

# Lost in Translation: the English Bobby seen through a German monocle.

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## 1. Introduction

Throughout the second half of the 19th century, there was ongoing debates about what kind of police the Germans ought to have, and nowhere was this debate more heated than over the Prussian state police, the *Schutzmannschaft*, that policed Berlin and an increasing number of main cities in Prussia.

One could see the debates of the second half of the 19<sup>th</sup> century concerning the Berlin *Schutzmannschaft* as competition between two models: During the reaction years of the early 1850s, as the *Schutzmannschaft* developed along the lines of the Prussian gendarmerie, although adapted to urban policing and subjected to the Interior Ministry rather than the War Ministry,<sup>1</sup> defenders hailed its paternalistic approach based on “German” or “Prussian” values such as selfless loyalty to King and State and incurruptable honesty in its enforcement of law and order.<sup>2</sup> Avé-Lallement admitted that this ideal was not quite attained by the *Schutzmannschaft*, but which nevertheless remained the ideal that they believed the police authorities should work towards. Similarly, defenders of the Conservative “Prusian” model maintained that discipline and good behaviour among the *Schutzmänner* was essentially a moral issue and if only the men were imbued with proper “Prussian values” erring and malpractice would not occur.<sup>3</sup>

The repeated calls from Liberals to reform the *Schutzmannschaft* along the lines of the London Metropolitan police was first placed on the political agenda in 1848 with the organisation of the Berlin *Schutzmannschaft*.<sup>4</sup> Liberals wanted a civil police to replace the gendarmerie, citizen militias and the regular military forces, under the control and accountable to elected bodies. After the successful conservative reaffirmation of power, new calls for reform along the “English model” came after the 1851 World Exhibition where German observers, like many other foreigners, had been impressed with the smooth and civil way the police dealt with crowd management and responded politely to the queries of the public.<sup>5</sup> The importance of the English example was that it proved how it was possible to keep order in a major city without recurrence to military style authority in the approach to the public.

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<sup>1</sup> Alf Lüdtke, „Gemeinwohl“, *Polizei und „Festungspraxis“: Staatliche Gewaltsamkeit und innere Verwaltung in Preussen, 1815-1850*, Göttingen: Vandenhoeck & Ruprecht, 1982, p. 193.

<sup>2</sup> Fr. Chr. Benedict Avé-Lallement, *Krisis der deutschen Polizei*, Leipzig: Brockhaus, 1861, pp. 1-4.

<sup>3</sup> As late as 1913, Bartel’s instruction book to police recruits emphasises the importance of the oath of the policeman to conduct himself well and warns that any breach of his oath to good behaviour will lead to loss of honour (*ehelos*). Ludwig Bartels, *Polizeilehrbuch*, Berlin: Carl Hermann, 1913, p. 11.

<sup>4</sup> Albrecht Funk, ‚Die Entstehung der modernen Polizei in Preussen 1870-1890: Bezugspunkte einer historischen Polizeianalyse‘, in (Herbert Reinke ed.) ‚Nur für die Sicherheit da...?‘, Frankfurt aM.: Campus, 1993, p. 56.

<sup>5</sup> Clive Emsley, *The English police: a political and social history* (2<sup>nd</sup> ed.) London: Longman, 1996, p. 259; Rudolf Gneist, *Das Englische Verwaltungsrecht der Gegenwart in Vergleichung mit den Deutschen Verwaltungssystem*, (Third edition) Berlin: Julius Springer, 1884, Bd. 1 pp. 252-272 & 276; Bd. 2 pp. 804-834.

By then the *Schutzmannschaft* had already acquired a poor reputation among Liberals and the Left opposition, however throughout the 1850s the force was accepted, and even hailed, among the supporters of law and order as the most effective bulwark against popular unrest and attacks on private property. It was the revelations in 1859 of widespread corruption and malpractice within the *Schutzmannschaft* under Police President Hinkeldey that administered some serious blows to the prestige of the force. Its claims to embody the “Prussian virtues” of honesty and incorruptability, on which the force based its legitimacy was undermined not only among liberal critics but among supporters of law and order, who happily tolerate a good deal of violence against the political opposition and rough treatment of ordinary members of the public, but to whom corruption was incompatible with legitimate authority.<sup>6</sup> Yet, rather than seeing the problem resulting from the institutional organisation, the police commentator Avé-Lallemant saw the problem as the result of foreign (French) influence. The solution therefore was moral rather than institutional and lay in the strengthening of good German-Prussian values.<sup>7</sup>

Apart from the apologists who saw the evil and the solution of the evil in moral terms, others recognised that moral revival was not enough and that problems were rooted in the concentration of powers and lack of proper oversight of officials in authority. One of the proposals for reform, initiated by Police President Winter in 1862 spoke not only for de-militarisation of the *Schutzmannschaft*, but for a complete re-conception of the force as a public service, that is a mediator between public authorities and the citizens.<sup>8</sup> The calls for reform along the English model emerged alongside the wider legal-constitutional debates about police powers and the relationship between police and judiciary, which continued throughout the latter part of 19<sup>th</sup> century.<sup>9</sup> The 1860s was also the decade when Liberal forces among Prussian-Germany civil servants and legal scholars gradually managed to establish the concept of the *Rechtsstaat* against opposition from conservative forces who would not accept any commitment on the part of the State to limit its actions to legal boundaries.

Both trends sat uncomfortably with the military style *Schutzmannschaft* based on supra-legal, paternalistic authority with no accountability or obligations towards the public. During the 1860s and 1870s, the process of unification, and the panic over the rise of Socialism particularly after the Commune, the 1872 riots in Berlin (*Blumenstrassenkrawall*) and the formation of the unified Social Democratic Party in 1875 helped to mute critical voices. However, calls for reform the *Schutzmannschaft* along English lines re-emerged in a major way in the 1890s.

## 2. *The Schutzmann between love and loathing: A fine body of men or the best hated profession?*

Travellers to Wilhelmine Germany often remarked that despite its size, Berlin was a much safer town for foreign travellers, with crime rates significantly lower compared to other big cities in Europe and America and with a police officer on every street corner.<sup>10</sup> When talking about police-public relations it is important to emphasise that the force still enjoyed considerable positive

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<sup>6</sup> Albrecht Funk, *Polizei und Rechtsstaat: Die Entwicklung des staatlichen Gewaltmonopols in Preußen 1848-1918*, Frankfurt aM.: Campus, 1986, p. 90;

<sup>7</sup> Avé-Lallemant, 1861, pp. 1-2.

<sup>8</sup> Funk, 1993, p. 59; *ibid*, 1986, p. 103.

<sup>9</sup> Lüdtke, 1982 pp. 69-70.

<sup>10</sup> Heinrich Eiben, *Polizei-Taschen-Lexicon: Sammlung von Reichs- und Landesgesetzen nebst Ausführungs- und Polizei-Verordnungen und zahlreichen Erkenntnissen der höchsten Gerichte*, Köln: Kölner Verlag, 1903, pp. v-viii.

appreciation among Prussian civil servants and ‘*kaisertreue*’ citizens, who talked with pride of the well-disciplined and effective *Schutzmannschaft*.

On the other hand, the *Schutzmann* throughout the second half of the 19<sup>th</sup> century were feared and ridiculed to the extent that a sympathetic observer described policing as the “best hated of professions”.<sup>11</sup> Even among the *Kaisertreue* sections of the population and senior police officers and government ministers, who otherwise dismissed the Social Democratic critique of police brutality as wildly exaggerated, commentators were prepared to concede that Prussian policemen’s approach to members of the public was often rough and not as courteous as might be desired.<sup>12</sup> The criticism against the police, which is an almost inevitable part of any police force, by the 1890s developed into something akin to a deluge, too conspicuous to ignore.<sup>13</sup>

So what had happened and why did the wave of complaints gain momentum in the 1890s? The most obvious element in the 1890s was the sheer amount of knowledge of police misbehaviour. Individual incidents were increasingly well documented and publicised in the ubiquitous press. Just as the *Kaiser* himself was intensely media aware, so did public institution become increasingly anxious to cultivating their public image, with the establishment of *Pressebüros* for the police, and for other State authorities as the most obvious examples.<sup>14</sup>

The greater awareness of public image can of course be linked to the wider political and social context in Germany, 1888-1890: a new Kaiser, Bismarck leaving, a new generation coming to power, the *Neue Kurs* and the liberalisation of the press laws. Moreover the Great Miners’ Strike which had seen major military interventions was followed by serious attempts to extend civilian police forces. In addition, the legalisation of the Social Democratic Party was followed by intense fears of revolution as well as anxious attempts to win the hearts and minds of the workers away from the Social Democrats.

Yet, we also need to see the German obsession with the popularity of the *Schutzmannschaft* as part of a broader trend: it was during the same years that Lépine in Paris embarked on his reforms of the Parisian Police in a conscious attempt at making the police loved by the population. Lépine took the view that a police force that was hated by the public was fragile and ineffective.<sup>15</sup> Similarly it was in the context of social anxieties that the behaviour of the *Schutzmannschaft* towards the population in general and to workers in particular was recognised, even among police supporters, as counterproductive and ultimately dangerous for the social stability.<sup>16</sup> With the challenges of policing modern mass-conurbations and with increased expectations to police effectively ensuring

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<sup>11</sup> Anon. ‘Polizei und Publikum’, *Die Polizei*, 1914, Vol. 11, No. 15, p. 145.

<sup>12</sup> Johannes Segger, *Executiv-Polizei und Publikum. Ein Wort zur Klärung und gegenseitigen Würdigung*, Hann. Münden, 1898, p. 40; Rudolf Lemke, *Die Preussische Executiv-Polizei. Wie sie war, wie sie ist und wie sie sein müsste*, Osnabrück: Liesecke, 1904, p. 196; Similarly Interior Minister von der Recke in during the debate of 17 February 1898 in the Prussian Diet, Session 24, pp. 716-717. See also letter to the editor in *Allgemeine Beobachter (Essener Anzeiger)* 4 Mai 1910.

<sup>13</sup> Funk, 1986, pp. 286; See also Jessen’s discussion about actual or perceived increase in malpractice. Ralph Jessen, *Polizei im Industrieviertel*, Göttingen: Vandenhoeck & Ruprecht, 1991 pp. 180-183.

<sup>14</sup> Philipp Müller, *Auf der Suche nach dem Täter: Die öffentliche Dramatisierung von Verbrechen im Berlin des Kaiserreichs*, Frankfurt a.M.: Campus Verlag, 2005, pp. 34-38; Alex Hall, *Scandal, Sensation and Social Democracy: the SPD press and Wilhelmine Germany 1890-1914*, Cambridge: CUP, 1977, p. 104. See also Chris Clark’s analysis of the media awareness of the Kaiser and government, *Kaiser Wilhelm II*, Harlow: Pearson, Longman, 2000, pp. 160-185.

<sup>15</sup> Jean-Marc Berlière, ‘Images de policiers: deux siècles de fantasmes?’, *Jahrbuch für Verwaltungsgeschichte*, 1994, No. 6, p.157-158; idem, *Le Préfet Lépine, vers la naissance de la police moderne*, Paris: Denoël, 1993, pp.117-158.

<sup>16</sup> See particularly Curt von Massow, *Reform oder Revolution*, Berlin: Otto Liebmann, 1894, p. 265.

crime fighting and maintenance of order, the police reformers recognised the advantages – indeed need – of cooperation from the wider population. Repression and brute force were not enough to fulfil the increasing number of tasks linked to modern policing.

At the same time popular expectations to police behaviour were changing. The barrage of complaints against the Prussian *Schutzmannschaft* from the 1890s onwards reflect increasing intolerance to violence and arbitrary police actions. The strengthening of the *Rechtsstaats* concept in the wider population was followed by the corresponding notion of *Rechtsbewusstsein* (sense of due rights) which was branded about in complaints letters. The authorities were left with the challenge of adapting to these new expectations. During the 1890s the *Schutzmannschaft* also increasingly suffered from what Jessen describes as a dual-crisis of legitimacy and authority.<sup>17</sup> While the professional prestige and the social status of the *Schutzmann* was rapidly declining, his powers and duties to interfere and regulate the public space were dramatically increased. At the same time, the legitimacy of the State who had granted him these powers was challenged politically, and in search of strengthening its legitimacy particularly among the workers.<sup>18</sup>

### 3. The return of the English Bobby in the German debates

It was in this context that calls for reform along the lines of the English police re-emerged in the German debates. Prussian Police reformers saw the English model as attractive not only because it seemed to ensure better cooperation from the population,<sup>19</sup> but also because the English bobby seemed to inspire greater respect and authority amongst the population than the Prussian *Schutzmann* – and certainly less popular ridicule.<sup>20</sup> While better cooperation from the population was seen as a way of ensuring greater effectiveness in fulfilling everyday policing, the German observers also rightly perceived the English police as more legitimate in the eyes of the wider public – just what the *Schutzmannschaft* was increasingly struggling to maintain.<sup>21</sup>

So what was it about the English Model that German reformers wanted to adopt? The English model was ailed by liberals as a-political, servant of the public, non-military, and unarmed. However, there were different ways of interpreting what that actually meant. While liberal forces sought to emphasise the need for *Schutzmannschaft* to “serve the public” rather than serving the State “against the public”, conservatives maintained that the *Schutzmannschaft* was already a-political, and that it was the Social Democrats who wrongly politicised policing.<sup>22</sup> Implementing the will of the State was by definition a politically neutral act, and there could be no opposition between serving the State and serving the public.

The various military aspects of the *Schutzmannschaft* were object of heated debates (recruitment, organisation, uniforms, and ethos), with even conservative minded observers admitting that some military elements in the *Schutzmannschaft* were counterproductive to effective civilian policing. In particular, the proverbial ex-NGO was to be partly replaced with recruits from rural areas or reliable

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<sup>17</sup> Jessen, 1991 pp.170ff.

<sup>18</sup> Jessen, 1991, pp.179-180.

<sup>19</sup> Segger, 1898, pp. 33-34 & pp. 38-40; Lemke, 1904, pp. 209-211.

<sup>20</sup> Alf Lüdtké & Thomas Erwig-Drüppel, „Das Subjekt. Das Objekt“ Polizisten und andere Amtspersonen im „Simplicissimus“ 1896-1914’ *Jahrbuch für Verwaltungsgeschichte*, No. 6, 1994, pp. 149-177.

<sup>21</sup> Jessen, 1991, pp. 180-183.

<sup>22</sup> Otte Gerland, *Der Polizei-Dienst bei städtischen Polizei-Verwaltung in Preußen*, Berlin: Hermann, 1895, chap 4. Segger, 1898, p. 32

members of the working class, who it was hoped might ensure better cooperation from workers and the *Kaisertreue* sections of the lower orders. On the other hand, I have come across no suggestion that the *Schutzmannschaft* should give up its weapons, and the idea of turning them into an unarmed force does not seem to appear on the agenda.

Instead German reformers, both liberal and conservative, focused on the training of the *Schutzmann* to be more polite, civil and forthcoming police force. This was seen as a matter of professional training of the uneducated, but essentially an attempt of civilisation.<sup>23</sup> What was particularly badly needed was a socially discriminating policeman, who knew his place in relation to his social superior, and who did not carry his military disdain for civilians over to his role as policeman.

However, the root of the problem in transferring the English model to a German context lay in the fact that German reformers had a very selective approach to the model and did not accept that the English model was built on a completely different understanding of power relationships between public authorities and the population.

#### 4. Problems linked to the duties of the *Schutzman* as different from those of the English policeman

The first problem arose in the call for police to be polite and the demand on the *Schutzmann* to serve the public. Many Prussian police manuals and service regulations call for policemen to approach the public politely and with courtesy without irritation or petty revengefulness and Segger notes that he has never seen police instructions that did not stress the importance of treating the members of public with respect and courtesy.<sup>24</sup> The 1887 service regulations for Königsberg police, which seem to be the key text for police service regulations of the following period, state that “towards the public the *Schutzmann* should always be polite and ready to serve”.<sup>25</sup> Similarly Gerland writes on the title page of his work on the Police Service in Prussian Towns that “the police officer should always be aware that he is called to defend the public”,<sup>26</sup> Eiben in his introduction stresses the importance of serving the public and of rigorously keeping the letter of the law<sup>27</sup> while Segger states that all police service regulations call for policemen to be firm, but calm, detached, polite, humble, friendly and ready to serve.<sup>28</sup>

So there were plenty of attempts to encourage the *Schutzmen* to be civil and polite towards members of the public – but to little avail, as reformers admitted themselves.<sup>29</sup> So what went wrong? Of course, encouragement of policemen to be polite might easily be ignored within any organisation with entrenched patterns of behaviour. However, there were some systemic and conceptual problems that quite understandably made ‘politeness’ a very minor priority for Prussian *Schutzmen* in their daily interaction with the public.

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<sup>23</sup> Lemke, 1904, pp. 207; Bartels, 1913, pp. 10-14.

<sup>24</sup> Segger, 1898, p. 40; Eiben, 1903 pp. v-viii; Bartels, 1913, p. 11.

<sup>25</sup> Service regulations for the Royal Police Direction of Königsberg of 28 June 1887, Art. 1.

<sup>26</sup> Gerland, 1895, title page.

<sup>27</sup> Eiben, 1903, pp. v-viii.

<sup>28</sup> Segger, 1898, p. 40.

<sup>29</sup> Lemke, 1904, p. 196. Thielemann, ‘Polizei und Publikum’ in *Die Polizei*, 1907, Jg. 4, No. 8, p. 106.

#### 4.1 Concepts of “the public” and of serving the public

One of the underlying problems that mitigated against the *Schutzmann* changing his attitude to the public lay in the very concept of ‘the public’ as it appeared in Prussian instructions – and it was simply incompatible with English notions of the public. In the first place, there was the presentation of concepts such as “citizen” and “the public” in police orders, handbooks and instructions, as these texts were primarily concerned with emphasising the extent of police powers and authority.

By the 1890s a series of civil rights and liberties were well established in German and Prussian law.<sup>30</sup> Yet in the police manuals and instructions to the police the concept of the ‘citizen’ (*Bürger*) mainly appears as someone in need of protection, but not as someone who has rights.<sup>31</sup> If citizens’ rights were mentioned at all it came as an afterthought. Similarly, while the police service regulations have extensive sections on the powers of the policeman to retain people in custody, arrest, undertake house searches, or make use of his weapons, the paragraphs urging *Schutzmann* to act with moderation and respect citizens’ rights again come as an afterthought – insofar as such considerations appear at all.<sup>32</sup>

In addition, several problems stem from the definition of the public. In the first place, the idea of “serving the public”, is limited to specific aspects of the policeman’s duty, such as indicating the route when asked or helping elderly ladies to cross the road. However, if the *Schutzmann* served the public, it was as part of his duty to maintain public order and enforce the law on behalf of King and State, not to serve the public in its own right. Similarly “the public” was an entity that needed protection in the name of the law and good order – not as a service to the public. Ultimately, the *Schutzmann* was not accountable or answerable to the public in any form.

Secondly, the public (*Publikum*) only comprises the law-abiding *Bürger*. The law-breaker, or even the potential law-breaker or the suspected law-breaker, are not conceptually part of the *Publikum*. Yet even the law-abiding *Publikum* is conceived as selfish individuals who would naturally seek to pursue their egoistic private interests to the detriment of the general good. It was therefore the duty of the policeman to prevent individuals, as much as possible, to pursue individual interests that might obstruct in any degree the smooth functioning of the public space.<sup>33</sup> Unlike the English concept that pursuit of individual interests was both legitimate and a basic civic right as long as they did not harm others – the starting point in German instructions was that individual pursuits were potentially ‘obstructing’ the implementation of the common good.

The conception of the *Publikum* as only comprising the law-abiding members of the public was all the more problematic because of the conception of the law-breaker. Because of the myriads of police ordinances and local bye-laws, the ordinary German going about his daily business would – often unwittingly and unknowingly – violate some law. Once a person was in breach of some law,

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<sup>30</sup> *Gesetz zum Schutz der persönlichen Freiheit* of 24 September 1848 and revision of 12 Februar 1850, Articles 4 & 6 and the Prussian Constitution of 31 January 1850, Articles 5-12. See also Alf Lüdtke, ‘Polizeiverständnis preussischer Polizeihandbücher im 19. Jahrhundert. Zur Folgenlosigkeit akademischer Diskurse’ *Ius Commune: Wissenschaft und Recht der Verwaltung seit dem Ancien Régime* (Special Issue) Vol. 21, 1984, pp. 329.

<sup>31</sup> Service Regulations for the Royal Police Direction of Königsberg of 28 June 1887, Art. 1; Gerland, 1898, front page, defines the role of the police as “the defence of the public”. This is reiterated in the last paragraph of section 4; Eiben, 1903, p. vi; Lemke, 1904 p. 194; Bartels, 1913, p. 16. Similarly Interior Minister von der Recke during a debate in the Prussian Diet of 17 February 1898 (Session 24, p. 716).

<sup>32</sup> Only the Königsberg Service Regulations has an appendix containing the legal paragraphs detailing the most important civil rights.

<sup>33</sup> Segger, 1898, p. 32; Eiben, 1903, pp. v-vi; Lemke, 1904, pp. 209-211.

he or she moved from the category of law-abiding citizens who had the right to protect, to the category of law-breakers who needed to be dealt with in the harshest terms possible – to discourage them from future law-breaking and to set an example for others. Thus any member of the public might at any moment find him or herself reduced from the category of “good citizen” worthy of police protection to an actual or potential lawbreaker, an obstruction to the authority of the policeman or a threat to the public order. As an extension of this logic, individual members of the public are often conceived of in police instructions in terms of potential law-breakers, because it was assumed that any individual would be naturally inclined to breach the law in pursuit of their private interests. As a result any member of the public was at any time a potential law-breaker, who should be stopped.<sup>34</sup> It was not only the usual suspects – the poor, the marginals, the workers – who were described as problematic but also the well-established citizen in pursuit of interests which conflict with the ‘common good’ as defined by the police.<sup>35</sup>

#### 4.2 Preventive policing and police discretion

It is also worth noting the differences between the meaning of preventive policing in English and Prussian policing. The English concept rested on the assumption that the mere presence of the policeman would deter people from committing theft and violence at least right under his nose.<sup>36</sup> The concept of prevention developed in Prussian administrative thinking during the first half of the 19<sup>th</sup> century as active police interference in actions which might lead to the violation of some law or regulation.<sup>37</sup> So the *Schutzmann* was instructed not only to regard all members of the public as potential law-breakers, but to actively intervene against their potential law-breaking.

This was all the more intrusive as a concept since the *Schutzmann* was under professional obligation to enforce all laws and regulations rigorously. Where the English approach to policing encouraged the *Schutzmann* not to interfere idly and left a margin of discretion to the individual constable to implement some laws according to his discretion,<sup>38</sup> the *Schutzmann* who did his duty had to intervene in petty breaches of some law. The Prussian concept of prevention was far more intrusive in that policemen were instructed to prevent law-breaking by intervening against members of the public before they actually broke the law. It was preferable to issue a paternal warning (*Belehrung*) before any law or regulation had been transgressed rather than to proceed to notifications and arrests post hoc.<sup>39</sup> As Funk observes, the Prussian service regulations operated with the concept of ‘suspects’ (*Verdächtigen*) rather than with ‘criminals’ (*Verbrecher*) and described ‘suspicion’ as sufficient reason for house searches and arrest.<sup>40</sup> Because of the infinite number of police regulations, even well-established members of the middle classes were affected by police micro-management of the public space as well as numerous activities taking place on private premises, but regulated by law.<sup>41</sup> As Fosdick observed in 1911, this left to arbitrary application of the law.<sup>42</sup>

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<sup>34</sup> Segger, 1898, pp. 32 & 36.

<sup>35</sup> Segger, 1898, p. 37.

<sup>36</sup> Clive Emsley (2004) ‘Control and Legitimacy: The Police in Comparative Perspective since circa 1800’ in (Clive Emsley, Eric A. Johnson & Pieter Spierenburg eds.) *Social control in Europe 1800-2000*, Columbus: Ohio State University, p. 198.

<sup>37</sup> Lüdtke, 1982 pp. 79-82; Funk, 1986, p. 284.

<sup>38</sup> Parliamentary Papers 1830 /515, June 1<sup>st</sup> 1830: A Return of all General Orders, issued by the Magistrates appointed under the Act of 1829: Instructions Part I, ‘Police Constables’.

<sup>39</sup> Eiben, 1903, p. viii; similarly Gerland, 1895, Article 21 and Lemke, 1904, pp. 194 & 201.

<sup>40</sup> Funk, 1986, p. 278.

<sup>41</sup> Geheimes Staatsarchiv (GstA), Berlin, H.A.1, Rep. 77, CB S 48 Vols. 3 & 4 contain a systematic collection of newspaper cuttings on the subject of complaints against the police gleaned from a broad section of the German press, 1908-1918. See also Berlin Landesarchiv (BLA), Pr. Br. Rep. 030, C, Polizeipräsidium Berlin 94, Geheime

### 4.3 Proportionality in the Use of Force

Finally, a central element in the English model was the concept of moderation in the use of force. The idea of accommodating the extent of force to the particular goal was not entirely absent from Prussian instructions which talk about *Mäßigkeit*. From the earliest Prussian instructions from the 1830s police was encouraged to avoid the use of physical force wherever goals could be achieved by simple persuasion.<sup>43</sup> Or, as von Brand put it in 1838, “*Humanität mit Strenge zu paren*” and only to use so much force as was necessary to enforce the law and maintain order.<sup>44</sup> This was from the days when physical punishment was still part of the legal authority of the police. Throughout the second half of the 19<sup>th</sup> century, we find repeatedly this paternalistic invitation from police managers not to use unnecessary violence, and all service regulations from the period 1890-1919 call for a polite and measured approach to the public. In the same vein, the 1898 instruction from the Interior Ministry stressed that weapons should only be used when other coercive means had proved to be fruitless.<sup>45</sup>

However, in the instructions the demand to use overwhelming force to deal with even minor opposition clearly takes precedent over any call for moderation. A measured reaction was limited to situations where no actual conflict existed. Whenever it came to dealing with actual opposition, physical or verbal, the *Schutzmann* had to make absolutely clear to the public that no opposition or challenge to his authority could be tolerated. This was completely opposite the instructions to the English policeman who was consistently encouraged not to react to provocation, to keep his temper and only use as much force as was needed for the enforcement of the law.<sup>46</sup> Similarly, where the English policeman was required only to use proportionate levels of violence, the Prussian *Schutzmann* was instructed to use disproportionate force: to use the sharp blade of the sword rather than the blunt, and to use firearms rather than sword, so that the population could be in no doubt that any challenge to a *Schutzmann* was a challenge to the authority of the State and would be dealt with through overwhelming force.<sup>47</sup>

Thus the arrogant and aggressive attitude of Prussian *Schutzmen* towards members of the public was to a great extent rooted in the instructions they received, and the definitions of key concepts which shaped police duties and approaches to the public.

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Präsidentialregistratur: 8872-8881: „Beschwerden der Bevölkerung über Polizeidienststellen und Polizeibeamte in Berlin, 1892-1913“.

<sup>42</sup> Raymond Fosdick, *European Police Systems*, Monclair: Patterson Smith 1969 (originally published 1915) pp. 34-35.

<sup>43</sup> Lüdtke, 1984, p. 320.

<sup>44</sup> Theodor von Brand, *Volks-, Noth- und Hülfsbüchlein für Jedermann*, Glogan Saxony, 1838, p. 502.

<sup>45</sup> Instruction of 22 June 1898 (Cit. Funk, 1986, footnote 703).

<sup>46</sup> Government Papers 1830: /515 *Return of Numbers of Metropolitan Police; Numbers of Divisions in Metropolitan Police District; General Orders issued by Secretary of State (Robert Peel)*, 29 September 1829; Howard Vincent, *A Police Code and Manual of the Criminal Law (Preceded by an Address to Constables by Sir Henry Hawkins)* London: Cassell & Co., 1883, p. 76.

<sup>47</sup> GStA, H.A.1, Rep. 77, Titel 1190, Nr., 2, Vol. 2 ‘Organisation der Schutzmannschaften und die Verhältnisse der Schutzmannen bei den königlichen Polizeipräsidium, 1903-1905’ docs. 139 ff.; *Dienstanweisung für die Schutzmannschaft des königlichen Polizei-Präsidioms zu Hannover*, 1 mai 1900; GStA, H.A.1, Rep. 77, Titel 1190, Nr., 2, Vol. 2 ‘Organisation der Schutzmannschaften und die Verhältnisse der Schutzmannen bei den königlichen Polizeipräsidium, 1903-1905’, docs. 48ff. *Dienstanweisung für die Schutzmannen des königlichen Polizei-Präsidioms zu Königsberg in Preussen. Vom 28 Juni 1887 nebst den später ergangenen Zusätzen pp. (1902) art. 1 & 16; Bartels, 1913, pp. 11-12.*

### *Conclusion: Cooperation and Legitimacy vs. Control and Ridicule*

For frustrated Prussian reformers of conservative bending like Segger and Lemke, there was no doubt where to place the responsibility for the failure to improve the relationship between the *Schutzmannschaft* and the public: if the German population did not respond as positively to the police as did the English population, it was of course the fault of the German population! The unruly, selfish Germans, who should learn to be more like the English.<sup>48</sup>

Of course, “the English model” even in England to some extent remained an ideal to be strived for rather than reflecting the full truth of police-public relations.<sup>49</sup> The features of police behaviour which English authorities claimed as reality was to some extent wishful thinking, at least in the interaction of police with the lower orders of society.

Yet at a very fundamental level the English model was not easily transferable to Berlin because some of the English concepts of policing were incompatible with many of the fundamental notions of Prussian policing. Application of the English policing model into the Prussian-German context would therefore require much more than simply institutional changes towards greater public accountability and control. To be sure, the legitimacy of Prussian policing might have been strengthened through adopting features from English policing such as greater public accountability and control through elected bodies and legal courts, that might help to change the public perception that the *Schutzmänner* were largely beyond the reach of the law.

However for the Prussians to implement the English police model it would require an entire rethinking of the logic of power structures between police as a State authority and individual citizens. It was not enough to cherry-pick isolated elements from the English model, such as demilitarising aspects of recruitment and training, improving politeness or adding “serving the public” to the numerous tasks of the *Schutzmannschaft*.

While Prussian reformers sought to improve cooperation from the public and strengthen the legitimacy and respect for the *Schutzmann* among Germans, they failed to grasp the deeper logic in the English notion of “policing by consent”. This requires exercise of power as part of on-going negotiation with the population about extent and boundaries of police powers and right to interfere. The Prussian authorities understood only coercion. Consent and cooperation appears in Prussian writing as something that the population “ought” to show, just as the *Schutzmen* “ought” to be men of honour who refrained out of their own sense of duty from engaging in corruption. While refusing to rethink the basic premises of power relationships, Prussian police authorities adopted a moralistic approach which provided no institutional mechanisms for transparency, accountability and control. Repeated scandals of widespread police corruption<sup>50</sup> clearly show that any attempt to regulate police behaviour on the basis of morality, honour and “Prussian values” was doomed to failure.

What Prussian police authorities particularly failed to grasp was the fact that the English model rested on a carefully managed balance and negotiation with the public over the limits of legitimate police powers. Because the introduction of police forces in England was controversial, it had to

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<sup>48</sup> Segger, 1898, p. 33-34; Lemke, 1904, pp. 209-211.

<sup>49</sup> Clive Emsley, ‘The English Bobby: An Indulgent Tradition’ in Roy Porter (ed.), *Myths of the English*, Cambridge: Polity Press, 1992, p. 121.

<sup>50</sup> Funk, 1986, pp. 90-91; Hall, 1977, pp. 89-112.

appear to be responsive and accountable to the public – and police authorities developed all kinds of ways of appearing to respond, sometimes appearing to lose, give way, step down – while actually, the police remained largely in control. The Prussian authorities never considered using soft power, winning by appearing to loose, and never contemplated giving up their old heavy-handed and ‘safe’ methods.

Similarly, there was no question of reconsidering the importance of never loosing face and never stepping down. It was one of the weak points of Prussian policing, because the need to never loose face in many cases made the authorities look morally beyond the pale, or simply plain stupid. The Prussian police authorities not only wanted to remain in control, they wanted to make sure that the public knew – and could be in no doubt – that they were in control. Rather than a negotiating approach that strengthened the legitimacy of policing by appearing responsive to citizens’ concerns, the Prussian insistence on never losing face actually made the *Schutzmannschaft* less legitimate and more vulnerable to ridicule in the inevitable situations where gross misconduct on the part of individual policemen was clear for all to see.