Van des keisserlichen Lübischen Rechtes wegen
Circumstances of Criminality in Medieval Reval

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The most outstanding characteristic of everyday life in medieval Tallinn (hereafter Reval in accordance with medieval usage) was the duality of the town population. The crucial term for understanding everyday life in medieval Reval is *undeutsch*. It was used to denote the natives of the land, to draw the line between them and the German conquerors. The closest English translation - "Ungerman" - is incapable of wholly transmitting the meaning of this word. The negative prefix *un-* appears to describe Ungermans as opposites of the Germans in any possible conjunction, condemning the whole culture. In the tradition of *Ostkolonisation*, mixing with the original population could cause the loss of privileges of personal freedom. Remembering that the conquerors considered themselves to be at a superior stage of cultural development, it is no surprise that no integration took place in medieval Livonia. The Germans (actually the Westfalians and the Rhinelanders - the often crucial distinction carefully maintained by the division of spoils) developed their own cultural milieu, which was almost entirely determined by the export of Hanseatic conditions. This export was crucial to Reval's medieval efflorescence.

Sources[1]

The most important legal imports for this paper are the codes of Lübeck law until 1586 and the code of Riga law for Reval.[2] The original Lübeck codes[3] lacked instructions on the subject of dealing with the Ungerman population. Interestingly enough, this subject

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[1] J.L.Müthel. *Handbuch der livländischen Criminalrechtslehre*. Dorpat: 1827. F.G.v.Bunge, *Beiträge zur Kunde der liv-, esth- und curländischen Rechtsquellen*. Riga und Dorpat: Frantzen 1832. F.G.v.Bunge. *Geschichte des Gerichtswesens und Gerichtsverfahrens in Liv-, Est- und Curland*. Reval: Franz Kluge 1874. F.G.v.Bunge. "Nachrichten überdas alte Archiv des Rathes zu Reval." In: *Archiv für die Geschichte Liv- , Esth- und Curlands iii* (Hrsg. v. F.G. von Bunge). Dorpat: Franz Kluge 1844.

[2] Reval 1282 = *Codex des lübischen Rechts von 1282*. Hrsg. v. F.G.v.Bunge. Die Quellen des Revaler Stadtrechts i. Dorpat: 1842. Reval 1257 = *Codex des lübischen Rechts von 1257*. Hrsg. v. F.G.v.Bunge. Die Quellen des Revaler Stadtrechts i. Dorpat: 1842. Reval 1347 = *Codex des lübischen Rechts von 1347*. Hrsg. v. F.G.v.Bunge. Die Quellen des Revaler Stadtrechts i. Dorpat: 1842. Riga-Reval = *Codex des rigischen Rechts für Reval*. Hrsg. v. F.G.v.Bunge. Die Quellen des Revaler Stadtrechts i. Dorpat: 1842.

[3] W.Ebel. *Lübisches Recht*. Bd. i. Lübeck: 1971. A.L.J.Michelsen, *Der ehemalige Oberhof zu Lübeck und seine Rechtssprüche*. Altona: 1839.

remained virtually unattended to in most of the other legal sources of medieval Reval as well. One of the few known exceptions is the decree of Queen Margaret of Denmark from August 29, 1273, affirmed by King Erik Klipping of Denmark. It sets the fine and the damages for wounding somebody inside the *pax civitatis* at two marks of silver and two öres of pences. If the wounded person happened to be an Ungerman, the fine was only one mark and two öres. The same applied when the felon was an Ungerman.[4]

Dictae of the town Magistrate (*Bursprake*)[5] and the statutes (*Skra, Schrag*) of the corporations (*Zunft*) of local craftsmen and merchants were also called Lübeck law. Whether it was done so as not to spoil the good standing with the Lübeck Magistrate or to confer more authority to the dictae, or both, is hard to determine.

Additionally there exists one more source, the significance of which has hitherto not been fully recognised. The extracts from the "old court proceedings" (dating from 1457 to 1555), made by the Magistrate secretary Herbers,[6] have been seen just as a chronicle of crimes committed in Reval in these years. Considering the existence of only one copy, carefully kept in the Magistrate archive, the notion of its being sensational reading seems unlikely. The document contains formulas for opening a jury session, outlawing a person, and swearing an *Urfehde*. The formula of *Urfehde* has been altered several times so that it would address the current ruler. Likewise is the description of the procedure for the body of a suicide (*Da findest du wie man mit denen, so sich selbst erhängt, procediret...)*[7] appropriate for a lawyers' handbook rather than a chronicle.

Additional sources for investigation of legal practices in medieval Reval might be various town books: the *Denkelbuch, Wackenbuch des Sankt-Johannis-Siechenhauses* and several account-books (*Kämmereibücher*).[8] Regretfully in the so-called *Geleitsbücher*[9] (accounts of the persons applying for safe conduct) the persons from

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[4] LECUB = *Liv-, Esth- und Curländisches Urkundenbuch i - vi.* Hrsg. v. F.G.v.Bunge. Dorpat, Reval:1853 - 1875. ii: 436, 437.

[5] Revaler Bursprake ca. 1400. LECUB *ii, 1516.* Revaler Bursprake von 1360. LECUB *ii, 981.* Revaler Bursprake von Ende 14. Jh. LECUB *ii 982.* P.Johansen, H. von zur Mühlen, Revaler Bursprake (1. und 2. Jahrzehnt des 15. Jahrhunderts). *Deutsch und Undeutsch im mittelalterlichen und frühneuzeitlichen Reval.* Köln Wien: Böhlau 1973. *Libri de diversis articulis 1333 - 1374.* Hrsg. v. P.Johansen. Publikationen aus dem Revaler Stadtarchiv viii. Reval: 1935. *Das Revaler Ratsurteilsbuch (Register van affsproken) 1515 - 1554.* Hrsg. v. W.Ebel. Göttingen: 1952. W.Arndt. "Die Willküren und Burspraken des Rathes zu Reval." In: *Archiv für die Geschichte Liv- , Esth- und Curlands iii* (Hrsg. v. F.G. von Bunge). Dorpat: Franz Kluge 1844.

[6] "Aus alten Gerichtsbücher ein kurzer auszugck (Herberssche Auszug)". E.v. Nottbeck (Hrsg.), *Die alte Criminalchronik Revals.* Reval: 1884.

[7] E. v. Nottbeck, *Die alte Criminalchronik Revals.* Reval: 1884, p. 54.

[8] *Die ältesten Kämmereibücher der Stadt Reval (1363 bis 1374).* Hrsg. v. O. v. Greiffenhagen. Publikationen aus dem Revaler Stadtarchiv iii. Reval: 1927. *Kämmereibuch der Stadt Reval (1432 - 1463).* Hrsg. v. R.Vogelsang. Quellen und Darstellungen zur hansischen Geschichte 22/1 and 22/2. Köln. Wien: Böhlau 1976.

[9] *Das Revaler Geleitsbuch 1515 - 1626.* Hrsg. v. P.Johansen, N.Essen. Publikationen aus dem Revaler Stadtarchiv ix. Reval: 1939.

rural areas dominate. Last, but not least, the notes made by sheriff Grymmert[10] throw some light on court practice and criminal statistics.

Verbal determination of crime

Due to the particularities of Estonian history, evidence about word usage by Ungermans is practically non-existent, while evidence as to the terminology used by German conquerors is abundant. Medieval Revalian terms did not exactly correspond with those known from Central European territories. *Ungericht*, the popular German term to denote the crime as such, is also hardly to be found in Revalian sources. *Friedensbruch*, another common term, is used rather infiequently. The most common terms in Reval are the Middle Lower German expressions *Schuld die an den Hals geht*[11] and *broke*.[12] The latter is also widely used in the meaning of a fine to be paid for a crime. Thus it seems that Revalian word usage was inspired by crime and its punishment rather than any law code. This is particularly manifest in the term *Schuld die an den Hals geht*, in which the *vox populi* has already determined the punishment for a misdeed.

The abundant use of corporal and capital punishment is as characteristic of medieval Reval as it is of any Hanseatic town. Stigmatisation of the offenders was also quite common. It is also apparent that the range of the misdeeds that were subject to punishment is considerably discordant with the range we are used to today. Numerous smaller, in our paradigm civil, transgressions, like a row between marketwomen, were reproved by corporal punishment. There is nothing to indicate that police justice, and swift execution of the rascals and vagrants (*landschädliche Leute*) were seen as something other than usual exertion of justice.

Criminality and culpability

The evidence points to the conclusion that criminality was considered a property of an individual. There is no data as to the understanding of how and why an individual turned criminal. It was apparently not considered hereditary, since this notionwas missing in the medieval paradigm. In two cases (in 1464[13] and 1502[14]) the sentenced women were allowed to give birth to their babies before being executed.

Closely tied with the question of criminality is the question of culpability. In the German tradition everything that could move (e.g. a falling beam) could be accused of ill will. Immutable objects (e.g. a well or a fence) could not. The owner was held liable, except in the case of ceding the accused thing or animal to the family of the injured.[15] In

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[10] "Der revalsche Gerichtsvogt und seine Protokolle von 1436 und 1437." Hrsg. v. E. von Nottbeck, In: *Beiträge zur Kunde Ehst-, Liv- und Kurlands iii*. Reval: 1887.

[11] Approximately meaning capital crime - "guilt that goes at the neck", see Reval 1282: 100.

[12] Literal translation would be "to break".

[13] E. v. Nottbeck, *Criminalchronik*, p. 52.

[14] E. v. Nottbeck, *Criminalchronik*, p. 69.

[15] R.His. *Geschichte des deutschen Strafrechts bis zur Karolina*. München und Berlin: R. Oldenbourg 1928.

Reval, falling beams and similar accidents were seen as mishaps and as such irredeemable.[16] One of the results of such an accident could be the surrendering of the object to the injured. Generally the negligence was not punishable: the guilty had only to pay the injuries.[17] Anybody who was not careful enough himself, had no right to compensation, for example, for being bitten by a dog in its "own" house.[18] If the same happened on the street, the owner was liable, except if they abandoned the creature.[19] The (assumed) intentions of the accused played a significant part in devising the punishment. A fairly clear distinction was made between crimes which were premeditated, those caused by anger and those caused by negligence. It is unclear whether the children and other dependants could be accused of crime in Reval; and nothing is said about culpability of mentally ill.

Vorsate

Anybody who prepared the crime well in advance, made himself guilty of *Vorsate*. *Vorsate* was no small misdemeanour: it was liable to a 10 mark fine - as much as the original *wergeld*, the fine for manslaughter - and a barrel of wine. The reason for such harshness was that since the states position was never secure, the order that would ensure peaceful coexistence between individuals (the state's monopoly of violence) had to be re-established every day. For these reasons any premeditated offence was seen as a grave crime. *Vorsate* was never presumable: only real estate owners with an unblemished reputation could testify to its existence.[20]

It has been said repeatedly that the judgement had to consider not only the outcome, but also the intentions of a criminal. Thus, the intentions had to have somehow been obvious. The appearance of the individual, and previous knowledge about him - or the lack thereof - were primarily capable of transmitting this kind of image. A good example of that is the institution of the oath-helpers (*Eidhelfer*) - the people who supported the oath of some friend or relative. For doing so, no knowledge of the actual case was needed: oath-helpers only certified the reliability of the person in general. The existence of a willingness to testify under these circumstances presupposes quite extensive trust towards the person in question. The oath-helpers had to be confident that social control over the person they testified for was functioning.

Legal environment: historical roots and sources

The first statute Reval had was probably the so-called *Weichbildrecht, ius civitatis*. Its essence was probably contained in the privileges donated by Waldemar II to his stronghold and its settings. The charter of donation is not conveyed to us, but it must

[16] Reval 1257: 59; Reval 1282: 65.

[17] Reval 1257: 59; Reval 1282: 65.

[18] Reval 1257: 60; Reval 1282: 68.

[19] Reval 1257: 61; Reval 1282: 69.

[20] Reval 1282: 110.

have been intrinsic for requesting the right to use Riga (essentially Hamburg) law.[21] The code sent in response to this request is known to be the oldest manuscript of Riga law.[22] The endorsement of Waldemar's privileges by Erik IV Plogpennig of Denmark also confirms the existence of these privileges. The actual use of Riga law has been doubted by Nottbeck, but the existence of a letter to the Magistrate of Riga and the existence of the manuscript (regretfully of indeterminable age) cannot be doubted. The main argument of Nottbeck - that in this code a *princeps* figured as a ruler, and therefore it must have been created after the interregnum of the Order (1227 - 1238) is vitiated, if one assumes that the code originated in the time before the interregnum. The proof can be found in the text of the treaty of Stenby (1238) - the words *munitio et civitas Revaliensis*[23] suggest that Reval did already have a town constitution.

On May 15, 1238 Erik IV Plogpennig conferred on the Revalians the right to use Lübeck law. The original document has been lost, but a transcription (*Transsumt*) of all royal Danish privileges given by the provincial Burchard von Dreileben to the Magistrate of Reval on February 1, 1347, contains a transcript.[24]

The document establishes the justices for the cases of injuries. These should be the Magistrate and *homines nostri*.[25] The meaning of the latter term is somewhat unclear: usually it simply means a vassal, which might not be the case here. It might refer to the castle sheriff. The real extent of the powers of these *homines nostri* is unknown: they might have been just the formal announcers of a verdict or autarchic judges who consulted the Magistrate only *pro forma*. It must be noted, however, that there is no evidence of actions by any judges but the town sheriff and the Magistrate. The Magistrates' sole responsibilities were initially civil suits, communal affairs, mercantile and community policing. It had the right to impose fines up to 10 marks and a barrel (*Fuder*) of wine - the usual fine for scheming to break the law. The Magistrate dealt with the insults to the magistrates and feuding.[26] It also had the right to let outcasts back into the town.[27]

On September 16, 1257[28] Christoph I affirmed the town rights of Reval. Responding to his request and to stress the standing of Reval as a filial town, the Magistrate of Lübeck sent a Latin transcript of all Lübeck codes of private, criminal and processual law (altogether 103 articles) to Reval as early as 1257.

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[21] F.G.v.Bunge. *Das Herzogthum Estland unter den Königen von Dänemark*. Gotha: Friedrich Andreas Perthes 1877, p. 146.

[22] LECUB i: 77.

[23] LECUB i: 160.

[24] LECUB ii: 869; Tallinn City Archives (TLA): F. 230 n 1-I. Urk. 168.

[25] F.G.v.Bunge. "Zur Feier des Gedächtnisses des am 15. Mai 1248 der Stadt Reval verliehenen lübischen Rechts." In: *Archiv für die Geschichte Liv-, Esth- und Curlands iv* (Hrsg. v. F.G. von Bunge). Dorpat: Franz Kluge. p. 68.

[26] Reval 1257: 77, 88.

[27] Reval 1257: 80.

[28] LECUB i: 315.

The code of 1282, written at the request of King Erik Klipping, his mother Margaret and the Magistrate of Reval, is the oldest known vernacular reception of Lübeck law. The Lübeck law of 1347 was formally a German translation of the 1257 code, though they were far from identical. All these, as well as the *Burspraken* imply that the sheriff (*Vogt*) was solely responsible for combating crime.[29]

As a representative of the sovereign the sheriff originally had the greatest powers in most German towns. However, the Magistrates gradually succeeded in their struggle for more power.

Reval, unlike the older Hanseatic towns, did not emerge slowly, but was founded by its conquerors (the speculated dike of the Estonians cannot be seen as analogous to European towns). Therefore the town sheriff was almost never a political figure. The castle sheriff, a royal appointee and thus generally a political figure, had virtually no power in the town.

In the course of its development, criminal justice in older Hanseatic towns tended to be based on the appropriation of the Magistrate as the highest power rather than on law codes. It could almost be said that the Magistrate did not need to judge offences: the citizens had already done that themselves in giving the citizens' oath. The Magistrate just stated the breaking of the oath and netted out the punishment implicit in it. Thus the Magistrate did not actually need prosecutors, defenders or, for that matter, formal laws.

The Revalian Magistrate obtained the right to nominate candidates for the sheriff's office in 1265.[30] The sheriff remained the most important official dealing with crime, even more so when he had the backing of the Magistrate. He was *Richter unter dem Königsbann*, i.e. he had power over life and death.

To the full quorum of the criminal court there also belonged, besides the town sheriff (*Stadtvogt, Gerichtsvogt*), the patrician sheriff (*Herrenvogt*) and undersheriff (*Untervogt*). The patrician sheriff was often a former town sheriff, which was evidently quite important for the continuity of legal practice. The distinction of the jury was completed by the presence of police orderlies (*waltbodel, walbode, bodel, praeco, hecht* - the last word originally signified the jail house) and, if need be, of the executioner. Until the middle of the fifteenth century an old German institution of *Urteilsfinder* still existed. Originally he was the representative of the community, by this time, however, he confined himself rather to pronouncing some ritual phrases.[31] Apparently replacing the *Urteilsfinder*, in 1479 two affluent citizens are for the first time referred to as taking part in the sessions. The sessions mostly took place in the office of the sheriff, sometimes also in the Magistrate chapel or outside the town (mainly in the port).

The sheriff was not only the most important but also the most visible defender of order. He had to deal with most of the transgressions personally. He played active role in the community affairs, presiding over sessions of the Ding (*echteding, echt Ding*, also *Vogt-Ding*): in German law area usually a body consisting of all citizens, deciding three times a year questions of inheritance, real estate and conferring about dictae of the

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[29] Reval 1257: 2, 3.

[30] LECUB i: 390.

[31] TLA. A.a. 7. Denkelbuch der Stadt Reval. p 23r. See also: O.Schmidt, "Rechtsgeschichte Liv-, Est- und Curlands." In: *Dorpater Juristische Studien iii*. Dorpat: 1894. p. 176.

Magistrate and other communal affairs. Later it was practically abolished with the sway passing over to the Magistrate. While it took place, the opening ceremony[32] consisted of the sheriff proclaiming himself the representative of the sovereign, town and law, judge and plaintiff; and also the single decision maker. The threefold drawing of the sword following the ritual reply of the answering solicitor (*vorsprake*) obviously symbolised the sheriff's power over life and death.

The sheriff was equipped with far-reaching authorities: he had the right to intervene in individuals' lives at almost any time and in any place, except in the cases of adultery.[33] He had the right to commandeer every inhabitant of the town to help him. Anybody who did not respond, *de sculde nicht weten, wo hoghe he dat beteren schulde*.[34] In our terms, that constituted rigorous social control, which, however, did not prevent the really obstinate going about their (criminal) business. The German verb *behüten*, it should be remarked, has other shades of meaning besides controlling. Medieval Revalians were not only controlled, they were also protected by the officials. That they were not always fond of their officials, is an issue for itself.

The means to defend order

The medieval Revalian practice to defend order consisted of five kinds of measures. These were the death penalty, pecuniary punishment, corporal punishment, the deprivation of honour and rights and the loss of freedom.

The death penalty cannot be seen as one with corporal punishment: instead of causing bodily sufferings, it ended them - and delivered the society from the criminal at minimal cost and to maximum public relations effect.

Similarly, the corporal punishments were not primarily aimed at torturing the guilty. Severing of limbs was employed only in cases of really heavy abuse. Every punishment seems to have had some exemplary as well as communicative significance. Cutting the hair, or severing the ears or nose had the practical purpose of making the offender discernible and thus somewhat less dangerous.

Deprivation of freedom was usually not a punishment in itself, rather it was a preventive measure. It was used against delinquents who were likely to flee, suspicious characters roaming the streets at night, and convicts awaiting being bailed out or banishment. At the same time it was not entirely without elements of corporal punishment: cold, darkness, and the proverbial bread and water. Banishment can also be seen as a form of deprivation of freedom. The banished were no longer free to choose the place of their residence. Clearly it was more practical than the jail: the honest citizens did not have to pay for the upkeep of the criminals.

Pecuniary punishments are most numerous. Their scale was long and diversified. They can be divided in *Buße* and *Wedde*. *Buße*, *bote* in the wider sense is any monetary punishment and as such correspondent to *broke*/*Brüche*. In the narrower, proper sense

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[32] In the end of *Aus alten Gerichtsbücher ein kurzer auszugck* (Herberssche Auszug).

[33] Reval 1282: 122.

[34] W.Arndt. "Beiträge zur Geschichte des Raths zu Reval." In: *Archiv für die Geschichte Liv-, Esth- und Curlands iii* (Hrsg. v. F.G. von Bunge). Dorpat: Franz Kluge 1844, p. 83.

buße (*emenda, emendatio, satisfactio, compositio*) is any kind of concession aiming to mend (*beteren*) the damage caused by the transgression. This money was to be used exclusively for these ends, so Lübeck law forbade the creditors of the victim from making any claims on this money. *Wedde* (*excessus*) was paid, together or without *buße* to the judge (sheriff) for disregard of justice. Whereas the sources do not distinguish between these two (usually simultaneously used) types, the proportions of the division of the lump sum between injured, town and judge are given. The sum of the fines was related to *Wergeld*. The exact amount depended on the gravity of the deed, not the standing of the victim. The highest amount in Lübeck law for Reval - 100 silver marks - was due for the misapprehension of inheritance regulations.[35] Confiscation of the whole estate was only appropriate for high treason. Even then there was the possibility of repentance and restoration of rights. The renouncement of confiscation in favour of fixed penalties was clearly more in the interests of the ruling strata: the affluent could pay the fine and forget the issue, the impecunious did not get away with giving up all their wealth which could have been smaller than the fine, but had to pay the entire fine or forswear the town. In the last case the Magistrate could show mercy and reverse the sentence.[36]

The scale of punishments for loss of honour and rights in medieval Reval seems fairly wide, reaching from making fun of somebody to very serious deprivation of rights. Honour and rights were denoted by the same word *recht* and were taken very seriously. Those who had lost their honour had hardly any rights. Yet in some cases certain kinds of humour appear to have been adding piquancy to the punishments, as it is the case with the punishment for adultery (see below). Adultery seems, however, not to have been serious transgression for the medieval Revalians. So the humour seems quite appropriate.

The deprivation of honour and rights was, according to the very influential *Sachsenspiegel*, not a proper punishment, but something that became effective immediately upon committing the crime.[37] Revalian codes hardly mention it, presumably there was no necessity to state the obvious. Article 165 of the 1282 code states casually that anyone who had perjured, robbed or stolen, *de ne scal nicht hebben so gvt recht als en ander gvt vnbesproken mann*. This seemingly quite vague announcement refers to the presumably self-explanatory (for medieval Revalians) term of *recht*. Vagueness may have been deliberate to give more latitude to law enforcement (which at the same time was the law...). The holder of the unrestrained *recht* was considered perfect, blameless - *inculpatus, bonus vir, biderber, guter mann*.[38] As a consequence of a crime, the person lost it partially or totally. In the first case he had no right to give oath, testify, deputise, to be a judge or *Rechtsfinder*, in the second case he became an outlaw. Whether or not the deprivation of rights was arranged like some ceremony is not clear. Herbers' excerpt, however, contains a formula for declaring a murderer to be outside of the law. The sheriff pronounced (apparently on some kind of a ceremony): *Mine heren, so sta ick hir van des keisserlichen Lübischen Rechtes wegen vnd lege fredelos den dotschleger* [---] *dat he keinen frede haben schall* [---] *beth he sin recht geleden heft na Lübischen Rechte.*

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[35] Reval 1257: 18; Reval 1282: 9.

[36] Reval 1257: 80.

[37] E.v.Repgow. *Der Sachsenpiegel*. Zürich: Manesse 1984. II 13. § 1; I 38. §1.

The crimes

Theft[39]

The laws of medieval Reval do not define theft. The word "thief" was in medieval Reval besides its proper sense used to denominate criminals in general, it was an expression condemning the whole *modus vivendi*. Apparently some quite universal mental image of the subject matter did exist, otherwise it would not have developed in widespread slander. Reval codes spelled the word itself differently: *deeff*, *def*, *dhef*, *dief*, *deffte*, *deifte*, *dhuue*, *dhuve*, *dhvue*, *duve*. The Modern German pleonastic term "*Diebstahl*" appears for the first time in *the Bursprake* of 1560. The language does not make a distinction between theft and loot.[40] Thus the most viable course appears to determine theft through its object, as, according to the evidence, did medieval Revalians themselves.

Usually the object of theft was movable property. Article 21 of the Riga-Reval law mentions also the theft of persons, newer sources do not mention it anymore. Real estate does not usually figure as object of theft, apart from cases where theft of the objects marks the perimeter of a plot. Abuse of trust is equated with theft,[41] as is the use of false measure.[42] Simple fraud is not understood as a separate crime, so that the Reval Magistrate was obliged to seek the advice of the Lübeck Magistrate in determining the status of a certain misdeed.[43] Theft of objects belonging to the thief himself was possible - if they were given as collateral.

The binding matter of all these deeds is clearly *causa lucri faciendi*, the wish to profit. Certainly this alone makes no thief, the wish has to be fulfilled in a certain way.

An important feature of theft was its deliberateness. For taking by mistake the term *misgrepe*[44] was used. Returning of the goods to the original owner was essential for the deed to be seen as *misgrepe*, otherwise a fine of 60 shillings was to be paid.[45] Punishment for false measure, selling falsified merchandise and buying wreck (*Strandgut*) could be avoided only by those who could prove their unwittingness by bringing two oath-helpers (*Eidhelfer*). Using without permission has escaped the attention of both

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38 Reval 1257: 45, 48; Reval 1282: 178, 201.

39 C.J.Paucker, "Die Strafe des Diebstahls 2., nach Land- und Stadtrechten der Ostsee-Provinzen, historisch beleuchtet 1., nach Landrechten des 13. Jh." In: *Archiv für die Geschichte Liv-, Esth- und Curlands iv* (Hrsg. v. F.G. von Bunge). Dorpat, Franz Kluge, 1845. S.1-20.

40 Reval 1282: 37, 175.

41 Bursprake 1560: 10.

42 Reval 1257: 42, Reval 1347: 42.

43 E.v.Nottbeck, *Criminalchronik*, p. 78.

44 Reval 1282: 128.

45 Reval 1282: 129.

laws and court. A high fine - 60 shillings - was to be imposed for taking the arrested goods without the sheriff's permission.[46]

Seemingly no less important in the mental image of theft was its deplorability. The most significant constituent of deplorability of the theft in medieval Reval was its secrecy. Estonian and Middle Lower German, like English, feature a connection between secrecy and theft: *dieflik* in Lower German and *vargsi* in Estonian both denote a stealthy manner of action.

Thus the sources comprehend the theft as secret dispossession of movable property with the intention of material gain. If the goods are moved from their place, it constitutes theft proper, the most common of property delicts. Thefts can be divided in ordinary and specific. Specific thefts fall into the categories of qualified and privileged, ordinary thefts can be divided into the categories of big and small ordinary theft. The first kind of specific thefts, qualified thefts, are identifiable through the place, manner or object of their perpetration. The second kind of specific thefts, privileged thefts, are determinated through their object. The theft of food and other essentials belong in this category.

Ordinary theft

Ordinary theft has no special, either burdening or mitigating, circumstances, be it in regard to the object, time, place or way of committing. The division depends on the value of the stolen items. Both the law of 1257 and its translation from 1347, place the margin at 8 shillings.[47] In practice this division is not always consistent, indeed a man guilty of the theft of 24 shillings received bare flogging on the *kaak*,[48] possibly due to the intervention of protégés.

Big ordinary theft was usually punished by hanging.[49] *Pro honore muliebri* the women were buried alive. Understanding of the honour of women in this connotation deserves a separate treatise. This measure is known to have been used in 1464[50] and 1503.[51]

The theft of horses was always considered big theft and punished accordingly, as in the case of 1439.[52] This case is also characteristic for the image of the crime, because not taking the horse but trying to sell it was decisive in sentencing a certain Janes (obviously an Ungerman) to death. It appears that the owner waited a certain amount of time for the horse to be given back before initiating judicial action. Besides the value of a horse, the significance of the horse in given cultural context probably played a role in placing this theft into the capital offence category. The origin of the significance of pigs

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[46] Reval 1282: 123

[47] Reval 1257: 37; Reval 1347 : 37.

[48] E.v.Nottbeck, *Criminalchronik*, p. 58.

[49] Reval 1257: 37.

[50] E.v.Nottbeck, *Criminalchronik*, p. 52.

[51] E.v.Nottbeck, *Criminalchronik*, p. 69.

[52] E.v.Nottbeck, *Criminalchronik*, p. 45.

in medieval Reval is unclear, but stealing them was supposed to effect the same punishment.

Small theft was punished *an Haut und Haar*, that is by flogging and shearing as well as occasional mutilation. The laws differ slightly concerning the exact details. The judges seem to have had considerable discretion in setting the punishment. Therefore in 1465 Matthias Sussy (an Ungerman name) was flogged and banished, after having had his ear cut off for the (small) theft of an axe, shovel, *schepes distel* and a bracelet or clasp,[53] in 1498 two men received a fine of only four marks and four weeks in jail for the (big) theft of four hens.[54]

Specific theft

Theft in pacified places was as a rule considered specific theft. In Reval the church, wine cellar, bath and castle were considered to be pacified places. The most harmful place to steal from was a church. There could be two models: theft from people in the church and theft of church property. The latter appeared as theft either with or without break-in. Reval codes do not comment on this kind of theft. That means neither that it was not performed nor that it went unpunished. The Herbers excerpt refers to the breaking on the wheel of a man and burying alive of his wife for theft from the church.[55] A pickpocket caught in the church was hanged[56] in the same way as a big theft - which pocket-picking was usually not considered to be. In 1439 the break-in and theft of pearls from a statue of Virgin Mary was punished by hanging.[57] Thus, theft in church was not a qualified theft in the codes, but it had to be a qualified theft in the opinion of the policymakers.

The objects qualifying a theft were multitudinous. Stealing wreck (*Strandgut*), for example, belonged to the category of the theft of lost/found property. Buying and selling it, as it was considered to be property of the town, was seen as theft.[58] Counterfeited wares were considered qualified theft: a fine of 10 shillings and the burning of the goods was the punishment due.[59] Importing falsified pelts was supposed to result in fines of 60 shillings.[60] Paying with "bad silver" was punished in the same fashion. If the coin cast was found, the owner was to be punished in the same way as a thief caught red-handed (*manuali sententia / ordeil dar handhaftigen*),[61] the code of 1282 defines it as *ordel de hant*. There has been some discussion about the meaning of these terms: the Latin one could mean both the severing of the limb and the punishment for a thief caught red-handed. I am inclined to see these words as a reference to recent crime, because

[53] E.v.Nottbeck. *Criminalchronik*. p.53.

[54] E.v.Nottbeck. *Criminalchronik*. p. 66.

[55] E.v.Nottbeck. *Criminalchronik*. p. 61.

[56] E.v.Nottbeck. *Criminalchronik*. p. 54.

[57] E.v.Nottbeck. *Criminalchronik*. p. 56.

[58] Reval 1282: 292.

[59] Reval 1282.

[60] Reval 1282: 193.

[61] Reval 1257: 33; Reval 1347: 33.

none of the known falsifiers has lost his hand. On May 6, 1458, the goldsmith Jakob Rese was decapitated for counterfeiting, the original intention was even to burn him at stake[62] In October 1490, a Russian was boiled to death on the market square for distributing false shillings [63]

Neither Roman nor older German law distinguished between falsifying coins and using them as a tool of fraud. This is understandable: from a theoretical viewpoint: counterfeiting money is to falsify objects of public trust with criminal intention. This intention can be fulfilled only by actual distribution of false coins. Yet everyone who minted coins without license had to be punished: it was assumed that there could be no other intention behind minting coins than future distribution. The notion of *vorsate*, the notion of being able to see a person's motifs, becomes apparent again: payment with bad silver - the actual fraud - was not punished as harshly as the ownership of coin casts.

The Bursprake of 1400 (article 20) also prescribes the punishment of the thief for persons who conceal from the Magistrate the personal effects of the person who died under their roof.

Theft qualified by the way of accomplishment is today in most cases defined as an abuse of trust. In 1554, a captain who had diverted 22 bags of salt was hanged as a thief. The man had told the rightful owner that the bags were thrown overboard because of a leak.[64] The use of the wrong measures belongs to the same category. The law decreed a 60 shilling fine for this offence. In addition the measures were to be placed on the *kaak*, kicking out the bottoms of the hollow measures [65] Also the use of the right measure could lead to a penalty of half a mark - if it was not filled properly.[66] Whoever took with the right and gave with the wrong measure, was to be treated like a thief.[67] The *Bursprake* of 1560 speaks even of credit fraud: *Der Gut kauft / und damit flüchtig wurde Man solls halten für Diebstahl* [68] There is no evidence of the occurrence of this crime.

Reval-Riga law does not treat theft of victuals and other essentials as a theft. The decision over punishment was left to the discretion of the judge,[69] usually it came down to a fine or the shearing of hair. This attitude is also obvious in article 37 of the 1282 code, relating to the procedure in the case of the theft of wood. The stumps were checked as to their fitting to the wood in question, and the loser of the dispute had to pay 60 shillings. The considerate attitude to the accused is evident here. The Plaintiff did

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[62] E.v.Nottbeck. *Criminalchronik*. p. 49.

[63] E.v.Nottbeck. *Criminalchronik*. p. 62.

[64] Reval 1282: 320.

[65] Reval 1282: 44, 45. 1282: 177.

[66] Reval 1282: 45.

[67] Reval 1282: 177.

[68] Article 11.

[69] Riga-Reval: 42.

not get any remission: 60 shilling were almost a mild punishment for a theft, but the usual fine for a false accusation.[70]

A separate term for accessories to the theft was not known in medieval Reval. Accomplices as well as recipients were punished like thieves.[71] The buyer in good faith had to return the goods or to be treated like a thief, the recipient of a presumed gift had to produce the giver in 14 days or face the punishment of a thief.[72]

Reval codes do not explicitly distinguish attempted theft from accomplished theft. Still there are some articles that seem to deal with attempted theft. The Riga law for Reval decrees a 3 marks' fine for opening a closed door and 6 öre for entering as well as for leaving a house with the door open.[73] Leo Leesment sees also the connection between attempted theft and the article of the 1400 *Bursprake* that orders everyone seen on the street after nine to be jailed or brought to his master.[74] Such rules would have been troublesome but for the widely accepted stereotype of a wrongdoer. Apparently there was an accepted way to distinguish thieves from honest people. It can be assumed that wealthy burghers did not generally walk around late at night. Other people did: the night was the best time for thieves. Thus the stereotype, according to which only thieves, servants and apprentices roam in the dark, emerged. People on the streets after nine, if not known to be otherwise, were presumed either to have a master or to be thieves. It is hard to believe that a respectable citizen would have been brought to jail only because of walking home late or entering his friend's house. Certain outward signs and, first of all, knowledge of individual persons seem to have made the distinction possible.

Robbery

The number of articles associated with robbery is small. Unlike in the case of theft, the action - *roff* - and the goods redistributed - *rover gudt* - are distinguished in the language. The first characteristic of robbery was again the wish to profit, the second its unlawfulness. Under certain circumstances, like in war or feud, activities that otherwise would have constituted robbery were legal, though not considered fair.[75] Presumably only movable property could be the object of the robbery. More important than in the case of the theft was the depossessing of the object. Delicts, where the depossession did not take place immediately,[76] like extortion, were also seen as robbery. Untypical, nevertheless, robberies are also robbery by the owner of the goods (for example from a creditor) and unfair exchange under the threat of violence. Violence or the threat of violence also belong to the characteristics of a robbery. Unlike theft, robbery was a public crime. Thus, robbery is understood in Reval codes as public depossession of

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70 Reval 1282: 33, 34.

71 Reval 1282: 292.

72 Reval 1282: 454.

73 Reval-Riga: 41.

74 L.Leesment. "Die Verbrechen des Diebstahls und des Raubes nach Rechten Livlands im Mittelalter." In: *Eesti Vabariigi Tartu Ülikooli toimetused*. B XXIV. Tartu 1931, lk. 115.

75 See *Raub* in: Frhr. von Schwerin. *Lexicon der germanischen Altertumskunde*.

76 Reval 1257: 62; Reval 1347: 62.

goods with the aim of material gain. Robbery can be either ordinary or specific. Specific robbery is usually determined by the place of its performance. Separate categories are highway robbery, church robbery, piracy (*Seeraub*), seashore robbery (*Strandraub*) and house robbery (*Stubenraub*).

Robbery as a more or less public crime was held worthy of more honourable punishment than theft. Here Reval law held up an early German attitude, which almost did not see robbery as a crime. The usual punishment for robbers, according to Revalian law as well as practice, was decapitation.[77] In some cases the culprit was only fined.[78] Highways and public roads, blood vessels of the society, were highly pacified. There is no indication of special punishments for highway robberies, the laws, however, always underline the special status of this crime. Piracy has traditionally been an important issue in Livonia. The preoccupation of the original population with this activity was allegedly one of the motives of the *tour de force* christianisation of the land. Somewhat surprisingly Reval codes do not mention it. Prudently - there was hardly an issue more confused than this. Principally the distinction between piracy as a robbery performed on the sea and piracy as a sea-based enterprise founded upon apolitical acts of violence could be made. "State-sponsored" piracy adds confusion to the issue, considering that the substance of the state was far from clear in Middle Ages. One of the most prominent cases of state-sponsored piracy in medieval Livonia was the feud between the Bishop von Damerow of Dorpat and the Order. In his letter of May 12, 1292 to the proctor of the Order, Wennemar von Brüggeneye writes about 1500 pirates (*Vitalienbrüder*) prepared to attack the Reval diocese.[79] He mentions a certain Kule (a general term for Ungermans) as one of the gangleaders. In the Revalian town book of the 16th century we find more piracy endorsed by the state.[80] Private piracy is mentioned in 1382.[81] When the rulers were able to punish the pirates (which was not always the case) they were decapitated.

Premeditated robbery is featured separately in the Revalian codes of 1257 and 1347, stating that, in addition to usual punishment (determined by the sheriff), the robbers should pay 10 marks and a barrel of wine to the Town Council for *vorsate*.[82]

Crimes of violence

For the purpose of this paper, only crimes without the evident desire of material gain qualify as crimes of violence. They are usually directed either against persons or their property. Occasionally violent crimes could be directed against no one in particular, but

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[77] E.v. Nottbeck, *Criminalchronik*, pp. 43, 46, 48,65.

[78] *Das älteste Wackenbuch des Revaler Sankt-Johannis- Siechenhauses 1435 - 1507*. Hrsg. v. Paul Johansen. Publikationen aus dem Revaler Stadtarchiv, Bd. 9. Reval 1939, p. 35.

[79] T.Schiemann. "Die Vitalienbrüder und ihre Bedeutung für Livland." In: *Baltische Monatsschrift*, B. 31, p. 312.

[80] G.v.Hansen. *Regesten aus zwei Missivbüchern des XVI Jh. im Revaler Stadtarchiv* I. 123.

[81] LECUB iii: 2915.

[82] Reval 1257, 1347: 62.

harming someone's interests is even in these cases virtually inevitable. Another important characteristic of crimes of violence is their wilfulness.

Homicide could be said to have been the most prominent crime of violence. Its treatment was to a great extent the model for dealing with similar crimes. Penalties for crimes of violence in Reval codes were based on the ancient German institution of *wergeld*. Like German law in general, Reval codes did not explicitly discriminate between manslaughter and murder, this issue was regulated through the institution of *vorsate*. Homicide was originally followed up only on the request of the interested. The codes of 1257 and 1347[83] as well as that of 1282[84] allowed the settlement outside the court under the condition that the case was not heard by a court previously. However, if the incident took place in public, the sheriff had to step in as an *ex officio* prosecutor. In the middle of the fifteenth century the sheriff functioned as plaintiff in the case of the lack of the interested party, so that no homicide went unheeded.[85]

Every case of unnatural death was investigated, mostly on the spot. Investigation included medical examination, and eventually the interrogation of the witnesses. If the evidence proved violent death the criminal was outlawed. If evidence was not conclusive, the action was postponed until new evidence emerged.[86] That did not mean that the case could subside quietly: in 1484 a homicide 20 years old was punished.[87] There was, however, also a case when a killer was jailed for only 15 days, since the homicide had taken place 20 years earlier.[88]

The penalty for homicide in Reval changed substantially during the medieval period. Bishop Albert had set the *wergeld* for manslaughter at 10 marks in the year 1211.[89] According to the statute of the Kanut guild it was 10 marks in silver or 40 marks in pfennigs.[90] It is not clear if it was in addition to the death sentence, as was the case later. The same statute gives the members of the guild a choice between avenging a dead brother and receiving their share of *wergeld*, which was 3 marks.[91] The law presumes the flight of a homicide, who is then outlawed. Flight was apparently a wise decision for any homicide. The prohibition of the feud, manifested in all codes, was evidently not very efficient. The statute of the Kanut guild requires that the members help their brothers, involved in homicide, to escape or go and bail them. If homicide took place in self-

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83 Reval 1257, 1347: 71.

84 Articles 60, 112, 166.

85 E.v.Nottbeck. "Der revalsche Gerichtsvogt und seine Protokolle von 1436 und 1437." In: *Beiträge zur Kunde Ehst-, Liv- und Kurlands*. Band III, Reval 1887, p. 49.

86 E.v.Nottbeck. *Criminalchronik*. pp. 56, 61, 65.

87 E.v.Nottbeck. *Criminalchronik*, p. 58.

88 E.v.Nottbeck. *Criminalchronik*, p. 86.

89 LECUB i: 20.

90 LECUB iii: 1519.

91 LECUBiii: 1519.

defence, the guild had to pay the *wergeld*. Similar articles could be found in the statutes of other guilds.[92]

My general impression is that death penalty was not always as consequently enforced as in 1530, when the Council did not agree to exonerate a homicide even at the request of a virgin prepared to marry him.[93] Herbers reports two occasions when the parties involved came to an agreement outside court.[94] Like in Hanseatic towns of North Germany,[95] in Reval people went unpunished if they went voluntarily to jail for 14 days (*fardage*) - if the victim did not die during this time.[96] The accused was pardoned also in the case of the victim dying, had the latter refused medical treatment.[97] Homicide in the heat of passion was not excused, but the execution took place in the market and not at the gallows.[98] Homicide in self-defence was not punished.[99]

The Riga code refers to the most usual crime of violence - bodily harm: *manum pro manu, pedem pro pede, pro oculo autem solventur XX marce*.[100] Later codes are more lenient: the code of 1257 remains unclear about the penalty,[101] the code of 1282[102] prescribes for *blau und blutig* (blue and bloody) maltreatment or ripping the clothes a 60 shilling fine. If bodily harm reached the dimensions of grievous, crippling somebody, 10 marks for the victim were added to the basic fine. In the case of insolvency the culprit had to be jailed for 10 days and exiled. Return was possible with the consent of the victim.[103]

If, following a conflict, somebody made preparations to harm the opponent or supported such preparations, he made himself guilty in *vorsate*.[104] The same rule applied in situations where the opponents already in conflict previously attack (with a club, as the source would have it) each other on meeting. The rule is effected only from the moment of the beginning of the violence. Until then, or if there has been no previous conflict, the law sees no *vorsate*.[105] The common delict of drawing a sword or knife was not considered *vorsate*, the fine was nevertheless considerable: 2 - 3 marks.[106] Carrying a

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[92] LECUB i: 593.

[93] E.v.Nottbeck, *Criminalchronik*, p. 83.

[94] E.v.Nottbeck, *Criminalchronik*, pp. 50, 85.

[95] K.Schiller, A.Lübben, *Mittelniederdeutsches Wörterbuch*. Bremen 1875 - 1881. Bd. V, p. 199.

[96] E.v.Nottbeck, *Criminalchronik*, pp. 57, 83.

[97] E.v.Nottbeck, *Criminalchronik*, p. 85.

[98] E.v.Nottbeck, *Criminalchronik*, pp. 62, 85.

[99] E.v.Nottbeck, *Criminalchronik*, p. 82.

[100] Reval-Riga: 7.

[101] Articles 30, 31.

[102] Article 161.

[103] Reval 1282: 53.

[104] Reval 1257: 30, 31; Reval 1282: 70, 162.

[105] Reval 1257: 31, Reval 1347: 31.

[106] Reval 1282: 110.

weapon was perfectly usual (though subsequently forbidden for Ungermans) behaviour in medieval Reval, and, unlike fetching a mighty club, did not need any premeditation. Wounds inflicted with sharp weapons cost the guilty from 1 mark to 3 marks and 2 öre each.[107]

Arson is not mentioned in the codes. The sources of court practice mention only one case from 1500. The criminal was burned on a stake for setting the house of the Blackheads on fire.[108]

Forced entry was seen as a delict against the authorities. According to the Riga code it deserves a fine of 3 marks for the town and 6 marks for the owner of the house - if there was no damage. In the case of damage to anybody or anything the share of the owner rose to 12 marks. 3 marks to the town was the usual fine for the breaching of high peace. If a burglar killed anybody in the house, the double *wergeld* for the kin of the victim and 6 marks (twice the fine for breaking the peace) for the town were due. A burglar caught red-handed was executed.[109] The code of 1257 let the sheriff set the penalty for break-in.[110] The sheriff had apparently quite a free hand in doing this: in 1492 a soldier from the castle forced his way into the house of the sheriff Marquardt von der Molen and assaulted him. Responding to the pleas of influential citizens, von der Molen let the brawler get away with only 18 days of jail, lifelong banishment and *Urfehde*.[111]

Offences against the authorities

Revalians swore their oath both to the town and the sovereign. The citizens' oath set out the relations of the state and its citizens on the basis of free will. The oath already contained a sentence for its breaking. The code of 1282 threatens, for joining the enemy and harming the town, the loss of rights and the heir's inheritance of the estate - until the damage is compensated.[112] Revalian sources do not document any cases of treason until the middle of the 16th. century.

For organising a rally with the aim to break the order, in the code of 1282 a fine of 100 marks in pfennigs is prescribed.[113] Until the payment of this amount the culprit had to stay in jail. For unfurling a flag *pro lite provocanda* a fine of 40 marks was threatened in the Riga code.[114] Hindering a Magistrate on official business meant 60 shilling *buße*, half a pound (Reval 1257: 10 shillings) to every Magistrate and 3 marks to

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[107] LECUB i: 435.

[108] E.v.Nottbeck. *Criminalchronik*, p. 68.

[109] Reval - Riga 8.

[110] Reval 1257: 86.

[111] E.v.Nottbeck. *Criminalchronik*, p. 63.

[112] Reval 1282: 152.

[113] Reval 1282: 152.

[114] Reval -Riga: 39.

the town.[115] Albrecht Giselmann from Greifswald was jailed in 1474 for abusing the Magistrate verbally. He had to do *Urfehde* after his release.[116]

For undeserved maltreatment (*male tractatus indebite / sonder sine schult oele gehandelt*) of the police orderlies of the town double of the normal fine was due.[117] Notable is the allowance of the possibility of the deserved maltreatment: the citizens obviously had right to resist injustice. Whoever was unable to pay the fine for the hindering of the sheriff and the police, had to spend time in jail.[118] If the resistance to the authorities was aimed at freeing the criminals or arrested persons, the guilty was to be decapitated.[119]

Recurrent offence amounted to challenging the authority of the judge, showing ingratitude and arrogance against the official, who had given a person a rare chance to mend his ways. Herbers reports the hanging of a thief, who had stolen only 6 guilders, but had previously been exiled and marked.[120] Herbers remarks that the man was hanged for returning to the town.

Feud was understood as a deed against the authorities already by the Riga code.[121] It is understandable that the state was very eager to monopolise the violence. It is also evident that the people did not want to rely on the state in this case. One of the reasons for the inefficiency of this prohibition was the conception of revenge as a "gentleman's crime". More specifically, it was not a crime, but a man's duty, his right. Feud was usually announced publicly and could be directed against the individuals as well as groups or the whole state substances. The Lübeck code of 1257 permits it in the case of homicide, with the reservation that the duel had to take place on the spot of the homicide and no more people could be challenged than the dead body had wounds.[122]

In 1360, the Magistrate prohibited any self-justice, feud and revenge.[123] That did not prevent feuds, some of them directed against the Magistrate itself, for example by Clawes Doeck in 1418.[124] In 1439, the soldiers of Dönhof Kalle performed quite a few acts of violence against Revalians. After some conflict with the town they escaped to the castle hill, called *vryhyt* - freedom - because of its exterritorial status. There they made preparations for hostile actions, arming themselves with crossbows. Downtown again, they forced their entry in Heinrich Kruse's house, with whom they apparently had some score to settle. The latter escaped behind the sturdy doors. So the gang beat up a poor innocent man and wounded his shoulder. After regrouping on castle hill again, they shot

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[115] Reval 1257: 77; 1282: 89.

[116] E.v.Nottbeck, *Criminalchronik*, p. 55.

[117] Reval 1257: 53.

[118] E.v.Nottbeck, *Criminalchronik*, pp. 55, 60, 63, 82.

[119] E.v.Nottbeck, *Criminalchronik*, pp. 56, 62.

[120] E.v.Nottbeck, *Criminalchronik*, p. 53.

[121] Reval-Riga: 1.

[122] Reval 1257: 49.

[123] LECUB ii: 981, p. 2; 982, p. 2; 983, p. 3.

[124] LECUB iii: 2266.

into the crowd with the crossbows. Additionally they broke into the town's boat-house and stole oxen and lambs from the town pasture. The two greatest evildoers were decapitated.[125] There is no explicit statement about the whole affair being a feud, but the character of the deeds leaves little doubt about it. The house-owner and juror of the *Mannge*richt (rural jury), Kalle, deemed himself apparently important enough to take it up with the town. He was certainly important enough to prevent the deserved punishment of all his soldiers. In 1526, a certain Olfert escaped the punishment, bringing the evidence that he broke the peace in the course of a feud.[126]

Squabbles in highly pacified places were forbidden. Breaking this rule was an offence against the authorities. God's peace (*Gottesfrieden*)[127] devalued increasingly as a result of the authorities' striving to create the biggest possible amount of pacified time - at times lasting from Wednesday evening to Monday. Riga code counts pacified places: the churchyard/graveyard, market, baths and the home (*privata*).[128] A formula at the end of Herbers' excerpt counts them again as the places, where an outlawed criminal should not have rest until suffering his punishment: *...in kerken oder klusten, noch in allen gadeshusen, in den batschouen, noch up sinem eigenem bedde...* The Lübeck codes add to the list the Magistrate's house, the court and the wine cellar. For crimes committed in such places, double punishment was due. Police orderlies and sheriff were pacified persons.[129]

False oath or testimony was offensive to the authorities as well as to the person damaged by them. They resulted in the removal of rights,[130] together with the death sentence for severe offences like, for example, seashore robbery.[131] In 1505, Bernd Horense was burned for "falsifying documents."[132] He claimed, supported by a letter from a Münster judge, that Heinrich Grasdick (Grasdingk, Grasdinck) owed 643 guilders to him. The Revalian Heinrich Grasdick was, though, not the one seen *tho dem beuergern* by the witnesses of the Munster judge. After Horense had confessed that he knew this fact, but nevertheless proceeded, he was executed, though it would have been possible to let him go with the usual fine of 60 shillings.

Dobbeln, dobbelspiel, a sort of gambling, was formally also an insult to the authorities; it was very common in medieval Reval and forbidden by several acts - by the *Bursprake*s of 1360[133], at the end of the fourteenth century,[134] and of approximately

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125 E.v.Nottbeck, *Criminalchronik*, pp. 47, 48.

126 E.v.Nottbeck, *Criminalchronik*, p. 75.

127 Reval 1257: 64, 1282: 74.

128 LECUB i: 77: 31.

129 Reval 1257: 53.

130 Reval 1282: 165.

131 LECUB i: 518.

132 E.v.Nottbeck, *Criminalchronik*, p. 72.

133 Article 13.

134 Article 16.

1400.[135] It was punishable by a 3 marks fine. The proprietor of the place of gambling (usually a wine cellar) had to pay one mark. In the same breath, giving credit to the customers of a pub was prohibited: *in den kalk sal man nicht betalen.* This was evidently introduced according to the wishes of the church. Nevertheless the pastime remained very popular. It is very probable that the patricians engaged in it as much as anyone else - though not necessarily in wine cellars. Furthermore, the fine was never high, so there must have been some understanding on the part of the authorities.

Offences against religion and morals

Reval got the *jus episcopale* quite early. Yet that right did not become official until the Reformation. On October 28, 1524 the Magistrate forbade poking fun at the Protestant preachers.[136] Hans Natelkoper, who called Luther a dog and compared preaching to the barking of the dogs, was jailed for two and a half weeks. After that he had to bark, standing on a chair and go to exile.[137] An Ungerman declaring that the only difference between the old and new confessions was permission to eat meat on Friday, was flogged in jail.[138]

There is little evidence of the prosecution of witches prior to the arrival of the "pure evangelical" creed. In the beginning of 1494 (apparently about the carnival time) two men were jailed. They were roaming the streets in the night, carrying unusual weapons and magical letters supposed to give invisibility.[139] After some imprisonment and the *Urfehde* they were set free. In 1526 two prostitutes were flogged for trying to increase the sales of beer by using the clothes of a hanged thief. The same penalty affected the provider of the clothes - a helper of the executioner.[140] A classic magical deed seems to have been the attempt to win back a lover, trying to poison his wife. The guilty escaped with corporal punishment.[141]

The Lübeck codes pronounce a peculiar penalty for adultery. The woman had to lead the man with whom she committed adultery down the streets by his penis (1257: *per veretrum suum*; 1282: *per Priapum*; 1347: *by siner schemede*).[142] Dishonourable this punishment may have been - but not exactly severe. There is no evidence as to the frequency of this punishment. Later Revalians seem to have felt that this was not an entirely appropriate punishment. Herbers' excerpt speaks of a boatowner, Roland, who

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[135] Articles 20, 21.

[136] E.v.Nottbeck, *Criminalchronik*, p. 22.

[137] E.v.Nottbeck, *Criminalchronik*, p. 80.

[138] E.v.Nottbeck, *Criminalchronik*, p. 80.

[139] E.v.Nottbeck, *Criminalchronik*, p. 63.

[140] E.v.Nottbeck, *Criminalchronik*, p. 75.

[141] O.Steiger, G.Heinsohn, *Die Vernichtung der weisen Frauen*. Heyne. München 1989.

[142] Reval 1257: 40; Reval 1282: 39.

was jailed and made to swear *Urfehde* for this transgression.[143] The same happened to the scribe of a Lübeck ship.[144] The code of 1586 introduces even harsher penalties.

Polygamy was considered a more serious transgression. Older codes prescribed a 10 mark fine, for the impecunious the shoving from the *Schuppstuhl* (shame chair).[145] Additionally the second wife was entitled to the half of the assets of the man as well as to her dowry. She was to be abandoned. In 1524 a man had to sit in the shame chair (*kaak*) for two hours, give away half of his property as well as return the dowry. The sheriff ordered the man, who by then had abandoned both wives, to live together with the first wife.[146]

Rape as a crime figures first in the 1586 code, which prescribes decapitation, if the guilty does not marry the victim. Punitive practices existed earlier. In 1487, a housemaid petitioned the court to punish her employer Godke Schutte, who had tried repeatedly to rape her, disregarding the sheriff's orders. The merchant had to marry the housemaid.[147] The existence of a juridical basis for court action is evident here. At the same time, the sheriff clearly tried not to let the case get to the court, but rather solve it with his own authority.

Unnatural sexuality was probably too embarrassing to be written down in the codes. Similar reasons seem to have prevented the facts about male homosexuality from reaching us. We can speculate that the monosexual communities of this time (monasteries) were capable of keeping their scandals to themselves. For example, if a monk in worldly clothes was seen in a brothel, he was to be delivered back to the monastery,[148] where the brothers obviously punished him themselves. Nothing is, logically, known about the repercussions. Lesbian love was, however, considered a mere misdemeanour. A Magistrate's decree from 1403[149] mentions it between other police matters: *Van den megeden, de up syck sulver liggen. Varietur.* stands beside *Van den losen wyven, de ber tappen.* The *Bursprake* from about 1400 says: *Welk meget, de up sek selves lith, de sal schoten unde wacken unde alle borgere recht tun, bi 3 mark unde nen smiden to dregende.*[150]

Bestiality was considered the most repulsive sexual crime. All three occasions documented in the records were investigated very closely. 1484 a certain Mathias, together with the cow involved, was burned at the stake.[151] The case of 1494 became one of the triggering moments of the Russian-Livonian war. The burning at the stake of a

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143 E.v.Nottbeck, *Criminalchronik*, p. 54.

144 E.v.Nottbeck, *Criminalchronik*, p. 83.

145 Reval 1257: 55; Reval 1282: 61.

146 E.v.Nottbeck, *Criminalchronik*, p. 84.

147 E.v.Nottbeck, *Criminalchronik*, p. 60.

148 E.v.Nottbeck, *Criminalchronik*, p. 55.

149 TLA, A.a. 7, Denkelbuch der Stadt Reval, I: 23p. See also: O.Schmidt, "Rechtsgeschichte Liv-, Est- und Curlands," p. 161.

150 Revaler Bursprake (1. und 2. Jahrzehnt des 15. Jahrhunderts): 72.

151 E.v.Nottbeck, *Criminalchronik*, p. 58.

Russian called Vassili was preceded by scrupulous investigation. Under oath the sodomite confessed that he was involved in these activities for a longer time already, and that it was not unusual in Russia.[152] In 1554 both the sodomite and the beast were executed secretly on *Meddejerwe* (a certain place, where waste and suicides were disposed of).[153] The extermination of the animal and the deviant both were, according to the canon law, meant to prevent the event being even remembered. The German folk tradition saw it as a way of preventing the birth of the were-beasts.

Parricide and infanticide, like suicide, were treated especially due to their violation of the rules of the church as well as of these of the worldly authorities. A certain Elsebed and a maidservant Catherine were both burned at stake for infanticide, the former in 1490, the latter in 1516.[154] These were qualified punishments for qualified crimes, requiring the testimony of two real-estate owning citizens.

Suicides' bodies were brought to *Meddejerwe* after rituals, presumably of purification.[155] Suicide did not cause any unpleasantness to the heirs.[156] If the suicide was mentally ill, he was buried honourably.[157] People who had drunk themselves to death were to be handled in the same manner as the suicides.[158]

Crimes against freedom and honour

The most widespread of those was without doubt the insult. An insult to individuals could be either ordinary or accusatory (slander). An ordinary insult could be verbal or non-verbal. Slander, calling somebody a thief, murderer, forger, was according to the Lübeck law fined by 60 shillings.[159] The same sanction was used in the case of declaring somebody to have been beaten before the court.[160] The same amount was due for forgery and false accusations in the proper sense. Quite high fines show that slander was no petty vice. This view is represented also by the ruling that mutual slander was not counted out. Instead, both slanderers were disciplined.

Women, who had expressed false and vilifying views about the sexual morality of other women, were disciplined in a different manner, since the money of the family normally belonged to a man, i.e. innocent person. Thus the women, escorted by the swineherds had to carry the "shame stone": two stones, connected by a chain and decorated by repulsive gargoyles.[161]

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[152] E.v.Nottbeck, *Criminalchronik*, p. 64.

[153] E.v.Nottbeck, *Criminalchronik*, p. 85.

[154] E.v.Nottbeck, *Criminalchronik*, pp. 61, 71.

[155] E.v.Nottbeck, *Criminalchronik*, pp. 54, 60, 85.

[156] E.v.Nottbeck, *Criminalchronik*, p. 54.

[157] E.v.Nottbeck, *Criminalchronik*, p. 85.

[158] E.v.Nottbeck, *Criminalchronik*, p. 95.

[159] E.v.Nottbeck, *Criminalchronik*, p. 55.

[160] Reval 1282: 138.

[161] E.v.Nottbeck, *Criminalchronik*, p. 55.

For slapping, pulling the hair and shoving, a fine of 12 shillings was applied.[162] Insults in the presence of the judge were seen as insults to the judge as well as to the direct object of the action. The fines were accordingly substantial: slapping cost 3 marks.[163] False oath in ecclesiastical court brought about a 10 mark fine to the benefit of the town treasury. An impecunious offender was shoved from the *Schuppstuhl* and banned.[164]

Whoever denounced a woman or a maid as having had carnal love and being betrothed or married to him, had to pay 40 marks in silver: one third for the town and the judge, the rest for the woman; in the case of insolvency half a year in jail, *Schuppstuhl* and banishment.[165]

A shipper Peter Gosliff, became the victim of a pasquil, written by his own crew and cannonier. The denunciators spread by the doors of the churches and guild houses notices that called the man a dog and threatened him. Two of the denunciators were jailed, the rest escaped to the castle hill. The sheriff took the role of the mediator and the accusations were taken back.[166]

In the case of a direct assault on freedom, like chaining somebody on mere suspicion, being unable to prove the guilt of the chained, a *wedde* was to be paid. Sixty shillings were multiplied by the number of times of opening and closing the chains.[167] In 1482, 60 shillings for every wasted workday had to be paid.[168] It was possible that the offender had to spend the same amount of time in jail as his victim.[169] Threatening with violence was also an attack on the freedom of the target of this attack. The threatened person had a right to compel the villain to set the bondsmen (*Dräubürgen - cautio non offendendo*), who were responsible for the threats not becoming real. Such a case is known from 1519, when Hans Droneken, a butcher, threatened the Magistrate Hessels. All three guilds in town pleaded on the behalf of the butcher, and he came away with a relatively lenient sentence.[170]

Conclusion

It could be said that on the one hand the town authorities seemed to consider every misdeed as directed against them. However, it seems that the term "authorities" is here appropriate with certain reservations only. The town council's power in the late medieval

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[162] Reval 1282: 161.

[163] Reval -Riga 31.

[164] Reval 1282. 2.

[165] Reval 1282: 168; LECUB ii: 933.

[166] E.v.Nottbeck. *Criminalchronik*, p. 61 - 62.

[167] Reval 1282: 148.

[168] E.v.Nottbeck, *Criminalchronik*, p. 57.

[169] E.v.Nottbeck, *Criminalchronik*, p. 69.

[170] E.v.Nottbeck, *Criminalchronik*, p. 73.

period of Reval was as yet indisputable. Thus, every violation of peace was in a sense a challenge to the Magistrate, an attempt to dispute its power. On the other hand, town authorities lacked the means to respond to every challenge with superior power. A considerable amount of conflicts had to be resolved by the means of non-adjudicated dispute settlement, of which *Urfehden* are only one of the most discernible forms. Town government had to preserve the social harmony in town rather than to crack down on crime mercilessly. The cases of the assault of sheriff von der Molen bears testimony to that [171] It seems that the sheriff frequently tried to solve the case without letting it go to court, even if the offence was pretty clear, as the cases of Godke Schutte[172] or Peter Gosliff[173] show. One of the reasons for that might have been the relative irreversibility of court rulings.

There were certain cases when decisive action was required. It seems that to some extent the borderline in cases, between where the authorities had to turn a blind eye on an offence and where they had to act vigorously, was determined to a certain extent by public opinion. The comparison between the punishments for theft and robbery shows that the crimes considered more "disgusting" by the public were as a rule also more severely punished. In doing so, the authorities were in a sense the representatives of townspeople and were as such equipped with far-reaching powers. However, the townspeople had apparently some right to resist the authorities, if they thought them unjust.[174] Moreover, in spite of regulations,[175] townspeople had the possibility to take justice in their own hands without risking too much. Sometimes even the most unjustifiable feuds could go without punishment, as in the case of Clawes Doeck.[176]

To summarise, it could be said that the preserving of order and justice in medieval Reval was frequently a case of maintaining the fragile social balance rather than enforcing the law.

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171 E.v.Nottbeck. *Criminalchronik*. p. 63.

172 E.v.Nottbeck. *Criminalchronik*. p. 60.

173 E.v.Nottbeck. *Criminalchronik*. p. 61 - 62.

174 Reval 1257: 53.

175 LECUB ii: 981. p. 2; 982. p. 2; 983. p. 3.

176 LECUB iii: 2266.

QUOTIDIANUM ESTONICUM

MEDIUM AEVUM QUOTIDIANUM

HERAUSGEGEBEN VON GERHARD JARITZ

SONDERBAND V

QUOTIDIANUM ESTONICUM

ASPECTS OF DAILY LIFE IN MEDIEVAL ESTONIA

EDITED BY

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AND

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Preface

The idea to publish a special Estonian or Baltic issue of *Medium Aevum Quotidianum* has been discussed already for a couple of years with Gerhard Jaritz and Christian Krötzl. Initially the idea was based on the first experience of studying medieval everyday life and mentalities in a small seminar-group at Tartu University. This optimistic curiosity of discovering a new history or actually a history forgotten long ago, has been carried on. The research topics of Katrin Kukke, Inna Põltsam and Erik Somelar originate from this seminar. However, all contributions of *Quotidianum Estonicum* were written especially for this issue.

Besides that, this collection of articles needs some comments. First, it must be admitted that the selection of aspects of everyday life published here is casual and represents only marginally the modern situation of historical research and history-writing in Estonia. The older Baltic German and Estonian national scholarship has occasionally referred to the aspects of everyday life. Yet the ideology of '*histoire nouvelle*' has won popularity among the younger generation of Estonian historians only in recent years. These ideas are uniting a small informal circle of historians and archivists around Tallinn City Archives, represented not only by the above mentioned authors but also by the contributions of Tiina Kala, Juhan Kreem, Marek Tamm and Mihkel Tammet. Secondly, we must confess the disputable aspects of the title *Quotidianum Estonicum*. Medieval Europe knew Livonia but not Estonia and Latvia which territories it covered over 350 years. There may be even reproaches towards the actual contents that it is too much centralised on Tallinn/Reval, but it can be explained with the rich late medieval collections available at Tallinn City Archives.

We wish above all to thank Eva Toulouse, Monique von Wistinghausen, Hugo de Chassiron, Tarmo Kotilaine and Urmas Oolup for the editorial assistance. Our greatest debt of gratitude is to Gerhard Jaritz, without whose encouragement and support this issue could not have been completed.

Jüri Kivimäe, Juhan Kreem, editors