

## A) Mechanisms of Urban Stability

### Social Control and Urban Government. The Case of Goerlitz, 15th and 16th centuries

Dr. des. Lars Behrisch  
University of Bielefeld, Germany  
lars.behrisch@uni-bielefeld.de

The history of crime, criminal justice and social control in the Early Modern Period has received much attention during the last two decades. In the German case, the large cities in the south and west of the country have been the focus of interest. In the process of research, the stereotype of harsh and pitiless, 'medieval' punishments has given way to the notion of a highly flexible and, at least in the 15<sup>th</sup> and 16<sup>th</sup> centuries, rather mild penal justice. City authorities were seeking to legitimize their rule by administering justice to the burghers. Accordingly, they tried to adapt the legal instruments to the particular requirements of social control.<sup>1</sup> These findings match with the notion of a general political consensus between the ruling magistrates and the burghers. Thus, urban stability went together with the acceptance of civic liberties – in the double sense of personal rights *and* of some degree of corporate political participation.

While this holds true for the so-called Imperial Cities in the south and west of the Empire – Nuremberg, Frankfurt, Cologne and others – it is doubtful if the cities in the north and east of the Empire, where burgher participation in urban government was often considerably more restricted, equally relied on consensus-orientated and flexible systems of criminal justice. This paper will focus on the case of Goerlitz, nowadays a forgotten place on the Polish border, but prominent in medieval and early modern Germany. In Goerlitz, a tiny elitist city council managed to govern the town without any guild participation. Civic liberties – in the political sense – were not respected. As shown by the protests articulated during various unsuccessful uprisings, this kind of government was not accepted by the urban population. Now, did crime control take different forms, too?

The answer is, first, that there was some cooperation between the citizens and the urban law court, largely identical with the city council. Second, however, the urban government did not adapt the legal norms to fit the particular context of crime control because it did not – and needed not – conceive of crime control as a measure of generating or keeping up a general consensus. Goerlitz did not develop the flexible control instruments characteristic of the cities mentioned above. On the contrary, the archaic medieval Saxon law was largely kept intact. The resulting inadequacy of the penal instruments had consequences for urban life and urban stability, too: As the

---

<sup>1</sup> Eibach, Joachim: Frankfurter Verhöre. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert, Paderborn 2003, p.376 ss.; Henselmeyer, Ulrich: Ratsherren und andere Delinquenten. Die Rechtsprechungspraxis bei geringfügigen Delikten im spätmittelalterlichen Nürnberg, Konstanz 2002, p. 136 ff.; Schuster, Peter: Eine Stadt vor Gericht. Recht und Alltag im spätmittelalterlichen Konstanz, Paderborn 2000, p. 312, 317 f.; Schwerhoff, Gerd: Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt, Bonn 1991, p. 167 ff.; idem, Devianz in der alteuropäischen Gesellschaft. Umriß einer historischen Kriminalitätsforschung, in: Zeitschrift für Historische Forschung 19 (1992), p. 385-414.

criminal records show, conflicts among the burghers were less ritualized and more openly violent than in other cities.

Let me outline these observations in three steps. First, I will show that the urban government in Goerlitz did not rely on the consensus of the population; second, I will sketch the basic patterns of cooperation in the domain of crime control; and third, I will show that social control in Goerlitz was less efficient than elsewhere.

(1) In the 15<sup>th</sup> and 16<sup>th</sup> centuries, most German towns of a certain size developed some kind of constitutional arrangement between the burghers and the city councils. Far from democratic regimes, there still existed some institutional link between the craft guilds and the magistrate. There was also a generally shared notion that the authorities could not act independently of a common consensus.<sup>2</sup> In Goerlitz, however, constitutional realities were different.<sup>3</sup> Although the craft guilds strove to implement certain forms of participation, the city council managed to keep up its small merchant recruitment basis and its tight grip on all questions of political importance. In spite of a series of uprisings, and in contrast to other cities, the guilds were not able to establish a less exclusive Greater Council or at least burgher committees that could mediate controversial issues. Moreover, the magistrate explicitly rejected the idea that its power was derived from the burghers. It emphasized instead that the only source of legitimacy was the city's sovereign, the king of Bohemia.

It was the particular relationship of city and king that made this unusual exclusiveness of the city council possible. Other than most city sovereigns of the period, the Bohemian king was interested only in the fiscal status quo and did not have any ambitions to interfere with the council's authority. He was prepared to back it against opposition without making use of the council's need for his support. That is why, unlike most other city authorities, the council of Goerlitz was always ready to invoke

---

<sup>2</sup> Schilling, Heinz: Gab es im späten Mittelalter und zu Beginn der Neuzeit in Deutschland einen städtischen "Republikanismus"? Zur politischen Kultur des alteuropäischen Stadtbürgertums, in: Helmut G. Koenigsberger (ed.), *Republiken und Republikanismus im Europa der Frühen Neuzeit*, München 1988, p. 101-143; idem, *Aufstandsbewegungen in der stadtbürgerlichen Gesellschaft des Alten Reiches. Die Vorgeschichte des Münsteraner Täuferreiches, 1525-1534*, in: Hans-Ulrich Wehler (ed.), *Der Deutsche Bauernkrieg 1524-26*, Göttingen 1975, p. 193-238; Meier, Ulrich / Schreiner, Klaus: *Regimen Civitatis. Zum Spannungsverhältnis von Freiheit und Ordnung in alteuropäischen Stadtgesellschaften*, in: idem (ed.), *Stadtregiment und Bürgerfreiheit. Handlungsspielräume in deutschen und italienischen Städten des Späten Mittelalters und der Frühen Neuzeit*, Göttingen 1994, p. 11-34; Schreiner, Klaus: *Iura et libertates. Wahrnehmungsformen und Ausprägungen 'bürgerlicher Freiheiten' in Städten des Hohen und Späten Mittelalters*, in: H.-J. Puhle (ed.), *Bürger in der Gesellschaft der Neuzeit. Wirtschaft - Politik - Kultur*, Göttingen 1991, p. 59-106.

<sup>3</sup> For the following, see Behrisch, Lars: *Justiz, Kriminalität und Stadtverfassung in Görlitz im 15. und 16. Jahrhundert*, in: J. Bahlcke (ed.), *Die Oberlausitz im frühneuzeitlichen Mitteleuropa. Politik - Wirtschaft - Kultur*, Leipzig 2004 [forthcoming]; idem, *Die Görlitzer Ratskür im 15. und 16. Jahrhundert*, in: *Neues Lausitzisches Magazin N. F. 3* (2000), p. 49-64. A similar situation can be found in Leipzig. See Hoffmann, Philipp: *Rechtmäßiges Klagen oder Rebellion? Konflikte um die Ordnung politischer Kommunikation im frühneuzeitlichen Leipzig*, in: Rudolf Schlögl (ed.), *Interaktion und Herrschaft. Die Politik der frühneuzeitlichen Stadt*, Konstanz 2004, p. 311-358; Keller, Katrin: *Gemeine Bürgerschaft und Obrigkeit. Zu Wirkungsmöglichkeiten von Handwerksmeistern innerhalb städtischer Selbstverwaltungsorgane Leipzigs im 16. Jahrhundert*, in: Wilfried Ehbrecht (ed.), *Verwaltung und Politik in Städten Mitteleuropas. Beiträge zu Verfassungsnorm und Verfassungswirklichkeit in altständischer Zeit*, Köln 1994, p. 183-190.

the sovereign's power, both rhetorically and effectively, in the face of guild opposition and uprisings.

The introduction of the Reformation in Goerlitz in 1525 is a significant exception to the rule. Because the king was fighting the Turks, and because the religious issue was too explosive, the city council for once had to give in. When it initially opposed the call for Lutheran preaching, people began to attack the council in various forms. Quite soon, the latter decided to give in and introduced the Reformation. Thanks to this swift reaction, however, the magistrate successfully stifled further claims for political participation or economic and social emancipation. In this respect, events in Goerlitz can be compared to Nuremberg, where the Reformation was introduced not only at the same time but for the same reason – namely, to prevent further constitutional changes. In most other cities, the urban authorities opposed the Reformation for many years to come and, as a result, faced serious threats to their political privileges towards the end of the 1520s.<sup>4</sup>

The early success of the Reformation in Goerlitz was possible because virtually all burghers were fiercely engaged in the religious issue. It provided a coherent focus for opposition across professional, social or gender boundaries. Due to this pressure, and because the king was not at hand, the magistrate made the partial concession of abandoning Catholicism. At the same time, the Reformation signaled yet another failure of the guilds to gain a hold in urban politics. For at least a century to come, civic liberties – in the sense of political participation – were not to be granted to the vast majority of the burghers of Goerlitz.

(2) In spite of this fundamental political disagreement, urban population and city council shared central values concerning urban stability: Both disapproved of physical violence, of verbal offenses, and of theft. This concurrence was not purely theoretical: Townspeople and inhabitants of the rural juridical district regularly sought justice at the city law court. The case of Goerlitz thus confirms the general view that social control was – and still is – a mutual undertaking of formal institutions and social interaction.<sup>5</sup>

Yet, a closer look reveals that the cooperation of the population with the urban government in the domain of crime control was highly selective. Offenses against the public order - drinking, dancing or gambling - were hardly ever reported to the authorities. Sexual deviance seems to have been sanctioned mostly informally, i.e. within families and neighbourhoods rather than in court procedure. Most striking,

---

<sup>4</sup> Mörke, Olaf: Rat und Bürger in der Reformation. Soziale Gruppen und kirchlicher Wandel in den welfischen Hansestädten Lüneburg, Braunschweig und Göttingen, Hildesheim 1983; Schilling, Heinz: Die politische Elite nordwestdeutscher Städte in den religiösen Auseinandersetzungen des 16. Jahrhunderts, in: Wolfgang J. Mommsen (ed.), Stadtbürgertum und Adel in der Reformation. Studien zur Sozialgeschichte der Reformation in England und Deutschland, Stuttgart 1979, p. 235-308. For Nuremberg, see Vogler, Günter: Nürnberg 1524/25: Studien zur Geschichte der reformatorischen und sozialen Bewegung in der Reichsstadt, Berlin 1982.

<sup>5</sup> Schwerhoff, Gerd: Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt, Bonn 1991, p. 445; Blauert, Andreas: Das Urfehdedewesen im Südwesten Deutschlands im Spätmittelalter und in der Frühen Neuzeit, Tübingen 2000, p. 29, 92; Eibach, Joachim: Gewaltkriminalität im Ancien Régime. Frankfurt am Main im europäischen Kontext, in: Zeitschrift für Historische Forschung 25 (1998), S.359-382; Groebner, Valentin: Der verletzte Körper und die Stadt. Gewalttätigkeit und Gewalt in Nürnberg am Ende des 15. Jahrhunderts, in: Thomas Lindenberger (ed.), Physische Gewalt, Frankfurt a.M. 1995, p. 162-189.

however, is the small number of reported property offenses compared to the charges of physical violence. This is not indicative of the true crime rate: The incidence of theft was in fact much higher than the number of charges indicate, because in this field, too, the role of *informal* control was more relevant than in the sphere of physical violence. Why that?

As a general explanation for the selective use of the court, it seems valid to say that the degree to which a particular type of crime was reported depended not on how much it was culturally rejected, but rather on the viability of the available informal social control. Thus, in the case of property offenses, the help of bystanders, neighbours and tavern proprietors in tracing thieves and stolen goods often made the appeal to the authorities redundant. Conversely, the endemic use of physical violence could not be sufficiently contained on the informal level of family and friends. Violence was widespread among all parts of the urban and rural population and was very often generated by honour conflicts. Still, physical violence was not accepted as a legitimate form of interaction. That is why so many and even minor deeds of violence were reported.

Surely, there were also secondary factors for the selectivity the people of Goerlitz betrayed in their reports to the authorities. Thus, the sanction of capital punishment for thieves may often have appeared too cruel. In addition, the chance of retrieving a stolen good thanks to a court trial was rather small. At the same time, the fine that a convicted mutilator or killer had to pay to the victim was a positive motivation to go to court.

However, the central conclusion is that the cooperation of the urban population with the authorities in the domain of social control was highly selective. This selectivity was due to the viability of informal social control relative to different sorts of crime. Still, it is safe to say that the existing minimum of cooperation between authorities and population guaranteed for a certain degree of everyday urban stability.

(3) During the 15<sup>th</sup> and early 16<sup>th</sup> centuries, there were hardly any efforts on behalf of the city council to change the traditional norms of Saxon law, although it would have been fully entitled to do so. The reason is obvious: the magistrate did not aim at legitimizing its rule by administering efficient or at least consensus-orientated crime control. The council did not – and needed not – conceive of social control as a means of generating legitimacy. Thus, for example, in most cities the punishments were clearly different for locals and for strangers.<sup>6</sup> In Goerlitz, strangers were not punished in any other way than the ordinary local. This might seem progressive to the modern eye. In the context of the time, however, it marks a style of social control that was not orientated towards community consensus.

The persistence of the traditional legal norms is all the more striking in view of the fact that the city councillors barely knew how to administer them. This is illustrated

---

<sup>6</sup> Schuster, Peter: Eine Stadt vor Gericht. Recht und Alltag im spätmittelalterlichen Konstanz, Paderborn 2000, p. 77; Gunter Gudian, Geldstrafrecht und peinliches Strafrecht im späten Mittelalter, in: Hans-Jürgen Becker et al. (ed.), Rechtsgeschichte als Kulturgeschichte, Aalen 1976, p. 273-288; Dobras, Wolfgang: Ratsregiment, Sittenpolizei und Kirchenzucht in der Reichsstadt Konstanz 1531-1548. Ein Beitrag zur Geschichte der oberdeutsch-schweizerischen Reformation, Gütersloh 1993, p. 172 s.

by a number of questions brought before the Magdeburg law court. The latter sometimes even rejected these questions because they were too banal. It is equally surprising to see that the city court of Goerlitz ignored the recommendation of the Magdeburg law court, given in the late 15<sup>th</sup> century, to sanction homicide with capital punishment.

The reluctance of the urban government to change the legal norms had consequences for the prevention of crime. This is especially true for physical violence. According to the medieval logic of the ordeal, Saxon law was not interested in what had really happened. Rather, in order to determine someone's guilt, it simply administered the oath to him. The right to take an oath was determined by the technical form of a charge which was therefore decisive for the outcome of the trial. As a result of this irrational procedure, the committed crime and the punishment did not correspond. The threat of a sanction was not calculable – and there was no clear differentiation between various degrees of violence.

Now, because sanctions for violence were not predictable, they did not provide a sufficient deterrent. As the criminal records show, conflicts among inhabitants of Goerlitz were more openly violent than those observed in other cities. For a contrasting example of a more developed system of social control, let us take the city of Constance, on the southern border of Germany.<sup>7</sup> Here, pulling one's knife was punished with a monetary fine. A banishment from the city was the minimum consequence of an act of violence and would be complemented by additional sanctions according to the gravity of the wounds. This seems to have entailed more ritualized forms of honour conflicts: Often enough, someone pulled his knife but refrained from using it. And if someone *did* resort to physical violence, more often than not he inflicted only light injury. The same pattern has been observed in other cities. In Goerlitz, however, injuries were more serious because the sanctions provided by Saxon law regularly failed to prevent the violent escalation of honour conflicts.

In the course of the 16<sup>th</sup> century, beginning around 1530, the magistrate finally did tighten the penal law. This concerned physical violence, sexual offenses and property offenses. But here, too, the aim was not to enhance the council's legitimacy within the city. Rather, the increased penalization of physical violence was directed mainly against the nobles in the countryside. As for the tightened control of sexual and property offences, it was clearly conditioned by the Reformation: The city council began to see itself as an instrument of godly sanction, evoking the notion of 'discipline' and targeting women and youth. Both this campaign of religious and moral improvement and the tightening of penal sanctions was characteristic for other cities of the same period, too. Thus, by the 1570s it had become common norm to impose capital punishment for homicide.<sup>8</sup> Towards the end of the century, therefore,

---

<sup>7</sup> For the following, see Schuster, Peter: Eine Stadt vor Gericht. Recht und Alltag im spätmittelalterlichen Konstanz, Paderborn 2000, p. 90 ss.; idem, Der gelobte Frieden. Täter, Opfer und Herrschaft im spätmittelalterlichen Konstanz, Konstanz 1995, p. 55, 106 s.

<sup>8</sup> Lück, Heiner: Zur Entstehung des peinlichen Strafrechts in Kursachsen: Genesis und Alternativen, in: Harriet Rudolph / Helga Schnabel-Schüle (Hrsg.), Justiz = Justice = Justitia? Rahmenbedingungen von Strafjustiz im frühneuzeitlichen Europa, Trier 2003, S. 271-286; Schuster, Peter: Hinrichtungsrituale in der Frühen Neuzeit. Anfragen aus dem Mittelalter, in: *ibid.*, p. 213-233.

social control in Goerlitz showed more similarity with other places.<sup>9</sup> Yet some features, notably the Saxon procedure, remained intact for the rest of the Early Modern period.

To sum up: We saw that there was a certain need of formal social control on behalf of the urban population. This was especially true for physical violence, as it could not be contained on the informal level. And yet, the city magistrate did not strive to optimize its legal norms to correspond to that societal need. Unlike other city magistrates, it did not adapt its legal instruments in order to conform better to the requirements of social control. A major consequence was the marked inefficiency of violence control. I argued that the reason for this contrast was the lack of a general political consensus within the city: Because the magistrate did not feel responsible towards the burghers, it did not strive to legitimize its rule by administering efficient social control. In short: The lack of civic liberties – at least in the political sense – had a negative affect on urban stability.

---

<sup>9</sup> Schwerhoff, Gerd: Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt, Bonn 1991, p. 322; Burghartz, Susanna: Leib, Ehre und Gut. Delinquenz in Zürich Ende des 14. Jahrhunderts, Zürich 1990, p. 21; Henselmeyer, Ulrich: Ratsherren und andere Delinquenten. Die Rechtsprechungspraxis bei geringfügigen Delikten im spätmittelalterlichen Nürnberg, Konstanz 2002, p. 84.