

The Exercise of Criminal Justice in Medieval Towns: A Comparison of English and Polish Jurisdiction

Submitted by **Katarzyna Wójcik**

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Abstract

The thesis offers a new vision of medieval criminal justice and for the first time identifies the significant common elements in the exercise of criminal law regulations in selected fourteenth-century towns in two contrasting countries in late medieval Europe, England and Poland. These elements include principles of cooperation and control between royal and local powers in the establishment and exercise of legal proceedings. These are also among the main determinants of the developing status and agency of medieval European urban communities including their executive powers. Through a comparative analysis of the local practice that comprised criminal justice in both nations' systems of law, this thesis marks new ground in the study of international features of criminal law proceedings in the period. It also contributes to a wider understanding of local mechanisms of control and the extent to which towns nevertheless relied upon the enforcement power of central royal authorities. Focusing on towns like Bristol, Exeter, Norwich, York, Wrocław and Kraków, this study explores the importance of local legal regulation in each town's development, their aspirations to control their own administrative and legal processes and the limits to their level of autonomy.

The thesis examines the individual stages of how local criminal law was exercised in towns of both countries, by demonstrating from various legal documents that formed parts of royal grants, privileges and charters, the roles of executive bodies directly involved in implementing local laws. The results reveal that despite political, territorial and monarchical differences that existed between the countries and their separate systems of law, there were certain common elements that arguably provide an international character for the application of local criminal justice. The thesis expands upon existing knowledge and scholarship about the essential role of corporal punishments in municipal legal proceedings, including how these were appropriate to each criminal and their specific crime. It also identifies a new approach towards the main factors affecting the active pursuit of criminal justice in England and Poland, especially their impact upon a general understanding of medieval European law enforcement procedures.

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Chapter 1. Introduction

During the fourteenth century, Europe underwent a period of accelerated urbanisation, and an increasing number of rural population centres evolved into towns and became important for local trade and production. As centres of trade and production, the towns attracted influxes of people from different parts of Europe, with the result that they also became centres of cultural and social life. These changes led to a growing need for well-defined regulations and laws to maintain the level of order required for the social and economic functioning of the towns. Specifically, the development of urban centres was inextricably linked with issues of central supervision of the regions and the extent of devolution of powers to the local level, dictated by the overriding need to maintain order, make sure local contracts and trade regulation were upheld, and reduce violence and crime. Law enforcement was thus a major concern for town authorities, which harnessed and developed various criminal justice processes to meet that purpose.

In the historical study of law it seems unquestionable that the development of state legal structures to enforce criminal justice was dependent on a partnership with the various jurisdictions that constituted the judicial system. Therefore, the creation of local, urban political-legal systems was maintained and enforced by appointed officials who worked within specifically defined town borders and systems of freedoms and rights. Such officials held responsibilities over various legal and administrative regulations, usually making decisions on behalf of the royal power, including the enforcement of particular law codes within the given area of their jurisdiction. However, criminal law procedure, one of the key criteria for developing systems of laws in medieval Europe, at that time was evolving separately and unequally, strongly based on the political situation in a given country, royal influences, local privileges and charters, which determined the status of the particular town as well as the scope of its legal powers. Significantly, despite the differences in the external arrangements and wider political structures that characterised royal supremacy within European states, the administration and executive function of criminal justice in towns evidenced some important similarities that need to be examined further.

The aim of this thesis is to investigate the creation and application of local criminal law in order to identify both the common and most distinctive elements of the judicature in the selected representative medieval towns of England and Poland.

The thesis argues that analysing the fourteenth century criminal law in towns provides evidence of major principles of justice and preservation of the peace and thus demonstrates criminal law's importance in the development of legal regulations and enforcement procedures exercised in my chosen towns. Furthermore, the comparative dimension reassesses the existing knowledge about the established hierarchy of local officials and the level of their dependence upon royal supervision and revises our understanding of methods used in applying criminal law and keeping the peace in towns of both countries.

The fourteenth century local systems of criminal justice in Eastern Europe have not been the central subjects of comparative research by legal historians. Apart from a number of publications about Anglo-Saxon England and detailed analysis of the Germanic legal systems,¹ none offers direct comparison with Polish examples. The thesis thus provides the first analysis of the local system of criminal justice in fourteenth-century English and Polish towns. In particular, this study will explore the key factors which had a major influence on the towns' legal development, which were not only the substance and framework of royal and local regulation but also the topography and architecture of the towns themselves, as well as their respective policies and practices of local authorities and their officials. The towns in this study were chosen because of their size, their representativeness and their legal importance as seen from an international perspective, in the complexity and effectiveness of the realisation of criminal justice procedures. Furthermore, while there are global similarities in the existence of control and supervision by royal authorities and the impact this had upon the general forms of the criminal law process, there are also some specific

¹ English legal history and the parallels with Germanic law and language can be examined in the work of Henry Maine and his *Ancient Law*, also Frederick Pollock and Frederic Maitland and *The History of English Law* and William Stubbs with *Constitutional History of England*. Additionally, more recent legal historians like James Campbell and Patrick Wormald provide examination of the Anglo-Saxon state before the twelfth century with some analysis of the political, economic and religious impact of their presence in Britain. See further J. Campbell, E. John and P. Wormald, *The Anglo-Saxons*, London, Penguin Group, 1991. Also, the development of Germanic socio-politics in early medieval England is found in P. Wormald, 'Germanic Power Structures: The Early English Experience', in L. Scales and O. Zimmer (eds), *Power and the Nation in European History*, Cambridge, Cambridge University Press, 2005, pp. 105-124.

differences between countries and between the selected towns themselves. An additional complicating anomaly, but one of great interest, lies in the fact that thirteenth-century England continued to experience the influence of Anglo-Saxon customary practices on its legal proceedings.² As a result, there were some procedures of medieval criminal law evidenced in both Western and Eastern European towns which, because of their common antecedents, developed along similar yet slightly different lines and so constitute an important point of comparison within this thesis project.

After the numerous and bloody internecine conflicts between the Polish dukes during the twelfth century, as well as the devastating Tatar attacks in the thirteenth century, Poland had become a desolate area with a much-reduced population by the end of the thirteenth century. The bad economic situation which ensued was caused both by a lack of workers on the land and also craftsmen and merchants, the latter of whom feared to bring their goods and services to the country due to the dangers associated with travel there and the uncertain situations in the areas affected by fighting. Due to problems with settlement in towns, Poland began to colonize its lands with an immigrant population, mostly Germans who came from Western and Southern Europe to start building new towns or rebuilding those that already existed with new defences and new German legal regulation.³ At the same time in England, the twelfth century process of adapting the common law as a new instrument of the royal authority of the Anglo-Norman kings, established the new system as being not entirely divorced from the Anglo-Saxon traditions and continuing to respect the ancient principles and local customs.⁴ What is more, the driving force of the wave of 'new town' foundations since the thirteenth century, had to respond to various political and armed conflicts⁵ and their impact on towns' general development and population growth, which significantly decreased during wars. Additionally, the

² For example, in the form of the outlaw status as well as the ordinary organisation of the Anglo-Saxon courts of public justice. More about the Anglo-Saxon period in A.H.F. Lefroy, 'The Anglo-Saxon Period of English Law', *Yale Law Journal*, vol.26, issue 4, 1917, pp. 291-303.

³ J.M. Piskorski (ed.), *Historiographical Approaches to Medieval Colonization of East Central Europe: A Comparative Analysis Against the Background of Other European Inter-ethnic Colonization Processes in the Middle Ages*, New York, East European Monograph, 2002.

⁴ N. Vincent, 'Law before Magna Carta: The Anglo-Saxon Law Codes and Their Successors before 1215', in N. Vincent, *Magna Carta: The Foundation of Freedom 1215-2015*, London, Third Millennium Publishing Ltd, 2015, pp. 19-35.

⁵ For example, armed conflicts with Scotland in the thirteenth and fourteenth century, also opening of the Hundred Years' War with France in 1337.

Black Death had a consequence on mortality rates in Central and Western Europe including England,⁶ causing a noticeable decrease in population as well as an economic downturn in the biggest towns like Bristol, Norwich, and York during the fourteenth century. The significant changes in the administrative and legal organisation of English towns at that time came as a result of the growing autonomy of these structures. Royal judicial authority in towns gradually became manifest not only through direct application of the law but also through regular transfer of powers to local officials and their courts, which empowered them to hear cases and increased their legal autonomy.

The thesis investigates the authority by which criminal law could be imposed on subordinate territories, by referring to the surviving royal documents which began this process. The research also examines the principles of cooperation between royal administration and local civic officials, which ultimately led to powers being transferred from the former to the latter. Each chapter compares how legal powers in criminal justice proceedings were exercised locally in both countries. In doing so, the study provides evidence of what similarities and differences occurred in the transmission of local criminal law in England and Poland. An important element in the research analysis was to indicate who was responsible for the local regulations in towns, what kind of authorities were appointed to determine and execute judgments, and the scope of their duties and responsibilities towards citizens, as well as in relation to the supervision of the localities by central authorities. Following this approach, the study identifies the hierarchical model between the local offices, including the method and extent of the transfer of legal powers to the local level and the terms of reference used for criminal justice in each country. Additionally, it also evidences forms of integration in the criminal justice system in the studied English and Polish towns with reference to their effectiveness and autonomy aspirations, determined in this thesis as the leading criterion for the fourteenth century development process in European urban areas.

⁶ In the fourteenth century, the Black Death generally did not affect the Polish lands. See discussion about the Black Death in Europe in C. Platt, *King Death: The Black Death and Its Aftermath in Late-Medieval England*, London, Routledge, 1997.

1.1 The aims of the research

There are currently no modern studies which provide a comparison of legal developments in medieval English and Polish towns. The first, and so far the most important source of theoretical background research in this area, was dedicated to the comparisons between the early origin of the English system of law and Germanic legal proceedings, developed by the pioneers in the field, namely German legal historian Heinrich Brunner and English legal historian Frederic Maitland. Both of the authors focused on the unique international studies of the evolution of legal doctrines, with Brunner in his article 'Pollock and Maitland's History of English Law',⁷ underlining the historical relationship between the Anglo-Saxon tradition and the Germanic organisation of royal proceedings. This was influential for my study in terms of the questions and arguments directed towards both fourteenth-century systems of law. Certain aspects of Germanic legal history, represented by the work of Brunner, are evident in the concepts of Maitland, who in *The History of English Law*, emphasized that medieval English law before the Norman Conquest was derived primarily from Germanic sources and believed that before the Conquest, English law was mainly 'pure Germanic'.⁸ The English nineteenth-century work of Henry Maine and his *Ancient Law*,⁹ which often includes references to German scholars like Maurer, Nasse and Sohm declares that the Roman law 'influenced the stubborn body of Germanic custom prevailing in Great Britain',¹⁰ also contributed to my general analysis of the legal sources and seemed to need to be investigated further.

Consequently, this thesis investigates whether there was a common international model behind the application of local criminal justice in towns performed by specifically appointed officials in England and Poland, in spite of the existence of territorial, political and royal distinctions between the two countries. In addition, the comparative analysis of the main legal concepts that modelled municipal justice in the fourteenth century urban areas considered in this thesis will highlight the continuities in the origins of English law through the examination of its

⁷ H. Brunner, 'Pollock and Maitland's History of English Law', *Political Science Quarterly*, vol.11, no. 3, 1896, pp. 534-544.

⁸ D.M. Rabban, *Law's History: American Legal Thought and the Transatlantic Turn to History*, Cambridge, Cambridge University Press, 2014, p. 397.

⁹ H.S. Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas*, London, Spottiswoode and Co., 1876.

¹⁰ Rabban, *Law's History*, p. 397.

individual development and its apparent contrasts with the Germanic legal systems applied in Polish towns from that period.

Therefore, I will identify for the first time the extensive role of the fourteenth century criminal justice in the proceedings of local jurisdiction in both England and Poland, where the judicial powers of the privileged towns were gradually modified through their legal development and self-government aspirations supplemented by the granted liberties and local charters.

The thesis is directed and underpinned by the research questions set out in the individual chapters of this study. It will evidence how the systems of law functioned in administering criminal justice in Exeter, Bristol, York, Norwich, Wrocław and Kraków within their desire for urban autonomy and in relation to key features of the nascent legal systems.

In undertaking this research, the thesis evaluates the characteristics of legal administrative practices in selected English and Polish urban areas and sheds new light on the nature of criminal law in these regions and in particular the forms of German Law transplanted and applied in certain Polish towns. Furthermore, this thesis emphasises the importance of relations between the royal authority and localities in regard to the development of their criminal justice procedures and contributes a fresh understanding of the international and complex character of medieval legal jurisdiction.

1.2 Structure of the thesis

Chapter 2 addresses the key developments in the evolution of medieval towns in England and Poland and the creation of municipal centres (along established trade routes) as economic, political and administrative units. By analysing the local development of legal structures, the research determines whether there was a model for the creation of towns in those two countries in terms of organization and procedure of the legal structures responsible for judicial matters. The analysis investigates documentary evidence of royal grants, privileges and orders in both countries, and examines the authority of executive bodies (e.g. specific commissions) and the local roles of officials directly involved in implementing laws. The chapter reviews the topography of English and Polish towns and explores in what way the proposed model of legally-significant topography, which

was seen in England, also applied to medieval Polish towns and how it reflected their desire for autonomy in terms of the exercise of local law. It also asks how economic and administrative development of the selected towns was commonly connected to the interests of the Crown, as represented by grants and privileges, which gave towns decision-making powers over local laws.

Chapter 3 identifies and shows the relevance of the procedures that characterised the local criminal law according to the preventive and responsive systems of each country, namely the use of outlaw status, the 'hue and cry' process, and the regulation of designated sanctuaries. The research investigates local crime statistics and provides comparative material to illustrate the similarities and differences between the English and Polish municipal courts and their role in the repression of crime. The impact that the granted liberties and local privileges had on the national status of the abovementioned systems and their legal consequences in the selected towns is evidenced through examination of their directives towards keeping the peace and order and the punishment of offenders from the area.

Chapter 4 considers the creation and appointment of the local authorities directly involved in municipal criminal regulation, particularly the supervisory and executive structures. Furthermore, it will explore the significance of the Polish municipal structures based on the German law with the responsibility for supervising and making self-governed decisions. The research defines and compares the duties of municipal offices and the distribution of powers between the sheriffs, coroners and *woźny sądowy*, all responsible for putting local criminal law into practice. It will also reveal the active role of the local police bodies in the law enforcement procedures by analysing their duties to maintain public safety by patrolling urban streets, as well as the comparative relations between these groups of men in the towns of both countries.

Chapter 5 looks at the principles behind the operation and control of municipal prisons in English and Polish towns. With close reference to the topography of towns identified in Chapter 2, this chapter discusses in more detail the kinds of buildings that functioned as prisons, their locations and the regulations that were used in such places to isolate and control prisoners. The chapter also investigates the size of prisons in relation to their local populations, as well as categorising the types of crimes and social status of prisoners. Similarities between the two

administrative systems are identified. Additionally, the church prisons in both countries, officially excluded from municipal law but forming a key part of the local legal regulation, will be used to mark the comparative size of those towns' criminal populations, and thus determine the boundaries of the criminal judicature and control function performed by the local authorities.¹¹

Chapter 6 focuses on the judicial verdicts of municipal courts in England and Poland, including the position of local officials responsible for the enforcement of sentences. The importance of sentences handed down by English and Polish municipal courts is identified by contrasting the nature of urban legal autonomy and the fundamental role of central royal justice in each system. Further, the chapter argues that it is possible to determine a common method of the enforcement procedure through the role of executioner, a key figure in local criminal law proceedings in both countries. In addition, by analysing the elements of the towns' architecture that were integral to this process and developed as a practical consequence of the urban liberties and privileges, namely pillories and gallows, I will indicate the apparent similarities in the legal purposes of the visual structures based on the respective rights of jurisdiction of the selected urban areas.

Research conducted for this study has been greatly helped by a number of institutions in both countries preserving archival documents and a significant quantity of legal and non-legal (especially visual) sources.¹² Methodologically, the first stage involved collection of the source literature; the second, analysis and selection of the most suitable sources from the perspective of this thesis. Having pre-selected the archival sources, a chronological method of data collection was chosen. The choice was affected by the lack of sufficiently detailed catalogues of the contents of certain archives (in Poland) and the availability of manuscript material or printed sources of the legal records. Due to the value and condition of surviving documents, some required special permission to be accessed, and

¹¹ For example, the case of Exeter and the jurisdictional dispute with the cathedral authorities in L. Attreed, 'Arbitration and the Growth of Urban Liberties in Late Medieval England', *Journal of British Studies*, vol.31, no. 3, 1992, pp. 205-235. Also, H. Carrel, 'Disputing Legal Privilege: Civic Relations with the Church in Late Medieval England', *Journal of Medieval History*, vol.35, 2009, pp.279-296. See below, Chapter 5, pp. 224-228.

¹² For example, English institutions like Devon Record Office, Exeter Cathedral Library and Archives, Bristol Archives, also Polish National Archives in Wrocław and National Archives in Kraków.

because of the different languages in which the documents were issued at that time, specifically medieval Polish, German, Latin and Anglo-Norman French, I have proceeded with personal translations of primary sources that were used for both countries.

David Palliser, in his collection of articles, provides a crucial discussion about the social, legal and economic status of medieval English towns and their autonomous aspirations. His article 'Town Defences in Medieval England and Wales', examining how the topography of defensive elements within towns determined an important part of medieval urban space, supplements my research in Chapter 2.¹³ I build upon this essay a comparative analysis of the legal regulation that constituted the topographical development of the selected local areas in England and Poland. Furthermore, in the essay 'Towns and the English State, 1066-1500',¹⁴ Palliser underlines the importance of royal control of municipal aspirations to autonomy and demonstrates the key role that the Crown had in the political and financial positions of English medieval urban communities. Additionally, Christian Liddy's work on the relationship between major English towns (like York and Bristol) and the Crown, provided an important perspective for my own research analysis, especially in terms of towns' legal identities and their individual status of development, a significant stage for negotiations with the royal government.¹⁵

In order to analyse fourteenth-century towns' crime statistics and forms of punishment practised by the English local authorities which determined my research for the third and sixth Chapters, apart from primary sources like the records of the mayors' courts, patent rolls, close rolls, leet rolls, early chancery proceedings and coroners' rolls, I used the findings of Kowaleski,¹⁶ Kimball and Harding, who focused on the work of different English commissions and law

¹³ D.M. Palliser, 'Town Defences in Medieval England and Wales', in A. Ayton and J.L. Price (eds), *The Medieval Military Revolution: State, Society and Military Change in Medieval and Early Modern Europe*, London, I.B. Tauris, 1995, pp. 105-120.

¹⁴ D.M. Palliser, 'Towns and the English State, 1066-1500', in J.R. Maddicott and D.M. Palliser (eds), *The Medieval State: Essays presented to James Campbell*, London, Hambledon Press, 2000, pp. 127-145.; S.R. Jones and D.M. Palliser, 'York 1272-1536', in P. Addyman (ed.), *The British Historic Towns Atlas*, vol.5: York, Oxford, the Historic Towns Trust and the York Archaeological Trust, 2015, pp. 37-48.

¹⁵ C.D. Liddy, *War, Politics and Finance in Late Medieval English Towns: Bristol, York and The Crown, 1350-1400*, London, The Royal Historical Society, 2005.

¹⁶ M. Kowaleski, *Local Markets and Regional Trade in Medieval Exeter*, Cambridge, Cambridge University Press, 1995.

courts.¹⁷ I also examined Putnam's discussion of the application of local law through commissions with the court statistics of selected counties and recorded forms of fourteenth-century verdicts that can be found in the research of Putnam¹⁸ and Hanawalt.¹⁹ However, as Anthony Musson shows in his reassessment of the Putnam thesis,²⁰ there are some serious shortcomings in the given analysis, including the limitation of the chronology, incomplete examination of the personnel of commissions and general lack of a wider judicial context.

The nature of the visual aspects of legal proceedings and their impact on medieval justice in towns became a significant element in my research for the fifth Chapter and required examination of the urban environments. This encompassed sanctuaries and the borders of their legal autonomy, the process of imprisonment within existing prison structures, as well as the gallows and pillories that were used to execute royal directives of keeping peace and order in different municipal areas of the kingdom. The study was supported in this aspect by Ralph Pugh's *Imprisonment in Medieval England*, with Christine Winter's arguments about the urban prisons and their punitive as well as custodial purpose in 'Prisons and Punishments in Late Medieval London'.²¹ Additionally, Henry Summerson's article about the existence of medieval criminal groups in 'The Criminal Underworld of Medieval England', with examination of judicial punishments in 'Attitudes to Capital Punishment in England, 1200-1350', provided a further reference for my investigation of the enforcement procedures of criminal law.²² In addition, contributions to this research area by Basset, Shoemaker, and Geltner, were significant foundations for my own research.²³ In

¹⁷ E.G. Kimball, 'Commissions of the Peace for Urban Jurisdictions in England, 1327-1485', *Proceedings of the American Philosophical Society*, vol.121, no. 6, 1977, pp. 448-475.; A. Harding, 'The Law Courts of Medieval England', *Speculum*, vol.50, no. 4, 1975, pp. 728-730.

¹⁸ B. Putnam, *Proceedings Before the Justices of the Peace in the Fourteenth and Fifteenth Centuries*, London, Spottiswoode, Ballantyne and Co.,1938.

¹⁹ B.A. Hanawalt, *Crime and Conflict in English Communities, 1300-1348*, Cambridge, Mass., Harvard University Press, 1979.

²⁰ A. Musson, *Public Order and Law Enforcement: The Local Administration of Criminal Justice, 1294-1350*, Woodbridge, The Boydell Press, 1996, pp. 11-14.

²¹ C. Winter, 'Prisons and Punishments in Late Medieval London', unpublished PhD thesis, University of London, 2012.

²² R.B. Pugh, *Imprisonment in Medieval England*, Cambridge, Cambridge University Press, 1968.; H. Summerson, 'Attitudes to Capital Punishment in England, 1200-1350', in M. Prestwich, R. Britnell and R. Frame (eds), *Thirteenth Century England VIII: Proceedings of the Durham Conference 1999*, Woodbridge, The Boydell Press, 2001, pp. 123-133.; H. Summerson, 'The Criminal Underworld of Medieval England', *The Journal of Legal History*, vol.17, no. 3, 1996, pp. 197-224.

²³ M. Bassett, 'Newgate Prison in the Middle Ages', *Speculum*, vol.18, 1943, pp. 233-246.; K.

these publications, the authors not only refer to visible municipal structures where the exercise of criminal justice occurred, they also illustrate the process of criminal justice from a general perspective according to fourteenth-century royal procedures.

With reference to the research about Polish medieval criminal justice, one of the major sources for this thesis was the work of the nineteenth century Polish historian and lawyer Romuald Hube, who in his work *Polish Law in the Thirteenth Century*²⁴ analysed the main principles of medieval Polish and German judicial systems. Hube examined how both system of laws worked in practice in different areas and made some commentaries on thirteenth- and fourteenth-century applications of local law. A further analysis of the medieval judicial process was the work of a lawyer and legal historian Prof. Witold Maisel. In his *The Legal Archaeology of Poland*, he focused mainly on the sixteenth century municipal objects and places used in legal proceedings, with limited coverage of earlier, fourteenth-century jurisdiction. Despite omitting the importance of enforcement procedures in the municipal courts based on German law, the publication formed a foundation for my analysis of visual legal symbols in the sixth Chapter of this thesis.²⁵ A significant contribution to my research about distinguishing the legal relation between medieval Polish and German regulations is *Urbanity, or the Magnitude of German Law in Poland* by Prof. Zygfryd Rymaszewski.²⁶ This research work investigated medieval sources of German law and Polish courts, providing a valuable commentary and discussion about the position of the local town clerks (whom he described as 'process-servers').²⁷ Rymaszewski's work

Shoemaker, *Sanctuary and Crime in the Middle Ages, 400-1500*, New York, Fordham University Press, 2011.; G. Geltner, *The Medieval Prison: A Social History*, Oxford, Princeton University Press, 2008.

²⁴ R. Hube, *Prawo Polskie w Wieku Trzynastym [Polish Law in The Thirteenth Century]*, Warszawa, M. Arcta, 1905.; *Statuty Ziemi Krakowskiej [Statutes of the Land of Kraków]*, Warszawa, M. Arcta, 1905.; *Wiadomość o Sądach Bożych czyli Ordaliach w Dawnej Polsce [Trial by Ordeal in Old Poland]*, Warszawa, M. Arcta, 1905.; *Prawo Polskie w Czternastym Wieku. Ustawodawstwo Kazimierza Wielkiego [Polish Law in the Fourteenth Century. Kazimierz Wielki's Legislature]*, Warszawa, Redakcja Biblioteki Umiejętności Prawnych, 1881.

²⁵ M. Maisel, *Archeologia Prawna Polski [The Legal Archaeology of Poland]*, Warszawa, Wydawnictwo PWN, 1982.; *Sądownictwo Miasta Poznania do końca XVI wieku [The Judiciary of the Town of Poznań to the end of the Sixteenth Century]*, Poznań, PTH, 1961.; *Przywileje Miasta Poznania XIII-XVIII wieku [The Privileges of the Town of Poznań from the Thirteenth to the Eighteenth Century]*, Poznań, PTPN, 1994.

²⁶ Z. Rymaszewski, *Miejskość czy Wielkość Prawa Niemieckiego w Polsce [Urbanity, or the Magnitude of German Law in Poland]*, Zeszyty Naukowe Uniwersytetu Łódzkiego, ser. I, 69, 1970, pp. 65-87.

²⁷ Z. Rymaszewski, *Woźny Sądowy. Z Badań nad Organizacją Sądów Prawa Polskiego w*

also included the so-called 'Latin texts of Zwierciadlo Saskie',²⁸ with translated texts and commentaries that inspired my analysis about regulation of the judicature system with similarities and differences between local Polish laws and the German model of legal proceedings (see Chapter 2).

To demonstrate successfully a common model of criminal law practised in certain towns in Poland, a comparative analysis of the necessary legal documents was made. Potential material was identified from texts referenced by a number of authors. This included personal translations of the original documents such as charters, privileges and royal orders,²⁹ with additional work of the authors like Urszulak, Mikula, Karabowicz, Żerelik and Wyrozumska.³⁰ A successful attempt to collect, classify and translate medieval legal documents³¹ from the Silesian area was achieved by Roman Stelmach, a member of the Wrocław department of the National Archives. His *Catalogue of the Medieval Documents Kept in the National Archives in Wrocław* supplemented my research aims by providing a number of translated legal documents about the criminal law proceedings in Silesian towns including Wrocław, which remained under a strong influence of German law.³²

The publications that provided the main background for my research project and provoked further questions about the evolution of local criminal justice were supplemented by work of nineteenth-century German authors, including Nicolaus Pohl's yearbook of Wrocław, *Jahrbücher der Stadt Breslau. Zum erstenmale aus dessen eigener Handschrift herausgegeben*.³³ The comparative analysis of criminals and their crimes also required the use of Silesian archives of local

Średniowieczu [The Woźny Sądowy. The Research about Polish Law in Medieval Courts], Warszawa, WAIp, 2008.

²⁸ Zwierciadlo saskie-The Sachsenspiegel: The collection of thirteenth-century German local law was a model for the criminal jurisdiction in the main fourteenth-century Polish and German towns.

²⁹ Translations of fourteenth- and fifteenth-century documents, mostly Latin and German texts and manuscripts.

³⁰ W. Uruszczak, M. Mikula and A. Karabowicz (eds), *Księga Kryminalna Miasta Krakowa 1554-1625 [The Criminal Book of Kraków, 1554-1625]*, Kraków, Wydawnictwo Uniwersytetu Jagiellońskiego, 2013.; B. Wyrozumska, *Księga Proskrypcji i Skarg Miasta Krakowa [The Book of Proscription and Complaints from Kraków]*, Kraków, Towarzystwo Miłośników Historii i Zabytków Krakowa, 2001.

³¹ Mostly in the form of the duke's orders, privileges and other local documents from the period of 993-1500.

³² R. Stelmach, *Katalog Średniowiecznych Dokumentów Przechowywanych w Archiwum Państwowym we Wrocławiu [A Catalogue of the Medieval Documents Kept in the National Archives in Wrocław]*, Wrocław, WAW, 2014.

³³ N. Pohl, *Die Jahrbücher der Stadt Breslau*, vol.1, Breslau, Grass und Barth, 1813.

punishment procedures that were published by Michael Morgenbesser and Karl Menzel in the *Geschichte Schlesiens: Ein Handbuch*.³⁴ Selected municipal crime statistics from the fourteenth to sixteenth centuries have been examined in the volume by FrauenStadt, *Breslaus Strafrechtspflege im 14. Bis 16. Jahrhundert: Ein Beitrag zur Geschichte des Strafrechts*.³⁵ Further contributions to the research subject from the archaeological and topographical approach were presented in selected modern works by Goliński, Trzciński, Grabarczyk and Kamler.³⁶ Although the authors' research lacked direct indication of legal and administrative proceedings of the medieval urban areas, they have made important suggestions about the creation and development of the legal structures used in the enforcement procedures of selected towns.

The scarcity of archival documentation about certain local civic officials directly involved in the enforcement of judgments in Poland before 1600 meant my research focussed on three main sources. One set of sources encompassed fifteenth-century account books from the selected towns, which show how much money the towns spent building and repairing judicial punishment structures (the gallows and pillories) used in the execution of local law. Another type of source I used was the special 'criminal books' kept by town clerks, which were compiled by larger towns and recorded criminal activities in their local areas. These criminal books, also called the *black books*, contain information about those accused of crimes and the different kinds of punishments meted out to criminals; hence they are important sources of knowledge about the punishment and execution work performed at that time. The surviving court books cover the Małopolska area (including Kraków town), with the earliest dating to before 1360. In contrast, there are no existing court books referring to criminal offences in Wrocław before 1449, so the research of that area is instead limited to municipal documents issued in

³⁴ M. Morgenbesser and K. A. Menzel, *Geschichte Schlesiens: Ein Handbuch*, Breslau, Josef Max und Romp, 1833.

³⁵ P. FrauenStadt, *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert: Ein Beitrag zur Geschichte des Strafrechts*, Zeitschrift für die Gesamte Strafrechtswissenschaft, vol.19, 1890.

³⁶ Apart from the work of W. Maisel and M. Goliński mentioned earlier, the sources include M. Trzciński, *Miecz Katowski, Pregierz, Szubienica. Zabytki Jurysdykcji Karnej na Dolnym Śląsku XIII-XVIII w. [The Executioner's Sword, Gallows and Pillory. The Monuments of Criminal Judicature in Lower Silesia from the Thirteenth to Eighteenth Century]*, Wrocław, Centrum Badań Śląskoznawczych i Bohemistycznych Uniwersytetu Wrocławskiego, 2001.; T. Grabarczyk, *Na Gardle Karanie. Kara Śmierci w Średniowiecznej Polsce [A Hanging Matter: Capital Punishment in Medieval Poland]*, Warszawa, DiG, 2008.; M. Kamler, *Złoczyńcy [The Villains]*, Warszawa, Neriton IHPAN, 2010.

the fourteenth century.³⁷ One of the important methodological consequences of these studies was the growing realization that methods of traditional legal history are not sufficient for the analysis of the international executive function of local justice. As a consequence, the third type of source, which supplements my investigations about the application of sentences in the selected medieval Polish and English towns, was archaeological and topographical in nature. It includes known fourteenth-century locations and kinds of gallows and pillories built in the towns, as shown by archives and maps and confirmed by the result of archaeological research.

The English sources concerning local officials and their direct involvement in towns' execution procedures were also narrowed by the availability of the archival records and other documents. According to my research, apart from various 'delegations' of duties to the local officers involved in the enforcement procedures, there is no indication about the individual office of executioner used as a part of the criminal justice proceedings in fourteenth-century selected towns. The data I have compiled was located mainly in the municipal documents as well as the local court proceedings which include confirmed examples of punishment imposed on the local crime and criminals from this period. These also regulated the social status of people who undertook the work of executioner.³⁸

1.3 The selection of towns for this study

As a result of some fundamental procedures of medieval criminal law that appeared in Western and Eastern European towns with the influence of Germanic legal sources from the Anglo-Saxon period and, the adoption of German law by thirteenth-century divided Polish urban areas, the selected English and Polish towns constituted a major point of comparison within this thesis project. Furthermore, the investigation of municipal systems of criminal justice in both countries, with the purpose of evidencing some important similarities in making and maintaining local law, was supplemented by the additional selection of English and Polish urban areas based on their territorial, economic and political

³⁷ The list of documents Wrocław issued at that time can be found in the National Archive-Wrocław department.

³⁸ For more about executioners and their work, see below, Chapter 6, pp. 248-262. Also, on the medieval selection of marginal crafts including executioners see Summerson, 'The Criminal Underworld of Medieval England', p. 200.

development.

In both countries in the fourteenth century, only the larger and economically substantial urban centres were able to gain the king's favour and ensuing benefits such as administrative and legal privileges that enabled the transfer of legal powers locally. The process of creating and adapting criminal justice at a local level began as towns acquired enough independence to establish their own municipal legal systems. Towns with developed legal and organisational apparatus that evidenced this process were therefore essential for this study.³⁹ However, the biggest and most influential urban areas like London and Magdeburg were excluded from detailed analysis mainly because of their leading role and special relation with the Crown, which often resulted in legislation and a power of negotiation that were different from other towns, with additional privileges and liberties.⁴⁰ Significantly, the selected English and Polish towns' aspirations for independence were manifest through granted privileges and charters, which allowed for legal, economic and social expansion. Additionally, they provide examples of how urban development of these towns was commonly connected with the growth of legal administrative systems which relied upon appointed officials and their legal powers to hear, determine and carry out the selected cases from the criminal law area, thus showing the degree of cooperation between organisation of these towns and their relation with the royal government.

Population growth was another important element in the development of towns that can be connected to increased legal controls⁴¹ made by specially appointed officials, according to royal regulations. The analysis of fifteenth- and sixteenth-century maps of the English and Polish towns relevant to this study helped me to

³⁹ In the English example, a lot depended on whether they were incorporated and had a mayor and aldermen with a hierarchy of legal and administrative officials. Later, too, whether they acquired county status (e.g. York, Bristol). Additionally, the existence of a Cathedral or Abbey also provided status and privileges for the town. In Polish urban areas, the foundation on German Law and later incorporation of Magdeburg legal proceedings were essential for the legal and administrative development of these towns including being a model in terms of organisational and judicial processes for less developed neighbouring towns.

⁴⁰ Fourteenth-century London was a major royal creditor and there was a significant role of London in national politics and trade placing the city as the largest and wealthiest in the country. In comparison, the organisation of Magdeburg town largely influenced the establishment of the municipal and legal proceedings for the major thirteenth-century Polish towns like Wrocław and Kraków.

⁴¹ See for example, the second chapter and the towns' local trade and manufacture were one of the forms of the application of criminal law.

gain some idea of the average size and location of each case study town. In England, the towns I have selected were among the ten most populated in the country. However, the Black Death that afflicted fourteenth-century Europe resulted in a significant population decrease in many English towns. For the research analysis, I have focused on population numbers before and after 1348-1350. Thus, by 1377, Exeter, with a population of 2,340, had become the twenty-fifth largest town. After London, York had the second largest population (10,872), Bristol the third (9,518), and Norwich the fifth largest (5,928).⁴² In contrast to England, the epidemic generally did not affect Polish lands. With just a few exceptions, the Polish towns selected for this study did not experience great changes in population. In 1357, Wrocław had c.10,000 citizens,⁴³ and Kraków had c.11,000 citizens. In terms of their development, population and benefits they enjoyed in the forms of privileges and grants, these towns were heavily reliant on their locations. My research shows that the most highly developed and populated fourteenth-century towns in both England and Poland were commonly located close to rivers as an important element for transportation of people and goods. This topographical feature allowed for the further development of prosperous towns and their ports that were crucial to the development of local trade, business and local legal regulation.

It is important to note that the selected towns covered by this research also acted as models in terms of how their development was stimulated through privileges and grants made by royal decree. The process of development thus spread outwards towards smaller neighbouring towns, which adopted the principles of local law and customs exemplified by their larger neighbours.

The research evidenced the rule of uniformity of local laws between Polish towns; for example, Wrocław provided a model for smaller Silesian towns, including Legnica, Nysa and Świdnica. This included models for administrative and legal

⁴² The population numbers from 1377, after the Black Death and major decrease in population in Europe. Before the disease, the population of towns in England was similar to numbers in Polish towns. For example, the population of Norwich in 1311 was around 15,000. C. Rawcliffe and R. Wilson (eds), *Medieval Norwich*, London, Hambledon, 2004, p. 158. Similarly, York and around 13,000 citizens before 1349. The 1377 population numbers found in J.C. Russell, *British Medieval Population*, Albuquerque, University of New Mexico Press, 1948, p. 142. Also, A. Dyer, *Decline and Growth in English Towns, 1400-1640*, Cambridge, Cambridge University Press, 1995.

⁴³ Based on the *'Die Entwicklung von Breslau seine Eingemeindungen und Einwohnerzahlen'* of Heinrich Knipping's 1934 topographical map of medieval Wrocław. For more about Wrocław's maps of Knipping, see AP Wrocław, *Rejencja Wrocławska*, sygn. 16321, pag. 15, 21.

issues, including criminal justice and the application of local privileges through the creation of the uniform law known as the Silesia *Landrecht*. This local, fourteenth-century version spread to smaller Silesian towns and confirmed Wrocław's legal domination of the area. Kraków also provided a model for nearby towns, using German legal proceedings and regulation that was practised through their town councils. In such cases, the smaller towns usually received not only models of customary law but also possibilities for appealing to bigger towns where disputes arose. Some English towns also demonstrated a similar model for nearby settlements in terms of receiving and giving privileges. The example of that practice was found in London customals that were copied in Lincoln, which adopted *Liber Albus* to its own requirements. The similar practice was seen in other towns like fifteenth-century Fordwich, which copied the customal from Sandwich.⁴⁴ The fourteenth century Waterford customals were a copy of the Dublin customals. Also the customs of Winchelsea closely resemble those of Hastings.⁴⁵ The set of the local customs found in Borough Customs, the medieval customary law for English towns, record the legal proceedings being regularly practised in urban areas from that period.

1.4 The chronological selection of the research material

This study covers the period from the thirteenth to the first half of the fifteenth century, with the central focus being the fourteenth century. The thirteenth century saw the creation of many towns by way of foundation charters, as well as the administrative structures and other forms of organisation. These included municipal fixtures such as fortifications and civil buildings like the town halls that formed the seats of municipal authorities. Thus, the earliest forms of local regulation of the general application of the law in the thirteenth century were strongly based on the granting of royal privileges and statutory documents to towns.

The fourteenth century witnessed even more development of towns, with influxes of alien migrants from different areas of Europe,⁴⁶ increasing trade, and ever

⁴⁴ M. Bateson (ed.), *Borough Customs*, vol.2, London, Bernard Quaritch, 1904, p. xxvii.

⁴⁵ *Ibid.*, p. lv.

⁴⁶ People moved around in medieval Europe mostly because of poor conditions in their natal lands caused by the wars, plagues and other diseases or better opportunities elsewhere. According to Mark Ormrod's research, between 1300-1550, England was a temporarily or permanent home to hundreds of thousands of people of foreign birth including French, Dutch and those from Baltic

greater legal and administrative aspirations. This was also a time for towns to develop their independence aspirations from the royal control. Many important legal documents giving English and Polish towns some freedom to expand their local laws were issued at that time.⁴⁷ This growing independence was visible through the work of different commissions and offices set up to be responsible for local criminal law in towns, and thus represent examples of royal cooperation with the transference of judicial powers to local authorities as part of the developmental process. The particular status of towns around this time was also affected by economic downturns that resulted from periods of famine, disease or armed conflicts. A limitation to this thesis, however, concerned a comparative analysis of fourteenth-century population statistics in the selected urban areas of both countries after the Black Death and partial or complete loss of statistics during that period. Additionally, my research into criminal justice in Polish towns experienced some source limitation according to the number of criminals and crimes committed in the local area. For example, there is a lack of available manuscript archives about the criminal activity of Wrocław residents before 1449.⁴⁸ Because of the existence of diversified statistics from that period, the comparative analysis about the size and number of prisons according to number of citizens, also the towns' criminal activities, required some generalisation and reference to the specific periods of time, that is, after 1350 with examples of crime statistics from the end of the fifteenth century as well. The borders of towns were not affected by political conflicts and decreases in population and remained on a similar level of development in both countries with the main assumption that the studied urban communities continued to develop through legal and administrative local proceedings.

lands. W.M. Ormrod, B.Lambert and J. Mackman, *Immigrant England, 1300-1550*, Manchester, Manchester University Press, 2019.

⁴⁷ See below, Chapter 2, pp. 41-56.

⁴⁸ The earliest survived records that can be analysed are from the period between 1449 and 1499, with the detailed lists of criminals and the local court's judgments. More about Wrocław's criminal records with the punishment statistics can be found in FrauenStadt, *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert: Ein Beitrag zur Geschichte des Strafrechts*, pp. 1-35 and pp. 229-250.

1.5 The territorial scope of the research

The towns of both countries were considered with reference to the administrative, legal and territorial analysis of the selected material. Due to the disintegration of the Polish state from the end of the twelfth through the thirteenth centuries, my research into the Polish selected towns was divided into two areas: Silesia in the West and Lesser Poland in the South (Map 2). Additional divergences in power and administrative-legal systems⁴⁹ led this study towards demonstration of similarities in the creation of administrative and legal proceedings under a model of German law, strongly developing in the selected areas through the fourteenth century. A distinctive element of the Polish research became the indication of the development and adaptation of the local laws into the legal model provided by Magdeburg, which had a significant impact on the exercise of the criminal law in towns of Central and Eastern Europe.⁵⁰ In this regard, Wrocław in Silesia and Kraków in Lesser Poland provide examples of towns where despite internal conflicts between the Polish Dukes and their allies, the Magdeburg model was successfully adapted to the local procedures and customs. The Northern and Eastern parts of Poland, however, have been excluded from this research because of legal⁵¹ and historical divergences which would require a separate, multifaceted research analysis (Map 1).

The English research covers the cities of York, Norwich, Bristol and Exeter. These towns were subject to the monarch's overriding authority and jurisdictional control over the whole kingdom from the North-East to the South-West⁵² – in significant contrast to the Polish areas, which despite being united under the German model of legal proceedings since the thirteenth century, remained

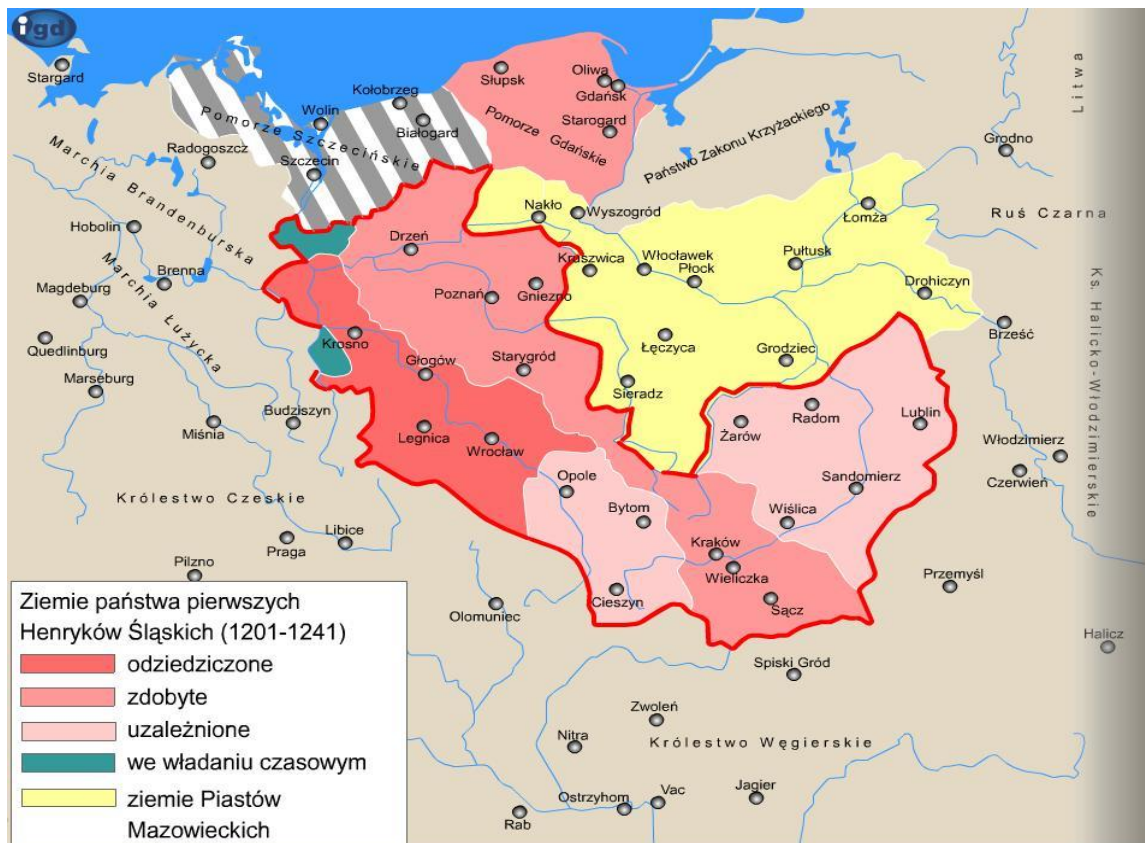
⁴⁹ Connected to the period of disintegration on the Polish lands between the twelfth and fourteenth centuries and changes of the local powers under the developing model of German law.

⁵⁰ The German model of law- mostly the Magdeburg set of rights in the form of town privileges which spread across Central and Eastern Europe including Poland in the thirteenth and fourteenth centuries.

⁵¹ The Northern and Central lands were under Chełmińskie law as a part of the expansion of German legal model, covering the area of Pomorze, Mazowsze, Warmia, Podlasie. The Lübeck law (another kind of a German law) was used in Elbląg town, Statgard, Braniewo (Northern area), also Średzkie law in East Wielkopolska and in Środa Śląska town. The Western and Southern area remained under Magdeburg law.

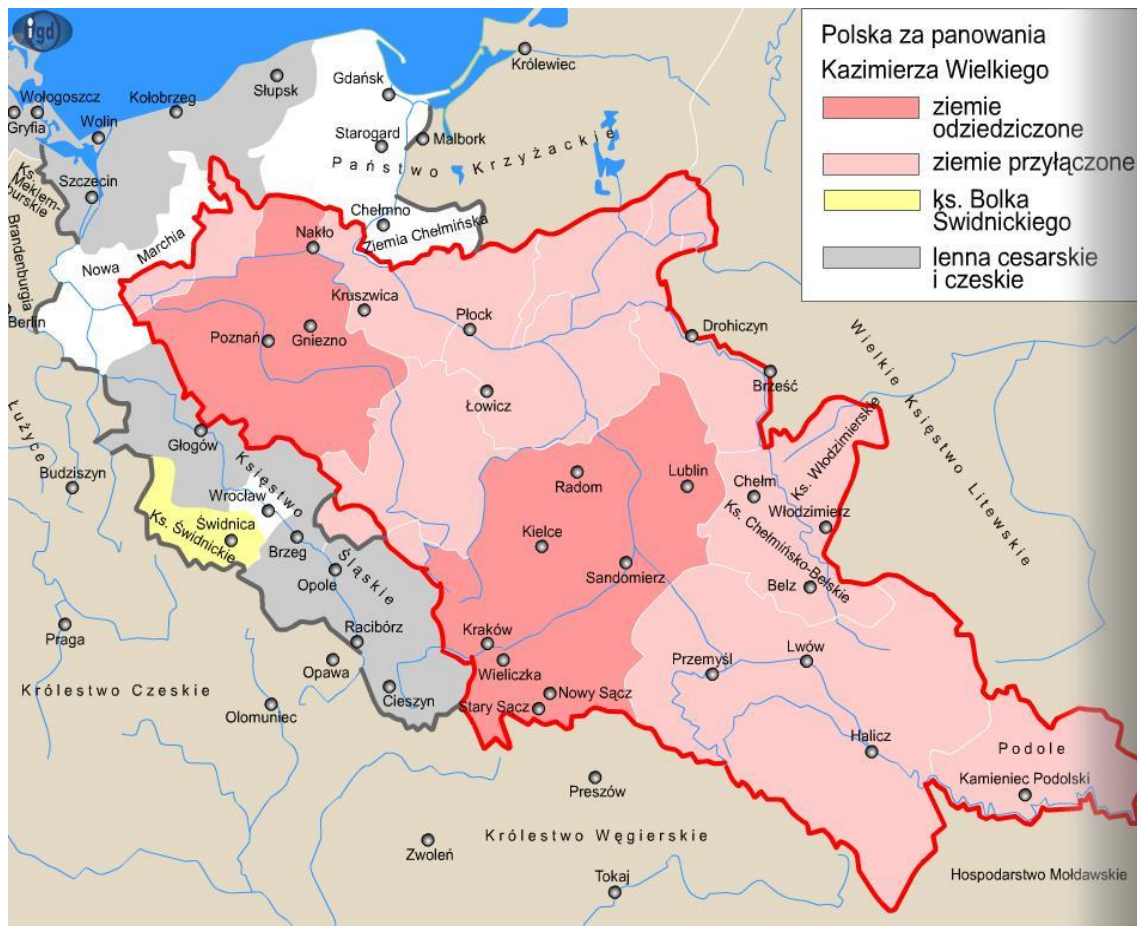
⁵² However, the unification was not complete for example in Yorkshire, which was still subject to the terminology and groupings of Danelaw in having three 'Ridings' and then Wapentakes rather than Hundreds as its county divisions. See A.T. Skinner and S. Semple, 'Assembly Mounds in the Danelaw: Place-name and Archaeological Evidence in the Historic Landscape', *Journal of the North Atlantic: Debating the Thing in the North II: Selected Papers from Workshops Organized by the Assembly Project*, vol.8, 2016, pp. 115-133.

divided into independent duchies and different variations of the local law. In addition, the competing interests within particular English towns that marked their development as judicial and political entities with the established system of civic government, determined a long-established relationship with the Crown expressed through liberties and urban privileges that supported towns' requested expectations of autonomy in the fourteenth century.



Map 1: A map of thirteenth-century Poland with Wrocław and Kraków commonly united under the Silesian Dukes between 1201-1241 (marked with the red line).

The rest of the country remained divided into separate Duchies like the Mazowsze area, (marked in yellow), also the Duchy of Szczecin (marked in white and grey stripes), being in the thirteenth century an independent part of the Holy Roman Empire. Source: http://biblioteka_zsg.manifo.com/, (accessed 10 January 2019).



Map 2: A map of fourteenth-century Poland including Kraków in the South, determined as an inherited area under the rule of Polish King Kazimierz Wielki (marked with a red line).

The Western town of Wrocław remained part of the separate Duchy of Silesia and, after the death of Duke of Silesia Henry VI in 1335, was incorporated to the Kingdom of Bohemia as a result of alliance with John of Luxembourg (grey colour on the map). Source: http://biblioteka_zsg.manifo.com/, (accessed 10 January 2019).

1.6 Contribution to the existing research on medieval criminal justice

The key contribution of this study to the existing canon of medieval criminal law is a comparative analysis of two geographic areas, which despite being superficially very different structurally and territorially, have a surprising number of similarities. At the heart of this study is a transformation of the legal climate, whereby criminal law was established and adapted to the changing political and local situations of late-medieval English and Polish towns. Significantly, the position and attitudes of the major civic authorities like the English sheriff and the Polish *woźny sądowy* towards the conviction procedures in response to

committed crimes is identified by this thesis as ambiguous with complex relationships between them and the hierarchical structure of the civic government.⁵³ Examining how legal responsibilities were devolved to towns through royal grants and privileges enhances the existing literature on the relationship between local town authorities and centralised royal power and highlights the distinctiveness of the law existing at a local level in the various regions.

The major contribution to knowledge arising from this study, therefore, is that it evidences the common nature of late-medieval English and Polish towns in terms of their legal development as manifested by the judicial power to repress crime and punish the offenders within their territorial and administrative areas.

The thesis offers a unique interpretation of the elements creating and customising criminal law in the particular context of each town studied. This includes supplementing the existing research about the criminal acts in medieval towns of England and Poland as well as the forms of criminal control processes, through the analysis of municipal courts' judgments and the special instruments of criminal law used in these urban areas to identify and prosecute individuals, including the use of outlaw status, hue and cry and sanctuary policy. It also offers a new dimension of the location and use of municipal prisons, considered as a developing element in the enforcement procedures of European towns. Additionally, the thesis shows that the number of prisons in the selected areas determined the penal and penitentiary possibilities in each town relative to the number of locally committed crimes. These compared findings give a broad picture of the scale of criminal activity in the English and Polish towns.

The project expands the existing literature about the position of civic officials and their underlings:⁵⁴ those responsible for carrying out judgments in the selected urban areas and who were highly important to the practice of criminal law in

⁵³ The position and duties of the medieval sheriff were dependent on the political impact of the monarchs as well as the aspiration of the town authorities, for example the inquest procedures of Edward I and, later, the urban requests and the county status that certain towns were granted with their own sheriffs and extended judicial powers. In Polish towns, the *woźny sądowy* and his duties became significantly affected by the limitation of the legal powers by the town councils and their growing legal autonomy in the chosen towns.

⁵⁴ A general term used to describe the medieval individuals who performed the corporal and capital punishments in the selected towns. However, this thesis evidences the significant differences in the appointment procedures as well as the social status of the offices in both countries. See below, Chapter 6, pp. 248-262.

medieval towns. Since there is limited research about the appointments for enforcement of judgments in both England and Poland before 1600, this study breaks new ground by discussing their status in the selected fourteenth century towns. Existing research about medieval criminal justice deals only with these offices peripherally in relation to other topics, and most information about their work can be found on the margins of the research into local executive law and medieval European social systems. The first offices appointed for punishment and execution, which evolved in late medieval proceedings into the regular office of executioner, formed an essential element of executive local laws and were thus pivotal in the realisation of the criminal justice process in sixteenth-century Europe. The international focus on both systems of law is significant as it explores the creation and duties of the early executioners in England and Poland, filling the gap in modern research and revealing the special common meaning of that office for the criminal justice system and executioners' perceived position within the legally developing medieval urban areas. Crucially, the executioner and his duties could not have existed without significant, earlier developments of local systems of criminal law, evidenced in the research of selected fourteenth-century towns.

One of the main elements of the maintenance of law and order in fourteenth-century English and Polish towns was found in properly-functioning processes, which could be called upon in response to crimes, particularly through the intervention and cooperation of localities in capturing offenders as well as punishing the criminals from the area. Therefore, through topographical analysis of towns, the special structures used in the process of enforcement of the local law regulation, such as defensive walls, gallows, pillories and structures embodying the municipal authorities are identified. They also support this thesis' argument about the relevance of criminal justice proceedings and their connections with the urban topography and physical organisation of my chosen towns.

Consequently, the thesis shows that the English towns of Exeter, Bristol, York and Norwich, and the Polish towns of Wrocław and Kraków, demonstrate a wide variety of legal methods that significantly affected their process of incorporation and local self-government. Additionally, it revises the perception of medieval urban partnership in criminal proceedings by underlining parallels in jurisdictional

methods that derived from the preserved traditions and local customs of these towns. Fundamentally, this thesis offers a new vision of the criminal law and its impact on the fourteenth century legal position of towns and their own courts of law. It also shows the progressive and developmental attitude of criminal justice during the transfer of state jurisdiction to the authority of municipal elites and their granted powers to try offenders. The transition of the early fourteenth century legal processes in towns of England and Poland will be examined in greater detail in the next chapters, together with the methods that will be used to form a comparative analysis and better understanding of the towns' legal system from the international point of view and its historical importance.

Chapter 2. The development of medieval urban jurisdiction and towns' legal status.

By analysing the development of selected medieval towns in Poland and England in terms of their municipal organisation, this chapter aims to find whether there was a shared model for the creation of towns' administrative and legal structures in those two countries and also what economic factors may have driven further urban development. The chapter will look at evidence for which of the important legal elements that characterised the foundation of processes in England were also practised in Poland. In particular, which of the principles underpinning the legal creation and development of English fourteenth-century medieval towns, as discussed below, can be compared to those taking effect in Poland? The analysis of the legal regulation in both countries will be used to determine the towns' motivations to seek autonomy in the proceedings of criminal law. In doing so, it will discuss the significance of the relation with the royal judicature and how it led to some decision-making with the charters of liberty being granted for respected municipal areas with a privileged position.

Furthermore, this chapter will examine the selected towns from a topographical perspective in order to suggest similarities in the universal plan of emerging urban communities with strategic buildings that were made to adapt the criminal law of this area. The medieval urban structures exercising legal actions include the town walls and gates, gallows and pillories, together with the seat of municipal authorities responsible for the town's constitution.

Through the twelfth and thirteenth centuries, the local jurisdiction in Poland was based on a complex model of Polish and German origin. The continuous armed conflicts between the kingdom of Poland, Bohemia and the Holy Roman Empire brought changes to the borders of the kingdom and royal powers, which usually confirmed the individual liberties the urban areas were already granted. For example, the document from 1303 issued by Wacław, the King of Bohemia and Poland, that confirmed earlier privileges granted for the town of Wrocław by Henryk and Władysław, Dukes of Wrocław and also, in April 1327 when Jan, the

King of Bohemia and Poland and the Count of Luxemburg⁵⁵ confirmed the local privileges determined in a document from 1290 granted by Henryk IV, Duke of Wrocław. Additionally, there were privileges granted by the dominant dukes of the selected towns that mainly concerned legal control like these given for the towns of Wrocław and Kraków. For example, there was a fourteenth-century set of privileges that were issued by Duke Władysław Łokietek (Władysław the Short) to control and regulate local law in Kraków and privileges of Henry VI, Duke of Silesia and Earl of Wrocław.⁵⁶

The general development of urban settlements in these areas was affected by periods of starvation, disease and armed conflicts, which impacted Polish lands periodically. In order to increase the population numbers as well as improve trade and the economy, the thirteenth century saw the peak of the German colonisation in the Polish territories. The earlier German influences that were found in the reign of Polish local dukes, like Henryk I of Wrocław,⁵⁷ also encouraged migration to the Western and Southern area of the kingdom, where the new towns were built following German models and existing towns were rebuilt with changes to their spatial and internal administrative organisation. Importantly, the specific German model of creation of the Polish towns, well known for the traders and merchants who came there from Western Europe, was dependent on the local customs and privileges. In 1261 in Wrocław, the Dukes of Silesia, Henryk and Władysław, officially granted provisions of Magdeburg Law⁵⁸ together with the acceptance of German as the official language and orders that allowed the local citizens to buy and set up their own market areas. These included further different licences for bread stalls (1271), shoe stalls (1273), and wine and beer stalls (1278).⁵⁹

⁵⁵ The title of Count as an equivalent to Earl was a title of nobility ranked in the hierarchy below a Duke.

⁵⁶ The fourteenth century set of different local privileges for Silesia about administration, trade and organisation of the town. The lists of documents with given privileges for Wrocław and Silesia found in Stelmach, *A Catalogue of the Medieval Documents*.

⁵⁷ Henryk I (Henry I), the Polish Duke of Wrocław who introduced the German language to the local legal proceedings. The official date that confirmed the process of German colonisation in the Wrocław area, that is 1214, was recorded during the reign of Henryk I. N. Davies and R. Moorhouse, *Mikrokosmos. Portret Miasta Środkowoeuropejskiego [Microcosm. Portrait of a Central European City]*, Kraków, Znak, 2011, p. 112.

⁵⁸ The 1261 grant of the Magdeburg Law given to Wrocław town and citizens by the dukes of Silesia. The earlier possible foundation of Wrocław on a German law was determined in the 1242 document issued by Bolesław, Duke of Wrocław. However, the original foundation document from 1242 has not survived. Stelmach, *A Catalogue of the Medieval Documents*, p. 47.

⁵⁹ The different licences given by Henryk IV Probus, Duke of Silesia, to the citizens of Wrocław. *Ibid.*, pp. 52-55.

Additionally, together with the increasing population rates, special taxes were established in order to improve the towns' defences: in 1274 in Wrocław, Henryk IV Probus issued a special tax to fund the construction of defensive walls.⁶⁰ Similarly in Kraków, one of the important privileges that played a decisive part in the organization of the new town⁶¹ was a ruling that new residents from Germany would be subject to German law and released from Polish legal regulation. The result of this privilege was the spread of German settlers and their law in the newly-formed town and among the already existing German residents, together with further orders and grants for native and international citizens.

In comparison to Polish regulation, twelfth-century English urban development was still concentrated in a few centres whose origins lay in the Anglo-Saxon period. The cities of Roman Britain had been abandoned after the breakdown of the Roman state in the fifth century. The new urban centres of the later Saxon and Viking periods, though in some cases for religious or strategic reasons located on the sites of former Roman towns, were different both in function and in form from their classical predecessors; hence while they often coincided in terms of place, they differed radically in most other respects. Over time, these roles tended to fuse into different combinations; a process that was complete by 1300.⁶² Similarly to the Polish towns, the importance of medieval English urban areas was founded on their financial stability, development in trade and economy as well as population, which was constantly increasing through the thirteenth and first half of the fourteenth century.⁶³ Additionally, the royal involvement in providing national defence led to a different sets of privileges and taxes issued for the urban areas. Apart from a regular contribution paid by the city of London,⁶⁴

⁶⁰ The text of the document from 1274 in Stelmach, *A Catalogue of the Medieval Documents*, p. 53.

⁶¹ In 1241, Kraków was almost entirely destroyed during the Mongol invasion of Poland.

⁶² D.G. Russo, *Town Origins and Development in Early England c.400-950 A.D.*, New York and London, Greenwood Press, 1998, pp. 99-168.

⁶³ However, the second half of the fourteenth century, that is 1377, saw the decrease of population rate as a result of the Black Death. For discussion see Russell, *British Medieval Population*, p. 146. Also, 'English Medieval Population: Reconciling Time Series and Cross Sectional Evidence', as a part of the project 'Reconstructing the National Income of Britain and Holland c.1270/1500 to 1850', Leverhulme Trust, Ref No: F/00215AR, [website], 2010, <https://warwick.ac.uk/fac/soc/economics/staff/sbroadberry/wp/medievalpopulation7.pdf>, (accessed 01 November 2017).

⁶⁴ After the 1340s' bankruptcy of Italian banks by Bardi and Peruzzi, who financed the king, the city of London began to play an increasingly large part in the financing of the royal government. C.M. Barron, *London in the Later Middle Ages: Government and People 1200-1500*, Oxford, Oxford University Press, 2007, p. 13.

the royal letters sent to the biggest towns and their officials, for example to York and Bristol to secure the money loans for the king's use, mainly defence needs towards continuous wars with Scotland and France during the thirteenth and fourteenth centuries, resulted in negotiation processes that encouraged urban areas to provide or augment their defences so as to improve greater security.⁶⁵ The result of that policy had an effect on towns' legal and territorial consciousness, expressed in their aspirations to autonomy and supported by royally exchanged petitions and requests.

The periods of war, conflicts, plague or poor harvest were not only causes of the national disorder and general crisis that both countries experienced but also had a positive effect on local towns which survived, with developed and improved urban structures. English towns like York, Bristol, Exeter and Norwich, together with Polish towns like Wrocław and Kraków, are examples of how European urban development successfully adapted to changing medieval social and economic conditions, including international migration, foundation of new towns, overseas trade together with the growth of local administrative systems over hundreds of years, as these places became well-organised and legally and economically developed areas.

The increasing number of residents and migrants attracted by growing towns and cities also brought with them problems in addition to their obvious benefits; these included increased criminal activity inside the town walls such as robberies and financial crimes, as well as criminals moving between towns to avoid prosecution. Despite the existence of defensive walls and gates, towns which could not defend themselves against invaders and criminals lost out on possibilities for development, and also risked depopulation due to economic and commercial stagnation. Rulers who were unable to benefit from failing towns and cities might lose interest in supporting those places or granting and maintaining special privileges. To prevent such problems the urban centres had to develop apparatuses of power that were capable of keeping law and order. However, the criminal justice system in the aforementioned English and Polish towns was created and controlled not only through developing local laws, but also by regular

⁶⁵ For example, the local merchants and their attempts to avoid or negotiate better terms of loans requested for the king's needs. Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 20-45.

contact with the royal powers, especially during royal visits which might be marked by formal acts of submission in cases where the most heinous crimes had been committed.

Through an examination of the various methods that were used to establish effective legal systems, this chapter will evidence that well-organised towns with developing trade were beneficial to urban incomes, as were larger urban populations and thus larger municipal structures responsible for the defence of English and Polish towns. However, only strong, independent and prosperous towns were candidates for autonomy when it came to the administration and jurisdiction of the law at a local level. Consequently, this chapter aims to prove that granted liberty charters and privileges required the maintenance of good relations between the king and the town's representatives, and so it was essential that towns avoided any unnecessary unrest or antagonism that might jeopardise the relationship. Importantly, good urban development was in the royal interest since it could increase tax incomes for the royal treasury, and thus could be rewarded by the king granting tax raising powers to towns, as is shown by surviving statutes and privileges relating to local justice, administration and the local authorities responsible for keeping the order in the researched urban areas.

2.1 The foundation documents and their role in local legal practice

2.1.1 Polish lands

The system of municipal law in the selected Polish lands was established from the thirteenth century onwards, with German law as its foundation. The German migration as a result of the post-wars decrease in population and economy in the Southern and Western area of Poland, influenced greatly the changes of the local law by new sets of privileges, granted for the favour of international merchants, colonists and labour workers. These legal changes led to an effective economic and organisational development in medieval towns like Wrocław and Kraków.⁶⁶ The sources of new laws were the so-called legal charters and foundation documents, which were used to determine the legal position of each town. The

⁶⁶ The advantages of German settlement on the Polish lands were economic with the important political aspect of unification of the legal system and adaptation of the western urban organisation. See discussion about German colonization of Polish towns in W.F. Reddaway, et al., *The Cambridge History of Poland: From the Origins to Sobieski (1696)*, Cambridge, Cambridge University Press, 1950, pp. 125-147.

essence of these charters was the introduction of new patterns of organisation of towns, including the significant change from Polish law to German regulation and release the town inhabitants from the jurisdiction of the Duke's Courts, placing them instead under the jurisdiction of the *Vogt* office, a town's judge.

The above changes in the legal system as well as political and social diversity can be seen as a significant form of Germanization of these areas, which were peacefully accepted by the native citizens, mostly because of the political history of the Polish territories since the early medieval times, where the borders and royal powers of their kings were modified constantly. From the eleventh century, Wrocław was in the centre of continuous international wars between the kingdom of Poland, Bohemia and Holy Roman Empire, with the result that Wrocław came under the Bohemian Crown (1038-1054), the Polish Crown (1054-1202), and between 1138 and 1335, after the death of Boleslaw the Wrymouth, the reign of eleven different dukes of German and Polish origin.⁶⁷ Additionally, difficult relations and the political unrest between Poland and the Holy Roman Empire over the years brought to these lands and their residents periods of partnership, dependency and armed conflicts including in 1109, the victory of the Polish King Bolesław III Krzywousty (Bolesław III Wrymouth) over Henry V, Holy Roman Emperor in the battle outside Wrocław, known in the Polish chronicle as the Battle of Hundsfeld.⁶⁸

The increasing number of German people migrating into Polish lands as well as adaptation of principles of the German common law through the policy of their dukes, led to the *Sachsenspiegel Landrecht* [*Saxon Mirror and Customary Law*] and *Magdeburger Weichbild* [*Magdeburg Municipal Law*] becoming the foundations of law for both Polish and German citizens of the selected towns from the thirteenth century onwards.

What is evidenced from the above documents is the fact that both of them were the basis of municipal law of selected Polish towns, and together with judicial

⁶⁷ Additionally, in 1327 with no son who could succeed his reign, Duke of Wrocław Henry VI made an alliance with the king of Bohemia, Jan Luksemburski. In return for the lifetime support of his policy, Henryk VI appointed Luksemburski his successor who in 1335, after the death of Henry VI, officially took over the title in Wrocław.

⁶⁸ The next invasion of the Roman Empire was recorded in 1147, 1152, 1157 and 1163 and resulted in medieval Silesia and Wrocław being under the constant influence of Polish and German powers.

regulation contributed to further legal development, thereby giving the German law adopted at that time in Polish urban areas a special form, practised through the thirteenth and fourteenth centuries. It can be concluded that migration and colonization of German settlers on divided Polish lands in the thirteenth century, could have a significant influence on the introduction of the common German law and unification of these areas under the same law and legal regulation for their citizens.

The thirteenth century *Sachsenspiegel Landrecht*, the code of Saxon common law, covered judicial, private, criminal and procedural law, and was the basis for criminal justice in the areas inhabited largely by the German population. The rebuilding process, as well as legal and organisational reforms granted by Silesian Dukes after the foundation of Wrocław on Magdeburg law in 1242⁶⁹, resulted in the *Sachsenspiegel* being practised in Wrocław. The German text of Wrocław's laws became a basis for further Latin translation *Versio Vratislaviensis*, ordered by the Bishop of Wrocław (1272-1292), Thomas II, and made by a public notary from Opole called Konrad. The manuscript was written at the end of the thirteenth century⁷⁰ and included the 234 articles about main regulations of German criminal, family and inheritance law, with some changes made by the Wrocław translator. In addition to the official German language practised in Wrocław, the ordered Latin version of *Versio Vratislaviensis* met the thirteenth century common criteria for international communication and unification between European Christians, being the language of scholars and church authorities. The Polish language in these areas remained in the group of local dialects and was excluded from thirteenth- and fourteenth-century legal documents.

The Wrocław translation included 92 articles, written in three books. Due to the large number of articles and problems with the translation, new copies of the *Versio Vratislaviensis* included abbreviations, abstracts and summaries. A useful comparison can be drawn from different articles of the translated document, where the legislative text of the Wrocław copy concerning regulation of the

⁶⁹ It was decided that 1241 was the first foundation of Wrocław on a German law. However the foundation document did not survive. A copy of the foundation document from 1261 was confirmed as a second location of Wrocław.

⁷⁰ The exact date of translation is not known. The surviving copy was dated in 1308. The Latin translation was based on two German manuscripts including Wrocław document. Z. Rymaszewski, *Łacińskie Teksty Landrehtu Zwierciadła Saskiego w Polsce [The Latin Texts of the Sachsenspiegel Landrecht in Poland]*, Wrocław, WPAN, 1975, pp. 9-11.

criminal justice proceedings can be compared with the original German text of *Sachsenspiegel*.

For example, the German article 26 § 2 determined that minters who circulated counterfeit money to pay for goods should be sentenced to capital punishment. Additionally, if a criminal was caught with the counterfeit money and refused to say where that money came from, he faced the punishment of his hand being cut off. However, article 47 v *Vratislaviensis* changed the regulated punishments, with the minters being punished by their hand being cut off while the criminal found with counterfeit money was sentenced to capital punishment.

Vrat. Article 47

Si solum denarium falsum exponit monetarius emendi [causa], reus est manu truneari. Qui ius suum demeruit in furtu vel spolio, sit res denarii furti vel spolii inveniantur super eum, reus est capitis, nisi ostendere possit, a quo denarius recepit.

[If a minter on his own issue a fake denarius [type of coin] for the purpose of buying, he should have his hand cut off. The person who was accused of robbery or theft of a denarius and who was found with the money should be sentenced to death unless he can show from whom he received the money].⁷¹

Differences can also be found in how the court proceedings treated those responsible when the accused of a crime died before the court hearing. In the German regulations, article nr 10 § 1 states that the person who guaranteed the accused to appear in the court was obliged to bring the body to the court to confirm the death of the accused. The Wrocław version changed that regulation in article nr 62, determining that the guarantor could confirm in court the death of the accused (in this example the debtor) by giving a statement.

Vrat. Article 62

Si autem super debito fuerit querela, mortuus non debet in iudicio presentari, si fideiussor mortem eius probaverit ipse duobus testibus adiunctis, sic erit liber.

[However, if a complaint was made concerning a debt, the dead person does not have to appear in court, if the guarantor could prove his death himself together with two witnesses, he will be free].⁷²

⁷¹ Personal translation. German text Article II 26 & 2; *Vrat. 47* in Rymaszewski, *The Latin Texts of the Sachsenspiegel Landrecht in Poland*, p. 42.

⁷² Personal translation. German text Article III 10 & 1; *Vrat. 62* in *Ibid.*, p. 55.

It is important to note that as defined in article nr 59(1) of the original text, local judges could settle certain issues only in venues under the jurisdiction of the court and the authority of the king (*banno regio*). The German text required that both of these conditions be fulfilled at the same time, while the Wrocław translation in article nr 32 required that only the first one be met.⁷³ The differences are also evidenced in the court process itself, where the original German article nr 12(13) stated that the accused were obliged to listen to the verdicts while standing in front of the judges presiding over the case; this information was omitted in the Wrocław translation and their court proceedings.⁷⁴ The above changes to the original text were mainly determined as a result of the translation difficulties and uncertainty of interpretation of these German laws, however they could also confirm Wrocław's own legal understanding of the given law.

The people over whom the local courts had jurisdiction included knights, heads of villages and peasants who had committed offences within the area of the town. In practice, the *Landrecht*⁷⁵ restricted local judgments and made exceptions towards certain crimes that were prosecuted *ex officio* nor regarding complaints brought individually. Therefore, in troublesome cases or when decisions were questionable, the Wrocław municipal court applied to higher authority for legal instructions called *Weisthümer* and for decisions from the judicial practice called *Urteil-Ortyle*, to be provided by the members of the council and the lay judges of Magdeburg. The first instructions of this kind were issued for Wrocław in 1261 and 1295.⁷⁶

The legal instruction of 1261 consisted of sixty-four articles, ten of which, based on the *Sachsenspiegel*, were confirmed as applicable by Duke Henry II (Polish: Henryk II) and Władysław. The said legal guidance and its official granting by the Silesian dukes can be determined as evidence of the increasing importance as

⁷³ Because of the sovereign status of the local dukes in the Polish selected towns in the thirteenth century as well as lack of a strong royal power on these areas, there was no requirement for the king's authority. German text Article I 59 & 1; *Vrat.* 32 in Rymaszewski, *The Latin Texts of the Sachsenspiegel Landrecht in Poland*, p. 37.

⁷⁴ German text Article II 12 & 13; *Vrat.* 39 in *Ibid.*, p. 38.

⁷⁵ *Landrecht* – the term used to describe German customary law that regulated the judiciary, criminal and procedural law.

⁷⁶ P. Jurek, *Historia Państwa i Prawa Polskiego [A History of the State and Polish Law: Sources of the Law and Judiciary]*, Wrocław, Wydawnictwo UW, 1996, p. 20.; P. Nocuń, *Zabytki Jurysdykcji Karnej w Późnośredniowiecznym Wrocławiu [Monuments of Criminal Jurisdiction in Late Medieval and Early Modern Wrocław According to Historical Archaeology]*, vol.6, Wrocław, Wratislavia Antiqua, 2004, p. 1.

well as dominant position the German legal process developed in the thirteenth century municipal law of selected towns in the Western area including Wrocław. It also revealed the significant process of selection of criminal offences and hierarchy of the officials involved in the criminal law based on a German model.⁷⁷ Furthermore, in response to Wrocław's own municipal development based on a German model of legal proceedings, there was a requirement of uniform law for all the neighbouring towns following the example of Wrocław. Thus, in the second half of the fourteenth century, Wrocław created the so-called Silesia *Landrecht*, which confirmed the town's legal dominance as the main town of Silesia.

Across the region, in accordance with the regular practice and adaptation of the German law⁷⁸ to local laws of the selected urban areas, the ultimate adjudication over legal regulation was initially reserved for the duke, the official highest judicial authority. With no interference with the superficial royal powers over the area, the sovereign status of the duke did not require authority of the king for the court judgments. In practice, his representative, the Landvogt (Polish: *landwójt*), held the office of a higher judge in the case of the duke's absence (*advocatus provincialis*) and, before the majority of the powers were transferred to the town councils that is at the beginning of the fourteenth century, the Landvogt became an official regularly involved in certain criminal cases in towns. The legal instruction of 1261 from Magdeburg to Wrocław confirmed the list of serious criminal cases that were restricted to the Landvogt of the district —Weichbild,⁷⁹ and included assault on ('robbery of') a house, rape or kidnap of a woman and robbery with murder.⁸⁰ The hierarchy of the officials directly involved in the criminal law proceedings also included the *Vogt* office, whose position and duties did not come from a Polish institution and was entirely dependent on Magdeburg Law and modified according to the legal position of the local duke and his relation with the growing powers of the town councils.

⁷⁷ As well as the Magdeburg laws, the importance of the German court proceedings in the medieval towns of Silesia was underlined once again in 1335, when the Polish Law Court (*Zaudgericht*), a remnant of the former Polish judicature, was abolished.

⁷⁸ The sets of Magdeburg law regulation.

⁷⁹ The territories of the dukedoms were divided into Weichbilder – i.e. special judicial districts – whose centres were based in towns called Weichbild Städte and covered the majority of the Southern and Western area of Poland at the end of the thirteenth century.

⁸⁰ R. Schranil, *Stadtverfassung nach Magdeburger Recht: Magdeburg und Halle, Untersuchungen zur deutschen Staats – und Rechtsgeschichte*, Breslau, Gierke Heft 125, 1915, pp. 55-64.

In Kraków town, the criminal law system developed following the foundation charter issued by Duke Boleslaw the Chaste (Boleslaw Wstydlivy) in 1257. The document referred, in particular, to the importance of Magdeburg:

eo iure eam locamus quo Wratislaviensis civitas est locata, ut non quod ibi fit, sed quod ad Magydburgensis civitatis ius et formam fieri debeat.

[We found it [Kraków] by the law with which the city of Breslau is established, but that it shall not be exercised as it is in that place [Breslau] but that it ought to be done according to the law and process of the city of Magdeburg].⁸¹

The foundation charter also evidenced a direct involvement of Wrocław officials, Gedko Stilvogt and Dethmar Wolk,⁸² in a municipal organisation of Kraków where both of them hold the important office of Kraków's *Vogt*. Additionally, the further instruction from Silesian dukes⁸³ meant that Kraków's establishment of the legal system followed Magdeburg and Wrocław models, with the transfer of decision-making powers for urban organisation. The period witnessed the creation of basic legal institutions like a local court and responsibilities of the *Vogt* office. Additional structures were later transferred to Kraków's town councils, where newly created urban authorities assumed the powers and responsibilities of the *Vogt* office. The above organisational model of Kraków was recorded in the *Yearbook* from 1257, which confirms the existence of the *Vogt* according to his office, '*in sua advocacia modicum duraverunt*'.⁸⁴ The German legal proceedings, with a fundamental process of transmission of laws between Polish towns and their officials, are again strongly indicated.

The continuation of division of the Polish lands into areas of internal wars between different coalitions of local dukes, as well as their need for money and

⁸¹ Personal translation. M. Starzyński, *Krakowska Rada Miejska w Średniowieczu [Kraków's Town Council in the Middle Ages]*, Kraków, Societas Vistulana, 2010, p. 29.

⁸² Gedko Stilvogt, a son of Wrocław's first *Vogt*, Godinus Stilvogt. Another son of Godinus, Alexander, became a mayor of Wrocław. M. Starzyński, *Das Mittelalterliche Krakau: Der Stadtrat Im Herrschaftsgefüge Der Polonischen Metropole*, Cologne, Boehlau Verlag GmbH&Cie, 2015, p. 20.

⁸³ In 1288, after a series of battles with different coalitions of Polish Dukes, Henryk IV Probus was officially granted title of a High Duke of Kraków. As a result, through the thirteenth century Kraków was under rules of three different Silesian Dukes: Henryk I (1231-1238), Henryk II Pobożny (1238-1241) and Henryk IV Probus (1288-1290).

⁸⁴ 'They stayed in the *Vogt* office for some time'. Personal translation. Z.Kozłowska-Budkowa (ed.), 'Najdawniejsze Roczniki Krakowskie i Kalendarz' ['The Oldest Yearbooks of Kraków and the Calendar'], in Starzyński, *Kraków's Town Council in the Middle Ages*, p. 27.

support from the towns' rich merchants and citizens, led to a process when the duke's representation in town- the Landvogt and later the *Vogt's* hereditary offices became divisible and allowed the *Vogt* to sell or exchange his position and duties with others.⁸⁵ Additionally, the driving force of a strong aspiration of autonomy as well as weaknesses in the leadership of the fighting dukes, brought a successful establishment of the town councils and dependent hierarchy of local officials, who gradually learnt how to extend their legal status and autonomy, mostly through purchase of the *Vogt's* offices and related benefits including powers over the local justice in the fourteenth century.

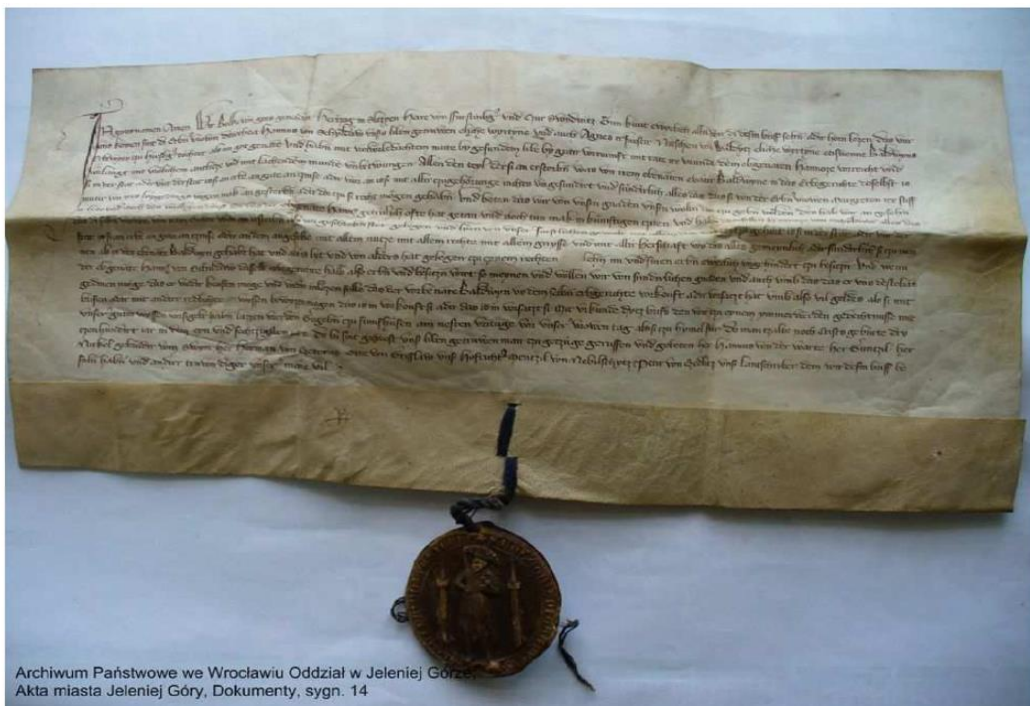
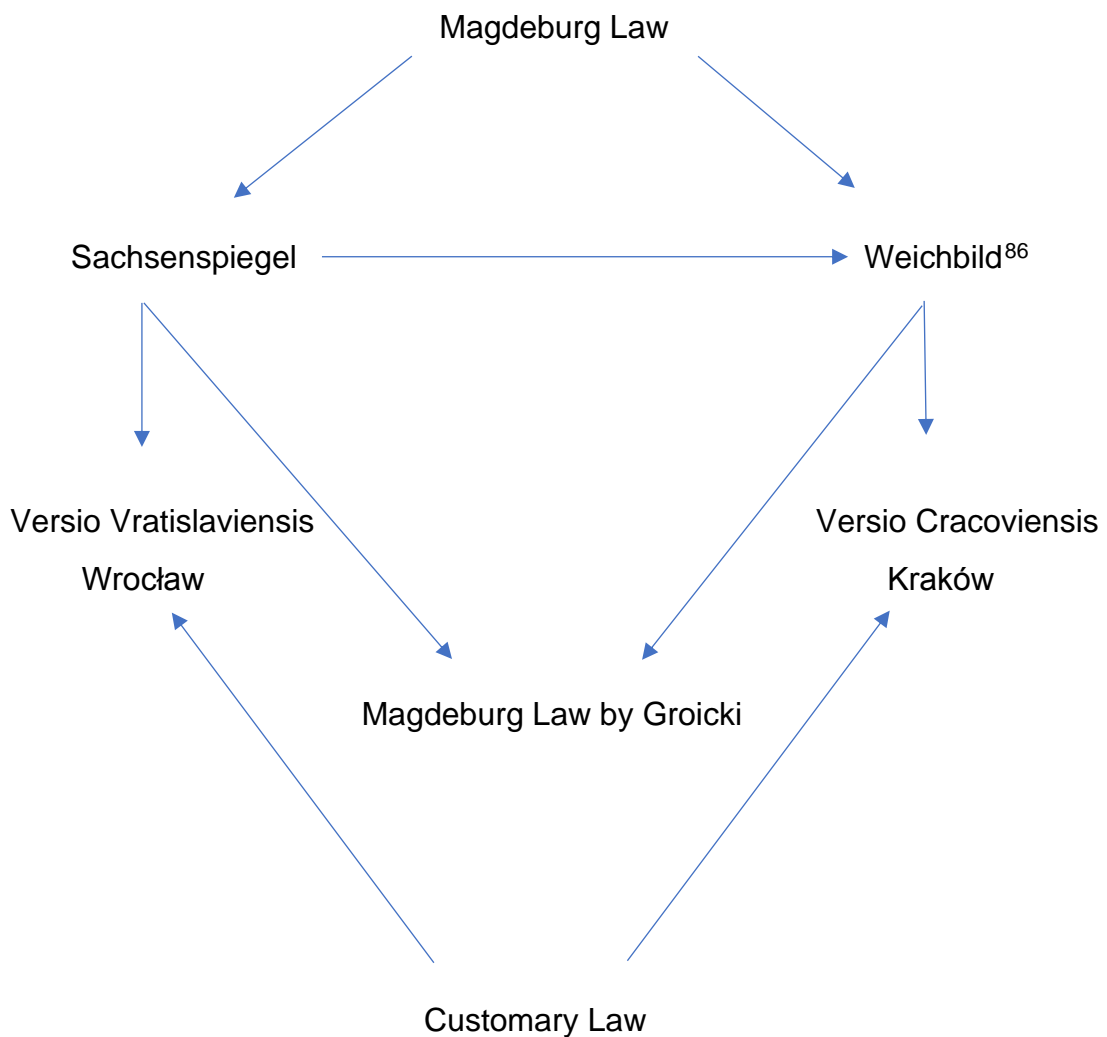


Figure 1: A copy of a surviving document issued by Duke Bolko of Silesia in 1361, confirming the sale of the hereditary *Vogt* of Jelenia Góra and the rights of the municipal judiciary to Dorothea, wife of Hannus von Schyldaw (from Wojanów), and her sister Agnes, wife of Nitsche von Waldycz, the hereditary *Vogt* of Jelenia Góra.

Source: Jelenia Góra branch of the Wrocław State Archive, File No. 14. <http://www.jbc.jelenia-gora.pl>, (accessed 5 June 2016).

⁸⁵ The sale of the *Vogt* office in Polish towns was a consequence of the adaptation of the Magdeburg Law regulation. The early record from 1261 from Wrocław confirmed the local *Vogt* and his hereditary status. Davies and Moorhouse, *Microcosm*, p. 122.



Graph 1: The influence of German laws, their local translation and local customs on the fourteenth century Polish towns of Wrocław and Kraków.

2.1.2 England

In thirteenth-century English towns, a key responsibility in the creation and expansion of town centres, regarding both organisation and administrative development, was ensuring peace and order. The king's coronation oath included the aim 'to maintain peace in the land and punish wrongdoers'.⁸⁷ The way the kings ensured this was through, in part, the structure of charters and orders applied at local levels. The authorities responsible for ensuring safety in towns were created and appointed mainly by the royal charters and acts, however with

⁸⁶ The fourteenth century Silesian-Małopolska version of *Weichbild*.

⁸⁷ A. Musson, 'Turning King's Evidence: The Prosecution of Crime in Late Medieval England', *Oxford Journal of Legal Studies*, vol.19, issue 3, 1999, p. 468.

the existence of a number of internal and external influences that modified the medieval administrative and judicial systems as well. The first half of the fourteenth century in England saw a period of disorder after the dethronement of Edward II and was followed by the Black Death and major decrease in population in most towns of the kingdom.⁸⁸ In contrast to the Polish towns which somehow did not record a disease and maintained a stable ratio of towns' citizens through the fourteenth century,⁸⁹ English towns had to overcome a social and economic crisis as a result of a high mortality rate.⁹⁰ The population of the city of London, probably four times greater than its nearest competitor, Norwich, from as high as 80,000 people in 1300 shrank by almost half in 1400, to 40,000.⁹¹ Additionally, political uncertainty due to wars with Scotland and France required additional organisation and powers to keep the general peace and order. The way the king guaranteed his finances for military expeditions lay in taxes and national loans, provided by merchants and other rich and influential groups of society from wealthy English towns like Bristol and York, however with the processes of negotiation and demonstration of importance from both sides.⁹² Accordingly, certain English town officials developed a leading status where in return for support and financial loans, they received the royal attention expressed in privileges and grants, however under the authority of the king and constant royal control.

The first major difference that characterised the introduction of the criminal law regulation in selected local areas of both countries was the fact that English legal proceedings were inextricably connected to the Crown and appointment of

⁸⁸ M. Bailey and S. Rigby (eds), *Town and Countryside in the Age of the Black Death. Essays in Honour of John Hatcher*, Belgium, Brepols, 2012.

⁸⁹ One of the possible explanations for why Polish lands did not record the Black Death and avoided the high mortality rate was connected to cultural and religious practices, however with no confirmed data. See published diploma paper of A. Creviston, 'Economic, Social and Geographical Explanations of How Poland Avoided the Black Death', Rutgers University, Graduate School-Newark, 2015.

⁹⁰ R.H. Britnell, *The Commercialisation of English Society, 1000-1500*, Manchester, Manchester University Press, 1996, pp. 155-156.

⁹¹ Barron, *London in the Later Middle Ages*, p. 45. Also, 1377 and population numbers for Exeter (2,340), Norwich (5,928), Bristol (9,518) in Russell, *British Medieval Population*, p. 142.

⁹² Apart from London, the elite towns like Bristol and York became models in terms of development and importance expressed in guaranteed loans and taxes provided for national and local defence and safety. W.M. Ormrod, 'Competing Capitals? York and London in the Fourteenth Century', in S.R. Jones, R. Marks and A.J. Minnis (eds), *Courts and Regions in Medieval Europe*, York, York Medieval Press, 2000, pp. 75-98.; Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 20-57.

special commission of the peace, which functioned by the transfer of royal powers, and which quickly and effectively responded to any attempts to breach royal orders and local laws in the country. Such powers were delegated through royal statutes and ordinances, which determined the scope and possibility of decision-making in relation to the maintenance of peace and safety and differ significantly from the sovereign status of the local dukes and the growing ambitions of the town councils in the Polish selected area of the research.

Before the Statute of Winchester, thirteenth-century English royal visitation in the provinces to keep the peace and order was strongly underlined by the early provisions of the Assize of Clarendon (1166) and reforms of criminal law proceedings, and Assize of Northampton (1176), a first judicial act of importance since the quelling of the rebellion of 1173.⁹³ This document was made as a royal set of instructions given to the judges of six committees, which were granted increased powers to deal with crime across the country, at the same time strengthening and confirming the royal law as a superior power in the kingdom. The direct involvement of the Crown in the establishment and control of the legal system resulted in further set of different appointments, acts and statutes with the main aim to restrain the social disorder.

The English Statute of Winchester of 1285,⁹⁴ as part of the wider legal reforms, crucially referred to the maintenance of safety as a part of the king's peace. The statute pointed out not only general problems relating to criminality, but also determined rules for the local police system in the form of 'instructions' for the towns' officials. For example, towns were commanded to close their gates from sunset to sunrise to ensure safety. Responsibility for closing the gates were given to special local units with the duties of keeping watch at night and being ready to raise the alarm in case of danger. Significantly, the statutes' most important aspects concerned the judicial powers to arrest and punish those breaking the king's peace. In addition, the document defined the judicial powers of officials like sheriffs, bailiffs and constables in relation to wider legal reforms.

In comparison to English statutes and the king's superior powers over national

⁹³ W. Stubbs (ed.), *Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First*, Oxford, Clarendon Press, 1921, p. 178.

⁹⁴ The text of 'Statute of Winchester 1285', found in G.B. Adams and H.M. Stephens (eds), *Select Documents of English Constitutional History*, London, The Macmillan Company, 1901, pp. 76-79.

safety, the selected Polish towns demonstrated a different model of responsibility for patrolling and reacting to crime, where apart from common aims and duties of local officials, the Polish watches and guards were appointed by the local town councils who took the majority of powers to maintain order and peace with the right to punish in municipal areas based on the German law.⁹⁵ Thus, the status of royal powers in local crime control of these areas was limited to the documents mostly confirming the legal possibilities of the town councils with some additional requirements, for example prohibition for carrying a weapon for Wrocław's citizens.⁹⁶

At the beginning of the fourteenth century, the English local administrative and legal proceedings were subjected to a large number of general royal writs, issued for selected local officials and their legal duties. In particular, the Statute of Northampton (1328)⁹⁷ provides important evidence about the special relation between the local authorities like the sheriffs, bailiffs, mayors, borough holders, constables and wardens and the Crown to enforce justice and prevent lawlessness.

Significantly, the majority of the royal powers expressed in the above documents were not autonomous and were supported by the existence of the parliament, a part of the central body that did not exist in the medieval Polish towns and their civic administration.⁹⁸ The parliament was a regular participant in the given methods and acts concerning peace and order in the country, with connection to the local legal and administrative proceedings by their representatives, consisting of the elite of towns and cities across the country. The different rank of the local officials appointed to the position of members of parliament who took an active part in the work of the royal government also determined the special link of

⁹⁵ A. Chmiel (ed.), *Księgi Radzieckie Kazimierskie 1369-1381, 1385-1402 [Acta Consularia Casimiriensia 1369-1381 et 1385-1402]*, Kraków, Wydawnictwa Archiwum Aktów Dawnych Miasta Krakowa, 1932, p. 10.

⁹⁶ The document from 1 IX 1331 found in Stelmach, *A Catalogue of the Medieval Documents*, p. 110.

⁹⁷ The text of 'Statute of Northampton 1328', found in Adams and Stephens, *Select Documents of English Constitutional History*, p. 100.

⁹⁸ The official date for the establishment of the Polish parliament is the subject of a dispute about two dates, 1468 and 1493. See discussion about the Polish parliament in W. Uruszczak, 'Najstarszy Sejm Walny Koronny 'Dwuizbowy' w Piotrkowie w 1468 roku' ['The Oldest Crown Parliament in Piotrków in 1468'], [website], <http://www.khpp.wpia.uj.edu.pl/documents/106750129/0/Najstarszy+Sejm+Walny+Koronny.pdf/b0e82a32-63eb-4b00-b6a1-2d4d6e52ce6c>, (accessed 15 February 2018).

cooperation as a result of shared common interests. For example, the regularity of meetings and matters that were put under voting gave some possibilities to support and privilege the ambitious urban areas.⁹⁹ In contrast, the Polish local administration at that time was divided and dependent on the political status of their dukes and alliances they made in order to extend legal and military powers over the given territory. The representatives of the towns – developing town councils had no intention of political cooperation and were mainly focused on ambitions for independence achieved by securing to themselves the offices and powers of their representation in towns under Magdeburg regulation.¹⁰⁰

Additionally, the relation between the English parliament and the urban areas was following a general model of communication practised by the Crown and its subjects and did proceed with exchange of requests and demands from the local communities and representation of towns. The Crown's attention was achieved by the process of petitioning, which often included general issues and other local interests that needed to be put forward by working together. In Poland, the different influences of the Magdeburg law in towns had a significant effect on a relation between the duke and the town councils, which were mainly focused on the exchange of financial benefits and powers, however with respect to the strengthened position showed by the councils. As a result, despite the significant differences that can be found in the political systems of both countries, the communication model between the local representatives and the highest royal powers in England and Poland determine some common features related to expected benefits and royal attention.

Apart from a large number of the patent rolls issued by the king and council which referred to maintenance of the peace in the urban areas, the involvement of the English parliament in policing and administrative functions to prevent disorder was significantly marked by the work of the royal peace commissions with further establishment of the justices of the peace offices. The link between the parliament and the commissions can be found in their personnel, with the existence of the

⁹⁹ For example, the requests of confirmation of the cities' charters that were presented in parliament by towns' representatives, including Norwich in 1378. For more information about the relationship between towns and parliament, see Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 140-190.

¹⁰⁰ For example, see the above-mentioned position of the *Vogt* office and the acquisition of local legal powers related to the office of the *Vogt*.

overlapped sessions as well as exchange of the appointments in the first half of fourteenth-century. The list of citizens that took part in the peace regulation varied between different levels of local offices including sheriffs, mayors, bailiffs and constables.¹⁰¹ Apart from thirteenth-century Statute of Winchester and Statute of Northampton from 1328, relevant here are the Statutes of the Realm of 1327 and 1330, which stated that, for the better maintenance of the peace, the king wished to assign good and lawful men in every shire to keep the peace.¹⁰²

In the above documents, the royal dominance over the legal and administrative development of medieval England is significantly marked. Furthermore, the central power was decisive in the appointments of local officials who represented the Crown in different shires across the country, while the scope of the judicial powers given to these officials is exemplified by the cases brought before justices of the peace.¹⁰³

The complex processes of legal transformation and adaptation of the law to the local level in England was inseparably connected to the central administration of the Crown and consisted of a number of established royal commissions. The partnership between the king and the local powers was underlined through the personnel, as well as the above-mentioned coincidence of parliamentary sessions and the issue of general peace commissions in the reign of Edward III.¹⁰⁴ The royal Justices of Assize and Gaol Delivery¹⁰⁵ also demonstrated a

¹⁰¹ Musson, *Public Order and Law Enforcement*, p. 55.

¹⁰² A.R. Myers (ed.), *English Historical Documents: 1327-1485*, London, Eyre and Spottiswoode, 1969, p. 533.

¹⁰³ The establishment and transformation of the justices resulted in further activities. The Act of Parliament from 1360 indicated the kind and authority of people appointed to this office with transferred legal powers to punish and imprison in the hands of 'most worthy in the county' which often included the local men. The number of statutes strengthened the position of the justices, however, with the existence of regular petitions and requests exchanged between the Crown and parliament according to the appointments and scope of the given powers. The analysis of the fourteenth century proceedings indicates that trespass and felony were the crimes most commonly dealt with by local justices of the peace. In a recorded case of trespass in Devon, a chaplain named John Donne pleaded with Thomas de Hurtecombe for matters 'not touching wills nor marriage' to the injury of the crown of the lord king. There are also several cases recorded in Norwich, such as one in 1378 where John de Colneys feloniously broke a window, thereby entering the chamber of the vicar of Martham in Martham and 'carried away six silver spoons and other various chattels against the peace'. Another case from Norwich is that of John, Son of John Gannock senior, who was accused of a felony involving the theft of two oxen, and then of fleeing from John Rysengles and Richard Rakbeych. Myers, *English Historical Documents: 1327-1485*, pp. 537-538. These examples demonstrate the type of crimes the justices of the peace heard at the local level, confirming their legal involvement in felonies and breaches of the peace under supreme royal control.

¹⁰⁴ Musson, *Public Order and Law Enforcement*, pp. 52-53.

¹⁰⁵ The structure of the royal commissions will be examined in the next chapter of the research.

similar model of commonly exchanged powers with the local keepers across the country. Additionally, the parliament on its own consisted of a regular representation of the town's elite and included appointments between high civic offices, merchants and sufficient citizens like 1340 and Norwich burgess representatives of Robert de Wyleby and John Fitz John, also 1343 and Exeter burgess Philip de Bersham.¹⁰⁶ The English cooperation in the judicial administration cannot be compared to superficial royal legal powers that were exercised in the Polish selected lands. However, the legal structures in different regions of England were regulated not only by the major royal documents and bodies but consisted of additional individual privileges and orders created to control and supervise the use of law on subordinate territories. At this stage, the similarities between the laws of England and Poland can be evidenced in the ways in which local charters concerning Polish criminal law (based on the major guiding principles of German law as directed from Magdeburg) were adapted to the different level of local officials to which they applied, in a process that was similar to that by English privileges in terms of rights and responsibilities, which were accreted to the existing local laws and their officials. For example, one common way that justice was performed at a local level was by offices like, in England, sheriffs, coroners, and constables, and in Poland, the town councillors and their officials. These performed a similar range of duties, and in both countries the offices saw the internal subordination in terms of the hierarchy in the enactment of criminal law procedures. Thus, citizens and other local officials were commonly required to respond to the hue and cry, or perform control duties of a specific area when attempting to suppress an outlaw.

In addition to the limits determined by royal regulation and administration, some parts of English local laws varied in a way that bears comparison to the local variations on the German legal orders throughout the selected Polish towns, which were similar in effect to English custom.¹⁰⁷ From as early as the twelfth century, the formation and development of a royal administrative system in England was closely connected to the person of the king and hierarchy of the

¹⁰⁶ The names of burgess representatives found in Appendix I of M. McKisack, *The Parliamentary Representation of the English Boroughs During the Middle Ages*, London, Oxford University Press, 1962, p. 146.

¹⁰⁷ As described above, the thirteenth century Wrocław translation of the *Sachsenspiegel* and fourteenth-century Silesian *Landrecht* regulation.

officials who could enforce order and peace regulation. The process of preservation of some Anglo—Saxon codes and their legal powers was connected to regional customs, which were legally sanctioned through royal charters including the most famous one, the thirteenth century Magna Carta.¹⁰⁸ Such transmission of the customals, codes and procedures can be seen in the archives of certain towns. For example, Lincoln obtained a copy of some parts of the contents of the *Liber Albus* from London, which were adapted to meet local requirements.

The customary laws of the boroughs were recorded in many ways. Some borough customs – notably certain London customs – were included among the printed statutes of the realm; some were part of Domesday Book; some were recorded in the borough charter and some on the borough court-roll, either because they had been pleaded in court, or because a single roll served as a register for all the records of the borough.¹⁰⁹

In most English towns, local traditions and procedures in the form of customary law survived through local charters and documents written by town clerks and exercised by the local officials. For instance, the British Library holds a fourteenth-century fragment of a Latin customal from Beverley in its collection. Additionally, in the Selden Society's volume of *Beverley Town's Documents* there are references to customary law as well as a collection of local orders, penalties and payments for the town's authorities and burgesses.¹¹⁰ Information about Exeter customals can be found in the city's manuscripts, written by the town clerk. The customal has been dated to the thirteenth century and the manuscript concerns, among other things, trade, summons of foreigners, pleas between residents and foreigners, sheriffs, city courts and trade by laws.¹¹¹ Additionally, a few citations have been found in the early court rolls. In the Bristol collection of charters, ordinances and local customs, *The Little Red Book of Bristol*, there are chapters

¹⁰⁸ Clause 13 of Magna Carta guarantees the 'ancient liberties and free customs' for all cities, boroughs, towns and ports. The text of Magna Carta found in Appendix IV of J.C. Holt, *Magna Carta*, Cambridge, Cambridge University Press, 1965, pp. 317-337.

¹⁰⁹ M. Bateson (ed.), *Borough Customs*, vol.1, London, Selden Society Publications, 1904, p. xv.

¹¹⁰ A.F. Leach (ed.), *Beverley Town Documents: Ancient Customs and Liberties of Beverley*, London, Selden Society Publications, 1900, pp. 8-73.

¹¹¹ The customal for Exeter is entered on Misc. Roll, Press Dd.1 in the keeping of the town clerk. The roll was identified by Stuard Moore as the Black Roll. Bateson, *Borough Customs*, vol.1, p. xxvi.

about the duties of officials and local orders about trade, strangers visiting town, wages and sanitary matters.¹¹² The regulations found in the above documents, much like those found in their Polish equivalents, the original version of the *Sachsenspiegel* and local copies of *Versio Vratislaviensis*, were concerned chiefly with the everyday situations that town authorities had to deal with, such as criminal law, merchant law, family law and land law.

2.1.3 Conclusion

In this section, the characteristics of the Polish and English documents that introduced local criminal regulation have been analysed according to their organisational effectiveness. It was evidenced that there were some major differences in the cooperation and control between royal authorities and urban areas in both countries. This occurred through the range of powers that local law bodies received from royal authorities from the thirteenth century onwards. In addition, local law was modified through the application of privileges and orders. Control and supervisory functions of legal application was carried out differently in both countries. In England, royal documents like the sets of statutes and charters examined above were supplemented by the existence of the appointed commissions and parliament, which performed its role as a regular meeting place between the King's Council and the towns' representatives to discuss general policy and different kind of issues often related to urban development. In Poland, this was done through regulation based on the German model of law and active involvement of the town councils, the local representation of the legal powers with autonomous policy over justice in the fourteenth century. Yet, in problematic cases the municipal courts were restricted from local judgment and required the legal instructions to be provided by a higher authority of the Magdeburg judges, while English enforcement procedures remained subject to the methods and acts granted by the royal justice.

The legal responsibilities transferred to the local officials and commissions in both countries have shown the involvement of these bodies in policing breaches of the peace and other criminal offences. Driven by aspirations for autonomy, the external and precise nature of jurisdiction over the local issues was a common subject of negotiation between the royal and local authorities in both countries

¹¹² F.B. Bickley (ed.), *The Little Red Book of Bristol*, vol.1, Bristol, W.C. Hemmons, 1900.

and played a significant role in shaping how urban entities evolved.

In Poland, the above process of greater autonomy was seen by the late thirteenth century, when the Polish town councils started to take on the majority of the powers of the *Vogt's* office. This contributed to the aim of developing their own legal autonomy away from royal supervision. In comparison, England saw a different process of royally granted powers and privileges to local figures through a link of cooperation with shared interests and other issues. This involved royal statutes and orders of the national peace that needed to be kept, with towns' officials ordered to carry out local justice including sheriffs, coroners, constables and specially formed night watch units in towns. The needed communication between the Crown and representation of towns was achieved thanks to the existence of parliament, with additional royal petitions, requests and personnel being regularly exchanged between these bodies.

Some similarities in the legal form of the English royal statutes and the Polish foundation documents can be discerned in the transformation of the local judicature. This gave the special institutions, commissions and officials appointed to keep the peace in towns the legal powers they needed to perform their functions. Additionally, similarities were found in the position of legal regulation that supplemented the rules of the 'common law'¹¹³ by the provisions of local customs, with examples of that practice found in towns of both countries.

The examined documents and royal acts evidenced a certain level of development of early fourteenth-century legal processes in both England and Poland. They were also a starting point for the further preventive and reactive forms of local justice in selected English and Polish towns which are analysed in detail in the next chapter of this research.

Importantly, the existence of special areas in towns that were created in the process of developing legal control over local crimes as well as punishing criminals finds its beginnings in the topography of towns, where the position of certain structures had a significant impact on the efficient function of English and Polish criminal regulation and the special role of their supervising officials.

¹¹³ English common law and legal process were applicable to all the king's subjects in the kingdom and Polish law was determined by the application of common legal proceedings derived from bodies of German law in the selected area.

2.2 Topography of the selected English towns

It is argued here that there is a significant connection between the development of towns' layout, or topography, and the organisation of criminal justice. The research into urban topography and the areas used in the application of English municipal law has been based on surviving maps and planning documents from the local town archives. Generally, municipal maps show the entire urban structural plan including different forms of the city walls, houses, streets and the seat of the town's government. Through the careful analysis of topographic maps, this study will distinguish a certain way of adaptation of the criminal law in urban areas due to the existence of town walls and gates, guildhalls and castles, with designated borders demarcating the limits of the town and its regulation. These key buildings and borders are marked on local maps, confirming their presence as permanent elements of both the urban landscape and local legal proceedings.

A town plan is a physical manifestation of the way in which a society organises space, which is most effectively represented in map form. It follows that town plans have always been of prime interest to geographers but, nevertheless, it is difficult to identify what exactly can be called a geographical approach in relation to a specific historical period. In considering early British town plans, a set of relevant aspects for geographical investigation can be identified. In an obvious and direct way, a discussion of the availability and characteristics of town plans is called for, since these constitute the basic 'documentary evidence'.¹¹⁴

Critical to any study of town planning and development is the availability of maps that are sufficiently accurate to be used for detailed reconstructions. The first source which supplemented my research is the series of urban plans found in John Speed's *Theatre of the Empire of Great Britain*, published in 1611. I have also used the first editions of the Ordnance Survey plans (using this term 'plan' as the OS does to refer to maps on a scale of 25 inches to the mile and larger), which were completed for the country by 1890.

John Speed's maps, dated 1610 and 1611, contain some seventy-three plans or views of towns. The work was derived from two major precursors: the sixteen manuscript sketches of William Smith, which were used in his 1588 book, *The*

¹¹⁴ H. Carter, 'The Geographical Approach', in M.W. Barley (ed.), *The Plans and Topography of Medieval Towns in England and Wales*, London, Council for British Archaeology, 1976, p. 7.

Particular Description of England, with the Portraitures of Certaine of the Chieftest Citties and Townes, and the great town plan atlas of Braun and Hogenberg, *Civitates Orbis Terrarum* [*Cities of the Lands of the Globe*], published between 1572 and 1618, which contains entries for many English towns including these selected for this study namely Bristol, Exeter, Norwich, and York. Additionally, William Worcester's *Topography of Medieval Bristol*¹¹⁵ supplemented my research about Bristol architecture and the general view of the fifteenth century town with additional modern research about the medieval topography of towns found in *The British Historic Towns Atlases*.¹¹⁶

¹¹⁵ F. Neale (ed.), *William Worcestre: The Topography of Medieval Bristol*, Bristol, Bristol Record Society, 2000.

¹¹⁶ The series of *British Historic Towns Atlases* published by Historic Towns Trust contain information about the topographic structure of many medieval English towns for example Bristol by M.D. Lobel and E.M. Carus-Wilson, *Historic Towns Atlas*, vol.2, London, the Historic Towns Trust, 1975.; Norwich in the same volume by J. Campbell, also York by Addyman, *The British Historic Towns Atlas*, vol.5: York.

Exeter

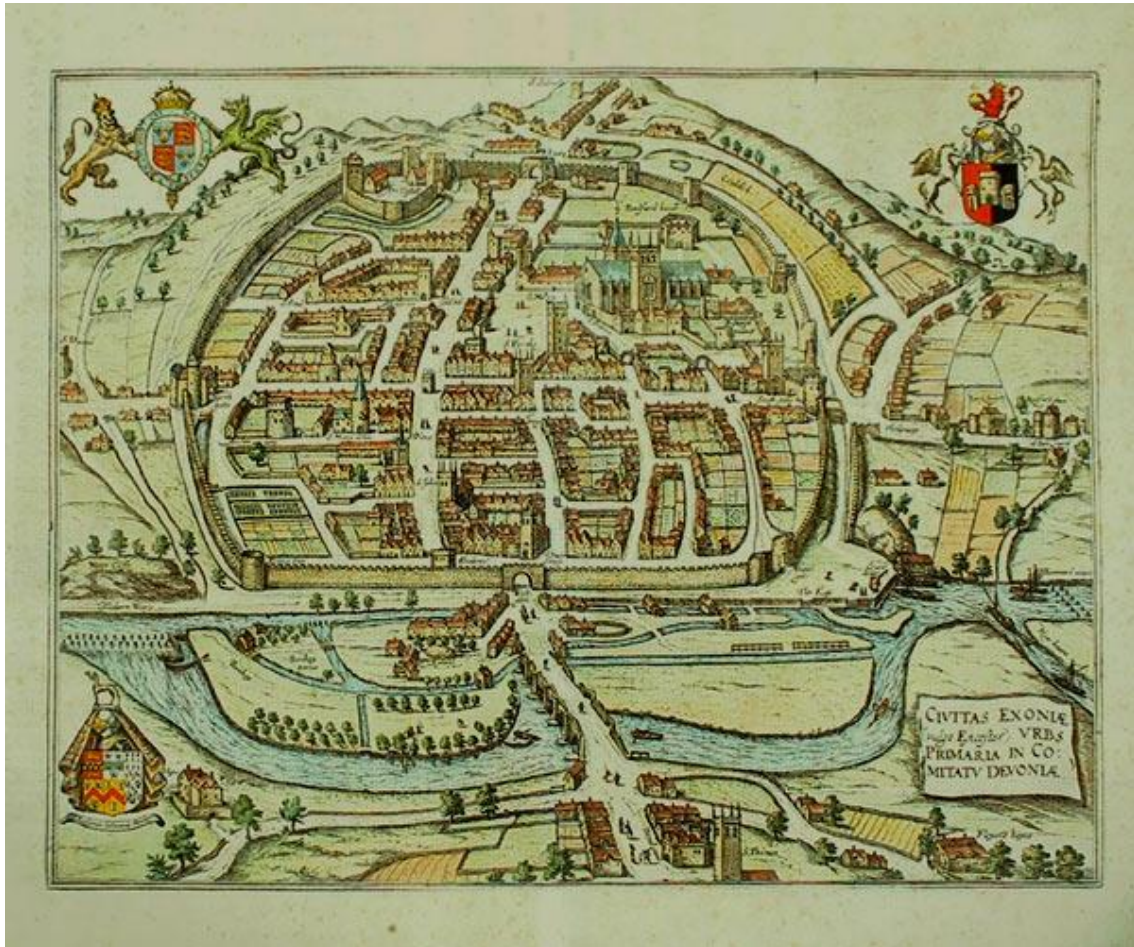


Figure 2: A map of Exeter in 1563.

From Georg Braun and Franz Hogenberg's *Civitates Orbis Terrarum*, vol.6, Cologne, 1617, <http://www.historic-cities.huji.ac.il>, (accessed 2 June 2016). The legend reads: '*Civitas Exoniae (vulgo Excester) urbs primaria in comitatu Devoniae*': The City of Exeter (Excester in the vernacular), the principal town in the county of Devon.

Through the analysis of the map of Exeter from 1563, the town can be determined as a fortified settlement with a castle in the northern part of the city connected to the city walls and with urban development around the central part of town. The town's gates, the River Exe and the local port, all of which were crucial to the local development and the transportation of goods, are also visible.

The fortified town walls of Exeter were, from a legal perspective, one of the main topographical barriers of its local laws. In addition to providing security for its citizens, they demarcated the general limits of municipal law, which applied inside

the urban area.¹¹⁷ According to David Palliser's research in his essay 'Town defences in Medieval England and Wales', the process of English fortification of the urban areas in the fourteenth century was determined by both royal decisions and the economic ability of towns to afford such defences.¹¹⁸ In addition to their walls, larger towns of this period usually had a castle, an impressive visual indicator of the town's military position and of royal dominance, at which were concentrated various functions. These included the seat of the highest authorities (bishops, barons and other figures) as well as military institutions, a treasury and sometimes a court building.

Exeter Castle, known as Rougemont Castle because of the colour of the rock on which it stood, dates to the eleventh century.¹¹⁹ As part of the rebellion against William the Conqueror, the Roman walls of the town were used for that purpose in 1068. After the conquest, William ordered that a castle be built on part of the remaining city wall and became a strategic point in the defence of the town.

In addition to the castle and the city walls built around the town, the 1563 map shows the five gates leading into the town: Water Gate, West Gate, North Gate, East Gate and South Gate. Additionally, one of the gatehouses of Rougemont Castle was located in the north-west corner of the city, including the now-blocked archway through which Edward I would have entered in 1285, when he presided over the murder trial of Walter Lechlade and resolved the dispute over who should become a Dean of the Cathedral.¹²⁰ The gates were an important control point of the urban area: according to the protective function of the town, they also defined the importance of municipal law, whereby persons entering the town by the existing gates, automatically became subject to its law. The existence of defensive fortifications together with the castle, which was the centre of the command during an attack, as well as the number of the gates, closed and protected by urban guards, had an influence not only on the position of Exeter among other fortified urban centres, but also could strengthen the enforcement of municipal law and security and thus assure Exeter's increasing number of

¹¹⁷ However, the town walls were not the only sign of the borders of legal regulations. For example, some towns did not develop any fortifications in the thirteenth and fourteenth century.

¹¹⁸ Palliser, 'Town Defences in Medieval England and Wales', in Ayton and Price (eds), *The Medieval Military Revolution*, pp. 105-117.

¹¹⁹ The name of the Rougemont Castle first appeared in the local records in 1250.

¹²⁰ D. Lysons and S. Lysons, 'The city of Exeter', *Magna Britannia Devonshire*, vol.6, London, 1822, pp. 177-234.

inhabitants and spurred local development.

One of the most important buildings for local law in the town was its guildhall. The building served mainly as a residence of the municipal authorities, who were responsible for keeping the peace and order of the town. Exeter Guildhall represented the local legal powers and was the place of the mayor's court that was held weekly, with the local cases of misbehaviour, assault and robberies tried there. In addition, the guildhall formed part of the urban landscape and was an invaluable source of information about local matters and events in town. The existence of the medieval guildhall in Exeter is confirmed by the common seal of the city,¹²¹ which dates from the late twelfth century and depicts a building enclosed within a fortification with a tiled roof and a lantern or bell turret.¹²² In contrast to the royal seals,¹²³ it is possible to conclude from comparisons with other contemporary seals of towns like Bristol seal with fortification and a quayside, York with the York Minster and St Peter on the back of the seal and Exeter seal of the guildhall,¹²⁴ that they represented an important type of public building during that period and it is more than likely, therefore, that the structure depicted on the city seal in some way corresponds to the architecture and urban life of the main thirteenth-century English towns. Apart from being a seat of the local authorities, part of the Exeter Guildhall was also used as the town's prison in the fourteenth century. For example, the Exeter account roll from 1364-65 evidences the 'necessary expenses' the town had to spend in order to buy 'a chain to keep the prisoners' and 'cords for binding the prisoners'.¹²⁵

The guildhall's function as a prison is analysed in the fifth chapter, but it is important now to underline this function in terms of a general picture of the building. The cellar that now lies underneath the front portion of the guildhall was used as a prison and in 1387-8 £1 12s. 3d. was spent repairing and better

¹²¹ The Exeter seal from 1170-1200 is currently the oldest surviving seal of any town and city of England.

¹²² H.L. Parry, *The Exeter Civic Seals*, Exeter, James G. Commin, 1909, p. 1.

¹²³ The medieval royal seals usually presented a picture of the king, for example the Great Seals of Edward I, II, III. The list of the royal seals with description and historical notes is found in A.B. Wyon, *The Great Seals of England from the Earliest Period to the Present Time*, London, Elliot Stock 62, Paternoster Row, E.C., 1887, pp. 26-41.

¹²⁴ A copy of the Exeter seal is found in a Royal Albert Memorial Museum of Exeter. A description of the Bristol and York seals was taken from Liddy, *War, Politics and Finance in Late Medieval English Towns*, p. 10.

¹²⁵ T. Wright, 'The Municipal Archives of Exeter', *The Journal of the British Archaeological Association*, vol.18, 1862, p. 311.

adapting it to that role.¹²⁶ The main hall was used for annual ceremonies like the selection of the mayor, the assizes, the quarter sessions, the great fairs and such saints' days as were observed as general holidays. The chamber of the guildhall, sometimes referred to as the Great Chamber, was where the council met. The great chest (*magna cista*) in which the rolls were preserved and the city's money deposited was also kept in this room.¹²⁷ Additionally, the local court, known as the Provost court, was held in this room, forming part of Exeter Guildhall and can be identified from the fourteenth¹²⁸ and fifteenth century rolls (1472-3), with information about the extensive works carried out at the back of the guildhall. 'Certain work was executed in fitting out the Provost Court, which had evidently been removed to another room, and the old Provost Court was converted into a prison for women'.¹²⁹

It can be stated that the Exeter Guildhall, apart from its ordinary purposes as a seat of the municipal authorities and short-term functions as a prison or place of entertainment for the local authorities,¹³⁰ was also the location of local courts, emphasising the importance of this place and the function in the practice of municipal law that the guildhall had at that time.

In English towns in the later Middle Ages, striking topographically manifested features – marked out by spires and their enduring construction materials – were their churches. Apart from being the religious centre of the town with ecclesiastical representatives, the church, together with the sacred space (usually cemeteries), played an important role in the field of legal autonomy with the exclusion of this area from the jurisdiction of municipal law: the church and the sacred space comprised what was known as a sanctuary. This was a place where a person who had committed a crime could receive a shelter and assistance. Accordingly, flight to a church was frequently not an attempt to avoid responsibility for committed crimes, but rather a chance to commute the

¹²⁶ H.L. Parry, *The History of the Exeter Guildhall and the Life Within*, Exeter, Exeter City Council, 1936, p. 4.

¹²⁷ The Receiver's Accounts from the fifteenth century recorded money of the sum of £30 locked there. *Ibid.*, p. 7.

¹²⁸ The Receiver's Roll from 1305-6 mentions the *Pretorium Gyalde*, referring to the Provostry. Further examples from 1470-1 describe the work in the entrance of the guildhall, *iuxta le provost Court*. *Ibid.*, p. 8.

¹²⁹ *Ibid.*, p. 13.

¹³⁰ *Ibid.*

sentence.¹³¹

Exeter Cathedral, which dates from the twelfth century, was in medieval times a sacred place and open to its citizens for regular worship. Because of the special purpose of the cathedral, as a religious and sacred centre, the place was often used to help the poor in pursuit of charity or criminals seeking sanctuary.¹³² The sanctuaries in Exeter were also found in other churches and chapels. One example is the Guildhall chapel, built in 1486 and located on the first floor at the front of the building, which was used mainly as the chapel but also as a sanctuary.¹³³ The above churches and chapels of Exeter had a direct connection to the criminal justice by their location and sacred function, being the place where local criminals could claim protection from the law and avoid execution from the town's officials. Furthermore, the authority of English royal powers meant that the majority of conflicts between the Church and local authorities did not involve the Pope's attention and were usually subjected to negotiation and mediation processes from both sides, where only after failure of agreement did they enter royal court. For example, in 1447 conflict between the Mayor of Exeter, John Shillingford and Bishop Edmund Lacy, was resolved with the arbitration of Lord Chancellor and two Justices.¹³⁴

¹³¹ For discussion about sanctuaries and church prisons, see below, Chapter 3, pp. 127-138 and Chapter 5, pp. 224-228.

¹³² N. Orme, *Exeter Cathedral: The First Thousand Years, 400-1500*, Exeter, Impress Books, 2009.

¹³³ S.R. Blaylock, 'Exeter Guildhall', in N. Orme, *The Churches of Medieval Exeter*, Exeter, Impress Books, 2014, pp. 134-135.

¹³⁴ S.A. Moore (ed.), *Letters and Papers of John Shillingford, Mayor of Exeter, 1447-1450*, London, Camden Society, 1871, pp. 133-135. See also Hereford where, in the 1230s and 1240s conflict with the bishop was resolved by royal judgment. G. Rosser, 'Conflict and Political Community in the Medieval Town: Disputes between Clergy and Laity in Hereford', in T.R. Slater and G. Rosser (eds), *The Church in the Medieval Town*, London and New York, Routledge, 2016, p. 23.

York

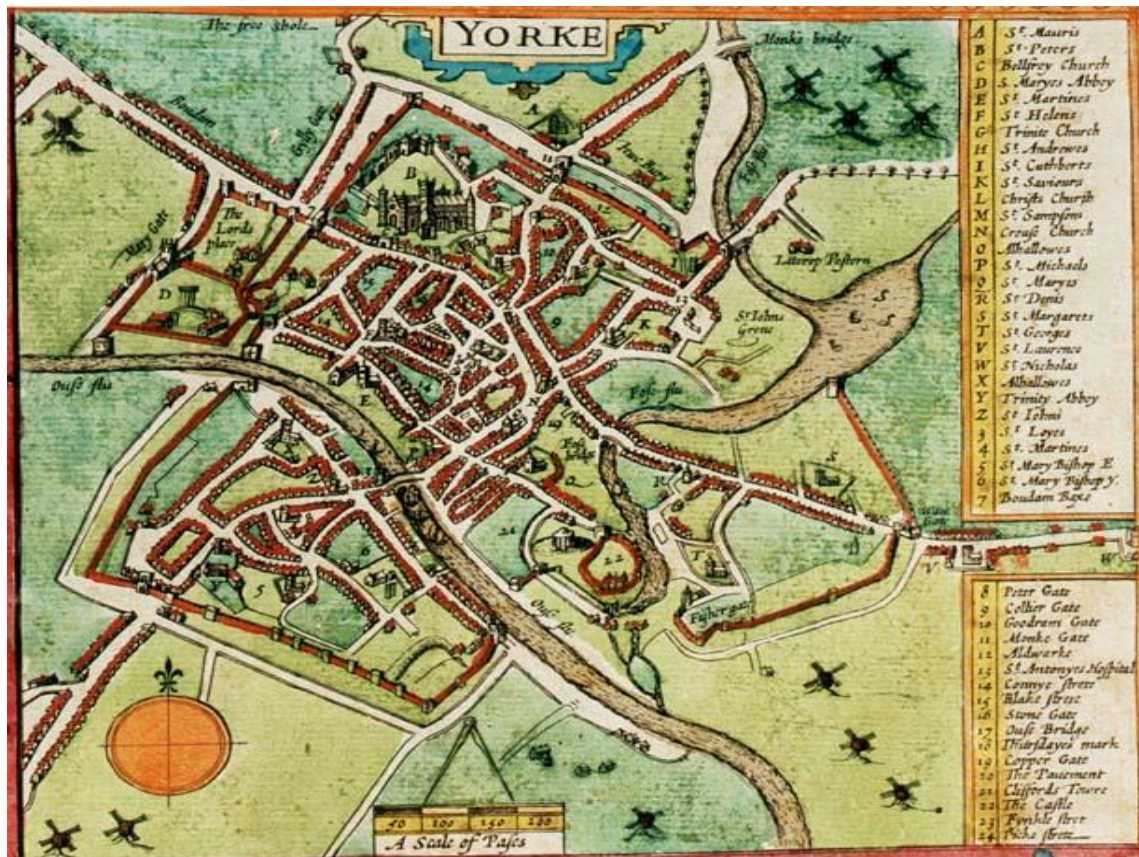


Figure 3: A map of York by John Speed, *Theatre of the Empire of Great Britaine*, 1611/1612. Source: Cambridge University Library, <http://www.cudl.lib.cam.ac.uk>, (accessed 2 June 2016).

Early in the twelfth century, William of Malmesbury described York as ‘*urbis amplissima et metropolis*’, the greatest town and capital.¹³⁵ However, he at once qualified this description, pointing to the destruction of the city and her hinterland by William I, as well as to the stronger attachment of the Norman kings to the southern parts of their dominion. York had still to recover from the disasters of the eleventh century and much destruction in the thirteenth and fourteenth centuries¹³⁶ before it properly merited the description of *urbis amplissima*; and if it was a *metropolis*, it was for some time a provincial one.¹³⁷

The second largest town in fourteenth-century England, York’s importance

¹³⁵ Personal translation. The quotation is found in a chapter of E. Miller, ‘Medieval York: York in Political History’, in P.M. Tillot (ed.), *A History of the County of York: The City of York*, London, Victoria County History, 1961, p. 25.

¹³⁶ See the Peasants’ Revolt of 1381 and partial destruction of the town. R.B. Dobson (ed.), *The Peasants’ Revolt of 1381*, London, The Macmillan Press, 1983, p. 43.

¹³⁷ Ormrod, ‘Competing Capitals? York and London in the Fourteenth Century’, p. 76.

derived from its lengthy history and its crucial location. The population of York at the beginning of the fourteenth century was around 15,000, placing the town second after London (in 1377 the population of London was around 34,971).¹³⁸ However, after the Black Death, the number of citizens of York had shrunk to about 10,872 in 1377. This was still considerably larger than Norwich, Bristol and Exeter.¹³⁹ It remained the seat of secular administration in Yorkshire, as well as of ecclesiastical administration for the north of England. These attributes alone were probably sufficient to attract a substantial population, stimulate trade and industry and reanimate urban life. Furthermore, the city was a centre of traditional land-routes and was well-placed to take advantage of inland waterways. Most important from a political point of view was the fact that York dominated the great route from north to south, which ran through the Vale of York. It guarded the heart of medieval England from northern invasion, and became one of the centres of English political life. Other things contributed to making York the *urbs amplissima*, and Anglo-Scottish strife turned it into a metropolis second only to the emerging capital in London.

As at Exeter, York was surrounded by city walls with gates leading into the town. Additionally, the main castle, which stood in the area of the rivers Ouse and Foss,¹⁴⁰ was determined as a part of defensive walls across the town. According to John Speed's map of 1610, York had four main gates and six additional gates,¹⁴¹ which together constituted the town as a secure and developing urban area.

It is important to note that in the medieval period, the walls of York, with ramparts steeper than they are today, presented an impressive prospect. The outer ditches, some up to 66 feet (20.12m) wide and 10 feet (3.05m) deep, kept archers and artillery at a distance and protected the walls from attempts at undermining. Each of the bars had towers, inner and outer gates, a *portcullis* (all four

¹³⁸ Russell, *British Medieval Population*, p. 142.

¹³⁹ 1377 and population numbers for Exeter (2,340), Norwich (5,928), Bristol (9,518) found in Ibid., p. 142.

¹⁴⁰ See the map number seven of the year 1500 in Addyman, *The British Historic Towns Atlas*, vol.5: York.

¹⁴¹ Peter Gate, Colher Gate, Monk Gate, Copper Gate, Stone Gate, Goodram Gate, Fisher Gate, Walm Gate, Gylly Gate, Mary Gate. J. Speed, *The Theatre of the Empire of Great Britaine*, 1611/1612, Royal Collection Trust, [website], <https://www.rct.uk/collection/1140798/the-theatre-of-the-empire-of-great-britain-presenting-an-exact-geography-of-the>, (accessed 15 June 2016).

portcullises still exist, though Monk Bar has the only one in working order) and a barbican, which also had an outer gate. Until it became neglected in the late fifteenth century, the royal castle, when fully garrisoned, was a formidable obstacle. Moreover, though York's defences were not as extensive as those of Bristol or Norwich, their circumference of more than 2 ½ miles meant that a besieging army would be too thinly spread out to be effective.¹⁴²

York is noteworthy as one of very few towns in England that had two castles: the main castle north-east of the Ouse and the smaller fortified part of castle, the Old Baile, south-west of the Ouse. Both were built by William I. The river certainly seems to have been a factor in determining the sites of the castles at York, but equally important was their location on the edges of the town.¹⁴³ A location on the outskirts of the town was beneficial to a castle, which could then be visible from a greater distance, representing the greatness of the town and making it easier to detect potential danger from its high towers. The similarity in the close location of castles and rivers as a part of the security of the town can also be found in the topography of Bristol.

The castle, together with Clifford's Tower,¹⁴⁴ was used for administrative purposes, notably for imprisonment, storage and judicial sessions. It was the place from which the king's sheriff administered Yorkshire, with its associated offices. York Castle was the county's judicial headquarters and it also acted as a home for the exchequer, which took over Clifford's Tower.¹⁴⁵ The area of the castle also housed an important royal mint.¹⁴⁶ Additionally, in the thirteenth and fourteenth centuries the castle was visited by many English kings. Between 1298 and 1338, Kings Edward I, II and III resided frequently in the city, using it mainly as a northern base for their Scottish wars,¹⁴⁷ bringing with them the government offices and royal courts like the king's bench sessions through the fourteenth

¹⁴² B. Wilson and F. Mee, *The City Walls and Castles of York: The Pictorial Evidence*, York, York Archaeological Trust, 2005, p. 14.

¹⁴³ *Ibid.*, p. 3.

¹⁴⁴ This is the largest remaining part of the castle.

¹⁴⁵ A. Musson, 'Court Venues and the Politics of Justice', in N. Saul (ed.), *Fourteenth Century England*, vol.5, Woodbridge, Boydell and Brewer, 2008, pp. 161-177.

¹⁴⁶ J. Ashbee, 'History of Clifford's Tower', [website], <http://www.english-heritage.org.uk/visit/places/cliffords-tower-york/history-and-stories/history/>, (accessed 15 June 2016).

¹⁴⁷ According to Ormrod's research, Edward II periods of residence in York were significant. The royal household spent over two and a half years at York during Edward's II reign. Ormrod, 'Competing Capitals? York and London in the Fourteenth Century', p. 82.

century.¹⁴⁸

York is unique among provincial cities in that it had a variety of medieval guildhalls through the fourteenth and fifteenth centuries namely: The Merchant Adventurers Hall (1357-1368), The Merchant Tailors' Hall (late fourteenth-century), St Anthony Hall (1446-1453).¹⁴⁹ These are a reminder of the prosperity of York in the days when it was a Staple Town and the chief centre from which the commodities of the surrounding countryside, especially wool and leather, were shipped along the Ouse and across the North Sea to the continent. York had a Merchant Guild before 1200, to which men of all trades belonged. Later the members of each craft made a separate guild to protect their special interests.¹⁵⁰

The present guildhall stands on the bank of the River Ouse and is approached from St Helen's Square by an arched carriageway passing through the Mansion House. The main hall itself was built between 1449 and 1459. The previous building, the thirteenth century York Common Hall, was mentioned in a royal charter from 1256, and served, like its counterpart the Exeter Guildhall, civic functions of all kinds, including being the place for the mayor's court, hearing local cases of property disputes, misbehaviour and assaults.¹⁵¹

York Minster lies inside the town walls of York, where municipal law was performed by the local authorities. Together with a surrounding area, York Minster was named a sanctuary place and excluded from the town's legal regulation. (By the time of Edward III, the privileges of the church of York were supported by the special charter granted to Southwell, which confirmed the established privileges, including these given to York).¹⁵² Similarly to Exeter and other towns in the kingdom, York also experienced regular disagreements and jurisdictional disputes in town—church relations, when in 1494, after the failure of agreement regarding the townsmen's right of commonage in the Vicars Leas that was owned by the vicars choral, the important role of the Crown in arbitration

¹⁴⁸ For example in the years of 1328, 1340, 1343-4, 1348-9, 1362 and 1393. Ormrod, 'Competing Capitals? York and London in the Fourteenth Century', p. 81.

¹⁴⁹ Jones and Palliser, 'York 1272-1536', in Addyman, *The British Historic Towns Atlas*, vol.5: York, pp. 37-48. Also, the chapter 'The later middle ages: City and citizens', in Tillot, *The City of York*, pp. 106-113.

¹⁵⁰ J. Rogers, *York*, London, Batsford, 1951, p. 32.

¹⁵¹ D.M. Palliser, *Medieval York: 600-1500*, Oxford, Oxford University Press, 2014, p. 159.

¹⁵² J.C. Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, London, Allen, 1911, p. 153.

was strongly indicated.¹⁵³

Other towns

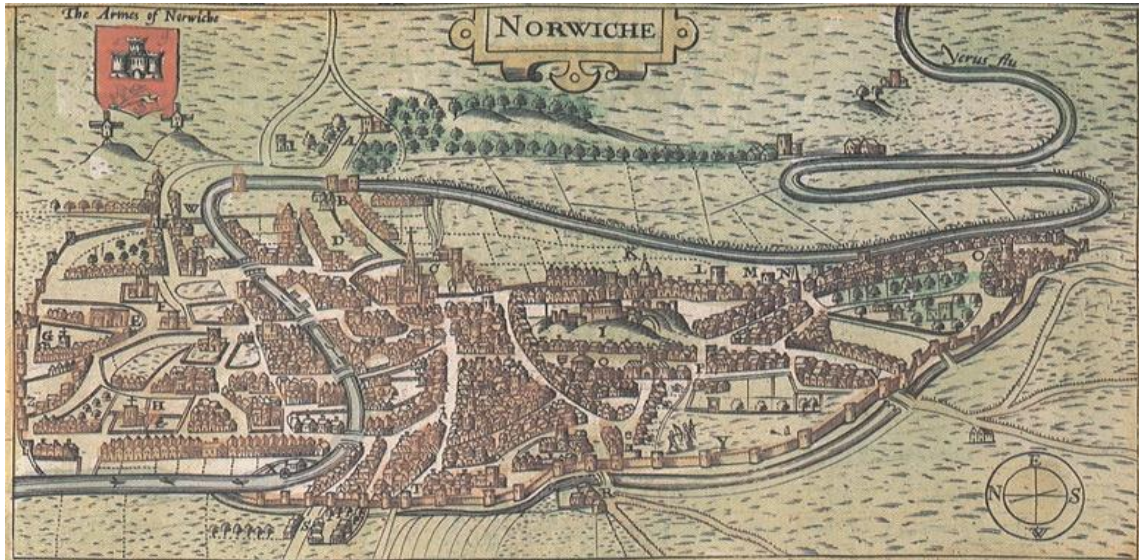


Figure 4: A view of Norwich from the west by John Speed, Theatre of the Empire of Great Britaine, 1611/1612.

Available from Cambridge University Library, <http://www.cudl.lib.cam.ac.uk>, (accessed 2 June 2016).

¹⁵³ Carrel, 'Disputing Legal Privilege', p. 287.

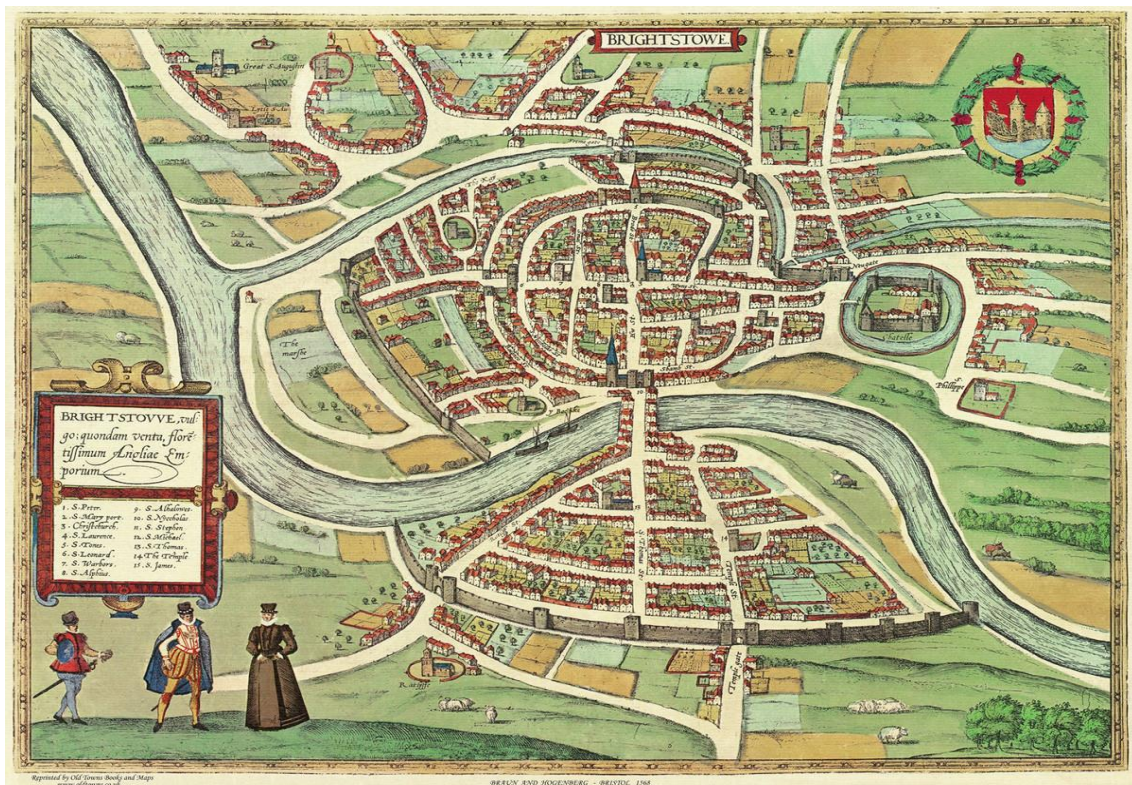


Figure 5: A view of Bristol in 1581 by Joris Hoefnagle.

The map was copied from of an early survey by William Smith (1568) and later reproduced in Georg Braun and Franz Hogenberg's *Civitates Orbis Terrarum* (1572-1617). Available from <http://www.museums.bristol.gov.uk>, (accessed 2 June 2016).

Other towns like Bristol and Norwich followed a similar model of urban development: the town walls protected them from danger and determined the area of the municipal law; the river flowed through the town and was important for the local economy and for security with the local castle located on the outskirts of the urban area (Bristol) or like in the case of Norwich, sited in the middle of the intramural area.¹⁵⁴ In addition, Bristol and Norwich also had sanctuary areas that were excluded from the jurisdiction of the local laws. In Norwich, there were several places like the church of St Gregory, the church of the Friars Preachers and the church of St Nicholas and St John, and in Bristol there was the church of the Apostles Philip and James, which is mentioned in the case of the death of William de Lay in the 1279, when William was dragged from the churchyard of the above church which served as a sanctuary, and later executed after the

¹⁵⁴ Palliser, 'Town Defences in Medieval England and Wales', in Ayton and Price (eds), *The Medieval Military Revolution*, p. 107.

orders of the constable of Bristol.¹⁵⁵

2.2.1 Special forms of trade control

With the topographical elements analysed above, the special areas used for the exercise of local justice have been determined to be places of execution and disgrace. The pillory, located in the centre of the selected towns, was regularly involved in the local jurisdiction of civic ordinances established for the urban areas. The towns' pillories, gallows and their function in criminal justice are examined in detail in the sixth chapter, however the relevant point at this juncture is that municipal documents confirm the existence and practice of this form of justice in English urban areas as a part of how the law controlled local trade and that these penal structures constituted significant architectural elements of the towns studied here.



Figure 6: An illustration from the Charter granted to Bristol by Edward III in 1347.

Source: <http://www.museums.bristol.gov.uk>, (accessed 4 June 2016).

¹⁵⁵ J. Evans, *The History of Bristol, Civil and Ecclesiastical*, vol.2, Bristol, W. Sheppard, 1816, p. 193.

Following this statement, the local charter granted to Bristol by Edward III on the 24th April 1347¹⁵⁶ confirmed that the mayor, the bailiffs and the commonalty were the officials empowered to confine evil doers and to inflict physical punishment on bakers who broke the Assize of Bread by drawing them upon hurdles through the streets. The illuminated initial beginning the Charter (see Figure 6 above) shows, in the top part, malefactors being confined and, in the lower part, an offending baker being drawn with a lightweight loaf tied around his neck and the scales used to defraud customers hung above him.

The Little Red Book of Bristol also defines the punishments by pillory for butchers who were selling diseased meat and who were buying meat from Jews to sell to Christians as follows: 'On the first conviction [he] should be heavily fined; on the second let him suffer the judgment of the pillory; on the third let him be imprisoned and make amends; on the fourth let him abjure the town'.¹⁵⁷

Restrictions on bakers were also established thus:

It is ordered also that if any one shall presume to sell flour adulterated with oats or in any way falsely compounded, for the first occasion let him be severely fined, if convicted a second time let him lose all his flour, and a third time let him undergo the punishment of the pillory, for the fourth time let him abjure the town.¹⁵⁸

And again with regard to butchers and fishmongers, the following punishments were established:

Also its [*sic.*] ordained and agreed that no butcher or fishmonger or their servants or any other regrators shall purchase any victuals when coming to the town by land or water, which if he shall do, the first or second time he shall be heavily fined according to the judgment of the Mayor and Commonalty, and the third time he shall undergo the punishment of the pillory or shall forswear his business forever.¹⁵⁹

Similarly, York civic ordinances of 1301 state about the pillory punishment against bakers that:

¹⁵⁶ N.D. Harding (ed.), *Bristol Charters, 1155-1373*, Bristol, Bristol Record Society, 1930, pp. 108-111.

¹⁵⁷ F.B. Bickley (ed.), *The Little Red Book of Bristol*, vol.2, London, W.C. Hemmons, 1900, p. 218.

¹⁵⁸ *Ibid.*, p. 221.

¹⁵⁹ Bickley, *The Little Red Book of Bristol*, vol.1, p. 39.

No baker shall use too much leaven or hot water or other means to make his bread when properly cooked and baked weigh more than it should. No bread over six days old is to be sold. Each kind of bread is to be weighed once a week according to the royal assize. If it is found to be well cooked and baked, and to weigh less than the assize demands, the baker shall be heavily fined each time the bread he sells for a farthing is shortweight by up to thirty pennyweight. If it falls short in weight by more than that, he shall go to the pillory, and henceforth his bread must be marked twice with his sign. If he offends a second time, he shall be punished similarly, and if a third, his oven, if it is his own, shall be destroyed, all his bread forfeited, and he shall abjure his calling for ever.¹⁶⁰

The above-mentioned examples of the pillory punishments constituted a reference for the largest towns such as Bristol, York and Norwich. However, they also became a legal model for smaller urban areas, with similar application of the pillory determined as a permanent architectural element occurring in various English towns following the general royal directives found in the statutes and charters.

For example, national legislation was applied in Exeter, as indicated by the common application of the assizes of bread, ale and wine, which all took place regularly and were locally administered by municipal authorities in the form of the annual mayor's tourn or, if more serious, in the mayor's court. The important local goods produced in Exeter were wine and meat, which is why local law was focused on that kind of regulation. The quality of meat in Exeter was ensured in a similar way to that described in *The Little Red Book of Bristol* and in York's ordinances: butchers were fined when they 'failed to bait bulls before their slaughter and by both court presentments and private pleas against butchers for the sale of measly, verminous, fetid, dried-up, and corrupt pork, mutton, beef and veal'.¹⁶¹ Apart from the regulation concerning the production of food, there were controls of the correctness of local weights and measures according to the quality of the goods and their price. Following national statutes, local Exeter regulation like assays was established to ensure that all privately owned measures met proper standards.¹⁶²

¹⁶⁰ York Exchequer, Plea Roll, E 13/26, mm. 75-76. was found in M. Prestwich, *York Civic Ordinances 1301*, University of York, Borthwick Papers, 1976, p. 9.

¹⁶¹ Kowaleski, *Local Markets and Regional Trade*, p. 188.

¹⁶² The assay of 1390 found many false measures in Exeter made by the 33 offenders (both rich

Such regulation suggests that established control over fairness and safety in trade by using a special form of pillory punishment had a significant impact on the development of the English towns' local law and economic regulation. In addition to the town's financial benefits from the controlled area and activity of its commercial practice, the civic ordinances were involved in the process of towns' officials gaining legal independence. Through the king's charters given to the selected towns, and through a number of local customs and regulations described above which came as a result of the agreement between the royal council and civic authorities,¹⁶³ the legal authority for control and punishment being carried out locally by appointed mayors, sheriffs and bailiffs was strengthened. The analysis confirmed those officers as responsible for maintaining law and order in commercial transactions and local production, with enhanced powers to confiscate the property, arrest and punish wrongdoers by using the pillory. English towns like York, Bristol, Norwich and Exeter demonstrate the important similarities in their system of legal control and supervision performed by the same groups of officials across the country and using the same punishment tool. The autonomy of the towns performing above punishments was not, however, complete, and remained under the control of royal charters that confirmed their privileges and specified the responsibilities given to the local officials.

2.2.2 Conclusion

This section about the topography of the selected English towns supplements David Nicholas' hypothesis about the common features of medieval European urban areas¹⁶⁴ and identifies strategic points that supported towns' aspirations to the legal and organisational development as well as their status in relation to other towns in the country. Undoubtedly, an important element that characterised 'the greatest towns'¹⁶⁵ was the existence of their fortifications, gates and castles as part of a defensive element that also indicated the importance of the town from a legal perspective. For example, the medieval castle, which was the visual

and poor), who incurred fines and had their measures broken and burned. MCR 1389/90 m. 35; CRA 1389/90, in Kowaleski, *Local Markets and Regional Trade*, p. 189.

¹⁶³ For example, the mentioned earlier 1301 York Civic Ordinances.

¹⁶⁴ D.M. Nicholas, *The Growth of the Medieval City. From Late Antiquity to the Early Fourteenth Century*, London and New York, Routledge, 2014, p. 99.

¹⁶⁵ The phrase was used by Edward I in relation to the grants of custom on exported wool, woolfells and hides for the selected towns in 1275. H. Rothwell (ed.), *English Historical Documents, 1189-1327*, vol.3, London, Eyre & Spottiswoode, 1975, p. 410.

symbol of the town's military position, also concentrated various functions: it was, among other things, the seat of the highest authorities, a military institution, a treasury and sometimes a court building. The defensive walls with the gates that were closed and controlled during the night are also shown on the maps of selected towns with the main purpose of defence and protection against criminals and other outlaws from the area. Additionally, a part of the civic defence in towns included fortified bridges, visible on the selected maps and performing the additional function of the collection of taxes and tolls, also being a place for local housing and fisheries. The main bridges found in Bristol (Avon Bridge), Norwich (Bishop Bridge), York (Layerthorpe Bridge over the river Foss), Exeter (Exe Bridge), represented the above specification with the significance of their existence to anyone who, after crossing the bridge, would pass the entry gate and become under jurisdiction of the certain town.¹⁶⁶

Another common element identified in this analysis was the guildhall building, a place that functioned as the seat of the municipal authorities in the form of the local courts in towns (Exeter, York, Norwich, Bristol), as well as functioning as a prison (Exeter, Norwich), and the place for holding annual ceremonies like the election of the local officials. Furthermore, the local churches played an important role as sanctuaries for the local criminals. Their central location definitely helped fleeing pursuers, who could stop and receive some help. Thus, the sanctuaries were areas excluded from the criminal jurisdiction and marked the significant boundaries of the enforcement of the local law inside the town walls.

My topographical study of certain English towns demonstrates the importance of the pillories in their market squares. These were not only a visible architectural manifestation of the legal powers with which the town was privileged, they were also the sites of punishment for local crime and misbehaviour. Additionally, the visibility of the pillories would have helped to inform inhabitants and visitors about the consequences of crimes, and perhaps prevent criminal acts through the special forms of criminal justice enacted using them.

A review of these urban structures shows the parallel between the status of these towns and topographical features that supported their legal and administrative

¹⁶⁶ Based on D. Harrison, P. McKeague, B. Watson, 'England's Fortified Medieval Bridges and Bridge Chapels: A New Survey', *Medieval Settlement Research*, no. 25, 2010, pp. 45-72.

processes, their internal organisation and their external strength. It can be concluded that topography and the associated model of legal regulation had a significant influence on the further expansion of the autonomous aspirations of Norwich, York, Exeter and Bristol in both economic and legal terms, as well as in relations with the highest royal power, the king, who in this process had a controlling and supervisory function.

2.3 Topography of the Polish urban areas

Kraków



Figure 7: Kraków in Liber Chronicarum by Hartmann Schedel, 1493.

Source: National Archive, Kraków in <http://www.krakow.pl> (accessed 2 June 2016).

A woodcut from the *Nuremberg Chronicle* made in 1493 by Hartmann Schedel shows a view of Kraków with defensive walls, town gates and a castle located on the hill above the town. The architectural structure of the urban area seems very similar to that of the English towns. The first element which determined the limits of the town and its legal regulation were defensive walls.

In the charter document that marks the foundation of Kraków in 1257, there is no information about the fortifications surrounding the city. Due to a lack of protection against enemies, local inhabitants experienced frequent attacks at that time. Kraków was burned by the Mongols in 1259 and again twenty-six years later in

rebellion against Duke Leszek Czarny (Leszek the Black).¹⁶⁷ However, Kraków's good location close to the River Wisła assured its economic development based on the movement of goods and people, and the river also provided a defensive function thanks to the town's moat.¹⁶⁸

It was not until 1285 that the citizens of Kraków were allowed to fortify their town. As in England, Polish cities were dependent on governmental policymakers and their directives manifested through privileges. The first of Kraków's defences were a series of embankments and moats, further reinforced by wooden buildings; only the city's gatehouses were constructed from brick.¹⁶⁹ As part of the town's defensive elements, Kraków had six town gates called Rzeźnicza, Grodzka, Floriańska, Wiślna, Sławkowska and Szewska, which regulated the flow of population in the city and were guarded and locked at night by the city guards.¹⁷⁰ Similarly to English towns, the importance of special architectural elements was evidenced in Kraków thanks to the common seal, which dates from late thirteenth-century and depicts a town's fortification with a gate and three turrets.¹⁷¹

As in England, royal power was embodied in Kraków through its castle. Wawel Castle, built in the eleventh century and situated on a hill above the town, served multiple purposes. In addition to being the seat of government and a symbol of royal politics, it was also used as a central defence and a prison. Additional defensive towers and brick fortifications were built around the hill. According to fifteenth-century maps, Wawel Castle was connected to the defensive walls in a similar way to York Castle in England.

¹⁶⁷ Information about rebellion found in M. Franic, *Kalendarz Dziejów Krakowa [Calendar of the History of Kraków]*, Kraków, Wydawnictwo Literackie, 1964.

¹⁶⁸ In 1327, the King Władysław Łokietek ordered a water system for Kraków with a moat around the town.

¹⁶⁹ A. Jelicz, *Życie Codzienne w Średniowiecznym Krakowie [Everyday Life in Medieval Kraków]*, Warszawa, PIW, 1966, p. 60.

¹⁷⁰ Originally, there were six gates around Kraków as is shown on a fourteenth-century plan of the fortifications: Rzeźnicza founded in 1289; Grodzka in 1289; Floriańska in 1307; Wiślna in 1310; Sławkowska in 1311; and Szewska in 1313. J. Piekalski, *Praga, Wrocław i Kraków: Przestrzeń Publiczna i Prywatna w Czasach Średniowiecznego Przełomu [Prague, Wrocław and Kraków: Public and Private Space in Medieval Times]*, Wrocław, Wydawnictwo Uniwersytetu Wrocławskiego, 2014, p. 87.

¹⁷¹ The common seal of Kraków dates from 1281-1288 and was used in different legal documents by the local *Vogt s[igillum] advocati*. A. Chmiel, 'Pieczęć Wójtowska Krakowska z drugiej połowy Trzynastego Wieku' ['The Seal of Kraków's *Vogt* from the second half of the Thirteenth Century'], *Rocznik Krakowski*, vol.9, 1907, p. 213.

The Town Hall¹⁷² in Kraków was situated in the centre of the town and was built at the beginning of the fourteenth century. The oldest parts of the Town Hall date back to the 1300s; these include the base and foundation stones. The building also had a gothic tower which was rebuilt in the fifteenth century. The town hall had an important role in the life of the city: several separate halls served as the chamber in which the meetings of the city council were held, and there was a separate mercantile chamber and additional royal apartments for the king during his visits in the city.¹⁷³

The existence of numerous churches in Kraków demonstrated not only religiosity of the residents but also demarcated the area being subjected to the jurisdiction of canon law and generally excluded from the municipal legal regulation. In the market area there were two churches: St Wojciech and the town's main church, dedicated to the Virgin Mary, which was built in the years 1290-1300 and consecrated in 1320. Additionally, there was a wall that protected the church and the cemetery area. The cemetery gate opened directly onto the market square and was quite an unusual architectural feature perhaps having its origins in the position of the church in the centre of the town, which meant that the space for building was limited. Another church confirmed in the municipal documents and named sanctuary was the church of St Francis, built in the thirteenth century, a short distance from the market centre. The above churches, together with the cemetery area, were similarly excluded from the jurisdiction of municipal law, like the sanctuaries in England.¹⁷⁴

¹⁷² The medieval town hall was comparable to the English guildhall in terms of its administrative and judicial purposes and responsibilities.

¹⁷³ A. Grabowski, *Dawne Zabytki Miasta Krakowa [Ancient Monuments of the City of Kraków]*, Kraków, Drukarnia Czasu, 1850, pp. 10-19.

¹⁷⁴ For more about sanctuaries, see below, Chapter 3, pp. 127-137.

Wrocław

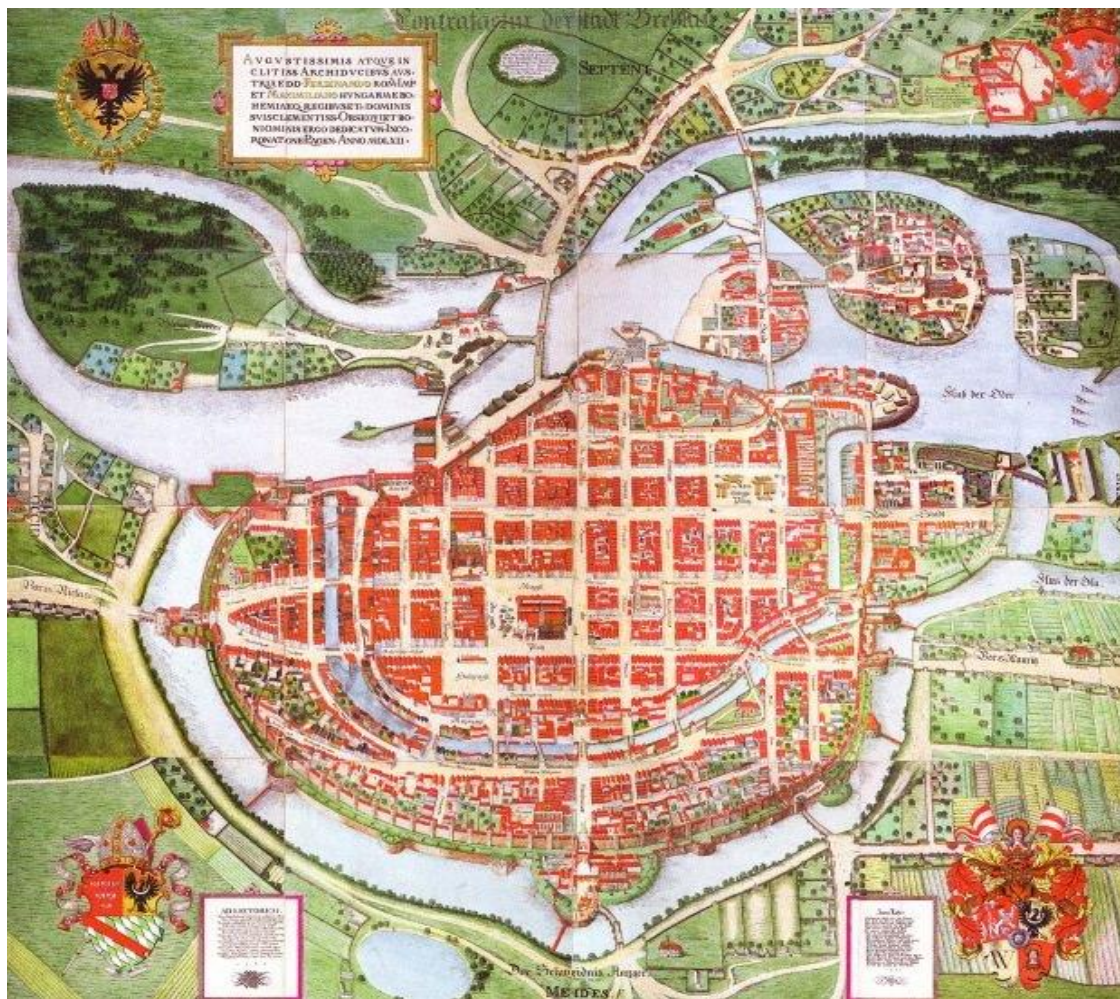


Figure 8: Aksonometric plan of Wrocław with buildings taken in angular perspective by Christian Friedrich Paritius (1775-1848).

Editor, Carl Gustav Foster (or Fischer?) printer and A. Bell lithographer after vratslavian vedutistas Bartolomaeus (Barthel) the elder (d. 1562) and the younger (active 4th quarter of sixteenth-century) Weyhnern, 1826 after the pattern of 1576. Source: Digital Library of University of Wrocław, [website], <http://www.bibliotekacyfrowa.pl>, (accessed 2 June 2016).

Wrocław town, similarly to Kraków and other selected English towns, was located near to a main river, the Odra, ensuring the flow of goods and people.¹⁷⁵ Additionally, the town was surrounded by defensive walls with secured gates and bridges. Together with the common seal¹⁷⁶ which depicts St John the Baptist and the town's main gates and turrets, the foundation documents and other records

¹⁷⁵ The importance of the River Odra in the exporting of goods was confirmed by the fact that Wrocław belonged to the Hanseatic League in the fourteenth century.

¹⁷⁶ The seal dates to 1261. K. Maleczyński, 'Herb Miasta Wrocławia' ['Wrocław's Coat of Arms'], *Sobótka*, 1948, pp. 1-22.

about the expansion of thirteenth-century Wrocław¹⁷⁷ determine the area with a complex system of fortifications; apart from the town's walls and the River Odra around the Cathedral Island site, there was also a moat surrounding the northern part of town. As a result of numerous conflicts, the castle in Wrocław was not constructed in accordance with any particular model. After the previous, thirteenth-century castle structure on Ostrów Tumski was taken over by the church authorities, the fourteenth century Wrocław did not have a specific model of the castle. However, the existence of a later castle building in Wrocław is evidenced by existing drawings, for example, the work of Matthaus Merian from 1650 and by the results of archaeological research, which has confirmed the existence of the fortified area in the seventeenth century.¹⁷⁸

The German regulations that applied in medieval Wrocław after 1242, required the seat of the local municipal authorities be placed in the centre of town, with administrative and judicial duties performed from the town hall, built shortly after the transfer to German law in the thirteenth century. The hall was a one-storey brick building with a distinctive Gothic roof and towers in the western part. In the main hall, burgess sessions were held to elect the most important members of the city's administration. The main hall also served as a place for meetings of the council and aldermen. The ground floor hall was used by the richest merchants, with the basement being used to store cloth; small trades, meanwhile, were conducted in the corridors. Wrocław Town Hall was differentiated from similar buildings in other towns of England and Poland by the fact that from the beginning it was also used as a commercial building rather than, as in other cases, mainly the seat of the municipal authorities.

Some of the religious activity of Wrocław's citizens was focused on Ostrów Tumski, connected with the town by a bridge. It contained the Cathedral of St John the Baptist, built in the thirteenth century. Additionally, Ostrów Tumski, under the jurisdiction of the canons, served the special function of the town's sanctuary, and was excluded from municipal law. The powers and influences of

¹⁷⁷ For example, 1274 and the order of Henryk, Duke of Wrocław which confirms the plans for moats and town walls. Stelmach, *A Catalogue of the Medieval Documents*, p. 53.

¹⁷⁸ Piekalski, *Prague, Wrocław and Kraków*, p. 43, also M. Chorowska, 'O Zabudowie Murowanej w Pierzejach Rynku i Ulic' ['A Stone Building Development in the Streets and the Market Square'], with additional location maps of Wrocław castle from 1250, 1275 and 1300 in Piekalski, *Prague, Wrocław and Kraków*, pp. 71-79.

the local bishops regularly interfered with demands of subordination and financial support for Wrocław dukes and often resulted in excommunication and exile that were listened and tried at synods with the presence of archbishop, bishops and pope's legates through the thirteenth and fourteenth centuries.¹⁷⁹ It can be stated that subjection of Polish lands to the Roman Church and the pope significantly affected the autonomy of legal powers of their dukes in local matters like division of territories and inheritance rights. In contrast, the English royal powers were decisive in the outcome of the disputes between the church and local authorities in the kingdom, where conflicts did not require the presence of papal envoys and remained under the Crown's control and jurisdiction.

The legal significance of the topography of Polish towns is similar to that in England. There were specific places for the punishment and judgment of local criminals, with Wrocław and Kraków each having a pillory in the centre of the town square. This was the same place where the weekly market was held and civic regulation was obeyed. The exact location of pillories in Polish towns can be confirmed through different records. A fifteenth-century chronicle written by Jan Długosz describes the pillory in Kraków town. Długosz records how John from Komczy was punished for blasphemy against the Castellan of Kraków by being tied to the pillory for two days. The pillory was situated between the Church of St Adalbert and the cloth hall in the centre of the market.¹⁸⁰ In Wrocław, a stone pillory was erected in 1492 in the place of the previous wooden one; apart from civic punishment connected to trade it also served as a place of judgment for different criminals including thieves, malefactors and blasphemers.¹⁸¹ The pillory punishment in Polish towns is mainly determined by the local privileges which enabled urban areas to use the pillory as a part of their legal procedures. There

¹⁷⁹ In 1284, Wrocław's Duke, Henryk IV, and local citizens were excommunicated by Bishop Tomasz II as a result of Henryk's demands for financial support for his military expeditions. In return, Henryk exiled Tomasz II and clergy from Wrocław with a further mediation from archbishop and five Polish bishops at synod. J. Dąbrowski (ed.), *Jana Długosza Roczniki czyli Kroniki Sławnego Królestwa Polskiego [Jan Długosz, The Chronicles of the Polish Kingdom]*, Books 7-8, Warszawa, PWN, 2009, pp. 292-293.

¹⁸⁰ '...I ukarali Jana z Komczy za bluźnierstwa przeciw Kasztelanowi Krakowskiemu dwoma dniami kary przywiązania do pręgierza na Rynku pomiędzy Kościołem Św. Wojciecha a Sukiennicami się znajdującego'. From the fifteenth century chronicle written by Jan Długosz cited in M. Janikowski, 'Dawny Pręgierz w Krakowie' ['The Old Pillory in Kraków'], *Pomniki Dawnego Prawa*, 2009.

¹⁸¹ C. Buśko, 'Rynek Centrum Średniowiecznego Wrocławia' ['The Market Square in the Centre of Medieval Wrocław'], in J. Piekalski and K. Wachowski (eds), *Wratislavia Antiqua*, vol.2, Wrocław, Zespół do Badań Średniowiecznego i Nowożytnego Wrocławia, 2000, p. 240.

were also functions resulting from the role of the building to intimidate criminals as a consequence of their crimes against trade and sale in the town.¹⁸² For example, fraud in the sale of goods, particularly through the use of weights and measures, was punishable by fines or, in cases of recidivism, exile or pillory punishment. This regulation demonstrates a similarity to local controls and punishments performed in English towns, such as the 1301 York civic ordinance (discussed above) regulating the goods produced by bakers and butchers, a 1390 regulation from Exeter demanding that fake measures be broken and burned, and Bristol local law from 1331 requiring the constable to both check the quality of meat and fish sold in town and to check measures twice a year.¹⁸³



Figure 9: Exeter seal, 1170-1200.

Source: <http://www.rammtimetrail.org.uk/Object/194/>, (accessed 11.02.2018).

¹⁸² For discussion about punishments, see below, Chapter 6, pp. 234-248.

¹⁸³ See this chapter, pp. 72-75.



Figure 10: Bristol seal, 1272-1307.

Source: <http://collections.rmg.co.uk/collections/objects/64234.html>, (accessed 12.02.2018).



Figure 11: Wrocław seal, 1261.

Source: <https://historia.org.pl/wp-content/uploads/2014/03/2.jpg>, (accessed 12.02.2018).



Figure 12: London seal, about 1219: 'SIGILLUM BARONUM LONDONIARUM'.

Source: <https://collections.museumoflondon.org.uk/online/object/37983.html>, (accessed 12.02.2018).



Figure 13: Kraków seal, 1281-1288.

Source: http://rcin.org.pl/Content/31100/WA303_44470_B88-SZ-R-50-2012_Starzynski.pdf, (accessed 12.02.2018).

2.4 Chapter conclusion

This chapter has shown that the English and Polish towns discussed above developed along similar lines of urban construction and planning, which in turn were determined by strategic internal and external points including defensive walls, gates with fortified bridges, castles and pillories. In addition, marketplaces developed as centres of trade that required supervision and control from municipal authorities, which had their own administrative buildings such as town halls and guildhalls. The topographical analysis of the selected towns was used to demonstrate the wealth structure of towns and urban populations as well as these groups' aspirations for their towns and cities, especially around issues such as autonomy in local administrative and legal affairs. An efficiently functioning apparatus of power could ensure the smooth development and expansion of towns and cities through such measures as improving roads and building defensive walls and gates with guards to prevent raiders and local unrest. The development of the selected towns was achieved through the maintenance of safety, well-administrated market squares where merchants could stop and conduct their business, widening trade and currency exchanges, as well as population movements. In addition, rulers' granting of local privileges and laws to towns and cities could be mutually beneficial, allowing both parties to profit from charging taxes and other local fees or tolls. The given powers in local administrative matters contributed to the development of urban centres: Bristol, York, Norwich, Exeter, Kraków and Wrocław all provide good examples of the local organisation of construction activities and urban expansion. In addition, the location of towns and cities close to rivers and important commercial routes contributed greatly to their prosperity.

The chapter has revealed how the two countries had a certain plan for the introduction of criminal law in urban areas in the thirteenth and early fourteenth centuries through two main elements: topography and municipal organisation. Thanks to this particular model of creation, the English and Polish towns could expand the reach of local law based on privileges and grants, which were given as a result of these urban areas' prosperity.¹⁸⁴ The main differences were found in the form of receiving legal powers, with the examples of English towns based

¹⁸⁴ Newly created or based on a new regulation.

on general cooperation and mutual aims exchanged with the Crown and, in the Polish examples, the local town councils characterised by autonomy and strong aspirations towards independence from royal influence.

This chapter has identified some common legal implications of the English and Polish towns' control over criminal responsibility for offences connected with trade and production. The form of responsibility depended on local customs. Punishment was realised through pillories and places of public disgrace, confirmed by topographic analysis in town centres and carried out by the local officials as a means of public control of trade, particularly of important factors like measures and scales.¹⁸⁵

Additionally, selected churches in English and Polish towns were named sanctuaries and excluded from local jurisdiction, thereby exemplifying the diversity of the legal systems of the period and providing an exception to the complete subordination of the area encompassed by the town walls to municipal jurisdiction. The churches of St Mary Redcliffe in Bristol, York Minster in the city of York, St Gregory and St Nicholas and John in Norwich, Exeter Guildhall Chapel, with the Polish examples of the churches of St Wojciech in Kraków and St John the Baptist in Wrocław, all demonstrate the common limitation and separation between the clerical estate and town boundaries in terms of competing municipal jurisdiction within the town walls. It has been evidenced that relations between church and local legal authorities in the two countries were dependent on a different model of settlement. The superficial royal powers as well as direct subjection to the Roman Church resulted in the pontiff's frequent intervention in the internal affairs of Polish lands, while English royal jurisdiction had the majority of powers in the restoration of temporary peace between the church and local authorities when they failed to reach agreement.¹⁸⁶

Consequently, this chapter has argued overall that the development of local legal administration, and criminal law enforcement in particular, in these two countries

¹⁸⁵As well as the use of the pillory for most trade offences, English convictions sometimes included cases involving prostitution, procuring or other acts against public morality, which like the Polish regulation were punished by civic authorities using the local pillory. For example, in London's *Letter Book I*, see the list of those convicted of immorality before the mayor between January 1400 and July 1439: from a total of 69 cases, 66 were convictions, which resulted in 32 punishments, including 6 by pillory. See discussion of Carrel, 'Disputing Legal Privilege', pp. 290-291.

¹⁸⁶ For more about the church's relation with local authorities see below, Chapter 3, pp. 127-137.

during the period in question needs to be understood in terms of its connections with urban topography. This means that town authorities developed regulatory and administrative practices as a function of local need and ambition, but also in ways partly influenced by, and resulting in an influence on, the physical organisation of urban space. While this comparison has indicated important similarities, mostly in terms of legal and organisational development, it has also highlighted key differences, particularly with regard to the relationship with the central royal power. This aspect of the legal systems of both countries is analysed in terms of the main determinants in the following chapter.

Chapter 3. The expansion of justice in towns: a comparative analysis

Since ancient times,¹⁸⁷ the function and importance of justice became a priority in terms of the creation and development of a uniform state of law and order. The common principle of legal hierarchy, together with rules of conduct exercised in European communities, influenced significantly the municipal growth of legal proceedings including law enforcement against criminal acts and antisocial behaviour in the medieval period.

As a result of the well-developed municipal defensive structures, commercial routes and the movement of people, English and Polish towns gradually expanded their territories and increased their populations. However, as they grew larger, they also needed to put in place controls and legal regulations which meant, among other things, criminal justice in the form of punishments for lawbreakers. Importantly, the main forms of local legal practice examined in Chapter Two, along with the town structures, needed to be developed and improved, not only in the field of the criminal law executed by local officials, but also with regard to their preventive and controlling functions, which were exercised in close cooperation with the residents of the given area and under royal supervision.

This chapter analyses the main types of criminal offences that were prosecuted by municipal courts in towns of both countries in the late thirteenth and fourteenth centuries. In particular, it will compare the kind and number of criminal cases that were brought before the local authorities in England and Poland, providing the statistics behind the records that characterised both systems of law. The study will supplement existing scholarship in the area and highlight the range of the granted powers and responsibilities of towns' authorities towards local crimes in both countries, with specific attention to the type of criminal offences that could

¹⁸⁷ For example, Aristotle and his philosophy about the inseparable connection between *iustitia* (justice) and *ius* (law). M. Maciejewski, 'Szkic z Dziejów Idei Sprawiedliwości od Czasów Starożytnych do Współczesności' ['An Outline of the Idea of Justice from Ancient Times to the Present Day'], [website], http://www.bibliotekacyfrowa.pl/Content/41099/01_Marek_Maciejewski.pdf, (accessed 5 February 2017).

be heard in the municipal courts of selected towns.

Further, the chapter will answer the question of how supervisory actions over local criminal law in selected towns worked through the directives of royal and local orders and other legal documents.¹⁸⁸ In particular, what were these activities and to what part of local law did they apply? In doing so I will identify the systems of cooperation between a town's inhabitants and local officials appointed to keep the peace in towns with the practical application of local criminal law procedure intended to prevent and respond to crimes. This research will be used to determine the extent to which the legal autonomy in towns based on established regulation of protecting the peace and order that functioned in English and Polish urban areas at that time can be measured.

Finally, the chapter will compare the similarities and differences that characterised the policies of hue and cry, areas designated as sanctuaries and the classification of outlaw status in England and Poland in order to provide a common example of criminal law-making based on local and territorial cooperation between various towns within each country.

3.1 Local crime

In fourteenth-century England, the social class of people who took part in criminal activities was broad and, apart from a large proportion of vagrant-strangers, also included respected citizens who could be involved in criminal incidents.¹⁸⁹ Thus, the prosecution of offences at the local level was undertaken by the municipal courts, with the active role of selected officials. However, the towns' local borough courts dealt mainly with the civil cases like non-payment, overpricing and misbehaviour, and had limited jurisdiction over felonies.¹⁹⁰ According to fourteenth-century special commissions directed by the king to control the king's peace and punish serious crimes in the counties, the sessions of English justices

¹⁸⁸ Depending on the importance of the document, it could be issued by the king, duke or local municipal authorities like the town councils.

¹⁸⁹ For more about the fourteenth century upper class criminals see B.A. Hanawalt, 'Fur-Collar Crime: The Pattern of Crime Among the Fourteenth Century English Nobility', *Journal of Social History*, vol.8, no. 4, 1975, pp. 1-17. Also, the social analysis of Oxford's criminal population is found in C.I. Hammer, 'Patterns of Homicide in a Medieval University Town: Fourteenth-Century Oxford', *Past and Present*, vol.78, 1978, pp. 1-23.

¹⁹⁰ H. Carrel, 'The Ideology of Punishment in Late Medieval English Towns', *Social History*, vol.34, no. 3, 2009, p. 303.

of the peace acted as a representation of royal powers towards local jurisdiction in the counties across the country. First appointed as assistants of the sheriff, in time the keepers of the peace were entrusted with more and more powers, with the result that their successors, the justices of the peace, were empowered to hear and determine felonies and trespasses. Significant for this thesis, the fourteenth century saw the justices taking over the duties and function of other legal authorities. The local officials like sheriffs, constables and bailiffs all lost legal importance over time because of the growing powers of the justices, however they were strongly involved in legal practice through their appointments to serve on different peace commissions.¹⁹¹ For example, Adam Bowes, the Sheriff of Durham (1312-14 and 1323-38), was also Keeper of the Peace for Yorkshire and a Keeper of the County for Westmorland in 1332. Similarly, Edmund Hemmegrave, before his appointment as a keeper of the peace, had experience as a justice both for gaol delivery and for special oyer and terminer commissions in 1314. In 1317, he received life exemption from sitting on juries and serving as a sheriff. The peace commission sessions of 1307 and 1308 included current sheriffs, who were appointed jointly with other named commissioners for the county or counties of their bailiwick. The sheriffs may even have been regarded as a suitable means of reinforcing and supervising the keepers' duties.¹⁹² The relationship was officially terminated in 1314, when the sheriff was no longer formally included in the peace commissions, however there was still an overlap between sheriffs and keepers of the peace after 1314.¹⁹³ What is more, the importance of the justice of the peace and their role in the local judicature can be evidenced through cooperation with the civic officials towards enforcement of the labour legislation (1351) and establishment of the peace commissions for urban jurisdiction in the second half of the fourteenth century.¹⁹⁴

It is important to note that despite the large number of crimes being treated directly by the central courts including visits to the shires by the King's Bench, certain criminal offences were initially processed before the municipal courts.¹⁹⁵

¹⁹¹ Musson, *Public Order and Law Enforcement*, pp. 130-131.

¹⁹² *Ibid.*, p. 152.

¹⁹³ *Ibid.*, p. 153.

¹⁹⁴ Liddy, *War, Politics and Finance in Late Medieval English Towns*, p. 199.

¹⁹⁵ The selection of criminal offences determined before the municipal courts of selected towns is presented later in the chapter.

The types of cases restricted to the royal courts are not part of this research because that element of the legal system requires its own separate, multifaceted analysis; however, some are evidenced by the justice of the peace sessions as well as the royal documents like the Statute of Treason (1352), where the acts against the king and his family, spreading rumours about the nobility, counterfeiting, heresy and serious riots were all considered treason and were required to be presented before the king and his court.¹⁹⁶ Accordingly, the municipal courts of selected towns heard different offences with an active judicial practice led by the local authorities of the mayor, sheriffs, coroners and bailiffs who had royally granted legal powers to respond and further prevent the criminal activity.

In comparison, most local crimes in the fourteenth century Polish towns, such as Wrocław and Kraków, were treated before the courts of town councillors. Their verdicts were based on German law, however, modified to match the towns' own developing autonomy in application of the given law. There were some differences between Polish fourteenth-century legal regulations and those in German law, and because some of the Polish regulations were applied in towns under German law, it is necessary to analyse both systems. An important example of the different applications of Polish and German criminal law is Kraków. In 1333, the Polish Kingdom was in a difficult political situation. The autonomous aspirations of the local dukes and armed conflicts with Bohemia, Hungary and the Holy Roman Empire meant that only certain parts of the country remained under Polish royal powers and a new king, Casimir the Great (Kazimierz Wielki). These areas included Lesser Poland (Małopolska) with Kraków and Greater Poland (Wielkopolska).¹⁹⁷ There, according to the foundation document the German law was granted primary position, however with some exceptions. For example, when a citizen accused a person without citizenship of the town, the case had to be heard in a Polish court. In the case of a serious crime like arson, the Wiślicki Statute¹⁹⁸ determined that if the accused

¹⁹⁶ 'The Statute of Treason 1352', found in Myers, *English Historical Documents: 1327-1485*, p. 403.

¹⁹⁷ Małopolska region covered the majority of the south with a large part of the north-east part of the kingdom. Wielkopolska area covered mostly the central part of medieval Poland.

¹⁹⁸ Wiślicki Statute- a set of laws issued by the king Kazimierz Wielki around 1362, in order to codify the judicial proceedings with the attempt to unify customary law in the Polish area of Małopolska with Kraków. Similar regulations were applied to Wielkopolska with the earlier Piotrowski Statute from 1356-1362.

were from a Polish town under German regulation, they should be excluded from that jurisdiction and tried according to Polish law. The same was true for rape charges.¹⁹⁹ However, the above regulation did not apply to every town that followed the German legal model and was dependent on the town's own political situation. For example, in 1327 in Wrocław, the local duke Henry VI, made an alliance with the king of Bohemia, John of Luxemburg (Jan Luksemburski). The result of this pact had consequences for Wrocław in terms of limitation of political and legal connection to the Kingdom of Poland and was confirmed in 1335, when the Polish Law Court (Zaudgericht), a remnant of the former Polish judicature was abolished, mostly because of the influence of the Bohemian Crown and growing importance of the German court and its proceedings in the town.²⁰⁰

In order to make a comparative analysis about the kind of criminal cases that were heard and determined before the municipal courts of selected Polish towns, I have examined archival documents which recorded relevant information about the crimes and the sentences given. These include the Willkür (that is, the local law acts), the court books, books of complaints and criminal books.

The local legal practice in these documents was based on Magdeburg law and generally characterised by severe punishment of those committing crimes and can be divided into two categories that were punished by *gardłem i ręką*, that is a capital punishment, and *skórze i włosach*, which refers mainly to mutilation and other physical punishment. The most serious crimes included cases of witchcraft, counterfeiting, arson and rioting, while offences like theft, wounding or beating were treated as petty crimes and punished less severely.²⁰¹

In the fourteenth century, most crimes in towns like Wrocław and Kraków were judged by the town council.²⁰² However, in uncertain cases or where the judgment

¹⁹⁹ K. Bąkowski, *Sądownictwo Karne w Krakowie w XIV wieku [Criminal Justice in Kraków in the Fourteenth Century]*, Kraków, Drukarnia Czas, 1901, p. 10.

²⁰⁰ Additionally, in 1335 after the death of Silesian Duke Henry VI, the Treaty of Trentschin [Traktat Trentczyński], and negotiation between Jan Luksemburski and the Polish Duke from Kraków, Kazimierz Wielki, resulted in the latter's resignation from his claims to Silesia and Wrocław in return for the Polish Crown. Kazimierz Wielki's decision had a deep effect on the further political and social situation in Wrocław and its citizens. Davies and Moorhouse, *Microcosm*, pp. 127-128.; Nocuń, 'Monuments of Criminal Jurisdiction in Late Medieval and Early Modern Wrocław According to Historical Archaeology', p. 25.

²⁰¹ The records about crimes and their different status can be found in the *Sachsenspiegel* and translated documents of B. Groicki with the Magdeburg law regulation. See below, Chapter 6, pp. 234-246.

²⁰² The process of the fourteenth century town councils taking powers of the alderman is analysed

was not sure, the town council's legal powers were limited and required legal advice (*Weisthümer*) or verdicts (*Urteile*),²⁰³ to be provided by the Magdeburg lay judges. Additionally in Kraków, King Kazimierz Wielki (Casimir the Great) created a Higher Court of Magdeburg Law (*Sąd Wyższy Prawa Magdeburckiego*) at Wawel Castle, which functioned as the appeal court in arguable or uncertain cases from the Kraków area between 1356 and 1791. With time, the number and importance of cases handled by this court enhanced the town's growing autonomy and signalled its independence from the direct jurisdiction of Magdeburg judges.

In addition, the legal regulation supervised by the Polish king that functioned in the central and southern-east part of the country with the towns like Kraków, Poznań, Sieradz, Sandomierz²⁰⁴, were more tolerant and, according to the *Wiślicki Statute* (1347), focused on the financial rather than physical punishment of the criminal.²⁰⁵ It still distinguished between petty and serious crimes. Crimes like murder, arson, theft, villainy (the violence committed by a gang of robbers) and assault with wounding were treated in Polish law as serious. Petty crimes heard before municipal courts included insult, assault without wounding and cutting down trees without permission. The most serious crimes were heard and determined at the king's court in the first instance, with the lower courts administered by appointments by the king in the form of royal officials like castellans, whose court was decisive in criminal cases that were not the direct responsibility of the king.

It can be concluded that in fourteenth-century German and Polish regulation, the major differences in the enforcement of the criminal law were dependent on the range of legal powers the local officials were granted to deal with the crime, also categorisation of the type of crime and seriousness of the offences.

English regulation divided criminal cases according to the level of crime, between

in more depth in the fourth chapter.

²⁰³ See discussion about the German legal judgments in M. Bobrzyński, *Ortyłe Magdeburckie [Magdeburg's Judgments]*, Poznań, Nakład Biblioteki Kornickiej, 1876 and W. Maisel, *Ortyłe Sądów Wyższych Miast Wielkopolskich z XV I XVI wieku [The Judgments of the Higher Courts of Greater Poland from the Fifteenth and Sixteenth Century]*, Wrocław, Zakład Narodowy im. Ossolinskich WPAN, 1959.

²⁰⁴ Kraków, Poznań, Sieradz, Sandomierz were main towns that were part of the Kingdom of Poland in the fourteenth century ruled by the Polish King Kazimierz Wielki.

²⁰⁵ R. Hube, *Ustawodawstwo Kazimierza Wielkiego [Kazimierz Wielki's Legislature]*, Warszawa, Redakcja Biblioteki Umiejętności Prawnych, 1881.

local courts of towns (including officials leading county commissions like the fourteenth century justice of the peace sessions) and, in the case of most serious crimes like treason, royal bodies. These were the special courts with the Common Pleas and the King's Bench enforcing the king's decisive power.²⁰⁶ In comparison, Polish towns under German regulation had a different model of transferring crimes into selected courts, which was mainly based on the political situation of the town and concentration of the majority of legal powers in the hands of certain local officials. The fourteenth and fifteenth century town councillors in Wrocław and Kraków had extensive criminal jurisdiction powers and were responsible for judging various types of crimes. Additionally, the existence of Polish royal powers in the area of Lesser Poland with Kraków meant that most serious criminal acts from these lands were sent to different royal courts under the king's control and supervision.

In order to answer the research question about the preventative and responsive models of legal proceedings undertaken in local fourteenth-century municipal courts of England and Poland, it is important to specify the kind of local crimes that were brought before them in both countries.

I have focused in my research on major offences that were heard before the English municipal courts as a result of the development of local justice including borough charters as well as customary law.²⁰⁷ However, the significant number of the cases that were heard at the municipal courts concerned civil matters, with limitation of criminal offences to the central courts. Fourteenth-century London provides the main example of a city's national dependence towards central common-law courts, with criminal cases divided between mayor and sheriff's courts and supervisory role of the royal court justices. As Penny Tucker suggested in the chapter '*The City Law Courts*', the potential delays and overlap in the jurisdiction between these two city courts had consequences in the number and kind of cases that could be heard locally with the possibility of being

²⁰⁶ According to Ralph Turner in his article, 'it was not until 1323, that an involvement with criminal work came to set the king's bench apart from common pleas'. R.V. Turner, 'The Origins of Common Pleas and King's Bench', *American Journal of Legal History*, vol.21, no. 3, 1977, p. 251, after Sayles, Selden Society Lecture, 1959, pp. 12-14.

²⁰⁷ A. Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt*, Manchester, Manchester University Press, 2001, p. 104.

transferred to the King's Bench.²⁰⁸

In Exeter and in other towns, the weekly mayor's court was an important representation of the local legal powers the town was granted and was the main court for the majority of the civil lawsuits brought by its citizens. Exeter's town records indicate that the fourteenth century mayor and his court dealt with the selection of civil and some criminal offences from the area, including regular royal orders sent to him and other local officials for keeping the peace.²⁰⁹ Additionally, from the beginning of the fourteenth century, the mayor and his court were supplemented by the local council and their administrative and advisory function to control the city.²¹⁰ The type of offences the Exeter mayor's court dealt with can be found in mayor's court rolls.²¹¹ They covered civil cases such as fines, property matters, debts, trespasses, wills and local regulation of assize of bread. The court rolls also recorded the criminal offences and included cases of assault and theft from the area. From the extant records, the type of offences the mayor's court was dealing with in selected years can be determined. For example, the early roll from 1302 recorded the case of Reginald Kene, who complained that in the area of Southern-hay, John Mody 'attacked him and his wife Julianna calling her a wicked witch and thief...and accusing them of other enormities'. The same court roll contain accusations of witchcraft in the case of Dionysia Baldewyne, also quarrels and acts of violence including the drawing of blood in assault on John Horn and John Oblyn from the High Street, made by Phillip Hamelyn and Roger, the porter of Exeter castle. The acts of robbery and trespass were also covered by the Exeter city court of justice with examples of a man's trespassing upon his neighbour's land and offences against the municipal regulations confirmed by regular complaints by citizens against a number of fishmongers, who were throwing the entrails of their fish into the High street.²¹²

²⁰⁸ P. Tucker, *Law Courts and Lawyers in the City of London, 1300-1550*, Cambridge, Cambridge University Press, 2010, pp. 104-130, 350-362.

²⁰⁹ For example, the Statute of Winchester and Statute of Northampton with the royal directives for local officials to keep the peace in towns.

²¹⁰ B. Wilkinson and R.C. Easterling, *The Medieval Council of Exeter*, Manchester, Manchester University Press, 1931, pp. 31-32.

²¹¹ The Exeter mayor's court rolls cover the years from 1264 to 1701 with a great number of the records concerning testaments 1290-1450, final concords 1290-1430, farms of customs and city pasture 1302-1499, all elections 1286-1405, all freedom entries 1266-1500. Kowaleski, *Local Markets and Regional Trade*, p. 338.

²¹² T. Wright, 'The Municipal Archives of Exeter', *The Journal of the British Archaeological Association*, vol.18, 1862, pp. 307-309. According to Kowaleski's research, in the three-year

The mayor's tourn was another court recorded in Exeter, with yearly meetings. However, the majority of cases punished by fines were civil offences such as selling by bad measure, out of due season, and forestalling the markets. The cooperation with the mayor's court was underlined in Kowaleski's book, *Local Markets and Regional Trade in Medieval Exeter*, where the author compared the lists of cases of butchers, brewers and cooks that had been previously noted in the mayor's court.²¹³ For example, the Mayor's Court Roll of 1295/6, m.16 contains a list of persons fined for forestalling and regrating fish, poultry and hides. Additionally, the Mayor's Court Roll of 1296/7, m.6d contains a list of persons fined for failing to remove dung as ordered.

The third borough court that represented local legal powers, a provost court, was regularly held in the guildhall.²¹⁴ The thirteenth and fourteenth century mayor's court rolls of Exeter also held the records of the provost court.²¹⁵ However, this court dealt mostly with civil matters of debt, trespass and broken contracts with limited cases of assaults. For example in 1370 and 1380 in Exeter, more than 80% of the cases heard at the provost court concerned debts and it was not allowed to try criminal offences. For this reason, this court is not featured further in my research.

There are no surviving pre-Tudor records of the mayor's court in Bristol. However, the practice of the jurisdiction given to the mayor and sheriff's court can be examined from selected Chancery Miscellanea and Early Chancery Proceedings as a result of the 1373 Charter.²¹⁶ Apart from the majority of civil cases like trespass, the criminal offences included assaults and theft with the arrest as a result.²¹⁷ Before Edward's III Charter which created the mayor and sheriff's court, the local offences were heard in the thirteenth century Tolzey court, which was

period from 1385 to 1388, there were a total of 992 pleas heard in the Exeter court. The most common plea was debt, in 354 cases (36%), then trespass, which included minor trespass and major felonies, in 341 cases (34%). The remaining 30% of cases were about testaments, wills, property disputes and regulation of the Assize of Bread. Kowaleski, *Local Markets and Regional Trade*, p. 339.

²¹³ Ibid.

²¹⁴ The Provost court in Exeter was held in a room in the front of the guildhall. J.H. Wylie, *Report on the Records of the City of Exeter*, London, HMSO, 1916, p. 408.

²¹⁵ Ibid., pp. 406-408.

²¹⁶ E.W.W. Veale (ed.), *The Great Red Book of Bristol*, Part III, Bristol, Bristol Record Society, 1951, p. 47.

²¹⁷ For example, *Chancery Miscellanea*, Bundle 59, file 2, no. 46 in Ibid., p. 48.

presided over by the bailiffs of Bristol. However, there are no complete records of the court before the ordinances of Edward IV, who limited the powers of the Tolzey court and transferred them to the mayor and sheriff's court.²¹⁸ Bristol Archives holds the Tolzey Court Book of 1480, where limitation of the legal powers is confirmed in the selection of local cases tried there. From a total of 512 cases, 439 were debt cases, 37 detinue, 9 account, 20 covenant, and only 7 were about trespass. The above document did not record the criminal offences tried there.²¹⁹

The type of offences the local jurisdiction was dealing with in English towns can also be supplemented by the example of Norwich, where before 1404 the town's petty offences and breaches of the peace were recorded in the Leet courts under local bailiffs. In the fifteenth century, these were transferred to the mayor's court. The offences presented before the Leets included areas of both criminal and civil jurisdiction. The most common were market offences, felonies, assaults, wrong usage of a hue and cry, forestalling, frauds of trade, manufacture. For example, the Leet Roll of 1374/5 had 152 presentments with 20 criminal offences like hamsok and beating,²²⁰ wrongful use of hue and cry, exchange of stolen goods, buying stolen goods, theft, drawing of blood, assault with a knife and threatening to kill, theft with the use of force, common evil-doers and night rovers who

²¹⁸ See the ordinances of Edward IV with the cases of trespass being transferred to the mayor and sheriff's court. E.W.W. Veale (ed.), *The Great Red Book of Bristol*, Part II, Bristol, Bristol Record Society, 1938, pp. 64-65.

²¹⁹ Bristol Archives no. 04755 and no. 04428 in Veale, *The Great Red Book of Bristol*, Part III, p. 38. However, Early Chancery Proceedings records about the jurisdiction of the mayor and sheriff's court are incomplete, with some of records badly damaged (for example, the Chancery Miscellanea bundle 59, file 2, no. 46). From the surviving documents, however, trespass and fraud are the main offences the Bristol mayor and sheriff were dealing with in the early sixteenth century. For example, in bundle 9, no. 157 one finds that two actions of trespass were brought before the mayor and sheriff's court, with imprisonment as a result. Bundle 46, no. 97 concerns trespass and stolen goods, as does bundle 32, no. 385. Bundle 45, no. 237 features a complaint case of a trespass action against a petitioner, where the petitioner alleged that the unlawful trespass was done by a powerful person. Similar complaints can be found in another sixteen cases recorded in Early Chancery Proceedings (for the complaints' cases see bundle 46, no. 274, bundle 46, no. 290, bundle 48, no. 185, bundle 49, no. 33, bundle 61, no. 521, bundle 61, no. 565, bundle 64, no. 397, bundle 64, no. 608, bundle 64, no. 918, bundle 64, no. 1091, bundle 66, no. 354, bundle 66, no. 444, bundle 56, no. 22, bundle 77, no. 36, bundle 170, no. 32, bundle 226, no. 32). Additionally, a sixteenth-century court book also shed some light on the range of legal proceedings brought before the mayor and sheriff's court, with seventeen cases of trespass occurring in 1585. However, these documents are not a court roll and contain only a very scanty particulars of the disputes to which they refer. *Ibid.*, pp. 48-51.

²²⁰ Hamsok offence usually involved the unacceptable impingement on another's private space.

disturbed the peace.²²¹ Similarly, the Leet Roll of 1390/1²²² has a total of 284 presentments which include 21 criminal cases. The criminal offences include assault and beating, usage of a stick and dagger with hamsok, theft, drawing of blood, common night-rovers causing people to lose money wrongfully, imprisonment and other enormities, re-sale of a stolen food, assault with a knife.²²³ Exceptions to the Leet courts' supervision were cases of murder, manslaughter or death by misfortune, which similarly to other towns including London were reserved for the coroner with a special thirteenth-century requirement for homicide suspects being placed in the custody of the sheriff.²²⁴

In York, as in other towns under examination, the mayor and bailiffs had been granted legal powers towards market offences including trespass. The early fourteenth century York Civic Ordinances determined the mayor and bailiffs being responsible for control of the Assize of Bread and Ale and punishment of those who were against the assize.²²⁵ Additionally, from 1396 the mayor and sheriff's courts were operating.²²⁶ All pleas and matters concerning apprentices were settled in the mayor's court. Further, offences against customs and ordinances of the city, breaches of the king's peace, cases of debt and wills were all overseen there.²²⁷ What is more, the *Memorandum Book* describes the mayor and sheriff's

²²¹ The other offences not included in the statistics: out of tithing as a result of non-attendance of the Leet-31, dice playing-1, tax offences-2, tenement-1, finding of a dagger on the king's highway and concealing it from the bailiffs -1, accusations of leprosy-2. The Leet Roll of 49 Edward III 1374/5 found in W. Hudson (ed.), *Leet Jurisdiction in the City of Norwich during the Thirteenth and Fourteenth Centuries*, London, Bernard Quaritch, 1892, pp. 62-68.

²²² The Leet Roll of 1390/1 found in *Ibid.*, pp. 69-74.

²²³ The other offences not included in the statistics: outlawing-1, debt-1, breaking town's customs-2, tenement -1, out of tithing as a result of non-attendance to the Leet-11, accusations of leprosy-4. The Leet Roll of 14 Richard II 1390/1 in *Ibid.*, pp. 69-76.

²²⁴ 'They shall be taken and delivered to the Sheriff, and shall be committed to the Gaol'. M. Sartore, *Outlawry, Governance, and Law in Medieval England*, New York, Peter Lang Publishing, 2013, p. 178.; *The Statutes of the Realm: Printed by Command of his Majesty King George the Third, 1235-1377*, London, Dawsons of Pall Mall, 1800, pp. 40-41.; London's coroners' rolls from the first half of fourteenth-century recorded 20 unlawful killings a year, excluding suicides, in 1300/1, 1321/2, 1339-40. Tucker, *Law Courts and Lawyers in the City of London*, pp. 154-155.

²²⁵ Exchequer Plea Roll, E 13/26, MM.75-76 found in Prestwich, *York Civic Ordinances 1301*, pp. 9-22.

²²⁶ In 1396, after the charter of Richard II, the city became county by itself. As a result, the two sheriffs took the place of three bailiffs. M. Sellers, (ed.), *York Memorandum Book*, Part II, (1388-1493), Durham, Surtees Society, 1915, p. vi.

²²⁷ For example, the will of John Warhill from the city of York dated on 12 September 1465. *Ibid.*, p. 232. Also, selection of different grants given to the citizens of York about rents, lands and debts (fo.317,b.)1465-land, (fo.218)1465-lands and tenements, (fo.319.b.)1466-tenancy, (fo.321)1442-3-land, (fo.322)1461-land, (fo.322,b.)1467-8-rent, (fo.323)1386-7-lands, (fo.325)1468-land, (fo.326)1468-rent, (fo.329)1463-4, land. *Ibid.*, pp. 232-237.

judicial powers with the cases like felony and theft initially proceeding by them.²²⁸ However, the surviving documents are incomplete and sometimes undated, with limited possibility to identify the exact number of cases in a given year presented before the York mayor's court.²²⁹

Some of the criminal offences from York can also be evidenced from the coroners' rolls and records of local presentments. The type of fourteenth-century crimes varied and included murders,²³⁰ larceny²³¹ and some accidental deaths viewed by the local coroners.²³²

To ensure a comparative analysis about types and number of criminal offences tried in municipal courts of England and Poland, this section will be supplemented by statistics of different criminal activity that appeared in Polish selected towns and their courts.

The selection and percentage of criminal offenders brought before the jurisdiction of town councillors in Polish towns is discernible in recorded councils' legal practice. These include the *Willkür*,²³³ criminal books,²³⁴ books of proscription and complaints,²³⁵ town books.²³⁶ However, the archives from the fourteenth century with a number of local criminal cases and with judges' verdicts were characterised by imperfection and were often unsystematic, omitting

²²⁸ Usually proceeding with the arrest and later delivery to the justices. Sellers, *York Memorandum Book*, Part II, p. 62.

²²⁹ For selected criminal cases brought before the mayor's court, see *Ibid.*, pp. 34, 53-54, 62, 286.

²³⁰ For example, the 1392 inquest in the county court of York before the sheriff and coroners of Yorkshire about felonious slaying of Henry Marshall by Nicholas Nicholson of Hayton. C. Gross, *Select Cases from the Coroners' Rolls, A.D. 1265-1413: With a Brief Account of the History of the Office of Coroner*, London, Bernard Quaritch, 1896, p. 125.

²³¹ For example, the 1377 inquest before the coroners of the city of York viewing the body of murdered John of Leyburn and Thomas Hayward, accused of larceny and assault. *Ibid.*, p. 119.

²³² *Ibid.*, pp. 119-125.

²³³ For more about *Willkür*, see discussion of S. Estreicher, *Najstarszy Zbiór Przywilejów i Wilkierzy Miasta Krakowa* [*The Oldest Collection of Privileges and Willkür of Kraków Town*], Kraków, Polska Akademia Umiejętności, 1936.

²³⁴ Uruszczak, Mięka and Krabowicz, *The Criminal Book of Kraków, 1554-1625*.

²³⁵ Wyrozumska, *The Book of Proscription and Complaints from Kraków, 1360-1422*.

²³⁶ *Scabinalia Cracoviensia 1310-1375* [*The Oldest Town Book of Kraków 1310-1375*], Kraków, [website], <http://www.mbc.malopolska.pl/dlibra/documetadata?id=17543&from=publication>, (accessed 10 April 2016). See also F. Piekosiński and J. Szujski (eds), *Najstarsze Księgi i Rachunki Miasta Krakowa od 1300 do 1400* [*The Oldest Books and Accounts of Kraków Town from 1300 to 1400*], Kraków, Akademia Umiejętności, 1878.; F. Piekosiński, *Kodeks Dyplomatyczny Małopolski* [*A Diplomatic Codex of Małopolska*], Kraków, Krakowska Akademia Umiejętności, 1876.

chronological order and sometimes even noting the same case twice.

In Kraków, the book of proscription and complaints gives the types of crimes that were subjected to the legal judgments of the town councillors. From the years between 1360-1422, there were 356 cases; the most common (more than 80% of the total number of cases) were homicide, wounding, wounding leading to death, mutilation and serious violence in the town. The criminal book of Kraków, made in the years of 1554-1625, was a successor to the criminal records in the earlier 1360-1422 *Liber Proscriptionum*, although no documentation survives from 1422 to 1554.²³⁷ The above records are an important piece of evidence concerning the serious criminal cases and punishments brought before the councils courts and require a brief analysis. Most were given verdicts of capital punishment, while the earlier *Liber Proscriptionum*, with a selection of serious crimes, also contains examples of offences being punished by banishment from town. For example, in the 30 recorded crimes from 1377, there were 10 murders and 20 woundings with banishment as punishment. Similarly, in the 20 criminal cases from 1388, there were 8 murders and 7 woundings.²³⁸ In comparison, in the 262 cases heard and determined before the Kraków's councillors that were recorded in the court book from 1554-1625, 208 cases were about theft, 30 about murder, 5 infanticide, 4 adultery, 2 counterfeiting, 3 procuration, 1 rape, 1 assault, 1 poison, 2 vagrancy, 1 assault and battery, 1 armed robbery, 2 burglary and 1 about the release of prisoners from the prison, when in 1607 Wojciech Walczyk, burgrave of Kraków's Town Hall, admitted release of the prisoners from the town hall prison, for which he was sentenced to the pillory, his ear was cut off and he was later expelled for life from Kraków.²³⁹

In Wrocław, the judicial regulation was very similar, and based on the Magdeburg legal model. The general application of the legal proceedings was examined earlier.²⁴⁰ These included the sixteenth century translations of the Magdeburg law by Groicki and translations of the *Landrecht (Versio Vratislaviensis)*. I discovered more localised examples of the legal practice in Wrocław after analysing citizens'

²³⁷ According to Uruszczak's analysis, there is a lack of existing documents describing criminal acts for the years 1422-1554, that were brought before the councillors of Kraków. Uruszczak, Miłucha and Krabowicz, *The Criminal Book of Kraków, 1554-1625*, pp. xiv.

²³⁸ For discussion about the local punishments for the crimes, see below, Chapter 6, pp. 234-246.

²³⁹ Uruszczak, Miłucha and Krabowicz, *The Criminal Book of Kraków, 1554-1625*, pp. 448-449.

²⁴⁰ For introduction of the German legal regulations, see Chapter 2, pp. 41-49.

recorded criminal activity together with the verdicts given for the crimes. In contrast to Kraków, the fourteenth century sources about criminal offences in Wrocław are more limited because of a lack of archives like court books, and apart from some nineteenth- and early twentieth-century publications about that period including *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert* and *Darstellung der inneren Verhältnisse der Stadt Breslau vom Jahre 1458 bis zum Jahre 1526*,²⁴¹ the majority of scholarship focuses on the more extensive archival sources concerning early modern criminal law.

Vital for this thesis, the German legal proceedings used for local crime and criminals sentenced before the Wrocław court magistrates can be generally determined from fifteenth-century cases from the Silesia area. Additionally, some medieval criminal sentencing survives from accounts of Wrocław from 1418, when the town experienced a series of riots. The trial two years later saw 27 citizens expelled from the town for life and 30 suffered decapitation.²⁴²

From the earliest extant Wrocław records, which cover the years of 1449-1499, it can be concluded that 211 criminals were sentenced for robbery and robbery with murder, and from the years 1456-1525, a total of 454 criminals were sentenced for crimes such as murder, theft, robbery and infanticide.²⁴³ The above records confirm that most of crimes heard before town councillors were similar to those committed in Kraków, and included serious cases like robbery, homicide and infanticide. Additionally, the later Silesian criminal records contain more details about punishments including the names of the local executioners like in 1573, where a thief from Żagań was decapitated by the local executioner called Bartel Seifert,²⁴⁴ or in 1540 in Lubań, where two criminals guilty of homicide were

²⁴¹ FrauenStadt, *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert.*; S.B. Klose, *Darstellung der inneren Verhältnisse der Stadt Breslau vom Jahre 1458 bis zum Jahre 1526*, Breslau, Josef Max, 1847.

²⁴² M. Wójcik, *Chwile Strachu i Trwogi [The Moment of Fear and Terror]*, Wrocław, Wydawnictwo WAW, 2008, p. 97.

²⁴³ The records of the statistics are found in FrauenStadt, *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert*, pp. 1-35, 229-250. Also, D. Wojtucki, *Publiczne Miejsca Straceń na Dolnym Śląsku od XV do XIX Wieku [The Public Places of Executions in Lower Silesia from the Fifteenth to Nineteenth Century]*, Katowice, Fundacja Zamek Chudów, 2009, pp. 470-471.

²⁴⁴ A.H. Hoffmann, *Monatschrift von und für Schlesien*, vol.2, Breslau, 1829, cited in D. Wojtucki, *Kat i Jego Warsztat Pracy na Śląsku, Górnych Łużycach i Hrabstwie Kłodzkim od początku XVI do połowy XIX wieku [The Hangman and His Workshop in Silesia, Upper Lusatia and Kłodzko County from the Beginning of the Sixteenth to the Mid- Nineteenth Century]*, Warszawa, Wydawnictwo DiG, 2014, p. 212.

sentenced to death by being broken on the wheel.²⁴⁵

The extent of the city jurisdiction practised by the town councillors in Polish selected towns can be compared to English municipal courts and their administration of justice.

The number of cases given to the English and Polish local courts differed according to the records. In the Polish sources, the records of a single town usually covered a period between 14 and 70 years.²⁴⁶ In contrast, the English statistics covered the cases for one town for a period of a year or just a few years.²⁴⁷ In the researched areas, the total number of criminal offences that were brought before the courts feature higher statistics for English municipal courts. For example, Kraków city court between the years 1360-1374 had 356 criminal cases that gives around 25 per year. Even fewer were heard and determined in Wrocław court, with only 4 criminal offences per year in the years 1449-1499. In comparison, Exeter mayor's court had around 113 criminal offences a year between 1385 and 1388,²⁴⁸ Bristol 7 in 1480 and Norwich 28 in the years 1390-1.

The legal activity of fourteenth-century English mayor and sheriff's courts confirm that the majority of offences were mainly civil cases such as trespass, debts, testaments, wills. Additionally, the criminal cases like assaults, dice playing, wrong usage of hue and cry, or having a forbidden weapon on the king's highway were also part of the municipal court justice in Exeter, Bristol, York and Norwich. In comparison, the crimes prosecuted in the local courts of certain towns in Poland show that German regulations were characterised by more variety in terms of criminal offences the courts could hear and determine. Emphasising this distinction, the English action of trespass, a general wrongdoing against the

²⁴⁵ See later discussion about the process of punishment and the work of local executioners in Chapter 6, pp. 234-262.; Biblioteka Uniwersytetu Wrocławskiego, sygn. Mil. II/358, s.93, cited in Wojtucki, *The Hangman and His Workshop in Silesia, Upper Lusatia and Kladsko County*, p. 241. A homicide was punished capitally by the magistrates, for example in 1503 in a case of infanticide in Wrocław, where the accused woman was thrown into Odra river. Biblioteka Uniwersytetu Wrocławskiego, sygn. IV F. 124 a, p. 49, cited in *Ibid.*, p. 222. Arson was also punished by death, where in 1584 in Wrocław, a guilty man was burnt to death. Biblioteka Uniwersytetu Wrocławskiego, sygn. IV F. 124 a, p. 49, cited in *Ibid.*, p. 234.

²⁴⁶ For example, the analysed crime statistics for Kraków cover the periods of 1360-1374 and 1554-1625, while those for Wrocław cover 1449-1499 and 1456-1525.

²⁴⁷ For example, Exeter in 1385-1388, Bristol in 1480, Norwich 1390-1391.

²⁴⁸ Based on Kowaleski, *Local Markets and Regional Trade*, p. 339.

king's peace²⁴⁹ determined before the keepers/justices of the peace, cannot be compared with the local regulation of Polish towns. At this time, the superficial royal interference as well as growing authority and legal powers of the municipal officials excluded the possibility of clear distinction between the civil cases processed by both Polish and German laws and their courts. Importantly, in towns like Kraków and Wrocław, the majority of cases brought before town councillors concerned criminal offences and included wounding leading to murder, mutilation and infanticide.²⁵⁰ Additionally, the FrauenStadt's Silesian records, as well as medieval archives from Kraków,²⁵¹ evidence that developing legal autonomy of the Polish town courts significantly influenced their possibilities in terms of trying certain crimes that were restricted in England to the separate court of the coroner.

In contrast, English municipal courts emphasized legal development and cooperation between officials in keeping the peace with a greater number of offences covered by different courts. Furthermore, the local proceedings within a selection of court systems differed from the strict Polish division of duties into towns each with separate powers and legal regulation, performed by town councillors in the courts of each one. Additionally, despite the existence of royal charters which could limit or withdrawn the city's legal powers, the English urban elites continued to request the extension of their jurisdiction and self-government rights.

²⁴⁹ As well as force of arms which can be determined as practically any physical interference, including a minimal amount of force used against the plaintiff. D.J. Ibbetson, *A Historical Introduction to the Law of Obligations*, Oxford, Oxford University Press, 2001, p. 42. Also, A. Musson and W.M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century*, New York, St. Martin's Press, pp. 50-52.

²⁵⁰ The civil offences in Polish towns were also part of the city courts' proceedings, however my research mainly focused on local criminal justice and for this reason they are not included in this analysis.

²⁵¹ Wyrozumska, *The Book of Proscription and Complaints from Kraków, 1360-1422*.

Table 1.: The statistics for the annual average of criminal offences in the Polish towns.

Kraków	1360-1374	25
	1554-1625	4
Wrocław	1449-1499	4
	1456-1525	7

Table 2.: The annual average of offences reported by municipal courts in the English towns.

Exeter Mayor court	1385-1388	330
Bristol Tolzey Court	1480	512
Norwich Leet Roll	1390-1	249

Table 3.: The annual average of criminal offences reported by English municipal courts in the selected areas.

Exeter Mayor court (including trespass)	1385-1388	113
Bristol Tolzey Court	1480	7
Norwich Leet Roll	1390-1	28

The recorded criminal activity had a common impact on the local urban communities in towns of both England and Poland in terms of inseparable links between violence and factors that motivated assaults²⁵² and for this reason the social dimension of crimes requires some brief introduction.

Comparative analysis of the number and types of locally committed crimes constitutes an important part of my research, enabling me to identify the legal powers of city courts and their proceedings that were conducted in both countries resulting from different forms of violent activity on the part of their citizens. My analysis also provides a further understanding of the punishment process as an effective legal response to the assaults, bloody brawls and homicides that were experienced in the selected areas.

The statistics about local crimes, as well as the enforcement of judgments against antisocial behaviour, have become a subject of debate among scholars about

²⁵² See discussion of Hammer, 'Patterns of Homicide in a Medieval University Town', pp. 1-23.

social factors involved in medieval criminal offences.²⁵³ James Sharpe, in his chapter about social crime,²⁵⁴ considered a special parallel in the complicated mechanisms which linked the motive, method, social class and gender of the sentenced felons. Generally, homicide was a male phenomenon; also, women less frequently became victims or were guilty of assault.²⁵⁵ The arguments suggest that, because of their submissive role in medieval society as well as their physical limitations, women were not able to perform these activities on the scale that men did. However, some of the court records do confirm examples of women acting as defendant or accuser in different types of business, family matters or homicide; however, these numbers are not high enough to be evidence of a significant influence on the crime statistics in either country.

The method of crime as well as the social class of the criminal was dependent on certain factors. The bigger the town, the higher the statistics of crime, including homicide, which occurred. For example, there were 43% more homicides than deaths by misadventure in London and 26% more in Oxford. It was similar in bigger Polish towns like Kraków, where about 80% of fourteenth-century criminal cases that came before the courts concerned homicide and other violence causing death or serious bodily harm.²⁵⁶ In comparison, in rural Northamptonshire, the percentage of homicidal deaths was 10% lower than accidental deaths.²⁵⁷ The type of committed crimes which appear in the coroners' rolls and criminal books²⁵⁸ can suggest that defendants were mostly from the middle levels of peasantry.²⁵⁹ Additionally, the social positions of suspects and victims were often similar. It is very possible that the majority of assaults which were made on citizens were committed by persons from the same rank of society

²⁵³ For example, the sociology of medieval English homicide in the research of J.B. Given, *Society and Homicide in Thirteenth-Century England*, Stanford, Stanford University Press, 1977.; M. Gaskill, *Crime and Mentalities in Early Modern England*, Cambridge, Cambridge University Press, 2000.

²⁵⁴ J. A. Sharpe, *Crime in Early Modern England, 1550-1750*, London-New York, Routledge, 1999, pp. 174-204.

²⁵⁵ B.A. Hanawalt, 'The Female Felon in Fourteenth Century England', *Viator*, vol.5, 1974, p. 253.

²⁵⁶ For my research about the number of fourteenth- and fifteenth-century crimes in Polish towns, see this chapter, pp. 101-105.

²⁵⁷ B.A. Hanawalt, 'Violent Death in Fourteenth- and Early Fifteenth-Century England', *Comparative Studies in Society and History*, vol.18, no. 3, 1976, p. 303.

²⁵⁸ Uruszczak, Miłko and Krabowicz, *The Criminal Book of Kraków, 1554-1625*.

²⁵⁹ However, according to Hammer's research, homicide was socially selective and 'confined largely to the lower rungs of the social ladder as the large proportion of strangers indicated'. Hammer, 'Patterns of Homicide in a Medieval University Town', p. 18.

or even the same profession. Hanawalt's research demonstrates that, in the case of English homicides, the majority of these crimes were committed in the same town where the victim and suspect lived; they could be neighbours, could often meet at the market or have business in common.²⁶⁰ The above statement can also be confirmed by the Polish example of Kraków, where homicides were often committed by people who knew the victims and had financial and personal connections, for example local disputes and other arguments.²⁶¹

The weapon which was a decisive tool in different cases of assault, robbery, theft²⁶² or homicide was usually a knife or other sharp weapon used to cut, slice or make the victim unconscious. The popularity of certain weapons in fourteenth-century England was underlined by the statistics, where the majority were identified as knives, axes and hatchets.²⁶³ Similarly, the sixteenth century Polish crime records also provide evidence of the weapons used in different assaults with axes, wooden sticks and knives the most popular, mostly because of everyday use of these tools.²⁶⁴

This brief socio-psychological profile of the medieval town criminal determines a man, from the lower class, usually making an attack in his place of residence, which was the same as that of the victim. Victim and attacker could know each other, perhaps had common business, and had an argument which resulted in assault with a knife or another sharp tool. Additionally, the crimes in the statistics include those committed by an unknown person, in self-defence or by the mentally ill, also accidental homicide or death by misadventure.²⁶⁵ However, the social history of medieval criminal law is also closely related to the history of hue and cry, outlawry and sanctuary status with a particular punishment process.

²⁶⁰ According to Hanawalt's research, 70% were killed in their place of residence. Hanawalt, 'Violent Death in Fourteenth- and Early Fifteenth-Century England', p. 309

²⁶¹ In the criminal book of Kraków from 1554-1625, of the 30 homicide cases heard at the local court, 27 murders were caused by person well known to the victim.

²⁶² For example, for cutting purses and belts. J.G. Bellamy, *The Criminal Trial in Later Medieval England: Felony Before the Courts from Edward I to the Sixteenth Century*, New York, University of Toronto Press, 1998, p. 72.

²⁶³ See Appendix IV in Hanawalt, 'Violent Death in Fourteenth- and Early Fifteenth-Century England', p. 318.

²⁶⁴ Usually for everyday businesses or local trade. In the criminal book of Kraków from 1554-1625, of the 30 homicide cases heard at the local court, the most popular weapon was the axe used in 9 murders, later wooden stick-8, knife-3, beating to death-3, sword-2, poison-2, murder by drowning the victim-1 and 2 deaths with no data about the weapon.

²⁶⁵ W.J. Turner, 'Mental Health and Homicide in Medieval English Trials', *Open Library of Humanities*, vol.4, no. 2, 2018, pp. 1-32.

Being considered as methods employed by the authorities to deal with the local criminals who avoided capture or were difficult to catch, these legal instruments also reveal the limitation of criminal justice and its compromises and will be analysed in greater detail in the following chapters of this research.

3.2 Status of outlaws

Criminal law in fourteenth-century English and Polish towns was characterised by diversity. The suspects of murders, assaults and rapes, as serious crimes, together with theft and robbery, which were categorised as petty crimes, were usually arrested and brought before the relevant authorities and their courts. Those who attempted to avoid court processes and severe punishments they entailed by not turning up on the designated dates became outlaws and wanted men who, were they captured, could be sentenced by local courts to the death penalty, often preceded by torture. Since ancient times, exile and outlawry defined the social, political and legal boundaries between towns and societies as well as being royal instruments for the exercise of power and authority.²⁶⁶

In medieval criminal law in both countries, outlaws were therefore treated in certain ways. Usually grouped with traitors, thieves and killers, were a real threat to general peace and social order. Thirteenth-century royal legislation against these offenders concerned removal from the protection of law, taking over any possessions they may have and a death sentence if found.²⁶⁷ In light of the development of criminal law with local officials responsible for performing legal regulation, the following section will demonstrate the characteristics of how people were prosecuted for a crime in a typical fourteenth-century town in England and Poland. The study for the first time will seek out evidence of the common principles of law that determined the status of outlaw in selected urban areas and will compare this status to different criminal activity in towns of England and Poland. For this, those deemed outlaws will be analysed based on examples from both countries and supported by archival documentation.

In England the word outlaw (in Polish, *złoczyńca*) referred to a male,²⁶⁸ above

²⁶⁶ M. Sartore, *Outlawry, Governance, and Law in Medieval England*, New York, Peter Lang Publishing, 2013, p. 19.

²⁶⁷ *Ibid.*, p. 184.

²⁶⁸ Women were treated differently. According to Bracton, women could not be outlawed because they were not under the law. S.E. Thorne (trans.), *Bracton On the Laws and Customs of England*,

12 years of age, who was either suspected of or had been prosecuted for an offence, and who had not appeared at a court summons or had fled from the scene of the crime. Generally, where serious offences had been committed, the applied sentence was usually severe, often preceded by torture. In the Magdeburg Law, the punishment for murder with intent was weaving into the wheel. For murder with anger, beheading, and for the murder of a relative, the person found guilty was to be torn by claws or dragged by horses with the punishment performed as part of a public display to underline the meaning of 'law and order' in towns. Given these grisly, painful and degrading punishments, it is understandable why making an escape or remaining hidden were attractive options for the accused. Similarly, where a crime involved a breach of the peace of the local community, solidarity among town inhabitants could effectively limit the potential to remain unnoticed in the town, and hence the only possibility was to flee the town.

The English legal system gave the suspect several opportunities to appear in the court and answer accusations. Following this statement, somebody could be stigmatised as an outlaw by English court judgment if he was unjustifiably absent from court summons several times in a row; usually failing to appear five times was sufficient for county courts to describe somebody as an outlaw or lawless man.²⁶⁹ According to Bracton in his *Laws and Customs of England*, the period of time given for the suspect to appear before the court in the case of homicide or another crime after the first failure to appear was five months. After this time, the suspect was determined an outlaw. However, there were also exceptions. In the event of death or serious illness preventing somebody's appearance in court, the law excluded the possibility of declaring them as outlaws. Similarly, men under the age of 12 years, as well as women in general, could not be deemed outlaws by the courts.²⁷⁰ Furthermore, if somebody came to be excluded because of false or unjustified accusations, or in cases of infringements of legal articles, the accused person could rely on the grace and favour of the king, whose writ could

vol.2, Cambridge, Mass., Harvard University Press, 1968, pp. 353-354.

²⁶⁹ Ibid., p. 352.

²⁷⁰ Women were alternatively 'waived'. See J. Brewer, 'Let Her Be Waived: Outlawing Women in Yorkshire, 1293-1294', in A.L. Kaufman, *British Outlaws of Literature and History: Essays on Medieval and Early Modern Figures from Robin Hood to Twm Shon Catty*, North Carolina, McFarland, 2011, pp. 28-44.

cancel his outlaw status.

In the Polish lands, according to the Magdeburg law, and similarly under English customary regulations, suspects had a few chances to appear at court, and a special possibility, known as the *legale impedimentum* [legal impediment], of appearing within two weeks to explain their earlier absences. If the suspect still did not appear despite a court summons, the judge could sentence him automatically and he would lose in any case in which he was accused or suspected. The regulation according to the court appearance was determined in a subchapter called '*legale impedimentum*' of the Magdeburg Law Articles, written by Bartholomew Groicki,²⁷¹ a sixteenth-century clerk; the reasons for an absence being excused were expanded to serious illness, prison, pilgrimage or military expedition, as well as bad weather conditions or mercantile activity causing the defendant to be outside the town or county and so unable to find out about the date of the trial. The above legal possibilities confirm that similarly to England, the Polish legal system encouraged the suspects to get on the right side of law and take part in the court proceedings to avoid exclusion and other serious consequences.

The study shows that in order to ensure a status of outlaw was disagreeable and caused associated social rejection, in late medieval English and Polish towns people deemed as such were to be deprived of their belongings and property. In early fourteenth-century Norwich, if any outlaw or other person who had abjured the realm returned without a special pardon from the king and was found in the city, it was stated that:

[he] shall be pursued at once with hue and cry from place to place, and the judgment that is due shall be done on him at once if he attempts to fly and will not return to the peace. And if by chance it happens that in ignorance such a one is taken and detained for a time or is led and delivered to prison, then nowise can such judgment be done, but well and safely he shall be kept without any release till the common delivery of the city prison. And let the gaoler beware that he guard him well and faithfully, and often visit him for fear of any fraud occurring.²⁷²

Similar regulations about outlaws can also be found in Bristol, in the Ordinance

²⁷¹ K. Koranyi (ed.), *Bartłomiej Groicki. Artykuły Prawa Magdeburskiego [Bartłomiej Groicki. Magdeburg Law Articles]*, Warszawa, Wydawnictwo Prawnicze, 1954, p. 77.

²⁷² Bateson, *Borough Customs*, vol.1, p. 73.

of the Common Council of 1419, which stated that all goods and chattels belonging to outlaws should be confiscated and 'high assessed' so that outlaws will suffer severe financial penalties if they try to get their possessions back.²⁷³

What is more, outlaws could lose more than just money, homes and social position; communication with their families, friends or other town residents was also at stake, so the possibilities for support and aid seemed very small. Significantly, Bracton states that in ancient times the outlaw used to be called a 'friendless' man as a result of the social ostracism and rejection. If anyone wittingly fed an outlaw after his outlawry and expulsion, gave him shelter or communicated with him in any way, that person received the same punishment as the outlaw.²⁷⁴

In Poland, various towns evidenced similar regulation. According to the chronicle of Jan Długosz, in 1358, King Kazimierz Wielki (Casimir the Great) sentenced the provincial governor of Poznań, Maciej Borkowic, and his brother to death for supporting local criminals and thieves by giving them a shelter:

[Instead of using his power against a large number of criminals and thieves from the area, he started giving them a shelter at his place and later became their leader].²⁷⁵

That cooperation between Maciej Borkowic and local criminals resulted in the death sentence where:

[The King Kazimierz, impatient by recurrent complaints about Borkowic's behaviour as well as his impunity, decided to imprison the provincial governor of Poznań at the castle of Olsztyn, and gave instruction to starve Borkowic].²⁷⁶

An additional Polish example of the punishment for a communication with the

²⁷³ 'Hen.V., 2.3. 1419, Ordinance of the Common Council as to Fines and Outlaws', is found in Bickley, *The Little Red Book of Bristol*, vol.1, p. 138.

²⁷⁴ Thorne, *Bracton*, vol.2, p. 361.

²⁷⁵ '...Aliści on złodziejom i rozbójnikom, których w tej okolicy wielka była liczba, a przeciw którym powinien był użyć swej władzy, naprzód skryte u siebie dawać począł przygarnienie, a potem głównym stał się ich przywódcą'. J. Mrukówna (ed.), *Jan Długosz, Roczniki czyli Kroniki Sławnego Królestwa Polskiego [The Chronicles of the Kingdom of Poland]*, books IX-XII, year 1358, Warszawa, PWN, 1969.

²⁷⁶ 'Król Kazimierz wreszcie, zniecierpliwiony częstymi skargami poddanych i tak zuchwalca bezkarnością, przybyłego do siebie, do Kalisza, Macieja Borkowica, wojewodę poznańskiego, kazał ująć i za jawne jego zbrodnie okutego w kajdany odesłać do zamku Olsztyna, gdzie go do turmy podziemnej wtrącono. Nie przestał nawet na prostym zgładzeniu winowajcy, ale postanowił go ukarać śmiercią głodową'. Mrukówna, *The Chronicles*, year 1358.

outlaws can be proved from article no. XII of the Magdeburg Law where:

[If any person communicates with the criminal by giving him food and shelter, he becomes, according to the law, a partner of the criminal and for these actions should be sentenced to torture.]²⁷⁷

This additional punishment was not only painful in a physical sense of lack of food, but also took away all hope outlaws might have had of receiving help and support from family and friends, and also strengthened their sense of exclusion from the local community.

Ruled by custom, the outlaw status was mainly reserved for persons who had missed court summons for their offences. However, the court cases also record certain criminals sentenced to expulsion from towns or counties for crimes they had committed. Depending on the type of crime, town authorities could determine the period of time for which the offender was excluded from the community (up to and including expulsion for life), with the possibility of later returning to town after the period of expulsion.

The municipal statutes of selected Polish towns clearly defined the rules of proceedings whereby transgressors prosecuted for theft or usury, in addition to receiving degrading punishments such as mutilation or being flogged at the pillory, could also be subjected to expulsion from towns and deprived of the status of citizen. For example, in fourteenth-century Kraków, additional penalties provided for offences included exile from town either for a certain period of time or for life (specified as 'a hundred years and one day'). This kind of banishment can be found in the case of a student called John and his girlfriend Dorothy, who were expelled from Kraków for stealing oats from a field belonging to one of the town's tailors, called Nikczon. The banishment was granted 'from the special grace of lords councillors', meaning that it was viewed as lenient: for such an offence the criminal law ordered much heavier punishment.²⁷⁸ Municipal troublemakers could also be subjected to that penalty. Fourteenth-century assistant to a local baker in Kraków, named Peter Zwirczała, who was often

²⁷⁷ 'Gdzieżby też ktokolwiek złoczyńcę, którzy by uciekli, ukrywał albo wiedząc o nich, że się pokryli, nie objawił, a żeby z nimi kontrakty jakie bez wiedzenia a przyzwolenia urzędu czynił, pieniądze od nich za to brał albo sie ich upomniał, takowy każdy słusznie ma być mian w tym podejrzzeniu, że z nimi współki ma i na to przyzwala, co oni czynią, a za takowymi dowody słusznie o to męczon być może'. Koranyi, *Magdeburg Law Articles*, p. 116.

²⁷⁸ For example, public punishment with the use of the pillory. Jelicz, *Everyday Life in Medieval Kraków*, p. 28.

charged with arguing and fighting at night, was banished for some time from the town 'to the grace of the lords councillors' which can be translated as 'until they decide otherwise'.²⁷⁹

In his article, 'The Criminal Underworld of Medieval England', Henry Summerson makes some interesting observations on criminal behaviour and identifies versatility and adaptability as the most truly constant factors underlying the medieval criminal life. Thus, his statement can be applied to offenders who, after being excluded or having tried to avoid that situation by fleeing from towns and living in forests or similar sparsely populated areas often alongside other criminals, formed criminal groups who were responsible for robberies and murders inside the towns and countryside. Summerson's research cannot specifically determine the exact number of the outlaws who lived with a group of similar ones and acted against the law, however he confirmed an increasing number of vagrants and unknown criminals in the English towns through the late thirteenth and fourteenth centuries.²⁸⁰

The groups of criminals of different social backgrounds and influences often resulted in different level of crimes in fourteenth-century English towns. For example, a high-ranked crime committed by outlaws was the capture in 1332 in the North Midlands of Sir Richard de Wylughby, a Chief Justice of the King's Bench and son of Sir Richard de Wylughby the Elder, Chief Justice of the Common Pleas in Ireland. The younger Sir Richard had been pursuing a commission of oyer and terminer, and was freed after a ransom was given to members of the gang.²⁸¹

With thirteenth-century reforms intended to clarify and unify the law, English legislation determined procedures for dealing with the outlaws in local communities across the country. In addition to the major Statute of Westminster (1275) and royal treatment of outlawry, the later Statutes for the City of London (1285) explained that it was forbidden to keep open house after the curfew because '... offenders ... going about by night, do commonly resort and have

²⁷⁹ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 21.

²⁸⁰ Summerson, 'The Criminal Underworld of Medieval England', pp. 198-199.

²⁸¹ The details of the capture and release of Sir Richard de Wylughby I have found in the article of J.G. Bellamy, 'The Cotereel Gang: An Anatomy of a Band of Fourteenth-Century Criminals', *The English Historical Review*, vol.79, no. 313, 1964, p. 707.

their meetings and hold their evil talk in taverns more than elsewhere, and there do seek for shelter, lying in wait and watching their time to do mischief'.²⁸²

Later demographic changes, particularly the emergence of bigger towns and a greater influx of people from the countryside and from abroad into towns, reduced the effectiveness of exclusion as a punishment, since excluded individuals could more easily move between towns and adopt new identities. Additionally, as Melissa Sartore argued,²⁸³ the fourteenth century political unrest and armed conflicts with Wales, France and Scotland forced the English Crown to find another means to deal with the legal, economic, social and political duties including breaches of the peace. With the development of keepers of the peace and later justices of the peace, royal trailbaston commissions, the use of gaols increased significantly. However, despite the urban development, the system of outlawry remained an important punitive tool used by the Crown to expand the power and control over law and order and 'from the government's point of view, up to the late thirteenth century, was a useful process whereby criminals were identified and information about them communicated'.²⁸⁴

In comparison, the early fourteenth century Polish legal regulation of outlawry was under the control of the local dukes with only superficial involvement of the Crown. For example, in 1305, in order to protect the citizen's assets in a case of robbery with the ransom, Duke Bolesław of Wrocław confirmed the town councillors' responsibility for security and control of the citizens' debts.²⁸⁵ Also in 1323, Henryk, the Duke of Silesia and Wrocław, transferred to the town councillors the legal powers to exile perjurers from Wrocław town.²⁸⁶ The continuous development of the town councils and their executive powers over criminal justice in towns like Wrocław and Kraków²⁸⁷ resulted in majority of crimes including outlawry being regularly punished according to local law and custom.

The existing similarities in the outlawry process in selected towns can be seen in

²⁸² 'Statutes for the City of London 13 Ed. I, Statutes of the Realm 1285', are found in A. McCall, *The Medieval Underworld*, London, Marboro Books, 1979, p. 153.

²⁸³ Sartore, *Outlawry, Governance, and Law in Medieval England*, pp. 177-210.

²⁸⁴ Musson, *Medieval Law in Context*, p. 172.

²⁸⁵ Stelmach, *A Catalogue of the Medieval Documents*, p. 71.

²⁸⁶ *Ibid.*, p. 97.

²⁸⁷ In 1331, Jan, the King of Bohemia and Poland and Count of Luxembourg, officially granted the jurisdiction over the majority of criminal cases to Wrocław town councillors. Stelmach, *A Catalogue of the Medieval Documents*, p. 111.

the process itself: in both countries the suspect, before he was determined to be an outlaw, had a chance to appear in the court and give a statement against the accusation. In English towns, according to Bracton,²⁸⁸ the suspect usually had a five chances to offer an explanation, while in Polish towns he had just four. Apart from corporal punishment for unlawful actions, the status of outlaw had the same consequences in England and Poland: isolating the criminal from social life, sentencing him to remain outside the social circle and again ostracising the criminal if he attempted to return.

In both countries, the system of outlawry had an important role in maintaining the social peace and order. Based on customary rights, the process was commonly involved in the national practice to protect the local communities and regularly punish by exclusion different class of offenders and malefactors. With increased numbers of local criminals as well as more defined legal procedures and mechanisms to restrain social disorder, the outlawry process was modified to respond these changes. The German law, supported by the powers of town councillors in selected Polish towns, enforced a novel approach to punishments and added more severe sentences at the same time reducing the use and meaning of social rejection from a local area. The English criminal law and royal legislation at that time were challenged by the political and judicial reforms with the main aim of keeping the peace and applying corporal punishments towards different class of criminals and wrongdoers in the kingdom.

Additionally, the effectiveness of exclusion for a number of criminals became selective in the case of high-born burgesses with special connections. Despite the top-down regulations confirming that anyone deemed an outlaw should be subjected to medieval exclusion, in practice the criminal law seemed to be more lenient for the members of higher social classes in studied English and Polish urban areas. The fifteenth century English examples of Sir Henry Bodrugan repeatedly prosecuted for robbery, assault and theft at the same time being involved in commissions investigating cases of piracy,²⁸⁹ together with another example of Sir Thomas Courtenay, the Earl of Devon's son, who in 1445, together

²⁸⁸ Thorne, *Bracton*, vol.2, p. 352.

²⁸⁹ H. Kleineke, 'Poachers and Gamekeepers: Four Fifteenth Century West Country Criminals', in J. Appleby and P. Dalton (eds), *Outlaws in Medieval and Early Modern England*, Liverpool, Ashgate Publishing Limited, 2009, p. 136.; A.L. Rowse, 'The Turbulent Career of Sir Henry de Bodrugan', *History*, vol.29, no. 109, 1944, pp. 17-26.

with others, including Nicholas Philip, Thomas Philip and John Amore, were accused of the murder of Nicholas Radford, a prominent lawyer and former justice of the peace,²⁹⁰ and whose crime went unpunished by an Exeter court, can be compared to the similar tolerance of the local system of justice for well-born criminals in Polish towns like Kraków. There, as a result of complaints made by the families of three aristocrats, Andrzej Słabosz, Andrzej Hard-Górecki and Jakub Boniecki, who were caught committing offences and were later sentenced to death, the royal court issued a judgment regarding the verdict, specifying that, for each of the three noblemen, three people from the municipality of Kazimierz (the district of Kraków) had to be executed as well.²⁹¹

The above examples confirm that despite the outlawry system being an important instrument to maintain local law and order since ancient times, the new legal mechanisms that responded to fourteenth-century crime and misbehaviour were the logical result of the developmental process of law enforcement, giving a new perception and understanding of the legal and judicial transformation in towns of England and Poland.

²⁹⁰ Myers, *English Historical Documents: 1327-1485*, pp. 1230-1233.

²⁹¹ 'Zdarzyło się mianowicie w roku 1519, że w założonym niegdyś przez Kazimierza Wielkiego (1335) naprzeciw Krakowa mieście Kazimierzu, które od króla tego otrzymało samorząd według prawa magdeburgskiego, zostali schwytani na gorącym uczynku gwałtu trzej szlachcice: Andrzej Słabosz, Andrzej Twardy-Górecki i Jakub Boniecki. Skazani następnie wyrokiem sądu miejskiego na karę śmierci, zostali straceni'. Koranyi, *Magdeburg Law Articles*, p. vii.

p. 14. In quibusdam. Donec peticio vnde in eodem huius fit monas adgnit in huius
 vbi. Do the King, my liege lord. — Pyttony and in the most lamentable wyse complayneth
 vnto your grace your highness and the power, subgettes, liegemen and seruants John
 Amundell of Salterton in the countie of Northumberland beinge within thre of your grace
 John pompon of Shroppe, William Capynwode of Shroppe and Peter phylipp woman of your grace
 to call vnto your grace remembrance the grete and lamentable complayntes of many and
 grete multitudes of your grace subgettes of your countie of Northumberland as well
 of diuers tounes bytowne your lieges, amyttes and subcondit, pibbeytes, dyspoyntes of
 mayntaynes, charynges beinge vnder the same lieges amyttes and subcondit as of other dyspoynt
 vnder your grace as well as of lands, tenementes of common extorcion.

these pmisses graciously to consider and thereupon by thair grace and assent of the lordes spiritual
 and temporall and the commons in this present parliament assembled, and by thair autorite of
 the same to adorne, establish and enacte that anye and as many wytes of parliament
 as shall be thought necessary be made out of your grace chamber dyces vnto your grace of
 london and with comaundynge theryn by the same vpon the persons of a. w. maye that
 they within 14 dayes next after the receyve of theryn or any of theryn of the said wyte
 or wytes do make appon parliament within the said cytye of london at place accustomed
 within the same and in lyke wyse at everye within the said countie of wyche that the said
 honour Godwyn Esq. in 10 dayes next after the same parliament made appon in his apper
 pence be fore you aduaynt lord, in your bench they to answer and answer vnto the
 matters contayned in the said wyte or wytes and to all and anye bill or bills, acton or
 actons that shalbe made ther, or in your grace chamber, or a fore you aduaynt lord and the lordes

Figure 14: One of the petitions against Bodrugan which resulted in an order being issued for his arrest.

Catalogue reference: KB 27/852, m. 35 (1475) in the National Archives.
<http://www.nationalarchives.gov.uk>, (accessed 6 June 2016).

3.3 Hue and cry

A further key element in the pursuit of justice against criminals in towns was the hue and cry, as a way of reacting quickly to call public attention towards crimes and offences in urban areas. As described by Ramsey, '[i]n response to a committed crime, an aggrieved person called for help by literally raising a shout or a clamor, fully expecting those within earshot to come to his or her aid'.²⁹² The alarm could be raised using the town bell as well: '*A wszakoż w mieściech zwyczaj a postanowienie jest, iż nie w ten czas, gdy kto na gwałt woła, ale gdy zadzwonią na ratuszu, ku gwałtowi biec mają...*' [the town bell signalled the confirmation of a committed offence and called on residents to initiate pursuit of the criminal].²⁹³ The study will compare the status and impact of hue and cry on criminal law regulation in English and Polish towns and will examine the ways it was used in response to offences and antisocial behaviour. Furthermore, the custumal records will be used to reflect the methods of cooperation between local citizens and the role of the officials that took place in the pursuit of the criminal in towns of both countries.

This legal institution, which allowed the victims of a crime to summon their neighbours to pursue criminals, is considered as one of the oldest systems of policing in England and Poland; it led to the further development of night watches, specially appointed units for keeping the peace and order in different parts of town, usually divided into wards under the control and supervision of English constables and Polish town councils. The hue and cry is also an example of collaboration and communication between town inhabitants, being a response to offences and thereby strengthening the importance and respect for the local law and for order.

In England, with regulations dating back to the tenth century, the system was strengthened by local customs and practice of the law, with additional support from the royal statutes. Extracts from the laws of Cnut, the longest of the Old English law codes of the eleventh century, described the responsibility placed on individuals for responding to hue and cry, and the fines to be levied from those

²⁹² A.R. DeWindt and E.B. DeWindt, *Ramsey: The Lives of an English Fenland Town, 1200-1600*, Washington, D.C., The Catholic University of America Press, 2006, p. 73.

²⁹³ Based on 'Ut de hoc Speculo Saxonum, libro 1 articulo 53', in Koranyi, *Magdeburg Law Articles*, p. 42.

who ignored the hue and cry or responded to it half-heartedly.²⁹⁴ The royal regulations issued in the form of statutes during the reign of Edward's I and III, continued to strengthen town inhabitants' social responsibility for detecting and reacting to offences with the examples of some wrong usage of hue and cry found in the records of municipal court proceedings of the local crime.²⁹⁵

In the earlier Statute of Winchester (1285), Edward I attempted to reduce crime and the possibility of criminals escaping with the principles of the pursuit: '[T]hat each district be henceforth so kept that immediately robberies and felonies are committed vigorous pursuit shall be made from vill to vill from district to district'. Additionally, in order to maintain safety in towns, the statute defined the rules for keeping guards at the gates and arresting strangers who walked around town after dark: '[A]nd if any stranger pass by them, let him be arrested until morning ... and if they will not suffer themselves to be arrested, let hue and cry be raised against them and those who keep watch shall follow with the whole vill together with the neighbouring vills with hue and cry from vill to vill until they are taken and handed over to the sheriff as is aforesaid'.²⁹⁶

In addition to the royal statutes and customals, the fourteenth century court records and coroners' rolls of selected towns also evidenced how the mechanism for the maintenance of peace operated in English practice.

The existing Norwich Leet rolls are a valuable source for understanding the mechanism for reporting the hue in English towns, and they include examples of false reports as well. For example, the Leet rolls from the thirteenth and fourteenth centuries indicate the fines used to punish unjustified usage of the hue. In the Leet roll of 1288, it recorded that Agnes de Redenhall was fined 12d., as was Roger the carter, while Lucy, the wife of Simon the palmer was fined 2s., for the same offence. Claricia de Gressenhall is also mentioned for having wrongfully raised the hue on Roger the fisher (although she was excused from a fine due to her poverty).²⁹⁷ Similarly, in the Leet roll of 1312, Roger Tailor is noted as having

²⁹⁴ Extracts from the Laws of Cnut are found in D. Whitelock (ed.), *English Historical Documents, 500-1042*, 2nd edn., London, Eyre and Spottiswoode, 1979, pp. 465-466.

²⁹⁵ For example, the above-mentioned Leet Roll of 49 Edward III 1374/5 in Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 62-68.

²⁹⁶ Rothwell, *English Historical Documents, 1189-1327*, pp. 460-462.

²⁹⁷ Leet Roll of Edward I, 1288-1289, found in Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 20-32.

been fined 12d. because 'he drew blood of Everard de Trowse and wounded him by night, whereof Alice, wife of Everard, raised the hue on Roger rightfully, by the pledge of William Hammond and William de Olyf'.²⁹⁸

The Records of the City of Norwich include a custumal from around 1308,²⁹⁹ which also contains information about the hue. The fifth chapter, in particular, indicates that when the hue was raised in response to a felony or robbery, it was to be immediately pursued 'by men who are of fealty of the lord king until the felons were captured or otherwise brought to justice'. Furthermore, Chapters six and seven, about the return of the outlaws without the royal special grace, indicate that the hue must be levied upon the discovery of an outlaw in the city.³⁰⁰

After 1313, all hues raised in Norwich were supposed to be recorded in the Leet rolls and were designated either justified or unjustified.³⁰¹ Thus, thanks to the Leet rolls, we can find out not only about punishment for wrongfully raising the hue, but also about why the hue was used in towns and what kind of criminal cases the town authorities had to deal with in order to protect their citizens. Samantha Sagui, in her work about the hue and cry in English towns, states that in the Leet rolls from 1288-1391, the main types of incidents resulting in the hue in Norwich were assault (46), hamsok³⁰² (23), and theft (6) out of a total of 238 cases.³⁰³

Additionally, borough customs give information about robberies and felonies committed in Norwich that resulted in a hue. An entry from 1340 states that: 'Concerning hue and cry raised in the city by day or by night for any felony or robbery done in the aforesaid city or its suburb, let suit be made immediately by men who are of the fealty of the lord king'.³⁰⁴ In Exeter, the mayor's court rolls rarely specify why the hue was raised, but in those instances where information is available, all but one hue was raised in response to assault (or assault

²⁹⁸ Leet Roll of Edward II, 1312-1313, found in Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 55-61.

²⁹⁹ Book of Pleas, fd. 89 found in W. Hudson and J.C. Tingey (ed.), *The Records of the City of Norwich*, vol.1, Norwich-London, Jarrold and Sons, 1906, p. 132. See also Bateson, *Borough Customs*, vol.1, p. 2.

³⁰⁰ Hudson and Tingey, *The Records of the City of Norwich*, vol.1, p. 141.

³⁰¹ Before 1313, the Leet rolls only reported unjustified usage of the hue.

³⁰² The Anglo-Saxon term determined an offence which involved the unacceptable impingement on another's private space.

³⁰³ S. Sagui, 'The Hue and Cry in Medieval English Towns', *Historical Research*, vol.87, no. 236, 2014, p. 182.

³⁰⁴ Bateson, *Borough Customs*, vol.1, p. 2.

combined with hamsok); in the exceptional case the hue was raised in reaction to a theft.³⁰⁵

The local criminal law of selected Polish towns, also included the institution of hue and cry under the name *Instytucja śladu* - the institution of trace. The Elbląska book, written in the thirteenth century by an unnamed German, defined the rules of customary law, including the principle of the pursuit of criminals. In section VIII, there is a note which specifies that, if a murder was committed and the local population could not catch the culprit(s) on the spot, they were obliged to chase the perpetrator(s), screaming 'with hue and cry', to the next village. The result was that, in every village and town where the hue and cry was observed, the local people had a duty to pursue the criminal. In addition, subsection number IX states that '*Tym samym sposobem goni się w ślad za łupieżcą lub złodziejem, od opola do opola, ode wsi do wsi, jak się tu rzekło*' ['there is a chase for a thief or criminal, from village to village, from town to town as it said'].³⁰⁶

Some of the later regulations of the Magdeburg law regularly used in Polish towns of Kraków and Wrocław confirmed the rules of hue and cry as well. For example, Article 71 of the *Speculum Saxonum* says that 'if a resident will not join together for the pursuit of the one call, [they] shall be punished'.³⁰⁷ Additionally, in the same article: 'in a case of an assault and breach of the town peace, the obligation to intervene, and possible pursuit after the criminal, started from the signal (mostly the bell ring of the town hall) and was not, like previously, upon the cries for help of the person who possibly suffered harm. The changes were introduced due to false alarms raised by drunk or mentally ill persons'.³⁰⁸ In the same chapter, there is also information for the people responsible for securing the bell to prevent it from being wrongfully used.

In England, in a chapter of the Ordinances made by Edward I in 1285 held in the *Liber Albus*, the London White Book of the borough customs compiled in 1419, we can read about how people were expected to react to crimes in the city:

[E]ach person who shall hear, or see, or know of, any offence against his peace or any felony committed, shall arrest or attach

³⁰⁵ Sagui, 'The Hue and Cry in Medieval English Towns', p. 184.

³⁰⁶ 'Elbląska Book', in A. Helcel (ed.), *Starodawne Prawa Polskiego Pomniki [Old Polish Law Monuments]*, vol.2, Kraków, Drukarnia Czas, 1870, p. 19.

³⁰⁷ Koranyi, *Magdeburg Law Articles*, p. 42.

³⁰⁸ *Ibid.*

such felons or transgressors to the utmost of his power, and if he have not power to do the same forthwith, let him raise hue and cry and command that all those shall be near and shall hear such cry, shall come upon such cry for the taking and arresting of such felons and misdoers. And so soon as they shall be taken, let them be delivered unto the bailiffs of the King. And he who comes not on such hue and cry raised, let him be heavily amerced.³⁰⁹

And in the same chapter about offenders, it is stated:

And let each person beware of raising hue and cry upon affray in the City by day or by night, without reasonable occasion for the same. And if anyone shall do so, and shall thereof be attainted, let him be punished according to the offence.³¹⁰

The above examples demonstrate the similarities in these towns in how the alarm was raised in response to a committed crime. The citizens had a common duty to react immediately, to pursue and attempt to catch the criminal. Furthermore, the punishments for misusing or not responding adequately to the hue and cry were very similar, usually involving a financial penalty.

However, the hue and cry in English towns was raised not only in response to local robberies, assaults or felonies, but also in response to people who appeared suspicious or to be armed. In a proclamation of 1332 concerning judicial powers given to the local keepers of the peace, it is stated that, when there are armed men, or others about whom people have cause to be suspicious, who pass through the town in companies or otherwise, 'the townsmen should cause the hue and cry to be raised, and pursue them from town to town, and hundred to hundred, and from shire to shire, and arrest them and keep them safe'.³¹¹ Immediately after the hue and cry was raised, criminals were supposed to be pursued according to a specified custom: the men in pursuit should follow the suspected criminal through their own land, the neighbouring lands and from estate to estate until the moment the criminal was captured. If the weather or other reasonable causes like darkness or obstacles made it impossible to continue the hunt, it could be stopped and restarted later when conditions

³⁰⁹ H.T. Riley (trans.), *Liber Albus: The White Book of the City of London*, London, Richard Griffin and Company, 1859, p. 244.

³¹⁰ *Ibid.*, p. 245.

³¹¹ 'Rotuli Parliamentorum II, 64', found in Myers, *English Historical Documents: 1327-1485*, p. 534.

improved.³¹² Additionally, each district had its own customary procedures for the pursuit of criminals, and, if someone died as a result of drowning, being crushed or by misadventure, or was killed in some other way whereby the culprit could not be immediately ascertained, the hue and cry should nevertheless have been raised in the same way.³¹³

Analysis of examples of breaches of the peace in towns demonstrates a selection of crimes that were common in the thirteenth and fourteenth centuries in English and Polish towns, as well as the system for protecting the peace that functioned in practice in the local law of selected areas. The examples are evidence that the hue system could be used by a town's inhabitants and by anyone in a dangerous situation, who then had the right to receive assistance and support from the municipal authorities. Although raising the hue unjustly could result in a heavy fine,³¹⁴ it was still potentially a successful legal institution whereby both individuals and the wider community could protect themselves through mutual cooperation.

As the above analysis states, the effectiveness of the hue and cry in local legal systems of both countries depended on the activity of the local community, particularly its alertness and willingness to detect and pursue suspects. Additionally, the English examples show that the hue was raised not only in cases of robbery and assault or to maintain an ongoing pursuit, but also to inform local society about criminals who had returned to homes they had previously abandoned because of the chase. For example, the hue was raised on 'a Shropshire killer who returned home three years after his abjuration as soon as he arrived in the neighbourhood, so that once more he had to flee to the church'.³¹⁵ A similar case can be found for a John Lengleyse of Wyrhale, who had 'slain the Mayor of Lynn, escaped to the sanctuary of Holy Church, and abjured the realm before the coroner. But after three years he returned to England, was taken prisoner, and endeavoured to appeal'.³¹⁶ In such situations,

³¹² 'Pleas of the Crown', found in Thorne, *Bracton*, vol.2, p. 328.

³¹³ *Ibid.*, p. 350.

³¹⁴ For example, in the 1374/5 Norwich Leet Roll, the wrongful use of hue and cry was punished by fine of 12d. In comparison, the same fine was given for assault with a knife and threat to kill (12d.). Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 62-68.

³¹⁵ H. Summerson, 'The Structure of Law Enforcement in Thirteenth Century England', *American Journal of Legal History*, vol.23, no. 4, 1979, p. 323.

³¹⁶ Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, p. 16.

the only way to escape from a probably quick death sentence was to escape to the nearest church to claim sanctuary or to escape the city or country.

It is important to underline that the hue and cry was not only a reaction to offences being committed, but was also a form of co-operation between communities and towns as a protection against criminals appearing in the area. According to English and Polish systems of hue and cry in the fourteenth century, the alarm required all local people to chase offenders to the boundaries of their village or town where the next group would be waiting to take up the chase. This principle helped to improve the direct system of town protection, as well as local and regional cooperation, by strengthening the concept of collective responsibility for local security.

Nevertheless, as towns expanded and municipal boundaries changed with the influx of people, the importance of hue and cry was reduced. Ever greater numbers of inhabitants improved criminals' chances of escaping, and, furthermore, increasing urban development provided them with more places to hide and wait for the chase to end. Despite a lack of opportunities for a strict and regular monitoring of the lives of town inhabitants and the decreasing efficiency of the hue and cry in developing towns, this legal institution still remained important for criminal law regulation, leading to the later formation of a special watch unit in both countries under the control of local officials, and contributing to the improvements in the criminal legal system in fourteenth-century English and Polish towns.

The first half of this section summarises the contents of another ancient institution with the main aim to keep the peace, namely the frankpledge system. There is evidence to suggest that this Germanic practice to secure the public order in local urban divisions was a common form intended to safeguard the community and control behaviour of individuals.³¹⁷ Not only did this increase the mutual responsibility of the selected members of vills or tithing groups,³¹⁸ but it also broadened the co-operation exchanged between the closest neighbourhoods in

³¹⁷ However, as suggested by Morris, questions still remain to be decided whether the frankpledge institution first appeared in England in the Anglo-Saxon or in the Norman period. W.A. Morris, *The Frankpledge System*, London, Longmans, Green, and Co., 1910, p. 5.

³¹⁸ Women, clergy, magnates, knights and the richer freeholders were usually exempt from the frankpledge institution. F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, vol.1, Cambridge, Cambridge University Press, 1895, p. 568.

the thirteenth century. One of the obligations connected to the frankpledge institution included self-regulatory activities of the ward meetings. As a part of local government, the wardmote consisted of the frankpledge inhabitants and their officers with the main aim to keep the peace inside the town walls and prevent antisocial behaviour.³¹⁹ Furthermore, the civic proceedings of territorially divided wardmotes suggested the importance of this communal partnership in towns' administrative and judicial development.

The relation between the frankpledge system and supervisory function of the royal agent, the English sheriff in his tourn at the hundred court³²⁰ was, suggested by Morris, an important process in which the members of frankpledge confirmed the allegiance to the king as well as abstinence from crime and from association with the criminals. Similar characteristics are evident in the medieval organization of Polish *Opole*, based on collective responsibility for local safety and identification of crime in the geographically divided area. The national obligation to participate, which according to Jacek Matuszewski³²¹ was based on territorial and neighbourhood community bonds, was established as the main principle of living within the borders of *Opole*. It was dependent on the willingness of their citizens to pursue crime and criminal. However, the organisation of *Opole* followed the legal responsibilities after the crime occurred, with limited preventive function as well as internal control between its members as can be seen in the English frankpledge system. Additionally, the superficial status of the duke's powers over the *Opole* excluded more detailed procedures in terms of financial contribution, however with some fixed tribute paid by meat and wheat by the locals and obligation to repair bridges and roads within the borders according to Karol Buczek in his article, *Organizacja Opolna w Polsce Średniowiecznej*.³²² Additionally, the citizens of *Opole* were obliged to pay a financial penalty when

³¹⁹ Like the frankpledge system, women, knights and clerks were excluded from attending the ward meetings. C.M. Barron, 'Lay Solidarities: The Wards of Medieval London', in P.L. Stafford and J.L. Nelson (eds), *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds*, Manchester, Manchester University Press, 2001, pp. 222-223.

³²⁰ Or a bailiff who was inclined to hold court in place of a sheriff who was unable to attend two sessions of every hundred in his county. Morris, *The Frankpledge System*, p. 120.

³²¹ J.S. Matuszewski, *Vicinia id est...Poszukiwania Alternatywnej Koncepcji Staropolskiego Opola [Vicinia id est...Looking for an Alternative Concept of Old-Polish Opole]*, Łódź, Wydawnictwo Uniwersytetu Łódzkiego, 1991, p. 7.

³²² There are a number of thirteenth-century copies confirming that practice according to Karol Buczek and his research in 'Organizacja Opolna w Polsce Średniowiecznej' ['The Organisation of Opole in Medieval Poland'], *Studia Historyczne*, vol.13, 1970, p. 231. See also Matuszewski, *Vicinia id est...Looking for an Alternative Concept of Old-Polish Opole*, pp. 146-149.

they failed to catch a criminal, detect crime or resigned from preventive activities towards criminal behaviour in the community. What is less clear, however, is the collective responsibility of *Opole* in the event of finding a dead body, as there is little archive evidence of that practice.³²³

Fourteenth-century English preservation of the local peace in the way of presentments of ordinary offences twice a year at the tourn was ineffective in certain ways. As Maitland indicated in the *History of English Law before the Time of Edward I*, there were large areas of England with significant geographical and administrative differences including the absence of frankpledge.³²⁴ Furthermore, the increase of criminals and social instability required more regular and direct punishments for the committed crimes. Similarly to hue and cry proceedings, the frankpledge system was commonly dependent on the activity of the local community and its willingness to follow the obligation, however with development of more efficient and instant mode of restraining and punishing criminals. On the other hand, as Morris observed,³²⁵ the number of fourteenth-century royal reforms to preserve the national peace by creation of a new commissions and justices did not restrain the general organisation of the frankpledge which remained a useful tool for peace officers in the tracing of vagrants, suspected and undesirable people in the local area with significant financial contribution for the king's peace and his officials. In comparison, the coexistence of the neighborhood units in the majority of Polish territory including Silesia and Lesser Poland, together with the developing German law in the thirteenth century, could have resulted in decline of the judicial and administrative function of *Opole*, however no confirmed examples of that practice have been found. Also, the unstable political and territorial divisions of the dukedoms³²⁶ could also have weakened the status of this custom.

It is significant that in both Polish and English urban areas, the above process of organisation and cooperation between communities seem to have marked an

³²³ For example, the fourteenth century document which determined the financial responsibility of the local community according to the place, where the bodies of two women were found and with no trace of a criminal. Matuszewski, *Vicinia id est...Looking for an Alternative Concept of Old-Polish Opole*, p. 175.

³²⁴ Pollock and Maitland, *The History of English Law*, vol.1, p. 569.

³²⁵ Morris, *The Frankpledge System*, pp. 151-161.

³²⁶ As a result of internal fights for power between the Polish dukes in the twelfth and fourteenth centuries.

important bond of dependencies with legal and financial responsibilities towards effectiveness of the justice system to identify the possible crime and punish criminal behaviour, under the control of the royal representatives in England and supervisory status of Polish dukes.

3.4 Sanctuaries

The idea of sanctuary dates back to ancient Greece and Rome, where certain places, like churches and temples, were designated places of sanctuary where violence or bloodshed were forbidden. Later, with the Emperor Constantine's Edict of Milan in 313 AD, which proclaimed Christianity a tolerated religion in the empire, protection in churches became an important demonstration of divine aid in place of the rules of asylum that previously applied to pagan places of worship. In this way, Roman Christians were eager to demonstrate that their God provided more effective means of help than the previous institutions. Along with changing laws, the principles of sanctuaries changed as well, although the idea was still the same: sanctuaries could help individuals and secure their lives in emergencies.³²⁷

The exclusion of the sanctuaries from the areas that English and Polish municipal criminal law regulated, as well as the importance of these buildings to the religious life of their citizens, lead to the next element in this analysis of international models of local justice. For this, the function of and the exclusion of sanctuaries from both countries' local justice as well as the kind of criminals that could escape justice by using these special places will be analysed to show how much local criminal law, which was applied in sanctuary areas, had to compromise in the face of canon law. Furthermore, the research will explore areas of local law in England and Poland that were affected by sanctuary and its surroundings, with the impact it had on crime prevention in certain towns.

In view of the difficult situation faced by the people who committed crimes and later sought to avoid punishment – especially where the hardest judgments were applied – the ability to find shelter in the form of sanctuary perhaps seems the

³²⁷ The principles were applied if the attackers and prosecutors respected the rules around sanctuary. More information can be found in the writings of Gregory of Tours (the sixth century historian and Bishop of Tours), who recorded examples of the rules of sanctuary being ignored, for example in his *History of the Franks*. For more discussion, see L. Thorpe (trans.), *Gregory of Tours: The History of the Franks*, London, Penguin Books, 1974.

perfect solution. Anglo-Norman law stated that, in a case of escape to a church, 'such a person could not be removed by the priest or his ministers. Immunity was also extended to the priest's house and its courtyard or entrance'.³²⁸ This example suggests that the institution of sanctuary gave criminals the possibility of escaping from a certain death.

It may seem that the general idea of sanctuary was very lenient, since criminals who had committed serious offences could treat the sanctuary as a refuge and hide from a crowd of inhabitants chasing them after a hue and cry. However, in practice medieval sanctuaries did not always offer help, according to the common law or their own rules of procedure.³²⁹

The main principles of procedure regarding the sanctuaries in towns of England and Poland, together with people who could find shelter in them, were described by the provisions of canon law and their principal, the Pope. However, the common law, together with the king's decisions, interfered in these principles, reducing the privileges of sanctuaries by excluding some forms of crimes and defining a maximum number of refugees who could stay in a single sanctuary, resulting in numerous conflicts between the representatives of both legal systems. Additionally, the land where the church was located was usually excluded from local jurisdiction, exemplifying the diversity of the law in urban areas, although there are some examples of people being killed or captured on sacred ground.³³⁰ In England, Bracton states that criminals trying to avoid arrest could claim refuge in churches or other sacred places (often cemeteries), where they could remain safe for some time, often with a view of planning a future escape. There was a kind of alternative to a sentence of death or a long gaol term where, after escaping to the churches, criminals could later stand before the king's court to confess their crime(s); this usually led to a judgment that they abjure the realm. Accordingly, escape to a church was frequently not an attempt to avoid responsibility for the committed crimes, but rather a chance to commute the sentence.

³²⁸ Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, p. 10.

³²⁹ See the Constitution of Gregory XIV from 1591 about asylum: '*Cum alias nonnulli*' in the article of J. Hallebeek, 'Church Asylum in Late Antiquity. Concession by the Emperor or Competence of the Church?', in E.C. Coppens (ed.), *Secundum Ius. Opstellen aangeboden aan prof. mr. P.L. Nève*, Nijmegen, Gerard Noodt Instituut, 2005, pp. 163-182.

³³⁰ The examples of people being killed or captured in a church are given later in the chapter.

A number of English royal documents defined the rules whereby criminals could claim sanctuary in churches and the criminals' subsequent responsibility for any crimes committed (in view of them having claimed sanctuary). In the Calendar of the Close Rolls from 1286, Richard de Scardeburg, a chaplain accused of larceny who claimed the sanctuary in the church of Marton, stayed in the church for forty days according to the custom. After that time, the king's orders required him to abjure the realm.³³¹ Also, the king's orders in later Close Rolls of 1299, 1300 and 1301 confirmed the sanctuary and its liberty, where persons who claimed sanctuary after committing crime and were later dragged out from the sanctuary and put to prison, had to be restored to that church and sanctuary protection.³³² Like English royal control over sanctuary claims, in the selected areas of Poland as well the position of towns' sanctuaries was determined by the statutes made by the king,³³³ together with application of German legal proceedings from the Articles of the Magdeburg Law which are all relevant.

The limited length of time that somebody could claim sanctuary in the English church was custom- defined as a maximum period of forty days,³³⁴ after which the offender could be forced to leave through the threat of violence, usually by the dean or parson. *The White Book, or Liber Albus of Southwell Minster*, contains a copy of a letter describing the customs of York Minster from the twelfth century, including a section about sanctuary and the period of time the criminal could stay there: 'If a homicide or thief or criminal or outlaw fly to the church for defence of life or limb, he shall be in peace there thirty days'.³³⁵ In cases of resistance, Bracton notes that the best form of coercion was usually to deprive the criminal of food – and anyone providing food to the criminal was then determined an enemy of the king, and thus faced similar punishments to those found hiding criminals.³³⁶

³³¹ The king's orders from 5th of July 1286 are found in *Calendar of the Close Rolls. Edward I, 1279-1288*, London, HMSO, 1902, p. 399.

³³² *Calendar of the Close Rolls. Edward I, 1296-1302*, London, HMSO, 1906, pp. 267, 372, 454.

³³³ 'The Statutes of King Casimir the Great', chapter LXXII, in O. Balzer, *Studia nad Historią Prawa Polskiego [A Study of the History of Polish Law]*, vol.19, Poznań, PTPN, 1947, p. 68.

³³⁴ Different dates were result of a different privileges and customs. See the king's order from 1286 in *Calendar of the Close Rolls. Edward I, 1279-1288*, p. 399. In the earlier, twelfth-century manuscripts written by Master Alured, the fugitive could stay in Church of St John of Beverley for 30 nights.

³³⁵ Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, p. 153.

³³⁶ S.E. Thorne (trans.), *Bracton On the Laws and Customs of England*, vol.1, Cambridge, Mass., Harvard University Press, 1968, p. 383.

Despite regulation of the areas used as sanctuaries, sometimes criminals managed to avoid punishment through planned escapes and assistance, often after consultation with local clerics.³³⁷ An example of a successful escape from a guarded church is the case of Robert le Peytevin, a clerk, and his servant Gilbert, who severely wounded a vintner named Warin, and took flight to the local church of St. Mary de Domersete. Despite the sheriff's guards in that area, le Peytevin was able to escape and avoid the legal process. In such cases, the legal articles stated that if the fugitive was to return to the town where the crime had been committed, he would be immediately taken to a gaol by the sheriff.³³⁸

From the ordinances for keeping the peace in London, made by King Edward I in 1285, we know that in the situation where a fugitive escaped to a church, a special local guard was appointed to reduce the possibility of the fugitive absconding, thus forcing him to accept responsibility for his acts and then to 'quit the realm'.³³⁹ Also, in the Borough Customs of Waterford from about 1300, there is information about how churches were guarded: 'If a man or woman has fled to a church because of killing or for larceny or for receiving criminals, and is in the church, the bailiffs and coroners ought to send for a serjeant to cause the neighbours to be summoned to watch the church that these thieves do not escape'.³⁴⁰ There is evidence to suggest that the community of inhabitants was a crucial determinant of the power of sanctuary, having a control of access to a particular sanctuary and, according to Gervase Rosser,³⁴¹ ability to determine the circumstances in which a refugee should leave it. Additionally, the legal procedures concerning criminals in sanctuary areas, officially excluded from municipal regulation, also confirm the active and direct involvement of English officials against breaches of the peace in towns. In Poland, the comparable involvement of the local offices can be proved from the fifteenth century example of the process after the death

³³⁷ For example, the case of James Coterel, fourteenth-century leader of a gang that frequently found protection, succour and provisions thanks to the members of clergy and the canons of Lichfield. C. Gregory-Abbott, 'Sacred Outlaws: Outlawry and the Medieval Church', in J. Appleby and P. Dalton (eds), *Outlaws in Medieval and Early Modern England*, Liverpool, Ashgate Publishing Limited, 2009, p. 76.

³³⁸ Based on Riley, *Liber Albus*, p. 89.

³³⁹ This was the usual punishment after leaving the church and being prosecuted before the king's court.

³⁴⁰ Bateson, *Borough Customs*, vol.2, p. 35.

³⁴¹ G. Rosser, 'Sanctuary and Social Negotiation in Medieval England', in J. Blair and B. Golding (eds), *The Cloister and the World: Essays in Medieval History in Honour of Barbara Harvey*, Oxford, Clarendon Press, 1996, p. 65.

of Andrzej Tęczynski. There, town councillors were sentenced to death after they acted against the sanctuary's liberty.

There were common limits in both countries to the privilege of sanctuary for certain crimes. The provisions of the fourteenth century Statute of Kazimierz Wielki (Casimir the Great), the Polish king, determined that, in the case of a person who had started a fire, the right to asylum in a church or on holy ground was not granted. Instead, the offender was to be led out of the church and sentenced, according to the law, to the death penalty.³⁴²

The sixteenth century articles of Magdeburg law also described exceptions to the application of asylum. For example, criminal law did not provide any right of asylum to a Jew who had committed a crime and who fled to a church asking for help, even if he was baptised.³⁴³ In addition, slaves, Tatars and those who had committed crimes in churches, adulterers and rapists were not subjected to the right of asylum in a local town's churches:

Article 2:

[If a Jew commits a crime, runs away to the church and asks for a christening, he can still be taken away from where he was defending himself because he could have a weapon].³⁴⁴

Article 9:

[Indentured servants, Tatars and other slaves are not protected by the church and can be turned in to a justice. Also those who robbed a church or committed a crime in a church, rapists of women and nuns, [and] adulterers who run to the church are not protected].³⁴⁵

In comparison to the German legal regulation, the situation of Jewish people in England was mainly directed by royal orders and in 1290 it was decided to expel them from the realm.³⁴⁶

³⁴² 'The Statutes of King Casimir the Great', chapter LXXII in Balzer, *A Study of the History of Polish Law*, pp. 68-69.

³⁴³ 'Speculo Saxon, lib.2 artic.2', in Koranyi, *Magdeburg Law Articles*, pp. 46-47.

³⁴⁴ 'Żyd uczyniwszy co złego a do kościoła by uciekł, chociażby się też krzcić obiecał, może być wzięt, a owszem, gdzieby się bronił, gdyż żydom z bronią chodzić zapowiedziano'. 'Speculo Saxon, lib.2 artic.2', in Ibid.

³⁴⁵ 'Też sługi niewolne, kto je ma, Tatarzy i inne niewolniki, tych też kościół bronić nie ma, i owszem, wydać. Co kościoły łupią albo gwałcą, też ich bronić nie mają, albo co dziewczki albo niewiasty gwałcą, albo mniszki, albo jawne cudzołożniki, gdyby je goniono, żeby tam uciekali, nie mają ich bronić'. 'Jure Municipa, articulo 2 and 9', in Ibid.

³⁴⁶ S. Menache, 'The King, the Church and the Jews: Some Considerations on the Expulsions

The English examples of those excluded from sanctuary are provided by *The Mirror of Justice*, a thirteenth-century book in which, along with historical and legal materials written during the reign of Edward II, there is an explanation of sanctuaries. In the text about sins against the holy peace, in particular, it is stated:

[If] a thief, robber, murderer, or a wanderer by night, and known and proclaimed as such by the people and his pledges or tithingmen, or if anyone is pursued for debt or sin by judgment or by his confession, and has forsworn the realm, or has been exiled, banished, outlawed, or waived, and has returned before his time, or if anyone has sinned mortally in sanctuary relying on his safety, and hoping to be defended by the holy peace, such a one, I say, can be taken, dragged and thrust out of the sanctuary, without offence or prejudice to its franchise.³⁴⁷

The above examples prove that shelter and assistance, as well as the escape and chance of avoiding the sentence, that were expected through the right of asylum could in some circumstances be limited as a result of the practice of local criminal law under the guidance of the royal justice.

Nevertheless, despite these restrictions, sometimes the royal authorities tried to obey the laws and privileges about sanctuaries that were applied around the country. For example, in the case of Robert Marschall, who had been accused of treason, and who ran and found refuge in Durham Cathedral, King Edward IV signed and sent a special letter to the Prior of Durham requesting that Marschall be kept safe, while also providing information about the crimes committed by Marschall and confirming the privilege of asylum in that church.³⁴⁸ Additionally, local inhabitants also affected the mechanism of sanctuary with their own understanding of the given law and examples of blocking the way or killing the criminal before he reached the sacred ground.³⁴⁹ As a result, the above issues were a source of long-standing conflicts between the royal authorities, local citizens and church representatives. This can be demonstrated by examples of sanctuaries which included not only churches and their immediate grounds, but also the close area like Bristol and St Augustine's Abbey, which was an example

from England and France', *Journal of Medieval History*, no. 13, 1987, pp. 223-236.

³⁴⁷ For example, Chapter 1 'Of Sins Against the Holy Peace' in W.J. Whittaker (ed.), *The Mirror of Justices*, London, Bernard Quaritch, 1895, pp. 33-35.

³⁴⁸ 'Edward IV Respects the Privilege of Sanctuary at Durham, 1473-4', found in Myers, *English Historical Documents: 1327-1485*, pp. 774-775.

³⁴⁹ Rosser, 'Sanctuary and Social Negotiation in Medieval England', pp. 69-70.

of liberty that covered the area of the Abbey's precinct and its environs. The fourteenth century conflicts over the independence of the Abbey's sanctuary together with the jurisdictional and trading privileges, resulted in a major outbreak of violence between the town of Bristol and the Abbey.³⁵⁰

By analysing the list of people who took the English sanctuary, it can be proved that not only members of the lower class but also educated and skilled professionals were using the sanctuary privilege and included officials, merchants and clerks.³⁵¹

In Norwich, a possible place of sanctuary was the Church of St Gregory, and the local coroners' rolls provide information about the people who found refuge here:

William Sot, of Hemstead, near Happisburgh, placed himself in the Church of St. Gregory, the Monday before St. Bartholomew's day, in the year 1267. He confessed before the coroners and bailiffs that he placed himself in the church because of certain robberies he had committed, for example cloths he had stolen at Hemstead and he was taken at Yarmouth and incarcerated, however he escaped and put himself in sanctuary.³⁵²

The Church of the Friars Preachers is also mentioned in the rolls as a sanctuary. Here in 1295, John Schot of St Edmund's placed himself in the church of the Friars Preachers because he had stolen goods and chattels from merchants of Winchelsea and Flanders of the value of £30, and had also broken prison at Yarmouth. Geoffrey Gom of Lynn was also recorded as having placed himself in the Church of the Friars Preachers after killing Richard of Gascony and breaking prison at Yarmouth.

Another place recorded as a sanctuary in Norwich was the Church of St Nicholas where, it is stated, 'Richard Clerk of Norwich, placed himself in the church of St. Nicholas and acknowledged [himself] to have killed John Russell and to have

³⁵⁰ P. Fleming, 'Conflict and Urban Government in Later Medieval England: St Augustine's Abbey and Bristol', *Journal of Urban History*, vol.27, issue 3, 2000, p. 331.

³⁵¹ In Beverley sanctuary between the years 1478 and 1539, the number of those who took the oath as sanctuary men during this period was 493, the majority of whom were debtors: the number included 208 debtors, 186 persons who had committed homicide or manslaughter, 54 who had committed various kinds of felony, 7 who had illegally minted coins and some cases where the crime or offence was not recorded. The list consists of one alderman, two clerks, sixteen gentlemen, two merchants, three surgeons and even one gentlewoman, all of whom sought sanctuary. Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, pp. 130-137.

³⁵² The examples are based on the local coroners' rolls found in *Ibid.*, pp. 235-237.

broken prison at Yarmouth'.³⁵³

The Assize Roll of Devonshire of 1237-8 recorded felons who escaped justice by putting themselves in local sanctuaries located at Exeter, South Molton, Bampton, Uffculme, Ilfracombe, Torrington and Tavistock. The following records from Devon Assizes named a group of fugitives who entered the city to claim sanctuary: 'At Exeter there was a sudden incursion of a band of nine malefactors, who dispersed themselves in diverse churches of the city. All abjured the realm, and none of them had any chattels. Four of them were from Wiltshire, and three from Gloucestershire. They probably made this move to be near a seaport'.³⁵⁴ The thirteenth century records of Exeter also give the example of a group of Exeter men and women, 'led by the chaplain of St Mary Arches, who rescued Alice Blunt, sentenced to be burnt for killing her husband, and enabled her to flee to Heavitree church (conveniently near the gallows), where she abjured'.³⁵⁵

In the selected Polish towns, the scale of criminals looking for a shelter in local churches was very similar. In Wrocław, the Ostrów Tumski, which was connected to the town by a bridge, functioned as a sanctuary. It was primarily a place of residence for the clergy, but also provided a special area for local criminals where they could seek asylum. Criminals coming through the Cathedral Island area could find shelter and assistance and even the possibility of re-entering the town by the second bridge. Those who used the island to claim sanctuary were mainly people who had defaulted on tax payments to the town authorities, petty thieves and other criminals. A special assistance for offenders was also provided by the so-called Kołowratski treaty of 1504,³⁵⁶ which specified the scope of the criminal jurisdiction of the city of Wrocław and the Church, setting boundaries on the bridge leading to the Ostrów.³⁵⁷

In the case of Kraków, information about the location of sanctuaries is given by the records relating to the criminal process that followed the murder of Andrzej

³⁵³ Cox, *The Sanctuaries and Sanctuary Seekers of Mediaeval England*, pp. 235-237.

³⁵⁴ And thus making it possible to leave the kingdom as a form of the punishment for committed crimes. *Ibid.*, p. 298.

³⁵⁵ JUST/1/186 m 13d. found in Summerson, 'Attitudes to Capital Punishment in England', in Prestwich, Britnell and Frame, *Thirteenth Century England VIII*, p. 127.

³⁵⁶ The medieval document agreed between the Church and Wrocław authorities regarding jurisdiction, taxes and local trade.

³⁵⁷ M. Sapała, 'Biskupi Azyli' ['Bishop's Asylum'], [website], 2011, <http://podroze.onet.pl/biskupi-azyli/7cs5s>, (accessed 6 June 2016).

Tęczyński, a respected citizen of the town who was killed in the church while claiming sanctuary there. Jan Długosz, in his book of 1461, describes how Tęczyński was accused of assaulting an arms maker named Clemet. After rumours about the offence, the furious citizens started to chase Tęczyński, who headed to the Church of St Francis to claim refuge. Despite Tęczyński's attempts to stay hidden in the sacristy, and despite his shouts for mercy and justice before the town court, he was murdered in the church and his body was dragged through the streets:

[The common people broke into the church, where after a long search they found where Tęczyński was staying hidden, [they] also broke off a barrier to the sacristy ... after a betrayal made by Jan Doizwon, who took from Tęczyński 200 złotych and later turned Tęczyński in, who, found in furious anger, and in the front of the monstrance of the holy sacrament, was murdered. The head after a deadly punch broke and the brain spilled out. Later the people dragged the body out from the church to the town hall by the street canal, in the mud, bloody and with the head broken with no beard].³⁵⁸

Following these events, King Kazimierz Jagiellończyk (Casimir IV Jagiellon) intervened and ordered that the councillors and residents responsible for the riots and Tęczyński's death be sentenced to capital punishment.³⁵⁹

One of the most important pieces of evidence confirming the role of the Church of St Francis as a sanctuary and excluded area from the municipal law regulation in Kraków came from a song written in the honour of Tęczyński by an unknown author between the years 1462 and 1463. It was written on the last page of the first Polish Chronicle from the twelfth century. In addition to the significance of preserving the text on the manuscript, the song emphasises the brutality of the murder as well as violation of the sacred principles of ecclesiastical asylum, and confirms the existence of sanctuaries in Polish churches (not least the Church of

³⁵⁸ '[L]ecz pospólstwo wybiwszy gwałtownie drzwi do kościoła, gdy po długich poszukiwaniach zmiarkowano, kędy Tęczyński siedział ukryty, wyłamało zaporę do zakrytii i za zdradą Jana Doizwona, który do przechowania wziął by od Tęczyńskiego dwieście złotych, a potem wydał go oprawcom, aby powierzone mu pieniądze przy nim zostały, znalezione w ściekłym rozjuszeniu, wobec stojącej monstrancji z Najświętszym Sakramentem, niecznie zamordowano. Głowa, długo opierająca się zabójczym ciosom, pękła i mózg z niej wytrysnął. Pastwił się lud jeszcze nad ciałem zabitego, wlokąc je z kościoła aż do ratusza kanałem ulicznym, w błocie uwalane, a od miejsca do miejsca skłute i skrwawione, z wyszarpaną brodą i głową obdartą'. J. Dąbrowski (ed.), *Jana Długosza Roczniki czyli Kroniki Sławnego Królestwa Polskiego [Jan Długosz, The Chronicles of the Polish Kingdom]*, Books 9-12, subchapter: Year 1461, Warszawa, PWN, 2009.

³⁵⁹ Usually, the crime was much greater if blood was spilt in the church – the spilling of blood in the church was the taboo that underpinned the sanctuary system.

St Francis). The lyrics read:

*w kościele-c jii zabili, na tem Boga nie znali,
świętości ni zacz nie mieli, kapłany poranili ...*

(they killed in church, acting against God
holiness counted for nothing, they hurt priests ...).³⁶⁰

The idea of sanctuary, together with the sacred area that qualified for this status, was related to wider understandings of holiness in late medieval England and Poland, as well as to the belief in the superiority of divine law over secular law.³⁶¹ The church and its properties were the place of last resort and offered kind of immunity for criminals who, as sinners, were looking for help and – from a Christian perspective – absolution for their acts. The abovementioned examples indicate that both England and Poland had similar ways of defining the importance and functions of these places, as is shown by the royal regulations and the agreements between the Church and the Crown. Despite the top-down canon rules that governed how sanctuaries functioned with respect to criminals, their effectiveness was limited by the types of crimes committed by those claiming refuge and the length of time for which a single individual could receive sanctuary. The concept of sanctuary, managed by the Pope's regulations, was consequently modified by the common law as the main instrument of control, and also reflected the religious consciousness of the communities served by sanctuaries. For instance, there were numerous conflicts in the English parliament in the fourteenth century regarding the types of crimes that were accepted by the principle of sanctuary and the integrity of the people seeking shelter in the church, which was not always respected.³⁶² The same was true in Poland, where apart from the issues that created an unstable judicial coexistence of the church authorities and municipal legal powers, the regulations of King Kazimierz Wielki

³⁶⁰ Personal translation. Dąbrowski, *Jan Długosz, The Chronicles of the Polish Kingdom*, Books 9-12, subchapter: Year 1461.; M. Paluch, 'Mord w Krakowskim Kościele Franciszkanów. Karę Ponieśli Niewinni' ['A Crime in Kraków's Franciscan Monastery. The Innocent Went Punished'], *Gazeta Krakowska*, [website], 2013, <http://www.gazetakrakowska.pl/artykul/732751,mord-w-krakowskim-kosciele-franciszkanow-kare-poniesli-niewinni,id,t.html?cookie=1>, (accessed 6 June 2016).

³⁶¹ Although in my opinion there was a common idea of sanctuary in Western Christendom throughout the medieval period, it had some regional and temporal variations.

³⁶² For example, 1378 and the Gloucester parliament session with Wyclif's attacks on the church's claim to protect debtors. C. Barron, 'The Reign of Richard II', in M. Jones (ed.), *The New Cambridge Medieval History c.1300-c.1415*, vol.6, Cambridge, Cambridge University Press, 2000, p. 307.

(Casimir the Great) specified the limitations of sanctuaries together with the provisions of Magdeburg Law, which mainly forbade Jews and Tatars from claiming the sanctuary privilege.

Generally, the sanctuary areas remained excluded from the medieval municipal law in both countries,³⁶³ confirming their liberty and superiority over local, secular regulation. With some exceptions, the areas determined as a sanctuary included not only churches and their immediate grounds, but also the close area like Beverley,³⁶⁴ or St Augustine's Abbey in Bristol, causing a long-standing conflict between the royal authorities and church representatives. However, despite these issues it can be stated that the places played an important role in the lives and beliefs of the inhabitants of medieval English and Polish towns and that local officials accepted and generally tolerate sanctuaries' autonomous status.

³⁶³ For more examples of churches and their exclusion from municipal law, see below, Chapter 5, pp. 224-228.

³⁶⁴ Leach, *Beverley Town Documents*, p. 20.

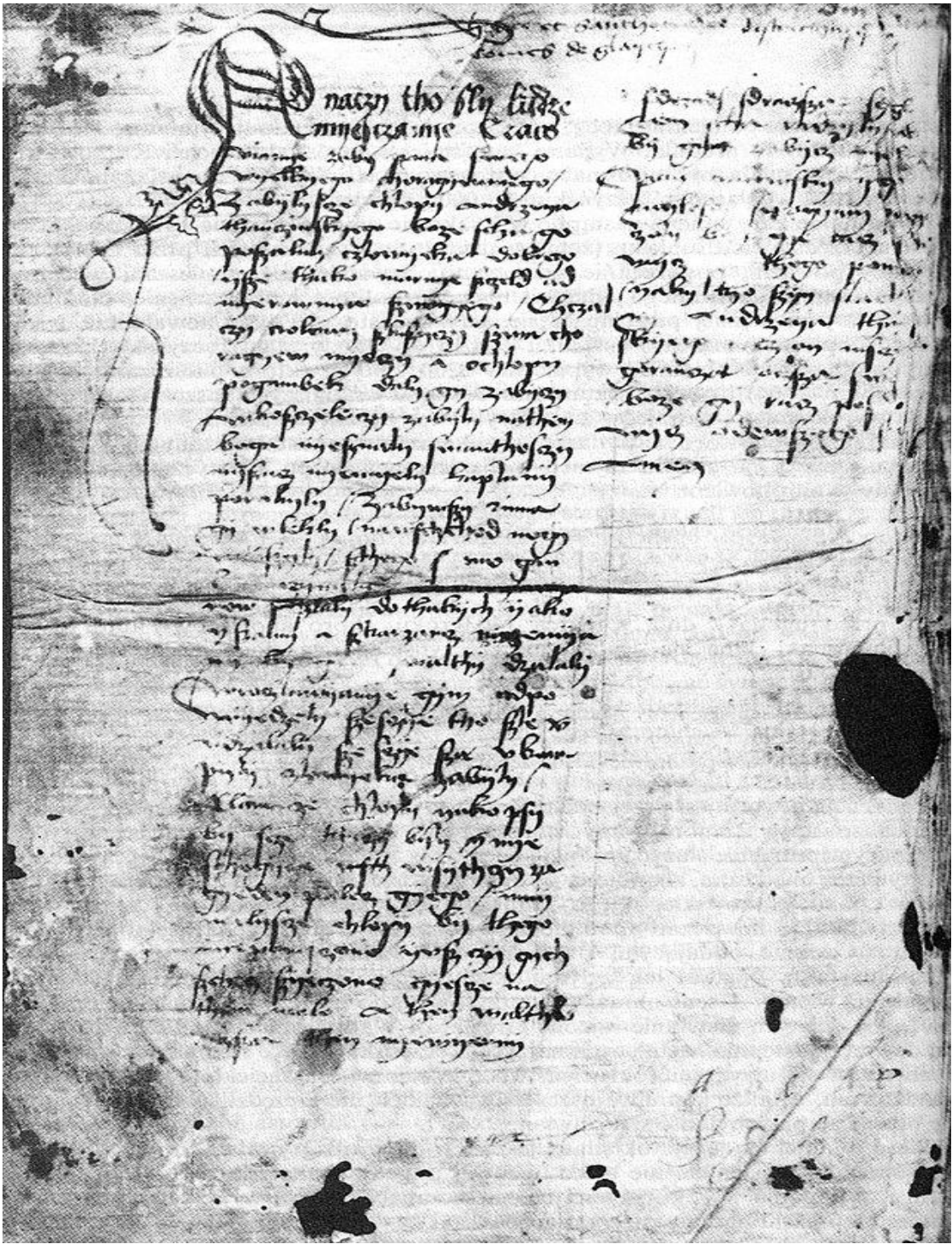


Figure 15: A copy of a song about the murder of Andrzej Tęczyński.

The fifteenth century text was written on the last page of the twelfth century manuscript of the *Polish Chronicle* by Gallus Anonymus. Source: National Library in Warsaw, card 97, [website], <http://www.alpha.bn.org.pl>, (accessed 8 June 2016).

3.5 Chapter conclusion

This chapter has investigated the English and Polish legal systems in terms of cooperation between the various officials and bodies responsible for maintaining law and order and shown that the transfer of judicial powers was an important element in the progression of criminal justice in the researched medieval urban areas. Polish and English local officials dealt with a certain range of duties and thus possessed legal powers and responsibilities entrusted to them for the duration of their office. The level and kind of local criminal activity in both countries had a major impact on the forms of legal proceedings, with significance for the research results.

The aspirations of the English monarchs to provide security and peace in the shires led them to grant statutes, charters and orders. These were comparable to the Polish foundation documents, as both enabled the reactive, preventative and controlling functions to develop in towns. Since the purpose of this chapter was to compare the proceedings of local court systems, the English royal courts with the most serious crimes they oversaw were excluded in my research and local criminal cases heard by the municipal courts in selected towns were further examined. Consequently, the chapter highlighted a different legal practice in Polish towns: a growing independent status demonstrated by the town councils and their courts resulted in the legal powers to hear and determine various types of criminal cases for their citizens and limitation of royal jurisdiction. However, the above status was still dependent on a certain town and its local policy, for example, the aforementioned royal influence through the higher appeal court in Kraków created by the king to reduce Magdeburg's legal dominance. In comparison, the early fourteenth century judicial powers of municipal courts of English towns experienced royal interference with serious criminal cases like felony, however with increasing development of liberties and rights for their self-government in the second half of the fourteenth century.³⁶⁵ Furthermore, the chapter evidenced the tendency for fourteenth-century courts – both Polish town council courts and English municipal courts to hear a growing number of cases.

³⁶⁵ For example, the 1393 York Charter granted powers to mayor and aldermen to 'correct, punish, enquire, hear and determine all matters as well of all felonies, trespasses, misprisions and extorsions'. *Calendar of the Charter Rolls. Edward III-Henry V, 1341-1417*, vol.5, London, HMSO, 1916, p. 336.

The processes of creation of and changes to the local law in terms of maintaining security and peace in the fourteenth century English and Polish towns can be regarded as experimental in response to past experiences. The changing political systems, as well as frequent international unrest of those countries, forced the devolution of supreme supervisory control over the law to subordinate areas through selected statutes, charters and various acts, together with the given powers to protect against crime and react to criminal activities. This chapter has demonstrated that issued legal documents were essential in the process of transferring criminal justice to the local level, together with forms of prevention, detection and reaction to crime, and with development of administrative and police authorities directly associated with these elements of criminal law proceedings such as outlaw status, hue and cry and sanctuaries. The judicial practice of the local structures confirms that despite differences in the range of legal activities that were performed in the municipal courts, there was a common form of prevention and control of crime based on a strong royal influence in England and on German legal regulation on Polish lands. The examples of exclusion from the society through outlaw status, cooperation between townsfolk to provide security through hue and cry and the existence of sanctuaries where condemned and wanted men could seek refuge, evidence how this system evolved in selected medieval English and Polish towns. Outlaw status suggested the development of public awareness in the field of joint law enforcement, while the sanctuaries exercised a level of tolerance and immunity of state policy towards certain citizens who had committed crimes. Additionally, English and Polish local officials commonly aspired to maintain safety in towns as a part of their legal responsibilities towards enforcement of criminal justice. In this way, selected officials with responsibilities for local law control, such as sheriffs, mayors, bailiffs, constables in England, and similarly *Vogts* and council authorities in Poland, were established. The next chapter will explore the ways in which the municipal offices and first police forces were appointed in order to gain greater insight into local responsibilities for detecting and prosecuting crimes with the development of the medieval system of policing in both countries.

Chapter 4. Municipal officers and their role in maintaining law and order in towns.

One of the key elements of developing and maintaining criminal justice in existing or newly formed fourteenth-century English and Polish towns was a need to create effective laws that punished criminals and established the powers and duties of bodies enacting local regulation.

This chapter will examine the legal position of local officials from fourteenth-century English and Polish towns who had a direct involvement in the processes of local criminal justice. Firstly, by examining these figures, this chapter will determine what kind of powers and duties were accorded the officials to enforce local criminal law in towns and how effective they were in combating crime. The chapter will also assess the scale of their dependence on royal supervision and control, with the mechanisms of their appointment and dismissal from office. Additionally, it examines how responsive English and Polish militia were to national regulations for keeping the peace in towns. Furthermore, the militia will be analysed in light of the research questions about the main systems of urban policing and their function of maintaining local order. Finally, the chapter will demonstrate a special graph set out with the hierarchy of local officials responsible for the application, control and supervision of the legal orders in selected Polish towns. This enables a better understanding of the development of the municipal legal systems based on the German law, as well as the impact that this process had on increasing powers from the criminal law area and the officials delegated to execute those powers in comparison to the English town-Crown relations and their system of civic government.

4.1 The sheriff and the *woźny sądowy*

4.1.1 The sheriff's office in England

The authority and significance of the position of the sheriff in England is reflected in the policing and judicial powers the local administration was granted and developed in the medieval period. Since the beginning of his office, which started

in the Anglo-Saxon period³⁶⁶ about the time of king Edgar and the rise of the judicial duties of the hundred, the royally appointed sheriff took regular action against offenders and suspects, having an important role of being the officer who was authorised to 'do justice and show mercy'³⁶⁷ for offenders and criminals in the shires across the kingdom. When Henry II decided to take the repression of crime into his own hands, the sheriffs were still powerful agents of the law and were active participants in the county judicial organization,³⁶⁸ however with some restriction imposed against their negligence in the legal and administrative proceedings.³⁶⁹

The thirteenth century records continue to provide a greater insight into the sheriff's range of duties in the field of criminal law entrusted to him for the time of his office. Many of the charters granted by the king to selected towns outlined not only the rights and duties of the towns' inhabitants but also those of the local authorities, confirming the relationship between the Crown and localities during this period.

The *Magna Carta*, the great thirteenth-century legal charter begins with a preamble, in which John, the King of England, addresses the document to all the great men of his kingdom 'archbishops, bishops, abbots, earls, barons', as well as to his own servants, 'justices, foresters, sheriffs, reeves [... and] bailiffs'. Importantly, the chapters of the *Magna Carta* that refer to the sheriff determined his position by his duties and established his area of civil and criminal law by presenting a number of warnings and restrictions to the office. For example, the Fourth Chapter advises about sheriffs' wasteful activity: 'if they had made a waste or destructions in the land of their wardship they were to be displaced by other custodians'.³⁷⁰ Similarly, Chapter Thirty determines that sheriffs and bailiffs were no longer authorised to transport with horses and carts of free men without the

³⁶⁶ The earliest recorded case of the holding of the shiremote by the official (regarded as a reeve), other than an alderman, seems to occur in a document dating between the years 964 and 988. W.A. Morris, *The Medieval English Sheriff to 1300*, Manchester, Manchester University Press, 1968, p. 19.

³⁶⁷ *Ibid.*, p. 22.

³⁶⁸ For example, in the Assize of Clarendon of 1166, the sheriff was charged with the duty of leading certain prisoners before the justices. The text of Assize of Clarendon is found in Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, pp. 134-139.

³⁶⁹ For example, the 1170 Inquest of sheriffs and investigation into fiscal exactions, administration and various other matters of complaint, after which nearly all the sheriffs were dismissed from office. For more discussion, see *Ibid.*, pp. 140-143.

³⁷⁰ Holt, *Magna Carta*, p. 319.

owner's consent.³⁷¹ Chapter Twenty-Four states that 'no sheriff, constable, coroner, or any other of our bailiffs, is to hold pleas of our Crown', meaning that men accused of crimes had to be tried before the king's judges rather than by local magistrates of any kind. Generally, the *Magna Carta* suggests the sheriff was a person in whom was placed only a limited trust and that some had abused the legal powers they had been given. What is key in this manuscript is the sheriff's confirmed royal dependency, with a function of performing duties under the king's supreme control and supervision. However, the restrictions of the *Magna Carta* also indicated the position and broad range of responsibilities the sheriff had before the time of King John.

At the end of the thirteenth century during the reign of Edward I, there was a review of the sheriffs and the subordination of several authorities after the king's years of absence from the country. One of the first steps was to determine to what extent the offices were responsible for administrative and legal matters in different parts of the country, working in accordance with the instructions issued by the king in the case of law-breaking or malpractice. This was another control point for the sheriff's position and his previously granted duties and responsibilities, especially in the area of criminal law, which at the end of the thirteenth century were reviewed and examined in detail.

Of the 51 questions which formed the Articles of the Inquest in 1274,³⁷² 16 referred directly to the sheriff's office.³⁷³ Edward I's inquest concerned the similar problems as Henry II's Inquest of Sheriffs from 1170, namely malpractice, violence and fraud occurring during the performance of the sheriff's fiscal, judicial and police duties. The sheriffs were accused of failing to release the king's debtors after the debt had been paid, of retaining for their own use goods and materials which they had purveyed for the Crown, of falsifying their accounts for work undertaken on the king's behalf, of summoning an excess of jurymen and fining those who defaulted, of holding tourns more than twice a year, of subletting Hundreds and Wapentakes³⁷⁴ for exorbitant rents so that bailiffs were driven to

³⁷¹ Holt, *Magna Carta*, p. 325.

³⁷² With reference to the Ragman Quest, a series of inquests during the reign of Edward I.

³⁷³ The full text of the articles of the inquest in English and Latin can be found in Appendix 1 of H.M. Cam, *The Hundred and the Hundred Rolls: An Outline of Local Government in Medieval England*, London, Methuen & Co Ltd, 1930, pp. 249-256.

³⁷⁴ Administrative divisions of the counties of England.

extortion to meet their financial commitments and of taking bribes from or failing to distraint the property of those who failed to take up their knighthood.³⁷⁵ Interestingly, despite the analysed complaints and criticism of the sheriff as a result of the reforms and transition of the royal powers, the importance and usefulness of the office are shown by the regular actions of the Crown and number of arrangements towards the civic authorities and their duties in enforcing criminal law including limitation and dismissal from the office.

This statement can be supplemented by the surviving rolls from the state trials from the years 1289-1293, which provide important evidence about the kinds of accusations made against the sheriff at that time. For example, Henry Bartelum, Undersheriff for Yorkshire, was accused of the assault and imprisonment of Geoff de Kellawe.³⁷⁶ The Sheriff of Yorkshire in 1285, Clifton Gervase, during his time in office was accused fourteen times of the imprisonment and seizure of goods. For example he was accused by Walt, son of Mildred de Brocton, of the seizure of beasts, imprisonment and non-execution of writ.³⁷⁷ In Cornwall, a sheriff who held office in 1285, 1286 and 1292 named Roger Inkepenne was accused of unjust attachment and of the imprisonment of Rich de Trevaga, and was accused nine times of different offences, including seizure of land and unlawful payment.³⁷⁸ The Sheriff of Devon in 1287, Matt, son of Jo, was accused five times of seizure of grain, on pretext of collecting the king's fifteenth.³⁷⁹

Despite complaints associated with unlawful arrests, it was the sheriff who performed the functions of decision-making on many issues including custody on the basis of accusations. It is significant because in these times accusations were often made falsely, and the sheriff was bound to arrest the accused until innocence could be proved. Importantly, not all accusations against sheriffs were warranted and some prosecutions later failed to appear at trial which could

³⁷⁵ Based on H. Cam's edition of the articles of the inquest. Also, I. Gladwin, *The Sheriff: The Man and His Office*, London, Victor Gollancz, 1974, p. 181.

³⁷⁶ Roll 541 A., Appendix 2, no. 40 in T.F. Tout and H. Johnstone, *State Trials of the Reign of Edward the First, 1289-1293*, London, Royal Historical Society, 1906, p. 106.

³⁷⁷ Roll 541 A., Appendix 2, no. 153-166 and Roll 541 B., Appendix 3, no. 69 in *Ibid.*, pp. 128-130 and p. 224.

³⁷⁸ Roll 541 A., Appendix 2, no. 290-297 and Roll 541 B., Appendix 3, no. 103-106 in *Ibid.*, pp. 154-156 and p. 234.

³⁷⁹ Roll 541 A., Appendix 2, no. 334 and Roll 541 B., Appendix 3, no. 119-123 in *Ibid.*, p. 166 and pp. 238-240.

suggest they had made false declarations and feared being discovered.³⁸⁰ However, in view of the many complaints and irregularities in the work of the sheriff, Edward I reformed the restrictions of the office in civil and criminal jurisdiction, with legal responsibilities for abuses. The sheriff was forbidden to summon more than twenty-four jurors at one time, to receive a writ without giving a receipt in the presence of witnesses or to needlessly delay the execution of a writ. Also all cases concerning debts of over forty shillings were removed from the sheriff's jurisdiction and became the responsibility of the justices of assize; the sheriff faced a stiff fine if he made an illegal arrest, concealed a felony, failed to arrest a felon or withheld or granted bail illegally.³⁸¹ The above restriction constituted a significant element in the process of assessing the sheriff's criminal jurisdiction.

Further references to the legal activity of the sheriffs can be made through recorded examples of a direct involvement in a range of duties within the area of criminal justice, for example detecting criminals and placing them in custody. The royal statutes, towns' customs and laws are all relevant here.

The Statute of Winchester of 1285 commanded sheriffs, bailiffs of franchises and other bailiffs great and small who have bailiwicks in their charge to take good care that they join with their district in the hue and cry after criminals. The statute clearly indicates the participation of the bailiff and sheriff in the thirteenth century hue and cry, confirming the right of the sheriff to arrest persons based on the suspicion of a felony with no requirements of indictments. This became a common practice by fifteenth-century proceedings.³⁸²

Additionally, a number of cases of urban homicide, rape, arson, robbery and assault also confirmed the sheriff's direct involvement in the key proceedings of the local criminal justice. The above cases were initially heard at the sheriff's tourn in the Hundred court, as a part of the royal court system. In London, if any

³⁸⁰ For example, the sheriff of Yorkshire, Clifton Gervase, was accused by Rob Hughtred de Skadeburgh of imprisonment and seizure of goods, but the latter did not attend the trial and Gervase was released 'sine die'.

³⁸¹ Gladwin, *The Sheriff*, p. 185.

³⁸² The text of The Statute of Winchester (1285) found in Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, pp. 463-469. The requirement of indictments became a common practice at the beginning of the fifteenth century (see the Statute of Additions of 1413) and included the name of the defendant and his or her estate, degree, mystery and place of residence. See more in S. Butler, *Forensic Medicine and Death Investigation in Medieval England*, New York, Routledge, 2014, p. 20.

man was killed or his death was suspicious, the sheriff was responsible for discovering the identity of the killer. 'If the neighbourhood names any one or suspects any one, or if the dead man himself has accused any one before he died', the sheriff is instructed 'to attach him who is accused, if he can find him'.³⁸³ Similarly in Bristol, the sheriff, when hearing a lawful declaration of another's crime concerning the death of a man, was empowered to arrest such persons and bring them to the gaol, where they would stay until they were delivered to the king's justice.³⁸⁴

Significant in these descriptions is that the sheriff visited crime scenes and investigated what had been committed by, for example, looking for a dead body or confirming a breach of the peace and any assault. According to Bracton, it was the responsibility of a coroner and the sheriff to view the place of crime and 'the said wounds, measure their length and depth, ascertain in what part of the body they are, whether on the head or elsewhere, and by what weapons they were inflicted'.³⁸⁵ The role of the sheriff in this process is further defined as 'they shall have all these matters enrolled with the sheriff as witness if he is present at the inquest, or at least in the county court'.³⁸⁶

In his book, *The Medieval English Sheriff to 1300*, Morris finds that the attendance of the sheriff at the presentation of the wounds was an important legal procedure in English criminal law from at least twelfth-century. For example, in an appeal from 1198 before the king's court, a victim 'could plead that he had shown his wound to one of the county coroners, it for long sufficed that wounds were shown to the serjeant, coroners, sheriff or specially assigned knights of no official position, to any combination of two or more of them or in the county court'.³⁸⁷

However, fundamental for the activity of the English sheriffs in terms of performing the local legal services was the fourteenth century transformation

³⁸³ Bateson, *Borough Customs*, vol.1, p. 13.

³⁸⁴ 8th August 1373, Edward III, in Harding, *Bristol Charters, 1155-1373*, p. 119.

³⁸⁵ Thorne, *Bracton*, vol.2, p. 345.

³⁸⁶ As a part of coroner's and sheriff's official duties. *Ibid.*

³⁸⁷ The text of the appeal is found in Curia Regis Rolls IV, p. 163, cited in R.F. Hunnisett, *The Medieval Coroner*, Cambridge, Cambridge University Press, 1961, p. 60. Additionally, in twelfth-century London, the alderman decided whether battery or affray with bloodshed was a plea for the sheriff or for the king. See Bateson, *Borough Customs*, vol.2, p. 147. Also, 'before the sheriff in this county assembly as well as before the reeve in the hundred court, wounds were displayed and crimes of violence denounced by the injured person', Glanville, XIV.6, Select Pleas, i.3, 18, cited in Morris, *The Medieval English Sheriff*, p. 120.

where towns such as Norwich and York gained the county status which allowed them to appoint their own sheriffs, at the same time increasing the powers of self-governance and legal responsibilities. As Christian Liddy argued in his book, *War, Politics and Finance in Late Medieval English Towns*, the towns with their own offices of sheriff, escheator and justice of the peace became free from the interference of officials from the counties in which they had hitherto been located. With regard to these liberties, the main aim of the charters of 1373, 1393 and 1396 was to extend the co-operative structure of government with the authority of the civic elites, rather than concede the autonomy from the Crown.³⁸⁸

The 1373 Bristol charter determined the sheriff's status by equalizing his powers with all the powers that the sheriffs in other counties exercised. Together with regular holdings of his county court, he was given authority to hear and determine 'evil-doings, transgressions, disturbances against the peace' within the town, suburbs and precinct, as well as powers of inquiry and arrest into felonies which had to await goal delivery. Additionally, the sheriff and the coroner were granted powers of receiving the lawful declaration of another's crime with the right to arrest.³⁸⁹ The Norwich Charter from 1404³⁹⁰ similarly confirmed the new powers and jurisdiction of the sheriff, while the constitutional provisions from 1415- a political settlement to a range of disputes and conflicts over issues of Norwich governance further supplemented the existing records about elections and powers of the main civic authorities including sheriffs.³⁹¹ Expanding on this concept, the city of London since the early twelfth century had been a county in all but name and ruled by sheriffs, who were chosen by citizens for nearly a hundred years before they secured the right to elect a mayor.³⁹² The *Liber Albus*, a book of borough custom from the City of London, explains the rules for choosing the sheriff and the duties connected with this office. For example, the same day that the new sheriff was chosen, he had a duty to go with the former sheriff to the prison of Newgate and: 'receive all the prisoners by indenture made between them and the old Sheriffs, and shall place due safeguard there at their own peril,

³⁸⁸ Liddy, *War, Politics and Finance in Late Medieval English Towns*, p. 211.

³⁸⁹ Harding, *Bristol Charters, 1155-1373*, pp. 119-141.

³⁹⁰ Hudson and Tingey, *The Records of the City of Norwich*, vol.1, pp. 31-36.

³⁹¹ *Ibid.*, pp. 93-108.

³⁹² C.N.L. Brooke and G. Keir, *London 800-1216: The Shaping of a City*, Berkeley, University of California Press, 1975, pp. 207-213.; Barron, *London in the Later Middle Ages*, p. 159.

without letting the gaol to ferm'.³⁹³ The sheriff also had a duty to make the prison safe, well-reputed, well-guarded and orderly: 'The said Sheriff shall not let the Gaol of Neugate to ferm, but shall put there a man, sufficient and of good repute, to keep the said gaol in due manner, without taking anything of him such keeping thereof, by covenant made in private or openly'.³⁹⁴ Therefore responsibilities such as taking control of prisoners and securing the prison were a priority for a new sheriff. Additionally, it was the sheriff's responsibility to order the arrest or attachment of the person being indicted by a jury, appealed by a private person or presented by a bailiff. The sheriff's duties included also allowing bail after a payment was made by an accused person. Because of his responsibility for securing criminals and prisoners, he had to pay a fine if they escaped. An example is the case of Robert le Peytevin, a clerk, and his servant Gilbert. After assaulting a vintner called Warin, they escaped to the churchyard. However, despite a guard being in the church area, a responsibility of the sheriff, Gilbert was able to escape. In this situation the sheriff was accused of negligence in front of the mayor and the citizens of the city of London and faced punishment as a result of the escape. However, because Warin the vintner was still alive and decided not to prosecute the accused, the sheriff was only instructed to arrest Gilbert immediately upon his return to town.³⁹⁵

Together with the fourteenth century liberties granted to selected towns and their officials, there were still important dimensions and specifications about the local appointments which could suggest the political impact and common concerns seen in other towns at this period as well. As in the previous crisis when Edward I returned to England, both Edward II and the Statute of Northampton of 1328 investigated the work of sheriffs, coroners and bailiffs with the list of accusations. Additionally, in 1341 Edward III accused the local government of several kinds of negligence, including corruption and disloyalty, which resulted in heavy fines and removal of officials.³⁹⁶ Therefore, the appointment of the sheriff varied depending on the administrative units and policy, and the office was from time to time confirmed by the royal grants and towns themselves, when they became counties

³⁹³ Riley, *Liber Albus*, p. 40.

³⁹⁴ *Ibid.*, p. 41.

³⁹⁵ *Ibid.*, pp. 89-90.

³⁹⁶ W.R. Jones, 'Rex et Ministri: English Local Government and the Crisis of 1341', *Journal of British Studies*, vol.13, no. 1, 1973, pp. 1-20. Also, *Calendar of the Patent Rolls. Edward III, 1327-1377*, London, HMSO, 1891.

in their own right. In York, after 1396, the mayor and the sheriff were chosen annually by the citizens of the town.³⁹⁷ Following this statement, the mayor had the power to take an oath from the sheriff, and both had the power to hear pleas of trespasses, agreements, contracts and debts, whether in the king's presence or absence.³⁹⁸ Similar regulations were confirmed in the liberties given to the citizens of Norwich in 1404. Apart from the stipulation that the sheriff take his oath in 'le Gyldehalle' (i.e. the guildhall), the local mayor had full jurisdiction 'to hear, correct, reform and determine before himself in 'le Gyldhalle' at the suit of any person all defaults (*defunctus*), oppressions, extorsions, misprisions, ignorances, negligences and wrongs done by the sheriffs of the county of Norwich within that county and adjudge damages to the aggrieved party according to the nature of the offence'.³⁹⁹ In comparison, a 1373 royal grant confirming the town of Bristol's county status and bounds of the new shire incorporated a special request concerning the appointment of the new sheriff. Unlike the examples of York and Norwich, the position of sheriff in Bristol was to be chosen from three names chosen by burgesses and commonalty and elected annually by royal appointment.⁴⁰⁰ The Crown's involvement in electing Bristol's sheriff confirmed the permanent royal influence 'on the composition of the town's ruling elite and a direct link with civic government'.⁴⁰¹

The process of development of fourteenth-century English local law led to changes in the roles and responsibilities of local officials including the sheriff. The strong growth of towns' aspirations to independence challenged royal dominance and resulted in different privileges. The sheriff, who previously represented mainly royal interests, now started to perform duties according to his local position. The process was confirmed at the end of the fourteenth century, when towns in England were granted their own sheriffs because of the county status the cities received. Bristol received the privilege of county status in 1373, York in 1396 and Norwich in 1404, while Exeter was given that status in 1537. The changes can also be seen in legal actions. Before the fourteenth century, the

³⁹⁷ 'Liberties given to the citizens of York. The 18th May 1396, Richard II'. *Calendar of the Charter Rolls. Edward III-Henry V, 1341-1417*, p. 359.

³⁹⁸ *Ibid.*, p. 359.

³⁹⁹ 'Liberties to the citizens and commonalty of Norwich. The 18th January 1404, Henry IV', in *Ibid.*, p. 421.

⁴⁰⁰ Harding, *Bristol Charters, 1155-1373*, p. 121.

⁴⁰¹ Liddy, *War, Politics and Finance in Late Medieval English Towns*, p. 211.

sheriff's powers consisted of a wide range of duties and responsibilities entrusted to him, including his function as a police officer, one of the king's justices and a local military leader. His legal practice was centred in the county court, where he was decisive in the pleas of trespass, also the legal process of minor offences of beating and assault, although excluding felony cases. The sheriff was also obligated to visit hundred courts twice a year to receive presentments of offences both against the king's peace and against private citizens. Significantly, the legal development modified the judicial function of the sheriff, which he started to share with the growing powers of the keepers of the peace, and later their judicial successors, the justices of the peace, who took over the powers in proceedings in the counties through royal regulation. Despite the limitation in the scope of his duties, the sheriff was still an important official in the criminal justice process. According to the responsibilities of his office examined earlier in the chapter, the sheriff retained his role as the main attendant in the prosecution of crimes in towns. He had the power to investigate crimes that had been committed, look for a body and witness the presentation of wounds, an important legal action in cooperation with the coroner. He was one of the main officials indicated in the attendance of hue and cry, with the power to detect and arrest.⁴⁰² From a criminal law perspective, the fourteenth century sheriff was a strong link between local and royal justice, performing local law with the involvement of royal interests as well. Additionally, his position was an example of the double control of the offices responsible for criminal justice in towns. Apart from the coroner who acted as a watchdog of the sheriff's activities, he was under royal control through the different orders and responsibilities given to and taken from him by the Crown. These included the royal approval for the office, like the 1373 Bristol Charter, with earlier examples of the king's decision to replace all sheriffs as a result of political events.⁴⁰³

⁴⁰² 'Let him raise the hue and cry at once, and with the hue and cry arrest the wrongdoers, as men manifestly opposed to the king's peace, and cast them into gaol until the king declares his will in the matter'. Thorne, *Bracton*, vol.2, p. 442.

⁴⁰³ Mentioned earlier, the changes of royal powers and review of the offices that included dismissal of the sheriffs.

4.1.2 The office of *woźny sądowy* in Poland

As a comparison to the English sheriff and his judicial and administrative legal function, the position, the powers and responsibilities of the Polish *woźny sądowy*⁴⁰⁴ are now analysed with reference to the municipal legal regulation. In contrast to the English royal control and supervision over the sheriff's office, the regulation of *woźny sądowy* in Poland was dependent on the divisions of the country and different sources of local law. The office varied not only with the terminology but also in terms of the activities applied to his duties.

The main sources that evidence the *woźny* office in selected Polish towns are found in royal charters, the Magdeburg law regulation of *Sachsenspiegel* and *Weichbild*,⁴⁰⁵ and Willkür books. The royal involvement in the internal legal proceedings of towns was mainly regulated by German sources of law. The thirteenth century foundation documents were special multi-faceted privileges, which removed towns from Polish law and placed them under a new, German law. Additionally, the European medieval theory of submission to the law, which was also practised in the Polish lands,⁴⁰⁶ confirmed the special character of laws and privileges that were included in the coronation oaths. Therefore, the king or duke could not issue new laws that were in conflict with the old ones, as well as

⁴⁰⁴ In Polish towns that adopted the model of German law, the *woźny* office was almost always described using Latin terms like *bedellus*, *pedellus* or *clamator*, which also determined the position of this official. In the *Sachsenspiegel*, the thirteenth century legal system of Magdeburg law, names like *vrone*, *bode* and *bodel* can be found. In the book by Homeyer, the name 'vrone bode' appears in the articles no. 55 and no. 56 (p. 156). The Article 61§3 (p. 160), mentions another name 'die bodel', with comments and additional names like 'botil', 'butel' and 'bedele'. C.G. Homeyer (ed.), *Des Sachsenspiegels Erster Theil, Oder Das Sächsische Landrecht. Nach Der Berliner handschrift V.J. 1369*, Berlin, Ferdinand Dummler, 1835. In Kraków, the fourteenth century town book of proscription and complaints describes the office of *woźny* as a *bedellus*. In the book *Księga Proskrypcji i Skarg Miasta Krakowa 1360-1422* [*The Book of Proscription and Complaints from Kraków, 1360-1422*], by B. Wyrozumska, the name *bedellus* appears in 1368, the name *pedellus* in 1375, also in 1379 and 1384, the name *bedelli* in 1389 and in 1420. In comparison, in medieval English regulation, the *bedel* office mainly defined a ward official in a particular area of the town, with duties to inform the sheriff, mayor or coroner of any breach of the peace in the ward. Therefore, the term 'bedel' that appeared in both systems of the law was not related. The details about English *bedel* and his duties were found in the text of his oath. Riley, *Liber Albus*, p. 272.

⁴⁰⁵ *Weichbild* text was a supplementary collection of Magdeburg laws and together with *Sachsenspiegel* determined the local legal practice of the majority of Polish medieval towns including Wrocław and Kraków. Also, some regulation used in *Sachsenspiegel* were found in different version of *Weichbild*.

⁴⁰⁶ The fourteenth century theoretical reflection about the royal submission to the law recorded in Western and Central Europe including Polish lands. M. Mięka, *Prawodawstwo Króla i Sejmu dla Małopolskich Miast Królewskich (1386-1572)* [*The Legislation of the King and Government for Lesser-Polish Royal Towns (1386-1572)*], Kraków, Wydawnictwo Uniwersytetu Jagiellońskiego, 2014, p. 72.

revoke the acts being already used in legal practice. Consequently, the only possible action was to supplement already existing municipal affairs with additional acts, permits and responsibilities for citizens and local officials. For example, the urban area of Kraków, which came under the superior powers of the king in the fourteenth century, experienced a royal control which covered the large spectrum of judicial structure with different acts and permits towards town and the officials. However, the importance and priority of the municipal law was underlined by the royal confirmation of the legal solutions and judicial decisions that were based on Magdeburg laws since the thirteenth century.

The Wiślicki Statute, which was the fourteenth century royal attempt to codify the legal procedure on subordinate area including Kraków,⁴⁰⁷ describes the position of *woźny* as '*pro exercendis suis iudiciis*'.⁴⁰⁸ This can be understood as a reference to an auxiliary officer carrying out his duties thanks to the orders of the judge. However, in terms of the appointment to this office and set of responsibilities, the *woźny* was subjected to the supervision of the provincial governor. The dependence between these two local offices suggests a comparison to the examples of the English sheriff and the mayor, based on the common model of the hierarchy of the officials, characterised by the supervisory and control activities. This is evidenced in the Statute of Wielkopolska, an earlier record of the royal statutes of Kazimierz Wielki (Casimir the Great). In Article 47, the provincial governor is charged with appointing the *woźny* and exercising jurisdiction over him. The above fourteenth century statutes provide a source of knowledge about the *woźny* and confirm the royal influence to codify the customary law on these lands through the determining function of the local authorities.⁴⁰⁹ However, despite the royal involvement in the structure of local officials, the general provisions of Magdeburg laws remained the main legal model used in criminal law proceedings on this area.

In Wrocław, the strong development of the town councils, as well as Bohemian

⁴⁰⁷ The *Wiślicki Statute* was a fourteenth-century collection of laws issued by Kazimierz Wielki (Casimir the Great), the King of Poland in the years 1333-1370. The statute was a part of the codification of Polish judiciary law in the area under his command including the regions of Wielkopolska and Małopolska.

⁴⁰⁸ The translation of the words: '*dla sprawowania swoich sądów*' is 'for exercise of your judgment'. Personal translation.

⁴⁰⁹ The sixteenth century court books confirmed the custom of the provincial governor appointing the *woźny*.

control over Silesia,⁴¹⁰ resulted in the election of *woźny* being dependent on a judge and jurors (town councillors).⁴¹¹ Additionally, there were some requirements about the social position that the right candidate for the office should have as well.⁴¹² A sixteenth-century Magdeburg Law states that the *woźny sądowy*, apart from being chosen by the alderman and town council, had to have appropriate financial status for the office, as under the *Sachsenspiegel*.⁴¹³ The appointment was in contrast to the regulation of the English sheriff. Thus, after the county status the city received, the sheriff was chosen yearly by the town citizens, however he was still supervised in his local duties and responsibilities by the mayor and above all, royal authority. Whereas under the German legal model, the local office of *woźny* was seen more as a court officer under the supervisory control of the town council. Additionally, a useful comparison can be drawn between the oaths taken by the English sheriff and the *woźny* in terms of the ethical duty of the office. According to Magdeburg Law, the *woźny* 'swears to God, councillors, alderman, and all the inhabitants to faithfully exercise the office, justly arrest, sue, testify and abide by the principles of honesty'.⁴¹⁴ In contrast, English sheriffs often highlighted the independence of cities and would not swear an oath outside the city before any persons other than the city's elite of civic officials, however they first swore the allegiance to the monarch: 'shall serve the king well and truly [...], and to the king's profit in everything that [his] office requires [him] to do as completely as [he] can or may. [He] shall truly keep the king's rights and all that pertains to the Crown'.⁴¹⁵

What is important here is the comparison between the administration of English

⁴¹⁰ According to the agreement between Henry VI, the Duke of Wrocław and Jan Luksemburski, the King of Bohemia, where after the death of Henry in 1335, Wrocław and Silesia came under the Bohemian Crown.

⁴¹¹ Art. 56§1 'Svenne de vrone bode von deme richtere unde von den scepenen gekoren wert', in Homeyer, *Des Sachsenspiegels*, p. 156.

⁴¹² Art. 61§3 in *Ibid.*, p. 160.

⁴¹³ For example, the candidate should have at least 16.8 ha of land. 'Speculo Saxonum, lib. 3 art. 61', in K. Koranyi (ed.), *Bartłomiej Groicki. Porządek Sądów i Spraw Miejskich Prawa Magdeburgskiego w Koronie Polskiej [Bartłomiej Groicki. The Order of Courts and Municipal Cases under Magdeburg Law on Polish Lands]*, Warszawa, Wydawnictwo Prawnicze, 1953, p. 54.

⁴¹⁴ 'Przysięgam Bogu wszechmogącemu, wójtowi i przysiężnikom i wszystkiemu pospólstwu miasta...gdzie będę posłan, sprawiedliwie aresztować, pilnie pozywać, prawdziwe szperunki i pozwy zeznawać...' *Ibid.*, p. 54.

⁴¹⁵ The form of the sheriff's oath from 1460 found in A. Musson, *Crime, Law and Society in the Later Middle Ages*, Manchester, Manchester University Press, 2009, p. 233. Also, J. Lee, 'Ye Shall Disturbe Noe Mans Right': Oath-Taking and Oath-Breaking in Late Medieval and Early Modern Bristol', *Urban History*, vol.34, 2007, pp. 27-38.

and Polish local offices directly associated with the criminal law proceedings. Therefore, the general appointment of *woźny* in the given areas was mostly dependent on the versions of German laws,⁴¹⁶ under the supervisory authority of the town councillors and the provincial governor in towns such as Kraków. Consequently, they varied due to the regional divisions and their customs. By contrast, in England, the town's sheriff was appointed by local citizens, but the chosen candidate had to be generally approved by the king, with the text of his oath confirming him as a royal official. This reflected the English local officials' strong ties with the central royal power, in contrast to the rather different application of German law in the Polish towns featuring in this study.

Also, significant for the analysis of the *woźny* office is the period of time for which the *woźny* was chosen. The provisions of the *Sachsenspiegel* determined only the situation where, in the event of the death of his predecessor, the selection of his successors would begin (Art. 2§3).⁴¹⁷ It can be assumed that the *woźny* in the area covered by the German law was appointed for life, in contrast to the English regular appointments of the local sheriffs which were usually for one year at a time.⁴¹⁸

Additionally, the German regulations show the status of the *woźny* according to the responsibilities for actions taken, which can be compared with the English sheriffs and their legal duties. The records state that if any *woźny* commits a crime, he can forfeit his life and property just like any other man. Furthermore, the *Sachsenspiegel* imposed corporal punishment for failure to fulfil the legal duties; along with a court fine, *woźny* also suffered 'thirty two lashes with a green oak rod two ells long'.⁴¹⁹ In comparison, in English law proceedings where the sheriff was held responsible for his actions, the offences were usually transferred to the king's court to be judged and punished with a heavy fine or removal from the office.⁴²⁰

⁴¹⁶ Accordingly, provisions of *Sachsenspiegel* in Silesia and *Weichbild* in Kraków.

⁴¹⁷ Art. 2§3 'Under den mut man wol kesen enen vronen boden, of de vrone bode stirft', in Homeyer, *Des Sachsenspiegels*, p. 16.

⁴¹⁸ In England, the time for which the sheriff was appointed was determined as one year.

⁴¹⁹ Because of the limited sources concerning the enactment of this punishment against the *woźny*, there is no clear statement about who was appointed to fulfil the sentence. M. Dobozy (ed.), *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*, Philadelphia, University of Pennsylvania Press, 1999, p. 98.

⁴²⁰ The examples are the State trials of 1289-1293 in which sheriffs faced fines if they made an illegal arrest, concealed a felony, failed to make an arrest or granted illegal bail. Also, during the

Earlier, the direct involvement of the English sheriff in the local criminal justice proceedings was examined. I will now compare the office of *woźny sądowy*, including the range of his legal powers and functions in providing criminal justice. To enact this, the evidence of the *woźny*'s activities in the criminal law process of selected Polish towns was examined and the selection of medieval German texts was made. These included the provisions of the *Sachsenspiegel*⁴²¹ as well as *Weichbild*.⁴²² Generally, the *woźny* office is mentioned in the litigation process, where he was responsible for summoning the parties to the court, arresting defendants, performing the sentenced judgments (including, among other duties, taking possessions). More detailed regulation can be found in the translation of Magdeburg law by Groicki, where the *woźny*, by the orders of the judge, had the right to sue and arrest. The same records also defined the three main duties of the *woźny* as a local official: that he should carry out justice, help neighbours and be an emissary of God's justice ['Firstly, he should punish, not because of hate, but from love of justice. Secondly, he should do this for the satisfaction of the victim of the above criminal. Thirdly, he should do this for God...'].⁴²³

Interestingly, the legal processes which determined the *woźny*'s duties in the area of criminal law also recorded his involvement in the carrying out of the given sentences. The *Sachsenspiegel* describes the special situation in which only the *woźny* could act as an executioner against convicted criminals sentenced to capital punishment, called *Schöffen*.⁴²⁴ One explanation for *woźny* acting as executioner could be that it was a result of the increasing independence of municipal town councils in the field of criminal law. This weakened the status of the officials previously representing royal authority, as they were now acting as municipal agents. What is less clear, however, is the regularity with which the

crisis of 1328 and 1341, there were accusations of fraud and violence that resulted in the removal of local officials including sheriffs.

⁴²¹ The English translation of the German text is found in Dobozy, *The Saxon Mirror*.

⁴²² The Polish translation is found in M. Mikula, *Prawo Miejskie Magdeburgskie (Ius Municipale Magdeburgense) w Polsce XIV- pocz. XVI w. [Municipal Magdeburg Law in Poland from the Fourteenth to the beginning of the Sixteenth Century]*, Kraków, Wydawnictwo Uniwersytetu Jagiellońskiego, 2018, pp. 197-220.

⁴²³ '...Naprzód aby złoczyńców nie karał ani dręczył z nienawiści, ale tylko z miłości sprawiedliwości. Wtóre, aby to czynił na posługę bliźniego swego, przeciw któremu on złoczyńca wystąpił. Trzecie aby to czynił dla Boga...' 'Speculum Saxonum, lib. 3 artic. 56', in Koranyi, *The Order of Courts*, p. 56.

⁴²⁴ *Schöffe*-lay judge, juror, roughly equivalent to the doomsman in old English law. Dobozy, *The Saxon Mirror*, p. 130.

woźny executed the judgments of local authorities and other officers.⁴²⁵

In comparison, in English towns there are no direct indications of the sheriff acting as executioner. However, it was a common practice of fourteenth-century civic officials like mayors and sheriffs to enforce the public corporal punishments such as the pillory. This was mainly used as a part of the punishment for different offences, often connected with merchant law and fraudulent food dealers.⁴²⁶ It can be suggested that participation of English local officials in this form of legal regulation increased the aspirations of further legal independence of towns and their criminal proceedings.

In addition to the arrest of defendants, one of the primary responsibilities of the *woźny* in areas following German criminal law was securing the prisoners held in local prisons. This was another common characteristic of both the sheriff and the *woźny* in performing local criminal law. The *woźny* took an active role in searching for and arresting people prosecuted by the local justice and was responsible for transferring criminals to the prison or court.⁴²⁷

Rymaszewski's study shows that the *woźny sądowy* in other parts of the country and with application of different legal practice was also responsible for arresting suspects, animals and everything else that was a subject in the case. Additionally, to provide evidence in court about a given arrest, the *woźny* usually took a sample of the arrested subject, for example he cut an ear from an arrested horse (AGZ XVII 2306/1490, in Przemyśl), or in the case of an arrested crop, he took two sheaves (AGZ XV, 279/1466, in Lwów).⁴²⁸

There is evidence to suggest that under Magdeburg law, the *woźny sądowy* was not entitled to arrest criminals following a hue and cry.⁴²⁹ In this regard he was dependent on the authority of the local court, where offenders had to be indicted before they could be arrested. To support this statement, the section of

⁴²⁵ For more discussion, see below, Chapter 6, pp. 248-262.

⁴²⁶ The pillory punishments for fraudulent food dealers are discussed in Chapter 2, pp. 72-75. Also, Carrel, 'The Ideology of Punishment in Late Medieval English Towns', pp. 301-320.

⁴²⁷ More about the involvement of sheriffs and *woźny sądowy* in the prison system of the selected towns, see below, Chapter 5, pp. 215-224.

⁴²⁸ Both examples are cited in Z. Rymaszewski, *Czynności Woźnego Sądowego [The Actions of the Woźny Sądowy]*, Warszawa, Wydawnictwa Akademickie i Profesjonalne, 2010, pp. 201-202.

⁴²⁹ In selected Polish lands, the hue and cry was raised and conducted by the residents and night watches that were ready to pursue the criminal. The arrest was possible after the decision of the court, and the *woźny sądowy* responsible for carrying it out.

Sachsenspiegel exposes the *woźny*'s enforcement of the law and his authority to summon the entire community with the hue and cry to perform what is required by law.⁴³⁰ Subsequently, the *woźny* could participate in the escort of a criminal who had already been indicted and it was known where he was staying. However, in some German areas governed by a different model of municipal law, for example Lübeck law which was also used in towns of northern Poland, there were recorded incidents of this practice. For example, in 1345 a *preco-woźny sądowy* arrested a Lübeck *kanon* who wandered around the town at night and made a noise.⁴³¹

A direct involvement in local criminal justice procedures by both English sheriffs and Polish *woźny* can be seen from their investigatory actions. Both visited crime scenes, examined victims' wounds and other circumstances of the committed crimes. However, under English regulations, the autopsy of the dead body was the work of the coroner with the sheriff as a witness, while in Poland all general procedures connected to a victim were part of the duties of the *woźny*. For example, in Kraków in 1400 the *woźny* was responsible for examining a victim's lacerations:

Laurentius de K. et M. frater ipsius cum alio coadiutore ipsorum contumaces in termino primo contra N. de S. pro eo, quod venientes manu armata violenter domumfregerunt kmethonis ipsius in B., et eundem kmethonem occiderunt, caput per se, manus per se, et pedes per se ita, quod ministerialis tum voluit vulnera considerare.

[Wawrzyniec from K. and M. his brother together with another person, their helper, did not come to the first court session in the case against N. from S. because coming armed they violently broke into the house of that peasant in B. and they killed that peasant by separation of the head, arms, legs, in such a way that the local *woźny sądowy* wished to examine the wounds.]⁴³²

The above analysis of the range of duties performed by the sheriff and the *woźny* sheds light on their important status within the criminal law process. For the

⁴³⁰ 'If anyone opposes his enforcement of the law, he must summon the entire community with the hue and cry to perform what is required by law'. Dobozy, *The Saxon Mirror*, p. 130.

⁴³¹ P.A. Jeziorski, *Margines Społeczny w Dużych Miastach Prus i Inflant w Późnym Średniowieczu i Wczesnych Latach Nowożytnych [Social Outcasts in the Largest Prussian Towns in the Late Middle Ages and Early Modern Period]*, Toruń, Wydawnictwo Naukowe UMK, 2009, p. 77.

⁴³² Personal translation. II 10862a/ 1400 Kraków found in B. Ulanowski, *Najdawniejsze Księgi Sądowe Krakowskie [The Oldest Judicial Books of Kraków]*, vol.8, Kraków, Prawa Polskiego Pominiki, 1884, cited in Rymaszewski, *The Actions of the Woźny Sądowy*, p. 52.

woźny, there were two major regulations: German laws and additional royal acts that determined his status. Under both the *woźny* was seen as a court clerk who received his duties from the court, where he demonstrated the reports from his actions. In the *Sachsenspiegel*, the *woźny* was a legal official working closely with the judge. His duties in the criminal law were similar to these of the sheriff in English law and included arresting criminals, visiting the scene of crime, examining wounds, giving testimony, and even performing the function of a judge. However, the reference of *woźny* to a judge was based on a special situation during the absence of the main judge from the court district, where the accuser could make an accusation⁴³³ to the *woźny* acting in lieu of the judge.⁴³⁴ Similarly, the *Weichbild* also connects *woźny* with the local court and criminal justice practice, which included the active role in summoning the parties to the court⁴³⁵ and authority to announce capital punishment for anyone causing disturbance in the trial by combat.⁴³⁶

In the second half of the fourteenth century, when judicial powers had moved into the hands of town councils, the range of the *woźny*'s duties became more limited. He was still a representative of the court but gained additional functions like guarding prisoners, which started to appear on a regular basis. It can be concluded that fourteenth-century German proceedings, together with a local version of customary law and the growing legal powers of the councils, made the *woźny* a municipal official under the control of the councillors with more limited duties and powers.

What is evident from the comparison between English and Polish officials and their role in local criminal proceedings is the fact that the sheriff was defined as a royal representative with judicial and administrative powers, performing local laws with the involvement of royal interests as well. Additionally, after the city received

⁴³³ Against a criminal caught after the hue and cry.

⁴³⁴ 'The criminal must be brought before the court for a crime after the hue and cry was raised and accuser can prove the crime with the oath of six witnesses the same day, then the one who committed crime should be outlawed right away. But if the judge is outside the court district, the accuser can make accusation to the *woźny* in lieu of the judge'. Dobozy, *The Saxon Mirror*, p. 91. Also, see R. Schorer, *Die Strafgerichtsbarkeit der Reichsstadt Augsburg 1156-1548*, Cologne, Böhlau-Verlag, 2001.

⁴³⁵ The above sentence can be found in a 1359 manuscript from Gniezno. The document contains a selection of municipal regulation including translation of Saxon Mirror as well as parts of *Weichbild* according to S. Estreicher. Mikula, *Municipal Magdeburg Law in Poland*, pp. 52-53.

⁴³⁶ Based on the *Weichbild* translation from 1506 in the Statute of J. Łaski. Translation found in *Ibid.*, pp. 197-270.

county status, the sheriff increased his authority in terms of criminal justice and legal proceedings for keeping the peace in town. In contrast, the *woźny sądowy* apart from performing a clerical function regarding orders of the court, lacked a royal allegiance and mainly represented the municipal law, according to the German law proceedings modified by the town councils and the superior role of royal powers in the area. Furthermore, the strong ties with the representation of the local court made the *woźny* significantly dependent on the hierarchy of town authorities in his administrative and legal duties.

4.1.3 Conclusion

The comparison of the fourteenth century offices of the sheriff and the *woźny sądowy* can be summarised through the criminal justice proceedings and the legal and administrative functions performed by both officials. The two offices were chosen for this research because of their close association with the principles of criminal justice performed locally in towns and executed through the offices' assigned legal powers and responsibilities. Further, they represent part of the extensive hierarchical structure of clerical officials who had cooperative and dependent relationships with other local officials. In both systems of law, the above structure functioned in similar ways and was based on the principle of transferring legal powers and duties according to local and royal regulations. The English officials involved in the system of local law were delineated by different royal documents addressing, among other facets, local authorities and underlining the principle of a double control of these offices. Thus, they demonstrated a significant process of cooperation between the Crown and sheriffs, as well as between other offices such as mayors and sheriffs, coroners and sheriffs.

On the Polish side, the involvement of the officials in the judicial function was, apart from royal confirmation and supplementation of the administrative structure in the selected area, dependent on the growing autonomy of the town council, which gained the legal powers from the *Vogt* office at the beginning of the fourteenth century,⁴³⁷ together with additional guidelines about municipal

⁴³⁷ In the thirteenth century, thanks to foundation privileges and financial status, the *Vogt* office became independent from the duke and citizens in the urban areas based on the German model of law such as Wrocław and Kraków. In Wrocław, the growing importance of the *Vogt* caused regular complaints and protests from the town council and in 1281, the local Duke Henry, decided to buy the powers of the *Vogt*. In 1345, the dependence and cooperation exchanged between the

judicature and local keeping of the peace. The process of taking over the judicial and administrative powers by the town council is best seen in the status of the *woźny sądowy*, who moved from the position of being a royal clerk to the official performing functions under the command of the town council and its authority.

Differences in the areas of criminal law that characterised the work of the sheriff and the *woźny sądowy* were found in the sources. They included a duty to arrest criminals based on a hue and cry in England⁴³⁸ and on court proceedings on the Polish lands.⁴³⁹ As a result, the *woźny* was not entitled to arrest without the decision of the court. The opposite was true in the case of the English sheriff and his position as a royal official with broader judicial powers and the right to arrest based on suspicion of a felony.

Also, the length of the office was different for both officials. In Poland the office was mostly given for life, while the English appointments were on an annual basis. Furthermore, while both offices were required to visit the scene of a crime and in the case of a dead body to undertake additional examination, the power to perform that practice in England was in the hands of the coroner, the usual death investigator, while in the Polish lands this was still part of the duties of the *woźny sądowy*. Despite the aforementioned differences, both officials were subject to similar regulation for detention and transportation of suspects, securing of the prisons, participation in public corporal punishment practices, and taking part in the explanation of the circumstances of local crimes and of any wounds suffered by the victims.

duke and town council resulted in the transfer of the majority of powers and privileges of the previous *Vogt* office to the town council. M. Niwiński, *Wójtostwo Krakowskie w Wiekach Średnich [The Vogt of Kraków in the Middle Ages]*, Kraków, Biblioteka Krakowska nr 95, 1938, p. 18. A similar situation was seen in Kraków, where the local *Vogt* became so powerful that in the fourteenth century it caused a rebellion against Duke Władysław Łokietek. The result was confiscation of the office by the future Polish king, together with the legal powers of the *Vogt* being transferred to different royal representatives. *Ibid.*, pp. 47-60.

⁴³⁸ For example, the Statute of Winchester (1285) 'commanded sheriffs, bailiffs of franchises and other bailiffs great and small who have bailiwicks in their charge to take good that they join with their district in the hue and cry after criminals'. The text of the Statute in Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, pp. 463-469.

⁴³⁹ Dobozy, *The Saxon Mirror*, p. 130.

4.2 The coroner's inquest

My research into fourteenth-century local criminal justice in England and Poland includes an original analysis of the direct participation of local officials in the process of identifying crimes. This can be determined as a basic form of criminological procedure, focusing on the crime and the evidence for and against suspects. The form of collection of the evidence required a person with certain knowledge of the criminal law process including medical aspects of the human body. In particular, the range of the above responsibilities required some experience in techniques used in medieval criminal law in relation to bodily harm of the victim. The research in this section will compare the main functions that were performed by English and Polish officials who examined the victim and the scene of crime in towns of both countries. Furthermore, the procedure of the appointment and supervision of their work will be analysed to answer questions related to the status held by the coroner and *woźny sądowy* and the production of evidence in the local criminal trial. For this, the legal powers and responsibilities of these officials as well as decision-making capabilities in terms of serious criminal acts including homicide, rape and assault will be identified. The research will reveal the common elements of criminal legal procedure that directly involved English and Polish municipal officials in the process of identification of criminal acts. Their actions show how the town authorities legally responded to criminal behaviour in the urban area, with the involvement of a certain model of the criminal justice applied at the local level.

In the selected towns of Poland and England researched for this study, the evidence-gathering processes of the local criminal law can be determined according to the identification of the victims and examination of their wounds. This was one of the clearest pieces confirming the breach of law and commitment of crime in medieval urban community. In Poland, the *woźny sądowy* participated in the identification as well as explanation of the factual state of the crime. The creation of the office and his dependency on municipal authorities were examined earlier. This part of the study will focus on the comparative analysis between the fourteenth century *woźny sądowy* and the separate English office of the coroner, both given legal powers to carry out the process about the circumstances of the committed crimes and examination of the victims. Further, they made decisions according to the level of crime with given legal actions. The range of

responsibilities performed by the above officials significantly contributed to the development of the criminal justice in towns of both countries and for this thesis's analysis.

In English legal proceedings that were exercised in the local area, the existence of the separate office of the coroner as a part of the criminal process was dependent on certain regulations. The first point of my research was to determine in which situation the coroner's participation was required in criminal proceedings. Bracton's *Laws and Customs of England*, royal close and charter rolls, and the coroners' rolls from the thirteenth and fourteenth centuries were the major records about the coroner and his function in criminal law procedures used in this study.

The coroner's office is identifiable in the twelfth century, with later royal documents like Magna Carta⁴⁴⁰ and the statutes of Edward I confirming his civil and criminal duties and general upholding of the royal rights.⁴⁴¹ However, the practice of fourteenth-century coroners as a part of local criminal law was delivered mainly on the basis of the town's policy and its legal development. In some boroughs, legal administration became independent enough to be separated from the county courts and have its own coroners. The same was true in the earlier analysis of the English sheriff, where independent processes against the county regulation were also connected to particular town's legal and decision-making powers towards the criminal procedure. The hierarchy and the level of dependency exchanged between local officials can also be identified from the position of the coroner, whose appointment and duties were subjected to the local sheriff. The town's coroner was chosen by the local community, with the oath taken in the front of the sheriff and mayor of the certain town. From the oath taken by the borough coroner, a useful comparison can be drawn between the coroner, sheriff and *woźny sądowy* in terms of the regulation of their offices.

Important details about the oath of the English medieval coroner can be defined from a fourteenth-century London text, where the local coroner swore that he 'will well and truly serve the King and the City of London in the office of the Coroner'.

⁴⁴⁰ No. 24 of Magna Carta: 'No sheriff, constable, coroner or others of our bailiffs will hold pleas of our Crown'. Appendix IV in Holt, *Magna Carta*, p. 325.

⁴⁴¹ *The Statutes: Revised Edition, Henry III to James II, A.D. 1235-6—1685*, vol.1, London, Eyre and Spottiswoode, 1870.

Further, identifying his dependency, the coroner swore 'that no inquest, abjuration, or other great matter shall you do or record without the presence of the Sheriffs or their substitute, according to the custom of the City. And ready shall you be at the command of the Mayor and governors of the City at all times when necessity shall arise for coming and doing your office'.⁴⁴² What is important to note is that the coroner, like the sheriff and in contrast to the Polish *woźny sądowy*, served his office firstly as an officer of the Crown, and was secondarily dependent on the sheriff and mayor of the particular town. In this way, the above model of subjection and hierarchy of the English local officials towards royal supervision is again strongly indicated.

The earlier royal orders sent to different areas of the country also proved the dependent status of the coroner, such as the example of the local sheriff of Devon in 1366, who was ordered to 'cause a coroner to be elected instead of Nicholas Potel, who is insufficiently qualified'.⁴⁴³ The order not only indicates the lack of relevant qualifications to hold the office, but also evidences the sheriff's involvement in the appointment of the coroner as well as the royal interest in the special requirements for that office. The seriousness of the above procedure is confirmed by the fact that the same order about Potel was once again sent to the sheriff of Devon a year later (4th December 1367), and at the same day against Richard Grypeston, another coroner considered to be insufficiently qualified.⁴⁴⁴ Similar orders were directed in 1367 to the Sheriff of Yorkshire ('cause a coroner to be elected instead of Geoffrey Randolph, who is insufficiently qualified'),⁴⁴⁵ the sheriff of Gloucestershire (1367),⁴⁴⁶ and of Cornwall, where the local coroner, Oger Penwore, was 'aged and infirm'.⁴⁴⁷

It is important to note that the archive documents evidence the interchangeability between sheriffs and coroners. In practice, coroners could become county sheriffs or perform both offices at the same time.⁴⁴⁸ For example, John del More

⁴⁴² Butler, *Forensic Medicine and Death Investigation*, p. 38.

⁴⁴³ *Calendar of the Close Rolls. Edward III, 1364-1368*, London, HMSO, 1910, p. 321.

⁴⁴⁴ *Ibid.*, p. 362.

⁴⁴⁵ *Ibid.*, p. 418.

⁴⁴⁶ *Ibid.*, p. 331.

⁴⁴⁷ *Ibid.*, p. 362.

⁴⁴⁸ The number of county and borough coroners varied, usually between two and four, mostly because of royal charters and privileges or the particular situation of the town or county. For example, between 1399-1401 Henry IV ordered the election of the coroners in the place of those elected under Richard II, since their powers ceased with his death. Hunnisett, *The Medieval*

was a county coroner for Yorkshire during the period 1377-1393 and was also Sheriff of the City of York in 1396. In another example, Robert Somerville was a coroner of Gloucestershire and also a local sheriff in 1402.⁴⁴⁹ An earlier fourteenth-century royal regulation about coroners also recorded the similarities of their duties to the sheriffs, where coroners functioned as keepers of the peace.⁴⁵⁰ However, the developing powers of the justices of the peace resulted in royal modification and limitations of the local officials. The common limitation towards both offices and their legal possibilities can be demonstrated from the Close Roll of 1317, where coroners and sheriffs were generally excluded from the office of royal justice:

that no sheriff or coroner shall be made a justice to take assizes, deliver gaols, of oyer and terminer, or to do any other office of justices, because they ought to be intendent to other justices appointed in their county, and if it happen that the king order the contrary, the chancellor shall inform him of this agreement of the council before he do anything.⁴⁵¹

Significantly, the requirements for the office were royally determined in Edward III's statute from 1340, with the possessions the candidate should have,⁴⁵² as well as the social position. The certain status connected to the coroner's office can be seen in the example of English families like the Louth family from York, 'perhaps originally of goldsmiths, which had been associated with Henry II's mint at York and which had provided the city with a reeve, two bailiffs, and a coroner in the course of the thirteenth century'.⁴⁵³ The special conditions for the office can be compared with the earlier analysis of the *woźny sądowy*, where the right candidate should also have an established social and financial position. For example, under Magdeburg-Saxon Law,⁴⁵⁴ the *woźny* should have at least 16.8 ha of land,⁴⁵⁵ while in England 'no coroner be chosen unless he have land in fee

Coroner, p. 165.

⁴⁴⁹ Butler, *Forensic Medicine and Death Investigation*, p. 73.

⁴⁵⁰ Musson, *Public Order and Law Enforcement*, p. 153.

⁴⁵¹ An order from 10th of April 1317 in *Calendar of the Close Rolls. Edward II, 1313-1318*, London, HMSO, 1893, p. 463.

⁴⁵² Edward III's Statute of 1340 in *The Statutes: Revised Edition, Henry III to James II*, p. 159.

⁴⁵³ Edward Miller's chapter 'Medieval York', in Tillott, *The City of York*, p. 46.

⁴⁵⁴ The provisions of *Sachsenspiegel* and *Weichbild* in selected Polish towns.

⁴⁵⁵ 'Speculo Saxonum, lib. 3 art. 61', in Koranyi, *The Order of Courts*, p. 54.

sufficient in the same county, whereof he may answer to all manner of people'.⁴⁵⁶

According to the scope of the legal powers, the status of the English coroner in municipal criminal law regulation is supported by Bracton, who pointed out:

Wherever men are found dead, which may sometimes be in the houses of a town, or the streets, sometimes outside the town in fields or woods, or when a homicide occurs, it is the business of the coroners to make diligent inquiry with respect to such.⁴⁵⁷

This proves that in the case of a dead body or serious assault in town, the first point of contact in a legal inquiry was made by the coroner. Additionally, the office was responsible for starting a direct investigation of the circumstances of the suspected or unnatural death. What is key in this thirteenth-century description is an indication of the extended possibilities of the criminal law and local jurisdiction, fulfilled through the transfer of the legal powers to privileged areas and investigation of any uncertain death or serious assault. This was part of the developmental process of criminal justice, exercised through a selected hierarchy of officials including the coroners, determined in their function by local legal proceedings entrusted to them.

While the English coroners had enough legal powers for a direct involvement in the investigation of the circumstances of the crime and other serious assaults, the powers of *woźny sądowy* were mainly dependent on the court proceedings modified by local customs of the selected area. In towns based on German law, the fourteenth century town councils held the majority of legal powers with the *woźny* being a dependent municipal official rather than separate office that can be seen in the example of the English coroner. The legal records that can be found in an old Polish judicial trial confirmed that 'it was a court who had a right to visit the place of the crime or send there *woźny sądowy*'.⁴⁵⁸ This underlines the importance of the court and their proceedings, however the common practice usually allowed the *woźny* to visit the crime scene. In his book, *Injury in Mazowieckie Law in the Late Middle Ages*, Józef Rafacz states that an important part of the *woźny*'s responsibilities in the criminal cases concerning wounds and

⁴⁵⁶ Edward III's Statute of 1340 in *The Statutes: Revised Edition, Henry III to James II*, p. 159.

⁴⁵⁷ Thorne, *Bracton*, vol.2, p. 342.

⁴⁵⁸ S.Kutrzeba, *Dawne Polskie Prawo w Zarysie [Old Polish Law in Outline]*, vol.2, Lwów, Zakład Narodowy im. Ossolińskich, 1927, p. 94.

other physical harm was to testify about the wounds as well as examine them. This recalls a fifteenth-century example where *'preco recognovit quia ego non vidi vulnera, sed vidi, quia caput inflatum...'*[The *woźny* testified that: I have not seen the wounds but I have seen the head swollen]. Rafacz also confirmed that in other areas of Polish kingdom like Kraków, the regulations were similar and it was the local custom rather than royal order that regulated this procedure.⁴⁵⁹

As soon as the body was found in a town, the local English coroner's work started, usually through information given him directly after the hue and cry was raised by the first people at the scene. For example in Bristol, the coroner 'can never have been far away'.⁴⁶⁰

In addition to investigating corpses, the coroner together with the sheriff usually viewed wounded victims. They would 'measure their length and depth [of wounds], ascertain in what part of the body they are, whether on the head or elsewhere, and by what weapons they were inflicted'.⁴⁶¹ One of the surviving written examples of the fifteenth century source of medical knowledge that the coroner could possibly have used for proceedings was the English book *Anatomia*, with the anatomical illustration of the human body including a selection of wounds.⁴⁶² Also, the local coroner investigated a number of cases of rape, suicide, drowning, and any other connected to physical harm of the victim.⁴⁶³ Additionally, he took an active part in the investigations and confiscations of chattels and belongings of the accused who fled from the area.

In Polish towns, there are comparative law methods. In Kraków, the statute determined that in the process of showing the wounds, the *woźny* and two noblemen needed to be present.⁴⁶⁴ Additionally, in the case of lack of *woźny* or his absence, the authorisation was given by the jurors (town councillors) and in the case of rape, 'the woman should have her hair down and give the certain

⁴⁵⁹ J. Rafacz, *Zranienie w Prawie Mazowieckim Późnego Średniowiecza [Injury in Mazowieckie Law in the Late Middle Ages]*, Lwów, Towarzystwo Naukowe, 1931, pp. 35-36.; *Dawny Proces Polski [An Old Polish Trial]*, Warszawa, Księgarnie Gebethnera i Wolfa, 1925, p. 160.

⁴⁶⁰ Hunnisett, *The Medieval Coroner*, p. 10.

⁴⁶¹ Thorne, *Bracton*, vol.2, p. 345.

⁴⁶² More about the book later in the chapter.

⁴⁶³ According to C.I. Hammer's research, the coroners generally responded to any violent or suspicious death, but not all deaths were homicides and included cases of illness, accidents and suicides. Hammer, 'Patterns of Homicide in a Medieval University Town', p. 9.

⁴⁶⁴ 'Constitutiones terre Cracoviensis art. 27', in Rymaszewski, *The Actions of the Woźny Sądowy*, p. 41.

symptoms as a result of that crime to *woźny*'.⁴⁶⁵ The important differences between the coroner and *woźny* can be identified by analysing how quickly, after the crime was committed in towns, they started proceedings. The English coroner took an action just after being informed about the act of crime, while the Polish *woźny* was ordered to participate in the examination of wounds in rather a short time after the accident. In the case of wounds, the quick examination was vital before the wound disappeared or became less visible, otherwise the case could be dismissed because of a lack of sufficient evidence:

Evasit nobilem P. de Z. pro vulneribus eo, quod ministerialis recognovit in iudicio, quod non habuit vulnera, nisi stigmas.

[Dismissed accusation of a nobleman P. from Z. about the wounds, because the *woźny sądowy* in the case stated that he (P.) did not have wounds but marks].⁴⁶⁶

Additionally, the *woźny* usually chose the date to visit the crime scene. For example in 1400 in Kraków, the local *woźny*, '*Stanecz Bogutha ministerialis deputatur ad videndum inter S.P., M. et J. heredes de P. et Clementem, vicecancellarium regni Polonie, qui ministerialis diem assignavit visionis*' [The *woźny* Stanecz Bogutha is appointed to examine the case between S.P., M. and J., heirs of P. and Klemens, the vice-chancellor of the Kingdom of Poland, and the *woźny* determined the date of the examination].⁴⁶⁷ Another example from Kraków from 1400 confirms the crime investigation being accepted by the court with the appointment of *woźny*, '*Nota. Warmusz ministerialis deputatus ad videndum, quem ambe partes acceptaverunt ad videndum*' [To note that Warmusz, the *woźny* was appointed to visit, and he was approved by both parties].⁴⁶⁸

Once the English town's coroner viewed the body, he usually held the inquest, a formal investigation to find the cause of death and if necessary to indict those he believed were guilty of the crime. The proceedings involved a local jury, consisting of the town's citizens, living or being close to where the body was found. Additionally, the representation of four to six people from neighbouring vills

⁴⁶⁵ Rafacz, *An Old Polish Trial*, p. 160.

⁴⁶⁶ Personal translation. The Latin text from 1461 found in Rymaszewski, *The Actions of the Woźny Sądowy*, p. 47.

⁴⁶⁷ UL. II 10378/1400 Kraków in Ibid.

⁴⁶⁸ UL. II 10799/1400 Kraków in Ibid., p. 62.

also came and gave independent testimony. The inquest was held in the place where the body was found, including areas like prisons, rivers, woods or even castles. The requirements for the local juries cannot be determined, however the statute from 1300 directs that in the given inquests, sheriffs and bailiffs must select jurors 'such as be next neighbours, most sufficient, and least suspicious'.⁴⁶⁹ The above description confirms the social position of the jurors determined by James Sharpe in his article 'Coroners' Inquests in an English County, 1600-1800: A Preliminary Survey', as 'better sort of inhabitants'.⁴⁷⁰

Referring back to local criminal procedure performed in Polish urban areas, it is important to note that investigations made by the *woźny* and the two noblemen were rather basic. Generally, the wounds were presented to *woźny* in his place unless the victim was seriously hurt.⁴⁷¹ As a result, the *woźny* acted as a court official rather than independent authority while the English coroner was privileged by his legal powers to conduct more decisive statements about the crimes.

The English coroners' rolls – official reports from the fourteenth-century – give examples that confirm my statement about the direct and effective identification procedure performed in cooperation between the jury and coroners in various towns. An example is York from the 3rd August 1342 where:

John of Houghton, who had been arrested by order of Thomas of Rokeby for various larcenies whereof he had been indicted before that sheriff, died a natural and not a violent death in the prison of the city of York on Monday next after the feast of St. Peter's Chains in the twenty-third year of King Edward the Third, as four parishes of the said city present on their oath, on view of John's body, before Thomas of Lincoln and his fellows, coroners of the said city.⁴⁷²

Similarly, the example from 28th June 1361 from the Norfolk area:

Four townships, to wit, Tilney, Terrington, Walsoken and Walpole, present that John of Nettleham who was thirty years of age, was found slain in the fens of Marshland on Monday next after the Nativity of St. John the Baptist in the thirty-fifth year of King Edward the Third. Inquest was taken before the said coroner at Terrington on the following Thursday by (twelve sworn

⁴⁶⁹ Butler, *Forensic Medicine and Death Investigation*, p. 81.

⁴⁷⁰ J.A. Sharpe and J.R. Dickinson, 'Coroners' Inquests in an English County, 1600-1800: A Preliminary Survey', *Northern History*, vol.48, no. 2, 2011, p. 256.

⁴⁷¹ Rafacz, *Injury in Mazowieckie Law*, p. 38.

⁴⁷² Gross, *Select Cases from the Coroners' Rolls, A.D. 1265-1413*, p. 112.

men) and by the said four townships (sworn).⁴⁷³

The above examination is comparable to some elements of the autopsy performed as a part of the inquest to find the cause of death and, where necessary, identify those guilty of the crime. This action held by the coroner significantly contributed to the national rule of maintaining law and order in different areas of the kingdom. Usually, the dead body was the evidence of the committed crime and, apart from the examples of natural causes, treated as a main object in the criminal law court procedure. It was so important that any attempts to remove the body or stand too close to the death scene were treated as a serious offence. The exact description of the autopsy as a part of medieval forensic medicine is not part of my research, however the legal procedures to establish the cause of death were key to a murder charge. The fourteenth century coroners' rolls from Yorkshire demonstrate the accusation of a criminal act as a result of the coroner's inquest:

The jury presented on oath that on the Sunday next before the feast of the Nativity of the Blessed Virgin Mary, in the second year of the reign of King Richard the second after the conquest, at Ryther, Roger Utyng of the same feloniously slew William Medde of Ryther by piercing his head with an arrow so that he immediately died. And the said Roger immediately fled. His chattels are none. Viewed by Thomas of Lockton coroner.⁴⁷⁴

The above superficial report carried out in the presence of the coroner and jury, determines the name of the victim, the way the person was murdered with indication of the name of the murderer. To fulfil these tasks, the coroner became an important link between local jurisdiction and the royal justice.

The legal possibilities the coroner and jury had during the investigation of the crime scene, together with the crime reports, differed significantly from the *woźny's* duties and his position in the same process. In contrast to the coroner, fourteenth-century *woźny* was responsible for giving testimony about the wounds and crime scene during the court trial, usually summoned by one of the parties. Although the *woźny* conducted his investigation with the noblemen, only he gave any testimony. An important part in the court proceedings was that the evidence

⁴⁷³ Gross, *Select Cases from the Coroners' Rolls, A.D. 1265-1413*, p. 56.

⁴⁷⁴ PRO JUST 2/233, m.5 in S. Butler, 'Spousal Abuse in Fourteenth-Century Yorkshire: What Can We Learn from the Coroners' Rolls?', *Florilegium*, vol.18, no. 2, 2001, p. 66.

about the wounds was based on the appeal of the aggrieved party, not *ex officio*.⁴⁷⁵ The testimony given by the *woźny* was crucial for the plaintiff as it could confirm the commitment of the crime. Otherwise with no clear testimony, the court would drop the charges against the defendant. For example, in 1453, the local statute recorded that:

si vero hoc idem nobilis non fecerit, extunc idem nobilis pro huiusmodi vulneribus et percussionibus omnino tacere debet.

[If the noble (*woźny*) does not do this (give a testimony), he must be completely silent about such wounds and blows].⁴⁷⁶

Additionally, the position of *woźny* in terms of giving testimony was generally impartial. Unlike the coroner, he did not indicate who was guilty of the crime, and his opinion was mainly used in the content of the suit about the number and depth of the wounds. The court proceedings were based on the appeal of the victim, who quite often indicated the perpetrator. However, sometimes a conflict occurred when both parties summoned different *woźnys* to clarify the incident, as happened in 1501 in Kraków:

[Helc. II 4529/1501 The court decided: In the case of groves which are part of a dispute between Katherine from C., a widow, previously wife of the Castellan of Sądecki, one party and Abbot John and his monastery of Wąchoczko as a second party, together with immovables, in accordance with the requirements of law and accusation, the groves were taken...and next, the opposing party requested, in accordance with the law, to be able to see the damages caused in these groves. Later, the two *woźnys* who had been sent to this place by both parties to see (the damages), and were not in agreement in their investigation and it was decided, that the plaintiff should prove (his right) together with the six witnesses, men from similar background, who should take an oath.]⁴⁷⁷

As a legal representative, the English coroner and his powers were regulated in

⁴⁷⁵ One of the party in the trial of wounds could be, apart from the victim, a member of the family or other person, who could assert that the victim could die from the serious assault.

⁴⁷⁶ 'Bandtkie Ius Polon.445', in Rafacz, *Injury in Mazowieckie Law*, p. 40.

⁴⁷⁷ Helc. II 4529/1501 *Judicium decrevit: 'Quia, ex quo silve iste seu gajja, pro quibus accio vertitur inter...Katherinam de C., relictam olim...Castellani Sandecensis, ex una, et Johannem Abbatem et suum conventum de Wąchoczko, parte ex altera, iacencia inter bona...per Jurisordinem et inscripcionem fuerunt arestata alias...et postea pars adversa affectabat sibi dari iuxta citationem, ad videndum damna facta in eisdem gajjs, postquam ministeriales duo, qui ex partibus ambabus hincinde producti fuerant ad videndum, discordes fuerunt in recognitione, decretum est, quod pars actoria...debet...docere metseptima cum sex testibus, sibi in genere similibus, masculis, mediante iuramento corporali...'* The Latin version found in Rymaszewski, *The Actions of the Woźny Sądowy*, p. 60.

royal charters with the Crown's supervision over his position and duties. For example, the royal Charter of 1373 given to Bristol confirmed the coroner having an important role in the criminal law proceedings and, similar to the sheriff and mayor, serving a special function in the developing apparatus of local officials.

The Sheriff and Coroners of the said town of Bristol for the time being for ever shall have the power of receiving appeals (lawful declaration of another's crime), of the death of a man and also of whatsoever other felonies perpetrated and to be perpetrated within the said town of Bristol, the suburbs and precinct; and to arrest such appealed persons and commit them to the gaol or prison aforesaid to remain in the same until they shall be delivered by the Justices of us and our heirs assigned and to be assigned for delivering the gaol of the said town of Bristol, of which Justices, the Mayor of the said town of Bristol for the time being shall be one, as is premised, according to the law and custom of our said realm...⁴⁷⁸

⁴⁷⁸ 8th August 1373 Charter in Harding, *Bristol Charters, 1155-1373*, pp. 119-141.

4.2.1 Conclusion

This section has compared the English and Polish municipal offices directly involved in the process of identification of the local crime and the victim. The most distinctive features that characterised both officials were connected to their status of dependence as well as the legal powers, required for the criminal law proceedings from the relevant area. The research has shown the coroner's position as independent, impartial and decisive towards examination of the committed crime, as he could indict the offender. Although the coroner had decision-making capabilities from the criminal law area, he was still dependent on the municipal hierarchy of the officials, and, together with a sheriff he was constrained by the royal control with the range of given powers and responsibilities towards local crimes. In comparison, the Polish *woźny* was seen as a court clerk who mainly confirmed the actual state of the local crime, with no powers to identify the offender and usually without explanation of the circumstances of the crime. The position of the *woźny* was determined from the fact that he was mainly delegated by the court for the procedural actions needed to establish the factual state, as a part of the motion of one of the parties. The testimony given by the *woźny* in the court was not, as in the case of the coroner, supported by any decisive powers to indicate the name of the guilty of crime and the possible events of the criminal action. It was rather assumed to be impartial descriptions about the facts according to the victim's state and the place of the crime, upon which the content of the suit was built. Furthermore, the fourteenth century English criminal justice procedure distinguished the coroner and jury as the important decisive body, taking actions immediately after the crime was committed. In comparison, the Polish *woźny* chose time to investigate the place of crime with the assistance of the two noblemen, and with later examination of the victims and their wounds.

The research analysis provides evidence to suggest that despite the strong ties of the English coroner and Polish *woźny sądowy* with the hierarchy of officials, the coroner and his actions were characterised by more autonomy in terms of taking responsibility and making decisions during investigation of the crimes and criminals. In contrast, the executive function of the criminal law in selected Polish towns determined the *woźny* as a dependent municipal clerk, working under strong direction of the court and practised legal procedure. This was the

consequence of the growing independence of the municipal town councils which functioned as the main judiciary and administrative bodies in various fourteenth-century Polish towns.

The research revealed the coroner and *woźny* both taking part in local criminal justice to investigate crimes and their victims in various towns of England and Poland. They contributed significantly to the evidential process of the criminal law and functioned as a result of the developing municipal jurisdiction. Finally, both offices confirmed a certain level of knowledge and understanding of the medical terms describing injuries they viewed. They included the need to measure the length and depth of wounds, ascertain in what part of the body they are, and by what weapons they were inflicted.⁴⁷⁹ The possible source of knowledge could be found in anatomical and surgical illustration of the human body as well as medical books, highly popular in medieval Europe.⁴⁸⁰

⁴⁷⁹ Thorne, *Bracton*, vol.2, p. 345.

⁴⁸⁰ The analysis of European medieval medical books and illustration can be found in A. Kirkham and C. Warr (eds), *Wounds in the Middle Ages*, London, Routledge, 2014.

4.3 The first police forces in fourteenth-century England and Poland

The maintenance of law and order in the selected urban areas required cooperation between the officials responsible for constituting and for executing criminal law. This was achieved not only by issuing a series of regulations at the local level, but also through direct participation in patrolling and controlling the towns' communities to which these provisions were addressed.

The beginning of the formation of the groups which today are called police can be identified from the development of the hue and cry. In thirteenth-century England, in the case of emergency situations and in response to crimes committed, the towns used the principles of hue and cry to pursue the criminal directly. Residents and those responsible for urban safety were obliged to participate in the pursuit. One of the main local officials actively participating in that form of keeping the peace in English towns was the constable, who was responsible, among other things, for organising watches to be kept, pursuing criminals and arresting suspects.

In comparison, from the end of the thirteenth century Polish urban safety was under the control of the city council. The local judiciary system, which previously was subjected to the decisions of the *Vogt* office, with time was taken over by the town council.⁴⁸¹ The result was that in various fourteenth-century Polish towns under German regulation, the town councils had become the authorities competent in the majority of matters of breaches of the peace and safety in towns. Additionally, in response to local crime and pursuit of the criminal using the hue and cry, town councils reflected the model practised in English urban areas based on the cooperation and alertness of its citizens.⁴⁸²

The English constable appears at the same time as the development of criminal law and the principles of keeping national safety at the local level. The office was the continuation of the process of transferring royal legal powers into the hands of local officials for the purpose of keeping the peace, and 'fourteenth-century constables of hundreds were also known as 'constables of the peace' or even

⁴⁸¹ For example, a 1261 legal instruction from Magdeburg to Wrocław stated that the town council in Wrocław was in charge of the town and any breaches could be prosecuted by the council itself.

⁴⁸² For more discussion about the hue and cry in Polish and English towns, see Chapter 3, pp. 118-127.

'keepers of the peace'.⁴⁸³ The transfer of legal powers to the constable and the individuals supervised by him can be found in thirteenth-century regulations under Henry III,⁴⁸⁴ where, in the ordinance of 1242, the king gave a requirement to keep watches in every town with examples: six armed men to guard each gate of a city, twelve men to guard each borough (that is an urban area without fortification with gates) and smaller numbers of watchmen for the villis with additional indications of the involvement of the constables in the keeping of the peace. Later, Edward I's Statute of Winchester (1285) confirmed the constable's involvement in keeping the peace in towns:

The two constables in each hundred, who were responsible to the county keepers of the peace, were entrusted with the view of arms and on two occasions each year were to check that the men were arrayed according to their competence.⁴⁸⁵

Apart from the constable's military function, the Statute of Winchester also determined his responsibilities for seeing that the statutory requirements for arms were fulfilled, for presenting before the justices assigned failures to keep the watch, for clearing the highways, for observing hosting regulations and for following the hue and cry.⁴⁸⁶ The confirmation of his duties can also be found in the text of the thirteenth century oath that the constable had to take after his appointment. The oath evidences the constable's connection to the local hierarchy of officials mentioned earlier in the chapter, where together with the powers and responsibilities, the constable was cooperating with the mayor and sheriff of the selected town:

And the faults that you shall find, you shall present them unto the Mayor and the officers of the City. And if you shall be withstood by any person or persons, that you cannot duly do your office, you shall certify unto the Mayor and Council of the same City.⁴⁸⁷

In comparison, the above activities were officially performed in the Polish local

⁴⁸³ B. Putnam, 'Shire Officials: Keepers of the Peace and Justices of the Peace', in J.F. Willard, W.A. Morris and W.H. Dunham (eds), *The English Government at Work, 1327-1336*, vol.3, Cambridge, Mass., The Mediaeval Academy of America, 1945-50, p. 188.

⁴⁸⁴ The ordinance of 1242 found in Rothwell, *English Historical Documents, 1189-1327*, p. 357.

⁴⁸⁵ Citation found in A. Musson, 'Sub-Keepers and Constables: The Role of Local Officials in Keeping the Peace in Fourteenth-Century England', *English Historical Review*, vol.117, no. 470, 2002, pp. 1-24.

⁴⁸⁶ Based on Statute of Winchester 1285 and Cam, 'Shire Officials: Coroners, Constables and Bailiffs', in Willard, Morris and Dunham, *The English Government at Work*, p. 168.

⁴⁸⁷ The text of the constables' oath found in Riley, *Liber Albus*, p. 271.

areas by decision of the city council, which had supervisory and control powers over local safety. This is seen in the legal advice from 1261 issued by Magdeburg lay judges to Wrocław town councillors, which determined the legal decisions of the town council as applicable with any contravention of them prosecuted by the council itself.⁴⁸⁸ Later royal privileges from 1331 and 1343 confirm the council's power of judgment over cases about maintaining order and peace and the power to punish criminals, although strictly police actions were delegated to the appointed officials.⁴⁸⁹ The scope of responsibilities that were performed by the English constables were in Polish towns carried out mainly by officials appointed by the council, called *capitanei*.

The best way to identify the range of powers and responsibilities of controlling agencies to increase the safety in English and Polish urban areas usually surrounded by the town walls is through analysis of division of these towns into wards and quarters, each with selected officials and supervising constables.

At York, the duties of the officers for each of the six wards, called sometimes constables and at other times sergeants, seem primarily related to defence. Linked with the reforms of the Statute of Winchester and its successors such as the Statute of Northampton, they raised and arrayed troops, supervised the viewing of arms, collected taxes to pay the expense of troops sent outside the city and were responsible for opening and closing the city gates.⁴⁹⁰ In thirteenth-century Norwich, there were usually around four constables whose main duties were to keep the peace and to see to the efficiency of the Militia organisation.⁴⁹¹ With time, as the number of town citizens increased, so did the number of constables and their responsibilities. For example, by 1421, sixteen constables were chosen by the Assembly, four each for the wards of Conesford, Mancroft, Wymer and Ultra Aquam. The same number of constables were chosen in 1423, two for Conesford, two for Berstrete, four for Mancroft, four for Wymer, two for Coselanye and two for Fibrigge.⁴⁹²

In the selected Polish towns, there was a similar division of the urban areas into

⁴⁸⁸ Stelmach, *A Catalogue of the Medieval Documents*, p. 48.

⁴⁸⁹ *Ibid.*, pp. 111-134.

⁴⁹⁰ Edward Miller's chapter 'The later middle ages: Courts, jurisdiction, City Council and Parliament', in Tillot, *The City of York*, pp. 75-79.

⁴⁹¹ Hudson and Tingey, *The Records of the City of Norwich*, vol.1, p. cxliv.

⁴⁹² 'Assembly Roll, 3 May, 9 Hen. V', in *Ibid.*, p. ciii.

quarters, which were similar to the English wards. For example, in 1396 Kraków was divided into four quarters called Quartale Castrense, Quartale Figulorum, Quartale Slawcoviense, Quartale Carnificum,⁴⁹³ and Wrocław was divided in the same way.⁴⁹⁴ Generally, the division of the medieval town into wards or quarters provided better protection and defence against all kinds of threats, for example fires and the fire regulation,⁴⁹⁵ also prevention against criminal acts with limitation of the possible escape of the suspect from the crime scene. Additional provisions relating to the number of guards controlling individual quarters defined the scope of the security of particular areas. In 1396, Kraków required seventeen guards, four for Quartale Castrense, four for Quartale Figulorum, four for Quartale Slawcoviense, and five for the Quartale Carnificum.⁴⁹⁶ Interestingly, the later records from 1404 evidenced that the number of guards increased to approximately twenty-six, thus proving that the municipal council was paying greater attention to the safety of Kraków after dark. This could also be seen as a reaction to the increased criminal activity of its inhabitants.⁴⁹⁷

In order to evidence the assumption of this section about the common involvement of the medieval Polish and English police agencies in the enforcement of criminal law regulation, I would like to summarise the range of

⁴⁹³ Piekosiński and Szujski, *The Oldest Books and Accounts of Kraków Town from 1300 to 1400*, p. 141.

⁴⁹⁴ 'Henricus Pauper. Rechnungen der Stadt Breslau von 1299-1358, nebst zwei Rationarien von 1386 und 1387, dem Liber imperatoris vom Jahre 1377 und den ältesten Breslauer Statuten', in C. Grunhagen (ed.), *Codex Diplomaticus Silesiae*, vol.3, Breslau, Josef Max and Komp, 1860, p. 16.; 'Item de precio circulatorum in quartalibus 9 mrc 6 scot', cited in J. Suproniuk, 'Policja Miejska i Przepisy Policyjne w Polsce XIII-XVI wieku' ['Municipal Police and Police Regulation in Poland from the Thirteenth to the Sixteenth Centuries'], *Rocznik Dziejów Społecznych i Gospodarczych*, vol.140, Poznań-Warszawa, 2006, p. 38.

⁴⁹⁵ Fourteenth-century fire regulation in London's articles of the wards, where one of the main duties of the ward was to watch out for fire. 'The London Assize of Nuisance 1301-1431: A Calendar', in S.R. Jones, 'Household, Work and the Problem of Mobile Labour: The Regulation of Labour in Medieval English Towns', in J. Bothwell, P.J.P. Goldberg and W.M. Ormrod (eds), *The Problem of Labour in Fourteenth-Century England*, Woodbridge, Boydell and Brewer, 2000, p. 138. Similarly, Polish regulation from the town of Poznań from the second half of the sixteenth century stated that two councilors be chosen for each half of the town so that in the case of fire one would be responsible for rescue and the other for keeping the peace in the town. A. Abramski and J. Konieczny, *Justycjariusze, Hutmani, Policjanci. Z Dziejów Służb Ochrony Porządku w Polsce [Justitiarius, Hutmans, Police. From the History of Municipal Order- Protection Services in Poland]*, Katowice, Wydawnictwo Śląsk, 1986, p. 78.

⁴⁹⁶ Acta Consularia 1385-1402 and a note from 19 VI 1396, cited in Chmiel, *Acta Consularia Casimiriensia 1369-1381 et 1385-1402*.

⁴⁹⁷ K. Kaczmarczyk, *Księgi Przyjęć do Prawa Miejskiego w Krakowie 1392-1506 [The Books of Admissions to the Municipal Law of Kraków]*, Kraków, Archiwum Aktów Dawnych Miasta Krakowa, 1913, p. 386.

powers they could use in terms of keeping the peace inside the wards.

The fourteenth century English organisation of wards consisted of territorial divisions of the cities, each with an alderman and subordinate officials including constables, beadles and sergeants. The ward administration mainly concerned defence, policing and public sanitation, and sometimes included punishment practices and the responsibility for providing necessary equipment such as stocks. For example, in 1501 in York, all six wards were ordered to provide public stocks and fetters for the 'punishment of beggars, vagabonds and other misdoers'.⁴⁹⁸ Additionally, in order to increase the law enforcement as well as authority of the local civic officials, there were special courts operating inside each ward called wardmotes, with its own aldermen and male representation,⁴⁹⁹ with the main purpose of 'keeping of the king's peace'.⁵⁰⁰ Although the hierarchical structure of the wardmote worked under the authority of the king, the responsibilities and information about people of bad repute regularly exchanged inside the wards significantly strengthened the co-operation between ward officers and the central authorities, according to Frank Rexroth's research.⁵⁰¹ In particular, the London wardmote court, based on the reports from the jury of men who presented to aldermen their complaints about night walkers, prostitutes, petty thieves, beggars vagabonds, gamblers, trade offenders and others who disturbed the peace, could effectively impose many aspects of crime control among inhabitants of the wards and their officers. For example, the aldermen who further reported complaints to the mayor, were empowered to deal with certain offences against the king's peace like theft, trespass, prostitution and other petty crimes, however the major felonies were reserved to royal justices.⁵⁰²

According to Morris, the organization of the ward system corresponded to the characteristics of the older system of the frankpledge,⁵⁰³ with a selection of officers directly involved in militia duties including constables. However, while the

⁴⁹⁸ D.M. Palliser, *Medieval York 600-1500*, Oxford, Oxford University Press, 2014, p. 259.

⁴⁹⁹ Usually chosen by the constables of the ward and consisting of a panel of juries from among 'reputable men' of the ward.

⁵⁰⁰ Jones, 'Household, Work and the Problem of Mobile Labour', in Bothwell, Goldberg and Ormrod, *The Problem of Labour*, p. 135.

⁵⁰¹ F. Rexroth, *Deviance and Power in Late Medieval London*, Cambridge, Cambridge University Press, 2007, p. 216.

⁵⁰² Jones, 'Household, Work and the Problem of Mobile Labour', in Bothwell, Goldberg and Ormrod, *The Problem of Labour*, p. 137.

⁵⁰³ Morris, *The Frankpledge System*, p. 62.

constable's duties involved him in a ward administration, he was not the only official in charge, and had to cooperate with decisions made by the central authorities. Apart from the regulation of his oath with the confirmed supervisory function of the mayor, sheriff and council, the constable's work also connected the office to the alderman and wardmotes. For example, he was responsible for choosing a panel of jurors from among 'reputable men' of the ward who later presented their complaints to alderman during a wardmote session.

The powers and responsibilities of the fourteenth century constables were often recorded in English royal regulation, which determined them as civic officials performing military, police and preventive actions in towns in close cooperation with the night watch. For example, the Statute of Northampton (1328) and the Statute of Westminster (1331) confirmed the police activities of these officials including the right to arrest. Also ordinances, for example from Norwich, demonstrated the cooperation and common aims exchanged between constables and other ward officers. The ordinances of 1423 required eight men to watch each of the four main wards, with a constable responsible for informing which householder had to send a man for the watch and the requirement that any problems be reported to the mayor. Similarly, in 1471 the Norwich Assembly ruled that nightly watches should be held in each ward⁵⁰⁴ by one alderman, one constable and eight other people, defensibly arrayed and the civic government made provision for appointing extra people to reduce the burden of night watching for the constables.⁵⁰⁵

The duties of the constables in keeping the peace in wards, such as the right to arrest and to raise the hue and cry in pursuit of criminals, meant that constables and other officials such as coroners became directly involved in the local criminal proceedings. For example, they served in trial juries and shared their broad knowledge of forensic matters.⁵⁰⁶ Also, on the orders of the sheriff or the coroner, the constable arrested men who had been appealed or indicted, and sometimes he was set to guard men arrested by the sheriff's bailiff or the bailiff of a franchise, evidencing the cooperation between local officials in criminal proceedings.⁵⁰⁷

⁵⁰⁴ The ward was a jurisdictional sub-section of the town with its own neighbourhood court, where presided the representative alderman or bailiff of the selected area.

⁵⁰⁵ Carrel, 'The Ideology of Punishment in Late Medieval English Towns', p. 307.

⁵⁰⁶ Musson, 'Sub-Keepers and Constables', p. 18.

⁵⁰⁷ J. Bellamy, *Crime and Public Order in England in the Later Middle Ages*, London, Routledge

However, with regard to his status and despite the wards' control over the choice of their own ward officers, the chosen constable could still face rejection by the mayor and aldermen which thus confirmed the dependency of his office towards the town's authorities.⁵⁰⁸

The night watches, identified in this research as medieval towns' police forces, were characterised by direct responsibilities in keeping the peace and order. Firstly, there were special requirements for the candidates, like being well-armed to be able to defend the town, so they could be accepted by the members of the ward with later presentation to the alderman. The duties of the watches were broad and included, depending on the size of the town, four or six men to keep the ward, being ready to arrest people who disturbed the peace or wandered at night. They were responsible for hue and cry in the case of crime or failure to arrest. In a situation where the criminal escaped to a church, people from the ward where the church was located had a duty to keep watch on that felon until he had been made to quit the realm. If not, the watches had the right to ask the next ward for assistance.⁵⁰⁹ Apart from the night watch, reacting to an emergency situation in the area was the responsibility of the town's inhabitants rather than a voluntary act. It thus sometimes caused problems between the chosen people and the town's officials. For example, in 1477 in Exeter, there was a dispute between the Bishop and Mayor of Exeter John Shillingford about the participation of the Bishop's tenants in the watch, which the Bishop instructed them not to do, stating that if any city official ordered them to come, 'they sholde breke his hed'.⁵¹⁰

Further evidence about the English watch and their work can be found in a sixteenth-century Exeter document made by John Hooker, who described the watchmen and their wardens and provided an explanation of their duties during the night watch. The watchmen were called the officers of trust, with the following responsibilities: 'They shall all night be watchful, walking abroad in their divisions, leaving always someone at the gate, they shall view and look whether all things be quiet and in good order. If they find any fires perilous, or houses adventured,

and Kegan Paul, 1973, p. 94.

⁵⁰⁸ Barron, 'Lay Solidarities: The Wards of Medieval London', in Stafford and Nelson, *Law, Laity and Solidarities*, p. 227.

⁵⁰⁹ Riley, *Liber Albus*, p. 244.

⁵¹⁰ 'Instructions to Richard Druell, Drawn by Shillingford', in Moore, *Letters and Papers of John Shillingford*, pp. 43-45.

they shall rouse and call up the scavengers⁵¹¹ and constables. If they find any night-watches, players, quarrellers, drunkards, suspect persons, whatsoever, they shall apprehend them and bring them either to the ward or to some convenient place, as where the parties may be forth-coming before the magistrate the next morning. If any stranger come, they shall receive him, and shall bring him to his lodging, or present him to the magistrate, according as his cause shall require. They shall attend the Mayor, upon every Monday, at the Guildhall Court, and then and there to present what faults have been done and committed in the nights of the watches'.⁵¹²

In comparison with the broad duties performed by fourteenth-century English town constables, the above activities in Poland were usually performed by *capitanei*.⁵¹³ They were the local offices chosen by the town council and responsible for the control of urban quarters and for patrolling them as local guards. The *capitanei* were supervised by the council, on which they depended for their powers and responsibilities. One of their duties was to choose the *dziesiętnik*, a person in charge of the hue and cry in town. Additionally, in the case of alarm raised by the town trumpeter, the citizens of the town usually went to a designated place to listen the instructions of their supervisor or *dziesiętnik*, who gave out information about the crisis.⁵¹⁴

As in the English towns, participation in urban watches was a duty of inhabitants of the Polish quarters. This is evidenced by a privilege of Kraków from 1358, in which the attendance in the watch was an obligation placed on all townspeople who had property inside the city walls. For those renting a home, it was the tenant's duty, not the owner's, to take part in the watch.⁵¹⁵

In addition to a cadre of regular guards drawn from the town's inhabitants who were responsive to the hue and cry, there were, as in England, the night watches

⁵¹¹ Scavengers were usually concerned with public safety, including the cleanliness of the streets, the condition of the buildings and the safety of chimneys.

⁵¹² 'The Office of the Watchmen and Wardens', in J. Hooker, *A Pamphlet of the Offices and Duties of Everie Particular Sworne Officer of the Citie of Excester*, London, Henry Denham, 1584, [website], <https://quod.lib.umich.edu/e/eebo/A14577.0001.001?rgn=main;view=fulltext>, (accessed 7 June 2016).

⁵¹³ In the sixteenth century, the *capitanei* were replaced by the office of a *hetman*. Suproniuk, 'Municipal Police and Police Regulation', p. 38.

⁵¹⁴ Koranyi, *Magdeburg Law Articles*, p. 42.

⁵¹⁵ Suproniuk, 'Municipal Police and Police Regulation', p. 45.

of specially appointed troops who patrolled the streets after dark. As city councils took over the powers to maintain order and peace in towns, the night watches became municipal servants directly subordinated to them. The specially chosen guards patrolled selected quarters after dark under the orders of their superiors, the *capitanei*, and watched over the peace and safety within the city walls. The English and Polish police formations of this time were characterised by common aims and duties. The watchmen's work in sixteenth-century Exeter can be compared to the records of fourteenth-century watchmen from the city of Kraków.⁵¹⁶ The latter set out that at the sound of the evening bell, the guards arrived at the town hall, where they received work instructions from their supervisor about the guarded area until sunrise. Sleeping in a house and performing other activities were forbidden during the night shift, and guards were tasked with stopping vagrants and those who, despite 'the curfew', walked around the city. They were also responsible for closing the gates of the town, raising the drawbridges at night and patrolling the streets of the selected quarters and market squares.

Due to the nature of the work of the town guards, their social position was rather low and sometimes, like in the example of Exeter,⁵¹⁷ this was a reason for people to protest against participation in the ward, for example by making verbal attacks and assaults on the patrols. In fourteenth-century Schweidnitz, a Polish town under German regulation, located a short distance from Wrocław, the *Ältestes Strafbuch* describes assaults on the local guards after dark which were not attempts to commit robbery.⁵¹⁸ Such attacks on the guards can also be found in other towns of Silesia, although sometimes they were a result of guards acting against the law. For example, in 1478 in Wrocław, when a thief escaped the gallows, the local guards not only publicly refused to pursue the criminal, they also shouted to him to run faster.⁵¹⁹ The above situation allowing the convicted

⁵¹⁶ Chmiel, *Acta Consularia Casimiriensia 1369-1381 et 1385-1402*, p. 10.

⁵¹⁷ '1477 Instructions to Richard Druell, Drawn by Shillingford', in Moore, *Letters and Papers of John Shillingford*, pp. 43-45.

⁵¹⁸ P. Gantzner (ed.), 'Ältestes Strafbuch der Stadt Schweidnitz', in *Zeitschrift des Vereins in Geschichte Schlesiens*, vol.71, Breslau, Josef Max and Komp., 1937, pp. 186-92, cited in Suproniuk, 'Municipal Police and Police Regulation', p. 54. For discussion about the medieval history of Schweidnitz and its inhabitants, see H. Adler, 'Über die ethnische Zugehörigkeit der Bewohner von Schweidnitz im Mittelalter', *Tägliche Rundschau*, vol.2, 2001, pp. 10-12.

⁵¹⁹ Klose, 'Darstellung der inneren Verhältnisse der Stadt Breslau vom Jahre 1458 bis zum Jahre 1526', in Stenzel, *Scriptores Rerum Silesiacarum. Oder Sammlung Schlesischer Geschichtschreiber, Namens der Schlesischen Gesellschaft für Vaterländische Cultur*.

criminal to escape from the gallows was not unusual and also practised in English towns, for example in York, where *suspensores* were bribed to allow the rescue of a thief as he was taken to the gallows, or like in 1341 in Suffolk, where the hanging was performed with such guile that the criminal did not die and usually survived the procedure.⁵²⁰

4.4 Chapter conclusion

The examination of the offices set up to direct, maintain and perform law and order in English and Polish towns has demonstrated an important dimension of the creation and function of these officials. Moreover, the peace-keeping and evidence-gathering activity undertaken by the local offices and supported by developing legal autonomy and aspirations of self-government of these urban areas defined the main elements that characterised the criminal justice processes in towns of both countries.

By focusing on the characteristics of the powers and responsibilities of the town offices directly involved in the realisation of the criminal law proceedings in fourteenth-century Poland and England, this chapter has demonstrated the similarities in the function performed by these officials to keep the peace and order in towns. Significantly, the analysis has revealed a common police system based on the system of hue and cry with the division of towns into securable areas such as wards and quarters with obligatory night watches patrolling them after dark. Furthermore, the local officials from both countries, that is the sheriff, coroner and *woźny sądowy*, were all directly involved in the activities related to the executive function of criminal law through cooperation and common aims, forming in effect a representation of the developing municipal legal agencies. Additionally, the regulations issued in selected English and Polish towns confirmed their major responsibilities to maintain local law and order. They were to resolve and stabilise common conflicts and prevent criminal acts within the town walls, including enforcing obligatory community duties such as participating in the watch inside the wards of towns.

There were, however, notable differences in terms of the length of time for which

⁵²⁰ The examples of York and Suffolk found in the article of Summerson, 'Attitudes to Capital Punishment in England', in Prestwich, Britnell and Frame, *Thirteenth Century England VIII*, p. 129.

the offices were held,⁵²¹ also in the methods of appointment and nomenclature of the officials. As discussed earlier, the main principles of subordination⁵²² have shown the English officials to be strongly connected to higher royal control and supervision, however with an established model of cooperation exchanged between the king and the local hierarchical structure. In comparison, Polish municipal officers were more autonomous with the royal powers having limited impact on their administrative and legal forms.

This chapter has advanced our knowledge about the jurisdictional powers exercised by the English and Polish officials in chosen towns. Also, the chapter has revealed methods shared by English and Polish urban control agencies when performing their duties in cooperation with and under the established hierarchy of town officials. This confirms the aims of the research about the common elements that can be found in both English and Polish fourteenth-century criminal justice proceedings performed by a selected group of the local authorities and analysed from an international, comparative point of view.

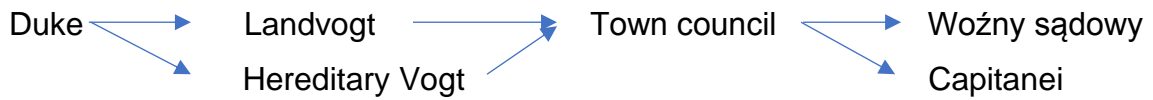
⁵²¹ For example, the constable and sheriff in comparison to the Polish *woźny sądowy* examined earlier.

⁵²² The English royal and Polish ducal powers over the local officials.

Magdeburg model:



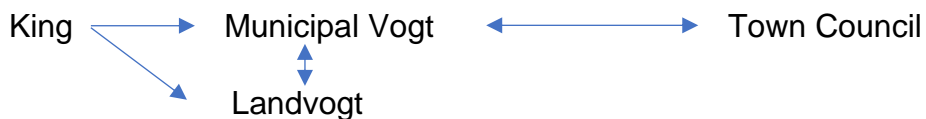
Wrocław XIV c.



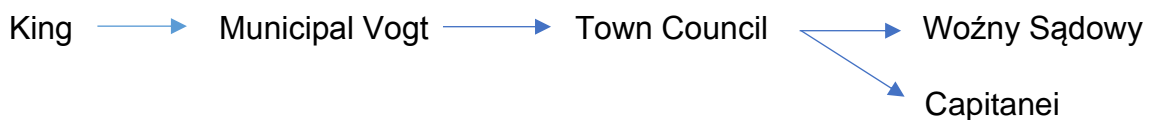
Kraków XIII c.



Kraków- First half of XIV c.



Kraków- Second half of XIV c.



Graph 2: The transfer of legal powers to the hierarchy of local officials in fourteenth-century Wrocław and Kraków, based on the Magdeburg law and modified by local customs and dependencies on the king's or duke's superior powers in these urban areas.

Chapter 5. Local prisons and prisoners in the selected towns in England and Poland

5.1 Introduction

The topography of the English and Polish towns analysed in the second chapter evidenced the important common elements of the urban areas, from the legal perspective. One of these elements includes the buildings designated 'prisons', which were places for keeping criminals, suspects and others who broke local legal regulations or disturbed the peace and order of the town. Imprisonment, which is now the most common form of punishment for criminals, was in the Middle Ages a different form of punitive tool: prisons were mainly places where prisoners were held for a short length of time until their case could be heard in court. Typically, those who were imprisoned were those who could not post bail or who were refused bail because of the seriousness of the crime – for example homicide – or because they had been caught 'red-handed'. Prisons were also used as a waiting place for the convicted until they paid their fine.⁵²³ From these examples we can determine that the function of the medieval municipal prison was primarily coercive rather than penitentiary.

Generally, the process of isolating and imprisoning those who had broken the law in the controlled area surrounded by the town walls seems to fulfil two essential responsibilities of the town to its citizens: the protective and preventative functions. Additionally, the location of these places in towns had an impact on criminal justice proceedings because they determined the control of the criminal with later transportation to the courtroom for judgment and execution of the sentence. The judgment and sentence were usually held in the centre of the town in guildhalls and town halls, with pillories standing in the front of the court building.⁵²⁴

This chapter examines the locations of the municipal prisons in the selected English and Polish towns, together with the forms and functions of the prisons

⁵²³ For further discussion about the offences and criminals see below, Chapter 6, pp. 234-246.

⁵²⁴ For the topographical description of the selected towns, see Chapter 2, pp. 59-88.

with regard to criminals and involvement of local officials in the performance of guard duties at these places. The results of the chapter form the next element in the analysis of criminal justice in the towns of both countries: in this case a special, secure place to hold suspects awaiting trial and others who acted against the law and against order.

The chapter seeks out evidence for the shared model of buildings that were viewed as or called municipal prisons in towns in England and Poland. According to the town-centre location and 'short-term' function of the prisons inside town walls, this chapter analyses the kind of criminals that were held in there, and for how long. In particular, this section examines and questions prisons' effectiveness as a means of punishment, including the number and size of functioning prisons in the selected towns and the impact that these elements had on the development of local justice and the scale of criminality in the towns of both countries. Finally, the chapter will highlight the work of local officials in the town prisons with their responsibilities and supervisory actions. In doing so, the English and Polish legal documents that regulated the work of the officials as the guards of these places will be revealed, together with similarities and differences that can be discerned according to their duties.

The number and condition of town prisons, often overcrowded by the different kinds of criminals waiting for their trial together with a social degradation connected to these places, had a certain impact on the citizens' understanding of the given law. Additionally, the existence of the canon law with the sanctuary policy significantly limited the autonomy of the jurisdiction and enforcement of law inside the town walls. In this way, the necessity for the establishment of English and Polish municipal prisons from a criminal law perspective, which incorporates the custodial and punitive functions of these places and affects local justice and social consciousness in selected areas of England and Poland, will be suggested.

5.2 Creation and location of the first town prisons

The imposition of involuntary physical confinement dates back to antiquity, with evidence of incarceration in pre-Christian societies and literary documents, such as Plato's *Gorgias* and the Bible.⁵²⁵ In the medieval period, a direct consequence

⁵²⁵ Winter, 'Prisons and Punishments in Late Medieval London', p. 46.

of the creation of towns and their responsibility for legal regulation can be found in the development of local justice with establishment of municipal places for punishment and public disgrace. These included a special building used to deprive an individual's freedom and effectively remove the offenders and suspects from the streets.

The surviving archive documents from the English municipal areas evidence that the first forms of incarceration places appeared through royal grants that allowed the citizens to have a prison and to imprison wrongdoers within the towns' defensive walls. Generally, the creation of prisons had already begun in the twelfth century, when the Assize of Clarendon from 1166 confirmed the requirement for royal gaols in one of the king's boroughs or castles, some of them situated inside the town walls. Later, as the charter given to the burgesses of Stafford by Henry III (confirming a charter issued earlier by King John) regarding the prisons in the borough provided, the town gaol was to be made and kept up at the burgesses' own expense to punish malefactors and others arrested in the borough or its suburbs until they could be delivered according to the law and custom of the realm.⁵²⁶ Accordingly, in the thirteenth and beginning of the fourteenth centuries the number of prison buildings in towns continued to increase.⁵²⁷ In Norwich, the Second Charter of Edward I to the citizens of Norwich, which dates from 8th July 1305, confirmed the existence of the city prison: 'all there indicted or arrested shall be detained in a prison of the said City'.⁵²⁸ Additionally, the coroners' rolls evidence that the city prison of Norwich was functioning in 1268: Roger Olot of Fonsete was 'kept in the City prison' after confessing to the murder of the baker Reginald, while, in the same year, Simon de Cranele was named as an accuser⁵²⁹ in Norwich prison, who 'accuses five persons of receiving stolen goods'.⁵³⁰ The Norwich prison is also confirmed by

⁵²⁶ The text of the Charter from 11th April 1228 found in *Calendar of the Charter Rolls. Henry III, 1226-1257*, London, HMSO, 1908, p. 71.

⁵²⁷ Partly because of foundation charters. For example, a foundation Charter for Bristol in 1373 (Edward's III Charter that separated Bristol from Gloucester and Somerset), also Charter for Norwich in 1194 (granted the status of a city) and for York in 1212 (also granted the status of a city).

⁵²⁸ The text of the second Charter of Edward I from 8th July 1305 found in Hudson and Tingley, *The Records of the City of Norwich*, vol.1, pp. 18-20.

⁵²⁹ In this example, de Cranele was described in the records as 'accuser'. However, the coroners' rolls also contain the broad list of 'approvers', who were guilty men pardoned on the condition of securing the conviction of the other felons.

⁵³⁰ The coroners' rolls from the reign of Henry III found in Hudson and Tingley, *The Records of*

the Borough Customs of 1340: ‘...But nowise shall the men of the city proceed to judgment in this behalf without suit until the common delivery of Norwich prison; and then the justices assigned to deliver the prison shall come to the city court and shall give judgment of such thieves taken with the mainour’.⁵³¹ In Bristol, the Borough Customs of 1240 mention the town prison: ‘...and that a burgess, for whatever cause he may be imprisoned, shall not be taken to the castle prison, but shall be taken to the town prison’.⁵³² The said prison is also confirmed later by the Charter of Edward III in 1373.⁵³³ In York, as with the other English towns, the first mention of the prison appeared in the thirteenth century. A note from 1279 describes the guild of butchers and their custody at night,⁵³⁴ and the Calendar of Fine Rolls from 1282 records the butchers of the city who were imprisoning those ‘indicted of larceny’.⁵³⁵ In Exeter, the town prison can be confirmed from the lists of prisoners who stayed there, for example Sir Thomas Leger, who was imprisoned in Guildhall prison in 1483 and later beheaded. The further reference to the practice of incarceration in Exeter can be evidenced from fifteenth-century Mayor’s Articles of Complaint, which describe the case of Richard Wode, arrested on the High Street by the Serjeant-at Mace and who later escaped from the Serjeant’s custody to the cathedral.⁵³⁶

In a way comparable to how English towns established organisation of their prisons, in Polish towns the imprisonment was connected to the foundation charters which were issued by the dukes or by the king, and were based on German regulation.⁵³⁷ The adopted legal instructions from Magdeburg to Wrocław of 1261 and 1295 concerned the town council and its role in local justice, with an obligation to search for and punish those who broke the law in the town.⁵³⁸ It is for this reason that the organisation and personnel of prisons in the selected

the City of Norwich, vol.1, pp. 203-207.

⁵³¹ Bateson, *Borough Customs*, vol.1, p. 54.

⁵³² *Ibid.*, p. 64.

⁵³³ 8th August 1373 of Edward III found in Harding, *Bristol Charters, 1155-1373*, pp. 119-141.

⁵³⁴ In the fourteenth century, the building was known as *the Kidcotes*. Tillott, *The City of York*, p. 34.

⁵³⁵ *Calendar of Fine Rolls. Edward I, 1272-1307*, vol.1, London, HMSO, 1911, p. 161.

⁵³⁶ However with no indication to the specific prison. Fifteenth-century archive documents found in Moore, *Letters and Papers of John Shillingford*, p. xv.

⁵³⁷ Wrocław’s first foundation charter in 1226 (1261 Magdeburg foundation charter), also Kraków’s in 1257.

⁵³⁸ For more discussion, see Mikula, *Municipal Magdeburg Law in Poland*.

Polish towns are recorded in the Willkür statutes, which contain a broad collection of the documented legal practices of the town councils and their resolution. Additionally, some royal involvement in the above regulation was also evident, for example in a 1369 case from Kraków, where an order was given by King Kazimierz Wielki (Casimir the Great) regarding conflicts between local students and town watches. The order determined that in the case of night dispute, the students should be kept in the town prison until the next day.⁵³⁹ The Willkür document from 1389, confirms the existence of a prison in Kraków and states that a person who would take a knife or draw a sword in the street and refuse to pay a fine would have to spend eight days in the town's prison, as a result of a prohibition of walking with any weapon, based on the German law.⁵⁴⁰ In Wrocław, the town's prison is mentioned according to the privileges and recorded riots between the local officials and citizens of the town. For example in 1335, the privilege given to the town councillors determined their duties and included responsibilities for a prison and tower in Wrocław Town Hall.⁵⁴¹ Also, the document from 1387 about the town's yearly income mentions the town prison and the income from this building of 13 marks. The income was probably the result of the high indirect taxes, imposed on citizens and public buildings in fourteenth-century Wrocław.⁵⁴² On 15th September 1406, in response to the riots made by the Wrocław citizens inside the town hall, King Wacław IV (Wenceslaus IV of Bohemia) appointed a new town council which was generally ordered to keep the peace in the town and to punish and imprison those who broke it. Also on 17th July 1418, the citizens of Wrocław rioted following the town council's decision to raise taxes, with the result that the town hall was attacked by a crowd stealing the money and valuable goods, also destroying the archives. The documents relating to this incident also recorded prisoners being released from the town hall prison by the angry mob.⁵⁴³ Another conflict in Wrocław also confirms the existence of the town prison: on 2nd May 1453, the citizens attacked

⁵³⁹ J. Wyrozumski, *Z Najstarszych Dziejów Uniwersytetu Krakowskiego* [*The Oldest History of the University of Kraków*], Kraków, Universitas, 1996, p. 16.

⁵⁴⁰ See '1398 Wilkierz Krakowa', as cited in Suproniuk, 'Municipal Police and Police Regulation', p. 46.

⁵⁴¹ D. Türk, *Die Entstehung und Entwicklung des Bürgermeisteramtes in Breslau*, cited in W. Długoborski, J. Gierowski and K. Maleczyński (eds), *Dzieje Wrocławia do roku 1807* [*The History of Wrocław up to 1807*], Warszawa, Państwowe Wydawnictwo Naukowe, 1958, p. 128.

⁵⁴² The records of Wrocław incomes from the fourteenth century found in Długoborski, Gierowski and Maleczyński, *The History of Wrocław*, p. 142.

⁵⁴³ 'Cod. Dipl. Siles. XI nr 41', in Pohl, *Die Jahrbücher der Stadt Breslau*, pp. 163-164.

a Jewish street in the town and dragged off fifty Jewish people from their houses and put them in one of the town's prisons.⁵⁴⁴

The above records, the first confirming the existence of prisons in these English and Polish towns, also illuminate points of comparison between both legal systems. The English prisons confirm that the king's regulations had already been set down during the thirteenth century, while the privileges and orders allowing the existence and practice of Polish town prisons mostly date from the end of the fourteenth century. Furthermore, the latter were supported by royal influence with the legal powers for town councils towards their citizens. For example, in 1343 in Wrocław, Jan, King of Bohemia and Count of Luxembourg, empowered the town council to suppress the riots of young people in the town.⁵⁴⁵ Similarly, in 1347 in Legnica, Duke of Śląsk, Waclaw, empowered the town council to punish criminals and keep the peace in the town.⁵⁴⁶ Also, King Waclaw's set of regulations from 1416, given to Wrocław town councillors, required them to keep the peace in the town and to punish those breaking it with both financial and physical punishment.⁵⁴⁷ In fact, for towns that adopted the Magdeburg law and transferred regulatory powers to town councils, along with responsibility for keeping the peace in town, the power to punish law-breakers had already been given in the first half of the fourteenth century.⁵⁴⁸ As a result, the first prisons in towns based on the German law like Wrocław and Kraków could have already existed at the end of the thirteenth century, at the very time when the town council started taking over the majority of the legal powers.⁵⁴⁹

The location of the municipal prisons in England and Poland was closely connected to the created model of the town outlined in the second chapter, with a common example of locating these places in the central parts of the town. In the fourteenth century Polish towns like Wrocław and Kraków, the municipal

⁵⁴⁴ Already in the fourteenth century, Wrocław had at least two working prisons. In this case, there was no record of which one was used. However, the prison on Więzienna Street was larger than the town hall prison. Wójcik, *The Moment of Fear and Terror*, p. 103.

⁵⁴⁵ 27th October 1343 in Stelmach, *A Catalogue of the Medieval Documents*, p. 134.

⁵⁴⁶ 27th October 1347 in *Ibid.*, p. 142.

⁵⁴⁷ The 7th January and 5th February 1416 orders to the town councils to keep the peace in Wrocław with the use of financial and physical punishments. *Ibid.*, p. 385.

⁵⁴⁸ For example, on 4th of August 1328, Jan, King of Bohemia and Poland confirmed the privileges with the council's right to punish criminals in the Silesian town of Kłodzko. *Ibid.*, p. 105.

⁵⁴⁹ The process of the town councils assuming legal powers in Wrocław and Kraków can be found in the research of the second and third chapters.

prisons were dependent on the town council and the place they met. In Wrocław, the town council had a seat in one of the halls of the town hall from around 1330. Additionally, after the privilege given to the councillors in 1335 with the responsibility for a town hall prison, we can assume that the municipal prison in the basement of the town hall began to be used around that time.⁵⁵⁰

The work of Bartholomaeus Stein,⁵⁵¹ and his description of Wrocław from 1512-1513, confirms the existence of the prison in the basement of the town hall, under the councillors' room (i.e. the main space for council sessions) on the north-east side of the building: *'tam jest również lżejsze więzienie dla obywateli zwane klatką dla czyżyków za nim zaś inne miejsce-dla zbrodniarzy'* [*there is a room for a light prison for citizens with the cage called 'siskins'⁵⁵² and heavy for the serious criminals*].⁵⁵³ The above description suggests not only the location of the town prison but also indicates the type of criminals that were held there. Similarly in Kraków, the prison was located on the market square inside the town hall, which was built around 1320. There is not much information about the fourteenth century prison, however the archives from 1547 give evidence of the renovation of the town hall with an indication that the previous municipal prison was located in the basement of the town hall and modernised by a new prison for small crimes and debtors, after using the plans and space of the previous one.⁵⁵⁴ Importantly, the settlement of Kraków on Magdeburg law in the thirteenth century had an impact on the organisation of the town, especially the town hall building. Similarities to Wrocław town hall and its judicial function can be evidenced from the fact that in 1257, two of the three persons who were chosen to direct the spatial organisation of Kraków on a new German law included Gedko Stilvoyt, the son of the Wrocław *Vogt* Godinus Stilevoyt, and Dytmar Wolk, also from

⁵⁵⁰ However, the town hall basement was first noted in 1355. Długoborski, Gierowski and Maleczyński, *The History of Wrocław*, p. 159.

⁵⁵¹ Bartholomaeus Stein was a Silesian Chronicler, the author of the *Description of Wrocław* from the years 1512 and 1513.

⁵⁵² Czyżyk-siskin, a medieval wordplay used by criminals towards first time prisoners with short sentences.

⁵⁵³ Cited in J. Trzynaldowski, 'Siedziba Dawnego Samorządu Wrocławia do 1741' ['Wrocław's City Council Through the Ages'], *Rada Miejska Wrocławia przez Wieki*, Wrocław, Rada Miejska Wrocławia, 2008, p. 20.

⁵⁵⁴ W. Komorowski, 'Ratusz Krakowski', cited in A. Grzybowski, A. Zygulski and T. Grzybkowska, *Urbs Celeberrima: Księga Pamiątkowa na 750-lecie Lokacji Krakowa [Urbs Celeberrima: A Commemoration of 750 years of Kraków]*, Kraków, Muzeum Narodowe, 2008, p. 182.

Wrocław.⁵⁵⁵

Additionally, most of the major Polish towns had prisons in more than one location. In fourteenth-century Wrocław, another municipal prison was built on Więzienna (Prison) Street in the north part of the old town, close to the market square. Confirmation about the existence of the prison can be found in a fifteenth-century document of Wrocław's expenses on the local churches and hospitals: in 1464, Wrocław spent money on a chapel in the municipal prison on Więzienna Street.⁵⁵⁶ It can be suggested that the new prison was built in response to the development of the town in the thirteenth and fourteenth centuries and decision to relieve the old prison in the town hall, which, because of the limited space, was often overcrowded by the number of local criminals. Kraków also had more than one prison, which, however, was located not on the market square but at the castle. The royal Wawel Castle was a part of the town defensive architecture from the eleventh century, and in the fourteenth century a new prison was built in one of the towers, called the Szlachecka (Gentry), for criminals from the higher social class and excluded from municipal justice. Because of its higher jurisdiction and royal supervision it can be compared to the castle prisons and their function in English towns. Additionally, there was a special tower at the Wawel Castle for imprisoning those who had committed thefts. The tower survived from the fourteenth century and has recently been restored, with a special dungeon prison that can be seen today.⁵⁵⁷

English municipal prisons were also located close to the market area, and there was usually more than one prison in each town. Furthermore, as in the Polish example of Kraków, certain prisons were located in royal castles. These,

⁵⁵⁵ Apart from Wolk and Gedko Stilvoyt, the third new *Vogt* of Kraków was Jacub, the judge from Silesian town of Nysa. The original text of Kraków's foundation document from 1257 found in 29/657 Parchment Manuscripts Department of the National Archive in Kraków. A digital copy available online from mbc.malopolska.pl/dlibra/docmetadata?id=17757, (accessed 7 April 2016). For more about the origin of medieval *Vogts* from Kraków, see J. Wyrozumski, *Dzieje Krakowa. Kraków do Schyłku Wieków Średnich [Kraków Town to the end of Medieval Times]*, vol.1, Kraków, Wydawnictwo Literackie, 1992, p. 132.

⁵⁵⁶ H. Neuling, *Schlesiens Kirchorte und ihre kirchlichen Stiftungen bis zum Ausgange des Mittelalters*, Breslau, E.Wohlfarth, 1902, pp. 27-31.

⁵⁵⁷ From the article 'Baszta Złodziejska na Wawelu już po remoncie' ['A Thief's Tower: Wawel Castle after Renovation'], [website], <http://krakow.wyborcza.pl/krakow/1,44425,18601556,baszta-zlodziejska-na-wawelu-juz-po-remoncie-zmienila-wyglad.html?disableRedirects=true> Krakow.wyborcza.pl, (accessed 4 July 2016).; S. Tomkowicz, *Wawel. Zabudowa Wawelu i Jego Dzieje [The Construction of Wawel and Its History]*, vol.4, Kraków, Teka Grona Konserwatorów Galicji Zachodniej, 1908.

however, functioned as county prisons that were excluded from municipal justice, but some were located inside the town walls with local officials performing guard duties. In Bristol, the municipal prisons were located in the town centre. Ordinances made by the assent of the mayor, his fellows and the commons of the town in 1381 reveal the existence of Monken-bridge prison and other prisons,⁵⁵⁸ while we know that other prisoners were kept in the market prison.⁵⁵⁹ In fourteenth-century York, the sheriffs' and mayor's town prisons, called Kidcotes, were located on the side of Ouse Bridge, which stood close to Market Street. Additionally, before 1398, there were two prisons located in the town centre with another prison placed at the castle, located on the edges of the town, close to the main river. In Norwich, from 1412 until 1597, the Common Gaol of the City of Norwich was in the cellars of the guildhall, together with a special chapel for prisoners built after 1472 and dedicated to St Barbara.⁵⁶⁰ Additionally, the existence of the separate prison at the castle is confirmed from an Act of Edward III dating to 1340-1341 which identifies a gaol building for the county of Norfolk.⁵⁶¹ The castle location of the prison is also supported by the earlier Patent Rolls of Edward III from around 1331, with a special pardon for a political prisoner: 'Pardon to Roger de Frenges for aiding Thomas de Thornham to escape from Norwich Castle when imprisoned there for adherence to Henry Earl of Lancaster against the King'.⁵⁶²

The first section of this chapter about the creation and location of the town prisons according to the topographical plan of the selected towns shows the result of comparative analysis between these forms of local criminal justice in England and Poland. The first element was to indicate who was responsible and had the main power to give and confirm the privileges, including the rights to imprison and to have a prison in the town. In England, this power came from the king. It was confirmed by the above-mentioned royal documents and requirement for the town prisons, together with their special function: for example, Edward II's grant of

⁵⁵⁸ The ordinances of 1381 in Bickley, *The Little Red Book of Bristol*, vol.1, p. 111. Also, 1402 and the recommendation made by King Henry IV about the appointment of John Armurer as Gaoler of Monken-bridge Gaol. *Ibid.*, p. 134.

⁵⁵⁹ Pugh, *Imprisonment in Medieval England*, p. 276.

⁵⁶⁰ F. Blomefield, *An Essay Towards A Topographical History of the County of Norfolk*, vol.3, London, W. Miller, 1806, p. 228.

⁵⁶¹ *Ibid.*, pp. 85-86.

⁵⁶² 23rd March 1331 in *Calendar of the Patent Rolls. Edward III, 1330-1334*, London, HMSO, 1893, p. 97.

1315 which required the existence of municipal prisons for judging and detaining thieves and other evil-doers in the Norwich area.⁵⁶³ The above order is a clear indication of the existence of this form of local justice under the king's controlling power, but offer no further details about the location of these buildings. The Polish approach was characterised by diversity in this matter. The recorded details about prisons and forms of imprisonment came, not from the duke or the king with the main principles of safety and order, but from the town councils, which were granted privileges and freedom to develop their legal powers and responsibilities. It can be assumed that the process of imprisonment, as a part of criminal law, was developing in fourteenth-century Wrocław and Kraków through local regulation, where the councils' broad possibilities in terms of the constitution of the local law had an important influence on the towns' justice and visual architecture in the form of prisons, gallows and pillories. Additionally, the deep connection between the medieval prison system and the legal practice of the town councils is confirmed by the fact that the first prisons in Wrocław and Kraków were located in the same buildings as the councillors had session rooms. With the development of towns, larger populations and expanding defensive walls, new prisons appeared, including a separate prison inside the royal Wawel Castle,⁵⁶⁴ but apart from this exception, most of the prisons inside the towns were under the close control and supervision of the city authorities.

The English towns demonstrate a different model of dependence: the first thirteenth-century prisons were different from municipal prisons not only according to their jurisdiction but also location, mainly in buildings that represented the royal powers such as castles; for example, Norwich had its first confirmed county prison in 1328 at the castle, situated far from other public buildings on the market square, for example the town guildhall. The same was true in Bristol, where the existence of two prisons can be confirmed as early as 1285, including one in the castle from the twelfth century.⁵⁶⁵ York Castle's use as

⁵⁶³ 30th August 1315 in *Calendar of the Charter Rolls. Edward I, Edward II 1300-1326*, London, HMSO, 1908, p. 284.

⁵⁶⁴ The prisoners at Wawel Castle were mostly a higher social rank of citizens. The castle remained under royal power and in 1356 was created a German appeal court from the Kraków jurisdiction.

⁵⁶⁵ Bristol Castle was one of the king's prisons since the twelfth century. See R.B. Pugh, 'The King's Prisons Before 1250', *Transactions of the Royal Historical Society*, 5th ser., London, Royal Historical Society, 1995.; M. Sharp (ed.), *Accounts of the Constables of Bristol Castle in the Thirteenth and Early Fourteenth Centuries*, Bristol, Bristol Record Society, 1982, p. 26.

a prison is confirmed by the thirteenth century close rolls, which also describe the kinds of prisoners held there,⁵⁶⁶ and Exeter Castle also functioned as a prison from the thirteenth century. From a topographical perspective, the county prison was usually located at the castle, and it had different functions from the municipal prisons, but both buildings were often located inside or as a part of the town walls and were actively guarded by local officials. The castle's function as a county prison⁵⁶⁷ was a result of the confirmation of royal dominance over the execution of this form of justice: the first prisons were placed not in the public buildings on the market square or in the seat of the councillors like guildhalls, which in England started to appear in the fourteenth century, but in the castles, which were visual symbols of royal power and dominance. Additionally, in the case when the particular area did not have a local official before whom criminals could be brought to justice, the prisoners were sent to specially secured place: for example, in Northampton, where 'if a suspect thief could not to be handed over to a sheriff he was to be delivered to the nearest castle-keeper'.⁵⁶⁸ Generally, the kings' castles were characterised by heavy, defensive constructions, with local officials responsible for their security and maintenance following royal orders. This confirms the connection between the kinds of criminals held there and extra security required for their captivity. With time, the royal privileges given to the local officials to 'have a prison' spread across the country, with increasing numbers of town offenders who required more places to be kept as they awaited trial. Furthermore, the social class of fourteenth-century prisoners had an impact on the existing and new prisons built in the towns. The research questions about the size of the municipal prisons of England and Poland and the kinds of prisoners held there are examined in the next section of this chapter.

⁵⁶⁶ The Close Rolls 1234-7 and 1240-5, cited in *RCHME Inventory Volumes. An Inventory of the Historical Monuments in City of York*, vol.2, London, HMSO, 1972, pp. 57-86.

⁵⁶⁷ It seems important to indicate the role of the castle prisons in proceedings of criminal justice in towns with the involvement of local officials.

⁵⁶⁸ Pugh, 'The King's Prisons Before 1250', p. 9.

5.3 The size and number of the functioning municipal prisons

The size of the selected English and Polish prisons can be ascertained by comparing the prison buildings, some of which still survive and some of which exist in a changed form. For this reason this analysis is supported by pictures and archival drawings of these buildings and locations. In Poland, Wrocław municipal prison was located in the basement of the town hall which was built around 1330. Its size can be examined in detail because of the purpose the building serves today and because it is open to the public. According to fifteenth-century chronicler Bartholomaeus Stein, the prison was located under the councillors' room.⁵⁶⁹ From today's perspective, the surviving room has a good size with visible windows and a wooden floor. Underneath, according to the plan of Wrocław Town Hall was a basement that functioned as a short stay area for the criminals waiting for their case to be heard in the courtroom, which was in the same building on the first floor. The parts of the basement that still exist reveal a dungeon in which prisoners were held, which is characterised by a small window and a high ceiling. Today, the dungeon room⁵⁷⁰ can house around ten people, confirming that general space was limited for the fourteenth century prisoners awaiting trial there. Additionally, Stein's description of the town hall evidences the practice of splitting up Wrocław prisoners and putting them into specially built cells.

⁵⁶⁹ Trzynaldowski, 'Wrocław's City Council Through the Ages', p. 20.

⁵⁷⁰ The cellar rooms underneath Wrocław's Town Hall are currently used as a restaurant.

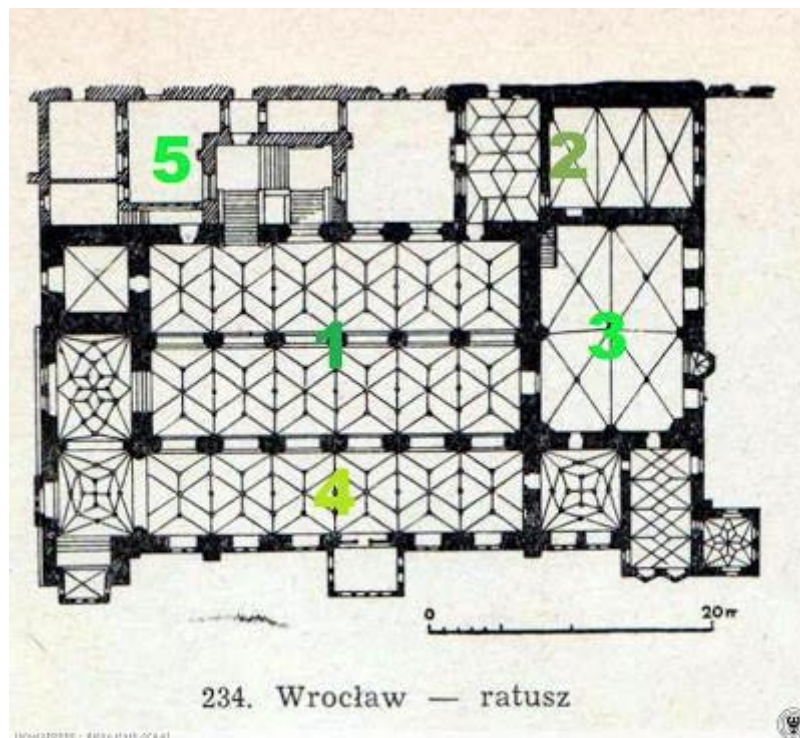


Figure 17: A plan of the Wrocław Town Hall.

1. Consistorium – a meeting place (thirteenth century) 2. Praetorium - the councillors' room (fourteenth century) 3. The courtroom (fourteenth century) 4. The duke's room with chapel (fifteenth century) 5. Decorative elements (sixteenth century). The plan was published by R. Stein, 'Der Grosse Ring zu Breslau', Breslau, 1935, [website], http://www.historyczny.wroclaw.pl/popup/foto_zoom.php?id_phot=631, (accessed 8 July 2016).

Following the development of law enforcement in Wrocław,⁵⁷¹ the prison in the basement became overcrowded, so another place for criminals was required, and this was built near to the market square on Więzienna (Prison) Street. The new prison was divided into developing sections: the basement area and the lower hall functioned as a space for newly arrived criminals, divided into rich and influential citizens and poor citizens and reoffenders. The building served as a prison until the nineteenth century and could hold more prisoners (the exact numbers of the fourteenth century prisoners kept there are not known, however, the sixteenth century expansion of the building substantially increased the prison space)– and, together with specially designated sections, was more spacious than the town hall prison.⁵⁷²

⁵⁷¹ Mostly because of increase of population and more criminal acts committed in the local area.

⁵⁷² M. Małachowicz, 'Gotyckie więzienie miejskie Więzienna 6', in J. Jakubowski, *Kalendarz*



Figure 18: Więzienna Prison, Wrocław – one of the cell rooms with its original ceiling and walls.

Photo from <http://www.wroclaw.dlastudenta.pl/studia/fotoalbum/619409,76891,1.html>, (accessed 8 July 2016).

In Kraków, as in Wrocław, the municipal prison was located in the basement of the town hall, which was situated in the centre of the market square. However, in 1820 Kraków Town Hall was demolished after the Senate of the town guided by a misconceived idea of *beautification of the city* decided to pull down the granary as the first step and decided the town hall itself would also be pulled down and only a single tower would be left.⁵⁷³ The archival drawings of the town hall before demolition determined the location and size of the basement, as well as its division into separate prison cells, including a torture room placed just next to the prison area. This prison, situated on the south side of the town hall had limited space for prisoners. In addition to the fifteenth century plan of the town hall, the

Wrocławski 1981 [*The Calendar of Wrocław*], Wrocław, Towarzystwo Miłośników Wrocławia, 1980, p. 232.

⁵⁷³ A. Grabowski, *Historyczny Opis Miasta Krakowa i Jego Okolic* [*A Historical Description of Kraków and the Local Area*], Kraków, J. Matecki, 1822, p. 55.

prison's size can be confirmed by a fourteenth-century municipal document: in 1393, '...at the same night a dozen or so citizens have been arrested for a refusal to sell beer in the basement of the town hall, and have been put into the town hall prison'.⁵⁷⁴ The main prison was located close to *Dorotka*, a special part of the basement used for those who had committed the most serious crimes; this, together with a torture room, all on the same level of the building, substantially enlarged the prison area.

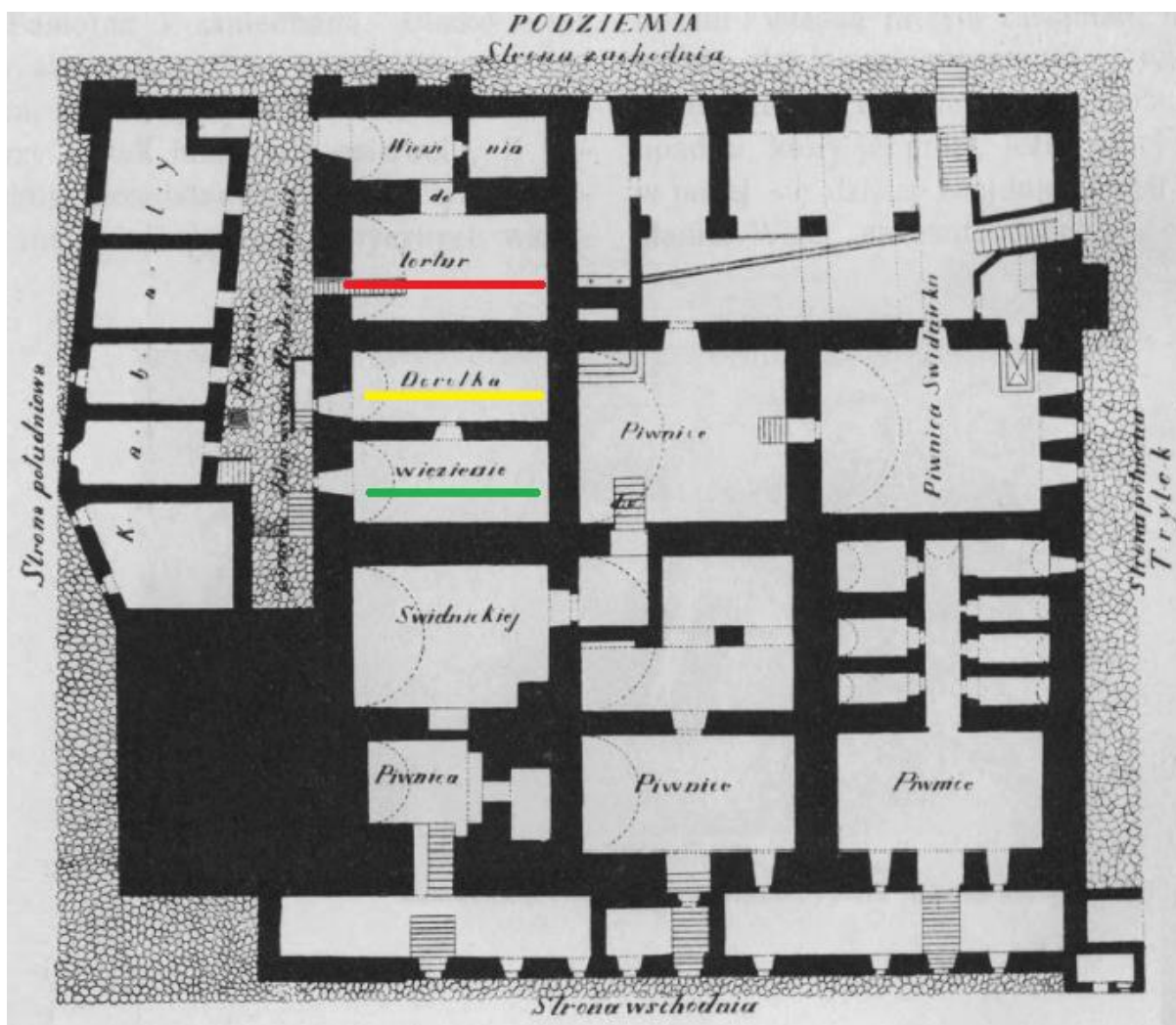


Figure 19: A plan of the Kraków Guildhall prison from the sixteenth century.

The red line marks the torture room, the yellow *Dorotka* room for the most dangerous criminals and the green the main prison. Redrawn after J. Brodowski, 1802. See more about the work of the author in S. Opalińska (ed.), *Józef Brodowski 1781-1853. Malarz i Rysownik Starego Krakowa* [*Józef Brodowski 1781-1853. The Painter and the Graphic Artist of Old Kraków*], Kraków, Muzeum Historyczne Miasta Krakowa, 2005.

⁵⁷⁴ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 44.



Figure 20: The entry to the surviving Guildhall basement in Kraków.

Photo from private collection.

Apart from the town hall prison, another fourteenth-century confinement place in Kraków was located at the Wawel Castle, which was built with additional towers designed to function as a prison for specifically selected criminals. The castle and the dungeons beneath it were part of the privileges for the local gentry: in 1358, the gentry were excluded from subjection to municipal justice in a case of murder or injury of a citizen and instead were placed under the royal court which had a seat at the Wawel Castle.⁵⁷⁵ This special prison at the castle is revealed by a number of different documents including those from the municipal archives. For example, in 1372 Maczkon, a servant of the gentry who had committed theft, was imprisoned in the town hall municipal prison despite the autonomy of his social class. The councillors who decided to keep him in the town prison were named Bartek Streit and Gotfryd Gallik and were themselves imprisoned in Wawel Castle

⁵⁷⁵ Mikula, *The Legislation of the King and Government for Lesser-Polish Royal Towns*, p. 252.

until they provided further explanation.⁵⁷⁶ This example is the evidence that the Wawel castle prison was a designated unit for a special type of criminal and that it could also be used to punish those who were usually responsible for peace and order in town.



Figure 21: The remaining part of the dungeon at Wawel Castle.

Photo from private collection.

Comparable to Polish regulations about the organization and size of municipal prison buildings, the English towns also categorised the function and purpose of their prisons during the fourteenth century. In Bristol, criminal justice was supported by the municipal prisons and the castle. The latter served as a county prison and was located on the outskirts of the city, with an additional moat that separated it from the rest of the town. The names of local prisons can be found in different records mentioned earlier, but these do not contain much information about the size or purpose of any of the prisons. The details can be discerned based on the topography of the town and its remaining buildings, together with archival maps and notes. The first example is the 1815 *Bristol Guide* to the historical places of Bristol, one of the chapters of which focuses on crime inside the town, including surviving medieval prisons. One of the best known of Bristol's

⁵⁷⁶ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 17.

prisons, Newgate, was for 'debtors and malefactors'⁵⁷⁷ and located at the eastern end of Wine Street. Mentioned already in 1148,⁵⁷⁸ it is described as being very strong and easy to defend. Situated close to the River Frome, Newgate also benefited from fresh air and water. It was slightly rebuilt in the seventeenth century so that it could hold around 100 inmates, which gives some idea about the prison population of the Bristol area. The Newgate location at the end of Wine Street and in close proximity to the castle and the town's pillory, was also evidenced in the local property holding lists, where one of the documents from 1376 mentioned the prison as a 'Niweyate de Bristill'. Also, in the document from 1377 'Abbot of Tewkesbury leased to John Bruton, carpenter and Agnes his wife, land etc. in the street called castelstrete next to the New Gate'.⁵⁷⁹ The fourteenth century plan of properties with the detailed lists of tenants placed the Newgate close to the main river. Additionally, the above prison area can also be determined from a cartographical map of the town made in 1673 by Millerd.⁵⁸⁰

Another prison, Bridewell, was also situated inside the town; described by Howard⁵⁸¹ as a spacious, strong prison of stone, 'with seventy separate cells as well as a chapel, a hall for the justices which is 150 feet long and strong surrounding wall that is 20 feet high'. The prison chapel dates from 1507, according to *Bristol and Its Environs*,⁵⁸² so the prison cells and the rest of the prison building are taken to have an earlier foundation.

Analysing the castle prison from a topographical perspective was difficult because of the demolition of the building in the seventeenth century.⁵⁸³ However,

⁵⁷⁷ J. Mathews, *The Bristol Guide: Being A Complete Ancient and Modern History of the City of Bristol*, 3rd ed., Bristol, J. Mathews, 1815, p. 104.

⁵⁷⁸ In 1148 described as 'the gaol of Newgate'. J. Evans, *A Chronological Outline of the History of Bristol, and the Stranger's Guide through its Streets and Neighbourhood*, Bristol, J. Evans, 1824, p. 43.

⁵⁷⁹ The selected properties with holding lists from medieval Bristol found in R.H. Leech, *The Topography of Medieval and Early Modern Bristol*, part 1, Bristol, Bristol Record Society, 1997, pp. 188-190.

⁵⁸⁰ 'Exact Delineation of the Famous City of Bristoll and the surburbs thereof', by James Millerd of 1673, [website], <http://museums.bristol.gov.uk/narratives.php?irn=11046>, (accessed 3 January 2017).

⁵⁸¹ John Howard, the eighteenth century prison reformer who came to Bristol to inspect the municipal prisons and made notes about the buildings. See J. Howard, *The State of the Prisons in England and Wales: With Preliminary Observations, and an Account of Some Foreign Prisons*, Warrington, William Eyres, 1780, pp. 391-395.

⁵⁸² *Bristol and Its Environs: Historical, Descriptive and Scientific*, London, Houlston and Sons Paternoster Square, 1875, p. 195.

⁵⁸³ Bristol Castle was demolished in 1654 following an order given by Cromwell to the mayor and commonalty of the city of Bristol. J.F. Nicholls and J. Taylor, *Bristol Past and Present*, vol.3,

the earliest records about the castle and its individual parts can help to determine the location of the prison. In 1480, William Worcester arrived in Bristol and gave an account of the castle in his *Notes of Bristol*. He describes the dungeon tower with precise notes about the size and thickness of the walls, confirming its use as a prison: ‘...The quantite of the Dongeon of the Castell of Bristol, after the inforinatione of ...porter of the Castell. The tour called the Dongeon ys in tiiykness, at fote, 25 pedes, and at the ledying-place, under the leede covering, 9 feet and dimid; and yn length, este and west, 60 pedes, and north and south, 45 pedes; with fowre toures standing upon the fowre cornes; and the highest toure, called the mayn...’⁵⁸⁴ Additionally, in 1533 John Leland, who had been appointed the King’s Antiquarian, also described the dungeon tower: ‘... in the Castle be two courtes. In the utter courtes, as in the north-west part of it, is a great dungeon-tower, made as it said of stone browghte out of Cane in Normady, by the redde Erle of Gloucester...’⁵⁸⁵ The main function of the Bristol Castle was as a county prison, so different kinds of prisoners were held there than in the municipal prisons. Those kept in the castle were mainly political prisoners, prisoners of war and politically inconvenient opponents who were dangerous for royal power, including, according to one possible story, Edward II, who may have stayed there briefly before being moved to Berkeley Castle. In 1327, Edward II was kept in Bristol Castle where he remained closely confined until it was discovered that some of the town had formed a resolution to assist him in making his escape beyond the sea. Upon this discovery he was removed by his keepers, Sir John Maltravers and Sir Thomas Gurney, to Berkeley Castle.⁵⁸⁶ Apart from Edward II, the other castle prisoners were of a higher social class as well. For example, in 1314 the Earl of Marr was released from Bristol Castle, while Ralph de Monthermer, the second husband of Edward I’s daughter Joan, was kept in the castle for twelve days, and prisoners captured during the Welsh and Scots wars were held in Bristol Castle.⁵⁸⁷

In his book, *Imprisonment in Medieval England*, Ralph Pugh found that before

London, Griffith and Farran, 1882, p. 36.

⁵⁸⁴ Neale, *William Worcestre*, pp. 222-223.

⁵⁸⁵ L.T. Smith (ed.), *The Itinerary of John Leland in or about the Years 1535-1543*, London, G. Bell and Sons LTD, 1910, p. 87.

⁵⁸⁶ Evans, *A Chronological Outline of the History of Bristol*, pp. 81-82.

⁵⁸⁷ *Ibid.*, p. 75.; Sharp, *Accounts of the Constables of Bristol Castle*, p. 34.

1398, there were two prisons operating in York, called Kidcotes, located near the town centre with one managed by the sheriff and one by the mayor.⁵⁸⁸ Before the time when York's Kidcotes were officially mentioned, the fine rolls allude to the prison already in 1282.⁵⁸⁹ The modern topographical map of York from 1500⁵⁹⁰ suggests the location of one of the town's prisons in the area of Common Hall gates and the Chamber, the short distance from the guildhall and Thursday Market place. The prisoners held there were committed for common offences such as night-walking, making this building more of a place where local men and women waited until their case could be heard at the court. Generally, with the development of the town and increase of population, fourteenth-century York increased the number of prisons, with the sheriff's and the mayor's prisons in operation.⁵⁹¹ Both prisons stood on the Ouse Bridge; the sheriff's was used for felons and the mayor's for debtors.⁵⁹² Apart from the town-centre prisons, York Castle was also a site of incarceration. The castle prison dates from the eleventh century,⁵⁹³ and was mainly used to keep prisoners of war⁵⁹⁴ and political opponents.⁵⁹⁵ Additionally, the fourteenth century Close Rolls of Edward III from 1337-1339 give some details about the prisoners held in York Castle. For example, in an order to the Sheriff of York from 1337, two individuals suspected of felonies named Thomas le Waite and his wife Agnes were ordered to be released from the castle prison,⁵⁹⁶ as well as William le Lount, imprisoned at York castle as disobedient and a rebel.⁵⁹⁷ With time, Clifford's tower was separated from the bailey buildings, which continued to be used as a prison.

In Norwich, the municipal prison was found in a guildhall basement which was

⁵⁸⁸ Pugh, *Imprisonment in Medieval England*, p. 103.

⁵⁸⁹ As mentioned earlier, 1282 and the butchers of the city imprisoning those 'indicted of larceny'. *Calendar of Fine Rolls. Edward I, 1272-1307*, p. 161.

⁵⁹⁰ Addyman, *The British Historic Towns Atlas*, vol.5: York, map sheet L, York, c.1500.

⁵⁹¹ E. Thomas and S.M. Perring, 'Gazetteer of York from its foundation to 1850', in *Ibid.*, p. 84.

⁵⁹² In the sixteenth century York developed the prison system and had an impressive number of specially selected prisons, including one on the Bean Hills for different kinds of prisoners like beggars and vagrants, also at Monk Bar (1577) and King's Staith for trespassers. Tillott, *The City of York*, pp. 492-493.

⁵⁹³ *Understanding Clifford's Tower: An English Heritage & History works Learning Event Supported by York City Council for Holocaust Memorial Day 2015 Report*, [website], <http://www.historyworks.tv/projects/2014/11/02/York-castle-project/>, (accessed 5 July 2016).

⁵⁹⁴ In the thirteenth century the castle was used for keeping the prisoners taken during the king's Irish campaigns.

⁵⁹⁵ In the fourteenth century Edward II used the castle as a repository for rebellious barons.

⁵⁹⁶ *Calendar of the Close Rolls. Edward III, 1337-1339*, London, HMSO, 1900, p. 240.

⁵⁹⁷ *Ibid.*, p. 184.

built around 1407.⁵⁹⁸ The prison cells were located in the undercroft, which functioned as a dungeon for holding criminals. Importantly, the building demonstrates visible similarities to the construction of the Wrocław Więzienna prison, particularly by the high-vaulted ceilings and small windows. The guildhall prison that exists to this day was mentioned in the record of the assault made in 1506 by the priors and monks from the Norwich Cathedral Church of the Holy Trinity on the local sheriff in order to rescue William Herryes, accused of felony and imprisoned in 'the Guyhald prison of the Lord King of the said city'.⁵⁹⁹ Also, there is a written testimony made by a sixteenth-century prisoner who stayed there called Thomas Bilney. *Actes and Monuments*, a Protestant history that gave examples of those who had suffered under the Catholic Church, recorded the name of Bilney and described him as a prisoner in the Norwich Guildhall in 1531: '...the said Bilney had diuers of his frendes resorting vnto hym in the Guildhall, where he was kept...'⁶⁰⁰ Apart from the guildhall, earlier, fourteenth-century town prisons were also mentioned in Norwich, as is shown by different documents such as Edward II's grant of 1315 and prisons for judging and detaining thieves and other evil-doers,⁶⁰¹ the Borough Customs: '...And if by chance it happens that in ignorance such a one is taken and detained for a time or is led and delivered to prison, then nowise can such judgment be done, but well and safely he shall be kept without any release till the common delivery of the city prison'⁶⁰² and Close Rolls: 'order to release John Gamen from the king's prison of the city of Norwich'.⁶⁰³

⁵⁹⁸ G. Byng, *Church Building and Society in the Later Middle Ages*, Cambridge, Cambridge University Press, 2017, p. 189.

⁵⁹⁹ W. Hudson and J.C. Tingey, *The Records of the City of Norwich*, vol.2, Norwich, Jarrold and Sons, 1910, p. 368.

⁶⁰⁰ 'Thomas Bilney, a sixteenth-century Christian martyr. Imprisonment and executed in 1531 in Norwich'. J. Foexe, *The Acts and Monuments*, 1583, p. 1036, [website], <http://www.johnfoxe.org>, (accessed 7 July 2016).

⁶⁰¹ '...and finding also that it would be for the king's good that there should be a prison in that town, because thieves and other evil-doers indicted (*indictati et rettati*) for thefts and other trespasses in that town for lack of such a prison have escaped and their ill-deeds remained unpunished'. *Calendar of the Charter Rolls. Edward I, Edward II 1300-1326*, p. 284.

⁶⁰² The Borough Customs from around 1322 regarding outlaws from Norwich found in Bateson, *Borough Customs*, vol.1, p. 73.

⁶⁰³ 10th December 1364 in *Calendar of the Close Rolls. Edward III, 1364-1368*, p. 88.



Figure 22: The Norwich Guildhall undercroft.

Photo, [website], <http://www.ukwells.org/wells/Thomas-bilney/>, (accessed 11 July 2016).

Norwich Castle played an important role as a county gaol, and was another place on the town's map for keeping criminals. Fourteenth-century royal documents confirm the castle as the king's prison and include orders for the keepers and about prisoners held there. For example, the Patent Rolls from 1327-1330 state: 'Appointment of John de Loudham, for life, to the custody of the king's castle of Norwich and the prisoners there'. There is also the judgment of self-defence concerning a murderer kept in the castle: 'Pardon to Alexander, son of Reginald Hakun of Beccles for the death of Roger Matte of Beccles, as it appears by the record of Robert Baniard and other assigned to deliver the gaol of Norwich Castle that he killed him in self-defence'.⁶⁰⁴ Additionally, the size of the castle prison can be concluded from Pugh's research about prisoners: the number of prisoners is said to have fluctuated between 80 in 1289 and around 310 in 1293.⁶⁰⁵ However, Pugh also admits that the number of prisoners and cells in the royal castles were

⁶⁰⁴ *Calendar of the Patent Rolls. Edward III, 1327-1330*, London, HMSO, 1891, p. 329 and p. 411 respectively. Also, the Close Rolls from 1327-1330, 1346-1349, 1349-1354, 1354-1360, 1364-1368, 1369-1374, 1374-1377 and 1381-1385, all of which confirmed the existence of the Norwich Castle prison.

⁶⁰⁵ Pugh, *Imprisonment in Medieval England*, p. 366. However, Pugh admitted that the number of more than 300 prisoners held in the castle is hard to credit.

changeable and depended on the political and military situation, so the exact numbers of prisoners cannot be confirmed.

In Exeter, as in other English towns, the prisons were located in the guildhall and in the castle. The guildhall was built around 1330⁶⁰⁶ and had a cellar beneath the mace sergeant's office at the front of the building. This cellar dates from the fourteenth century and was used as a male prison, referred to as the 'pytt of the Guyldhall'. The dungeon was characterised by brick walls and had quite large space for the prisoners. The city's stocks, pillory and armoury were all stored there. The rear of the guildhall contained four ground floor female cells that were replaced in 1838 and two cells from 1558. The fact that the guildhall was used as a medieval prison is confirmed by the case of a political prisoner Sir Thomas Leger, who was imprisoned in 1483 because of his rebellion against Richard III, his brother-in-law. After his capture, Leger and Sir John Rame were held in guildhall overnight:

..and amongst them sir Thomas St. Leger, the husband of the duchess of Exeter, a sister of Richard. The greatest efforts were made, and large sums offered to save his life; but the king was inflexible. St. Leger and several other gentlemen were beheaded...⁶⁰⁷

In a royal order from 1229, the local sheriff was instructed to spend up to twenty marks on 'making' a gaol in Exeter Castle and thirty marks the next year on 'repairing' it.⁶⁰⁸ Also, thirteenth- and fourteenth-century close rolls reveal the function of Exeter Castle and its role as a king's prison. From the years 1272 to 1392, a number of 57 prisoners were confirmed (often by the name), including families like a husband and wife: 'John de Alwynton and Mariota, his wife, imprisoned at Exeter for the death of Roger Falewy, whereof they are appealed, have letters to the sheriff of Devon to bail them',⁶⁰⁹ or father and son: 'Roger de Hurdwik and Henry his son, imprisoned at Exeter for the death of Richard de Hokshill, whereof they are appealed, have letters to the sheriff of Devon to bail them'.⁶¹⁰ Additionally, the prison at Exeter Castle is mentioned in fifteenth-century

⁶⁰⁶ According to Hooker's note.

⁶⁰⁷ J.E. Doyle, *A Chronicle of England B.C.55- A.D.1485*, London, Longman, Roberts and Green, 1864, p. 449.

⁶⁰⁸ 'Calendar of Liberate Rolls, 1226-40', cited in Pugh, 'The King's Prisons before 1250', p. 3.

⁶⁰⁹ *Calendar of the Close Rolls. Edward I, 1272-1279*, London, HMSO, 1900, p. 317.

⁶¹⁰ *Ibid.*, p. 363.

wills. The request of Richard Baker (14 February 1473) determines a bequest ‘*prisonatoribus Dni Regis Castri sui Exon*’, and in an earlier deed from 20th of March 1469, it is called ‘*Vetus Gaola-Old Gaol*’.⁶¹¹ It seems important to mention the different terms used to describe imprisonment at Exeter Castle. Generally, the castle which was referred to as either ‘prison’ or ‘gaol’ had usually a duality of purpose within the prison itself. According to Christine Winter’s research,⁶¹² the gaols were used to detain those awaiting the trial and prisons were used post sentencing for punishment or while the detainee attempted to clear his debts, find mainpernors or the fee for his release. Apart from Exeter, similar terms were applied to Norwich Castle, York Castle and Newgate prison in London.⁶¹³



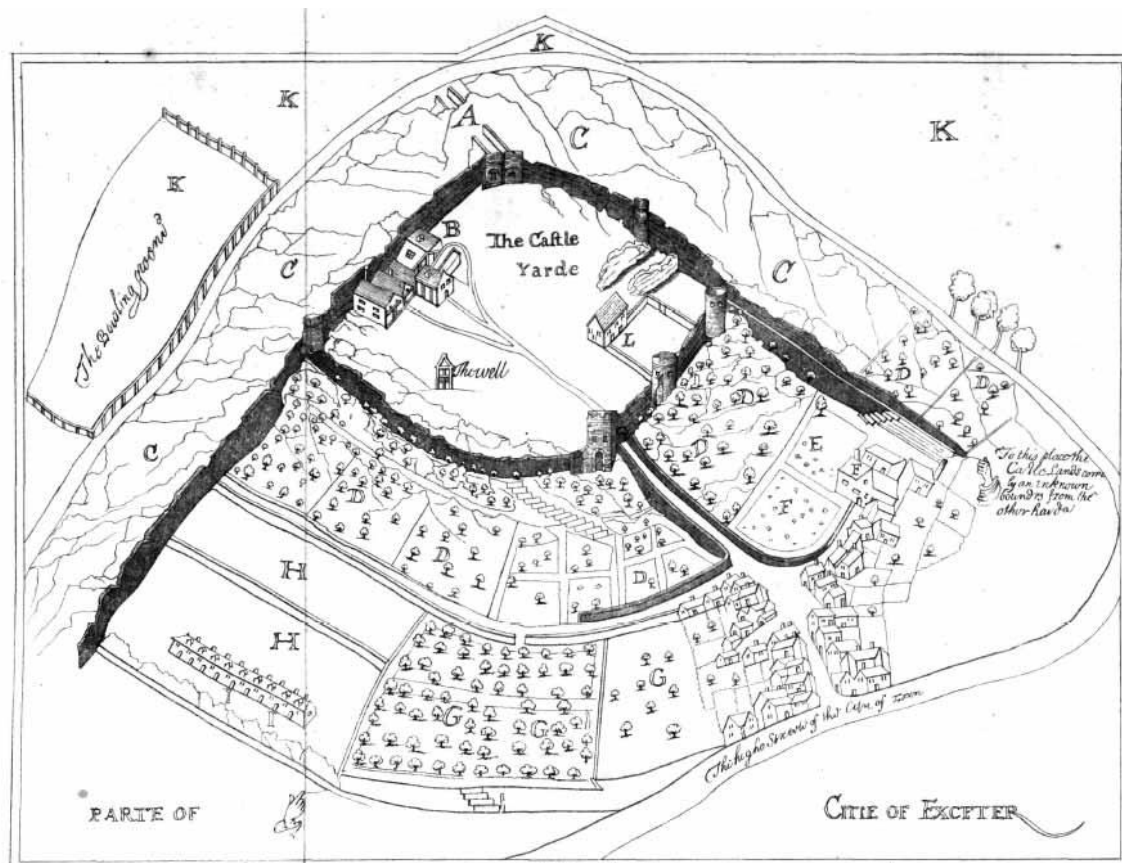
Figure 23: One of the windows in the Exeter Guildhall cell.

Photo from private collection.

⁶¹¹ G. Oliver, *The History of Exeter*, Exeter, R. Cullum, 1821, p. 111.

⁶¹² Winter, ‘Prisons and Punishments in Late Medieval London’, p. 25.

⁶¹³ For example on 12th of July 1378, John Haywardyn was freed from Newgate prison. *Calendar of the Close Rolls. Richard II, 1377-1381*, London, HMSO, 1914, p. 201. Conversely, the 1463 documents concerning prisoners refer to the gaol of Newgate. Winter, ‘Prisons and Punishments in Late Medieval London’, p. 25.



A. The old draw-bridge over the ditch. B. The Assizes & Sessions house built about 1699. C. The outer ditch of the Castle. D. The inner castle ditch converted into Gardens. E. A Garden. F. The old Prison, removed about 1796. G. Orchards & Gardens. H. A part of the Castle Precincts. I. St. Manwayrings new houses (1617). K. The Castle Hill. L. St. Mary's Chapel.

Figure 24: A seventeenth-century plan of Exeter Castle by Norden (1617).

The location of the old town prison, which was removed in 1796, is shown at letter F.

The size and number of prisons that existed in the selected towns of England and Poland can determine the number of prisoners that could be held there and therefore the scale of crime with which the local officials had to deal. Additionally, the practice of distributing criminals between the municipal prisons and the castle, which represented the royal jurisdiction, shows the level of the development of criminal justice inside the town walls. The first difference can be seen in the number of the municipal prisons in both countries. In fifteenth-century Bristol there were two municipal prisons and the castle prison, in York there were around seven municipal prisons⁶¹⁴ and the castle and in Norwich at least two municipal

⁶¹⁴ According to *History of York* and an online article from a website led by York Museums Trust <http://www.historyofyork.org.uk/themes/1000-years-of-justice-at-york-castle/medieval-prisons>, (accessed 7 April 2016).

prisons and the castle. These numbers are significantly higher than numbers for the selected Polish towns, with Wrocław having two confirmed municipal prisons and Kraków one municipal prison and the castle. The size of the English and Polish prisons was commonly dependent on their location. For example, guildhall prisons in both countries were similar in size, with only a few cells for the prisoners, and were characterised by their basement location and rather limited space. Later, with the development of local justice and the construction of new prisons, the size and number of the cells increased such that the average prison in both countries could hold around eighty prisoners. For example, Wrocław municipal prison on Więzienna Street could contain around hundred inmates, while in Bristol around hundred prisoners could be held in Newgate and seventy in Bridewell. The numbers of the municipal prisons compared with the citizen statistics of each town give important evidence about the scale of crime in these towns.

Tables 4 and 5: The number of fourteenth-century English and Polish prisons compared to the number of citizens in the fourteenth century English and Polish towns.⁶¹⁵

Town	Number of citizens ⁶¹⁶	Number of municipal prisons
York	10 872	7 and the castle
Bristol	9 518	2 and the castle
Norwich	5 928	At least 2 and the castle
Exeter	2 340	At least 1 ⁶¹⁷ and the castle

Town	Number of citizens	Number of municipal prisons
Wrocław	11 000	2
Kraków	10 000	At least 1 and the castle

These numbers demonstrate a significant difference between the two countries and the ratio of prisons to citizens. The most populous of the selected English towns was York with around 11,000 people, and it had seven working prisons, around 1 prison for every 2,000 citizens. In contrast, the most populous selected Polish town, Wrocław, had 11,000 citizens and 2 working prisons. However, there are some differences between the two countries that go some way towards explaining these numbers. Thus, the Polish maps of the selected prisons like Wrocław Town Hall, the prison on Więzienna Street, also Kraków Town Hall and Wawel Castle show that different types of prisons were combined in one building on the different floors or in different areas, while in England it was more common to keep different kinds of criminals in separate prison buildings.

Another point that needs emphasis was the process of selecting the criminals by their type of crime, which was commonplace in towns of both countries. The

⁶¹⁵ The numbers are based on the analysis made in the third and the fifth chapters of this research project.

⁶¹⁶ The number of the towns' population in 1377 according to Russell, *British Medieval Population*, pp. 142-143.

⁶¹⁷ The records of sixteenth-century Exeter confirmed the guildhall had separate cells in the front of the building (the dungeon) and two at the back which were replaced in the nineteenth century by female cells. Parry, *The History of the Exeter Guildhall*.

English and Polish municipal prisons were strongly divided by the type of crime and the social class of the criminal, with differences according to the location of the prison. Generally, the prisoners were segregated to distinguish their different ranks before they were kept in different prisons until their cases could be heard. Ralph Pugh argues that medieval English prisons contained a higher part for honoured and freemen citizens, a lower part for strangers and those of inferior rank, and a basement that was usually reserved for those who had committed a felony or the most severe crimes.⁶¹⁸ However, some of the English and Polish prisons divided prisoners only by their social position or crime committed. In Poland, for example, at the Więzienna prison in Wrocław criminals were divided according to their social position and whether they were rich or poor. In the town hall, the prisoners were only divided by the type of crime, where according to Stein, 'there is a room for a light prison for citizens called the cage for 'siskins' and heavy for serious criminals'.⁶¹⁹ In Kraków, the distinction between different ranks of the criminals held in different prisons was confirmed by the earlier example of Wawel Castle as a special prison unit for gentry and other members of the higher social class of citizens including the town authorities.⁶²⁰ Similarly, this practice also occurred in England, where in municipal prisons (such as those in guildhalls) the prisoners were held separately based on gender (seen in the Exeter Guildhall and York's municipal prisons, Kidcotes), type of crime (Bristol Newgate prison was specifically for debtors and malefactors, according to J. Mathews),⁶²¹ and social position (for example, high-ranked political prisoners were held at Exeter and Norwich Guildhalls).⁶²² Additionally, in both English and Polish prisons some inmates during their confinement could have received additional privileges like better meals, visits or exercises, however this would have depended on money and the particular social status of that prisoner.⁶²³

⁶¹⁸ Pugh, *Imprisonment in Medieval England*, p. 353.

⁶¹⁹ Stein's 1512 description of Wrocław Town Hall prison was analysed earlier in the chapter.

⁶²⁰ See an earlier example from 1372 about Maczkon, a servant of the gentry who was unjustly imprisoned in the town hall prison.

⁶²¹ In the *Bristol Guide*, Mathews determined the Newgate as a special prison unit used to keep local debtors and malefactors.

⁶²² For example, the Exeter Guildhall and Sir Thomas Leger with his several followers, also Thomas Bilney in Norwich.

⁶²³ For example, fourteenth-century London Fleet which was accounted a comfortable prison for those who could afford to pay for the better treatment. Winter, 'Prisons and Punishments in Late Medieval London', pp. 171-172.; Pugh, *Imprisonment in Medieval England*, p. 118.

In towns of both countries the castles had a special function in the local justice as a place for holding selected types of prisoners under the double control of the Crown and the local officials who were responsible for supervising and guarding these places. Despite being excluded from the municipal justice, the existence of the castle determined the position of the town and indicated that the town was an important place on the fourteenth century map for royal visits like the justices, commissions and inquisitions of all kinds.

5.4 The local officials and their role in the prison system

The scale of the involvement of local officials in the prison system of towns in both countries must also be investigated. In England, apart from royal justice having representation in the form of the county sheriff at the castle, local justice was focused on the town prisons, which were supervised and controlled by specially selected local authorities.

Generally, the function of keeping the peace and order in fourteenth-century English towns was given and controlled by royal statutes and direct orders to the local level of their officials. The additional writs addressed to the sheriffs, mayors, bailiffs and constables of the towns called keepers of the peace included the ability to arrest wrongdoers and to hear and determine the felonies of those who had been arrested, taken and indicted before them and confirmed by the king.⁶²⁴ The relationship between the king and the officials in terms of keeping the peace was characterised by cooperation and common aims. This statement can be confirmed by the position of the sheriff, who had several duties which were analysed in detail in the fourth chapter, and included taking responsibility for the town's prison system. As the chief peace official of his shire, the sheriff carried out royal orders about the delivery of the criminals to the selected prisons and about keeping them safe, bailing them (for example, 6th June 1275 in York where 'Thomas le Folur of Sadbergh and John son of Thomas de Ulveswath, imprisoned at York for the death of Roger Feraunt, whereof they are appealed, have letters to the sheriff of York to bail them'),⁶²⁵ releasing them ('18th July 1275 with the

⁶²⁴ 'Judicial powers given to keepers of the peace 1332', in Myers, *English Historical Documents: 1327-1485*, p. 534. Also, Edward III's close rolls and different orders for local officials such as that of 16th September 1327 to the sheriff of Yorkshire, regarding the peace in the town and election of a new coroner for the county. *Calendar of the Close Rolls. Edward III, 1327-1330*, London, HMSO, 1896, p. 164.

⁶²⁵ *Calendar of the Close Rolls. Edward I, 1272-1279*, p. 181.

order to the Sheriff of Somerset to release Hugh Poynz'),⁶²⁶ also maintaining the function of the building and generally being responsible for any escape attempts, however with some exceptions.⁶²⁷ For example, according to the Borough Customs of London from around 1321, the sheriffs were not responsible for any escapes of thieves from churches.⁶²⁸ However, the records of the patent rolls give the example from the thirteenth century, during the reign of King Edward I, of the sheriff being pardoned for such an escape. In this case John de Byroun, the sheriff of York, was found responsible for the escape of twenty-six prisoners from the gaol of York castle in 1298.⁶²⁹ Additionally, the *Liber Albus* provides the example from the beginning of the thirteenth century of the sheriff being accused of negligence in front of the mayor and citizens of the City of London and facing punishment for the escape. However, because the victim of the assault was still alive it was decided not to prosecute the accused and the sheriff received the instruction to arrest Gilbert immediately upon his return.⁶³⁰

The royal orders that can be found in the close rolls evidence the cooperation between the king and the sheriff through the exchange of letters about prisoners, their arrest and release, and also about escapes and maintenance, making the sheriff an important link between royal and local legal practice. The sheriff's main duties of arresting and keeping prisoners in his custody required the existence of a sheriff's prison. At the time of Edward I it was broadly assumed that there was a chief prison in each county.⁶³¹ With time, some towns had more than one sheriff because of the county status the cities received (Bristol in 1373, York 1396, Norwich 1404 and Exeter in 1537).⁶³² A county status gave the mayor of that town the right to appoint his own sheriffs, and to remove the town's prisons from the supervision of the county sheriff and other royal officers, although they would still cooperate substantially. Generally, the county sheriff or his bailiffs arrested felons

⁶²⁶ *Calendar of the Close Rolls. Edward I, 1272-1279*, p. 203.

⁶²⁷ Generally, in the case of a prisoners' escape, the sheriff was subjected to a fine of 100s. for each prisoner. Bassett, 'Newgate Prison in the Middle Ages', p. 234.

⁶²⁸ Bateson, *Borough Customs*, vol.2, p. 35.

⁶²⁹ *Calendar of the Patent Rolls. Edward I, 1292-1301*, London, HMSO, 1895, p. 364.

⁶³⁰ In this case Robert le Peytevin, a clerk, and his servant Gilbert, after assaulting a vintner called Warin escaped to the church. Despite the sheriff guarding the church, Gilbert was able to escape. Riley, *Liber Albus*, pp. 89-90.

⁶³¹ Morris, *The Medieval English Sheriff*, p. 118.

⁶³² Exeter had the right to have its own sheriff in 1537, after Henry VIII granted the city county status.

and kept them until the arrival of the justices. As separate gaols were rare, from the eleventh century the sheriff had the authority to use some parts of the castle as a temporary prison. This was possible through royal regulation, like that of 1166 which required the sheriffs to have gaols in each of the king's boroughs or castles. However, the situation was still dependent on that of each particular town. For example, a Borough Custom of 1240 for Bristol mentions the town prison: '...and that a burgess, for whatever cause he may be imprisoned, shall not be taken to the castle prison, but shall be taken to the town prison'.⁶³³ This is seen also in Winchester in 1228, where the sheriff of the castle was directed to keep his prisoners, not at the castle but at the gaol of the same city.⁶³⁴ In Norwich in 1345 the Shirehouse of the city, the place where the county court was held, belonged to 'the fee of Norwich Castle'.⁶³⁵ These examples were the result of the county sheriff's position and his powers of jurisdiction. These remained under royal supervision and were not always restricted to the castle's physical limits. Due to his assigned authority and responsibilities, some parts of towns were subject to the sheriff's legal powers and were excluded from the jurisdiction of the municipal authorities.

The involvement of the local sheriff in the municipal prison system was closely connected to his legal powers. In the fourteenth century, after liberties had been given to towns in terms of county status, the elected sheriff, together with the mayor and other local officials, were responsible for the local justice of a gaol delivery connected to breaches of the peace: for example in York, where the sheriff's powers included the local courts of pleas especially of debt, and also pleas of trespass, account and detinue, and investigated some infractions of the statutes of labourers.⁶³⁶ These judicial functions were officially separated from the main royal jurisdiction, but remained connected to it: these were exercised at the castle at the sheriff's tourns, gaol deliveries and sessions of the peace. The example of the connection between royal and local jurisdiction through the active role of the sheriff can also be seen already in 1282 in Exeter, with the regulation that a man who pleaded in the county court about the default of justice in the city

⁶³³ Bateson, *Borough Customs*, vol.1, p. 64.

⁶³⁴ 'Pro imprisonment apud Wintoniam', in *Calendar of the Close Rolls. Henry III, 1227-1231*, London, HMSO, 1902, p. 31.

⁶³⁵ N.J. Pounds, *The Medieval Castle in England and Wales*, Cambridge, Cambridge University Press, 1994, p. 97.

⁶³⁶ Tillott, *The City of York*, p. 75.

court could be brought back to the city court by the bailiff but with the participation of the sheriff controlling the course of the trial 'to hear that right is done on both sides'.⁶³⁷

Together with the sheriffs, the responsibility for keeping criminals in prisons was given to the sheriff's appointee, who was usually a warden elected yearly and who had to be a man of good character to keep the prison in the right order and prevent any abuses and offences inside the prison.⁶³⁸ The keepers of town prisons received an income from charges imposed at a prisoners' admittance, discharge and for the provision of basic necessities.⁶³⁹ However, because they were also responsible for the repairs and other expenses of the prison under their guard, the prisoners were often forced to pay money for additional food, light or to avoid tortures and irons. For example, in 1333 the gaoler of Newgate, Hugh the Croydon, was guilty of oppressions and extortions by placing prisoners charged with trespasses other than felony among notorious felons, bailing out homicides and torturing prisoners for large ransoms and fines.⁶⁴⁰ For this reason, fourteenth-century commissions were regularly appointed to investigate different charges against prison keepers, for example in 1326, when a commission of oyer and terminer determined the oppressions and extortions as the offences committed by the keepers of the prisons and gaols in the city of London and county of Middlesex.⁶⁴¹ Additionally, in 1356 London Common Council specified the ordinances dealing with the sheriffs' duties and their servants who were to control the prison environment with the complaint procedure that could be heard in front of the mayor and aldermen of that town.⁶⁴² Despite being the sheriffs' servants, the keepers could be fined, imprisoned or removed from office if someone in their custody died or escaped.⁶⁴³ In her thesis, Christine Winter particularly argues about the scale of fines imposed on London's prison keepers for such escapes including the example from 1378, when Roger de Saperton, the warden of the Fleet, was imprisoned in his own prison after a prisoner escaped.⁶⁴⁴

⁶³⁷ Bateson, *Borough Customs*, vol.2, p. 16.

⁶³⁸ Riley, *Liber Albus*, p. 41.

⁶³⁹ Winter, 'Prisons and Punishments in Late Medieval London', pp. 108-109.

⁶⁴⁰ *Calendar of the Patent Rolls. Edward III, 1330-1334*, pp. 442-443.

⁶⁴¹ *Calendar of the Patent Rolls. Edward II, 1324-1327*, London, HMSO, 1904, p. 347.

⁶⁴² Bassett, 'Newgate Prison in the Middle Ages', p. 237.

⁶⁴³ Winter, 'Prisons and Punishments in Late Medieval London', p. 118.

⁶⁴⁴ *Calendar of the Close Rolls. Richard II, 1377-1381*, pp. 67-68.; Winter, 'Prisons and

In Poland, under its fourteenth-century local justice system, there was no office strictly responsible for the custody of prisoners, their escapes and their releases, like the English sheriff and those appointed by him as prison wardens. The *woźny sądowy*, examined in the fourth chapter, had substantial similarities to the main sheriff's activities, which included the arrest of criminals and their supervision. The thirteenth century *Sachsenspiegel* defined the office of the *woźny* as a royal agent who was empowered to arrest the accused and deliver him for trial, also to collect taxes and seize a debtor's goods. However, with the increasing autonomy of the town council and its legal powers, which started developing from the end of the thirteenth century, the position of *woźny* became less powerful, occupying the new function of being the town's official under the regulation of the town council. There is another comparison to the English sheriff: the county sheriff working with royal powers over criminals and the prisons can be compared to the Polish *woźny* before the fourteenth century. Then, with the increasing autonomy of the town council, the *woźny* became the official with more similarities to the urban sheriffs and their wardens in the fourteenth century English towns. For example, in the *Swabenspiegel*⁶⁴⁵ the *woźny* was named *Stockwerter*, that is a prison guard.⁶⁴⁶ The dependence of the *woźny* and his prison function upon the town's officials is also proved by the regulation that, in the event of the escape of a criminal in the absence of the *woźny*, a judge – that is the alderman⁶⁴⁷ or the mayor of the town – was responsible. The early sixteenth century Magdeburg Law practised in the selected Polish towns includes an article about the judge's financial responsibility in the case of the escape of the prisoner from the town's prison, with reference to the committed crime, divided between serious and petty crimes. In the case of a petty crime and the criminal who managed to escape from the prison, the judge was free from any responsibility, if he swore that the escape was not his fault:

[...If there was a criminal sent to prison for a debt or another thing which was not classified as a serious crime and managed to escape, the judge was free from the responsibility if he swore

Punishments in Late Medieval London', p. 118.

⁶⁴⁵ The *Swabenspiegel* was a collection of German territorial laws from the end of the thirteenth century based on the *Sachsenspiegel*, and popularised in the South Germany.

⁶⁴⁶ Jeziorski, *Social Outcasts in the Largest Prussian Towns*, p. 74.

⁶⁴⁷ At the end of the thirteenth century, the office was dependent on the town council which, after taking over the responsibilities of the alderman, first had the power to choose the alderman from the town councillors and later took over the office completely.

that the escape was not his fault].⁶⁴⁸

However, if the criminal who was sent to the prison and accused of a serious crime escaped from that prison, the judge was financially responsible for that escape:

[...In the case of a serious crime, the judge cannot be free after his swearing, rather he should repay to the person who sent the criminal to prison, by a whole *wargielt* in the case of a death sentence or a half *wargielt* if the criminal was sentenced 'after a hand'].⁶⁴⁹

Additionally, the judge was also responsible for the security of the prison building:

'I powinien sędzia albo urząd oprawić a opatrzyć dobrze komorę, gdzie sadzają'
[... And the judge should provide a good defence to the prison cell].⁶⁵⁰

As has been demonstrated, the *woźny* and his prison duties are comparable to the English town's sheriff, who also handed some of his responsibilities to the prison wardens with the financial penalty for the prison escapes while in Polish towns, the responsibility for the prison safety was entirely imposed on *woźny* or alderman of that town. Some similarities in the work of the English prison wardens can be found in the duties of Polish town guards, who, apart from keeping the town safe especially after dark, also controlled the criminals at the town's prison,⁶⁵¹ fed them and released for trial or execution. This specific duties were based on the town guards' place of work, that is the town hall, from which they received orders to control the prisons located in the basements of town halls.

The different kinds of Polish prisons examined earlier shared both their location inside the town walls and the involvement of local officials. The prisons included amongst their number, as in England, the prisons of certain castles which held specially selected prisoners under supervision of the royally appointed officials.

⁶⁴⁸ '[...] Jeśliby kto na czyję instygacją dan był do kaźni pospolitej z pomocą prawa na obżałowanie o dług albo o jaką inną rzecz, która by nie wiodła na gardło, a więzień by z więzienia uciekł, sędzia obwiniony o to będzie wolen, gdy sam przysięże, iż więzień bez jego winy albo jakiej przyczyny uciekł'. 'Iure Municipali articulo 17', in Koranyi, *The Order of Courts*, p. 114.

⁶⁴⁹ 'Ale jeśliby dan był do więzienia o złoczyństwo, za którym by więźniowi szło o gardło, tam sędzia przysięgą nie może być wolen, ale powinien to będzie onemu, który go dał do więzienia, nagrodzić całym wargieltem, jeśli więźniowi szło o gardło; a jeśli szło o rękę, tedy połowica wargieltu'. Ibid.

⁶⁵⁰ 'Iure Municipali articulo 59', in Koranyi, *Magdeburg Law Articles*, p. 46.

⁶⁵¹ 'Quarto: Distributa ad pontes', in Chmiel, *Acta Consularia Casimiriensia 1369-1381 et 1385-1402*, p. 19.

In England, the castles were royal, with the county sheriff and constables responsible for the prisons and criminals held there. As the seat of the county gaol and the location of the sheriff's prison, the castle was a crucial element in the exercise of the royal justice, involving officials like the sheriffs, constables and sub-constables. In the fourteenth century, King Edward III confirmed the regulation for sheriffs to have custody at the Norwich Castle. However, for some time he did nominate a constable for the defence, like in 1354, when Roger Clerk was chosen a constable of the castle.

The importance of a royally appointed constable can be identified from his responsibilities towards the security of the castle. What is more, according to the function the castles served, constables were often county sheriffs. These dual appointments were made as a single grant given by the king, usually recorded on the fine rolls, with the office of the constable coming second to that of sheriff.⁶⁵² The constables' duties were much the same as these of sheriffs and included bail and release from the king's prison, being responsible for escape attempts from the king's prison (5th June 1327 and Pardon to Henry de Bisshebury, the constable of Coneway Castle, for allowing the escape of his prisoners Howel ap Grenon and Heynun Gogh, in the time of the late king),⁶⁵³ having responsibility for any debts (10th November 1274 and the order to John de Muscegros, the constable of Bristol Castle, about the arrears that had to be given to the abbot of Tewkesbury)⁶⁵⁴ and other payments, carrying out repairs and maintenance of the castle and its surroundings (12th October 1278 and the order to Peter de la Mare, the constable of Bristol Castle, to have eighty oaks fit for timber to make a chamber in the castle and repair other houses there),⁶⁵⁵ also supervising the king's gifts and the castle's supplies (20th July 1340 and the order to John de la Ryvere, the constable of Bristol Castle, about the eight tuns of wine to be sold because the king had been informed that the said wine had become so feeble that it could not be kept any longer without putrefaction),⁶⁵⁶ all of which made him

⁶⁵² J. Rickard, *The Castle Community: The Personnel of English and Welsh Castles, 1272-1422*, Woodbridge, The Boydell Press, 2002, p. 7.

⁶⁵³ *Calendar of the Patent Rolls. Edward III, 1327-1330*, p. 124.

⁶⁵⁴ *Calendar of the Close Rolls. Edward I, 1272-1279*, p. 108. See also 16th November 1276 and the order to Peter de la Mare, constable of the Bristol Castle, to deliver the king's money in his custody to Orlandinus de Podio and his fellows, merchants of Lucca, for an expedition of some of the king's affairs. *Ibid.*, p. 408.

⁶⁵⁵ *Ibid.*, p. 479.

⁶⁵⁶ *Calendar of the Close Rolls. Edward III, 1339-1341*, London, HMSO, p. 433.

an important administrator and accountant of the royal treasury. Quite often the constables were supported by sub-constables, who were appointed by the constables of the particular castle.⁶⁵⁷ The role of sub-constable was generally to perform the duties of the constable when he was absent or 'until the king makes other arrangements', like on 5th December 1360 and the grant to Andrew de Guildford, who held the keeping of the castle of Dover under Hohn de Bello Campo, and was appointed as a temporary constable.⁶⁵⁸

The lists of thirteenth- and early fourteenth-century castle constables in Bristol confirmed the regular appointments with the average tenure of the office lasting about two years. However, there were exceptions like in 1335, when John de Heigham was appointed to keep the castle for life and in 1347, when John de la Rivers was appointed 'to act till his death'.⁶⁵⁹ In Poland, Kraków also had a custody at the castle together with a court called *grodzki*, which was separate from the town's jurisdiction and dependent on the special privilege of the gentry. The court was royal and supervised by the king's *starosta*, who had the legal powers that covered the *powiat*⁶⁶⁰ area. The cases brought before the *grodzki* court were restricted to the gentry social class and were prosecuted according to the four main articles, that is rape, robbery on the public road, arson and attacks on the gentry's houses. Apart from jurisdiction, there was transportation of the gentry criminal to the castle prison and keeping him safe until his case could be heard at the castle's court. In Kraków, the prison was called the Senator Tower. It was built in the fifteenth century and located close to the Thief Tower, which was also part of the castle. The Polish Chronicle from 1455 describes the example of the *starosta* and his attempts to keep the prisoners in the basement of the castle, although the prisoners managed to escape, climbing on a rope and defending themselves by throwing stones:

[When Jan Synowiec, under starosta from Oświęcim area, captured eight criminals and put them into the tower by lowering them down on a rope, the aforesaid criminals managed to escape at night by taking control of the tower and started

⁶⁵⁷ For example, in 1354 a newly appointed constable for Corfe Castle, Roger de Mortimer, had chosen John de Elmerugg as his deputy. Rickard, *The Castle Community*, p. 40.

⁶⁵⁸ *Calendar of the Patent Rolls. Edward III, 1358-1361*, London, HMSO, 1911, p. 509.

⁶⁵⁹ Sharp, *Accounts of the Constables of Bristol Castle*, pp. 78-84.; Blomefield, *An Essay*, vol.3, p. 80.

⁶⁶⁰ The *powiat* was the second-level unit of local government and administration in medieval Poland, the equivalent to the English county.

throwing stones.]⁶⁶¹

Together with the prison supervision, the *starosta* was responsible for keeping the prison area in the right order, usually using castle guards under his command.⁶⁶² The range of the castle responsibilities given to the *starosta* was similar to that of the English county sheriff. Both were royal officials who performed their duties at the castles' royal courts, both were responsible for the criminals held there and for prison security and both worked closely with the offices appointed by them like sub-constables from the English side and castle guards from the Polish. The main difference was the fact that, apart from the court function, the English county sheriff had an influence on the town's local justice. For example, in certain cases he had the right to use the town's prisons or other special places in town restricted to his jurisdiction and excluded from the municipal law like Norwich and the Shirehouse of the city.⁶⁶³ In contrast, the *starosta* was only dependent on the royal jurisdiction and the place of the court practice, the castle, and therefore represented no connection to the municipal justice system. Additionally, not every Polish town accepted the powers and position of the *starosta*. For example, in Wrocław, the German municipal regulation had a significant influence on the town council and the local citizens. In 1487, the new king⁶⁶⁴ assumed his powers over Silesia and introduced the new policy whereby the senior member of the town council, Heinrich Dompnig, became a *starosta* of the Duchy of Wrocław. This elected *starosta* started to represent mainly royal interests, which were against the town's policy. The angry citizens, together with the town council, decided to remove Dompnig by accusing him of different crimes, including conspiracy with Hungary and acts of sodomy, and, after torture, in 1490 he was sentenced to death by decapitation on the market square in front of the citizens.⁶⁶⁵ The death of Dompnig was treated in fifteenth-century Wrocław as a triumph of the municipal justice over the royal

⁶⁶¹ [...] *Albowiem gdy Jan Synowiec podstarości oświęcimski poimał ośmi tych łotrów i wsadził do wieże na dno, a powroza tego, którym je tam spuszczano, zabaczono odjąć: tedy to łotrostwo w nocy wylazło zasię po onym powrozie z wieże i, opanowawszy oną wieżę, poczęli się w niej kamieński bronić.* K.J. Turowski (ed.), *Marcin Bielski: Kronika Polska [Marcin Bielski: A Polish Chronicle]*, vol.1, Book 1,2,3, Sanok, Karol Pollak, 1856, pp. 752-753.

⁶⁶² Maisel, *The Legal Archaeology of Poland*, p. 142.

⁶⁶³ In 1345 the Shirehouse of the city, the place where the county court was held, belonged to 'the fee of Norwich Castle'.

⁶⁶⁴ Maciej Korwin, the King of Hungary and the ruler of Silesia from 1469 to 1490.

⁶⁶⁵ For more about the accusations and torture of Dompnig, see below, Chapter 6, pp. 251-252.

interference in the appointment of the *starosta*, and resulted in the restoration of the previous regulation in the same year.

5.5 Church prisons

In addition to the municipal and county prisons, both countries had special prisons under the regulation of ecclesiastical authorities. These prisons were part of the extensive system of the church's autonomy and were excluded from the control of the local officials and their justice. The church prisons are not part of my research analysis; however, because of their locations within towns as well as the criminal offenders they held, they require a brief introduction.

In both England and Poland, the medieval church had a separate jurisdiction, however the relations between the local law and ecclesiastical authority were often part of a town's contentious issues. In fourteenth-century Wrocław, the municipal documents frequently recorded tensions between local legal powers and church authorities, mostly in response to the orders from the highest secular and religious authorities, namely the king and the pope. For example in 1366, Pope Urban V responded to arguments between secular and ecclesiastical jurisdiction in Wrocław.⁶⁶⁶ In 1368, Urban then approved a cardinal's verdict about the competence of the town's church and the boundaries of the secular judicature.⁶⁶⁷ In the same year, he also asked Karol IV, the Holy Roman Emperor and the king of Bohemia,⁶⁶⁸ to intervene about the jurisdictional dispute in Wrocław.⁶⁶⁹ A significant decision about the borders of municipal legal practice was made in 1370, when Emperor Karol decided that subjects of the bishopric and the chapter of Wrocław Cathedral who were charged with crimes had to be sentenced before the municipal court, which arguably underlined the superiority of the municipal law over church regulation in Wrocław.⁶⁷⁰ Similarly in England, the financial, territorial and jurisdictional privileges that were part of the civic and ecclesiastical administration in fourteenth-century towns frequently overlapped and resulted in disputes and protests from both sides with the Crown's arbitration

⁶⁶⁶ 16th November 1366 found in Stelmach, *A Catalogue of the Medieval Documents*, p. 194.

⁶⁶⁷ 11th December 1368 found in *Ibid.*, p. 198.

⁶⁶⁸ Including Silesia with Wrocław, as the lands under the Bohemian powers.

⁶⁶⁹ 1th December 1368 in Stelmach, *A Catalogue of the Medieval Documents*, p. 198.

⁶⁷⁰ *Ibid.*, p. 204.

and judgment.⁶⁷¹ Additionally, the town walls did not make the boundaries of urban jurisdiction, which was determined by a town's legal powers - church authorities often caused legal issues about these boundaries. In Exeter, in 1432 a suit was brought against the local Mayor John Shillingford and the citizens of Exeter by Edmund Lacy, the Bishop, and the cathedral Dean and chapter. The long-lasting dispute concerned the borders of their legal jurisdictions, as the mayor claimed sole legal powers within the city, including the Bishop's Palace. In response, the bishop claimed that he held a fee called the Bishop's Fee which was separate from the jurisdiction of the mayor. The quarrel involved the whole city – its citizens and the bishop's tenants – resulting in accusations and attacks from both sides.⁶⁷² In Norwich, a similar tense situation existed between the chapter Prior and the town's authorities and citizens, with regular protests about the priory's boundaries.⁶⁷³ This resulted in riots, for example in 1443, caused by citizens of Norwich against a deed that was in the possession of the prior⁶⁷⁴ and assaults, like the attack in the guildhall prison on the town's sheriff by the priors and monks of the cathedral church in order to rescue William Herryes, who was charged for a felony and later escaped to the sanctuary of the above church.⁶⁷⁵ Norwich archives confirm that an agreement was made between the prior and the cathedral chapter and the mayor and citizens of Norwich, agreeing to respect the jurisdiction within the precinct.⁶⁷⁶ In York, the church's powers also overlapped with the city's jurisdiction about territorial rights with the most violent conflicts concerning citizens' claims to 'winter common rights', which were considered as ancient rights to place the citizens' livestock on the Vicars' Lees field from October through March.⁶⁷⁷ Additionally, the archbishop was responsible for the maintenance of the Old Baile, a line of the town's fortifications located on the south-west bank of the Ouse and close to Bishop Hill. It was passed to the

⁶⁷¹ Carrel, 'Disputing Legal Privilege', pp. 287-288.

⁶⁷² The letters of the mayor about the dispute can be found in Moore, *Letters and Papers of John Shillingford*.

⁶⁷³ In 1331, an accord between the Prior and the citizens respecting the river and Bishop's bridge. Hudson and Tingey, *The Records of the City of Norwich*, vol.2, pp. 366-368.

⁶⁷⁴ After the 1443 citizens' attack, the Crown seized Norwich liberties for four years and imposed heavy fines. L. Attreed, 'Urban Identity in Medieval English Towns', *The Journal of Interdisciplinary History*, vol.32, no. 4, 2002, p. 584.

⁶⁷⁵ In 1506, a rescue effected by the Prior and monks. Hudson and Tingey, *The Records of the City of Norwich*, vol.2, pp. 368-370.

⁶⁷⁶ In 1539, an agreement was made between the Dean and Chapter respecting the jurisdiction within the Precinct. *Ibid.*, pp. 371-376.

⁶⁷⁷ Attreed, 'Urban Identity in Medieval English Towns', p. 587.

archbishop by 1308. In 1320, Archbishop Melton refortified the Old Baile against the threat of Scottish attack; however, by 1487 it had passed to the town.⁶⁷⁸

In order to determine the legal claims to the disputable land as well as confirm the town's customs and liberties over the church authorities and their granted powers, the civic officials used written records and public display for example in Bristol, where the boundaries of the county were created in writing in the 1373 Charter, which stated the legal limits of the city jurisdiction.⁶⁷⁹ Also in Exeter, the Parliament Act from 1548 defined the boundaries of the city and its suburbs as a part of the county of Exeter and confirmed the town's claims to the cathedral fees, however with some exceptions.⁶⁸⁰

As Helen Carrel has highlighted in her article 'Disputing Legal Privilege: Civic Relations with the Church in Late Medieval England', there were examples in the records of borough courts of Norwich of members of clergy being prosecuted for having cases in their courts which should come under civil jurisdiction.⁶⁸¹ This indicates the uneasy judicial coexistence of ecclesiastical and municipal legal authorities in fourteenth-century Norwich and also confirms that the church could exercise its own justice, including having the right to imprison and sentence clergy and locals accused within their area of jurisdiction. Importantly, *The Corpus Juris Canonici*, a thirteenth-century collection of legal texts of Latin Church proceedings, confirmed that church courts could assume jurisdiction when it was allowed by local custom or where secular justice was not available to punish a crime.⁶⁸² Indeed, church prisons were usually located a short distance from the ecclesiastical buildings in towns, like cathedrals, and were constituted as the area excluded from municipal jurisdiction (as in Wrocław and the area of Ostrów Tumski). Alternatively, such prisons were found in episcopal castles outside the town walls, like the Lipowiec Castle which in the fifteenth century functioned as the bishop's prison, located a short distance from Kraków.

⁶⁷⁸ Jones and Palliser, 'York 1272-1536', in Addyman, *The British Historic Towns Atlas*, vol.5: York, p. 41.

⁶⁷⁹ Harding, *Bristol Charters, 1155-1373*, pp. 168-169.

⁶⁸⁰ According to the royal grant, the city received the cathedral fees however the church was promised that it would not be deprived of any privileges. Attreed, 'Urban Identity in Medieval English Towns', p. 578.

⁶⁸¹ Carrel, 'Disputing Legal Privilege', p. 289.

⁶⁸² R.H. Helmholz, 'Crime, Compurgation and the Courts of the Medieval Church', *Law and History Review*, vol.1, no. 1, 1983, p. 4.

As in Poland, the English church prisons were often located close to cathedrals or abbeys and other special buildings inside the town walls. In Exeter, the ecclesiastical prison was located in the cathedral precinct, commonly called 'the Close of St. Peter of Exon[imensis]'. It was separated from local law, with its rights assured by various royal charters, with one calling it 'distinct, separate, and exempt from the jurisdiction of the mayor, bailiffs and commonalty of Exeter'.⁶⁸³ Additionally, on the south side of the Close was the Bishop's Palace, which had its own prison for '*convicted and scandalous clergymen*'.⁶⁸⁴ In Norwich, the bishop's prison was described in a king's grant from 1315: 'John, Bishop of Norwich and his successors should have their own prison in the said town for judging (*justiciandis*) and detaining thieves (*latronibus*) and other evil-doers here taken'.⁶⁸⁵ At York, the cathedral close housed what were really two complexes side by side: the Archbishop's Palace north of the Minster, which included the court and prison; and the equivalent buildings for the dean and Chapter, with the chapter house, their courts and prison.⁶⁸⁶ In addition, St Mary's and St Leonard's Churches held courts for their own tenants both with and without the city: St Mary's had its own prison, as well as gallows in Burton Stone Lane (first recorded in 1444-5), while St Leonard's had gallows in Green Dykes Lane (recorded by 1374-5).⁶⁸⁷

Additionally, English church prisons and the types of criminals held there can be confirmed from Bracton's analysis of criminal clerks. After committing homicide or any other crime, a guilty cleric would be arrested. After being requested by the authority of the bishop or another responsible cleric, he had to be delivered to them and kept safely in custody, in the bishop's prison or in the king's ('if the ordinary so desires'). Because the ecclesiastical courts were forbidden to shed blood, they had history of using the prisons as a main form of punishment.⁶⁸⁸ Furthermore, when a cleric was imprisoned in a royal prison, his representatives had no right to judge or imprison the churchman without episcopal or religious

⁶⁸³ Oliver, *The History of Exeter*, p. 132.

⁶⁸⁴ *Ibid.*, p. 133.

⁶⁸⁵ The grant from 30th of August 1315 about the city prisons. *Calendar of the Charter Rolls. Edward I, Edward II 1300-1326*, p. 284.

⁶⁸⁶ Jones and Palliser, 'York 1272-1536', in Addyman, *The British Historic Towns Atlas*, vol.5: York, p. 41.

⁶⁸⁷ *Ibid.*

⁶⁸⁸ T. Dean, *Crime in Medieval Europe, 1200-1550*, New York, Routledge, 2001, p. 121.

authority.⁶⁸⁹

This brief analysis explains the different types of prisons that existed for clergy and tenants of ecclesiastical landlords and who were excluded from municipal jurisdiction in general. However, they are relevant for my analysis because of their location and often fractious relationship with local justice in both England and Poland. Church prisons in the towns of both countries evidence that municipal jurisdiction was commonly limited, with a separation between the clerical estate and the town's boundaries. Consequently, this resulted in complex system to regulate law processes between church and town authorities. Additionally, the examples of assaults, attacks and mediation made by both parties in England and Poland were overseen by the Crown's power of control and determined as an important method to emphasise the common good and royal jurisdictional importance.

⁶⁸⁹ Thorne, *Bracton*, vol.2, p. 348.

5.6 Chapter conclusion

This chapter has examined the fourteenth century municipal prison system and demonstrated that the English and Polish towns were characterised by similarities in terms of the enforcement of local justice. The towns of both countries used imprisonment as one of the most common forms of keeping and isolating the criminals, which formed an important part of their administrative and legal work.

From a legal history point of view, the English documents which granted and confirmed the existence of the local prisons under municipal regulation evidence the active oversight of officials responsible for this regulation by the Crown. The royal grants, statutes, charters and orders indicated cooperation between the local level of the officials like sheriffs and constables and the supervision representing the royal power, working together to keep peace and order in the country, including maintaining and improving prison buildings in the local areas. In comparison, Polish imprisonment as a system developed mostly because of the growing autonomy of the town councils. The practice of local law resulted in fixed and visible forms of justice like prisons, gallows and pillories built by self-conscious and ambitious councils. Consequently, the prison structures were monitored and supervised by locally appointed town officials, which were mainly dependent in their function on the regulation provided by town councillors and with only superficial control from the Crown.

The location of prisons in towns shares similar features in both countries: they were found near central market squares and guildhalls. Situated usually in the basement of the main building, the town prison underlined the function of this place for the local criminals held there. In both England and Poland, the guildhall represented the local authorities and their legal powers in terms of being the centre of local justice and court proceedings. Clearly, imprisonment in the medieval period was considered to be punitive in terms of removal of the wrongdoer's liberty and his citizen's rights. However, for most of the local crimes the sentence was usually the pillory or a fine and prison punishment was limited. As a result, the selected English and Polish town prisons served a different purpose, being rather a short term 'waiting room' for the accused waiting for their trial in the same building and later released or sentenced in the short distance

from the court room. The example of that well preserved organisation is Wrocław Town Hall, where to this day can be seen the copy of a fourteenth- century pillory standing just outside the court room windows and the prison basement located underneath the town hall court rooms. Additionally, the existence of ecclesiastical prisons in both countries' towns modified the municipal jurisdiction and placed the performance of local justice under different officials' control and supervision. The coexistence of legal borders between these two bodies of church and town authorities (not to mention royal authority) resulted in the exchange and negotiation of similar cases of disputes and assaults in the towns of England and Poland.

The chapter has shown that in both countries, local prisons played an active role in the towns' legal procedure and were directly involved in the ubiquitous practice of splitting up prisoners according to their crime and social origin. One of the major differences can be seen in the number of prisons and the type of prisoners held there. The range of criminals who could be held in municipal prisons in England and Poland was broad and depended on certain factors. Tables 4 and 5 showed that Polish prisons processed criminals by creating different types of prisons within one building, on its different floors or its different areas. In England, apart from a few examples of that practice, criminals were sorted by their crime and kept in separate prison buildings. However, in both countries the researched areas similarly divided prisoners according to their crime, gender and social position.

The above research analysis has outlined that in both countries local officials were jointly responsible for the supervision, control and maintenance of the prison buildings. Furthermore, with the legal and geographical expansion of towns, the officials gained the needed legal experience during frequent riots and disputes by attending court proceedings and arbitration between the towns, their citizens and church representatives. Additionally, the local residents often contributed to the prisons and support of the inmates through bequests in their wills.⁶⁹⁰ As prison buildings represented the rule of law and order in towns of England and Poland, the officials and citizens took a common and active role in maintaining this local

⁶⁹⁰ The previously mentioned fifteenth-century Exeter wills, also fifteenth-century Bristol and the will of the Chestre family with the '20 d. of bread to be distributed to the prisoners in Newgate Gaol'. C. Burgess, "By Quick and by Dead": Wills and Pious Provision in Late Medieval Bristol', *The English Historical Review*, vol.102, no. 405, 1987, p. 848.

representation of fourteenth-century criminal justice in practice.

Chapter 6. Local judgment of criminal acts in selected medieval towns of England and Poland.

In the late medieval English and Polish municipal systems of law, lower-ranked crimes in towns were prosecuted locally. In England, these involved the local courts and officials such as mayors, sheriffs and bailiffs. In Poland, town councils' municipal courts would judge, based on additional legal advice called *Weisthümer* or verdicts called *Urteile*, given from Magdeburg, when cases were uncertain or unclear. After the capture of the criminal, the place where the prisoner was usually held before the sentence was similarly divided according to the type of crime and the social position of the criminal.

This chapter focuses on an important function that was performed as a result of the court proceedings in both countries, namely the enforcement of the sentences of criminal cases in English and Polish towns. The chapter will examine what kind of judgments were usually given in fourteenth-century systems of local law in English and Polish towns according to the number of crimes committed and the different criminal offences. It also ascertains what kind of town officials were directly involved in rendering the verdicts being publicly performed on the convicted criminals. Importantly, the chapter will show the major similarities and differences that characterised local criminal justice systems in both countries in terms of executing the sentence.

By analysing the legal sources such as English municipal records of the mayor and sheriff's courts, borough customs, coroners' rolls, capital pledges, chancery miscellanea and the judicial activities of Polish town councillors in the *black books*⁶⁹¹, I will demonstrate, therefore, the executive function of local courts of England and Poland. In particular, I will highlight the ways in which the criminal justice proceedings were performed by specially appointed officials responsible for carrying out the sentence and execution of the given punishment. They were done within particular municipal structures, as evidenced in the second chapter. Furthermore, the application of stricter punishments for crimes evidenced in the

⁶⁹¹ The special 'criminal books' were usually kept by the town clerks and compiled by larger towns with recorded criminal activities in their local areas.

legal proceedings of towns of both countries will indicate the similarities in the transformation of fourteenth-century local criminal justice. This includes the appointment of the regular office of executioner, commonly responsible for corporal and capital punishments in towns of England and Poland.

6.1 Local punishment

The punishment practice in medieval municipal areas developed together with the criminal law and legal procedure. In addition to the ancient form of punishment for the crimes which was usually a banishment from the local area,⁶⁹² the towns' fourteenth-century court records indicate that different types of imposed penalties were dependent on the type of crime, social position of the criminal and the level of severity according to the legal regulation.

In the selected Polish towns based on German law, the sources about local verdicts are usually found in the records of legal court proceedings with determined lists of crimes and court decisions. In the fourteenth century, the type of punishment was closely connected to the crime and to the status of the criminal.⁶⁹³ In Kraków, the legal verdicts and punishments were identified in the local book of proscription and complaints from 1360-1422.⁶⁹⁴ For the crimes like infanticide, wounding with intent, counterfeiting, rape and assault causing death of the other person, the common punishment given by the local court was deprivation of municipal rights and banishment (*proscripto-prohibitio a civitate*). For example, in 1377 and out of 30 recorded crimes, 10 of which were murders and 20 woundings, the common punishment was 'proscripti et prohibiti'.⁶⁹⁵ Also, in 1388 out of 20 criminal cases of which 8 were murders and 7 woundings, the punishment was deprivation of municipal rights and banishment.⁶⁹⁶ The other examples included Piotr Zwirczał, a baker's assistant, who in 1381 was banished

⁶⁹² See more about the ancient punishment of banishment in D.A. Washbourn, *Banishment in the Later Roman Empire, 284-476 CE*, New York, Routledge Studies in Ancient History, 2013.

⁶⁹³ The status of the criminal and his punishment according to the crime was analysed in the third chapter about the outlaw proceedings, with the citizens who avoided or were sentenced to a lesser punishment because of their high social class.

⁶⁹⁴ The book of proscription and complaints from Kraków was a collection of fourteenth-century criminal cases whose main form of punishment was the banishment and deprivation of the municipal rights: *civitas est prohibita*. The book was important from the local legal perspective and had a preventative function against prohibited criminals, who tried to return to Kraków. Wyrozumska, *The Book of Proscription and Complaints from Kraków, 1360-1422*.

⁶⁹⁵ 'Anno LXXVII proscripti et prohibiti circa advocatum Nicolaum Beem' in *Ibid.*, pp. 45-47.

⁶⁹⁶ 'Anno LXXVIII proscripti et prohibiti circa advocatum Nicolaum Beem' in *Ibid.*, pp. 47-49.

from the town for numerous adulteries and verbal assaults on the prison wardens.⁶⁹⁷ There is also the example of Piotr Polirow, who played at dice and was a local thief, and who in 1382 was prohibited from entering the town for 100 years and one day for cheating at dice and also for murdering a priest in Kleparz, a district of the town, an accusation he later denied.⁶⁹⁸ In addition to these court sentences, the local statutes of the *Willkür*, given from the town council to the citizens of Kraków in 1336, also evidenced the use of banishment, which lasted for either two or ten years for the two main types of crime: it was stated that if a man married a widow or maiden without getting approval from her parents, he should be banished for ten years. Also, if a person accused of homicide escaped from the town before the trial, the result was a banishment for two years after the criminal's decision to make an agreement with the accusers. If the criminal decided to stay in town and answer the charges, an additional, often financial agreement was made with the victim or the victim's family, followed by banishment for two years, starting the day after the agreement.⁶⁹⁹ Thus, the banishment from towns like Wrocław and Kraków included cases about moral jurisdiction and were usually restricted to a certain period of time and the area where the criminal had no right to entry after his sentence. In this case, the criminals moved to another town or village to survive the banishment period or tried to start a 'new life', especially when having avoided being mutilated, the additional punishment given with the banishment sentence.⁷⁰⁰

In comparison to Polish municipal court sentences of deprivation of municipal rights and banishment given for life or a certain period of time, the English system of exile involved two important factors. First, the men and women who were obliged to abjure the realm included those suspected but not convicted of crimes together with felons who decided to confess their crimes in sanctuary areas.⁷⁰¹

⁶⁹⁷ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 21.

⁶⁹⁸ *Ibid.*, p. 7.

⁶⁹⁹ *Ibid.*, p. 22.

⁷⁰⁰ In Central Europe, this special form of punishment had several variations. For example, the sentence of the fifteenth century German artist who spent more than twenty years working in Kraków, named Wit Stwosz –Veit Stoss: in 1503, he was accused and sentenced in Nuremberg of an attempt of fraud and later mutilated including a sentence prohibiting him from leaving Nuremberg. M. Rożek, *Wit Stwosz[Veit Stoss]*, Kraków, Petrus, 2014.

⁷⁰¹ However, the abjurors who underwent a form of legal process, must be distinguished from simple outlaws, who were low-status fugitives from the law. W.C. Jordan, *From England to France: Felony and Exile in the High Middle Ages*, Princeton, Princeton University Press, 2015, p. 8.

Second, in both situations the abjurers had to promise not to return to the jurisdiction from which she or he was exiled. In other words, those sent to exile were removed from their local communities by leaving the country for life. In contrast to abjuration that exiled the criminals from the country, the process of banishment was often narrowed to the area of the town or county. The English local legal practice recorded different examples of towns' banishment sentences for multiple convictions related to the every day experiences of its citizens. For example, in fourteenth-century London, a common bawd, after the third offence was 'led to the city gates and told never to enter the city again'.⁷⁰² Similarly, women condemned as prostitutes, notorious quarrellers and adulterer priests were also banished from the city after the third offence of this kind.⁷⁰³ The type of crimes that had led to exile can be compared with banishment sentences examined in the selected Polish towns. The fourteenth century records of Kraków evidenced that for criminal cases like murder, wounding, theft, rape, assault, the common punishment was banishment and deprivation of rights. In England, the coroners' rolls registered abjurers and determined the selection of crimes that led to the grant of sanctuary and abjuration which were similar to Polish examples⁷⁰⁴ and included major felonies like homicide,⁷⁰⁵ conspiracy to kill⁷⁰⁶ and theft.⁷⁰⁷ What is more, the abjuration of criminals was a local matter managed by the coroners with involvement of other civic officials as well. For example, Patent Rolls from 1311 indicate the role of the coroner in order to receive the abjuration of the criminal, John Alisaundre, according to the custom.⁷⁰⁸ Furthermore, the

⁷⁰² Rexroth, *Deviance and Power in Late Medieval London*, p. 173.

⁷⁰³ Ibid.

⁷⁰⁴ For example, the suspicion of larceny and later abjuration of the realm in 1276 in Bedfordshire. Gross, *Select Cases from the Coroners' Rolls, A.D. 1265-1413*, p. 37. Also, a murder and robbery by John of Ditchford, who in 1327 in the Hundred of Wymersley, confessed before the coroner his felonies and abjured the realm. Ibid., p. 75.

⁷⁰⁵ For example, the case of a wife of Peter Crossbowman, who cut her son William throat and threw his body in a cesspit. She abjured from Bristol in 1287. Jordan, *From England to France*, p. 50.

⁷⁰⁶ For example, the mid-thirteenth century Exeter case of domestic violence with two women, Alice and Margaret, who conspired to kill Richard le Blunt. Alice was rescued on the way to execution place and managed to reach sanctuary and abjured. Ibid., p. 49.

⁷⁰⁷ A 1361 case of John of *Gildhousdale*, who abjured from Yorkshire for theft. Ibid., p. 36.

⁷⁰⁸ 'The like to John de Thorpe and Robert Baynard, on learning that when John Alisaundre of Ringstede, who was indicted for larceny, robbery and other felonies, took sanctuary in the church of Segefod, and remained there for a long time, and Henry de Walpol, coroner for the county of Norfolk, approached the church to receive his abjuration according to the custom, divers persons obstructed the coroner in the discharge of his office, forcibly broke the church and entered it by night, compelled John Alisaundre to go forth from it, and beat the men appointed to guard him in the church'. *Calendar of the Patent Rolls. Edward II, 1307-1313*, London, HMSO, 1894, p. 425.

local magistrate had to be informed about the crimes of the sanctuary seekers who could not obtain sanctuary and further abjuration if they had already been convicted in court or tried to receive multiple abjurations for their crimes.⁷⁰⁹ However, despite the strict regulation some of the abjurers were allowed to return, usually after being recruited to England's armies or for being willing to serve in return for royal pardons.⁷¹⁰

Consequently, different types of punishment developed together with the growing legal possibilities of the criminal law applicable in that town. This is shown by the fifteenth and sixteenth century court books of Wrocław and Kraków. For example, out of 262 criminal cases from 1554 to 1625 in Kraków analysed earlier in the third chapter, 95 were hanged, 2 flogged at the pillory, 4 quartered, 8 broken on the wheel, 27 decapitated, 4 burned, 7 drowned, 37 banished, 3 released, 3 committed suicide, 3 sentenced for a longer prison term and later released, 2 beaten with a stick, 1 received a commuted sentence and 3 were punished by the stocks.⁷¹¹ These punishments were given by the local authorities according to the type of crime that was committed, as well as the gender and social position of the criminal. Out of 95 cases of criminals who were hanged, all of them committed multiple robberies. Decapitation was usually given for men convicted of murder (15), adultery (3), rape (1), different kinds of robberies (6) including stealing a coffin from a graveyard (2). The punishment practice for female criminals was usually drowning. For example, in Kraków between 1554 and 1625, six of seven capital punishments of drowning were inflicted upon women.⁷¹² A special form of punishment, involving quartering after being broken on the wheel, was usually given to a criminal who committed both murder and multiple robberies, with the punishment given 4 times. Being broken on the wheel was given 6 times for multiple murders and robberies.

Also Wrocław shows a developed type of imposed punishment according to the local crimes. Records for the period 1449-1499 are one of the earliest surviving lists of criminals that were sentenced to capital punishment. 211 capital

⁷⁰⁹ *Calendar of the Patent Rolls. Edward II, 1307-1313*, p. 18.

⁷¹⁰ For example, during the Anglo-French wars since the end of thirteenth century. See more about royal pardons in Jordan, *From England to France*, pp. 131-135.

⁷¹¹ Uruszczak, Miłko and Krabowicz, *The Criminal Book of Kraków, 1554-1625*.

⁷¹² Mostly for infanticide (3) and multiple robberies (3).

punishments occurred: 168 including hangings, 11 who were broken on the wheel, 6 burned, 6 decapitated and 20 drowned. In the years 1456-1525, capital punishment was given in 454 cases: 251 were hanged, 103 decapitated, 25 broken on the wheel, 2 quartered, 39 burned, 31 drowned, 3 buried alive and 70 others later released. Additionally, only in 1456 in Wrocław, fourteen criminals were sentenced to death. Of this number, 10 persons were hanged, 1 broken on the wheel, 2 drowned and in the case of 1 person there are no details about what type of capital punishment was sentenced.⁷¹³

In England, the fourteenth century municipal courts of selected towns analysed in the third chapter, mostly heard civil cases and only a limited number of criminal offences.⁷¹⁴ Most of the market offences were punished by fines,⁷¹⁵ however, some of the civic ordinances also determined the physical punishments in the form of pillory for breaking the Assize of Bread, which were usually ordered by the mayor and the bailiffs of towns.⁷¹⁶

In Norwich, the book of pleas determined the selection of criminal offences that could be presented and punished before the mayor's and bailiffs' courts. They included wounding in town, drawing of blood, hamsoken (house-breaking) and petty theft. Additionally, the market offences were also presented in the city court and were usually heavily amerced with the use of the pillory for the regular offenders. The fourteenth century *Capital Pledges* provide a list of punishments imposed in the city of Norwich with comparable results. In the 1374/5 Leet Roll,⁷¹⁷ there were 152 presentments with 99 cases about market offences punished by a fine.⁷¹⁸ Additionally, 10 criminal offences were fined as well, like hamsoken and

⁷¹³ The punishment statistics can be found in FrauenStadt, *Breslaus Strafrechtspflege im 14. bis 16. Jahrhundert*, pp. 1-35 and pp. 229-250 respectively. Also, Wojtucki, *The Hangman and His Workshop in Silesia, Upper Lusatia and Kladsko County*, pp. 470-471.

⁷¹⁴ See more about the offences in Chapter 3, pp. 95-100.

⁷¹⁵ See Norwich Leet Rolls from 1374/5, 1390/1 and number of ameracements for forestalling and arrest for different examples of felony. Also, Exeter Mayor Rolls and several lists of citizens being fined for a market offences. For example, MCR 1295/6, m.16 contain a list of persons fined for forestalling and regrating fish, also poultry and hides. MCR 1296/7, m.6d with a list of persons fined for failing to remove dung as ordered.

⁷¹⁶ See York Civic Ordinances of 1301 and sixteen bakers being put into pillory for breaking the Assize of Bread. Prestwich, *York Civic Ordinances 1301*, pp. 19-22.

⁷¹⁷ Leet Roll of 1374-5 in Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 62-68.

⁷¹⁸ The other presentments included not coming to the Leet (19), defrauding of the old clothes(2), distraint with no licence of the bailiffs (3), nuisance of the river, nuisance of the neighbours(2), illegal sinking of the boat, finding a dagger on a highway and kept and concealed from the bailiffs, avoiding of a common tax(2), lepers(2).

beating 8d., wrongful use of hue and cry 12 d., exchange of stolen goods 6d., buying stolen goods 12d., theft 2s., drawing of blood 18 d., exchange of stolen goods 6d., buying stolen goods 20s., hamsoken, assault with a knife and threat to kill 12 d, theft 6d. Also, the above document records 10 offences with the arrest as a result, for example hamsoken with beating and threat to kill, theft of the goods valued of 20 s., theft of 40d. with the use of force, drawing of blood, hamsoken and wrongful use of hue and cry, common theft, dice-playing, hamsoken, hamsoken and beating, common evil-doers and night rovers who disturbed the peace. Similarly, the Leet Roll of 1390/1,⁷¹⁹ which includes a total of 284 presentments, evidences the majority of civil cases (259) and only 21 criminal cases with 9 arrested and others amerced.⁷²⁰ The criminal offences included assault and beating (40 d.), assault, beating, use of a stick and dagger and hamsoken (40 d.), hamsoken, theft, drawing of blood (arrest), common night-rover (40 d. and arrest), theft of 30s. (arrest), hamsoken and theft (arrest), drawing of blood (12 d.), theft (no specific details about punishment), common touter of the Dean (12d., arrest), causing of people to lose money wrongfully (arrest), imprisonment and other enormities (20s. and arrest), re-sale of stolen food (40 d.), assault with a knife (20d.), drawing of blood (2s.), theft and re-sale of the stolen horse (1 mark), common theft (12d.), wrongful accusations (arrest), hamsoken made by an alien⁷²¹ (arrest), drawing of blood (6d.), theft of a sheaves (40d.), making person outlawed with amercement of a capital pledge of a half a mark.

In York, apart from the civic ordinances which are focused on market offences,⁷²² the *Memorandum Book* provides a selection of criminal cases presented before the mayor and bailiffs of the town, however some of them were restricted to the higher courts. For example, John Cooke for a felony of stealing the money from the king's taxes was arrested until delivery to the justices,⁷²³ while in the case from 1416, John Bryghenhall, who was hanged for treason and felony had on the day of his arrest by the sheriffs of the city stolen goods and chattels.⁷²⁴ Another

⁷¹⁹ Leet Roll of 1390/1 in Hudson, *Leet Jurisdiction in the City of Norwich*, pp. 69-74.

⁷²⁰ The other four presentments concerned lepers in the city.

⁷²¹ Usually a foreign citizen.

⁷²² Prestwich, *York Civic Ordinances 1301*.

⁷²³ Sellers, *York Memorandum Book*, Part II, p. 62.

⁷²⁴ *Ibid.*, p. 54.

punishment can be evidenced from a 1436 record about disobedience of the aldermen towards the mayor of York, which was punished by exclusion from the office however with later restoration.⁷²⁵ The other criminal offences punished by imprisonment are found in the fourteenth century coroners' rolls and the criminals arrested for murder,⁷²⁶ wounding⁷²⁷ and larceny.⁷²⁸ In Bristol, the 1373 Charter created the mayor and sheriff's court with a majority of civil and limited criminal offences tried there.⁷²⁹ As the records of the borough courts of Bristol are lacking,⁷³⁰ the main evidence for the practice of the mayor and sheriff's court and the local judgment can be collected from the *Chancery Miscellanea* and *Early Chancery Proceedings*. In the first record, the trespass and assault together with the goods stolen was punished with a defendant being imprisoned until the damages were paid(or secured),⁷³¹ and the deceit was punished by the arrest as well.⁷³² Similarly, the *Early Chancery Proceedings* and cases of trespass were punished by the arrest of the criminal,⁷³³ so it can be suggested that imprisonment for serious crimes was considered as a 'waiting room' before delivery to the justices rather than a common form of punishment.⁷³⁴ What is more, the fourteenth century ordinances of the *Little Red Book of Bristol* confirm the mayor's powers in terms of putting into prison local robbers, quarrellers, evil doers and common disturbers of the peace.⁷³⁵ Additionally, the *Pleas of the Crown* from

⁷²⁵ Sellers, *York Memorandum Book*, Part II, pp. 142-143.

⁷²⁶ Inquest before the coroners of the city of York in 1377 and the case of John Smith's son, who killed Nicholas with a knife and he was arrested. Gross, *Select Cases from the Coroners' Rolls, A.D. 1265-1413*, pp. 119-120.

⁷²⁷ Inquest in the Castle of York in 1391 and the case of John Tope of Keltfield, who had been arrested and imprisoned in the gaol of York Castle for the death of John Shale Cawood, whom he had slain. *Ibid.*, p. 125.

⁷²⁸ Inquest before the coroners of the city of York in 1377 and the case of Thomas Hayward, a suspect of larceny, who feloniously slew the king's officer and, during his escape to the church to avoid being arrested, was killed by William of Flasby in self-defence. *Ibid.*, p. 119.

⁷²⁹ The 1373 Charter and the mayor and sheriff's powers to hear and determine evil-doings, transgression, disturbances against the peace with the punishment by fines, amercements and imprisonments. Harding, *Bristol Charters, 1155-1373*, p. 125. Also, the criminal jurisdiction in Bristol included offences like shedding of blood and hamsoken. Bickley, *The Little Red Book of Bristol*, vol.1, p. 41.

⁷³⁰ E.W.W. Veale (ed.), *The Great Red Book of Bristol*, Part I, Bristol, Bristol Record Society, 1931, p. 33.

⁷³¹ *Chancery Miscellanea*, Bundle 59, file 2, No. 46, in Veale, *The Great Red Book of Bristol*, Part III, p. 48.

⁷³² *Chancery Miscellanea*, Bundle 59, file 2, No. 55, in *Ibid.*, pp. 48-49.

⁷³³ *Early Chancery Proceedings*, Bundle 9, No. 157, in *Ibid.*, p. 50.

⁷³⁴ See Bracton's comment 'the gaol is appointed for custody and not for punishment'. Thorne, *Bracton*, vol.2, p. 9.

⁷³⁵ 'The ordinances made by the assent of the mayor, his fellows, and the commons of the town

1221 for Bristol contain the list of the criminal offences with the amercements and fines used by the judges while the court was sitting and it can be compared with the punishments imposed by the fourteenth century courts of the mayor and sheriffs. From a total of 26 pleas, there were 18 criminal cases with 7 persons being exacted and outlawed, 2 fined, 1 abjured the realm, 2 escaped with no judgments, 5 deaths by misadventure, 1 arrested and taken to London.⁷³⁶ In comparison, the local mayor and sheriff's courts preferred the sentencing of fines, amercements and imprisonments for evil-doings, transgression and general disturbances against the peace.

The analysis of the punishment methods in the English municipal courts of selected towns evidenced limited jurisdiction over felonies, however they could still try criminal cases through civic officials who were acting by royal orders in commissions of the peace for urban jurisdictions. The fourteenth century commissions for keeping the peace and order in certain towns were issued by royal appointment to local officials such as mayor and bailiffs and included sometimes the recorder or town clerk. Directed by the royal statutes,⁷³⁷ they were importantly connected to preservation of the peace and provide greater insight into the punishment process in selected English towns from that period. They were usually issued in terms of general lawlessness or more specifically addressed to local officials of the town. For example, between 1327 and 1485, there was one separate commission issued for Bristol in 1332, one for Exeter in 1344, fifteen commissions for York and seventeen commissions for Norwich.⁷³⁸ The keeping of the local peace included the power to arrest and imprison those indicted for the crimes until the arrival of the justices of gaol delivery which was specified in a commission issued for Norwich in 1344.⁷³⁹ The commission of 1351 for York determined the powers of local officials to try felons and trespassers,⁷⁴⁰

of Bristol (1381)'. Bickley, *The Little Red Book of Bristol*, vol.1, pp. 110-113.

⁷³⁶ E.J. Watson, *Pleas of the Crown for the Hundred of Swineshead and the Township of Bristol in the Fifth Year of the Reign of King Henry the Third A.D. 1221*, Bristol, W. Crofton Hemmons, 1902, pp. 131-153.

⁷³⁷ The specification of the enforcement of the local peace by urban commissions can be found in the summaries of the Statute of Winchester (1285), Northampton (1327) and Westminster (1331 and 1361).

⁷³⁸ Kimball, 'Commissions of the Peace for Urban Jurisdictions in England, 1327-1485', pp. 468-471.

⁷³⁹ *Ibid.*, p. 452.

⁷⁴⁰ *Ibid.*, p. 454.

while the 1344 commission for Norwich was specifically addressed to officials named justices, because the local bailiffs who were ordered to keep the peace in 1338 failed to do so.⁷⁴¹

The similarities in the form and personnel of the urban commission to the county justices,⁷⁴² connected the urban jurisdiction to the local crimes heard by the justice of the peace sessions from selected counties. Therefore, in order to demonstrate a comparative analysis with the Polish site of research, I have supplemented my research by the list of crimes and given verdicts of fourteenth century justices of the peace from selected counties.

From Somerset justice of the peace sessions in 1338-41, 97 persons were indicted for a felony, of whom 24 were acquitted, 6 convicted and hanged, 2 turned over to the ordinary as 'convicted clerks', 39 outlawed and 5 summoned with no further process; for 21 no process was noted. Of the 18 persons indicted for trespass, 9 were convicted and fined, 8 were outlawed and there was no result in 1 case. Additionally, three people who had been acquitted of a felony were transferred to the chancery and two were sent to be tried before king's bench.⁷⁴³ The felonies included a large proportion of thefts- nearly half the total, a number of homicides, often accompanied by theft, also a few cases of arson, escape, robbery and burglary. The trespasses included two cases of malefactors and four assaults.⁷⁴⁴

From the 1351-3 Devon peace roll sessions⁷⁴⁵ and the 294 presentments therein, 84 criminals were given sentences: some of the verdicts included 19 felons being acquitted by juries, trespasses and 17 acquittals by jury, 17 convictions (for all or part of the trespass), 27 being given fines and in 3 cases a jury trial being held without result. The above 294 presentments included 95 cases of felony, 190 for trespass and 9 for economic offences. The felonies included many homicides and thefts (grand larceny), 2 cases of petty larceny, also burglary, robbery, rape and

⁷⁴¹ Kimball, 'Commissions of the Peace for Urban Jurisdictions in England, 1327-1485', p. 460. Also, the letter from 10th of December 1338 to the bailiffs of Norwich to arrest suspects and others breaking the peace in town. *Calendar of the Patent Rolls. Edward III, 1338-1340*, London, HMSO, 1898, p. 184.

⁷⁴² Kimball, 'Commissions of the Peace for Urban Jurisdictions in England, 1327-1485', p. 455.

⁷⁴³ 'Assize Roll 769 Somerset 12-15 Edw. III', in Putnam, *Proceedings Before the Justices of the Peace*, pp. 149-179.

⁷⁴⁴ *Ibid.*, p. 176.

⁷⁴⁵ '1351-2 Assize Roll 195 Devon 25-27 Edw. III', in *Ibid.*, pp. 62-86.

one case of petty treason. The trespass included a large proportion of assaults, some against officials, threats of violence and arson, burning a woman, false indictments, forgery and many offences including extortion committed by officials and by their clerks and servants, namely sheriffs, coroners, bailiffs, reeves. The economic offences were receipt of excess price and forestalling of corn and salt.

The area of Yorkshire between 1380-1392⁷⁴⁶ recorded 170 presentments including 3 from East Riding, 6 from North Riding and 16 from West Riding which were transferred to the king's bench. Of these, 11 were acquitted, 4 pardoned, 3 outlawed and 1 acquitted for trespass. Additionally, there is one case of acquittal for felony on indictments in a West Riding session that has not been found on the peace roll and one case where one of the accused was pardoned and there was no result for the other. In general, the peace rolls for the three Ridings contained 161 felonies, 14 trespasses and 4 economic offences. The felonies included nearly 50 homicides, over 50 thefts (grand larceny), many burglaries, a number of robberies and rapes, 1 case of petty treason, 1 case of armed insurrection. Most of the trespasses were committed in the West Riding; they included assaults, cases of extortion in both the West and North Ridings, a forcible entry of a church in the latter. The 4 economic offences were all in West Riding with 3 of forestalling and 1 departure of labourers from the country in the autumn for higher wages.

The above figures of the given punishment for crimes in English counties demonstrate an important point of comparison. In Poland, the exercise of local justice in towns was mainly concentrated in the hands of the local town councils and with only superficial involvement of the royal powers. The result of that practice was that the percentage of local criminals who were acquitted from punishment was rather low, generally not exceeding a few per cent. For example, in Kraków with recorded 262 criminal cases in the years 1554-1625, only 3 criminals were officially released. Similarly, in Wrocław between 1456-1525, capital punishment was given in 454 cases with only 70 convicts later released, about 15% of all those convicted. In both Polish towns, there were no examples

⁷⁴⁶ The statistics covered the years for 1383, 1385, 1391-2 in 'Assize Roll 1145, mm. 1-5 Yorkshire, East Riding 6,7,9, 14-16 Rich. II', in Putnam, *Proceedings Before the Justices of the Peace*, pp. 434-442. For the years 1380 and 1389-92, see 'Assize Roll 1145, mm. 7-8 West Riding 4, 13-15 Rich. II', and for 1390-2 see 'Assize Roll 1145, mm. 9-12 North Riding 14-16 Rich. II', in *Ibid.*, pp. 443-449 and pp. 449-455 respectively.

of criminals being fined. In comparison, in England, the county commission of peace rolls confirm the leading status of royal powers over serious crimes like felonies and reveal that a form of acquittal was much more in use. In the records for Devon, Somerset and Yorkshire, acquittals were often applied. For example, of the 84 criminals sentenced in the years 1351-3 in Devon, 36 were given acquittals. Additionally, 27 convicts were fined for their crimes. Thus a total number of 63 criminals left custody with no physical punishment. Similarly, in Somerset, out of 97 criminals from 1338 -1341 indicted for a felony, 24 were acquitted. Out of 18 indicted for trespass, 9 were convicted and fined. Somerset proceedings also included the form of outlawing, which was applied 39 times for a felony and 8 times for trespass. In Yorkshire, the peace rolls for the years 1380-1392 also contain a number of criminals being sentenced for trespass and felony with the examples of acquittals and pardons for these crimes.

The list of sentences given for crimes evidence that in fifteenth-century Polish towns, mutilation and capital punishment were applied regularly, with only a small percentage of criminals being released. This indicates that application of stricter forms of punishment was the result of the council's developing legal powers in towns based on the German law, strongly focused on their independence and autonomy from overarching royal interference. Consequently, the development of the towns' legal autonomy significantly limited the use of a royal pardon in these areas. In comparison, fourteenth-century English justice of the peace sessions saw a large number of crimes acquitted or fined, with examples of outlaw procedures as well. Additionally, if the case was transferred for further proceedings at the king's bench, the archives did record examples of royal pardons for the crimes committed. The main difference in the judicial process in each country was connected to the sentences given, where local town councils in Polish towns applied physical punishments much more often. In addition, acquittals or fines were not recorded in Poland during the researched period of time. Both English municipal courts' legal procedures and justice of peace sessions instead reached financial rather than physical punishments for a range of criminal offences, including assaults and thefts. Additionally, the criminal could also face the possibility of the royal pardon given at the king's bench – a well-known apparatus used in the English legal process that increased the criminal's

chances to restore the social status after his or hers return to the country.⁷⁴⁷

It is important to note that recorded changes in the procedure of English local criminal law in the following century had significant impact on the judicial process. The urban charters granting the county status made commissions of the peace for urban jurisdictions unnecessary. The most important of these was that the mayor and other local officials of the town were authorized to serve as justices of the peace with expanded powers towards felons and their crimes.⁷⁴⁸ Consequently, the given sentences started to be characterised by more diversity and severity in the application of the law. The fifteenth century records of selected towns like Exeter, Norwich, York and Bristol more often confirmed the pillory, located and used in the town's centre with different forms of punishment connected to it and treated before the municipal courts of these towns.

Additionally, the borough customs demonstrate the selection of preserved archaic physical punishments imposed across England. In the fourteenth century, criminals from Sandwich 'condemned for homicide are to be buried alive in the place allotted to this purpose at Sandown, called the Thiefdowns'.⁷⁴⁹ People were also thrown from cliffs in fifteenth century Hastings: 'And all the persons condemned in this cases of olde tyme shulde be throwen over [the cliff?] called Stortisdale'.⁷⁵⁰ Finally, people were burnt alive according to Waterford regulations for arson, 'And if a street be set on fire by any one, his body shall be attached and cast into the midst of the fire'.⁷⁵¹ Therefore, the growing importance and responsibilities of the local criminal proceedings led to the widespread use of death sentences on criminals in the next centuries with executions becoming a frequent event in the local justice system across the country.⁷⁵²

⁷⁴⁷ For example, being granted royal pardon for serving in the Anglo-French wars or for being willing to serve. Jordan, *From England to France*, p. 133.

⁷⁴⁸ As a result of the 1393 petition, the mayor and twelve aldermen of York were authorized to act as justices of the peace with powers to try felons. However, in 1404 in Norwich, the mayor and four people chosen by the mayor to be justices of the peace could not try felons without the king's writ. Kimball, 'Commissions of the Peace for Urban Jurisdictions in England, 1327-1485', pp. 465-466.

⁷⁴⁹ In 1315, the penalty was drowning. Bateson, *Borough Customs*, vol.1, p. 74.

⁷⁵⁰ In the years 1461-83, there was a custom in Hastings whereby felons were executed by being thrown off a cliff; this was later changed to hanging. *Ibid.*, p. 76.

⁷⁵¹ In fourteenth-century Waterford there were provisions whereby, in the case of a person setting a fire in the town, the guilty should be cast into the fire. *Ibid.*, p. 77.

⁷⁵² The examples can be found in Devon's justice of the peace sessions: between 1351 and 1353 there were 95 cases of felony a year, and this increased to 250 a year between 1598 and 1640 with around 250 death sentences in the first decade of the seventeenth century. In Norfolk, there

6.1.1 Conclusion

In both countries' systems of law at a local level, an important point of comparison can be made from the types of crimes and verdicts given in towns. Polish towns like Wrocław and Kraków in the first half of the fourteenth century developed a criminal law system based on banishment and deprivation of municipal rights for more serious crimes like murder, theft and assault. However, with the development of criminal law, the powers of the town councils to give more severe punishments also expanded. This can be concluded from the examples drawn from towns' court books discussed above, as well as from the *Willkür* and other legal archival documents. In both Wrocław and Kraków, the most common sentences for crimes in the fifteenth century were hanging and decapitation, but there were also increasing examples of criminals being broken on the wheel, drowned and burned alive. Very few criminals were released or pardoned for their crimes. In comparison, the most common form of punishment for local crimes given by fourteenth-century English municipal courts were fines and amerancements. Additionally, the felony crimes were usually punished by the arrest with later delivery to the justices. However, early fourteenth-century justices of the peace sentences were also less severe, with acquittals and fines determined as the most used verdicts for criminal offences including felony.

The study evidences that at the beginning of the fourteenth century, verdicts for criminal offences were similar in towns of both countries. They mainly aimed to fine or exclude the criminal from the social life of the urban community rather than sentencing him to death. However, the differences can be seen in the seriousness of the offences. In Polish towns banishment included cases of homicide and serious assaults while in England, the municipal courts had limited jurisdiction over felony cases which were mainly restricted to the county justices. Importantly, the practice of banishing the criminal for life or for a period of time

were 71 cases of felony in the years 1372 and 1375-9, and by the end of the sixteenth century this had increased to 312 cases of felony and 49 sentences of death (with 58 cases of clergymen who escaped the death sentence because of their social position). In other parts of the country the number of death penalties was similar: in Chester there were 650 indictments of a felony and 90 capital punishments between 1580-89 and 170 capital punishments between 1620-29, while Essex executed an average of 26 people a year from 1597 to 1603. The above statistics were found in Sharpe, *Crime in Early Modern England*, p. 58.; Rawcliffe and Wilson, *Medieval Norwich*, p. 55, and compared to numbers from the research in section 'Local crime and punishment', earlier in this chapter with additional comments on the fourteenth century justice of the peace sessions in selected counties.

was a common occurrence in the legal proceedings of early fourteenth-century European towns, including England and Poland.⁷⁵³ Additionally, the abjuration of the realm occurred through claiming sanctuary for the suspicion or commitment of felonies and was considered as a successful way of avoiding prosecution and possible death sentence from the English municipal authorities.

The analysed punishment statistics show that over the following two centuries, legal responses to local crimes in Polish towns changed to the regular application of mutilation and capital punishment, while fourteenth-century English jurisdiction procedures were strongly focused on fines and acquittals. With time, fifteenth-century records of borough customs and local justice of the peace sessions reveal the introduction of greater number of physical punishments as well. Changes in the verdicts can be connected to changes in towns, where the urban charters granted to English towns separated them from the counties and empowered the municipal communities with more independence and legal responsibilities with the justice in the hands of civic officials.⁷⁵⁴ Additionally, the movement of people required stricter control with the local laws becoming more preventative and deterrent. As a result, the criminal justice contributed to the development of new methods and techniques used by the municipal authorities with the most visceral spectacles of pillories, gallows and the public execution therefore increasing. The involvement of these punishment structures in the legal procedure depended on the kind of crime committed, for example those convicted of multiple robbery were hanged and murderers decapitated.⁷⁵⁵ These make clear that English and Polish towns with the powers to protect the peace and punish wrongdoers regularly used the pillory and gallows in their legal practice.

⁷⁵³ The example of medieval Kraków with similarities to the English structures and procedures that led to abjuration found in Jordan, *From England to France*, p. 27.

⁷⁵⁴ The urban charters of 1373, 1393 and 1396 extended the authority of the municipal officials in Bristol and York, with the office of justice of the peace being granted to the existing system of civic government in these towns. Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 196-202.

⁷⁵⁵ See the earlier statistics about the crime and punishment in selected Polish and English towns. Also, the pillory was often involved in the special form of a trade control.

6.2 The town servants and their direct involvement in execution procedures

The involvement of local officials in the criminal law analysed in earlier chapters shows that their activities were vital to keep order and peace in towns. Furthermore, their extended role in legal proceedings used sets of local commissions and offices which reacted to different forms of crime and law-breaking, including the control of prisons and prisoners. The emergence of these functions coincided with another important element of local criminal law that was practised in public in the fourteenth century English and Polish towns, together with the use of judicial punishment structures like pillories and gallows designated for this practice. The application of the death penalty and other physical punishments evidenced in towns of both countries⁷⁵⁶ required the separate office for that duty, or it was determined to be part of the additional responsibilities of an existing local official. This section of the research will explain what kind of town officials from both countries were directly involved in performing the given judgments in local criminal justice proceedings. In doing so, I will show the need for the office of executioner as a result of the significant changes to the English and Polish criminal law processes in the fifteenth and sixteenth centuries.

The answers will build upon the status of the fourteenth century criminal justice process from the perspective of the execution of justice, with evidence from both countries analysed to discern the common and most distinctive elements of their jurisdiction. Additionally, the obtained research material supplements existing publications about the development and impact criminal justice had on the hierarchy of the municipal officials in both countries and the range of their responsibilities in the area of criminal law. Especially, it underlines the existence and purpose of specially appointed town servants whose duties were to carry out the local judgments and different forms of punishment and execution.

In Polish towns, the process of criminal law that developed from German regulations as a model for the organisation and practice of local courts and their proceedings also determined the position of the urban executioner. He was a specially appointed officer for the execution of local sentences and different forms

⁷⁵⁶ For example, the mentioned earlier fifteenth-century borough customs with given death sentences, also the physical punishment for the market offenders regularly enforced in selected English towns.

of torture. Bartłomiej Groicki in his sixteenth-century account about the orders of the Magdeburg courts and legal regulation called the office of executioner a servant of God and law who performs his duties in the name of royal authority and other superiors. Additionally, Groicki suggests that the executioner was free from any moral responsibilities for his actions because he works in the name of justice, and any justice comes from God:

Because after his action there is no sin in front of the world or God, who is the beginning of any justice. Because everything he does comes from justice not from his desires, and according to St. Paul, the executioner is a servant of God, the servant of justice and his service is very necessary.⁷⁵⁷

The requirements for the role of executioner in various Polish towns grew alongside development of the criminal justice system. What is more, different acts of mutilation and pillory punishment evidenced the close relationship between the work of executioner and given sentences. For example, between 1554-1625, Kraków recorded 262 criminal cases where, apart from capital punishment by decapitation, the sentences included flogging at the pillory, quartering, breaking on the wheel, burning, drowning, beating with a stick and 3 other people being punished by the stocks.⁷⁵⁸ The same is true in Wrocław, where between 1456 and 1525 25 criminals were broken on the wheel, quartered, burned, drowned and buried alive. Significantly, all given punishments required an experienced and available local executioner to perform this specific form of a given sentence.

It is important to note that development of the office of executioner was not constant and was dependent on certain circumstances. Firstly, only the most developed towns could afford an individual who quite often required a house and the clothes for use during executions. If towns could not afford this special service, they often borrowed an executioner from other urban areas, seeking assistance in performing the death sentence, and offering to pay for his stay and work. For example, in a letter sent to Wrocław on 10th of August 1448, the citizens of an unidentifiable town (because of damage to the letter the exact name of the

⁷⁵⁷ *'A wszakże uczynkiem swoim na sumieniu nic nie grzeszy ani przed światem, ani przed Bogiem, który jest początkiem wszystkiej sprawiedliwości. Albowiem co czyni, wszystko za skazaniem sprawiedliwości, nie za żądzami swemi czyni, i owszem, wedle Pawła Św. jest sługą bożym, sługą sprawiedliwości i urząd jego jest bardzo potrzebny'*. Koranyi, *The Order of Courts*, p. 57.

⁷⁵⁸ Uruszczak, Miłucha and Krabowicz, *The Criminal Book of Kraków, 1554-1625*.

town cannot be specified), asked to borrow Wrocław's executioner to enforce the sentence on a local criminal.⁷⁵⁹ Similar procedures can be seen in other Silesian towns like Tarnowskie Góry, which borrowed the executioner from Racibórz in 1549. He earned 14 *florenów* and a year later 11 *florenów*, as the payments for food, ladder and lighting.⁷⁶⁰

One of the first pieces of written evidence about this office in Polish towns is the thirteenth century *Henrykowska Book* from Silesia, describing the death sentence performed by the executioner in Reichenbach⁷⁶¹ on two brothers, Andrzej and Jeszko, accused of three murders in Munsterberg.⁷⁶² The description of the execution also mentions the executioner who performed the sentence:

At this hour, like sons of Babylon, they were surprised by the punitive court of a one judge — Duke Bolko, a Christian sovereign and at this day and this place in Reichenbach, they were decapitated by the one and the same executioner from the justice's judgment.⁷⁶³

In Wrocław, fourteenth-century records evidence the name of local executioner Niklas Pucker.⁷⁶⁴ Additionally, a failed rebellion of the citizens against higher taxes in 1418 resulted in death sentences for six town councillors who were beheaded two years later. The royal edict from 26th of March 1420 specified the names and professions of the rebels of both German and Polish nationality.⁷⁶⁵ In addition, on 27th of March, King Zygmunt Luksemburski (Sigismund of Luxemburg) sent the order to Wrocław town council to punish the rebels physically and financially. As a result, 30 people responsible for riots were sentenced to death by decapitation on a specially constructed scaffold that stood on the market square. This process required the involvement of eight

⁷⁵⁹ APWr., AmW, Dokumenty, sygn. 3372, in Wojtucki, *The Hangman and His Workshop in Silesia, Upper Lusatia and Kladsko County*, p. 33.

⁷⁶⁰ The *floren* was a type of currency. The National Archive in Katowice, 'Akta Miasta Tarnowskie Góry', sygn. 150, cited in *Ibid.*, p. 94.

⁷⁶¹ The medieval Lower Silesian town of Reichenbach is nowadays known as Dzierżoniów.

⁷⁶² Nowadays known as the Lower Silesian town of Ziębice.

⁷⁶³ 'W jednej godzinie, jako synów Babilonu, zaskoczył ich karzący sąd, iż pod jednym sędzią, mianowicie księciem Bolkiem, arcychrześcijańskim władcą, w jednym dniu i w jednym miejscu, mianowicie w Reichenbach, zostali ścięci przez jednego i tego samego kata z wyroku sprawiedliwości'. R. Grodecki (ed.), *Księga Henrykowska [The Book of Henrykowska]*, Wrocław, Instytut Zachodni, 1949, p. 66.

⁷⁶⁴ Davies and Moorhouse, *Microcosm*, p. 167.

⁷⁶⁵ The thirty names mentioned in the royal edict included twenty German and ten Polish names. Additionally, thirty other people were sentenced for banishment. See more in *Ibid.*, pp. 170-171.

executioners.⁷⁶⁶ The king, being aware of the possibility of a second rebellion, closed all streets leading into the market square on the execution day. The decapitated heads of the rioters were boiled, smeared with tar and placed on the town's defensive walls.

Another example from Wrocław, a fifteenth-century town book, specifies the case of Heinrich Dompnig, a local councillor, who, accused of betrayal and other criminal acts, was beheaded on the market square by the town's executioner in 1490, and later buried in the churchyard of Maria Magdalene Church:

*Das tumultuarische Gericht sprach das Todesurtheil und am 4. Juli 1490 wurde er vor dem Rathhause enthauptet und auf dem Kirchhofe von Maria Magdalena begraben.*⁷⁶⁷

[The tumultuous court gave a death sentence, and on the 4th of July 1490, he was (Dompnig) beheaded before the town hall and buried in the cemetery of St Magdalene].

What is important here is that the burial of Dompnig as a criminal in consecrated ground in the churchyard reflects his family position and influence during his career as a town councillor with strong connections to the wealthy and commonly known fifteenth-century Wrocław patrician families like Popplau, Haunold and Horning, with the privilege of a Christian burial.

In Kraków, the earliest records about the local executioners date to the fourteenth century. The accounts of the town's expenses book confirm different sums of money spent on tools for executions. These include 9 *groszy* for the wood, used to burn Geisko in 1392. In 1396, the expenses for wood and straw were required to burn some women, also in 1398 for men, who buried a decapitated man, and in 1399 for wood and straw to burn criminals. The book describes the executioner as an official who was regularly given a salary and had a special function: he was called the *wieszacz* – the hangman.⁷⁶⁸

Additionally, sixteenth-century Kraków records confirm the cases in which the local executioner is mentioned not only as a town's servant but also as a criminal and according to the court proceedings a partner in crime or as a supporter of the

⁷⁶⁶ A order from 27th March 1420 in Stelmach, *A Catalogue of the Medieval Documents*, p. 409.; Wójcik, *The Moment of Fear and Terror*, p. 97.

⁷⁶⁷ Morgenbesser and Menzel, *Geschichte Schlesiens: Ein Handbuch*, pp. 186-187.

⁷⁶⁸ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 47.

accused by hosting them or giving them money or food. For example, in 1580 the local thief and robber Wojciech from Michałowice testified to giving some money to the executioner from Kraków, because the executioner gave him money and food in the past when he needed.⁷⁶⁹ Similarly in 1577, a thief brought stolen items to the executioner to be resold.⁷⁷⁰ In 1578, Maciej Markowicz testified that he used to bring stolen goods to the local executioner.⁷⁷¹ The involvement of the executioners in criminal activities undoubtedly had an effect on their social position in the local community. However, the general status of the executioners in towns based on the German law was mainly dependent on the practice of local custom with the active involvement of the local community.⁷⁷²

It can be concluded that the executioner and his office in the criminal justice proceedings in selected Polish towns became significant because of major developments in local law regulation in the fifteenth century,⁷⁷³ whereby crimes that would have usually been punished by banishment in the first half of the fourteenth century came to be punished by death or torture, which necessitated the employment of an experienced and skilful master of justice.⁷⁷⁴ This special name was the common term used in German law that specifies the qualification

⁷⁶⁹ Akta Miasta Kazimierza [Municipal documents of the city of Kazimierz], AmKaz., K 266, f.129.

⁷⁷⁰ Akta Miasta Krakowa [Municipal documents of the city of Kraków], AmKr., 864, f.216.

⁷⁷¹ AmKaz., K 266, f.117, 287.

⁷⁷² For example, in 1577 in the Silesian town of Lwówek Śląski, after the local furrier took off his hat and asked the executioner to be present at his wedding, he was later prohibited from holding a citizen's rights. However, in 1585 Richard von Dulmen gave an example of Lübeck town where the local executioner was treated as a citizen and was allowed to enter local meetings and sit among them. The examples found in Wojtucki, *The Hangman and His Workshop in Silesia, Upper Lusatia and Kladsko County*, pp. 56-58.

⁷⁷³ Generally, from the end of the fourteenth century, the local office of executioner in Polish towns was confirmed by the increasing number of different forms of death penalties sentenced by the local courts and recorded in the towns' books. The position of executioner was also designated as permanent with a given salary and additional benefits. Later fifteenth- and sixteenth-century German regulation found in the codex of Karol V, the *Constitutio Criminalis Carolina*, had a major legal influence on the towns under German law. It was used to codify legal criminal procedures including that of executioners and their work. The *Carolina* contributed to the development of the executioner's position by instituting more severe sentences than those from the thirteenth and the beginning of the fourteenth centuries. For example, the executioner's duties are outlined in the sixteenth century 'price list' that describes various tortures and forms of capital punishment. The most expensive for towns were usually payments for the executioner to 'tear of the body by the glowing tongs, later dragging to the gallows place, tear off the parts of the skin and quartering', which cost 12 talars. The least expensive involved 'putting at the pillory, burial of the dead body and basic tortures', with the cost of 1 talar. The text of *Constituto Criminalis Carolina* found in J.H. Langbein, *Prosecuting Crime in the Renaissance England, Germany, France*, Cambridge, Harvard University Press, 1974, pp. 167-202.

⁷⁷⁴ The common name for the medieval executioner, often used in the nineteenth century German terminology of authors like Otton Beneke and Werner Danckert. The names like *Meiser* and *Scharfrichtermeister* were terms popularly used to describe this office.

and skills the office required with some medical knowledge the person had to demonstrate to become the executioner. The most important skills included beheading with one stroke of the sword, the experience with torture like cutting off the body parts and flogging, also knowledge about the construction and use of the gallows and pillory.⁷⁷⁵

Apart from the death penalty, another form of public punishment that required the attention of the local legal powers was the pillory. Later sixteenth-century documents such as the *Carolina* and different translations used in various towns included the punishment of the pillory as a part of the executioner's work, 'when the accused shall be publicly put in the stock, pillory, or iron collar ...[and] afterwards the judge shall command that the accused be brought before the court by the executioner and court attendant, well-guarded'.⁷⁷⁶ These legal enforcement procedures demonstrate a contrast to the earlier fourteenth-century laws which determined the pillory as a part of the local officials' duties with no direct link to the executioner's office.

In order to specify who was appointed to the individual position of the executioner in Polish towns, I will briefly analyse the examples from fourteenth-century Kraków with additional information about the involvement of the officials in given regulation. Generally, the criminal justice system in Kraków was in the hands of the town's councillors, with the local courts summoned by the alderman, who also at various points represented the executioner of the sentences: ['the courts are summoned by the alderman and he represents the chairman of the court, also at some point, the guardian of public order, the chief of the police and the executioner of the sentences'].⁷⁷⁷ There are no surviving notes that confirm the alderman being the executioner himself, but he was mentioned as his

⁷⁷⁵ According to the local custom, if the executioner needed more than one attempt to cut off the head of the criminal, he faced being killed by the local community. For example, in sixteenth-century Wrocław, the four unsuccessful attempts to cut off the head of the murderer of a child resulted in the citizens killing the town's executioner afterwards by throwing stones on him. The above statement about executioners' special requirements and knowledge can also be confirmed by the records about the early sixteenth-century local executioners like Christoph Kuhn and his contract exchanged with another executioner named Hans Gotschalig. See more about the biography of Kuhn in Wojtucki, *The Hangman and His Workshop in Silesia, Upper Lusatia and Kladsko County*, pp. 401-404.

⁷⁷⁶ *Constituto Criminalis Carolina* in Langbein, *Prosecuting Crime*, p. 289.

⁷⁷⁷ 'Sądy zagaja wójt, ale ten reprezentuje nie tylko przewodniczącego sądu, ale także do pewnego stopnia i stróża porządku, naczelnika policyji, oraz wykonawcę wyroków'. The representation of executioner by the alderman in early fourteenth-century Kraków is evidenced by Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 14.

representative. Additionally, the town book with the examples of the pillory punishment also records another official directly involved in the performance of corporal punishment, the *woźny sądowy*. The fourth and fifth chapters define his office and responsibilities in the context of criminal justice and imprisonment. In addition, the *woźny sądowy* was also appointed to perform some pillory punishments on local criminals, confirming the assumption of the direct involvement of local officials in the execution of sentences in fourteenth-century Polish towns. For example, the fourteenth century banishment records from Kraków note that in 1383 Hannus Rosinhayn was given the birch. Then with a public announcement made by the *woźny* around the market square, Hannus was banished because of his polygamy. Also, Hennus, a surgeon, was similarly banished in 1393 after he killed a tailor called Reybnik and committed perjury.⁷⁷⁸

What is more, the *woźny*'s direct involvement in the execution of sentences in thirteenth- and fourteenth-century towns under German law is made clear in the town of Lübeck, where the local *woźny* was responsible for performing sentences, including the death penalty.⁷⁷⁹ With time, the development of local law led to the responsibility for carrying out the pillory punishment transferred to a separate office of the town's executioner.⁷⁸⁰ The process of releasing the *woźny* from his execution duties under German law can be evidenced from a royal document of Louis IV the Bavarian⁷⁸¹. In his statement from 1334, the king ordered the *woźny* (*Fronboten*) to be released from the obligation to perform these duties at the court of Regensburg and was ordered to hire the executioner (*Haher*) instead.⁷⁸² The above practice became widespread in neighbouring regions and, together with later codifications of the law, it determined the executioner as a separate office in towns under the German regulation.

⁷⁷⁸ Bąkowski, *Criminal Justice in Kraków in the Fourteenth Century*, p. 26.

⁷⁷⁹ W. Scheffknecht, 'Scharfrichter. Vom römischen Carnifex bis zum frühneuzeitlichen Staatsdiener', *Randgruppen der Spätmittelalterlichen Gesellschaft*, vol.5, pp. 122-172, cited in Jeziorski, *Social Outcasts in the Largest Prussian Towns*, p. 76.

⁷⁸⁰ *Ibid.*, p. 164. However, in some fifteenth- and sixteenth-century German towns like Cologne, if the town could not afford or use the local executioner, the capital punishment was performed by *Schwertträger*, one of the town's servants, as a part of their duties.

⁷⁸¹ Louis IV, called the Bavarian was the king of the Romans from 1314, King of Italy from 1327 and Holy Roman Emperor from 1328.

⁷⁸² Based on Schorer, *Die Strafgerichtsbarkeit der Reichsstadt Augsburg 1156-1548*. For more about fifteenth-century criminal proceedings and the active role of the local executioners, see description of the tortures in medieval Augsburg. C.A. Hoffmann, 'Strukturen und Quellen des Augsburger reichsstädtischen Strafgerichtswesens in der ersten Hälfte des 16. Jahrhunderts', *Zeitschrift des Historischen Vereins für Schwaben und Neuburg*, vol.88, 1995, pp. 62-81.

The Polish executioners and their involvement in the enforcement of the local criminal justice in the fourteenth and beginning of the fifteenth centuries forms a useful comparison to the similar role that was practised in English towns and their legal process. Among the points of comparison are the powers and legal possibilities the towns used in accordance to the criminals and punishment for the crimes.

My earlier research shows that, in the English towns examined, fourteenth-century punishment practice involved a hierarchy of local officials who were directly involved in the proceedings. Royal documents from that period usually transferred the legal powers for keeping the peace and order to municipal officials, identified as active agents in execution of the final verdicts. Further support for this statement can be demonstrated by the additional regulations of local charters which confirmed that for certain crimes committed, for example, breaking the rules of the assize for bread and ale, the mayor, bailiff and commonalty were empowered to confine the evil-doers and also to inflict punishment.⁷⁸³ In most cases, the financial punishment was applied, however some crimes were treated with the use of the pillory as well. According to Langland, it was a duty of civic officials to administer fourteenth-century London's food trade fairly with the use of pillory for offenders.⁷⁸⁴ Similarly, the York Ordinances of 1301 included penalties that increased with the severity of the offence and the recidivism of the offenders, with corporal punishment being often applied (in the form of the pillory) against bakers and brewers. Also, a 1347 Bristol Charter confirmed the adoption of London rules about pillory punishment for bakers, while the Norwich customal from the *Book of Pleas* (1454)⁷⁸⁵ determined the punishment of the pillory for regrators, forestallers, butchers, brokers and tiplers for their offences. As the pillory and its usage is analysed in more detail later in the chapter, the following section shows how the English local officials who were involved in corporal punishments are comparable to the aforementioned Polish examples.

⁷⁸³ The local Charter granted for Bristol on 24th April 1347 by Edward III in Harding, *Bristol Charters, 1155-1373*, p. 109.

⁷⁸⁴ A.V.C. Schmidt (ed.), *William Langland. The Vision of Piers Plowman*, London, Everyman, 1987, p. 26.

⁷⁸⁵ The fourteenth century 'Laws and Customs used and upheld in the City of Norwich since ancient times', from the *Book of Pleas, Concerning Regrators and Forestallers* in Hudson and Tingey, *The Records of the City of Norwich*, vol.1, p. 182.

Therefore, in comparison to the *Carolina* regulation and the impact that it had on towns under the German law, English towns also experienced some changes to their criminal law process. The fourteenth century legal powers transferred to the local officials such as the mayor, sheriff and bailiffs meant that, apart from keeping the peace and order in town, they were also responsible for punishment. That responsibility can be seen in the work of justices of the peace as well.⁷⁸⁶ There are a significant number of statutes that empowered local officials to carry out sentences. The 1351 Statute of Labourers, apart from giving new legislation regarding local justices and their sessions, also determined labour wages and work regulations, with lords, bailiffs and constables being appointed as enforcement officials. In a case where labourers refused to take an oath before the above officials, or committed theft, they were to 'be put in the stocks by the said lords, stewards, bailiffs and constables of the towns for three days or more or sent to the next gaol, there to remain until they satisfy themselves. And the stocks be made in every town for such occasion, between now and the feast of Pentecost'.⁷⁸⁷ Similarly, Statutes of 1429 and 1433 empowered justices of the peace and mayors to proceed against users of faulty weights and measures either 'by inquests, or by examination'.⁷⁸⁸ Another Act of 1433 that regulated the candle trade, empowered justices of the peace and mayors to examine and search (by weighting or otherwise) candles and other wax products and to punish any violators found guilty in such examinations.⁷⁸⁹

Importantly, in the Beggars Act of 1495, which concerned vagabonds, beggars and other 'suspicious' people, local officials were determined to be those performing the punishment:

the sheriff, mayors, bailiffs, high constables and petty constables... within three days after this Act proclaimed, make due search, and take or cause to be taken all such vagabonds, idle and suspect persons, living suspiciously and them so taken to set in stocks, there to remain by the space of 3 days and 3

⁷⁸⁶ The justices of the peace and their role in criminal law and giving verdicts in cases of felony were analysed earlier in the chapter. Their involvement in the local criminal law proceedings can also be evidenced from the sixteenth century pre-trial examinations that occurred after the defendant had been apprehended. See more in Langbein, *Prosecuting Crime*, pp. 63-103.

⁷⁸⁷ The text of the Statute of Labourers 1351 was found in A.B. White and W. Notestein (eds), *Source Problems in English History*, New York, Harper and Brother Publishers, 1915, pp. 146-152.

⁷⁸⁸ '1429 and 1433 Hen. VI The Statutes about Weights and Measures', in Langbein, *Prosecuting Crime*, p. 69.

⁷⁸⁹ '1433 Hen. VI The Pre-Marian Statute About Candle Manufacture', in *Ibid*.

nights and there to have none other sustenance but bread and water; and after the said 3 days and 3 nights to be had out and set at large and then to be commanded to avoid(depart) the town.⁷⁹⁰

These regulations were mainly royal directives that transferred the responsibility for carrying out punishments to local officials in different areas of the country. However, the practice of local law that strengthened and developed the autonomy of the officials in criminal proceedings also gave them possibilities to delegate their punishment duties to appointed wardens and town guards reacting to any breach of the peace in towns. One example of such delegation is the position of special supervisors who were responsible for enforcing regulations regarding sale, production and trade, with powers to perform punishments as well. A local wine-seller, John Penrose, was in 1364 punished by four supervisors for the sale of wine in London:

that John Penrose shall drink a draught of the same wine which he sold to the common people; and the remainder of such wine shall then be poured on the head of John Penrose; and he shall forswear the calling of a vintner in the City of London for ever, unless he can obtain the favour of our lord the king as to the same.⁷⁹¹

Apart from the officials being directly involved in the punishment process, the local citizens were also appointed to perform verbal and physical attacks on criminals with the permission from the town's authorities. In Helen Carrel's article we can find the following passage referring to fifteenth-century Dover, where 'mayor and bailiffs should place a cut-purse in the pillory and all the peple that will come ther may do hym vylvone [physical or verbal attack]'.⁷⁹² What is more, the interpretation of Henry Summerson suggests that the above permission to apply physical punishments was given to the locals already in the thirteenth century, when 'in 1288 the villagers of Sompting in Sussex were amerced, because when they captured an outlaw 'they should have at once beheaded him as a fugitive, after they knew him to be an outlaw', but instead took him into

⁷⁹⁰ The Beggars Act of 1495 against vagabonds and beggars was found in J.R. Tanner, *Tudor Constitutional Documents A.D. 1485-1603 with an Historical Commentary*, Cambridge, Cambridge University Press, 1922, p. 473.

⁷⁹¹ Myers, *English Historical Documents: 1327-1485*, p. 1059.

⁷⁹² Carrel, 'The Ideology of Punishment in Late Medieval English Towns', p. 304.

custody, from which he escaped'.⁷⁹³

The English punishment practice performed by towns' officials in the fourteenth century is comparable to Polish towns, where their officials were also actively involved in the physical and verbal forms of carrying out the sentence. Additionally, the legal powers that were given to the sheriffs, mayors and bailiffs so that they uphold peace and order were delegated to wardens and supervisors, and this can also be seen in the Polish towns. The above development resulted in later codification of the legal procedure and more severe sentences of the *Codex Carolina* applied in Polish towns, while English urban areas started giving the executioner a regular function after granted liberties and increased powers of the civic authorities in terms of law enforcement.⁷⁹⁴

Following this statement, the first time when the name of English executioner was mentioned in the English records is in Edward Hall's *Chronicle* of the years 1538 and 1556. The document specifies that at the first day of September 1538, London hangman called Cratwell together with two other men were hung at Clerkenwell, for robbing a booth at St Bartholomew's fair in London.⁷⁹⁵

The earlier, thirteenth- and fourteenth-century legal proceedings across the country did not record the name of the executioner himself, however they did confirm the practice of that office through different capital punishments ordered by the royal justice. For example in thirteenth-century York, in 1293, two men described as 'hangers of thieves' were convicted of having allowed the condemned at York escape to the church.⁷⁹⁶ Also Norwich from 1319 provides the example of the local executioner with the name of Richard Fyshere le Hangeman, who refused to do his job without first being paid.⁷⁹⁷ The limited records about the executioners from fourteenth-century English towns give no

⁷⁹³ Summerson, 'Attitudes to Capital Punishment in England', in Prestwich, Britnell and Frame, *Thirteenth Century England VIII*, p. 125.

⁷⁹⁴ Fourteenth- and fifteenth-century royal charters giving a county status for particular town with privileges and autonomy for their officials. Before that time, early fourteenth-century local courts were not authorised to order the mutilation of offenders or to hang them, except the case when thieves were caught red-handed. See more in Rexroth, *Deviance and Power in Late Medieval London*, p. 112.

⁷⁹⁵ A. Marks, *Tyburn Tree: Its History and Annals*, London, Brown, Langham, 1908, p. 45. Also, W.D. Hamilton (ed.), *A Chronicle of England During the Reigns of the Tudors from A.D. 1485 to 1559*, vol.1, London, Camden Society, 1875, pp. 84-85.

⁷⁹⁶ JUST/1/1286 m 33d. in Summerson, 'Attitudes to Capital Punishment in England', in Prestwich, Britnell and Frame, *Thirteenth Century England VIII*, p. 128.

⁷⁹⁷ *Ibid.*

evidence for a regular office who carried out the public corporal punishments as a result of the municipal courts' verdicts. Instead, the procedure was organised ad hoc with the involvement of locally hired groups of people.

In comparison to Polish towns and their regularly appointed executioners, English executions were usually performed by different local men and included members of the local offices as well. In his article 'Attitudes to Capital Punishment in England, 1200-1350', Summerson provides the example from 1325, where a local man from Cheddar, John Gouiz, was convicted of theft and handed over to the bailiff for execution. However, the bailiff handed John over to the under-bailiff and the under-bailiff in his turn put John in the hands of the two tithingmen from Cheddar.⁷⁹⁸ The chaotic process of transferring the obligation sometimes caused further arguments about who should execute the sentence. In fourteenth-century Exeter, for example, 'Adam, the miller of Teignton, convicted of homicide at an Exeter gaol delivery, escaped because of quarrel between the men of Crediton burgh and South Tawton about doing judgment on Adam'.⁷⁹⁹

The process of delegating the executions to a different group of people supports the statement that there was no legal regulation in fourteenth-century English towns about sentences being performed by the separate office of the executioner. Additionally, the social prejudice and stigma of this profession led to the conclusion that it was rather a form of responsibility of the major local officials who were keeping the peace and order in towns and had the ability to transfer that duty to a lower-ranked official.

It is correct to assume that the office of the English executioner was the result of the adaptation of criminal justice regulation to the developing legal status of towns, characterised by the royal rule of law and order.⁸⁰⁰ With time, the growing authority and legal powers of the town officials towards citizens and criminal activity forced changes to the criminal regulation and its justice in terms of granted

⁷⁹⁸ JUST/1/1286 m 33d. in Summerson, 'Attitudes to Capital Punishment in England', in Prestwich, Britnell and Frame, *Thirteenth Century England VIII*, pp. 129-130.

⁷⁹⁹ JUST/1/186 m 15. in *Ibid.*

⁸⁰⁰ However, the thirteenth and early fourteenth century examples of using different forms of torture and capital punishments for the most serious crimes like treason, in the reigns of Edward I and Edward II, were treated as a demonstration of the king's power over his enemies rather than a municipal form of criminal justice. The examples of the punishment process, including hanging of the felons in 1285 and 1317, can be found in Musson, *Crime, Law and Society in the Later Middle Ages*, pp. 180-182.

powers to try felons,⁸⁰¹ which resulted in more severe sentences performed by the local executioners.

Consequently, the increased number of death sentences, which required the existence of the executioners and their work, started to appear in the records of criminal cases. Apart from Cratwell and his London execution in 1538, Hall's Chronicle also records a 'hangman with the stump-leg' whose death was described in a sixteenth-century document.⁸⁰² On 2nd of July 1556, he was accused of theft and driven in a cart to Tyburn with four other criminals, 'the ij day of July rod in a care v. unto Tyborne; on was the hangman with the stump-lege for stheft, the wyche he had hangyd mony a man and quartered mony, and hed e mony a nobull man and odur'.⁸⁰³

In other parts of the country the executioner and his role were also well known. For example in Norwich, where in 1551 William Mordewes, a baker, after examination confessed to public conversations with customers in which he said, regarding the people who do not obey the king's proclamation nor the king's proceedings according to the food prices and fall of money, 'that if it pleased the king to make him hangman to great many gentlemen, he could find in his heart to hang a great many of them'.⁸⁰⁴ Furthermore, the Norfolk proceedings and the records of local deaths such as hanging for stealing a sword, or cutting a purse, include a 1592 case of the offender being hanged, drawn and quartered for treason. This required a skilful person to perform that kind of punishment.⁸⁰⁵

My research demonstrates that one of the major differences in the executive practice of English and Polish municipal systems of law was the period when the executioner officially appeared in the records of criminal law and its procedure. The existence of this office in Polish towns by the end of the fourteenth century was connected to the growing importance of the councils' legal judgments, which

⁸⁰¹ As a result of the urban charters granted to fourteenth-century English towns.

⁸⁰² The executioner and his crime were described in the diary of Henry Machyn, a merchant tailor who made notes about sixteenth-century London crimes and punishment practices. See J.G. Nichols (ed.), *The Diary of Henry Machyn, Citizen and Merchant-Taylor of London, from 1550-1563*, London, Camden Society, 1848, p. 109.

⁸⁰³ 'Who had hanged many men and quartered many, and had [done] many a noble man and other'. Personal translation.

⁸⁰⁴ The cases from the Norwich Depositions 1549-1554 found in Langbein, *Prosecuting Crime*, pp. 84-89.

⁸⁰⁵ See Chapter 5 in A. Hassell Smith, *County and Court: Government and Politics in Norfolk 1558-1603*, Oxford, Clarendon Press: Oxford University Press, 1974.

led to the increase in corporal punishments for local crimes. In England, these changes occurred later, as can be seen in sixteenth-century records about the number of crimes and types of given sentences in my chosen towns. Specifically, apart from the ancient principles and local customs about the death penalty which remained in some local jurisdictions,⁸⁰⁶ there was a visible increase in the number of capital punishments starting from the end of the fifteenth century, which is after urban liberties and new judicial arrangements in the counties.

Additionally, the increased number of death sentences and other corporal punishments required skilful and experienced persons to carry them out. The usually low social status of this position, however, excluded main local officials from that function and confirmed the need for the individual position in the municipal regulation. For example, fourteenth-century English records stigmatised certain categories of people as practising marginal crafts, with the executioner's profession being placed between people of the lowest social class including 'heralds, common women, jugglers, and beggars who made themselves out to be cripples so as to attract alms'.⁸⁰⁷ As the main research of this thesis project is focused on the municipal criminal law proceedings, the social position of the English executioners and their dependence on local officials, together with comparison to the wider European examples, would require further additional and separate research.

⁸⁰⁶ Mentioned earlier, the borough customs and the examples of medieval capital punishments performed by the local communities of towns.

⁸⁰⁷ B.L. Harl. MS 45, fos. 71 verso-72 recto. in Summerson, 'The Criminal Underworld of Medieval England', p. 200.

6.3 Places and means of execution of judgments in the selected towns

At the end of the fourteenth and the beginning of the fifteenth centuries, the punishment for a crime in various English and Polish towns was closely connected to the active involvement of the local officials and the citizens of the area. Moreover, the level of the punishment, including the death sentence, was dependent on the criminal law regulations the town had developed, usually from the granted liberties and other royal acts. These legal instruments determined the legal position of the privileged town towards other urban areas and confirmed its authority in the system of law enforcement.

In the Polish towns of Wrocław and Kraków, the most visible elements of fourteenth-century criminal justice were gallows and pillories located, according to the urban topography analysed in the second chapter, in specially selected areas. The medieval documents confirm that the first gallows started to appear outside the town gates, usually on the main roads leading to the town, to indicate the town's legal ability to punish wrongdoers and criminals.



Figure 25: A drawing of Wrocław 1536-37 by an artist from the retinue of Palatyn Ottheinrich.

Available online at <http://www.dolny-slask.org.pl/606208.foto.html>, [accessed 19 July 2016].

The records from 1346 and the *Księgi Szosu*, a book of the town's taxes from 1370, mention Szubieniczna Street (Gallows Street) located in the area of Brama Sawkowa, on the line of the town's walls, today's Partzant's Hill.⁸⁰⁸ Additionally, a sixteenth-century drawing of Wrocław clearly shows the town's gallows, located on the outskirts of the town (on the left side of the drawing) together with the local criminals hanged and broken on the wheel. It is important to note that the breaking wheel was a special torture method performed a short distance from the gallows and used for most serious crimes, usually multiple murders and robberies. The Polish medieval legal records lack a detailed description of this execution procedure, however the sixteenth century iconographic materials give

⁸⁰⁸ See more in M. Goliński, *Wrocławskie Księgi Szosu z lat 1370-1404* [The Tax Books from Wrocław, 1370-1404], Wrocław, Atut, 2008.

an impression of how the punishment looked. The location of the gallows outside the town, in addition to being a warning sign, was also connected to sanitary regulations, as the smell of the dead bodies and the possibility of disease were problems for close, crowded communities. Examples of the local criminals executed in this area of Wrocław include a description of a hanged man dressed in nice-looking red boots 'hubschen rothen Kleide in Stiefel'.⁸⁰⁹ Another town's gallows were probably located in the centre of the town, close to the pillory which stands to this day in front of the town hall. The remains of the medieval gallows were found during eighteenth-century excavations, together with an inscription dating from 1515, which indicates the use of this form of punishment in the city centre in the sixteenth century. Archival records also confirm that sixteenth-century wooden gallows stood on the market square close to the town hall and were removed on 11th of February 1653. Unfortunately, there are no earlier documents that confirm the use of this particular gallows in fourteenth-century Wrocław.⁸¹⁰

In addition to the local gallows, there was a special place for burial of the bodies of executed criminals. However, the place of burial in medieval Wrocław was dependent on certain factors. Generally, the criminal's body was treated with no respect and it was often put in the common ground under the gallows or in a shallow ditch in a nearby area. After the special request from the family, the body was sometimes given back for a consecrated burial. What is more, the execution on the market square usually guaranteed that the body was given to the family and buried in the churchyard. For example, on 28th of August 1517, the decapitated body of Caspar Lebe was buried in the cemetery of the Maria Magdalene church. The same day, Hans Siegersdof was buried in the cemetery of St Barbara.⁸¹¹ Also, the day after the execution of Carl Poley, on 17th January 1585, the body was given to the family and buried in the cemetery of St Elizabeth.⁸¹²

In Kraków, the first town's gallows, as in Wrocław, were also located outside the

⁸⁰⁹ On 18th September 1508, there was an execution of a man dressed in 'hubschen rothen Kleide in Stiefel'. Pohl, *Die Jahrbücher der Stadt Breslau*, p. 191.

⁸¹⁰ On 11th February 1653, the old wooden gallows were removed. Biblioteka Uniwersytetu Wrocławskiego sygn. 2974 II, s. 56 v, cited in Wojtucki, *The Public Places of Executions*, p. 23.

⁸¹¹ *Ibid.*, p. 166.

⁸¹² *Ibid.*, p. 167.

town walls, in Błonie. The area is the hilly outskirts of the town and located some distance from the town's walls. The location of the gallows outside the town is confirmed by the chronicle already in 1312, after the unsuccessful rebellion of Alderman Albert against Władysław Łokietek, Duke of Kraków and the future King of Poland. After they had been defeated, some rebels were:

[‘dragged by the horses through the town and to the gallows located outside the town, where they were hanged and broken by the wheel’].⁸¹³

Additionally, the Kraków archives from 1589 record a special type of hanging performed outside the town walls: [‘the criminal will be taken away to the field, hung by the executioners, and left for the birds’].⁸¹⁴

As local laws developed, so did the architecture of gallows improve and adapt. The fifteenth century turn to a frequent use of capital punishment saw the town gallows transformed from a wooden structure into a brick building. This established the gallows as a permanent architectural element of the town, with regular use in the execution of local judgment. The changes to the construction of the gallows were the result of its common use, as well as weather conditions, which had detrimental effects on its wooden fabric and contributed additional costs the town had to pay. For example, the sixteenth century reparation costs of the Wrocław gallows included in 1533 the replacement of the wooden beams, also stairs and the platform.⁸¹⁵ The higher quality brick elements were a better solution for the gallows with a high number of local death sentences performed there through the years.

Apart from the gallows, another visual form of criminal justice commonly practised in fourteenth-century Wrocław and Kraków was the pillory. This was mainly used to punish local thieves, cheating sellers and other petty criminals in towns.

⁸¹³ *‘Niektórych zaś z mieszczan krakowskich, sprawców i przywódców buntu, na postrach i przykład dla drugich, aby się podobnej wystrzegali zbrodni, kazał pojmać i końmi włączyć po ulicach, a potem wieszać albo w koło wplatać’.* The text of the process can be found in Mrukówna, *The Chronicles*.

⁸¹⁴ *‘Przez mistrzów ma być w pole wywiedziony, pod niebo i między ziemie podwieszony, gdzie go ptak przeleci i podleci, a tak go skarże, iżże już tego więcej nie będzie działać. Co jest obieszony’.* AmKr., 865, ff. 10, 13-14 and f. 6, cited in Kamler, *The Villains*, p. 416.

⁸¹⁵ Between the years 1533 and 1598, Wrocław replaced the wooden elements of the gallows six times including the new structure from the brick elements in 1574. The information about the maintenance work of the gallows was found in the research of Wojtucki, *The Public Places of Executions*, p. 79.

Importantly, the pillory structure in Wrocław and Kraków followed the regulations of Magdeburg law, which required the existence of a punishment site in the centre of the town together with specific instructions about the kind of punishment to be performed there. The Magdeburg law translated by Groicki instructed that, as punishment for a theft inside the town, for goods worth less than 3 *złote*, the thief should be punished at the pillory with his hair cut off. In a later regulation, his ear or nose was to be removed or the thief branded on the face:

[If the stolen thing was worth less than 3 *złote*, and if the thievery was made during the day, the criminal should be put on the pillory to be physically punished and his hair to be cut off, which was commonly called *poenam in cute et crinibus*. (The above law of cutting the hair was applied where the people commonly wore long hair; after they started to wear short hair, the law changed so instead of cutting the hair, they started cutting off the ear, stigmatised the face and calling the new law *poenam in cute et carne, non in crinibus*)].⁸¹⁶

The Wrocław pillory was located in the south-east part of the market square just outside the town hall. The first wooden structure was adapted for flogging, pouring away watered-down wine and to display the cut hands of the thieves (Fig. 26).⁸¹⁷ In the fifteenth century, the wooden pillory was replaced, as it was in Kraków, with a stone building and became an important part of the local public jurisdiction. The description of the new pillory states that it was made of sandstone and had a shape of trapezium with an intricately carved openwork cupola. Also, on the very top of the pillory, there was a 70 centimetre high figure of an executioner, known commonly as Roland, with a sword and bunch of rods.⁸¹⁸ Additionally, the pillory had metal rings to which convicts were tied during the punishment. The importance and meaning of the pillory for Wrocław town authorities was underlined by the fact that the new form of this punishment tool was made in 1492 in the workshop of Paul Preusse, a Saxon architect and a master builder, also the architect of the South side of the Wrocław town hall and

⁸¹⁶ 'A jeśliby rzecz kradziona mniej niż trzy złote ważyła a kradziejstwo by się zastało we dnie, u prągi ma być bit i włosy mają być oberznione, co zową łacinnicy *poenam in cute et crinibus*. Które prawo około obrzynania włosów (pisze tamże) na ten czas było dane, kiedy ludzie długie włosy nosiły; potym, kiedy krótkie włosy poczeli nosić, tedy kawalec ucha albo nosa miasto włosów urzynają, a jeśli żeby ucha nie miał, na twarzy bywa nacechowan, i nazywano to po tym *poenam in cute et carne, non in crinibus*'. 'Iure Municipali articulo 38', in Koranyi, *The Order of Courts*, pp. 201-202.

⁸¹⁷ Buśko, 'The Market Square in the Centre of Medieval Wrocław', in Piekalski and Wachowski, *Wratistlavia Antiqua*, vol.2, p. 240.

⁸¹⁸ Maisel, *The Legal Archaeology of Poland*, p. 128.

its interior.

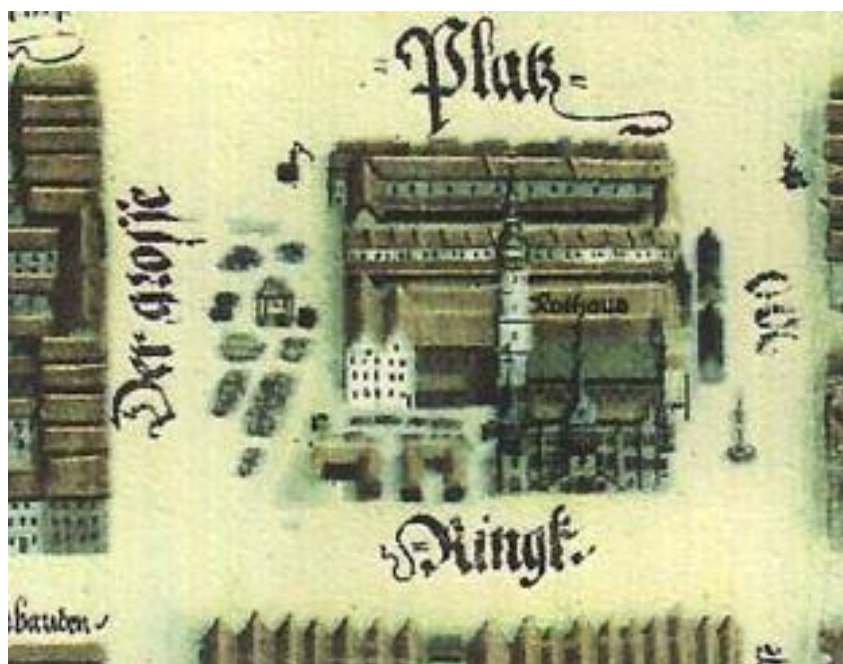


Figure 26: Detail of Wrocław market square in 1562, with the town's pillory located on the right side of the plan.

The map was made by B. Weiner and is available online in the Digital Library of University of Wrocław, [website], <http://www.bibliotekacyfrowa.pl/dlibra/docmetadata?id=39530&from=publication>, (accessed 21 of July 2016).

In Kraków, the pillory was similarly located close to the town hall and Spiski Square.⁸¹⁹ The archives confirm the location in the centre of the market square between St. Wojciech and Sukiennice, where Jan from Komczy was punished for blasphemy against the Castellan of Kraków by being tied to the pillory for two days:

[And they punished Jan from Komczy for blasphemy against the Kraków castellan, by two days being tied to the pillory, located on the market square between the Church of St. Wojciech and

⁸¹⁹ H. Walendowski, 'Kamieniarz Wykonał, Kat Wychłostał' ['The Stonemason Built, the Executioner Flogged'], *Nowy Kamieniarz*, vol.46, 2010, p. 29.

Sukiennice.]⁸²⁰

At the beginning of the fourteenth century, the pillory was a wooden construction, replaced by a brick building in the sixteenth century. Until it was removed in the nineteenth century, the Kraków pillory was an important part of public punishment against local criminals as well as an architectural element of the town's market square (Fig. 22).

⁸²⁰ *'...I ukarali Jana z Komczy za bluźnierstwa przeciw Kasztelanowi Krakowskiemu dwoma dniami kary przywiązania do pręgierza na Rynku pomiędzy Kościołem Św. Wojciecha a Sukiennicami się znajdującego'*. From fifteenth-century chronicle written by Jan Długosz and cited in Janikowski, 'Dawny Pręgierz w Krakowie' ['The Old Pillory in Kraków'], *Pomniki Dawnego Prawa*, 2009.



Figure 27: The arrow indicates the place of the medieval pillory, which used to stand on the market square in Kraków.

Photo from private collection.

Like the Polish examples, English local authorities also carried out criminal punishment in designated urban areas. Already in the thirteenth century, royal *Judicium Pillorie* treated the pillory as part of the urban market system and instrument for the punishment of typical offences.⁸²¹ Additionally, a main statute of the 'Assize of Bread and Ale' determined that if a baker or brewer breached

⁸²¹ *Judicium Pillorie* of 1266/7 in Rexroth, *Deviance and Power in Late Medieval London*, p. 11.

the assizes, he was to be amerced for the first three breaches, in proportion to the offence, provided they were not serious breaches.⁸²² However, if a baker committed a serious breach, making farthing loaves short in weight by more than 2s, he was to be put in the pillory. The pillory punishment is found in other local documents, such as the York Ordinances of 1301 about offences relating to breaking pricing rules, as well as the 1347 Bristol Charter which confirmed the town's adoption of London rules about the punishment of the pillory for bakers:

[T]o inflict the following punishment on bakers breaking that assize in the same place, namely, to draw such bakers, delinquents against that assize, upon hurdles through the streets of the town aforesaid and otherwise to chastise them as in our said city of London is similarly used for such bakers.⁸²³

Additionally, the Norwich custom from the *Book of Pleas* (1454) designated the punishment of the pillory for the offences made by regrators and forestallers, as well as by butchers, brokers and tiplers. For example, the forestallers and regrators who broke the sales regulation:

[A]nd if a second time he be convicted of the like offence perpetrated in the city let him lose all his merchandise to the use of the Bailiffs and nevertheless let him be set upon the pillory by the decision and judgment of the court of the city [...].⁸²⁴

For butchers:

[...] if he does this customarily and be convicted thereon let him be punished with the pillory and nevertheless give satisfaction to the complainant of the damages to be adjudged...⁸²⁵

The pillory served as a heavy punishment against economic offences (usually pricing and food offences) and because of the central location in towns, served also as a symbol of disgrace for the punished person. For example, in fourteenth-century London, the pillory with the whetstone ordered for liars and beggars was

⁸²² The statute was attributed to the Act 51 Henry III, which occurred around 1266-1267 and was one of the first laws that regulated the production and sale of food in English towns. G. Seabourne, *Royal Regulation of Loans and Sales in Medieval England*, Woodbridge, The Boydell Press, 2003, pp. 75-76.

⁸²³ 24th April 1347 Charter in Harding, *Bristol Charters, 1155-1373*, p. 109.

⁸²⁴ The fourteenth century 'Laws and Customs used and upheld in the City of Norwich since ancient times', from the *Book of Pleas, Concerning Regrators and Forestallers* in Hudson and Tingey, *The Records of the City of Norwich*, vol.1, p. 182.

⁸²⁵ From the *Book of Pleas, Concerning Butchers, Brokers and Tiplers* in *Ibid.*, p. 186.

considered as the most important innovation in the system of municipal punishments. In particular, the symbolic meaning of these sanctions according to Frank Rexroth's research was 'to restore the state of transparency' by punishing the offender with humiliation of having a whetstone hung on the neck and public destruction of the representatives of falsity used in the offences such as documents, food and wine.⁸²⁶

However, the English pillory and its purpose sometimes caused arguments between the officials involved in this practice, for example in York, where in 1317 there was a dispute between the abbot of St Mary's and the mayor of the city of York, Nicholas le Flemmyng, concerning the assizes of bread and ale in Bootham. It was stated that abbot had a 'borough' of Bootham with the assize of bread and ale of his tenants including the court and justice given to him by royal charter and that no bailiff or other royal official could change the liberties given to the borough. However, it was alleged that mayor determined the area as a 'suburb' of York and illegally pilloried men and tenants of the abbot about baking and brewing contrary to the assizes, treated as a trespass offence.⁸²⁷

The location of the English pillories is discernible in a similar way to the Polish examples, using archival documents concerning medieval topography with additional drawings of the selected urban areas. In Bristol, the 1347 Royal Charter granted the town authorities permission to build the cage and imprison evil-doers, disturbers of the peace and any person found wandering by night.⁸²⁸ However, apart from its prison function, there is no direct indication that the above structure acted as the pillory for town's offenders. Significantly, important details about the Bristol pillory are in William Worcestre's fifteenth-century account published as *The Topography of Medieval Bristol*. The notes describe the town's main buildings, including the pillory. According to his description of Wynch Street (the name Wynch derives from the pillory to which Worcestre refers; it was later changed to modern Wine Street): 'The length from the High Cross going along the street of Wynch Street to the pillory totals 150 steps. And continuing from the pillory as far as Newgate, nine times 60 that is 560 steps'.⁸²⁹ Furthermore, 'the

⁸²⁶ Rexroth, *Deviance and Power in Late Medieval London*, p. 119.

⁸²⁷ 25th January 1317 in *Calendar of the Patent Rolls. Edward II, 1313-1317*, London, HMSO, 1898, p. 681.

⁸²⁸ Harding, *Bristol Charters, 1155-1373*, p. 109.

⁸²⁹ Neale, *William Worcestre*, p. 5.

length of the road from St Leonard's Gate as far as St Werburgh's church measures 120 steps to the centre of the entrance of St Werburgh's church. And thus continuing past the High Cross, going on along past the public Pillory building, continuing to the oldest gate of the town wall, the Oldgate'.⁸³⁰

Apart from the fifteenth century topographical description of the place, Worcestre also indicates what the public pillory looked like and what was the main purpose of that structure:

The house of punishment and the public pillory, situated about the middle of Wynch Street [Wine Street today], in front of the end of the road from Pithay Gate, is circular, constructed in fine freestone work, as broad as [it is] high, with cells and windows with close bars of wrought iron. A circuit of the said public building measures in length ... steps. And above the pillory building is the device of timber work, built by carpenters, to pillory wicked people or wrongdoers in baking of bread, tourtes, etc.⁸³¹

In contrast to this example, the Wroclaw pillory was a different type of building, made from sandstone and crowned with an intricately carved openwork cupola. Additionally, on the very top of the pillory, there was a figure of an executioner holding a bundle of whipping canes. Undoubtedly, both pillories were substantial structures with great importance for the local justice system and respected by local town officials and the citizens of these towns.⁸³²

What is more, Bristol had another pillory located on the north side of Temple Street, as revealed in Worcestre's description: 'at the end of Tucker Street, and going alongside the river Avon, by the meadows on the north side of the river, measures 420 steps to the turning of the lane to Temple Street at the pillory'.⁸³³

He also records that:

The second lane in the said road fronting the river Avon measures about 90 steps; and it goes along to turn off by a certain local wooden bridge, which a horse cannot cross, to the meadows alongside the river Avon; and so returning to Temple Street opposite the pillory near Temple church, it measures as

⁸³⁰ Neale, *William Worcestre*, p. 39.

⁸³¹ *Ibid.*, p. 67. Neale added that *tourtes* were a type of 'rough brown bread, containing husks, probably used for trenchers'.

⁸³² The Wroclaw stone pillory that can be seen on the market square today is but a faint copy of the original 1492 construction.

⁸³³ Neale, *William Worcestre*, p. 89.

above 90 steps. The width of the said lane measures 4 yards.⁸³⁴

When Norwich gained a mayor and became a county in 1404, the cage with a pillory over it was erected and stood at the eastern end of the Guildhall. The comparison to the previous example of Wrocław pillory in terms of the meaning of this building to the local community can be seen in the characteristic features, where Norwich pillory had a special cage under it, covered with lead, and a vane placed on the crucifix on the top.⁸³⁵ Additionally, in 1453, Alderman Thomas Alleyn gave 50 marks to rebuild the pillory and make a house under it to buy and sell corn, with Thomas Veyle being responsible for the construction work.⁸³⁶ Therefore, the market pillory was used not only for trade offences but also regularly punished different misbehaviour from the area. For example, in 1539 it was used to punish John Pratt for giving a false statement of his visit to Norwich as a Lord Privy Seal's servant. He 'went round the market with a bason rung before him and a paper on which was written, *for false feynyng*, and after had both his ears nailed to the pillory, and then cut off'.⁸³⁷ Similar punishment was given to Robert Burnam, a parish clerk of St. Gregory who after saying that 'There are too many gentlemen in England by five hundred' was imprisoned as a 'fautor of rebels', and after the statement given in the front of the mayor and the alderman that 'Ye skrybes and pharasies ye seke innocent bloode', was adjudged to the pillory and to have his ears nailed thereto.⁸³⁸ In addition to the town's pillory located on the market square, a prior's pillory can also be confirmed. The documents about the 1443 Gladman's Procession and few days of riots in the city against the church authorities, which were followed by a violent attack upon the priory by the mayor and the commonalty,⁸³⁹ recorded that a crowd of some citizens broke into guildhall and destroyed the prior's pillory on their way.⁸⁴⁰

In Exeter, the town's pillory was mentioned in relation to the local market and

⁸³⁴ Neale, *William Worcestre*, p. 91.

⁸³⁵ C. Parkin, *The History and Antiquities of the City of Norwich*, London, J. Robson, 1783, p. 243.

⁸³⁶ Where he rebuilt, painted and adorned the common well-house. Blomefield, *An Essay*, vol.3, p. 235.

⁸³⁷ From the court books found in *Ibid.*, p. 421.

⁸³⁸ *Ibid.*, pp. 220-265.

⁸³⁹ According to the jury. What is more, the procession of the town authorities and citizens by John Gladman led to the imprisonment in London of the mayor and four year suspension of the city's liberties. R. Hilton, 'Status and Class in the Medieval Town', in Slater and Rosser, *The Church in the Medieval Town*, pp. 10-22.

⁸⁴⁰ Hudson and Tingey, *The Records of the City of Norwich*, vol.1, pp. 343-347.

trade where 'the dean and chapter owned four selds near the pillory and two newly built in Northgate Street which is leased for 40s per year in the 1380s'.⁸⁴¹ Additionally, the *Miscellaneous Rolls* confirm the central location of the pillory as early as 1314, when Robert de Bodman was granted a cellar on High Street opposite the pillory:

Monday after Saint Luke, 8 Edward II 1314. Robert de Bodman, son and heir of Stephen de Bodman to Thomas Soor and Alice, mother of said Robert. Grant of a cellar in High Street opposite the Pillory.⁸⁴²

As this research is primarily based on the places of punishment and execution sites in towns of both countries, the English sources about the fourteenth century municipal gallows and burial places of the criminals will also be revealed. In Worcestre's description of Bristol can be found an important record about the gallows as a place for executing criminals for serious criminal acts. He describes it as being by the nunnery of the Holy Virgin Mary Magdalene:

And from the said church of the community, or the parish church of St Michael, as far as the tall stone appointed as the boundary of the franchise of the town of Bristol, near the cross and the site of the gallows for the legal punishment, by hanging and putting to death, for traitors and thieves: 420 steps, climbing all the time up the hill. But the said stone, which is the end of the franchise of the county of Bristol from the high cross on the south (the high cross marked the official centre of the county of Bristol), to the place of executing punishment, measures in all, with 120 more steps, 540 steps.⁸⁴³

Significantly, the place of execution commonly called 'the gibbet or gallows',⁸⁴⁴ determines the area located on the hill with the close distance to the local churches. According to Worcestre's topography, the road leading to the gallows, called St Michael Hill, was going through the community of St Mary Magdalene, also the church and tower of St Michael, and later to the collegiate church of Westbury.⁸⁴⁵ We can say that, from the very start, the symbolic meaning of this act of punishment performed in the specially chosen area, emphasises the role

⁸⁴¹ Kowaleski, *Local Markets and Regional Trade*, p. 184.

⁸⁴² 'The City of Exeter: Miscellaneous Rolls', no. 42, in Wylie, *Report On the Records of the City of Exeter*, pp. 383-406.

⁸⁴³ Neale, *William Worcestre*, p. 87.

⁸⁴⁴ *Ibid.*, p. 187.

⁸⁴⁵ *Ibid.*

of the church as the last resort for the criminal who, as a sinner was looking for absolution for his or her crimes. Furthermore, the procession of the criminal through the sacred area to the execution site reveals the judicial coexistence of the church authorities and municipal legal powers and confirms their importance towards enforcement of local justice.

In York, the existence of the town's first gallows is evidenced from the royal records. On 31st of March 1379, Edward Hewison was executed at Tyburn, commonly named after the London gallows⁸⁴⁶ and located in a distance from the centre of the town. After his death, his body was hung on a gibbet in the field where he had committed his crime, that is in Sheriff Hutton Road. On 27th of November 1488, John Chambers and several others were executed at Tyburn. Later in 1537, that location was used for other executions as well. Lord Hussey was hung and quartered there as well as William Wode, who was beheaded and quartered for treason; while Sir Robert Aske was beheaded in the Pavement, the centre of the walled city, where:

at five o'clock, the Sheriff and his officers, with a troop of Light Horse, and a large number of citizens took the body to Heworth Moor, east of the Wind-mills, then standing, where a gibbet-post had been erected 35 feet high. The body having been hung at the top of the gibbet, and all things cleared away, the Sheriff read his proclamation, stating that any person or persons found taking down the body or damaging the post would be imprisoned for twenty years.⁸⁴⁷

Apart from Tyburn, York had a gallows in Burton Stone Lane which belonged to St Mary's Abbey and were first recorded as being there in 1444-5. Another gallows stood on Garrow Hill on Green Dykes Lane, and is recorded as being there from 1374-5 until 1444-5.⁸⁴⁸ The gallows which belonged to Holy Trinity Priory had been covered by the St James Chapel as early as 1150-4, and the gallows on the Hull Road, at one point called Gallows Hole, were abandoned by

⁸⁴⁶ The possible explanation of the common name Tyburn for the Knavesmire gallows was found in Tillott, *The City of York*, pp. 491-498.

⁸⁴⁷ W. Knipe, *Criminal Chronology of York Castle; With a Register of Criminals Capitally Convicted and Executed at the County Assizes, Commencing March 1st, 1379, to the Present Time*, York, C.L. Burdekin, 1867.

⁸⁴⁸ These gallows belonged to St Leonard's Hospital, part of four great ecclesiastical liberties within the city. Apart from St Leonard's, other areas included St Mary's Abbey, the Cathedral Chapter and those of the archbishops. Jones and Palliser, 'York 1272-1536', in Addyman, *The British Historic Towns Atlas*, vol.5: York, p. 39.



Figure 28: The remains of the York Tyburn, located on Knavesmire some distance from the town's walls.

Photo from <http://www.geograph.org.uk/phftp/3241888>, (accessed 3 March 2015).

In Norwich, the existence of the city gallows is accounted for in the city rolls from the sixteenth century. Therefore, following the riots during the Kett's rebellion of 1549, gallows were built outside the gate and used to punish 30 traitors, who 'were hanged, drawn and quartered at the gallows out of Magdalen-gates; in all about 300 were executed, of which 49 suffered in like manner at the gallows by the cross in the market'.⁸⁵⁰ The gallows outside the Magdalen-gates were also used in 1615. The 'priest Thomas Tunstall was hanged, drawn and quartered at the gallows out of Magdalen gates, his head was set on a pole on St. Benedict's-gates, and his quarters hung on four other gates'.⁸⁵¹ Additionally, the city rolls

⁸⁴⁹ Jones and Palliser, 'York 1272-1536', in Addyman, *The British Historic Towns Atlas*, vol.5: York, pp. 37-48.

⁸⁵⁰ Blomefield, *An Essay*, vol.3, pp. 220-265.

⁸⁵¹ *Ibid.*

from the same period describe the use and location of the gallows where:

all persons executed on the gallows out of Magdalen-gates, could claim a right to be buried in this churchyard; which shows, that all the land lying on the west side of the road, which is now in St. Paul's parish, originally belonged, and paid tithes to this parish, and that the triangular hill where the gallows formerly stood, now given to lay much on, was also in this parish.⁸⁵²

The above description reveals the significant location of the gallows, located similarly to Bristol example of the execution place on the hill and within the close distance to the local church community.



Figure 29: View of the Magdalen Gate about 1720 by Henry Ninham, made from a drawing by John Kirkpatrick.

Norwich Castle Museum 1954.138, Todd 5, Norwich, 114b.

⁸⁵² F. Blomefield, *An Essay Towards A Topographical History of the County of Norfolk*, vol.4, London, W. Miller, 1806, p. 440.

The location of the Exeter gallows was similar to other English and Polish towns and placed some distance from the city centre. The first confirmed gallows in Exeter was at Livery Dole, located partly in Heavitree and partly in St Leonard's parish. The chapel at Livery Dole was first mentioned in 1279: 'prayers were offered for souls of the criminals executed here'.⁸⁵³ Additionally, the executions at Livery Dole⁸⁵⁴ in Exeter feature in sixteenth-century records. For example, in 1531 Thomas Benet, who was arrested for heresy, was burnt at Livery Dole, which was named as a common place of execution: '[...]Soon after burnt at Livery Dole, then the accustomed place of execution'.⁸⁵⁵

In the next year, Exeter opened another place of execution called Ringswell, located between the Honiton and Sidmouth roads, also outside the town walls. The location was used in 1532, when 'John Waltheman was executed as a traitor at Ringswell, for being given to blindly prophesying did interpret and apply them to the King'.⁸⁵⁶

⁸⁵³ G. Oliver, *Ecclesiastical Antiquities of Devon: Being Observations on Many Churches in Devonshire*, Exeter, The Exeter and Plymouth Gazette, 1828, p. 45.

⁸⁵⁴ In 1465, the name Lyvery Dole had a meaning 'share of the common field'. J.E.B. Gover, A. Mawer and F.M. Stenton, *The Place-Names of Devon*, Part II, Cambridge, Cambridge University Press, 1932, p. 440.

⁸⁵⁵ Oliver, *Ecclesiastical Antiquities of Devon*, pp. 16-17.

⁸⁵⁶ *Ibid.*



Figure 30: The sixteenth century location of Exeter's Ringswell, close to the main junction (today's Sidmouth Road), located some distance from the town's walls.

Photo from private collection.

As a direct consequence of the location of the sixteenth century Exeter gallows, placed outside the town's walls on Heavitree⁸⁵⁷ and in close proximity to a large tree (cut down in 2013), this place also performed another function: to hang the executed heads of the criminals as a warning sign for any persons newly arrived to the town.⁸⁵⁸ Just under the gallows there was a common cemetery for burial of the bodies of criminals. The local excavations from 1994 confirmed six skeletons that were dug up from the garden of a property in Honiton Road. This followed similar discoveries in 1926 and 1973.⁸⁵⁹

⁸⁵⁷ In 1345, the area was named Hevytre. Gover, Mawer and Stenton, *The Place-Names of Devon*, p. 439.

⁸⁵⁸ *Ibid.*, p. 440.

⁸⁵⁹ G.J. Harrison, *The Penalty was Death*, Tiverton, Halsgrove, 1997, p. 10.

6.3.1 Conclusion

The study of the setting and architecture where public punishments in selected towns of England and Poland occurred demonstrates that in the local criminal justice system of both countries, the pillory was one of the main elements used to punish various offenders. In English urban areas, for the offences like theft, contraventions of trade, breaking food production regulations, offences against the pricing and selling of local products, together with financial penalties and the confiscation of illegal items, the criminal faced public degradation with the use of the pillory. Additionally, political liars who endangered peace in the city as well as 'work-shy' and sturdy beggars were also punished by the pillory. In comparison, the Polish offenders that faced the pillory included local thieves, cheating sellers and other petty criminals in towns. What is more, the examples of blasphemy against the town authorities were similarly sentenced with this public form of punishment.

English towns like York, Bristol, Norwich and Exeter and Polish towns like Wrocław and Kraków all demonstrate similarities in the model of local legal architecture, with the pillory placed in the town centre and the public use of that structure in the judicial proceedings through its central location. Differences, however, can be seen in the architecture details of the above buildings. In Bristol, the pillory constituted a special structure with more than one storey of a round shape and a quite large space for cells and windows, while in Wrocław, the pillory had a trapezoid shape with an upper cage for criminals, made of stone.



Figure 31: The drawing of the pillory on the Gerichtslaube building in medieval Berlin illustrates what the Bristol pillory could have looked like.

Historical engraving 1883. Source: [website], <http://www.alamy.com/stock-photo-man-in-the-pillory-on-the-gerichtslaube-building-in-berlin-in-medieval-47916942.html>, (accessed 21 July 2016).

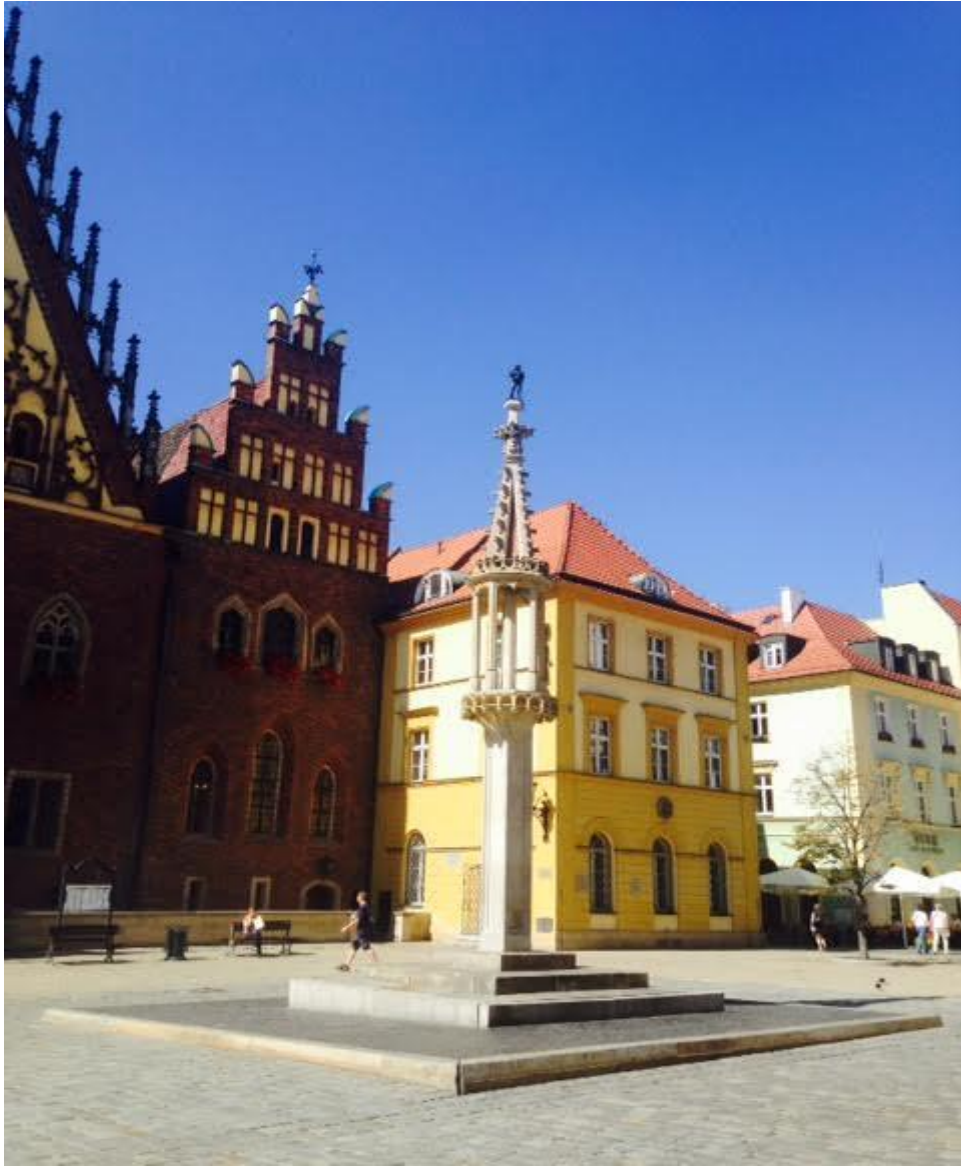


Figure 32: A photo of the Wrocław pillory today.

From a private collection.

The research shows that both buildings represented the importance of the enforcement of local legal regulations. This statement can be supported by the specific architecture and restoration work regularly ordered by town officials in both countries. Additionally, the central location of the Polish and English pillories, placed a short distance from the market square and the guildhall, underlines the status of legal powers the towns developed. This presumably was to embed within the community the authority of the officials responsible for enforcing the law.

In addition to pillories, the comparison of the towns' gallows enabled examination

of where places of execution were situated. Polish towns of Wrocław and Kraków and English towns of Bristol and Norwich confirmed both conditions, that is, a distance from the town's walls and a hilly area as a place for the gallows in terms of the specific location of the execution place.⁸⁶⁰ Located on the outskirts of the urban area, the gallows evidenced the town's practice in performing the death sentence with additional preventative effect on potential criminals trying to enter the town. The special location of the gallows and their purpose within criminal law were also determinants of the relationship between the royal justice and the legal powers of the selected towns. As indicated from the selection of crimes in the early fourteenth-century, the locally-given sentences at that time were mostly banishment, which was used for a different crimes,⁸⁶¹ whereas in the fifteenth and sixteenth centuries, there was visible increase in more severe punishments such as mutilation or capital punishment, performed on the towns' pillories and gallows. The crimes punished by the gallows in Polish towns varied and included murders, adultery, rapes, multiple robberies, while the English criminal records show limited use of capital punishment by the municipal authorities with high crimes like treason, heresy or treasonous actions against the king being publicly punished by the gallows.⁸⁶² There is, however, evidence that English towns not only enforced royal judgments and did impose their own capital punishments as a result of the granted powers and preserved customs.⁸⁶³ For example, fourteenth-century keepers of the peace were endowed to determine felony cases,⁸⁶⁴ while the Charters of 1373, 1393 and 1396 significantly extended the judicial authority of the officials and empowered them 'to correct, punish, enquire, hear and determine all matters as well of all felonies, trespasses, misprisions and

⁸⁶⁰ The English towns like York and Exeter also regularly used the local gallows located on the outskirts of the town. However, the area of the location was rather flat.

⁸⁶¹ According to Frank Rexroth's research, the London ordinance from 1382 concerning bawds, procuresses and prostitutes, stated that sexual deviations and prostitutes after the third conviction were punished by banishment from the city. Additionally, if a priest was discovered with a woman for the third time, he was banished from the city forever. Rexroth, *Deviance and Power in Late Medieval London*, pp. 172-174.

⁸⁶² The criminal justice regulation of the chosen English towns shows that local ordinances and proclamations of the town authorities for the local crimes and misbehavior used mostly a fine with public punishment on the pillory and banishment for the majority of the offences. The gallows punishment was usually given for high crimes and performed as a result of the county court sessions in the fourteenth century towns examined here.

⁸⁶³ As evidenced in borough customs, archaic punishments like marooning on rocks, burying alive or throwing off cliffs remained in some local jurisdictions.

⁸⁶⁴ First, appointed to assist the sheriff in his policing duties in the counties, in the reign of Edward III, the keepers of the peace were given powers to hear and determine felony and trespass cases. Musson and Ormrod, *The Evolution of English Justice*, pp. 50-52.

extorsions'.⁸⁶⁵

Additionally, the special areas designated for burial and prayers for the executed criminals were a further common element used in both countries' enforcement processes. These were usually located a short distance from the execution site, outside the town walls, in the form of churches or graveyards. For example, the special burial place for criminals in Exeter was confirmed to be Heavitree, just under the gallows area. Furthermore, chapels for intercession for the dead were built: at Livery Dole there was a place for prayers to be said for executed criminals. This chapel was comparable to places for prayer and burial of criminals in Polish towns. In 1406, following the burial of executed local councillor Andrzej Wierzynek in un-consecrated ground outside the city walls of Kraków, his son Mikołaj founded a special church of St. Gertruda in the same place where his father was buried. This established the usual place where local criminals were buried, becoming commonly known as the 'graveyard for the beheaded'.⁸⁶⁶ Apart from Exeter, the special regulations towards burial of the executed were found in Norwich city rolls, which describe the use and location of the gallows where all persons executed at the gallows out of Magdalen-gate could claim a right to be buried in this churchyard. The modern excavations also put some light towards the burial place for criminals in medieval York. In 2013 there were found skeletons in the Knavesmire area dating back to the 1460s. The place of finding was the common ground for a local Tyburn.⁸⁶⁷ In comparison, the Polish town of Wrocław generally did not respect the burials of fourteenth-century criminals, however, after a special request, the regulation allowed the families to organise the consecrated burials in one of the cemeteries of the town's churches.

⁸⁶⁵ The 1393 York Charter that empowered the city's mayor and twelve aldermen to punish the felony cases from the city and suburbs. According to the 1373 Bristol Charter, the city's mayor and sheriff were to hear and determine less serious criminal offences including trespass and cases concerning workers, labourers, victuallers, and were only given powers to inquiry and arrest into felonies which had to await goal delivery and sentencing by a quorum of justices, of which the mayor was to be a member. Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 202-203.

⁸⁶⁶ H. Zaremska, 'Miejsca Kaźni w Krakowie w XIV i XVI Wieku' ['The Places of Torture in Kraków in the Fourteenth and Sixteenth Centuries'], *Kwartalnik Historii Kultury Materialnej*, vol.40, no. 3, 1992, p. 311.

⁸⁶⁷ More about the excavations in York, [website], <http://bbc.co.uk/news/uk-england-york-north-yorkshire-31656838>, (accessed 21 June 2016).

6.4 Chapter conclusion

The purpose of the sixth chapter of this study was to demonstrate the main elements that characterised the enforcement of judgments in both English and Polish local regulation, analysed in terms of their common determinants. The result of the research shows that local crimes were heard in the municipal courts, with significant division in England into the practice of the local and royal jurisdiction that dealt with certain types of crimes. The felonies heard at the local justice of the peace sessions were differentiated from crimes of treason, which were exclusively reserved for the king's court. Significantly, the municipal courts had the majority of the civil cases with limited numbers of criminal offences. These included market offences, local breaches of the peace, quarrels and other petty crimes committed by their citizens. However, by the late fourteenth-century certain English towns and cities had their own justices of the peace that resulted in the increased legal powers to hear and determine felonies and trespasses.⁸⁶⁸ In contrast, the majority of Polish towns' criminal justice was in the hands of local officials, while, in uncertain cases, the town authorities asked for legal advice from the main centre of German law, Magdeburg. The thirteenth and early fourteenth-century system of banishment for felony crimes in both countries was similarly enacted, with a common tendency towards more frequent use of corporal punishment and the death penalty in later formulations of the local law. However, there were not a great number of people executed for felony in English towns who were necessarily from the town itself or as a result of the judgment of the towns' courts. For example, in the 1374/5 Norwich Leet Roll, out of 20 criminal offences, 10 resulted in arrest and the gaol delivery. Additionally, in 1390/1, out of 21 criminal cases, 9 persons were arrested. What is more, the county peace sessions also evidenced the limited use of the death penalty towards felony cases. From the analysed statistics only Somerset records confirm the death penalty as a result of a committed crime with six criminals being convicted and hanged.⁸⁶⁹ It is important to note that the gaol delivery and justice of the peace sessions,⁸⁷⁰ twice a year, significantly limited the number of criminal trials that

⁸⁶⁸ However, it depended on the individual status of the town. For example, York's 1393 Charter granted the city's mayor and twelve aldermen the power to hear and determine all felonies and trespasses, while according to the 1373 Charter, Bristol's mayor and sheriff were to hear and determine less serious cases like trespass and only arrest felons who had to await gaol delivery.

⁸⁶⁹ From a total of 97 persons indicted for felony.

⁸⁷⁰ The requirement of the quorum (1420) and the consequent overlaps in personnel between the

could be prosecuted within the county where the offence had been committed. Despite the difficulty of knowing how effectively the crime was punished, the fifty-year period with averages of conviction rates at gaol delivery shows that they did not exceed 50% of all gaol delivery cases.⁸⁷¹ In comparison, Polish criminal records show a similar frequency of death penalties in the area where the municipal courts were operating. In Wrocław, the average number of capital punishments was 5 a year, while in Kraków it was even less, with only 2 deaths a year. Furthermore, the analysed number of criminals sentenced to death and different forms of corporal punishment in the late fourteenth- and fifteenth-centuries in Polish towns shows that developing German regulations were more direct and explicit in their verdicts than those given in English towns at that time. Specifically, both Kraków and Wrocław's municipal records confirm the capital punishments like breaking on the wheel and quartering being used on local criminals which were proceeded by the public spectacle of tortures, while in England these forms of punishment were usually restricted for the king's traitors, however with some exceptions.⁸⁷²

In both countries the similarities in the increased application of death penalties can be seen in the fifteenth and early sixteenth-century legislation regarding the legal procedures associated with the office of the executioner, who was officially delegated to perform a number of public punishments including death sentences. Therefore, it is evident that execution of the judgments was connected to the active involvement of the local officials according to the given sentences and judicial tools, such as pillories, which were commonly located in town centres, and gallows, commonly located on hills outside the town's walls. The public spectacle of physical punishments imposed on local criminals was determined as the common method in developing criminal justice in towns of both countries. Considered as the consequence of the local customs and individual peace regulation, the town's pillory was mainly ordered for minor offences, often

assize justices and peace commissioners meant that it was usually convenient to hold peace sessions at a time when the justices were delivering the county goal. The coincidence of sessions also offered an opportunity for the central court justices and local men of law present at the peace sessions to exchange communication and other informal issues. Musson, *Crime, Law and Society in the Later Middle Ages*, p. 128.

⁸⁷¹ Musson, *Public Order and Law Enforcement*, pp. 210-211.

⁸⁷² In comparison to hanging as the punishment for felons, public methods like drowning, burning and quartering were usually determined as a form of punishment for fourteenth-century English traitors.

economic and trade disputes with a strong element of dishonesty. Additionally, as well as flogging, the offender could also receive more serious punishments involving mutilation such as having an ear cut off and shaving off the hair-for theft or having a whetstone hung round the neck-for liars and beggars. However, these kinds of offences were usually dependent on repetition of the offences with exclusion of felonies and other serious crimes. It can be concluded that the frequent sentence of the pillory was designed to gather large groups of local residents in order to ensure the public humiliation of offenders.

The first half of this chapter shows the scope of the legal powers the local officials were granted to impose public punishment. As demonstrated by the role of the Polish *woźny sądowy* together with English mayors', sheriffs' and bailiffs' responsibilities, the work of these officials was transferred from the higher rank official to the lower one and was characterised by hierarchical dependency and the delegation of duties.

Consequently, this chapter has demonstrated differences in the control enacted over empowered local officials. English towns maintained close control and supervision between central and local powers, while in Poland the lack of a strong relationship with the apparatus of royal government resulted in the town councils' advanced autonomy in the criminal law area. Therefore, the selected English towns remained subjected to one particular system of the criminal law procedure while Polish towns continued to experience different influences of German and Polish court practices with varied forms of punishments imposed on local criminals.

Finally, this chapter has evidenced the common ground of both Polish and English legal systems, built upon municipal criminal laws and the hierarchies of the officials involved in the process. The study also evidenced the autonomy that occurred in each, established through preservation of the peace. This was made possible by application of different sets of criminal justice regulations to repress crime and punish criminal behaviour, the main determinants of law and order directives in the fourteenth century municipal areas of England and Poland.

7. Conclusion

*Wan dem sunder wirdt abgesprochen das leben so wirt er mir
unter meine handt gegeben.*⁸⁷³

The thesis has argued that the development of criminal justice was fundamental to the fourteenth century transformation of the local law and towns' legal procedure. Moreover, the criminal justice methods commonly employed by the local authorities subsequently emphasized their role in dealing with the crime and punishment of the offenders as a part of the municipal enforcement processes in the researched urban areas.

The thesis has compared for the first time the distinctive elements that characterised local criminal justice in England and Poland and provided a comparative viewpoint on local justice by analysing the individual manifestations of the criminal law in towns. The importance of this research lies in the evidence of the common features and variants in local criminal justice that developed in both English and Polish urban areas during this period. In particular, it shows the capacity for legal creativity and growth within the territorial, political and jurisdictional areas that characterised medieval England and Poland. Further, it sheds new light on the transnational parallels of relations between royal interference and local initiative to the legal autonomy in the chosen towns.

The fourteenth century has been used as a reference point in order to identify the main elements in the process of application of law in the individual municipal regions. The evidence supports the notion that the application of criminal justice in the selected medieval English towns of Exeter, Bristol, York and Norwich, and Polish towns of Wrocław and Kraków, was inextricably connected to the organisational, territorial and economic development of these urban areas. The municipal organisation was thus essential for the subsequent political position of each town and the autonomy the town could possibly gain, within the boundaries

⁸⁷³ 'When it is decided that the right to live is taken away from the sinner, he is put under my hand'. The inscription taken from an executioner's sword, this being one of the forms used in the practice of local criminal justice in medieval English and Polish towns. The inscription was made at the end of the sixteenth century and the sword is currently kept in the museum of the town of Jelenia Góra in Poland.

of royal regulation and a system that prioritised royal wishes over all else. It is also evident that the English and Polish towns studied in this dissertation had in common growing ambitions for their organisational advancement as well as establishing regulation of certain municipal laws. In this way, the relationship between the Crown and towns' elites, as well as the royal acceptance of urban development resulting from increased populations and expanded local businesses, significantly influenced the aspirations to autonomy of these towns, enabling them to receive ranges of privileges and grants to support the area of local law.

Chapter 2 has shown that the model the chosen towns provided for smaller places had important implications in the legal dimension. The growth of administrative and legal proceedings including criminal justice was modelled on the larger towns, which advised and supervised the neighbouring towns about legal issues and applications of the given law.

In practice, however, the legal guidance appears to have been different in many aspects. Material from Wrocław as well as a range of documents issued for smaller Silesian towns included a local version of *Sachsenspiegel Versio Vratislaviensis*. This document not only confirmed the dominant legal position of Wrocław but also significantly limited the smaller towns and their individual attempts for interpretation of the legal proceedings. The English cities like Bristol and York did not have such a clear dependency status. Furthermore, the varieties of privileges granted and legal regulations issued suggest that only bigger and well organised towns could maintain a long-term cooperation with the apparatus of royal government. For example, the Charters of 1373 and 1396 which raised Bristol and York to county status also established the geographic boundaries of these cities' liberties and confirmed the extended jurisdiction with the granted powers of the justices of the peace.⁸⁷⁴

The importance of this thesis is that alongside the examination of the mechanisms shaping the legal status of fourteenth-century towns in my chosen areas, it sets out the specialised skills and aspirations demonstrated by the administration of local government. Consequently, the local ruling elites' own positions appear to have had significant impact on towns' judicial and

⁸⁷⁴ Liddy, *War, Politics and Finance in Late Medieval English Towns*, pp. 202-203.

administrative expansion, providing in Bristol and York⁸⁷⁵ the fullest expression of self-government (outside of the Palatinates) under a monarchical regime — a county status and development of criminal jurisdiction. In addition, there were a variety of ways the local offices of sheriff, *woźny sądowy*, coroner and early police units maintained law and order within the cities and provided the evidence of exchanged forms of cooperation and common aims directly linked to the local law proceedings. This thesis positioned the sheriff as dependent on the local mayor, however, both offices were representatives of the local community and directly associated with the royal authority in terms of legal and social development for aspiring towns. In comparison, the autonomous legal powers of the Polish town councils were revealed with the distinctive forms of action used mainly to modify or restrict the responsibilities of the municipal officials including the office of *woźny sądowy*.

As this thesis has argued, alongside the confirmed tendency to extend legal autonomy in the towns, the criminal law proceedings in both countries were largely modified by the top-down decisions of national authorities. The privileges and liberties granted to individual towns provided the status for the legal and administrative officials and confirmed their involvement in maintaining peace and order in the municipal centres of both countries. This investigation has shed a new light on the direction of relations between the royal authorities and the local offices involved in the towns' jurisdiction. It is clear that English towns were dependent upon royal influence and, as a result of their judicial and administrative cooperation as well as political support, could hope to receive liberties and privileges including the powers to hear and determine serious criminal cases.⁸⁷⁶

In Chapter 3, the evidenced examples of outlaw status and the process of hue and cry prove the ancient common roots of the legal methods used against criminals and their crimes in medieval towns of England and Poland. However, it also shows the overriding royal authority between granting and withdrawing the jurisdictional powers of the selected towns. Englishmen like Henry Bodrugan and

⁸⁷⁵ Importantly, during the fourteenth century, towns like Exeter and Norwich did not obtain county status.

⁸⁷⁶ For example, the grant of county status to the English towns of Bristol and York resulted in the extension of judicial powers for civic officials. However, Bristol's mayor and sheriff were given powers to hear and determine less serious criminal cases like trespass, and felonies had to await a gaol delivery. In comparison, York's 1393 Charter provided the city's mayor with the fullest jurisdiction including all felonies.

Thomas Courtenay, and Polish examples of comparable noblemen, exemplified the social distance between nobles and lower classes, directed by the royal limitations of the judicial powers of fourteenth-century municipal courts, where the superior authorities made the key decisions and could pardon certain outlaw criminals irrespective of the municipal view. The selective procedures towards those accused of crimes in chosen areas were commonly dependent on the severity of the crime and the social position of the criminal. The evidence of significant distinction between the role of the Crown and responsibilities in criminal law proceedings of municipal courts in the selected towns suggests that effective judgment was dependent on a wide range of legal procedures and relations provided by different dimensions of law in force in these towns.

In *The History of English Law*, Pollock and Maitland have explained that in Anglo-Saxon laws, imprisonment occurred as a means of temporary confinement.⁸⁷⁷ Chapter 5 of this thesis confirms the above statement according to fourteenth-century municipal prisons, however it also reveals their increasing role among the methods employed to control crime by both English and Polish officials. The number and location of towns' prisons in both England and Poland were associated with the scale of local wrongdoing and misbehaviour and were used to indicate the range of legal powers that were entrusted to locals to deal with the crime. Significantly, the prisons were a very visible constituent of the municipal rights the selected towns had and, together with local gallows and pillories, constituted crucial elements in their legal procedures of the punitive and preventative functions.

There is nothing to suggest that the number of criminals tried before the local courts of England and Poland, as well as the numbers sentenced to death and mutilation in towns at the end of the fourteenth and the beginning of the fifteenth centuries, evidenced an increasing tendency to corporal punishment verdicts in both countries, in contrast to less severe judicial sentences seen in the thirteenth century. Through the careful analysis of the kind of crimes the municipal courts of selected towns prosecuted, this thesis shows how limited were the jurisdictional rights of the aspiring English urban elites towards the serious criminal cases, in contrast to the Polish division into autonomous units of the town

⁸⁷⁷ Pollock and Maitland, *The History of English Law*, vol.1, p. 49.

councils and their wide range of judicial powers. As was demonstrated in Chapter Six, the local judgment imposed on criminals shows the similar late-fourteenth century transformation of the municipal laws in England and Poland. Therefore, together with the development from the grants of privileges, the towns similarly extended their powers to investigate crime-scenes and perform post-mortem examinations of victims. However, as this thesis has proved, the autonomous judicial powers of the town councils largely supported by the provisions of German laws predominated over the royal influences in the making and maintenance of local peace in Poland, while the self-government of English towns, was forged through the regular partnership and responsibilities exchanged with the Crown in the fourteenth century.

The use of international comparisons between the methodology of courts' jurisdiction and the punishment system redefined the range of duties of selected officials with introduction of the function of executioner, first found in the criminal cases of fourteenth-century Polish towns. The European wide -differences in the social status of the person appointed to that office must await further research; however, this study explains that municipal execution of corporal and capital punishments through the office of executioner was the common result of the development of the local legal system. What is more, it appears that the English municipal courts in the fourteenth century had no records of the individual office of executioner before that time.⁸⁷⁸ In comparison, in the Polish towns examined, the regular use of corporal punishments from the end of the fourteenth century was evidenced in the records of local courts openly mentioning the towns' appointed executioners. This has confirmed the profession of the executioners and their influence on the judicial status of towns and has contributed to our general understanding of the enforcement procedures following the German legal model.

The thesis has evidenced that the fourteenth century criminal justice processes in towns had reference to some archaic legal concepts that operated in the past and were related to the tradition and custom procedures. By the development of their local legal structures, the towns of both England and Poland emphasized the ambitious nature of the town officials in terms of preservation of the peace

⁸⁷⁸ However, there were some fourteenth-century 'delegations' of physical punishment duties on the local officers involved in the enforcement procedures.

and punishment of the offenders. The examined background of the social and legal position of certain English and Polish towns offers a new dimension of local justice, based on the royal codes and formulated laws which shaped the growth of the legal rights and liberties of the developing urban areas. Furthermore, the investigation has revealed that whilst the towns were generally bound to respect the royal authority, their individual approach to judicial possibilities with the right to self-government, played a crucial role during the transformation of the fourteenth century legal processes. Even acknowledging the limitations of this thesis to only criminal law and the civic courts, the evidence suggests that there was a shared practice of the selected towns to strengthen their legal position in the Crown-town relation which enabled them to extend the limits of their executive powers and made a foundation for the later developments of the legal actions to provide justice and preserve order.

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