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Security and “Gute Policey” in Early Modern Europe: Concepts, Laws, and Instruments

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Abstract: »Sicherheit und “Gute Policey” im frühneuzeitlichen Europa: Konzepte, Gesetze und Instrumente«. The article demonstrates that the development of “security” as a leading category and main field of state activity in the Early Modern Era was closely interconnected with the concept of “gute Policey” and the increasing body of police ordinances. Within Early Modern administrative law as well as in the theoretical discourses of the administrative sciences, “security” became a crucial objective of the well-ordered police state and thus succeeded “peace” and “unity” as a leading category. In this respect, the growing importance of security indicates the “secularization” of authoritarian regulatory policy. In parallel to this, administrative law was characterized by the differentiation between “internal” and “social” security. Whereas the former focused on exterior security threats, for example mobile marginal groups, the latter manifested itself in scopes such as “poor relief”, the “health sector” and measures dealing with risks and hazards including bad harvests, epidemic plagues, fire hazards and natural disasters. The resulting regulatory policy gave rise to the gradual establishment of administrative measures in the area of internal and social security, ranging from surveillance to insurances. However, the addressees of ordinances and the subjects also participated in the production of security via “guter Policey”, and in this respect security policy partially adopted popular demands for security and security discourses. Altogether, the Early Modern “gute Policey” could well be interpreted as a prototype of “human security”. But on the other hand, “gute Policey” also implied the juridification of security and the implementation of a state-based security policy, which ultimately led to the fundamental separation between internal security and police on the one hand and welfare policy/administration on the other hand, by the beginning of the 19th century.

Keywords: public law, administrative law, police ordinances, public/internal security, social security, administration, social control, security policy.

I. Introduction: Notion and Purposes of *Policey* and “Security”

In the history of Early Modern Europe, the development of “security” as a leading category and main field of state activity is closely interconnected with

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the concept of “*gute Policey*”.¹ Nowadays the term police (*Polizei*) indicates an institution primarily dealing with security and order; “human” or social security as well as welfare or the common weal are out of range of the police.² However, the contemporary notion of police is the result of a lengthy process in which the concept and notion of “*Policey*” was narrowed to an executive agency primarily dealing with the maintenance of “internal security”. When the terms *police* and *Policey* first appeared in the 15th century in France and in the Holy Roman Empire of the German Nation respectively they referred to the general concept and the overall purpose of the “good order” of a community, society or state: the so-called well-ordered police state.³

The pivotal instrument of establishing and maintaining good order was the police ordinance – the so-called *Policeyordnung*: administrative laws, ordinances, regulations, edicts and so forth, primarily enacted by the Early Modern authorities (*Obrigkeiten*) and covering a variety of subject matters in the wide area of public order. From the 15th century onwards a growing number of police ordinances (*Policeygesetze*) in virtually all European states, territories and cities reacted to crises and topical problems within society and the economy and aimed at a long-term regulation of social behaviour. Police ordinances and regulations dealt with religious matters, blasphemy and swearing, deviant sexual behaviour and sexual offences, sumptuousness and luxury, clothing, feasts, drinking and gambling, violent offences and larceny as well as with marginal groups, beggars, poor relief, public health, agriculture and forests, market and price regulations, commerce, guilds and craftsmen, infrastructure, fire, natural disasters – to name but a few of the expanding scopes of the Early Modern police norms, of which many could be subsumed under the purposes of “welfare” and “security”. As “laws”, *Policeygesetze* were addressed to all social groups as the recipients and objects of *gute Policey*, because society as a whole was to be policed, regulated, disciplined and ordered. In this respect the police ordinances also helped to establish “welfare” and “security” as leading categories which crossed the social order and applied to society as a whole.

Beyond legislation and norms, *gute Policey* as an overall concept was closely connected to government and administration (*Regiment und Verwaltung*) and with respect to the implementation and enforcement of police ordinances, it became a central field of concrete administrative action. Although the Early Modern state had to rely on intermediate powers, local social groups/communities and traditional institutions to enforce police ordinances, *gute Policey* allowed the authorities to expand executive administrative instru-

¹ On the conceptual history (*Begriffsgeschichte*) of security, see: Conze 1984.

² On the history of social as well as human security, albeit without giving any attention to the concept of “*gute Policey*”, see: MacFarlane and Khong 2006, 23-60; Metz 2008.

³ On the history of *gute Policey* as a whole and its notion in particular, see: Härter 2010; Iseli 2009; Nitschke 1992; Raeff 1983.

ments and institutions, especially with regard to the overall purposes of welfare and security. Within the concept of *gute Policey* from the 17th century onwards, “security” slowly but steadily gained a more and more prominent role as a crucial element of “good order”: as a general purpose of good government, as an important sector of police legislation (*Policeygesetzgebung*) and as a field of concrete administrative action.

Hence, the police ordinances as well as the theoretical discourses of *Policeywissenschaft* (police and administrative sciences) allow us in the following to analyse the intentions and aims of “security” which were to be established and maintained by police ordinances, as well as the more specific security regulations and the concrete fields of administration in which security was considered to be the primary purpose. With regard to legislation in the field of public order, security was considered as the primary task of the emerging Early Modern state. In this respect, *gute Policey* is tightly knitted to authorities, state and concepts such as social control, norm enforcement or security policy. But the analysis of the police ordinances reaches beyond the level of the authorities and the state and also touches on general social motives, fears and demands for security interrelated with common risks, dangers, challenges and threats. Recent historical research on “gute Policey” no longer considers *Policeygesetzgebung* and the implementation and administration of *gute Policey* as top-to-bottom law-making, but as an interactive process of communication, negotiation and bargaining between social/local communities, intermediary powers, local office-holders, administration and the authorities/rulers. In this respect the specific regulations and security matters of the *Policeygesetzgebung* enable further-reaching conclusions about the requirements, needs and demands for “security” within Early Modern society and therefore seem to correspond with the concept of human security in a historical perspective.⁴

II. Security and *Policey* Within the Theoretical Concepts of *Policeywissenschaft*

Nearly all authors of the so-called *Policeywissenschaft* of the 18th century agreed that besides welfare, “security” constituted the leading purpose of *gute Policey*.⁵ In his *Traité de la police*, the French author Delamare named “la Securedé, & la Tranquillité publique” as a primary task of police.⁶ In the second half of the 18th century, Justi shaped the relationship between security and *Policey*, concentrating on internal security, prevention and the state: “Diese so

⁴ For recent perspectives on *gute Policey* as a key concept of Early Modern society see: Stolleis et al. 1996; Härter 2000a; Blickle and Schüpbach 2003.

⁵ In general see: Maier 1966; Stolleis 1988; Simon 2004.

⁶ Delamare 1707, 4.

nothwendige innerliche Sicherheit ist nicht allein ein Gegenstand der *Policey*; sie ist eben so sehr, und so gar in ihren wichtigsten Umständen ein Gegenstand der Staatskunst” (This so necessary internal security is not solely an object of the police; it is equally, and even in its most important aspects, an object of state government). Therefore he distinguishes between specific and general internal security, for the latter concerns “sowohl die Wohlfarth und Ruhe aller Bürger in ihrem Zusammenhange, als auch die oberste Gewalt in ihrem Verhältniß gegen die Staatsverfassung” (both the welfare and tranquillity of all citizens in its interrelationship, and the highest power in its relation to the states constitution). The more specific internal security, on the other hand, was solely the subject matter of *Policey* and concerned the individual burgher:

Die besondere innerliche Sicherheit ist diejenige, welche die Bürger, einzeln betrachtet, genießen müssen, und welche denen Bürgern in Ansehung ihres Lebens, ihrer Güther, und ihrer Ehre, Schutz und Ruhe verschaffet, und alle Beeinträchtigungen und Gewaltthätigkeiten von ihnen abwendet; und dieses zu bewirken, ist die Sache der *Policey*. Dieses ist einer ihrer vornehmsten Endzwecke; und die besondere innerliche Sicherheit ist demnach einer von denen haupsachlichsten Gegenständen, worauf sie ihre Aufmerksamkeit zu richten hat. (Specifically internal security is that which individual citizens must enjoy, and which gives protection and tranquility to these citizens with regard to their life, their goods and their honour, and which averts all damages and violent acts from them; and effecting this is the task of the police. This is one of its most noble ultimate purposes; and specifically internal security is therefore one of the primary objects to which it should direct its attention).⁷

Other authors came up with very similar concepts of *Policey* and security. Sonnenfels classified internal security in general as a primary task of *gute Policey*, and therefore *Policeywissenschaft* had to comprehend the main principles of security. With regard to police ordinances and the administrative tasks, he distinguished two main fields: “Vorsorge für die innere öffentliche Sicherheit” (provision for internal public security) and “Vorsorge für die innere Privatsicherheit” (provision for internal private security). Whereas public security primarily concerns internal state security (“der Zustand, worinnen der Staat von seinen Bürgern nichts zu befürchten hat”: the condition in which the state has nothing to fear from its citizens), the latter – *innere Privatsicherheit* – concerns “Handlungen, Personen, Ehre und Güter der Bürger” (actions, persons, the citizens’ honour and property). *Gute Policey* should provide security in a preventative and protective way for every individual subject or burgher with regard to his actions (especially economic ones), his physical body (against violence, disease, starving etc.), his honour or social reputation (against defamation etc.) and his property (against fire hazards, larceny etc.).⁸ Finally, in 1799 Berg amalgamated public and private security in his encompassing

⁷ Justi 1761, vol. 2, 264, 266.

⁸ Sonnenfels 1787, 25.

concept of *Sicherheitspolicey*, for the precondition of internal security in the broadest sense was “die Ruhe des Staates selbst [...], wenn für die Ruhe und Sicherheit jedes Einzelnen mit Erfolg gesorgt werden soll” (the tranquillity of the state itself [...], if one is successfully to ensure the tranquillity and security of every individual).⁹ Only a secure state could provide security and welfare for its subjects by establishing and maintaining *gute Policey* through a comprehensive legislation and an effective administration. At the turn of the century several authors of German public law narrowed the notion of *Policey* solely to security by excluding “welfare” and the “common weal” as the main purposes of *gute Policey*, such as Gönner (referring to Pütter’s definition): “Die Polizei hat es immer nur mit Sicherheit zu thun, Erhöhung des Wohlstands liegt ausser ihrem direkten Zweck” (the police is always concerned solely with security; the increase of prosperity lies outside its direct objective).¹⁰

Besides the restriction of *Policey* to security, the important advancement of *Policeywissenschaft* in the interconnected conceptual history (*Begriffsgeschichte*) of *Policey* and security in Early Modern Europe can be discerned in the differentiation of external and internal security – brought up initially by Thomas Hobbes in 1651 in his *Leviathan*¹¹ – as well as between the public (internal) security of the state and the “social security” of the individual burgher. In this respect the Early Modern concept of *gute Policey* points to more or less modern concepts of state-based internal public security (*innere Sicherheit*), dealing for instance with terrorism and similar violent threats, on the one hand, and social or human security, which focuses on the security needs of the individual human or social groups on the other hand. It almost seems that *gute Policey* could be described as a precursor of the modern concept of “human security”. For one of its crucial assumptions is that the focus of research and concrete security policy should be on the people and not only on the state.¹²

However, *Policeywissenschaft* as well as the Early Modern authorities subordinated (or integrated) social security to the concept of *gute Policey* and *Policeygesetzgebung* in particular, for the primary instruments to establish and maintain internal, public as well as social security were the police ordinances and the strict observance of them. As Berg puts it:

Gehorsam gegen die Gesetze und die Obrigkeit, und die freye, ungestörte Wirksamkeit der Regierung für den allgemeinen Zweck ... darauf beruht die innere öffentliche Sicherheit, und diese ist natürlicher Weise der erste Gegenstand der Sicherheitspolicey. (Obedience to the ordinances and the authorities, and the free, undisturbed activity of the government for the common pur-

⁹ Berg 1802, vol. 1, 207.

¹⁰ Gönner 1804, 424-425. Compare in general Matsumoto 1999.

¹¹ Schrimm-Heins 1990.

¹² Boer and Wilde 2008.

pose... this is the basis of internal public security, and this is naturally the first object of the security police).¹³

The “Stärke und Glückseligkeit des Staats” (strength and happiness of the state), underlines Justi, is based on the condition that “die innerliche Sicherheit auf diese Art als eine Frucht der Gesetze entsteht” (internal security emerges in this way as the fruits of the ordinances).¹⁴ Inner (public as well as social) security should be produced primarily through laws/police ordinances which the state should enforce and which the subjects have to obey. In this respect many authors tried to systematize the vast bulk of police ordinances, indicating specific fields of regulation and related administrative measures (*Sicherheitsanstalten*) in which security matters were of prime importance, thus providing police knowledge and advice for governments on how to conceive the “best” police ordinances. In this regard the writing/discourses of *Policeywissenschaft* were part of law-making and reflect the development of security as an overall purpose and intention within the growing body of Early Modern police ordinances.

III. Legislation (*Policeygesetzgebung*) and Security in the 16th and 17th Centuries

Since the second half of the 15th century the imperial cities, the territorial rulers and the Imperial Diet of the Holy Roman Empire had enacted a growing body of police ordinances comprising many regulations which pointed at typical security issues: revolts and social upheaval, vagrants, robbers and bandits, marauding soldiers, poverty and poor relief, diseases and plagues, famine and food shortage, fire, natural hazards and many more. From the perspective of the authorities and the public, Early Modern society always seemed to be in a state of disorder – unstable, risky and threatened by permanent crises. However, neither the police ordinances of the 15th and 16th centuries nor the early treatises of *Policeywissenschaft* bore any substantial relation to the term security or even named it, although they were indicating the prevention of dangers and threats as well as evil (*Übel*), abuses, wrongs, deficiencies and shortages (*Gebrechen und Mängel*). But on the whole such threats as epidemics, war, revolts, religious crises, rising prices, bad harvest or natural catastrophes were regarded as the wrath of God who reacted with divine punishment to the sinful and deviant behaviour of human beings: God was “zu billichem zorn gegen den menschen bewegt worden/ und theüwrunge/ krieg/ pestilent/ und andere manigfaltige plagen/ auf erden kommen” because people had not obeyed “Gottes

¹³ Berg 1802, vol. 1, 207.

¹⁴ Justi 1761, 263.

gebot” (God’s law) as well as the imperial police ordinances, argued the *Reichspoliceyordnung* of 1548.¹⁵

In this respect the police regulations indicated as their main intentions social as well as religious peace, tranquility, unity, stability and the common weal, which were to be established mainly through godly and disciplined behaviour according to religious norms and the *Policeyordnungen*, at least to appease the wrath of God and prevent divine punishment.¹⁶ The *Statuten, Satzung, Reformation und Ordnung, Burgerlicher Pollicey* (1541) of the imperial city of Heilbronn stated the “handthabung gemeynes nützs / Rechtlicher Ordnung / frydens vnd eynigkeyt” (maintaining the common weal, legal order, peace and unity) as well as “fryd / Recht vnnd eynigkeyt in vnser Stat” (peace, law and unity in our city) as its main intentions.¹⁷ Very similarly, the Archbishop of Cologne in 1537 and the Elector of the Palatinate in 1598 indicated the purposes of their comprehensive *Policeyordnungen* as “fridts und eynigkeit [...] unsem landen unnd lüden zue wolfart/ nutz/ uffnehmen unnd gedeihen” (peace and unity ... so that the welfare and utility of our lands and people may thrive), and “stillter Ruhe/ Frieden und gutem Gemach” (tranquility, peace and comfort), respectively.¹⁸

Although many police regulations contained preventative and practical means as well as instructions for concrete administration which could certainly be regarded as security measures, the pivotal idea of *gute Policey* was to establish a good order – including security, without naming it – by prescribing a normative order based on religious and moral norms and covering all aspects of deviant behaviour, abuses and disorder in a comprehensive and exhausting *Policeyordnung* to which everyone (including the higher orders) was to behave accordingly: human security was to be achieved through social and religious discipline¹⁹ – or as the Hessian *Reformationsordnung in Policey-Sachen* (1526) stated: “abstellung erneuter sünde und mißbräuch, versönung gottes zorn, anrichtung und pflanzung eines ehrlichen zuchtigen lebens, Christlicher eynigkeit und ordentlicher sidten, und furderung gemeynes nutztes” (prevention of renewed sin and abuses, appeasement of God’s fury, the establishment and foundation of an honest and modest life, Christian unity and proper customs, and the promotion of public utility).²⁰

In the course of the 17th century we can observe a growing importance of security within the framework of *gute Policey*. First of all the sheer number of police ordinances, enacted mainly by the territorial rulers, increased after the

¹⁵ Cited in Weber 2002, 168. Compare Härter 1993.

¹⁶ See Simon 2004, 218-225.

¹⁷ Statuten Haylpron 1541.

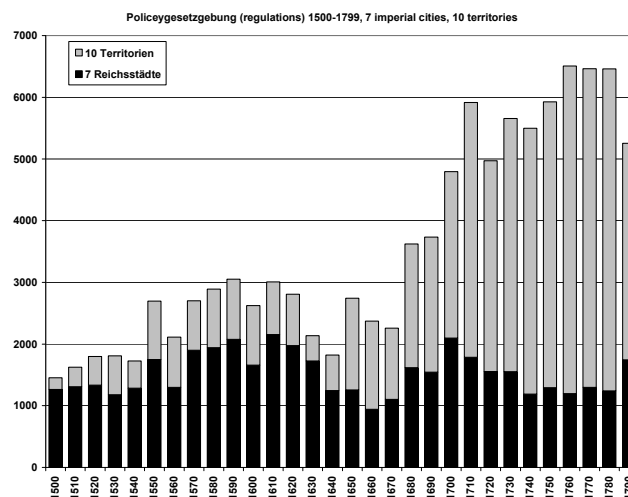
¹⁸ Policei 1537.

¹⁹ Härter 1994; Härter 2000b.

²⁰ Kleinschmidt and Apell 1767, 50.

Thirty Years' war, as Figure 1 shows.²¹ In the course of this development the form of the laws (*Gesetzesform*) changed as well. Single laws (*Einzelgesetze*) were more and more dominant, such as mandates, edicts, decrees, and prescriptions, which in contrast to the comprehensive *Policeyordnung* dealt only with particular matters and regulations of *Policey* (*Policeymaterien*) and facilitated a more flexible and prompt legal reaction to current threats, risks and dangers. In this respect the police ordinances aimed more at prevention and governance, indicating and defining areas of the “good order” as a subject of security, occasionally using the term and explicitly stating “security” as the purpose and justification of *Policeygesetzgebung*. Moreover, within the growing body of the ordinances, typical security issues gained more importance, especially concerning strolling soldiers, vagrants and bandits as well as duels or the carrying of weapons, all of them regarded as a matter of public security.

Figure 1: Police Regulations 1500-1799



An edict by the Archbishop of Cologne issued in 1696 claimed that plundering gangs had overturned public security in the archbishopric altogether (“die öffentliche Sicherheit im rheinischen Erzstifte gänzlich aufgehoben”).²² The *Policeyordnung Brandenburg-Bayreuth* (1672) dealt in several paragraphs with

²¹ Based on Härter and Stolleis 1996-2010; included are the data of: Nördlingen, compiled by Barbara Rajkay; Schweinfurt, compiled by Marian Opalka. They count not the number of ordinances but the different regulations according to the index of “police matters” (*Policeymaterien*). In the following, police ordinances covered by the repertory are merely referenced with the name of the territory/city, number of the repertory, form and date.

²² Kurköln 182 [Reskript], 07.12.1696.

vagrants, gypsies and robber bands, stating that the primary aim of the regulations was

daß die strasen und wege fuer raube und plackereyen sicher und rein gehalten, und dadurch handel und gewerbe im lande ohne gefahr getrieben werden, reisende personen ungehindert wandeln, und ein jeder in seinem hause und stande sich ruhesam naehren moege” (that the streets and paths may be kept secure and clear of robberies and feuds, so that trade and business can be carried out in the country without danger, travellers may make their journeys unhindered, and every man can peacefully support himself in his own house and station in life).²³

Maintaining public peace and security with regard to trade and commerce endangered by ambulant masterless marginal groups was also the prime subject matter of a police ordinance issued by the Archbishop of Mainz in 1680.²⁴

The growing number of police ordinances dealing with marginal, migrating groups defined and distributed the normative label of criminal, dangerous groups as an external – socially as well as spatially – threat to internal/public security.²⁵ They depicted such groups in general as a menace to the common people: raiding, plundering and burning villages, killing and raping people, stealing or destructing their property. In addition, the regulations described certain spaces and places as insecure: the borders, country roads, woods, lonely spots, farmhouses, mills, or inns in the countryside, where such criminal vagrants and bandits could hide or were even welcomed. Admittedly, authorities tended to exaggerate the imminence of such dangerous groups in order to “stimulate” their reluctant subjects to perform security duties, pay more taxes for security measures, or to inform them about the habits of beggars, vagrants or the “criminal milieu”. However, such police ordinances cannot be reduced to a purely symbolic function and ineffective products of a failed security or social policy. For the concept of *Sicherheitspolicey* implied the labelling and criminalization of marginal groups (independently from the “real” crime rate) as well as the forming of the enduring stereotype of external dangerous groups which threatened internal security and endangered specific “insecure” locations. And beyond this, the Early Modern state did in fact establish and extend specific security measures and institutions (especially police forces) to enforce the ordinances, to control and prosecute dangerous groups and to maintain public security.²⁶

In the second half of the 17th century we can also discern the growing importance of public security in the legislation of the Empire, the imperial circles

²³ Policeyordnung Brandenburg-Bayreuth (1672), printed in: Wüst 2003, 574-668, cit. 631

²⁴ Kurmainz 342, Verordnung, 30.04.1680.

²⁵ Härter 2003a; Härter 2003c; Fritz 2004; Härter 2005a, chapter 9. For a slightly different view see: Ammerer 2003.

²⁶ Compare for instance Nitschke 1990; Härter 1999a. This will be discussed subsequently more in detail.

and the permanent diet of Ratisbone (since 1663) respectively, which deliberated certain issues of *gute Policey* and *securitas publica* concerning the Empire as a whole.²⁷ In 1668/1670 the diet and the Emperor issued a resolution (*Reichsgutachten*) “vom Policey-Wesen/ und sonderlich von Abstellung des höchst-schädlichen Duelliren/ Balgen und Kugel-Wechseln” (concerning the police and in particular the prevention of the highly dangerous duelling/fighting and exchanging of bullets). This was followed by a comprehensive law on the *Puncti Securitatis publicae* (later called *Reichsexekutionsordnung*: imperial execution order), which dealt with vagrants and gypsy gangs, strolling and marauding soldiers, robbery and banditry, breach of the peace (*Landfriedensbruch*), social upheaval and revolts as well as several security measures such as safe conduct (*sicheres Geleit*), prosecution (*Nacheile*), alarm (*Alarmwesen*), patrols and visitations, with regard to the rural areas and country roads in particular.²⁸ The imperial diet enacted only a few laws concerning public security, but they were part of and stimulated the increasing *Policeygesetzgebung* of the imperial circles and the imperial estates as well as the burgeoning public discourses on “internal security”.

At the start of the 18th century, “security” had achieved a stable and increasingly important role within the *Policeygesetzgebung*, which had established and was using the concept of *allgemeine Landessicherheit* (general security of the land) with regard to “dangerous groups” as well as to property (*Eigentum*), trade and commerce.²⁹ However, the concept of *Policey* and security and the *Policeygesetzgebung* in particular still focused primarily on internal security, which was threatened by marginal, criminal and violent groups: the poor, vagrants, ethnical/religious minorities such as the gypsies and the Jews, gangs of thieves and robbers (*Diebes- und Räuberbanden*) as well as ex-soldiers, deserters, duellists or rioting subjects. In this respect the authorities and the *Policeygesetzgebung* conceived security as a reaction to criminal behaviour and deviant/dissident groups, endangering above all the life and property of subjects in rural areas, small towns and villages as well as the country roads, mail, coaches and transport of passengers and therefore trade and commerce. Thus society and economy on the whole as well as individual property were considered as a matter of public security within the scope of *gute Policey*, conceiving security as a crucial precondition of property and economic prosperity and progress.

²⁷ Härter 2003b.

²⁸ “Reichs-Abschieds-Anfang“ 1740, part 1, 324-327, 437-445, 634-670.

²⁹ Compare as examples the “security ordinances” of the imperial circles: “Edikte des Fränkischen Kreises“ 1700; “Verordnungen des Oberrheinischen Kreises“ 1722; *Neue und mehr geschärfte Poenal-Sanktion und Verordnung des löbl. Ober-Rheinischen Crayßes*, 20.12.1726; *Instruction, wornach die vom Löblichen Ober-Rheinischen Crayß bestellte Crayß-Land-Lieutenants mit der untergebenen Mannschafft/ in denen Ihnen aufgetragenen Verrichtungen sich zu achten haben*, 19.12.1726.

The reasons for the growing importance of this particular concept of *Sicherheitspolicey* in the second half of the 17th and the first decades of the 18th century can be discerned in certain socioeconomic developments: first of all the growth of population and the increase of migrating, marginal groups after the Thirty Years' War. These groups were not only suspected of committing violent crimes but also of spreading epidemic plagues, which menaced Europe and the Empire in several pandemic waves (1660-1670, 1709-1713, 1720-21). Furthermore, marginal groups and the growing strata of the "idle poor" were blamed for endangering the basic food resource or causing lack of food. In general, the *Policeygesetzgebung* merged different security threats and hazards: marginal and criminal groups, epidemic diseases and supply crises. In this regard the police ordinances not only reflected common fears and popular images of a gradually unfolding topical security discourse but were equally interrelated with cameralist theory, which influenced the current economic and population policy as well as the burgeoning *Policeywissenschaft*. The latter likewise postulated the growth of population, state-based mercantilist economic and welfare policies, as well as security, as the primary aims of *gute Policey* and *Policeygesetzgebung* – ultimately to strengthen the power of the state.³⁰

IV. The Differentiation Between Public/Internal and Social/Human Security in the 18th Century

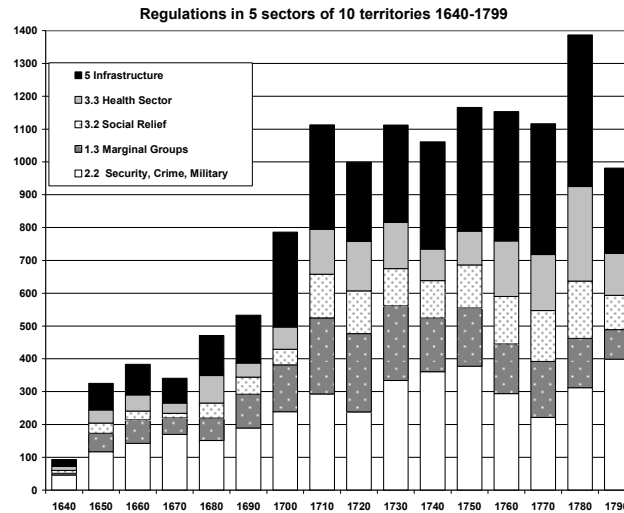
Political theory and *Policeywissenschaft* had additionally further developed the concept of security and established the fundamental distinction between external and internal security as well as addressing public security – besides welfare – as a primary task of the state within the framework of *gute Policey*.³¹ *Öffentliche* and *gemeine Sicherheit* (public/general security) on the one and common weal/welfare on the other hand merged into the common formula of *Sicherheit und Wohlfahrt*, indicating the – modern – differentiation between internal and social security (*innere und soziale Sicherheit*). In contrast, the *Policeygesetzgebung* as well as the *Policeywissenschaft* rarely referred to the traditional concept of universal peace. In this respect the process of establishing public security as a crucial concept and purpose of *gute Policey* after the Thirty Years' War could be interpreted as a "secularisation" of the traditional concept of peace as related to the internal order of society. Based on the development of *gute Policey* and the *Policeygesetzgebung* in particular, security had become a leading concept of the state in the 18th century, justifying and stimulating the expansion of government and administration as well as further legislation in the fields of order, welfare and security.

³⁰ Compare Simon 2004, 381-562.

³¹ Conze 1984, 846-847; Simon 2004, 522-524.

The following figure (Figure 2) shows the increase of the *Policeygesetzgebung* of ten selected imperial territories between 1640 und 1799 in five sectors of police matters (*Policeymaterien*) related closely to internal/public as well as social security.³²

Figure 2: Regulations in 5 sectors



The main issues covered by these regulations can be systematized as follows:

1) “Internal/Public Security”: crimes/violence against people (body, property) or society/the state (= 2.2 Security, Crime, Military and 1.3 Marginal Groups):

- marginal groups, criminal vagrants, gangs, thieves and robbers
- military: ex-soldiers, deserters, military excesses
- political crimes: revolts, propaganda, pamphlets, “secret” associations
- and the corresponding security institutions/measures such as patrols, visitations, rural militia and paramilitary police forces (hussars), wanted lists, passport control etc.

Within these sectors of police regulations, security was to be established mainly through repressive executive measures and institutions to protect subjects and their property as well as society and the state against criminal behaviour and dangerous groups.

2) “Social Security” with regard to everyday risks, accidents, natural hazards and disasters:

³² Data/territories such as those given in footnote 21.

- poverty/the poor and poor relief
- everyday supply/starvation; bad harvest, high prices, plagues (grasshoppers, vermin), storms, floods
- health sector: epidemic plagues, accidents, hygiene, first aid
- infrastructure: natural disasters (floods, storms, fires) as well as buildings, roads, street lighting, traffic, transport, mail

In these sectors of police regulations the focus was on the security of individual persons, social groups, communities or society endangered by topical risks, hazards and disasters which were not primarily caused by deviant/criminal humans but by natural or human accidents; thus the security measures concerned laid more emphasis on prevention, support, relief and insurances.

Although security as a primary purpose shows up in the course of the 18th century in new, and more of the existing, sectors of the increasing *Policeygesetzgebung*, the different regulations and measures can be clearly differentiated according to the categories of “internal/public” and “social” security, with the latter gaining more importance in the second half of the 18th century in relevant sectors of the *Policeygesetzgebung* such as health, poor relief, infrastructure, building and traffic (as Figure 2 shows).³³ Despite the fact that regulations dealing with the poor, fire hazards or epidemic plagues reached back to the late Middle Ages, health, poverty, food shortages and building (*Bauwesen*) were more and more considered as an issue of welfare *and* human security, which the state should provide through *Policeygesetzgebung* as well as administrative and preventative measures. Joseph von Sonnenfels, by way of example, expanded the concept of “personal” or “physical” security (*persönliche/ körperliche Sicherheit*), which was threatened not only by crime but also by diseases, poverty, bodily defects, inability to work or shortage of food, and similarly enhanced the “security of goods and property” by the inclusion of fire hazards, storms and lightning in addition to robbery, larceny and fraud.³⁴ In this respect, internal/public and social security and the corresponding sectors of *Policeygesetzgebung* remained interrelated in many ways: policing marginal groups and poor relief constituted two sides of the same coin; vagrants and the poor were suspected of spreading epidemic diseases, of committing arson and endangering country roads, transport and mail. In this respect, many police regulations merged internal and social security and therefore also repressive policing of “dangerous groups” and technical preventative measures.

However, since the end of the 17th century the expansion of the security concept to “personal security” and the human being as a primary object of security is clearly discernable in police ordinances dealing with health/diseases,

³³ See in general on these sectors of *gute Policey*: Landwehr 2000b; Holenstein 2003; Härter 2005b.

³⁴ Sonnenfels 1787, 123-192, 200-219.

social relief, fire, building or traffic. The *Medizinalordnung* of Kurtrier (the electorate of Trier) stated for instance in 1683 for the first time that *gute Policy* should aim at “*der Unterthanen Conservation, Wohlfahrt wie auch derer Leibsgesuntheitserhaltung*” (the conservation and welfare of the subjects as well as the preservation of their physical health).³⁵ Although since the late Middle Ages many authorities had issued laws and ordinances dealing especially with medical affairs and epidemic diseases in particular, the health sector not only obtained a greater share within the *Policeygesetzgebung* in the second half of the 18th century but evolved into the *Gesundheitspolicy/Medicinalpolicy*: state-based health policy via medical laws aiming at the security of persons, bodies and minds and establishing more or less new provisions and institutions to provide more security.³⁶ In his ground-breaking work *System einer vollständigen medicinischen Polizey* (A Complete System of Medical Policy) (1779-1819), Johann Peter Frank defined the health of society as a crucial constituent of internal security and *gute Policy*:

Die innere Sicherheit des Staates ist der Gegenstand der allgemeinen Polizeywissenschaft; [...] ein sehr ansehnlicher Theil davon ist die Wissenschaft, das Gesundheitswohl der in Gesellschaft lebenden Menschen [...] nach gewissen Grundsätzen zu handhaben, folglich die Bevölkerung [...] zu befördern. (The internal security of the state is the object of general police science; ... a very considerable part thereof is the science of handling the health of the people living in society ... according to certain principles, and consequently ... of promoting the population).³⁷

Thus the regulations of the *Gesundheitspolicy/Medicinalpolicy* ranged from first aid in case of accidents and natural catastrophes, instruction sheets with remedies for epidemic diseases and cattle plagues, hygiene regulations concerning refuse, water or food, to the control of apothecaries and medicine and obligatory vaccination to health passports (*Gesundheitspaß*), the education, qualification, examination and accreditation of a “professional” medical staff (physicians, midwives, etc.) and the institution of state-based hospitals and birth houses; only the instrument of medical insurance was missing in the broad range of state-based health-care policy, but was established in the 19th century.³⁸

We can observe a similar development in the sector of *Baupolicy* and *Feuerpolicy*: The new building regulations (*Bauordnung*) of 1690, issued after military devastation and fire disasters in some towns of Kurmainz (the electorate of Mainz), ordered the rebuilding in such a way “*dass jeder genugsame Sicherheit darin habe*” (that everyone should have sufficient security in

³⁵ Kurtrier 285, *Medizinalordnung*, 1683.

³⁶ Dinges 2000; Wahrig and Sohn 2003; Möller 2005; Grumbach 2006.

³⁷ Frank 1779, vol. 1, 3-4.

³⁸ Frevert 1984.

them).³⁹ In the 18th century the *Policeygesetzgebung* of many territories and cities comprised a growing quantity of building and construction regulations as well as technical provisions, regulating such matters as construction, architecture, plans, licences, supervision, inspection, material, fireplaces, and increasingly aiming at the security of buildings, streets, passengers and inhabitants.⁴⁰ Although the primary purposes of such comprehensive *Bauordnungen* concerned the topographic order and planning of a city or town in general as well as the prevention of fire disasters, other issues interrelated with security such as hygiene, waste disposal, street cleaning, street lighting, and also traffic safety (*Verkehrssicherheit*) gained in importance.⁴¹ One of the first police ordinances dealing with traffic safety was the Prussian “*Avertissement, wegen des sachte und vorsichtigen Fahrens in den Residentzien*” (announcement concerning steady and careful driving in the residences), which obliged all carriage drivers and waggoners to drive slowly for the health and safety of pedestrians, children and elderly people.⁴² The imperial city of Frankfurt similarly issued in 1789 the “*Verbot des schnellen Fahrens und Reutens in der Stadt*” (ban on fast driving and riding in the city); and the city of Mainz threatened serious penalties to all drivers and equestrians harming pedestrians.⁴³

However, the main topic of police ordinances dealing with security matters in the wide array of infrastructure remained fire hazards and *Feuerpolicey*. The elector of Cologne, who had already established fire ordinances in the *Policeyordnung* of 1695, issued in 1718 a decree in which prevention and the rescue of subjects from fire hazards (caused by smoke) was mentioned as a primary purpose for the first time, and the elector stated as his aim: “*solchem Uebel dermahlen mit allem Ernst vorzubiegen, und ihre Unterthanen von sothaner Grund-verderblichen Brands-Gefahr zu erretten*” (to make every effort to prevent such an evil, and save his subjects from this highly ruinous fire hazard). “*Verhüt- und Abwendung sothaner Land und Leuten Grundverderblichen Brands-Gefahr*” – the prevention of conflagration endangering land and people – emerged as a topical argument in many of the following ordinances dealing with fire hazards. This was completed by the launch of an obligatory fire insurance in 1773, indicating the final shift from reaction and punishment to preventative supporting measures and insurances respectively.⁴⁴ Like the elector of

³⁹ Kurmainz 377, Verordnung, 27.05.1690.

⁴⁰ See the *Repertorium der Policeyordnungen*, vol. 1-10, systematic index “5.4 Bauwesen”. Compare further as an example Süßmann 2007.

⁴¹ Compare for instance Württemberg 800, Bauordnung, 02.01.1655: *Deß Hertzogthumbs Württemberg revidierte Bau-Ordnung*, comprising more than hundred pages.

⁴² Brandenburg-Preußen 2720, Avertissement, 05.05.1758.

⁴³ Frankfurt 4358, Verordnung, 13.01.1789; Kurmainz 2561, Verordnung, 25.08.1792.

⁴⁴ Kurköln 306, Verordnung, 26.08.1718, cited: *Vollständige Sammlung deren die Verfassung des Hohen Erzstifts Cölln betreffender Stucken, [...] dan in Regal- und Cameral-Sachen, in Justitz-, Policey- und Militair-Weesen vor- und nach ergangener Verordnungen, und Edic-*

Cologne, in the 18th century many other rulers issued police ordinances imposing statutory fire insurances as well as enhancing technical provisions and measures.

One of the first authors in the Holy Roman Empire who supported such insurances as a means of security and *gute Policey* (“*einer guthen Policey ganz gemäß*”) was Gottfried Wilhelm Leibniz, who drafted five treatises on public insurances around 1678-1680,⁴⁵ shortly after he had issued in 1670 his primary work on security: “*Bedencken welchergestalt Securitas publica interna et externa und Status praesens im Reich ietzigen Umständen nach auf Festen Fuß zu stellen*” (Thoughts on how public internal and external security and the current state of affairs can be put on solid ground in the empire according to present conditions).⁴⁶ From the start of the 18th century onwards, nearly all authorities and rulers in the Old Reich issued police ordinances prescribing fire insurances, offices and associations, as well as often regulating nearly all matters of “*Feuerpolicey*”, from fire services to building regulations.⁴⁷

Insurances evolved into an important instrument of social security and *gute Policey*, which was expanded to include more hazards: the fire insurances were sometimes extended to damages by storms or floods. Beyond that, some rulers in the 18th century initiated social insurances for widows and orphans of office-holders, issuing ordinances and statutes regulating the *Pfarr-Wittwen-Cassa*, *Wittwen-Casse vor die weltliche Dienerschaft*, *Wittwen- und Waysen-Kassen Institut* (parsons’ widows’ fund, secular servants’ widow’s fund, institute of widows’ and orphans’ funds), etc.⁴⁸ Whilst earlier charitable foundations supporting widows and orphans used as their argument the prevention of divine punishment, the new insurances and funds of the 18th century aimed explicitly at the protection (“*Absicherung*”) of specific groups exposed to poverty, such as for instance the ordinance establishing the “*Wittwen-Fiskus*” in Württemberg in 1700.⁴⁹ Although earlier efforts at “private” insurances by guilds, trad-

ten [...], 2 vol. (Köln 1772/739), vol. 2, 148 (Nr. 346); Kurköln 588, Verordnung, 14.08.1750, cit. Vollständige Sammlung II, 148f. (Nr. 347); Kurköln 848, Brand-Societäts Ordnung, 20.06.1773.

⁴⁵ Printed in: Knobloch et al. 2000.

⁴⁶ Printed in: Guhrauer 1838, 151-255; compare Schrimm-Heins 1990, 240-241.

⁴⁷ The territories and cities covered in Härter and Stolleis 1996-2010, issued nearly 200 ordinances dealing with fire insurances.

⁴⁸ Pfalz-Zweibrücken 681, Verordnung, 13.02.1730; Pfalz-Zweibrücken 1218, Verordnung, 24.12.1749; Kurtrier 1552, Ordnung, 26.07.1779. Compare in general Härter 2009, passim, especially 63.

⁴⁹ Württemberg 1495, Verordnung, 09.03.1700; compare further the outline of the development of the orphans’ and widows’ charity in Württemberg from the 16th century onwards in Württemberg 2763, Witwenkassenordnung, 1739: *Gründliche Nachrichten von dem Württembergischen Fisco Charitativo, wie solcher [...] Vor arme Pfarrers- und Präceptors-Wittwen aufgerichtet [...]*, 1739.

ing companies etc. can easily be discerned,⁵⁰ the insurances embedded in the concept of *gute Policey* implied a new dimension: they were often obligatory/statutory, state-based, regulated in police ordinances, and in principal aimed at future prevention and the whole of society (or the concerned target group of social security). As the *Herzoglich-Württembergische allgemeine Brand-Schadens-Versicherungs-Ordnung* expressed it: because a voluntary association would fail to cover the possible extent of fire damages, it was necessary to establish the *allgemeine Brand-Schadens-Versicherungs-Anstalt* (general fire damage insurance institution) to which every house owner was obligated to contribute according to the taxation of his property; for this could be the only general remedy to ensure not only that aggrieved parties would be able to rebuild their ruined houses immediately, but that “*Häuser und Gebäude [...] in Zukunft ein sicheres Capital werden*” (houses and buildings should become a safe capital in future).⁵¹

The increase of police ordinances dealing with matters of human security in the second half of the 18th century is clearly connected to the cameralist economic and social policies of the Early Modern state, which aimed at the increase of revenues and the amplification of power. In this regard social security and *gute Policey* interlocked closely with the reform politics of so-called enlightened absolutism. Furthermore, the amalgamation of *Policeygesetzgebung* as administrative law and the establishment of concrete state-based institutions constituted the inception of social law and a primarily state-based social policy (*staatliche Sozialpolitik*), which differed from traditional charity based on the Church, the guilds or traditional communities.⁵²

V. Conclusion: The Production of Security through Administration and Communication

The expansion of social/human as well as internal/public security within the framework of *gute Policey* indicates an intensification of administration, government and social control which could certainly be interpreted as state-building. Security and *gute Policey* at least provided an effective justification and legitimization for establishing and expanding more state-based, professional measures and institutions and for transferring security tasks from traditional services and institutions such as local communities, the Church, guilds, local courts, rural militia etc. Because of its institutional weakness, the Early Modern state depended on intermediate powers and traditional social commu-

⁵⁰ See Schewe 2000; Zedtwitz 2000.

⁵¹ Württemberg 3587, Feuerversicherungsordnung, 16.01.1773, cited in Reyscher, *Sammlung*, vol. 14, 871-905, 875.

⁵² Stolleis 2001; Schmid 1981; Reidegeld 2006.

nities to perform security services and even fostered participation with regard to patrolling, guard duties, informing/denunciation and the enforcement of police ordinances in general. But this proved to be difficult with regard to the intensification of security policies in the 18th century and led to increasing problems and conflicts with reluctant or inapt subjects who could make productive use of security arguments and police ordinances by claiming that security services would interfere with their daily labour for mere subsistence (and would also decrease productiveness and taxes). With regard to threats to internal/public security – especially armed gangs, and robber bands – subjects as well as local officials were prone to exaggerate the potential number and dangerousness in order to argue that they could not cope and perform effectively in the face of such a menace.

In a way, such arguments coincided with the perception of the authorities, who considered traditional services as ineffective in maintaining security and endeavoured to expand state-based security measures and institutions, albeit without having the necessary means and funds and therefore often merely experimenting with more modern and/or traditional institutions and measures (or a mixture of both) such as patrols, visitations, inspections, passport control, or tracing (using wanted lists) performed by peasants, rural militia, military forces, or new police forces (such as hussars, dragoons, *Landjäger*, “*Hatschiere*”, *Landreiter*, *Landleutnants*, *Policeykommissare*).⁵³ Similar problems and developments can be observed in the sectors of human/social security in which *Armenpolicy* (poor relief), *Gesundheitspolicy* (health-care), *Baupolicy* (building regulations) or *Feuerpolicy* remained embedded within local communities, intermediary powers, the Church, the guilds, and families on the one hand, while on the other hand new state-based institutions and provisions were established in the course of the 18th century (as depicted above).

In this respect *gute Policy* contributed to the establishment of modern security agencies and instruments as well as to the incorporation of traditional local institutions into the emerging modern security policy, which altogether could be interpreted as the expansion of formal social control and the nationalization (*Verstaatlichung*) of security. Apart from the recent controversial debate on the question of the success and effectiveness of Early Modern security policy and norm enforcement, which we cannot discuss here in detail,⁵⁴ it seems indubitable that this peculiar amalgamation – and in a way, the deficiencies – also stimulated the differentiation of security instruments and the discourses on security. On the one hand the Early Modern state could demonstrate, with its administrative and policing activities in the realm of *gute Policy*, its ability to establish and maintain public security and to protect its subjects; but on the other hand the latter could use “security” (or insecurity) as an argument to

⁵³ Nitschke 1990; Holenstein et al. 2002a.

⁵⁴ Härter 1999b; Stolleis 2000; Landwehr 2000a.

avoid traditional services or to claim governmental benefits and security provisions. In this respect the growing importance of security in the framework of *gute Policey* was by no means solely the result of intended state-building and modernization, but rather the product of the diverse problems with the administration of security and *gute Policey* as well as the corresponding communications and discourses.

It may be true that the prevention and control of hazards, threats, dangers, risks, catastrophes, crime and their effects indicates the extent of security, but in the Early Modern period such a thing was nearly impossible to achieve. Moreover, the state of “security” is difficult to measure or to determine and besides such a relatively technical approach it could well be argued that security is rather a complex product of the relationship between power, mentalities, and communication.⁵⁵ Based on such an approach, we may emphasize the impact of *gute Policey* on the increasing importance of security and the forming of a distinct security policy.

Although police ordinances were enacted by the authorities, they can be considered as part of the communication process or legal/administrative discourse on order, welfare and security between different actors: the authorities, the legislators, the rulers, the jurists, the officials, the local administration, intermediary powers, local office-holders, social communities, and subjects; though by no means equal participants of mutual interaction, *gute Policey* nevertheless provided options to communicate about security. The media of this discourse/communication on *gute Policey* and security can be systematized as the *Policeygesetze* themselves; the corresponding official or semi-official publications (ranging from wanted lists to operating instructions); the reports, lists, charts and statistics of local officials and office-holders on the enforcement, implementation and administration of *gute Policey*; the supplications, dispensations and complaints of subjects; the writings and treatises of the *Policeywissenschaft*, and popular media such as illustrated broadsheets or pamphlets dealing with catastrophes, crimes, hazards etc. The array of communication ranged from the genesis of police norms and the law-making procedure via the process of implementation and enforcement of the ordinances to reactions and complaints.⁵⁶

Already the promulgation of police ordinances generated a wider public sphere, for they had to be brought to the knowledge of the *Gemeiner Mann* (common man), who should be able to understand the regulations, obey them and help to enforce them. In addition, governments and administrations demanded responses and information on the implementation, transgressions and the effect of ordinances and measures as well as on potential threats, hazards

⁵⁵ Compare in general on the “nature” of security: Foucault 2004; Sofsky 2005.

⁵⁶ Holenstein 2000; Schilling 2000; Holenstein 2005; Holenstein 2002; Härter 2002; Härter 2005a, 189-241; Härter et al. 2010.

and risks; the governments of Baden or Kurmainz ordered the local official to report periodically on all “*Merck- und Nachrichtswürdigen Begebenheiten*” (interesting and newsworthy events) as well as on a multitude of issues concerning security and *gute Policey*.⁵⁷ And the addressees of ordinances reacted and communicated actively on matters of *Policey* and security via supplications, petitions or complaints, informing governments and administrations, sometimes articulating their concerns and interests in security and regulations as well as negotiating for dispensations, concerning for instance security services that they had to perform. Precisely because local communities and subjects were essentially integrated into security measures and services, they could make “productive use” of police ordinances and the security argument.

Within this increasing communication process, security was shaped, negotiated, demanded, rejected, and conceived with regard to *gute Policey* as well as to common fears and popular images. This included exaggeration and even hysteria: the fear of the black death in the twenties and seventies of the 18th century, the food crises of 1770-1773 or the robber band of Schinderhannes (reportedly consisting of hundreds of robbers, militarily organized, and terrorizing entire towns) are only a few examples of overstated hazards which did, however, lead to a wave of ordinances as well as to concrete administrative activities. In this respect, *gute Policey* as a communicative process and administrative discourse not only produced security but also exaggerated and even devised images of threats and hazards, influenced the perception of them and therefore could also produce insecurity.⁵⁸

On the other hand, we should not underestimate the crucial function of *gute Policey* in developing and producing security on a symbolic as well as a practical level. *Policeygesetzgebung* implied a normative legal order characterized ultimately by the stability, predictability and calculability of law, an essential precondition and instrument of modern security – internal/public as well as social/human. Police ordinances initially defined security threats and hazards as well as the institutions, instruments and provisions of the responding security policy in legal terms, reacting to socioeconomic developments and integrating public discourses, but also according to social and economic attributes. This included the labelling and criminalization of “dangerous groups” which threatened internal/public security, as well as the stipulation of inclusion-exclusion criteria concerning the beneficiaries of security: native or foreign, wealthy or poor, able or unable to work, genuinely indigent or cheating, accidents/diseases which merited support or not, etc. Within the framework of *gute Policey* only the propertied, industrious, productive, disciplined and “useful” subject should benefit from social/human security, whereas masterless vagrants and marginal

⁵⁷ Kurmainz 1066, Verordnung, 13.02.1753; Holenstein 2003, 258-281.

⁵⁸ For a short summary of the debate on these issues, see the introduction to: Härter et al. 2010, 1-23.

groups were considered as external threat to internal security. In this regard *gute Policy* formed a state-based security policy and contributed to the juridification (*Verrechtlichung*) and nationalization (*Verstaatlichung*) of security, but also induced in the long run the fundamental separation of internal security (*innere Sicherheit*) on the one hand and welfare policy (*Sozialpolitik*) on the other hand. Whether the latter could or should be reintegrated as “Human Security” in an overall historical concept of security remains an open and controversial question.

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