

Christian Müller. *Verbrechensbekämpfung im Anstaltsstaat: Psychiatrie, Kriminologie und Strafrechtsform in Deutschland. 1871-1933.* Göttingen: Vandenhoeck & Ruprecht, 2004. 337 S. EUR 38.90, paper, ISBN 978-3-525-35141-3.



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Published on H-German (July, 2006)

Christian Müller's book is a study of various attitudes and practices--chiefly those of psychiatrists and jurists--toward crime, criminals, penal administration, and legal reform. The book covers the period from German unification in 1871 to the end of the Weimar Republic, although its chief focus is post-1890. Müller has no aspirations to write a comprehensive history of criminology. Instead, he seeks to link developments in criminal law with the science of criminology and to investigate the interface between psychiatric and criminological science on the one hand and penal practice on the other. Müller presents his evidence in chronological fashion, arguing that this strategy facilitates a better understanding of the socio-historical convulsions wrought by the First World War. Within this chronology, he considers several different levels of agency and discourse, such as the practice of forensic experts, medical theories on crime, political disputes over criminal law reform, the impact of the war on perceptions of crime, and the "establishment of criminal biology as a science" (p. 19). In Müller's account, criminology is confined largely within a psychiatric and medico-biological paradigm. Readers interested in

forensic pathology and/or the sociology and psychology of crime will not be drawn to this book.

Müller's book is well researched. It draws on archival material, journals and other published literature from a broad array of sources. The study would have profited from a brief survey of the landscape of criminological journals and associations in Germany; and some important literature has been overlooked.[1] But these are minor issues. One of the more striking aspects of this monograph, however, is the near ubiquitous use of so-called "scare quotes." Numerous terms ranging all the way from "modern," "klassisch" and "Fortschritt" to "verbrecherische Irren," "gemeingefährlich" and "völkisch" are set off in scare quotes. Others terms, such as *Rassenwahn* (p. 13), *moderne Anstaltsstaat* (p. 298) or *zwangspsychiatrisiert* (p. 298) are not. Two things are interesting about this practice: one is that, today, the terms "modern" and "classic" appear to require the same kind of velvet glove treatment that "erbbiologisch," "gemeingefährlich" or "völkisch" do. Another is that the reader is left struggling with a text from which the author is

forever distancing himself. One must wonder, for example, what the point is of using the term "modern" in scare quotes from start to finish? And at times the argument seems to be structured around terms such as "gemeingefährlich" or "verbrecherischer Irre" to the point that, although in scare quotes, the analytical framework is in danger of succumbing to the very categories it is studying.

Nevertheless, the author is clear about where his methodological and political allegiances lie: within the first two pages of the book, the authority of Max Weber, Hans-Ulrich Wehler, and Detlev Peukert has been summoned. By contrast, Müller will have no truck with the work of Michel Foucault, and he is decidedly critical of Thomas Nipperdey's interpretation of criminal law in Imperial Germany.

Müller interprets his work as contributing to a better understanding of the boundary between histories of racism and of the welfare state. To these ends, he relies heavily on the concept of medicalization, analyzing how psychiatry and an interventionist state contributed to the "Überformung der Strafrechtspflege" (p. 14). In Müller's usage, the term medicalization is synonymous with biologization. In addition, he considers medicalization as being comprised "essentially" of three other processes: professionalization, social disciplining and rationalization (p. 20). Rather than defining what he means by these concepts—or, for that matter, by the term "Anstaltsstaat" in the book's title—, Müller uses them heuristically to formulate three basic questions: First, whether the political engagement of doctors in criminal law reform can be understood as a strategy of professionalization; second, whether the advance of the bio-sciences into penal practice led to a strategy of social disciplining along the lines described by Michel Foucault; and third, whether criminal law reform rationalized the "fight against crime" by making the techniques of "Gesellschaftsteuerung" more scientific and utilitarian (p. 21).

Several chapters of the book present new and important findings. Müller's account of the debates on eugenics and criminal law reform in the Reichstag during the Weimar Republic is especially insightful. The section on "Anstaltspsychiatrie und Strafvollzug" also presents new and important material about how German courts dealt with mentally ill defendants. Here and elsewhere Müller's analysis differentiates clearly between administrative, institutional and legislative measures that were deployed to confront the "problem" of psychiatric criminals. In this context, one of the most important contributions of the book is its exemplification of the financial and institutional constraints on psychiatric practice. In Müller's account, these constraints generally become evident when analyzing the spaces between various jurisdictions, such as psychiatry and penal administration, court officials, the police, forensic experts or academic jurists. In so far as Müller has provided us with a history of jurisdictional boundary disputes, his history of criminology is a welcome and useful addition to the literature.

Difficulties arise, however, when Müller attempts to situate these boundary disputes within his larger narrative of medicalization. From the outset, Müller insists that by 1900 a "medico-biological paradigm" had come to dominate criminological theory and practice (p. 23). Yet in spite of this claim, he keeps running up against evidence to the contrary. Many of the theoreticians he considers do not fit the medicalization paradigm. He also recounts several examples of just how limited psychiatric influence was on judicial process and how reluctant psychiatrists could be in their dealings with the criminal justice system (pp. 29-34, 88). Important resolutions of the Internationale Kriminalistische Vereinigung and the Deutsche Juristentage do not appear to support the hypothesis of medicalization in the sense of psychiatrists gaining greater influence over the criminal justice system or of crime being recast in medical terms (p. 149).

More generally, this problem suggests that Müller's reliance on Lombroso's "born criminal" to support his medicalization argument is misplaced. The "avalanche" that Lombroso set off in Germany was markedly critical of the concept of the "born criminal," with both medical practitioners and conservative moralists taking him to task. Indeed, the consensus in psychiatric circles seems to have been a rejection of Lombroso--a rejection that can be interpreted as a move *away* from any rigid medico-biological paradigm of crime toward more subtle definitions of mental deviance as personality disorder.[2] The apodictic claim that Adolf Baer's "milieu-theory" was an "extreme position" is doubtful and not supported by evidence (p. 75). Or at least, if Baer's views were extreme, then it was probably because they were at the forefront of contemporary criminological research. Thus, Paul Näcke cited Baer's book as an exemplary piece of "serious science" and the best in the field of criminal anthropology--a discipline that he believed Lombroso had brought into ill-repute. According to Näcke, criminals were "primarily the product of external influences, of milieu." [3] All of this is not to argue that German psychiatrists dismissed the possibility of biological markers for crime. They did not and Müller is right to point this out. But it is to argue that they were far more discerning and differentiating than his notion of medicalization is able to account for.

The difficulties and contradictions of Müller's medicalization hypothesis come to a head in the work of Gustav Aschaffenburg. Arguably the most influential German criminologist in first decades of the twentieth century, Aschaffenburg was a psychiatrist and student of Emil Kraepelin. Yet he by no means advanced an overtly "biological" or "medical" explanation of crime. On the contrary, his work placed great emphasis on the social causes of crime. To his credit, Müller does not biologize Aschaffenburg's work and warns his readers not to adopt an "all too simplistic view" of the man (p. 79). But given the fact that Aschaffenburg's *Das Verbrechen und seine Bekämpfung*

(1903) was likely the most widely read textbook on criminology prior to World War I, it seems implausible to argue that criminology in Germany was decidedly biological. Indeed, the claim fits awkwardly with numerous examples that Müller himself cites of psychiatrists who, like Aschaffenburg, defined criminal behavior as being precisely *not* a disease. In fact, a social and psychological turn in German psychiatry in the 1890s contradicts Müller's attempt to posit an inexorable crescendo of medical and biological interpretations of crime. It is worth noting that Aschaffenburg and numerous other psychiatrists saw themselves working in the field of criminal *psychology*, something that Müller conveniently overlooks because it does not fit in the narrative of medicalization.

Nor is the evidence for a medicalization of crime in the Weimar Republic much stronger. Müller concedes that the concept of "psychopathische Minderwertigkeit" was forensically useful precisely because it was *not* a medical term (pp. 70-71). In fact, the book's entire section on the *Verbrecherpersönlichkeit* suggests that crime was not being medicalized at all, but rather demedicalized, because Müller moves from "moralischer Schwachsinn" (which arguably *was* a medical term) in the 1870s to Kurt Schneider's "psychopathische Persönlichkeit" (which did *not* describe a morbid condition) in the 1920s. Nor does the extended treatment of Theodor Viernstein's work appear to buttress the argument, given the decidedly tentative nature of the evidence and the fact that the *Stufenvollzug* in Bavaria was clearly not driven by biological concerns, indeed it proved to be relatively impervious to them (p. 254). All of this suggests that attempts to medicalize crime were a rather spectacular failure. Jurists, penal authorities and other non-medical expert groups retained their respective jurisdictions over the task of defining who criminals were and how they should be treated.

Rarely does Müller miss an opportunity to stress that psychiatrists were eager advocates of state security policy. And indeed, it is not hard to find examples of psychiatrists doing the state's bidding on security issues. But this is a state-centered reading of the sources. In fact, the reality was much more complicated. There are ample cases of psychiatrists resisting police incarcerations or objecting to psychiatric wards in prisons. Many psychiatrists were reluctant to deal with the state security apparatus because it raised the specter of their institutions being viewed not as beneficent medical hospitals, but as carceral institutions. The association of asylums with jails and prisons was longstanding and psychiatrists were not eager to encourage such notions. No doubt psychiatrists were concerned about security issues, but public safety was not necessarily at the forefront of their worries and could sometimes be an easy flag to wave when it came to arguing the case for other professional interests. And far better than anyone else, psychiatrists knew that there was no marked difference in the rates of crime in the general vs. the psychiatric population.

Müller rejects the view that professional advantages accrued to psychiatry from forensic work mainly on the grounds that that work distracted from and contradicted psychiatrists' interests in medicalizing their discipline (pp. 32, 292). The validity of this claim rests on the assumption that medicalization was the *only* professional strategy that psychiatrists deployed. But this was not the case. Here Müller has relied too heavily on Doris Kaufmann's study of the early and mid-nineteenth century, at which time medicalization was in fact foremost in psychiatrists' minds. But by the 1880s, psychiatry's status as a medical discipline was—for the most part—recognized. Secure in this knowledge, psychiatrists could and did deploy strategies of professionalization that took them further afield from their medical model. Thus, as far as professional strategies go, the usefulness of forensic psychiatry lay not in its ability

to strengthen the medical model (Müller is right about this), but rather in helping psychiatry extend its jurisdiction in the direction of psychology and public health, exploit the void arising from the failure of criminal anthropologists to find distinguishing biological markers of crime, and demonstrate psychiatry's social utility vis-a-vis other, more narrowly medical specialties. Müller's reliance on a "medico-biological paradigm" prevents him from recognizing these strategies of professionalization.

In the end, Müller reflects on the implications of his findings for criminal justice in Nazi Germany and returns to the original three questions that framed the investigation, answering them all with a qualified no. With that, the entire hypothesis of the medicalization of crime seems to dissolve, since the author claimed that professionalization, social disciplining and rationalization were three "essential" components of medicalization. Indeed, Müller appears to have cast aside his own "theoretischer Ordnungsbegriff" and reverted to older explanations that take no notice of biopolitics (p. 20). By Müller's account, what ultimately mattered in terms of criminal law reform were the "politische Weichenstellungen" (p. 302), the "konservatives politisches Umfeld" (p. 302) and strategies of "defensive modernization" (pp. 159-169). Although Müller cites approvingly Peukert's claim that the Nazis both advanced and hindered processes of modernization, his main point at the end of the book is that they adopted and radicalized older, authoritarian tendencies of an "illiberale Kriminalpolitik" (p. 302). Indeed, Müller comes perilously close to claiming that modern criminology—and with it forensic psychiatry—is neither here nor there when it comes to explaining criminal justice in Nazi Germany, because the reformers made no significant headway before 1933, and after 1933 the Nazis adopted more traditional, authoritarian models. It seems this is not what Müller wanted to argue, but his conclusions do not leave the reader with many other options. Consequently, far from advancing Peukert's mod-

ernization argument, this result seems to return to the West German debates about illiberalism, *Reformstau* and defensive modernization of the 1970s and 80s.

Notes

[1]. See, for example, Jürgen Blühdorn's excellent dissertation, "Beiträge zur Entwicklung und Pflege der Gefängniswissenschaft an den deutschen Universitäten seit Anfang des 19. Jahrhunderts" (Diss. jur., University of Münster, 1964); Heinrich Unger, *Die Irrengesetzgebung in Preussen nebst den Bestimmungen über das Entmündigungsverfahren sowie die Einrichtung und Beaufsichtigung der Irrenanstalten* (Berlin: Siemenroth & Troschel, 1898); E. C. Rautenberg, *Verminderte Schuldfähigkeit. Ein besonderer, fakultativer Strafmilderungsgrund?* (Heidelberg: Kriminalistik Verlag, 1984); Wolfgang Burgmair et al., *Emil Kraepelin. Kriminologische und forensische Schriften, Werke und Briefe* (Munich: belleville, 2001); Richard P. Werner, *Die Versorgung der geisteskranken Verbrecher in Dalldorf* (Berlin: Fischer's medicinische Buchhandlung, 1906).

[2]. See Ludwig Kirn's review of the literature, in which he concludes: "Heute muss daher das Dogma vom geborenen Verbrecher als gründlich widerlegt betrachtet werden." Ludwig Kirn, "Ueber den gegenwärtigen Stand der Criminal-Anthropologie," *Der Irrenfreund* 36 (1894): p. 21.

[3]. Paul Näcke, "Zur Methodologie einer wissenschaftlichen Criminal-Anthropologie," *Centralblatt für Nervenheilkunde und Psychiatrie* 16 (1893): p. 458; cf. also p. 435.

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Citation: Eric J. Engstrom. Review of Müller, Christian. *Verbrechensbekämpfung im Analtsstaat: Psychiatrie, Kriminologie und Strafrechtsform in Deutschland. 1871-1933*. H-German, H-Net Reviews. July, 2006.

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