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Johansen, Anja

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Policemen in the Dock: Criminal Prosecution of Police Personnel in Wilhelmine Prussia*

I. Introduction

In September 1902, the Prussian Justice Minister Karl Heinrich Schönstedt sent a request to all senior prosecutors (*Oberstaatsanwälte*) asking them how many police employees had been prosecuted and convicted at the criminal courts (*Landgerichte*) for violence and illegal arrests. The request included all types of police personnel: full-time personnel from the *Schutzmannschaft*, the *Gendarmerie* and municipal police forces, as well as part-time personnel (night watchmen, *Hilfspolizei*, *Polizeidiener*). The figures resulting from this and similar requests in subsequent years are astonishing: 556 prosecutions between 1899 and 1905, leading to 400 convictions, just for acts of violence and illegal arrests. These figures are high, not only compared to Victorian/Edwardian Britain and the French Third Republic,[1] but also by 21st century standards.[2]

The high rates of prosecutions of police personnel happened despite police having clear interests in avoiding trial in open court, with judges overwhelmingly accepting police explanations as well as repeated attempts by successive interior ministers to publicly deny problems of police violence and malpractice.[3] Historians and contemporary observers of Wilhelmine Prussia have mainly focused the fact that the vast majority of allegations of police violence were rejected by the prosecuting authorities, interpreting this as evidence of the particularly elite driven and authoritarian nature of the Prussian-German system. Yet, similar interests and dynamics have characterised the prosecution of police personnel in most Western societies from the 19th to the 21st centuries. As police managers generally prefer dealing with incidents of excessive violence and other forms of police malpractice through internal disciplinary procedures, most Western police forces have developed a range of mechanisms to minimise the number of criminal prosecutions against police personnel.[4] The true significance of the Prussian case is therefore the comparatively high rates of prosecution and conviction.

The multiple cases of prosecution against police personnel cannot be seen simply as a reflection of the amount and severity of violence generated by the Prussian police. French policing was equally characterised by extreme levels of random violence, yet in France there is only one known case between 1880 and 1914 of criminal prosecution against French police personnel for acts related to their professional conduct.[5] Similarly, despite the English rhetoric about the 'gentle London Bobby', the cases of police violence brought before the Old

* My warm thanks to Klaus Weinhauer, Karl Härter, Herbert Reinke and Murray Frame for their constructive criticism and helpful suggestions in the development of this article.

[1] Johansen (forthcoming)

[2] The annual number between 2006 and 2012 of prosecutions against German police personnel for violence with bodily harm was around 30. (Amnesty International (2010) pp.19-20; Singelnstein (2013) pp.15-27). Yet, this is still considerably higher than the figures for France in the 1990s (Jobard, 2002, p.257; Fassin, 2011, ch.4). Although, figures for 21st century the US and UK are patchy and hard to verify, they are lower than the Prussian figures when the number of police personnel are taken into account. For the USA, see data by Henry A. Wallace's 'Police Crime Database' https://policecrime.bgsu.edu/Home/Crimes; Stinson (2017); Stinson et al. (2016). See also Walker & Archbold (2014) p.50. For the UK see IPCC, Annual Reports 2007-2017 and 'Misconduct Sanctions Imposed on Officers' (2002-2009) https://www.ipcc.gov.uk.

[3] Johansen (2011) pp.59-83.

[4] Harris (2012) pp.323-332; Lee *et al*. (2013) pp.386-401; Walker (2003); Klockars et al. (2005). See also Johansen (2016a).

[5] For a detailed analysis of the French case, see Johansen (forthcoming)

Bailey – as well as the many incidents reported in the British press which never reached the courts – were as nasty as the ones appearing before the Prussian *Landgerichte*.[6]

That police personnel in Wilhelmine Prussia were very frequently involved in court proceedings, both as defendants and plaintiffs, is well known.[7] Yet it sit awkwardly with existing scholarly interpretations about police accountability and the nature of Wilhelmine Prussia as a political regime. While much historical research since the 1990s has fundamentally challenged the *Sonderweg* interpretation with its depiction of Wilhelmine Prussia as stuck in its absolutist pre-modern legacies,[8] interpretations of police accountability are still strongly influenced by the seminal works research of the 1970s and 1980s, despite current recognition of the ambiguities and significant aspects of 'modernity' of Wilhelmine Prussia.[9]

The high number of prosecutions of Prussian police personnel call for a rethink of the correlation that some historians[10] and police scholars[11] have drawn between democratisation of political regimes as strengthening levels of police accountability to the public: while Prussian courts prosecuted and convicted police personnel throughout the nineteenth century, the fully democratic French Third Republic was extremely reluctant to allow criminal prosecution against policemen.[12] This is particularly important in the light of current public concerns about lack police accountability in the 21st century, with academic research revealing the limitations around citizens' access to justice in contemporary Western democracies.[13]

This article has three main aims. In the first place, it establishes as much evidence as possible about the cases that led to prosecution, the police officers who were prosecuted and convicted, as well as the punishments issued. Throughout the article, evidence from contemporary France and Britain is included in order to provide much needed contextualisation of key aspects of the Prussian case. Unfortunately, the patchy and uneven documentation in all three countries does not allow for systematic comparison. Most of the British evidence relates to evidence from London, while the French evidence covers all police forces as well as the *gendarmerie*.

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[6] The cases documented by James Timewell in multiple pamphlets and by the former police magistrate, Hugh Gamon, testify to the extensive violence committed by London policemen out of the sight of 'respectable' citizens. See Gamon (1907) and in particular Emsley (1985); ibid. (2005) Chap. 8; ibid. (2010) pp.145-53.

[7] Hall (1977, p.98), Jessen (1991, pp.165 & 182) and Spencer (1992, pp.105-7) all recognise criminal prosecution of police personnel as a common phenomenon in Prussia, but only touch upon this in passing. Hall also mentions that the Social Democratic daily *Vorwärts* recorded 131 cases in 1898 alone involving police personnel as plaintiffs or defendants. Lüdtke (1982, pp.184-90) analyses one single case from 1845-6 to demonstrate how leniently State authorities handled incidents excessive police violence. Lindenberger (2011, pp.206-13) analyses of the court procedures to obtain compensation for a victim of police violence, but with no discussion of possible criminal prosecution of the responsible policeman. Only Funk (1986, pp.96-9 & 101-2) provides some brief descriptions of the key features of criminal prosecution as part of a wider complex of police accountability by the mid-nineteenth century.

[8] The main champion of this interpretation remains Hans-Ulrich Wehler (1973). For a critical analysis of the *Sonderweg* thesis, see Geoff Eley and David Blackbourn (1984).

[9] Lüdtke (1982); Funk (1986) pp.286-9; Reinke (1991); for more recent reflections of this perspective see Lindenberger (2011) and Haupt (2012).

[10] Hsi-Huey Liang (1992) p.4 was the first to explicitly formulate this connection. For a critical perspective see Johansen (2016b).

[11] For sociologist and political scientists working on 21st century policing, the assumption of a correlation between democratic political institutions and high levels of police accountability forms the basis for the concept of 'democratic policing': Waddington (1999) pp.21-27; Bayley (2006); Manning (2010); Reiner (2010) pp.7 & 88-9. For critical perspectives on 'democratic policing' see Bittner (1970) and Brodeur (2010) pp.115 & 135-6.

[12] Johansen (forthcoming).

[13] Walker (2005); Smith (2004) pp.15-33. See also Johansen (2014); Aden (2016) pp.15-33.

The second aim is to examine the dynamics around the criminal justice process, as well as the institutional and cultural context in which Prussian prosecutors and judges operated. The article identifies the options available to members of the judiciary as well as their level of independence from interference from police managers and government authorities. It analyses how they negotiated the perennial dilemmas of enforcing the law under the pressure from public opinion, at a time when attitudes towards police violence were rapidly changing. By the turn of the 20th century authorities in Prussia, as in many other European countries, were confronted with rising public expectations to responsive and accountable governance, with prosecution of police violence and illegality being a major area of contention.

The third aim is to explore the wider implication of these court decisions in the context of public concerns about police malpractice and the pressure from the left-liberal and social democratic opposition for greater police accountability to the law. The sustained, and often highly effective, attacks from the liberal left and the social democratic press on the foundations of the Prussian state, combined with an increasing number of highly damaging scandals have led historians to describe the Wilhelmine era as beset by 'crises of legitimacy' (*Legitimationskrise*), which affected both the police and the criminal justice system.[14] This opens for new question why the comparatively high rates of prosecution of Prussian police personnel did not lead to a strengthening of the public trust in the criminal justice system as guaranteeing police accountability.

II. 'Blind in the right eye'? Interpretations of the Prussian judiciary

The Prussian judiciary has gone down in history with a very poor reputation for highly politicised professional conduct. After the collapse of the 1848 Revolutions, the criminal justice system was characterised by a consistent tension between reluctant acceptance of certain liberal principles, notably on issues of legal boundaries around state officials[15], and persistent government attempts under Bismarck to use the criminal justice system to implement regime conserving policies. Nevertheless, by the Wilhelmine era the rule of law (*Rechtsstaat*) had come to constitute the cornerstone in legitimizing the regime and became the foundation for all interaction between State and citizens.[16] As a result, Prussia of the Wilhelmine era developed into a highly litigious society in which the letter of the law and sense of justice (*Rechtsbewusstsein*) were routinely invoked in the public discourse and in citizens' challenges to public authorities.[17]

Social Democrats and left-leaning police critics repeatedly alleged that police personnel were protected by their superiors and by the Prussian judiciary. At the same time they complained that procedures and court decisions were systematically biased against the plaintiffs, particularly if they belonged to the lower orders of society (known as *Klassenjustiz*) or were known or suspected supporters of the social democratic movement.[18] Such complaints were justified in the light of the absurd discrepancies between the

[14] For the police, the idea of a 'crisis of legitimacy' has been particularly promoted by Ralph Jessen (1991) p.180. See also Funk (1986) pp.286ff. On the 'crisis of legitimacy' of the criminal justice system see Hett (2004), Domeier (2010) ch. 5; Grunwald (2012) [for the Weimar era].

[15] Stolleis (2001) pp.374-5.

[16] Geheimes Staatsarchiv (hereafter GStA), HA1, Rep. 84a, No, 2685 'Die gerichtliche Verfolgung der Beamten wegen Überschreitungen ihrer Amtsbefugnisse, Art. 97. der Verfassungsurkunde vom 31 Jan. 1850', (Document 131): *Vossische Zeitung*, 2 Sept. 1874. See also Funk (1986).

[17] Hett (2004); Goldberg (2010).

[18] Aulus Agerius (1896); Rechtsschutzverein (1898) pp.i-iv; Beradt (1909); Block (1911); Frohme (1926);. See also Hall (1977) and Johnson (1995) 40-42.

punishments handed down to left-wing political critics for rather innocuous public statements, compared to the punishments given to police personnel for violence causing death or serious bodily harm. This criticism intensified during the early Weimar years, with Emil Julius Gumbel's famous statistical studies of political violence between 1918 and 1922, which revealed systematic discrepancies between the harsh punishments handed down for political violence committed by the political left and the leniency or non-prosecution of political violence by far-right extremists.[19] The negative interpretation of the German judiciary was further exacerbated by the appalling travesties of the German justice system during the Nazi era. The collusion of important sections of the German judiciary with the Nazi regime made a mockery of the German legal tradition, which has weighed heavily on historical interpretations, and raised questions about the cultural and professional outlook of the Prussian judiciary during the *Kaiserreich*.[20]

Over the past fifteen years, however, historians have sought to challenge the negative perspective on the Prussian judiciary of the Wilhelmine era as shaped by their social background and professional socialisation.[21] Instead recent research on the German judiciary of the Imperial era focus on what happened in the courtrooms rather than analysing the social and professional background of its personnel. This has led to descriptions of a more modern and independent professional body, far from simply the agency of government policies or a prelude to the juridical horrors of the Third Reich.[22] Hett in particular emphasises the progress in legal protection and flexibilities within the system which allowed increasing leniency and recognition of individual circumstances behind criminal behaviour. According to Hett, this pattern continued until the end of the Weimar era.

The findings of this research place a different perspective on the criticism from left-liberals and social democrats who complained that punishments against erring policemen were far too soft. Comparing the punishments for police violence with the harsh sentences handed down to left-wing political activists and striking workers, they called for tougher sentences for police violence.[23] Yet, it were the harsh sentences of left-wing activists – rather than the sentencing of the police personnel – that were out of line with general sentencing practices. Indeed, the acts of prosecutors and judges toward erring policemen were highly ambiguous. Although members of the Prussian judiciary were unyielding loyalty to the regime and strongly tended to give accused policemen any benefit of the doubt, they were also concerned about upholding the authority of the criminal justice system, and therefore did not shelter police personnel at all costs. Indeed, the sentences they handed down to convicted policemen were not out of line with punishments issued to civilians for violence offences or with sentencing practices against London police personnel. In a broader perspective these findings therefore raise questions about for the link that historians have drawn between prosecution practices against police personnel during the Wilhelmine era and the travesties of justice committed by members of the Prussian judiciary during the Weimar Republic and the Nazi dictatorship.

[19] Gumbel (1921); id. (1922); Kuhn (1983).

[20] This criticism was first developed during the 1960s, particularly in Heinrich Hannover and Elisabeth Hannover-Drück (1966), and continues to shape interpretations of the Prussian-German judiciary between 1918 and 1945. See in particular Jarausch (1985) pp.379-98; id. (1990). See also discussion by Stolleis and Simon (1981) pp.13-51. For a recent critical assessment of the literature drawing connections between the conservatism of the judiciary of the Imperial Era and the complicity of the German judiciary in Nazi misuse of justice see Grunwald (2012) pp.2-8.

[21] Siegrist (1996); Ledford (1996).

[22] Hett (2004); Goldberg (2010); Grunwald (2012).

[23] Frohme (1926) pp.183-4; Exner (1931); Rabl (1936).

III. Public debates on police brutality and the organisation of support for victims

The 1890s marked a fundamental shift in the dynamics between police authorities and their social democratic and left-liberal critics, who managed to place police and government authorities increasingly on the defensive. With the liberalisation of press censorship and the rise of a mass press, police misconduct came to occupy a very prominent place in the public debate of the 1890s, in which critics consistently expressed frustration that police frequently got away with very serious violence and even manslaughter.[24] The public concern about police brutality and the difficulties for victims to challenge police malpractice led to several attempts to form support organisation. For this purpose, a group of lawyers and journalists around Gustav Kauffmann organised the 'Association for Legal Protection and Reform of the Criminal Justice System' (*Verein für Rechtsschutz und Justizreform*) in 1882. The group claimed to be inspired by Rudof von Jhering's influential 1874 pamphlet 'The Struggle for Law', and by the spring of 1883 the organisation had 600 members.[25] Nevertheless, the initiative was rather short-lived with no mentioning after 1886. In 1895, a series of highly publicised incidents of police brutality led to the formation in Hamburg of the so-called 'Association for the Protection against Policemen' (*Verein zum Schutz gegen Schutzleute*), later known as the *Rechtsschutzverein*. Because it was based in the free-city of Hamburg, and did not need authorisation from the Prussian Interior Ministry, this organisation existed at least until 1906, but had few members and limited influence. Like the group around Gustav Kauffmann in the early 1880s, the *Rechtsschutzverein* was committed to lobbying for greater legal protection against police brutality, and to inform citizens about their rights in relation to the police. Accordingly, several pamphlets provided information about how to complain against the police according to the procedures prescribed by the 1883 Law on Local Administration (*Landesverwaltungsgesetz*), and advice about the legal position of citizens in relation to the police.[26] In addition, with the non-renewal of the anti-Socialist legislation in 1890, the social democratic movement began to organised legal advice bureaus (*Rechtshilfestellen*) in some of the major cities, where workers could obtain affordable legal advice for all types of problems with employers or with public authorities[27]. Although many of the legal advice bureaus in smaller locations had to be abandoned due to lack of qualified volunteers, the Social Democratic criticism was central to the complaints culture against the police that developed during the Wilhelmine era.

By the turn of the 20th century the public criticism of police malpractice cut across the political spectrum and included the 'conservative' press, which was otherwise unyieldingly loyal to the existing social and political order. This culminated in 1902-3 with a series of debates in the Prussian House of Representatives and the *Reichstag* about police violence and malpractice under the slogan 'Protection against Policemen' (*Schutz gegen Schutzleute*).[28] Successive interior ministers appeared in the Prussian Diet to publically refute the existence of any problem. Yet, the internal ministerial correspondence reflects increasing unease within government about the continuous popular outrage and its potential impact on police

[24] Königsberger Volkszeitung, 19 Juni 1902 'Danzig: ein Polizeikommissar als Angeklagter': GStA, HA1, Rep.77, CB S, No. 519, 'Beleidigungen verübt durch Beamte, Offiziere. 1895-1913', doc. 54.

[25] Trescher (1883) pp.163-167.

[26] Kamptz (1894); Anon. [Rechtsschutzverein] (1898).

[27] GStA, HA1, Rep. 77, CB S, 400 'Rechtshilfe für Sozialdemokraten, 1895-1914'.

[28] Debates in the Prussian House of Representatives 17 Feb. 1898 (Session 24) and 17 Feb. 1899 (Session 22) on police approach to the population; Debate in the *Reichstag* 22 Nov. 1902 (Session 220) concerning mistreatment of Polish workers by the police. Debates in the House of Representatives 5 Feb. 1903 (Session 14); 31 January 1908 (Session 21); and 23 Feb. 1910 (Session 23) on police mistreatment of civilians; Debate in the *Reichstag* 11 Mar. 1910 (Sessions 54-55) as well as four debates in the *Reichstag* 9-14 December 1910 relating to the recent Moabit Riots.

legitimacy – particularly in the pro-government press.[29] Nevertheless, the public outrage about police violence preoccupied the public discourse even before the most notorious scandals of the Wilhelmine era.[30]

These concerns were understandable given that the left-liberal and social democratic press used police violence to attack the legitimacy, not just of policing, but of the political regime, which was accused of condoning and encouraging random violence against innocent members of the public. The critical press repeatedly ran lengthy reports on extreme police violence that either went unpunished or led to what police critics described as ridiculously lenient sentences. These were juxtaposed to great effect with examples of very harsh sentencing against striking workers or social democratic newspaper editors convicted of libel against public servants.[31] At the same time, the frequent prosecutions of police personnel were presented as evidence of the Prussian police being prone to extreme violence and generally out of control. This politicisation of police violence was the background against which Justice Minister Schönstedt began to collect information about prosecution cases against police personnel.[32]

IV. Prussian Rates of Prosecution in Context

Prosecution of police personnel was nothing new in the 1890s. Throughout the second half of the 19th century, there was a steady stream of prosecutions and convictions against police personnel Sometimes the plaintiff was a member of the public, but often prosecution was initiated by the police itself, with several high profile cases.[33] In 1883, Gustav Kauffmann organised a petition to the Prussia House of Representatives complaining about the near impossibility for aggrieved citizens to take action against violent police personnel.[34] Despite these genuine difficulties, out of the seventeen cases mentioned in the Petition – which covered a period of 24 months from 1881 to 1883 – ten cases led to criminal prosecution and conviction, three were still pending, and only four led to no trial. In at least one case the offending *Schutzmann* was dismissed from the police. In addition to the prosecutions for violence, police personnel were also frequently involved in libel cases,[35] although most often policemen appeared in court as plaintiffs, suing anyone who criticised their professional conduct.[36] Thus, both the civil and criminal courts played a key role in settling conflicts

[29] Letter from Chancellor Bülow to the Prussian Justice Minister, 10 Dec. 1902: GStA, HA1, Rep.77, Titel 345, 17/1, docs. 289-293.

[30] The homosexual scandals around Fritz Krupp and Phillip Eulenburg erupted respectively in 1903 and 1907 (See Domeier, 2010), while the scandals relating to genocide and later sexual misconduct in German colonies only started in 1904 (see Habermas, 2016).

[31] See for instance the highly publicised case against Polizeisergeant Wilhelm Lorenz in Stettin. *Vorwärts* 26 Sept. 1896 and *Vorwärts* Berlin, 30 Sept. 1896: GStA, HA1, Rep. 77, CB S, 572 ‚Begnadigungsrecht der deutschen Landesherren, 1896-1918'.

[32] Justice Minister to senior prosecutors at the *Landgerichte*, 13 Sept. 1902: GStA, HA1, Rep. 84a, 8264 'Justitzministerium: Verbrechen und Vergehen im Amte, 1872-1934', vol. 5, doc.116.

[33] LABB, A. Pr. Br. 30, Berlin C, Titel 93: Personnel files. These contain many references to criminal prosecution of Berlin police personnel from 1815 onwards. The high profile cases include the prosecutions in the 1840s and 1860-1861 against Wilhelm Stieber, the head of the detective squad; the case against the detective Hugo von Schwerin 1881-1882; the 1894 case against Eugen von Tausch, detective from the political police.

[34] The Kaufmann Petition to the lower house of the Prussian Diet, Nov. 1883: GStA, HA1, Rep. 77, Titel 345, no.17, vol.1, 'Das gegen pflichtvergessene Polizeibeamte zu beobachtende Verfahren und deren Entlassung aus dem Dienste (Übergriffe der Polizeibeamten) 1814-1903', docs. 84-93.

[35] GStA, HA1, Rep.77, CB S, 519, ‚Beleidigungen verübt durch Beamte, Offiziere, usw. 1895-1913'; See also Goldberg (2010).

[36] GStA, HA1, Rep. 77, CB S, 497, 'Prozesse, Beleidigung von Behörden und Beamten, 1895-1912'.

between police and public. Yet, while the rates of prosecution in Prussia were high compared to other countries, these cases only constituted a very small proportion of the criminal allegations made against police personnel. Taking a policeman to court was a lengthy and extremely cumbersome process, with very limited prospects of success.

Table 1: Annual number of convictions and acquittals of Prussian police personnel[37]

	Number of cases	Convictions	Acquittals	Conviction Rates
1899	**68**	**41**	**27**	**60.3**
1900	**98**	**74**	**24**	**75.5**
1901	**97**	**76**	**21**	**78.4**
1902	**89**	**69**	**20**	**77.5**
1903	**98**	**66**	**32**	**67.3**
1904	**53**	**35**	**18**	**66.1**
1905	**53**	**39**	**14**	**73.6**
In total	**556**	**400**	**156**	**71.2**

The 556 cases established by the Justice Ministry do not include all prosecutions against police personnel as these figures only relate to transgressions of the articles 339-343 of the Penal Code.[38] With the exception of a handful of less serious allegations, all the cases in Schönstedt's documents were tried at the provincial criminal courts (*Landgerichte*) or the three Berlin Kammergerichte – rather than the lower courts (*Amtsgerichte*). The most severe cases were tried before a jury (*Schöffengericht* or *Schwurgericht*).[39]

Although comprehensive figures are not available for Britain, it is possible to make broad estimates for London that contextualises the Prussian figures. This study has identified sixteen cases at the Old Bailey over a twenty-nine year period between 1884 and 1913 involving twenty-five members of the London Metropolitan police.[40] These cases cover all

[37] GStA, HA1, Rep.84a, microfiche 6740, ‚Justizministerium, Verbrechen und Vergehen im Amte, 1872-1934' vol. 5; GStA, HA1, Rep.84a, microfiche 6746, 'Justizministerium, Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906'.

[38] Schönstedt's request only concerned violations of the paragraphs 339-343 of the Penal Code. These are the paragraphs which concern misuse of power by officials (art. 339); grievous bodily harm (art. 340); illegal arrest (art. 341); unlawful entry into private property (art. 342); and pressuring suspects into confession (art. 343). The figures therefore do not include prosecutions of policemen for offenses such as perjury or corruption, although we know from press reports that several cases on these offenses were also tried in Prussian courts; nor do they Include libel cases, which constituted by far the greatest proposition of prosecutions against police personnel.

[39] According to Spencer (1992, p.106) 16 out of 29 convictions handed down by the Düsseldorf courts in 1892-3 were for violence with bodily harm.

[40] t18840107-165 against PC Friedrich Whisker for perjury (not guilty);
t18841020-986 against PC Charles Hall for perjury (guilty - 18 months hard labour);
t18850518-376 against PC Michael Kavanagh for perjury (not guilty);
t18850727-766 against PC George Tubman; PC Wharf Fuller; PC Samuel Bennett; PC Thomas Fuller; Henry Griggs for unlawful assault (not guilty);
t18860111-237 against PC Alexander Austin for wounding (not guilty);
t18871024-1058 against PC Bowden Endacott for perjury (not guilty);
t18880702-700 against PC George Russell for perjury (not guilty);
t18960420-403 against PC John Parslow for perjury (not guilty);
t18961116-39 against PC Thomas Murray for perjury (guilty - 9 months hard labour);
t18980110-112 against PC John Ferris; PC Frederick Corps; PC Richard Sands; PC Charles Woodridge for assault on George Hillman (not guilty);
t19020909-657 against PC William Rolls for perjury (guilty);
t19030112-8 against PC Charles Thwaites for mail theft (guilty - 18 months hard labour);
t19040321-329 against PC Alfred Williams for perjury (not guilty);
t19071119-42 against PC James Adams for perjury (not guilty);
t19081020-49 against PC Edwin Ashford for wounding (guilty 9 months hard labour);

types of offences. The numbers seem in line with the assertion by the 'Royal Inquiry into the Duties of the Metropolitan Police' (1909) that there were no prosecutions of police personnel at the Old Bailey in 1906. That year, four police officers appeared before a magistrates' court for assault, but these cases were all dismissed by the magistrate.[41] There seems to have been, on average, less than one prosecution per year at the Old Bailey. In comparison, the Berlin *Kammergerichte* prosecuted at least 52 cases between 1895 and 1906, which amounts to an average of 4.3 per year.[42] This was despite the London Metropolitan police being more than twice the size of the Berlin *Schutzmannschaft*.[43] The conviction rate at the Old Bailey of 37.5 percent was also considerably lower than the conviction rate of 81 percent for the cases appearing at the Berlin *Kammergerichte*. At the same time, it was quite common for aggrieved Londoners to use the magistrates' courts to bring cases on lesser charges against Metropolitan police personnel. While this would most often lead only to money compensation for damage of property and personal injury it allowed the aggrieved individual to get some official recognition of victimhood. According to the Royal Inquiry of 1909, eight Metropolitan policemen appeared before a London magistrate in 1908, but only on charges of misdemeanours.[44]

A much starker pattern of police unaccountability emerges in France, where criminal prosecution of police personnel or *gendarmes* was exceedingly rare, despite considerable pressure from the highly influential and well-connected League of Human Rights (*Ligue des droits de l'homme*), which systematically pressured for greater accountability from its inception in 1898. In all France, only one single case of criminal prosecution has been identified between 1890 and 1914 for acts relating to the professional functions, in the 1903 Forissier Affair. In addition, there is one known case was a civil suit brought against three policemen in Lyon in 1904. So while the French press was teeming with allegations about extreme police violence and widespread perjury, criminal prosecution almost never happened as police managers and prosecution authorities went to great lengths to prevent this.[45]

V. The twisted road to criminal prosecution: An elimination process in four stages.

The cases appearing in Prussian courts show a consistent pattern, which involved a series of stages before prosecution of a policeman was considered at all. The vast majority of allegations of violence were rejected outright on the grounds that the alleged police acts – although technically illegal – fell into one of the categories that would exempt the policeman from criminal responsibility: notably, acts committed under order as part of a broader police operation. Prosecution further hinged on the complete innocence of the alleged victim. In most of the cases for which we have details, the complainant was first accused of resisting arrest or of violence against the police, and had to prove their innocence with the burden of evidence heavily stacked against them.[46] Many criminal allegations of police violence and illegal arrest were preceded by a separate prosecution against the complainant.

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t19130204-64 against PC Albert Brooks; PC Maurice Wetherill; PC William Smithe for assault and perjury (guilty - Brooks 4 months hard labour, Wetherill and Smithe each 12 months hard labour).

[41] 'Report of the Royal Commission upon the Duties of the Metropolitan Police' (London, 1909). Parliamentary Papers Cd 4261, vol. III 'Minutes and Evidence; Appendices and Index', 116.

[42] Jessen (1991) p.367 (Table 15).

[43] The number of uniformed and plain clothes police officers within the London Metropolitan Police increased from 14,000 in 1889 to 21,000 in 1914, while the number of Schutzmänner for Berlin and suburbs (Groß-Berlin) was just under 9,000 by 1910. Shpayer-Makov (2011) p.60; Jessen (1991) p.359.

[44] 'Report of the Royal Commission upon the Duties of the Metropolitan Police', London, HMSO, 1908. Parliamentary Papers Cd 4261, vol. III 'Minutes and Evidence; Appendices and Index', 116.

[45] For details on the French case, see Johansen (forthcoming).

As long as the police provided accounts that were logically consistent – no matter how unbelievable – the complainant was most likely to be convicted with no possibility of raising a case against the police. From the cases reported in the press, a consistent pattern appears whereby courts acquitted alleged victims of police violence only when it became clear during the trial that police witnesses had knowingly not told the truth. Yet, unlike in France, where the best victims of police violence could hope for was acquittal from charges of resisting arrest and violence against the police,[47] in Prussia acquittal of the complainant opened the possibility for making a counter-accusation against the policemen. The charge that would subsequently be raised against the policemen tended to be for violence or illegal arrest, rather than perjury.

For a complaint against a policeman to be accepted, the alleged victim had to be able to demonstrate a blameless past. Any previous history of arrest or being known to the police, or just being suspected of social democratic sympathies – no matter how unrelated to the events under consideration – was repeatedly used as sufficient grounds for the court to declare that violent acts by the police were justified as legitimate law enforcement. Only complainants with blameless previous conduct and unyielding loyalty to the monarch (*Kaisertreue*) would have a chance of getting their day in court. Given the hoops that the complainants had to get through in order for the policeman to enter the dock, it is hardly surprising that only a tiny proportion of criminal allegations led to a trial. The vast majority of cases were rejected by the public prosecutor, who at every stage accepted fanciful explanations by the accused policeman and other police witnesses, often in stark contradiction to the testimonies of independent witnesses.

At the trial, much of the case would revolve around whether the accused policeman had caused actual harm. This could cover a variety of damages, some of which were easy to establish, such as attack on the complainant's rights and freedom through illegal arrest. Others could be more difficult to prove: whether bodily harm was caused by the policeman, or whether it was self-inflicted or due to an accident, as police often maintained. If actual harm was established in court, the accused policeman might still get off the hook if he could make a convincing case of acting in good faith: mistaking the victim for a 'known criminal', or arguing that the alleged victim acted suspiciously, or – what was accepted in some cases – the policeman claiming to have acted in good faith, but on the basis of incorrect interpretation of the law.

The cases which passed successfully through all stages therefore tended to be straightforward and often rather extreme, where the evidence against the accused policeman was overwhelming, and where mitigating circumstances were difficult to establish. The public debate about police violence and malpractice was in a permanent stalemate between, on the one hand, critical journalists, public commentators and lawyers acting on behalf of aggrieved citizens who referred to the letter of the Penal Code and what they saw as plain 'sense of justice' (*Rechtsbewusstsein*). On the other hand, the prosecution ruled according to highly restrictive definitions of what constituted criminal acts for policemen in action.

VI. The role of the public prosecutor and the judiciary

[46] See newspaper reports: GStA, HA1, Rep.77, CB S, No 48 vols. 1, 3 and 4 'Angriffe gegen Behörden, 1896-1898; 1906-1918'. Similar observations were made by Agerius (1896) p.23. See also Johnson (1995) p.43.
[47] Johansen (forthcoming).

Due to the monopoly of state prosecution for most offenses, the Prussian public prosecutor played a central role in accepting or rejecting cases against the police.[48] Nevertheless, the Code of Criminal Procedure of 1877 allowed individuals to bring criminal charges on their own initiative and expenses (*Privatklage*), but only after a case had been rejected by the public prosecutor[49] and only for two specific types of offences. One was libel which led to a tsunami of civil suits between police personnel and individual citizens during the Wilhelmine era.[50] The other offense was violence with bodily harm.[51] Between the 1880s and the turn of the century an important shift took place, moving away from predominantly private prosecutions. A significant number of the trials mentioned in the 1883 'Kauffmann Petition' were private prosecutions[52], while by the years 1899-1905, all but a handful of cases were prosecuted by the *Staatsanwaltschaft*. The transition towards public prosecution had important consequences, as it enabled more people without means to get their day in court.

Critical contemporary observers and historians have tended to presume that the social and professional background of prosecutors and judges of the Wilhelmine era determined not only their political outlook but also their professional decisions towards whatever was in the interest of the Prussian state. There can be no doubt that both prosecutors and judges were unfailingly loyal and committed to support the interests of the Prussian state and to uphold the existing political and social order. Yet, this does not mean that their decisions in relation to accused police personnel were entirely predictable.[53] Moreover, given that the cases against police personnel are distributed across many Prussian *Landgerichte* and involved a considerable number of prosecutors and judges, decisions to prosecute and convict were not restricted to a few unconventional or maverick members of the judiciary.

The Prussian judiciary were dependent on the state due to their status as civil servants, and as such potentially vulnerable to government pressure,[54] it is important also to emphasise the extensive levels of independence enjoyed by Prussian prosecutors and judges from interference from government and police authorities. While the entry to the professional positions as judges and prosecutors was highly selective with only the most loyal candidates being appointed,[55] they were appointed for life and could only be removed through disciplinary procedures conducted by their peers. The minister of justice, as their immediate superior, had no influence on judicial decisions as the ministerial oversight only concerned administrative matters.[56] So if Bismarck in the 1880s still insisted on their right to override legal boundaries in the name of governmental supremacy, no evidence has been found for the Wilhelmine era of interference from the Prussian Justice Ministry in cases against police personnel.[57] In comparison, the members of the French judiciary were far more vulnerable to

[48] *Gerichtsverfassungsgesetz* of 1877, section 148.

[49] Strafprozessordnung, 1877, sections 170-3; Strafprozessordnung articles 377 and 417; See also Brettschneider (1909); Mayr (1927); See also Goldberg (2010) p.30.

[50] Goldberg (2010); GStA, HA1, Rep.77, CB S, no.519 ‚Beleidigungen verübt durch Beamte, Offiziere, usw. 1895-1913'. In 1903 province governor of the Düsseldorf province even encouraged police personnel to sue citizens for libel as one way of asserting the authority of the police (Spencer (1992) p.107).

[51] Terfloth (1918) pp.11-12.

[52] Newspaper cutting from *Berliner Zeitung*, 16 May 1884: GStA, HA1, Rep. 77, Titel 345, 17/1, 'Das gegen pflichtvergessene Polizeibeamte zu beobachtende Verfahren und deren Entlassung aus dem Dienste (Übergriffe der Polizeibeamten) 1814-1903', doc. 82; The Kaufmann Petition 1883: *Ibid*. (docs. 84-93).

[53] Grunwald (2012) p.9.

[54] Ledford (1996) pp.3-6. On contemporary questioning of the independence of judges, see Hett (2014) p.31.

[55] Carsten & Rautenberg (2015) pp.124-5; Wilke (2016) pp.13-15.

[56] Wilford Garner (1903), p.514.

[57] *Gerichtsverfassungsgesetz* 1877. The legislation of the reform era that sought to draw institutional separations between the judiciary and the administration (which included the police). Lüdtke (1982) p.56.

change in the political constellations, notably regime change, with several rounds of purges as a defining collective experience throughout the 19th century.[58]

Furthermore, Prussian prosecutors also seemed to operate without much reference to the police authorities. Police scholars have pointed out that, in general, public prosecutors tend to avoid conflicts with police authorities over malpractice because they need good working relationships with the police in order to function effectively.[59] It is therefore worth noting that Prussian prosecutors and judges displayed great assertiveness in relation to the police authorities, including the powerful police president of Berlin. In one communication with the police, the most senior public prosecutor (*Oberstaatsanwalt*) informed the Berlin Police President about evidence of widespread malpractice within the political police, relating to investigation of a controversial police detective.[60] In a tone that is unusually blunt for the otherwise highly formalistic and overly polite Prussian bureaucratic style, the *Oberstaatsanwalt* requested the police president to look further into the functioning of this unit. In comparison, successive Parisian *procureurs* almost never sought to challenge successive police prefects who categorically objected to prosecution of their personnel and never challenged the tacit covenant between police and the state that police were never to face criminal prosecution for acts committed in the service of the French state.[61]

Generally, the levels of compartimentalisation between the judicial authorities and the police were much higher in Prussia compared to France. Indeed, there is very little evidence of inter-institutional communication over cases against Prussian police personnel. Complainants raised their cases directly with the public prosecutor, who was under obligation to investigate all allegations of criminal transgression. This process did not involve the police authorities at all.[62] In France, by contrast, there was close and ongoing communication between police and prosecutor. In Paris bureaucratic practices had developed whereby all allegations of criminal behaviour against police personnel were forwarded by the public prosecutor to the Paris police prefect. The allegations were then handed over for investigation by the internal disciplinary unit, *le contrôle général*. By this administrative procedure, criminal allegations were effectively redefined as disciplinary matters, and thereby conveniently removed from the courts.[63] While in France, any attempt to prosecute police personnel would constitute a major breach with established practice, Prussian prosecutors operated within a system that had strong precedents for criminal prosecution of civil servants, including police personnel.

Prussian prosecutors had good reasons for bringing charges against erring policeman in serious cases to prevent the victim from launching a private prosecution – an option which was not open to complainants within the French system. In the 1870s several elements were introduced to Prussian criminal justice procedures inspired by the English legal tradition.[64] These included independent lawyers (*Rechtsanwälte*) who could act as defence or as prosecutors in private prosecutions. These independent lawyers were outside the control of

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[58] For comparative a perspective with France see Wilford Garner (1903) pp.513-14 & 516; Similarly, Hellwig (2015) p.263.

[59] Klockars (1985); Sherman (1985); Punch (2003) pp.171-196; Walker & Archbold (2014) p.50.

[60] Letter from Senior Prosecutor for *Landgericht* I, Berlin to Police president von Windheim, 27 Mar. 1895: GStA, HA1, Rep 84a, 58195, 'Untersuchungssache gegen Kommissar von Tausch', docs.38-44.

[61] Johansen (forthcoming)

[62] Raymond Fosdick (1969, p.16), in his famous 1911 investigation of European police organisations, claimed that in continental European police systems police had a say in whether or not prosecution could go ahead. While this was de facto the case for France, this study has been unable to find any evidence of this in relation to Prussian prosecutions.

[63] Johansen (forthcoming).

[64] *Gerichtsverfassungsgesetz* of 1877; *Strafprozeßordnung* of 1877, *Rechtsanwaltsordnung* of 1878/79. See Stolleis (2001) pp.377-9.

the state-employed judiciary, and could cause considerable embarrassment to public authorities. This was repeatedly evidenced during trials against social democrats where defence lawyers turned the court room into a politicised platform, denouncing the biases and injustices within the criminal justice system. The decision by public prosecutors to go ahead with some of the most clear-cut cases was undoubtedly influenced by the greater control they could then exercise over the process in potentially damaging trials.

As public opinion acquired an increasing role in court cases during the Wilhelmine era, prosecutors and judges – although not directly accountable to the citizenry – could not entirely ignore that their decisions were reported in the critical left-wing press as 'evidence' of the systematic bias of the criminal justice system against victims of police violence.[65] Alongside debates about policemen's attitude towards the public ran another debate lambasting the judiciary for class bias and political obstruction of critical voices.[66] The Prussian judiciary therefore had good reasons to share the concerns expressed within the police and the Interior Ministry about maintaining loyalty among the core supporters of the regime. While prosecutors and judges may not have felt much sympathy for workers or members of marginal groups, many of the victims of police brutality were well-established middle-class citizens who could not be described as anything but upright supporters of the regime. In such cases the interest of the state was to avoid antagonising the victim and get a bad press in the conservative newspapers.

Judges and prosecutors were under consistent scrutiny from the critical press – left-liberal or social democratic – who would seize any opportunity, not only to attack the police, but to undermine the authority and legitimacy of the courts, and ultimately of the political regime. Thus, public prosecutors and judges operated within a highly politicised context, and the individual judge could not ignore the potential damage to the prestige of the courts and the political regime from systematically exonerating extremely violent acts by police personnel. Moreover, prosecutors and judges needed to be concerned with upholding the legitimacy of the criminal justice procedures, as well as the reputation of public servants as incorruptible.[67] Evidence of policemen blatantly lying under oath undermined trust and respect of their own profession by making a mockery of the judicial process, even among the loyal sections of the population.[68]

The critical left-leaning and social democratic press often gained the moral high-ground in the propaganda war. Some of the reporting style, particularly of the 1890s, was highly emotive and outraged. However, increasingly critical journalists restricted themselves to simply reporting the facts of the case – often carefully selected and ordered for maximum effect – whereby the court rulings came to appear completely at odds with the 'facts' of the case. The Prussian judiciary, on their side, were struggling to maintain a public image of impartiality in cases against police personnel. So despite applying considerable obstacles against alleged victim of police malpractice, they were also eager to demonstrate that they were holding erring policemen accountable to the Penal Code. Yet, prosecuting some of the most extreme cases – while many others went unpunished – did nothing to improve the public trust in the impartiality of the criminal justice system. While the high rates of prosecution should have demonstrated the robustness of police accountability to the law, this was overshadowed by repeated public outcries over outrageous incidents of police violence

[65] Hett (2004) epilogue; Agerius (1896); Beradt (1909).

[66] For example, the analysis by Hans Block after the so-called Moabit riots in Sept. 1910: Block (1911).

[67] Fricke (1912, pp.12-3) talks about the principle of 'purity in the exercise of public office' (*Reinheit der Amtsausübung*).

[68] GStA, HA1, Rep. 77, CB S, 83 vol. 1 ‚Gerichtsentscheidung und deren Kritik, 1895-1908'; vol. 2, 'Gerichtsentscheidung und deren Kritik, 1909-1918'. See also Spencer (1992) pp.102-8 on police discipline and expectations to conduct.

that went unpunished. As a result, the Prussian judiciary of the Wilhelmine era got a reputation for undue leniency towards violent police personnel, crassly contrasted with the heavy sentences issued to political critics of the regime. This reputation was only exacerbated during the Weimar era by the unbalanced prosecution of violence by Communist activists compared to violence by far-right extremists, and later destroyed altogether when many members of the German legal profession colluded with the Nazi regime.

VII. The Policemen on Trial: Regional Distribution and Rank

So who were the policemen on trial? Unsurprisingly, the largest number of trials come from the industrialised and highly urbanised western regions of the Rhineland (Cologne) and Westphalia (Hamm, which included the Ruhr area), as well as the mining areas of Silesia (Breslau).[69] The Berlin region comes in fourth place (52 trials out of 556 or 9.4 per cent), while the remaining nine *Oberlandesgericht* regions account for an average of 4.2 per cent of the trials. The majority of criminal prosecutions appear in areas which were policed by municipal forces rather than the state organised *Schutzmannschaft*. Accordingly, municipal police personnel constituted the overwhelming and increasing majority of the accused.[70]

The availability of records of 417 convicted policemen who applied for reduction of their sentence (*Gnadensuche*) between 1895 and 1906 give some important insights about the profile of the policemen who were convicted at the Prussian courts.[71] Unsurprisingly, the majority of those who applied for reduction in their sentence belonged to the lower ranks, which constituted the most numerous personnel groups within the police, and also those who were in direct everyday contact with the population. The overwhelming majority of the applicants were – or had been – full-time police employees either in one of the municipal police forces, the *Schutzmannschaft* or the *gendarmerie*. Only about one in eight of the *Gnadensuche* (53 out of 417) came from the part-time supporting personnel (*Polizeidiener*, *Nachtwächter* and *Hilfspolizei*), although they often had the most difficult tasks, patrolling at odd hours during the night, and due to their low status often struggling to assert personal authority, respect and cooperation among the population.[72]

A disproportionately high number of applications for sentence reduction came from middle-ranking police personnel in commanding positions (police sergeants, police lieutenants and *Wachtmeister*), despite constituting a minority among the overall police personnel.[73] There may be two explanations for this, which are not mutually exclusive. Personnel at this level were likely to be more resourceful than the rank-and-file and therefore more likely to apply for reduction of their sentence. At the same time, if several policemen

[69] GStA, HA1, 84a, 8265, 'Nachweisung der im Jahre 1899-1905 erfolgenden Verurteilungen und Freispruche von Polizeibeamten wegen Überschreitung ihrer Amtsbefugnisse'. See also the calculations by Jessen (1991) Table 15a. On the inadequate police numbers in rapidly developing industrial areas see also Evans (1991) p.172.

[70] According to Jessen's calculations, the municipal police, with 17,090 men, and the *Schutzmannschaft*, with 16,801 by 1913 accounted for almost equal proportions among Prussian police personnel: 43.1 per cent municipal police; 42.4 per cent *Schutzmannschaft*, while 14.5 per cent of the Prussian police force belonged to the gendarmerie. However, the proportion of applicants from municipal forces increased from 66.7 to 83.3 per cent between 1896 and 1905, while the proportion of applications from members of the *Schutzmannschaft* declined from 33.3 to 16.7 per cent. Jessen (1991) Tables 6 and 15b.

[71] GStA, HA1, Rep.84a, microfiche 6744 'Justizministerium, ‚Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906'.

[72] Jessen (1991) pp.69-70 & 182-3.

[73] GStA, HA1, Rep.84a, microfiche 6744 'Justizministerium, ‚Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906'.

were accused, the most senior officers generally received harsher punishments. This seems to indicate that the prosecution and judges were particularly severe on those at higher ranks, expecting them to be role models for their subordinate personnel and therefore clamping down more severely on professional transgressions. The majority of convicted police personnel went back to their former post after conviction, often in their former rank. However, a non-negligible number of those applying for reduction in their sentence are registered as 'former' – whether sacked or having left by their own decision. While the practice of retaining police personnel after a criminal conviction was criticised in public debates, by the 1890s it was also being challenged from within the system.[74]

VIII. Sentencing practices

The records from the Prussian Justice Ministry also provide an overview of the sentencing practices in cases against police personnel between 1899 and 1905. Although, the Penal Code and the Code of Criminal Procedure defined in detail the sentences for individual offenses, Prussian judges still had a significant margin of discretion between the maximum or minimum sentences. In just over half of these cases (209) the policeman was fined, while the rest (191) were given prison sentences, for the major part of 3-6 months (86 cases). In 27 cases the convicted police officers were given sentences of 6 months to a year, while 12 were sentenced to prison terms of more than a year, and 5 were given the most severe punishment, *Zuchthaus* with hard labour.

Table 2: Distribution of punishments against Prussian police personnel.[75]

	Hard Labour (Zuchthaus)	Prison for 2 Years+	Prison for 1-2 years.	Prison from 6 to 12 months	Prison from 3 to 6 months	Prison less than 3 months.	Fine
1899	-	-	-	1	10	7	23
1900	1	-	3	2	20	12	36
1901	2	2	2	7	17	16	30
1902	2	-	1	7	17	7	35
1903	-	-	2	6	11	11	36
1904	-	-	1	2	6	4	22
1905	-	-	1	2	5	4	27
Total *Percentage*	**5** *1.25*	**2** *0.5*	**10** *2.5*	**27** *6.75*	**86** *21.5*	**61** *15.25*	**209** *52.25*

Police critics frequently derided the sentences handed down to police personnel as ridiculously lenient,[76] while police managers argued that police were particularly harshly

[74] GStA, HA1, Rep. 77, CB S, 83/1 ‚Gerichtsentscheidung und deren Kritik, 1895-1908', doc. 5.

[75] The figures for punishment provided by the Justice Ministry add up to 401. This inaccuracy most likely came about because one convicted policeman was given more than one type of punishment. 'Zusammenstellung der im Jahr 1905 anfolgten Verurtheilungen und Freigespüche von Polizeibeamter wegen Überschreitungen ihrer Amtsbefugnisse (§§ 339-343)': GStA, HA1, Rep. 84a, microfiche 6746 'Justizministerium, Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906', docs. 177-179.

[76] *Ostsee-Zeitung*, 9 Oct. 1907, 'Bestrafung von Beamten in der Theorie und in der Praxis': GStA, HA1, Rep. 84a, microfiche 6741, 'Justitsministerium': Verbrechen und Vergehen im Amte, 1872-1934', doc. 158. Agerius (1896) pp.23-6; Anon. [Rechtsschutzverein] (1898) pp.i-iv.

punished for breaking their professional duties.[77] Whether the sentences were appropriate remains a normative question. Yet, two studies by the Austrian criminologist Franz Exner and his pupil Rupert Rabl on general sentencing practices from 1880 to 1930 help to contextualise the sentences issued to police personnel during the Wilhelmine era.[78]

Police and non-police offenders were convicted according to different paragraphs: Article 340 (relating to police personnel) and articles 223 and 228 (relating to non-police defendants). The prescribed punishment for policemen convicted for article 340 'Grievous bodily harm in the exercise of duty' (*Körperverletzung im Amt*) varied between one day minimum and six months prison as maximum, or a fine. In serious cases, policemen were prosecuted both according to article 340 and article 223. The latter paragraph concerned dangerous bodily harm in general, and could be applied to civilians and police alike.[79] The prescribed punishment for article 223 started with two months prison and could go up to five years. This however could be reduced down to one day depending on mitigating circumstances. The prosecution of police personnel according to article 223 allowed judges the discretion to apply considerable longer jail sentences to police personnel than those defined by article 340.

Exner and Rabl both observe that punishments for all types of offences became more lenient between the 1890s and 1930.[80] This trend was constant, irrespective of the major social and political upheavals from the Wilhelmine era through the First World War to the Weimar Republic and included major revisions of the Penal Code:[81] Prison sentences tended to become shorter and an increasing number of offences were punished only by fines.[82] This suggests that the punishments issued to police personnel between 1896 and 1905 were part of a long-term trend towards more lenient sentences for violence. No similar tendency towards lenient sentencing applied to cases against political opponents of the regime.[83] Thus, rather than seeing the sentencing of police personnel as simply due to preferential treatment, it was part of a broader trend. In contrast, the sentencing of political opponents of the regime and activists from the political left was disproportionate already in the 1890s. Over time, as the practice of issuing harsh sentences to critics of the political regime remained largely unchanged, it became increasingly out of line with sentencing for other offences.

During the years 1899-1905 the proportion of policemen who were given only fines for violations of Articles 339-343 was 52.3 percent[84]. Exner shows that by 1925-1927, 89.5 percent of violations of Article 340 (the paragraph that specifically related to police violence) led to fines only.[85] In comparison, the proportion of cases of violence with bodily harm committed by civilians that led only to a fine increased from 41 percent for the period 1890 to

[77] Grotefend (1888) p.11; Segger (1898) pp.38-40; Beyendorff (1900) p.67; Eiben (1903), p.viii; Priester (1904) pp.10-1; Lemke (1904) pp.207-11; Bartels (1913) pp.10-4.

[78] Exner (1931); Rabl (1936).

[79] Art. 340 „Körperverletzung im Amt - 1 Tag bis 6 Monate Gefängnis oder Geldstrafe". Art. 223 Gefärliche Körperverletzung – 2 Monate bis 5 Jahre, bei mildere Umstände 1 Tag bis 3 Jahre Gefängnis oder Geldstrafe'.

[80] A similar point was made by Ludwig Mayer (1928) pp.1-2 & 20-5, and by Hett (2004) pp.187-189 for the Wilhelmine era.

[81] Exner (1931) pp.17-23.

[82] Exner (1931) p.19; Rabl (1936) pp.17-8.

[83] The sentences meted out for political murder by far-left militants as documented by Gumbel in *Vier Jahre politischer Mord*, similarly point towards these being extreme compared to the general patter in sentencing as described by Exner and Rabl.

[84] GStA, HA1, Rep. 84a, 8264, 'Justizministerium: Verbrechen und Vergehen im Amte, 1872-1934' (vol.5); GStA, HA1, Rep. 84a, 8265, 'Justizministerium: Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906'.

[85] Exner (1931) p.117.

1903 to 66 percent in 1911 and 66.8 percent in 1925-1927.[86] Looking specifically at fines together with the sentences of imprisonment of less than three months, a pattern appears whereby sentencing of both civilians and police moved towards lighter punishments for violence with bodily harm: Between 1890 and 1903 the percentage for civilians given fines or shorter prison sentences was 83 percent. By 1925-1927 this had increased to 88 percent for civilians, while it was 93 percent for policemen convicted according to art. 340. Thus the long-term trend is clearly towards more fines for violence with bodily harm, whether committed by police or by civilians.

Comparison of Prussian sentencing practices with those in London needs to be approached with caution due to the low number of convictions of police at the Old Bailey. Nevertheless, the data from London do not indicate greater leniency by the Prussian courts compared to the Old Bailey. Firstly, in London the conviction rate for cases against police personnel was much lower than at Prussian courts. Secondly, the sentences fall broadly within the same range as in Prussia: out of a total of 19 prosecutions against London police personnel, 13 concerned perjury, which led to six convictions with sentences ranging from three months' prison to 18 months' hard labour.[87] The seven prosecutions of wounding or assault only led to two convictions. In 1908 PC Ashford was convicted for a very nasty assault on George Gamble, a young worker from Southwark who suffered serious injuries in the course of the beating. Ashford was sentenced to nine months hard labour.[88] In 1913 three police constables, Albert Brooks, Maurice Wetherill and William Smithe were convicted at the Old Bailey for assault and perjury. Brooks was given four months hard labour, while Wetherill and Smithe were each given twelve months hard labour.[89] Despite difficulties in comparing these patterns, it shows that the sentences given to Prussian police personnel between 1895 and 1906 fall broadly within the same range as the punishments handed down to convicted policemen at the Old Bailey.

IX. Systemic Undermining of Court Sentencing.

There was, however, one aspect of the Prussian criminal justice system – completely out of the control of the judges – which undermined the punishments issued by them, namely the access of convicted individuals to apply to the king for a reduction in the sentence handed down by the courts (*Gnadensuche*). This was a legacy of the pre-constitutional powers of German sovereigns, which controversially continued to operate at the margins of the criminal justice system until 1918.[90] Between 1898 and 1908, the number of applications sent to the Justice Ministry and presented to the king with a ministerial recommendation increased by 450 percent.[91] Application for sentence reduction was by no means the preserve of public servants, as even common criminals sought – and frequently obtained – significant reductions in their sentences.[92]

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[86] Exner (1931) pp.22 & 112.

[87] oldbaileyonline: t18710918-671 against PC George Jacobs for Perjury (three months' prison)
oldbaileyonline: t18761120-48 against PC William Bailey for perjury (recommended mercy)
oldbaileyonline: t18841020-986 against PC Charles Hall for perjury (eighteen months' hard labour);
oldbaileyonline: t18961116-39 against PC Thomas Murray for perjury (nine months' hard labour);
oldbaileyonline: t19020909-657 against PC William Rolls for perjury (no sentence stated).
oldbaileyonline: t19130204-64 against PC Albert Brooks; PC Maurice Wetherill; PC William Smithe for assault and perjury (Brooks got four months' hard labour, Wetherill and Smithe got each twelve months' hard labour).

[88] oldbaileyonline, t19081020-49.

[89] oldbaileyonline: t19130204-64.

[90] Kesper-Biermann (2012) pp.21-47.

[91] From 6,000 applications in 1898 to 28,000 in 1908. Kesper-Biermann (2012) p.34.

The vast majority of the *Gnadensuche* came from policemen convicted for violence and grievous bodily harm, and would therefore be included in the list of trials and convictions established for 1899-1905. Although the two lists are not easily comparable it appears that a high proportion of those convicted of violence and grievous bodily harm (between 56 and 83 percent depending on the year) applied for sentence reduction. Unfortunately the documents do not indicate exactly how large a proportion of these applications were accepted, but for the majority of cases the decision is indicated in the margins, which shows that the success rate was above 50 percent.[93] The reduction in sentences could be substantial: Fines were frequently reduced to less than half of the original sum, and prison sentences were similarly reduced by half, even for very serious violence. In one case, a *Wachtmeister* and a clerk, who had caused grievous bodily harm to a young apprentice arrested on suspicion of theft, got their original two sentences substantially reduced. The *Wachtmeister's* original sentence of one year of hard labour was reduced to six months of confinement in a fortress (*Festungshaft*), which was the most lenient and least degrading form of confinement available. The clerk had his sentence reduced from six months prison to three months *Festungshaft*.

The applications – which were most commonly formulated by the defence lawyer appointed by the court[94] – give some clues about what the Justice Ministry was likely to accept as mitigating circumstances. The applications stress the good character of the convicted policeman, claiming that the act of violence was out of character and in contrast to his previously unblemished professional service. Emphasis is also placed on the pressure the policeman was under when committing the act of violence. Similarly revealing are expressions, which repeatedly appear in these appeals, describing convicted policemen as "having forgotten his duties" (*Pflichtvergessende*) or showing "exaggerated zeal in doing his duty" (*übertriebenem Pflichteifer*). It implies that the convicted policemen had transgressed the boundaries of their office out of the right professional motives. The fact that a large proportion of these applications were accepted indicates that the Justice Ministry and the king accepted these as valid reasons for overriding the decision by the courts. The reductions in sentencing bear no relation to the minimum sentences defined by the Penal Code, and thereby undermined the authority of the law. So while the punishments handed down by the judges were only slightly lighter than general sentencing practice for violence by civilians, the access to *Gnadensuche* completely undermined the decisions made in court. The outcome was often very lenient punishments – and this was of course what was subsequently reported in the critical press.

X. Conclusions

Although Prussian prosecution of police personnel was patchy and inconsistent, with only a tiny minority of alleged criminal acts ever reaching the courts, the Prussian courts played a greater role in keeping police to account than the criminal justice systems in the French Third Republic or even in Victorian/Edwardian London. The sentences against police personnel

[92] *Vorwärts*, 1 Dec. 1896, 'Begnadigungen' and *Vorwärts*, 25 Dec. 1898, 'Einige bemerkenswerte Begnadigungen aus dem Jahre 1898': GStA, HA1, Rep. 77, CB S, 572, 'Begnadigungsrecht der deutschen Landesherre, 1896-1918' (no document number).

[93] GStA, HA1, Rep.84a, microfiche 6744 'Justizministerium, ‚Zusammenstellungen und Nachweisungen über Verurteilungen, Freisprechungen bzw. Begnadigungen von Polizeibeamten wegen Überschreitung ihrer Amtsbefügnisse, 1896-1906'.

[94] *Vorwärts* Berlin, 30 Sept. 1896, 'Der Schutzmann Lorenz': GStA, HA1, Rep. 77, CB S, 572, 'Begnadigungsrecht der deutschen Landesherre, 1896-1918', (no document number). The original applications are not available, only snippets cited on the government lists.

issued by Prussian courts were only slightly more lenient – and generally falling within the same range – as the punishments issued against police personnel by judges at the Old Bailey in London. The tendency during the Wilhelmine era towards increasingly lenient sentences for police violence must also be understood as part a broader trend towards lighter sentences for most offences. Rather, it was the harsh punishments handed down to critics of the Prussian regime that were out of line with prevailing sentencing practice. These findings call for reconsideration of interpretations describing the decisions of Prussian judges as systematically lenient towards police personnel, at all costs. The professional actions of Prussian prosecutors and judges cannot be predicted on the basis of their social background or professional socialisation. Compared to their French counterparts, their willingness to prosecute and convict police personnel also reflects their greater independence from police and government interference. Moreover, although Prussian prosecutors and judges undoubtedly tended towards political conservatism and unfailing loyalty towards the State, their decisions were also influenced by concerns about upholding respect for the criminal justice process in the face of extreme cases of police malpractice.

While police and government authorities in London also went to great lengths to deny and cover up police malpractice – as evidence of illegality and violence would undermine the legitimacy of the police – London police personnel were occasionally prosecuted and convicted. Importantly, when criminal prosecution became inevitable in the face of mounting evidence, the case was presented to the British public as exceptional and isolated. Accordingly, trials against London police personnel were turned into a public demonstration of the effectiveness of the courts in keeping a few 'rotten apples' accountable to the law. As a result, the criminal prosecution of police personnel in London could help to strengthen public trust in the well-functioning of existing accountability mechanisms. In Prussia, by contrast, the willingness of the criminal justice system to prosecute the most extreme cases of police malpractice did nothing to improve public trust in the criminal justice system. Instead, it was the multiple cases of horrific police brutality that went unpunished, which caught the public's attention. This gave the critical press excellent opportunities to attack the legitimacy, not just of the police but of the political regime, and they did their best to fuel the public indignation. Their criticism was so successful that trust in the judicial processes to keep police to account was seriously undermined, even among those who were otherwise loyal to the regime and tended to support robust public order policies. Repeated attempts by Prussian police and government authorities to improve police-public relations always fell short of the goals set by the critical press, which held up British policing as the gold-standard – without any regard to the fact that, in Britain, these standards were often not met, either by the police or by the criminal justice system. In comparison, the Prussian courts were in fact not doing that badly.

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