



Volume 2. From Absolutism to Napoleon, 1648-1815

Emperor Joseph II's Penal Patent [*Strafpatent*] governing Manorial Courts in the Countryside (September 1, 1781)

The reign of Maria Theresa saw the issuance of administrative rulings that improved the condition of the peasantry in the lands of the Austrian monarchy. These rulings put limits on the feudal rents noble landlords could rightfully demand from their village subjects. They also prohibited further lordly enclosure of peasant land in manorial demesne land. This patent, released early in Joseph II's independent reign, sought to further improve the condition of peasant subjects by systematizing the procedures whereby manorial courts maintained by noble lordships administered primary-jurisdiction justice to subject villagers [*Untertanen*]. Though its provisions are harsh by modern standards, its intent was village-friendly. In any case, noble lordships had little rational interest in meting out lengthy or debilitating punishments, which would only render their subjects unfit to fulfill their labor obligations. Still, abuses of manorial justice were common.

That on the one hand, the general welfare may be promoted and preserved, and the dependence and obedience of the subjects to their lawful lords, which is necessary for tranquility, be established, and on the other hand, that subjects be protected against any abuse by the manorial authority – Be it enacted:

1. Every subject shall obey and submit to the commands of the Crown services and the orders of the manorial lords and their officials.
2. No subject shall be judge in his own case, but shall carry any complaint to the lawful authorities, and act as instructed by them.
3. A person disobeying such instructions is to be punished as ordered by the manorial authority unless a penalty has already been imposed on him by a higher instance.
4. Persons inciting others to disobedience or combining with them to that purpose are to be regarded as principal offenders.
5. Before any subject is punished, his offense shall be recited to him in the local Court in the presence of the magistrate or of two neighbors, and his defense heard. If his defense is untenable, or if his offense is proved by witnesses, the authority shall impose on him a punishment appropriate to the offense.

6. A record must be drawn up stating the offense, indictment and all attendant circumstances, and the sentence. This shall be read aloud and signed by the neighbors convoked for the purpose.

7. Should the subject wish to appeal against the punishment, he is to be furnished free of charge with a copy of this record; but the authority may proceed at once to put the sentence into effect.

8. The punishments which the manorial Court or its officials may award are the following:

- a. Detention in decent circumstances not prejudicial to health; this may include a diet of bread and water.
- b. Hard labor.
- c. Rigorous detention and hard labor in irons.
- d. Eviction from house and land.

In framing the sentence, regard must be had to the age or extreme youth of the offender, and in general, to his physical condition; the severer punishments must be awarded only to individuals on whom lighter punishments have had no effect; sentences of detention and penal labor awarded at a time when urgent work in the fields is in progress shall not be served until this is completed.

[. . .]

9. A sentence of a week's detention or of expulsion from house and land must first be approved by the Kreis office.

[. . .]

10. The Court must send the record of the case to the Kreis office, which shall confirm it within a maximum of eight days if approved or else institute enquiries within that period.

11. A subject sentenced to detention does not have to pay for his keep, neither can a fine, in cash or its equivalent, be imposed on him. Should he, however, have inflicted damage, this shall be assessed by qualified persons, and equitable compensation fixed.

12. The manorial Courts and their servants are not to make unreasonable demands on the subjects. If found guilty of this they are to be punished by the Kreis office. Records of these punishments are to be sent quarterly to the Provincial authorities.

Source of English translation: C.A. Macartney, ed., *The Habsburg and Hohenzollern Dynasties in the Seventeenth and Eighteenth Centuries*, in *Documentary History of Western Civilization*. New York, Evanston, and London: Harper & Row, 1970, pp. 174-76. Introduction, editorial notes, chronology, translations by the editor; and compilation copyright © 1970 by C.A. Macartney. Used by permission of HarperCollins Publishers.

Source of German original text: Joseph Kropatschek, ed., *Handbuch aller unter der Regierung des Kaisers Joseph II. für die k.k. Erbländer ergangenen Verordnungen und Gesetze in einer systematischen Verbindung: enthält die Verordnungen und Gesetze vom Jahre 1780 bis 1784* [*Handbook of all Decrees and Laws issued under the Government of Emperor Joseph II for the Austrian Imperial and Royal Hereditary Lands in Systematic Assembly, including the Decrees and Laws from 1780 to 1784*], volume 1. Vienna: Moesle, 1785, pp. 48-53.