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Measuring Crime and Morality: The bureaucratic life of a novel concept under the Habsburg Monarchy in the late 18th and first third of the 19th century

Pavel Himl

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Author

Pavel Himl
Fakulta humanitních studií
Univerzita Karlova
Pátková 2137/5
182 00 Praha 8 - Libeň
Czech Republic
Email: pavel.himl@fhs.cuni.cz
ORCID: 0000-0002-9839-1315

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Abstract

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This article explores the concept of “morality” as it developed in the field of criminal justice under the Habsburg monarchy during and after the Enlightenment reforms. Two penal codes, ratified in 1787 and 1803–1804, established a new, separate category for serious police offences with a heavy focus on acts against morality. Some of these offenses were grouped according to their explicitly public dimension, like endangering the public peace or serving as a bad example. Morality was also considered when administrative officials reviewed data gathered from new statistical overviews of crime, which had been compiled in the Habsburg monarchy since the 1810s. In contrast to the concept of “sin,” immorality was no longer viewed as the root of all criminality and a clear distinction was now being made between behaviours stemming from socioeconomic causes and those with a background in morality.

The term “restoration,” often used to describe the re-establishment of political conditions in Europe after 1814–1815, has been relativized and redefined in part by more recent historiography. Andreas Fahrmeir defines it as an “attempt to maintain central political norms by adapting to changing circumstances” or an “adaptation of power relations to the changing social order.”¹ Despite the simplification inherent in such definitions, social reality—of any kind—on the one hand, and political norms or power relations on the other cannot be thought of as mutually separate. Norms and institutions reflect changes in the contemporary understanding of law and order, but also conversely, existing practices influence and help shape those ideas.²

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- 1 Cf. FAHRMEIR, Andreas. *Europa zwischen Restauration, Reform und Revolution 1815–1850*. München : Oldenbourg Verlag, 2012, p. 2.
- 2 For more on the unquestioning identification of norms through discourse and the inseparability of discourse and practice, see LANDWEHR, Achim. Jenseits von Diskursen und Praktiken. Perspektiven kriminalitätshistorischer Forschung. In HABERMAS, Rebekka – SCHWERHOFF, Gerd (eds.) *Verbrechen im Blick. Perspektiven der neuzeitlichen Kriminalitätsgeschichte*. Frankfurt; New York : Campus, 2009, pp. 43–67.

Still, even limiting ourselves to the most visible norms and institutions, European restoration represented not just a step back from both a political and an economic or social perspective, but a move to another dimension. As Andreas Fahrmeir adds, many countries retained both the (post)revolutionary changes in ownership and the Napoleonic legal code and, despite the persecution of so-called subversive persons, thoughts or texts, these changes helped preserve some space for the articulation of political alternatives.³ It should also be taken into account, however, that journalism and propaganda in the states of the anti-French coalition often held the revolution accountable for the alleged disintegration of the existing social and moral order.⁴

Changes in the criminal law reflected this ambivalence. While acts such as blasphemy, insulting the majesty (*lèse-majesté*), suicide or sex “crimes”⁵ were now classified more mildly and even decriminalised in some places, the same acts reappeared under the title of “police offences” or “misdemeanours,” which allowed for broader possibilities for prosecution as they were now less stringently defined.⁶ Generally speaking, measures which were brought in by the Enlightened reforms were upheld in many European countries, but their implementation and impact changed after 1815.

The aim of this article is to shed light on these societal changes from the perspective of acts lying at the crossroads between judicial and police prosecution or sanctioning. Attention will be focused primarily on deeds which were treated by the relevant authorities as violations of public order, peace or decency, and how these terms were thereby constituted and defined. The use of certain terminology can be examined on multiple different levels. At the beginning of the nineteenth century, we are no longer dependent solely on norms produced by the authorities or the documents that describe their implementation. Nevertheless, this article focuses on sources that do reflect the perspective of the authorities. In addition to authorities’ internal communication, certain types of sources are employed which were relatively new during the period in question, such as crime statistics, including an analysis of the terminology found in those documents.

Firstly, the selection of offences investigated must be outlined. Infractions could either fall into particular categories of criminal law or stretch, to a certain extent, across several. In the latter case, the decisive criterion could be a reference to society as a whole and its earthly—as opposed to transcendently—interests. In addition to actions directed against institutions or the state, such as insurrection or rioting, (which still counted as serious

3 FAHRMEIR, Andreas. *Revolutionen und Reformen. Europa 1789–1850*. Munich : C. H. Beck, 2010, p. 197; FAHRMEIR 2012, pp. 48–49.

4 ZAMOYSKI, Adam. *Phantom Terror. The Threat of Revolution and the Repression of Liberty 1789–1848*. London : William Collins, 2014, p. 106.

5 When terms of the period like „crime,” „immorality,” etc. are used in the following text without quotation marks, this does not indicate that the author identifies with their contemporary meaning.

6 HÄRTER, Karl. Die Entwicklung des Strafrechts in Mitteleuropa 1770–1848. Defensive Modernisierung, Kontinuitäten und Wandel der Rahmenbedingungen. In HABERMAS – SCHWERHOFF 2009, pp. 99–100.

crimes), actions which were viewed as having a negative impact on the public should also be included.

The present state of research also played a role in the selection process. Recent literature on the history of crime in the nineteenth century is characterised by an emphasis on the continuity between the liberal age and the relatively well-researched pre-modern period before 1848. It is less interested in the self-presentation of the new justice system and its representatives as a humanistic instrument and focuses more on the processes through which law and justice were implemented at different social levels.⁷ Despite this shift, the year 1848 continues to remain a turning point in the development of criminal law, as shown by, among other things, research on morality with a sexual connotation. For example, in her book *Sittlichkeitsverbrechen*, Tanja Hommen pays relatively little attention to the first half of the nineteenth century, the Austrian monarchy or nonviolent acts that were nevertheless considered immoral, such as same-sex sexual relations. Citing Alf Lüdtke, she also refers to the broad semantic field of morality in a bourgeois society, which emphasised fortitude (psychological stability), self-control and humanity.⁸ Elisabeth Hull's analysis of the emerging bourgeois (sexual) order likewise focuses on Germany. She stresses the close link between sexual order and the state, often going beyond the traditional understanding of the history of crime.⁹ In English-language overviews of the history of sexuality, the transitional period of the late Enlightenment tends to be neglected.¹⁰

Morality and the public from the perspective of criminal law and administration

At the end of the eighteenth and the beginning of the nineteenth century, the norms of Austrian criminal law abounded with concepts like public morality, public peace or public nuisance.¹¹ Some of the so-called immoral acts that were classified more mildly in the Josephine Penal Code of 1787 and assigned to the newly created group of police crimes¹² maintain an explicitly public character. For example, the penalty for blasphemy was theoretically grounded in the fact that it took place “in public places or in the presence of other

7 A critical summary cf. HABERMAS, Rebekka. Rechts- und Kriminalitätsgeschichte revisited – ein Plädoyer. In HABERMAS – SCHWERHOFF 2009, pp. 19–41.

8 HOMMEN, Tanja. *Sittlichkeitsverbrechen. Sexuelle Gewalt im Kaiserreich*. Frankfurt; New York : Campus, 1999, on the legal-historical foundation of particular crimes in the first half of the 19th century, see pp. 26–31.

9 HULL, Isabel V. *Sexuality, State, and Civil Society 1700–1815*. Ithaca; London : Cornell University Press, 1996, pp. 407–411; cf. also HULL, Isabel V. 'Sexualität' und bürgerliche Gesellschaft. In FREVERT, Ute (ed.) *Bürgerinnen und Bürger. Geschlechterverhältnisse im 19. Jahrhundert*. Göttingen : Vandenhoeck & Ruprecht, 1988, pp. 49–66.

10 WEEKS, Jeffrey. *Sex, Politics, and Society. The Regulation of Sexuality since 1800*. London; New York : Longman, 1989; CRAWFORD, Katherine. *European Sexualities, 1400–1800*. Cambridge : Cambridge University Press, 2007.

11 Literature on police science and the debates of the second half of the eighteenth century, where this is investigated and discussed, need not be addressed here in detail.

12 The contemporary German term “politisches Verbrechen” does not refer to acts directed against the state, its constitution or its representatives, but to acts which were classified as less serious than crimes.

people.”¹³ Same-sex sexual activity “degraded humanity” and was considered a punishable police crime in itself but the sentencing was harsher “if it caused public outrage.”¹⁴ It is not without interest that in the later Franciscan Penal Code of 1803–1804, the two acts were again promoted to serious crimes, whereby any public character no longer played a constitutive but merely an aggravating role in the case of “religious disturbance,” and no role at all in the case of “fornication against nature.”¹⁵ How exactly a public nuisance or the public nature of such acts was determined is not something we can infer from the texts of the norms, however. It must be examined for each particular case.

An offence’s public nature was also cited in connection with other “serious police violations,” which the Franziskana of 1803–1804 not only retained as a category but even expanded. Thus, a riot (a counterpart to insurrection, which was classified as a crime) was defined as resisting a public official and further along these lines, we also find references to public disturbance.¹⁶ The fact that morality entails a pronounced public character and cannot be thought of in any way other than as public is expressed in this part of the code in a separate chapter on public morality. The introductory paragraph states: “The diligence of legislation does not limit the concept of public morality to those acts which are in and of themselves capable of arousing public offence and disgust: it also includes acts which by their nature contribute to the spread of moral corruption, as well as those with which disorder and debauchery are associated as their common consequences.”¹⁷

Fornication, begging, banned games and drunkenness are then listed as such kinds of acts. In some of these transgressions, such as begging, the public dimension is clear. Prostitution and pandering fell under the broad definition of fornication. With respect to the other acts, their public aspect seems to have entered the picture indirectly, through an interpretation as an implicit, internal threat to other people or setting a bad example. Ultimately, all offences that took place in public could be viewed as threatening public order. At the end of this chapter of the Franciscana, we find reference to immoralities within the family, which usually consisted of a refusal to obey and take on the character of a “transgression against public safety” when the head of the family, household or workshop found him or herself “obliged to call upon the help

13 *Allgemeines Gesetz über Verbrechen und derselben Bestrafung*. Vienna : Johann Thomas Edler von Trattnern, 1787, volume 2, p. 281, § 61.

14 *Allgemeines Gesetz* 1787, p. 287, 289, § 71–72: “Auch soll der Thäter von dem Orte, wo er öffentlich Aergerniß gegeben hat, abgeschafft werden.”

15 *Gesetzbuch über Verbrechen und schwere Polizey-Übertretungen, Volume 1*. Vienna : Johann Thomas Edler von Trattnern, 1803, pp. 60–61, §§ 107–109 (violation of religious observance), p. 63, § 113–114 (sexual offences against nature). For more on premodern or Enlightenment prehistory of religious offences in Habsburg, Prussian and Bavarian penal codes, cf. TINKOVÁ, Daniela. ‘Das Recht, die Beleidigung Gottes zu rächen.’ Verwandelte Auffassung der ‘Religionsverbrechen’ an der Wende des 18. Jahrhunderts. In BRAUNEDER, Wilhelm – HLAVÁČKA, Milan (eds.) *Bürgerliche Gesellschaft auf dem Papier: Konstruktion, Kodifikation und Realisation der Zivilgesellschaft in der Habsburgermonarchie*. Berlin : Duncker & Humblot 2014, pp. 379–405.

16 *Gesetzbuch über Verbrechen und schwere Polizey-Übertretungen. Volume 2*. Vienna : Johann Thomas Edler von Trattnern, 1803, pp. 27–28, §§ 51, 53.

17 *Gesetzbuch* 1803, p. 120, § 245.

of the authorities” to deal with such behaviours.¹⁸ On the level of the penal code, morality seems to have consisted of the observance of social hierarchy, which could be supported or enforced in the family or within the domestic sphere by state authorities.

A cursory glance at the Austrian predecessor of the *Franziscana*, the aforementioned penal code of 1787, shows that although the public nature of a crime was an important factor in many of the police crimes (fornication, pandering, religious offences, etc.),¹⁹ state authorities were not explicitly authorised to ensure order in families and homes. Still, it would be hasty to infer that there was a renewed fusion of family and state authority in the *Franziscana* or to make assumptions about any regressive or conservative character of the code.

These penal norms did not exist in isolation, however, as monuments to or even sources of the prevailing conception of good and evil, for example. Especially in the (post)Enlightenment period, legal standards often emerged from a partly written scholarly debate and were subsequently reflected in a growing body of administrative texts. In literature on state theory and in administrative sources from the beginning of the nineteenth century, we encounter various terms with a moral connotation. For example, when Joseph Taddäus Sumerau, the Viennese president of the Police Court Office (*Polizeihofstelle*), complained in 1807 that “morality among the lower class of people in the city of Prague is decreasing more and more every day,” what he meant by morality was probably the observance of norms and directives and the willingness to continue doing so. He described the opposite state of affairs in accordance with the penal law as “moral corruption,” which resulted in an increase in criminal activity. Sumerau was convinced that alcohol consumption and gambling posed a particular threat to morality.²⁰ It seems, therefore, that in his view, *Moralität*, which he took to mean both an inner attitude and its outer manifestation, was no different from what was understood by the term *Sittlichkeit*.²¹ Similarly, in 1805, the Prague police directorate was instructed to identify bathing places which were “deemed

18 *Gesetzbuch* 1803, pp. 131–132, § 269. This expansion of the “greater immoralities” was also adopted by Andreas Eichler, Chief Commissioner of the Prague Police, in the new edition of his widespread handbook (originally from 1794); cf. EICHLER, Andreas Chrysogonus. *Die Polizei praktisch. Handbuch für Magistrate, Wirthschaftsämter, Aerzte, Wundaerzte, Apotheker, u. s. w. dann für alle, denen die Aufsicht auf die Polizeigegegenstände obliegt, oder die von ihr gründlich unterrichtet seyn wollen, mit Anführung der ergangenen Gesetze, dann der neuen Strafgesetze nach dem Patente vom 3. Septemb. 1803*. Prague : Johann Herrl, 1815, (1st edition 1794), p. 223.

19 *Allgemeines Gesetz* 1787, especially p. 267, § 49 (“Widersetzlichkeit gegenüber dem Dienstherrn”), and p. 293, § 77 (“die politischen Verbrecher[!], die zum Verderbnisse der Sitten führen”).

20 Národní archiv [National Archives] Praha, Presidium Českého gubernia [henceforth NA, PG], sign. 15c, box 522, letter from the president of the Police Court Office Sumerau to the president of the Bohemian Gubernium Wallis, Vienna, 1 May 1807.

21 For example, when a report on the so-called Spinnstuben of 1821 speaks of an absence of immoralities [Unsittlichkeiten], this is most likely a reference to behaviours with sexual connotations; cf. Státní oblastní archiv [State Regional Archive] Litoměřice, Krajský úřad [henceforth SOA KÚ] Litoměřice, sign. Publ 16/1, box 1064, Report of the Leitmeritz Circle Office for the Bohemian Gubernium (Concept), 6 June 1821.

most suitable in terms of the personal safety of bathers as well as morality.”²² In this directive, morality does not seem to represent a variable degree, but rather a constant level of decency.

Morality had been interpreted as an inner normative attitude by Prague political scientist Joseph Ignatz Butschek in his *Abhandlung von der Policey* of 1778, writing, “There are even cases in civil life where the previous education of a citizen [des Bürgers] and morality stemming from it take the place of laws.”²³ Butschek’s conviction that morality is inherent to citizens is just as important here as his belief that it is the result of education or cultivation. The ability to acquire morality or become moral was an important component of ideology in the Enlightenment and remained widespread in the first decades of the nineteenth century. A cultivated person, (*l’homme policé*), was the goal of both the way individuals conducted their lives and of public measures, including police, but the process of achieving perfection seems to have been even more important.²⁴ However, to infer that this is what made the bourgeois habitus different from premodern social roles would be premature. Even disregarding gender-specific role models, the opportunity to perfect oneself morally was not open to everyone and moreover, the unequal treatment of different social groups or classes continued to be reflected in both criminal law and the administrative treatment of individuals.²⁵

“Genuine religiosity, morality and ethics as indispensable qualities for imperial and royal civil servants” were also to be considered in appointments and promotions.²⁶ In the Habsburg Monarchy, moral conduct had been a fixed rubric in personnel files since the 1790s at the latest. According to Waltraud Heindl, “conduct” under Joseph II referred less to morality in the private lives of civil servants and more to their performance in the workplace. Though, at the turn of the century, morality and religiosity gained importance as significant components.²⁷

22 NA, PG, sign. 15c, box 238, Bohemian Gubernium to the Prague Police Directorate/City Headquarters, Prague, 16 June 1805.

23 BUTSCHEK, Joseph Ignatz. *Abhandlung von der Polizey überhaupt, und wie die eigentlichen Polizeygeschäfte von gerichtlichen und anderen öffentlichen Verrichtungen unterschieden sind*. Prague: Gerl, 1778, p. 54.

24 HETTLING, Manfred – HOFFMANN, Stefan-Ludwig. Der bürgerliche Wertehimmel. Zum Problem individueller Lebensführung im 19. Jahrhundert. In *Geschichte und Gesellschaft*, 1997, Vol. 23, No. 3, pp. 333–359, here 347.

25 For example, when it came to punishing persons who took part in the Prague riots of 1793, commissioners of the Bohemian Gubernium proposed different sentences for students and the journeymen, apprentices and servants, though they were all equally involved; cf. HIML, Pavel. *Pozorovat, popsát, stvořit. Osvícenská policie a moderní stát 1770–1820*. Praha: Argo, 2019, p. 239. On (un)equal administrative treatment, see also HIML, Pavel. “Sine respectu personarum”? The Creation of a New Citizen by Policing the Population. Habsburg Monarchy 1750–1820. In *Cornova*, 2018, Vol. 8, No. 2, pp. 23–39.

26 NA, PG, sign. 3, box 86, President of the Police Court Office Sumerau to the Gubernium President Chotek, Prague, 1 January 1805. Statement justifying the dismissal of a civil servant “who has incurred his unfitness for further service through his debauchery” which contains this quotation was later forwarded by Chotek to the subordinate authorities, including the Prague Police Directorate; NA, Policejní ředitelství I. (1769–1855) [Prague Police Directorate I (1769–1855), henceforth PŘ I.], box 24, Prague, 16 February 1804.

27 HEINDL, Waltraud. *Gehorsame Rebellen. Bürokratie und Beamte in Österreich. Volume 1: 1780–1848*. Vienna: Böhlau, 2013, (1st edition 1991), p. 53.

The prominent role which religion continued to play in the eyes of the police within the context of preservation of the state should also be noted. According to Andreas Chrysogonus Eichler, the versatile commissioner of the Prague police directorate, one of the duties of the police was to “form morals” and in this effort, religion was the first instrument of choice. It was the task of the police “to ensure that every citizen in the state has religion, and that he shows this by his external characteristics... For a man without religion is a dangerous member of the state but religion is a very firm bond of the civil society [der bürgerlichen Gesellschaft].”²⁸ A few years later, after Europe became more experienced with French rule and propaganda, Theodor Karl Hartleben, editor of the first *Deutsche Justiz- und Polizey-Fama* (German Justice and Police Gazette) and former Salzburg police director, was keen to warn all future policemen not to “nourish the false delusion that an irreligious person can be an obedient, enlightened and civilised member of the state.”²⁹ The “corruption of morals” (*Sittenverderbnis*) which Hartleben deplored as a consequence of the wars and which was something the moral police was supposed to tackle and eliminate, seems to have generally replaced the premodern notions of vice and sin. Nevertheless, although the Austrian Penal Code of 1803–1804 makes almost no use of the term “vice,” it did not completely disappear from the language of the authorities. Religion, albeit one purified of superstition, apparently came to play the role of regulator, even in those areas of public life that had nothing to do directly with religious practice.³⁰

Measuring morality: Early crime statistics

In the eighteenth and nineteenth centuries, the terms “morality” and “immorality” are used in connection with a new type of source that made a claim to precision: statistics and its associated documentation. In particular, early crime statistics were linked closely to morality as their compilation was now legitimised, among other things, by the claim that they were able to measure or calculate the moral state (*état moral*) of the population. A convicted crime was interpreted as an expression of the fall of man, of a lack of or low morality, or an example of immorality par excellence, without drawing any distinction between particular offences. In this way, crime statistics could be presented as indicators of the moral state of the society in question,³¹ and as such, the term “morality” did not always maintain such sharp contours in period documents. This applies to the predecessors as

28 EICHLER 1815, p. 3.

29 *Deutsche Justiz- und Polizey-Fama* No. 5, 6 January 1802, col. 5.

30 In the context of the emerging science of criminology, Peter Becker speaks of “residues of Christian thought patterns in the bourgeois conception of deviance” using the example of the secularised Fall of Man; cf. BECKER, Peter. *Verderbnis und Entartung. Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis*. Göttingen : Vandenhoeck & Ruprecht, 2002, pp. 36–37.

31 This is the case of one of the early crime statistics from the second half of the 1780s, “Observations sur la moralité en France” by Jean Baptiste de Montyon; cf. LECUIR, Jean. *Criminalité et ‘moralité’: Montyon, statisticien du Parlement de Paris*. In *Revue d’histoire moderne et contemporaine*, 1974, Vol. 21, No. 3, pp. 445–493.

well as the classics of moral statistics, whose work extended beyond the period investigated in this article³²

By the beginning of the nineteenth century, statistics of various categories based on a range of methodologies were no longer a novelty, and the Habsburg Monarchy had already gained experience with both its own state-organised surveys and censuses, and with (proto)statistical enterprises of private persons (insofar as the two can be separated).³³ It is significant that the numerous statistics of nongovernmental origin at the turn of the eighteenth and nineteenth centuries contain virtually no information on crime or criminality, but have plenty to say about the so called “moral qualities” of the population.³⁴

A quantitative evaluation of crimes was also advocated by Joseph Anton Riegger, one of the founders of statistics in Bohemia, but he too viewed it primarily as a means of assessing the “character” or “morality” of a nation, whereby he treated the *Moralität* he sought to quantify as synonymous with *Sittlichkeit*. Where he began to differentiate was in the notion of “nation,” which, in his interpretation, is more akin to ethnicity. Thus, he notes that most thieves in the region of Hradec Králové are of a “Slavic descent.” In his text, this segment of the Bohemian population is generally ascribed a tendency to higher criminality or a greater “corruption of morals.”³⁵ According to Riegger, crime statistics, which he views as the most objective basis for general judgements about countries and their inhabitants, have been compiled, in Bohemia at least, since the 1770s.³⁶

In much more recent research, Arno Pilgram also concludes that crime statistics organised either by the sovereign lands or by the state had a longer history in the Habsburg Monarchy and were linked to the judicial and administrative

32 A fundamental work on this subject is REINKE, Herbert. Die ‘Liaison’ des Strafrechts mit der Statistik. Zu den Anfängen kriminalstatistischer Zählungen im 18. und 19. Jahrhundert. In *Zeitschrift für Neuere Rechtsgeschichte*, 1990, Vol. 12, pp. 169–179.

33 On the beginnings of Austrian statistics in the proper sense of the word, see in passing DUPÂQUIER, Jacques et Michel. *Histoire de la démographie. La statistique de la population des origins à 1914*. Paris : Librairie Académique Perrin, 1985, pp. 270–271, but also, BÖDEKER, Hans Erich. On the Origins of the “Statistical Gaze”: Modes of Perception, Forms of Knowledge and Ways of Writing in the Early Social Sciences. In BECKER, Peter – CLARK, William (eds.) *Little Tools of Knowledge. Historical Essays on Academic and Bureaucratic Practices*. Ann Arbor : University of Michigan Press, 2001, pp. 169–195.

34 Apart from the censuses, this prehistory of Habsburg/Austrian statistics has not been critically examined yet. From the numerous works of the beginning of the nineteenth century, a few should be mentioned without claiming exhaustivity: DEMIAN, Johann Andreas. *Darstellung der Oesterreichischen Monarchie nach den neuesten statistischen Beziehungen*. Vienna : Camesiansche Buchhandlung, 1804–1806; LIECHTENSTERN, Joseph Marx. *Statistische Uebersicht des österreichischen Kaiserstaats. Nach dessen Zustande in dem Anfange des Jahres 1809*. Vienna, 1809, where for the “moral characteristics” or “peculiarities” of the individual nations of the Austrian monarchy, cf. *ibid.*, table “Inhabitants” (Einwohner).

35 [RIEGGER, Joseph Anton], Beytrag zur Bestimmung des Nationalcharakters. In *Archiv der Geschichte und Statistik, insbesondere von Böhmen*. Dresden : Waltherische Hofbuchhandlung, 1792, pp. 404–415, here 411: “daß die meisten Verbrecher dieser Art zur slavischen Abkunft gehörten, so wie dieser Theil der Inwohner Böhmens beynahe in Allem – was Bezug auf Aufklärung hat – um mehr als ein halbes Jahrhundert gegen die deutschen Abkömmlinge zurück sind; so ist auch das Verderbnis der Sitten bey ihnen größer.”

36 RIEGGER 1792, p. 409, 411. On Riegger, cf. BĚLINA, Pavel. K počátkům statistiky v českých zemích (Působení Josefa Antonína Rieggera v Čechách). In *Československý časopis historický* 1977, Vol. 25, No. 1, pp. 63–85, 82.

reforms that took place starting in the mid-eighteenth century.³⁷ He notes that the foundation for the quantification of crime was laid by the Josephine Criminal Procedure Code of 1788, by which superior criminal courts (*Kriminalobergerichte*) not only had to summarise the reports of subordinate courts on the number of crimes they had investigated and tried, but also send an accompanying report to the Supreme Judicial Office (*Oberste Justizstelle*) in which “the increase and decrease of crimes, their most important reasons, if one has the opportunity to discover such... were to be listed with care and consideration.”³⁸ The Penal Code of 1803–1804 retained this injunction in a similar wording.³⁹

This claim, according to which the aim of statistics was to investigate the causes of crime and changes in criminality, contrasts to some extent with Pilgram’s and Forcher’s assertion that the primary purpose of these reports was to control the activities of the courts.⁴⁰ However, we must agree with the two authors’ observation that these guidelines were implemented only hesitantly, at least so far. There is no evidence at all of such reports produced at the end of the eighteenth century.

It turns out, apparently, that statistical surveys on crimes but also on police offences in the Habsburg Monarchy were compiled prior to 1818.⁴¹ According to the first samples, it seems to have been the Viennese Supreme Judicial Office (*Oberste Justizstelle*) or the Police Court Office (*Polizeihofstelle*) that centrally organised crime statistics in the first decade of the nineteenth century. Although the latter authority was probably engaged in “statistical considerations” as early as 1811,⁴² summary reports on serious police offences and crimes from Lower Austria only go back to 1813.⁴³ In summary reports from 1814, 47 categories of serious police offences include “excesses,” “acts against public institutions,” “immorality,” “incitement to apostasy” [!]

37 PILGRAM, Arno. *Kriminalität in Österreich. Studien zur Soziologie der Kriminalitätsentwicklung*. Vienna : Verlag für Gesellschaftskritik, 1980, pp. 56–69. Pilgram looks at this (pre)history from the perspective of the state-building process, also bringing in much that is not directly related to statistics. Pilgram relies on FORCHER, Hugo. Die österreichische Kriminalstatistik. Eine kurze geschichtliche Entwicklung ihrer methodologischen Grundlagen von den ersten Anfängen bis zur Gegenwart. In *Statistische Monatsschrift*, Neue Folge 1913, Vol. 18, pp. 593–660, here 594–595.

38 *Allgemeine Kriminalgerichtsordnung*. Vienna : Joseph Edler von Kurzbek, 1788, p. 209, § 298.

39 *Gesetzbuch* 1803, vol. 1, pp. 321–324, §§ 550–555, “in dem Einbegleitungsbericht ist mit Sorgfalt und Überlegung anzuführen, ob, und welche Gattungen von Verbrechen in diesem Jahre gegen das vorige zugenommen, oder abgenommen haben; worin die vorzüglichsten Ursachen dieses Unterschiedes bestehen mögen”.

40 PILGRAM 1980, p. 68: “Es handelt sich nicht... um Abbilder einer gesellschaftlichen Wirklichkeit, die von der staatlichen als abgehoben realisiert worden wäre. Es handelt sich auch nicht um ein moralisches Zustandsbild der Gesellschaft, der hier geboten werden sollte.”

41 PILGRAM 1980, p. 62, considers the two groups of acts separately and cites the Court Decree of 1818 as the earliest evidence of statistics of police offences.

42 PILGRAM 1980, p. 61, speaks of demand for police statistics; after him REINKE 1990, p. 170.

43 Österreichisches Staatsarchiv, Allgemeines Verwaltungsarchiv [henceforth ÖStA, AVA], Inneres, Polizeihofstelle [henceforth PHSt] 5012/1815, box 650. The reports on police offences and crimes from 1813 (compared to 1812) were drawn up by the Lower Austrian Provincial Accounts Office based on information provided by the individual judicial authorities and sent to Franz Hager, President of the Police Court Office, only on 3 February 1815. In light of current knowledge, it is rather unlikely that these surveys of crime were related to the attempts to establish a state-wide statistical office in Austria in 1810; cf. DUPÂQUIER 1985, p. 270.

or simple “fornication.” “Fornication against nature” then constitutes one of the other 18 categories of crimes.

In the following period, information on offences was likely collected in a similar way. More details are available from 1818–1820, also from Lower Austria. The collection and processing seem to have been routine; data were collected by the individual regional offices, the Viennese magistrate and the main police directorate of Vienna as well as by the court of the *Schottenstift* and sent to the provincial accounting office (*Landesbuchhaltung*). The government of Lower Austria then forwarded statistics for the whole province to the Supreme Police and Censorship Court Office (*Oberste Polizei- und Zensurhofstelle*),⁴⁴ which likewise made a distinction between “serious police offenders” and “criminal offenders.” Remarkably though, while the 50 categories of police offenders or beggars recorded by the regional offices were more or less identical to those of 1813–1814, the Viennese report now listed 99 categories, including “disturbance of the inner peace,” “immoral behaviour” and “census violation.” Due to gaps in sources, however, no further conclusions can be drawn from such an increase in the types of offences.

As was the case six years earlier, the data in tables for 1819 were compared with those for the previous year. New additions are the fields “the cause of decrease and increase,” “the instrument of prevention” and “comment.” The actual figures for police offences are based on the data of local municipal and manorial police authorities, but the accompanying comments provide insight into the thinking of lower regional officials as well as ideas from the capital regarding the social context of the delinquency that was being surveyed. Officials, especially the Viennese ones, were also aware of the limited informative value of these statistics. The main police directorate of the capital (*Polizeioberdirektion*) noted, for instance, that the reason for the increase in traffic violations in 1819 was “partly to be found in the greater or lesser attention of the watch, partly also in the actual decrease and increase in the number of violations committed, which is of no concern, however, because of the insignificant difference.” The remaining offences did not lend themselves to a statistical evaluation or general explanation due to their uniqueness.⁴⁵

Officials distinguished between criminal behaviours caused by material or economic circumstances and those which were attributed to moral reasons. This is explicitly stated in the notes of the *Unter dem Manhartsberg* regional office: The “blessed harvest” and “greater affluence of the first necessities of life” in 1819 resulted in less incentive to commit property crimes, which

44 ÖStA, AVA, PHSt, 7630/1820, box 923, a cover letter from the representative of the Lower Austrian Provincial Government to the President of the Supreme Police and Censorship Court Office Sedlnitzky, Vienna, 13 September 1820.

45 ÖStA, AVA, PHSt, 7630/1820, box 923, Vienna, 31 August 1820, “Summarischer Ausweis über die vom 1^{ten} Jänner bis letzten December 1819 von den unterbenannten Gerichtsbehörden untersuchten und abgeurtheilten schweren Polizey-Übertreter und Bettler, dann Criminal-Verbrecher sambt deren Ab- und Zunahme gegen das Jahr 1818”. Adolphe Quételet, founder of criminal or moral statistics, as well as other nineteenth-century theorists (e.g., Mittermaier) were likewise aware of the fact that statistical data of this kind reflect, above all, the activity of judicial organs; cf. REINKE 1990, pp. 177–178.

“in part at least arose from misery.” On the contrary, the offences “which are based more on wantonness and other malice” and whose cause lies in the so-called corruption of morals were increasing. Officials of the regional office *Ober dem Manhartsberg* even saw a causal connection across this division; a link between economic and moral offences and their causes. They believed that the increase in immoral deeds, such as forbidden games or drunkenness, which was observed despite a general downward trend, could be driven by the remission of material concerns.⁴⁶ In Vienna, falling wine prices provided even more of an opportunity for brawling, physical injuries and similar excesses.

The regional office *Unter dem Wienerwald* also made a connection between the decreasing trend in crimes against property between 1818 and 1819 and “the highly reduced prices of the most indispensable foodstuffs for the common class.” Despite this development, theft and begging still constituted a large part of cases which police investigated. In addition to insufficient wages, officials attributed this to the “indolence and work-shyness of the common people” as well as their immorality and lack of education. In areas where factories were located, police supervision was further complicated by disorderly social conditions.⁴⁷

Similar motives were provided by the officials of the Viennese court district *Schottenstift*, where in 1819, the number of certain transgressions (fraud, bodily harm, lewd trades, etc.) had increased compared to the previous year. They noted that “The main causes of this marked increase in transgressions lie in neglected education, the lack of religious principles and tendency to laziness, especially on the part of the female sex, but then also in the lack of work and wages for some trades, especially weavers and silk manufacturers.”⁴⁸ Officials of the *Ober dem Wienerwald* regional office interpreted the figures in a similarly ambivalent manner. In particular, they attributed the general decrease in crimes and minor offences to, e.g., “continued peace,” “greater morality,” and “greater elimination of hardship,” while the fact that certain offences continued to occur was, in their view, due to the “countless numbers of passport-less, unemployed, master-less riffraff,” noting that “lack of education, innate crudeness, animal stupidity... contribute their share.”⁴⁹

Towards the end of 1810s, quantitative surveys on crime were also seemingly conducted in other countries of the Austrian Monarchy. From Bohemia, we have only indirect indications, but they do refer to measures taken in the wake

46 For further comments made by the individual regional offices in Lower Austria, cf. ÖStA, AVA, PHSt, 7630/1820, box 923. Here is one from the regional office Ober dem Manhartsberg: “Diese Erscheinung könne nicht befremden, wenn man erwäge, daß Menschen, sobald sie in ihrem Erwerbe geschützt und von kümmerlichen Nahrungswegen [?] befreiet sind, leicht zu derley Übertretungen verleitet werden.”

47 ÖStA, AVA, PHSt, 7630/1820, box 923, comments of the regional office Unter dem Wienerwald: “Im Allgemeinen bemerket aber das Kreisamt, daß alle Gattungen von Übertretungen, insbesondere die Sittenlosigkeit in jenen Ortschaften, wo Fabriken bestehen, am stärksten sich äußern, da die Mischung von Arbeitsleuten aller Nationen und ihr häufiger Wechsel es den Obrigkeiten beynahe unmöglich macht jene Polizeimaßregeln handzuhaben, welche bey ansässigen Unterthanen mit mehr Erfolg angewendet werden können.”

48 ÖStA, AVA, PHSt, 7630/1820, box 923, Vienna, 31 August 1820.

49 ÖStA, AVA, PHSt, 7630/1820, box 923.

of such surveys. The Prague Gubernium was responsible for their implementation. We also know that the number of all crimes investigated in Bohemia in 1818 (according to the Supreme Judicial Office: 2,203 in total) was said to represent a decrease compared to the previous year. In this case too, the central authorities in Vienna ascribed the trend to a “blessed harvest and the resulting drop in the price of living necessities.” Authorities attributed the relative increase in “religious disorder,” murder and abortion mainly to “prevailing immorality,” which had a bad influence on “the character of the people,” but also to the “neglect of education and religious instruction.” As a remedy, the Court Chancellery (*Hofkanzlei*) and the Gubernium recommended intensive educational cooperation between schools and the Church in order to “teach the population moral religious principles and instruct them of their obligations towards the state and their fellow citizens.” The regional and subordinate offices were then tasked with ensuring compliance with police regulations and an aim to provide sufficient work opportunities.⁵⁰

Such statistical investigations were also undertaken in Bohemia in subsequent years. In this way, comparisons could be made over several years, developments observed and conclusions drawn about the effectiveness of measures. Documents sent to the regional office in Litoměřice show that the downward trend continued for some time. In 1819, 2,081 crimes were recorded in the entire country, while in 1820, the number decreased to 1,838. The recommended means of combating crime changed little, whereby the response to the relative increase of certain offences took the form of republishing the corresponding ordinances, some of which dated back decades.⁵¹ In 1821, in addition to the regional, manorial and municipal authorities, schools and the Church were again explicitly tasked with working towards “morally good education and training for industriousness and moderation.” As was the case with other authorities, the Prague Gubernium drew attention to the limited significance of the statistics of reported and investigated acts relative to the supposed real crime figures.⁵²

How these statistics were compiled at the level of individual criminal courts and how—apart from centrally ordered measures—they were dealt with are subjects that must be clarified by further research. At this point, however,

50 SOA, KÚ Litoměřice, sign. Publ. 16–1, box 1064, circular letter from the Prague Gubernium to all Bohemian regional offices, Prague, 16 August 1819. Unemployment was described as one of the “sources of the worst crimes,” whereby it was noted that “it may arise from a lack of opportunity to work or from a tendency to idleness.” The regional authorities were therefore instructed to “take steps... to enable the poorer classes of people to secure their livelihood through work.”

51 SOA, KÚ Litoměřice, sign. Publ. 16–1, box 1064, Prague, 15 January 1821, the circular of the Prague Gubernium to all Bohemian circle offices mentions – in addition to regulations pertaining to servants – ordinances against infanticide, abortion, putting away a child and concealing the birth, which was published in 1791–1818. For the figure for 1820, cf. *ibid.*, Prague, 6 December 1821. It is worth noting that totals for a given year were not communicated to the regional and local authorities until about a year later.

52 SOA, KÚ Litoměřice, sign. Publ. 16–1, box 1064, Prague, 15 January 1821, “...da endlich hervorgekommen ist, daß eine große Anzahl von Verbrechen theils aus Unwissenheit und Unbehilflichkeit der Beschädigten, welche die Anzeige unterlassen, theils aus Gleichgültigkeit der Ortsobrigkeiten, welche von dem darüber entstehenden Rufe nicht sogleich Notiz nehmen, und solchen nicht verfolgen, entweder gar nicht, oder doch erst spät, zur Kenntniß der Kriminalgerichte gelangen...”

another of their uses—one that is actually not surprising in the context of quantification of governance—should be pointed out. The list of criminal offences “occurring in the Moravian and Silesian courts” in 1818 and 1819 was included with other tables and overviews as a part of the documents assembled to provide information about provinces in connection with Emperor Franz’ journey to the Austrian and Bohemian lands in 1820. Among the 18 types of offences, this source also confirms a clear year-on-year decrease in thefts, distributed evenly among all courts. On the other hand, the number of registered cases of murder and manslaughter as well as public violence (Brno) and religious disturbance (Olomouc) had increased relatively.⁵³ Although we can only speculate about the concrete use of these figures, such detailed statistics can serve as a guide to particular cases or to documentation of the corresponding criminal courts. In any case, Austrian crime statistics from the first decade of the nineteenth century discussed here represent an early and relatively little-known example of this type of administrative texts.⁵⁴

From the statistics themselves, one can ascertain only to a limited extent what exactly was understood by morality and which kinds of behaviours were viewed as incompatible with it in the first third of the nineteenth century. Though the commentary and accompanying materials⁵⁵ produced by various authorities of the Austrian monarchy indicate that at this time, (im)morality was perceived in a more differentiated way than previously. Immorality was no longer viewed merely as the root of all criminality, thus functioning in a sense as a modern equivalent of sin. By now, a distinction was being made between behaviours that had socioeconomic causes and those that stemmed from what was considered a moral background. On the other hand, the texts also attest to a belief that although material prosperity has a positive effect in the decrease of economically motivated unlawful behaviours, this greater prosperity also leads to excesses, especially among the so called “inferior class,” who allegedly tend to be “lazy” and “work-shy.”⁵⁶ Last but not least, immorality seems to be, at least on a declarative level, distinguished from sin, the difference being in the possibility of improvement by institutional means, which incidentally corresponds to the modern understanding of punishment.

In the examined surveys, a specific relationship to work, industriousness or even the spirit of inventiveness and enterprise was attributed to the populations of individual regions, countries or—as in Riegger’s or in Liechtenstern’s

53 ÖStA, Haus-, Hof- und Staatsarchiv [henceforth HHStA], Hofreisen 44-1-13, documents for the journey of Emperor Franz I. in 1820 (cf. <https://www.archivinformationssystem.at/detail.aspx?ID=3944199>, last viewed on 1 February 2022).

54 In France, Belgium or Baden, crime statistics in a proper sense of the word date back only to the 1820s and 1830s, and in Austria, even later; cf. REINKE 1990, pp. 175–176.

55 The regional offices apparently reported regularly to the central authorities (state governments, Supreme Judicial Office) on causes of delinquency; cf. note 42, commentary by the regional office of Unter dem Manhartsberg: “weil die Ursachen, aus welchen solches [moral corruption] herührt, und die in dem kkreisämtlich[en] Berichte vom 30^{ten} Jänner [1]819 Nro. 1117 umständlich erörtert wurden, noch immer bestehen und immer fühlbarer werden müssen.”

56 The terms “lower” or “common class” also appear as synonyms in the files examined.

statistics—even entire nations.⁵⁷ But the national factor played a role in the considerations of at least some police officers by the beginning of the nineteenth century. This is suggested, for example, by an 1808 communication from Johann Thaddäus Sumerau, President of the Police Court Office, to Josef Franz Wallis, President of the Bohemian Gubernium, where we can read that the emperor was displeased with the “thievery, begging, drunkenness and, as a consequence of the latter, addiction to brawls” that were spreading in Prague. Sumerau saw the reasons for this “not so much in a tendency peculiar to the Slavic nation, which could gradually be effectively counteracted by educational institutions, but rather in the still present inadequate administrative institutions,” namely labour and institutions aimed at helping the poor and destitute in the city. Socially, Sumerau attributed this evil to the “vast masses” or “lower rabble.” He also spoke of a “sketch of the moral condition of the lower classes of people in Prague.”⁵⁸

The range of official sources in which *Moralität* and *Sittlichkeit* appear could certainly be expanded but one should not draw any far-reaching conclusions from the various contexts in which the term morality is used. We encounter it as early as 1739 in Zedler’s *Universal-Lexicon*,⁵⁹ and its history may be even longer. It would be a worthwhile task to examine the economic, social or cultural dimensions of morality and criminality in the eyes of the state and police administration at the point of emergence and formation of a view of society as a whole or its groups/classes, independent of religion, and even categories such as economic or social.⁶⁰ The study presented here shows that, in contrast to assumptions made in previous research, the complex evidence of early crime statistics covers more than just the activity of the central courts and police bodies. Apparently, lower administrative officials were also capable of considering material as well as immaterial factors and reflecting conclusions in their presentation of the social situation in particular regions.⁶¹ In statements, there also emerges a connection between morality and social status or the national characteristics of different population groups. Nevertheless, the varied meanings of morality, the conditions under which it could

57 This was most clearly not just a matter of scholarly discussions, such assumptions were reflected even in administrative practice. An example of this is the 1783 manual “Gegenstände, über welche von den Kreiskommissären bei Bereisung eines Bezirks Beobachtungen zu machen sind,” which contains questions such as: “Are the people industrious or indolent? To which occupations do they show more aptitude, ability, inclination? Which passions, virtues, vices predominate?” On the origin and use of this manual, cf. HIML 2019, p. 31–32. LIECHTENSTERN. *Statistische Uebersicht*, “Bemerkenswerth ist der starke Handlungsgeist, dem [!] ein ansehnlicher Theil der östr. Einwohner, besonders von der slavischen Nazion, und darunter am meisten die Illirier und Böhmen, zu besitzen zeigen, Bei eben dieser Nazion nimmt man auch eine aufgewecktere Gemüthsart, als bei den übrigen gewahr...”

58 NA, PG, sign. 15c, box 527, Vienna, 8 August 1808. With regard to drunkenness, Sumerau admitted that it was “not infrequently the source of many immoral acts of disturbance of the peace, even among educated classes.”

59 ZEDLER, Johann Heinrich. *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste. Volume 21*. Leipzig–Halle 1739, col. 1482.

60 It could be linked to studies in England, among others PHILIPS, David. Three ‘Moral Entrepreneurs’ and the Creation of a ‘Criminal Class’ in England, c. 1790s–1840s. In *Crime, Histoire & Sociétés/Crime, History & Societies* 2003, Vol. 7, No. 1, pp. 1–28.

61 At least in the Bohemian and Austrian provinces, officials took up the practice of inspection and reporting from the 1780s, and their standardised training was also reflected in their judgements.

be claimed, ascribed or denied as well as other characteristics mentioned only in passing in this text, such as gender, could be analysed further based on particular criminal cases and other acts against morality.