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OFFENCES AGAINST FOREST REGULATIONS

IN EARLY MODERN TIMES IN THE CANTON OF ZURICH: DEVIANT BEHAVIOUR OR A SUBLIMATION OF CONFLICT? INTENSITY LAND USE AREAS

Introduction

On 9 June 1779 the forester of Winterthur discovered a hundred freshly hewn rootstocks in the forest of Tössrain, near the town of Winterthur⁴³. Owing to their thickness the forester thought it likely that they had been cut for use as beanpoles (“Erbsstängeli”). He reported his observation to the council of Winterthur, the pertinent authority. The following inquiry revealed that Rudolf Kläui and Christof Bretscher from Töss, a neighbouring village, had been seen with a lot of beanpoles. They were duly accused of theft of wood, which was, of course, an offence against forest regulations. The defendants denied the theft and they were sent for further interrogation to Kyburg⁴⁴. As we can see in a letter from the council of Winterthur to the bailiff at Kyburg, the council had hoped that the accused would confess to the charge of theft.

Records concerning wood theft from the forests of the sovereign territory of Zurich in the 18th century are not difficult to find. Examples of this type of transgression, which

was called *Frevel* in Zurich and which roughly translates as an offence against forest regulations, are to be found in numerous documents that have been studied. *Frevel* was the term applied to all minor delinquencies pertaining to the forest. It covered such acts as the illegal gathering fallen wood, the grazing livestock and the theft of wood, all of which, therefore, will be discussed in the following.

Before we enter into a discussion of *Frevel* we would like to make some remarks on the area of historical research. One of the first studies on the history of criminality in Germany is Dirk Balsuis inquiry⁴⁵ in which he discusses the interaction between civil society and criminality. This work is very helpful regarding the theme *Frevel*, especially the chapter about property and theft where Blasius also addresses the issue of wood theft. He describes a new law of 1821, which curtailed the accustomed rights of the population – especially the rural population – to use the forests, for example to gather firewood.

Josef Mooser’s studies were constitutive for the German historiography on the subject of

⁴³ Records of court proceedings of the bailiwick Kyburg StAZH (Staatsarchiv Zürich), B VII 21.90 p. 81 (14.6.1779).

⁴⁴ Castle Kyburg, near Winterthur, was the residence of the bailiff of Zurich.

⁴⁵ Blasius Dirk, *Bürgerliche Gesellschaft und Kriminalität. Zur Sozialgeschichte Preußens im Vormärz* (Kritische Studien zur Geschichtswissenschaft, 22), Göttingen 1976.

wood theft⁴⁶. In his view, wood theft was not only a form of delinquency or criminality but also a social conflict. The latter was manifest in conflict between landlords and peasants, and as a protest against the modernisation of agriculture. Wood theft was also a result of poverty. Using methods of social history Mooser interprets wood theft as a class struggle: By taking wood from the forest, the “lower classes” were fighting for their traditional rights to use the forest⁴⁷.

Bernd Grewe took up Mooser’s concept and expanded it with the question of whether offences against forest regulations were the result of overexploitation of forests and the scarcity of wood⁴⁸. Grewe’s extension of the concept is important in the context of the analysis of the scarcity of resources in the late 18th and at the beginning of the 19th century. While we have only rare statistical material for the period in question to prove the scarcities, we can use the known cases of wood theft as a measure. In the estimation of Uwe Schmidt it was the increasing scarcity of timber combined with the rising number of offences

that made new laws necessary⁴⁹. A strong forest police force was necessary to enforce the new regulations. Both studies are based on the assumption that the increase in offences indicates a scarcity of resources. What neither study takes into account is that changes in the law might have arisen for social or political reasons. To ignore dominion is a form of positivism of law.

Infringements of forest regulations were a part of criminality, which means the breaking codified laws. In medieval and early modern times regulations did not have necessarily written down in a codex or a corpus juris. Consequently the term “criminality” signifies in the *ancien régime* offending the regulations of the authorities. In the territory of Zurich it was particularly the regulation of the council of Zurich. Criminality is a special case of deviance, which means an infringement of the norms of the society⁵⁰. “Criminality” and “deviance” can only be measured against an existing “norm”. As the theory of subculture showed in the first half of 20th century, however, the norms of any given society or the authorities are not always identical with the norms of specific groups within that society. Not all social groups or individuals

⁴⁶ Mooser Josef, Holzdiebstahl und sozialer Konflikt, in: Beiträge zur Historischen Sozialkunde, 11, 1981; Mooser Josef, “Furcht bewahrt das Holz”. Holzdiebstahl und sozialer Konflikt in der ländlichen Gesellschaft 1800–1850 an westfälischen Beispielen, in: Räuber, Volk und Obrigkeit. Studien zur Geschichte der Kriminalität in Deutschland seit dem 18. Jahrhundert, hrsg. v. Heinz Reif, Frankfurt 1984, S. 43–100.

⁴⁷ See following chapter “Conflicts between authorities and village people”.

⁴⁸ Grewe Bernd-Stefan, Darum treibt hier Not und Verzweiflung zum Holzfrevel. Ein Beitrag zur Sozial-, Wirtschafts- und Umweltgeschichte der Pfalz 1816-1860, in: Mitteilungen des Historischen Vereins der Pfalz, 94, 1996, S. 271–295.

⁴⁹ Schmidt Uwe Eduard, Waldfrevel contra staatliche Interessen. Die sozialgeschichtliche Bedeutung des Waldes im 18. und 19. Jahrhundert, in: Der Bürger im Staat (Der deutsche Wald), 51, 2001, S. 17–23.

⁵⁰ Hürlimann Katja, Soziale Beziehungen im Dorf. Aspekte dörflicher Soziabilität in den Landvogteien Greifensee und Kyburg, Zürich 2000, S. 66–70; Lamnek Siegfried, Theorien abweichenden Verhaltens, München 1993; Lamnek Siegfried, Neue Theorien abweichenden Verhaltens, München 1994.

follow the same norms, values and symbols⁵¹. In early modern times we find that phenomenon in the context of offences against forest regulations as well. Acts of wood theft or other infringements of forest regulations were often perceived, by those who committed the acts, to be their right. Bearing this in mind, we can explore the specific norms of social groups to analyze offences and, above all, the reasons for them.

In the *Rheinische Zeitung* Karl Marx described the debates on the law on thefts of wood in 1842. “Holzfrevel” (offences against forest regulations) should now be called “Holzdiebstahl” (theft of wood)⁵². Infringement of forest regulations was only a minor offence whereas theft was an indictable offence. Karl Marx explained a phenomenon that in modern criminal theory is called “labelling approach”. According to the theory, criminality does not exist per se, but is the result of process of attribution⁵³.

In the following we turn our attention to infringements of forest regulations in the sovereign territory of Zurich in late medieval times and under the *ancien régime* from a point of view of environmental history and of historical criminology. We hope to show that the impact of the methods of the historical criminology can furnish new interpretations of delinquency in the forest. We advance the thesis that *Frevel* was a way to solve other

forms of conflict, and not only those between village people and the authorities in the city. The forest was also sometimes an object and a space of conflict. The aim of this text is to show the daily interactions on the basis of conflicts in the forest and conflicts on the use of forests. Exploring the records of the courts we will study the culture of the peasant society⁵⁴.

The term “Frevel”

Under the *ancien régime* the German word, *Frevel* meaning “offences against forest regulations” had four different meanings. It covered a range of infringements from audacious acts (1), wantonness or unauthorised use (2), minor delinquencies or breeches of the law (3) and, in certain regions; the term was also used to describe the fine imposed for this minor delinquency (4)⁵⁵. The third meaning is important in the context of forest history and theft of wood a very frequently occurring offence against forest regulations. According to the law governing the use of the forest in Rheinfelden (Holzeinung) from the year 1530 we can distinguish several varieties of the transgression⁵⁶. For example, a thief

⁵¹ For the theory of subculture see Lamnek, *Theorien*, 1993, p. 142–216.

⁵² Marx Karl, *Debatten über das Holzdiebstahlggesetz*, in: *Werke*, Bd. 1, hrsg. v. Karl Marx /Friedrich Engels, Berlin 1961, S. 109–147.

⁵³ Lamnek, *Theorien*, 1993, p. 216–236.

⁵⁴ The method is quite similar to Schindler Norbert, *Wilderer im Zeitalter der Französischen Revolution. Ein Kapitel alpiner Sozialgeschichte*, München 2001.

⁵⁵ Cf. Schweizerisches Idiotikon. Wörterbuch der schweizerdeutschen Sprache (dictionary of Swiss German), vol. 1, Frauenfeld 1885, column 1287–1288.

⁵⁶ “Item, der ein türen boum ane est howet, der git v S. d, und von einem grienen boum x schilling. Item, wer ein eychen abhouwet, derselbig git ein pfund d. Item, wer einen huffen holtz dem andern zerpricht, derselb git ein pfund d. Item, wer ein

who stole timber during the night hours was fined one pound, but daytime theft was punished with a fine of “only” ten shillings⁵⁷. The fine for cutting a branch from a dead tree was five shillings, for a green tree, ten shillings. It was even more expensive to take wood from oak trees. The most severe punishment was meted out to those who took already hewn wood, i.e. instead of cutting the wood themselves. In Rheinfeldern this category were fined one pound and banned from the village or community for four weeks. We see a great difference in the severity of the punishment meted out for the theft of hewn timber if we compare Rheinfeldern with Westfalen. In Westfalen in the 19th century the theft of hewn timber was treated as an ordinary theft, which carried the death penalty. The death penalty for theft was not unknown in Switzerland in the 18th century but theft of wood was more often treated as an offence, which carried a more lenient penalty⁵⁸.

reiffstangen abhauwet, derselb git fünf schilling. Item, wer ein burde gert houwet, derselbig git drey schilling. Item, welcher ein purde limpasst [Lindenbast] schnid, derselb git zehen schilling. Item, wer dem andern ein zun zerpricht und hinweg tregt, derselbig git ein pfund d. Item, wer dem andern zwig ussgrabt oder verwüstet, der gibt ein pfund. Item, welcher dem andern holtz hinweg führt, es sye by tag oder by nacht, derselb git ein pfund und vier wuchen vür die statt.” cit. Wullschleger Erwin, Forstliche Erlasse der Obrigkeit im ehemals vorderösterreichischen Fricktal. Ein Beitrag zur aargauischen Forstgeschichte (Bericht der Eidgenössischen Anstalt für das forstliche Versuchswesen, 323), Birmensdorf 1990, p. 459.

⁵⁷ In the 18th century Switzerland there were twenty shillings in one pound.

⁵⁸ For Westfaalen see Mooser, Holzdiebstahl, 1984, p. 43–45.

But thefts were not the only kind of offence against forest regulations. All damage to the forest had to be regarded as infringements. The regime of Weiach (Holzordnung) in 1796⁵⁹ enumerates the forbidden forms of forest use. In the introduction of the regime we find the reasons for the new restriction: The village people cause damage to the forest. They cut and collected leaves or grass and, in the estimation of the regime, such acts were very detrimental to the forest⁶⁰. The agricultural use of the forest to graze livestock was very often seen as damaging to the forest in the 18th century, especially with regard to timber production.

Strangely enough, the term *Frevel* already existed in medieval times, at a time therefore where there was no regulation of the forest by the authorities. At that time it was mainly employed to describe offences committed against the written or unwritten rules of each village or community. Use of the forest was regulated according to the commonly agreed rules, the so-called “Dorffoffnung”. For example in Bliggensdorf the common forest was divided into four parts, each of which served a specific function. In the first, called “*Schönbül*” all use of wood was banned. The wood in the second part, the “*Spilbül*” was reserved for the production of fences and barrels, and in the third, the “*Bann*” the use of birches was only allowed for the production of

⁵⁹ StAZH A 199.7 (Fasz. 2454) (18.3.1796).

⁶⁰ The regime was necessary, because “viele dortige Bürger durch frevlen, schneiden, lauben, grasen und dergleichen dem Holz äusserst schädlichen handlungen selbige [...] in zusehenden Abgang bringen...”

besoms, or drawbars for sledges or strings. Wood from the fourth section, the “Bachtal”, was reserved for the manufacture of sledges or carts.⁶¹ Other infringements surrounding the forest were offences committed against hunting laws. In the documents available for Germany one sees that poaching was taken quite seriously, whereas we find hardly any evidence of this offence in Switzerland in the early modern times.⁶² Hunting regulations were very diverse in Switzerland’s autonomous regions but we can deduce that, very often, peasants had the right to hunt in the forest, although they sometimes had to pay a fee to do so.⁶³ As the laws concerning hunting play only a minor role, we will limit our discussion to offences committed against forest regulations with regard to the wood and trees.

The forest as an area of social interaction

We will use an example from the 16th century⁶⁴ to discuss the aspect of the forest as

a place of social action. The two villages of Dorlikon⁶⁵ and Altikon had co-possession of a forest called Schlatt. The border separating the two villages passed through the forest. Three documents are extant that document a conflict about grazing pigs that seems to have lasted, on and off, between 1499 and 1511. According to the claims of the people of Altikon in the year 1499 the pigs from Dorlikon trespassed into their part of the forest. The people of Dorlikon argued that it was not their fault that the pigs escaped because the fence was broken and that the people of Altikon should repair the fence that marked the boundary. The court at Kyburg adjudicated that the function of a fence was only to keep out horses and cows and not pigs, which had to be herded.⁶⁶ Already in the year 1501, the villages went to court again. The foresters of Altikon testified that they had again discovered the pigs of Dorlikon in the forest.⁶⁷ Ten years later, in 1511, a complaint was brought by one Junker Hans from Schönau⁶⁸, who claimed once more that the people of Dorlikon had been herding their pigs in the common forest of Altikon and not in their own forest.⁶⁹ On each occasion the people of Dorlikon were fined for trespassing. Our research into the court archives was

⁶¹ See, for example, the “Korporationssatzungen” from Blickensdorf (near Zug), in: Gruber Eugen, Die Rechtsquellen des Kantons Zug. Band 2: Stadt Zug und ihre Vogteien Äußeres Amt (Sammlung Schweizerischer Rechtsquellen, Abt. VIII, Die Rechtsquellen des Kantons Zug), Aarau 1972, p. 1014–1018.

⁶² See Knoll Martin, Umwelt – Herrschaft – Gesellschaft. Die landesherrliche Jagd Kurbayerns im 18. Jahrhundert (Studien zur neueren Geschichte, 4), St. Katharinen 2004, p. 293–340 or Schindler, Wilderer, 2001.

⁶³ See e.g. Lutz Albert, Die Zürcher Jagd. Eine Geschichte des Jagdwesens im Kanton Zürich, Zürich 1963.

⁶⁴ See Hürlimann Katja, Erinnern und aushandeln. Grenzsicherung in den Dörfern im Zürcher Untertanengebiet um 1500, in: Wirtschaft und

Herrschaft. Beiträge zur ländlichen Gesellschaft in der östlichen Schweiz (1200–1800), Zürich 1999, S. 163–186.

⁶⁵ This is Thalheim today.

⁶⁶ Cf. StAZH, Urkunden Stadt und Landschaft Zürich, C I no. 2587 (23.10.1499).

⁶⁷ StAZH, Urkunden Stadt und Landschaft Zürich, C I no. 2588 (18.11.1501).

⁶⁸ A Junker is a donzel.

⁶⁹ StAZH, Akten Vogtei Altikon, A 106 no 5 (25.9.1511).

discontinued at this point but it is quite possible that the people of Dorlikon continued to offend and that the conflict did not end here.

The record of the year 1501 is of particular interest.⁷⁰ According to this document, it seems probable that the conflict was not primarily an argument about the use of the forest, but more a history of mutual provocation. In court a pig herder from Dorlikon explained that they could not drive the pigs back because they were obstructed from doing this by the foresters. The foresters, on the other hand, had quite a different story to tell and stated that the pig herders from Dorlikon had not even attempted to drive the pigs back until they saw the forester. More important than the question of who was telling the truth is the analysis of the arguments advanced by either side. The fact that the pigs trespassed into the forest of the neighbours was not discussed and seems not to have been in dispute. The herders' explanation appears to be weak, but what is interesting is that the conflict came to court on numerous occasions. It looks strongly as if each party tried to provoke the other, which means that the forest was used as a substitute battlefield to wage an unrelated dispute. The people from Dorlikon drove their pigs into the neighbouring forest or at least they did nothing to prevent them crossing the border. Subsequently, the neighbours prevented the herders from driving the pigs back, preferring

to take them to court. The issue of grazing the pigs seems to be a secondary conflict, comparable to insults, which regularly occurred in medieval villages⁷¹. *Frevel* was a form of solving conflicts in the villages in the sovereign territory in late medieval times. While we can no longer uncover the real reason for the conflict the aim of the delinquent was not gain profit but a means of provoking the population of the neighbouring village.

Conflicts about forests

Conflicts between authorities and village people

Offences against forest regulations were a form of crime or deviancy, but they can also be a conflict between subjects and the authority. The people in the sovereign territory deliberately infringed the forest laws to show the authorities that the use of the forests was under the control of village and that they were not prepared to accept the proclaimed regulations. The functionaries, who had to enforce the authorities' rules, were themselves generally inhabitants of the village. This naturally led to additional conflict between the functionaries and the village community.⁷² Such conflicts can also be interpreted as conflicts between villages and the authority in town.

⁷⁰ StAZH, Urkunden Stadt und Landschaft Zürich, C I no. 2588 (18.11.1501).

⁷¹ For insults, see Hürlimann, *Soziale Beziehungen*, 2000, p. 100–116.

⁷² See also the example of the deputy bailiffs in the territory of Zurich who failed to penalise illegal innkeepers. Hürlimann, *Soziale Beziehungen*, 2000, p. 260–264.

We would like to take Weiach as an example. Weiach is a village in the north of Canton Zurich, not far from the Rhine River, but quite a long way from Zurich. On 31 March 1797 24 citizens of Weiach were accused of cutting and gathering heather.⁷³ We know from the economic tables of 1774 that Weiach⁷⁴ had 472 inhabitants. That means that around five per cent of the village population was indicted for offences against the forest regulations.⁷⁵ The 24 accused were fined between ten and twenty pounds, depending on the number of times they had offended. Some of the accused, however, were punished more severely than others. The wife of an ex-officer (“Alt-Weibel”) and her daughter, for example, had to pay a fine of 30 pounds to the court and 5 extra pounds to the forester. Above all, they were made to apologise to the forester and to the “Stillstand”, which was the instance in the village responsible for moral concerns.⁷⁶ The reason for their more severe penalty was that they had insulted the honour of the forester by calling him a dog and a rogue⁷⁷.

Heinrich Bersinger, the village smith, was penalized more severely still. He had to pay 10 pounds, was given ten lashes in the village square, witnessed by the community, and was sent to prison for a day. His punishment was a mixture of fine, honour punishment and corporal punishment. He was punished not only because of his offences against forest regulations, but also because of his disrespectful answers to the judge and his attempts to incite a rebellion in the village⁷⁸. We perceive in the records that in *Weiach* there are quite a lot of people who insulted the forester, whom they considered a traitor, but also because he was seen to symbolize the authorities. As the former forester Felix Schurter reported, he was not only verbally assaulted, but the village people also got violent and destroyed the windows of his house⁷⁹. Similar conflicts also broke out in Weinfeld, where the local forester stopped his nightly controls because he was afraid he

⁷³ StAZH, Urteilsprotokoll der Obervogtei Neuamt, B VII 28.23, no. 13–16 (31.03.1797)

⁷⁴ StAZH, Statistische Tabellen über Haushaltungen etc. der Gemeinden im unteren Neuamt (1771 und 1774), B IX 5 (5.2.1774).

⁷⁵ They were accused of “frevlen in hölzeren, besonders wegen gheiden”. StAZH, Urteilsprotokoll der Obervogtei Neuamt, B VII 28.23, p. 13–16 (31.3.1797), here p. 13.

⁷⁶ “so ward darauf erkannt, sie solle 30 lb Buß, und 5 lb dem Forster bezahlen, auch letzteren um Verzeihung bitten und entschlagen, so dann könfftigen Sonntag vor den Stillstand gestellt werden, und einen nachdenklichen Zuspruch erhalten” StAZH B VII 28.23 (31.3.1797) p. 15.

⁷⁷ “und überdiß die Frau den Forster einen Hund und Schelm gescholten” StAZH B VII 28.23 (31.3.1797) p. 15.

⁷⁸ “Heinrich Bersinger, Isenschmids, [...] und der selbst bey allen Anlaasen die Leüthe aufzuwiegeln sucht; wurde dahin verfällt, daß er 10 lb obrigkeitl. Buß bezahlen und so dann wegen seinen verschiedenen Vergehungen, besonders aber wegen seiner heütigen frechen und respektwidrigen Aufführung auf 24 Stund in den Ölenbach gesezt und mit 10 Streichen an der Stud mit der Sulhe gezüchtigt werden solle.” StAZH B VII 28.23 (31.3.1797) p. 14.

⁷⁹ “Altforster Felix Schurter erzählte, daß er 2 J. Forster gewesen, und gesucht, seine Pflicht zuerfüllen, den Schaden in Holz und Feld zuwenden, es seÿen ihm hierauf die Fenster eingeschlagen worden, wovon er aber die Thäter nicht wiße, durch diesen u. andere solche Beleidigungen habe er sich endlich gezwungen gesehen, den Posten aufzugeben.” StAZH B VII 28.22 (18.3.1796), p. 140.

would be attacked by thieves in the wood⁸⁰. The position of the forester was a difficult one in the village. On the one hand, he had to enforce forest regulations passed by the authorities and it was his duty to fine the misdemeanours carried out by the village people in the forests. On the other hand, he lived amongst them and they saw his work as a form of betrayal. If he fulfilled his duties conscientiously the forester lived in a permanent state of conflict with the population of the village. The deputy bailiff (“Untervogt”) explained that in Weiach the old forester was removed for doing his duty.⁸¹ For the bailiff it was clear the reason for the election of a new forester was because a majority of the population broke forest regulations.

The example of Weiach nicely illustrates four areas of conflict. First, an offence against the forest regulation was an attack against the authority. This was the main interpretation the authorities in Zurich placed on the reason for offences even though for some of the offenders the main purpose was to provoke.

⁸⁰ Bürgerarchiv Weinfelden B II 5 p. 93 (25.11.1756): “und wann er beÿ nacht zeit sich nicht getrauwet allein in daß holtz zu gehen, so solle von seiten der vorgesetzten einen mann mitgegeben werden auch solle er samt seinem sohn geflißener sein ...”

⁸¹ “Da von dem Untervogt zu Weÿach im Namen sämtlicher Vorgesetzten allda über das höchstschädliche und alle Schranken übersteigende Freflen und Verderben der dortigen Gemeind- und Privathölzler die stärksten Klagen geführt worden, zudem Ende auch getrachtet worden, den alten Forster, der seinen Dienst meist mit aller Treue und zum allgemeinen Nutzen versehen, beÿzubehalten, ohngeachtet von der Gemeind, durch das Mehr, wozu eben die Frefler das meiste Übergewicht gegeben, ein neuer Forster erwählt worden, ...” StAZH B VII 28.22, p. 139 (18.03.1796)

The third field of conflict included conflicts within the villages. Most of the time these were conflicts between the foresters, who, as functionaries of the authorities, had to fine offences against forest regulations, and the village people who could not understand how “one of their own” could punish them in the name of the authorities. The latter area of conflict arose from the fact that the offenders did not (or did not want to) understand that they were doing something wrong and illegal. Acts such as cutting heather and grazing the livestock in the forest had been the right of the villagers for hundreds of years and was still widely considered to be a rightful, everyday use of forest⁸².

Wood theft resulting from poverty

Naturally, forest offences were not committed solely by people defending their ancient rights of usage in the forests around Zurich. For a very large proportion of the population it would seem that poverty was one of the major reasons for wood theft. Cleophea Attinger from Dübendorf, for example, justified her thievery in the forest of Schwamendingen⁸³ with her poverty⁸⁴. There are many records

⁸² See Mooser, Holzdiebstahl, 1984.

⁸³ This forest is just outside the border of the commune in the direction of Zurich.

⁸⁴ The summary of the court case said: “Daß die Beklagten beschuldigt und geständig sind, in der Schwamendinger Waldung unbefugter Weise geholzet, die Attingerin über das auch noch Laub gesammelt zu haben, zur Entschuldigung zwar ihre Armuth verschutzen, indessen aber nicht in Abrede stellen können, schon früher wegen ähnlichen Frevle theils gewarndt, theils zur Verantwortung gezogen worden zu seÿn und daher nach Gebühr bestraft zu werden verdienen.”

that prove this to have been a form of defence often used by the accused at the end of the 18th and well into the 19th century to explain their delinquency in the forests⁸⁵. In some villages almost half of the population received sustenance from the state⁸⁶. In the same period we find an increasing number of records that tell of offences against forest regulations. A direct connection between poverty and wood theft therefore seems conclusive. Nevertheless, we would like to put forward other explanations for the thefts.

First, we must be aware that in court the accused used those arguments in their defence that they imagined would be most helpful to them. In other words, the accused, even when they did not deny the theft, did not give always the true reason for their actions in their testimonies. In her recent analysis of early modern court proceedings, Natalie Zemon Davis writes about the “fiction in the archives”. The accused explained their delinquency in the way they thought would please the judges in the hope of receiving a milder punishment.⁸⁷ They did not lie outright or categorically deny the charge, but they left

out some details or stressed particular aspects of the matter. In addition, it must be remembered that court proceedings in early modern times were not verbatim protocols, but summaries of trials written by a clerk of the court. It is evident that the clerk wrote down the important facts for the verdict. The statements from the accused, while of great interest for social history, were not considered important to the trial, and were not generally included in the documents. To return to the example of Cleophea Attinger, perhaps she took the wood from the forest of Schwamendingen, because it was closer to her home. Wood was often stolen simply because forests where wood could be legally removed were too far away from dwellings.

Secondly, from early modern times until the mid-19th century, when a federal constitution was adopted, the political system in Switzerland underwent very radical changes. The judiciary was reorganised and given far more powers over the lives of the rural population. The consequence of these changes was that more thefts, as well as infringements of forest regulations, were punished⁸⁸. To sum up, we do not want to deny that many instances of wood theft occurred for reasons of poverty, but it seems unlikely that, in region of Zurich, thefts of wood increased as strongly as the increase in court records might lead one to believe. Wood

StAZH, Oberamtsgericht Bezirk Zürich, K III 142.2, No. 40 (Beil. a) (23.02.1823)

⁸⁵ See the study of Blasius, who statistically proves the increase in Prussia. Blasius, *Bürgerliche Gesellschaft*, 1976. See also Schmidt, *Waldfrevel*, 2001, p. 21.

⁸⁶ See Fritzsche Bruno / Lemmenmeier Max, *Die revolutionäre Umgestaltung von Wirtschaft, Gesellschaft und Staat 1780–1870*, in: *Geschichte des Kantons Zürich*, Bd. 3, hrsg. v. Niklaus Flüeler (†) / Marianne Flüeler, Zürich 1994, S. 20–157, here p. 54–81.

⁸⁷ See Davis Natalie Zemon, *Fiction in the Archives. Pardon Tales and Their Tellers in Sixteenth-Century France*, Stanford 1987.

⁸⁸ Gut Franz, *Die Übeltat und Ihre Wahrheit. Straftäter und Strafverfolgung vom Spätmittelalter bis zur neuesten Zeit – ein Beitrag zur Winterthurer Rechtsgeschichte* (Neujahrsblatt der Stadtbibliothek Winterthur, 326), Zürich 1995.

theft also certainly taken place in previous times but under a less inefficient police and judiciary system and, in addition, prior to 1600 not all judgements were systematically recorded. Thirdly, there is no direct link between the poverty of people at beginning of the 19th century and theft or scarcity of wood. Most of the inhabitants of the villages in sovereign territory of Zurich had the right to use that part of the forest which belonged to the common property, and even those without a right received a small portion of firewood. Offences against forest regulations are a common occurrence but are nevertheless only very scantily explored for early modern times in Switzerland. In this paper we were only able to focus on a few aspects. Further studies are required, especially on serial records of the courts in different regions of Switzerland.

The few examples have shown the important role of the methodology of the historical criminology for the research of offences against forest regulations. The application of the methodology of historical criminology helps to avoid the danger of positivism of laws. The different forms of misdemeanours in the forest can be interpreted as deviant behaviour, as well as an instrument for solving conflicts and can help to interpret everyday social interactions in the villages.

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