PUBLIC PUNISHMENTS IN SIXTEENTH–CENTURY. THEORETICAL BACKGROUND

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The history of public punishments reveals not only universal methods of treating deviant behavior, but provides information about urban social networks, population movements and elite mentalities. Early modern Transylvanian methods of treating those who, in any way, broke the well constructed moral codes of behavior, indicate basic and obvious similarities with Western punitive practices. The microanalysis of the judicial system of the late sixteenth-century Kolozsvár (Cluj) reveal different mentalities, forces of social cohesion, and forms of cultural transmission. A contrastive study of different responses to deviant behavior indicate the specific mental map of the community. Punishments given for offenses and crimes are one of the most productive ways of analyzing social structure and morality.

Self-perception of the cultural and political elite of the sixteenth century is reflected in several documents connected to the judicial system and trial processes. For a historical analysis it is a revealing fact what officials in Kolozsvár thought to be inadmissible behavior, which violated social norms. While killing was always considered a capital crime throughout Europe, different attitudes were thought of as being improper. While describing the judicial system of early modern Kolozsvár mainly based on trial records, town regulations and town accounts, one can follow this kind of delimitation, first looking at the images of proper behavior as reflected in official edicts and laws, and then describing the popular behavior, which is evident when analyzing sexual offenses and crimes, lewd behavior, witchcraft, usage of bad language, and theft.

Society in the early modern period was not a community of equal people, where each individual acts the same way. Distinct cultural differences between the popular and high culture always existed, and the task of the historian is to reveal the organizing mechanism of societies, which is to be described with the help of the preserved archive documents.

The history of public punishment can be best studied in a comparative framework. Comparison with German and English punitive patterns is chosen because historians dealing with these countries stress the occurring similarities.

Yet, what is more interesting, they always point out the differences, which can be observed during rituals of punishment (e.g. the tendency to expose the dead body in Germany and to use it in the anatomy rooms in England). The distinctive types of legal systems are in close connection with the local variables, which help understand cultural and social networks of the given communities. Court records and town accounts are among the most illuminating of all early modern sources for social history. Interrogations are a good source for investigating early modern lives, which would be otherwise unknown. What we can read about, of course, is mediated by the interrogators' interest, scribes' framing of the story, offenders' defense strategies. These narratives, combined with extra-textual realities allow the interpretation of elite and popular mentalities. Main drawback is the way in which this method wipes out the cultural distance between the past and the present. An imaginative leap of understanding is needed, by which to comprehend mentalities, which could seem bizarre or unexplainable to us, present-day European historians.

There is a rich archival material, principally in the Romanian National Archives, and a well-developed secondary literature on the topics of public punishment, moral codes, norms of social behavior. Sources from the sixteenth and seventeenth centuries are microfilmed in the State Archives in Kolozsvár, and there can be found different statutes of the town (1536, 1557, 1577, 1578), registers of the council meetings (from 1557 on), trial registers (from 1516 on) and town accounts (from 1553 on). A great variety of documents were collected and published mainly in the second half of the last century. The most important ones: Elek Jakab, *Collection of Documents to the History of Kolozsvár,* vol. 2; Sándor Kolosvári and Kelemen Óvári, *Corpus Juris Hungarici. Transylvania, 1540-1848*; Sándor Szilágyi, *Documents from the Transylvanian Diets*, vol. 2-12; Endre Varga, *Documents from Seigniorial Courts.* Besides collections, useful secondary sources are numerous studies on legal documents and the legal system of the Principality, written by Elek Jakab, Károly Vajna, András Kiss etc. The theoretical framework of legislation, morality and punishment are primarily given by Richard van Dülmen in the *Theatre of Horror*, Ulinka Rublack, *The Crimes of Women in Early Modern Germany*, R. P.-C. Hsia, *Social Discipline in the Reformation.*

When groups of people live together in the same locality, in order to keep the community functioning, they have to regulate their conduct by adapting a set of laws. Those who violate the established rules of the community are subject to some type of sanction, discipline or punishment. Describing deviance and reactions to deviance in a certain community, therefore, can reveal the basic patterns of social and cultural life.

Most of the anthropological studies concerned with small-scale social units, regarded deviance as something which breaks well-constructed theories, cultural patterns and structures. While sociologists systematically studied deviance, the big break-through in the study of deviance in anthropological perspectives began only in the second half of the twentieth century. A summary

of anthropological and sociological studies is given in the book edited by Morris Freilich, Douglas Raybeck and Joel Savishinsky[1]. Although it presents methodological perspectives for anthropologists working with non-Europen communities, their models for cross-cultural research can be successfully used for describing communities in a historical perspective.

The investigation of social norms, and implicitly, the changing notion of deviance fits new trends in writing history, which are present in the historiography of the last couple of decades. Instead of focusing on the great deeds of the powerful, scholars have considered ordinary men as actors of history, worthy of investigation; and „rewriting" the history of Europe has created new perspectives for investigating several aspects of everyday-life history. Previously neglected topics have attracted students, and historical anthropology as a method of approach, have provided them with a new analytical framework. Bob Scribner's ennumeration of new themes and new applications of anthropological models indicate how these trends have gained legitimacy in current historiography[2]: „major themes discussed under this heading include economic and political anthropology as applied to pre-industrial European societies; the anthropology of daily life and material culture; family, kinship and community; honor and patronage; sex and gender; religion, magic and witchcraft; orality and literacy; ritual and ritual behavior."[3] In this context, an interest towards deviant behavior and the relationship between a deviant person and the set of norms in a society has arisen. Close links with sociology and ethnography can help historians to study deviance in a complex way, having access not only to data which confirm the existence of deviance in a community, but also to its sociocultural context[4]. The methodo-logy called „thick description", which was introduced by Clifford Geertz[5], and which comprises the guiding idea for students of new historical perspectives. It is based on the interpretation of social interaction in a given society, and in terms of that society's own norms and categories. The importance of context, and its interpretation given by the participants (using Durkheim's definition, actors) is equally valid in studying normative rules in a society. This compa-rative understanding of deviance implies a different type of understanding:

> our involvements with complex and simple, nonwestern societies lead to a better recognition of the way in which deviance is affected by sociocultural scale. Additionally, concerns with fieldwork and with differing levels of sociocultural integration combine to promote a better appreciation of the processes that generate deviance. Finally, an anthropology of deviance is likely to create new models, models that permit the individual to reappear as a viable actor who creates and recreates sociocultural systems.[6]

In the next few paragraphs I survey the main set of terminology offered by the authors, and argue for their usefulness in historical analyses. First of all, it is worth mentioning that anthropologists prefer qualitative to quantitative data, and their methods are likely to yield deep insights into the nature and

functioning of deviance. Their conclusions usually rest upon these insights, while comprehensiveness and sensitivity are preferred to replicability and testability.[7] Further, being aware of the complexity of even the smallest community, there are some limitations and categorizations in the respect of community-types. The clarification of these structures help to understand their functioning, and motivate most of our usage of terminology. Discussion of large- and small-scale social units/communities emphasizes the contrast between the two, and indicates the adaptability of terms for a historical inquiry. As presented by Peter Burke, new historical analyses are concerned with qualitative evidence, and concentrate on specific cases.[8]

The first and basic term borrowed from anthropology is scale. This perspective was successfully applied in Emmanuel Le Roy Ladurie's *Montaillou*, when focused on a small community, described in depths local particulars characteristic for that type of village. Small-scale social units are „either independent and self-reliant (such as a hunting and gathering bands) or are part of a large-scale social unit (such as a tribe or a state). They are distinguished in part by a limited population, and by the personalistic, three-dimensional ties that interconnect members of the system".[9] The sociocultural context, which characterizes these communities, is extremely rich; the interdependence of their members and shared circumstances promote a common knowledge of their personal background, personality, past, and current behavior. In these communities there is a well-defined set of social and moral norms, and the access to the shared social knowledge affects the way people regard and treat deviations from the common norms. „Moreover, it allows them to rely principally on informal sanctions." At this point there is a clear indication given by Peter Burke, showing how historical anthropology uses anthropological means to „translate" the implicit rules in a society. Informal sanctions can indicate the flexibility of the rules, which in reality are not applied mechanically. They can be broken, but at the price of giving offence. „The idea of rules remains a useful one, and so does the attempt to tell the modern reader how he or she would have been expected to behave in another century; how to be polite, for example, or how to be insulting, how to be a thief, how to be a saint."[10]

Large-scale social units are fundamentally different from small ones in the regard of both their qualitative and quantitative ways. They „lose their personalistic, three-dimensional relationships that are common in small-scale entities. While small- units are independent, self-sufficient, and possess only few specialized institutions that exhibit a great deal of interdependence rather than independence"[11]. It basically means that most members are unfamiliar with other individuals of their society. Therefore, most relationships are formalized, structured, and devoid of personal content (like buyer-seller, employer-employee relationships). As seen from my presentation, historians are much more concerned with smaller units of population, but students of social theories dealing mainly with the concept of social discipline and European penal system,

regard these large communities as the very expression of state power, the power of institutions over masses of people.[12]

Put in a historical perspective, the evolution of a town presents features that first correspond to those of the small-scale social units, and during the urban development bears the features of both types of communities. It becomes a larger unit, with independent and specialized institutions, and finally lose the characteristics of face-to-face communities. Institutions and their power exercised in society are in the focus of many historians dealing with the growing interdependence of modern societies[13]. Quoted by Norbert Finzsch, Peter Duerr's arguement against Norbert Elias' thesis enforces the idea of continuity and changed interference in the developement of urban history and the history of institutions: „I will challange this thesis [process of civilisation] by showing that human beings in small, easy to survey, 'traditional' societies were much more interconnected with their peers than is the case today. That means that the immediate social control, to which one was subjected, was much more unavoidable and complete. Accordingly, it becomes clear how questionable Elias's assumption is that today we live in a much tighter ring of prescriptions and rules, since the 'censure and the pressure of social life' have increased tremendously.“[14] Discussing further the history and theory of confinement, Finzsch writes about the theory of Gerhard Oestrich, who developed in the 60s a concept of social discipline. His point of departure was that the late feudal system of the fifteenth and sixteenth centuries was in disarray. Populations were growing rapidly and shortages of provisions led to crises, especially in cities. This situation was aggravated by the failure of the clerical institutions to order and regulate the realm of propriety and morals. Therefore secular authority had to replace the church in this area. Finally, the „production of norms" (*Normenproduzierung*) was a natural reaction to changes that were superimposed on the cities.[15]

In the context of social norms and punishments it is important to consider the growing power of authorities, increasing social control, and improving mechanism of state control. These characteristics have significant implications for the manifestations of deviance and for the reactions of others to deviant acts and actors. Every malady and deviation from the sociocultural matrix bear a social meaning which is defined by social experiences and judgments. The process of showing and reporting maladaptations is socially learnt, and often perceived in a stereotypical way. As a cultural construction – just like illness or gender – deviance varies from one social unit (and implicitly culture) to another, and it is true for time-perspective as well; being deviant and oppressing deviance always require the exact knowledge of different social roles.

Defining the social role of the punishment, first of all we have to turn to the definition of deviance, and to understand its cohesive power by placing it into the social pattern. As Emile Durkheim stated, deviance is not a marginal phenomenon in society, but rather a central one because it involves violation of norms and redefinition of moral and social boundaries, therefore it is an integral

part of all healthy societies. The source of all kind of maladaptations is a conflict between a person and the social environment. This conflict arises if the person does not accept or follow something important for others – common values, common ideals, common rules of everyday behavior, the usual way of life, oral principles, norms, laws, traditions, expectations – and this behavior is not tolerated by the community. Durkheim concluded saying that deviance is functional and good because it is one mechanism of social change. Its main function is to create and sustain the flexibility necessary for the social system to adapt itself to varying conditions[16].

Another set of definitions taken from anthropological studies is soft and hard deviance[17]. Concerned with studies on the micro level, anthropologists and historians accepted new perspectives in studying communities. The change occurred in the mid-1950s with the introduction of a distinction between social structure and micro-level social organization. The investigation focusing on the „exercise of choices by members of society"[18] replaced previous, elegant and very general social models, and could deal both with the stable elements of culture, and with those aspects that were unstable, changing, and often varied with the changing norms. Defining the level of the studied social entity could explain hard versus soft deviance. From my point of view, this terminology is important because it helps understand the response given to any manifestation of deviance. As people are (and were) capable of discriminating between those who simply fail to act according to the desired norms (i.e. soft deviance), and those whose behavior threatens the order in a community (i.e. hard deviance). Therefore it is useful to regard these notions as local variables.

In most parts of Hungary and Transylvania fornication or adultery, for example, was considered a serious crime and was punished by death. However, in some Protestant towns, where the social norms were different, it was punished by flogging, shaming or public penance. The same happened with the judging of theft. It makes a clear difference to deter people by cutting the thief's right hand or by executing him. Along with the changing of the social definition of deviance, it is obvious that the authorities' response to it is altered in concordance. It is not enough to enumerate the offenses against public rules and the reaction to them, for the better understanding of functioning of a community it is essential to view punishment as part of the everyday life and point out those specific features which make it indispensable in human life. Richard J. Evans focuses[19] on the central aims of the punitive pattern, such as deterrence and retribution, reintegration by ritual cleansing, and later the intention to reform the wrongdoer. These are very good explanations, which reveal the logic of punishment. Crime was regarded as an offense against values and normality, therefore it merited punishment. The more serious a crime was, the more severe the reaction to it. Proportionality gives answer to combined punishments: when hanging was not seen as a punishment enough for high or even petty treasons, the fate of those guilty of this offence was to be hung, drawn and quartered.

Unquestionably, the intention of the officials differed from the mob's perception of an execution, for example. If viewed with a modern eye, the early modern punitive system was something horrifying, very cruel[20] and mostly chaotic. Richard van Dülmen[21] uses the term „horror" to denote the harshness of the „theatre". Every execution was meant as a spectacle for the attending crowd, and according to Foucault, it was a demonstrative ostentation of power. And as such, it needed to be public. While the whole trial process was not conducted publicly, the punishment, even the smallest one, was placed into a public sphere. Nevertheless, attending an execution and enjoying its theatre-like performance, was a very specific element in preindustrial societies. Like every well-organized show, it had the most basic elements: procession with criminals marching through the densely populated streets of the town, the special place of the scaffold, which was placed either at the margins of the town or in the main square, a well known and feared person represented by the executioner, the criminal, the officials (both secular and religious), sometimes soldiers, and of course, spectators, the crowd. According to Dülmen, it was first of all an instance of public life, and secondly, an artificially constructed deterrence. Staging of the criminal, using the symbols of his crime, its gravity was made understandable for everybody, and people could define themselves, as being normal, against the criminal.[22]

Besides the changing judgement of the crime, there is another aspect which I call the economy of punishment. In trial documents found in the archives of Kolozsvár there were some procedures of clemency, or applications of a lesser punishment (floggings, beatings, fines), even when the crime merited a serious bodily punishment or banishment. These can be explained again with the role an individual plays in a small social unit: for maintaining the equilibrium of the community, it needs all its members to actively participate in its life. If the number of crimes committed were equal with the number of executions, it would have meant serious losses to the town.

The Principality of Transylvania during the course of the sixteenth century developed gradually, and the most influential facts were the Turkish alliance and the spread of Reformation. Unlike Hungary, affiliated to the Habsburgs, it was exposed to a number of foreign influences, witnessed commercial instability, inflation, and several devastations. Further, in the second half of the sixteenth century there were several plague epidemics and fires in Kolozsvár, which caused serious damage. And it is well known that royal towns severely limited the acceptance of new residents from the outside of the town. Another characteristic of the legal system was that executions could be redeemed right before they took place either by the expressive will of a citizen to marry the criminal[23], or after having made an agreement with the victim's family. All these factors contributed to the formation of a specific mentality, which was adapted to the local characteristics and needs.

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After the introduction of different terms, which help interpret punishments from below, from the perception of the members of the community, there is a clear need for understanding the mentality of the sixteenth century, which constituted the basis for moral judgements. As mentioned before, every indivi-dual in a community knows the rules, which govern the social entity, and put simply, it appears as a social contract: live by the rules and avoid causing problems, or break the rules and expect punishment. Focused on the governing moral rules in Kolozsvár in the second half of the sixteenth century the complex analysis of available sources can also reveal representations of lower classes and self-representation of the elite. A simple analysis of the laws (common law and customary law[24]) is not enough, because they were only abstractions created by the political elite of Transylvania. However, they can be helpful in comparison with the statutes of Kolozsvár, which transmit a closer adaptation of local demands. The dynamism of morals, and the actual picture of righteous behavior is best reflected in depositions of witnesses in trials. Rigid rules were not always respected, they were often broken, and in practice were applied more flexibly rather than mechanically.[25] Besides social practices of urban popu-lation, trial records can illuminate many other aspects of everyday-life history: family histories, neighborhood relations, material conditions, personal micro-universe, and life experience. The historian's interest is, obviously, different from that of the judges', our main aim is to learn about the conflicts which are detected behind the crime itself, and its appreciation by contemporary people. The careful reader of the depositions can gain a deep insight into the moral values of a community. Another aspect has to be taken into consideration: the great variety of crimes, like those in the jurisdiction of the Church, moral crimes and other infamous deeds. Therefore only the analysis of the punitive practice can give answers in the regard of how crimes were interpreted.

Modern perception implies a very strong institutional background behind any punitive system. Customary law was an oral tradition, without any enforcing institution, but with a strong influence upon judgements. It was first collected and published by István Werbőczy's *Tripartitum*[26] which contains the laws, customary laws and ordinances concerning mainly the nobility. Werbőczy's intention was to lay the ground for a judicial system based not on changing customs but on solid codes.

In addition, there is another aspect which is worth stressing when talking about morality and judging practices: shifts in mentality, and the acceptance of laws happened really slowly because cultural changes occur both within a life-cycle and within generation cycles, from parents to children and grandchildren. As Scribner argues „given that the period in which a person can be born, socialized, grow up, marry, procreate and transmit her or his values to the next generation as parent or grandparent is around fifty to sixty years, we should not be surprised to find that significant change may move in long waves of five to

six generation covering up to 150 years."[27] In this case we know that some elements of the customary law were abrogated in the eighteenth century[28] but some of them were still legally effective in the nineteenth century.[29]

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1 Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives* (New York; Westport, Connecticut; London: Bergin&Garvey, 1991).

2 The application into practice of anthropological methods by historians has a fairly long tradition with the school of Annales. Besides Scribner's article see Gérard Lenclud, „L'historien et l'anthropologue", *Annales,* 1998 (May-June): 695-714.

3 Bob Scribner, „Historical Anthropology of Early Modern Europe", in *Problems in the Historical Anthropology of Early Modern Europe*, eds. R. P. Po-Chia Hsia and R. W. Scribner (Harrassowitz Verlag: Wiesbaden, 1997), 11-34.

4 Peter Burke calls it the „grammar" of a culture, which is used by the members of a society, and upon which, the emitted signals of the users is comprehended by recipients. See *The historical anthropology of early modern Italy* (Cambridge: Cambridge University Press, 1987), 5.

5 Clifford Geertz, „Thick description", in *Interpretation of Cultures* (Basic Books, 1973), 3-33.

6 Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives*, 4.

7 Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives.* p. 5. In the introduction of his book, *The historical anthropology of early modern Italy,* Peter Burke emphasized the importance of the complementary use of quantitative and qualitative, microsocial and macrosocial approaches. Case-studies are needed to show how major trends affected the lives of individuals, while statistical analysis is required to show that the cases are really typical, and of what. 4.

8 Peter Burke, *The historical anthropology of early modern Italy*, 3.

9 Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives*, 6.

10 Peter Burke, *The historical anthropology of early modern Italy*, 6.

11 Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives,* 11.

12 See, for example, different works of Foucault, Elias, Oestrich as described in Norbert Finzsch, *Elias, Foucault, Oestreich,* in Finzsch and Jütte eds., *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America, 1500-1950,* 3-16.

13 One of the outcomes is Finzsch and Jütte eds., *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America, 1500-1950.*

14 Norbert Finzsch, *Elias, Foucault, Oestreich*, in Finzsch and Jütte eds., *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America, 1500-1950,* 3-16.

15 *Ibid*., p. 13. See also on Oestreich's concept as presented by Martin Dinges, „Foucault and German Historiography", in Finzsch and Jütte eds., *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America,* 161: discipline was first introduced into the army, the bureaucracy, and the priesthood, and then into the rest of the population.

16 Nachman Ben-Yehuda, *Deviance and Moral Boundaries* (Chicago and London: The University of Chicago Press, 1985).

17 Douglas Raybeck, „Hard versus soft deviance: anthropology and labeling theory", in Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives,* 51-73.

18 Raymond Firth's theory as quoted in Freilich, Raybeck and Savishinsky eds., *Deviance. Anthropological Perspectives*, 10.

19 Richard J. Evans, *Rituals of Retribution. Capital Punishment in Germany, 1600-1987* (Oxford: Oxford University Press, 1996).

20 See for example Ferenc Temesvári's qualification: inhuman perceptions, laws and executions (*igyekszünk átfogó képet adni a letűnt korok embertelen felfogásáról, törvényeiről és*

ítéletvégrehajtásairól), in *Büntető eszközök a régi Magyarországon* [Means of Punishment in Early Modern Hungary] (Szombathely: Savaria Múzeum, 1970), 3.

21 Richard van Dülmen, *A rettenet színháza. Ítélkezési gyakorlat és büntetőrituálék a kora újkorban. [Theatre of Horror]* (Budapest: Századvég Kiadó--Hajnal István Kör, 1990).

22 „Societies always view themselves in terms of the Other, a figure that is necessarily fictious in its discourse no matter what the objective reality is." Quotation taken from Jean-Claude Schmitt, „Religion, Folklore, and Society in the Medieval West", in *Debating the Middle Ages.*

23 András Kiss, "Halálból megmentett vőlegény", in *Források és értelmezések* [Sources and Interpretations] (Bukarest: Kriterion, 1994), 30-38.

24 The concept of crime within groups living under traditional conditions is different from that in the common law which is represented by the state. See Tárkány Szücs, „A népi jogszokások szankció-rendszere" [The Sanctions of Popular Legal Customs] *Separatum ex Ethnographia*, 1980 (3-4): 372-392.

25 See Peter Burke, *The historical anthropology of early modern Italy*, 6.

26 István Werbőczy, *Tripartitum opus juris consuetudinarii inclyti regni Hungariae, Nemes Magyarország szokásjogának hármaskönyve*. Transl. and ed. by Sándor Kolosvári and Kelemen Óvári (Budapest: Franklin Társulat, 1897).

27 Bob Scribner, „Reformation and Desacralisation: from Sacramental World to Moralised Universe", in *Problems in the Historical Anthropology of Early Modern Europe*, eds. R. Po-Chia Hsia and R. W. Scribner (Harrassowitz Verlag: Wiesbaden, 1997), 75-92.

28 Tárkány Szücs, *A népi jogszokások szankció-rendszere.*

29 Sándor Kolosvári and Kelemen Óvári, „Introduction" to Werbőczy, *Tripartitum, xi-xxxii.*

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