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**The Graz School of Criminology
– The Criminological Institute
at the Karl-Franzens-University of Graz (1912–1978)¹**

The Austrian city Graz is one of the birth places of criminology as an independent branch of science; it once was one of the centres of criminology and thus a „Mecca of modern knowledge society“.² In this short essay I want to give a short overview over the development of the Graz school of criminology, starting with its foundation shortly before World War I and ending with the closing of the criminological institute in 1978. The focus lies on the main protagonists and their crucial points of criminological research; the importance of the Graz school of criminology for the Viennese branch of Austrian criminology and its effect on the development of criminology in Europe and the USA cannot be analysed in this article.³

*1. Hans Gross
– criminology in the Austro-Hungarian Monarchy*

In the year 1912 Hans Gross (1847–1915) founded the Criminological Institute at the Karl-Franzens-University Graz, thus contributing decisively to the institutionalisation of criminology at university level and so becoming a „pioneer in modern forensic science“ and a „father of modern criminal

¹ I want to thank Prof. Jan Widacki for the invitation to present the history of the Graz school of criminology in the „Studia Prawnicze“.

² P. Becker, *Kriminalmuseum, Graz: Der praktische Blick am Tatort*, [in:] *Mekkas der Moderne. Pilgerstätten der Wissensgesellschaft*, ed. H. Schmundt, M. Vec, H. Westphal, Köln et al. 2010, p. 348–353.

³ I. Burney, N. Pemberton, *Making Space for Criminalistics: Hans Gross and fin-de siècle CSI*, „Studies in History and Philosophy of Biological and Biomedical Sciences“ 2013, No. 44, p. 16–25.

investigations“.⁴ Gross developed an encyclopaedic concept of criminology, unifying practical investigation work and theoretical reflection under one epistemological roof. Before his academic career, which started 1898 at the University of Czernowitz (today Tchernivtsi in Ukraine), Gross had served for decades as an investigating judge, public prosecutor and criminal judge. He became famous for his „Handbook for Investigating Judges“,⁵ which was published first in 1893 and saw many editions in the following years (the 10th and final German edition was published 1977/1978) and was translated into several languages, including English and Russian. His second major work was the „Criminal Psychology“,⁶ the first edition of which appeared in 1898, and in the same year Gross started editing the „Archives of Criminal-Anthropology and Criminalistics“.⁷ This journal was an interdisciplinary platform for theoretical and practical research concerning all fields of knowledge that were relevant for criminology; it was renamed „Archives of Criminology“ in 1916, under which name it still is edited, thus being the oldest existing criminological journal.



Fig. 1. Hans Gross (1847–1915)

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⁴ R.M. Gardner, T. Bevel, *Practical Crime Scene Analysis and Reconstruction*, Boca Raton 2009, p. 4.

⁵ H. Gross, *Handbuch für Untersuchungsrichter, Polizeibeamte, Gendarmen u. s. w.*, Graz 1893.

⁶ H. Gross, *Criminalpsychologie*, Graz 1898.

⁷ Archiv für Kriminal-Anthropologie und Kriminalistik 1ff. (1898ff.); from 1916 on published under the title „Archiv für Kriminologie“.

Hans Gross and his concept of an encyclopaedic, aetiological criminology were very influential. Gross was a central figure in criminological science as well as in criminal literature – he was the incarnation of Sherlock Holmes, even outdoing him in criminalistic accuracy.⁸ Many aspects of his work and life would be interesting – his model role for the typical detective in criminal literature for example, or the precarious and tragic relationship between him and his only son, the psycho-analyst and anarchist Otto Gross (1877–1920).⁹ Here we will focus on some central epistemological characteristics of Gross' criminology:¹⁰

Hans Gross was convinced of the importance of natural science – only if criminology and criminal law are based on the inductive methods of the exact sciences, they can become sciences themselves. The investigation of lawful causation was the core of scientific work, and so Gross tried to apply the exact methods of classical physics in criminology. In a positivistic manner he wanted to uncover the truth not by entering a hermeneutic process but by strict empirical induction and by deductive conclusion. Humanities like history or philosophy and their ‚weak‘ or ‚uncertain‘ methodology¹¹ were only of secondary interest to him. What really counted was the discovery of hard facts, of the real things or realities („Realien“), and to find out the realities Hans Gross transferred the criminalistic method of fact finding to criminological and criminal-psychological problems. Even motives, intentions and the mental state of human beings materialized to hard realities. In general, Gross understood human beings as realities that should be examined like any given object related to a criminal case. But unlike the mere material character of any object that served as piece of evidence, the uncertainty characterizing

⁸ W.M. Johnston, *Österreichische Kultur- und Geistesgeschichte. Gesellschaft und Ideen im Donauraum 1848 bis 1938*, Wien et al. 1974, p. 107f.

⁹ *Očeva država – majčin sin / Vaterstaat – Muttersohn*, ed. G.M. Dienes, E. Dubrović, G. Kocher, Exhibition catalogue, Rijeka 2007; *Die Gesetze des Vaters. Problematische Identitätsansprüche. Hans und Otto Gross, Sigmund Freud und Franz Kafka*, ed. G.M. Dienes, R. Rother, Exhibition catalogue, Wien et al. 2003.

¹⁰ For a detailed analysis of Hans Gross' epistemology see: C. Bachhiesl, *Zwischen Indizienparadigma und Pseudowissenschaft. Wissenschaftshistorische Überlegungen zum epistemischen Status kriminalwissenschaftlicher Forschung* (= Austria: Forschung und Wissenschaft interdisziplinär, Vol. 8), Wien et al. 2012, p. 11–203; C. Bachhiesl, *Die Grazer Schule der Kriminologie. Eine wissenschaftsgeschichtliche Skizze*, „Monatschrift für Kriminologie und Strafrechtsreform“ 2008, Vol. 91, No. 2, p. 87–111, 88–93; P. Becker, *Zwischen Tradition und Neubeginn: Hans Gross und die Kriminologie und Kriminalistik der Jahrhundertwende*, [in:] *Die Gesetze des Vaters. 4. Internationaler Otto Gross Kongress*, ed. A. Götz von Olenhusen, G. Heuer, Marburg an der Lahn 2005, p. 290–309; L. Gschwend, *Justitias Griff zur Lupe. Zur Verwissenschaftlichung der Kriminalistik im 19. Jahrhundert* (= Grazer Rechts- und Staatswissenschaftliche Studien, vol. 60), Graz 2004.

¹¹ B. Mazlish, *The Uncertain Sciences*, New Haven–London 1998.

the manifestations of human life caused problems to exact objectification. Since the natural sciences did not offer reliable and broadly accepted methods of measuring intentions and qualia, it was exactly his confidence in the exact methods that opened Gross' epistemology for unnoticed political and ideological value judgements. From today's point of view it is clear that many of the truths Gross thought he had found were mere assertions and reflections of social values. So in some aspects Gross' epistemology does not show the path to scientific truth but to the reproduction of social and political standards given by the patriarchal and semi-feudalistic, semi-capitalistic regime of the Austro-Hungarian Monarchy. This becomes clearly visible when Gross' theories concerning gypsies – his favourite scapegoats – or female criminals are examined.¹² The aetiological and encyclopaedic criminology was not only a branch of science dedicated to the search for truth, it was also an *ancilla iuris* and an instrument for political and social control and discipline. (Which in my opinion does not mean that it completely constructed criminology or 'the evil', as some post-modern inspired authors conclude,¹³ but it instrumentalized criminality as well as criminal science for political purposes.)

Besides physics and its exact methodological ideal, evolutionary biology was another natural-scientific discipline that was especially important for Gross' criminology. Gross was impressed by the stringent and careful argumentation of Charles Darwin, and in his „Criminal Psychology“, he extensively referred to Darwin's book „The Expressions and Emotions in Man and Animals“.¹⁴ But even if Gross tried to elaborate his arguments as carefully and free from prejudices as Darwin did, he rather often replaced Darwinian biology by the social Darwinism prevalent in those days.¹⁵ Darwin's concept of biological evolution was mixed with the concepts of degeneration and inevitable social and genetic decline. Neither the ‚real‘ criminals nor the ‚real‘ insane perpetrators were a challenge for criminology, but the „psychopathic degenerates“ and the „simple degenerates“, like Gross named them. What should be done with people who were not insane enough for a lunatic asylum and not criminal enough for (enduring) imprisonment? – Gross was thinking about deportation to some remote islands in the Adriatic sea, where these

¹² C. Bachhiesl, *Bemerkungen zur kriminologischen Physiognomik und zu ihren antiken Wurzeln*, [in:] *Antike Lebenswelten. Konstanz – Wandel – Wirkungsmacht. Festschrift für Ingomar Weiler zum 70. Geburtstag* (= Philippika. Marburger altertumskundliche Abhandlungen, Vol. 25), ed. P. Mauritsch et al., Wiesbaden 2008, p. 829–859.

¹³ P. Strasser, *Verbrechermenschen. Zur kriminalwissenschaftlichen Erzeugung des Bösen*, Frankfurt am Main–New York 2005.

¹⁴ H. Gross, *Criminalpsychologie...*, p. 104ff., 559ff.; C. Darwin, *The Expressions and the Emotions in Man and Animals*, London 1872.

¹⁵ T. Ertzemer, *Ein ewigwährender Untergang. Der apokalyptische Bevölkerungsdiskurs im 20.*

degenerates, who in his eyes were victims of an excess of culture, could find back their way to healthy nature.¹⁶ The focus on degeneration was a common place in criminology at the turn of the 19th century, although there were some differences – the Italian criminologist Cesare Lombroso for example was convinced that degeneration was not caused by a surplus of culture but by a lack of it – Lombroso advocated an atavistic theory of degeneration which culminated in the concept of the *delinquente nato* or born criminal,¹⁷ a concept that Hans Gross, who was a member of the modern school of criminology following Franz von Liszt, did not appreciate.

Gross' confidence in the capacity of the exact, empiricist methods of natural science lead him to the conclusion that it was not the formal law bound to paragraphs that formed the core of a modern law system, but the scientific physical and psychical exploration of the criminal. Therefore, Gross was convinced that the detailed knowledge of the laws of nature was more important than the knowledge of criminal law. For a distant future he even could imagine a system of criminal law without a code of penal law – the laws of nature should replace the rules of law.¹⁸ This was of course contradictory to the principle of legality, which is one of the basic rules of a modern constitutional state. But Gross did not think that the principle *nullum crimen, nulla poena sine lege* and the unequivocal administration of the law were essential for the future; to him the individualistic psychological and biological judgement by a criminal court seemed to be more important than any formal principles¹⁹ – he could not see the danger of judicial arbitrariness.

So for the development of criminology Hans Gross is an ambivalent figure: He was one of the founding fathers of this new branch of science and a pioneer of its institutionalization. His criminological theories were of enormous influence up to the 1960s, and his criminalistic tenets are still of importance today. But he was also a precursor of a way of thinking that undermined the rule of (formal) law. Of course he cannot be made responsible for developments that occurred after his death, but he delivered some of the pave-stones with which the street that should lead into totalitarianism was built. Gross believed that the exact methods of the natural sciences would make penal law and criminology more scientific; he could not see the danger of an ideological or political abuse of scientific lines of argumentation.

¹⁶ H. Gross, *Degeneration und Deportation*, [in:] H. Gross, *Gesammelte Kriminalistische Aufsätze*, Vol. 2, Leipzig 1907, p. 70–77; H. Gross, *Die Degeneration und das Strafrecht*, *ibidem*, p. 1–11; C. Bachhiesl, *Zwischen Indizienparadigma...*, p. 114–137.

¹⁷ C. Lombroso, *Der Verbrecher (homo delinquens) in anthropologischer, ärztlicher und juristischer Beziehung*, In deutscher Bearbeitung von O. Fraenkel, 2 vol., Hamburg 21894/1890.

¹⁸ H. Gross, *Antrittsvorlesung*, „Archiv für Kriminal-Anthropologie und Kriminalistik“ 1905, Vol. 21, No. 1–2, p. 169–183.

2. Adolf Lenz – The First Republic and Austro-Fascism

In 1915, Hans Gross fell ill with pneumonia (his criminological institute was located in the not heated basement of the main building of the University of Graz), he died on 9th of December 1915. His successor was Adolf Lenz (1868–1959), an expert for international law and penal law born in Vienna. In contrast to Gross, Lenz was not a votary of natural science. Lenz believed in holism and intuition: Because man is not alone a rational but to a not too small extent also an irrational being, he should be analysed by irrational means. Lenz was convinced that he was able to put himself inside the mind and soul of another person by intuition, thus grasping his or her personality and detecting his or her „personality guilt“. Lenz called this form of irrational and intuitive science criminal biology.²⁰



Fig. 2. Adolf Lenz (1868–1959)

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²⁰ A. Lenz, *Grundriß der Kriminalbiologie. Werden und Wesen der Persönlichkeit des Täters nach Untersuchungen an Sträflingen*, Wien 1927; C. Bachhiesl, *Zur Konstruktion der kriminellen Persönlichkeit. Die Kriminalbiologie an der Karl-Franzens-Universität Graz* (=Rechtsgeschichtliche Studien, Vol. 12), Hamburg 2005, p. 41–179; C. Bachhiesl, *Der Fall Josef Streck. Ein Sträfling, sein Professor und die Erforschung der Persönlichkeit* (= Feldforschung, Vol. 1), Wien et al. 2010; C. Bachhiesl, *Die Grazer Schule der Kriminologie...*, p. 93–97. For the criminal biology in Germany see J. Simon, *Kriminalbiologie und Zwangssterilisation. Eugenischer Rassismus 1920–1945*, Münster et al. 2001; T. Kailer, *Vermessung des Verbrechers. Die Kriminalbiologische Untersuchung in Bayern, 1923–1945*, Bielefeld 2011.

Adolf Lenz tried to give criminology a holistic turn. Lenz referred to the psychological concepts of C. G. Jung (1875–1961) and Karl Jaspers (1883–1969) and to the Constitutional Biology of Ernst Kretschmer (1888–1964), but the central method of his criminal biology was irrational intuition like the philosophers Richard Müller-Freienfels (1882–1949) and Ludwig Klages (1872–1956) taught it. The roots of Lenz' thinking reached back to the holistic concepts of German romanticism – Carl Gustav Carus (1789–1869) for example was one of the scholars whose ideas contributed to criminal biology. Carus was convinced that the character and the soul of a person were mirrored in its physical appearance,²¹ and this idea was also crucial for Lenz. (Today some tendencies towards a ‚rebiologicalization‘ seem to revitalize a more sophisticated version of this idea.²²)

Lenz took part in the debate concerning the reform of penal law that had begun in the 19th century and did not come to rest even in the 1920s. The traditionally oriented jurists wanted to stick with the classical concept of guilt, whereas the supporters of the modern school of criminology (like Hans Gross) wanted to replace guilt – as it was defined by penal law – by psychology and the concept of dangerousness. Adolf Lenz did not want to give up the idea of guilt and punishment – he thought that the people would never understand and approve a ‚soul-less‘ penal law that did not know guilt and retaliation –, but he wanted to modify it: Not the guilt concerning a single criminal act of a person should be examined, but the „personality guilt“, the general guilt that emanated from the character of a person. And a criminal should be punished no more for individual criminal acts but for the amount of „personality guilt“ he carried with him.

The method Lenz used for exploring this „personality guilt“ was mere intuition or, as he called it, „inner inspection“; Lenz thought he could place himself inside the analyzed person, thus sharing his or her inner life.²³ Of course this was far away of the natural-scientific exactness and inductive empiricism Gross had had in mind, but natural science was not setting the standards for Adolf Lenz, who followed a current of thought that became noticeably important after World War I and did not appreciate natural science; the latter was recognized as a major cause for the crisis of the occidental

²¹ C.G. Carus, *Symbolik der menschlichen Gestalt. Ein Handbuch zur Menschenkenntnis*. Neu bearbeitet und erweitert von T. Lessing, Celle 1925.

²² P. Strasser, *Naturalistische Kriminologie?*, [in:] *Paradigmenwechsel im Strafverfahren! Neurobiologie auf dem Vormarsch* (= Schriftenreihe des Instituts für Konfliktforschung, Vol. 30), ed. I. Rohde, H. Kammeier, M. Leipert, Berlin 2008, p. 65–80; S. Krauth, *Die Hirnforschung und der gefährliche Mensch. Über die Gefahren einer Neuauflage der biologischen Kriminologie*, Münster 2008.

²³ A. Lenz, *Grundriß der Kriminalbiologie...*, p. 19f.

culture.²⁴ With his intuitive and irrational method, Lenz tried to reach the core of the criminal personality. From today's point of view the results of his research do not seem to be very reliable and trustworthy: When, for example, examining a manslayer and burglar who had broad shoulders but narrow hips and thin legs, Lenz concluded that this physical appearance mirrored a disturbance of psychical equilibrium²⁵ – an impressing line of reasoning, indeed. For the examined person this expertise was of course not amusing at all, since it uncovered a good dose of personality guilt which, had Lenz' concept of a reform of penal law been realized, would have meant a more severe punishment.

Lenz was an internationally well respected scientist. He became president of the International Criminal-Biological Society in 1927, and his „Compendium of criminal biology“²⁶ was the first systematic presentation of this, well, branch of criminal science. But Lenz did not only push his scientific career, he also was an influential politician. Lenz was member of the „Heimwehr“, a conservative paramilitary unit in the First Austrian Republic, and after the establishment of the Austro-fascist regime he became a member of the „Federal Culture Council“ (Bundeskulturrat) and thus was a rather high representative of the Schuschnigg government 1934 to 1938. This was the reason why he had to retire when, in March 1938, Austria was occupied by Nazi Germany.²⁷ With his retirement the character of criminal biology in Graz changed.

3. Ernst Seelig – Nazi criminology

Ernst Seelig (1895–1955) had started his studies of the law in Graz, when Hans Gross still was director of the criminological institute. 1919 he served as unpaid assistant at this institute, and here he made his career. Seelig did not follow the holistic turn Lenz had carried out, he felt bound to the exact epistemology Gross had established as central characteristic of criminology. As we will see, this did not mean that Seelig was not influenced by the intuitive method, but his work was principally based on inductive empiricism.

²⁴ E. Husserl, *Die Krisis der europäischen Wissenschaften und die transzendente Phänomenologie. Eine Einleitung in die phänomenologische Philosophie*. Herausgegeben, eingeleitet und mit Registern versehen von E. Ströker (= Philosophische Bibliothek, Vol. 292), Hamburg ³1996; A. Harrington, *Reenchanting Science. Holism in German Culture from Wilhelm II to Hitler*, Princeton 1996.

²⁵ A. Lenz, *Grundriß der Kriminalbiologie...*, p. 71.

²⁶ *Ibidem*.

²⁷ C. Bachhiesl, *Zur Konstruktion der kriminellen Persönlichkeit...*, p. 164–179.

Seelig also kept on with criminalistic analyses and produced criminalistic court expertises, an activity that did not find the attention of Adolf Lenz.²⁸



Fig. 3. Ernst Seelig (1895–1955)

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In the 1920s, one of Seelig's central research fields was testimony research, especially the „registration of expression“, an early form of lie detection, using a polygraph that registered the movements of the examinees legs and arms and the thoracic and abdominal breathing.²⁹ But this was just one field in which Seelig was active – his work comprised various topics of criminology and penal law, for example game of chance and its criminal implications,³⁰ the psychology of pimps³¹ and the extermination of life non worth living.³²

An important research area in criminology was typology. The categorization of criminal behaviour and personalities was a daring project, because reality showed a broad variety of criminal phenomena. This diversity made

²⁸ *Ibidem*, p. 180–222; C. Bachhiesl, *Die Grazer Schule der Kriminologie...*, p. 97–101.

²⁹ C. Bachhiesl, *The Search for Truth by „Registration of Expression“ – Polygraph Experiments in Graz in the 1920s*, „European Polygraph“ 2013, No. 7, p. 55–68; E. Seelig, *Die Registrierung unwillkürlicher Ausdrucksbewegungen als forensisch-psychodiagnostische Methode*, „Zeitschrift für angewandte Psychologie“ 1927, No. 28, p. 45–84.

³⁰ E. Seelig, *Das Glücksspielstrafrecht*, Graz 1923.

³¹ E. Seelig, *Die psychosexuelle Struktur des Zuhälters*, „Monatsschrift für Kriminalpsychologie und Strafrechtsreform“ 1929, No. 3, p. 169–173.

³² E. Seelig, *Die Freigabe der Vernichtung lebensunwerten Lebens*, „Archiv für Kriminologie“ 1923, No. 75, p. 304–306.

it difficult to find general physical and psychological characteristics of ‚typical criminals‘, but, as the German criminologist Gustav Aschaffenburg stated, nonetheless certain homogenous types of criminals differing characterologically from ‚normal‘, non-criminal human beings could be defined.³³ Adolf Lenz was focussed on the intuitive exploration of individual persons – although he wanted to let his criminal biology end in a typology of criminals, he could not reach a level that permitted general, abstract definitions.³⁴ Ernst Seelig took up this loose end of Lenz' work and developed a typology that conceded the existence of atypical criminals, thus paying tribute to individual particularities, but classified the majority of criminals into eight types. This typology was first published 1931,³⁵ was modified later on and re-published together with an empirical study carried out by Karl Weindler with the purpose to attest the practical usefulness of Seelig's classification.³⁶ (Here we have to point to the fact that Seelig – like all members of the Graz school of criminology – did think that a typical criminal was a scientific abstraction of real criminal phenomena and not an anthropological reality; in contrast to the Lombroso-school the Graz school did not believe in the existence of the *homo delinquens* as a special variety of *homo sapiens*.³⁷) The eight types according to Seelig were:³⁸

- 1) the work-shy professional criminal
- 2) the criminal lacking the power to resist committing property offences
- 3) the aggressive criminal
- 4) the criminal lacking sexual self-control
- 5) the criminal due to a crisis
- 6) the primitive-reactive criminal
- 7) the criminal due to conviction
- 8) the criminal lacking social discipline

This typology was the backbone of Seelig's concept of criminology, as can be clearly seen when regarding his manual of criminology;³⁹ it also was integrated into criminal biology. Seelig took over the criminological institute

³³ G. Aschaffenburg, *Das Verbrechen und seine Bekämpfung. Einleitung in die Kriminalpsychologie für Mediziner, Juristen und Soziologen; ein Beitrag zur Reform der Strafgesetzgebung*, Heidelberg 1923, p. 194.

³⁴ A. Lenz, *Grundriß der Kriminalbiologie...*, p. 136.

³⁵ E. Seelig, *Das Typenproblem in der Kriminalbiologie*, „Journal für Psychologie und Neurologie“ 1931, No. 42, p. 515–526.

³⁶ E. Seelig, K. Weindler, *Die Typen der Kriminellen*, Berlin–München 1949.

³⁷ *Ibidem*, p. 4.

³⁸ *Ibidem*, p. 2–17.

³⁹ E. Seelig, *Lehrbuch der Kriminologie*, Graz 1951, p. 40–194.

in Graz after the annexation of Austria by Germany in 1938, he became a member of the NSDAP and was appointed professor by Hitler in 1941. Seelig did not omit the irrational and intuitive criminal biology. He programmatically insisted on natural-scientific standards, but did not completely give up intuition as a method of gaining knowledge; he just didn't talk about it any more. Instead of intuition now race biology and the typology presented above became the most important elements of criminal biology. Criminology became an instrument of Nazi ideology: The criminal-biological analysis was no more only carried out with criminals but also extended to so-called „quarter-jews“ who generally were not allowed to marry – but their marriage could exceptionally be allowed if they showed sufficient racial characteristics, and these racial characteristics were detected (or not) by Ernst Seelig with the help of his modified criminal biology that was re-modelled to a general racial biology.⁴⁰

Hans Gross' abovementioned idea of a scientifically based penal law without a code of penal law was realized in a perverted form in the Nazi era, when a person could be convicted because of the offence of the so called „healthy feeling of the people“. Seelig appreciated this quasi-legal arbitrariness.⁴¹ Seelig's concept of criminology was genuinely organicistic. He thought that not the criminal individual, but criminality as a whole was a sort of cancer destroying the health of the „body of the people“ („Volkskörper“). Like a physician saves the life of a man by cutting out the cancerous ulcer, the criminologist should provide the health of the people by removing the criminals from society.⁴² After the end of World War II, Seelig was removed from office only for a short time; he was rehabilitated and went to Saarbrücken (Germany) in 1954, where he was one of the founders of the criminological institute at the University of the Saarland. In 1955 he died from lung cancer.

4. Hanns Bellavić and Gerth Neudert – criminology in the Second Austrian Republic

Hanns Bellavić (1901–1965) was director of the criminological institute in Graz from 1955 until his death in the year 1965. He had started his career in this institution in 1928. Bellavić continued the tradition of criminal biology

⁴⁰ C. Bachhiesl, *Das Jahr 1938 und die Grazer Kriminologie. Gebrochene Kontinuitäten in einer aufstrebenden Wissenschaftsdisziplin*, „Historisches Jahrbuch der Stadt Graz“ 2009, No. 38/39, p. 93–120.

⁴¹ C. Bachhiesl, *Das Verbrechen als Krankheit. Zur Pathologisierung eines strafrechtlichen Begriffs*, „Virus. Beiträge zur Sozialgeschichte der Medizin“ 2008, No. 7, p. 11–40, 30f.

⁴² C. Bachhiesl, *Die Grazer Schule der Kriminologie...*, p. 100f.

in Graz. He omitted the racial-biological focus Seelig had introduced to criminal biology; in the examination form still remained the question after the race of the examinee. This question had been part of the form since the 1920s, but after World War II, like before 1938, it was not of significant importance. Bellavić did not declare intuition a central methodological item, but because of his resuming to Adolf Lenz' criminal-biological concept the intuitive method was always a mute precondition of Bellavić' criminal biology.⁴³



Fig. 4. Hanns Bellavić (1901–1965)

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After World War II the discussion in Austria about replacing the classical penal law by natural-scientifically justified measures of preventive detention and *défense sociale* became less excited. A compromise between both systems became more and more probable, and the integration of committal elements into the classical penal law based on guilt and responsibility – like the Austrian reform of penal law of 1974 realized it – appeared in outlines. Bellavić here saw the chance for bringing in criminal biology which found a new focus on juvenile delinquency. Bellavić completed Seelig's typology of criminals, which still played an important role, with his own typology aimed at the degree of rehabilitation probability of juvenile perpetrators. Rehabilitation of convicted criminals was a topic of growing importance in the 1950s

⁴³ Bellavić' concept of criminology is outlined in C. Bachhiesl, *Zur Konstruktion der kriminellen Persönlichkeit...*, p. 223–233; C. Bachhiesl, *Die Grazer Schule der Kriminologie...*, p. 101–104.

and 1960s; it was increasingly emphasized by criminology that not only the criminal individual was guilty for committing a crime, but society as whole, and that with a conviction not only the guilty criminal was punished but the guilty conscience of society.⁴⁴ Bellavić presented a typology comprising five types of juvenile criminals; his final aim was to extend these types to adult criminals.⁴⁵ According to the prognosis of rehabilitation probability the kind of punishment should vary: Bellavić suggested a „conviction without punishment“, a „lesson punishment“ (for example a slap in the face), a „therapy punishment“, and preventive detention.

The prognosis of rehabilitation probability was based on a „multi-dimensional method“ using „understanding registration“ – a method not further specified, but in its core identical with Lenz' intuition which was brought into a more modern form.⁴⁶ A modern feature of this ‚new‘ criminal biology was the inclusion of women; Ellinor Reckenzaun, a collaborator of Bellavić, examined 200 female prisoners. This was the first large scale female criminological examination in Graz.⁴⁷

Bellavić had revived criminal biology in Graz, and also on international level criminal biology seemed to come back. The International Criminal-Biological Society was refounded, and Bellavić was a member of the managing committee. But the blossom of criminal biology was fading – it could not be integrated in the reform of penal law. Not criminologists as universal experts for all phenomena concerning crime and criminals in the sense of Hans Gross were the specialists who should bring in new knowledge and expertises, but psychologists and psychiatrists. (If these experts are better qualified for answering the various questions concerning a person's guilt and personal as well as social circumstances is an open question – even today we can find the opinion that these questions would better be answered by sociologically trained criminologists.⁴⁸) This development brought a decisive loss of importance of criminal biology and of the criminological branch of the Graz school of criminology.

⁴⁴ A. Mergen, *Methodik kriminalbiologischer Untersuchungen*, Stuttgart 1953, p. 7.

⁴⁵ H. Bellavić, *Soziale Prognose*, Mitteilungen aus gerichtlicher Medizin und Psychiatrie, Gerichtsmedizin und – Psychologie, „Kriminologie, Strafrecht und Strafvollzug“ 1958/1959, No. 2–4, p. 8–20, 9.

⁴⁶ H. Bellavić, *Soziale Prognose...*, p. 14ff.

⁴⁷ E. Reckenzaun, *Die Retardierung der kriminellen Frau als kriminalbiologische Erscheinung*, „Archiv für Kriminologie“ 1960, No. 126, p. 1–11.

⁴⁸ M. Bock, *Kriminologie im Strafverfahren. Über eine Lücke im Erbe von Hans Gross*, [in:] *Kriminologische Entwicklungslinien. Eine interdisziplinäre Synopsie*, ed. C. Bachhiesl, S. Bachhiesl, J. Leitner, Wien et al. 2014 (in print).

What remained was criminalistics. Hans Gross had always tried to tie theoretical criminology and practical-technical criminalistics together; the criminological institute at the University of Graz always comprised a criminalistic station in which criminalistic analyses were carried out and forensic expertises were produced. Hanns Bellavić was an acknowledged expert for handwriting and script analyses,⁴⁹ and he also worked at drill and saw traces and other physical, chemical and technical problems.⁵⁰ Bellavić died in 1965.



Fig. 5. Gerth Neudert (1928–2001)

© Hans Gross Kriminalmuseum, Universitätsmuseen der Karl-Franzens-Universität Graz

Criminalistics were in the focus of Gerth Neudert (1928–2001), who followed Hanns Bellavić as director of the criminological institute in 1967. Like all criminologists in Graz, Neudert was a jurist, he had started to work at the institute in 1955. Although Neudert, too, tried to continue with criminal biology – for example, he examined a 50 year old man who always did start sexual actions with minor juveniles when he had heard church bells ringing; Neudert stated a „hearing fetishism“⁵¹ – he could not change the fact that

⁴⁹ H. Bellavić, *Die Sekundären Veränderungen bei Schriftverstellung*, Graz 1948.

⁵⁰ H. Bellavić, *Identifikation von Sägespuren*, „Archiv für Kriminologie“ 1934, No. 34, p. 139–146; H. Bellavić, *Identifikation von Bohrspuren*, „Archiv für Kriminologie“ 1938, No. 102, p. 97–113.

⁵¹ G. Neudert, *Ein eigenartiger Fall von Gehörfetischismus*, „Archiv für Kriminologie“ 1960, No. 125, p. 64–71. For Neudert's criminology see C. Bachhiesl, *Die Grazer Schule der Kriminologie...*, p. 105f.

the glory days of criminal biology were over. But Neudert was a noted expert for handwriting analysis and graphology – hundreds of his expertises still fill the archive of the Hans Gross Museum of Criminology. He also carried out diverse criminalistic examinations, for example ballistic analyses or analyses of forged documents.

Neudert was the last director of the criminological institute at the University of Graz. Like its founder, Hans Gross, Neudert combined criminology and criminalistics – this combination was a constant characteristic of the Graz school of criminology. But criminology in Graz did not participate in the change of criminological paradigms that took place in the 1960s and 1970s (sociologic turn, labelling etc.), it remained basically aetiological and biological. This was one reason for its decline. In 1977/1978, the 10th and up to now last German edition of Hans Gross' famous „Handbook“ was published.⁵² In 1978, the criminological institute was closed and integrated into the institute of penal law at the University of Graz. Criminology was again just an auxiliary discipline for criminal law. Neudert continued his work until his retirement in 1993. On 8th of January 2001 with him the last director of the criminological institute died. In 2003 the Hans Gross Museum of Criminology, the old teaching collection that formed part of the criminological institute from its beginnings on, was reopened as a public museum in the main building of the University of Graz. Since 2009 it is part of the University Museums of the University of Graz. Today it is a small, but well established institution with more than 6.000 visitors per year, and it is also a place of historical-criminological and epistemological research and a platform for the cooperation of science, justice, administration and executive power.⁵³ The institute of penal law shows a re-awakened interest in criminological research and teaching. The Graz school of criminology with all its scientific merits and its epistemological weaknesses and problematic political and ethical implications is now a part of history; but the Hans Gross Museum of Criminology at the Karl-Franzens-University of Graz is a *lieu de mémoire* that tries to make visible the connections between past and present.

⁵² H. Gross, F. Geerds, *Handbuch der Kriminalistik. Wissenschaft und Praxis der Verbrechensbekämpfung*, Vol. 2, Berlin 1977–1978.

⁵³ These cooperative efforts resulted among others in three international and interdisciplinary congresses: „Criminological Theory and Praxis“ 2009, Nov. 9; „100 Years Criminology in Graz – Criminological developments in interdisciplinary perspective“ 2012, Oct. 18–20; „Measuring the Soul – Validity and Genealogies of the Quantification of Qualia“ 2013, Oct. 17–19. For the activities of the Hans Gross Museum of Criminology see: www.kriminalmuseum.uni-graz.at.

Streszczenie

Szkoła Kryminologii w Grazu – Instytut Kryminalistyczny na Uniwersytecie w Grazu (1912–1978)

Wraz z założeniem w 1912 roku Instytutu Kryminologii na Uniwersytecie w Grazu austriacki prawnik i kryminolog Hans Gross stał się jednym z twórców kryminologii jako gałęzi nauki na poziomie uniwersyteckim, uznawanym również w czasach dzisiejszych. Niezmienną cechą szkoły kryminologii w Grazu było ujednoczenie kryminalistyki praktycznej i kryminologii teoretycznej. Sporządzanie ekspertyz sądowych oraz pomoc w miejscu dokonania przestępstwa były zarówno częścią czynności kryminologów, jak i próbą przekształcenia prawa karnego w naukę ścisłą, intuicyjno-irrationalnym badaniem przestępców z pomocą biologii kryminalnej, czy opracowaniem typologii przestępców. Szkoła kryminologii w Grazu była mocno związana z polityką, jej przedstawiciele doskonale wpasowywali się w poszczególne reżimy. Hans Gross był monarchistą patriarchalnym, Adolf Lenz był w latach 1934–1938 członkiem austrofaszystowskiego rządu, a Ernst Seelig przekształcił kryminologię w narzędzie ideologii nazistowskiej. Po II wojnie światowej szkoła w Grazu nie uczestniczyła w zmianie paradygmatów, które zachodziły w kryminologii w latach sześćdziesiątych i siedemdziesiątych; był to jeden z powodów jej podupadania. W roku 1978 Instytut Kryminalistyczny na Uniwersytecie w Grazu został włączony do Instytutu Prawa Karnego, kryminologia ponownie stała się jedynie *ancilla iuris* sprzed czasów Hansa Grossa. Od 2003 Muzeum Kryminologii na Uniwersytecie w Grazu stanowi *lieu de mémoire* ewolucji współczesnej kryminologii oraz punkt wspólny historii nauki i rzeczywistych badań kryminologicznych.

Słowa kluczowe: Hans Gros, Adolf Lenz, Ernst Seelig, kryminologia, Uniwersytet w Grazu

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Recent Developments in Jurisdiction Regarding European Labour and Social Law

Introduction

In 2012 and 2013, numerous decisions of the ECJ on labour and social law have been delivered. Therefore, these comments are restricted to a – of course very subjective – selection. The report focuses on labour law and begins with the individual labour law, which most of the decisions pertain to (e.g. conclusion, content and termination of an employment relationship). This section is followed by two judgements on international jurisdiction and international labour contract law and then by decisions on collective labour law. The conclusion finally is dedicated to the recent developments in the area of social law, followed by a few basic considerations. There is no tendency within the jurisdiction of the ECJ towards a particular development, whatsoever it is still strongly engaged with the national law of the Member States and therefore enforces changes within there. The anti-discrimination jurisdiction points some consolidation, particularly in regard to age discrimination. The ECJ also continued and expanded the jurisdiction concerning the law of holidays, which began with the verdict in *Schultz-Hoff*¹ in 2009. In contrast to the aforementioned developments, it is striking that there is nothing essentially new to report concerning the transfer of undertakings after the sensational judgment *Alemo-Herron*² in the summer of last year. In the daily press, the two decisions *Galina Meister*³ and *Kücük*⁴ have caused quite a stir.

¹ Case C-350/06 and C-520/06 [2009], ECR 2009, p. I-179 = ECLI:EU:C:2009:18.

² Case C-426/11 [2013], ECLI:EU:C:2013:521.

³ Case C-415/10 [2012], ECLI:EU:C:2012:217.

⁴ Case C-586/10 [2012], ECLI:EU:C:2012:39.