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Rebekka Habermas, Diebe vor Gericht. Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert, Frankfurt a. M., New York (Campus) 2008, 411 S., ISBN 978-3-593-38774-1, EUR 34,90.

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Following a highly regarded and innovative micro-history of bourgeois family life in the century before industrialization, Rebekka Habermas now delivers a fresh and sophisticated account of the social grounding, cultural performance, and public staging entailed in the shaping of a reformed legal system in the wake of the 1848 revolution. Based in a rare trove of documentation for the impoverished rural districts of Upper Hessen (trial records and associated criminal proceedings were not usually archived), her study challenges not only the celebratory liberal story of the march of the rule of law, but also the social historian's critique of the latter deriving from the 1970s and 1980s, associated in German historiography above all with the pioneering contributions of Dirk Blasius. Neither the triumph of the liberals' vaunted ideals of justice (public accountability, trial by jury, equality before the law) nor the purposeful imposition of class justice via the rule of property, the new judicial procedures and investigative practices of the 1850s and 1860s became fashioned into an operative regime of the law (»the modern legal order«) only by an elaborate process of cultural conflict and everyday transactions. Driven far less by immediate expressions of material need and economic gain than by breakdowns in a complex moral economy of lower-class reciprocities and social honor, the incidence of small-scale theft is related by Habermas to the precariousness of ordinary existence in a time of rural changes whose impact exacerbated »the many small differences in the village« (p. 43–48). Yet, so far from restoring the damaged integrity of those popular conceptions of honor and customary right, the courts applied themselves to the instituting of a fully elaborated bourgeois conception of property based in its exclusive ownership and use. In each aspect of the reformed legal order – investigation and gathering of evidence, definitions of criminality and representations of the accused, treatment of witnesses and jurors, the staging of justice in the physical setting of the court-room, the protocols of arraignment and trial – the resulting practice of criminal justice was taken further and further away from the originary social setting of village life. Whereas the crimes of theft began in the micropolitical contexts of shared ownership, customary reciprocity, and common use, they ended as elements in a new societal regime of regulative objectification.

Habermas calls this »jurisdictional politics« (p. 248–250), a new cultural formation of the law shaped via processes of »abstraction and decontextualization«. In developing this analysis, she divides the book into three roughly equal parts. The first (p. 27–89) considers the conflictual divergence of popular and upper-class understandings of the social and cultural meanings of theft, as the judicial system became remade in the wake of the societal crisis of the 1840s and the revolution of 1848. By posing the question »What is

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Property – What is Theft?« (p. 80–86), she assembles the ground from which the earlier social histories of Blasius may be persuasively critiqued. The second part (p. 91–161) turns to the new practices for the production of evidence and proof, moving from the procedural obsession with the crime scene and the narrowly conceived redefinitions of ownership, through the new sciences of criminology, classification, and statistics, to the perfection of new practices of hearing and examination. Such processes embedded and secured the new assumptions about property while helping the new juridical habitus to cohere. In its third and final part (p. 163–239) the book culminates in the courtroom itself, examining the treatment of witnesses, the protocols for legal representation, the standing of jurists, the practical unimportance of jury trials, and the powerlessness of the accused. Here Habermas reemphasizes all the ways in which judicial proceedings effectively removed theft-crime from its contexts of social intelligibility while staging the power and dignity of the law. At the same time, she resists any reduction to mere theatricality, qualifying the latter with a complicated argument about the growth of the public sphere and the effects of public critique.

This is an ambitious, original, richly grounded, beautifully expounded, and mainly compelling account. It draws creatively on the findings of legal anthropology[1] with its emphasis on the making of judicial systems and juridical practices in the concrete and everyday settings where crimes are committed and apprehended, investigated and reviewed, codified and judged, such that their meanings become secured into particular regimes of the law. If Habermas confirms Blasius's view of the law as a distinctive bourgeois formation of power, historicizing its rhetorics of emancipation while negating its claims to superiority over the *ancien regime*, she regrounds the argument in a more complex cultural understanding: the rule of property not as the consequence of materially driven social conflicts and their forms of agency, but growing from the conflicted cultural arena of clashing everyday transactions. In the process she well reaps the benefits of the so-called cultural turn. Whether the latter obviates the fruitfulness of social history, though, is another matter, because a different category of nineteenth-century rural property crime – classically that of wood theft, not by accident the one chosen by Blasius – could further complicate the dialectics of property and its rights. Likewise, Habermas's approach is highly reminiscent of Edward Thompson's »Whigs and Hunters: The Origins of the Black Acts« (New York, 1975), not mentioned in »Diebe vor Gericht«, whose simultaneity of social and cultural analysis belies their gratuitous but all-too familiar binarizing. In another major dimension, the argument might shift again once conceptions of property under the civil law are brought into play, as in Jonathan Sperber's »Property and Civil Society in South-Western Germany, 1820–1914« (Oxford, 2005), also unmentioned. Finally, while Habermas couches her approach in critique of Michel Foucault, its terms remain ineluctably and appropriately post-Foucauldian. But these reservations cannot take away from the fascinating merits of this outstanding book.

[1] E. g. Sally Engle Merry, Colonizing Hawai'i.The Cultural Power of Law, Princeton 2000.

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