Forensic Medicine in the Nineteenth-Century Habsburg Monarchy

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As a cultural historian with a strong dedication to socioeconomic and sociological reasoning, I claim that social reality is constituted from a network of social and cultural determinations; this in turn implies that the formation and practice of forensic medicine is not intelligible through classical medical history, which is mainly concerned with the history of medicine's progress and success. The classic approach believes and claims the teleological power of science and humanity to achieve primacy and well-being while neglecting and sometimes even eradicating the struggles, drawbacks, exterminations, reductions, and discontinuities of its emergence in history. It emphasizes the power of internal and self-referential development and excludes the social and cultural conditions of its origins and its practice. The current project's meta-narrative is the question of expertise, the division of labor, and the political and socioeconomic contexts of forensic medicine in an industrializing civilization. I am also interested here in the culturally mediated attempts to give meaning to the practice of post-mortem examinations. That means research into attitudes regarding the procedures in cases of violent death with respect to legal, medical, social, and individual norms and patterns of behavior--a main part of my research that has not yet been completed.

Accepting the assessment that the history of medicine is definitely something other than a story of its proliferation and success, forensic medicine is far more insecure than other branches of medicine. The testimony of expert witnesses was for a long time a casual labor. Up to the late eighteenth century there were no medical experts permanently

employed by the state or the magistrate. It then became a task for the official representative (the Stadtphysicus, Kreisphysicus, or Protomedicus) of the public health system.[(1)]

A book by M. Anne Crowther and Brenda White[(2)] gives ample evidence that in Scotland the establishment of forensic medicine at the medical school was due to political circumstances and its close affiliation to public health, which was more important, at least according to Johann Peter Frank's publication *System einer vollständigen medizinischen Polizei* (System of a complete medical police).[(3)] "Medical police" refers to the regulations concerning individual well-being and the welfare, prosperity, and security of the state. Therefore, for instance, the chair in Vienna was called *Staatsarzneykunde* (later spelled *Staatsarzneikunde*). The techniques and methods of forensic medicine were at that time rudimentary and its benefits by no means obvious.[(4)] While the establishment of the chair in Edinburgh owed much more to political disputes than to the advancement of medical knowledge,[(5)] in Vienna, by comparison, where the conservative Baron Stifft established it, the chair came into existence as a consequence of Frank's new curriculum for medical students. Whether the study of medical police in Vienna was understood as a legacy of the French Revolution, as it was by Tories in Britain, is relevant but will not be treated in this text.

One aspect of my research is to explore the influence of context, especially the legal context and its correlation to professional strategies. A forensic expert had to establish his specialized supply of knowledge not only within the service market of medicine, which was and probably is a jeopardized endeavor, but he also had to conquer the legal experts in order to emphasize the value of his expertise. He had to create a specific niche out of his own interest, but he was also supposed to promote the well-being of the state; therefore, he was the agent not only of his own interests but of a broader social and cultural context.[(6)]

This paper presents an overview of the topic, primarily focusing on institutional and legal facts--an indispensable basis for the more differentiated cultural and social history of forensic expert intervention.

Generalia

The public interest in issues surrounding death serves as a part of governmental practice for ruling the population. I understand the term practice not as action but as an epistemological concept that creates its objects and ideologies.[(7)] "Instead of believing that there is something that might be called the 'ruled' toward which the 'rulers' act, we would like to consider that the 'ruled' at different times are treated with such different practices that they have nothing more in common than their label."[(8)] In addition to the census of living inhabitants (*Seelenkonskription*),[(9)] which was established in Austria 1754, the registration of death and its causes is an important tool for mapping the population. Obviously, there are two other aspects. The official inquest of the dead serves as a source of information on infectious diseases and epidemiological issues and was developed in view of the great plagues of former centuries. And, finally, the inspection of

the corpse is indebted to a society that decided to sanction bodily injury. So, the first step in establishing any pattern of law concerning deadly or non-deadly damage to the human body is to verify in what way that body was hurt or brought to death.[(10)] I will concentrate on deadly damage to the human body, although medical experts didn't deal with death only. There are several occasions when they also must inspect the sick or the insane body. However, the Enlightenment and the nineteenth century marked the beginning of a systematic dealing with death. The secularizing rationalization of health was accompanied by the one of death and dying.[(11)] The hospital is supposed to have been the focus of an extraordinary change in clinical and general medicine, convincingly described by Michel Foucault in *Birth of the Clinic*;[(12)] the morgue fulfilled the same role for the forensic expert: observation of the object without observation of the observer. Instead of vague systems of legal medicine, empirical positivism became fashionable. The observer saw what existed, and what existed was visible. A new epistemology was established, recognizable by its new language. British historian Ivan Waddington argues that the change in the doctor-patient relationship enabled medicine to accomplish a change in epistemology rather than that scientific reasoning altered its power and professional aspirations.[(13)]

Esther Fischer-Homberger claims that forensic medicine was a kind of vanguard of the medical sciences because it was from the beginning primarily interested in issues of pathological anatomy. She stresses forensic medicine's internal importance within the medical sciences. Legal medicine is related to public hygiene, politics in the field of medicine, and aligned throughout toward the public. The forensic expert has to face critiques all the time; consequently, he looks for authoritative evidence. This is one reason for its attraction to other fields of expertise such as chemistry. On the other hand, it was a fundamental battlefield for the struggle between the academically licensed physicians and the surgeons and midwives. In the course of the nineteenth century, non-academic healing personnel were downgraded. They then constituted the auxiliary medical personnel, dependent on the grace of academic physicians. One can observe a subtle strategy--post festum. Legal medicine was able to transform and integrate branches of different fields of expertise. They transformed aspects of theology and psychology into forensic psychiatry, the skills and knowledge of apothecaries into toxicology and medical chemistry, and governmental theory (*Staatswissenschaft*) into agendas of public health. Furthermore, legal medicine was responsible for the jurisdiction of malpractice, thus it was a professional institution. Legal medicine is, according to Fischer-Homberger, the pacemaker of medicine in general.[(14)]

The traditional fields of expertise and intervention were infanticide, abortion, sodomy, witchcraft, sorcery, insanity defense, lunacy, malpractice, autopsies for the courts, classification of wounds, and determination of virginity, sexual offenses, and aspects of public health, of medical jurisdiction, of torture, and of deformities. A broad spectrum became specialized and differentiated in the course of the nineteenth century.

One constant source of tension is the cooperation of forensic experts with courts and authorities. Since the late middle ages jurists and physicians have debated heatedly about the hegemony of their respective fields of expertise. Beginning with the age of

enlightenment, medicine could establish its claim for social and political recognition. Doctors based their education and diagnostic and therapeutic argumentation on scientific and utilitarian terms, a strategy that was readily accepted and widespread at least in the affluent layers of society, the *Bürgertum.* The important stratagem of health, and the care for the body as a resource formed a very distinct mean in the process of forming the "bürgerliche Gesellschaft."[(15)] In addition, medicine became an integral force for enlightened philosophy.[(16)] "Medicine, it seemed, was transforming itself from medieval mystery, from the furtive ally of alchemy and astrology, into a thoroughly philosophical science, and this association of the new philosophy with the art of healing proved to the thinkers of the day the strength of both."[(17)]

In modern history, medicine was linked to the state (no matter what form), authorities, and the law. Aside from giving forensic expertise and evidence in trials, the physicians, who were in the process of professionalizing, were eager to participate and to affect the regulation of modern society, since it seemed to be a field where they could gain momentum and influence vis-à-vis the authorities and their competitors in the market of healing, and particularly in the market of the medico-scientific interpretation of life, death, illness, and well-being. The designation "medical police" describes one field of action in which physicians were able to solidify their authority by serving the absolute monarch. Faced with plagues and pestilence, smallpox and cholera, the physicians tried to demonstrate their competence. Ultimately, they were successful in linking their professional ambitions to the state; terms like *"Staatsarzneykunde"* prove the establishment of medicine as a guiding principle in the practice of government:

That was the situation in which the nineteenth century found the relation between forensic medicine and the public--its representation respectively through jurists and authorities. The rivalry between medicine and jurisprudence concerning the care for a common well-being was replaced by specialized collaboration. This part of medicine, dealing with public agendas, started segregation from general medicine toward a specialized discipline. Within this publicly oriented branch of the medical sciences--in spite of and due to the knowledge of its enormous scope of expertise and the growing need for a specialized organization--a lack of consensus existed regarding the design of relations between forensic medicine and the other branches that relate themselves to public needs.[(18)]

The process of professionalizing physicians benefited greatly from the input of public applications of medicine, including forensic expertise:

Another factor was the contemporary drive to reform the medical profession and improve its reputation; forensic medicine had significance in this context because, unlike most medical practice, it was performed publicly, under challenging adversarial conditions. The regular profession was preoccupied in this period with suppressing quackery and incompetence, and was continually campaigning for legislation that would give it a legal monopoly on healing; the fact that doctors were seeking new levels of government protection was doubtless another factor in their frequent emphasis on what the medical

profession, through the practice of forensic medicine, could do and was already doing for the state.[19]

The first sources for early modern European forensic medicine were found in the cities of northern Italy, especially in Bologna during the thirteenth and fourteenth centuries.[20] Thus, forensic medicine traces back much farther than the eighteenth century.[21]

The eighteenth century is full of writings concerning issues in forensic medicine,[22] at least in continental Europe. There is some scholarship on the belated reception of legal medicine in England and the USA, especially concerning medico-legal writings; there is also some evidence on medico-legal practice, for instance records from Maryland provide information on forensic expertise as early as the seventeenth century.[23] Catherine Crawford argues that that is due to different legal systems. Medicine and law build an interwoven relationship throughout civilization. Authority in issues of death, insanity, and ethics is traditionally at stake. The question of power was raised, according to Foucault, when the traditional juridical power of the sovereign was superseded by new productive regimes of intervention and observation, by what he calls bio-power. This power establishes a norm and judges everything by discriminating between normal and pathological. The medical profession seems to benefit from this change in the practice of power and order. Crawford uses the term "medicalization" in order to designate "an expansion of medical authority into new social territory."[24] Concerning this implementation "from above," we must ask: Who imposed it? Who benefited? Who was discriminated against? Who participated in that shift? And is it true that it came solely from above, or were there different tendencies that supported and even demanded the rise of medical authority in the specific field of forensic medicine? Forensic medicine is thus related to law courts and regulatory bodies, whereas legal medicine is a more comprehensive notion.[25]

Crawford stresses that it is important to consider the legal systems, the legal context for the emergence of forensic medicine. She distinguishes between the British and Anglo-Saxon common law--which, perhaps due to its encouragement of the opinion of lay people in juries, hindered the development of medico-legal writings--and continental European law. She argues that medical expertise had different meanings and practices in these two cases. The continental European legal system, on the other hand, was based on Roman and Canon law--which means, according to her, that cases were investigated by and verdicts were given by professional judges. This power, which was assigned to an individual or a few persons, needed contextual restriction; thus, a complex law of proof was designed. This pattern of proof encouraged a formalized system based on the rationality and certainty of proof-based expertise. Another reason for the proliferation of forensic textbooks was the practice of "Aktenverschickung"--in case the medical opinion was doubted, medical faculties of the universities had to deliver their collective findings. Thus, Crawford summarizes:

All decisions of fact were made by professional jurists, whose reasoning was governed by comprehensive rules of interference which were spelled out in scholarly texts on legal

proof. Medical facts were no exception, and because they, too, were meant to be decided on the basis of textual authority, there was a juristic demand in Roman-canon law systems for texts on *medico*-legal proof: that is, for texts on forensic medicine.[(26)]

This asymmetry changed eventually. Fischer-Homberger, a Swiss psychiatrist and historian, gives a comprehensive survey especially respecting the history of forensic ideas and concepts in continental Europe. Despite this evidence (writings on forensic expertise, treatises, textbooks, etc.), legal medicine did not become incorporated into the academic curriculum, at least not as mandatory coursework, until the early nineteenth century.

Toward the end of the eighteenth century J. P. Frank, well known for his publication *System einer vollständigen medizinischen Polizei,* postulated that a modern state must have a chair of *Staatsarzneykunde,* public health, to compete with other countries. Health turned out to be one of the decisive and regulating factors of the modern (civil) state. This marks the beginning of the therapeutic state.[(27)] In this setting (1804) the director of studies of the University of Vienna, Johann Andreas von Stifft, established the chair for *Staatsarzneykunde,* which consists of two disciplines.[(28)] One is the medical police, the doctrine of ruling a population according to medical principles (the later hygiene leads back to it), the other is forensic medicine. Both were differentiated before but synthesized in order to provide the chair with a medical specialty dealing with the state's public sphere; this external relation to the public interest made it sound to combine both in one chair, which occurred not only in the Habsburg monarchy but in most European countries.[(29)] Thus, for example, the term *Staatsarzneykunde,* which marks the end of a long debate on the correct denotation, goes back to a bibliography, compiled by Christian Friedrich Daniel, with the title *Entwurf einer Bibliothek der Staats-Arzneikunde oder der gerichtlichen Arzneikunde und medicinischen Polizey von ihrem Anfange bis auf das Jahr 1784,* published in Halle in 1784. This artificial synthesis caused an almost 100-year-long discrimination against hygiene, then called medical police.[(30)] On the other hand, at least in Scotland, it supported the emergence of forensic medicine due to its political implications.[(31)] Eulner, a German medical historian, claims that in Germany hygiene succeeded and was thus able to fight for institutional implementation of different approaches in the field represented by Max Pettenkofer and Robert Koch. In Austria, the internal discussion on different aspects of forensic medicine--whether to concentrate on pathological-anatomical or pathological-chemical expertise--overshadowed the struggle for attention of medical police or hygiene.[(32)]

One of the many theoreticians of medical police, public health, legal, and forensic medicine, J. B. Erhard, a liberal practitioner from Berlin, claimed in 1800 that the state as legislative power should support and care for civic life. As an enlightened physician, he stated that personal well-being is a subjective phenomenon and therefore an individual need, but only the academic physician is able to realize that well-being for the sake of the one and the many--the state. He argued, against any liberal ideas, for the alliance between state and medicine: medicine perceives needs virtually "from outside," while the state on its part satisfies them "from above"--through the promulgation of laws and enactments.[(33)] Based on that fundamental decision, he distinguished between medical legislation

("medizinische Gesetzgebung") and forensic medicine. The former's purpose--physical and spiritual well-being--coincides with the art of healing. The latter's purpose is achieved through the means of medical science. Therefore, it forms an appendix to Erhard's system of medical legislation. His scheme involves the medical police and the "Polizei der Medizin"--the latter refers to the relevant laws and regulations. The former specified the ambition for well-being, and it collapsed in a flood of advisory literature.[(34)] Erhard believed that he created a more precise version of "medicina forensis" by designating it as an auxiliary tool for criminal and civil jurisdiction. Forensic medicine was "die genauere Bestimmung eines Faktums durch die Kenntnisse der Heilkunde."[(35)] The main distinctive feature between medical police, "Polizei der Medizin," and forensic medicine is that forensic medicine is not legislative but jurisdictional. It is, as already mentioned, an auxiliary juridical instrument. Therefore, Erhard makes four distinctions:

1. In which legal cases do you need an expert opinion? The evaluation of age; the physical conditions being considered in inquisition, sentence, and punishment; the determination of pregnancy, of paternity, of the simulation or concealment of diseases, and so on.

2. The form a written expert opinion should take. He argues for a formalism that enables the judge to use the findings easily. Erhard standardizes a certain rubric for expert opinions.

3. The duties of the medical personnel--physicians, surgeons, apothecaries, midwives--who are put under oath for forensic issues.

4. The validity of an expert opinion. Erhard considers this as the key to sentences. He distinguishes between a dogmatic expert opinion, in which the findings are binding, and a casuistic one, in which case the judge is supposed to decide. This system involves, as a final step, the opportunity to consult medical schools or expert bodies.[(36)]

This scheme of medical forensic intervention shaped the practice of it in the German-speaking countries and is closely related to the regulations for criminal procedures--a further field of inquiry in my prospective research.

Joseph Bernt, the leading forensic expert in Prague and, after 1813, in Vienna,[(37)] conceived *Staatsarzneykunde* as the synthesis of the police of medicine (*politia medicinae*) and the medical police (*politia medica*). He understands "police of medicine" as an integral part of governmental interests in the population, covering issues like internal security, prosperity, welfare, and housing, and encompassing laws, decrees, and enactments. His views indicate a shift in the practice of governing a population. Therapeutical practices began to supersede those of coarse exploitation. In 1768, J. Sonnenfels, a leading expert in the field of governmental theory, defined the notion of police: "Police means the science of establishing and handling the inner security of a state."[(38)]

Thus, medical police is a genuine medical undertaking, medicine is understood as a servant to public life and particularly important for the official medical personnel. In Bernt's scheme, medical police is structured in three layers:

1. the police of health (*politia diaetetica*), which is concerned with the maintenance of public health;

2. the police of therapy (*politia therapeutica*), which should foster and guarantee the correct therapy;

3. the police of investigative tasks (*politia pathognostica*), which is concerned with the recognition of maladies (*the Pathognosie des kranken Lebens*).

In this pattern the *politia pathognostica* is a subdivision of medical police and, thus, not integrated into the more governmental interests of the police of medicine. The application of medicine in respect to public life and health marks its key position. "Because it is its duty, in order to support the legal system, to investigate if and to what extent somebody did violate the regulations of the health and healing police [politia diaetetica et therapeutica - TB] [...]; that is the reason why it is traditionally called forensic medicine (medicina legalis forensis)."[(39)] Bernt's rhetoric tries to legitimate forensic medicine as a valuable tool for the regulation of public life, as complimentary to medical police and its multifarious uses. Since forensic medicine is not a branch of the law but of medical science (although it makes use of a lot of auxiliary sciences), Bernt structured forensic medicine according to the different states of its object: the dead, sick, or healthy human being.

Forensic medicine implied much more than detecting the causes of death. Although it was a branch of the medical sciences, it was closely related to the needs of the law. The influence of the law--for example, regarding theories of proof--is so strong that in order to understand forensic medicine, the scholar must know a lot about the needs and intentions of juridical practice. "Essentially it places medical knowledge at the service of the law for many purposes: deciding compensation for injury; investigating fatal accidents and injuries at work; advising on the mental state of those accused of crimes or who die leaving disputed wills; examining the victims of rape and other assaults; checking the health of applicants for life insurance policies; and so on."[(40)] Here I am referring to an 1813 handbook edited by Joseph Bernt, the second Chair of the Department of *Staatsarzneykunde*. There are three main domains of investigation:

1. Inspections of healthy persons concerning the determination of age, gender, deformities, generative capability, pregnancy, and birth.

2. Inspections of sicknesses dealing with doubtful diseases, whether pretended illnesses or hidden deviations. Mental illness is part of this domain. Secondarily, this category includes the investigation of damages of the body such as deadly or non-deadly injuries and poisoning.

3. Inspections of the dead, of corpses of newborn children as well as of adults. The forensic expert differentiates between the causes and the categories of death through performing an autopsy.[41]

The duties of forensic experts were executed in the past--according to Bernt's account--by the two youngest members of the guild of barber-surgeons. They performed their inquests in the private rooms of the deceased without any remuneration. When the General Hospital was founded by Joseph II in 1784, the two youngest "Primarwundärzte" were supposed to do the postmortem; later on they were replaced by the "Beschaumeister" who were employed by the court.[42]

The Establishment of Forensic Medicine as a Compulsory Course and the Founding of the Chair of *Staatsarzneykunde* in Vienna

On July 14, 1772, the two deans of the medical school--Anton Störck and J. A. Kestler--released a curriculum without forensic medicine or medical police.[43] The same applies to the draft of the medical school concerning the departments and specialties from August 6, 1772.[44] The syllabus of the professor for surgery from October 28, 1772, indicates plans to include aspects of forensic medicine in his practical course:

Therewith every barber-surgeon who will be instructed to conduct a post-mortem in the future should--before he passes his final exam--dissect in private or under the auspices of his professor, or better in public, a dead child or any other corpse. After he named and demonstrated all the relevant viscera the professor should ask him, regarding the corpse, especially about the lethality of the wounds.[45]

On January 13, 1775, the draft of August 1772 became valid. Forensic medicine is mentioned in the syllabus of pathology--especially the attitude toward responding to queries from the court and the phrasing of written expert opinions. "Forensic medicine belongs to pathology, too; it is called forensic due to its usefulness before the law and the magistrates, because it is necessary for the judge to consult physicians."[46] The syllabus standardizes practical exercises on corpses too: "The corpse has to be investigated carefully in order to reveal the causes of illness and/or the causes of death."[47]

Thus, in 1775 forensic medicine became for the first time part of the surgery course. The goal was to introduce the students, physicians, and surgeons to the practice of viewing a corpse. Besides the university there was another medical school. The Josephinische Militärakademie was established in 1785 to instruct military surgeons in general. There forensic medicine was a minor field (*Nebenfach*) of the professor of applied surgery, operative surgery, and obstetrics.[48] This program did not seem to be much elaborated, because in 1795 after the dismissal of the first director of the Josephinische Militärakademie, Giovanni Alessandro Brambilla, one member of the *Professorenkollegieum* (the board of professors), Hunczovsky, criticized the poor

condition of the education program, including the "total neglect of some indispensable courses like, for example, obstetrics [and] forensic medicine." After a new reform in 1796, obstetrics and forensic medicine got their own chair within the Medicinisch-Chirugischen Josephs-Akademie.[(49)]

In 1804 forensic medicine became compulsory in the curriculum of medicine at the University of Vienna; it was taught every other semester alternating with medical police. Rudolf Kink, however, argues that the syllabus from February 17, 1804, does not mention forensic medicine. He claims that it first appears as part of the 1812 plan as a course in the fifth year.[(50)] And in 1810, in the curriculum for surgeons at the university, forensic medicine is mentioned for the first time. Studies in medicine and in surgery, however, were different educational patterns taught in different schools. The physicians established their theoretical predominance and superseded the traditional barber-surgeons.[(51)]

An 1817 decree from the vice-director of the medical school describes the duties and the procedures of forensic education within the medical curriculum.[(52)] Students are required to participate during an autopsy. The hour of the legal dissection is not supposed to coincide with other classes. Already-educated students perform the postmortem and the protocol under the guidance of the professor; the education is considered a side effect, the findings are the main focus. If the legal secretary is absent, one of the students must take dictation from the person performing the dissection. Afterward it must be read aloud and signed by the legal commissioners and the demonstrator. In the next lesson, the written protocol is criticized, and the students are required to compose an oral expert opinion. The form and contents of the actual opinion--that is, that of the professor--must be discussed. The protocols and the concepts of the written expert opinion are registered and collected as examples of "how public health officers do their business" ("wie Physiker ihre Geschäftregistratur zu führen haben"; it is impossible to translate "Physiker" precisely, and "Geschäftregistratur" emphasizes the prescriptions and regulatory process of these tasks)[(53)] and to provide a rich source of bizarre cases for the most important medical journal in Austria, the *Medicinischen Jahrbücher des k.k. Österreichischen Staates.* Each student is obliged to deliver an expert opinion before he is able to take the final examination (*strenge Prüfung*). These opinions cannot be used in trials, because the expert in that case must be employed by the authorities. Since the regulation foresees the opportunity for students to deliver an expert opinion if it is proved and signed by the employed forensic expert, we have to consider that to be the common practice. In order to establish the chair of *Staatsarzneykunde* it was allowable to write a dissertation in forensic medicine and medical police.

Concerning legal affairs, there were basically two types of medical experts. The first was responsible for administration of inspection of prisoners at the house of detention, determining the conditions of the prisoner regarding detention, interrogation, and judgment, especially the penal responsibility of the delinquent. In practice, as we will see, they continued to deliver their expertise in working on and in the body. The Physician of the City of Vienna (Wiener Stadtphysikus) and the Magister sanitatis were appointed and

had a few subordinate surgeons and midwives. The second expert was called the *Beschaumeister;* he actually performed the postmortems.

Beginning in 1808, all legal dissections that needed to be done in the General Hospital of Vienna were led by the professor of *Staatsarzneykunde,* who guided the dissection in the presence of his students. This decision was repeated in 1812, so obviously its execution had been different from the written decree. A surgeon still performed the autopsy in the presence of the professor. When the professor was named as demonstrator of the City of Vienna, the practical method of medical education concerning forensic medicine was enforced. On April 12, 1815, the city council of Vienna elected the chair of *Staatsarzneykunde* as the official *Beschaumeister.*[(54)] This centralization, which determined the medical system, particularly the administration of public health, strengthened the development of supervised dissection at one specific place: the "forensic dissection room at the deathyard of the General Hospital."[(55)] Eventually Carl von Rokitansky, the pathologist, could achieve his reputation and expertise via this decision. This decision marks the outset of an unpleasant situation concerning the Institute of Forensic Medicine in Vienna. In contrast to the School of Paris, which was mainly oriented around toxicological issues, Vienna's forensic medicine was based on pathological anatomy, due to an official decision in 1818, when the demonstrator of pathological anatomy was elected as the legal anatomist. After 1842, when Rokitansky emerged as a pathological anatomist and the former distinguished chair of *Staatsarzneykunde* Joseph Bernt died, all corpses went into the hands of the pathologist Rokitanksy; he became the *Beschaumeister* of the City. Forensic medicine became an appendix of his institute. This unpleasant situation for the forensic experts (and the Institute for *Staatsarzneykunde*) lasted until 1875 when Eduard von Hofmann was elected as the new executive of forensic medicine. Meanwhile medical police had been separated into public hygiene and forensic medicine, due to their development as independent studies. Hofmann, the new chief, liberated forensic medicine from the embrace of the pathological anatomist, as Fritz Reuter, a former professor of forensic medicine, puts it. Hofmann was finally named as the legal anatomist of Vienna and also as the demonstrator for official autopsies (*sanitätspolizeiliche Obduktionen*).[(56)]

Finally, I want to mention that due to the contemporary drive to reform the medical profession and enhance its public status, the improvement of medico-legal knowledge and practice came to be viewed as a priority for the medical profession as a whole. The growth of medical interest in pathological anatomy at that time also stimulated interest in forensic medicine, but, at least in Vienna, it damaged the institutional importance of the Institute for *Staatsarzneykunde*. As already mentioned, it became an appendix of pathological anatomy.

The Legal Dissection of the Dead: The Professional Pursuit of Truth

The autopsy is the last in a series of efforts to verify damages to the body and efforts to present prognoses in trials. Before dissection came superficial inspection, since the location of injuries serves as source of speculation on the deadliness of wounds. This

epistemological pattern contains certain moments of guilt-rating. Joseph Bernt comments on that issue in his textbook on the composition of professional opinions in legal cases; he underscores that expert opinions should avoid any judgments, especially more lenient ones. Although sometimes, in doubtful cases, that was allowable; "and just in very doubtful cases should the voice of humanity judge, and search for leniency before the court."[(57)] During the eighteenth century, diagnosis (which is interested in the status and its history) ousted prognosis (which is interested in the status and its future). Influenced by the Italian physician Morgagni, the founder of pathological anatomy, medical ideology held that the pure "scientific" and positivistic perception of harmed tissues and so forth was a direct representation of reality, no interpretation was needed--it would be judgment, and therefore doubtful. Medical opinion becomes testimony in a trial, at least in theory. The eighteenth century recognized dissection as the crucial base for the pursuit of truth according to forensic textbooks and professional propaganda. Legal textbooks, on the other hand, believe more in the evidence of confession and the account of witnesses. In spite of that, legal practice appreciates the postmortem as a decisive part of fact-finding in a legal case. Based on that evidence, the investigating judge decides early in the proceedings whether or not it is a case for the criminal court, not to mention the effect of forensic evidence on any subsequent judgment. It is also important to mention that the judges (*Räte*) received their education on the job. The period of professional, academic judges did not start before 1808. In 1783, the Criminal Court of Vienna (Wiener Kriminalsenat) consisted of the vice-mayor, twelve judges, the commissioner of the criminal court, one physician, one surgeon, and one midwife. The commissioner (*Kriminalgerichts-Kommissar*) was in charge of the actual preliminary examinations under guidance of the investigating judge. One element of this pretrial phase was the postmortem. Since the forensic surgeon was not available at all times, especially Sundays and holidays, the commissioner occasionally had to perform a postmortem himself.[(58)] That is an indication about the quality of some findings and also about the acceptance and importance of expert opinions at that time. This contrasts to the importance of witness accounts before the judge in the trial. The theory neglected the expert opinion and the inquest. But in the nineteenth century the pretrial procedures became central, even essential. Thus, the autopsy gained relevance.[(59)]

Concerning the Habsburg monarchy, the earliest document on the autopsy[(60)] is a decree from Prague in Bohemia dated 1734. It later became a section of the "Theresianischen peinlichen Gerichtsordnung," a collection of laws and procedure regulation regarding criminal offenses, from 1768; its title was "Instrukzion wie und auf was für eine Art in Fällen einer gewaltthätigen Ertödtung oder Verwundung das corpus delicti ordentlich zu erheben, und hierüber die Beschau- und Wundzettel einzurichten sein?"[(61)] Now I will focus on decisive items of the legal autopsy. It is more or less a special viewing of the dead. Thus, we now swing into the nineteenth century. Per an 1812 decree, all legal dissections in the legal district of Vienna must be performed in the General Hospital of Vienna. Between 1808 and 1818 the professor of *Staatsarzneykunde* led the inspection; from 1818 to 1875, as we have heard, the pathological anatomists reclaimed the corpses. Finally, in 1855 an instruction for legal postmortems was issued that is still valid.

In 1814, an instruction for official medical experts[62] was published; its first paragraph describes the official legal and cameralistic interest of the authorities. "To conduct postmortems is one of the most relevant tasks of the public health officers because the judgment on the honor, freedom, property, and life of the accused depends on it."[63] As we can see, the decisive notions of civil life depend--at least in legal cases--on expert opinion. Or vice versa after the state and the physicians formed an alliance in order to rule the people in terms of a new practice, the practice of the therapeutic state. At that time this new medical order swept over into legal domains.

This instruction, however, lists the crucial issues of an autopsy, even in technical terms. First, the reasons for a legal inspection. As already mentioned, the official viewing is of central importance in determining whether a legal dissection is warranted. Specific subjects are, for example:

* death from forcible manipulations;

* death by poisoning, or at least in suspicious circumstances;

* in case of external applications of remedies;

* hanging, strangulation, drowning, and so on;

* sudden death;

* those found dead in apartments, in the streets, or otherwise outside a hospital;

* in case of presumed infanticide;

* if the deceased was treated by a quack.

Second, the terms under which a legal dismemberment is performed are:

1. an official request must be made by the responsible authorities;

2. the form should mention time, date, specific location, and the names of the legal witnesses and medical experts;

3. at least one medical expert is required;

4. according to Bernt, the chair of *Staatsarzneykunde,* the corpse must be brought to the dissecting room in the General Hospital; before 1812 the dissection took place anywhere--for instance in a churchyard--in spite of regulations on the location.

Third, the course of the inspection:

1. The medical expert is employed by the legal authorities, is put under oath, and leads the dissection. Generally a *Wundarzt* (surgeon) is the actual dissector. The forensic expert has to record everything.

2. The surgeon is liable for this business; in Vienna it falls to one of the two youngsters at the General Hospital (actually, to one of the two youngest senior surgeons [*Primarwundärzte*] and to the official, legal surgeon). The official surgeon provides the tools and performs the dissection depending on the medical expert. After finishing, he has to concur with the commissioner on the medico-legal opinion or, in case of objection, to contact the judge.

3. Official force should guarantee that unauthorized viewers are kept away.

4. Before opening the corpse, the commissioner must check that the person is already dead and, if not, start resuscitation.

5. The protocol of the medical expert is compared with the record of the legal witness after the dissection, and all persons present must sign it. The protocol of the legal witness goes to the investigation files. The one of the forensic expert serves as basis for the *visum repertum,* the medical opinion, which is a written paper that intends to respond to all requests from the judge. At least twenty-four hours are given to create this opinion, and these papers have a distinct rhetorical structure.

Last, but not least, I want to mention one most decisive precondition. It is the epistemological theory that what the visual senses of a medical expert perceive is truth and that only the interpretation of the record is imperfect. Thus, any expert is able to approximate the visual truth from the record because the expert records what he sees. Only the assessment of the primary findings depends on interpretation. "Differing opinions of the medical personnel are conceivable regarding the findings but not regarding the facts and phenomena that were experienced during the postmortem, because the former depends on different intellectual and scholarly arguments but the latter are objects of an external perception through the senses and therefore undoubtedly real."[(64)] Forensic medicine is on this fundamental level an avant-gardist to clinical medicine. Considering Foucault's *Birth of the Clinic,* the positivistic access to the unveiled interior of the body marks a turn in nosology.

What Happened When a Corpse Was Found?

Now, I will give a description of the procedure involved in a forensic intervention. This account is based mostly on normative, official documents, records of the criminal court, and accounts of forensic experts. I want to emphasize that this is a first approach to the subject, and not the core of my investigation. But it helps me to imagine and to construct my field of interest.

When a corpse was found every citizen, but especially physicians, surgeons, midwives, and so forth, was obliged to inform the local political authorities (I'm dealing with the eighteenth and nineteenth centuries and with the political district of Vienna--in the countryside and even in smaller communities the practice differed from the norm much more than in the big city of Vienna).[(65)] Regulations for the official viewing of the deceased (*Totenbeschau*) date back at least until the seventeenth century. Frank gives some dates for these regulations, unfortunately without evidence: March 1, 1721; January 9, 1743; September 4, 1751; March 30, 1770; November 21, 1770; May 27, 1780; and May 18, 1782.[(66)] Salzmann[(67)] reports the first decree on the official viewing as dated November 23, 1607 (=WrStLA, Urkunde 443, Serie B). The City of Vienna has kept records of the dead since 1648. A *Totenbeschreiber* or *Totenbeschauer* had to register the death. Without a *Totenzettel,* a document about the determination of the actual death, funerals were not allowed to take place.[(68)]

A manuscript[(69)] from the City Archives of Vienna refers to an *Infektionsordnung,* a rule regarding infectious diseases, from 1630. This *Infektionsordnung* mentioned the first pertinent regulation from 1551. The official viewing results from sanctions prompted by the great plagues. There are other traces of the official viewing of the dead from 1630 in the Oberkammeramtsrechnungen, the revenue-office of the City Council, and a reference to the bureau of the official registration of the dead, the *Totenbeschreibamt,* located in the Tiefer Graben starting in 1630. The earliest regulation that I found dates back to 1705. Its first paragraph is mainly concerned with the drinking habits of the *Totenbeschauer.* The staff of this office consisted of "4 ordentlichen Beschauern, welche geprüfte Wundärzte und Acoucheurs seyen müßen, einem Infektions-Sperrer, dann aus 4 Siechenknechten und einem Adjuncten."

To view the corpse the authorities sent an appointed *Totenbeschauer,* who gave an opinion and issued a *Totenschein,* a death certificate. This first official viewing or inquest is an interesting story of its own, in that it evolves out of the experience of plagues and that the cameralists--for instance, Sonnenfels or Justi--had a strong interest in this practice in terms of governing the state's most important resource, the population. Thus, a whole bureaucratic apparatus evolved called the *Leichenwesen.*[(70)] The register of the City's dead from 1648 onward is only one part of it.

If the *Totenbeschauer,* the medical examiner, presumed a violent death or if he was uncertain about the cause of death, he had to notify the Criminal Court and/or the local police station. "A legal dissection is only necessary if the corpse shows signs of a crime, for they are elements of an offense. The first part of the penal code regulates these cases: murder, second degree murder, aborted fetus, individuals who died after a duel or through incendiarism."[(71)] The Court appointed an investigating judge, who was supported by the commissioner of the criminal court (*abgeordnete Criminal-Gerichts-Individuen*). The latter was involved in the fact-finding and ordered the corpse to the legal dissection room in the General Hospital. The so-called *Siechenknechte,* who were assigned to the magistrate, carried the corpse through Vienna to the hospital. They were a kind of on-call service and lived, therefore, in a specific building in Vienna, their trade and their reputation was similar to that of the knacker (a British term for people who bury dead

animals). Both were located in a specific location in Vienna--at the Tiefer Graben, or in house number 184.

The commissioner then notified the experts and the chair of *Staatsarzneykunde.* They were supposed to come to the dissection room the following afternoon. The next day, the commissioner received the key to the dissection booth from the vice-mayor, who was president of the criminal court. There he opened the cupboard with the dissecting instruments. Meanwhile, the *Siechenknechte* had to prepare the corpse, and the rest of the legally involved persons gathered.

The chair of *Staatsarzneykunde,* who appeared with his students, was supposed to supervise the postmortem examination, while an appointed barber-surgeon did the actual work. More precisely, if there was no student to perform the postmortem, Bernt reports, then the surgeon Bogers was obliged to do the autopsy--after his death, Bogers was succeeded by the pathological demonstrator. One of the two senior surgeons was supposed to appear as a witness. Therefore, the three received a fixed salary from the magistrate. As the instruction prescribes, the commissioner had to appear at 3:30 p.m. at the *Totenkammer* of the General Hospital to administer the orderly process. During the postmortem, a protocol was written. The next day, the chair was supposed to deliver his expert findings to the commissioner. This opinion went into the files. The commissioner's duty was to report to the criminal court, and the respective paper was called "Amtsanzeige" or "Relation." The commissioner is supposed to present a chronological account beginning with the first hint that a criminal case is known, and ending with the arrest or the failure to arrest the delinquent. His presentation had to contain a report on the circumstances of a crime (*Taterhebungsprotokoll*), the factual findings, the written expert opinion, and lots of documents that were created during the investigation. He has to order all the pieces alphabetically and in a logical order.

The entire procedure was part of the preliminary investigation. The court had then to decide whether the case was a matter for the criminal court or not. At that time there were no oral and public proceedings, and no jury. It was called inquisition. Despite the practical value of the expert findings, there was no public stage for forensic experts to feature their professional relevance before 1873.

Early in the nineteenth century most of the postmortems were done by either one of the hospital surgeons or eventually by a pathological anatomist. A commissioner recounts that, shortly after the establishment of the chair of *Staatsarzneykunde,* he was forced to perform a postmortem by himself together with a corpse-carrier due to the refusal of the chair to work on holidays.[(72)] This situation is probably the reason why the legal textbooks at that time did not much appreciate the evidence of an autopsy. They were, however, influential in daily practice, according to one legal historian. Thus, the official regulations were modified in the beginning of the nineteenth century. A decree for the postmortem dissection regulated the entire procedure, both the administration and the dissection itself. It is important to mention that the penal law, which determines the value of the evidence, did not change at that time, so this development was a reaction to the day-to-day practice of jurisdiction.

Endnotes

1. See for Württemberg Gerber (1976).

2. See Crowther/White (1988).

3. See Frank (1780ff.).

4. See Forbes (1985), especially for Britain.

5. See Crowther/White (1988), 7.

6. For the methodological considerations, see Burg (1996).

7. See Veyne (1992).

8. Veyne (1992), 14. "Anstatt zu glauben, es gäbe da eine Sache, die sich 'die Regierten' nennt, der gegenüber sich 'die Regierenden' verhalten, wollen wir davon ausgehen, daß man 'die Regierten' zu verschiedenen Zeiten mit so unterschiedlichen Praktiken behandeln kann, daß besagte Regierte kaum mehr als ihren Namen gemeinsam haben."

9. See Durdik (1973).

10. Fischer-Homberger (1983), 293 ff.

11. See Wimmer (1985), particularly 161-203.

12. See also Göckenjan (1985).

13. See Loetz (1993) and Waddington (1978).

14. Fischer-Homberger (1983), 13-14.

15. See Conze/Kocka (1983).

16. Fischer-Homberger (1983), 85-87.

17. Gay (1977), 13.

18. Fischer-Homberger (1983), 99. "Das war etwa die Situation, in der das 19. Jahrhundert die Beziehung zwischen Gerichtsmedizin und Öffentlichkeit - beziehungsweise deren Vertretung in Form von Juristen und Behörden - fand. Die rivalisiernde Bemühung von Medizin und Jurisprudenz um das Wohl der Allgemeinheit war einer spezialistischen Zusammenarbeit gewichen, die der Öffentlichkeit dienende Medizin war im Begriff sich als eigener Fachbereich von der Individualmedizin

abzuschnüren. Innerhalb dieses sich der Öffentlichkeit verpflichtet fühlenden Teils der Medizin aber bestand, bei zunehmedendem Bewußtsein der übermässigen Weite des Gebiets und wachsendem Bedürfnis nach einer neuen spezialistischen Organisation zu deren Bewältigung, noch kein Consensus bezüglich der Gestaltung der Beziehung zwischen der Gerichtsmedizin im engeren Sinne und der übrigen der Öffentlichkeit dienenden Medizin."

19. Crawford (1993), 1629.

20. See Fischer-Homberger (1983).

21. See Ackerknecht (1950-1).

22. See Daniel (1776) and the bibliography in Fischer-Homberger (1983).

23. See Brock/Crawford (1994).

24. Crawford (1993), 1620. See also, for the term "medicalization," Loetz (1993), 19-57.

25. See Crawford (1993), 1620.

26. Crawford (1993), 1627.

27. See Szasz (1977).

28. The *Medicinische Jahrbücher des k.k. Österreichischen Staates* from 1811 report the establishment of the chair for Staatsarzneykunde. The first professor was Ferdinand Vietz (February 24, 1804). His remuneration was 1000 florin per year. A decree from March 8, 1805, indicates that the relevant lectures are supposed to be held from Monday to Friday for the students in the fifth grade. See *MedJB* (1811), Vol. 1, 1. Part, 39-40.

29. Cf. Eulner (1970).

30. Cf. Lesky (1978), 109.

31. Cf. Crowther/White (1988), 7.

32. Cf. Eulner (1970), 163. I am not convinced by Eulner's assessment. The system of public health was able to catch attention at least starting with the 1860s. Issues of city-planning, plagues, and so on supported the importance of hygiene. In 1875, the synthesis was split; both became independent chairs at the medical school.

33. Cf. Erhard (1800), 1-3.

34. Cf. Erhard (1800), 19.

35. Erhard (1800), 171.

36. Erhard (1800), 174.

37. See Bindseil (1970).

38. Sonnenfels (1768), 29. "Die Polizei ist eine Wissenschaft, die innere Sicherheit des Staates zu gründen, und handzuhaben."

39. Bernt (1813), 3. "Da es ihr Zweck ist, zum Behufe der Gerechtigkeitspflege zu untersuchen, ob und in welchem Grade von Jemandem die gesetzlichen Vorschriften der Gesundheits- und Heilungspolizei [...] übertreten worden sind; so nennt man sie von jeher die gerichtliche Arzneikunde (medicina legalis forensis)."

40. Crowther/White (1988), 2.

41. See Bernt (1813) 23-286.

42. See Bernt (1818) Bd. 1, 18.

43. Rosas (1847) 3/1, 202-203.

44. Rosas (1847) 3/1, 204-208.

45. Rosas (1847) 3/1, 208. "Damit aber auch ferners jeder Wundarzt in Hinkunft die oft höchst nothwendige Beschau gehörig zu unternehmen genugsam belehret sey, als solle jeder Chirurgus, bevor er sich dem Examini unterziehet, entweder in *Collegio privato*, oder im Beyseyn des Professors, oder, welches das Nützlichste wäre, im öffentlichen Collegio ein todtes Kind, oder einen andern todten Körper eröffnen, und nachdem er in demselben die grossen Ingeweide genannt und gezeiget hat, von dem Professor mit einigen Fragen, so bey vorzunehmender Beschau, besonders aber *de vulnerum lethalitate*, zu wissen nöthig sind, geprüft."

46. Rosas (1847) 3/1, 229. "Conjugitur quoque Pathologiae, utpote quae ab ejus peritia pendet, Medicine, quam Forensem ex eo vocant, quod usui illa sit in iis caussis, quarum cognitio ad Magistratus et Tribunalia cum deferatur, necesse habent Judices sententiam Medicorum explorare."

47. Rosas (1847) 3/1, 229. "[...] secatur cadaver, in eoque curiosissime exploratur, quicquid potuerit unquam tum hunc morbum facere, tum mort causam praebere."

48. See Haberda (1911), 1-16, cf. Wyklicki (1985), 70.

49. Quoted after Wycklicky (1985), 89-91. Compare with Haberda, who claims that not before 1826 was a chair (*Ordinariat*) founded. Haberda (1911), 15. Hunczovsky

criticized the "gänzliche Vernachlässigung einiger ganz unentbehrlicher Gegenstände z.B. Geburtshilfe, gerichtliche Arzneywissenschaft."

50. Cf. Kink (1854) 1. Part, 609-10.

51. See Burg (1994).

52. See Bernt (1818) Bd. 1, 25-27.

53. Bernt (1818) Bd. 1, 25.

54. See Bernt (1818) Bd. 1, 21-22.

55. Bernt (1818) Bd. 1, 22. "auf dem Todtenhofe des allgemeinen Krankenhauses bestehende eigene gerichtliche Secirkammer."

56. Reuter (1954), 10.

57. Bernt (1821), 77. "und nur höchstens in zweifelhaften Fällen die Stimme der Menschlichkeit entscheiden lassen, und die gelindere Meinung vor dem Gerichte geltend machen."

58. See Hartl (1973), 67-73.

59. See Hartl, (1973), 161-64.

60. See the entry "Augenscheinsbefund" in John (1790-98), 112-41.

61. John (1790-98), 112.

62. See Instruction für die öffentlich angestellten Aerzte und Wundärzte in den k.k. österreichischen Staaten, wie sie sich bei gerichtlichen Leichenbeschauen zu benehmen haben (Vienna, 1814).

63. See ibid., 3. "Die Besorgung der gerichtlichen Leichenbeschauen, weil davon der richterliche Urtheilsspruch über Ehre, Freiheit, Eigenthum und Leben der Beklagten und Inquisiten größtentheils abhängt, macht einen der wichtigsten Gegenstände des öffentlich aufgestellten Medicinal-Personal aus."

64. Bernt (1821), 66. "Abweichende Meinungen der Medicinal=Personen können zwar nur in Hinsicht des Gutachtens, keineswegs aber in Bezug auf die bey der vorgenommenen Untersuchung vorgefundenen Daten und Erscheinungen Statt finden, indem nur das erstere als die Folge verschiedener intellectueller Ansichten, nicht aber letztere, als bloße Gegenstände der äußeren Sinnenerkenntnis, einem gegründeten Zweifel unterliegen können."

65. Compare the following with Totenbeschauverordnung vom 1.8. 1766 ff., publ. in John (1790-98), 25-32; "Instruction für zu landgerichtlichen Leichenbeschauen abgeordnete Criminal-Gerichts-individuen bey Vornahme gerichtlicher Sectionen" published in Bernt (1820) Bd. 3, 12-22; Hartl (1973), 155-77; "Von dem rechtlichen Werthe medicinischer-gerichtlicher Gutachten, und der Beurtheilung derselben bey höheren medicinisch-gerichtlichen Behörden", publ. in Bernt (1821), 98-107.

66. Cf. Frank (1786-1819) Vol. 4, 659-60.

67. Salzmann (1932).

68. Salzmann (1932), 78-79.

69. Wr.StLArchiv Handschrift A 12/16.

70. See Knispel (1991) and Schmid/Kammerer (1882).

71. This and the following refer to an enactment--Instruction für zu langerichtlichen Leichenbeschauen abgeordnete Criminal-Gerichts-Individuen bey Vornahme gerichtlicher Sectionen--from June 13, 1815, that is published in Bernt (1820) Bd. 3, 12-22, 12. "Im Criminalwege kommen nur jene Leichen zu untersuchen, an denen Merkmahle eines verübten Verbrechens als Thaterhebungsgegenstände aufzusammeln sind, die nach dem ersten Theile des Strafgesetzes in vollbrachten Morden, Todtschlägen, abgetriebenen Leibesfrüchten, und bey jenen Menschen vorgeschrieben sind, die allenfalls in einem Zweykampfe, oder die während eines boßhafterweise angelegten Brandes ihren Tod in den Flammen gefunden haben konnten."

72. See above.

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