des 19. Jahrhunderts*, (forthcoming).

³² Vec (2002b), 114.

came into existence. From 1890 on, the engineers tried more and more vigorously to replace the lawyers. Municipal administration was one of these fields.³³

To the engineers, private rulemaking („*Selbstnormierung*“) was a way to overcome the disadvantages of the process of political decision-making.³⁴ This attitude can be understood in the context of their *habitus*.³⁵ Engineers were not trained for discussions. On the contrary they rather believed in the existence of objective truth and in the success of technical approaches leading to the unique, most compelling and best solutions. Here we have the roots of the technocratic movement that flourished in the 1920s.³⁶

The lawyers' response was that the engineers had too little general understanding of governing, because they were only technical experts.³⁷

The reflections of the upheavals of the Industrial Revolution upon legal theory

With the emergence of new élites, the perception of the role of law and lawyers changed. The traditional, classical doctrine was criticised as inflexible. The same critique was directed at the lawyers themselves.³⁸ Economic leaders campaigned for a new flexibility of the law towards the

³³ Theodor Koehn (1910), „Der Verwaltungsingenieur“, in: *Technisches Gemeindeblatt. Zeitschrift für die technischen und hygienischen Aufgaben der Verwaltung. Organ der Vereinigung der technischen Oberbeamten der deutschen Städte* 12, 195-197; Conrad Matschoß (1909), „Der Verwaltungsingenieur“, in: *Technik und Wirtschaft* 2, 324-28; Friedrich Ritzmann (1907), „Verwaltungsingenieure“, in: *Deutsche Bau-Zeitung. Organ des Verbandes Deutscher Architekten- und Ingenieur-Vereine* 41, 715-719.

³⁴ Vec (2002b), 115-120.

³⁵ N. Manfred Mai (1989), *Die Bedeutung des fachspezifischen Habitus von Ingenieuren und Juristen in der wissenschaftlichen Politikberatung* (Europäische Hochschulschriften Reihe XXII Soziologie Bd. 181), Frankfurt/Main.

³⁶ Stefan Willeke (1995), *Die Technokratiebewegung in Nordamerika und Deutschland zwischen den Weltkriegen. Eine vergleichende Analyse*, Frankfurt/Main et al.; Willeke (1996), *Die Technokratiebewegung zwischen den Weltkriegen und der „Kulturfaktor Technik“*, in: Günther Bayerl (ed.), *Technische Intelligenz und „Kulturfaktor Technik“. Kulturvorstellungen von Technikern und Ingenieuren zwischen Kaiserreich und früher Bundesrepublik Deutschland*, Münster, 203-221.

³⁷ Boethke (1901), *Techniker und Juristen*, in: *Deutsche Juristen-Zeitung* 6, 517-520.

³⁸ Paul von Lossow (1913), Review article of: „C. Bach, *Die Maschinenelemente*, 11. Auflage, Leipzig 1913“, in: *Zeitschrift des Vereins Deutscher Ingenieure* 57, 1720-1721, 1720.

new circumstances.³⁹ They radically rejected the Roman law. In Germany, this was particularly the position of the journal „*Technik und Wirtschaft*“.

The lawyers reacted very silently to this critique. Instead of fundamentally changing the law, they published in the new fields of the law, like the law of the cinematographer⁴⁰ or the law of the flying machines.⁴¹ They discussed legal problems related to the dangers or nuisances of the modern traffic systems (such as railways⁴² and subways⁴³) and began a controversy whether or not electricity could be „stolen“. ⁴⁴ But they lacked a vision that was comparable to those grand narratives of a utopian technological revolution. What the legal scholars did was regulate and limit the dangers of the promising machines and to regulate the industrial pollution.⁴⁵ This seemed to be a necessary but not really a breathtaking job. Even worse, the legal scholars maintained to the role and cliché of a profession that tried to limit advancement itself. Therefore they were under heavy pressure from the public opinion in those years. They had to legitimate their role.

The result of this „clash of professions“ was a shortcoming of legal regulation in several technological areas. The field of personal identification, for example, was completely left to the police without any parliamentary control. The officers tried out a lot of methods, among them standardized photography, and the measurement of people in standardized

³⁹ Rathenau criticizes 1911 „juristischen Schematismus“, „Allmacht des Gesetzgebers“, die „starre Form des Gesetzes und seine nicht minder starre Handhabung“ (Rathenau (1911), „Recht und Wirtschaft“, in: *Preußisches Verwaltungs=Blatt. Wochenschrift für Verwaltung und Verwaltungsrechtspflege in Preußen* 32, 461-463, 461).

⁴⁰ Georg Cohn (1909), *Kinematographenrecht. Vortrag, gehalten in der Juristischen Gesellschaft zu Berlin am 12. Juni 1909*, Berlin.

⁴¹ Maximilian Fleischmann (1910), *Grundgedanken eines Luftrechts*, München; Alex Meyer (1909), *Die Erschliessung des Luftraumes in ihren rechtlichen Folgen. Ein Vortrag*, Frankfurt am Main; Erich Warschauer (1910), *Luftrecht. Eine rechtsphilosophische Studie*, Kattowitz.

⁴² Meisel (1901), Zum Offenbacher Eisenbahnunglück, in: *Deutsche Juristen-Zeitung* 6, 252.

⁴³ Otto Hagen (1913), Untergrundbahnen und Schadenersatz, in: *Deutsche Juristen-Zeitung* 18, Sp.1430-32 (1431).

⁴⁴ Eduard Kohlrausch (1900), Das „Gesetz betreffend die Bestrafung der Entziehung elektrischer Arbeit“ und seine Vorgeschichte, in: *Zeitschrift für die gesamte Strafrechtswissenschaft* 20, 459-510.

⁴⁵ Jörg Rohde (2000), *Das Recht der genehmigungsbedürftigen Anlagen im Gewerbe- und Immissionsschutzrecht von 1810 bis in die Gegenwart unter besonderer Berücksichtigung des Preußischen Verwaltungsrechts*, Hamburg; Gudrun Lies-Benachib (2002), *Immissionsschutz im 19. Jahrhundert* (Schriften zum Umweltrecht 122), Berlin.

ways, called „*anthropometric bertillonage*“.⁴⁶ Then, around 1895, the fingerprinting method was developed. The criminologists promoted the introduction of all these technologies. The technologies seemed to be very successful, even in court.⁴⁷ But was it lawful to apply these technologies to suspect persons? In Germany there was no precise answer to this important question. For decades, there was no specific law relating to the photographing of suspects, the application of *bertillonage*, or the taking of fingerprints.⁴⁸ The scientific revolution overwhelmed the law.

Why did no one ask for regulation? We think that the positive image of technology allowed no such criticism. Technology was understood as a sign of hope, as a solution for problems - such as criminality, environmental problems⁴⁹ or the so-called „social question“. The limitation of technology often seemed to be unnecessary.

⁴⁶ Milos Vec (2002c), *Die Spur des Täters. Methoden der Identifikation in der Kriminalistik* (1879-1933), (Schriftenreihe der Juristischen Zeitgeschichte – Abteilung 1: Allgemeine Reihe, Band 12) Baden-Baden.

⁴⁷ Simon A. Cole (2001), *Suspect Identities. A History of Fingerprinting and Criminal Identification*, Cambridge.

⁴⁸ Vec (2002c), 99ff.

⁴⁹ Ottomar Kayser (1910), Die vollständige Beseitigung der Rauch- und Rußplage, in: *Technisches Gemeindeblatt* 12, 151-156.

DER
VERTRAGSSCHLUSS
AUF
ELEKTRISCHEM WEGE.

VON
DR. JUR. GEORG MAAS.



BERLIN 1889.
VERLAG VON FRIEDRICH & MÜLLER
NW., UNTER DEN LINDEN 4.

ILL 6: „Electronic“ Contracting in 1889

Internationalization

In all of the mentioned fields we can observe an astonishing move towards internationalization.

The internationalization did not only affect traffic and communication, but also juridical constructions. Again, the private or semi-private actors

behaved similarly to the states. They internationalized their activities as well. Engineers and doctors, scientists, insurers and others intensified their international congresses from the middle of the nineteenth century on.⁵⁰ Here, they formulated recommendations for international standards, norms and laws. Let us refer to two fields:

Patent Law

A prominent example for the development of an international legal regulation was the *Paris Convention for the Protection of Industrial Property* of 1883.⁵¹ This regulation was by and by ratified by all 'civilized nations'.⁵² Its emergence related to the increasingly interlinked economy of the Industrial Revolution.

In the middle of the 19th century, national patent regulations, if existing, were completely disparate. Even worse, most states tried to enforce their economic potential by granting patents not only for new inventions which were made within their own territory but also to those who 'imported' new industrial creations from other countries.⁵³ Even a regulation with a radical enhancement of intellectual property as the French revolutionary Patents Act of 1791 granted patents for the 'import' of foreign inventions. By contrast, the inhabitants of foreign states did very often not have a possibility to apply for a patent in a foreign state. Intellectual Property, thus extraordinarily weak by its ease of imitation, was a common object of unfair behavior.

This applies mostly to the German territories, Switzerland and Austria, all of which were harbingers of the Industrial Revolution. While the markets were still expanding, foreign enterprises wanted to export to Germany. But as Germany did not have a unique patent regulation, and most German territories did not acknowledge foreign patents, the German industry was endangered to lose its international contacts.⁵⁴ Particularly

⁵⁰ C. Tapia/ J. Taieb (1976), „Conférences et Congrès Internationaux de 1815 à 1913“, in: *Relations internationales* 5, S. 11-35; Anne Rasmussen (1990), „Jalons pour une histoire des congrès internationaux au XIXe siècle: Régulation scientifique et propagande intellectuelle“, in: *Relations internationales* 62, 115-133.

⁵¹ Margrit Seckelmann (2002a), „The indebtedness to the inventive genius: Global Expositions and the Development of an International Patent Protection“, in: Volker Barth (ed.), *Identity and Universality. A Commemoration of 150 Years of Universal Exhibitions*, Bureau International des Expositions: Paris, 131-144.

⁵² Bruno Alexander-Katz (1912), *Das Patent- und Markenrecht aller Kultur-länder*, Zwei Bände, Rothschild: Berlin / Leipzig.

⁵³ Barbara Doelemeyer (1984), „Einführungsprivilegien und Einführungspatente. Mittel des Technologietransfers“, *Ius Commune* 12, 207 – 234.

⁵⁴ Niklas Luhmann (1984), *Soziale Systeme. Grundriß einer allgemeinen Theorie*, Frankfurt am Main, 179 – 182.

American firms threatened to boycott the Global Exposition of 1873 in Vienna.⁵⁵ Then, a movement for the harmonization of patent regulations emerged. Current economic theories stress the importance of 'trust' in this context. In *Structure and Change of Economic History*⁵⁶ Nobel Prize winner Douglass C. North pointed out that the necessity to prevent free-riding behavior is an important factor for the economic success of an economy. For the same reason, the curator of the Vienna exhibition, Baron Schwarz-Selborn, convinced the Austrian government to invite representatives of all countries as well as experts and everyone who felt concerned by the patent question.⁵⁷

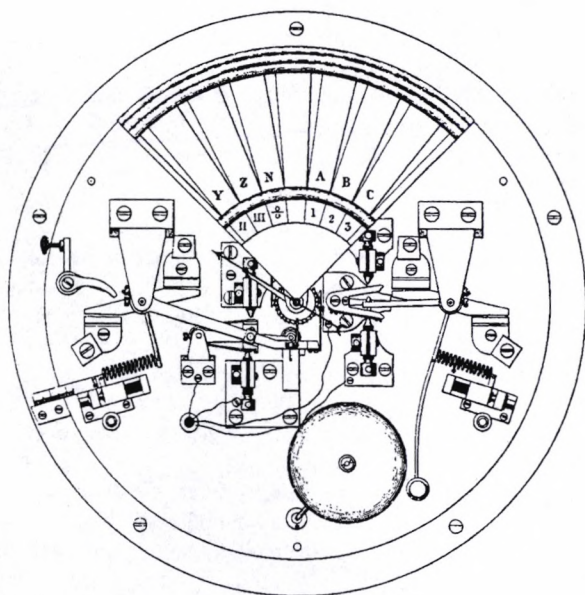
Several international conferences developed: a second one in Paris followed, which still invited virtually everyone. In the course of those two congresses, where the new elite of civil engineers met on an international basis, accompanied by chambers of commerce, trade chambers and some representatives of national states, the foundation of an international union was outlined that should guarantee all member states a mutual recognition of their patents. Then, the state representatives assumed the initiative. The result was the *Paris Convention for the Protection of Industrial Property* of 1883. In this convention, states agreed to form an international organization, which guaranteed all citizens an acknowledgement of their national patents in any of the member states. This intellectual property system is still existing as the Paris Convention was transferred into the *World Intellectual Property Organization (WIPO)* in 1967. Although Germany did not join the union at first, German Engineers had been among the promoters of the international movement.⁵⁸ Still, no German 'Sonderweg' proved to be possible in the interlinked industrial society of the late Industrial Revolution. After a modification of the *Paris Convention* in two decisive components, Germany joined the so-called *International Union*.

⁵⁵ Karl-Heinz Manegold, (1971), „Der Wiener Patentschutzkongreß von 1873. Seine Stellung und Bedeutung in der Geschichte des deutschen Patentwesens im 19. Jahrhundert“, in: *Technikgeschichte* 38, 158 – 65, 162.

⁵⁶ Douglass C. North (1988), *Structure and Change in Economic History*, New York.

⁵⁷ Carl Pieper (ed.) (1873), *Der Erfinderschutz und die Reform der Patentgesetze. Amtlicher Bericht über den Internationalen Patent-Congress zur Eroberung der Frage des Patentschutzes*, Dresden.

⁵⁸ Margrit Seckelmann (2002b), „The Quest for Legal Stability: Patent Protection within the German Empire, 1871 – 1903“, in: Rolv P. Amdam / Anne E. Hagberg / Knut Sogner (eds.), *Business and Knowledge*, Proceedings from the 5th European Business History Association (EBHA) Conference (CD-ROM).



Siemens dial telegraph, 1847

ILL 7: Patent Drawing of the Siemens Pointer Telegraph

The globalized economy needed a certain legal stability for its operations. Unlike in close relationships as families or even homogenous cultures, trust could only be generated by a stable and enforceable legal system. Although many private agents contributed to the installment of the international union, it was finally ratified by the states. This resulted not only from the trust in the Hobbesian 'Great Leviathan', which was characteristic for the 19th century. Moreover, a generality of rules – due to a state guarantee – was necessary. In Niklas Luhmann's words, the installment of the *International Union* substantially reduced contingency.⁵⁹ However, the *International Union* had its problems with enforceability similar to those of the *World Trade Organization* today. But it thoroughly influenced the national patent systems or even initiated the enactment of national patents acts.⁶⁰

⁵⁹ Niklas Luhmann (1984), 179.

⁶⁰ For further references see: Margrit Seckelmann (2004), *Industrialisierung, Internationalisierung und Patentrecht in Deutschland, 1871 – 1914*, (forthcoming).

In the case of the harmonization of patent regulation, "Normativity" resulted from a normalizing discourse.⁶¹ It also had normalizing effects. In this regard, the international harmonization of patents normalized not only different intellectual property systems but also the different "cultures of invention".⁶²

Insurance Law

Another example of international legal regulation can be found in the sphere of insurance law. Here, the actors are primarily companies and cartels, not states. The instrument used by the insurance business to control „their“ law was traditionally the use of forms of contract called policies (since the rise of the mass contract well-known as the „fine-print“⁶³). The conditions contained in these policies were the main source of insurance law. Their importance rose enormously with the emergence of mass insurance business in the 19th century.

Contract conditions existed in many different fields of economy. But in the insurance business, they played an important role as transmitter between the scientific (esp. mathematical) and economic calculation of specific risks and their fixation in contracts. Every word in the policy conditions had a significance for the distribution of risk between the insurer and the insured. The forms had to be legally flawless because mistakes or uncertainties could lead to the ruin of insurance companies.

During the second half of the century, insurance policies were standardized on a national level. This standardization was not essentially different from the standardization of technical norms in mass production. In the view of the businessman, the standardization of a screw and that of a contract form both helped to increase the effectiveness of his company.⁶⁴ But the seemingly „technical“ standardization of contract forms meant, at the same time, the standardization of law. Considering this fact, we realize other, hidden functions of the use of contract conditions. The most

⁶¹ Jürgen Link (1998), *Versuch über den Normalismus. Wie Normalität produziert wird*, 2nd ed., Opladen, 16.

⁶² Kees Gispén (2002), *Poems in Steel. National Socialism and the Politics of Inventing from Weimar to Bonn*, New York / Oxford, 278, after: Thomas P. Hughes (1989), *American genesis. A Century of Invention and Technological Enthusiasm*, New York.

⁶³ Robert Pohlhausen (1978), *Zum Recht der allgemeinen Geschäftsbedingungen im 19. Jahrhundert*, Ebelsbach. The German popular term is „das Kleingedruckte“.

⁶⁴ Koch, Arwed (1932), *Die allgemeinen Geschäftsbedingungen der Banken*, 4; J. H. v. Brunn (1956), *Die formularmäßigen Vertragsbedingungen der deutschen Wirtschaft*, 1.

important one was to increase economic power.⁶⁵ Standard forms were often used by strong single companies or cartels. They never represented an equilibrium of rights and obligations. The majority of the contract clauses gave advantage to the contractor introducing them. Whoever wanted to insure himself or his house or company, had to accept these contract conditions. Most state legislators did not react on this problem earlier than by 1900.

A third function of the standardization of contract conditions became obvious with the internationalization of the insurance business after 1870. The expansion of insurance markets into the furthest regions of the earth, the development of international re-insurance networks and other factors (mostly of an economic and insurance-technical nature) brought about a need for the worldwide harmonization and compatibility of insurance law. These aims could be promoted, if not wholly achieved by the standardization of policy-conditions. Indeed the insurers' search for universally valid solutions was often followed by the standardization of contract clauses. In this development, the European direct and re-insurers played a central role.

One example is the standardization of the „earthquake clause“ in fire insurance contracts between 1906 and 1910. On April 18th, 1906, an earthquake and resulting conflagration destroyed the young metropolis of San Francisco. The storm of fire raged in the city for three days, and it destroyed large districts.⁶⁶ No incident ever before had caused comparable damages. On the basis of fire insurance contracts, the international insurance business was obliged to pay damages, in the amount of 330 million dollars. A global discussion arose during the following weeks, concerning a legally flawless exclusion of the earthquake hazard from fire insurance contracts. It was pressed ahead by re-insurers who tried, in close cooperation with each other, to promote this idea.⁶⁷ A very small number of insurance managers activated a virtually global network and tried to influence more than five hundred fire insurance companies worldwide as well as cartels, legislators and the public. Their aim was the globally uniform solution of the problem of earthquake hazard in fire insurance contracts. In their view, this risk had to be excluded for two major reasons. First, seismology could not yet give sound analysis of the reasons of earthquakes; thus, any prediction was impossible. Many saw any inclusion of the earthquake hazard like gambling. Secondly, it was thought that many

⁶⁵ Ludwig Raiser (1935), *Das Recht der Allgemeinen Geschäftsbedingungen*, 18, 26.

⁶⁶ An impressing description of the disaster: Jack London, „The Story of an Eyewitness“, in: *Collier's*, 5. Mai 1906.

⁶⁷ „Zur Katastrophe in San Francisco“ (Position of 20 european Re-insurance companies, Frankfurt a.M. April 4th, 1906), in: *Masius' Rundschau* 1906, 227.

insurance companies would have been ruined by another disaster like the one of San Francisco.

New No 1301765 OLD No 1301765

FIREMAN'S FUND
INSURANCE COMPANY
OF
SAN FRANCISCO, CALIFORNIA.

In Consideration of the Stipulations herein
named and of *Eighty* Dollars Premium
Does Insure *W. & J. SLOANE & CO.*
for the term of *One Year* from the *4th* day of *October* A.D. *1906*
at noon to the *4th* day of *October* A.D. *1907* at noon
AGAINST ALL DIRECT LOSS OR DAMAGE BY FIRE EXCEPT AS HEREINAFTER PROVIDED *Ten thousand* Dollars
not exceeding *Ten thousand* Dollars
to the following described property which located and contained as described
herein and not elsewhere to wit:
1/25/06/1/2/5

W. & J. SLOANE & CO.
AS THE FIRE IS NOW OR MAY HEREAFTER BE CONSIDERED.

On stock of carpets, matings, linens, oil-cloths, upholstery goods, window shades, furniture and other merchandise, hazardous non-hazardous and extra hazardous, shall cover or held by them in trust or on commission, or sold but not removed; also the property located with them to be altered, repaired or finished, while contained in 1st, 2d, 3d, 4th, 5th, 6th and 7th floors and basement, and under sidewalks and in show-windows, of the Mercantile Bank and Trust Company Building, situated Nos. 124, 126, 128 and 130, north side Post Street, bet. Kearny St. and Grant Ave., San Francisco, Cal.

It is agreed by the undersigned of this Policy, and on which there is no stamp or seal, that the insured shall maintain insurance in conformity with this policy on the property hereby insured, to the extent of \$100,000, and in the event of the insured's failure to do so, and that failing to do so, the insured shall be a co-insured, with a limit of an amount sufficient to make the aggregate insurance equal to twenty (20) per cent. of the actual cash value of the property insured, and in that capacity, shall bear their proportion of any loss that may occur.

This clause, however, shall not apply to small losses which do not exceed five per cent. of the maximum.

It is a part of this condition of this policy, and the basis upon which the rate of premium is fixed, that there shall be maintained upon the policy insured premises five boxes of the Pacific Auxiliary Fire Alarm, and in the event of the insured's failure to do so, the insured shall be removed at any time during the period in which this policy remains in force, he will immediately upon such removal, coming to his knowledge notify the representative of the insuring company, and will pay back to said representative such proportion of the allowance now made as shall correspond to the time which this policy has then to run before termination.

Permission granted to make window shades, to do drapery work, painting, and other work for heating purposes.

Permission granted to do upholstering on the property described premises.

Privileged to make alterations and repairs, and to work overtime, and at night, and to generate and use electricity for lighting and other purposes.

OTHER INSURANCE PERMITTED
This slip is attached to and made a part of Policy No. 1301765
Issued to W. & J. SLOANE & CO. by the FIREMAN'S FUND INS. CO.
San Francisco *Oct 4th*

Warranted to maintain on the premises nights, Sundays and holidays
Watchman and 2 watchmen signal boxes connected with alarm system.
Insured in the City of San Francisco, State of California.

W. J. Rutton President.
W. J. Rutton Secretary.

ILL 8: Mind the Fine Print: Fire Insurance Policy 1905/06



*ILL 9: San Francisco Destruction by Fire:
View Looking West From Telegraph Hill*

For these reasons, the re-insurance managers developed a „perfect“ contract clause called the „earthquake clause“.⁶⁸ This clause was translated in all important business languages of the time and communicated around the world.

At the same time, this issue was discussed wherever fire insurance was common in the world. The reactions on the re-insurers' demand were diverse.

A couple of countries, especially in Europe, followed the call for an exclusion of the earthquake hazard from all fire insurance contracts. Cartels accepted to implement standard earthquake clauses into their contract conditions, and sometimes even the legislators decided that their laws provide the exclusion of that risk from any contract.⁶⁹ The acceptance of the „earthquake clause“ was not only based on the experience of the enormous financial loss in San Francisco. It also had to do with the fear of a similar catastrophe in other countries. Only a few months after „San Francisco“, similar events occurred in Chile (Valparaíso), Jamaica (Kingston) and Italy (Messina). People also remembered historical earthquakes like the disasters of Bale (1356) and Lisbon (1755). It was thought that such events would ruin the insurance business without any advantage for those directly concerned.

Overseas, the question was discussed differently - especially in California and the rest of the United States. After the loss of San Francisco,

⁶⁸ Facts based on studies in the archives of (re-)insurance companies, esp. the Swiss Re (Zurich).

⁶⁹ E.g. in Germany.

California was dominated by conflicts between insurers and insured who had lost their property. The courts judged in favour of the insured. Consequently, some companies intensified their clauses. But the traumatized public, reacted with fierce opposition. On August 1st, 1909, the Californian Senate enacted the *California Standard Form of Fire Insurance Policy*. This law prescribed to all fire insurers the use of the same policies which did not contain any earthquake-clause. Now it was certain that in California, the insurers would have to pay again if another earthquake was followed by fires. The standardization movement in the insurance business was here stopped by state standardization. Other earthquake-endangered countries followed the Californian example.

The case of the earthquake clause shows the possible role law can play in a process of standardization. In the context of normalization processes, the law can be of similar importance. At the same time it makes visible where the borders of standardization and normalization, or of similar processes can be. Again, it can be law used by societies to realize or to stop this process. Moreover, we see how different systems interact. Economic success of insurance companies needs a homogenous basis for their calculation; this needs uniform contracts; and this is achieved by the means of language, by the standardization of policies.

Summary

Our investigations have shown that the meaning of terms like „norms“ and „standards“ is a result of a complex historical process of which the outcome could not have been predicted beforehand. Legal and technical regulations were often interlinked, so that the boundaries became blurred. Underlying the legal norms was often a concept of normalization, such as in the field of insurance law. On the other hand, norms could also create „normality“ throughout the harmonization of „cultures of inventing“, such as in the field of patent law. Legal norms, technical standards and economic and technical progress were and are influencing each other: „Normality“ turns out to be constructed by a diversity of legal, technical and social norms.⁷⁰

⁷⁰ Monika Böhm (1996), *Der Normmensch. Materielle und prozedurale Aspekte des Schutzes der menschlichen Gesundheit vor Umweltschadstoffen*, Tübingen; Volker Hess (2000), *Der wohltemperierte Mensch. Wissenschaft und Alltag des Fiebermessens (1850-1900)*, Frankfurt am Main; Adolf Markus (1913), *Ein Normalanstellungsvertrag*. Referat im Dresdner Bezirksverein, in: *Zeitschrift des Verbandes Deutscher Diplom-Ingenieure* 4, 155-159.

The German Nudist Movement and the Normalization of the Body 1890-1930

Maren Möhring

This paper is based on my dissertation on German nudism.¹ Since the subject of this seminar is *normalizing diversity* I will focus on the normalization of the body in naturism; I won't go into detail on the German nudists' organizations, the protagonists of the movement etc.² My interest is only in the norm and the normal in nudist discourse which are both absolutely central categories. The nudist discourse can be conceptualised as an interweaving of as diverse discourses as physiology, hygiene, educational theory, aesthetics and eugenics. The texts I analysed were written for a general public and accordingly consist largely of interdiscursive elements. As the German scholar Jürgen Link has pointed out, it is interdiscourse on which normalism, in itself no homogenous strategy, depends.³

At the end of the 19th century, a social movement emerged in Germany, directed at a „return to nature“ and a natural life-style. This so-called life-reform (*Lebensreform*) movement, a mainly Northern German protestant and middle-class phenomenon, consisted of as divergent movements such as health reform, vegetarianism, anti-vivisectionism, the temperance movement and the sex-reform movement.⁴ One of its most radical groups was nudism.

¹ M. Möhring, *Nackte Marmorleiber und organische Maschinen. Der natürliche Körper in der deutschen Nacktkultur, 1890-1930* (Dissertation Munich 2001) (*Nude Marble Statues and Organic Machines. The Natural Body in German Nudism, 1890-1930*)

² On the nudists' organizations and for a chronology of the nudist movement see H. Masalskis, *Ziel und Weg der deutschen Freikörperkultur* (Nienburg 1964). The latest book on nudism is M. Grisko (ed.), *Freikörperkultur und Lebenswelt: Studien zur Vor- und Frühgeschichte der Freikörperkultur in Deutschland* (Kassel 1999). For a short introduction to Wilhelmine nudism see U. Schneider, „Nacktkultur im Kaiserreich“, in U. Puschner/W. Schmitz/J. H. Ulbricht (eds.), *Handbuch zur „Völkischen Bewegung“*, 1871-1918 (Munich 1999), pp. 409-435.

³ Cf. J. Link, *Versuch über den Normalismus: Wie Normalität produziert wird* (Opladen 1997), p. 272.

⁴ On the life reform movement see W. R. Krabbe, *Gesellschaftsveränderung durch Lebensreform: Strukturmerkmale einer sozialreformerischen Bewegung* in

The reform activities of German nudism were focussed on the body. The body of modern civilization was viewed as 'deformed', 'pathological' and 'abnormal'; these deficits were to be overcome through a return to nature formulated – in a Rousseauian manner – as the third step of human evolution: In the beginning, man had lived in unconscious unity with nature; then, he had estranged himself from nature and thus gained self-consciousness; now he had to form a new, conscious unity with nature.⁵ Nature and the natural body were therefore seen as the lost origin as well as the ideal to strive for.

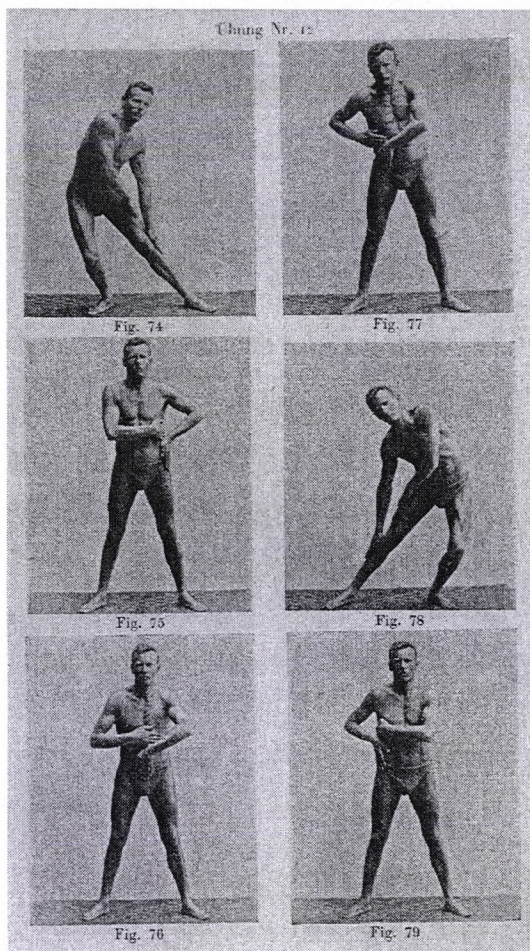
Within this logic of reasoning, the natural body was not conceived as something simply given. Returning to nature meant that you had to work hard to build this lost ideal body. *Nacktgymnastik*, i.e. gymnastics exercised in the nude, if possible in the open, was one of the most important means for the formation of the natural body within German nudism. It was the least controversial and most largely accepted and practised part of all the nudists' reform ideas. After World War I, all kinds of physical exercise were declared necessary for 'rebuilding the nation'. The call for a „return to nature“ had existed since the late 19th century, but those ideas took firm hold in the popular mind and had mass appeal, only after the experience of the First World War. In the 1920s nudist associations multiplied and nudist activities, namely *Nacktgymnastik*, became very popular.

Therefore, in my presentation I concentrate on this body practice. Health and beauty, physiological and aesthetic norms, were the guiding principles of *Nacktgymnastik*.

Among the numerous „systems of gymnastics“ circulating in the early 20th century the German nudists preferred *My System* of the Danish lieutenant Jan Peder Müller (1866-1938) and the system of physical culture for women invented by the physician Bess Mensendieck (1864-1957).

Deutschland der Industrialisierungsperiode (Göttingen 1974); D. Kerbs and J. Reulecke (eds.), *Handbuch der deutschen Reformbewegungen 1880-1933* (Wuppertal 1998).

⁵ The German term for early nudism, i.e. „Nacktkultur“, literally meaning „Naked-Culture“, points to one of the central dichotomies in German discourses around 1900, that is the opposition of culture and civilization. Culture and Naked-Culture were viewed as instances helping to return to nature whereas civilization was seen as being directly opposed to nature.



ILL. 1 Müller exercising

Müllern (i.e. „doing the Müller“) and *mensendiecken* became synonyms for doing *Nacktgymnastik* – even Franz Kafka *müllerte* every morning and urged his lover Felice to do the same.⁶ In the 1920s the so-called „German Gymnastics“, developed by the army officer Hans Surén, became the most popular system of *Nacktgymnastik*.

⁶ Cf. F. Kafka, *Briefe an Felice und andere Korrespondenz aus der Verlobungszeit*, ed. E. Heller and J. Born (Frankfurt/M. 1967)(*Gesammelte Werke*, ed. M. Brod; 10), p. 438.

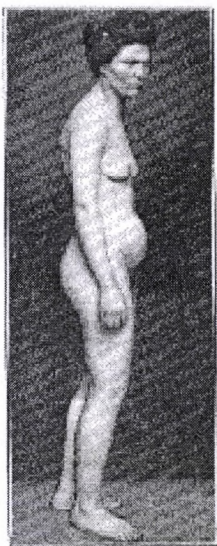


Fig. 1. Haltung zu Beginn der Übungen.

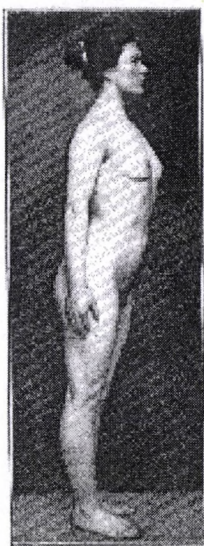


Fig. 2. Haltung nach einem Monat.



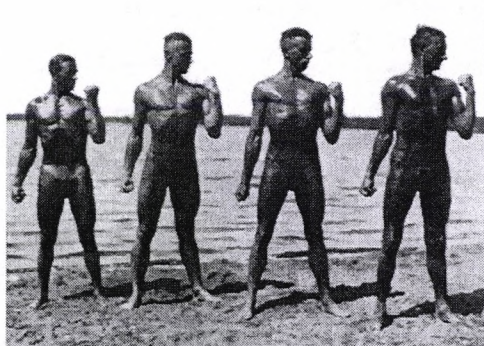
Fig. 3. Stellung nach sechs Monaten. Haltung nach drei Monaten.

ILL. 2. Mensendieck demonstrating figure and posture control⁷

My approach to Nacktgymnastik is based on Foucault's theory of disciplinary power as normalizing power and on Judith Butler's concept of the body's construction as a materialization of norms.⁸ Whereas the German nudist movement celebrated nudism as a liberation from the constraints of Wilhelmine society – and a great deal of the literature dealing with German nudism just repeats this one-sided self-description – theories of normalization can, in my opinion, much better explain the ambivalence of body practices like nudism and *Nacktgymnastik*. In the following, I will argue that the natural body advocated by German nudists was the effect of a many-layered disciplining and normalizing process, a process that has to be systematically and historically specified.

⁷ J. P. Müller, *Mein System: 15 Minuten täglicher Arbeit für die Gesundheit* (Leipzig and Zürich 1908); B. M. Mensendieck, *Körperkultur der Frau: Praktisch hygienische und praktisch ästhetische Winke* (München 1912). On Müller see H. Bonde, 'J.P. Müller: Danish Apostle of Health', in *The International Journal of the History of Sport*, 8 (1991), pp. 347-369.

⁸ M. Foucault, *Surveiller et punir: Naissance de la prison* (Paris 1975); J. Butler, *Bodies that Matter: On the Discursive Limits of „Sex“* (New York et al. 1993).



ILL 3: Surén's German Gymnastics, on the right side Surén himself⁹

I start with a short description of *Nacktgymnastik* as a disciplinary body practice, supplementing Foucault's account in *Surveiller et punir* with the aspect of gender - being in itself- a disciplinary effect. Then, in part 2, I will discuss the historical specificity of disciplining the body in German nudism (discipline as a regulatory, as a normalizing mechanism). Thirdly, I will focus on the one feature distinguishing *Nacktgymnastik* from other forms of physical exercise, i.e. nudity. I will argue that nudity can be read as a normalizing technique as it implies a new form of visibility of the body. In the end I'd like to shortly discuss the aesthetic goal of *Nacktgymnastik*, i.e. to model one's body like a Greek statue. This practice of imitating the ideal Greek body can be analysed with Judith Butler's concept of performativity as citationality. By this means, I hope to open up theories of normalization to mimetic processes.

Nacktgymnastik as a disciplinary body practice

In *Surveiller et punir*, Foucault discusses mainly four disciplinary techniques: *tableau*, *manoeuvre*, *exercice* and *tactique*. All of these techniques can be found in *Nacktgymnastik*. *Manoeuvre* stands for the minute and detailed control of movements, which were assigned a direction and a period of time: „Lift the upper part of your body 12 times to a sitting position“; „Now turn the upper part of your body ca. 90°“.¹⁰

Exercice in the Foucauldian sense stands for the organization of development as enhancement. The books on gymnastics give instructions

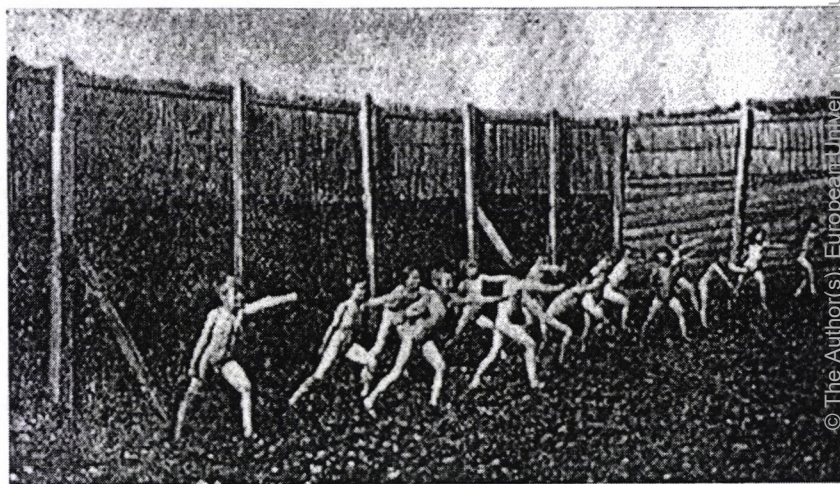
⁹ H. Surén, *Deutsche Gymnastik. Vorbereitende Übungen für den Sport: Frottierübungen, Atemgymnastik, Massage, Körperpflege, Verhalten im Licht-, Luft- und Sonnenbad* (Oldenburg i.O. and Berlin 1925).

¹⁰ J.P. Müller, *Mein System*, pp. 54 and 88.

on how to move each individual muscle and how one movement was to be followed by another. Hence, complex series of exercises were organised. (ILL. 1).

The sequences were legitimized by physiological knowledge of the 'natural functioning' of the muscles; they were seen as governed by natural laws, aiming at a progressive development. By grounding exercise sequences in physiology, *Nacktgymnastik* was formulated as a repetition, as a sort of an 'external representation' of the natural processes going on within the body. By repeating and reinscribing this physiologically normal functioning, natural bodies were performatively produced.

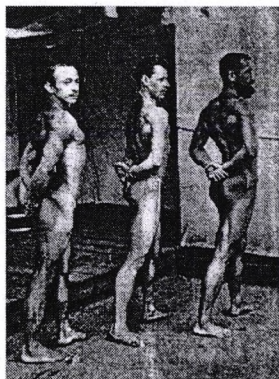
Tableau stands for the controlled spatial distribution of individuals, assigning each individual its place. Whenever *Nacktgymnastik* was practised under a gymnastics instructor the individuals were grouped in a way that they could easily be monitored.



ILL. 4: Children exercising in the nude in a light and air-bath

Being placed in an analytical space, the gymnasts were made comparable and were classified according to the norm of a healthy, well-proportioned and strong body. This way, a hierarchy of bodies was established in order to spur the will of each gymnast to conform to the ideal norm. Shame of one's imperfect body was installed to stimulate self-normalization.¹¹

¹¹ Nudists were among the first in Germany to organize beauty contests (ILL. 5).



ILL.5: The winners of the „Körperschönheitskonkurrenz“ in Leipzig

Tactique as the fourth of the disciplinary techniques described by Foucault stands for combining individual forces to build a super-individual, even more effective apparatus. In *Nacktgymnastik*, disciplining the individual body was connected with the - often racial-hygienic - will to form a strong and healthy national body.

Nacktgymnastik and gender

A closer look at the physiological discourse of the early 20th century makes clear that there was not one single human organism from which to obtain physiological norms guiding gymnastic exercises. The physiological discourse was (and is) structured by the binary opposition of male and female. In his analysis of disciplinary power, Foucault does not take gender into consideration. *Nacktgymnastik*, however, was not gender-neutral. It was clearly divided into exercises for both men and women on the one hand, and into exercises thought of as exclusively appropriate for women on the other hand. Following Butler, I assume that a specific body movement is not only assigned to one gender, but that being male and female is constituted to a large extent by performing body practices which are 'known' as either male or female.

Nacktgymnastik was gender-specifically differentiated via two strategies:

Women were advised to do the same exercises as men, i.e. exercises which were mainly intended to gain physical strength - though the ideal body of the male nudist was not the body of a heavy-weight bodybuilder, but a muscular, but nevertheless slender body. Class (and race) distinctions

played an important role in formulating this ideal.¹² Within nudism, physical exercise for women was generally welcomed and considered necessary – not at all an universally accepted point of view around 1900. As the German historian Ute Planert has lately remarked life-reformers were one of the first groups to advocate physical culture for women and to open up new forms of body techniques to the female sex.¹³ Mainly biopolitical arguments were brought forth in support of women exercising; it was above all the capacity for child-bearing that was to be trained.

Nevertheless, for women gymnastic exercises were quantitatively and/or qualitatively reduced. The female skeleton, muscular and nervous system were presumed too ‚delicate‘ to allow women to perform as men do. It was the systematic medicalization of the female body in the 19th century,¹⁴ declaring it to be a deficient body that needs supervision, which still played a dominant role in the discourse of nudism. The production of physiological knowledge of the normal (male) body was connected with the production of a deviant (female) body. Femaleness lay in exactly this pathological deviance from the male norm.

The second strategy of gender-specific differentiation within *Nacktgymnastik* was to encourage women to do completely different forms of exercise, i.e. additional exercises intended to form a specific female body, above all an expressive body that moves ‚gracefully‘. Grace is probably the main concept that has shaped the middle-class (and white) aesthetic ideal of womanhood since the 18th century. Graceful body movements had to be ‚round and soft‘ – like women anatomically had to be ‚round and soft‘.¹⁵ Through this association with biological ‚givens‘, aesthetic norms were naturalized – and, vice versa, biological norms were supported by aesthetics. This interdependence of biology and aesthetics can be found in almost all nudist texts.

Summing it up, there was not the one natural body built through *Nacktgymnastik*, but male and female natural bodies. The female body was – via both strategies of gender-differentiation – constructed as particular in comparison to the male body that performed the so-called general exercises. The two strategies correspond with two different approaches to gender relations in general. The first strategy, advising women to do the same exercises as men, is based on the assumption that women and men are

¹² On the nudists' ideal of the male body see M. Möhring, "Der moderne Apoll", in *WerkstattGeschichte*, 10/29 (2001), pp. 27-42.

¹³ U. Planert, "Der dreifache Körper des Volkes: Sexualität, Biopolitik und die Wissenschaften vom Leben", in *Geschichte und Gesellschaft*, 26 (2000), pp. 539-576: p. 573 and p. 575.

¹⁴ Cf. E. Fischer-Homberger, "Krankheit Frau" und andere Arbeiten zur Medizingeschichte der Frau (Bern 1979).

¹⁵ Cf. Mensendieck, *Körperkultur der Frau*, p. 63.

equal (though women are less efficient, less vigorous etc). The second strategy of specifically female exercises is based on the assumption of a fundamental difference of men and women. This fundamental deviation on the one hand and the gradual deviation of women from men on the other hand can be conceptualized with Thomas Laqueur's distinction between the Two- and the One-Sex-Model¹⁶ – and so the question of continuity or discontinuity between 'the male' and 'the female' arises.¹⁷ Both models are linked in their focus on the male body as the norm and therefore they both remain within the (hetero) sexist logic of the same.

Naturalizing the body – normalizing the body

Discussing *Nacktgymnastik* as a disciplinary body practice, it is important to historicize the Foucauldian framework and to specify what kind of discipline *Nacktgymnastik* was. The German nudists at the beginning of the 20th century were severe critics of the disciplinary institutions of the 18th century. *Nacktgymnastik* was conceived as an individual, non-institutional self-disciplining – in sharp contrast to the so-called „drilling“ associated with the military or physical exercise as practised in schools. Instead of *external* constraint, the nudists emphasized *self*-discipline. A good example for this shift is the nudists' rejection of corsets; instead women were urged to build a so-called „muscle-corset“ via *Nacktgymnastik*.¹⁸ Conforming to aesthetic norms now was to be achieved with and on the body itself, not by wearing a corset.

The individual drilled in a disciplinary institution was considered a 'lifeless puppet' in the nudist discourse. Asking of the gymnastics instructor just to „realize nature's purpose“ and to only intervene in a 'regulating' manner,¹⁹ the nudist body practices illustrate what Francois Ewald calls a „shift from discipline as constraint to discipline as a regulatory mechanism“. ²⁰ In Jürgen Link's words, one could say that the German nudists distanced themselves from the „quasi-normative“

¹⁶ Cf. Th. Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, Mass. 1990).

¹⁷ Either male and female are separated by fixed lines or are conceptualized as two extremes within a continuum which implies two different forms of normalizing gender.

¹⁸ J. P. Müller, *Mein System*, pp. 38 and 21.

¹⁹ H. Pudor, *Die neue Erziehung. Essays über die Erziehung zur Kunst und zum Leben* (Leipzig 1902), p. 33.

²⁰ F. Ewald, "Norms, Discipline, and the Law", in *Representations* 30 (1990), pp. 138-161; p. 141.

discipline²¹ (analysed by Foucault in *Surveiller et punir*) and advocated normalization.

But on what kind of norm is *Nacktgymnastik* based? Using the criteria Link developed in his *Versuch über den Normalismus*, the normal in nudist discourse can be categorized as mainly protonormalistic, based on prenatalistic concepts like nature, health and beauty, which were interdiscursively linked and symbolically over-determined. That is the reason why I speak of an ideal natural body, not an average natural body. The question is whether the longing for a „return to nature“ can - as a whole - be interpreted as a protonormalistic phenomenon. Insofar as the natural body advocated by the nudists is a *naturalized* body, it is a *protonormalistically normalized* body.

Though proto- and flexible normalism are to be seen as two polar (ideal) types of strategies, not as two distinct and discontinuous discursive systems, Link suggests that the protonormalistic rigid conformity to the norm, dominant in the 19th and early 20th centuries, has been replaced by a more flexible adaptation to the norm. The flexible normalism, becoming virulent around 1900, was, according to Link, answered by a „protonormalistic radical-reaction“.²² The nudist movement, using concepts like „Entartung“ (degeneration) to fix the line of demarcation between the normal and the abnormal, can be seen as part of this protonormalistic reaction. This is one point of departure for historically locating the normalization of the body in the German nudist movement within a history of normalism.

Nudity and the visibility of the body

Being accused of immorality, the nudists took much effort to explain the advantages of ‚going naked‘. A number of arguments in support of the absolute necessity of exercising without clothes were redundantly repeated. Nudity meant a greater freedom of movement, nudity improved the so-called ‚breathing with the skin‘ (whereas clothing clogged one’s pores) and, above all, nudity made the body visible. By this means, the precise execution of movements could be supervised more effectively. Mensendieck points out that the nudity of her students enables her not only to discover all sorts of deficits concerning body movements and breathing,

²¹ J. Link, “‘Normativ’ oder ‘Normal’? Diskursgeschichtliches zur Sonderstellung der Industrienorm im Normalismus, mit einem Blick auf Walter Cannon”, in: W. Sohn/H. Mehrrens (eds.), *Normalität und Abweichung: Studien zur Theorie und Geschichte der Normalisierungsgesellschaft* (Opladen/Wiesbaden 1999), pp. 30-44: p. 34.

²² J. Link, “Grenzen des flexiblen Normalismus?“, in: E. Schulte-Holtey (ed.), *Grenzmarkierungen: Normalisierung und diskursive Ausgrenzung* (Duisburg 1995), pp. 24-39: p. 28.

but also to demonstrate those mistakes to one another.²³ Hedwig Hagemann, a teacher of the Mensendieck system, explains this function of nudity in 1927: „Gymnastics in the purest form requires nudity. Today's body with its symptoms of degeneration demands strictest control“.²⁴

Nudity made possible an efficient supervision of the body that helped to find bodily flaws that had to be corrected. Children should play naked so that parents could see their bodily constitution and „do something at the right time“.²⁵ Richard Ungewitter, a protagonist of early nudism, in 1907 speaks of ‚presenting the naked body, to the scrutinizing gaze‘.²⁶

Whereas the naked body was said to demonstrate all its „defects“ and „anomalies“, clothing was accused of covering bodily flaws. Clothing and insincerity on the one hand, and nudity and truth on the other hand were discursively linked. To stop getting married, under the banner of lying, the German nudist movement advocated the so-called „nackte Gattenwahl“, i.e. assortative mating (of human beings) in the nude - a practice that was closely linked to doing Nacktgymnastik together. The idea was that future husbands and wives were given the possibility to check their potential mates' bodies for signs of weakness or sickness and by this means to prevent so-called ‚degenerate offspring‘. Arnd Krüger points to syphilis prevention and the strong antisemitic aspect of this practice.²⁷ Within this Darwinistic scenario of ‚sexual selection‘ firmly devoted to eugenic and racial-hygienic purposes,²⁸ nudity once again functioned as a means of surveillance. The normalizing gaze was directed at the individual body, but also in respect to the national body.

German nudists loved referring to the traditional image of the naked truth. One of the most popular quotations in nudist texts was Goethe's classical dictum: „der Mensch ohne Hülle ist eigentlich der Mensch“ ((only) man without covering is proper man). This dictum undergoes a symptomatic reformulation within the Darwinistic scenario of ‚assortative mating in the nude‘. Man is true in as far as he can't hide his bodily defects any longer and makes (allegedly) apparent his biological constitution. In

²³ Mensendieck, *Körperkultur der Frau*, pp. IX-X.

²⁴ H. Hagemann, *Über Körper und Seele der Frau* (Leipzig/Zürich 1927), p. 32.

²⁵ H. Lahmann, *Das Luftbad als Heil- und Abhärtungsmittel*, 3rd edn. (Stuttgart 1904), p. 26.

²⁶ R. Ungewitter, *Die Nacktheit in entwicklungsgeschichtlicher, gesundheitlicher, moralischer und künstlerischer Beleuchtung* (Stuttgart 1907), p. 15.

²⁷ By exposing one's genitals, the invisible Jew was to be made visible. Cf. A. Krüger, „There Goes This Art of Manliness: Naturism and Racial Hygiene in Germany“, in *Journal of Sport History*, 18 (1991), p. 56.

²⁸ The nudists preferred positive to negative eugenics, i.e. they advocated above all the advancement of ‚superior‘ procreators.

this sense, the biopolitically informed nudist gaze has to be interpreted as a historically specific "procedure of the truth".²⁹

In the nudist discourse, the naked body became the materialization of truth: „Gain self-knowledge – in the physical sense, this is only possible naked in front of a mirror. Look at yourself in the nude – only nudity is truth“.³⁰ Self-knowledge was closely linked to the normalizing gaze. One could only get to know oneself (at least physically) by scrutinizing one's body, listing all non-conformities to the norm and by this means forming one's individuality. Whereas in groups of gymnasts the nudists looked at each other, correcting each other, sometimes monitored by an instructor, the mirror took over this function when nudists exercised alone. The mirror was seen as spurring one's efforts.³¹

Self-observation is described by Foucault in *Surveiller et punir* as an endless generalization and internalization of the panoptical surveillance. Internalization, however, based on a homology of inner and outer order, is a problematic concept. The strategic importance of self-surveillance within normalizing societies lies, in my opinion, not in its identity with, but in its peculiarity and difference to the panoptical surveillance. I think, it makes more sense – instead of speaking of the one practice of surveillance – to differentiate between specific practices of surveillance.

In the discourse of German nudism the call for self-observation was also directed against the privileges of experts. Mensendieck asks: „Why should only doctors and artists look [at the naked body, MM]“?³² It is no surprise that it is always the medical gaze and the gaze of the artist that is referred to in nudist texts. In this way, the nudists tried to make clear that a (presumably) de-sexualized look on the naked body did exist. Learning to see like a doctor or an artist meant leaving the Wilhelmine eroticization of nudity behind. It has often been remarked that nudism implied (and still implies) a certain de-sexualization of the naked body. In my opinion, this de-sexualization was achieved to a large extent by making nudity available for medical and aesthetic processes of normalization. For Mensendieck, a „thoroughgoing education of the eye“ was necessary in order to learn to pass a self-reliant judgement on what was normal.³³ There were several media to educate people how to look at bodies. Besides looking at each other in the nudist clubs, naturists were urged to train their ability to see by meditating on Greek statues, under the guidance of Johann Joachim

²⁹ G. Deleuze, Foucault, 2nd edn (Frankfurt/M. 1995), p. 91.

³⁰ Theoros, „Kraft-Kunst“, in *Die Schönheit*, 17 (1921), pp. 500-521: p. 517.

³¹ Surén points to the importance of the mirror as well in his *Deutsche Gymnastik* as well as in his best-selling *Der Mensch und die Sonne*, 64th edn. (Stuttgart 1925).

³² Mensendieck, *Körperkultur der Frau*, p. 93.

³³ Mensendieck, *Körperkultur der Frau*, p. XII.

Winckelmann, and by looking at the many pictures of nude men and, above all, women published in the nudist journals. Also by spreading these photographs, nudism had its share in advancing the public visibility of the naked body. These pictures are in a sense the other side of the archives of abnormal bodies in criminology, medicine and anthropology. Nudist images try to visualize the norm, therein being parasitically linked to the visualization of the abnormal.

When the medical gaze and the gaze of the artist is trained via photographs, then the normalizing gaze is a technically mediated, prosthetic gaze. In this respect, the naked natural body of nudism in his historically specific visibility is a product of the „culture of the photographic gaze“.³⁴ The nudists' focus on the natural body and body practices therefore does not only imply a resistance to the functionalization of the body in the industrial world, but can also be regarded as a positive reaction to the new possibilities of embodiment offered by the new media. In enthusiastically welcoming photography (and later on film) nudism, which has long been interpreted as anti-modern,³⁵ is not at all hostile to modern media. The longing for a „return to nature“ expressed itself in the preference for the medium of photography, which was understood as an unmediated reproduction of nature‘.

Imitating Greek statues – citing ideal norms

Whereas in the physiological discourse of German nudism the natural body was conceptualised as a thermodynamic machine, in the aesthetic discourse of nudism the ideal natural body resembled a Greek statue. Richard Ungewitter clearly defines the aesthetic goal of nudism and *Nacktgymnastik* when he expresses his will „to transform homo sapiens to an ideal, ‚living artwork““.³⁶ His model for the New Man was none other than that of the Ancient Greek. The strictly neoclassical aesthetics of nudism implied studying Greek statuary and by this means educating one's sense of beauty. But that was not all. Furthermore, one had to imitate the Greek statues by continually practising figure and posture control according to the Greek model. On the so-called „beauty-evenings“, soirées organized by a specific branch of German nudism, i.e. the „beauty

³⁴ Th. Schlich, „Die Repräsentation von Krankheitserregern: Wie Robert Koch Bakterien als Krankheitsursache dargestellt hat“, in H.-J. Rheinberger/B. Wahrig-Schmidt/M. Hagner (eds.), *Räume des Wissens: Repräsentation, Codierung, Spur* (Berlin 1997), pp. 165-190: p. 75.

³⁵ Cf., e.g., B. Wedemeyer, „‘Zum Licht‘: Die Freikörperkultur in der wilhelminischen Ära und der Weimarer Republik zwischen Völkischer Bewegung, Okkultismus und Neuheidentum“, in *Archiv für Kulturgeschichte*, 81 (1999), pp. 173-197: p. 173.

³⁶ Ungewitter, *Nacktheit*, p. 81.

movement“, the guests enjoyed *tableaux vivants*, performed by men and women in the nude who mainly imitated Greek marble statues, but also famous painted nudes.



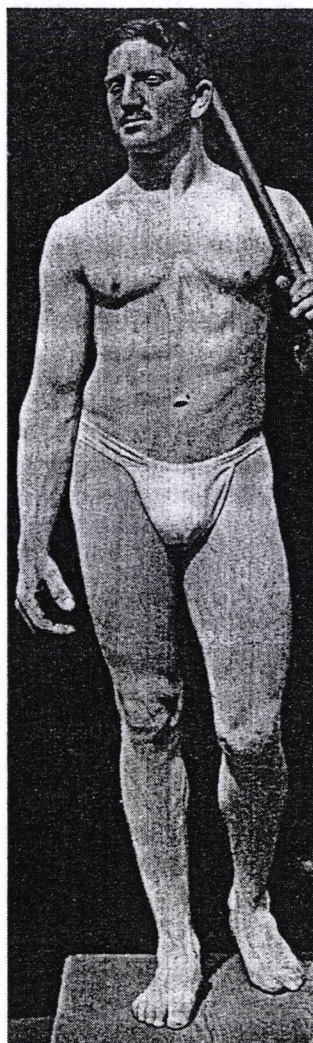
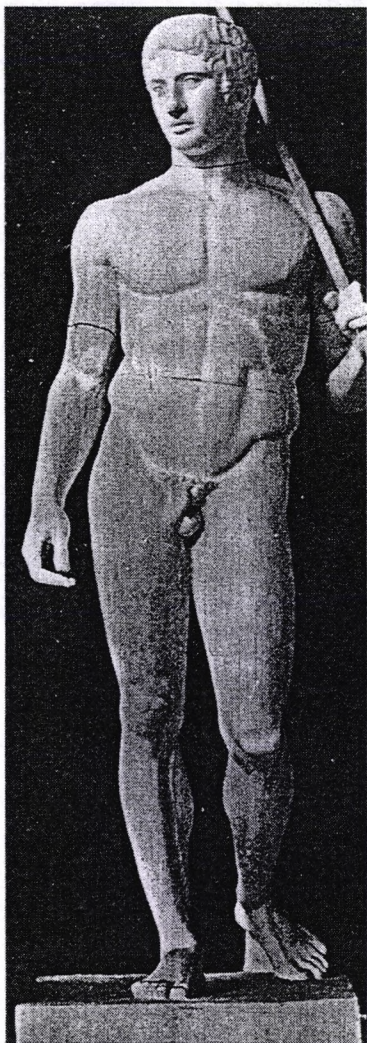
ILL 6: *The living Venus*“, a student of Hedwig Hagemann’s school of gymnastics in Hamburg

Copying Greek statues, in *Nacktgymnastik* or *tableau vivant*, was described by Mensendieck as a „turnover of art into living human material“. ³⁷ This imitation of statues, this mimetic process of embodying the other demonstrates what is implied in any act of the construction of the subject, i.e. the „detour via the figure, the image of the other“. ³⁸ Jacques Lacan’s

³⁷ Mensendieck, *Körperkultur der Frau*, p. 65.

³⁸ S. Lüdemann, „Die Nachahmung der Gesellschaft“, in J. Butler and J. Huber (eds.), *Konturen des Unentschiedenen* (Basel 1997), p. 83.

remarks on the mirror stage discuss exactly this split as the founding act of identification.³⁹



ILL 7: Polyclite's spear-man, imitated by a gymnasi⁴⁰

³⁹ J. Lacan, "Das Spiegelstadium als Bildner der Ichfunktion, wie sie uns in der psychoanalytischen Erfahrung erscheint", in J. Lacan, *Schriften I*, ed. N. Haas, 3rd edn. (Weinheim/Berlin 1991), pp. 61-70.

The nudists tried to form an ideal body by imitating Greek statues. This body-building - in the fullest sense of the word - I would like to conceptualise with Judith Butler's account of the performative construction of the body. For Butler, the materiality of the body is not something stable and complete; she reformulates materiality as a process of materialization, as a sedimentary process over time. This process can be described as an ongoing forced reiteration of norms. Of these norms or „regulatory ideals“ sex and race are among the most important categories regulating bodies. Sex can no longer be viewed „as a bodily given on which the construction of gender is artificially imposed, but as a cultural norm which governs the materialization of bodies“. ⁴¹ Sex norms are always already gender norms and have to be cited permanently to qualify as a ‚body that matters‘. ⁴²

Not only in the discourse of nudism Greek statues were considered the perfect embodiment of sex norms. Women were to look like Venus and men like Apoll (i.e. without herculean muscles). Similar to the gender differentiation of the gymnastic exercises, nudist texts speak of slenderness and symmetry as so-called „general signs of beauty“, exemplified by male statues, whereas the „elliptical rounding of the joints“ was considered a typically female sign of beauty. ⁴³ Here again we find the tension between a one-sex and a two-sex-model. In her book on physical culture for women Mensendieck presents illustrations (also) of male Greek statues to demonstrate what beauty and posture control mean. But in no text is a female statue praised as an ideal for men to imitate. By these means, I suggest, the traditional status of the male body as the original and the normative body in aesthetics was secured.

Intertwined with the ideal sex norm was the category of race. In nudist discourse, the Greeks figured as the „ancient Aryans“ ⁴⁴ and thus the ancestors of ‚the Germanic people‘. Greek statues were models for body-building not least because of this presumed ‚racial superiority‘. ⁴⁵ Around

⁴⁰ Cf. „Der erste Schönheit-Abend in Berlin“, in Beiblatt zur Schönheit, 5 (1907), pp. 167-181.

⁴¹ Butler, *Bodies that Matter*, p. 3. Butler tries to de-naturalize sex; but de-naturalization does not mean de-normalization. From a ‚normalism-critical‘ perspective, de-naturalization can be read as ‚only‘ aiming at overcoming protonormalistic regimes depending on references to nature.

⁴² This reformulation of the sex/gender-system has first been outlined by Butler in *Gender Trouble*.

⁴³ J. Große, „Griechische Körperbildung und Schönheitszeichen“, in *Die Schönheit*, 18 (1922), pp. 65-78; p. 77.

⁴⁴ J. Lanz-Liebenfels, *Nackt- und Rassenkultur im Kampfe gegen Mucker- und Tschandalakultur* (Rodaun 1913), p. 5.

⁴⁵ On this aspect see M. Möhring, „Ideale Nacktheit: Inszenierungen in der deutschen Nacktkultur 1893-1925“, in K. Gernig (ed.), *Nacktheit: Ästhetische Inszenierungen im Kulturvergleich* (Köln/Weimar/Wien 2002), pp. 91-109.

1900, philhellenism was thoroughly reformulated in terms of race and racial hierarchy.

I will stop here to end with pointing out what my interest in Butler is. I think that her concept of performativity as citationality in a new way focuses the aspect of the permanent repetition of norms, which is so central to processes of normalization. In psychoanalysis, the construction of the body is conceptualised as projecting a body image and by this means defining bodily contours. Butler reformulates this concept when she discusses the body image not as an anthropological given, but as an effect of hegemonic discourse and in this sense as something unstable and (historically) variable. I suggest that imitating a Greek statue - *the* embodiment of a normative body image in Western culture - can be read as a form of putting on stage the unconscious processes of the materialization of the body. Integrating psychoanalytic aspects in her theory of the normalization of the body, Butler on the one hand supplements psychoanalytic accounts of the body with aspects of power. On the other hand, a critically revised psychoanalytic approach may broaden the theories of normalization inspired by Foucault.

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Searching for a “True Emancipation”

The Normalization of the Jews and Zionism

Emanuele D'Antonio

The Jewish question: Emancipation and True Emancipation

“In the great procession of humankind towards the future, the intelligent Jew is not able to keep up the pace of the group, in which he is ended up; he wants to walk according his own pace, and he hurries ahead. In so doing, he disarranges the ranks and falls out of lines”.¹ In these terms, the Italian sociologist, and Cesare Lombroso’s son-in-law, Guglielmo Ferrero, certainly not an anti-Semite, depicted the position of the Jews within German and, more generally, European societies in his 1897 best-selling book, *L'Europa giovane*. In the context of the European debates on the Jewish question, Ferrero’s lines were a quite typical hypostatization of the Jewish diversity as a potential disruptive entity for a political modernity that was searching for rational organization and social homogeneity.

The modernity of this author could be a very stimulating starting point in order to develop some reflections on the cultural framework of the Jewish question at the Turn-of-the-Century, the scientific contributions to it and the particular Jewish declination of the scientific images, especially within the Zionist field. I would suggest that, from 1870 onwards, scientific interests in the Jews grew in parallel with the national states’ needs to strengthen social control, to discipline and, eventually, normalize wide parts of their population. Moreover, I would like to show how, following different political ways, some sectors of the Jewish bourgeois elite were able to combine these needs of social control with some elements of modern Jewish culture and, in so doing, develop similar strategies of governmentality within the Jewish group. In these terms, I would suggest that the Jewish question was not only a marginalization of a socio-cultural and religious minority, but also a turning point of history, in which the different European Jewries were able to refuse values and institutions in order to maintain a certain degree of social power within national societies.

¹ G. Ferrero, *L'Europa giovane*, Treves, Milano 1897, 386. All of the translations from Italian are mine.

Although one could see some elements of religious polemics against Judaism along the pages of *L'Europa giovane*, the nucleus of Ferrero's discourse on the Jews was completely secular. During the *ancien régime*, while being segregated in ghettos and distinguished because of their religious diversity, the Jews represented one of the various corporations in which political power was fragmented.² On the contrary, within the framework of modernity, with the centralization of political power, the social membership of the Jews should not be guaranteed by any kind of intermediate Jewish autonomy. Thus, between 1783 and 1871, by developing emancipationist politics and legislation, the European states included the Jews, a population already distinct for religion, but also for habits and lifestyles from their Gentile counterparts, in the structure of political citizenship. More than the realization of tolerance principles, for the state, emancipation represented an important chance to strengthen their power by increasing the number of individuals under their control, and, so, according to the principles of *raison d'état*, their economic productivity, their source of legitimization and their force.³

Now, what primarily produced the imagined dangerousness of the Jews, and, so, the Jewish question, was essentially the uncertainty that political powers felt about the loyalty of a population, whose "visible" diversity was a remarkable sign of a pre-modern corporation. Thus, in different ways, the European states connected the Jewish individuals to their needs by linking the recognition of civil and political rights to a deep process of economic, cultural and moral regeneration. As a consequence, within the Jewish communities, the "rising classes", able to connect regeneration to previous religious instances, developed programs of popular education, religious reforms and social solidarity, whose outcome was the establishment, or perhaps the institutionalization, of a first version of Jewish modernity.⁴

On the other hand, in late nineteenth century, the discontinuities were due to the fact that a further regeneration was connected to a new concept, the "true emancipation". With the emancipation, paradoxically, the Jews

² D. Biale, *Power and Powerlessness in Jewish History*, Schocken, New York 1986, 67.

³ M. Foucault, *La tecnologia politica degli individui*, in *Un seminario con Michel Foucault. Tecnologie del sé*, a cura di L. H. Martin, H. Gutman e P. H. Hutton, Boringhieri, Torino 1992, 143-144 [Amherst 1988].

⁴ See Z. Bauman, *Modernità e olocausto*, Il Mulino, Bologna 1992, 64 [Oxford 1989]; D. Sorkin, *The Transformation of German Jewry, 1780-1840*, Oxford University Press 1987, 20. By using a similar Germanocentric historiography, in no way I would like to generalize a unique experience. However, the German Jewish model could be a stimulating source to approach other case-studies, more neglected, such as the Italian one.

not only became a religious minority, but also moved from an ancient condition of *religious anomaly* to another that could be defined as *social anomaly*. The re-emergence of a Jewish question worked as a further step towards the definition of the Jews as *social abnormality*. No doubt about the success of emancipation; in Germany, in Austria, in France, in Italy, the Jews lived their process of modernization and spread within society. At the same time, the emancipationist stereotypical images of the Jew subsisted and, from the 1870s onward, in parallel with the crisis generated by industrialization and modernization of European societies, assumed a new political and cultural definition. Indeed, the national political structures, both the new (Germany and Italy) and the older ones, (France and, in a different sense, Switzerland) were struggling to establish a new normative order and developed politics and policies able to produce the highest degree of social homogeneity in terms of bourgeois habits and lifestyles. This is to say, to produce the economic liberty in a world that “suffered” from various diversities, European states began a wide process of social inclusion of the diversities through disciplinary and normalizing politics and practises.⁵

After nearly a century of regenerative politics, it was obvious that Jewish diversity was changed. Mainly, at that time, Western European Jews had become “invisible” and indistinguishable, while their economic and social successes were being widely recognized. Thus, national powers needed to know what was the hidden element of this rise. Here, the conflict was generated by the anti-Semitic premise that this “secret” was the Jewish ability to maintain their separate status.⁶ Moreover, the control of the Jewish population seemed to be more and more urgent since the thousands upon thousands of fugitive *Ostjuden* were arriving in Western countries.

In this framework, European bureaucratic agencies, scientific centres and universities, and professional scientists produced masses of books, *pamphlets* and articles that spread a powerful and “respectable” discourse on Jewish abnormality. As in the case of other social deviants, a complex set of disciplines, anthropology, medicine, psychiatry, and hygiene,

⁵ M. Foucault, *Biopolitica e liberalismo. Detti e scritti su potere ed etica*, Medusa, Milano 2001, 159-161 [Paris 1994]. On the concept of normalization, see M. Foucault, *Les anormaux. Cours aux Collège de France. 1974-1975*, Gallimard-Le Seuil, Paris 1999, 44-48.

⁶ Z. Bauman, *Modernità e olocausto*, cit., 72-73. Bauman's discussion focussed on anti-Semitism. I would propose a clear distinction between anti-Semitic propaganda, whose aim was politics of exclusion, and the use of anti-Semitic stereotypes aiming at “liberal” and nationalist goals of better integration of the Jews within societies. Moreover, while the former saw an already established “Jewish modernity”, the latter quite clearly showed “Jewish modernity” as a potential risk, as, for example, Ferrero did. In these terms, my future research will focus on these second kind of “liberal” intellectuals.

connected by statistical methodologies, was able to produce an image of the Jews, both as individual and as group, as “objectively” disconnected from the concrete relationships with other individuals, society and social norms.⁷ Connecting the resulting semiotic system, for example the statistical high frequencies of madmen or diabetics among the Jewish population, to the complex universe of racial theories had an effect to separate clearly the Jews from surrounding society because of their negative historical development, or, worse, their presumed inherited biological character.

Thus, the scientific discourse demonstrated that the Jew, the “pathological Other”,⁸ was not really integrated within the healthy national body. For the utilitarian principles that had promoted emancipation, it was a disgrace; however, as a new segregation of the Jews would have meant the loss of a quite a substantial part of the population, the liberal elite tried to develop a new solution to the Jewish question. It was hardly a question of rights or citizenship. Instead, the state might act in different ways, by imposing regenerative practices on the individuals, for example banning particular butchery procedures or promoting certain kind of marriages. However, political powers developed a very strong pressure over the Jewish world, but, as an effective politics of regeneration was conceived as the outcome of a negotiation, the institutional framework did not undergo a radical transformation until at least the First World War.

Appropriating the hegemonic discourse: Jewish culture and the Jewish question.

The Jewish question, instead, produced a very radical transformation within European Jewish culture. As already said, in Western and Central Europe, emancipation and citizenship granted the Jews the possibility to enlarge their access to economic resources, to education, social relationships and professional careers, beyond the longstanding restrictions. However, it is very hard to say that emancipation had established a parallel process of effective social integration.

Of course, the uniqueness of every national case should be pointed out; however, I would suggest that Jewish descent of individuals was a widely considered fact in the process of production of public images of

⁷ See C. Pogliano, *Scienze della natura e scienze dell'uomo. Momenti di un rapporto*, Angeli, Milano 1987; T. Porter, *The Rise of Statistical Thinking 1820-1900*, Princeton University Press, Princeton 1986; S. L. Gilman, *The Jew's Body*, Routledge, London-New York 1991.

⁸ J. M. Efron, *Defenders of the Race. Jewish Doctors and Racial Science in Fin-de-Siècle Europe*, Yale University Press, New Haven and London 1994, 20.

individuals.⁹ Especially in German-speaking counties, the context of the Jewish question, and the related social and political pressures on individuals, restricted the social room that, in theory, should have been open for the Jews. For example, it is well known how difficult it was for an Austrian Jew to be admitted into those cultural subsystems delegated to the development of political identities and political careers.¹⁰ The effectiveness of these informal and, in some cases, official mechanisms of social exclusion pushed a large number of individuals of the assimilated Jewish elite, (journalists, physicians, lawyers,) the educated liberal bourgeoisie- in a word the educated liberal bourgeoisie, into a sort of invisible “new ghetto”. This is to say, a perceived condition of lack of social power.

Referring to Zionism, Hannah Arendt had already shown the importance of a secularized Jewish intellectual elite in the development of modern politics of Jewish identity.¹¹ Usually far from the religious membership, the “Jewishness” of those intellectuals is quite hardly definable in terms of traditional categories. In fact, at the Turn-of-the-Century, Central and Western European Jewish culture was no longer circumscribed to synagogal and religious elements, but was the already century-old outcome of the negotiation of the “emancipation *versus* regeneration” contract and, so to speak, the product of the assimilatory process. Historians like George Mosse, David Sorkin and Steven Beller have demonstrated that the Jewish social group was in fact a subculture, connected by a new kind of ethnic solidarity, with a confessionalist view of Judaism, of which the bourgeois elite enhanced the ethical element of individual responsibility.¹² In fact, within this liberal Jewish tradition,

⁹ Steven Beller has demonstrated how Viennese society produced an image of Jewishness of Fin-de-Siècle Viennese intellectual elite, even if intellectuals of Jewish descent had converted or were ennobled, S. Beller, *Vienna and the Jews. A Cultural History 1867-1938*, Cambridge University Press, Cambridge 1989, 12. To a lesser degree, this production of a public Jewish image was a quite widespread phenomenon also in countries, such as Italy and France, commonly considered as examples of perfect integration. For example, Cesare Lombroso was regarded as the archetypal Jewish intellectual by his contemporary Italian culture, both Catholic and Jewish, M. Nani, *Cesare Lombroso*, in B. Maida, *Dal ghetto alla città. Gli ebrei torinesi nel secondo ottocento*, Zamorani, Torino 1999, 242.

¹⁰ A. Pelinka, *Anti-Semitism and Ethno-Nationalism as Determining Factors for Austria's Political Culture at the Fin-de-Siècle*, in *Liberalism Anti-Semitism and Democracy. Essays in Honor of Peter Pulzer*, edited by H. Tewes and J. Wright, Oxford University Press, Oxford 2000, 66-67.

¹¹ H. Arendt, *The Jewish State: Fifty Years After. Where Have Herzl's Politics Led?* (1946), in H. Arendt, *The Jew as Pariah: Jewish Identity and Politics in the Modern Age*, Grove Press, New York 1978, 168-169.

¹² G. L. Mosse, *Ebrei in Germania fra antisemitismo ed assimilazione*, Giuntina, Firenze 1991; D. Sorkin, *The Transformation of German Jewry*, op.cit.; S. Beller, *Vienna and the Jews*, op.cit., 113-121. For the French case, see L. Moses Leff, *Jewish*

secularized intellectuals could develop a wide variety of religious, political and cultural positions (also those traditionally viewed as Jewish self-hatred) in order to fulfil the emancipatory pact.

Thus, while defending Jews from anti-Semitism, many Jewish intellectuals appropriated the cultural framework of the Jewish question and developed a strong criticism of the Jewish group. Of course, as large part of the cultural tools was openly anti-Semitic, they needed to operate a re-interpretation of them. However, as Steven Beller brilliantly pointed out, “from the Jews’ own perspective, those Jews who continued the [imagined] old ways were not only letting themselves down but also all other Jews. Criticism [...] could be seen as loyal criticism, even loyal self-criticism”¹³ and represented the cognitive step towards the organization of an attempt to produce a new normalizing politics.

In early political Zionist writings,¹⁴ the lack of religious themes and the profound presence of a “sociological” substratum that depicted the Jews as unproductive, is surprising, in the light of their disconnection from societies and their lack of internal cohesion. Though not actually looking at properly Zionist scientific works here, I would like to mention that, very often, Zionist political discourses had, in fact, a “metascientific” character and were built on elements of the scientific “semiotic system” of the Jew. Thus, for Theodor Herzl, after Emancipation, Gentile concurrence had mouldered the “Jewish bourgeoisie” and pushed it towards economic unproductive roles, dangerous for national economic systems and for the Jews themselves.¹⁵ More catastrophic was the physician and novelist Max Nordau, who built a “quasi-

Solidarity in Nineteenth-Century France: The Evolution of a Concept, in “*Journal of Modern History*”, 74 (2002), 52. In the Italian case, whose “integrationist” approach is widely recognized, the research is barely beginning, see G. Luzzatto Voghera, *Il prezzo dell’eguaglianza. Il dibattito sull’emancipazione degli ebrei in Italia (1781-1848)*, Angeli, Milano 1998; and A. Cavaglion, Felice Momigliano (1866-1924). Una biografia, Il Mulino, Bologna 1988. An intriguing approach, that pushes the interpretation towards the view of a political modernity as the result of the integration of different “co-constitutive” cultural elements, among the others the Jewish one, has been recently suggested by S. E. Aschheim, *In Times of Crisis. Essays on European Culture, Germans, and Jews*, The University of Wisconsin Press, Madison 2001, 87-88.

¹³ S. Beller, Herzl, Wagner, and the Ironies of “True Emancipation”, in *Tainted Greatness: anti-Semitism and Cultural Heroes*, Temple University Press, Boston 1994, 144.

¹⁴ The focus of my analysis is especially the “political” wing of Zionism. While not referring to other “cultural families”, perhaps, the common character of this complex movement was the attempt to remove Jewish alienation from European society, see E. Schweid, *The Rejection of the Diaspora in the Zionist Thought: Two Approaches*, in “*Studies in Zionism*”, 5 (1984), 43-70.

¹⁵ T. Herzl, *The Jews’ State. An Attempt at a Modern Solution to the Issue of the Jews. A Critical English Translation*, Aronson Inc., Northvale-Jerusalem 1997, 143-144 [Wien 1896].

scientific" typology of Eastern Jews, a population of "*Luftmenschen und Bettelstudenten*", whose disconnection from national economic systems was, in his view, parallel to the double exclusion of Western Jews from national societies and from "Jewish life". In these terms, Nordau was depicting an image of the Jews in the light of his degeneration theory, whose consequences would have been the weakening and the subsequent extinction of the affected human group.¹⁶ Similar analyses were developed also within assimilationist circles: for the Italian anthropologist Cesare Lombroso, it was clear that, because of their exclusion from national socio-economic structures, "mendicity" and other questionable professions were the only economic outlets for the "filthy" population of Russian Jews.¹⁷

All of those views were very similar to the anti-Semitic ones. However, the will to change the Jews, to transform them into individuals whose roles should have been compatible with other individuals and organic to society and social norms, in a word I would term normal, implied a view of "race" that reduced the room for a fixist hereditary interpretation. So, in their own view, the Jews were a "race", but their "degenerations", their unhealthy lifestyles, their bad habits, were the results more of the historical evolution within the narrow and harsh space of the ghettos, than of biological inheritance.¹⁸

What is striking in this kind of Jewish literature, be it assimilationist or Zionist, is its similarity to a medical diagnosis that paves the way for an intervention of social therapy, conducted by Jewish intellectual elite on the rest of Jewish population. So, no surprise that an old Cesare Lombroso, who rightly considered himself to be a social scientist and a promoter of active scientific politics on deviancies, wrote Herzl, a great journalist and writer, calling him "*Lieber Collega*".¹⁹

¹⁶ See M. Nordau, *Degenerazione*, Bocca, Torino 1896, 8 and 563-564 [Leipzig 1892]; M. Nordau, *V. Kongressrede* (1901), in M. Nordau, *Zionistische Schriften*, Jüdischer Verlag, Berlin 1923, 117-124; M. Nordau, *Der Judentum im 19. und 20. Jahrhundert* (1909), in *Ibid.*, 434-459.

¹⁷ C. Lombroso, *L'antisemitismo e le scienze moderne*, Roux, Torino 1894, 94. Lombroso's book was, in fact, assimilationist. However, from 1898, he became a moderate Zionist supporter because Zionism could be precisely a good way to modernize the masses of Ostjuden. C. Lombroso, *Der Zionismus in Italien und anderswo*, in "Die Welt", 30. Juni 1898.

¹⁸ Mitchell Hart has spoken of "Jewish Lamarckianism". He is largely right; however, I would note that Jewish social scientists referred quite often also to heredity. M. B. Hart, *Social Science and the Politics of Jewish Identities*, Stanford University Press, Stanford 2001, 12.

¹⁹ Letter from Cesare Lombroso (1898), Herzl's Papers, H751, Central Zionist Archives, Jerusalem. I would like to thank Gita Dov Baer and Rochelle Rubinstein for sending me a copy of the document.

Regeneration, Zionism and power

The diagnosis was clear; the political technology of emancipation was not enough to ensure the existence of a society in which the Jews had their legitimate place and function. Before moving to Zionism, I would say that Jewish assimilationism did not mean simply a defence of an hypothetical legal equality; on the contrary, if one looks at assimilationist solutions, one could find even there the Jewish question solved through further regenerative practices. And this is true also for the intellectuals I mentioned above, in their pre-Zionist phase.²⁰ For Nordau, Herzl and many others, Zionism was above all a particular way to assimilate to German and European, culture outside European territory.²¹ Nor do I think Jewish assimilationists had renounced their expression of Jewish distinction.

Rather, the main difference between assimilationism and Zionism concerned the relationship between the Jews and the political power. On the one hand, the former accepted the old "state-Jewish community" normative order and tried to obtain true emancipation along the lines of the old scheme. This is to say, the bourgeois intellectual elite acted on behalf of the community in enacting the different practices of regeneration. On the other hand, Zionism was an attempt to implement true emancipation with a new "will to [political] action".²² the establishment of a *Judenstaat* (not necessarily a Jewish State) that would have organized population on a new basis.

Herzl's *chef d'œuvre* was not very far from the operational logic of European liberal state. I do not think that the *Jews' State* was a Jewish version of Viennese pan-Germanism.²³ It is true that Herzl established a strong political and "moral" power, on which he advocated the legitimization to act on behalf of the "powerless" and "idle" "Jewish

²⁰ Herzl invoked alternatively politics of mass mixed marriages, a public mass baptism and a politics of dueling against anti-Semitic leaders, Lombroso aimed at the foundation of a new religion of humanity and, more soberly, Nordau proposed a general change of names, language, and religious calendar and rituals. See S. Beller, Herzl, Halban, London 1991; C. Lombroso, *L'antisemitismo e le scienze moderne*, cit., 109-110; and M. Nordau, *Paradossi, L'Arte bodoniana*, Piacenza 1914, 368 [Leipzig 1885].

²¹ See G. L. Mosse, Max Nordau, Liberalism and the New Jew, in "Journal of Contemporary History", 27 (1992), 570; Y. Shavit, The 'Glorious Century' or the 'Cursed Century': Fin-de-Siècle Europe and the Emergence of Modern Jewish Nationalism, 26 (1991), 568-569. Here, it is not my intention to say what was the "Jewishness" of this approach. Generally speaking, I agree completely with Steven Beller's interpretation of Zionism as a way to develop the religious ideal of the Jewish ethical mission in a national form, S. Beller, Herzl, op. cit., 105.

²² H. Arendt, *The Jewish State: Fifty Years After*, op. cit., 170.

²³ For this interpretation see J. Le Rider, *Modernité viennoise et crise d'identité*, Puf, Paris 1990, 258.

people".²⁴ However, the membership of the subsequent *Neue Gesellschaft*, which Herzl imagined, would have been open to Christians and Muslims, women would have had political rights, and the State would have had international recognition.²⁵

The problem of social inclusion, but especially the need to organize Jewish individuals into an organic society, was solved by endowing the imagined Zionist Organization, namely the *in fieri* Jews' State, with the power to impose the same normalizing action on Jewish individuals that European states might not impose. The purpose was quite clear; through the discipline of emigration, through the capillary organization of work, through Zionist schools, Herzl aimed at preventing the probable social chaos and anarchy that could have been produced by the composition of an heterogeneous mass, whose large majority would have been "Eastern Jewish proletarians". Probably, there was a strong influence of German cameralistic tradition;²⁶ in any case, when regeneration would have been an accomplished fact, in the *Neue Gesellschaft*, quite paradoxically, the State had disappeared, working only through administrative and technical agencies and co-operatives.

A last point should be devoted to the "spillover" of Zionist agencies of regeneration. In his own words, Herzl considered his plan "modern" precisely because of its similarity with the procedures through which, a "finance minister prepares his budget", and asked his readers: "Would you consider a financial bill utopian, even if you knew that the projections could never be precisely achieved?".²⁷ Once the parallel with national states was established, every organization that composed the World Zionist Organization (not only in Herzl's project, but also in historical development) was devoted to specific cures for the well being of Jewish population.

Labor, economic roles, body, mind, knowledge, hygiene, also Palestinian (or eventually Argentinean and Ugandan) territory: the field of intervention was very wide. Thus, Zionism organized strong networks of Jewish gymnastics associations, professional schools, female circles, solidarity groups, a Jewish Colonial Association and so on, under the guidance of Jewish experts in the different disciplines. Aiming at the sectional self-directed implementation of true emancipation, all of these structures were trying to replace and substitute the old communal structures of the assimilationist framework.

²⁴ T. Herzl, *The Jews' State*, cit., 187-190.

²⁵ The best description of Herzl's political project is in the beautiful utopian novel *Altneuland* (1902), in T. Herzl, *Wenn ihr wollt, ist es kein Märchen. Der Judenstaat/Altneuland*, Jüdischer Verlag, Königstein 1979.

²⁶ J. Doron, *Social Concepts Prevalent in German Zionism 1883-1914*, in "Studies in Zionism", 5, 4 (1982), 24-25.

²⁷ T. Herzl, *The Jew's State*, op. cit., 125.

As Herzl and Nordau had stated in official places, in order to “model human material”, Zionism needed an exhaustive statistical collection of the whole Jewish population.²⁸ Quite consequently, in 1904, the young and Democratic Zionists Alfred Nossig and Arthur Ruppin founded the *Bureau* for Jewish Statistics and Demography in Berlin, soon assisted by a network of local organizations, that was able to produce an original, but probably not unique, Jewish social science. Aiming at a scientific national solution of the problems of Jewish population, the *Bureau* was the principal institution by which “expert knowledge – produced by these selfsame [Jewish] scientists – [was] translated into social policy”.²⁹

Of course, this paper is only one of the preparatory stages of what should be a coherent research. In particular, I would like to move between the political and the more specific scientific discourse in order to define the main tendencies of the process of discipline and normalization of Jewish identities, Zionist and assimilationist, at the Turn-of-the-Century. Especially, in my future research, I would like to move towards the Italian case, its specificities, and the cultural and intellectual relationships with the Jewish and Gentile Austro-German culture.

²⁸ T. Herzl, *The Jews' State*, op. cit., 191; M. Nordau, *V. Kongressrede*, cit., 112-115.

²⁹ M. B. Hart, *Social Science and the Politics of Modern Jewish Identity*, cit., 79. It is true that the *Bureau* was open to non-Zionist scientist, but it was essentially a Zionist institution. At most, I would note that its attempt to produce a global Jewish statistics was preceded by the French Alliance Israelite Universelle pamphlets, and by the Italian Flaminio Servi, *Gli Israeliti nella civiltà moderna. 1780-1870*, Foa, Torino 1871.



ILL.1: Herzl in his office with his family

Riassunto delle diverse nascite e delle morti dal 10 gennaio 1855 a tutto dicembre 1864.

Anno	Totale dei presenti	Uomini da 7anni in poi - morti	Donne da 7anni in poi - morti	Fanciulli fino ai 7anni - morti	Fanciulle fino ai 7anni - morti	Comple - morti	ssivi - nati
1855	1,210	13	19	11	5	48	41
1856	1,224	7	7	5	3	22	29
1857	1,241	6	6	3	3	18	40
1858	1,259	9	4	3	2	18	29
1859	1,261	12	9	4	5	30	30
1860	1,315	7	6	6	3	22	32
1861	1,340	11	9	5	5	30	30
1862	1,346	4	13	4	5	26	29
1863	1,327	13	6	2	6	27	36
1864	1,282	11	6	8	6	31	24
Somma	12,805	93	85	51	43	272	320

ILL 2: Cesare Lombroso, *L'antisemitismo e le scienze moderne*, Torino, Roux, 1894.

Normality vs Normality:

Balkan Sworn Virgin Cross-dressers and Western Travellers

Aleksandra Djajic Horváth

In the very beginning of the second half of the nineteenth century, an intriguing phenomenon of female celibate, accompanied with a partial or complete gender reversal, was registered in the Dinaric mountainous belt of the Western Balkan peninsula. In 1855 Milorad Medakovic, a Serbian ethnographer, while doing his field work in the Rovci tribe on the border of Herzegovina and Montenegro, came across a case of a girl called Milica who, not having any brothers, vowed to stay unmarried in order to be a surrogate son to her father. The girl wore male clothes and arms, and was respected in her tribe like a man (Medakovic, 1860, 23-24). Almost at the same time Johann Georg von Hahn, an Austrian consul on the Balkans and a distinguished albanologist, came across a couple of similar cases of *tobelija* among the tribes of northern Albania, what he described in his book *Reise durch die Gebiete des Drin und Wardar*, published in Vienna in 1867. He gives an account of meeting four Albanian girls who publicly renounced marriage and decided to become men. While for two of them Hahn does not specify the motifs for such a change, he does it for the other two, reporting that one did it because she had been in love with a man whom she could not marry while the other one did not want to marry a fiancé who was of another religion (Hahn, 1867, 31-33). This female-to-male transformation, the condition for which was celibacy and a total ban of person's sexuality, included not only the acquisition of a male name, male clothes and male haircut, but also of some male privileges, such as possessing and wearing arms, socializing with men and participating in men's assemblies.

The phenomenon was either mentioned or described later by a number of travellers who visited that part of the Western Balkans in the second half of the nineteenth and the beginning of the twentieth centuries. However, what is striking is that a number of authors only mention the existence of *tobelija* without reporting of ever encountering any. This provokes several questions: how really widespread the phenomenon was and in what extent it was the product of Western mythologizing, of the ethnographical-

anthropological *guild myth*, and of the “bourgeois vogue of romantic primitivism” as Fussell labels it (Fussell, 1980) to which the Balkans was succumbed from the second half of the nineteenth century? Then - what were the images of the Balkans to which the reports about *tobelija* contributed? And finally, to what extent they added to the distinctly male appeal of the Balkans, “the Balkanist singularly male discourse”, as Maria Todorova labels it in her book *Imagining the Balkans* (Todorova, 1997, 15).

Due to the fact that the material about *tobelija* is not abundant, and that we do not have any material older than the above mentioned travel writing, our picture of the phenomenon is doomed to remain partial: we may only speculate about its age and diffusion, hoping to give our own limited interpretations of this socially accepted form of female to male transvestism. Mine would begin with the analysis of the meaning/s *tobelija* were ascribed by European travel writers and missionaries, these proto-ethnographers of the second half of the nineteenth and the beginning of the twentieth centuries. “If texts are to be more than literary topoi, scattered shards from which we presume worlds, they have to be anchored in the processes of their production, in the orbits of connection and influence that give them life and force” (Comaroff & Comaroff, 1992, 34).

If we read travelogues and early ethnographic accounts as points of intersection between observers and the observed, as intercultural frontiers, what do we see in the picture of *tobelija*? How is this phenomenon of gender transgression situated in the wider travel narrative of the transgression of national, linguistic, religious and cultural boundaries? What does it reveal about the traveller and the reading audience back there at home? In his book *Haunted Journeys*, in which he focuses on the interplay of desire and transgression in European travel writing, Dennis Porter comments on the fundamental ambiguity of “representation”, particularly salient in travel writing, saying that “to represent the world is a political as well as an aesthetic-cognitive activity. It is an effort both to put something alien into the words of a shared language for someone else at home and to put oneself in the Other’s place abroad in order to speak on its behalf. One is at the same time *representator* and *representative*, reporter and legislator. And in all that one writes one also inevitably (re)presents, however imperfectly, oneself” (Porter, 1991, 14-15).



*ILL. 1 a photo published in 1907 in Die Woche, No. 40,
along with the text on tobelija written by Dr. E. Schultz*

To try to look into the cultural baggage of a traveller therefore seems necessary in order to cast light on the interaction that takes place in the process of representation of the Other. In that respect, what is of importance for us here is to look into cultural ideology of Europe that was gazing at the Balkans in the last couple of decades of the nineteenth century, with hope that it would open up ways for us to grasp the nature and meaning/s of that gaze. Eye is not neutral as well as perspective is not just a mathematical projection on external space, but is cognitively, ideologically and emotionally coloured way one conceptualizes and represents external reality and positions oneself accordingly within it. The analysis of perspective does not only reveal a more detailed portrait of the traveller but also the face of the otherwise invisible party of the travelogue - an audience back there at home, for whom and in a certain extent even about whom, these texts were written. The will to represent the world, as Porter suggests, masks the effort to control it with the ideological fixity (Porter, 1991, 20), to impose one's own pattern of order, disciplining and

appropriating the exposed - be that a landscape, plants, natives, habits, women or butterflies - to the gaze that scrutinizes and the discourse that represents.

“Being made the object of European curiosity is a process that can tell us something of the nature of modern European states”. The question to ask is which Europe is gazing at the Balkans in the second half of the nineteenth century? Briefly, we could say: it is the Europe in which a curiosity towards the human body and how it is to be classified is expressed in physiognomy and anthropometry; and the period of new techniques of representation and regulation that are crucial to the restructuring of the state in industrialized societies and to establishing the network of disciplinary institutions - the police, hospitals, asylums, schools, prisons etc. It is also the Europe in which in 1860s ethnology is transformed by a Darwinian revolution, the Europe that takes now an interest in cultures and human bodies different from the Western. Evolutionism was, as Stocking says “both the reflection of and the justification for the invasion, appropriation and subjugation of the ‘savage’, ‘barbarian’ or ‘semi-civilized’ regions of the earth” (Stocking, 1991:4). So it is also the period of expanding European colonialism which embodies a wish to control the entire world and the period when “photography [invented in 1839] is employed by science and imperial expansion to document glimpses of its margins, be it places, people, plants, trains or ships” (Shohat & Stam, 1994, 104-105).

Focusing more on gender and family, we can say that it is the Europe in which the myth of patriarchy appears (J.J. Bachofen’s *Das Mutterrecht*, published in 1861), the Europe in which bourgeoisie is homogenizing itself thanks to its strong patriarchal ideology (the exemplary of which is Victorian England and its ideology of separated spheres, of *respectable femininity*, *angel in the house* and similar concepts that are combinations of moral, religious, economic and cultural systems applied almost exclusively to middle-class women), the Europe in which the politics of medicine aims at controlling potentially dangerous zone of sexuality, particularly female sexuality, and the West in which the interest for the Rest is also visible, for example, in the appearance of the early kinship theories based on strong biological dimorphism or ‘Western folk model of reproduction’, as Yanagisako and Collier would label it these days (Henry L. Morgan’s *Ancient Society* and further works that were inspired by it, such as, for example, F. Engels’ *The Origin of the Family, Private Property and the State* published in 1884).

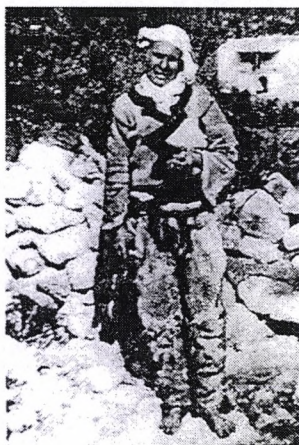


*ILL.2: another photo accompanying
Dr. Schultz's text in Die Woche, No. 40, 1907*

Our particular case here is that of Europe's potentially controlling and classifying gaze directed at the mountainous parts of the Western Balkans, the gaze that tends to label everything different as - in the best case -exotic and strange and primeval, or as savage, barbaric and primitive. *Tobelija*, a socially approved female cross-dresser that suddenly appears within that gaze, materializes in verbal and visual narrative most often as strange, strong, almost thoroughly masculinized and armed **single woman**. S/he is never perceived or talked of as a man, except in the cases when a traveller is deceived by his/her male looks and manners. In some cases, for example in Ferenc Nopcsa's book on northern Albania called *The darkest Europe* (1908), s/he is described as an Amazonian, which perfectly fits the time that has just produced the romantic myth of matriarchy. For Dr. Schultz, who in 1907 published a text accompanied with several photos in *Die Woche - Moderne Illustrierte Zeitschrift*, s/he is also an Amazonian, but of the type that once upon a time existed among the ancient Germans, in the time of the great migration of peoples. So s/he is the remnant of something primeval, the embodiment of the stage of development that civilized societies have already passed through, part of civilization's early childhood. He portrays the tribes as completely uncivilized, adding that only in his third attempt he managed to get into the inhospitable region of northern Albania, on a horse and without the Sultan's permission, which all adds to a romantic flavour of adventure. The institution of female cross-dressing is for him one of the most weird in the world, and he even gives it a special name - *Virtschentums*. His transvestites "shoot as mad", and they have renounced "the greatest happiness" - i.e. marriage (Schultz, 1907, 1758-63). An Austrian explorer and journalist Leo Brenner, alias Spiridon Gopcevic, in 1881 places *tobelijas* in the highly ironized context of a society the laws of which are totally senseless and where marriage ceremonies are comedies full of pretense and lies (Gopcevic, 1881, 435, 442, 443-444). He views *tobelijas* as women who try to avoid an unwanted marriage but drops an ironical remark that these 'men' should be careful not to get pregnant: "Nur muss sich dieser neue Mann in Acht nehmen, bei seinen Herumstreiferein nicht - schwanger zu werden, denn dies haette seinen Tod zu Folge" (ibid., 460). The sworn virgin cross-dresser described by an Austrian engineer Karl Steinmetz is placed within a similar context, with the comment that the morality of the local population is lax and that the particular *tobelija* whom he has met is ugly, which is the reason why she opted to become a sworn virgin: "Unsere Wirtschin war etwa 30 Jahre alt und hässlich, was sie wohl zu ihrem Gelöbnis mitbewogen hat" (Steinmetz, 1905, 50). The early accounts very seldom reflect the ways local population viewed sworn virgin female transvestites. Only Mary Durham in her travelogue reports talking to a local man about the phenomenon of sworn virgins, asking him if he would eat with one (the

local custom, strictly obeyed, was that men and women always ate separately), and "he slapped his thigh and said: Of course! She has breeches on just like mine and a revolver!" (Durham, 1908, 63).

The exoticizing of the Peripheral, present in almost all early accounts of *tobelijas* and embodied in narrative strategies of patronizing, ironizing and infantilizing, could be viewed as a kind of exclusion, taking place at the same time as normalization processes back there at the Centre. It also opens a discontinuity, dividing the world into *Us* and *Them*, aiming at disciplining *Them* into anthropological and Western discourse. As for the representation of sex and gender in all of these accounts, we could say that *tobelijas* gender identity is 'normalized', or rather - disciplined into the Western gender discourse, in the sense that they are presented within a strict dimorphic gender system, the same one that reinforced normative heterosexuality and bourgeois marriage values in Europe of the time.



ILL. 3: A photo of tobelija taken by M.E. Durham during her travel on the Balkans

These and similar accounts represent not only the exotic, appropriated and objectified Other, but also the ordinary reader, back there at home, a visitor of exotic exhibitions and various anthropological spectacles popular in Europe at the time, a citizen of the industrial state who is the material on which all the questions of difference - social, racial, sexual or moral - are being performed in the late nineteenth century. So colonialism, either narrative or political and economic, was not only about forming the periphery but also about forming the centre, as Comaroff and Comaroff remark (Comaroff & Comaroff, 1992). Through narrative incorporation of the wild and primitive, cultural ideology of the centre was modelled.

The above mentioned travel accounts on western Balkans not only point to the “prevalence of the male gaze across cultures” (Kaplan, 1997), but testify to the interplay of male and imperial gazes within western patriarchal cultures. The nineteenth and early twentieth century travellers and ethnographers were fixed in particular on the position of women, as women clearly epitomized the most exotic manifestation of “the other”. But it was not only the exotic woman that was exposed to the classifying and controlling gaze of the expert: the woman at home, back there in Western Europe, was scrutinized under that gaze too. As Philippa Levine says in her book on Victorian England - “the language of class, the language of sex and the language of imperialism by the end of the nineteenth century show some common features - tendency towards domination, control and power, as well as fear of contagion and disease” (Levine, 1990, 86).

The visual representation of delinquents in criminology

The quest for modernity, Portugal 1910-1930's

Tiago Marques

When criminal anthropology emerged in the 1870s, it was not the first time that the 'criminal' was treated as an object of science. In the first decades of the 19th century, the *criminal persona* had already played a central role in the effort to constitute unified systems of knowledge on human behaviour, with physiognomy and phrenology standing as the classical examples. However, more episodic than criminal anthropology and closely linked to the work of particular individuals (Lavater, Gall, Spurzheim), it is highly problematic to sustain that these 'sciences' formed internally consistent bodies of knowledge cultivated, through a certain period of time, by communities of 'scientists'. In other words, and even if these sciences seem to have had impact on the representations of criminals, it is difficult to maintain that they formed 'schools of thought'. In contrast to them, criminal anthropology did form a 'school' as such. Also differently from physiognomy and phrenology, which addressed the 'criminal' as a liminal case of general human behaviour, the new science isolated her from society and focused uniquely on the 'criminal individual' for her own sake. Just as biology began to assume the existence of a sphere of natural life susceptible of being understood in scientific terms; just as psychology began to depart from the idea of a human 'soul' or mind endowed with a certain degree of stability; or just as sociology posited 'society' as an ontological entity capable of being understood by reason – so, criminal anthropology postulated the existence of the 'criminal man'.

Given form by Lombroso in 1876 with *L'uomo delinquente*, criminal anthropology defined itself as the scientific study of the agents of crime (and not exactly of the phenomena of crime). Although the terms in which the characterization of the nature of the 'criminal', and particularly its aetiology, differed among authors, these last did share the belief that such a 'nature' existed. From the late 1890s on, however, this idea encountered increasing resistance. By that time, criminal anthropology had lost the aura of scientific novelty and a great part of its appeal to the scientific communities and penal agents thereby. However, even if the

concept of *criminal persona* was becoming increasingly complex and was, in some cases, rejected, it continued to be widely accepted. This was, undoubtedly, the most important element that constituted criminal anthropology's heritage. Another factor element but linked to this last, was a rhetorical strategy constructed on the basis of visual representations of criminals. Long after the period of major influence of criminal anthropology, criminals continued to be depicted visually and their images shown, both in scientific studies and in books devoted to publicise certain penal institutions, as a proof of the existence of 'criminal natures'.

In this paper, I propose to analyse some visual representations of criminals shown in criminological books and penal propaganda published in Portugal after the period when criminal anthropology was most influential (the first book being dated to 1917 and the last one to 1934). My objectives are, first, to evaluate the importance of the heritage of criminal anthropology in its less evident aspects – because undeclared and often in juxtaposition with the stated positions of its practitioners. Did criminal anthropology contribute to form a *habitus*¹ in the criminological field, detectable in the pictures of criminals that continued to be published until the 1930s? A second objective is, through an analysis of the interplay of these images with their subtitles, to understand the functions intended in publishing such pictures. Finally, I would like to build on the hypothesis – which will nevertheless remain open and subject to further debate – that criminology contributed, through the penal apparatus, to the vulgarisation, within larger bourgeois society, of a predisposition to evaluate certain types of physical, social and behavioural characteristics on the basis of a dichotomy between 'normal' and 'abnormal'. In other words, this is a historically novel form of representation with, arguably, an important impact on the construction of social reality.

Visualising the criminal

Criminal anthropology can be characterized, by and large, as a discipline constructed upon the juncture of the dichotomy normal/ abnormal with the concept of 'danger to society'. Its main objective was to prevent the instantiation of such danger. To do so, it deduced a system of signs from the physical and behavioural characteristics of particularly threatening individuals and groups. Considering certain universes of individuals, defined *a priori* as constituted of individuals with behaviour patterns deemed as threatening to society – e.g. prison inmates/ criminals - criminal anthropologists categorized the various forms of threatening behaviour and

¹ I use Pierre Bourdieu's concept in the sense of «an immanent law of production of a series of relatively homogeneous phenomena» [my translation], Louis Pinto, *Pierre Bourdieu et la théorie du monde social*, [s.l.], Editions Albin Michel, 2002, 128.

established regular relations between the categories they observed and certain physical traits. Each set of such traits formed a *type*. The stability of the relations holding between behavioural categories – which I will name simply as *categories* – should allow one, from there on, to perform the opposite operation: after identifying a *type*, deducing the *category* (i.e. threatening behaviour) before it occurred and to prevent it. Such operation was formed, therefore, of three different stages: i) the categorization of threatening forms of behaviour; ii) the construction of physical types; and iii) the articulation between *types* and *categories*.

i) The categorisation of the forms of behaviour considered threatening to society followed, first of all, the lines of penal law. Thus, it gave rise to a frontline of characters of the like of the ‘murderer’, the ‘parricide’, the ‘thief’, the ‘incendiary’, the ‘rapist’ and the ‘anarchist’. However, such categorisation went far beyond the boundaries of penal law to include ‘morally condemnable behaviour’ by bourgeois standards, which did not, however, entail punishment nor necessarily an aggravation of penalties. This behaviour ran from alcoholism (which was, in some cases, punished) to ‘idleness’, sexual ‘license’ and associating with one’s peers (something that linked, for instance, trade unions and criminal gangs).

ii) The construction of physical types was mainly done through a process that can be described in three steps.

In order to illustrate this process, let us consider a book of penal propaganda, *Cadeia Nacional de Lisboa*, published in 1917 by Rodrigo Rodrigues, director of the Lisbon Penitentiary. Over several pages of this work, the presentation of parts of the body such as hands, ears or heads shows how concentration was focused on detail and its importance in these representations (Figures 1 and 2). Details in the shape of hands, foreheads or jaws, size of ears or curve of eyebrows, were viewed as highly meaningful signs and, therefore, turned into the basic units for the representation of criminals. The first visual operation involved was thus a narrowing of vision, bringing into focus certain limited aspects of reality.

The second step in this process was the construction, with these basic units or fragments, of a certain schematised totality figuring a given type. The pictures of assassins presented by Rodrigo Rodrigues are a perfect illustration of this: the focus on the shape of the skull, underlining a short and very inclined forehead, is combined with a static expression and prominent jaws to give an overall image of cruelty, feeble-mindedness and savagery (Figure 3). In other cases, such as the picture of the parricide presented in the same work, these attributes are condensed into a particularly striking image, in this case the grinning expression in an otherwise rather neutral head (Figure 4). The manipulative attitude underlying these pictorial constructs is well documented by this head, where such a ferocious mouth seems to be either induced by means that are

hidden from the viewer or simply added, in a sort of patchwork operation, to substitute the actual mouth of the individual. The categories of behaviour that these pictures are intended to portray are given to us in their subtitles ('homicidal killers', 'parricide', etc). The immediate objective of this kind of association is clear: by putting the pieces together (plus other kinds of fragmented details, such as the hands), an ensemble of traits – the scheme or the *type* – is obtained that allows individuals of the same kind to be detected in other contexts.

The last step in the construction of these images is their de-contextualisation. Such an operation was, of course, already present in the first two stages. However, they are never 're-contextualised', which renders the de-contextualising operation not only an intermediary stage in the process of representation but also an element that seems to integrate the actual nature of these pictures. Left floating in the white sheet (Figure 5) of paper or punctuating the text (Figure 6), sometimes without any subtitle whatsoever, these heads of criminals are reified into stable and natural entities. The fact that they are deliberately portrayed outside their social environment tells us that the 'criminogenic factors' that originated those *criminal personae* converged into their morphologies and expressions and were 'frozen' into purely objective entities from which any trace of subjectivity was scientifically cancelled. (The deliberate and systematic character of this operation is evident if we compare these pictures with those of the penal agents portrayed in the same book, in which one can see an effort to create a visual analogy with the bust of the creator of the *panopticon*, the philosopher Jeremy Bentham.)

Through the analysis of the body into significant fragments, the erasure of the non-significant elements (any mark of subjectivity, etc.), the synthesis through schemes and de-contextualisation, Rodrigo Rodrigues (and arguably other criminologists) considered that they would identify objective *types* of criminals. Besides the intended practical use of these *types* (for the detection of criminals), they played an important role in channelling the vision of the observer of this kind of picture. Placed at the beginning of the book, the image of the parricide – a sort of archetype of all criminal characters – also provides a grid of reading for the figures presented in the following pages. Through this mechanism, a second visual process – besides the one described as fragmentation/ reconstruction – is triggered from the beginning of the act of viewing the pictures. This mechanism consists in placing the *type* at the beginning of the act of observation and letting it function as a filter in the viewing of the following pictures, underlining or hiding this or that aspect and orienting their interpretation. In reality, for the observer, both processes act simultaneously, recalling one another. The *type* is, thus, put at the beginning and at the end of a visual process where the observer is,

nevertheless, given the impression of being pushed along the ascending stages of a scientific method, starting with an analysis and finishing with a synthesis.

In cases where the *type* has achieved a sufficient degree of stylisation, the fiction of the process leading from analysis to synthesis is laid aside and the 'schemes' are openly allowed to tunnel² the vision of the observer into certain particularities. A good example of this are the pictures showing the use of the morphological types created by Sigaud and Mac-Auliffe and reproduced by Luís de Pina in *Tipos Constitucionais e Criminalidade* (1934) (Figures 7, 8 and 9).

iii) The third element, present in this type of representation are the articulators between *categories* and *types*. These were purely conceptual elements and most of the time only detectable in the texts accompanying the pictures, but, to the extent that *categories* and *types* may be seen as their technical derivations, such articulators were the central constituents of these representations. The articulators were concepts describing certain states of the individual endowed with a sufficient degree of stability, so that by detecting a *type* one could predict a *category* with reasonable certainty. In reality, they translated into certain species of 'abnormality' – the 'born criminal', the 'mad delinquent', the 'habitual delinquent', the 'prostitute', the 'degenerate', etc.³ The *species* – I will employ this abbreviated form from now on – gave a conceptual justification for the 'objective' form of the *type* and confirmed the objective nature of the play between picture (e.g. a type of thief) and subtitle (e.g. the category of 'thief'), guaranteeing that a picture of a particular individual would have a general, 'scientific' value. In other words, it explained why we should believe that, by recognising a type of criminal, we could predict her likely behaviour and degree of dangerousness to society.

Filling the gaps of modernity

We should now ask what were the objectives of publishing of these images and which were the less conscious functions of the rationality underlying their construction.

A more detailed observation of the picture of the parricide can give us a hint as to how to interpret the immediate objectives lying behind the

² I borrow the term from John C. Scott, *Seeing like a State*, New Haven and London, Yale University Press, 1998, p. 11.

³ The hypothesised permanent 'abnormal' state of criminals - linked to an idea of 'degeneration' and rooted on what Foucault called *la psychiatrie de l'état permanent*, opposed to *la psychiatrie des processus pathologiques*, 'instaureurs de discontinuités' – would emerge, in these forms, as social dangers. See on this, Michel Foucault, *Les anormaux, Cours au Collège de France. 1974-1975*, Paris, Gallimard / Le Seuil, 1999, pp. 281-282.

publishing of most of these pictures. Shown just after the image of a convict with a penitentiary hood, this image tells us that underneath all penitentiary hoods are extremely dangerous individuals and, analogously, that beyond the penitentiary walls there are some fearsome criminals from whom society must protect itself. The two pictures thus form, by themselves, a legitimising device. Justifying penal institutions was, therefore, the likely immediate objective of the publishing of the pictures of these 'frozen heads' and assassin hands.

More challenging is perhaps the attempt to understand what functions these pictures might have had in their historical contexts. We should here remember that criminal anthropology emerged in Italy, soon after unification, when it was trying hard to be a nation, despite the great differences it presented (cultural, linguistic, distribution of wealth between the north and the south, the extreme gap between rich and poor). The criminological discourse functioned, in this social environment that was perceived as threatened by fragmentation, as a unifying discourse: it unified all these differences into a coherent social body by freezing the evolutionary process (through the theories of degeneration and atavism) into the 'organic nation'.⁴ Its success in Portugal - a country with fewer problems of national identity but also characterized by a huge economic and cultural gap between the bourgeois ruling class and the popular classes and where the disparity between the projects of modernization and the actual situation was striking and presented with almost fatalistic contours - may well have resulted from its ability to perform a similar unifying function, at service of a modernising programme.

But in what way was criminal anthropology a unifying discourse? In its representations of the social phenomena, certain normal types, constructed in terms of social averages, were posited, and the various types of 'abnormals' were distributed along a continuum that deviated from that norm. Assuming that a given society comes together through a limited set of functions, which vary according to its stage of civilization, and which are performed correctly by 'normal individuals', it was understood, conversely, that social disfunctions (described as 'problems of disorder') were due to the agency of 'abnormal individuals'. Thus, through this device, disorder did not question the existence of a core of functions, nor, as a result, of the organic character of society.

On the other hand, criminal anthropology provided the justification for the somewhat embarrassing existence of crime in an organic society: many criminals, and certainly the most threatening ones, were considered as

⁴ Daniel Pick, *Faces of degeneration. A European Disorder, c.1848-c.1918*, Cambridge etc., Cambridge University Press, 1989, pp. 114-116.

'atavistic throwbacks', equated with savages, who could emerge in 'civilised society'. They were 'normal' in previous stages of evolution but 'abnormal' in the modern era. Paradoxically, through an abnormalizing discourse, criminal anthropology and its immediate inheritors managed to normalize crime, by integrating it within a general theory of society and justifying the creation of special institutions to deal with all sorts of 'deviants'. Measured against the pre-modern figures of outcasts – moral and physical monsters, lepers, witches, regicides –, all placed beyond the divide that separated humanity from nature or the realms of good and evil, 'abnormals' appear, both discursively and institutionally, as integrated in society.

It is, thus, possible to distinguish two senses in which the concept of 'normal' was used by criminology. In one of them - the first I have addressed - the concepts 'normal' and 'abnormal' refer to a set of pre-defined social functions deemed as 'natural' for a given stage of evolution of a society. Their focus is on synchrony. In the second sense, 'normal' refers to a diachronic process – the evolution of society from a stage of primitiveness (or even nature) to modernity – and is equated with 'civilisation'. To use Ian Hacking's terms, the first concept of 'normal' would fit into what he calls a 'regulative concept of norm', while the second could be termed a 'transformative concept of norm'.⁵

For criminal anthropologists, and many criminologists after them, society was close to modernity but it was not yet entirely modern: there were these atavistic criminals still blocking the arrival of modernity. Since criminal anthropology was committed to freeing society from these remains of 'primitiveness' – that is, to entirely normalising society - we can argue that normalisation was, from the perspective of criminal anthropology and many of its inheritors, a project of modernisation.

Apparently, its importance in modernisation was destined to be small, since its range of action was limited to criminals. However, after the initial impulse of criminal anthropology, criminology tried hard to expand its reach. The changes of strategy in the processes of visual representation of criminals and other types of 'deviants', and mainly in the play of the terms in the equation category-type-species are extremely revealing of this. As a general trend, we observe that, while in a first moment the categories of behaviour were crimes (even when associated with other types of 'immoral' behaviour), in further developments a toning down in the criminal aspect took place, leading to a configuration that was no longer that of crime-type-abnormality, but rather deviancy-type-abnormality. In more extreme cases, as illustrated by the photograph of a 'family of

⁵ Ian Hacking, *The Taming of Chance*, Cambridge, Cambridge University Press, 1999, pp.161-170.

degenerates' (according to its subtitle), the element of behaviour was effaced altogether from this equation, leading to the equation of type-abnormality (Figure 10). The publishing of this photograph with such a subtitle, without any reference to a crime or even to 'immoral' conduct, suggests the existence of a public already accustomed to relating the physical traits of these individuals with some species of 'abnormality' and to extracting the consequence – the danger they represented to society. In any case, this kind of work increased the chances of the public's doing just this.

Conclusion

Although we should be careful to draw general conclusions from this analysis, it gives us grounds to believe that criminal anthropology, after the peak of its influence, contributed to form a *habitus* of representation of criminals and other groups considered as 'deviants'. This *habitus*, structured on the play between what I have identified as *categories*, *types* and *species*, meant that some of the concepts dear to criminal anthropology were enacted even when theoretical criminological discourse was critical of the principles that foregrounded them. The idea that 'criminogenic factors' were inscribed, in a stable and long lasting way, in the bodies and personalities of 'deviants' – an idea that seems to have embodied a certain practice of visual representation – was possibly the most significant heritage of criminal anthropology.

This was, however, an unspoken or even unconscious, feature of the kind of pictures I have addressed. For the historical actors involved, they had a legitimising value – they legitimised penal institutions to which they were linked and, eventually, the claims to extend the penal apparatus – and a scientific-technical value. This latter was oriented to prevention, since it overtly focused on the recognition of criminal *types* in order to prevent the actions that, sooner or later, they would fatalistically originate.

The concern with making these pictures, as well as the 'scientific' work behind them, accessible and appealing to a general public reveal the intention of giving the public the means to detect social danger in the figures of these 'abnormals'. At any rate, some of these pictures indicate the existence of a public that was used to concepts of the *type* of 'abnormals' (such as 'degenerates'), and capable of associating them with physical *types* and deducing their dangerous behavioural and future manifestations. This suggests that, when analysing the emergence of what has been called as *societies of normalisation*, the Foucauldian perspective of strategies of power should be understood in wide terms in order to include their cultural conditions, namely the dissemination, within certain segments of society, of new types of representation of social reality.

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FIGURE APPENDIX

XV

A lei que impoz o estabelecimento do sistema penal penitenciário em Portugal obedeceu, embora tardiamente, à mesma lógica irresistível da História: foi um reflexo jurídico dos mais sensíveis que no nosso meio produziu aquele formidável abalo das instituições sociais.

Concluindo:

A criação da Penitenciária de Lisboa, como com exactidão se disse já, é um honroso documento histórico da revolução liberal portuguesa.

Colaborou no «*Courrier de Bretonne*» jornal de Mirabeau, e publicou os *Essay on Political Præctice* e *Draught of a code for the organisation of the judicial establishments in France*.

Tendo a primeira destas obras sido destinada aos Estados Gerais e a segunda apresentada por Mirabeau à Convenção, o duque de Rochefoucauld pediu que se fizesse a sua tradução, ao que Stöys se opôs.

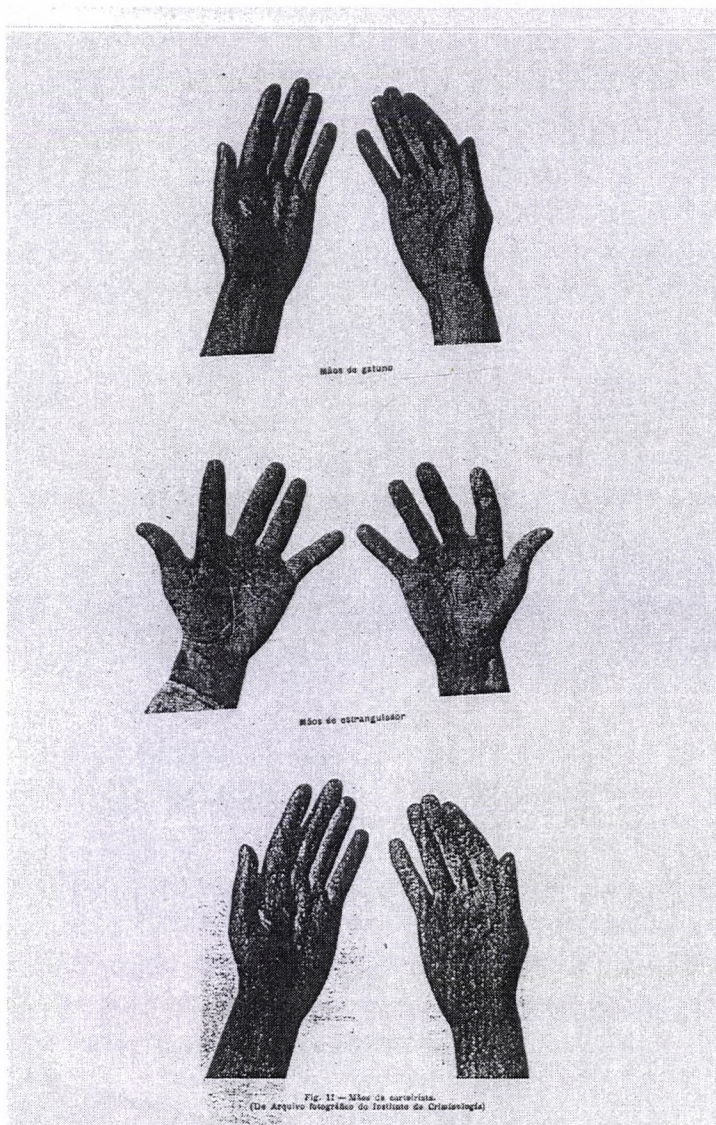
O seu regimento penitenciário — *Bases of the labour bill* — foi adotada pela Convenção, que em reconhecimento dos seus bons serviços e altas qualidades, lhe deu, por proposta de Brissot em 23 de Agosto de 1792, o título de cidadão francez. Bentham ainda escreveu, dirigida à Convenção, entre outras obras, *Emancipate your colonies* a que se seguiram ainda umas outras vinte e sete obras já publicadas em Inglaterra aonde voltou, tendo deixado, quando faleceu, manuscritos que onchem 80 caixas da biblioteca da University College.

Com um renome e consideração mundiais, coerente e fiel com os seus princípios do utilitarismo social, que constituem a mais extraordinária previsão da era de ciência positiva que se adivinhava, determinou que o seu cadaver servisse para estudos anatomicos o que, em tal epocha e pela raridade do facto, provocou um movimento geral da estupefacção.

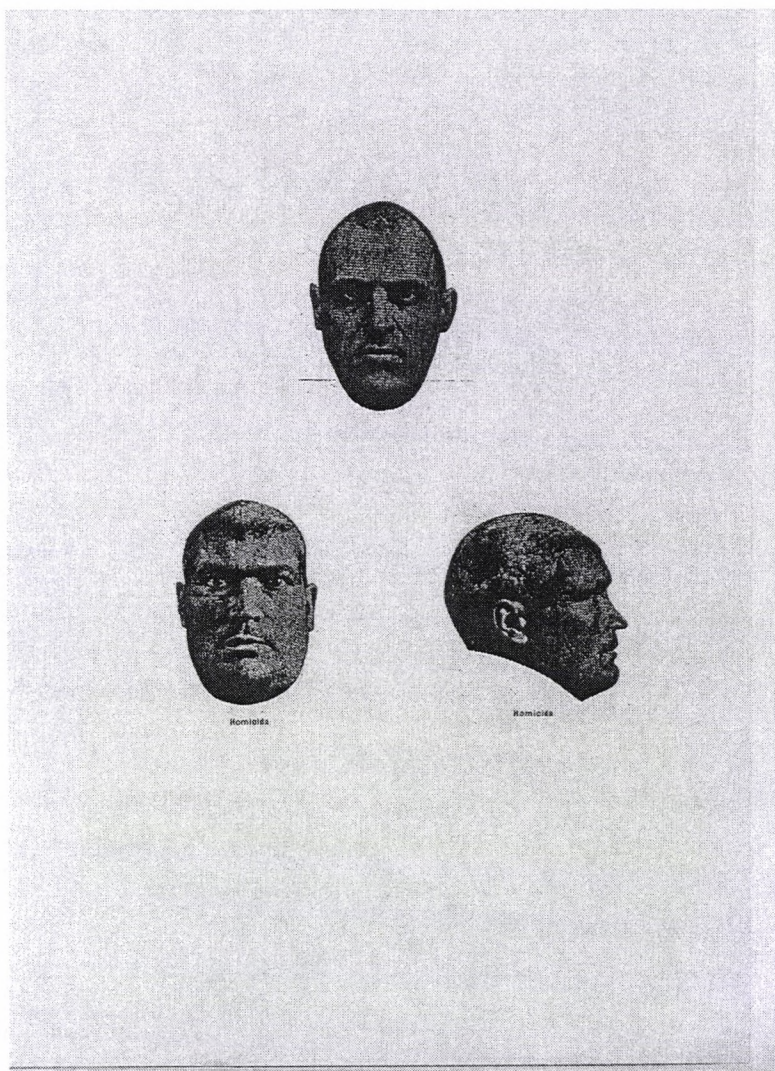
Com legítimo orgulho a Inglaterra vê no seu filho um dos mais nobres, generosos e geniais pioneiros da intelligencia humana, cuja acção, linha de conduta, coerencia e filosofia representam, em relação à filosofia positiva do seculo seguinte, a mesma proceurssão genial de Lamarck em relação à filosofia transformista de Darwin — outro imortal compatriota de Bentham.



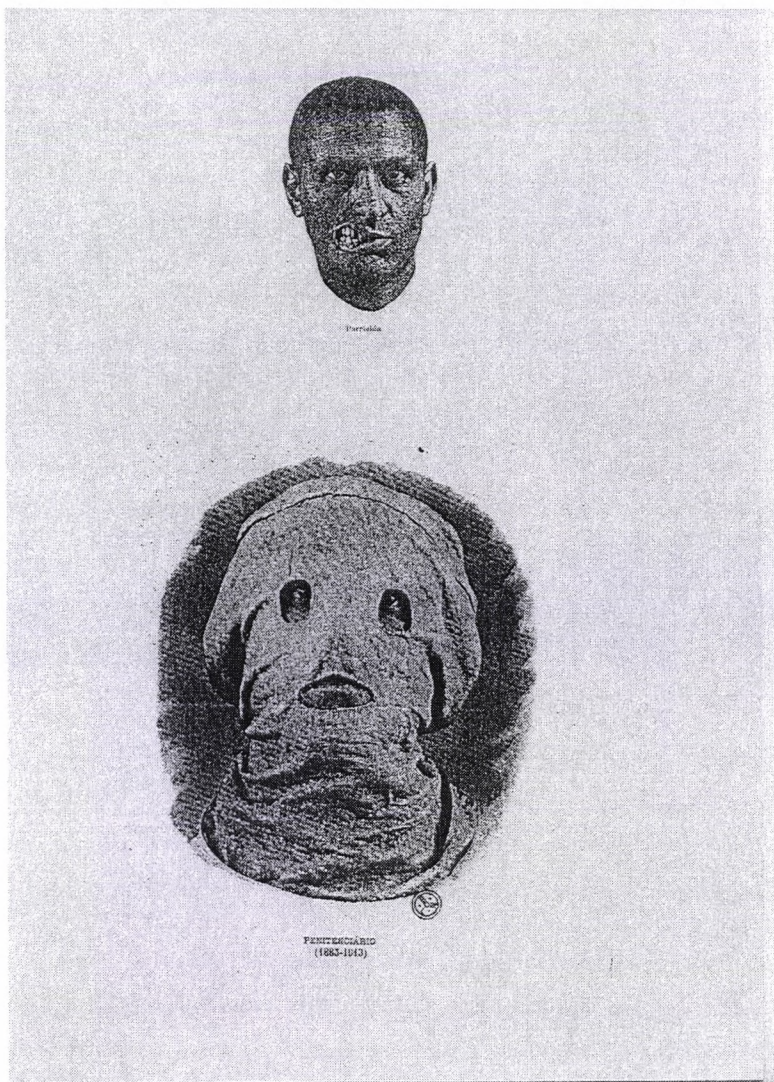
ILL. 1: Detail of an ear inserted in the text without subtitle.



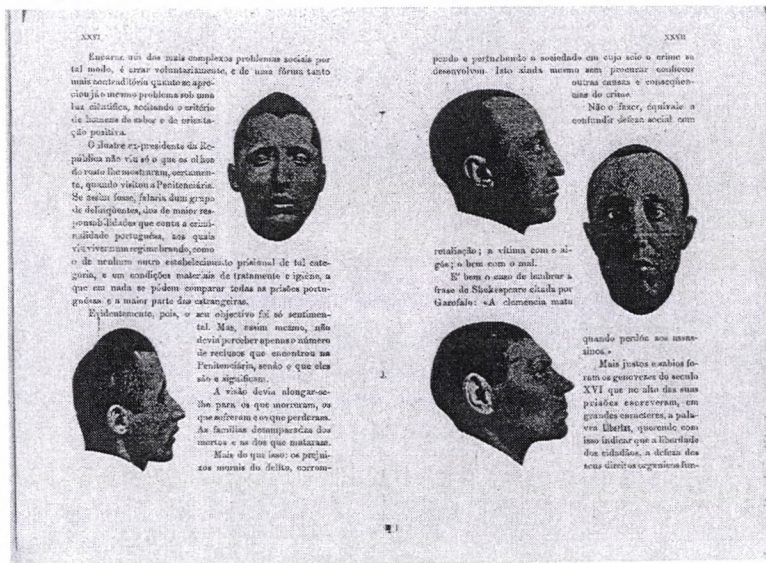
ILL. 2: Hands of delinquents. Above: «Hands of a thief », Center: «Hands of a strangler», Below: «Hands of a pickpocket».



ILL. 3: Heads of delinquents. Above: untitled head.
Below: figures of «murderers» .



ILL. 4: Above: figure of «Parricide»
Below: inmate of the Lisbon Penitentiary with the penitentiary hood.



ILL. 5: Heads of delinquents inserted in the text without subtitles.

mais brandos aos mais inerciosos e sangrentos. E como nas doenças grandemente contagiosas ha que atender ao doente — sem esquecer a coletividade a que elle pertence e cujos direitos são mais imperativos que os do individuo — assim tambem em criminallogia.

É preciso tratar os *doentes* — o criminallogista dirá os criminosos — mas mais necessario é prevenir, fazer a hygiene do meio social, havendo particular cuidado com os *predispostos*.

Assim se pensa hoje; mas, então, quando se visionou o sistema celular, podia, *devia* cometer-se o erro que se cometeu, porque se ignoravam todos os ensinamentos que só depois a Antropologia, a Psiquiatria, os varios ramos da Biologia e outras ciencias de base positivas nos vieram ensinar. Hoje, seria isso erro incompreensivel. Se é importantissima a ação do meio externo, ella está longe de ser unica e dominante, em relação ás determinações individuais. A modalidade reaccional é *sui-generis*, individualisada, característica para cada delinquente e especial para cada caso, como o são os factores determinantes das nossas acções.

O tratamento do individuo tem, portanto, de ser tambem especial, *individualisado* em relação a cada preso e caso. É isto hoje uma banalidade incontestavel, mas que precisa ser vulgarisada.

E se a propria coletividade pode adotar para si «por menor esforço», «por melhor metodo» sistemas de defeza, ainda assim eles só são uteis quando adaptados ás suas condições proprias.



ILL. 6: Heads of delinquents inserted in the text without subtitles.

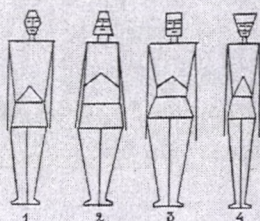


Fig. 2 — Esquemas des types morphologiques. (Extrait de A. Thorelli, «La vie par le Stades»)
1 — Reproductive; 2 — Digestive; 3 — Muscular; 4 — Cerebral

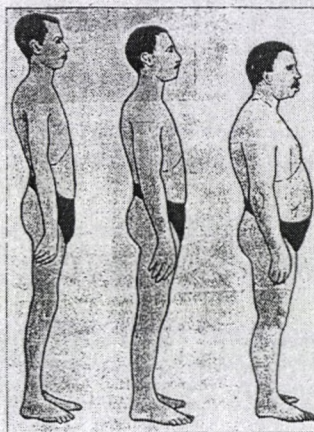


Fig. 3 — Tipos costitucionais, segundo Viola (extrato de: A. Schenkel, «Contrasto alto maslo degli stadi costituzionali. Ann. di Clinica Terap.» Vol. 9, N. 2 e 3)
Da esquerda para a direita: Micro-espasticismo, Normo-espasticismo, Macro-espasticismo

ILL. 7: Above : scheme of morphological types.
Below: constitutional types according to Viola.

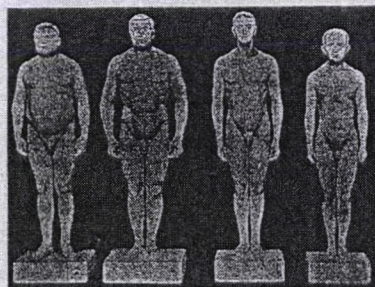


Fig. 3—Representações plásticas dos 4 tipos Sigaud-Mac-Auliffe. Foto de Anstrop. Österreich. in Wien, 1926-27: esboço de V. Lehnacher e Emma Engel-Gastrecht. «Plastische Darstellung der Konstitutionstypen nach Sigaud und Mac-Auliffe».

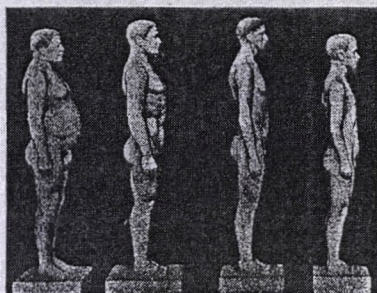


Fig. 4—Tipos morfológicos de Sigaud e Mac-Auliffe. Os mesmos da Fig. 3, observados de perfil.

ILL. 8: Representation of Sigaud and Mac-Auliffe morphological types

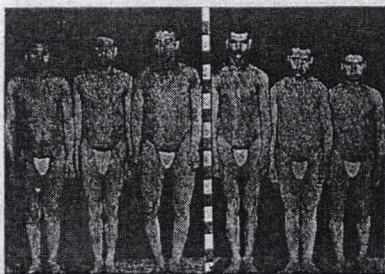


Fig. 5—Exemplares de tipos morfológicos em delinqüentes (Obs. do autor)
De esquerda para a direita: muscular, respiratório, muscular, respiratório, digestivo, muscular.

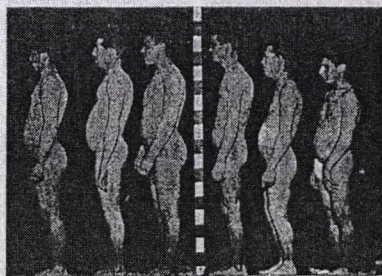


Fig. 12—Exemplares de tipos morfológicos em delinqüentes (Obs. do autor)
De mesmo de figura anterior (perfil)

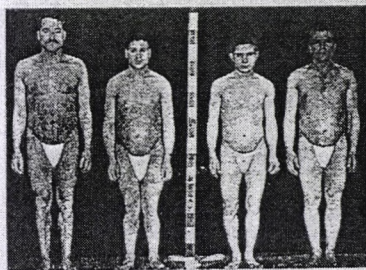


Fig. 13—Exemplares de tipos morfológicos em delinqüentes (Obs. do autor)
De esquerda para a direita: muscular, digestivo, cerebral, muscular

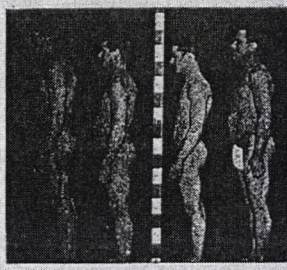


Fig. 14—Exemplares de tipos morfológicos em delinqüentes (Obs. do autor)
De mesmo de fig. anterior (perfil)

ILL. 9: Morphological types of delinquents



ILL. 10: Representation of «A family of degenerates»

Foucault and the history of criminology as discursive practice

Peter Becker

In *Discipline and Punish* (1975, English translation 1977), Foucault describes discipline as crucial for the programs, technologies, and discursive practices guiding and informing the practices of imprisonment. Discipline is seen as the main rationale behind general strategies of integration and segregation. Due to the 'genealogical' character of Foucault's inquiry, his interest in disciplines is not mainly in the discontinuities on the level of discourses and practices, but rather in the identification of the origins of contemporary penal practices.¹

My reflection on the history of criminology as discursive practice takes its cue from a critical reading of Foucault's *Discipline and Punish* as a "history of the present". I follow Foucault by primarily considering the texts of practitioners who attempted to develop projects to improve the performance of the administrative apparatus by linking "a way of understanding a problem to the institutions and practices of society."² Differentiating myself clearly from Foucault's approach, I look at these texts not from the vantage point of the postwar prison system, but rather understand them as contributions to a discourse whose discontinuities provide important insights into changing modes of governance. My argument is mainly based on research on the history of criminology in 19th century Germany as discourse and practice.³ Comparative explorations into

¹ Michel Foucault: *Discipline and Punish. The Birth of the Prison*. London 1977, 31; John S. Ransom: *Foucault's Discipline. The Politics of Subjectivity*. Durham 1997, 88ff. An interesting survey on the reflections of historians on Foucault can be found in: David Garland, *Punishment and Modern Society. A Study in Social Theory*, Chicago 1993, 157ff; on pp. 131 and 168 Garland reflects especially on the difference between control program and implemented control strategies. A critique on Foucault's thesis of panoptical control from a historical perspective cf. Dirk Blasius, *Kriminologie und Geschichtswissenschaft. Bilanz und Perspektiven interdisziplinärer Forschung*. In: GG 14, 1988, 136ff. The most current discussion of Foucault's arguments from a social historical perspective can be found in Richard J. Evans, *Rituals of Retribution. Capital Punishment in Germany, 1600-1987*, London 1997, 880ff.

² Cited after Ransom, *Discipline*, 44 and 130.

³ Cf. Peter Becker, *Verderbnis und Entartung. Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis*. Göttingen 2002.

the criminological discourse of this time reveal, however, that criminological reflections followed a similar logic within Europe.

When placing the practitioners' writings in the context of a criminological discourse of the 19th century, I rely on Foucault's approach to discourse analysis.⁴ This choice is motivated by the fact that *Archaeology of Knowledge* presents a model for the reconstruction of discursive practices and their relation to non-discursive practices, which is of key importance for understanding the links between disciplines, discourses and institutions. These links are also crucial for Foucault's argument in *Discipline and Punish*. He presents disciplines as a main force in shaping the subjectivity of people, and speaks therefore of the productive and not exclusively destructive character of disciplines.

Following Ransom and his extensive reading of Foucault, I consider disciplines only as one of several resources for the shaping of subjects. Of equal importance were the theoretical and non-theoretical concepts that individuals used to structure and appropriate their social world.⁵ From this perspective, a systematic reflection on the different forms of conceptualizations of crime and criminals throughout the 19th century is of relevance for developing a more differentiated view of the penal system as a site where programs of action were developed and, to some extent, also deployed.⁶

Discontinuity between the pre-modern and modern penal system

Foucault introduces the "colonization of the penalty by the prison" as the result of a major, even though surprising transformation of the system of punishment. The surprise results from a narrative strategy in which he links the critique of pre-modern punishment to the emergence of a new semiotics of public punishment that was completely unrelated to the prison system.

⁴ Michel Foucault, *L'Archéologie du savoir*. Paris 1969 (English translation: *Archaeology of Knowledge*. London, New York 1972).

⁵ Cf. Ransom, *Discipline*, 128.

⁶ This is not intended to reverse Foucault's shift in perspective towards a 'social history of practices', but reflect on the influence of an emerging social science approach towards social problems on institutional strategies of preventing and fighting crime. On Foucault's shift in perspective cf. Ulrich Brieler, *Foucaults Geschichte*. In: GG 24, 1998, 261f. My reflection will not just provide a critique of *Discipline and Punish*, but contribute towards a new history of criminology as discursive practice: This will allow to choose another alternative to a formalistic discourse analysis than the one Foucault has chosen by focussing on issues of disciplines and power. For a critique on Foucault from this perspective cf. Thomas Lemke: *Eine Kritik der politischen Vernunft. Foucaults Analyse der modernen Gouvernementalität*. Berlin 1997, 46-50. For a convincing reflection on linguistically oriented approaches to discourse analysis cf. Peter Schöttler: *Historians and Discourse Analysis*. In: *History Workshop Journal* 27, 1989, 37-65.

The new semiotics was aimed more at the onlooker than the pre-modern spectacle of punishment, but it was expected to deter without brutalizing. The “punitive city” with its “hundreds of tiny theatres of punishment” no longer avenged the offended authority of the prince. Rather, it clearly marked the offender as the *other* in the new bourgeois society and at the same time used his body as a space to teach the spectators a lesson, though a different one from the spectacle of vengeance on the scaffold:

*The example is no longer a ritual that manifests; it is a sign that serves as an obstacle. Through this technique of punitive signs, which tend to reverse the whole temporal field of punitive action, the reformers were thought they were giving to the power an economic, effective instrument that could be made general throughout the entire social body, capable of coding all its behavior and consequently of reducing the whole diffuse domain of illegalities.*⁷

At the end of this part of his argument, Foucault leaves the reader puzzled: he makes a strong case against adopting the prison as the main strategy for punishment and coercion. Nevertheless, when monarchical law and its “ritual marks of vengeance” vanished, the “punitive city” was not introduced. The principle of detention for every offense of importance replaced the early modern ‘theatre of punishment’. Foucault’s argument to explain this surprising turn is well known. It is the perspective of transforming a *fallen* human being, whose moral-ethical deprivation allowed him/her to act against society, into a docile, productive member of society through subjecting his mind and body to a system of discipline. Foucault presents this transformation as part of larger “political anatomy”, which aimed at the production of “subjected and practiced bodies, ‘docile’ bodies.”⁸

When this puzzle is looked at from the perspective of Foucault’s remarks on discourse analysis, the structure of his argument regarding the change from pre-modern to modern penal practices becomes clearer. In his *Archeology* he distinguishes three different types of relations between objects and discourses, between crime and criminology in this case. Primary – or ‘real’ – relations link crime rates to socioeconomic structures, while secondary – or ‘reflective’ – relations refer to the connection between crime and contemporary criminological reflections. Foucault understands tertiary – or ‘discursive’ – relations as the specific structure of a discursive practice. This structure defines, for example, the privileged position from where to speak about crime and criminals, favors specific modes of enunciation, and privileges specific forms of evidence for a systematic inquiry into the very nature of criminals.

⁷ Foucault, *Discipline and Punish*, 94.

⁸ *Ibid.*, 138.

The second part of *Discipline and Punish* restricts itself to the discussion of primary and secondary relations. Foucault does not develop a convincing outline of the tertiary discursive relations within criminological discourse.⁹ Foucault reconstructs the shift from the pre-modern to a modern penal system with a strong emphasis on the role played by changing primary relations. He correlates the changing nature of crime, shifting from violent to property crimes, with a general rise in the standard of living, a large demographic expansion and an increase in wealth and property since the first half of the 18th century.¹⁰ This resulted, according to Foucault, in a shift in the main targets of criminal activities from rights (such as taxes and levies) to property. The endemic form of illegality, which was characteristic of the penal system of the Ancien Régime, became increasingly intolerable within a new economic system: "...this illegality, while resented by the bourgeoisie where the ownership of land was concerned, was intolerable in commercial and industrial ownership."¹¹

On the level of secondary relations, Foucault identifies an increased need for security associated with higher living standards and therefore a higher demand for systematic prosecution of even minor property crimes. Moreover, a new understanding of landed property developed, in which the tolerated 'rights' of the peasantry such as free pasture and wood collecting were rejected and criminalized.¹² Higher legal and moral value was placed on property relations, coinciding with the demand for a more finely tuned justice system, which was expected to deter the potential criminal through a finely grained system of representations and through the certainty of punishment for every crime committed. The reform aimed therefore at punishing better, not less.¹³

What the remainder of the book adds from the perspective of tertiary relations is the reconstruction of a discourse and practice of discipline aiming at the production of docile bodies as a response to new political,

⁹ Foucault, *Archeology of Knowledge*, 45f.

¹⁰ Foucault, *Discipline and Punish*, 75ff.

¹¹ *Ibid.*, 85.

¹² Cf. Dirk Blasius, *Bürgerliche Gesellschaft und Kriminalität. Zur Sozialgeschichte Preußens im Vormärz*, Göttingen 1976, 138; social historical accounts of the conflicts related to the transformations in the concepts of property can be found also in: Dirk Blasius, *Kriminalität und Alltag. Zur Konfliktgeschichte des Alltagslebens im 19. Jahrhundert*, Göttingen 1978; Michael Grüttner, *Unterklassenkriminalität in Hamburg. Güterberaubungen im Hamburger Hafen 1888-1923*, in: Heinz Reif (Ed.), *Räuber, Volk und Obrigkeit. Studien zur Geschichte der Kriminalität in Deutschland seit dem 18. Jahrhundert*, Frankfurt 1984, S. 153 ff; Josef Mooser, „Furcht bewahrt das Holz.“ *Holzdiebstahl und sozialer Konflikt in der ländlichen Gesellschaft 1800-1850 an westfälischen Beispielen*, in: *ibid.*, 43ff.

¹³ Foucault, *Discipline and Punish*, 94ff.

social and economic conditions.¹⁴ This particular framework provides the reflection on the *fallen* human being within the discursive and institutional space of the prison, where the reform of the criminal, his resurrection as citizen, and therefore his re-insertion into the production process should take place. Foucault traces the origins of these disciplinary mechanisms to the army, workshop and schools of the early modern period. He does not restrict himself, however, to a genealogy of these techniques. He also emphasizes their crucial role in political discourses and institutional practices of the 19th century, where the production of knowledge and subjects were interlinked within a new political technology.

Foucault introduces this new technology with reference to the 'panopticon', which represents in his argument state-controlled disciplinary mechanisms for neutralizing dangers, for making "useful individuals", and for building a system of lateral control to penetrate the social body.¹⁵ He links the production of criminological and penal knowledge about deviance, and about its reasons, prevention and elimination closely to the panoptical surveillance of the society. Conceptually, this required that every individual be subjected to a disciplining, normalizing, and researching gaze. Foucault even describes the panopticon as a "laboratory", which "...could be used as a machine to carry out experiments, to alter behavior, to train or correct individuals."¹⁶

Foucault's reflection on the panoptical perspective does justice to the viewpoint of contemporary commentators by extending the reach of the argument well beyond the narrow walls of the prison and, equally important, beyond the problem of criminal offenses. Until the late 19th century, criminals were understood as being the main enemies of the social body.¹⁷ Criminals were not, however, the only problem from the perspective of discipline and reform. Deviance appeared to social and moral reformers in many guises and pointed to the existence of a threatening gap between their basic assumptions about society and social reality. My reading of the criminological writings of statisticians, administrators, and philanthropists indicate that the "programs of actions" developed during the late 18th and early 19th centuries, aimed at the

¹⁴ Cf. Lemke, Kritik, 76f.

¹⁵ On the concepts of normalization and discipline within Foucault's argument cf. Garland, Punishment, 145ff. The panoptical model was certainly never put into practice. On the Panopticon as political program cf. Stefan Breuer, Die Formierung der Disziplinargesellschaft: Michel Foucault und die Probleme einer Theorie der Sozialdisziplinierung. In: SOWI 12, 1983, 262; Hubert Treiber und Heinz Steinert, Die Fabrikation des zuverlässigen Menschen. Über die 'Wahlverwandschaft' von Kloster- und Fabrikdisziplin. München 1980, 77ff.

¹⁶ Foucault, Discipline and Punish, 203.

¹⁷ Cf. Foucault, Discipline and Punish, 90.

elimination of disorder in more general terms in the forms of vice, idleness and transgression of gender as well as social roles in order to prevent crime.¹⁸

This broader perspective directs the attention towards a blind spot in Foucault's argument. He does not systematically reflect on the objectification of the criminal within the penal discourse. This is all the more surprising as he identified this issue as one of the two questions linked to the reform of punishment as political program of prevention:

*...the two types of objectification that emerge with the project of penal reform are very different from one another: both in their chronology and in their effects. The objectification of the criminal outside the law, as natural man, is still only a potentiality, a vanishing trace ... The other, on the contrary, has had much more rapid and decisive effects in so far as it was linked more directly to the reorganization of the power to punish: codification, definition of offences, the fixing of a scale of penalties, rules of procedure, definition of the role of magistrates.*¹⁹

Foucault's failure to address the essentially anthropological question of how the perpetrator was conceptualized within the penal and anthropological discourse has important consequences for his argument, especially regarding the analysis of discursive relations.²⁰ As he restricts this part of his argument only to the question of the "homo criminalis" situated outside the law and defined as "natural man", he overlooks the relevance of the emergence of a moral-ethical subject for the discussions of moral and penal reformers. Foucault discovered the importance of the liberal persona only in his later writings on governmentality. Only at this time Foucault reflects more systematically on the cultural-political assumptions that were at the core of both the early criminological discourse and a liberal form of government, which tried to integrate 'free' and interest-bound subjects into state and society.²¹

¹⁸ Cf. Becker, *Verderbnis*, chap.1-3; cf. also Jeroen Dekker, *The Will to Change the Child. Re-education Homes for Children at Risk in Nineteenth Century Western Europe*. Frankfurt/Main 2001.

¹⁹ Foucault, *Discipline and Punish*, 102.

²⁰ A convincing introduction into the divers anthropological conceptions of the 19th century can be found in: Achim Barsch, Peter M. Hejl, *Zur Verweltlichung und Pluralisierung des Menschenbildes im 19. Jahrhundert: Einleitung*, in: *ibid.*, (Eds.), *Menschenbilder. Zur Pluralisierung der Vorstellung von der menschlichen Natur (1850-1914)*, Frankfurt/Main 2000, esp. 11f.

²¹ Cf. Lemke, *Kritik*, 172-183; Michel Foucault, *Naissance de la biopolitique* (1979). In: *Dits et Écrits II*, 1976-1988, Paris 2001, 818-825; Michel Foucault, *Espace, savoir et pouvoir* (1982). In: *Dits et Écrits II*, 1976-1988, Paris 2001, 1089-1104, 1090-92.

The moral-ethical concept of deviance

In his reflections on the arguments of penal law reformers, especially in his outline of the 'punitive city', Foucault refers to the psychological premises of the reform plans. The individual, who is deterred by sensual impressions of the semiotics of punishment, is a permanently calculating and, at the same time, morally not very advanced human being. He is in principle ready to follow his deviant inclinations for the pursuit of immoral or even illegal gain. To deter him, an almost mechanical counterweight – a carefully calculated semiotics in which crime and punishment are intimately connected – had to be established: "A crime is committed because it produces certain advantages. If one linked, to the idea of crime, the idea of a slightly greater disadvantage, it would cease to be desirable."²² This psychological concept of prevention influenced penal law theories in Germany at the end of the 18th and the beginning of the 19th century. Paul J.A. von Feuerbach was the most influential spokesman of a model of general prevention based on psychological deterrence. His theory provided the basis for the very influential Bavarian penal code of 1813.²³ He wanted to deter, however, less through punishment itself, but rather through the idea of punishment.

Even though the sensualist perspective was quite influential, it was not the only one. Within criminological, penological and philanthropic reflections on prevention of crime and the reform of criminals, a notion of 'man' dominated that conceptualized the subject as being guided by a moral-ethical outlook on life. Patriotism and the resulting subjection of the individual to the common good was understood as the invisible hand harmonizing personal and public interests.²⁴ Foucault's omission of any reflection on the importance of the 'liberal' persona for the criminological and penological discourse of the early 19th century leaves a void, which is filled by the 'panopticon' as metaphor of power relations. This metaphor has a strong resemblance to Max Weber's notion of the 'iron cage', in which integration is mainly organized through a form of repression aiming at producing docile bodies.

²² Foucault, *Discipline and Punish*, 94.

²³ Cf. Helga Müller, *Der Begriff der Generalprävention im 19. Jahrhundert. Von P.J.A. Feuerbach bis Franz v. Liszt*. Frankfurt/Main 1984; Monika Frommel, *Präventionsmodelle in der deutschen Strafzweck-Diskussion. Beziehungen zwischen Rechtsphilosophie, Dogmatik, Rechtspolitik und Erfahrungswissenschaften*. Berlin 1987.

²⁴ Cf. Rudolf Vierhaus, „Wir nennen's Gemeinsinn“ (We Call it Public Spirit): Republic and Republicanism in the German Political Discussion of the Nineteenth Century. In: Jürgen Heideking et. al. (Eds.), *Republicanism and Liberalism in America and the German States, 1750-1850*. New York 2002, 21-32, 21-24.

Within the German-speaking discourse on crime and criminals, the problem of punishment, social integration, and deviance was raised in more complex terms as Foucault suggests in his analysis of the French discourse. Practitioners reflected on the possibility of willful, wicked opposition towards the reasonable expectations of state and society mainly in discussions about repeat offenders. These discussions were strongly based on moral philosophy, its anthropological presumption, and its conceptualization of liability. The concept of liability was informed by Immanuel Kant's concept of 'freedom' (Freiheit), which assumed that every individual's volition had to be free from determining influences. Individuals could therefore be expected to make their decisions based on reason.

Kant as well as many legal, penal and moral reformers was fully aware of the fact that everyone had to come to terms with a wide range of different influences when making decisions. They stressed, however, that these influences did not usually determine the choice, but that some of them made it rather difficult to opt for the reasonable choice.²⁵ Habitual customs, sensual drives, socialization into a wicked lifestyle, were among the long list of influences preventing repeated offenders from becoming respectable members of society. By blaming criminals for failures of the penal system to reintegrate them into state and society, the challenge posed by recidivist criminals to the anthropological assumptions of the penal code could be met.²⁶ Foucault's reflection on the failure of the penal system leaves aside the logic of contemporary reflections and introduces an interesting twist. He stresses the positive contribution of the reproduction of the criminal world to the control of the society by state agencies. The members of the political police appreciated these side effects already in the 19th century, but the failure of prevention and reform put the 'liberal' penal

²⁵ Cf. the argument in Immanuel Kant, *Kritik der reinen Vernunft*. vol. 2, ed. Wilhelm Weischedel (vol. 4 of collected works). Frankfurt am Main 1995, 489.

²⁶ To Kant the incorrigibility of offenders posed no challenge, because he resisted any utilitarian understanding of the penal law. He considered the penal law as "categorical imperative", which did not allow any additional rationale of punishing, such as the one aiming at prevention. Cf. Immanuel Kant, *Die Metaphysik der Sitten*. Part 1. *Metaphysische Anfangsgründe der Rechtslehre* (1797), ed. Bernd Ludwig, Hamburg 1986, 155; on the influence of Kant's doctrine on the penal law discourse cf. Joachim Rückert, *Kant-Rezeption in juristischer und politischer Theorie* (Naturrecht, Rechtsphilosophie, Staatslehre, Politik) des 19. Jahrhunderts. In: John Locke und Immanuel Kant. *Historische Rezeption und gegenwärtige Relevanz*, ed. Martyn P. Thompson, Berlin 1991, 160 and 188f. The famous German penal law reformer P. J. A. Feuerbach opposed – like many of his contemporaries – the penal law theories of Kant, opted for a limited utilitarianism, and continued to conceive of himself as Kantian: cf. Frommel, *Präventionsmodelle*, 136.

system at risk – an aspect overlooked by Foucault because of his lack of interest in the discontinuities of criminology as a discursive practice.

To understand the logic of the criminological discourse until the second half of the 19th century we need to acknowledge the practitioners' interest in prevention. For this reason, they looked for the circumstances in which the persuasive influence of reason on individual decision-making processes failed and deviance emerged. Their findings were published in order to develop new penal strategies, for which the support of peers, superiors, and respectable citizens were sought.

The practitioners approached the problem of criminality from a different angle than legislators such as P.J.A. Feuerbach. During the first half of the 19th century, both legislators and practitioners used, however, Kant's concepts of freedom and *Gesinnung*, i.e. of attitude towards life, when they reflected on the unfolding of criminal careers in criminological case studies.²⁷ In contrast to legislators, practitioners used their insights systematically to draft programs for police prevention. Preventative measures were directed against those people who seemed to lack the necessary potential for reasoning. These included the less educated people,²⁸ but also members of the educated classes who developed a dangerous form of misguided reason. For each of the two problem groups, specific solutions were proposed.

For the lesser educated, a more thorough supervision in the sense of a panoptical discipline combined with religious teaching seemed to suffice. Misguided reason as the seedbed for an evil attitude towards society, was considered to be more dangerous than the lack of reasoning. To fend off this threat, several strategies were pursued: The police and the penal law were considered to provide important 'guidelines' for everyone who lacked

²⁷ Cf. Paul Johann Anselm Feuerbach, *Merkwürdige Criminal-Rechtsfälle*, Bd. 2, Gießen 1811, 3-30; Becker, *Verderbnis*, 266-8.

²⁸ On the discussion on the overlap between social stratification and the different capabilities to reason, cf. Holger Böning, *Der 'gemeine Mann' als Adressat aufklärerischen Gedankengutes. Ein Forschungsbericht zur Volksaufklärung*. In: *Das Achtzehnte Jahrhundert*, 12, 1988, 52ff.. The inoculation of reason into the members of the lower classes was considered by contemporaries as a rather utopian project: Cf. Rudolf Vierhaus, *The Revolutionizing of Consciousness. A German Utopia?* In: Eckhart Hellmuth (Ed.), *The Transformation of Political Culture. England and Germany in the Late Eighteenth Century*. Oxford 1990, esp. 574f. Cf. also Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte*. Vol. 2, *Von der Reformära bis zur industriellen und politischen 'Deutschen Doppelrevolution', 1815-1848/49*, München 1987, 480f. On the integration of children of marginalized parents through philanthropic education projects cf. Jeroen J. H. Dekker, *Transforming the Nation and the Child: Philanthropy in the Netherlands, Belgium, France and England, c.1780-c.1850*. In: H. Cunningham, J. Innes (Ed.), *Charity, Philanthropy and Reform. From the 1690s to 1850*. London 1998, esp. 131f.

a fully developed moral and ethical constitution. These institutions at least demarcated the limits of choice by defining more or less clear-cut borderlines for social and economic activities. They were therefore expected to enforce behavioral patterns, which were not necessarily based on ethical principles, but were within the space of legality.²⁹

In their criminological reflections, 19th-century practitioners conceptualized criminality as professional occupation of morally degraded, but physically and intellectually well-developed men.³⁰ They were therefore preoccupied, among others, with the identification of those conditions under which moral degradation, i.e. evil attitudes and misguided reason, could develop and in which disguises it appeared first to the observation of police, law and moral reformers. Alcoholism appeared together with prostitution and gambling to be the main reasons for men's departure from the path of virtue. The senior detective Johann Friedrich Carl Merker was quite representative when he stressed the prostitute's corrupting influence on young males as the most immediate problem. He argued that "once young men develop an inclination for intercourse with prostitutes, they can not freely pull themselves away again." They often turned to embezzlement, forgery and thievery to acquire the means that were necessary to live up to the expectations of prostitutes. Since these young men could not even be cured from their insidious inclination by imprisonment, Merker demanded that prostitutes be banned from city streets (Merker 1839, 37; Fröhlich 1851, 77). Furthermore, the negative influence of professional criminals and the bad example of their lavish and easy going lifestyle was even considered a motivation for members of the poorly paid police force and the local courts to join forces with the underworld.³¹

This knowledge about the possible sites of seduction was crucial for building a new system of prevention and techniques of reform, more complex than Foucault is able to reconstruct with his exclusive focus on the prison. In all reflections on reform institutions, one can trace the awareness that a person develops an evil attitude only gradually, and that the slow

²⁹ Martin Wiener found a similar logic within the British penal law discussion: *Reconstructing the Criminal. Culture, Law, and Policy in England, 1830-1914*. Cambridge 1990, 141ff. From this perspective a multitude of disciplining and normalizing strategies can be conceptually integrated. This allows for a differentiation in Foucault's argumentation, which Garland (*Punishment and Modern Society. A Study in Social Theory*, Chicago 1993, 170) calls for.

³⁰ On the moral philosophical foundations of 19th century criminology cf. Becker, *Verderbnis*, chap. 1.

³¹ Franz Andreas Wennmohs, *Ueber Gauner und über das zweckmäßigste, vielmehr einzige Mittel zur Vertilgung dieses Uebels*, Bd. 1: *Schilderung des Gauners nach seiner Menge und Schädlichkeit*, in seinem Betriebe, nach seinem Aeußern und als Inquisiten, Güstrow 1823, 29.

degradation has to be countered by an equally slow, and thus long lasting recuperation. Moreover, research into the organization of the criminal profession revealed a highly organized social organization, which the criminological authors (re-) constructed by projecting the structural elements of their own world onto the criminal underworld.³² The criminal world was therefore presented as having its own socialization routines that had to be taken into consideration when developing strategies for reclaiming juvenile offenders for state and society. In the 1820s, the penal expert Franz Andreas Wennmohs identified as one of the most pressing problems for internal security the existence of a “class of people” who stayed together, excluded themselves from all means of moral improvement and betterment, and systematically prepared their offspring for criminal careers.³³

The practices of reform, deterrence, and surveillance were based on mostly silent assumptions about the social, moral, and political nature of men in general and of criminals in particular. This motivated extensive criminological research – an observation, already emphasized strongly by Foucault:

*The legal punishment bears upon an act; the punitive technique on a life; it falls to this punitive technique, therefore, to reconstitute all the sordid detail of a life in form of knowledge, to fill in the gaps of that knowledge and to act upon it by the practice of compulsion.*³⁴

One widely acknowledged strength of Foucault's *Discipline and Punish* is, that this link between production of knowledge and the production of docile bodies – or more bluntly, between knowledge and power, is used to overturn long-lasting notions of a neutral form of knowledge as operating outside of and in opposition to power relations.³⁵ He takes this argument even further and identifies “the petty, malicious minutiae of the disciplines and their investigations” as the very origins of the sciences of man and their technical matrix.³⁶ One of the links between the sciences and the disciplines

³² See Peter Becker, *Kriminelle Identitäten im 19. Jahrhundert. Neue Entwicklungen in der historischen Kriminalitätsforschung*, in: *Historische Anthropologie* 2, 1994, 142ff.

³³ Wennmohs, *Ueber Gauner*, 29.

³⁴ Foucault, *Discipline and Punish*, 252.

³⁵ Foucault's concept of ‘knowledge’ refers both to information about the social world and to the mastering of specific bureaucratic techniques. Cf. Garland, *Punishment*, 138f and 148f.

³⁶ Foucault, *Discipline and Punish*, 226; an intriguing discussion of the power-knowledge thesis can be found in Rudi Visker: Michel Foucault. Genealogy as Critique. London 1995, 54ff, where he emphasizes the ambiguous character of Foucault's concept of ‘power’ and the influence this ambiguity has for Foucault's argument about the relations between disciplines and human sciences. Michel de Certeau, *The Arts of Theory*. In: V.E. Taylor, C.E. Winquist (Eds.), *Postmodernism. Critical Concepts*. Vol.

is identified by Foucault in the normalization effect of disciplines, for they are based on the creation of a homogenous field of observation, the cases of which are compared, differentiated, excluded and hierarchized.³⁷

Looking at different forms of conceptualization of both deviance and reform strategies, one can argue that the 'liberal' anthropological vision played an equally important part as the disciplinary strategy of the prison in creating a homogeneous field of observation. The homogeneity of criminological observation resulted from an anthropological notion, which ascribed every single individual, the possibility to opt for or against a decent, moral, and law-abiding lifestyle. From this viewpoint, decontextualized biographies focusing on the unfolding of vice and crime could be considered as appropriate evidence for criminological reasoning.³⁸

Foucault is therefore right when he stresses the importance of the biographical interest of the penal experts: "The introduction of the 'biographical' is important in the history of penalty. Because it establishes the 'criminal' as existing before the crime and even outside of it."³⁹ Foucault pinpoints some important aspects of the prison as a 'program of action' by linking it to the normalizing practices of disciplines and their knowledge-generating functions. His analytical focus is limited, however. He implicitly assumes a common anthropological basis inspiring both the prison reform models of the early 19th century and Foucault's contemporary discussion. In between these two time periods, he identifies an anthropological intermezzo of the *homo criminalis*⁴⁰ – the "natural man" – on which the criminological discourse of the late 19th and early 20th centuries focused. But can we still claim that a form of *biography*, which restricts itself to the highly selective accumulation of previous convictions, represents the 'truth' about a criminal career?

The only common conceptual basis of early 19th century and postwar criminology can be found among the critical voices addressing existing practices of reform and prevention. By the mid-nineteenth century, there was strong criticism raised against the practice of police surveillance of released prison inmates. The critics pointed to the detrimental effects of

1, London 1998, 49ff, understands the power-knowledge relation in the work of Foucault even as a privileged analytical viewpoint, from which society in general and human sciences in particular can be described.

³⁷ Foucault, *Discipline and Punish*, 177ff.

³⁸ This research was not only aimed at the understanding of the criminal's 'soul', as Lemke (Kritik, 79f) argues in his reflections on Foucault's argument, but resulted from a dialogue with contemporary moral philosophical arguments about the very nature of man.

³⁹ Foucault, *Discipline and Punish*, 252.

⁴⁰ *Ibid.*, 102.

this practice on the integration of 'fallen' men into society.⁴¹ They referred implicitly to the production of "delinquency" – a concept introduced by Foucault in the later parts of his book, where it is presented as a technology producing a politically welcome form of marginalization.⁴² This notion of an institutionally created logic of criminal careers was introduced not only by Foucault but even more prominently by representatives of the 'labeling approach' within American and European criminal sociology.⁴³

Foucault's lack of interest in the anthropological dimension of the early criminological discourse⁴⁴ has lasting repercussions for his argument. He is unable to understand fully the relations between the penal discourse, moral philosophy, and the development of preventative and repressive strategies. Biographies could provide not only the proof of *fallen* beings delinquent character, but also insights into the various reasons for the *fall*. This information was highly necessary for two reasons: First, it was important for the development of preventative strategies to reduce the number of potential delinquents. Second, this information could be used within the wider project of liberal governmentality, for it provided insights into the mechanisms, which were responsible for a person's failure to integrate into state and society.

The shift from a moral to a medical-anthropological concept of deviance

Looking at the production of knowledge about criminals from the perspective of a history of criminology as discursive and institutional practice, we are confronted with a greater variety than Foucault considers in DP. Practitioners working within the prison system were not alone in occupying themselves with general questions about the *raison d'être* of crime and criminals. Police practitioners such as the magistrate Patrick Colquhoun, the police expert Honoré-Antoine Frégier, and the *Polizeirat* Johann Friedrich Karl Merker followed the same rationale when they traced criminal careers and started to work on an ethnographic description

⁴¹ Alf Lüttke, 'Gemeinwohl', Polizei und 'Festungspraxis'. Staatliche Gewaltsamkeit und innere Verwaltung in Preußen, 1815-1850. Göttingen 1982, 234ff; Karl Wilhelm Zimmermann, Die Diebe in Berlin oder Darstellung ihres Entstehens, ihrer Organisation, ihrer Verbindungen, ihres (sic!) Taktik, ihrer Gewohnheiten und ihrer Sprache. Zur Belehrung für Polizeibeamte und zur Warnung für das Publikum. Berlin 1847, 387; Becker, *Verderbnis*, chap. 4.

⁴² On delinquency and the delinquent cf. Foucault, *Discipline and Punish*, 264ff.

⁴³ Cf. Siegfried Lamnek, *Kriminalitätstheorien, kritisch: Anomie und Labeling im Vergleich*. München 1977.

⁴⁴ On the anthropological concepts of early 19th century prison reform cf. Thomas Nutz, *Strafanstalt als Besserungsmaschine. Reformdiskurs und Gefängniswissenschaft 1775-1848*. München 2001, 72ff.

of the 'underworld'.⁴⁵ In the writings of police practitioners the criminal world is constituted as the inversion of bourgeois society. This ethnographic project presented the enemies of bourgeois society as members of a counter-society, which threatened the social body in its entirety. The inclusion of 'ethnographic' descriptions breaks the strongly individualistic notion of Foucault's history of the production of criminological knowledge, which results from his exclusive reliance on the reflections of penal practitioners.⁴⁶

More importantly, if we consider the criminological discourse from the perspective of discourse analysis, we can observe an important transformation during the second half of the 19th century.⁴⁷ Even though this change did not appear as a radical change of the legal and penal institutions, it redefined the criminal as object of study. Moreover, it shifted the authority to produce knowledge about criminals from practitioners to medical and anthropological scholars, put strong emphasis on the individual by abandoning the idea of a criminal counter-society, and featured the use of genealogies instead of biographies, that is family history instead of personal history, to understand the hidden causes of crime.⁴⁸

This shift in criminological discourse also produced a series of new programs of action for the prison population, which were, however, not systematically implemented. They ranged from preventative internment of *inferior* individuals (imprisonment even before they had committed a crime) to sterilization.⁴⁹ Considering Foucault's claim to focus more on programs of action than on their actual implementation, his omission of these projects is due to his rather a-historical understanding of the

⁴⁵ For a more comprehensive discussion of the practitioners' role in the criminological discourse of the early 19th century see Becker, *Verderbnis*, chap. 1 and 4.

⁴⁶ Foucault, *Discipline and Punish*, 253.

⁴⁷ This shift is completely disregarded by Foucault in DP. He only alludes to it at the end of the chapter on *Generalized punishment* when he speaks about different ways of objectifying the criminal as *homo criminalis*: Foucault, *Discipline and Punish*, 102.

⁴⁸ Cf. Becker, *Verderbnis*, chap. 5-6. Foucault considered this shift in his later writings on the 'dangerous individuals', where he traced this obsession with unpredictable outbursts of violence to the forensic psychiatry of the early 19th century: Michel Foucault, *L'évolution de la notion d'"individu dangereux" dans la psychiatrie légale du XIXe siècle* (1978). In: *Dits et Écrits*, Bd. II, 1976-1988, Paris 2001, 443-464, 454f.

⁴⁹ Cf. Richard Wetzell: *Inventing the Criminal. A History of German Criminology 1880-1945*. Chapel Hill 2000, 96ff; Becker, *Verderbnis*, chap. 5. Karin Jušek quotes an extreme, but rather telling proposal of a Viennese doctor, who wanted to stop the further spread of syphilis by the lifelong imprisonment or even execution of incurable patients of syphilis: Karin J. Jušek, *Auf der Suche nach der Verlorenen. Die Prostitutionsdebatten im Wien der Jahrhundertwende*. Wien 1994, esp. 123f.

genealogical method.⁵⁰ To write the history of the present, he was interested only in the origins of the prison system of his own time. By making people reflect on the contingency of the emergence of the prison as total institution, he wanted to foster a potential critique and opposition against this institution. With this strategy, he failed to reconstruct the full 'historical' meaning, which the prison and its discipline carried. The prison was not only the disciplinary response to a challenge posed at the end of the Ancien Régime, it was, in the postwar period, also the return from a radicalized vision of prevention through simply disposing of and not disciplining its inmates.

The discontinuity between the 'liberal' and the 'interventionist' criminological programs took place on the level of secondary, i.e. reflective, relations. During the second half of the 19th century the conceptual framework for speaking about criminality changed completely. This was due to an increasing sense of failure of existing concepts and practices, indicated especially by increasing rates of recidivism. Foucault pays no attention to this discontinuity and develops therefore a different strategy to come to terms with the failure of the 'liberal' program of penal action. He ascribes it a positive role as producer of 'delinquency'. The existence of 'delinquency' as lifelong careers of deviance offered, as to Foucault, additional and necessary resources for the control of society within the framework of an all-pervasive discipline. If we look at the broader picture of criminological discourse and penal programs during the 'long' 19th century, we are confronted with a different story. The failure of the 'liberal' system did not just produce 'delinquency', but contributed strongly to its demise. Crucial for its collapse was the transparency of its failure through the availability of statistical data, which were debated by experts, but also by a wider public.⁵¹

The frustration with the 'liberal' penal system supported the success of materialistic and scientific explanations of the social world and its problems. These explanations were advancing in social and natural sciences, especially in statistics, medicine, and natural history, and were increasingly accepted and exploited by urban and state governments. The reception of Darwinism and the concept of degeneration, developed by the French psychiatrist Bénédict Augustin Morel,⁵² provided the theoretical

⁵⁰ On the a-historical approach of Foucault's genealogical method cf. Garland, *Punishment*, 157ff.

⁵¹ A more comprehensive account of the reasons behind the change of master narratives can be found in: Becker, *Verderbnis*, 365-71.

⁵² Benedict Augustin Morel, *Traité des dégénérescences physiques, intellectuelles et morales de l'espèce humaine et des causes qui produisent ces variétés malades*. Paris 1857; cf. Robert A. Nye, *Crime, Madness and Politics in Modern France. The Medical Concept of National Decline*, Princeton 1984, esp. 121; Rafael

framework for a discursive practice in the center of which stood a new concept of man. *Man* appeared now as a physiological machine, programmed by environmental influences and heritage.⁵³

The changing conceptual basis of criminological thinking reflected to some extent the social, political and economic transformations of its time. European states such as France and Germany underwent far-reaching social, economic and political changes over the course of the 19th century. Urbanization, deteriorating living conditions in the slums of industrial centers, malnutrition and its detrimental effects on the physical well-being of recruits, but also the appeal of the labor movement to the working class, contributed to the irritation of contemporary observers.⁵⁴ The transformation of the discursive practice of criminology was part of a transition towards a risk-conscious society and of the medicalization and scientization of social problems. Medical experts claimed the competence to solve the new or newly defined social problems in cooperation with a growing institutional network of state and welfare organizations.⁵⁵

Huertas, Madness and Degeneration, III: Degeneration and Criminality, in: History of Psychiatry, 4, 1993, 141ff; Daniel Pick, Faces of Degeneration. A European Disorder, c. 1848-c.1918, Cambridge 1989, 44ff and 192f; Peter Becker, The Triumphant Advance of Degeneration: Medical Sciences and Criminal Law in Nineteenth Century Germany, in: Y. Otsuka u. S. Sakai (Eds.), Medicine and the Law, Tokyo 1998, 83ff; Ruth Harris, Murders and Madness. Medicine, Law, and Society in the *fin de siècle*, Oxford 1989, 51ff.

⁵³ Cf. Wiener, Reconstructing, 269ff, Pierre Darmon, Médecins et assassins à la Belle Époque. La médicalisation du crime, Paris 1989, 139ff; the 'scientization' of the social opened the door of the administration to the physicians: cf. Lutz Raphael, Die Verwissenschaftlichung des Sozialen als methodische und konzeptuelle Herausforderung für eine Sozialgeschichte des 20. Jahrhunderts. In: GG 22, 1996, 168 and 173ff. Michael J. Shapiro, Language and Political Understanding. The Politics of Discursive Practices. New Haven 1981, 160, argues: „To the extent that various dimensions of social process – legal, health, penal – are professionalized, the norms for performance become embedded in what is called ‚knowledge‘, a knowledge predicated on professional dominance...”

⁵⁴ On urbanization cf. Hans-Ulrich Wehler, Deutsche Gesellschaftsgeschichte, Bd. 3: Von der ‚Deutschen Doppelrevolution‘ bis zum Beginn des Ersten Weltkrieges, 1849-1914, München 1995, 11ff and 510ff; the comparative analysis of Clemens Zimmermann, Die Zeit der Metropolen. Urbanisierung und Großstadtentwicklung. Frankfurt/Main 1996, esp. 13ff; and Jürgen Reulecke, Geschichte der Urbanisierung in Deutschland. Frankfurt/Main 1985, 32ff, 118ff and 142; Johnson sees the social prejudices of German elites determined by the close link between urbanization and criminality; based on this conceptual framework, the elites could instrumentalize the crime panics of the late 19th century for their political aims: Eric A. Johnson, Urbanization and Crime. Germany 1871-1914, New York 1995, esp. 3.

⁵⁵ For a more comprehensive reflection on this discontinuity cf. Becker, Verderbnis, chap. 7.

By looking at the increasing importance of medical experts within social and health insurance as well as public health institutions, we are confronted with changing discursive relations, i.e. tertiary relations within Foucault's discourse analytical concept. It is obvious that the transformation of the criminological discourse completely overhauled its organization. The privileged place from which to speak about criminals moved from the offices of police experts and magistrates to the world of anthropologists, psychiatrists and medical experts. Clinics, laboratories and criminological museums were now the sites where one learned about the 'nature' of the criminal. Psychiatrists, doctors and anthropologists were credited with a competence that went far beyond the evaluation of individual cases and allowed them to authoritatively reflect on the reasons for the existence of crime and deviance, and to influence the development of new criminal policies.

These changes were closely related to a redefinition of the criminal. The self-determined *Gauner*, i.e. a professional thief and swindler, who willingly transgressed the boundaries of state and society, was replaced by an *inferior* human being, unable to live up to the standards of modern society because of detrimental 'genetic' and environmental factors. This change was reflected in the privileging of specific crimes within the criminological discourse. The *Gauner* stood for carefully planned property crimes, whereas the pathological nature of the *inferior* degenerate was thought to express itself in sudden, unpredictable outbursts of violence.⁵⁶

If we look closely at the discursive practices of criminologists, we can better understand the complexity of this shift in its political and epistemological implications. This transformation changed the modes of enunciation and narration. The rather personal style of earlier practitioners, with their frequent references to a familiarity with the criminal underworld, was replaced by the scientific style of medical and anthropological scholars who used tables and numbers to bolster their scientific authority. The new criminological approach also changed the status of the criminal as source of information. Criminals were seen as 'degenerated'. Only a distanced, theoretically informed gaze at their bodies, activities, and cultural productions could contribute to the growing knowledge about their pathological nature. Criminologists were still interested in the self-presentation of criminals, but they read these narratives within a strictly

⁵⁶ Lombroso read the brutality of criminals as the reemergence of a primitive characteristic, which prevented its bearer from adapting to modern living conditions. A social Darwinian reading of Darwin's theory featured brutality in a similar fashion as primitive characteristic of men, while humanity and tolerance were acquired by men only at later stages of their development. Cf. R.P. Sieferle, *Sozialdarwinismus*, in: B.-M. Baumunk, J. Rieß (Eds.), *Darwin und Darwinismus. Eine Ausstellung zur Kultur- und Naturgeschichte*, Berlin 1994, 139f.

pathological frame of reference in which the oral, written and artistic articulations of criminals acquired a specific meaning.⁵⁷

Further insights into the changes in the conceptualization of criminals can be gained by looking at the continuity and discontinuity established between criminals and respectable citizens within criminological thought.⁵⁸ Until the late 19th century, when practitioners and their moral-ethical outlook on criminals dominated the criminological discourse, there was a strict discontinuity between criminals and respectable citizens established on the basis of their acts. As soon as someone committed a crime, s/he clearly put herself/himself outside of society and became a corrupt, fallen human being. As the decision for – and that means also against – a criminal act was firmly put into every person's competence, everyone risked crossing the boundaries between deviance and rightfulness. There was thus a strong sense of continuity between citizens and criminals as far as their personal identity was concerned. A criminal was a former citizen (in the case of delinquent juveniles: a potential citizen) whose subjectivity changed because of the detrimental influence of vice and a wrong-guided reason.

When psychiatrists and anthropologists claimed the authority to speak about criminals, they presented a different conceptual framework, in which the criminals as self-determined individuals lost their place to *inferior* degenerate human beings.⁵⁹ This new conceptual framework was strongly informed by evolutionary thought and degeneration theory. It radically changed the relationship between continuity and discontinuity with regard to crime and criminals. The focus on the individual constitution to explain the existence of crime introduced a strict discontinuity between 'normal' citizens and criminals. The respectable citizen, who had successfully completed his physical, social, and cultural evolution, was perfectly adapted to the demands of modern society. In contrast, the degenerate criminal was unable to complete his individual development – not only because of bad inheritance, but also because of negative environmental factors; he was therefore unable to cope with the high demands of modern society, its modes of production, consumption, and sociability. At the same time, criminal or even immoral acts lost their importance for identifying *inferior* people. The complexity of modern life could bring even respectable citizens into situations where a crime or contravention was

⁵⁷ Cf. Philippe Artières, *L'écriture des criminels vue par les anthropologues*, in: Laurent Mucchielli (Ed.), *Histoire de la Criminologie Française*, Paris 1994, esp. 181; and Philippe Artières, *Le livre des vies coupables. Autobiographies des criminels (1896-1909)*, Paris 2000, 392ff.

⁵⁸ This argument is inspired by Jürgen Link, *Versuch über den Normalismus. Wie Normalität produziert wird*, 2nd ed., Opladen 1999, chap. IV.

⁵⁹ Cf. Wiener, *Reconstructing*, S. 159ff; Becker, *Verderbnis*, chap. 5 and 6.

committed. This was no reason to marginalize them as long as they were capable of facing the demands of society. There was, therefore, continuity introduced between deviance and normality on the basis of the criminal act itself.

These different forms of objectification of criminals structured the social and political field in different ways. They had strong implications for the development of programs for penal action. The use of discipline was conceivable only within a frame of thought in which citizens and criminals were placed on a continuous line running from exemplary virtue to repellent vice. With the introduction of a discontinuity between respectable citizens and criminals new programs of action had to be developed: Degenerate, *inferior* criminals were like 'beasts' to be put in cages and separated forever from the rest of society.

This transformation within the criminological discourse affected the choice of empirical evidence as well. I have already noted that the criminologists of the late 19th century featured statistics, graphs, and tables, in which they presented social and anthropological data in a systematic way. The theoretical concept of degeneration directed the criminologist's gaze at hereditary taints. Evidence for the presence of these taints was retrieved on the body of suspects. There was, however, no conclusive semiotics of degeneration and many signs of degeneration were hidden inside the body.⁶⁰ This was one of the reasons for the heuristic appeal of genealogies, which offered easily accessible evidence for the degeneration of individuals and helped identify potential criminals even before they committed their crimes.⁶¹

The specific criminological logic in using these genealogies can be best shown through a comparison with their use in the arguments of practitioners. Practitioners employed genealogical information – if they were able to reconstruct it from confessions of criminals – as a means to understand better the organization of the criminal counter-society. They saw themselves confronted with a rapidly growing security problem, as families appeared to be the main agents of moral contagion. To combat this

⁶⁰ Cf. Paul Adolf Näcke, Ueber 'innere' somatische Entartungszeichen, in: Archiv für Kriminalanthropologie und Kriminalistik 9.1902 S. 153-156.

⁶¹ Ursula Link-Heer argues that also in the medical literature of the second half of the 19th century the genealogy of nervous diseases was replaced by the genealogy of the patients suffering from nervous diseases: Ursula Link-Heer, Über den Anteil der Fiktionalität an der Psychopathologie des 19. Jahrhunderts. In: Zeitschrift für Literaturwissenschaft und Linguistik 51/52, 1983, 288ff. For a more thorough discussion of the importance of genealogies for criminological writing see Peter Becker, Von der Biographie zur Genealogie. Zur Vorgeschichte der Kriminologie als Wissenschaft und diskursive Praxis. In: H. Bödeker et.al. (Eds.): Wissenschaft als kulturelle Praxis, 1750-1900. Göttingen 1999, 335-375, 367-71.

threat, they demanded radical welfare measures such as the compulsory assignment of children to reformatories.⁶² Criminologists and psychiatrists were not interested in moral contagion but rather in tracing the rapid spread of degeneration throughout the social body.

In criminological texts of the late 19th century hereditary taints from direct antecessors were recorded as part of the case history. If we look at the wide range of diseases, which were used by criminologists to construct the evidence for degeneration, we are left stunned. Diabetes, heart attacks and the early death of a father carried the same meaning as internment in an asylum, suicide and a wide range of neurotic diseases. Because of the vagueness of concepts of hereditary taints and degeneration⁶³ criminological and psychiatric writings convey the impression of a ubiquitous depravity, which does not conform with the concept of a rigid dichotomy between healthy and degenerate individuals.

Despite of the lack of a clear-cut definition of hereditary taints and degeneration, criminologists proposed to use this information for the evaluation of a defendant's personality at court. At the beginning of the 20th century, the first demands to add information about hereditary taints to the criminal records were published. Jacques Stern argued that the existing criminal records were only able to provide information about a criminal's evil inclinations, which he considered to be still valuable but insufficient for an evaluation of criminals.⁶⁴ Before the outbreak of the war in 1914, programs for implementation of criminal biological strategies did not influence penal or legal practices.⁶⁵ After the war, Belgian and Bavarian

⁶² Cf. Leo Lucassen, *Zigeuner. Die Geschichte eines polizeilichen Ordnungsbegriffes in Deutschland, 1700-1945*, Köln 1996, 25f. On the problem of moral deprivation of children see Johann H. Wichern, *Stockungen im christlichen Leben des evangelischen Volkes und deren Überwindung* (1868). In: id., *Prinzipielles zur Inneren Mission*, Hamburg 1902, esp. 1149f; Bernd Weisbrod, *Wohltätigkeit und 'symbolische Gewalt' in der Frühindustrialisierung. Städtische Armut und Armenpolitik im Wuppertal*. In: Hans Mommsen, Winfried Schulze (Eds.), *Vom Elend der Handarbeit. Probleme historischer Unterschichtenforschung*, Stuttgart 1981, esp. 341f. Prostitutes and the owners of brothels were among the first target for these measures. They were forced to have their children educated elsewhere: Becker, *Verderbnis*, chap. 3.

⁶³ Cf. Anna Bergmann, *Die verhütete Sexualität. Die Anfänge der modernen Geburtenkontrolle*, Hamburg 1992, 64. The psychiatrist Wilmanns registered the early death of his patients' father as indication for a hereditary taint: Karl Wilmanns, *Zur Psychopathologie des Landstreichers. Eine klinische Studie*, Leipzig 1906, 330.

⁶⁴ Cf. Jacques Stern, *Das Wesen des Strafregisters*, in: *Archiv für Kriminalanthropologie und Kriminalistik* 8, 1902, 261.

⁶⁵ On the discussions of penal law experts about the necessary transformation of the penal law to focus more on criminals than on crimes cf. Monika Frommel, *Internationale Reformbewegung zwischen 1880 und 1920*, in: Jörg Schönert (Hg.), *Erzählte Kriminalität. Zur Typologie und Funktion von narrativen Darstellungen in*

prison doctors were given a first chance to implement criminal biological research, to use it for classifying inmates, and linking the results to the criminal records.⁶⁶ A wide-ranging implementation of this knowledge was possible only after the end of the Weimar Republic when the *Rechtsstaat* (rule of law) as one of the main obstacles was abandoned.

Conclusion

A more systematic evaluation of the rich criminological literature of the 19th century adds more than a footnote to the story that Foucault presents in *Discipline and Punish*. It breaks down the notion of an all-pervasive discipline by throwing light on tensions between discursive and institutional practices emerging during the second half of the 19th century. Penal institutions as well as the police and the legal system were fully compatible with the criminological 'knowledge' of the late 18th and early 19th century. They were targeted at the deviant individual, who was held responsible for his deeds or at least for entering the downward spiral, which led finally towards a life determined by deviance and/or insanity. The criminal of this time was in a very specific way considered to be within and outside of society. He/she was considered by moral and social reformers as representative of the main social evil and as one of the main enemies of state and society; this placed him/her definitively outside of society. At the same time, reformers argued from a moral philosophical perspective in which continuity existed between citizens and criminals – every fallen human being had at least the potential for becoming a respectable member of society.

Systems of classification, the criteria for granting mitigating circumstances and the collection of information were closely related to the discursive practice of the early 19th century, which looked at biographies to trace the origins and steps of the *fall*. When the criminological discourse began to change during the second half of the 19th century, however, practitioners as well as medical and anthropological experts expressed their discontent with the existing institutional and theoretical framework. They demanded different criteria for the classification of inmates, more focussed on constitutional than on behavioral patterns. They also asked for different criteria for the consideration of mitigating circumstances, in which not the

Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920. Tübingen 1991, 467-495, 470ff.

⁶⁶ On the creation of a criminal biological laboratory cf. L. Vervaeck, *Le Laboratoire d'anthropologie pénitentiaire*. In: Gustav Aschaffenburg u. A. Partenheimer (Ed.), *Bericht über den VII. Internationalen Kongress für Kriminalanthropologie*, Heidelberg 1912, 332ff; until 1939 11.678 criminal biological reports written by physicians and 11.819 psychological-sociological evaluations has been collected in Bavaria. This was the second largest collection of criminal biological material in Europe.

biography but the genealogy should play the main role. The penal and legal system was not responsive to these demands because of its strong reliance on the *Rechtsstaat*, i.e. the rule of law. There was therefore an interesting gap between discursive and institutional practices evolving, which was closed only at the end of the Weimar Republic, when the rule of law was abandoned.

Foucault's book on the prison as a 'history of the present' is a wide-ranging account of the repressive features of a penal system. Within his argumentation, education appears as synonym for a strict subjection to a disciplining regime and reform as the legitimization of a strategy which produced life-long careers of deviance on a large scale. His argument is based on the idea that we can establish a continuum between the concept of the prison in the early 19th and the mid-20th centuries. This assumption disregards major transformations within this time-span, even when we restrict ourselves to the realm of theories and concepts. As soon as we move on to the field of practices, the discrepancies become even more pronounced. This does certainly not invalidate all of Foucault's arguments made in DP. Like his other books, DP is explorative and rich in insights and new approaches. In this sense, he succeeded in opening new perspectives on the history of the prison and power relations, even though his arguments have to be read within their limitations. From a discourse analytical perspective, one of the most unfortunate limitations is Foucault's disregard for the criminological discourse within which a specific conceptualization of the criminal and the prison appeared. This disregard for the criminological discourse of the 19th century leaves a void, which is filled by a reproduction of the 'iron cage' imaginary. Only in his later writings did Foucault develop a less bleak image of the 19th century when he reflected on the strategies developed to integrate interest-bound subjects into state and society. Within the framework of the prison and the criminal law system a question remains: what relation can be assumed between discipline and normalization on the one hand and integration and participation on the other?

Omitting the disturbing history of the more recent past, Foucault does not reflect on alternative penal programs emerging from a biological master narrative, which inspired penologists to envision a radicalized form of prevention by identifying and eliminating criminals before they committed a crime. The decision taken in designing postwar penal policy along the lines of a disciplinary approach was a return to a more distant past. The interlude of biological solutions does not extenuate the failures of the disciplinary prison regime. It should nevertheless put us on guard against a critique of the disciplinary system from the perspective of biological and genetic theories of crime.

Emancipation or Adaptation: The Contested Role of Psychoanalysis

Martin Dehli

Introduction

The argument of this paper is focused on one main question: does psychoanalysis liberate individuals from inner constraints and inhibitions thus enabling them to find the satisfaction of their needs in society and a state of happiness? Or does psychoanalysis rather serve the aims of society by forming and adapting the needs of the individuals in order to avoid political and social protest? Is psychoanalysis a manipulation to keep the troubled individuals disciplined or is it aimed at the liberation and emancipation of its patients?

This question shall be exposed in two different perspectives. First by discussing two texts of Alexander Mitscherlich, who emphasized the social and political commitment of psychoanalysis. Then the question shall be put in the historical perspective offered by Michel Foucault's genealogy of the Humanities. These two perspectives seem to be contradictory: whereas Mitscherlich proposes psychoanalysis as a means for personal liberation and emancipatory progress of society, Foucault describes it as a disciplining practice of modern society. As a conclusion, I will therefore try to relate these two perspectives to each other and argue that the main question of this article must itself be historicised.

Psychoanalysis as Emancipation: The Perspective of Alexander Mitscherlich

The German physician and psychoanalyst Alexander Mitscherlich started his career after 1945 and became one of the most prominent intellectual figures of former West Germany. He argued in an exemplary manner for a politically engaged psychoanalysis aiming at the emancipation of the individual from social constraints. By developing a social psychology on a psychoanalytical basis, he proposed psychoanalysis as a tool to understand problematic developments in modern society and as a yardstick for social policy.

This shall be explained with two of Mitscherlich's texts: the article "Anpassungsgefährdungen und heutige gesellschaftliche Lebensbedingungen - Erkenntnisse psychosomatischer Medizin",¹ published in 1970, and the chapter "Aggression und Anpassung" from the book "Die Idee des Friedens und die menschliche Aggressivität"² (1977). These writings are a part of the synthesis characterizing Mitscherlich's late work: The combination of political and social interests with the basic concepts of psychoanalysis in a comprehensive social psychology.

Mitscherlich discusses the question of adaptation or emancipation on the basis of a rather pessimistic cultural anthropology: the egoistic drives of the individual and the social constraints of society are antagonist forces. The integration of the individual in society creates, therefore, an unavoidable conflict renewed in every period in history.³ This integration is always only partly successful: there remains always a "surplus of aggression",⁴ unsatisfied aggressive needs, which lay at the root of both social conflicts and neurotic deformations of the individual.

These conflicts focus on the question of adaptation. The individuals are trapped between their unconscious asocial drives from within and the social constraints of society from without. If they fail to resolve this conflict rationally, they cannot integrate into society. Mitscherlich speaks in this case of "failed adaptation".⁵ This failed adaptation appears in two forms: either as blind submission to the constraints of society in the case of "over-adapted" individuals, who deny their own needs, or as uncontrolled asocial aggression in the case of "trouble-makers", who get stuck in the acting-out of their aggressions and are unable to develop stable social relations.⁶ Both are cases of lost freedom: The over-adapted is suppressed by the moral constraints of society, the troublemaker is dominated by his own animal drives.

¹ Alexander Mitscherlich: Anpassungsgefährdungen und heutige gesellschaftliche Lebensbedingungen - Erkenntnisse psychosomatischer Medizin. in: Alexander Mitscherlich, Gesammelte Schriften Bd. 2, Frankfurt 1983, 589-599.

² Alexander Mitscherlich: Aggression und Anpassung. In: Alexander Mitscherlich, Gesammelte Schriften Bd. 5, 1977, 215-252.

³ Alexander Mitscherlich, Aggression und Anpassung, in: Alexander Mitscherlich, Gesammelte Schriften Bd. 5, Frankfurt 1983, 217ff. The classical description of this conflict and Mitscherlich's chief source of inspiration is Sigmund Freud, Das Unbehagen in der Kultur (Civilization and its Discontents), Wien 1930.

⁴ "Aggressionsüberschuß", Alexander Mitscherlich, Aggression und Anpassung, in: Alexander Mitscherlich, Gesammelte Schriften Bd. 5, Frankfurt 1983, 217.

⁵ "Fehlanspassung", Alexander Mitscherlich, Aggression und Anpassung, in: Alexander Mitscherlich, Gesammelte Schriften Bd. 5, Frankfurt 1983, 247.

⁶ Alexander Mitscherlich, Aggression und Anpassung, in: Alexander Mitscherlich, Gesammelte Schriften Bd. 5, Frankfurt 1983, 248.

Successful adaptation means, on the other hand, “active adaptation”.⁷ A reflective distance towards both the egoistic drives and the constraints of society characterizes active adaptation. This distance enables individuals to handle the conflict of adaptation rationally and to preserve their autonomy.⁸ Whereas failed adaptation is the contradiction of personal freedom; successful adaptation is its precondition.

On the abstract level, the function of psychoanalysis and the task of the psychoanalyst seem clear enough: the psychoanalyst has to guide his patient towards successful adaptation by bringing to his conscience the unavoidable conflict of adaptation. In concrete terms, however, this definition of the function of psychoanalysis remains within the dilemma of the question posed at the beginning of this article. If an individual is at odds with the social environment, this can be a case of uncontrolled aggression as well as a justified protest against inhuman conditions of life and suppression. An unobtrusive individual can be over-adapted or successfully integrated in society. Emancipation towards personal freedom can mean, on the other hand, that an individual learns to adapt to his social environment. But it can also mean that he learns to refuse to live in social conditions, which make him unwell.⁹ Where must the psychoanalyst support adaptation, where must he stop over-adaptation and stimulate resistance? Which living conditions and which social habits must be judged as unacceptable and unhealthy? Which others are necessary constrictions of aggression to secure social life?

In his second text discussed here, Mitscherlich exposes this dilemma with tenacity.¹⁰ His problem is to identify a criterion to guide the psychoanalyst’s therapeutic measures. Mitscherlich developed in his work two different solutions to this challenge. On the one hand, he referred to an idea of existential liberty as the therapeutic aim. On the other hand, he developed a social psychology to understand the role of the individual in society.

Mitscherlich rejects an instrumental understanding of psychoanalysis. Psychoanalysis is not a neutral method, which can serve a variety of therapeutic and political interests. Whereas behavioral therapy tries to train

⁷ “aktive Anpassung”, Alexander Mitscherlich, *Aggression und Anpassung*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 5, Frankfurt 1983, 238.

⁸ Alexander Mitscherlich, *Aggression und Anpassung*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 5, Frankfurt 1983, 248.

⁹ Alexander Mitscherlich, *Anpassungsgefährdungen und heutige gesellschaftliche Lebensbedingungen - Erkenntnisse psychosomatischer Medizin*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 2, Frankfurt 1983, 590.

¹⁰ Alexander Mitscherlich, *Anpassungsgefährdungen und heutige gesellschaftliche Lebensbedingungen - Erkenntnisse psychosomatischer Medizin*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 2, Frankfurt 1983, 590, 591, 593, 595.

the patient's behavior towards a freely defined aim, psychoanalysis is bound to the goal of existential freedom and truth, which are revealed in the therapeutic process.¹¹ Mitscherlich understands neurotic illness as a lost freedom of decision, which results in a neurotic restriction of the personality. Psychoanalysis is oriented in all its therapeutic measures to the idea of existential freedom.¹² Only this bond to an absolute value can protect psychoanalysis from being instrumentalised for dubious political aims. The historical background for this rejection of psychoanalysis as a value-free science was Mitscherlich's experience of the Nuremberg war-trial against German physicians. He interpreted their crimes as the consequence of a medicine free from human values, which became a mere instrument in the hands of the Nazi Regime.¹³

In his later works, Mitscherlich shifted his attention from the individual to society as a whole. To be able to judge the behavior of a patient as successful or failed adaptation, the psychoanalyst must have a clear idea of the moral values and of the codes of behavior valid in a society.¹⁴ He must be able to define the limit of collective behavior towards the abnormal and the pathological.¹⁵ Mitscherlich did not hesitate to apply these medical terms to social phenomena: he speaks of "illnesses of society"¹⁶ or an "cultural epidemic".¹⁷

Only a psychoanalyst informed by social psychology can guide his patients towards personal freedom in a concrete therapeutic and social setting.¹⁸ Mitscherlich's writings on social psychology can be understood as the attempt to answer the dilemma of emancipation and adaptation in a changing society in order to preserve the emancipatory goal of psychoanalysis. By developing his social psychology, Mitscherlich

¹¹ Alexander Mitscherlich, *Anpassungsgefährdungen und heutige gesellschaftliche Lebensbedingungen - Erkenntnisse psychosomatischer Medizin*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 2, Frankfurt 1983, 593f.

¹² Mitscherlich developed this idea especially in his earlier writings: Alexander Mitscherlich, *Freiheit und Unfreiheit in der Krankheit* (1946). in: Alexander Mitscherlich, *Gesammelte Schriften* Band 1, Frankfurt 1983, 7-135.

¹³ Alexander Mitscherlich, Fred Mielke (Hg.), *Das Diktat der Menschenverachtung*, Heidelberg 1947, 10ff.

¹⁴ Mitscherlich, Alexander Mitscherlich, *Aggression und Anpassung*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 5, Frankfurt 1983, 595.

¹⁵ Alexander Mitscherlich, *Aggression und Anpassung*, in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 5, Frankfurt 1983, 593.

¹⁶ Alexander Mitscherlich, *Die Krankheiten der Gesellschaft und die psychosomatische Medizin*. in: Alexander Mitscherlich, *Gesammelte Schriften* Bd. 2, Frankfurt 1983, 425-444.

¹⁷ "Kulturseuche", Mitscherlich, *Aggression und Anpassung*, 592.

¹⁸ This point is dealt with extensively by Mitscherlich's collaborator in Frankfurt, Klaus Horn: *Der überraschte Psychoanalytiker*. In: *Psyche* 28 (1974), 395-430, esp. 498.

enlarged his intentions from the existential liberation of the individual towards an emancipation of society as a whole. This process coincided with his personal development from a doctor treating individual patients to a known intellectual commenting critically on the great political and social issues of his time.

Michel Foucault: Psychoanalysis to Disciplining the Self

Alexander Mitscherlich understands successful psychoanalysis as a process aiming at the liberation and the emancipation of the individual. In the following, this view shall be put in contrast with the perspective offered by Michel Foucault. According to Foucault, psychoanalysis is one of the disciplinary practices of modern Western society that create and impose normative knowledge about humanity.

On the level of fundamental concepts, Mitscherlich and Foucault differ mainly in their understanding of subjectivity. Mitscherlich supposes an original subjectivity, a stronghold of individual liberty beyond history and society. The revelation of this subjectivity functions as the therapeutic aim of psychoanalysis. Psychoanalysis does so by establishing a protected space within which the individual can redevelop his freedom versus the claims of society and natural instincts. The discourse of psychoanalysis establishes its truth against the power of society and is therefore essentially critical.

Michel Foucault challenges this belief that "truth does not belong to the order of power, but shares an original affinity with freedom" and wants to show that the production of truth is on the contrary "thoroughly imbued with the relations of power".¹⁹ He perceives subjectivity not as beyond history and society, but rather as the result of both. Subjectivity is a specifically modern subjectivity, created by power-oriented practices intended to discipline mankind. Since the creation of modern subjectivity is itself a power-directed process, the recurrence of true subjectivity in a power-free psychoanalytical process is an illusion: psychoanalysis does not reveal it, but construct and manipulate individual subjectivity according to certain scientific criteria.

The investigation of these criteria was the main interest of Foucault's scientific work. His intention was, as he put it in 1982, "to write a history of the different manners by which men in our culture create knowledge about themselves: in the economic sciences, biology, psychiatry, medicine and criminology."²⁰ In the first volume of the "History of Sexuality"

¹⁹ Michel Foucault, *The History of Sexuality*, Vol. 1: An Introduction, New York 1980, 60.

²⁰ Michel Foucault, *Lecture Vermont 1982*, in: *Dits et Ecrits* tome 4, ed. by Daniel Defert, Paris 1994, 784.

Foucault gives, on quite an abstract level, a historical sketch of the cultural practices from which this science stems.

Foucault traces the development of the Humanities to the Christian confessional practices that first created knowledge about mankind, about one's self. He locates the origin of these practices in the 13th century. At that time, the content of confession changed: whereas before the sinful *action* was the principal thing to be confessed, now the sinful *intention* became the focus of interest of the confessor. This shift demanded the creation of a new kind of knowledge: the self-acknowledgment of one's thoughts and motives. In criminal justice, tests of guilt were replaced by interrogation practices designed to produce this knowledge.²¹

The sinful action was no longer judged as a singular event, but as the expression of motives and the characteristics of the personality of the sinner. The new practices of knowledge-production aimed, therefore, at the revelation of this personality, at defining this personality as a stable entity. This intention was, according to Foucault, fundamental to the development of modern subjectivity. Since then, Western society "has become a singularly confessing society" and man "a confessing animal".²²

With the rise of Protestantism and the Counter-Reformation, 18th century pedagogy and 19th century medicine, confession lost its exclusive location in religion and became a common social practice. "Children and parents, students and educators, patients and psychiatrists, delinquents and experts" were now confessing.²³

In the 19th century, these confessing practices provided the ground for the development of medicine, psychiatry and pedagogy. These new sciences are "confessional sciences"²⁴ characterized by a common scientific paradigm:²⁵ 1. They combine confession with examination; 2. They suppose a general and diffuse causality of the symptoms: Since everything has to be taken into account as a possible reason for illness or the formation of personality, everything has to be told; 3. The real causes are unknown to the subject; he is not conscious of them; 4. A method of interpretation is applied: "The revelation of confession has to be combined with the decipherment of what is said;"²⁶ 5. All the knowledge produced is "placed

²¹ Michel Foucault, *The History of Sexuality*, Vol. 1: An Introduction, New York 1980, 58ff.

²² Michel Foucault, *The History of Sexuality*, Vol. 1: An Introduction, New York 1980, 59

²³ *ibid.*, 63.

²⁴ *ibid.*, 64

²⁵ *ibid.*, 65ff.

²⁶ *ibid.*, 66.

under the rule of the normal and the pathological", that is, it is medicalized.²⁷

Even if Foucault, in "The History of Sexuality", does not mention psychoanalysis, explicitly at least,²⁸ it is evident that it fits into this general paradigm: psychoanalysis combines the confession of the patient's actions, thoughts and feelings with the examination by the psychoanalyst. Causality is enlarged to encompass the entire biography of the patient, and, especially, apparently unimportant details, which can have a crucial importance to the analytical process. The causes of the illness are unknown to the individual: The analytic process aims exactly at making evident the hidden, unconscious reasons of the symptoms. Psychoanalysis developed an art of interpretation: the professional skills of the psychoanalyst to decipher the symbolic meaning of dreams and the hidden meaning of the actions and statements during psychoanalysis. Finally, all phenomena brought to light in psychoanalysis have to be judged according to their pathology or normality to indicate where the psychoanalyst has to intervene and what he can define as his therapeutic aim.

Psychoanalysis fits into the framework of Foucault's historical sketch of the development of the "confessional sciences". As a consequence, the knowledge of the self as produced by psychoanalysis cannot be understood as a knowledge revealed in a discourse protected from power and beyond history and society: it is knowledge stemming from a tradition of practices to stabilize and to discipline the self. Psychoanalysis cannot bring about the liberation of the individual from the constraints of society, because it subjects individuality to the norms of society itself, it produces a certain kind of individuality according to these norms. In the historical perspective defined by Foucault, Mitscherlich's understanding of psychoanalysis, as a process of emancipation seems to be no more than a misleading illusion.

The Ambivalence of Psychoanalysis

The function of psychoanalysis appears profoundly ambivalent. Proposed by Mitscherlich as a means of emancipation of the individual from social constraints and blind subjection to its animal drives, it is on the contrary described by Foucault as one of the practices of Western "confessing society" designed to produce and to discipline subjectivity according to social norms. The question posed at the point of departure of this paper has to be re-evaluated taking into account the two perspectives of psychoanalysis exposed here.

²⁷ *ibid.*, 67.

²⁸ Foucault describes the inherent structures of power of psychoanalysis in "Madness and Civilization. A History of Insanity in the Age of Reason" (London, New York 2001), 261ff.

The answer depends, firstly, on the philosophical background and the historical framework to which reference is being made. If subjectivity and truth are defined as entities beyond society and history, then liberation can perhaps be reached by a psychoanalytical process. If one historicises subjectivity and truth, as does Foucault, this can be only an illusion, blind to the power-structures subjectivity and truth are embedded in themselves.

Second, it must be emphasized that Mitscherlich's and Foucault's arguments cannot be put as simply contradictory, because they do not only refer to different fundamental concepts but above all to a completely different time frame. Mitscherlich measures the process of liberation in an individual life's time; Foucault speaks about mental developments of the last seven centuries. A process of personal emancipation in Mitscherlich's sense can be part of the long-term disciplining process Foucault describes. The disciplining power of Foucault's confessing discourses, on the other hand, can be a source of individual freedom: the freedom made possible by self-control. The apparent contradiction between Mitscherlich's and Foucault's understanding of the function of psychoanalysis in modern society results from the misleading generalization of terms like emancipation and liberty or constraint and discipline, where they should be understood in a well defined epistemological and historical framework.

These distinctions are not only important on the abstract level, but are crucial to clear historical judgments. The reform of the penal system in the Federal Republic of Germany can explain this point. In 1951, Mitscherlich wrote to Max Horkheimer with quite revolutionary pathos that he was aiming at "a penetration of the psychology of the German penal law" ["einen Einbruch in die Psychologie des deutschen Strafrechts"].²⁹ He was given the occasion to realize his intention when he was asked, as the chairman of the Deutsche Gesellschaft für Psychotherapie und Tiefenpsychologie, to formulate a statement demanding the reform of the §51 of the German penal law, which defines the responsibility of a perpetrator of a criminal act in the case of unsoundness of mind. Mitscherlich pleaded for a moderation of punishment in the case the culprit was incapable of recognizing the illegal nature of his action.³⁰ The shift from a penal system aiming at the retaliation of criminal acts to one judging intentions, which is only hinted at in Mitscherlich's statement of 1956, came into force with the reform of the penal system achieved in the 1960s.³¹ This reform aimed at a humanization of the penal system: Not a

²⁹ Alexander Mitscherlich to Max Horkheimer, 29.10.1951, Alexander-Mitscherlich-Archiv VII b 93.

³⁰ Alexander Mitscherlich to the Minister of Justice, 25.6.1956, Alexander-Mitscherlich-Archiv VII b 98.

³¹ According to Franziska Lamott, *Die erzwungene Beichte. Zur Kritik des therapeutischen Strafvollzugs*, München 1984, 5 ff.

punishment, but therapeutic help shall be provided to the criminal to facilitate his reintegration into society.

According to Franziska Lamott, who examined the concrete results of the reform, the reform failed. In reality the therapy prescribed to the criminals was never the humanistic effort opposed to punishment, but was, in its concrete reality, always interwoven with punishment and served at the end only the greater efficiency of prisons.³² Foucault's concept of the intrinsic power of therapeutic processes can offer enlightenment as to why the humanistic intentions of the reformers of the penal system fell short: it was their illusion to establish in a penal system therapy as a power-free discourse.³³

Medicalization as a dialectical concept

Alexander Mitscherlich proposed a *politicization* of psychoanalysis and medicine to avoid psychoanalysis serving dubious political aims. Psychoanalytical concepts have to be applied to politics and society to allow the psychoanalyst a critical view on them. From another point of view, this can be called not politicization of medicine, but *medicalization* of politics. Genuine political conflicts, like the difficulties of an individual to socialize, to find appropriate labor and pleasure, are medicalized, when they are understood in medical categories, when they are placed, as Foucault would put it, "under the rule of the normal and the pathological". Mitscherlich's social psychology is not only the expression of a psychoanalyst's will to live up to his political responsibility, but also his claim for the medical competence in the field of politics.

The alternative "politicization of medicine" or "medicalization of politics" repeats the leading question of this article in a new form. In the first case, medicine is used to realize political responsibility and emancipation, be it of the physician or of the patient. In the second case, political responsibility is replaced by the decision of medical experts, who conceive of the political field in medical categories. This exclusive alternative implies obvious moral statements: whereas the politicization of medicine is exposed as a moral necessity for civil society, the medicalization of politics seems to represent the danger of a restriction of decisions about the *res publica* to a circle of experts. This judgment is palpable in both Mitscherlich's and Foucault's writings. If Foucault criticizes psychoanalysis as disciplinary practice, this is exactly because he is looking critically on the establishment of a medical control of society; the "disciplinary society" is clearly a critical concept.

³² Ibid., 2.

³³ Foucault analyzes the power structures of the penal system extensively in "Discipline and Punish. The Birth of the Prison", London 1977.

These moral judgments tend to reduce the complex historical reality to simple, but misleading, alternatives. The dichotomy of the basic question of this article is one example for this reductionism. In the following, the concept of medicalization shall be put forward as a dialectic concept which includes both the processes described, and therefore, can grasp better the complex interaction between medicine and society in the 20th century.

An analogy to the concept of *secularization* can explain the point. This concept describes, on the one hand, the loss of influence of religion and the church on social and spiritual life and the emergence of a secular society in the modern world. On the other hand, and quite contradictory to this, it can signify the transfer of religious meanings to new contexts. In this sense, socialist revolutionary expectations can be called a secular form of apocalyptic thought. Understood as such, secularization does not describe the loss of influence of religion, but its spreading to and its preservation in new contexts.

Secularization should be understood as a double process, which includes dialectically each of the aspects, described above. This dialectical understanding of the process of secularization could only develop when the concept was no longer used to judge the gains and losses of this historical process.

Medicalization also describes the transfer of concepts and contents from one context to another: political conflicts are understood in medical categories and as medical problems, and medical problems gain political significance. This does not automatically mean the abandonment of political decision-making in favor of solutions in terms of medical techniques. It could be understood as well as the preservation of political themes in the new context of medicine. It is, by analogy with secularization, a dialectical double process: Politics is neither replaced completely by medicine nor is all of medicine politicized, but medicine and politics become involved in a manner that results in both changing shapes. Before judging the moral implications of this process, the historian should ask: how do the problems at stake change their form when transferred to another epistemic system? How do the rules of the discourse and the decision-making change? Who are the actors and the driving forces of this mutual approach of medicine and politics?

Whereas the process of secularization seems today distant enough to be understood in a dialectic sense, this neutrality is not reached yet in the historical description of the interaction of medicine and politics. It can only be outlined and sketched as the aim of a history of medicine beyond the dichotomy of questions like the one, which has been discussed here.

Toward a History of Psycho-social Counseling as a Cultural Practice.

Notes on Research in the City of Basel

Sibylle Brändli Blumenbach

Introduction

In her book "Flexible Bodies: Tracking Immunity in American Culture" (1994), the anthropologist Emily Martin observes that there have been radical shifts in recent decades in what it means to be a person. Thus, she claims, personhood has often become difficult to understand in classic gender, class, race or religious terms. In order to follow up on Martin's observations, it seems necessary, then, and inviting to identify and analyze those forces that have aided in the ongoing reconfiguration of personhood. Social technologies, I contend, have been instrumental in bringing about such changes – changes that affect not only what it means to be a person but also *how* to be a person. Professional counseling has figured as one such eminently important social technology and thus merits particular attention. The outline of a research project, which forms the bulk of this paper, traces the history and development of one specific kind of counseling, namely psycho/social counseling, and its role in processes of normalization (cf. Link 1997), of social inclusion and exclusion (cf. Castel 1995, 2000), and of learning subjectivity (cf. Mansfield 2000).¹ In this

¹ This is the outline of postdoctoral research I am now conducting at the History Department, University of Basel. I thank Martin Schaffner for introducing me to the joint seminar "Normalizing Diversity" at the EUI in Florence and especially Peter Becker, the organizer of both the seminar and the attendant workshop on 2-3 June 2002, for his invitation to present my research at a critical point in its development. Many thanks also to the workshop participants for their responses.

In addition, I would like to thank Dr. Peter Gutzwiller, head of the "Schulpsychologischer Dienst", and Ms Susy Signer-Fischer, head of the "Familien- und Erziehungsberatung" in Basel, for their active interest in the research project and their gracious permission to work with archival material in their holdings. Further, I thank Dr. Joseph Zwicker, head of the "Staatsarchiv des Kantons Basel-Stadt", for permission to access records, as well as Lambert Kansy (who was in charge of cataloguing the holdings of the "Sozialpädagogischer Dienst" at the "Staatsarchiv") for

context, research tackles the question of what could be meant by a reconfiguration of personhood.

Before developing the different foci of empirical inquiry it might be useful to address a few theoretical considerations and to introduce the three dimensions of counseling that structure the thematic entities of research: namely institutions, practices and discourses. I use the institutional framework as a point of departure for conceptualizing practices and discourses, thus following the approach of Ruth Grossmass as she delineates a social phenomenology of psycho/social counseling.

Against the background of system theory and the thinking of Pierre Bourdieu, she defines counseling institutions as specialized social systems that (albeit critically) help their clientele in developing the appropriate 'habitus'. They operate within specific social fields and offer a set of constantly evolving modes of communication (informed by social work and psychological bodies of knowledge, among others) in order to guide their clientele and meet changing orientation needs in different intimate areas of life (Grossmass 2000: 60/61). With this seemingly rather formal set of institutional traits as a starting point, my study moves both towards the messiness of history and social reality as well as towards a more Foucauldian understanding of counseling as a social technology.

On the history side, it is necessary to contend, for instance, with notions of counseling that have more to do with forced instruction than voluntary learning and action, or to grapple with the interplay of different functions and competencies within single institutions. For instance, some provide counseling alongside material assistance; others have the authority to counsel as well as to mete out sanctions.

On the Foucauldian side, it is fruitful to study counseling as a very versatile and professionalized social technology within the governmental framework of modern liberal democracies. Michel Foucault argues that modern liberal democracies depend on the self-willed action and self-governance of their citizens (cf. Foucault 1982, 1988, 2000). His notions of governmentality and pastoral power² are brilliant attempts to conceptualize how such self-willed action is brought about. Taking his reasoning one step further and adding a decidedly political dimension, Barbara Cruikshank argues that the modern welfare state acts with a "will to empower" and turns individuals into citizens by "technologies of citizenship." These refer

sharing his knowledge and for common discussion. Without their support, this project would not be possible.

² With the term "governmentality" Foucault sought to encompass the systematic connections between forms of knowledge, political rationalities and technologies, and the making of subjects (cf. Foucault 2000). Pastoral power denotes a form of power which is "salvation oriented", "oblativ", "individualizing" and "linked with a production of truth – the truth of the individual himself" (Foucault 1982: 214).

to “discourses, programs, and other tactics aimed at making individuals politically active and capable of self-government” (1999: 1). They “operate according to a political rationality for governing people in ways that promote their autonomy, self-sufficiency, and political engagement” (1999: 4). I argue that counseling is a form of pastoral power and, more precisely, a technology of citizenship. Counseling performs vital tasks for social integration and social exclusion. It helps produce, negotiate and transmit notions of difference and normality. It regulates behavior and guides individual action, thereby playing an important role for learning subjectivity.

On the one hand, a closer look at counseling makes it possible to study how individuals have become implicated as active agents in their own normalization. On the other hand, one may thus ask how they have come into a position to intervene in what normalization means or to trouble its workings. Finally, there remains the question of how counseling promotes political engagement.

Outline of Research

The historical research project traces the history of counseling (in the German sense of “Beratung”) from the 1950s through the 1980s.³ It focuses on (pre-)school children and their families in Basel as they meet with three public services: the “Schulpsychologischer Dienst”, the “Schulfürsorgeamt” and the “Zentralkommission für soziale Fürsorge”.⁴ I study the practices of counseling in the three institutions, the discourses informing counseling and the actions of the subjects affected in order to bring into focus individual trajectories as well as collective patterns of exclusion and integration as they change over time. These specifically modern institutions are especially suited for this approach, because it is their explicit function to attend to the social, medical and educational welfare of (pre-)school children and their families -- particularly those who are seen to deviate from a norm, who are in crisis or in need of material assistance and thus in danger of exclusion. In addition, communicative engagement, e.g.

³ It is important to note that “Beratung” in German speaking contexts and “counseling” in English speaking contexts are couched in entirely different histories. Whereas, for instance, “counseling psychology” established itself as a subdiscipline of psychology in Great Britain and the USA, no such unified development took place in continental psychology. Cf. Siekendiek/Engel/Nestmann for an introductory overview of the professional and disciplinary history and segmentation of “sozialpädagogische Beratung” and “psychosoziale Beratung” (1999:13-83), and the entry “counseling psychology” in Kazdin 2000. I use the term “counseling” throughout to facilitate reading, but actually mean “Beratung”.

⁴ I.e. the state services responsible for school psychology and school welfare, and the so-called “Central Commission for Social Welfare.”

counseling, has played an important role in the work and self-understanding of the services in question. How have they constituted, perceived and dealt with their adult and non-adult clientele in gender, class and cultural terms? What specific discourses of normality and difference have guided counseling? What means have been at the disposal of parents and children for articulating their interests and needs? How does psychology enter everyday life?

Historically, counseling has always had multiple meanings for those involved. It has been a more or less voluntary communicative practice for its target audience -- a mode for the transmission of knowledge and for the cooperative working out of solutions, but also a technique of power for the diagnostic and prescriptive labor of the expert and for manufacturing consent. For these reasons, it is imperative to study both the humanistic and democratic principles of consent, voluntary action and self-help usually associated with counseling, as well as coercive practice, normalizing discourse and the attendant legal frameworks. Thus, inquiry reaches back to the foundation of the institutions and stretches forwards to contemporary issues. The central period chosen for examination is marked on the one hand by the expansion of state and para-state social services and the beginning deployment of "case work" as a social work re-import from the USA in the 1950s. These years fan out into the heyday of social work and the psychological and educational disciplines in the 1970s. The study is framed on the other hand by cutbacks in social expenditure and the wane of new social movements as neoliberal politics and managerial notions of counseling become stronger in the 1980s.

My study is guided by the assumption that in the second half of the 20th century and more intensely since the late 1960s, psychological expertise and self-knowledge have become important not only for governmental action but also for the ways people relate to themselves. I investigate how counseling has helped establish this self-relation as part of understanding its integrational and subjectifying role. While closely registering the historical understandings of social integration and exclusion, I read social integration and exclusion today as spatial metaphors for processes which empower individuals and collectives within socialities (integration), and for those processes which mark individuals and collectives with difference in order to discriminate and, ultimately, to withhold full personhood within these same socialities (exclusion). In this context, I study how counseling has come to be a central and highly versatile technology for "governing the soul" (Rose 1999) – i.e. for

negotiating difference and normality, for regulating behavior, for guiding individual action and for learning subjectivity.⁵

My historical inquiry provides a critical historical foil for reflecting on the integrational and subjectifying effects of counseling in the past and today: How have people become empowered through counseling to integrate themselves? How have institutions and their practices of counseling coped with providing material, social and cultural resources to their clientele as part of their welfare and educational task? What is the future of counseling as a potent integrative instrument in today's highly individualized, fragmented and multicultural democratic societies?

The study is geared to national and international comparison. It fulfills pressing research desiderata in four areas: 1) it broaches the hitherto neglected social and cultural history of counseling (but cf. for instance Nestmann 1997); 2) it contributes to the largely unwritten history of Swiss medico-pedagogical services (exceptions in French speaking Switzerland are Catherine Fussinger, Bernard Graf and Anne Dupanloup) and youth welfare especially in relation to the history of youth (see the important study by Ramsauer 2000, also Gestrich 2001); 3) it answers to calls in the history of science to study the implementation of social science discourses (in my case: psychology and education) in professional practice; and 4) instead of a centrist macro-perspective on the workings of the welfare state, it offers "thick description" (Clifford Geertz) of microcontexts with a close look at discourses, institutions, administrative procedure, practices, and, not least, experiences at a local and individual level.

Research is divided into the following three sections as it analyzes the interplay between discourses, institutions/actors and the subjects of counseling.

Institutional Contexts of Counseling

At stake are the changing roles of the institutions in successive phases of reform as gatekeepers of normality, social order and the fates of individual children and families. They were chosen, because they cooperated closely, gave priority to different disciplines (social work, psychology, psychiatry) and fulfilled different functions within the architecture of welfare in Basel. On a theoretical level, this section takes on the Foucauldian notion of "governmentality" for understanding how people are linked into different social fields by "regulated procedures of choice" (Nikolas Rose) and force. Research focuses on the contexts of counseling in:

⁵ In this part of my argument, I rely heavily on the inspiring work of Nikolas Rose, sociologist and prime exponent of "governmentality studies" (cf. Rose 1996, 1999). For a scathing critique of the 'psychotherapization' of social work cf. Specht/Courtney 1994.

the "Schulpsychologischer Dienst" (SPD; founded in 1927) within the ministry of education, entrusted with psychological and psychiatric diagnostic functions (including, importantly, intelligence testing) and counseling of parents and teachers in view of psychological and psychiatric measures and school tracking;

the "Schulfürsorgeamt" (founded in 1910) within the ministry of education with legal obligation to administer or secure an array of services to needy children and their families ("Bedürftigkeit"). I concentrate on the work of the department "Individualfürsorge" which helped secure material, educational and psychological assistance. The (mainly women) social workers were in charge of counseling parents (very often on the basis of SPD expertise). In most cases, child referral to special homes was at issue; the "Zentralkommission für soziale Fürsorge", a private association founded in 1932 as an instrument of poor relief ("Armenfürsorge") with representatives of state institutions in its steering committee (the "Schulfürsorgeamt" among them). From the start, it focused on family and educational counseling. At first an agency of control administering bourgeois domesticity and frugality to the poor, the "Zentralkommission" began to offer more development oriented social work as well as psychotherapy vis a vis a socially more heterogeneous clientele.⁶

Where necessary, I take into account the competencies of the ministry of justice. Special attention is given to 1) the production of difference and abnormality by reading bodily and behavioral signs having to do with disabilities, mental illness, behavioral disturbances, neglect, violence and poverty; 2) the discursive and representational construction of administrative forms and client records and their stigmatizing effects; 3) implicit and explicit conflict between the institutions over questions of (disciplinary and institutional) responsibility and 4) the causes for 'deficiencies' (for instance hereditary vs. social causes) with concomitant disagreement over treatment.

Thus, the set of administrative and diagnostic procedures for identifying the "problem child" and/or the "problem family" and the measures to be taken are central to this section. This serves to understand how underlying assumptions about class, culture, gender and heredity become connected to mental/physical ability and development potential that then influence the course of integration or exclusion. How do social work, educational, psychological and/or psychiatric discourses structure

⁶ The American psychologist Carl R. Rogers is attributed with the 'invention' of client-centered procedures in therapy, these being a basic move toward activating people instead of acting upon them. Client-centered therapy is based on a growth model of the human subject, whose capacity for self-direction and self-understanding are to be released in therapy. Most counseling today is influenced by the client-centered approach (Cf. Rogers 1951).

these procedures? What are the rights of parents and children and their leeway of action?

Practices of Counseling and Individual Cases

This section focuses on the interaction between the affected families and children and the professional(s) in charge (social workers, psychologists, "ErziehungsberaterInnen", psychiatrists). It analyzes a unique selection of client records from all three institutions dating from different time periods. These feature longstanding contact between one practitioner and the subjects of counseling, usually women on both sides. At stake is a thick, microhistorical reconstruction of cases serving to examine individual trajectories of integration and exclusion. This reconstruction is supplemented by an overview of extant records.⁷ I take on Ruth Grossmass's demand to study the 'working concepts of counseling' (Grossmass 2000: 19) evolving in institutions and practices as a means of specifying the nature of counseling.

Keeping in mind the growth of resident immigrant communities, I study historical changes in the following areas: 1) The separation of children from their parents. Studying this highly sensitive issue offers perspectives on changing doctrines as well as on coercion and voluntary action. Since consent was the legal basis for action for both the "Schulfürsorgeamt" and the "Zentralkommission für Sozialfürsorge", communication played an important role. How do the practitioners legitimate, initiate and accompany the process of referring a child to a home? When does "Erziehungsberatung" figure as an alternative and when does it begin to be informed by concepts developed in family therapy and systemic counseling? What conflicts arise and how are they resolved?; 2) Psychology and the self. How does psychological discourse structure the counselor's negotiations? When do clients begin to display a psychologically informed knowledge of the self? 3) Gender, class and age as hierarchical markers. When do practitioners speak directly to the children as agents? How do middle class norms of gender and class inform counseling? 4) Counseling, agency and representation. What are the contents of negotiation and how are they represented? How are the clients afforded agency, how are they stigmatized in representation?

⁷ Anonymity and protection of privacy rights are given the highest priority here and elsewhere in this study.

“Erziehungsberatung”: Training, Discourse, Politics

This section concentrates on the development of “Erziehungsberatung”⁸ as an element of counselor training, counseling discourse and politics. In this context, the reception and application of new approaches in counseling and therapy (esp. systemic approaches) as they enter educational programmes for practitioners and everyday practice is especially salient. “Erziehungsberatung” was important for all three of the Basel institutions. This mode of pedagogic intervention was part of their wider concern to influence the relations, self-relations and conduct of children and parents, as well as to release and safeguard the development potential of the child.

As a body of knowledge and as a practice, “Erziehungsberatung” was always heavily structured by psychological discourse while, interestingly enough, remaining available to practitioners from different training backgrounds. Inquiry traces a) the history of training in “Erziehungsberatung” at the department of psychology in Berne, since the programme has held a longstanding progressive reputation, and b) at the “Institut für spezielle Pädagogik und Psychologie” in Basel as part of the narrower case study focus. This history adds a training dimension to sections A and B while providing a prehistory of the “resource-orientation” hegemonic in the social and psychological services of today. Moreover, the history of “Erziehungsberatung” acts as a lens through which to focus changes in integrational politics against the wider background of socio-political developments. 1) The history of “Erziehungsberatung” serves to throw in relief the heterogeneous training history of especially the early practitioners in the employ of the Basel institutions and to attend to the disciplinary professionalization of counseling in Switzerland at large and Basel in particular (for instance: the “Zentralkommission” changes its name to “Familien- und Erziehungsberatung” in 1970, the “Schulfürsorgeamt” changes its name to “Sozialpädagogischer Dienst” in 1971). 2) The study examines notions having to do with “self-help”, “self-realization”, “empowerment” and “efficacy” in the programmes and practices of “Erziehungsberatung” and their connections to left-wing and feminist political discourse and, later, management concepts. It is especially important to examine how and when such notions displace older ones of “upbringing” and “Fürsorge” which I analyze here as well as in the client and institutional records (cf. section B). 3) Through the lens of “Erziehungsberatung”, I thematize the politicization of the caring professions in the wake of ‘1968’ and their beginning “managerialization” in the 1980s. How does “Erziehungsberatung” implicate itself in the critique of (correctional) homes for children, in the condemnation and re-

⁸ In the broadest sense, this is counseling on matters of educating and raising one’s children.

evaluation of the family? Is it influenced by international political movements such as the Civil Rights Movement in the USA and antipsychiatry in Great Britain and Italy? How do social integration and exclusion themselves become critical topics in psychology, psychiatry, education and social work as a part of 60s/70s upheavals -- which then affects not only counselor training but the political process as well? Does a "self- management" ethos begin to supplant more self-consciously political notions of "self-realization" and "autonomy"?

The central concern of this study lies with children and their families whose lives were profoundly affected by contact with sometimes more and sometimes less beneficent institutions. Research identifies changing modes of subjectification as well as the individual paths and the collective patterns of integration and exclusion. It tracks the heterogeneous trajectories of individual lives and actions as they were influenced by counseling in its changing disciplinary contexts. Thus, the study draws richly founded conclusions on how counseling has contributed to social and educational mobility, stabilization and, sometimes, destabilization of its subjects. In a larger context, it might yield new insights on the rush of political hope in social work and psychotherapy, the production of new concepts of society, citizenship and selfhood, and the conditions of subjectivity in our own (post)-neoliberal times.

Psychiatric Evaluation by Medical Officers in Basel

Institutional and Discursive Aspects of Normalization¹

**Martin Schaffner, Stefan Nellen, Monica Gisler,
Pascal Meyer, Marco Micheluzzi, Robert Suter**

Introduction

The contribution to the common seminar, which we present here, focuses on a number of cases of bureaucratic practice in Basel around 1900. It was our purpose to work with sources documenting everyday aspects of normalization. To be able to do so we selected files of manuscript records transcribed and analysed them.

The source material we were looking into consists of reports produced by the medical officers of the city of Basel between 1890 and 1910. The reports are filed in case records preserved in the city archives (Staatsarchiv Basel, Sanitaet T 13.1). The case records in question, usually contain for each case the following elements: a police report (established by a policeman after inquiries), letters to and from the various branches of the administration dealing with the case (including the director of the psychiatric hospital), and sometimes, though rather rarely, letters from the persons concerned.

The men and women, whose case this material documents, were examined by the police and subsequently by the town physician because of their 'abnormal', 'bizarre' behaviour in the private sphere or (more often) in the public space. Some of them were telling wild stories about being followed or persecuted, others fell totally silent or shouted incomprehensible sounds, others again performed strangely in inns or in the street. The records only rarely mention acts of physical violence. Their 'case' story began, when a relative or a neighbour or some bystanders reported their alienating behaviour to the police, which then started their inquiries.

¹ Results of Prof. Martin Schaffner's seminar course, summer term 2002, Historisches Seminar der Universität Basel, Hirschgässlein 21, CH - 4051 Basel. The chapter was translated by Hagen Schulz-Forberg.

As a result the person in question was usually arrested, the town physician was called, and, after examining the suspect, wrote up his report, concluding most of the time that the patient be brought to the psychiatric hospital.

The reports, which we read and analysed, are interesting in several respects. We looked at them as documents produced by medical experts (even if they were general practitioners and not psychiatrists) for administrative purposes. There are at least three dimensions at stake, medical, judicial, and administrative, and, correspondingly, at least two institutions: law enforcement (represented by the police) and public health (represented by the physician and the psychiatric hospital). We analysed the language of these texts (e.g. the vocabularies involved) and read them in order to reconstruct the practices of observation, questioning and reporting. We asked: are there contradictions? Do these texts convey coherence? And if so: by which means? A further step was our concern with the town physicians: Are they in any way „experts“ or „middle figures“ (to use a term familiar in historical anthropology)? Or is it more productive to think of them as „translators“? The following pages outline some of our answers to these questions.

Basel in the 19th century (Pascal Meyer)

My short presentation is based on the research and findings done by the historians Regina Wecker² and Philipp Sarasin.³ Sarasin considers the division of the territory of Basle into two separate cantons as an important turning point in the history of the city. Even though I am not going to elaborate this point any further, 1833 is an important historical date that still has an impact on Basle today. The separation also had economic consequences for the city, as the silk ribbons, produced by the textile industry had mainly been manufactured in the countryside (canton Baselland); after the split, the investments took place inside the city.

Sarasin considers the demolition of the city walls, from the year 1860 onwards, a second turning point in Basle's history. Only increasing immigration moved the city council to pull down its walls. The third and last turning point was the end of the „Ratsherrenregiment“, the reign of a few rich and influential bourgeois families, and the electoral success of the „radical democrats“ in 1875.

² Regina Wecker, 1833 bis 1910: Die Entwicklung zur Grosstadt, in: Georg Kreis und Beat von Wartburg (Hg.), *Basel. Geschichte einer städtischen Gesellschaft*, Basel 2000, S. 196-224.

³ Philipp Sarasin, *Stadt der Bürger. Bürgerliche Macht und städtische Gesellschaft 1846-1914*, Göttingen 1997.

From the first census of the population inside the new Canton in 1835, up to the first World War, Basle had grown from 23,000 to 135,900 inhabitants. Its population grew most rapidly between the end of the 19th century and the decade before first World War. At the same time, there was also a high rate of fluctuation inside the city. As Sarasin describes in his book: „...a lot of manual workers, maid-servants, factory workers and clerks lead an unsteady, nomadic life and often lived in the same place for a few months only.“⁴ In the second half of the 1880s, the immigration rate was at 16%; until 1887 this figure rose to 21,7%, which means an increase in population of 20,000 people a year.

The great wave of immigration since the 1850s was the expression of a radical economic change. Up to the middle of the century, the silk-ribbon industry was mainly based on a system of manual domestic production. This form of production did not allow a mobile worker to find work for a long period of time. Only the establishment of factories inside the city made this possible.

Besides England, Switzerland was the country in which the economic concept of factories took its roots most rapidly. Nevertheless, at first Basle did not have an important role in that development. Not only did the existence of the guilds block this development, but the manufacture of silk-ribbons was mainly carried out domestically in the villages of the neighbouring Swiss countryside at home. After the separation of the territory of Basle, manufacturers considered it to be more secure to invest their money in the industries inside the city. This led to economic growth and made it possible to build the first silk-ribbon factories. During the boom years of 1850 to 1873 the textile industry characterise the economy of the town.

There was a large majority of female workers in the textile factories. In the late 1880's their number was about 57% of Basle's working population. In this context, Regina Wecker writes:

„The high proportion of female workers - they only received very low wages - was typical of Swiss industrialisation, and was a key reason why Basle could compete with other textile industries around the world.“⁵

The chemical and pharmaceutical industries only developed in the 19th century. Originally, they were suppliers of the textile industries and used elementary chemistry for the colouring of textiles. In 1856, the first synthetic colours were developed in England.

Although the French made a step further in this field, the new discovery for colouring textiles could not be commercialised in France. Therefore French chemists decided to sell their knowledge abroad. Basle

⁴ Sarasin, *Stadt*, S. 37.

⁵ Wecker, *Entwicklung*, S. 204.

was their choice, because they did not have to worry about any patent office, and the river Rhine was an ideal place for waste disposal.

Until 1897, poor relief was only organised by the church or similar social institutions and mainly based on private charity. At the same time there were up to 100 other organisations that operated in this field. In 1870 a new institution, „Armenpflege“, was founded in order to coordinate the different organisations. It was mainly financed by private people. Despite this not all persons had automatic access to its support. Only in 1903, the founding of compulsory unemployment insurance was an important step towards a lasting and efficient social policy in Basle. This achievement was unique in Switzerland at that time.

The ‚Physikat‘ around 1894 (Stefan Nellen)

The *Physikus* has not been an invention of the 19th century. Already in 1571, the office of the *Physikus* had been introduced in Basle; Felix Platter was Basle's first city doctor. However, the invention of the city doctor could just as well have been a modern one.

In 1884, the Basle Sanitary Commission, on the “grounds of personnel changes within our *Physikat*” (the *Physikus* had left office, to be replaced by his deputy, Dr. med. Theophil Lodz, who was voted into the office of *First Physikus* on 16 February 1884), passed the resolution that the old rules of the *Physikat* from 1862 should be revised.⁶ In this revision, a range of actions and duties that had become obsolete were left out: among them tasks that had already before been carried out by public chemists and the canton's doctors themselves. Thereupon the position of the deputy – which had been temporarily approved in the 1870s – was turned into the position of *Second Physikus*.

Both physicians were hierarchically equal while the *Physikus I* had been in charge of the complete sanitary care and the supervision of the medical institutions, and *Physikus II* was responsible for the complete jurisdiction and police work. Both physicians earned an annual stipend of 2500 Swiss francs, plus an amount between 800 and 1200 francs respectively for expenses. Both physicians were each others' deputies, and both were obliged to attend the meetings of the sanitary commission. Following a suggestion of the sanitary commission the physicians were voted into office for six years by the government council; at the end of their period in office they could be confirmed in office by the government council without the necessity of an advertisement for the position. A pre-

⁶ See the “Physikat Amtsordnung” from 28 February 1884 in Basle's city archive (StaBS): Sanitätsdepartement E 0: Physici, Stadtärzte, Gesundheitsamt allgemein.

requisite for becoming a *Physikus* was that applicants had the permission to practice as medical doctors within the canton of Basle-city.

Their tasks included:

*Physikus I:*⁷

Supervision of medical system, of medical law, medical resolutions, and medical personnel,

Supervision of midwives, keeping of birth tables,

Supervision of public sanitary institutions; control, whether sanitary laws and regulations were followed or not,

Following of epidemic illnesses and suggestions as to necessary means as well as the surveillance of their enforcement,

Organisation of vaccination system; and – as a new task – the control of the effectiveness of vaccinations exported from Basle,

Periodic/Annual report on the condition of public health (illness reports and death certificates),

Coroner's inquest,

Surveillance of unclean businesses and – as a new task – inspection of unhealthy apartments and their surrounding respectively, including a report thereupon.

*Physikus II:*⁸

Surveillance of pharmacists,

Coroner's inquest,

New task: Inspection of prostitutes taken into custody by the police,

Supervision and maintenance of places and apparatuses for the salvation of casualties,

In charge of forensic medicine, reports on the latter, as well as execution of all enquiries demanded by the communal institutions,

Surveillance and inspection of injury or illness in cases of forensic medicine,

New task: Advice of accidents in manufactures,

Personal presence when demanded by communal institutions,

Medical treatment of *Lohnhof*-prisoners and "just as well medical inspection of and reports on persons that have been delegated to him by the police department in order to be inspected as to their state of health, as well as reports on hospital catering and the possibility of the prisoners' transportability."⁹

In an article published in the *Basler Nachrichten*, the liberal-minded head of the sanitary department, Wilhelm Klein, commented on the range

⁷ See the "Geschäftsverteilung zwischen den beiden Physici, Physicus I", in: op.cit.

⁸ See the "Geschäftsverteilung zwischen den beiden Physici, Physicus II", in: op.cit.

⁹ See "Physikat Amtsordnung", op.cit.

of tasks the *Physikus II* had to fulfil that the “*Physikus II* remained a member of the sanitary department only on a very moderate level”, he is, rather, “a court and police doctor.”¹⁰ On 1 March 1884, Dr. Ernst Sury-Bienz was elected as *Physikus II*. In the same year he became professor at the University of Basle. Beside his office, Sury remained a private practitioner. Six years later, both Dr. med. Theophil Lodz and Dr. med. Ernst Sury were confirmed in their office.

Following the death of Ernst Sury, the *Physikat* was slightly revised one more time. The distribution of tasks that should have been reformed by the head of the sanitary department in 1884, was now finally defined and also fixed within specific instructions defining the tasks of *Physikus I* and *Physikus II* respectively. *Physikus II* was now directly related to the police department, while *Physikus I* remained linked to the sanitary department. Furthermore, the *Physikat* was reinforced: each physician was assigned a new deputy.¹¹ On 19 October 1895, Dr. med. Adolf Streckeisen was elected *Physikus II*. He simultaneously acted as a private practitioner as well.

The *Physikat* did not only interfere with two different departments, it furthermore intervened on two different levels: On the one hand, it was an agent of population control (Foucault would perhaps have talked of ‘bio-politics’¹²) and on the other hand, it was a discipline of individual human beings (Foucault’s ‘political Anatomy’¹³). The duties of the *Physikat* were not simply intended to secure a good life for the citizens. Two levels were indivisibly connected to each other: the access to single bodies produced the material for bio-politics, and the ‘surveillance’ of the population localised and differentiated subjects inside the social body. This brings us back to the end of the 16th century and the first introduction of a public health office in Basle, when *Policey* in its comprehensive, early modern meaning as government began to take shape.

The Case of Rita Sarasin-Alioth¹⁴ (Monica Gisler, Marco Micheluzzi)

Case Reconstruction

On 25 September 1894, 34-year-old Rita Sarasin-Alioth, mother of a 16-year-old daughter and wife to a mechanic, attracts attention in the

¹⁰ *Basler Nachrichten*, Nr. 62, Thursday, 13 March 1884.

¹¹ See “*Amtsordnung des Physikus I*” and the “*Amtsordnung des Physikus II*” in: StaBS: Sanitätsdepartment E 0: Physici, Stadtärzte, Gesundheitsamt allgemein.

¹² See Michel Foucault: *Der Wille zum Wissen. Sexualität und Wahrheit*, Vol. 1 (Frankfurt am Main, 1977), p. 166.

¹³ Op.cit.

¹⁴ The name is not the original one.

Church of Mary in Basle when she threatens to commit suicide and claims that her husband has been murdered. The responsible priest alarms the Basle *Physikus* who immediately refers the woman to an insane asylum. R. S.-A.'s husband is in accordance to this and states that his wife would suffer from religious delusional ideas and was completely confused for quite some time. Already on 22 November 1894, the woman is released on her husband's request, yet against the will of the doctor's.

On 30 March 1895 the husband again states to the police department that his wife has become dangerous to public safety and would suffer from conditions of high excitement. Since the insane asylum would decline his request, he asks the police to take his wife there one more time. The *Physikus* examines the woman and concludes she was healthy and that there would be no reason for a second referral to the asylum.

On 23 February 1897, a police officer writes in a protocol that he was an eye-witness to a violent outbreak of R. S.-A. against her neighbours. The husband, thereupon, asks the policeman to call the *Physikus*. By request, the *Physikus* examines the woman yet again on 22 February 1897 (sic!) and she is referred to the insane asylum for a second time. Half a year later, and by now declared incurable, she is referred to the insane asylum of her home canton Luzern because the canton Basle is no longer willing to pay the costs for her treatment. Her husband agrees with the referral.

Analysis

The character of the *Physikus* shall be in the centre of this argument. Our guiding question to the sources is, based on the idea of the joint seminar with the EUI, whether the *Physikus* was the central control station, which decides upon normality and abnormality respectively, and whether he thus represents a 'middle figure' between psychiatry, a supposedly ill person, and the administration. In order to be able to answer this question we shall first shed light on three related aspects:

The *Physikus* lacks a specific language expertise. The medical terms he uses belong already – or have always belonged – to a common language. This can be illustrated by comparing a report written by a *Physikus* with one by the police. At the same time the *Physikus* lacks medical categories, leaving him with a mere description of symptoms, while the expected diagnosis is lacking from his report. Accordingly, the responsible *Physikus*, Dr. Sury, writes: "During my examination the woman was very excited and completely confused."¹⁵

This lack of a specific language and of specific knowledge leads to the question as to where the *Physikus* derived his authority from when the field of medicine can be excluded. A study of the source material implies that

¹⁵ *Physikus*-report on R. S.-A., see appendix, p. 24.

this authority could stem from the field of administration. The reports themselves speak an administrative language, e.g. with their formal structure (reference to order in the beginning, identification of person, symptoms, measures taken). This special administrative field is also reflected on the level of decision making. The *Physikus* has to judge not only medical aspects, but also to consider the financial implications of specific cases in his decisions. Accordingly, in his second report, Sury explains his decision of not referring her to the asylum by saying that the "polyclinic refuses to pay for the costs."¹⁶

The *Physikus* is relieved from taking the decision on normality/abnormality by the public. He is dependent on this public in order to be called into duty in the first place. By calling the *Physikus*, the public has already pronounced its judgement of the subject. In such a case, the *Physikus* is left with the task to transform this judgement into an administrative text. To put it differently, the *Physikus* takes the position of a translator between the public and the administration. Considering the level of measures taken - which as such is already endowed with a strong administrative character - the *Physikus*, according to our source material, is left with a freedom of choice between inclusion or exclusion of the individual in question. Nevertheless, taking today's perspective, the question remains as to what extent the *Physikus* had a space of manoeuvre for measures and decisions or if he was a 'mere' translator.

Conclusion

The *Physikus* must be regarded as a pure agent of administration, i.e. he cannot play the role of a 'middle figure' between administration, the sick person, and psychiatry. He acts as a translator, yet not between these three groups, but between the public and the administration. The *Physikus'* strong roots in administration also come to the fore through the way in which the *Physikat* in Basle is organised. The *Physikus* consulted in cases such as R. S.-A.'s is not responsible to the sanitary department but to the police department.¹⁷

The Case of Huber (Stefan Nellen)

According to our typology I will present a short *Physikat* report, i.e. a report, which was written in relation to an examination in the *Lohnhof* prison. My interest lies less in the character of the *Physikus* than in the performativity of his reports. The question is not: "What is a *Physikus*?",

¹⁶ *Physikus*-report on R. S.-A., see appendix, p. 25.

¹⁷ See p. 9 ff. of our article.

but “What *does* a *Physikat* report?” To put it differently: I am concerned with the materiality of documents, which always describe actions, too.

During the morning of 1 October he was on his usual tour through the dormitories of the hotel, reports the warden of the lodging house for the poor, Gottfried Wilhelm Werner-Hirt.¹⁸ When he reached Eduard Huber,¹⁹ the latter had completely wetted his bed. Werner confronted him with this fact. Huber himself was speechless and answered by delivering a fairly strong blow to the warden’s head, using his shoe for this matter. The bleeding wound had to be stitched at the hospital. Even though warden Werner was not unable to work and only needed to rest a little while, he initiated a proceeding against Huber. Following the rules of the procedure, the man taken into custody is interrogated by police officer Rippmann; and here the Huber case takes a turn. Rippmann writes in his protocol:

“Huber is highly mentally deranged and cannot be interrogated since no answer can be obtained from him.”²⁰

Following this protocol, one discovers in the files the report of Basle *Physikus II*, Dr. med. Ernst von Sury-Bienz, honorary professor of surgery at the University of Basle:

Basle, 2 October 1884

To Basle Police Department

Today, according to your order, I have examined the arrested Eduard Huber in the Lohnhof and I herewith take your permission to report that the latter is mentally deranged and shall be at once referred to an insane asylum. I attach a relating medical certificate.

Most sincerely yours,

Prof. Sury²¹

This case appears to be straightforward. In the *Lohnhof*, the city’s prison, a man called Eduard Huber is held in remand. “According” to the police department’s order, Eduard Huber is examined by the city doctor, *Physikus II*, on 2 October 1894 in the *Lohnhof*, and declared as being mentally deranged without any further mention of symptoms. And just as it was clear that Eduard Huber would be mentally deranged, it was clear that the latter had to be “at once” referred to an “insane asylum”. Because of this, the *Physikus* attached a “relating medical certificate”.

What is this specific place mentioned in the report? Well, a *Physikus*, a doctor provided by the department of sanitation, has written the report.

¹⁸ See the “Verhör-Protokoll von Polizeimann Rippmann” within the dossier regarding Eduard Huber in: StaBS: Sanitätsakten T 13, 1: Basel, Einzelne Geisteskranke 1894-1912.

¹⁹ Not the original name.

²⁰ StaBS: Sanitätsakten T 13, 1: Irrenanstalt Basel, Einzelne Geisteskranke 1894-1912.

²¹ *Physikus*-report on E. H., see appendix, p. 23.

The report itself, however, is not addressed to another doctor (e.g. a mental specialist) but to the police department. In that sense it crosses a border. But there is more: the *Physikus* acts in accordance to a police order and he does so in the *Lohnhof* – as a quasi policeman or agent of the police. Nevertheless he acts as a doctor: he “examines” a patient and concludes with a diagnosis: “mentally deranged”. However, he authorises a measure to be taken that is not specifically therapeutic in character but rather typical police work. Only a “relating medical certificate” in the hands of a police officer could move the putative criminal Eduard Huber from a prison into an insane asylum, where he supposedly belonged due to his mental illness. One can see that the place of the report cannot be fixed and remains ambiguous. Thus the report describes and creates a connection between medical and policing practice, and opens up a police-medical space of knowledge.

It is remarkable that the *Physikus* himself does not have prowess over a language of his own. All information this report contains is already written down in files before the report of the *Physikus*; even that Eduard Huber is “mentally deranged” was already stated by policeman Rippmann. It was only Rippmann’s file that called for the necessity of a *Physikus*-report.

Maybe the *Physikus* can fix Huber’s “mental illness” formally. At the same time it is the power of the report to install a police-medical rule by re-composing already known information, finally enabling the “referral” of the “mentally deranged” Eduard Huber. One could also talk of a police-medical space of manoeuvre of translatability. Around 1900, police-medical rules and regulations are nothing new, however. Rather, they are already part of history, existing since the middle of the 18th century.²²

It remains to ask: how is a “mentally deranged” signified? To what refers the term “mentally deranged”? One can surmise that a disorder of the mind implies a disorder of a rule. Some reports refer to “disorder of public peace and order” or “disorder of public peace and security”. In the report on Eduard Huber, however, nothing of this kind of public disturbance is mentioned. Yet police officer Rippmann writes, following a supposedly held interrogation with Huber:

“Huber is highly mentally deranged and cannot be interrogated since no answer can be obtained from him.”

What has happened? Obviously, Huber had not been able to answer Rippmann’s questions during the “interrogations” in an adequate way. Whatever Huber has said, if he had said anything at all, did not correspond

²² See Martin Dinges, “Medizinische Policey zwischen Heilkundigen und ‘Patienten’” (1750-1830), in Karl Härter (ed.): *Policey und frühneuzeitliche Gesellschaft* (Frankfurt am Main, 2000), pp. 263-296.

to what Rippmann was expecting or had thought he would say. Here, “mental derangement” refers to a disorder of words and sounds.

This disorder of words caused the writing of the *Physikus*-report, which confirmed the “mental derangement” of Huber and, continuing the administrative chain, caused the creation of the attached “relating medical certificate”. What is the nature of this “certificate”? As a response to this question, I will reconstruct the location of this certificat within the paper trail initiated by Huber’s imprisonment. The disorder of Huber’s words produced further files: a “relating medical certificate”; a report by Prof. Ludwig Wille, head of the insane asylum; two letters to the regional president of Upper Alsatia; one letter to Prof. Wille; one letter from Prof. Wille; one letter from the regional president of Colmar; a further letter to Prof. Wille; a letter to the police inspector of St. Ludwig and a letter from this police inspector to Basle, including the confirmation of the “correct delivery of Huber”.²³

Within these files and letters circulates the name of the “mentally deranged Conrad Eduard Huber” and together with these files and letters the “mentally deranged” himself is circulated: from the poor lodging house to the *Lohnhof*, from the *Lohnhof* to the insane asylum Friedmatt. Showing symptoms of being “dangerously ill to a high degree”, he is “transferred” across the German border into an Alsatian insane asylum in the region where he was born. It is as if Huber’s “mental derangement” initiates the labour of a file-producing discourse machine that incessantly tries to repair his mental insanity, or tries to rebuild the (“dis-ordered”) order of words.²⁴

Yet this does not seem to be of interest for the Huber file: the case is closed, at least for the Basle official administration, once Huber had been transferred to the police inspector of St. Ludwig. That is to say it ended at the German border. The Huber case does not seem to hint at the normalisation of an individual. But what does it hint at? What is happening to Huber? He is excluded from the social body. But he is not simply excluded, he is immediately included again, first in the prison, the *Lohnhof*, then in the insane asylums of Basle and Alsatia. These institutions are themselves part of society, however. Thus, it is a case of a – not very simple - inclusive exclusion. While Huber’s order might be reconstituted, it is certainly an effort at reconstituting order within the social body of Basle. From the fringes of society, in the concrete form of the Basle suburbs, the order of the social body shall be newly built. And it is exactly with this action that the social body itself becomes a visible entity. Normality is defined at the fringes and from the fringes of society. Normality can thus

²³ See dossier on Eduard Huber in: StaBS: Sanitätsakten T 13, 1: Irrenanstalt Basel, Einzelne Geisteskranke 1894-1912.

²⁴ For more detail, see our article, p. 20.

only be built indirectly when the “mentally deranged” non-normal is the signified. Through this process, the character of the “mentally deranged” is put into the imaginary and empty centre of society. The positive order of the social body, in other words: normality, constitutes itself in a negative process of an inclusive exclusion of, for example, mentally disordered people.

Displaced Order. On the semiotics of “Insanity” (Robert Suter)

Verbatim, the German word “verrückt” means that something is not in its right place, something is not where, according to a common order, it should be. In English, a similar phrase is used when saying that someone would be ‘out of his mind’, he or she does not function as would be expected. ‘Insanity’, in German (‘Verrücktheit’) may literally mean disorder, and the term can only be conceived of in relation to a certain order in which all things have their places. In the *Physikat*-reports, ‘insanity’ is often used as a diagnostic term and can be found in perpetually novel variations: ‘insanity with hallucinations’, ‘chronic insanity’, ‘acute insanity’, ‘epileptic insanity’. Always, this diagnosis leads to the displacement of individuals that have been signified as being insane, mentally deranged, ‘verrückt’. They are taken from one place to the next. Mostly, they are taken to an insane asylum. Insanity itself is not only diagnosed by the *Physikus*. Ludwig Wille, head of the psychiatric institution and professor of psychiatry in Basle, diagnoses as well, and without second thoughts, whether or not somebody is ‘deranged’. Here, the irritating fuzziness of the term *insanity*, shall not be understood as a sign of deficiency of a psychiatry that is still struggling for its scientific tools, but shall rather, in its positivism, be interpreted according to the genealogical programme of Michel Foucault.

In one of the reports, a woman is mentioned who is “obviously suffering from persecution mania that disallows her to speak and to eat.”²⁵ How the *Physikus* was able to reach the conclusion that the woman was suffering from persecution mania when she is unable to speak cannot be read in the report. In the case of B. E., the *Physikus* recommends a transferral of the examined even though the latter “now appears to be quite harmless (...), it could unexpectedly be the case that he, who is always armed with a razor, might present a threat for his environment.”²⁶ The reporting expert makes a logical step from the dangerous razor to the dangerous person. All mentally disoriented patients share the quality that

²⁵ *Physikus*-report on A. E., see appendix, p. 21.

²⁶ *Physikus*-report on B. E., see appendix, p. 23.

no symptoms of disease exist, which point directly at them. They only point at them indirectly. Furthermore, all signs that signify a possible mental illness are by no means unambiguous. There always exists a certain room for interpretation: often phrases like “the examined person is *obviously insane*”²⁷ are found in the reports. Persistent silence and dangerous razors thus become circumstantial evidence of insanity. These signs always pre-suppose an active interpretation, and always they are themselves somehow insane since they never represent the malady in a direct way, even though this is what they appear to be doing in the eyes of the report writing experts. Mental disorders do not go without saying, they must be signified as such in order to become visible. This is the task of the reporting expert. Thus, the fact that mental disorders can only be signified indirectly shifts to the focus of our attention even more to the reports. In one report, we read that the Catholic priest H. L. P. would be “undoubtedly mentally deranged”, and the *Physikus* adds in brackets: “possibly in the form of an acute, hallucinatory insanity”. The referral to the insane asylum, however, is based by the doctor on the grounds of the patient’s disturbance of “public peace”.²⁸ Thus, a mental disorder is diagnosed, and described more precisely in brackets, but the measure taken that authorises a referral into an insane asylum is not motivated by a diagnosed illness but by a disturbance of public peace. One description is substituted, or rather supplemented, by the next measure taken. The mental disturbance is supplemented by insanity, which again is supplemented by the measure taken, and each of these supplements cancels out the one before and at the same time adds on to it.²⁹ In the following part of my presentation I want to elaborate on this play of supplements.

The play of supplements reaches far beyond the reports. In the case of R. S.-A. it is the priest who calls for the *Physikus* and not the police. He reports that there would be a “mentally deranged” woman in the parsonage. He furthermore explains that R. S.-A.’s husband said “he knew for a long time that his wife was insane, and one should do with her whatever one wants to do.”³⁰ The reporting expert himself does not provide any explicit diagnosis, but is merely quoting the statements of the priest and the husband –on the basis of which he orders the woman to be driven to the insane asylum. The woman’s transport to the insane asylum supplements the two non-expert diagnoses, just as it normally supplements the diagnosis of the report writing expert. The measure taken is therefore just as much a sign as the diagnosis themselves, they are inconceivable without the

²⁷ *Physikus*-report on W. T., see appendix, p. 26. My italics.

²⁸ *Physikus*-report on H. L. P., see appendix, p. 23.

²⁹ I follow here Jaques Derrida’s concept of *supplement* in his *Grammatology*.

³⁰ *Physikus*-report on R. S.-A., see appendix, p. 24.

relation to the unauthorised statements of non-experts, even though it is at the same time supplementing these statements. Here, the priest quotes the husband and the *Physikus* quotes the priest. Through this process, characterisations are circulated which are meant to state the woman's insanity and which finally lead to her dis-placement ('Ver-rückung') into the insane asylum. It is thus of no analytical value to comprehend the *Physikus* as a form of translator, both of the two other persons have just as much the same function of translation. The policemen translate their protocols from oral statements into written ones; the landlady that denounces a woman to the police for disturbing the quietness of the night, does also speak for the other tenants living in the house. The *Physikus* thus acts within a network that works exactly because of the existence of many translators. Signs circulate through the impetus of an array of switching stations. The reporting expert, is part of this network and at the same time a switching station. It is striking that he never merely repeats the terms he finds in police protocols, but his diagnoses still gain their authority through pre-diagnostic statements, especially by supplementing them. When taking this perspective, Ludwig Wille can be understood, who writes in a report on a written document sent to him by the hairdresser B. E. that it was obvious for everyone that this document could only have been written by somebody insane. This may even have been the case, but only the authorised expert can fix this judgement, only the *Physikus* was endowed with this right by police rule, and could put people who have obviously behaved in a disordered way back into their right place. He is able to do this because he corrects dis-ordered diagnoses of others, because he fixes floating significant, and can thus authorise police measures. With this he creates order, yet at the same time he produces dis-order; while he is stubbornly trying to fix the significant, to attach it to a certain signifier, for example a mental disease, he is re-coining their meaning and re-introduces them into circulation. While he is inscribing an order, he is simultaneously changing it. This characterises the contradictory function of the reporting expert who acts as an authorised translator.

When this inscription of order is conceived of as a production of normality, then it follows that normality will never be reached, since it also follows that the normalisation of variety leads to a diversification of normality itself. Diversification of normality means that each effort at constituting a normal order implies a simultaneous changing of that order. Perpetually, new inscriptions of order become a necessity, producing new statements, protocols and reports – documents of a dis-ordered order of normality.

Appendix: Quoted *Physikus*-Reports³¹

A. E.1894 Sp. 310

Basle, 28th May 1894

To the Basle Police Department

This morning, according to your order, I have examined an unknown person in the *Lohnhof* as far as this was possible, and I permit myself to suggest to you an immediate transferral of this person to the insane asylum. This patient, who, according to the files, has been picked up yesterday morning, has not spoken since and has not eaten either. Furthermore she does not answer to me; yet concluding from her behaviour it seems to be the case that she suffers from hallucinations and persecution mania, which forbid her to speak and eat.

Most sincerely yours,
Prof. Sury

P.S.

It is likely that the woman comes from Baden; her age must be between 35 and 45 years.

[on the back of the page]:

This goes to the already existing files on directorate of insane asylum with the request to report – as soon as this is possible - on the personal details of the unknown and her transportability when sending the files back.

Basle, 29 May 1894
The Secretary of Basle Police Department,
Lutz

[D. u.s.]

The insane asylum's directorate has called and reports that the woman in question's name was E. A. and worked as a maiden in Clarabad.

The guarantee bond is re-demanded since the woman in question is in residence here.

³¹ StaBS: Sanitätsakten T 13, 1: Irrenanstalt Basel, Einzelne Geistesranke 1894-1912.

In fidem,
G. Haller
[written with a pencil]: E. B.³²
1846, 12. 3.
Tel. 165
Dormettingen Württemberg

Physikat, Basle City

To Basle Police Department

According to your order, I herewith report on the mental condition of B. E. whom I have examined this morning in the *Lohnhof* after having consulted the relating files.

E. has a thickset stature, a reddish face, normal temperature, heart rate 96; he claims to have an appetite. Of his previous diseases, he only remembers a pneumonia and a broken arm when he was a boy; he is now 39 years old.

Asked about how he was feeling recently, he replies that for some weeks he would be sleeping in an excited way, he also said he had occasionally drunken a bit more than he would habitually do; but he has gone through quite something recently as well! He could not live with his wife anymore; she has poisoned his soup for the first time on 7 June; on the 8th he already began to tremble in such a way that he could not work anymore. He hears the wife together with other spirits, for example: "now the Kaib is still alive and more healthy than before". The wife is having affairs with other men; while he was being deadly sick and lying on his bed last week, he heard how his wife was doing it with somebody else outside his room; it also happens that somebody would be knocking on her door during the night, assuming that he would be sleeping. The pharmacist Münch (close to Central Station Square) could not stand him either; he recently bought berry tea there and there was "in any case something inside"; arms and legs felt "soapy" ever since.

Of yesterday's soup he only ate a spoonful, then he already had difficulties breathing and became hoarse; Dr. Hagenbach gave him an antidote which immediately helped. He gave the soup to Dr. Kober in the Holbein Pharmacy to be analysed; the latter has not found anything poisonous inside "until now".

³² In the same dossier, a file on E. B. is found, born 3 December 1846.

Last night he slept out of house at innkeeper Meyer's in Kuchegässlein; today he has not drunken any alcohol, had milk and bread for breakfast and taken his "antidote" (Uprom solution).

All this and similar things he describes under moderate exertion and in a slightly disordered way. A slight tremor can be noticed when he sticks out his tongue and when he extends his fingers.

E. suffers from a mental disorder connected to hallucinations of his hearing and needs to be immediately transferred to the insane asylum. I have at once filled out a relating medical certificate.

Basle, 19 July 1894

Yours sincerely,

Dr. Th. Lotz.

To the Police Department of Canton Basle-City

As you have ordered me to do, I have examined B. E., born in 1856, assistant to the hairdresser Daiker in Blumenrain 13, in order to assess his mental condition and can report to you the following result:

The patient appears in good bodily health except for a chronic throat catarrh, because of which he coughs up slightly, from time to time. His heart rate is slightly above average, 90 beats per minute. As can be seen in the files, he used to drink excessively, a fact he admits himself; now, he claims, he does not drink too much anymore, which is credible as he shows no signs of chronic alcoholism such as trembling hands and tongue, etc. His master gives him good testimony in this respect, too; as a worker he was rather useful when he was first employed; recently, however, he was often absentminded and looked distressed but would not talk about his sorrows.

When asked what was wrong with him, he would talk to me in a confused way about all the things he documented in his "appeal and charge claims" and in both of his letters to Captain Mangold. He complains about his tormentors (Dr. A. Heitz, Frei and Schwägler) who would follow him everywhere, and would, furthermore, hypnotise him over great distances, wherever he may be, and are supposed to have swindled him, who in reality was a 'von E.', out of his fortune of 25 million francs. The most embarrassing thing, for him, is that his tormentors have scattered itching powder into his collar every morning when he had to serve customers forcing him to cough and often even vomit. (The cough and the *vomit* *matutinus* are caused by the throat catarrh).

Certificate

Based on the existing files and on my examination it can be concluded that the patient suffers from mental disorder which manifests itself mainly in persecution mania; besides, he suffers from megalomania, as well as hearing and partially also facial hallucinations.

Even though the patient now appears to be quite harmless, I consider his transferral to an insane asylum to be a necessity since it could unexpectedly be the case that he, who is always armed with a razor, might present a threat for his environment. He can be transported to Münsingen.

Most sincerely yours,
Dr. G[ustav] Schaffner,

deputy to *Physikus II*

Basle, 2 October 1894

To Basle Police Department

Today, according to your order, I have examined the arrested Eduard Huber in the *Lohnhof* and I herewith take your permission to report that the latter is mentally deranged and shall be at once referred to an insane asylum. I attach a relating medical certificate.

Most sincerely yours,
Prof. Sury

Basle, 24 May 1894

To Basle Police Department

According to your order I have examined the Catholic priest, H. L. P., today at lunch time in the *Lohnhof* where he is held in custody, and I herewith permit myself to report to you that he is undoubtedly mentally deranged (probably in the form of an acute, hallucinatory insanity); because he has disturbed the public peace, he has to be temporarily taken care of in

the local insane asylum until a closer examination and the reports requested from his home community allow further conclusions.

Most sincerely yours,

Prof. Sury

S. A., R.

1894 B. 227

Basle, 25 September 1894

To Basle Police Department

Tonight around 7.30 p.m. I was called to the Roman-Catholic parsonage (Auststrasse 30) after it had been indicated that a mentally ill woman was found there, who was very excited and threatened to commit suicide; the woman has spent almost the whole day in the Church of Mary and has attracted great attention with her strange behaviour.

I have immediately made my way to the parsonage where I found the 31year-old Mrs R. S. (living in Nr. 108, Lehenmattenweg), wife of a mechanic; today afternoon, according to Abbé Joye, the husband, after having learned about the incident at the parsonage, has answered that he knew for a long time that his wife was insane, and one should do with her whatever one wants to do.

During my examination the woman was very excited and completely confused. She claimed that her husband has been murdered, that Mariastein was burning, and that she wanted to jump into the Rhine just to save the others with her sacrifice, etc.

Since her condition demanded an immediate transferral to the insane asylum – partly for reasons of public peace, partly in order to protect her life – I drove her to the *Lohnhof* myself, accompanied by a maiden from the parsonage. I ordered her to be taken from the *Lohnhof* to the insane asylum. She was accompanied by Mrs Schelling, whom I provided with a relating medical certificate.

Most sincerely yours,

Prof. Sury *Physikus*

Basle, 6 April 1895

To Basle Police Department

According to your order I have examined Mrs R. S. at 108, Lehenmattenweg, and permit myself herewith to report the following to you.

On 25 September 1894, Mrs S. had to be brought into the insane asylum due to acute mental disorder. Unfortunately, she was discharged already on 22 November 1894 following a request by the husband and against the council of Prof. Wille; she had not been cured yet.

Ever since, as her husband reports, moments of great excitement have returned from time to time, supposedly making her excited and violent.

During my visit, the patient was calm and relatively clear and reasonable; the other tenants of the house said as well that the woman would be quite calm and decent again (I did not see the husband).

Since the husband has brought his wife home against the asylum directorate's council, since Mr Wille rightly opposes to take her back, and since, furthermore, the polyclinic refuses to pay for the costs, it could be, according to my reasoning, a solution to take the patient to her home community (St. Urban, Luzern) for medical care once the illness returns more strongly; eventually nothing could be said against her transport. Yet I believe the case is not an urgent one right now; I permit myself to request to temporarily not do anything in this case but to wait for its future development.

Most sincerely yours,
Prof. Sury

Physikus II
of the canton Basle-City Basle, 22 February 1897
To the Police Department of the canton Basle-City

Following your order I have examined Mrs S.-A., living at 87, Zürcherstraße, as to her state of mind and to her necessity of medical care, and I herewith have the honour of reporting on this to you with the following.

The patient is 34 years old, married for 16 years, born in Henliberg, Luzern, and for years in a state of excitement, often mischievous, moody,

and temporarily violent, so that she attacks people in her environment with an axe or a knife. From 24 September to 22 November 1894 she was treated in the local insane asylum for hysteric insanity and has been discharged from the asylum against the doctors' council. She gave birth twice, a 16 year old girl is alive and healthy, while a six months old boy has died. There are supposed to be no cases of mental diseases in the family.

This year, in early January, she was excited again, scolded a lot, nothing was good enough for her, she felt persecuted by everybody and accused husband and daughter for no apparent reason; besides she was indulging in self-accusations, she was supposed to have committed adultery and must atone for it, her husband could never forgive her this. At night, too, she was restless, often wandered about, even on the streets, saying she wanted to go to the police station. Without thinking about it, she threw a child down the staircase that wanted to pay her a visit. Slowly she calmed down a bit, but she remained moody and queer; since 8 days the excitement has increased again, she does not sleep, suffers from headache and a buzzing in the ears, scolds and scandalises. Today she penetrated into another apartment in the same building, destroyed some of the windows, hit the daughter of the concerned family and tore her dress into pieces, believing that these people were planning to take her daughter away. In her rage she cut her lower right arm.

The patient is a weak and meagre person, restless and excited; she feels weak, too, that is why all people behave in a bad and rude manner towards her, and they want to put as many unpleasant obstacles into her way and to exploit her; even though she is ill, nothing is done for her, she feels as if she was shut in. She herself would be working as hard as she could and yet they would be coming down much more.

Many questions are not answered by the patient, just as she refused to be examined and she does not want to have her wound bandaged, either. Her mood is anxiously excited and leaning towards scornful outbreaks and violence.

There is no doubt that the patient is mentally disturbed to such a degree that it lifts her soundness of mind and necessitates medical care. The family is not capable of constantly providing her with a warden, which would be necessary. It is even more necessary to refer her to the insane asylum since she is to some degree dangerous to public safety, and, furthermore, an unfortunate influence of the mentally ill mother on the adolescent daughter cannot be abrogated.

Most sincerely yours,
Dr. Streckeisen
Physikus II

Basle 15 October 1894

To the Basle Police Department

According to your order I have examined Mrs W. T. in 5, Trolleygässchen, and herewith take permission to propose the patient's referral to the insane asylum.

Mrs W., 45 years old, was taken care of in the local insane asylum from 27 February to 13 May 1893, then, according to her records, suffering from insanity. Not cured, but calmed down, she was discharged. Her symptoms preceding her reception in the asylum were the same as today: excitements obviously due to delusions.

Since patients like her are not only disturbing public peace but can also become a danger to themselves and others because of their delusions, a second referral into the insane asylum is not only justified but also absolutely necessary.

Since I have not encountered the husband during my visit I have ordered him to my office where he has not presented himself until today, and it should thus be necessary that your office informs him of his wife's referral into the asylum before it happens.

Most sincerely yours,
Prof. Sury

Attachment: 1. Medical certificate for the asylum

2. Files

5'.8017

W. T., born E., from Wynau, Bern, born on 21 January 1849, second wife of Jacob, day labourer, Nr. 5, Trolleygässchen.

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