# Introduction

## *Questions Regarding Thieves, Reformers, Jurists, and Others*

In May 1854, Maria Scherrer filed charges against a day laborer by the name of Anton Zimmermann for having allegedly stolen bread and a cap from her thirteen-year-old son and his eight-year-old friend. The two boys, for their part, had obtained the bread, a loaf and a half in all, by begging.

In 1857 two children, eight and fifteen years old, were accused in Gelnhausen of having first sought to beg from a ten-year-old boy who was walking home through the forest completely laden with purchases, and then having threatened him. One of the children supposedly approached the boy and said, "I want the bread." At the same time the child, a girl, "stepped right up close to him. He declared that he hadn't any bread. In response, she allegedly said, 'Then we'll take the rolls.'"

A few years later, more precisely in 1859, the servant Johannes Bernstein was accused of having stolen, or taken with him, an ownerless hat that lay in the village wood yard. Of course the hat was not ownerless, but had been forgotten there by a certain Brandeis, a day laborer by trade.

At first glance we appear to be looking here at three harmless offenses. After all, the objects in question had little material worth; the cases involved conflicts between neighbors, and sometimes it is not even certain whether oversights, absentmindedness, or simply misunderstandings may have been the cause. And yet, these are stories that were recounted in court and in each case resulted in charges of theft, leading to legally binding convictions. For in the eyes of the men and women of those times, theft was by no means a trivial or even harmless matter. Instead, it was an offense that drew serious attention from victims, jurists, literati, and journalists alike.

## THE INTEREST OF JURISTS, CRIMINOLOGISTS, LITERATI, AND JOURNALISTS

Jurists devoted considerable energy to such offenses, conducted research with unrelenting meticulousness, and exhibited extraordinary persistence in pursuing every little bit of evidence. Never before had the need to describe thoroughly what constitutes a theft and who plays what role in it appeared so great. This enormous interest in property offenses is all the more remarkable because, as a rule, relatively worthless objects were involved. Neither the cap nor the bread, obtained by begging no less, was valuable. Indeed, most of the other thefts that were the focus of intensive interest by the state authorities revolved around articles with little material value, for example, socks, shirts, hats, vegetables, or daily-use articles such as pots. The overwhelming majority of thefts in the nineteenth century involved this kind of petty larceny in which relatively worthless items were taken. Nevertheless, entire armies of jurists delved into the question of what belonged to whom and how the stolen article was acquired. Senior and junior state procurators – precursors to state prosecutors – judges, defense attorneys, junior attorneys, and even law professors focused on the offense with an intensity not to be seen in either the eighteenth or the twentieth century, even after the most thorough search.

Jurists were not the only ones interested in property offenses during the nineteenth century. A separate science arose, dealing remarkably often, if not exclusively, with property offenses. At the latest with Lombroso's 1876 work *L'Uomo delinquent*, criminology took shape in Germany as well. The new field researched the habitual criminal – and he/she was usually a thief. Criminologists wanted to know who thieves were, where they came from, and what they looked like. The science that developed set about applying precise measurement instruments to investigating in detail the criminal's nose, mouth, forehead, and eye position, and mapped him as exactly as only landmasses had been previously.

Literature also turned theft into a topic. Just think of Friedrich Schiller's *Verbrecher aus verlorener Ehre*[1] or Wilhelm Raabe's *Horacker*.[2] Indeed, an unprecedented increase in works on crime could be observed in the burgeoning literary market of the nineteenth century. New crime genres evolved and gained an audience: Eugène François Vidocq published his adventurous crime stories, which were quickly translated into German.[3] Ernst Dronke was one of the first to write so-called police stories which sometimes reproduced complete interrogations.[4] The stories about criminals and judges by the writer

and liberal jurist Jodocus Temme[5] were crawling with thieves. Then the first crime novellas were published, usually as serials in widely circulated papers such as *Die Gartenlaube*. Finally, the crime genre par excellence, the detective novel, developed in the nineteenth century; as seen in Sherlock Holmes, it moved the focus to detective work, to the act of discovery, and thus to the detective rather than the criminal. All these stories found an audience. Even more, the new genre was a great success, as the following 1866 commentary by Paul Féval on the situation in France illustrates: "Crime is booming; it sells. . ..France has one to two million consumers who want nothing but crime served up to them, if possible, done to a turn."[6]

Worth mentioning is also the genre likely most popular in nineteenth-century middle-class reader circles, although frequently overlooked today: the travel description. There, too, thieves turned up in droves, especially when the journey passed through inhospitable regions. For example, the Caucasus was home to true "masters of the art of thievery."[7] Indians were considered "rapacious,"[8] and in Texas, according to the author of one travel report, no one went out in the evening without a knife because there were so many thieves.[9] When the "thief" became one of the central figures in children's literature toward the middle of the century, he was then a fixture in middle-class nurseries.

Finally, a fourth group should be noted that discovered its interest in criminals (although not primarily thieves) at about the same time: journalists, or more precisely, the new subspecies, the court reporter. In addition to court reporting, which detailed significant, and not so significant, court cases,[10] another genre appeared. Still very popular today and devoting particular attention to criminals, so-called "miscellaneous items" or *faits divers* reported frequently, if incidentally, about thieves. The two genres originated in the nineteenth century and quickly kindled the enthusiasm of readers for criminal matters.

This massive interest gives rise to a number of questions: What was the cause of the interest and what consequences did it have? I want to start with the first question. Why were jurists, writers, journalists, and criminologists, as well as an increasing number of newspaper and magazine readers, suddenly so intensely interested in thieves? What aspects made these cases so interesting to them? What exactly did the jurists want to find out from repeated interrogations? Did the violence in theft cases, or primarily the character of the simple thief or perhaps rather of the female thief, arouse their curiosity? Were the court and the investigative proceedings of interest, or was it possibly even mostly the legal issues that

captured their attention? – after all, the nineteenth century is the century of great legal reforms. What interested the men and women readers? Did people want to learn more about the individual figures within the process, about investigators, judges, and defense attorneys, or was it instead a matter of establishing whether the new public jury trials actually delivered what their proponents had so vehemently promised? Was it thus perhaps not even a matter of the particular details surrounding the theft, but rather of fundamental questions regarding justice? Or did the fascination lie neither with the thieves nor the judges and defense attorneys, but instead with property issues that people actually wanted to explore in reading crime novellas, court reports, or even only brief items in the "miscellaneous news items" column? Why did the police and criminologists spare neither time nor effort, using constantly refined measurement procedures and precisely preserving even the most insignificant evidence through sketches and in evidence rooms, to get the goods on delinquents?

Certainly a number of factors played into the massive interest in theft. The increase in literacy and the advent of the popular press made a great deal now possible; the development of new fields such as criminology expedited some things; the self-conception of professionally evolving jurists and even new bureaucratic techniques played a role. However, of particular significance – as argued in the following pages – were the property and legal systems, which were changing fundamentally in the nineteenth century. It was the explosiveness of these changes that gave rise to the robber stories, the "miscellaneous news items," the criminological treatises, and the legal studies on property crimes and shifted them to the center of attention.

## BACKGROUND: PROPERTY AND LAW

In the nineteenth century, the meaning of "property" changed. The modern notion of absolute property with the distinction, obvious today, between possession and ownership took clear shape in a manner significant for many people. Now for the first time a scholarly debate long associated with the names Adam Smith and John Locke became reality, even impacting everyday life. At the latest when the reforms of the so-called peasant liberation took effect, it became clear even to the man and maid servants in the most remote corners of Electoral Hesse, the focus of this book, that new rules now determined the value of property.

Furthermore, property was not just being redefined; its relevance also grew considerably. This greatly increased significance is evident from

many indicators, for example, from the fact that property determined whether a person had the right to vote, or that the right to own property appeared prominently in the American, French, and Frankfurt constitutions.

That the new prominence and significance of property contributed to the rise of theft as an important topic seems obvious: When everyone is talking about property, property crimes also attract increased attention. However, it is important that the change in the property system played at least as great a role for the thieves and their victims as for the jurists; at the same time, the meaning of the new property concept for the two groups could not have been more different. As representatives of the middle class, the jurists, not without self-interest, became proponents of the modern property concept and saw it threatened by even the most innocuous theft. The thieves and their victims, who in both cases came from the lower classes, were by no means as strong supporters of the new property system; after all, they had little to gain from it, at least in the short term. In fact, for them the very finely drawn distinctions between "ownership" and "possession," "lent" and "used for the time being," were, as before, fluid, because their everyday make-do economy functioned on the basis of multiple possibilities, not the unambiguousness of property concepts. Yet – as will be seen – the day laborers and maids who showed up at police stations to report the loss of a hat or a piece of fabric were also sometimes able to use these new absolute property concepts to their advantage, and not just because in the best case they got their hat or pipe back.

The modified concept of property in the nineteenth century thus undoubtedly played a role in the new interest in theft, but this new interest must secondly – as I have asserted – be viewed in the context of a legal system that had itself been fundamentally restructured. After long and intensive debates, the legal system of virtually every state of the German Confederation was radically transformed in the middle of the nineteenth century. Codes of criminal procedure that provided for public instead of secret court proceedings and furthermore subscribed to the new fundamental principles of equality before the law, uniformity of procedure, and certainty of the law created a new foundation for the legal system. This new foundation – as interpreted not only in legal circles – was the exact opposite of the Early Modern Period's inquisitorial process, which now seemed to epitomize arbitrariness and torture. In the new legal system, a special role was assigned to the publicly held jury trial. Many saw this as the emergence of an institution that realized on a small scale what

middle-class society promised on a large scale: a society in which the public was assigned the central role of guardian, ensuring adherence to rules that, once agreed upon, applied to everyone regardless of class, status, or property.

The legal reforms were thus strongly politicized and had come to represent *pars pro toto* reform of society as a whole; they received so much attention because they were regarded as an important part of the great transformation from an estates-based system of social stratification to a modern constitutional state. Precisely this politically charged new legal system – I will argue – was a further factor underlying the increased interest in theft. As the focus was always on the big questions about achieving a better society, the jurists devoted inordinate meticulousness and persistence to examining every little property crime, and criminologists never tired of pursuing every bit of evidence with unrelenting zeal. As a result of the interest in these big questions of the nineteenth century, the newspapers, too, were full of court reports and people read crime novellas and socially critical novels about judges. After all, questions about the ideal organization of social existence, about justice and injustice, could be vividly discussed in multiple dimensions on the basis of actual legal cases. Every thieving novel hero, every court report and criminological investigation provided an opportunity to consider the small but also the big questions of justice, the relationships between top and bottom, and consequently, the problems of good, and better, societal models.

Of course here, as in the new property system, differences in viewpoint are evident. Very few day laborers shared the all-too-optimistic perspective of the liberal legal reformers. In fact, there were many who viewed the new legal system with open skepticism. The differences were so great that some maid-servants interpreted actions labeled by jurists as theft to be emergency responses essential to survival. At times, it was perhaps just this difference in perspective regarding the legal system and the associated societal models that further heightened interest in property cases.

## RESULTS: PROPERTY AND LAW

The background of the remarkable interest in theft, treated only briefly here under the heading of changes in the property and legal systems, is important in order to understand why cases such as those of Anton Zimmermann and Johannes Bernstein mentioned at the beginning so intensively engaged jurists, journalists, criminologists, and many others. At least as significant is a second aspect: The results that this interest

produced, the meticulousness with which the jurists sought to explain the thefts, and the sheer volume of crime representations with which authors and journalists confronted their growing audience did not remain without effect. The actual procedures in theft proceedings, their representation practices, and the debates they touched off in themselves changed the legal and property systems.

The central focus of this book is the results that emerged for the legal system. (The results for the property system will only be mentioned secondarily.) These results, I maintain, were momentous. At the point when every single theft of a piece of bread had to be researched – dozens of interviews conducted even in cases of almost worthless trousers; evidence secured at great expense; or complicated residential searches performed, requiring production of crime scene sketches and write-ups of exact physical descriptions, just to locate an old pipe – the procedures for finding the truth changed. Furthermore, every little theft that was investigated judicially with such excessive attention led to development of additional methods for evidence production, refinement of crime scene sketches, and modification of criminological considerations – just as every court report could shift the perspective on the offense or offender.

Precisely this altered legal system, the way in which law was established or truth produced anew with each theft proceeding, is the focus of my interest: the gradual creation of the modern state of law (*Rechtsstaat*) from hundreds of thousands of legal negotiations, illustrated by the example of the crime of theft, which is especially important for many reasons. Thus, neither the special characteristics of thieves in the nineteenth century, nor theft and its portrayal in crime novels, court reports, and criminal treatises are central to this book. Instead, a detailed examination of theft proceedings will show how the legal system changed from trial to trial in the course of the nineteenth century. The question arises as to what direction these changes in establishing justice took. Did the changes in the production of truth – to use a term of Michel Foucault's[11] – seen at the latest by the mid-nineteenth century really result in greater equality and uniformity as maintained by both contemporaries and by the mainstream in current research? And did the public, acting as a new control authority monitoring whether greater equality and justice had been attained, play the principal role in the new legal system, as so frequently emphasized? Or had the legal system been transformed instead into a system of class justice as a smaller number of contemporaries believed? Did a great deal remain unaffected, as had long been thought? Or, a further possibility: Is it necessary to describe the changes in

completely different terms? Or was it perhaps the case that, although questions of class (and of gender as well) were doubtless important and we certainly cannot speak of a simple increase in equality and uniformity, the public still had an important function that was not just limited to guardian of the laws?

## "DOING LAW"

A description of the changes in the legal system that neither considers them the creative act of a few extraordinary jurists nor views the political system, social structures, or the economy as the single determining cause has moved beyond models based on the history of ideas or social history. Both models have in fact lost their persuasiveness in the last decades. Classical legal historiography is increasingly less likely to assume that the source of all law is jurists and their pronouncements alone. In fact, no one has more sharply criticized the all-too-narrow history-of-ideas perspective that justice results from laws, is applied by judges, and is changed by legal reforms than classical legal historians themselves.[12] Likewise, other models, for example, the social history model of the 1980s, which assumes that law was conceived in well-organized economic circles or government offices bent exclusively on maintaining their own power, no longer seem plausible.[13] In the meantime, there have been a whole series of attempts to find a nuanced answer to the difficult question of how law is made and changed. The most interesting come from the "anthropology of law."[14]

In keeping with these studies from cultural and social anthropology and with considerations from the "Doing Gender"[15] and "Doing Culture"[16] debate, I assume that changes in law, as in other areas, cannot be explained monocausally or by simply adding on various causes – that is not the case only because everything is much more complex than it appears at first glance. More important, in my view, than this always accurate insight is recognition that such a perspective conceals the dynamics among forces contributing to alteration of the legal system instead of placing those dynamics at the center of consideration. Developments in the legal system result in fact from the constantly changing interaction of norms, actors, and institutions. Thus, the idea that justice is "set" or "established" is replaced by the concept of a dynamic process involving a multitude of entities, which, endowed with varying degrees of power, repeatedly renegotiate justice.[17]

I wish to describe that particular concept with the term "doing *Recht*," that is, "doing law." "Doing law" combines a distinctly English-language

gerund with an equally distinctly German concept "*Recht*," rendered for these purposes as "law." The concept means, first, that the definition of what constitutes law and how violations of law are to be punished is a process of negotiation involving many participants rather than a process of assignment. Thus, as a negotiation process, "doing law" should not be confused with the well-known "labeling approach" of criminology in the 1980s, nor should law be considered a two-figure model in which antagonists – for example, justice or the state versus the criminal – confront each other. Neither the "social crime" narrative, long popular in research studies, which constructs the criminal as a powerful figure who through crime is rebelling against the state and its ideas, nor the social discipline model, which casts the state as the powerful force educating the delinquent, does justice to the complex interaction among widely varying forces and actors. Instead of only two characters, a multitude populates the stage: persons filing reports, criminals, witnesses, persons defamed though innocent, on-lookers, administrative employees, investigative officials, judges, defense attorneys, journalists, politicians, and jurists. But not only actors in an all-too-narrow sense shape the way in which law is produced. In addition, there are "actors" in a broader sense. The norm framework, the procedural structure, the patterns of interrogation methods, the methods of making written records, the juristic training, the experts' habitus formation, and the judges' self-conceptions play just as important a role, in fact determine which events may be brought before the court at all, which persons decide the topic of discussion, and according to what rules.

Second, viewing law as a process of negotiation with many participants means keeping in mind that the many forces and actors operate on different levels. The meaning of a criminological study is on a different plane from that of the defendant's testimony. The principles governing the judicial production of knowledge, what is defined in each case as an offense – and what is not – and the rules according to which policemen prepare reports and thus determine what is available to the court in writing, for example, regarding the crime scene or the items taken, have different weight in answering the question of how law is determined and how a legal system is changed. Likewise, the effects that the attorneys' linguistic code or the symbolism of the court architecture has on judgment of the crime are on different levels, to be compared to one another only with great care.

Third, "doing law" in not a process of negotiation outside the reaches of power; in fact, power plays a considerable role, of course with quite variable effects. The power of the procedural system to establish rules for

speaking and silence strengthens, weakens, or undermines any chance of exerting influence that the state procurators and judges may have as their habitus or on the basis of their social position. Court reporting's ability to present interpretations can in turn be more significant than the power deriving from a plea. Likewise, the jury may mean less than the power of a certain procedural step for the decision on whether someone will or will not be found guilty. In short, all that and much more determines with ever-varying weight the form of a legal system and its transformation.

The thought figure of "doing law" derives not just from the idea of negotiation among many varyingly powerful entities and many entities on different levels with unequal degrees of power. Also important, fourth, is that the performative dimensions are taken into account. Or as stated loosely by Foucault himself, "People know what they are doing; often they know why they are doing it, but what they don't know is what their doing does."[18] For example, the effect the physical descriptions of persons (*Signalements*) has in the process of establishing norms and producing criminal stereotypes only becomes gradually apparent and has precious little to do with the intentions that originally prompted generation of a physical description. That court reporting does much more than report the events in court, that is, actually contributes to structuring events, also belongs to the performative dimension, just as does the fact that women who murdered their husbands played, much to their advantage, to the gallery as "hysterical madwomen," with the result, for example, that the hysteria discussion in psychiatry produced a surprising effect.[19]

Fifth, and even more important: Law is not simply made and then realigned at some random date to then function in a certain way for a particular period. In so saying I do not intend to recall the always correct simultaneity of the non-simultaneous, but to point out that inherent to establishing justice/producing truth is process, which tends never to stand still. Establishing justice/producing truth is not to be investigated, as the structure of most criminological studies suggests, by treating the procedural code and norms of criminal law in the first part under the heading "general framework," followed in the second part by the results according to this "general framework," as they ostensibly emerge, new and immediately, in every proceeding. Actually, the "general framework" itself also changes in every proceeding – after all, even strengthening can be change. Not only does the general framework give structure; it is itself repeatedly re-structured.

Of course, none of this happens without conflict – to mention a sixth point that is of considerable consequence for the "doing law" concept.

Conflicts, for example, about whether a textbook or a higher appeals court has more authority in deciding right and wrong, are daily events and structure legal practice in their own right. It is always a matter of "jurisdictional politics," as Lauren Benton puts it, that is, of "conflicts over the preservation, creation, nature, and extent of different legal forums and authorities."[20] In these conflicts, something new often comes about, changing the finding of truth. If the dynamic character Benton stresses is taken seriously, it becomes obvious that setting the boundary between the old estates-based system and modern legal system, so important for development of the latter, was an act of self-empowerment by eloquent and influential criminal law reformers of the liberal movements prior to the March Revolution who thus placed themselves in the thoroughly glorious position of all-powerful innovators. Thus, these boundary demarcations, too, are part of "jurisdictional politics" and anything but objective descriptions of structural changes in the legal system.

## MARIA SCHERRER, JOHANNES BERNSTEIN, AND SEVERAL CHILDREN BEFORE THE COURT

Although the notion of law as having many participants and changing constantly in dynamic proceedings may appear entirely plausible at first glance, analysis of this process for the nineteenth century quickly reveals difficulties.

A central problem, that is, the lack of sources, has been overcome by chance, luck, and prior work of other researchers.[21] Although court records were not generally retained in the nineteenth century, especially for widespread crimes such as theft, the Hessian archivists made an exception to this rule, keeping a considerable number of such records. Unfortunately, however, much less was recorded or saved by Hessian historians and archivists than would be desirable for a scholarly historical study in the early twenty-first century. To mention only one example, a great deal remains unsaid, especially in record books that would be of interest for quantitative questions. Detailed information about the five thousand accused persons listed there is often missing; the occupation of the accused is seldom given in the brief record summary. Direct statements about possible prior convictions or confessions – both are information noted in any witness statement – are usually missing.[22] Consequently, the comprehensive record books created by the courts are above all the basis for complex data collection by the justice apparatus, which mainly sought, using quantitative recording procedures, to

"fence in" the actors of the state apparatus[23] rather than the "criminals"[24] and thus to make the former subject to control.[25]

Even the detailed records, the interrogation and court protocols, are limited sources and at times remain silent, with the result that a great deal must be added from broad regional research, and numerous other documents must also be consulted, for example, various legal journals, studies and treatises, law and regulation texts, administrative provisions, articles from the Electoral Hessian provincial press, crime novellas, and criminological treatises.

A further problem for analysis in the context of "doing law" is on the level of representation: How to describe complex dynamics with their many ramifications on various levels without ending up with an exhausting enumeration, a boring list, or even a technical explanation of legal rhetoric or case histories? How, when faced with the contrast to legal jargon, to capture the rural world of almost illiterate thieves and their statements, which have been modified in protocol records, without succumbing to the all-too-tempting language of "authenticity" and social romanticism? How to escape the trap of wanting in the end effect to be the better and particularly the more just judge? How to lay out the logic of criminological treatises without just copying their style? How to bring out central interconnections without wanting to connect everything to everything else? How to make connections clear without endorsing simple cause-and-effect models?

The structure of the book has been determined by the effort, if not to resolve these and numerous other difficulties, at least to address them. Part I takes up the question of how an event becomes a criminal case. The focus is first of all on the living environment of the thieves and that of their victims. Many facets of this world, for example, the perception of the social and economic changes so central in the mid-nineteenth century, can only be briefly mentioned. Nevertheless, it will hopefully become evident that both offenders and victims alike viewed questions of law and property in different contexts from those of jurists and criminologists, producing tension – the thesis of this part – which contributed decisively to the result that thefts of even the most worthless articles were tried in court. While the jurists believed that every stolen piece of bread confronted them with highly significant questions of a new social order, the male offenders and the few female offenders possibly only wanted to clarify who had say in the matter. In any case, the victim filed a complaint not only to get back some piece of bread and thus to set right the modern property system, but also because it was for him or her a

question of honor, raised with great vehemence just at this time of marked change and many new uncertainties.

Part II examines how these conflicts about honor, property, social reforms, or just about pieces of bread could develop into a preliminary investigative record of several hundred pages even before the beginning of the actual public court trial. Was this preliminary investigation really as meaningless as the new codes of procedure would have people believe, or was the actual place where law was made there, in long interrogations and during complicated evidence gathering, only then to be presented in court to a marveling public? The preliminary investigation was – to reveal that much – of considerable importance for the question of who was or was not a thief, and how that thief was to be punished. But the preliminary investigation was also of great significance in other regards. There the new techniques for evidence gathering, report writing, preservation, and sketching discussed prior to this in criminology, statistics, and the many police treatises were applied, and at the same time completely new methods were developed for necessarily separating truth from untruth. Of course, the new methods did not conform primarily to the guidelines for legal equality and uniformity asserted by contemporary reforms and broad sectors of research but rather to other logical approaches geared toward the legal procedure of decontextualization and the statistical procedure of quantification. Thus, the approaches to establishing justice were by no means only of a legal nature; in fact, criminology and statistics played a decisive role.

Although the power of the statistical, criminological, and police techniques that to some extent dominated the preliminary investigation was very great and consequently considerable weight was given to events before the public court trial, the latter remained important – as Part III intends to show. In this part, events in the courtroom are scrutinized: What did the public trial, as introduced in 1848, change about the way in which justice was established? One answer is that the events in court for deciding in concrete terms how an offense was to be assessed, although far less important than those of the preliminary investigation, had enormous weight. The significance lay much less on the level of actually establishing justice than on the level of legitimizing the entire legal process. The new public, as well as further reforms such as the introduction of the jury, a public audience, and defense attorneys, lent increased legitimacy to the legal process. The courtroom was the place where a play about establishing justice was staged, not necessarily bringing with it more justice but in any case commanding a higher degree of legitimacy.

That not being enough, the public negotiation produced a second, perhaps more important effect: a public, actually more than one, that had little to do with the "public" as understood by contemporaries. The public that could be reduced to the role of a guardian and protector upholding laws was not significant. Significant instead was the public – as it appeared, for example, in the form of the press – to which no specific role could be assigned and which saw to it that judgments were made according to common sense criteria, at times with regard to social justice and at times according to the logic of moral concepts specific to class or gender. The criteria according to which the public passed judgment took different forms, depending on which conception of justice and also on which public power held sway. Sometimes the public criteria stood in direct contradiction to the letter of the law; sometimes they did not conform to the spirit of the law. Of even greater import, the circumstance that the public, or rather the various publics, would not allow itself to be assigned the role of guardian and protector but instead acted according to its own rules made law a matter to be negotiated publicly. Precisely this possibility is perhaps the most important characteristic of the modern state of law. More equality and uniformity may have been goals; what in fact was achieved was the new and momentous possibility of discussing publicly which method of establishing justice was just and which unjust.

**Notes**

1 Friedrich Schiller, 1999 (First edition, 1786).
2 Wilhelm Raabe, 1876.
3 Eugène François Vidocq (1775–1857) reports primarily about the criminal milieu and less about the act of discovery. See Hans-Otto Hügel, 1978. For an overview, see Jörg Schönert, 1983b.
4 Ernst Dronke, 1846. See also Erich Edler, 1977, 129ff.
5 On Jodocus D.H. Temme, see Erich Edler, 1977, 157ff.
6 "Le crime est en hausse, il se vend, il fait prime; au dire des marchands, le France compte un ou deux millions de consommateurs qui ne veulent plus rien manger, sinon du crime, tout cru," quoted in Dominique Kalifa, 1995, 29. See also Jörg Hennig, 1991.
7 Wilhelm von Freygang and Friederike von Freygang, 1817, 45.
8 Joseph Friedrich von Weech, 1831, 89.
9 Wilhelm Steinert, 1850, 105.
10 See Jörg Hennig, 1991; Klaus Marxen, 1991; Joachim Linder and Jörg Schönert, 1983b; Philipp Müller, 2005; Eric A. Johnson, 1995.
11 Michel Foucault, 2003.
12 For example, the history-of-ideas orientation is central to the criticism of Michael Stolleis, 1985 and 1997.

13 See Hans-Ulrich Wehler, 1989, 183.
14 This area of work from ethnology and anthropology developed out of the early studies of Laura Nader in the 1960s. See Laura Nader, 1969, 1990, and 1997; Jonathan Aleck and Peter Sack, 1992; Jane F. Collier and June Starr, 1989; Reiner Schulze, 1990; Francis G. Snyder, 1993.
15 Central to this subject, Candace West and Don H. Zimmermann, 1987.
16 See Karl H. Hörning and Julia Reuter, 2004.
17 For details, see the initial reflections in the literature overview of Rebekka Habermas, 2003. The pioneering work is still the collection of Andreas Blauert and Gerd Schwerhoff, 2000; a very stimulating work on the nineteenth century is that of Claudia Töngi, 2004.
18 Quoted in Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault. Jenseits von Strukturalismus und Hermeneutik* (Frankfurt, 1987), 219; quoted in Michael Maset, 2000, 239.
19 Ruth Harris, 1988.
20 Lauren A. Benton, 2002, here 11.
21 I owe the information about the holdings of the Marburg State Archives that I used to a chance meeting in the hallways of the Frankfurt State Archives; Joachim Eibach (today in Bern) was performing research for his dissertation there at the end of the 1990s, and I was preparing my edition of the child murder trial of Susanna Brandt when Joachim Eibach, in response to the question of whether he knew of good holdings for the nineteenth century, casually mentioned Marburg. Without that valuable information, this book could not have been written.
22 See Marburg State Archives (STAM), 273 Marburg 324. The archival holdings quoted in the following pages all come from the Marburg State Archives, unless another source is explicitly cited.
23 The notes entered under the heading of "Comments" in the record books are especially indicative of that situation. In that column, there are many completely illegible references to the work of the justice system.
24 The references to other offenses provided under the heading of "Comments" made it possible to furnish information about prior convictions of and suspicions about the person in question from recent court and police inquiries.
25 An extensive form bundle results; it introduces the investigative record and includes the "List of persons charged," the "Subject of the complaint," a column with the heading "Offense," and two other columns – never filled out – intended for entry of the dates when the individual was placed in investigative detention and when released. A further column is provided for entering the name of the official in charge, the state procurator. Yet another column follows for the "Status of the matter," generally listing very exactly which agency sent records to which other agency, and especially, when that occurred. On the basis of this column, the path of a record can be tracked exactly. At the end of the form is a "Comments" column. The hand-written entry here usually reads "Completed" or "Completed (Accident)" (273 Marburg 324). However, not all record books were so detailed; see, for example, 268 Marburg 97.