'Police' and the Formation of the Modern State. Legal and Ideological Assumptions on State Capacity in the Austrian Lands of the Habsburg Empire, 1500–1800

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Since the late fifteenth century in German-speaking territories, rulers claimed a general competence in the combating of all social disorder for which existing law and custom did not provide a remedy. The concept of 'police' denoted these state activities. Focusing on developments in Lower Austria and Vienna between 1500 and 1800, I discuss the transition from the practice that regarded policing as the *administration* of the affairs of the state to the practice of 'high policing' which saw the police as a *preventative force* functioning as a means to defend the state against internal enemies. I argue that this transformation was closely bound up with the growing concern of the state since the middle of the seventeenth century with the surveillance of its population.

I

In German-speaking Europe the term 'police' (*Policey*) was first found in the towns and, subsequently, in the principalities; in Würzburg in 1476, in Nuremberg in ordinances of the town council (*Regiment und Pollicei*) of 1482 and 1485, in the Electorate of Mainz (*Regiment und Pollucy*) in 1488. From the early sixteenth century, the combination 'police and good order' or 'good police and order' is used in the sources. In the imperial and the territorial police ordinances (*Polizeiordnungen*) of the sixteenth century the word 'police' was used in a very distinct and specific way. Though the spelling of the word 'Policey' was not fixed—one can find 'Policy(ei)', 'Pollicey(ei)', 'Pollizey(ei)', 'Politzey', 'Polluc(e)y', and 'Pullucey'—its meaning remained invariable: it meant the condition of good order in the public realm and in the common weal. The aim of 'police' was to establish a well ordered civic or territorial community. 'Good police' (*gute Polizei*) meant the redressing and correcting of disorder. Furthermore, the word 'policey' was also used to refer to the

instructions and activities which were considered necessary for the main-tenance or reformation of 'good order', thus being identical with 'police ordinance'. In the course of the sixteenth century the term was used in an increasingly extended form to indicate one of the major tasks of government: the ruling authorities claimed a general competence in the combating of all social disorders for which existing law and custom did not provide a remedy.[1]

In so far as the police ordinances were dissociated from custom and tra-ditional law, they constituted a new departure in the history of the formation of the modern state. The police ordinances created *new* law. The ordinances were deliberate acts of will and reason. These new laws stood, in principle, in stark contrast to the old law (*gutes altes Recht*) which had not been *created* and *enacted* by a secular sovereign legislator but was thought of as representing and expressing perennial norms contained in tradition, ethical values, and religious prescriptions. 'Old' law was not enacted but 'found'; changes in the law were thought of, not as a purposeful creation, but as a 'reformation' of still binding traditional norms. The task of the ruler, which emerged from this notion, was to provide *pax et iustitia*. For the medieval ruler to govern meant to sit in judgement; to 'find', ascertain, and confirm law was the ruler's main political responsibility.

The rulers performed this task within two main constraints. The dominant ideology contained the idea that the rulers had received their authority from God, *Dei gratia*. As deputies of Christ, *vicarii Christi*, their office, as *ministerium*, obliged them to perform their duties in a devout and just way. But in so far as the rulers' 'legislative' power was subordinated to their judicial power (or, rather, was by and large comprised by it), they did not only rule under God but also under the law. This constraint of the ruler's authority, which was rooted in religious ideology, was complemented by a political constraint. The power structure of medieval society, which was characterized by a plurality of autonomous, if not autogenous, authorities with economic and military resources of their own, prevented the ruler from imposing law without the consensus of the *meliorum et maiorum terrae*. Herein lies the fundamental tension of the medieval polity: as a consequence of the feudal contract, the vassals were obliged to give aid and counsel, *consilium et auxilium*, to their feudal lord; but given the fragmented power structure, this duty to give advice could be transformed into a right to be consulted and even the right of approval. Likewise, the duty to come to the support of the lord could be interpreted as legitimating the participation in the administration of

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[1] G. Oestreich, *Neostoicism and the Early Modern State* (Cambridge, 1982), p. 156; H. Maier, *Die ältere deutsche Staats- und Verwaltungslehre* (Munich, 1980), pp. 92-8; F.-L. Knemeyer, 'Polizeibegriffe in Gesetzen des 15. bis 18. Jahrhunderts. Kritische Bemerkungen zur Literatur über die Entwicklung des Polizeibegriffs', *Archiv für öffentliches Recht*, 92 (1967), 155-62; P. Preu, *Polizeibegriff und Staatszwecklehre. Die Entwicklung des Polizeibegriffs durch die Rechts- und Staatswissenschaften des 18. Jahrhunderts* (Göttingen, 1983), pp. 33-5; R. W. Scribner, 'Police and the Territorial State in 16th Century Württemberg', in E. J. Kouri and T. Scott (eds.), *Politics and Society in Reformation Europe* (London, 1987), p. 104.

the realm. While the nobility was thus providing power resources for the ruler, at the same time it also restricted his use of these resources. In the course of this negotiated confrontation, the nobility acquired (and reaffirmed) legal rights which further bound the ruler. These *iura quaesita* were, in principle, unimpeachable by the ruler. This led to a situation in which particularistic law or individual rights held predominance over general or universal law.[2]

Keeping the peace and providing justice were the two main responsibilities and justifications of royal authority. The task of preserving the peace, however, gave the rulers the opportunity to formulate and create new law in the Imperial and territorial peace statutes (*Landfrieden*). Between 1103 and 1235 eighteen Imperial peace statutes were issued; and between 1093 and 1235 ten territorial peace statutes were published. It was this legislation which turned a ruler increasingly into a *legum conditor*. The peace statutes of the twelve and thirteenth centuries were mainly concerned with preventing violence, blood feuds, and duels, but also with preserving public order more generally, which led to the inclusion of matters of an economic and administrative nature into the statutes. To achieve these goals the existing legal order was systematized and reformed and rulers demanded of all people within their jurisdiction to obey these new laws. This legislation remained firmly rooted in the legal thinking of the time in that it emanated from the rulers' duty to maintain *pax et iustitia*. In the late middle ages the regulative force of these statutes waned and aristocratic self-help to redress perceived wrong came to the fore again. It was only in 1495 that a new Imperial Peace Statute was issued at the imperial diet at Worms forbidding feud and violent self-help. But the '*Ewiger Landfrieden*' ('Eternal Peace of the Land') of 1495 was not an expression of the authority of the Emperor, rather the contrary: the Imperial Estates acquired the right to determine the composition of the Imperial Court (*Reichskammergericht*) which was designed to guarantee the peace by allowing and securing due legal process. The Imperial Peace Statute of 1495 thus restricted, not augmented, the legislative power of the Emperor.[3]

Since the notion of the ruler as legislator was familiar through the tradition of the peace statutes, the police ordinances of the sixteenth century, as *enacted* law, did not break completely with legal tradition. Furthermore, though police

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[2] O. Brunner, *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Oesterreichs im Mittelalter* (Darmstadt; 5th edn. 1973), pp. 133–46; H. Boldt, *Deutsche Verfassungsgeschichte*, vol. 1: *Von den Anfängen bis zum Ende des älteren deutschen Reiches 1806* (Munich, 1984), pp. 48–50, 54–9; H. J. Berman, *Law and Revolution. The Formation of the Western Legal Tradition* (Cambridge, Mass., 1983), pp. 292–4, 482–6; Maier, *Staats- und Verwaltungslehre*, pp. 50–3; M. Raeff, *The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia 1600—1800* (New Haven, 1983), p. 53; W. Merk, 'Der Gedanke des gemeinen Besten in der deutschen Staats- und Rechtsentwicklung', in W. Merk (ed.), *Festschrift für Alfred Schultze* (Weimar, 1934), pp. 481–99.

[3] Boldt, *Verfassungsgeschichte*, pp. 56–7, 123–4, 256; Berman, *Law and Revolution*, pp. 493–510; J. Gernhuber, *Die Landfriedensbewegung in Deutschland bis zum Mainzer Reichslandfrieden von 1235* (Mainz, 1952).

legislation was the prerogative of the ruler, co-operation between him and the Estates was by no means ruled out. Thus the police ordinance of Lower Austria of 1552/68 stated that it had been issued with the knowledge and consent of the Estates. It was a kind of emergency legislation, dictated by dire need (*der notturft nach*), and passed in the interest of the common weal (*gemeiner Nutzen*).[4] Well into the seventeenth century, police ordinances were typically drawn up on the instigation of the Estates and with their active participation.[5] The decline in the power position of the Estates in the wake of the Thirty Years War found one of its expressions in their diminished role as participants in police legislation.

The Imperial Police Ordinances of 1530, 1548, and 1577 allow us to gain an understanding of the notion of the 'good order' which informed police ordinances until the middle of the seventeenth century. The Imperial Police Ordinances regulated a wide variety of activities and circumstances. Dress regulations and sumptuary laws were enacted to prevent the blurring of status distinctions. Disregard of these laws was punished either by the confiscation of the luxury item or by the imposition of a high fine. These sumptuary laws also covered excessive expense at christenings, weddings and funerals. Blasphemy and cursing were made punishable, as were adultery, concubinage, and procuration of women. Provisions prohibiting the formation of economic monopolies as well as the practice of selling and buying goods under avoidance of market transactions (*Fürkauf*) were among the most important regulations concerning economic matters. Profiteering, usury, and embezzlement were considered criminal offences and so was breach of trust, particularly in cases of wardship. Slander and libel became punishable; adulterators of wine and of foodstuffs faced severe penalties. Such was the range of the provisions and prohibitions in the Imperial Police Ordinances that increasingly all Imperial criminal law was concentrated in these ordinances.[6] Since the Imperial Peace Statute of 1495 had already outlawed feud or private warfare as a legitimate means of redressing private grievances, issues of 'public order' in the narrow sense of public tranquillity and the absence of illegitimate violence in social relations were marginalized in these ordinances.[7]

By and large the police ordinances of the principalities within the Empire resembled the Imperial Police Ordinances. The Police Ordinance of Lower Austria in 1542, for example, maintained that vice, frivolity, and wrongdoings of the populace had incurred the wrath of God. God's wrath was evident in the threat to the well-being of the population posed by the Turks and by inflation. The reformation of good police (*Reformation guter Pollicey*) was

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[4] *Codex Austriacus*, ii. 147 (hereafter: *Cod. Aust.*)

[5] R. Schulze, *Policey und Gesetzgebungslehre im 18. Jahrhundert* (Berlin, 1982), p. 39.

[6] J. Segall, *Geschichte und Strafrecht der Reichspolizeiordnungen von 1530, 1548 und 1577* (Breslau, 1914), p. 101.

[7] For an edition of the Imperial Police Ordinances see E. A. Koch (ed.), *Neue und vollständige Sammlung der Reichs-Abschiede . . .* (Frankfurt, 1747), ii. 332–45 (for 1530), 587–606 (for 1548), iii. 379–98 (for 1577).

therefore necessary.[8] The Police Ordinance of Lower Austria in 1568 reiter-
ated the concerns and objectives of the 1542 ordinance. Vice and frivolity,
annoying bad habits and extravagance, expressed by gluttony and unseemly
and immoderate attire, had brought the wrath of God in the guise of the
Turks upon the populace. Re-establishing a common order and good police
(*eine gemeine Ordnung und Reformation guter Politzey*) made it incumbent
upon the ruler to implant (*Pflantzung*) virtue, propriety, discipline, decency,
and piety in his Christian subjects.[9]

In these as in other territorial police ordinances of the sixteenth century,
'good order' was related to concerns about morality and comprised primarily
the conduct of a virtuous and religious life. Religion, both as a body of beliefs
and as a pattern of behaviour, was the primary concern. Good order was
thought to exist only if the subjects led a modest, orderly *Christian* life: as
apostasy of religious faith was considered to be the root of all social evil and
disorder, the list of regulations in the police ordinances of the sixteenth
century frequently commenced with prohibitions concerning blasphemy and
cursing.[10]

As long as the Estates had not yet been deprived of their power, the notion
of the *bonum commune*, which the ruler had the duty to guarantee, was
entwined in the notion of *pax et iustitia*; the legislative authority of the ruler,
as expressed in the police ordinances, was considered to emanate from his
judicial power. The common weal or welfare was seen as the result of justice
as represented and exercised by the ruler and of the condition of peace to
which this justice gave rise. But this consensual understanding of the legal
and political order was undermined by the development of absolutism. The
definition of the common weal now became the domain of the ruler and his
staff; it was used for legitimating the ruler's attempt to accrue powers to
himself which so far he had had to share with the Estates.[11]

By the ruler's appellation of the common weal, 'policey' could be constituted
as *ius inspectionis* and as *ius reformandi politicum*, i.e., police legislation could
claim to express the ruler's right and duty, not only to oversee the social and
political consequences of the *iura quaesita* as they materialized in 'private'
legal orders, but to redress any resulting harm to the *salus publica*. And even
if this common weal was defined in a traditional way as the maintenance of
the old status order, in a time of fundamental social and economic change the

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[8] *Polizeiordnung Niederösterreichs von 1542* (Vienna: Hanns Singrüner, n.d.).

[9] *Cod. Aust.* ii. 147–51; on ordinance of 1552: Wilhelm Brauneder, 'Der soziale und rechtliche
Gehalt der österreichischen Polizeiordnungen des 16. Jahrhunderts', *Zeitschrift für historische
Forschung*, 3 (1976), 205–19; on dress regulations: G. Hampel-Kallbrunner, *Beiträge zur Ges-
chichte der Kleiderordnungen mit besonderer Berücksichtigung Oesterreichs* (Vienna, 1962), pp.
45–9.

[10] Raeff, *The Well-Ordered Police State*, pp. 167–8.

[11] Maier, *Staats- und Verwaltungslehre*, pp. 157–9; Merk, 'Der Gedanke des gemeinen Besten',
pp. 503–9.

ever more far-reaching police regulations in defence of the old order could not but strengthen the state as legislator and thus contribute to its rise above the old powers.[12]

Since the late seventeenth century, natural law theorists contributed to a new conceptualization of 'police'. 'Police' was now thought to be concerned with promoting the public good, the happiness, or even bliss (*Glückseligkeit*) of the population: since the mid-seventeenth century the purpose of the state was seen, both by the rulers themselves and by the majority of the natural law theorists, as going beyond the confines of preserving *pax et iustitia* and comprising the task of actively promoting the secular and material welfare of the state and the population. *Salus publica* and *felicitas/beatitudo civitatis* replaced *pax et iustitia* as the primary definition of the 'state-objective' (*Staatszweck*). Not the 'reformation' of a destabilized 'good old order', but the creation and formation of a *new* order based on reason and rationality were now thought to be the ruler's task.[13]

In Christian Wolff's rationalistic natural law theory, *societas civilis*, which was thought to have been established through a social contract and to be identical with the 'state', was 'a means to promote the common weal [*gemeine Wohlfahrt*]'. The contractual relationship between sovereign authority and its subjects comprised the promise by the ruler 'to muster all his powers and diligence to devise those means beneficial to the promotion of the common weal and security and to make all necessary preparations for their deployment'. The subjects, on the other hand, promised 'to consent and accede to any given instructions which are considered by the ruler to be beneficial to them'.[14]

This theory established a particularly strong teleological conceptualization of the 'state'. The state was now conceptualized as a rationally created means to achieve an end which was conceived as prior to the state. This meant, in effect, that political rule could not any longer be derived from, and legitimated by, its origins, for example as being *dei gratia*. Rather, political legitimation was now seen to derive from the purposive and rational pursuit of common welfare as the contractual end.[15] In Wolff's philosophy, every activity was regarded as lawful which conformed to reason. The state as the sole and only

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[12] Preu, *Polizeibegriff*, pp. 47–51; D. Willoweit, 'Struktur und Funktion intermediärer Gewalten im Ancien Regime', *Der Staat*, supplement 2 (1978), 20; R. Grawert, 'Historische Entwicklungslinien des neuzeitlichen Gesetzesrechts', *Der Staat*, 11 (1972), 11–14.

[13] U. Scheuner, 'Die Staatszwecke und die Entwicklung der Verwaltung im deutschen Staat des 18. Jahrhunderts', in G. Kleinheuer and P. Mikat (eds.), *Beiträge zur Rechtsgeschichte. Gedächtnisschrift für Hermann Conrad*, (Paderborn, 1979), pp. 477–82; H. Wessel, *Zweckmäßigkeit als Handlungsprinzip in der deutschen Regierungs- und Verwaltungslehre der frühen Neuzeit* (Berlin, 1978), pp. 135–50.

[14] Chr. Wolff, *Vernünfftige Gedanken von dem wissenschaftlichen Leben der Menschen und insonderheit dem gemeinen Wesen zur Beförderung der Glückseeligkeit des menschlichen Geschlechtes . . .* (Halle, 1756), §§ 4, 223, 230, 433.

[15] G. Niedhardt, 'Aufgeklärter Absolutismus oder Rationalisierung der Herrschaft?', *Zeitschrift für historische Forschung*, 6 (1979), 201.

guardian of the common weal was not only entitled but, indeed, obliged to subject to its direct control all facts of social life.[16]

In this theory, as in all the other natural-law theories before the middle of the eighteenth century, the *common good* was not defined by taking the welfare and well-being of individuals as the starting-point. Rather, there was the assumption of a coalescence of the interests of the state and those of the individual subjects (organized in patriarchal families). Should a conflict between these interests arise, then private interests should be curbed in favour of public/state interests. Thus, on the one hand, the state-objective of common welfare confined domination by formulating a 'social' goal the pursuit of which was considered the only legitimate activity of the state. On the other hand, however, it was left to the ruler's discretion to determine the means which would best serve the common weal; to destroy those political or social forces thought to prevent its promotion; and to decide on the degree of 'civil' liberties permissible from the point of view of the common welfare. This ambivalence was particularly manifest in the writings of Justi and Sonnenfels who, in the second half of the eighteenth century, were influential in forming political thinking in the Habsburg monarchy.[17]

Johann Heinrich Gottlob von Justi, who, in the early 1750s, had taught in Vienna, adhered to Wolff's teleological conceptualization of the state. The creation of 'the common blissful happiness [*gemeinschaftliche Glückseligkeit*] of ruler and subjects' was the purpose of the state; it was the duty of the ruler 'to maintain and increase the fortune and assets of the state and make his subjects happy'.[18] Justi conceived the relationship between ruler and subjects as one of mutual obligations: the ruler's responsibility with regard to the promotion of happiness was matched by the subjects' duty to obey.[19] But not only did the state become a means to an end in this theory; the subjects, too, became instrumentalized as a means of the state: it was their duty 'to promote with all their powers the welfare of the state'.[20] This idea was derived from the quintessentially cameralistic notion that the welfare of the individual subject was a necessary precondition for the ruler's financial wealth. Thus, whereas rational natural law served as the springboard for the definition of

[16] H. E. Strakosch, *State Absolutism and the Rule of Law. The Struggle for the Codification of Civil Law in Austria, 1753–1811* (Sydney, 1967), p. 120; on Wolff cf. L. Krieger, *The German Idea of Freedom. History of a Political Tradition,* (Boston, 1957), pp. 66–71; on Pufendorf, Wolff, and the influence of natural-law theories on the policies of 'enlightened' absolutism cf. H. von Voltelini, 'Die naturrechtlichen Lehren und die Reformen des 18. Jahrhunderts', *Historische Zeitschrift,* 105 (1910), 65–104.

[17] K. Tribe, *Governing Economy. The Reformation of German Economic Discourse 1750– 1840* (Cambridge, 1988), ch. 4.

[18] J. H. G. v. Justi, *Staatswirthschaft oder Systematische Abhandlung aller ökonomischen und Cameral-wissenschaften, die zur Regierung eines Landes erfordert werden* (Leipzig, 1755), vol. ii: § 15; vol: i: § 21.

[19] Ibid.

[20] J. H. G. v. Justi, *Natur und Wesen der Staaten als die Quelle aller Regierungswissenschaften und Gesetze . . .* (Aalen, 1969, reprint of 1771 edn.), § 136.

the state-objective, cameralistic theories informed the thinking about the practical policies and, at the same time, served as their justification.[21]

Justi defined *policey* as the 'science to organize the internal constitution of the state in such a way that the welfare of individual families should constantly be in a precise connection with the common good [*dem allgemeinen Besten*]'.[22] Police was thought of as an activity aimed at mediating between the happiness of the individual (family) and that of the state. Justi thus rejected the idea of a coalescence of private and public interests. The recognition of private interests led to the idea of a sphere of civil liberties which remained outside the reach of the state. Justi argued that 'as long as the citizens are obliged to obey only those laws that had been enacted for the common happiness, they are in fact free. This is the essential characteristic of the civil liberty [*bürgerliche Freyheit*].'[23]

But this assertion of the *libertas civilis* remained restricted in several ways: first, happiness as the purpose of the state remained the determinant of liberty; second, neither ruler nor 'state' were said to be equally bound by enacted law; third, there were no legally fixed guarantees of those liberties. If the common weal was both linked to private welfare and dependent on the balance of individual happiness and the happiness of the state, then the activity of the state had to be concerned, of necessity, with both private and public happiness at the same time. The pursuit of private interests could not be left to the discretion of the individual (family), but had to become an area of intervention within the purview of the state. Furthermore, according to Justi, the overall aim of the state had to be to curb the power and influence of all social groups and the political estates in order to remove any possibility of them challenging the authority of the state and, as a result of their struggles between themselves, destabilizing the community. Neither was thought to be beneficial to the common welfare.[24]

For Justi 'police' comprised all activities concerned with the promotion of the common weal. 'State-objective' and 'police-objective' were identical: the furtherance and maintenance of the *salus publica*. Joseph von Sonnenfels, who took up a professorship in Vienna in 1763 and was to be an influential member of the political classes in the Habsburg monarchy over the following decades, however, departed from the tradition of equating police with welfare. For him 'police is a science to establish and manage the internal security of

[21] B. Stollberg-Rilinger, *Der Staat als Maschine. Zur politischen Methaphorik des absoluten Fürstenstaates* (Berlin, 1986), pp. 104–5, 109–10.

[22] J. H. G. v. Justi, *Die Grundfeste zu der Macht und Glückseeligkeit der Staaten . . .* (Königsberg, 1760), vol. i: § 3.

[23] Justi, *Natur und Wesen*, § 235.

[24] Justi, *Staatswirthschaft*, vol. i: § 76; D. Klippel, *Politische Freiheit und Freiheitsrechte im deutschen Naturrecht des 18. Jahrhunderts* (Paderborn, 1976), pp. 63–6; H. Klueting, *Die Lehre von der Macht der Staaten* (Berlin, 1986), pp. 87–114; U. Engelhardt, 'Zum Begriff der Glückseligkeit in der kameralistischen Staatslehre des 18. Jahrhunderts (J. H. G. v. Justi)', *Zeitschrift für historische Forschung*, 8 (1981), 37–79.

the state'.[25] The sphere of internal security, as the area of police intervention, comprised two distinct dimensions: 'public security' as the condition where the state had nothing to fear from its citizens, and 'private security' as the condition where the citizens were protected from illegal encroachments by the state on their civil liberty as well as from attacks on their life, property, and honour.[26] The concern for both 'public security' and the citizen's protection against criminal assault led to Sonnenfels's involvement in the formation of police *forces* under the control of the state.

There are two aspects in Sonnenfels's arguments which are of some importance to our discussion. First, Sonnenfels did not consider activities aimed at promoting (economic) welfare to fall outside the purview of the state now that police was conceptually restricted to establishing and managing internal security. Rather, he accepted that economic changes had brought a certain degree of autonomy for private economic activities. A distinct economic discipline, the *Handlungswissenschaft*, was to analyse these new developments.[27] Freed from economic considerations, the 'security' police (forces) could now be used more efficiently to deal with the disruptive effects of the strengthening of private forces which resulted from the economic changes. The police (forces) were construed as a coercive instrument which intervened to 'keep the private forces in a position of subordination to the forces of the state'.[28] In so far as the control over the police (forces) should reside with the territorial prince, this new definition of police extended the power of the ruler to the detriment of the Estates and local power-holders.[29]

This description of the task of the police as a guarantor of 'public security' sheds ample light on its importance for maintaining 'private security'. For Sonnenfels 'civil liberty' consisted in the 'freedom to act in so far as this act did not violate public welfare [*öffentliche Wohlfahrt*]'.[30] This understanding of civil liberty remained in line with the position already taken by Justi. However, Sonnenfels supported attempts to codify criminal, public, and civil law. For him, such codification was an important step towards establishing 'private security'. He maintained that a certain degree of coherence and predictability of the law should be achieved by formulating legal principles as the cornerstones of codified law.[31]

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[25] J. v. Sonnenfels, *Grundsätze der Polizey, Handlung und Finanzwissenschaft: Erster Theil* (Vienna, 2nd edn. 1768), vol. i: § 29.

[26] Ibid., § 31ff; K.-H. Osterloh, *Joseph von Sonnenfels und die österreichische Reformbewegung im Zeitalter des aufgeklärten Absolutismus* (Lübeck, 1970), pp. 49–79 for a summary of Sonnenfels's 'Polizeywissenschaft'.

[27] Osterloh, *Sonnenfels*, pp. 79–104.

[28] J. v. Sonnenfels, *Ueber öffentliche Sicherheit, oder von der Sorgfalt, die Privatkräfte gegen die Kraft des Staats in einem untergeordneten Verhältnisse zu erhalten. Ein Nachlaß* (Vienna, 1817).

[29] Schulze, *Policey*, pp. 102–9; Preu, *Polizeibegriff*, pp. 157–64.

[30] Sonnenfels, *Grundsätze*, vol. i: § 76.

[31] Strakosch, *State Absolutism*, passim.

But in his argumentation, Sonnenfels did not transcend the confines of monarchical absolutism. On the one hand, he was adamant that legislation should bind the ruler as well as the ruled and be limited to those enactments which pertained to the common weal. On the other hand, however, Sonnenfels left it to the monarch's discretion to determine whether any particular law did or did not contribute to the *salus publica*.[32] This bias in favour of the monarch was also reflected in Sonnenfels's notion of 'police'. As the police was charged with controlling social groups in order to prevent any of them gaining a pre-eminence which would threaten not only social harmony and happiness but also the very existence of the state, Sonnenfels understood the police as an instrument used by the absolutist state as a means of securing its own existence.[33]

A second aspect of Sonnenfels's discussion of the police deserves attention. Standing in a legal and theoretical tradition which went back to the late fifteenth century, Justi had conceived police essentially as '*cura promovendi salutem publicam*'. But by removing 'concern for the promotion of public welfare' from the field of activity of the police, Sonnenfels defined the task of police as much narrower than the overarching 'state-objective'. Pütter in 1770 epitomized the new departure in the thinking about police when he conceived police as '*cura avertendi mala futura*'. Not the promotion of the common good, but 'the concern for averting the ills to come' would increasingly define the task of the police. It was this redefinition of police which shifted the meaning of police as the synonym of good government and public order to a conceptualization of the police as an organizational force charged with maintaining public order and safety and with preventing and investigating unlawful activities.[34] I shall return to this point in the third part of this article.

II

In the previous section I have suggested that, until the late Middle Ages, the task of the rulers was seen as providing and maintaining *pax et iustitia*. Their legal role was largely passive: they 'found' and confirmed the old law; they did not create new law. Since the late fifteenth century, however, rulers increasingly assumed the task of reforming and reconstituting a destabilized 'good order' through enacting police ordinances. They claimed a general competence in the combatting of all social disorder for which existing law and custom did not provide a remedy. Since the middle of the seventeenth century police legislation went beyond these restitutive concerns and aimed to bring

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[32] Sonnenfels, *Grundsätze*, vol. i: § 76; W. Ogris, 'Joseph von Sonnenfels als Rechtsreformer', in H. Reinalter (ed.), *Joseph von Sonnenfels* (Vienna, 1988), pp. 35, 42–51.
[33] Osterloh, *Sonnenfels*, p. 51.
[34] J. St. Pütter, *Institutiones Iuris Publici Germanici* (Göttingen, 1770), § 321; cf. P. Pasquino, 'Theatrum politicum. The Genealogy of Capital—Police and the State of Prosperity', *Ideology and Consciousness 4* (1978), pp. 45–7; Preu, *Polizeibegriff*, pp. 167–92.

about and enhance the secular and material welfare of the state and its population. This state-objective was characteristic of 'enlightened' absolutism, though 'police' was gradually redefined during that period. Though still related to the notion of 'welfare', 'police' came to signify that body of state agents which was charged with maintaining internal, 'public' security.

The police ordinances of the sixteenth and early seventeenth centuries constituted the response by the state to the social and economic transformation of society. The pull of the towns in the fifteenth and sixteenth centuries as well as the expansion of the money economy through trade and industry and the commercialization of agriculture undermined traditional social relations. The religious conflicts since the Reformation added to the social and economic uncertainties. As the stipulations regarding morality or the sumptuary laws demonstrate for Austria, a major goal was the preservation of the established status order by securing the means of subsistence for each established 'estate' and social group according to its respective ranking, standing, and tradition.[35] More generally speaking, the police ordinances aimed to restore the 'good old order' which had been destabilized by urbanization, monetarization, and religious controversy.

In the period of reconstruction after the breakdown of political, economic, and religious order during the Thirty Years War, however, the state's aim of achieving financial strength through economic growth gained priority in economic policy over the maintenance of the old order. It now became the aim of the economic policy of the state to manipulate and mobilize all sections of society in order to increase, and make use of, the economic potential of the country. This new goal was reflected in the new police ordinances.[36] The mobilization of material resources was a geopolitical imperative.[37] The formation of standing armies in the wake of the Peace of Westphalia vastly increased the rulers' fiscal needs for maintaining an efficient, combative military force. In order to achieve or retain 'Great Power' status, rulers had to create economic growth which could then be channelled into the build-up of military forces and the conduct of military campaigns. In order to create economic growth, the state strove to 'police' its population. The monitoring and surveillance of the population as well as the support for the commercialization of the economy through mercantilism formed part of this effort to increase the economic wealth of the state.

This economic policy found its theoretical justification in the writings of the Austrian cameralists such as Johann Joachim Becher and Philip Wilhelm von

[35] F. Hartung, *Deutsche Verfassungsgeschichte. Vom 15. Jahrhundert bis zur Gegenwart* (Stuttgart, 1950), pp. 76–7.

[36] Preu, *Polizeibegriff*, p. 17.

[37] On the importance of geopolitics for state formation and political development in general cf. Ch. Tilly, *Coercion, Capital, and European States, A.D. 900–1990* (Oxford, 1990). See also my reading of Max Weber's political sociology: R. Axtmann, 'The Formation of the Modern State. A Reconstruction of Max Weber's Arguments', *History of Political Thought*, 11 (1990), 295–311.

Hörnigk. They did not only espouse theories about population growth, the creation of a national economy, and the development of trade. They were also convinced that a core element of any economic policy was the creation of a disciplined work force. All available labour power had to be harnessed for the common good; idleness and work-shy behaviour had therefore to be eradicated.[38] It was this concern with disciplining the work force which figured prominently in the new ordinances, though it was by no means a new concern of the state.

The state's attempts to monitor and deploy the country's population in general, and the labour force in particular, manifested very clearly the public and civil law dimensions of police legislation.[39] Numerous pieces of police legislation between the sixteenth and the eighteenth century attempted to secure a continuous supply of the work force and to shape the conditions of work. The fundamental principle, underlying police regulations on work, was simple: idleness is the parent of vice, and, in particular, of begging and vagrancy. Already in 1563, an ordinance for Vienna had laid down that all unemployed people should be expelled from the city. To prevent them from finding accommodation, the police ordinance in 1597 threatened all inn-keepers with severe punishment should they give board and lodging to the unemployed (as well as to vagrants and criminals).[40] Idle persons were not tolerated: an ordinance of 1679 promulgated that, if admonition or impris-onment did not convince idle persons of the social undesirability of their behaviour, they should be ordered to leave the territory.[41] Such was the concern of the authorities with detecting the unemployed that in the early eighteenth century special district commissioners were set up to trace the whereabouts of unemployed individuals. In 1721 these commissioners were placed under a special municipal commission for security.[42]

Closely connected with the question of work and idleness was the problem of the poor and beggars. How best to deal with them had been a major political issue since the Middle Ages. One recurrent trait of the attempts to come to grips with this problem was the distinction between 'deserving' and 'undeserving' poor. In Vienna in 1443 an ordinance regulated the tasks of the city officials (*Sterzenmeister*) who had the penal authority over local and

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[38] J. J. Becher, *Politischer Diskurs* (1668); Ph. W. von Hörnigk, *Oesterreich über alles, wann es nur will* (1684); cf. L. Bauer and H. Matis, *Geburt der Neuzeit. Vom Feudalsystem zur Marktgesellschaft* (Munich, 1988), p. 280.

[39] G. K. Schmelzeisen, *Polizeiordnungen und Privatrecht* (Munster, 1955); for an edition of German police ordinances and territorial statutes see *Polizei- und Landesordnungen* (=Quellen zur Neueren Privatrechtsgeschichte Deutschlands, ii, part 1 and 2), ed. G. K. Schmelzeisen (Cologne, 1968/1969)).

[40] E. H. Zimmermann (ed.), *Geschichte der Stadt Wien* (Vienna, n.d.), v, part 2, 133–5.

[41] See e.g. *Cod. Aust.* i. 205 (Jan. 1679) where penalties are listed for 'work-shy vagrants' ranging from expulsion and incarceration to capital punishment 'in order to set a warning example'.

[42] *Geschichte Wien*, p. 135.

foreign beggars.[43] They had to prove to him that circumstances beyond their control had compelled them to take up begging. If he was convinced of the truth of their claim, he could issue a certificate allowing them to beg, provided, however, that they could prove knowledge of the common Christian prayers and that they had gone to confession during the previous year and received the sacraments.[44]

The police ordinance of 1552 made it incumbent upon the parish authorities to provide for their poor. Apart from giving alms to their poor, local authorities discharged their duty by issuing certificates to their 'deserving' poor which allowed their holders to beg within the locality.[45] The financially less well-off parishes, however, were legally entitled to issue certificates granting the right to beg outside the locality. For holders of such a licence, Vienna seemed to be the most rewarding place. But with an increasing number of certified as well as unlicensed beggars and vagrants, particularly during the 'crisis of the seventeenth century', there arose the need for controlling this category of people more stringently.[46]

The local authorities were reminded by the government that they had an obligation to look after their 'deserving' poor; should they not comply with this rule they would face severe penalties. But the reissuing of such admonitions indicates that the local authorities did not heed them.[47] The county courts (*Landgerichte*), which were under the authority of local aristocratic landlords, were urged to co-operate in order to improve the combat of vagrancy.[48] But since the state was rather powerless to coerce the local authorities and power-holders into determined action, it took it upon itself to persecute the beggars and vagrants. In the eighteenth century, 'police' raids across the country to apprehend suspicious individuals were made fairly frequently.[49] In 1721 in one of these raids, the government of Lower Austria deployed more than 1,000 cavalry and four-hundred infantry in addition to the forces provided by the local authorities.[50] Those able-bodied, unlicensed vagrants, caught either in these raids or in the course of normal policing, could be compulsorily

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[43] A. Luschin von Ebengreuth, *Geschichte des älteren Gerichtswesens in Oesterreich ob und unter der Enns* (Weimar, 1879), p. 233.

[44] K. Weiß, *Geschichte der Stadt Wien* (Vienna, 1882/3), i. 361.

[45] H. Feigl, *Die niederösterreichische Grundherrschaft vom ausgehenden Mittelalter bis zu den theresianisch-josefinischen Reformen* (Vienna, 1964), pp. 128–30.

[46] Alfred Hoffmann states that in 1727 about 8 to 10% of the population of Upper Austria, i.e. almost 26,000 people, were considered by the government to be in need and deserving of support; see A. Hoffmann, *Wirtschaftsgeschichte des Landes Oberösterreich*, vol i: *Werden-Wachsen-Reifen von der Frühzeit bis zum Jahre 1848* (Salzburg, 1952), pp. 246–8.

[47] *Cod. Aust.* ii. 76–7 (for ordinance of 1662 and its reissue in 1682); *Cod. Aust.* i. 207–9 (for ordinance of 1695).

[48] Ibid. 727, 730 (for Ferdinand III's county court regulation of 1656).

[49] See 'Land-Visitations-Ordnung' of June 1727, in *Cod. Aust.* iv. 433; also the 'Visitations-Ordnung' of 1752 for Upper Austria, in *Sammlung aller k.k. Verordnungen und Gesetze vom Jahre 1740 bis 1780, die unter der Regierung des Kaisers Joseph des II. theils noch ganz bestehen, theils zum Theile abgeändert sind* (Vienna, 1787), i, 376–83.

[50] K. Gutkas, *Geschichte des Landes Niederösterreich* (St. Pölten, 1973), pp. 297–8.

conscripted into the army.[51] But while the army thus contributed to the endeavours of the state to police vagrants and beggars, it also contributed to the problem of vagrancy. Discharged soldiers frequently roamed the country begging for money and sustenance but also extorting money by force.[52] Crippled and disabled soldiers who could not find employment added to the problem. The period of war between 1672 and 1714 aggravated the situation and it was in response to deteriorating conditions that the state embarked on a policy of devising state-subsidized invalidity provisions for disabled soldiers. This policy was the starting-point for a comparatively wide-ranging system of state provisions such as pension schemes for civil servants in the course of the eighteenth century.[53]

Yet another way of dealing with the 'undeserving' poor or beggars was to put them into workhouses.[54] There they had to work for the food and shelter they received. The first of these houses was founded in 1671 in Vienna (Leopoldstadt) and over the next hundred years or so eleven more of them were established throughout the Habsburg monarchy.[55] Beginning in the 1720s, mercantilistic ideas penetrated this mechanism of social control. Charles VI envisaged a network of such houses across the country engaged in manufacturing. For small wages the inmates, hitherto 'idle persons', would produce goods out of domestic raw material so cheaply that expensive imports would be unnecessary. This was meant to prevent, 'for the common good', money being taken out of the country.[56] The workhouses thus acquired a double task. First, they should 'socialize' the inmates so that they would become obedient subjects; second, they should instil a strict work discipline in the inmates without which an efficient work process would not be possible.[57]

The 'policing' of economic activities was also manifested in rules forbidding workers to go into service with more than one employer or to change the place of work (or, for employers, to take someone into employment) at times other than stipulated in the ordinances.[58] This provision was meant to contain competition amongst employers for workers in times of scarcity but also to restrain workers from achieving an advantageous wage-bargaining position.[59] With regard to the level of wages, ordinances frequently set an upper limit to

[51] *Cod. Aust.* i. 206–7 (Mar. 1693), 210 (May 1697), 216 (Feb. 1698); *Sammlung*, iii. 222 (Aug. 1755), v. 60–1 (June 1766), viii. 492–6 (Dec. 1767).

[52] *Cod. Aust.* i. 4–5 (1606/1609/1611).

[53] B. Wunder, 'Die Institutionalisierung der Invaliden-, Alters- und Hinterbliebenenversorgung der Staatsbediensteten in Oesterreich (1748–1790)', *Mitteilungen des Instituts für österreichische Geschichtsforschung*, 92 (1984), 341–406.

[54] *Cod. Aust.* ii. 545–7 (July 1671), i. 205 (Jan. 1679), 209–19 (May 1697); cf. E. Bruckmüller, *Sozialgeschichte Oesterreichs* (Vienna, 1985), pp. 269–70 on J. J. Becher's report of 1671 on idleness, work-shy behaviour, and the need for disciplining the workforce.

[55] H. Stekl, *Oesterreichs Zucht- und Arbeitshäuser, 1671–1920: Institutionen zwischen Fürsorge und Strafvollzug* (Vienna, 1978), pp. 62–73, 181.

[56] *Cod. Aust.* iv. 160 (Jan. 1724).

[57] Stekl, *Zucht- und Arbeitshäuser*, p. 91.

[58] Schmelzeisen, *Polizeiordnungen*, pp. 328–38.

[59] See 'Dienstbotenordnung' of Sept. 1688 in *Cod. Aust.* i. 281–2.

prevent workers from taking advantage of the scarcity of labour and dem-
anding higher wages.[60] These regulations harked back to economic measures
taken by the territorial rulers and the manorial lords since the second half of
the fourteenth century. After the Black Deaths in the middle of the fourteenth
century a policy of regulating wages and working-conditions had been pursued
to combat the strengthened position of peasants and day-labourers which had
resulted from the decline in population. As early as 1352, for example,
wage scales for labourers in vineyards had been fixed in response to labour
shortages.[61] Ordinances explicitly forbade people to demand, concede, or
agree on wages higher than the officially fixed rates. These attempts to
coerce workers into compliance were underpinned by outlawing workers'
combinations.[62]

Police ordinances also legislated on the conditions of taking up a profession
or entering a trade. The 'policing' of the guilds may serve as a prominent
example. Typically, craftsmen could only pursue their occupation as members
of a guild. But in their policy against monopolies, territorial rulers would
sometimes threaten to license outsiders should the guilds not perform the
duties which they were considered to have vis-à-vis the public. It could also
happen that guilds suffered attacks at the hand of the rulers who tried to
suppress them out of opposition to any sort of semi-private associations. The
Tyrol Ordinance of 1602, for example, forbade blacksmiths and carpenters to
form a corporation or guild.[63] In the second half of the eighteenth century,
the guild system in Austria came under sustained political attack. An important
step towards curbing their power was the division of industrial enterprises
into those producing for the local market ('police' industries) and those
producing for a distant market, either domestic or foreign ('commercial'
industries) in 1754. These 'commercial' industries were placed outside the
guild restrictions. As a consequence, the number of masters working for
distant markets was no longer determined by the guilds but by market forces.
This policy not only established the state's supervisory control over the guilds,
it also allowed the instrumentalization of the guilds for a state policy that
aimed at stepping up economic production and increasing the population and
thus the economic and political power of the state.[64]

[60] Schmelzeisen, *Polizeiordnungen*, pp. 350–9; on wages for day labourers see *Cod. Aust*. i.
480 (ordinance for woodcutters in 1689); ii. 425–32 (ordinance for labourers in vineyards in 1666).
    [61] F. Lütge, 'Das 14./15. Jahrhundert in der Sozial- und Wirtschaftsgeschichte', *Jahrbücher
für Nationalökonomie und Statistik*, 162 (1950), 193–8; H. Hon-Firnberg, *Lohnarbeiter und
Lohnarbeit im Mittelalter und zu Beginn der Neuzeit* (Baden/Vienna, 1935), pp. 55–112.
    [62] *Cod. Aust*. i. 278–81, § 10 (Tyrol Police Ordinance of 1573); Schmelzeisen, *Polizeiordnungen*,
pp. 367–8 (Austrian Ordinance for Domestic Servants of 1688).
    [63] Ibid., 305 n. 82.
    [64] On 'police' industries: J. Slokar, *Geschichte der österreichischen Industrie und ihrer Förderung
unter Kaiser Franz I.* (Vienna, 1914), pp. 132–42; K. Pribram, *Geschichte der österreichischen
Gewerbepolitik von 1740 bis 1869*, vol. 1: *1740–1798* (Leipzig, 1907), pp. 38, 104, 268; on the
guilds: J. Komlos, 'Institutional Change under Pressure: Enlightened Government Policy in the
18th Century Habsburg Monarchy', *Journal of European Economic History*, 15 (1986), 442–8;
Hoffmann, *Wirtschaftsgeschichte*, pp. 399–415.

The centrality of the state's economic interests in police legislation was not confined to attempts to discipline the work force and to shape the production process. It also informed the new sumptuary and luxury laws. The police ordinance which Leopold I issued in 1671 did indeed impose new sumptuary laws restricting, in particular, the wearing of luxurious dresses.[65] In one respect, this ordinance remained within the traditional form: it asserted the importance of maintaining social distinction and distance between the status groups in society.[66] Conspicuous consumption was accepted as an affirmation of status; attempts of certain sections of society to live outside their station by emulating their social betters were deplored. While the highest three ranks of society were exempted from the regulations concerning the wearing of dresses, the rest of society had to conform to the newly laid-down rules. But in two other respects, this police ordinance expressed the realities of a new age. To start with, the traditional religious motivation for issuing an ordinance had receded. The ordinance was formulated, not in order to redress religious or moral wrong-doings, but to prevent the purchase of expensive foreign goods which led to 'an extremely large sum of money' being taken abroad. Furthermore, the classes which were established by the ordinance were constructed with reference to the sovereign's court; the closer in their political, social, and administrative functions individuals were to the centre of courtly life, the less they were restricted by the provisions concerning the wearing of particular types of clothes. The sovereign became the focal point in the ordinance.

This trend was reinforced in the police ordinance of 1686.[67] Whereas in the ordinance of 1671 the three highest ranks of the status order had been exempted from the provisions concerning 'conspicuous consumption', they, too, were now subjected to the new rules. Their inclusion indicates the increasing incorporation of even the top status groups into a system of domination which centred on the ruler residing at his or her court. Furthermore, the ordinance of 1686 put the ruler's officials in charge of executing the new regulations. The responsibility of the state for maintaining good order was thus firmly extended to include not only legislative duties but also executive tasks. This could not but mean a subordination, at least in theory, of the local aristocracy under the supervision by the state.[68] In 1697, finally, the sumptuary laws became a means of enhancing the revenue of the ruler who faced financial difficulties due to the Turkish wars. The ordinance stated that the financial burden of the wars made it necessary for a fine to be imposed

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[65] *Cod. Aust.* ii. 153–9.

[66] K. Plodek, 'Zur sozialgeschichtlichen Bedeutung der absolutistischen Polizei- und Landesordnungen', *Zeitschrift für bayerische Landesgeschichte*, 39 (1976), 100–1.

[67] *Cod. Aust.* ii. 159–61.

[68] On the police ordinances of 1671 and 1686 cf. Bruckmüller, *Sozialgeschichte*, pp. 276–8; Hampel-Kallbrunner, *Beiträge*, pp. 50–63.

for the wearing of dresses embroidered with silver or gold, or, alternatively, for licences to be sold which exempted their holders from these provisions.[69] By the end of the seventeenth century, then, the ruler's interests and concerns had firmly taken the central place in the territorial police ordinances.

When in August 1749, during the great reforms of the state under Maria Theresa, the subject-matter of 'police' was raised, the discussion and understanding of 'police' was informed by the developments since the second half of the seventeenth century. For Count Haugwitz, Maria Theresa's chief reforming minister, the main goal of a well-organized police was to ensure that money was not to leave the country in exchange for luxury goods from abroad. In line with mercantilistic thinking and the disciplining thrust of the intensifying absolutist state, the officials in the *Directorium in publicis et cameralibus* were agreed that squanderers had to be compelled to show moderation.[70] It was this reasoning which led 'logically' to an ordinance on luxuries in September 1749. This ordinance did not prohibit the purchase of luxury articles. Rather, it set out to prevent the *import* of luxury goods and articles. It was informed by mercantilistic ideas and a consideration for the status concerns of the aristocracy. But it also reflected the adverse economic impact of sumptuary laws on the domestic industry as well as the administrative difficulties in effectively enforcing them.[71]

It thus retained the main thrust of the luxury 'Patent' of 1732.[72] There, for the first time, it had been explicitly stated that the domestic industry which produced luxury items should be protected against foreign competition. The state's policy concerning luxury had thus taken a decisive turn. Up to the middle of the seventeenth century, sumptuary laws in general, and luxury decrees in particular, were motivated by attempts to stabilize and maintain the traditional religious order and the status distinctions between the ranks of society. After the end of the Thirty Years War these motivations receded in importance and rational considerations commensurate with mercantilistic policies came to inform state policies on luxuries. The ruler's interest in economic protectionism went hand in hand with the realization that economic and social developments had transformed society to such a degree that the traditional status order could not possibly be re-established by passing traditional sumptuary laws.[73]

[69] *Cod. Aust.* ii. 165–6.

[70] F. Walter, *Geschichte der österreichischen Zentralverwaltung in der Zeit Maria Theresias* (1740–1780) (=Veröffentlichungen der Kommission für Neuere Geschichte Oesterreichs, vol. 32) (Vienna, 1938), pp. 242–3; I. Mayer, 'Polizeiwesen in Wien und Niederösterreich im 18. Jahrhundert: Reform und Kompetenzverteilung', *Unsere Heimat*, 57 (1986), 77.

[71] *Die Zeit des Directoriums in publicis et cameralibus. Aktenstücke* (=Veröffentlichungen der Kommission für Neuere Geschichte Oesterreichs, vol. 18) (Vienna, 1925), pp. 391ff.

[72] *Cod. Aust.* iv. 770.

[73] M. Stolleis, *Pecunia Nervus Rerum. Zur Staatsfinanzierung in der frühen Neuzeit* (Frankfurt, 1983), pp. 35–50.

III

In the previous section I have shown how the state attempted to regulate vagrancy and begging and to manage the problem of the poor. I have argued that the monitoring and disciplining of the population, and the work force in particular, had been a main objective of the police ordinances since the second half of the seventeenth century. Surveillance came to dominate considerations of 'policing'. I want to suggest in this section that this focus on surveillance contributed to the transition from a practice that regarded policing as the *administration* of the affairs of the state to a practice of 'high policing' with the police as a *preventative force* functioning as a means to defend the state against internal enemies.

Attempts to enforce a system of compulsory registration were a major concern in the 'policing' of Vienna. The Vienna Police Ordinance of 1597 stipulated that anyone who did not register guests or visitors with the authorities would lose his status and rights as a citizen.[74] New rules concerning the registration of the people in Vienna which were promulgated in 1696 demonstrated the state's incessant concern with monitoring the population.[75] In July 1746 and June 1751 compulsory registration was justified in two decrees as an important measure against vagrancy.[76] Yet another decree concerning compulsory registration in May 1757 was followed by two further decrees in April 1765.[77] The owners and caretakers of houses were again reminded that they had a duty to register all those individuals living in their house who had not yet had abode in Vienna for at least ten years. Information about these individuals concerning name, religion, nationality, marital status, occupation, and date of arrival and/or (expected) departure had to be forwarded to the authorities.[78]

The second decree in April 1765 stipulated that 'house inspectors' (*Hausvisitationskommissionäre*) had to visit the houses assigned to them for surveillance once a month to enforce compliance with compulsory registration. Eighty years earlier this task of inspecting the houses in Vienna had been assigned to two of the city's three police forces, the City Guards (*Stadtguardi*) and the *Rumorwache*.[79] This task had then been transferred to special officials when the office of *Hausnachseher* was introduced in the early 1750s. They had been put in charge of keeping a close watch over the inhabitants and visitors of Vienna, conducting secret inquiries, if need be, to ascertain whether

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[74] *Geschichte Wien*, p. 133.

[75] *Cod. Aust.* i. 468–9.

[76] *Sammlung*, i. 32–3, 295–7.

[77] Ibid. iii. 350; iv. 376–81.

[78] Cf. also the stipulations concerning compulsory registration in the new police order for Vienna in 1776, in *Sammlung*, viii. 618–20.

[79] *Cod. Aust.* ii. 273–4; from their inception in 1569, the City Guards had been charged with enforcing registration: Mayer, *Polizeiwesen*, pp. 68–72. An instruction of 1733 for the third police force, the *Sicherheitswache*, defined its task as that of catching beggars: H. Oberhummer, *Die Wiener Polizei* (Vienna, 1938), ii. 216–26.

they abided by the regulations concerning compulsory registration.[80] In order to improve this system of surveillance, the office of 'special constable' (*Unterkommissar*) was established in 1754. Citizens of Vienna were appointed as special constable by the government of Lower Austria on the suggestion of the city council. They did not receive any pay, but were given certain tax exemptions. In all, 188 special constables were installed in order to improve the enforcement of compulsory registration. But already in 1756, this office was abolished because of drunkenness and lack of diligent performance of duties amongst these special constables.[81]

Thus, such was the concern of the state with surveillance that specialized policemen were employed in Vienna. However, the tasks of the city police forces were more comprehensive than enforcing compulsory registration. The instruction of the *Rumorwache* in 1646 may serve as an example. The *Rumorwache* had to apprehend a wide range of perpetrators: blasphemers, be they drunk or sober; workmen and traders who went about their business on Sundays and public holidays during the time of church services and mass; beggars without permits and those beggars of Catholic faith who could not prove that they went to confession regularly; Jews without permits to stay in Vienna on Sundays and public holidays; magicians, sorcerers and fortune-tellers; prostitutes, adulterers and adultresses; rapists and those who had committed incest; usurers and profiteers, be they Christians or Jews; drunk and disorderly people; those who stayed on in pubs after licensing hours; all persons bearing arms, except soldiers; people involved in routs and riots; gamblers and thieves, burglars and murderers; those people who, as bearers of a contagious disease, had returned to Vienna before their days in quarantine outside the city had lapsed.[82] The Vienna market regulation of 1647 put the *Rumormeister* also in charge of the market police;[83] and the instruction of 1706, which reaffirmed the tasks of the *Rumorwache*, added as new important duties street-lighting and fire-fighting.[84] The *Rumorwache* was thus charged with acting as public health officers, maintaining public order, upholding public morality, and providing internal security. And when in 1776 the Military Police Guard replaced the Security Day and Night Watch, the instructions of this new force were, in effect, an extended version of those issued for the *Rumorwache* in 1706.[85]

Thus, even in the late 1770s, police forces were still given the task of ensuring both 'welfare' and 'security'. In effect, 'police' was still conceptualized in very broad terms. The definition of 'police' by the government of Lower

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[80] V. Bibl, *Die Wiener Polizei. Eine kulturhistorische Studie* (Leipzig, 1927), p. 204.

[81] *Sammlung*, ii. 357–60 for the instruction to the special constables; Bibl. *Wiener Polizei*, p. 205; Oberhummer, *Wiener Polizei*, i. 23–4.

[82] Oberhummer, *Wiener Polizei*, ii. 203–6.

[83] A. Gigl, 'Geschichte der Wiener Marktordnungen vom sechzehnten Jahrhundert bis zum Ende des achtzehnten', *Archiv für österreichische Geschichte*, 35 (1865), 153–5.

[84] Oberhummer, *Wiener Polizei*, ii. 206.

[85] *Sammlung*, viii. 630–4; Oberhummer, *Wiener Polizei*, ii. 229–55.

Austria was still in force. In a draft paper presented to Maria Theresa, the government had argued—reminiscent of Justi—that police was nothing but the promotion of the well-being of the individual families in order to bring about the welfare of the state as a whole.[86] Starting from this premiss, nine areas of police activities were distinguished: population policy, health, religion and propriety, supply of victuals, supervision of the quality of foodstuffs and other vital goods and their price, industry (which included education, soil cultivation, matters concerning trade, commerce, crafts, and industry proper), poor relief as well as unemployment relief, building police, and, finally, 'administration', i.e., the execution of police regulations.[87] All these areas were claimed to fall firmly within the policing duties of the state.

The new departure in Joseph II's reign was not that these state objectives would have been rescinded. Rather, these activities were no longer contained in the concept of 'police'. State reforms concerning police can be summarized under three headings: functional differentiation, structural differentiation, and specialization.[88] The reorganization of the police in Vienna in April 1782 reflected the processes of differentiation: policing was separated into three distinct activities and each activity was to be overseen by a distinct body. The municipal authorities were put in charge of all matters concerning trade, street-cleaning, street-paving, and street-lighting, but also of the market police; the town court was made responsible for all aspects concerning security, in particular for arresting perpetrators and for the compulsory conveyancing of beggars and other unwanted individuals; finally, the newly created director of police, who was directly subordinated to the president of the government of Lower Austria, was put in charge of the secret police and the remaining matters of police.[89] 'Welfare' functions and 'security' functions were thus clearly separated. Whatever the changes in policing over the next decade or so, this functional differentiation remained in force. When the policing system of Vienna was extended to other parts of the monarchy, the controversy this raised was not to do with the separation of welfare and security functions, but with the question which executive body should be put in charge of which aspect of policing. What exactly was the responsibility regarding policing of the local directors of police, the municipal authorities, the provincial governments, the police directorate in Vienna, the president of the government of Lower Austria (Count Pergen) and the Court Chancery? As is well known, these organizational power struggles were solved with the establishment of an Imperial ministry (*Hofstelle*) for police in the monarchy in 1789 and the appointment of Count Pergen as its head.[90]

    [86] Bibl, *Wiener Polizei*, p. 211.
    [87] F. Walter, 'Die Organisierung der staatlichen Polizei unter Kaiser Joseph II.', *Mitteilungen des Vereins für Geschichte der Stadt Wien*, 7 (1927), 22–3; Bibl, *Wiener Polizei*. pp. 211–13.
    [88] Cf. Walter, *'Organisierung'*, as general overview.
    [89] Ibid. 29–30.
    [90] Ibid. 37–9.

It was Count Pergen who argued successfully for the 'specialization' of the state police forces. Throughout his career he maintained that police should concentrate on public security and should not get involved in matters concerning public welfare (*politico-publica*).[91] In 1793, in a time of internal political turmoil and external threat, Pergen, as minister of police, impressed on his subordinates the need to enforce the system of compulsory registration and to pay close attention to the 'subversive machinations' of those political clubs and organizations up and down the country which, inspired by developments in revolutionary France, were trying to arouse the population with 'freedom humbug' (*Freiheitsschwindel*).[92]

Pergen's conviction that the state police forces had the task of maintaining public order/tranquillity and security had found an institutionalized expression in the formation of a secret police in 1786. With regard to maintaining public order and avoiding any threats to the state, the secret police agents were urged to inquire thoroughly into the opinion among the population about the monarch and governmental policies; in particular, they were admonished to monitor the activities of likely 'rabble-rousers' (*Aufwickler des leichtgläubigen Pöbels*). For this purpose, they were also to monitor the movements of suspicious individuals and, particularly, of foreigners. They were advised to ensure the efficiency of the local systems of compulsory registration. But they were also charged with spying on other state officials and the military to ascertain their loyalty to the regime.[93]

Since Joseph II's reign, then, police was seen as a means to defend the state against internal enemies. Rather than to regard policing as the administration of the affairs of the state, it was now seen as denoting a state agency operating as a preventative force. I have argued in this section that this development was intrinsic to the emphasis on surveillance. But I have already pointed out in the first part of this article that Sonnenfels's arguments regarding the dissociation of an all-encompassing notion of *bonum commune* and the narrower concept of internal security could provide the ideological support for these changes.

But Sonnenfels's arguments were also logically open to theoretical developments critical of absolutist government. A re-evaluation of the notion of *salus publica* would lead to yet another, completely different, definition of police. In the last two decades of the eighteenth century, German idealist philosophy set out to destroy the natural law theories regarding the 'objective'

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[91] Cf. Pergen's instruction to the local directors of police in 1785, in Oberhummer, *Wiener Polizei*, ii. 146, 149.

[92] Cf. A. H. Benna, *Die Polizeihofstelle. Ein Beitrag zur Geschichte der österreichischen Zentralverwaltung* (Vienna, 1942) (= unpublished Ph.D thesis, University of Vienna), pp. 127–45 for Pergen's instructions to his subordinates.

[93] Cf. instruction concerning secret police in Oberhummer, *Wiener Polizei*, ii. 168–76; the spying on other state officials was due to the fact that Joseph II's reversal of 'enlightened' policies in the second half of the 1780s had led to an increasing disenchantment of reform-minded bureaucrats and their gradual move into active political opposition to the regime.

of the state. The concept of *salus publica* was, rightly, interpreted as enabling the state to interfere with the self-determination of the individual. In clear contradistinction it was maintained that it was a *human right* of each individual to embark on 'the pursuit of happiness' unencumbered by the 'police' state.[94]

In this theory, the scope of state activity was limited to guaranteeing a legal framework which would allow each individual to participate in society on the basis of individual property/properties. For Kant, *salus publica* was exactly that legal constitution which guaranteed every man his freedom within the law. Kant maintained that, within such a legal context, every man would retain the right to pursue his own happiness by whatever means, so long as he did not impair the general lawful freedom and thus the rights of his fellow subjects at large.[95] This perspective led to the conceptualization of police, not as a preventative and interventionist force operating under only a few legal restraints, but as an executive body *operating firmly within the law*. This 'liberal' police force was charged with ensuring that all hindrances and threats to the security and welfare of the *citizen*, not the state, were averted, thus enabling his self-determined individual pursuit of happiness.[96]

Towards the end of the eighteenth century in Austria, there was not yet an economic and social basis for a 'bourgeois' society which could have transformed this theory into practice. There, in the last decade of the eighteenth century, the reality was a restorative state. Nevertheless, the policies of social engineering by the absolutist Habsburg monarchy had contributed to the gradual emergence of distinct 'bourgeois' groups such as intellectuals and civil servants who were demanding ever more radical political reforms to establish their right of full political participation and social equality.[97] These demands gradually undermined the material and ideological foundations of the absolutist monarchy. At the same time, the policies of the absolutist state, propelled by (geo-)political requirements since the loss of Silesia in 1740 and legitimated by rationalistic theories of domination, had whittled away the power of the traditional bearers of authority, the aristocracy and the clergy. Their attempt to regain lost ground in the period of the Turkish War and the wars with France contributed to the formation of an authoritarian régime in the 1790s. This restorative state used its police forces to stifle and suppress political and

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[94] Cf. H. Dippel, *Germany and the American Revolution 1770–1800. A Socio-Historical Investigation of Late Eighteenth-Century Political Thinking* (Wiesbaden, 1978) on the impact of the American Revolution on German political thought.

[95] I. Kant, 'Ueber den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht in der Praxis (1793)', in E. Cassirer (ed.), *Immanuel Kants Werke* (Berlin, 1914), vi. 355–98; Krieger, *The German Idea of Freedom*, pp. 86–125; Preu, *Polizeibegriff*, pp. 193–273; Klippel, *Politische Freiheit*, pp. 131–4.

[96] G. H. von Berg, *Handbuch des Teutschen Policeyrechts* (Hanover, 1799–1809), 7 vols.; F. X. Funk, 'Die Auffassung des Begriffes Polizei im vorigen Jahrhundert', *Zeitschrift für die gesamte Staatswissenschaft*, 19 (1863), 513–15; Maier, *Staats- und Verwaltungslehre*, pp. 200–7.

[97] On the Austrian 'Jacobins' cf. E. Wangermann, *From Joseph II to the Jacobin Trials* (Oxford, 1959); H. Reinalter, *Aufgeklärter Absolutismus und Revolution* (Vienna, 1980).

social discontent. It was in the last decade of the eighteenth century that
'police' became now firmly established, and deployed, as the repressive arm
of the state.

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