

**CRIME AND PUNISHMENT
IN THE NUREMBURG
AND AUGSBURG
CHRONICLES OF THE
LATE MIDDLE AGES**

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Most sources on court cases in the Middle Ages are not very informative. In general, they give very little detail on the reasons for judgments, provide no information on the background to a prosecuted offence, and offer only some hints regarding the enforcement of penal measures. Neither death penalty enforcement nor corporal punishment and torture were legislated before the *Constitutio Criminalis Carolina*, and both judges and executioners tended to draw on traditions, whose origins and concrete forms remain largely obscure. To gain a clearer picture of everyday judicial practice, it is necessary to go beyond the legal sources in a stricter sense. Therefore, the present chapter examines how far the city chronicles of the fifteenth and early sixteenth centuries addressed the legal sphere. It has been repeatedly pointed out that reports on crime and what was often its brutal punishment were among the 'favourite topics of the genre of sources known as city chronicles'.¹ In light of this observation, it is surprising how little research has been done on how they depict crime and punishment.²

¹ Dieter Weber, *Geschichtsschreibung in Augsburg. Hektor Müllich und die reichsstädtische Chronistik des Spätmittelalters* (Abhandlungen zur Geschichte der Stadt Augsburg, 30), Augsburg 1984, p. 224 (translated). See Karl Schnith, *Die Augsburger Chronik des Burkhard Zink. Eine Untersuchung zur reichsstädtischen Geschichtsschreibung des 15. Jahrhundert*, Diss. phil. München 1958, p. 78 (translated): 'Crime as a deviation from that which is both commonplace and lawful seems to be a very important part of the material in the chronicles'. See also Joachim Schneider, *Heinrich Deichsler und die Nürnberger Chronistik des 15. Jahrhunderts* (Wissensliteratur, 5), Wiesbaden 1991, p. 314.

² One successful attempt was Valentin Groebner, *Der verletzte Körper und die Stadt. Gewalttätigkeit und Gewalt in Nürnberg am Ende des 15. Jahrhunderts*, in: Thomas Lindenberger/Alf Lütke (Eds.), *Physische Gewalt. Studien zur Geschichte der Neuzeit*, pp. 162–189. See Joachim Schneider, *Legitime Selbstbehauptung oder Verbrechen. Soziale und politische Konflikte in der spätmittelalterlichen Chronistik am Beispiel der Nürnberger Strafjustiz und der Süddeutschen Fürstenkriege von 1458–1463*, in: Hagen Keller et al. (Eds.), *Schriftlichkeit und Lebenspraxis im Mittelalter. Erfassen, Bewahren, Verändern* (Münstersche Mittelalter-Schriften, 76), München 1999, pp. 219–241 and particularly pp. 221–223. Succinct but appropriate comments can be found in Carla Kramer-Schlette, *Vier Augsburger Chronisten der Reformationszeit* (Historische Studien 421), Lübeck, Hamburg 1970, pp. 50–52. See also Cristoph Heiduk, *Die Diskussion über das Strafrecht in spätmittelalterlichen Chroniken Schlesiens und der Lausitz*, in: Cristoph Heiduk/Almut Höfert/Cord Ulrichs, *Krieg und Verbrechen nach spätmittelalterlichen Chroniken*, Köln etc. 1997, pp. 9–109. Heige Blanke, *Gewaltausübung und Strafrechtspflege im Lichte der spätmittelalterlichen Grafenschaftschronistik Nordwestdeutschlands*, in: Hans Schlosser et al. (Eds.), *Herrschaftliches Strafen seit dem Hochmittelalter. Formen und Entwicklungsstufen*, Köln etc. 2002, pp. 246–284, addresses only the perception of and response to feuds. A less convincing account can be found in Helmut Martin, *Verbrechen und Sanktion in der spätmittelalterlichen*

This chapter uses the Augsburg and Nuremberg chronicles to study the contemporary presentation and perception of crime and punishment. It also draws on the annals of Johannes Müllner, written in 1623, that present what could be viewed as a kind of official history of Nuremberg based on a great number of sources, many of which are now lost. At first, this chapter focuses on both judgments of value and indications regarding the behaviour of those involved given by the chroniclers, as contemporary responses to crime and punishment. It also focuses on the few, occasional, incidental indications to gain more precise knowledge on how prosecution and punishment were carried out.

I. Offences and offenders

In nearly all chronicles, the focus on crime and punishment refers to law enforcement, particularly the enforcement of the death penalty. An exception is Heinrich Deichsler's chronicle, which also gives detailed reports on banishments and other punishments. In addition, Deichsler evidently tried to be a kind of spokesman of crime in his native city through his writing. He often gives a brief description of the offence, the victim, and the offender³ – at times, just of the offence itself –, which probably indicates he had no detailed knowledge about it⁴.

Other chroniclers have a more selective perception of which crimes were worthy of being recalled. They tend to concentrate on spectacular and unusual cases and then write more than just a few words, even looking beyond the borders of their own cities. In 1515, according to the Augsburg chronicler Wilhelm Rem, there was a horrible robbery with murder close to the city of Regensburg. While a nobleman was away, his

brother's servant sought lodging in the nobleman's castle. During the night, the servant gained access to the sleeping chamber of the nobleman's wife and slew her with an axe. He then went on to kill the son and the maid. Rem did not forget to mention that the maid was pregnant: "man schnitt sie hernach auff, da fand man 2 kneblin in ir" ["afterwards they cut her open and found two boys in her"]. After committing these crimes, the offender searched the castle and stole silver cutlery and other valuables, before finally setting fire to the building. Once the deed was done, he hurried down into the village and raised the alarm. At first, due to the subsequent confusion, he managed to flee. Eventually, he was caught near Nuremberg and taken to that city, where he was broken by the wheel.⁵ From Wurzach, in the state of Württemberg, Rem had also heard of a particularly perfidious series of murders carried out by a few casual gravediggers during the plague. Having been promised payment of 8 to 17 Kreuzer per burial, they decided to supplement this low wage through murder: "also tetten sie ains: wan ettlich kranck in ainem haus waren, so erwirgten sie es gar oder ermördeten es, damit sie das graberon verdienten, und stalen auch in heusern" ["so they did one thing: when someone was ill in a house, they strangled him or even murdered him so that they would earn the gravedigger's pay and also stole things from houses"].⁶

In general, crimes in the chronicler's city of residence predominate. The focus was to point out something exceptional, such as the involvement of the top levels of society. In 1532, several weavers were beheaded in Augsburg when a letter from the city of Cologne revealed that cloth cutters in Augsburg had, over many years, been systematically marketing rolls of fabric that were too short.⁷ The case of the execution of Augsburg's former mayor, Ulrich Schwarz, in 1478, also attracted

Chronistik Nürnbergs (Konflikt, Verbrechen und Sanktion in der Gesellschaft Alteuropas. Fallstudien, 1), Köln etc. 1996. Crime and punishment are excluded in Heinrich Schmidt, *Die deutschen Städtechroniken als Spiegel des bürgerlichen Selbstverständnisses im Spätmittelalter* (Schriftenreihe der Historischen Kommission bei der Bayerischen Akademie der Wissenschaften, 3), Göttingen 1958.

³ 'Item an Corpus Christi (10. Juni 1501) da erstach ein messingslaher den Linhart Ostermann, den verber' [Item on Corpus Christi (10. Juni 1501) a brass beater stabbed to death Linhart Ostermann the dyer. Heinrich Deichsler's Chronik 1488–1506, in: *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 11, Leipzig 1874, pp. 533–706, here 638.

⁴ 'Item darnach am Montag (21.6.1501) da wurd einer erstochen' [Item on the following Monday (21.6.1501) a person was stabbed to death], *Ebenda*.

⁵ 'Cronica newer geschichten' from Wilhelm Rem, in: *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 25, Leipzig 1896, pp. 1–265, here p. 31.

⁶ *Ebenda*, p. 168.

⁷ See *Die Chronik des Clemens Sender*, in: *Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert*, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 23, Leipzig 1894, pp. 1–404, here 339. See, on this chronicle, Wilhelm Vogt, *Die Augsburger Chronik des Clemens Sender*, in: *ZHVS 21* (1894), pp. 149–164.

attention,⁸ as well as the execution of Nuremberg's tax collector Niklas Muffel, in 1469.⁹

Besides concentrating on prominent offenders, most chroniclers also focused on offenses characterized by special circumstances. A bloody knife fight between two women in 1493 was recorded in the chronicles because it had taken place in a church, which had to be re-consecrated afterwards.¹⁰ At Easter of 1455, two church servants spread the rumour that a couple had had sexual relations behind the choir of the cathedral. After the cathedral had been re-consecrated, it was discovered that both servants had been lying.¹¹ Churches were also the aim of offences associated with fleeing offenders claiming sanctuary. Whether the city officials should be allowed to forcibly remove offenders from church asylum or not was a frequent source of conflict.¹² The assault and wounding of the son of the patrician Jörg Höchstetter one night in 1501 led to much public debate. The offenders, two apprentice furriers, fled immediately to the St. Ulrich Monastery. The Höchsetters paid a twelve-man guard to surround the monastery, and sent a member of the family to Innsbruck to obtain a mandate from the king allowing them to use force to remove the offenders from their sanctuary. Nine days after the offence, the king granted their request. However, before force could be used, the suspected apprentice furriers negotiated with the council and the abbot,

⁸ See Chronik des Hector Müllich 1348–1487, in: Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 2, Leipzig 1892, pp. 1–273, here 260ff., See also the appendix to Ulrich Schwarz ebenda, pp. 15–442; Sender, p. 41.

⁹ Jahrbücher des 15. Jahrhunderts, in: Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 10, Leipzig 1872, pp. 118–386, here 307ff. See also, in general, Gerhard Fouquet, Die Affäre Niklas Muffel. Die Hinrichtung eines Nürnberger Patriziers im Jahre 1469, in: VSWG 83 (1996), pp. 459–500.

¹⁰ See Sender, p. 60.

¹¹ See Müllich, p. 113. On the criticism of failure to re-consecrate a church after sexual acts were performed, see Rem, pp. 92f.

¹² There are numerous reports on people seeking sanctuary in churches. See Sender, pp. 36ff., 110, 210ff., 334, 450, Deichsler, pp. 562, 573ff., 582f., Rem, 7, 65f., 127; Die Chronik des Burkhard Zink, in: Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 5, Leipzig 1866, pp. 1–333, here 239f., 269; Müllich, p. 119, 147, 191. In 1528, an offender was removed forcibly from sanctuary in the St. Ulrich Benedictine Monastery. The council later apologized for doing this, but the abbot showed little appreciation. See Sender, p. 211. In 1493, a murderer was removed forcibly from church asylum in Nuremberg. See Deichsler, p. 574. In 1448, the Augsburg bailiffs disregarded the right of asylum. See Müllich, p. 92.

left their sanctuary voluntarily, and surrendered to the council. Not all citizens were pleased about this development. The old debate about rich and poor welled up immediately. The cry on the streets was that such effort would not have been made had the victim been poor. Some viewed the weakening of church asylum with skepticism, pointing out that they might as well have need of the institution.¹³ Other citizens, in contrast, were against the institution of church asylum, calling for the city authorities to be granted unrestricted access because one would otherwise no longer be safe in the streets.¹⁴

It was not just asylum law that led to friction between the church and the cities' right to exercise criminal law. Because consecrated persons were not subject to worldly jurisdiction, chroniclers had a particularly strong interest in criminal clergy and in the way they were often only mildly punished by the church. This was a widely known practice that was commented on scornfully. In his chronicle, Wilhelm Rem weaved in a story that had purportedly happened many years before, but was more likely taken from a satirical tale. A priest had killed a cobbler, whereupon the ruler of the city handed the priest over to the bishop for punishment. The bishop released the priest under the prohibition of him saying mass. A short time later, the son of the murdered cobbler took his revenge by stabbing and killing the priest. The duke, as the ruler of the city, highlighted the absurdity of the episcopal punishment by freeing the young cobbler with the prohibition of him making shoes.¹⁵ In 1490, a thief tried to avoid the jurisdiction of the city council in Nuremberg by claiming he was ordained. The council then ordered a servant to take the suspect to the Bishop of Bamberg and determine whether this was true. After confirming that he was not ordained, the bishop had him escorted by six mercenaries back to Nuremberg, where he was finally hanged as a thief.¹⁶

¹³ This was not because they were considering the possibility of becoming criminal themselves. Asylum also played an important role in civil law. The sanctuary of the church was an important refuge in which to evade the direct access of the council or of opponents after acts of violence or debts, and to gain time for negotiations. On the significance of these negotiations known as 'Taidingen [arbitration]', see Groebner, Der verletzte Körper, 187, with reference to a saying in Sebastian Franck: 'Kannstu fliehen, so fliehe/ ausz den stauden ist gut theidingen' [If you can flee, then flee/you can negotiate your defence well from the bushes].

¹⁴ See Fortsetzung der Chronik des Hector Müllich von Demer, Walther und Rem, in: Die Chroniken der deutschen Städte vom 14. bis ins 16. Jahrhundert, published by the Historische Kommission bei der Bayerischen Akademie der Wissenschaften, Vol. 24, Leipzig 1894, pp. 405–470, here 436.

¹⁵ See Rem, p. 79f.

¹⁶ See Deichsler, p. 559.

In the year of 1477, in Augsburg, a priest from St. Ulrich sexually abused a "peichttochter" ["girl in the confessional"]. The curate granted the council the right to prosecute the offender. As if knowing how mildly he would be treated later, the right was exercised as a ritual dishonouring. The priest was led throughout the whole city "schantlich" ["in shame"], reaching the Perlach tower where a large crowd had gathered. There the prisoner was publicly displayed for two hours, and Hektor Müllich does not forget to note the priest had been a "stoltzer, pöser pfaff" ["proud, wicked cleric"]. He was then tied to a cart and escorted to the bishop in Dillingen by members of the council. The bishop received the offender and imprisoned him for a short time. Finally, he was released with no further punishment.¹⁷ In 1525, the Augsburg senate arrested two priests accused of raping an eleven-year-old girl. Whereas one of the priests managed to escape, the other one was handed over to the bishop: "also legt in der bischoff in ain thuren, aber er tet im nichtz, bald darnach lies er in wider aus" ["so the bishop put him in a tower, but he did nothing to him; soon afterwards, he let him out again"].¹⁸

What angered the chroniclers even more than the clergy's immunity from prosecution was the frequent lack of any possibility to punish what was considered criminal feud among nobles.¹⁹ Hektor Müllich in particular addresses frequently the violent behaviour of feuding adversaries in the city, and the chronicler clearly perceived this as a greater threat to civic peace and to the citizens' lives than every form of criminal and delinquent behaviour.²⁰ Therefore, he at times uses strong words to condemn such behaviour. Their violent treatment of city residents was "schantlich wider recht" ["shamefully illegal"].²¹ In Müllich's view, the only way to counter these quarrelers was resolute action. In 1370, a quarrel was executed even though his friends had taken citizens as hostages.²² In 1490, the Nuremberg council condemned the nobleman Fritz von Eich to death for robbery. Although roughly 30 persons tried to

¹⁷ Müllich, pp. 256f.

¹⁸ Rem, 216. In 1519, the same thing happened to an abbot who was accused of having homosexual relations with his cook. See Rem, p. 113. For a further example, see Sender, 160. The first executions of clergymen without the previous consult of the bishop occurred during the course of the Reformation. Wilhelm Rem reports on such a case in Bern in 1522. See Rem, p. 180.

¹⁹ See Groebner's instructive analysis of how Deichsler viewed the violence the citizens of Nuremberg were subjected through feuding. Groebner, *Der verletzte Körper*, pp. 183f.

²⁰ See the report on the many years of conflict with Jacob Pütrich, with the Council finally placing a very high price on his head. Müllich, p. 9 and 16.

²¹ Müllich, p. 134.

²² See Müllich, pp. 7f.

intercede on his behalf, the council executed him anyway.²³ Executing nobles was particularly risky because it could lead to foreign policy problems. Harsh punishment by the city courts could well be interpreted as an attack on the feudal order. According to Hektor Müllich, there were frequent conflicts with the Duke of Bavaria. In 1418, the Augsburg Council accused one of the Duke's servants of robbing Augsburg butchers on the Lechfeld plain, and executed him on the gallows: "des ward der hertzog zornig und mault sich gen dieser stat bei zehen jaren" ["then the duke was angry and griped about the city for ten years"].²⁴ The beheading of Jörg von Rietheims, who was in the service of a ducal councilor, was more within the context of feuding. He had purportedly 'große(n) gewalt getrieben mit armen leuten' ["been very violent towards poor people"]. This also resulted in a long-term deterioration of relationships, because "der hertzog trug dieser stat neid und haß bis an sein end darumb" ["this made the duke envious and hateful of the city until his death"].²⁵ Finally, in 1457, the Duke freed a person sentenced to death for feuding in the city on the way to the execution site.²⁶

In general, the nobility are depicted in the city chronicles as potential troublemakers and as triggers of violence. This perception was certainly not limited to the practice of feuding. Wilhelm Rem reports how the 1519 diet meeting had a bad influence on the morals of the citizens.²⁷ In 1487, according to Johannes Müllner's annals, numerous crimes were committed during the diet meeting in Nuremberg. Although many offenders were arrested, most avoided the punishment they deserved

²³ ". . . man köpft in am 13. tag, was ein edelmann gar gutz geslechts, het wol pei 30 guter pet für in" ["He was beheaded on the thirteenth day, was a nobleman of an important noble house for whom about 30 persons of noble status had begged for mercy"]. Deichsler, p. 557.

²⁴ Müllich, 62. When the city of Göttingen wanted to execute a counterfeiter in 1481, Duke William threatened them with a feud. However, the Council still executed the offender after five months. The resulting feud was resolved one year later following the mediation of the Elector of Saxony. See Franciscus Lubecus, *Göttinger Annalen. Von den Anfängen bis zum Jahr 1588*, edited by Reinhard Vogelsang (*Quellen zur Geschichte der Stadt Göttingen*, 1), Göttingen 1994, p. 225.

²⁵ Müllich, p. 79.

²⁶ See Müllich, p. 126. The person sentenced to death had been captured in the Duchy, and they aimed to have him executed in Munich. According to Müllich, the Duke had granted the city the right to proceed against its adversary in Bavarian territory.

²⁷ "Es hetten die kaiserischen vil böß sitten her bracht, die vor hie nicht gewesen waren" ["The imperial diet brought many wicked customs that had never been here before"]. Rem, p. 115.

through the intercession of nobles attending the diet.²⁸ The nobles did not just extend a protecting hand over crimes: in 1515, several Franconian nobles were accused of throwing an inn servant out of the window for refusing to serve them more wine.²⁹ In 1500, Leonhard Fraunberg vom Haag stabbed a furrier in Nuremberg after he refused to deliver a gown until it was paid for. He avoided prosecution by fleeing, and went on to make a career for himself in the service of the king.³⁰

Apart from a few spectacular cases,³¹ crimes of passion and suicides particularly captivate the chroniclers. Although suicide was a crime to be punished by sinking the corpse in the River Lech in Augsburg, and then by burning it post mortem in Nuremberg, chroniclers placed little emphasis on the punishment itself, which only rarely mentioned.³² Their reports are far more focused on the motives.³³ As with crimes of passion, mental confusion provided a welcome explanation for the incomprehensible: "Des jars im herbst erhieng sich Endres messingslaher,..., solt nit sinnig sein gewesen. man horet vil zeugen und man prennet in nit" ["This year in autumn, Endres, a brass beater, hanged himself . . . he was supposedly not of a clear mind. They questioned many witnesses and they did not burn him"].³⁴ Otherwise, the main reasons for suicide are problems related to personal relationships and poverty. In 1525, a weaver travelled from Aichach to Augsburg. There, during the night, he gambled with townsmen and lost eight guilders. Wilhelm Rem thought he had probably been cheated on, and goes on to report that the man said he would never be able to go back home again. Afterwards, he went to the stable and hanged himself.³⁵ A husband's gambling debts were also the reason why an impoverished woman jumped into the River Lech and drowned. One man hanged himself because of frustrated love; another one because of dire poverty. Clemens Sender's report on a

succession of four cases of suicide ends in the spectacular act of a poor weaver who wanted to kill his four children, his wife, and finally himself.³⁶

When Jorg Demer, writing about a desperate man who finally took his own life, says that "er lebt übel mit seinem weib" ["he had a bad life with his wife"],³⁷ he points to severe disturbances in people's social relationships. Evidently, crimes in the chroniclers' immediate social context particularly shocked them, and were therefore mostly reported in detail. These crimes ranged from incest (which in one case, the offender attempted to conceal),³⁸ to rape and severe physical abuse,³⁹ to murder.⁴⁰ In the autumn of 1504, two young maids and a young male servant killed their master Georg von Maxelrain. According to Clemens Sender, the initiative came from the maids. Whether they carried out the offence in order to rob him or for other reasons remain strangely vague. The case also caused a great stir, because the King's council requested a special dispensation to execute the offenders, although they were still minors.⁴¹ In 1426, the innkeeper Geir hired a man to kill his wealthy niece. The child was suffocated in her bed and then thrown into the River Lech to cover up the deed. The offender managed to flee. Geir, on the other hand, was broken by the wheel. Three years later, a father who had killed all three of his children was sentenced to the same fate.⁴² In 1495, the Nuremberg patrician Berthold Nützel killed his wife while she was lying next to him in bed by stabbing her repeatedly with a knife. When neighbours rushed to the chamber because of the noise, Nützel fled to a "Freiung" ["sanctuary"]. He managed to escape and finally to persuade the king to petition for him. This petition stated that Nützel had caught his wife in bed with a servant, and that he had rightfully killed her as an adulteress. The council replied stating they had questioned numerous witnesses who contradicted Nützel's version. They therefore requested the king to "ein rat in dieser sach mit dergleichen mandaten nit mer zu beschweren" ["no longer make things more difficult for a Council through such mandates"]. However, the council did not succeed in arresting Nützel; he was still at large in 1504.⁴³ One year after Nützel's offence, a baker named Sebald

²⁸ Müllner III, p. 91.

²⁹ Rem, pp. 37f.

³⁰ See Demer, pp. 430f.

³¹ In 1493, a clearly insane person hit a travelling student for no reason whatsoever. Witnesses of the offence then beat him almost to death with stones and sticks. See Deichsler, p. 575. A Beguine took her revenge after many years for a broken promise of marriage and hired a murderer. See Sender, pp. 210–212.

³² In 1477, a goose thief who had hanged himself in prison was burnt in Nuremberg. See *Jahrbücher*, p. 350.

³³ There are two exceptions: Rem, p. 39, reports on the suicide of a woman in 1515 with no further explanation; Sender, p. 113, the suicide of a 14-year-old boy.

³⁴ Deichsler, p. 576 (1494). See also Demer, p. 452.

³⁵ See Rem, p. 219.

³⁶ See Sender, pp. 365f.

³⁷ Demer, p. 452.

³⁸ See Sender, p. 364.

³⁹ Wilhelm Rem reports on an exceptionally sadistic husband, p. 127 und 142f.

⁴⁰ Occasionally, offenders in this area of crime were also described as being mentally disturbed. See Rem, 49; Müllner III, p. 599.

⁴¹ See Sender, pp. 108f. The usual minimum age was 15. In Nuremberg, a 14-year-old boy was brought before the Council in 1506. Each councillor had to examine the boy and judge whether it would be right to hang him. See Deichsler, p. 700.

⁴² See Müllich, p. 69 und 71. See also Rem, p. 203 (murder of own child in 1523).

⁴³ Deichsler, pp. 582f, Müllner III, pp. 143f.

Wunderer used a wooden club to attack his wife in her bed at night. Nevertheless, she survived this attempt on her life.⁴⁴

II. Prosecution and Punishment

To some extent, depictions of prosecution and punishment deliver clearer indications on how specific offences were evaluated. The murder attempt by Sebald Wunderer did not go unpunished. His eyes were gouged out and he was banished from the city. Deichsler concluded his report with the cryptic comment: "man wolt in, maint man, tott haben" ["they wanted, the opinion was, to have him dead"].⁴⁵ The court's treatment of the three young servants who had killed their master in 1504 was also brutal. Because two of the offenders were still minors, and the practice of executing people under the age of 15 was not accepted in Augsburg, the Council sent two delegates to King Maximilian to obtain a special dispensation. The public execution was held on the 17th of January 1505. The plan was to behead the 12-year-old boy first. When the executioner drew his sword from its sheath, the boy ran to and fro on the execution platform begging the executioner to spare him. The executioner showed no mercy and beheaded the boy while he was still standing. The boy, writes Clemens Sender with no sympathy, had behaved as if he were still a child. In contrast, the two girls, who would both be subsequently buried alive, were "baid keck und manlich gewessen und haben mit reu ain andechtiges, cristenlichs end genomen" ["both bold and manly and came through remorse to a devout Christian end"].⁴⁶ Murders between married people were judged in a particularly severe way. In 1487, Hefin, a mercenary's wife, was executed for murdering him by poisoning his beer. She was shoved half naked onto a wagon and tortured on the way to her grave with red-hot tongs before finally being buried alive.⁴⁷

Executions marked the spectacular culmination of law enforcement in the cities. It had to commence immediately particularly in cases of physical assault and murder, because offenders would regularly try to

evade arrest by fleeing the city or seeking church asylum. Numerous reports suggest that they had a good chance of successfully evading justice. In spectacular cases, the Council closed the city gates after an offence and offered a reward for the offender's capture.⁴⁸ Evidently, there was a strong pressure to apprehend offenders. Failing or neglecting to enforce the law often results in disparaging or concerned commentaries from the chroniclers. In 1458, Burkhard Zink mentioned the previous robbery and murder of a young Augsburg merchant gone unpunished, and concluded: "allmechtiger gott laß das mord nit ungerochen, das der böswicht an dem unschuldigen jüngling begangen hat" ["almighty God don't let the murder that villain perpetrated on the innocent youth go without revenge"].⁴⁹ Heinrich Deichsler complained that there had been five murders between the end of May and the end of August 1499, and that none of the offenders had been caught.⁵⁰ Wilhelm Rem also expressed his unease after the immediate intervention of the Council to try and prevent a mass brawl among groups of apprentices, but had subsequently failed to punish anybody. He remarked skeptically that it "stund warlich nicht wol hie" ["truly did not go well here"].⁵¹

In contrast, intercessions are not perceived as a threat to the civil order, although they were numerous, and reported frequently in the chronicles. Burkhard Zink called it a possible divine intervention when two apprehended thieves were saved from the gallows and pardoned through the intercession of the Duchess of Bavaria, who happened to be in Augsburg at the time. However, intercessions were not just directed towards saving the offender from punishment. They regularly aimed more at making punishments less harsh.⁵² Even when offenders were repeatedly shown mercy and pardoned, this did not lead the chronicler Heinrich Deichsler to doubt the value of the institution of pardon. In 1503, a thief whom the city wanted to hang was pardoned by the mayor's wife. Deichsler supplemented this entry in his chronicle with the neutral statement: "auch vor pei fünf jarn ward er auch erpeten vom galgen und die stat verpoten" ["five years ago, he was also pardoned from the gallows and banned from the city"].⁵³ A further case also reveals no trace of criticism. According to Deichsler, a thief that the Council court would have

⁴⁴ See Deichsler, p. 587, Müllner III, 1p. 56 (the offender here was called Winter)

⁴⁵ Deichsler, p. 587. Müllner III, p. 156, writes that the offender was treated mercifully and only blinded. This cannot be confirmed. At his father's request, banishment to the other side of the Danube was transmuted into a simple banishment from the city. See Deichsler, p. 587 and Note 2.

⁴⁶ Sender, pp. 109f., quotation 110.

⁴⁷ See Jahrbücher des 15. Jahrhunderts, p. 384; Müllich III, p. 91. For a similar case, see Ebenda, p. 459.

⁴⁸ See Deichsler, p. 603, 637f.

⁴⁹ Zink, p. 217.

⁵⁰ See Deichsler, p. 574.

⁵¹ Wilhelm Rem, p. 54 (1516)

⁵² See Deichsler, p. 557, 562, 577, 597, 625, 637, 640, 657, 669, 691, Sender, 200, 358, Demer, 427, Müllich, 9.

⁵³ Deichsler, p. 663.

liked to have seen hang was in the end only driven away from the city with a beating due to intercessions. Deichsler puts it succinctly: “het vil gestoln, het vil pit” [“stolen a lot, had a lot of pleas”].⁵⁴ Hektor Müllich also expressed no annoyance about the pardoning practice. In a distanced tone, he reports on a city official who had stolen or embezzled a total of 500 guilders over 24 years. The king summoned him to the place of the execution. More or less by chance, another thief was going to be hanged that day. He also unexpectedly and, so to speak, *en passant*, was able to walk away thanks to the regal intercession. Whereas Müllich abstained from any critical comment, he nonetheless knew that the pardoning of the city official was poorly received by the townspeople.⁵⁵ However, this only seems paradoxical. The chroniclers’ affirmative attitude towards the institution of intercession does not correspond to an occasionally restrictive policy of the city Councils, that tried to ward off too much influence over their administration of justice and occasionally even prevent petitions for pardon. For example, the Nuremberg Council intervened when a banished individual tried to enter the city with the Duke of Mechelburg.⁵⁶ The Nuremberg Council also consistently rejected intercessions on Niklas Muffel’s behalf to save him from the gallows, although the general public never believed that they would actually hang him.⁵⁷ However, any nobility who were in the city were promising people to plead with. In 1494, two thieves were waiting to be executed in Nuremberg. The wife of one of them was advised to go to the honourable wives, who had been invited for a visit with Albrecht, the Duke of Saxony, who was in Nuremberg at the time. She should plead with the women to intercede for her husband: “das geschah und der jung fürst erpat in, das man in im gantz ledig und frei gab aller ding. Und den andern hieng man” [“that happened, and the young duke pardoned him so that he should be completely free and liberated of all he had done. And the other one was hanged”].⁵⁸

The chroniclers’ reports on the enforcement of corporal punishments are particularly worth noting. Heinrich Deichsler proves to be a careful observer of the punishing Council. Unusual punishments, such as chopping off fingers, could well elicit mild criticism from the citizens.⁵⁹

⁵⁴ Deichsler, p. 657.

⁵⁵ See Müllich, p. 449.

⁵⁶ See Deichsler, p. 663.

⁵⁷ Jahrbücher des 15. Jahrhunderts, p. 309.

⁵⁸ Deichsler, p. 577.

⁵⁹ See Deichsler, p. 574. On critical remarks by Deichsler, see also Schneider, *Legitime Selbstbehauptung*, pp. 222f.

Otherwise, the chroniclers inform us that the executioner evidently had considerable scope in how to administer a corporal punishment. In 1500, the executioner banished two brothers from the city with a beating. They were also sentenced to perpetual banishment on the other side of the Danube. Deichsler, who does not name their offence, reports the initial intention had actually been to gouge their eyes out, but this had been thwarted through numerous intercessions. However, the executioner beat one of the convicts so badly “das man maint, er würd sterben” [“that one thought he would die”].⁶⁰ There was a similar situation in 1502: “...da hieb man einen gesellen mit gerten auß und hieb in so ser, das man maint, er würd in zu tod hawen, wann man het in vor ein mal ausgehawen” [“an apprentice was beaten with whips, and beaten so severely that one could believe he would have been beaten to death if he had been hit one more time”].⁶¹ Only three weeks later, although a thief avoided the gallows thanks to numerous intercessions, one had “lang keinen so hart gehawen” [“not beaten someone so hard for a long time”].⁶² In 1504, there was a case in which a member of the family intervened. As the executioner was banishing a man from the city with a beating, and as they reached the outer bridge, the father or brother of the one being punished that way wrested the rope away from the executioner with the words: “maister, hör auf, es ist nu da auß und genug” [“master desist; that’s finished and enough”]. This man was arrested immediately and two days later, also banished from the city with a beating.⁶³ Mild beatings were also a deviation from the norm. Deichsler reports on a thief who was beaten with whips but did not have to bear his back. He explained this mildness with the fact that it was the first time the thief had been caught stealing.⁶⁴ In 1518, the 74-year-old cellar master Schittenhelm was sentenced to shameful banishment for engaging in numerous sexual acts in the Augsburg churches. Wilhelm Rem was indignant: “den Schittenhelm strich man mit rutten, aber man tet im nicht wee. Es war ain schand, dass man im so gar wenig strich” [“they struck Schittenhelm with the birch, but they did not hurt him. It was a scandal that they hit him so little”].⁶⁵

Certainly without intending it, Heinrich Deichsler provides clear evidence that the brutal punishment measures of the late Middle Ages

⁶⁰ Deichsler, p. 625. The Council allowed both men to remain in Schweinau for two days to tend to their wounds.

⁶¹ Deichsler, p. 657. Similarly in 1506. See Deichsler, p. 705.

⁶² Deichsler, p. 657.

⁶³ Deichsler, p. 671.

⁶⁴ See Deichsler, p. 667.

⁶⁵ Rem, p. 93.

neither deterred nor reformed offenders. Deichsler gives numerous examples of offenders, predominantly thieves, who had been banished from the city with beatings repeatedly, but nonetheless continued to be delinquent.⁶⁶ The large number of young offenders is particularly conspicuous: the youngest offender to be banished from the city with a beating was a twelve-year-old boy.⁶⁷ When in 1498, a sixteen-year-old boy was also banished from the city with a beating, Deichsler noted that his father had already 'drei gerten an im zerslagen' ["broken three whips on him"] without reforming him. He carried on stealing, and this was already the second time he had been banished by the executioner.⁶⁸ Indeed, the fate of these offenders was predictable: their ultimate punishment would be death on the gallows. Deichsler repeatedly reports on hopeless lives that finally ended this way. In 1501, a man who had already been banished from the city with a beating four times was hanged. Deichsler's resigned comment was that the man "wolt nit aufhörn" ["didn't want to stop"]⁶⁹. Two years later, a young thief ended up hanging on the gallows, after he had already lain in the dungeon and been banished from the city with a beating.⁷⁰ In the same year, the court sentenced a man named Glaser to death with the argument that there was no hope of him improving. Deichsler reports that the man had already been birched three times for theft. On the fourth occasion, they had hacked off his fingers. After he went on to steal again, all that was left was the gallows.⁷¹

Executions attracted the interest of the citizens, who observed them very closely. There are several reports on the great numbers turning up to see executions. Hektor Müllich reports how a large crowd turned up for an execution even though it was held at the early hour of four in the morning.⁷² In general, the authorities wanted a large crowd. Executions were announced to the citizenry by ringing the storm bells. Cases in which the bells did not sound were something special and worthy of mention for the chroniclers. In 1524, the Augsburg Council had two 60-year-old weavers beheaded for making inflammatory speeches and other offences. Clemens Sender points out that the Council did not sound the bells this

⁶⁶ See Deichsler, p. 596, 598, 618, 657, 658, 705.

⁶⁷ See Deichsler, p. 660. On a thirteen-year-old thief, *Ibidem*, 663.

⁶⁸ Deichsler, p. 598.

⁶⁹ Deichsler, p. 632.

⁷⁰ See Deichsler, p. 656.

⁷¹ See Deichsler, p. 663. On this topic, Peter Schuster, *Verbrecher, Opfer, Heilige. Eine Geschichte des Tötens*, Stuttgart 2016, pp. 326ff.

⁷² See Müllich, p. 18. See also Sender, p. 212.

time "damit der boffel (=Pöbel) nit wider auffrierig wurde" ["to prevent the mob from becoming unruly again"].⁷³

The chronicles' reports on how executions were carried out confirm that although a strict ritual was followed, it was, nonetheless, subject to continuous modifications. Executions in the late Middle Ages were religiously staged events. Priests accompanied the condemned to the places of execution, and great emphasis was placed on the condemned singing hymns, making speeches, and reciting prayers. One person, condemned to death by the wheel, continued to pray despite the pains he was suffering from the several blows that the executioner had already inflicted on his limbs and neck.⁷⁴ A condemned Jew sang Hebraic songs on his way to the place of execution.⁷⁵ Sender describes an execution in which the condemned man prayed so devoutly and awaited his fate so patiently that the spectators began to cry.⁷⁶ When the sorceress Barbara was taken to be burned in Schwabach in 1505, she was accompanied by three priests. As she was about to mount the pyre, they instructed her as follows: "ir liebe frau, seit stet in kristenlichem glauben und sterbt als ein cristenmensch (...) wenn man das feur anzündt, so schreit mit andacht und mit lauter stimm mit uns: Jesus Nazarenus rex Judeorum, herr erparm dich über mich" ["dear woman, be steadfast in Christian faith and die as a Christian . . . when they light the fire, join us in crying out devotedly and with a loud voice: 'Jesus Nazarenus rex Judeorum', Lord have mercy on me"]. The condemned, described as being an exceptionally beautiful woman, assented and became the leading actor in a gruesome religious play. She cried out the assigned phrase until the heat and the smoke of the fire around her smothered her efforts. Thereby, according to Deichsler, "gab (sie) grosse anzaigung, das sie ein gute kristin und kristenliche andaht gehabt hat" "[she] gave a great display that she was a good Christian and had had Christian devotion".⁷⁷ Repentance and patience were praised, because otherwise the authorities would have to fear that the event would be disturbed.⁷⁸ Sometimes, the executioners interrupted disturbances as they occurred. Deichsler reported on the execution of a thief in 1505 that walked towards the place of execution

⁷³ Sender, p. 159, see also *ibidem*, 212.

⁷⁴ See *Jahrbücher des 15. Jahrhunderts*, p. 348.

⁷⁵ See Müllner III, p. 666.

⁷⁶ See Sender, p. 202. Cf. the report on the execution of Ulrich Schwarz in: *Die Chroniken der deutschen Städte*, Vol. 22, pp. 436f.

⁷⁷ Deichsler, p. 694.

⁷⁸ See Peter Schuster, *Hinrichtungsrituale in der beginnenden Neuzeit: Anfragen aus dem Mittelalter*, in: Helga Schnabel-Schüle/Harriet Rudolph (Eds.), *Rahmenbedingungen des Strafrechts in der Frühen Neuzeit*, Trier 2003, pp. 213-233. On milder punishment for pious and suitable behaviour, cf. Zink, pp. 184f.

more cheerfully than had ever been seen before. He was saying that this is how it has to be now, one must be of good cheer, and so forth. When he finally had to kneel down so that the executioner could behead him, he refused, saying he wanted to carry on talking. Upon this, the executioner evidently beheaded him while standing.⁷⁹

The type of execution assigned to a specific offence was also weakened by the numerous intercessions such as, for example, granting a person condemned to hanging the less painful death by beheading. Nonetheless, there seem to have been fixed ritual details. Those condemned to be broken by the wheel were dragged to the place of execution on a type of sledge. However, it was customary to hold up the head of the condemned to prevent it from striking the cobbles.⁸⁰ This was also the case in 1493: the head of the condemned, while being dragged to the place of execution, was held one hand's width above the cobbles. Nonetheless, he still hurt himself during this humiliating journey.⁸¹ For beheadings, the condemned had to kneel. Before a hanging, the executioner led the condemned three times around the gallows.⁸² Then the executioner would lead them up a ladder, place the noose around their neck, and push the ladder away. Evidently, even the direction the person had to face while being hanged was specified. What other interpretation is possible when at Ulrich Schwarz's execution, it was specifically stressed that he should be hanged with his face towards the city?⁸³ In 1502, an accident occurred during a hanging on the gallows: after the ladder was pushed away, the man hanging started swinging more violently than had purportedly been seen in Nuremberg for one hundred years.⁸⁴ Otherwise, it was predominantly during beheadings that the executioner ran the risk of making mistakes that could be closely observed by the spectators. In Augsburg in 1465, an executioner was "ze tod geworfen" ["thrown to his death"] after an unsuccessful beheading.⁸⁵ In 1498, the Nuremberg executioner failed to strike cleanly during two beheadings so that both executions were very botched. As a result,

"beschriem in die puben" ["the public shouted at him"] and wanted to stone him. Several mercenaries as well as the judge had to lead the executioner away among the horses and into a building to protect him from the outraged mob.⁸⁶ After another beheading gone bad in 1506, the Nuremberg Council issued a proclamation that, whatever happened, it was forbidden to lay hands on the executioner.⁸⁷

Nonetheless, there was also praise. In 1501, Heinrich Deichsler was greatly impressed by the way the executioner beheaded two men with one swing.⁸⁸ It is significant, though probably by chance, that Heinrich Deichsler's chronicle ends with the description of an exceptionally successful beheading. In November 1506, an executioner on loan from Weissenburg carried out three beheadings. Deichsler was very impressed. His chronicle ends with the words: "und er köpfet sie all drei so redlich, das daz swert gleich hindurch schnurret, das in ieglichs lobet" ["and he beheaded all three so fairly the sword slid right through in such a way that everybody praised him"].⁸⁹

III. Conclusion

It was a customary practice in Augsburg to clear away the gallows and bury the mortal remains of the hanged on the occasion of a new bishop entering the city for the first time. In 1470, they found 250 heads at the gallows.⁹⁰ Because Peter von Schaumberg, then bishop, had ruled for 45 years (1425–1469), this sums up to a rate of five to six executions per year. Such numbers place Augsburg in line with prominent cities of the Empire. Hence, executions were not everyday events, but rather somewhat spectacular occasions. This is why they are the focus of reports on punishments in every chronicle except that of Heinrich Deichsler.

⁷⁹ See Deichsler, p. 689. See also Sender, 202. See an extensive discussion about one's own guilt at the place of execution in Zink, pp. 306f.

⁸⁰ Cf. Schuster, *Hinrichtungsrituale*, p. 221. *Jahrbücher des 15. Jahrhunderts*, p. 167.

⁸¹ "man sleift in und hielt im den kopf ein zwerh hant (Handbreit) vom pflaster und die schultern auf dem pflaster, das die schultern plutent" ["they dragged him and held his head a hand's width above the cobbles and his shoulders on the cobbles so that the shoulders bled"]. Deichsler, p. 574.

⁸² Execution of Schwarz. For a variation on this practice, see Deichsler, p. 578.

⁸³ *Chroniken der deutschen Städte*, Vol. 22, p. 437.

⁸⁴ See Deichsler, p. 652.

⁸⁵ Müllich, p. 201.

⁸⁶ Deichsler, p. 597. See also Müllner III, p. 48: The executioner's assistant required eight to nine blows for a beheading. Poor beheadings could be interpreted as a sign. After the Göttingen executioner had failed to behead a condemned man after three blows in 1515, the crowd interpreted this as a confirmation of the innocence of the condemned. Here as well, the crowd went for the executioner. See Franciscus Lubecus, *Göttinger Annalen*, p. 310.

⁸⁷ See Müllner III, p. 387.

⁸⁸ See Deichsler, p. 637.

⁸⁹ Deichsler, p. 706.

⁹⁰ See Sender, p. 39. This practice was associated with an act of religiously based mercy. Those who had been hanged, killed by the wheel, or drowned as punishment had no right to a Christian burial.

Because all the chroniclers came from the mainstream of society, it is not surprising that they were in no way critical of the system of punishment, even in its most brutal form. For them, punishment was far more the essence of civil rule. They only ever challenged it when the law failed to be enforced. Despite their affirmative attitude, they do sometimes reveal the weakness of the punishment system. The brutality of law enforcement, along with the cruelty of torture and physical punishment, did not remain uncommented. As mentioned above, Heinrich Deichsler repeatedly emphasized the brutality of flogging. Sender reports on an innocent victim of torture who could no longer walk unassisted after being released from prison.⁹¹ In other parts of his chronicle, he hints at the inhumane prison conditions.⁹² In 1472, a thief who had had his eyes gouged out died as a result of his punishment.⁹³

On the other hand, the chroniclers also report on inappropriate protection. The twists and turns of the court, when obliged to punish a Fugger in 1533⁹⁴, reveal the great significance not only of intercessions but also of social integration when it came to avoiding the harshest of punishments. The fatal spiral of civil violence towards thieves documented by Heinrich Deichsler also confirms how corporal punishments inadequately protected victims from further crimes. Occasionally, the chroniclers describe a criminal asocial milieu to us.⁹⁵ Although they express no sympathy for these milieus, they also do not feel particularly threatened by them. What did appall them was when people suddenly fell dead. When Hektor Müllich described the sudden collapse and death of a former mayor during the Ulrich Schwarz scandal, his comment was: "davor uns got alle behüet" ["may God protect us all from that"]. It was sudden death, not murders and the gallows, which frightened the inhabitants of the cities of the empire around 1500.⁹⁶

⁹¹ See Sender, p. 357. See also Kramer-Schlette, Vier Augsburger Chronisten, p. 50.

⁹² See Sender, p. 237.

⁹³ See Müllner III, p. 17.

⁹⁴ See Sender, pp. 343f.

⁹⁵ Examples can be found in Wilhelm Rem, p. 127 and 142f.; Müllner III, p. 454.

⁹⁶ Müllich, p. 261.

CONQUEST AND JUST WAR: NORMATIVE CLAIMS FOR REGULATING POLITICAL CONFLICTS IN THE THOUGHT OF FRANCISCO DE VITORIA O.P. (1483–1546)

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