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LAW AND CRIME IN POLAND IN EARLY MODERN TIMES

The moral standards of society in Early Modern Poland must be examined against the background of the administration of justice and its links with social stratification. There were many law courts in the Polish Commonwealth and the competence of each of them was usually restricted to a specific social group. It was the social position of a man which determined what law he was subject to, what judges adjudicated on his case and what penalty was inflicted on him. Already in the 16th century Andrzej Frycz Modrzewski wrote with indignation: “Is it not monstrous what is practised in our country? Some people pay with their heads for what others are given a lenient treatment, although they are the same people living together in one Commonwealth”¹.

In criminal cases noblemen were tried by castle courts which were run by starosts; civil cases were tried by judges of noble blood in regional country courts. Appeals, which as late as the early 16th century were heard by the king, were from the end of the 16th century lodged with the Polish and Lithuanian Tribunals set up at that time; the judges of the tribunals were elected by all noblemen during the meetings of what was known as tribunal dietines; appeals could also be lodged with the General Sejm. This shows that the nobility was granted full self-government in judiciary matters².

Towns had urban courts — benches — which adjudicated in accordance with the Magdeburg or Chełmno laws. Peasants were tried by the lord of the manor; the old peasant courts composed of representatives of the peasant community survived in some villages, but their verdicts had to be confirmed

¹ A. Frycz Modrzewski, *Wybór pism (Selected Works)*, ed. by Ł. Kurdybacha, Warszawa 1953, pp. 141–142.

² Cf. *Historia państwa i prawa Polski (The History of the Polish State and Law)*; vol. II from the middle of the 15th century up to 1795, ed. by J. Barดาch, Warszawa 1966, pp. 150–160, 273–433.

by the lord. The military were tried by the Hetman on the basis of special articles. The clergy were amenable to ecclesiastical courts which after the noblemen's stubborn struggle in the 16th century were deprived of jurisdiction and power over the nobility. The Grand Marshal heard and decided cases at the royal court and in places where the king resided. During *interregna* special courts, called *sądy kapturowe*, were set up to ensure prompt administration of justice during this dangerous period. Some minorities, e.g. the Jews and Armenians, had their own law courts.

This complicated judicial situation, the lack of a uniform codified system of law, and the fact that the court and the verdict depended on the social position of the defendant affected the administration of justice in a way which was obvious to all. In the 16th century Mikołaj Rej strongly criticized the administration of justice: "Try and go to law, go to any law court, any kind of court; a poor fox collar presents his case, but when a sable comes, the fox must make room, the sable will sit here. Your case must be put off until tomorrow and the sable's case, however trivial it is, must be settled first, for he is in a hurry. And the poor sheep must wait behind the stove, for the fitchets must be dealt with before him". And further on: "Our justice is called a cobweb; a gad-fly will pierce it, but a wretched fly gets trapped, entangled, and having lost everything and without getting any comfort in its downfall, it goes home with a stick, crying and wringing its hands"³.

Gdatus, a 17th century Protestant preacher, accused judges of corruption and nepotism: "Nearly all of them attend only to gifts, relatives and kinsmen, paying no heed to the merits of the case. They are only interested in who will give them what, who is a relation, a kinsman, who is respectable, who is rich"⁴. In a volume (1618) of collected epigrams entitled *Grosz (One Penny)* there is one by Stanisław Serafin Jagodyński bearing the significant title *One Penny, Portrait of a Judge*:

Judges are always painted without hands any eyes
They must be respected, forbidden to take bribes.
Eyes and hands are quite useless, ears play the main role,
But what if the coins' sound penetrates to the soul?⁵

Krzysztof Opaliński (17th century) criticized the law courts in his *Satires*:

³ M. Rej, *Zwierciadło (The Mirror)*, ed. by J. Czubek and J. Łoś, Kraków 1914, vol. I, p. 205, vol. II, p. 167.

⁴ Quoted after J. Bystroń, *Dzieje obyczajów w dawnej Polsce (A History of Customs in Old Poland)*, Warszawa 1976, vol. II, p. 328.

⁵ *Poeci polskiego baroku (Poets of the Polish Baroque)*, ed. by J. Sokołowska and K. Żukowska, Warszawa 1965, vol. I, p. 337.

Only those who win really know what gold can
Accomplish in tribunals and in courts of law⁶.

He was echoed by Daniel Bratkowski in the poem *About a Law Court — the Author to Himself*:

When I had one day a case in a court of law
Countless documents for a prognosis I saw.
That day the prospects were extremely good for me
And prophesied I should surely the victor be.
Having lost the case, this to the lawyer I said:
I won't believe documents until I am dead,
They said that my prospects were excellent today,
But now I see that it is quite the other way.
My patron: "In your own or another man's case
It's the purse, not the documents, that is the base"⁷.

As the Polish noblemen loved to litigate, the law courts were flooded with suits; some cases went on for years as a result of bribery, incompetence or repeated appeals. A 17th century writer, Szymon Starowolski, derided the situation:

What kind of courts we have I cannot understand,
A trivial case lasts a hundred years in this land.
It can't be brought to an end by a castle court,
A tribunal or a court of some other sort⁸.

Owing to this great demand for legal services, a large group of jurists, called *palestra*, was formed in Poland already in the 17th century. "The name *palestra* denotes the estate of lawyers", wrote Jędrzej Kitowicz in the 18th century, "some of whom are patrons (i.e. advocates, counsel for the defence — M.B.) who help the litigants; others enter in public records or copy from them decrees, manifestos, summonses and other transactions, that is, public contracts concerning the purchase or sale of property, its pledging and leasing, claims on mortgaged property, conferment of dowries, acknowledgments of their receipt; they also enter the conferment of *starostwas* as well as Crown and regional offices by the king ... the *palestra* was divided into *regentes* (heads of law court chancelleries — M. B.), *vice-regentes*, *suscipientes* (assistants of *regentes* — M. B.) and *feriantes* (clerks of the court — M. B.); this last group consisted of young people who joined the *palestra* for educational purposes or to advance in the legal profession"⁹.

⁶ *Ibidem*, p. 631.

⁷ *Ibidem*, vol. I, p. 197.

⁸ *Ibidem*, vol. I, p. 310.

The *palestra* was composed of poor noblemen who after acquiring a practical knowledge of law could earn their living without losing a nobleman's status.

An important court official was the beadle whose work consisted in delivering summonses. This was a difficult and dangerous job, for an angry nobleman would sometimes make the beadle eat the summons to demonstrate that he did not accept it. Not only was the beadle treated with disdain, but his life was frequently in danger.

Near every court of law one could meet a group of rather uncongenial individuals who looked for easy money. This was a group which supplied false witnesses, many of whom gave evidence during court proceedings. Although perjury was regarded as a mortal sin punished by heavy penalties and although many stories about false witnesses punished by God and struck by thunder were in circulation, there were always people ready to give evidence for a payment. But there were also cases when people lied out of friendship, to help their family or save a relative.

Researchers do not agree on frequency of torture applied during trials; some hold the view that torture was widespread and frequently used by sadistic judges who were often drunk, others say that this was not an everyday practice¹⁰. Let us state first and foremost that during the investigation torture was inflicted mainly on plebeians; noblemen were tortured only in exceptional cases, if they were accused of committing the gravest crimes (lese majesty, high treason). Apart from the notorious Piekarski, who attacked King Sigismund III and wanted to kill him, such fate befell to very few noblemen. Torture was used more frequently by urban courts, but according to some researchers, it was applied in only 10%–15% of the criminal cases¹¹. This was due to practical reasons: very few towns had their own torturer, others had to borrow “the master” in case of need. His services were expensive and the towns did not always have the money to pay him¹². The horrifying descriptions about the daily infliction of torture on culprits and even innocent victims of false accusations are definitely exaggerated.

The inefficiency of the law courts and the sense of impunity this created may have been the reason why in the 17th century the crime rate, already

⁹ J. Kitowicz, *Opis obyczajów za panowania Augusta III* (A Description of Customs under Augustus III), ed. by R. Pollak, Wrocław 1970, p. 175.

¹⁰ M. Kamler, *The Role of Torture in Polish Municipal Judicature in the Second Half of the 16th and the First Half of the 17th Century*, “Acta Poloniae Historica”, vol. 66, 1992, pp. 53–74.

¹¹ *Ibidem*.

¹² H. Zarębska, *Niegodne rzemiosło. Kat w społeczeństwie Polski XIV–XVI w. (The Infamous Occupation. The Executioner in Poland's Society from the 14th until the 16th Century)*, Warszawa 1986, *passim*.

quite high in the previous century, acquired dimensions which jeopardized the normal functioning of society. Soon after ascending the Polish throne (1576) King Batory in a proclamation to the nobility uttered the significant words: "Lawlessness destroys all morals and in their place we now have grave crimes, homicide, rape, plunder, murder, killing with the blunderbuss, harlotry, perjury, extravagance, damage to property and many other hideous offences"¹³. This does not, of course, mean that no offences were committed in the first half of the 16th century. Nevertheless, their number kept increasing from the end of the 16th century and moral standards declined rapidly. Already at the time of Sigismund Augustus' death (1572) the administration of justice was in such a bad state that, as a chronicler wrote, "there had remained only the mere form of law which benefited nobody except the lawyers, beadles and clerks; sentences were not carried out and private crimes knew no bounds and no limits"¹⁴. The chronicler was echoed by a researcher in the early 20th century: "What a world, what a world! Ominous, savage, murderous. A world of oppression and brute force. A world without authority, government, order and mercy. Blood was cheaper than wine, man less valuable than a horse. A world in which it was easy to kill and difficult not to get killed. He who was not killed by a Tartar was killed by a ruffian, and if he was not killed by a ruffian, he was killed by a neighbour. A world in which it was difficult to be righteous and impossible to be calm"¹⁵. This statement requires an explanation. W. Łoziński referred to the eastern borderland, where the situation was specific in view of the constant Tartar-Turkish threat, where the law was helpless in the vast, thinly populated areas which attracted "hot spirits" and fugitives from the whole of the Polish Commonwealth. Moreover, Łoziński made use of one-sided records, namely, court registers, which naturally speak only of deviations from the law and not of its observance. Nevertheless, the Polish noblemen seem to have become an extremely criminogenic class since the end of the 16th century. Rape, forays, duels were an everyday occurrence among the nobility, from the magnates to the noble rabble. Bloody rows broke out for no reason at all, simply as a result of the temperament of noblemen who only wanted to give vent to their vigour. A. S. Radziwiłł describes how in May 1632 Stanisław Daniłowicz, son of the voivode of Ruthenia, starost of Korsuń and Czehryn, "for no valid reason" gravely wounded Adam Kali-

¹³ *Stefan Batory pod Gdańskiem 1576–1577 (Stephen Batory at Gdańsk 1576–1577)*, ed. by A. Pawiński, Warszawa 1877, p. XIII.

¹⁴ S. Orzełski, *Bezkrólewia ksiąg ośmioro czyli dzieje Polski od zgonu Zygmunta Augusta r. 1572 do r. 1576 (Eight Books of the Interregnum or the History of Poland from the Death of Sigismund Augustus in 1572 until 1576)*, Petersburg-Mohylew 1856, vol. II, p. 61.

¹⁵ W. Łoziński, *Prawem i lewem (By Hook or by Crook)*, 5th ed., Kraków 1957, vol. I, p. 3.

nowski, starost of Winnica, cutting off his three fingers and inflicting a total of 15 wounds on him. As all this happened at the royal court, the marshal convoked a court session; Daniłowicz was infamised, outlawed and sent to dungeon. But the magnate's son easily wriggled out of the punishment; he paid a compensation of 100,000 Polish zlotys to the injured man, escaped the dungeon by paying 200,000 zlotys, while infamy and outlawry were commuted to participation in the Smolensk campaign. The rowdy soon became the hero of another wrangle. At a dinner given in Warsaw by the voivode of Wilno, Krzysztof Radziwiłł, during the sitting of Parliament in July 1634, Daniłowicz quarrelled with Hieronim Radziejowski, son of the voivode of Łęczysca. "They pounded each other with fists and pulled each other's hair so violently that they injured each other and had practically no hair left", recorded a diarist. "Had the door not been closed to their servants who came running, there would have been turmoil and bloodshed, for the room glittered with unsheathed swords"¹⁶. But the wise voivode adjusted the quarrel and the two young men made it up and went home. Quarrels would break out in the least appropriate places and at the least appropriate moments. On April 16, 1648, and ominous quarrel broke out at the Wilno castle during the performance of an opera. The place was packed with spectators and this irritated the Lithuanian court marshal, Antoni Jan Tyszkiewicz, who used "insulting words". He is reported to have said to another magnate, Hieronim Karol Chodkiewicz: "If you don't make room, I'll strike you with a stick and may finish it up with a sword". The incident was noticed by King Ladislaus IV who, greatly irritated, said: "If I could get on my feet (he suffered from gout — M. B.), I would stab one of them with a sword"¹⁷. However, the marshal's court was indulgent and in view of the Queen's intercession and the pardon given to the culprits by the King, whose anger turned out to be short-lived, it confined itself to a "stern admonition".

If this could happen at the royal court, no wonder that quarrels, brawls and duels were an everyday occurrence among the middle nobility; Trivial reasons, such as an improper joke, a dispute, difference in opinion as to the swiftness of the neighbour's greyhound or the virtues of his horse, or even alcohol-induced delusions, were enough for the noblemen to catch hold of their sabres and pistols. Disputes over more important matters, such as failure to pay back a loan, appropriation of a strip of land, breach of promise, frequently led to a foray on the adversary's house during which the owner and his servants were often wounded or killed and the house was set on fire.

¹⁶ A.S. Radziwiłł, *Pamiętnik o dziejach w Polsce (Diary on Happenings in Poland)*, ed. by A. Przyboś and R. Żelewski, Warszawa 1980, vol. I, pp. 117, 387.

¹⁷ *Ibidem*, vol. III, pp. 72–73.

The relatives who survived would swear revenge, thus starting a family feud which might drag on for years and in which brave women also frequently took part. In order to assault a neighbour's house or repel his attack, the noblemen armed their peasants and dragged them into the fight. Hate and the desire to take revenge were stronger than the fear that the serfs might turn the weapons against their own lord.

Quarrels over bequests were often settled by force of arms. Appropriation of the property of orphans, widows and unmarried women was a daily occurrence. A more powerful man would take possession of the property of his weaker neighbour, brothers frequently fought over patrimony. Noblemen thought nothing of assaulting their adversaries on highways, in inns, even in monasteries and churches. There were professional robbers among noblemen who waylaid merchants and travellers on highways and there were also maniacal rowdies who invited people only to start a quarrel and maul the guests and their servants. Some manor houses had the ill fame of being dens of robbers which it was better to avoid¹⁸.

Excesses against plebeians are another story. Noblemen would start quarrels in towns for no reason; they would beat and reprimand shopkeepers and craftsmen, raid, plunder and burn down towns, and the inhabitants, beaten up and abused, had to take cover in neighbouring woods¹⁹. These excesses, committed out of revenge or for fun, met with only limited disapproval.

It was the same with bribery, a normal practice at that time. The magnates were corrupted by foreign courts and they in turn corrupted the nobility. Some researchers hold the view that bribery was not regarded as an infringement of behavioural norms. But this does not seem to be true. 16th and 17th century literature, the writings of moralists and sermons show that the noblemen realized that bribery was a blame worthy act. "Gifts, presents and other benefits are agreeable, but virtue should always be more agreeable", wrote Rej²⁰. "Everything is venal", asserted Krzysztof Opaliński in his *Satires*:

Are then Poland and the Commonwealth for sale, too?
 Why not, this usual in a market square.
 We can bargain and bargain and buy everything.
 But if a man his own country puts out for sale,

¹⁸ Gruesome incidents of this kind are related by W. Łoziński, *Prawem i Lewem*, vols. I–II, *passim*.

¹⁹ B. Baranowski, *Życie codzienne małego miasteczka w XVII i XVIII w. (Everyday Life in a Small Town in the 17th and 18th Centuries)*, Warszawa 1975, pp. 238 ff.

²⁰ M. Rej, *Zwierciadło*, vol. II, p. 68.

What is his guilt and should the penalty be?
Please, judge Yourself, My Lord, and punish such sons!²¹

The frequency of such behaviour terrified the Poles especially in the 17th century²².

On the other hand, the taking of war booty was fully accepted by the old Polish code of morals. Jan Chryzostom Pasek, a 17th century diarist, speaks unceremoniously and with great contentment about the spoils of war: "I took a very beautiful cross; there were some twenty red zlotys on the mounting", he says describing his participation in a skirmish with Muscovian forces at Polonka (1660). "I also took a Wallachian (Wallachian horse — M. B.) with a black stripe ... my servant then came up; I gave him the horse and was on my guard. The rascal put on the horse what he had got hold of, but it was trash, hides used by heavy cavalry; had he been with me he would have put on satin, velvet, harness, and he could have taken good horses"²³. To rob the enemy was a traditional right of every soldier; nobody thought of questioning the morality of this practice. In every manor house there was an abundance of carpets, weapons and ornaments seized in war. Every nobleman boasted of his booty since it testified to his bravery and the bravery of his family.

Towns were also a criminogenic area, but the crimes committed there were of a different character. The crowds in the streets, butchers' stalls and jumble-shops, in inns and market squares created favourable conditions for petty thefts. Professional pickpockets who knew how to skilfully rob an inattentive passerby operated in every town. Even people assembled in a crowded church for a religious service or a procession were not safe from thieves. What is surprising, given the religiousness of people at that time, is that money-boxes in churches were often picked, and that votive offerings and other valuable objects were frequently stolen. Offences of this kind are often mentioned in all law court records and chronicles²⁴. The fear of committing a sacrilege must have been weaker than the economic motives.

In towns, big and small, all kinds of tricksters displayed their skills especially during fairs, encouraging people to play cards or dice, fooling them out of money and offering various services. They collected the pay-

²¹ *Poeci polskiego baroku*, vol. I, p. 630.

²² K. Augustyniak, *Potworne konspiracje czyli problem zdrady w Rzeczypospolitej w czasach Wazów (Dreadful Conspiracies or the Problem of High Treason in the Polish Commonwealth during the Reign of the Vasas)*, "Baroque", vol. 1, 1994, pp. 89–104.

²³ J. Ch. Pasek, *Pamiętniki (Diary)*, ed. by W. Czaplinski, Wrocław 1968, pp. 133–135.

²⁴ *Chronografia albo dziejopis żywiecki przez Andrzeja Konieckiego (Chronography or a History of Żywiec by Andrzej Komiecki)*, ed. by S., Grodziński and I. Dwornicka, Żywiec 1987, *passim*.

ment in advance and then disappeared nimbly in the crowd. The market squares in particular swarmed with cutpurses of both sexes, even children earned their bread in this way. Offences were committed not only by people of the underworld. Swindling was also practised in retail trade by “honest” stall-keepers. There was of necessity more honesty in wholesale trade which, like credit transactions, was to a great extent based on confidence. The loss of a disappointed partner would have made further business difficult. Strict rules were binding in this field and they were broken unwillingly and only in exceptional circumstances (bankruptcy, insolvency).

Small and great monetary frauds were very popular, especially in the 17th century when the economic crisis and the depreciation of money facilitated such practices. The counterfeiting of money was frequent, even though this required skill and was severely prosecuted. Each coin had to be carefully examined and as there were many coins in circulation — domestic and foreign ones — people engaged in money exchange were hated and regarded as unscrupulous cheats.

Law courts often adjudicated wordy disputes, that is public squabbles during which unparliamentary expressions were used and “indecorous” gestures made to the delight of the spectators. Women excelled in these squabbles. Actions followed words, leading to a general scuffle, for the fighting fellows were joined by friends, servants and relatives. Injuries, mutilation, even killings were not an exception. They occurred during street fighting, in tap rooms under the influence of alcohol and even in private houses when, for instance, the master reprimanded his journeyman or apprentice and beat him black and blue. Premeditated murders committed in cold blood were not so frequent. But they did happen, even within family circles; there were cases of fratricides, murders of the spouse, crimes caused by disputes over property, in revenge for the maltreatment of the wife, crimes committed by insane people. Infanticide occurred on the whole mostly among the poor; this was the way frequently resorted to by poor seduced girls, usually servants, sometimes victims of rape or blackmail, to get rid of their baby which could ruin their life, for it would have meant the loss of work, general contempt and poverty²⁵. Sexual offences, rape, adultery (which was a punishable offence at that time) also occurred; incest and sodomy were less frequent. Since these offences were committed in great secrecy, they did not frequently end up in law courts and consequently, there are no reliable statistics concerning this problem.

²⁵ M. K a m l e r, *Infanticide in the Towns of the Kingdom of Poland in the Second Half of the 16th and the First Half of the 17th Century*, “Acta Poloniae Historica”, 1988, vol. 58, pp. 33–50.

Armed robberies, burglaries, assaults on late passers-by at night complete the register of the most popular offences in towns. Towns were by no means peaceful oases, but acts of violence did not occur there every day. Besides, this depended, to a great extent, on the general situation, which undoubtedly deteriorated in Poland in the 17th century because of wars, epidemics and migrations of people and military units²⁶. The plunders committed by Polish troops were by no means easier to bear than those committed by foreign soldiers. The system of billeting and provisioning the army simply drove soldiers into excesses for they were not paid on time and were often hungry and embittered. Let us cite a few examples concerning the cities of Warsaw and Lublin. In 1612 the soldiers of the so-called Sapięha confederation extorted a ransom of 1,600 zlotys from Warsaw townsmen, but this was only an insignificant episode. The mutinous soldiers collecting their pay on their own account encamped near the city, at Błonie, but it seems that they did not enter Warsaw. The sum they raised was not high²⁷. Lublin was given a worse treatment during the so-called Zebrzydowski rebellion. The rebellious noblemen gathered first near Lublin in 1606, then in Sandomierz in 1607. Lublin, which lies on the road from Warsaw to Sandomierz, experienced the passage of various companies which robbed townsmen and destroyed the town, demanding money, horses, carts and food. The town had to undergo equally painful experiences again in 1611 and 1621. In 1658 units of the regular Polish army were stationed in Lublin; having received no pay, they were embittered and disposed to commit excesses²⁸. Such examples can be multiplied.

It was even easier for soldiers to plunder villages, and unless the owner was powerful enough to protect his serfs, villages often fell victim to soldiers' "frolics".

Petty larceny was the most popular offence among peasants. In their own opinion this was not a blameworthy act. The peasants believed that they had the right to use the resources of nature given man by God and could therefore collect timber and dry twigs in the lord's wood, lay snares for birds and small animals and even engage in more serious cases of poaching, and fish in the lord's river or pond. Even though manorial officials were on the lookout for them and the lord punished the apprehended culprits, they did not change their behaviour. Nor did a peasant have qualms of conscience

²⁶ See M. K a m l e r, *Robbery in the Polish Lands during the Second Half of the 16th and the First of the 17th Century*, "Acta Poloniae Historica", 1993, vol. 68, pp. 59–78.

²⁷ Cf. *Warszawa w latach 1526–1795 (Warsaw in 1526–1795)*, ed. by A. Z a h o r s k i, Warszawa 1984, p. 15.

²⁸ *Dzieje Lubelszczyzny (The History of the Lublin Region)* ed. by T. M e n c e l, vol. I, Warszawa 1974, pp. 241 ff., 353 ff.

when he pinched the lord's grain or let his cattle graze on the lord's meadow. To pilfer from a neighbour and let one's cattle cause damage to his field was common practice, even though this harmed another member of the community. The man who suffered the damage frequently made a counter-move instead of going to court. Hence the many records of the broken necks of geese which had wandered over to a neighbour's corn field, of cows and calves killed on that account.

Peasants seldom stole cattle or horses in their own village for fear of being recognized. Such thefts often ended dramatically. Here are excerpts from court records concerning such a case: *laboriosus* Grzegorz Sępinos, a peasant living in a village near Krościenko, stated before the 1667 harvest: "Your Honour. I regretfully submit this accusation against these bad people, Klimunt Głodawa and his son, to your worthy court. They have robbed me, a poor man, of everything in this year when everything is so dear (this was after the Swedish invasion and the prices did indeed soar up in 1666–1667 — M. B.); I had only one cow which like a mother fed myself, my wife and my children; she provided all the food we had". The wronged man discovered in the morning that his cow had been taken out of the cow-shed at night, and he set off in pursuit of the thief, following his traces. "I found a trace on an old path and followed it up to the cottage of the rascals, but was afraid to get in and waited amidst bushes until night had set in ... but lo and behold, I heard them lead my cow into their cottage. Having brought her in, they struck her three times on the head, and on hearing this, I almost fainted for grief". The poor man rushed to the Jazów deputy starost to complain; the latter sent six peasants to the scene where the offence had been committed and went there himself. The cow had already been divided into quarters, its entrails were in pots in the oven. After dressing the thief in the hide of the killed animal, as evidence of the offence, they brought him and his son to the manor house for trial. Głodawa testified that a certain Golak, a fugitive, talked him into stealing the cow. It turned out that the two had been engaged in stealing for some time; they had about a dozen sheep on their conscience, had eaten the heifer of a certain Kucaj ("we got off scotfree"), tried to sell stolen meat to a butcher in the city of Stary Sącz, but the butcher was afraid to engage in a shady deal²⁹.

In addition to cattle, various small things were frequently stolen, such as sheep's skins, cow's hides, hay, gallons of oats, barley or rye, onions, apples, sometimes pieces of furniture and tools (chains, feeding troughs, pots, metal parts of ploughs), clothes (sheep's skin coats, kerchiefs, skirts),

²⁹ *Księgi sądowe wiejskie klucza jazowskiego 1663–1808 (Village Court Records of the Jazów Demesne 1663–1808)*, ed. by S. Grodziski, Wrocław 1967, pp. 38–40.

to say nothing of money. Thefts were committed in various places, wherever the opportunity arose: in the fields, farm-yards, cottages, closets (as is testified to by court records padlocks were either broken or opened with false keys). Many offences of this type were committed when the owner was at a mill or an inn. It was usually poor peasants, especially farm-hands, servant girls, shepherds, sometimes children, who were charged with theft. Most probably it was indeed these poor people who, forced by poverty, appropriated to themselves other people's belongings.

Revilement and fights in which both men and women took part were the next most popular misdemeanour, women being responsible for at least 50% of the misdemeanours committed in the countryside. The reasons for squabbles were frequently trivial. It was enough for a peasant to drive his cattle too close to the cottage of his neighbour, to use his pathway or well, for a quarrel to start, for axes and poles to be used. If anything got lost, neighbours would accuse each other of theft and shower invectives and words of abuse on each other. Similarly violent reactions followed if cattle or geese caused damage (even if it was insignificant); quarrels over a hen which had got over the fence and scratched the plants in a garden, a dog which killed a chicken, an overturned pail of milk, the right of way in a narrow path, usually ended in fisticuffs. However, the most dangerous were the scuffles which broke out in inns during parties given on the occasion of a wedding or a child's baptism, for the participants became extremely brutal under the influence of alcohol. People were injured, lamed or even killed. Such happenings were particularly frequent at the foot of the Tatra Mountains and in the eastern borderland where peasants were noted for their pugnacity and impetuosity. One scuffle often led to another and the feud would go on for years, especially if the quarrel was between rival families or between inhabitants of different villages.

Infanticide is not frequently mentioned in village records, in any case less frequently than in the records of urban courts. It may have indeed been less frequent in rural areas where control over young people was stricter and the pressure of public opinion stronger than in the larger, frequently anonymous, urban milieus. But it may have also been less frequently detected. Charges of adultery and incest were not uncommon. Stepbrothers and step sisters, cousins, parents and their stepsons or stepdaughters were the most frequent defendants and such charges were not always groundless. Sometimes a father committed incest with his daughter, disregarding the risk of being burned at the stake³⁰. Young wives who had old husbands committed adultery with farm-hands or were accused of this. It happened now and again

³⁰ *Chronografia albo dziejopis żywiecki*, p. 249.

that a secret liaison ended in an attempt to murder the legal spouse, though this was punished by torture and death. Sodomy was spreading not only among sheep-farmers and shepherds, although sodomites were burned at the stake (together with the animal). Rape was quite frequent, but was not always severely punished; the victims were girls and young women picking dry twigs and berries in woods, tending cattle in remote meadows or surprised on an empty road. The hard austere life in the countryside created many opportunities for offences of this kind.

It is interesting that homosexuality, well known at the royal and magnatial courts (Ladislaus IV's inclination is well known, foreigners travelling in Poland wrote of transvestites at the royal court in the 17th century)³¹, could also be found in small towns and even in villages. Andrzej Komoniewski noted in 1715 that Michał Kucharczyk, bailiff of Oszczalnica, "kept a boy with whom he slept"³². Homosexuality, though disapproved of by society, was not necessarily a punishable offence. It was only when Kucharczyk murdered the pregnant wife of this "boy" in a fit of jealousy that the case was brought to court and Kucharczyk was convicted for murder, not for sexual deviation. Nevertheless, homosexuality was frowned upon as a transgression of God's laws, and homosexuals were frequently called sodomites; preachers fulminated against homosexual practices and moralistic literature condemned them.

A perusal of castle, urban and peasant court records — that is records which reflected the problems preoccupying the whole of Polish society, from the nobility and townsmen to the peasants — leads one to believe that the crime rate increased in the Commonwealth in the late 17th and early 18th centuries, compared with the 16th century and even the first half of the 17th. This cannot be proved by figures for no statistics concerning this problem were kept. Let us add that this agrees with the social feelings as they are reflected in the literature and other pronouncements of that time. The hard times after the Swedish invasion and other wars in the middle of the 17th century and the military operations in the early 18th century, as well as the growing poverty, promoted crime, and so did the anarchisation of relations in the country, the disintegration of the judicial system and the decline in the prestige of authority. All this drove many townsmen and peasants to transgress the law. The number of petty larcenies and more serious thefts increased the most quickly.

³¹ *Cudzoziemcy o Polsce. Relacje i opinie (Foreigners on Poland. Accounts and Opinions)*, ed. by J. Gintel, vol. I, Kraków 1971, p. 256.

³² *Chronografia albo dziejopis żywiecki*, p. 457.

It seems, however, that grave crimes, such as premeditated murder, arson, armed robbery, were not frequently committed, in particular in the countryside, in peasant milieus. As a rule, grave crimes came from the outside together with hostilities, together with the marauding, frequently hungry, Polish and foreign soldiers, or together with noblemen's forays and attacks on their adversaries' estates and together with the activity of gangs of robbers³³. The last-named problem is connected with the existence of a social fringe consisting mostly of professional criminals; in the countryside it was a result of the flight of peasants from their lords' estates, which was regarded as a grave offence in the old Polish penal code.

Peasants ran away from their lords' estates already in the 16th century but the problem assumed larger proportions in the 17th century, especially in its second half³⁴. Only some of the runaways managed to make a "career" in town, in handicrafts or services, or join the army or the Cossacks. The majority reinforced the ranks of the social fringe composed of beggars, vagrants, prostitutes, professional thieves and swindlers, that is all kinds of people who roamed about the country individually or in groups, settling in large towns for some time until they were expelled. The members of this social fringe had their own code of behaviour and their own morals; they used special expressions and gestures of which we learn from statements made by witnesses during court proceedings; but the information is so fragmentary that it is difficult to construct a comprehensive picture of that class of people on this basis. The social fringe also included Gypsies, Hungarian and Slovak horse-thieves in the southern borderland, and highwaymen. The highwaymen, irrespective of whether they were of Slovak, Hungarian or Polish origin, were undoubtedly the aristocracy of the social fringe which had its own hierarchy and internal differentiation, no less sharp than that of the official society. Gangs of robbers operated throughout Poland in the 16th and 17th centuries, mostly in places which offered favourable conditions for hiding and attacks, that is in wooded and mountainous regions. The highwaymen, whose ranks included not only runaway peasants but also petty noblemen who were frequently ringleaders, waylaid merchants and wayfarers on highroads³⁵. As time went on, legends unjustly glorifying their characters and deeds began to circulate about some of them (*Janosik*, *Ondraszek*). Stories were told about the great nobleness and courage of highwaymen, especially those operating in the Polish-Hungarian

³³ Cf. M. K a m l e r, *Robbery, passim*.

³⁴ *Zarys historii gospodarstwa wiejskiego w Polsce (An Outline of the History of Farming in Poland)*, vol. II, Warszawa 1964, pp. 55, 70 ff.

³⁵ M. K a m l e r, *Robbery, passim*.

borderland, about their kind-heartedness and the help they gave to the poor and oppressed by attacking only rich men and administering justice on cruel lords. The highwaymen were frequently helped by the rural population; some peasants led a double life; they took part in assaults on travellers and then went back home and resumed farming as if nothing had happened. The social fringe, also in towns, was linked by many threads with the lowest classes, made frequent use of their help (receivers who sold robbers' and thieves' spoils, fences who gave them refuge) and recruited new members from their ranks.

Witchcraft held an important place among old Polish offences, although in this respect Poland lagged far behind many West and North European countries. In the West and North, persecutions soared up in the 16th and 17th centuries, taking a toll of tens if not hundreds of thousands of victims. In Poland there were practically no trials of witches in the 16th century; they did take place in town and countryside in the 17th century, but they were few; it was only plebeian women who were accused of witchcraft, no noblewoman was tried, let alone convicted, for witchcraft³⁶ despite the fact that the old Polish society was very superstitious. Not only ordinary people but even the educated elites believed in magic. In 1635–1636 a Frenchman visiting Poland, Charles Ogier, conversed on wizards and witches in Gdańsk with burghers with an university education, people of a very high intellectual level; both he and his interlocutors did not have a shadow of a doubt about magic and its effectiveness. According to a story, a Swedish witch, in love with a man from Gdańsk, asked him for a wisp of hair; the cautious youth gave her hair he had torn out of his furcoat. This was most fortunate, for on his way back home a storm broke out at sea and the wind pulled the furcoat from under the young man and because of the spell cast by the woman, carried it back to Stockholm. A foresighted merchant of another story bought winds tied up in a handkerchief from a sorcerer; unfortunately, reckless sailors untied the handkerchief and the ensuing hurricane wrecked the ship³⁷. Such stories and many others could be heard in private homes, inns and at the market square in Gdańsk. It is not surprising therefore that several well known trials of witches were held there in the 16th and 17th centuries and that in this town several witches were burned at the stake³⁸.

Everybody in Poland, also magnates and noblemen, even the best educated and widely-read persons, believed in witchcraft. These beliefs are

³⁶ J. Tazbir, *Hexenprozesse in Polen*, "Archiv für Reformationsgeschichte" 71, 1980, pp. 280–307.

³⁷ Ch. Ogier, *Podróż do Gdańska 1635–1636 (A Journey to Gdańsk 1635–1636)*, ed. by W. Czaplinski, Gdańsk 1953–1955, vol. I, pp. 325 ff.

³⁸ M. Bogucka, *Das alte Danzig. Alltagsleben vom 15. bis 17Jh.*, Leipzig 1980, pp. 180–181.

abundantly reflected in diaries, correspondence and noblemen's records. When A. S. Radziwiłł wrote of a great storm in May 1643 in which a peasant was killed, he added: "There is no doubt that witches caused this tragedy"³⁹. The diarist Pasek writes in all seriousness about Danish gnomes and imps, and when he had no issue by the widow he had married, he attributed this to witchcraft: somebody kept throwing piece of a wooden coffin into their bed! Pasek's wife refused to live at the village of Smogorzów, for that was a *locus fatalis*: a spell caused the death of many people staying there⁴⁰.

As far as superstitions were concerned, the "cream" of Polish society did not differ much from simple peasants who were convinced that some persons, especially women, had the power of casting a spell on cattle, make a cow milkless and by means of some special "knots" and chants harm or help people, make them sick or break the spell cast on them. In the 16th century a witch named Ożóg, whose services were allegedly sought even by Queen Bona, gained renown throughout the Commonwealth⁴¹. Noblemen accused young Barbara Radziwiłłówna not only of debauchery but also of having sucked in knowledge of witchcraft with her mother's milk, thanks to which she managed to ensnare King Sigismund Augustus⁴². Ladislaus IV's favourite, Jadwiga Łuszkowska, was said to have "many magical skills"⁴³. But nobody would have dared to arraign these ladies.

Information on charges of witchcraft can be found in the records of peasant courts. There were rather few such cases in the 16th and 17th centuries and as a rule, they ended with "abjuration". For instance, the wife of a certain Łukasz Grylas living near Klimków was charged with witchcraft in 1618. "After hearing their (the accusers' — M. B.) story, the court decreed that the said Łukaczka Grelaczka should swear that she had done, and would do, no harm to anybody"⁴⁴. The defendant suffered no other consequences. The court at Klimków was equally reasonable in 1636 when it ordered "Połaga, the wife of Piotr Karzeł, to swear that she had done no harm to anybody and would not harm anybody in the future and that she had caused no damage by these knots (amulets used in witchcraft — M. B.) which Łoski showed. And she took the oath in good conscience. The court accepted the oath and permitted her to live with her husband and decreed that nobody

³⁹ A. S. Radziwiłł, *Pamiętnik*, vol. II, p. 359.

⁴⁰ J. Ch. Pasek, *Pamiętniki*, p. 436.

⁴¹ M. Bogućka, *Bona Sforza d'Aragona*, Warszawa 1989, p. 152.

⁴² M. Bogućka, *Barbara Radziwiłłówna*, in: *Życiorysy historyczne, literackie i legendarne*, ed. by Z. Stefanowska and J. Tazbir, Warszawa 1980, p. 73.

⁴³ A. S. Radziwiłł, *Pamiętnik*, vol. II, p. 139.

⁴⁴ *Księga sądowa kresu klimkowskiego 1600–1672 (Court Records of the District of Klimków 1600–1672)*, ed. by L. Łysiak, Wrocław 1965, p. 66.

should upbraid her under the penalty of ten marcs (to be paid to the lord — M.B.)”⁴⁵. It is worth emphasizing the categorical tone of the verdict and the heavy fine foreseen for those who might wish to raise the question again.

Charges of witchcraft, however, multiplied in the late 17th century and any reason became good to lay a charge: whether a horse died, a cow fell ill or a cheese did not come out as it should. The verdicts changed too, it was no longer enough for the accused women to swear an oath, they were sentenced to be lashed and pay a fine to the manor. At the beginning of the 18th century new, even grimmer accents appeared. Let us quote a characteristic passage from 1702: “Honest Kaśka, widow of the village administrator Danek, complained that Olena Baniaska had induced her deceased husband, Danek, to swear that she was not a witch and knew nothing about sorcery. And when the deceased, not knowing how to excuse himself, did this and swore, he died a week later. And since the said Olena Baniaska walked about other people’s fields on a holiday morning, creating the semblance of witchcraft, the court orders her to pay a fine of 4 marcs to the lord, to the court and to the village officer. And the court orders that Baniaska should also pay 4 marcs to Kaśka Klimkowska for having induced the deceased Danek, Klimków village administrator, to swear the oath. She should pay the fines at once under the penalty of imprisonment. And should there be later any evidence of Olena’s witchcraft and sorcery and should anybody be harmed by this, she should be sentenced to death as a common witch”⁴⁶.

In the late 17th and early 18th centuries many village women and poor townswomen were indeed burned at the stake for witchcraft. We shall never know the exact figures and there is no point in trying to ascertain them. It is certain however that compared with the wave of persecutions in the West and North of Europe, Poland was a quiet country in this respect. Researchers cite various explanations: the weak development of demonology (or of theology in general) in the Commonwealth; the fact that inquisitions and bloody persecutions of heretics (who were regarded as the devil’s accomplices and close relatives of witches) were unknown in Poland; the fact that the political system was different, that no bureaucracy was fighting for political influence (trials of witches were an important element of the political game in the West); the situation in the countryside was relatively stable while the West European countryside was experiencing an upheaval in connection with the development of early capitalist relations; Polish Catholicism was of the traditional type with a strongly developed cult of the

⁴⁵ *Ibidem*, p. 130.

⁴⁶ *Ibidem*, p. 351.

Virgin Mary and the saints, and this gave people a sense of security, absent in the countries of the Reformation which experienced religion in a more rationalistic and intellectual way; and finally the devil was domesticated in Poland; he did not terrify anybody and was even ridiculed. All these factors may have jointly contributed to the special situation prevailing in Poland in this respect.

Offence and crime are connected with punishment. Old Poland took over the medieval concept of punishment as a revenge on the malefactor. Punishment was also to deter potential wrongdoers. Spectacular corporal punishment, such as public flogging, pillory, stigmatization, the cutting off of arms, quartering, were the most frequent penalties. In a way this resulted from the shortage of prisons and prison personnel (escapes from prison are frequently mentioned; it must therefore have been relatively easy, especially for poor unknown people, to get out of dungeons and disappear from the area where they had committed the offence) and the cost of keeping them. Corporal punishment was cheaper, easier to administer, spectacular and irreversible. In many cases the aim was also to eliminate the criminal from society for good, hence the frequent use of banishment, stigmatization by branding a mark on the forehead, the cutting off of an ear (this warned all people that they were facing a man with a criminal past), and the most radical irreversible method, the death sentence. It was carried out in various ways, more or less cruel; the malefactor could be hanged (thieves, robbers), beheaded (reserved for men of noble blood, sometimes used as an act of grace), drowned (infanticides, witches), buried alive (infanticides), burned at the stake (for witchcraft, some forms of incest, sodomy, counterfeiting of money), quartered alive or broken on the wheel (banditry)⁴⁷. The penalties differed and were graduated, often under the influence of the judges' inclination, so departures from the rules were frequent. For instance, Andrzej Komoniewski noted that on June 6, 1715 "an unusual execution exceeding the law was carried out on three criminals at Żywiec". These were highwaymen sentenced by the urban court to be quartered. but "the lord of the manor altered the decree and invented a new one; he ordered that each man should have his right arm and left leg cut off under the pillory in the market square, and a gallows branded on his forehead. And this did happen causing them great pain and fear, and people could not look at this. And when this was done, the men were set free so that they should look after themselves; their arms and legs were nailed to the pillory. It was a ghastly sight for the pillory was covered all over with human arms and legs"⁴⁸. It is

⁴⁷ See M. Kamler, *Torture, passim*; H. Zaremska, *Niegodne rzemiosło, passim*.

⁴⁸ *Chronografia albo dziejopis żywiecki*, p. 460.

worth adding that the lord of Żywiec who decreed this sentence, Franciszek Wielopolski, a magnate, was a music lover who played violin in church during religious services.

The death sentence was frequently supplemented by torture before the final execution (the man sentenced to death had his arm cut off, his tongue torn out, was quartered, disemboweled, burned). On the whole, the penalties became more cruel and savage on the middle of the 17th century, the first few decades of the 18th century in particular were marked by the growth of sadism in the administration of justice. There were even cases of impalement. Was this a result of the already mentioned increase in crime rate and the desire to counteract it by the use of more draconian measures or was it simply indifference to suffering, resulting from the dreadful war spectacles in which the people of that time took part as spectators or actors? It is difficult to give an unequivocal answer.

It is worth adding that the moving old Polish custom which allowed a sentenced man to be freed if an unmarried girl promised to marry him was abandoned in the 17th century. This custom must have been maintained for quite a long time in Poland if as late as 1684 an attempt was made to save the life of Wojciech Stokłosa, a tailor from Zabłocie, sentenced to death for horse stealing. "When the executioner was about to behead him, a girl from Biała (a village near Żywiec — M. B.) ran up to the youth, wound up a kerchief round his neck, seized him by the arm so strongly that the executioner was unable to tear her away, and took the youth far away from the square in order to free him". But after a struggle Stokłosa was torn away from the girl and forced to put his head on the block. He was beheaded at Żywiec "near the Holy Cross Church where the Passion of Christ is"⁴⁹.

The mortal remains of criminals were as a rule left at the execution place so that decaying and decomposing for weeks they should be a terrifying memento for passers-by. "The stench and the sight were terrible and struck everybody with awe", writes Andrzej Komonieczki in 1721 about the sight of the impaled and tortured bodies of criminals decomposing in the market square at Żywiec⁵⁰. Such spectacles were not exceptional in the towns and villages of the Polish-Lithuanian Commonwealth.

This gruesome register of punishments should however be examined against the background of the situation at that time. To begin with, penalty depended not only on the committed offence but, first and foremost, on the social status of the person who committed it. The law was the most lenient towards the nobility, the most severe towards the plebeians. Moreover,

⁴⁹ *Ibidem*, p. 239.

⁵⁰ *Ibidem*, p. 531.

whereas urban law was more or less uniform, in villages (and in small private towns like the above-mentioned Żywiec) the penalty depended, to a great extent, on whether the owner was lenient or cruel. But even cruel lords were reluctant to sentence a peasant to death or banishment from the village for this meant the loss of valuable labour force. The most popular penalties were: flogging (sometimes very cruel, consisting of 100 and even more lashes), fines paid to the manor, the assessors' court or the church, wax for church candles (in cases of offences against morals). In towns such objections as the possible loss of labour did not exist, death sentences and banishment were therefore more frequently pronounced there. The general trend in the administration of justice was that with regard to plebeians the verdicts were stricter and the penalties more severe in the 17th century, especially in its second half, than in the 16th century, while they became increasingly mild and their execution was weaker and weaker with regard to the nobility.

The nobility consolidated its exceptional position in the state by being relieved of responsibility for certain offences. The killing of a nobleman by a plebeian was punished by death; if a nobleman killed a plebeian, he paid a small fine, headmoney, which in the 16th century amounted to 30 marcs and from 1631 to 100 (this was in fact the same amount, for the value of money had dropped). If a nobleman killed another nobleman the penalty was, of course, more severe. Premeditated murder was punished by beheading, unintentional, accidental manslaughter (e.g. under severe provocation, in a duel) by imprisonment in lower dungeon for one year and six weeks and headmoney paid to the family (several hundred marcs)⁵¹. Imprisonment in a lower dungeon was regarded as a very severe sentence, for in a dump, completely dark and stinking dungeon one could easily fall ill and die. Conditions were better on the higher floors of a dungeon where the discipline was not so strict: the prisoner was allowed to move in with his own utensils, send somebody out to fetch food and even drinks; this was the place of punishment for misdemeanours; there were cases of women being sent to dungeon.

But even though the penalties imposed on noblemen were milder than those inflicted on plebeians, there were many cases when they were not carried out, especially in the 17th century. There were not enough dungeons to put all the sentenced men in, and the courts did not have enough power to bring the convicted men to prison. The nobility thought little of sentences and condemnations. Infamy and banishment were punishments which were only put down on paper; an influential magnate or a swaggerer of noble

⁵¹ *Historia państwa i prawa*, vol. II, pp. 327 ff.

blood who was under a magnate's protection could ignore them. Even if he killed another nobleman, he got away with it, despite the endeavours of the victim's family and friends, for as a rule, the parliamentary court decided the case, except when he was caught red-handed. Trials dragged on for years and the culprit lived unmolested and committed new crimes. "It is a bad law", wrote Skarga in his *Parliamentary Sermons*, "which does not order the apprehension of even the most notorious criminal who has betrayed his country, offended His Majesty the King, killed a hundred people, plundered houses and killed at will in forays. He cannot be apprehended until all the possibilities offered by the law have been used, even if this lasts a dozen, 30 or 40 years, and he can be tried only by the Sejm, which decides during a session only five, six or very few cases... Oh, hapless law which ruins all justice and is a scourge to this country"⁵².

The administration of justice was one of the darkest aspects of life in old Poland. People were getting used to lawlessness at a time when other nations were going through a severe but fruitful training in law abidance in absolute monarchies. In Western Europe endeavours were made already in the 16th century (Holland) to resocialise criminals through close supervision, strict discipline and hard work. The concept of punishment assumed a new meaning; it was no longer a revenge or exclusion from society but a way of bringing the criminal back to society, making him an honest member of a village community, a town or the state. The workhouses which mushroomed in the 17th century, brutal and barbaric as they seem to us today, played a certain role in shaping a modern society. In the 17th century Commonwealth they were established only in the well developed towns of Royal Prussia (Gdańsk, Toruń, Elbląg). Warsaw and Cracow did not have them until the 18th century, and even then only for a short time⁵³. The helplessness of the law, the unjust way in which it treated the individual estates, the conservative forms of punishment negatively affected the general situation in the Noblemen's Commonwealth.

(Translated by Janina Dorosz)

⁵² P. Skarga, *Kazania sejmowe (Parliamentary Sermons)*, ed. by J. Tazbir with the co-operation of M. Korolka, 3rd ed. Wrocław 1972, pp. 171-172.

⁵³ See M. Bogucka, *Les origines de la pensée pénitentiaire moderne en Pologne du XVII^e siècle*, "Acta Poloniae Historica", 1987, vol. 56, pp. 19-28.