

Urban Stability and Civic Liberties: two fundamental Concepts and the Practice of Crime Control in Early Modern European Cities (1400-1800)

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A) Mechanisms of Urban Stability

Burghers or Town Council? Who is responsible for Urban Stability in Late Medieval and Early Modern German Towns?

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This paper focuses on a fundamental shift in the establishment and maintenance of urban stability in pre-modern German towns. While in late medieval towns, the burghers themselves were for the most part responsible for the settlement of conflicts, the town council took over control in a long-ranging process, which started already during the 15th century. The burghers never withdrew completely from public service for their towns as guards etc. However, urban stability (i.e. ‚pax‘, ‚peace‘, ‚bonne police‘, ‚Stadtfrieden‘) was more and more conceived as a task of the authorities (i.e.: the council, its courts and office bearers). A relevant element of the general development is the burghers' loss of their traditional right to bear arms in public. While during the late middle ages a diverse personnel of beadles and burgher guards went on patrol through the alleys, with the introduction of soldiers from the 17th century onwards urban stability gained a new quality. Frequent conflicts between guards or soldiers respectively and burghers show that the popular perception distinguished between legitimate and illegitimate use of physical violence. Corresponding with the shift in the means of control, the nature of petty conflict in urban alleys and taverns changed. Instead of looking for a direct, face-to-face confrontation, burghers and other groups of town dwellers could henceforth call the guards of the council or take a case to court in order to settle their disputes.

Turning to the point of departure of the development in the late middle ages, we find that the most guards on the towers and gates of the towns were ordinary burghers. In order to gain the right of citizenship burghers had to swear an oath, by which they vowed to relinquish violence as a means to settle conflicts. In case of a violent dispute on the street, burghers were also obliged to step in immediately, thus acting as arbitrators. Burghers carried arms in public, which was conceived as a key symbol not only of their manhood, but also of their natural civic liberties. On the one hand, burghers were to defend their home town in case of war and feud and to safeguard peace inside the town walls. Some town councils even stipulated that men had to prove the possession of weapons, such as armour, halberd and sword, in order to gain citizenship. On the other hand, the presence of weapons in everyday life clearly threatened urban stability. Swords and long knives could be used immediately in any tavern brawl or one of the frequent fights after closing time etc. To pull out a long knife, seems to have been ‚part of the game‘ in honour conflicts among burghers. We have to consider though that in most cases knives were only used in a highly ritualized way to show off the readiness for violence and not actually to stab the opponent.¹

¹ Peter Schuster, *Eine Stadt vor Gericht. Recht und Alltag im spätmittelalterlichen Konstanz*, Paderborn 2000, pp. 94-97.

Initially, the role of the town council and its courts was not to punish, but to reconcile the opponents, even in severe cases of manslaughter. Private agreements between the families of perpetrator and victim were often acknowledged by the councilmen without further interventions. Accordingly, the primary objective of the town council was not to discipline its subjects, but to restore peace and to ensure urban stability. Moreover, when it came to severe punishments or monetary fines, the sentences of urban courts evidently gave preference to native burghers of the town. Alien people, in contrast, were much more likely to stand at the pillory or to receive capital punishment on the gallows.

At first sight, the number of office bearers in late medieval towns, who were in charge of keeping the peace seems enormous. 16th-century Nuremberg, a free city of some 50.000 inhabitants, employed 120 guards and beadles, which makes a ratio of one guard on 417 town-dwellers. For late medieval Italian cities such as Venice, Florence and Siena a ratio of 1:200 or even 1:150 has been calculated. 16th-century Cologne, on the contrary, seems to have had only one guard or beadle on 4.000 inhabitants.² The tricky obstacle behind these rather different figures and thus the difficulty of a quantitative approach lies in the question: What do we actually count? The old style police personnel in late medieval and early modern towns was rather diverse in terms of profession and legal status. It is relevant to note that the majority of these small police officials were burghers from the lower strata. These burghers, often craftsmen, fulfilled their duty for the sake of urban stability mostly in second jobs beside their main occupation. Guards of Nuremberg were even allowed to practice their trade and leave their posts for a short time during their service for the town. Beadles, who fulfilled their duty as a main occupation, often had a very bad reputation, sometimes close to dishonourable status. The old style police personnel must not be compared with modern specialized and highly trained staff. As will be shown later, guards and beadles, moreover, functioned not as safeguard but rather as a threat to urban stability.

The shift in the practice of urban stability was a slow, long-term development that took place in the rather constant 'longue durée'-shell of the late medieval and early modern urban sphere. The change in practice corresponded on several stages with the formation of authority ('Obrigkeitsbildung') within the towns. From the late middle ages onwards, the council started to conceive itself no longer as an assembly of the confraternity of all burghers, but rather as a divine authority, thereby degrading the burghers to its subjects. Again and again, we find examples of public rule that was monopolized in the towns by an elite of some families. Accordingly, the council attempted to regulate efficiently both political and economic matters and, moreover, to 'usurp' the role of the sole judge over conflicts in the civic sphere. As a consequence, civic liberty was reduced and urban stability increasingly defined by representatives of the council. Ancient rituals of settling conflicts without any control of the council were now perceived as a danger. While during the 15th and 16th centuries other judges, such as notaries, priests or even artisans, acted beside the council, the case of Frankfurt on Main shows that such 'infrajustice' institutions by the end of the ancien régime had mostly disappeared. 'Private' arrangements between victim and perpetrator were no longer accepted and replaced by the claim of the council to sentence offenders according to the penal code. Article 137 of the criminal law of emperor Charles V. stipulated in 1532 that manslaughter was to be sentenced by capital punishment. The example of 16th-century Cologne illustrates that both ways of dealing with manslaughter competed with each other.

² Andrea Bendlage, *Henkers Hetzbruder. Das Strafverfolgungspersonal der Reichsstadt Nürnberg im 15. und 16. Jahrhundert*, Konstanz 2003, pp. 52-54.

There still remained an old acceptance for private arrangements; on the other hand, a growing number of perpetrators was sent to the gallows.³

A crucial point of the new policy of urban stability under the auspices of council rule was the competence (or rather incompetence respectively) of the old style police forces. Faced with their lack of acceptance among the burghers, esp. their alleged brutal behaviour in carrying out their tasks on streets and squares, the authorities tried to discipline guards and beadles. Guards, who threatened the high value of urban stability were of no use, neither for burghers nor for the council. At the same time, violent attacks against the guards were looked upon and sentenced as offence against the authorities. The old style policemen thus participated in the emerging state monopoly of the use of force. Nuremberg witnessed already during the 16th century the introduction of a selective recruitment of personnel, moreover of differentiation and hierarchy among the lower office bearers. Inappropriate behaviour such as unnecessary violence or drunkenness in office was regulated with degradation or monetary fines.⁴ It was the job of the lower police personnel to disarm the burghers. Burgher disarmament became an essential strategy of the redefinition of urban stability. Since the right to bear arms was conceived as a symbol not only of civic liberty, but also of male identity, disarmament esp. in crowded streets and alleys was a risky, difficult exercise. While stabbing weapons were allowed to guards and beadles, they were taken away from the burghers. The implementation of this new policy seems to have taken some centuries. First edicts with regard to disarmament of burghers date from the late 14th century. However in spite of all bans by the councils, towards the end of the 16th century the burghers of Frankfurt and Cologne still carried knives on their belts.⁵ Beside the symbolic dimension, knives were also needed for daily business in the shops of craftsmen. Criminal records of Frankfurt show that only during the 18th century stabbing weapons were no longer a regular part of male clothing. Violent offenders now used all kinds of things as weapons against their opponents. But the ritualized pulling out of knives, so frequent in the everyday life of towns of the 15th century, had largely disappeared. The same counts for other ancient rituals of social control such as 'Charivari', which apparently survived longer in the countryside.

The next stage of the development can be described best as militarization of urban stability. In the free cities of the Holy Roman Empire, the old burgher guards were step by step replaced or controlled by soldiers. Already in the late middle ages, the councils could employ mercenaries as guards at their town gates on a temporary basis. These mercenaries, however, were easily dismissed, if not needed anymore and were not the backbone of the old police personnel. A thorough militarization of urban stability started with the introduction of standing armies, not only in the large territories but also in the free cities in the course of the 17th century. Forerunner was the large city of Augsburg, which some historians regard as the informal capital of the 16th-century Holy Roman Empire. From 1560 on, the council of Augsburg employed mercenaries continuously on a regular basis. Other major free cities followed during the 17th century.⁶ It is relevant to note that the policy shift as regards urban stability did not necessarily correspond with a crime wave or some other sociocultural crisis of the towns. Militarization in the urban sphere was rather a by-product of the general military

³ Gerd Schwerhoff, Köln im Kreuzverhör. Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt, Bonn 1991, pp. 280-81.

⁴ Bendlage, Henkers Hetzbruder, pp. 107-122.

⁵ As an example from the sources see Institut für Stadtgeschichte, Frankfurt on Main, Criminalia 78 (1565); Joachim Eibach, Provokationen en passant: der Stadtfrieden, die Ehre und Gewalt auf der Straße (16.-18. Jahrhundert), in: Archiv für Frankfurts Geschichte und Kunst 68 (2002), pp. 201-16; for the case of Cologne see Schwerhoff, Köln im Kreuzverhör, pp. 292-93.

⁶ Jürgen Kraus, Das Militärwesen der Reichsstadt Augsburg 1548-1806. Vergleichende Untersuchungen über städtische Militäreinrichtungen in Deutschland vom 16.-18. Jahrhundert, Augsburg 1980, p. 226.

revolution, which included the introduction of standing armies. As a consequence, soldiers took over from burghers. In Frankfurt in the mid 18th century, more than 200 soldiers served as watchmen and guards.⁷ Soldiers now were highly visible in the everyday life of the burghers. They stood at the town gates and in front of the town hall. They patrolled the green market and visited the taverns. Even though among these soldiers we can discern some burgher sons, it is evident that a central function of the ancient civic confraternity was taken away from the burghers. Formal tasks of the burghers were reduced to night-watch under the supervision of soldiers and the burgher militia, which served as fire brigade and police in case of rebellion. Instead of securing urban stability themselves, the burghers henceforth financed the urban military with their taxes. The militarized personnel of the free cities must not be confused with the modern police force as an organization separate from the military. Modern type police forces were to emerge in the capitals of Western Europe only around or after the year 1800. However, substantial changes had taken place already in the rather constant climate of the early modern period.

Apparently, in most towns the burghers were not unhappy to loose their formal competence as police force. In 1762, the so-called burgher captains of Luebeck handed in a supplication, in which they asked to be dispensed de jure from all duties as guards and watchmen.⁸ It became common practice that burghers from the higher strata such as merchants and patricians found a way to get around night watch service etc. This task was left only for the lower strata and, accordingly, was anything but prestigious. On the other hand, numerous petty conflicts between soldiers or beadles and burghers in everyday life show that the ancient civic liberty remained vivid in the burgher perception. To hand over your knife to some watchman of the council was – not least – a question of honour. Orders of soldiers versus old burgher freedoms, such as carrying arms or walking the street at night-time were not accepted. Hence, also any use of physical violence against burghers was perceived as illegitimate. Conflicts between burghers and guards of the council were not fights between equals, determined by rules of honour. The lack of acceptance was expressed in frequent grievances about the brutal behaviour of the police forces.

All these tendencies must not lead us to overlook the fact that social control was never completely monopolized by agencies of urban government. Informal social control of guilds and corporations, neighbourhoods and peer groups remained vivid. Moreover, formal social control by criminal courts and police force worked only, when these institutions were fed with indictments by the town dwellers. Burghers, the privileged holders of the right of citizenship, especially from the upper strata, were ready to take disputes and offences to court. Other groups of urban society were far more reluctant in using means of litigation. Hence, the burghers knew, how to take advantage of the new development, delineated above. Yet, the identity and self-conception of the male burgher had changed drastically. It was no longer the armed free burgher, ready to defend his town against enemies from outside and to guarantee peace inside the town walls. This conception was only revitalized in times of severe crisis or for reasons of prestigious burgher representation (processions etc.). In the long run, the medieval German burgher with armour and halberd was to become a satirical stereotype. Against the backdrop of the new 19th-century bourgeois society, he appeared merely as an awkward anachronism, a running gag, referred to as ‘Spießbürger’ (petty bourgeois with a spear)!

⁷ Joachim Eibach, *Frankfurter Verhöre. Städtische Lebenswelten und Kriminalität im 18. Jahrhundert*, Paderborn 2003, pp. 84-89.

⁸ Thomas Schwark, *Lübeck's Stadtmilitär im 17. und 18. Jahrhundert. Untersuchungen zur Sozialgeschichte einer reichsstädtischen Berufsgruppe*, Hamburg 1990, p. 69.