

Enmity, Dispute, and Noble Community
in the Late Medieval Kingdom of Poland:
Evidence of the Rus' palatinate, 15th-beginning of
16th centuries

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Submitted to
Central European University
Department of Medieval Studies

In partial fulfilment of the requirements
for the degree of Doctor of Philosophy

Supervisor: Professor Janos M. Bak

Budapest, Hungary
2008

ACKNOWLEDGEMENT

It gives me a pleasure to acknowledge my great indebtedness to all those who offered essential support during the time it took to write my thesis. Above all, I would like to express my special and deep acknowledgment to Professor Janos M. Bak, my supervisor. His continual support, insightful commentaries, and stimulating criticism were vital in all stages of my work. I owe special debts of gratitude to Judith Rasson for correcting and improving my Academic English writing. Without her generous assistance this work has never been completed. I would also like to thank Gabor Klaniczay, Gerhard Jaritz, Joska Laszlovszky, Thomas Wunsch, Piotr Górecki, Paul Hyams, with whom I had opportunities to discuss various questions and problems related to my work.

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Introduction

I intend to investigate nobles' enmity and dispute in late medieval Poland. I start with the premise that enmity and dispute played key roles in shaping the ethos and identity of member's of the noble estate. In my approach to noble enmity I will view violence and litigation as two major ways to redress wrongs and restore a shaken balance of justice in interpersonal relationships. The main aim of the investigation is to approach noble enmity and conflict as complex social phenomena, interpreting them as points of intersection of different aspects of social reality, including structures of governance and justice, the social and family network, power relations, statute law, mental attitudes and so on.

Chronologically this work covers the period from the middle of the fifteenth to the early sixteenth century. This period started with a crisis for the Polish monarchy, which affected many aspects of the social life, and manifested itself, first of all, in a weakening of the social order and system of justice. Therefore it is important to explore the possible repercussions of this crisis at the local level and to analyze how disputes were settled under the worsening conditions of the exercise of justice. Another important point is that the fifteenth century was a time when statute law gradually established itself as the main instrument for regulating noble crime and dispute. Legislative initiatives were crowned by the emergence of a number of legal statutes and privileges in the late fifteenth and early sixteenth century. It will be interesting to clarify how this growing body of legislative texts influenced the local practice of conflict regulation and interacted with local customs.

The time limits of the research are closely connected with the choice of nobility as a social group on which the study is concentrated. First, the nobility constituted the social layer which is the best known from the sources of the late medieval Kingdom of Poland. Second, it was during that very period that the political predominance of the Polish nobility was established. From this point of view, it will be particularly interesting to examine how and whether at all the rapid growth of the importance of the institutions of noble self-governance corresponded with the practice of dispute settlement. The choice of period can be also justified by the fact that it provides an opportunity to trace possible connections between egalitarian discourse and the feuding culture of the nobility of Polish kingdom.¹

¹ The correlation between the wide spread of feuding and an egalitarian ethos of societies is stressed by William I. Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: The University of Chicago Press, 1990), 185-6. Similarly, Trevor Dean has recently contended in his study of vendetta in Renaissance Italy that "...vendetta and feud were part of the aristocratic faction-fighting that flourished in the

In spatial terms, the study will focus on one region of the Polish Crown: Galician Rus'. This territory constitutes the western part of present-day Ukraine and the south-eastern part of Poland. Up to the middle of the fourteenth century the lands of Galicia belonged to the Halyč-Volynian Principality, and were ruled by one of the branches of the Rurikid dynasty. During the second half of the fourteenth century they were brought into the Kingdom of Poland; after the introduction of the Polish administrative and judicial system in the 1430s, Galician Rus' became generally known as the Rus' Palatinate.

The peripheral position of the Rus' Palatinate on the eastern border of the Polish Kingdom can be taken as a considerable advantage in studying interpersonal violence. Some recent historical studies on medieval and early modern violence and social order have concentrated exactly on the societies situated on the periphery of the late medieval and early modern states.² They emphasize that the borderland situation limited the opportunities for the central institutions to maintain order and exercise justice compared with other parts of the kingdoms. Some Polish scholars also assume that violence played a more crucial role in conflict resolution among the Ruthenian nobility than in other parts of the kingdom. This point of view has been recently advanced by Maria Bogucka in her analysis of crime and violence in Early Modern Poland. Emphasizing the high level of interpersonal violence observed among Ruthenian nobility during the first half of the seventeenth century, she suggests that this situation was strongly influenced by the frontier location of the Rus' Palatinate and differed from other parts of the Polish-Lithuanian Commonwealth.³

Problem of dispute and violence in historiography

Questions of dispute, violence, and administration of justice were one of the central subjects of research in Polish historiography of the nineteenth and the first part of the twentieth century. Numerous works appeared during that period of time devoted to different aspects of the legal regulation of crime and punishment in medieval Polish law, as well as peacemaking and public penance involved in the settlement of enmities.⁴ These issues were studied mainly

republican cities." See, his "Marriage and Mutilation: Vendetta in Late Medieval Italy," *Past and Present* 157 (1997), 21. The interrelation between the preference, given to violence in the dispute settlement and the absence of a central government has been highlighted by some anthropologists. See Simon Roberts, "The Study of Dispute: Anthropological Perspective," in *Dispute and Settlement: Law and Human relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 9-10.

² See: Daniel Lord Smail, "Factions and Vengeance in Renaissance Italy. A Review Article," *Comparative Studies in Society and History* 38, no 4 (1996), 784.

³ Maria Bogucka, "Law and Crime in Poland in Early Modern Times," *Acta Poloniae Historica* 71 (1995):161-175.

⁴ See, for example Przemysław Dąbkowski, *Zemsta, okup i pokora na Rusi Halickiej w wieku XV i w pierwszej połowie wieku XVI* (Vengeance, retribution and humiliation in Galician Rus' in the fifteenth and first half of the

from the point of view of legal and institutional history and they frequently lack the wider social and cultural perspective that is offered by present studies. In general, investigations of various aspects of medieval dispute settlement and the social role of violence still remain a rather neglected area of research in present-day Polish historiography.⁵

This situation contrasts with a spectacular expansion that historical studies of feud and dispute have witnessed in Western scholarship in recent decades. Two main scholarly traditions have had crucial influence on shaping the theoretical background and research agenda of these studies. The first, and so far the most important, source of inspiration for medieval historians interested in problems of feud and dispute was the intensive anthropological researches into these problems conducted in the 1940s through the 1970s. The outstanding anthropological achievements of that period, represented by works of E. E. Evans-Pritchard, Max Gluckman, Simon Roberts and Jean Comaroff exerted a strong influence on how medievalists came to interpret and understand their own objects of study. Anthropological categories and concepts, as applied to the analysis of medieval violence and dispute settlement, have become one of the most evident and fruitful manifestations of the interdisciplinary trends in the history writing of the 1970s through the 1990s.

There is probably no better way to appreciate the impact of anthropological studies on historical interpretations of feud and dispute than to look at works of the prominent British scholar Max Gluckman. A number of highly influential concepts that inspired historians' thinking about feud and dispute, like "peace in feud," the "extended case method", or the "processual approach" go back to Max Gluckman. In a pioneering and stimulating article published in 1955 Gluckman pointed out the complex dynamics between social conflict and social order in traditional, stateless societies.⁶ Dwelling largely on the empirical evidence of E. E. Evans-Pritchard's famous investigation of the Nuer tribe,⁷ Gluckman showed that feud and enmity, far from being a purely destructive force in social relationships, played an

sixteenth centuries) (L'viv, 1898); Marcelli Handelsman, *Prawo karne w Statutach Kazimierza Wielkiego* (Criminal law in the Statutes of Casimir the Great) (Warsaw, 1909); Stanisław Kutrzeba, *Męzobójstwo w prawie polskim XIV i XV w.* (Homicide in Polish law in the fourteenth and fifteenth centuries) (Cracow, 1907); Adolf Pawinski, *O pojednaniu w zabójstwie według dawnego prawa polskiego* (The arbitration of homicide according to old Polish law) (Warsaw, 1884).

⁵ How an exploration of rich and diverse evidence coming from territories once related to the Kingdom of Poland may offer new interesting insights in mechanisms of medieval dispute settlement is demonstrated by studies of Piotr Górecki. See, for example his "Ad Controversiam Reprimendam: Family Groups and Dispute Prevention in Medieval Poland, c. 1200," *Law and History Review* vol. 14, no. 2 (Autumn 1996): 213-43 and "A Historian as a Source of Law: Abbot Peter of Henryków and the Invocation of Norms in Medieval Poland, c. 1200-1270," *Law and History Review* vol. 18, no. 3 (Autumn 2000): 479-523.

⁶ Max Gluckman, "The Peace in the Feud," *Past and Present* 8 (1955): 1-14.

⁷ See E. E. Evans-Pritchard, *The Nuer, a Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (Oxford: Clarendon, 1947).

important role in re-establishing social order and enhancing social cohesion. Gluckman's main thesis holds that the quick renewal of social peace after the end of destructive feuds was possible due to specific features of tribal social organization – such societies were structured as constantly changing and overlapping networks of social alliances, “so that people, who are friends on one basis, are enemies on another.”⁸ These multiple ties between enemies as well as among their supporters restrict the use of violence in communal conflicts by exerting pressure on rivals to compromise. Gluckman also stresses another crucial aspect of dispute settlement in traditional African societies. Despite the lack or weakness of governmental structures, such societies managed to create an elaborate body of unwritten customs, codes of moral conduct, and rituals that worked to control feuds and settle disputes. In this way the social order was maintained in a state of constant equilibrium between peace and feud, between conflict and cooperation. According to Gluckman, the discovery and investigation of these social mechanisms of dispute settlement was one of the most important anthropological contributions for understanding social relations in traditional societies.

In his article Gluckman also made a remark which appears to have been prophetic for the future of historical studies of feud. Gluckman was probably the first among anthropologists to point out the new research possibilities that anthropological investigations of feud and dispute settlement open for historians of medieval Europe.⁹ Furthermore, to illustrate a potential of anthropological approach, Gluckman endeavors to make some observations about the Anglo-Saxon blood feud. In so doing, Gluckman meant to show the limitations on the practice of early medieval feud as similar to those he analyzed in an African context. He stressed that because of various links and interdependencies between inimical kin groups, not all their members were willing to participate in avenging the wrongs of their blood relatives. Instead, many people on both sides tried to pacify the senses of vengeance for their wronged kinsmen and reconcile relationships between enemies. In this way Gluckman took issue with the previous historiography (including F. W. Maitland) that emphasized the participation of whole kin groups in avenging wrongs as a fundamental feature of medieval blood feuds.¹⁰

⁸ M. Gluckman, “The Peace in the Feud,” 2. In another place in his article Gluckman quotes the famous African proverb: “They are our enemies; we marry them,” see *Ibid.*, 7.

⁹ *Ibid.*, 2, “I believe it would be profitable to apply these analyses to those periods of European history when the feud was still apparently the main instrument for redress of injury.”

¹⁰ *Ibid.*, 13.

Max Gluckman can be also considered the first major advocate of the so-called “processual approach” in studying communal conflicts.¹¹ This approach has been then further developed in works of such anthropologists as Sally Falk Moore, Simon Roberts and John Comaroff.¹² Anthropologists working within a processual approach insisted on understanding social order not as body of abstract rules and norms to which social actors must comply in their daily life behavior, but as a corollary of subjective interpretations and understandings of these norms by people, involved in the process of interaction. As a result, a central conceptual premise of the processual approach is an emphasis on the behavior, individual choices, and strategies of disputants, rather than on the rules, norms and institutions that framed the process of dispute. What was usually neglected by previous scholarship, scholars like S. Roberts and J. Comaroff have argued, was a certain degree of ambiguity in norms, the possibility of manipulating and misunderstanding them in the context of dispute. Perhaps nobody grasped the essence of this new approach better than Gluckman. In a famous statement he said that it is important to understand not only the rules of the disputing game, but “how the game was played.” The important implication of such an approach for the study of communal conflict was an attempt to re-consider the category of “normal” social action, regarded primarily as rule-governed behavior. This was attempted to do by reassessing of the view of dispute and feud as “social pathology” that must be inevitably corrected and erased. According to processually thinking anthropologists, dispute and feud were normal and inevitable elements of social interaction; they were an accepted and permissible mode of conduct to negotiate and resolve contradictions in social relations between people. Viewed from this perspective, dispute and conflict appear as significant elements in the incessant process of negotiation about the meaning and essence of social norms and their applicability.¹³

¹¹ On the theoretical contribution of Max Gluckman to the development of a processual paradigm, see recent comments by Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford and New York: Oxford University Press, 2003), 303-4. For a general historians’ appreciation of a processual approach in studying dispute, consult Thomas Kuehn, “Introduction,” in his *Law, Family and Women. Toward a Legal Anthropology of Renaissance Italy* (Chicago and London: University of Chicago Press, 1991), 2-3, 11; Chris Wickham, *Courts and Conflict*, esp. 5, 303-12; Warren Brown and Piotr Górecki, “What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970-2000,” in Warren C. Brown and Piotr Górecki eds., *Conflict in Medieval Europe. Changing Perspective on Society and Culture* (Adlershot: Ashgate, 2003), 6-10.

¹² Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Oxford: Calrendon, 1979); John L. Comaroff and Simon Robert, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981); Simon Roberts, “The Study of Dispute: Anthropological Perspective,” in John Bossy ed., *Dispute and Settlement: Law and Human relations in the West* (Cambridge: Cambridge University Press, 1983), 1-24

¹³ For these observations, see Simon Roberts, “The Study of Dispute,” esp. 4, 11.

The processual paradigm came to dominate historical research starting from the 1970s. Studies by Fredric Cheyette, Patrick Geary, and Stephen White, written under the influence of the processual paradigm in the 1970s and 1980s, proposed new innovative interpretations of medieval dispute, law, and order. Most of these works focused on medieval France during the period from the tenth to the twelfth century. This time in the history of medieval France is generally recognized as a period of the deterioration of public institutions of justice, the absence of a unified law and strong kingship, and the wide spread of private feuds and violence. Viewed from this perspective, the period from the tenth to the twelfth century represented a perfect case for testing methods and theoretical premises of processual paradigm.

Fredric Cheyette has analyzed changes in the forms of dispute settlement in the course of the thirteen-century in southern France.¹⁴ His main conclusion is that before the middle of the thirteenth century, objective authoritative legal norms were rarely applied for dispute settlement. Before the mid-thirteenth century private arbitration, compromise, and violence were major means of conflict resolution. F. Cheyette made an important point that institutions of peacemaking on which settlement of disputes relied “were not courts with established jurisdictions,” and their decisions were not determined by a body of abstract, impersonal legal rules and norms. Equity, that is, the idea of “giving everyone something” was the dominant value and principle underlying dispute settlement.¹⁵ In similar fashion Stephen White has demonstrated the limited applicability of legal norms and rules in the practice of peacemaking in western France in the eleventh-century.¹⁶

By considering this aspect of medieval dispute settlement, so well highlighted by the research of F. Cheyette and S. White, Patrick Geary has sought in his methodologically innovative article to concentrate not on the legal aspects, but on wider social implications of conflict and dispute.¹⁷ In his close reading of one particular case from the region Chorges in southern France, Geary has endeavored to investigate the impact the conflict had on social relations. He has examined how the social boundaries of groups as well as collective and individual identities were defined, transformed, and re-confirmed in the course of the dispute.

¹⁴ Fredric L. Cheyette, “Cuique suum tribuere,” *French Historical Studies*, vol. 6, no. 3 (1970): 287-99.

¹⁵ F. Cheyette, “Cuique suum tribuere,” 293: “The practice of giving everyone something was indeed so prevalent that it is impossible to reconstruct any objective rules of decision on the basis of arbitral judgments in lower Languedoc, at least before the mid-thirteenth century.”

¹⁶ Stephen D. White, “Feuding and Peace-Making in the Touraine around the Year 1100,” *Traditio* 42 (1986): 195-263.

¹⁷ Patrick Geary, “Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050-1200,” in his *Living with the Dead in the Middle Ages*, (New York and Ithaca: Cornell University Press, 1994), 124-160.

Geary also showed that by its social implications the conflict worked in different directions – for some groups of people it operated as a mechanism of social cohesion, as for others it helped to establish new alliances and new social ties. In this way the conflict changed a structure of relationships between people involved in its pursuit and settlement. Another highly interesting observation Geary made relates to how conflicts were able to articulate some implicit yet fundamental structures and values of society, like power, status, and honor.

These and other studies have also offered many new insights and posed new questions about the role of feud and violence in medieval conflict management. Gluckman's interpretation of feud was the first anthropological concept on which historians explicitly relied in their own studies. In this regard it is worth mentioning J. M. Wallace-Hadrill's article on the Frankish blood feud, published in 1959. It was probably a historian's first explicit attempt to analyze medieval evidence of feud by taking into account recent anthropological achievements.¹⁸ Wallace-Hadrill's analysis was strongly inspired by Gluckman's ideas and insights into African feud and he openly recognized this influence.¹⁹ To illustrate this influence it is enough to look at Wallace-Hadrill's explanation of the social forces that led to feud settlement. It explicitly followed a line of Gluckman's thesis: "So we arrive somewhere near the situation envisaged in another context by Professor Gluckman, where the mere elaboration and interdependence of kin-groups may ensure a kind of immobility. Common blood and propinquity will always make for settlement."²⁰

A more nuanced understanding of medieval feud among historians has emerged with the further progress of research. For example, some historians became especially interested in analyzing how people attempted to use the feud in order to go beyond the immediate context of the current enmity or dispute targeting deeper and more fundamental issues of their relationships. In one of his latest studies Stephan White re-considered the meanings and context of one well known case of blood feud between Merovingian and Burgundian kings.²¹ He has demonstrated that the blood feud initiated by three sons of Clovis against their Burgundian relatives to avenge old wrongs of their mother, Clotild, was related with the wider context of the competition for power among the Merovingians themselves. According to White, a feud was not only a key instrument of political strategizing, but also represented a

¹⁸ See J. M. Wallace-Hadrill, "The Bloodfeud of the Franks," *Bulletin of the John Rylands Library* 41 (1959); reprinted in his *The Long-Haired Kings* (Toronto: University of Toronto Press, 1982), 121-147.

¹⁹ For the explicit recognition of Gluckman's influence by J. M. Wallace-Hadrill, see his, "The Bloodfeud," 123, footnote 1.

²⁰ J. M. Wallace-Hadrill, "The Bloodfeud," 125-26.

²¹ Stephen D. White, "Clotild's Revenge: Politics, Kinship, and Ideology in the Merovingian Blood Feud," in Samuel K. Cohn, Jr., and Steven A. Epstein eds., *Portraits of Medieval and Renaissance Living. Essays in Memory of David Herlihy* (Ann Arbor: University of Michigan Press, 1996), 107-130.

coherent yet flexible cultural schema, within which the early medieval politics and kinship was acted out and understood. White's interpretation was also important for putting an emphasis on agency, that is, the ability of people involved in enmity to interpret and manipulate the meanings of feud and kinship to their advantage.

It must be noted that the feud as a cross-cultural phenomenon turns out to be a rather elusive concept which present-day historians sometimes find difficult to define.²² Some scholars even try to avoid describing all cases of using violence in medieval conflict management as feud. They prefer to speak of a variety of forms and types of violence, arguing that, first, the existence of what historians usually call the feud and define as a state of longstanding hostility between two groups cannot always be supported by sources, and second, that in many cases the sources themselves do not conceptualize the use of violence in terms of feud.²³ Yet historians have not given up seeking for a working definition.²⁴ For all the difference made between feud and other types of communal violence, it seems possible to single out a common set of characteristics intrinsic to medieval violence and feud.²⁵

One of the most important methodological consequences of these studies was the growing realization that methods of traditional legal and institutional history are not sufficient for the analysis of feud and dispute. As a consequence, historians have come to recognize the importance of the approaches of social and cultural history for the investigation of community conflicts and tensions. This significant change of research perspective was, for example, explicitly articulated by Patrick Geary, who stressed that "...an understanding of the means

²² On the "conceptual crisis" in providing definitions of feud, see Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003), 6. Consider, also William I. Miller in *Bloodtaking and Peacemaking*, 179-80, where the author discusses problems, connected with defining the medieval feud.

²³ Even such "feuding" societies as medieval Iceland had no proper terms for the feud. In his comments on this fact, William Miller noted that: "The sense from the terminology, however, is not that there was no native consciousness of the disputing process as process..." see in William I. Miller, *Bloodtaking and Peacemaking*, 181-82. For the critics of the concept of feud one can consult the recent collection of articles on the social role of violence in early medieval societies: Guy Halsall ed., *Violence and Society in the Early Medieval West* (Rochester, NY, 1998). In his introduction to the volume G. Halsall makes an attempt to introduce the term "customary violence" to emphasize difference between feud and more mundane forms of violent actions.

²⁴ For the most inclusive definitions of feud, see William I. Miller, *Bloodtaking and Peacemaking*, 179-81; Paul R. Hyams, *Rancor and Reconciliation*, 8-9. One can find a detailed overview of various definitions of feud, proposed by historians for the period of the early Middle Ages, in Matthew Bennet, "Violence in Twelfth-Century Normandy: Feud, Warfare, and Politics," in Guy Halsall ed., *Violence and Society in the Early Medieval West*, 127-29.

²⁵ For example, historians often tend to emphasize that an enmity or feud meant an enduring state of hostile relations, with active and dormant stages continually alternating each other. Viewed from this perspective, feud is a conflict, in which the preference was usually given to provisional compromises rather than to final settlements. See Patrick Geary, "Living with Conflicts," 137, 139, 159; Stephen D. White, "Debate. The 'Feudal Revolution,'" 215; Trevor Dean, "Marriage and Mutilation," 5; Philipp R. Schofield, "Peasants and Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the thirteenth Century," *Past and Present* 159 (1998), 6; Barbara H. Rosenwein, Thomas Head and Sharon Farmer, "Monks and Their Enemies: A Comparative Approach," *Speculum* vol. 66, no. 4 (1991), 764.

by which conflict was handled in Feudal France cannot be achieved through the methods of traditionally conceived institutional and legal history; it demands the method of the social and cultural history.”²⁶

In this regard, legal anthropology, with its strong bid for processual approaches, represents a highly significant but single example of historians’ search for new methodological insights in their attempt to interpret and to explain the phenomenon of medieval feud and dispute. During the last two decades it has become visible just how rich and sophisticated the methodological equipment of a researcher of medieval dispute and feud has become. A few examples will be enough to illustrate this statement. To explain the principles governing the pursuit of feud in early medieval Icelandic society William Miller draws on the notion of “negative gift” and the model of “symbolic reciprocity and exchange.” It is possible to recognize the legacy of Marcel Mauss in the usage of these concepts.²⁷ Stephen White has explicitly relied on the Pierre Bourdieu’s thesis about “fallacies of the rule” in his emphasis on ambiguities of normative expectations and prescriptions in the context of Merovingian feud.²⁸ Chris Wickham’s study of conflict in twelfth-century Tuscany represents another example of the impact of Bourdieu’s theory of practice.²⁹ In his explanatory model of feud in medieval England, Paul Hyams refers to the achievements of social anthropology (Max Gluckman), as well as to the findings of game theory and evolutionary biology (Robert Axelrod).³⁰

All this gives us an idea of how diversified the field of the research has become in last decades. To continue with examples of the thematic and methodological diversity of the present-day studies of dispute and feud, it is enough to mention investigations on such varied topics and problems as gender and violence;³¹ literacy, uses of written documents and dispute;³² ritual dimensions of disputing process;³³ and display of emotions in the context of dispute.³⁴

²⁶ See Patrick Geary, “Living with Conflicts in Stateless France,” 127.

²⁷ William I. Miller *Bloodtaking and Peacemaking*, e.g. 182, 184

²⁸ Stephen D. White, “Clotild’s Revenge,” 114.

²⁹ Chris Wickham, *Courts and Conflict*, e. g. 8.

³⁰ Paul R. Hyams, *Rancor and Reconciliation*, 16-18.

³¹ See, for example, a good analysis of the ritual of goading and its gender implications in the early medieval Icelandic feud, in William I. Miller, *Bloodtaking and Peacemaking*, 212-13.

³² See, for example Adam J. Kosto, *Making Agreements in Medieval Catalonia. Power, Order, and the Written Word, 1000-1200* (Cambridge, NY: Cambridge University Press, 2001), esp. 268-94.

³³ See, for instance, a special chapter Chris Wickham devotes to rituals and disputing in his, *Courts and Conflict*, 277-312.

³⁴ For an example one can consult a recent collection on medieval senses of anger: *Anger’s Past: the Social Uses of an Emotion in the Middle Ages*, ed. Barbara H. Rosenwein (Ithaca: Cornell University Press, 1998).

The clear pre-dominance of methods from anthropology and cultural and social history, so visible in recent historical research on medieval feud and dispute, should not prevent an appreciation of recent contributions from such traditional sub-disciplines as legal and institutional history. Works of such distinguished practitioners of legal and institutional history as Julius Kirschner, Susan Reynolds, and Thomas Bisson have convincingly demonstrated the importance of procedures and rules of formal law in the process of dispute settlement. Research into medieval dispute conducted *sub specie* law and institutions has brought a major challenge to some of the theoretical premises of the processual paradigm. Re-evaluation of the role of formal law and legal procedures in the disputing process resulted in a growing awareness of the importance of what can be called a two-tiered model. It has become important to not only investigate actions and perceptions of actors in dispute settlement, but also to examine the institutional logic of courts and the complexities of the legal system. Underlying this approach is the idea of the autonomy of the law and legal norms that determined the legal consciousness of disputants, shaping their choice of strategic actions and behavior in dispute.³⁵ This approach is evident in works of scholars like Thomas Kuehn or Paul Hyams who choose to explore dispute and feud in European societies with a complex and highly sophisticated legal system (Renaissance Florence and Angevin England). In their studies these scholars have tended to emphasize how institutional and normative rules permeated the individual and subjective thinking of disputants.³⁶ It is also noteworthy that historians who favor the processual approaches in their research, like Chris Wickham, have conceded to the importance of norms and rules.³⁷

In fact, the role of legal and institutional history in the profound re-consideration of visions of medieval dispute and feud has its own historiographic tradition, which can not be reduced to its challenge to the processual paradigm. This tradition can be traced back to the seminal book of Otto Brunner, published in 1939. Being itself a product of German traditional *Verfassungsgeschichte*, Brunner's book represented at the same time a radical break with the established concepts of feud that had dominated legal history in the nineteenth and early

³⁵ For a balance of the normative and processual approaches in studying medieval conflict, see recent remarks by Warren C. Brown and Piotr Górecki, "Where Conflict Leads: On the Present and Future of Medieval Conflict Studies in the United States," in *Conflict in Medieval Europe*, esp. 273-74.

³⁶ For this, one can find an explicit statement by Thomas Kuehn, "Introduction," in his *Law, Family, and Women*, 11: "The status of law as a theoretical object and as a historical institutional nexus in Renaissance Italy cannot be denied. My desire has been to understand how, or how much, the very sophisticated and complex apparatus of law could serve the interests of litigants and to see how law functioned in a context with other mechanisms of disputing and settling disputes, ranging from fairly formal arbitration to violence."

³⁷ See Ch. Wickham, *Courts and Conflict*, 305: "While emphasizing the overall superiority of the processual paradigm, I would not wish to abandon rules altogether."

twentieth century.³⁸ Contrary to the traditional view of nineteenth-century historiography, Brunner proposed considering the medieval feud as a legitimate instrument for settling feuds based on claims to justice and law. Brunner saw the legitimacy of feuding as a crucial element for medieval political and social order. Many aspects of Brunner's conceptions have been criticized and rethought in the last decades.³⁹ Still, his view of feud as an integral part of power and social relations in medieval society continues to influence present interpretations of the phenomenon of medieval violence. Perhaps the most significant contribution of Brunner's interpretation concerns his understanding of medieval social order and polity and the role the feud played in shaping them, based on legal and mental premises completely different from those of the modern world.

This is a point where Brunner's ideas about medieval feud intersect with the current historical debates about meanings, purposes, and the scale of violence in medieval society. Brunner's influence, for example, is clearly visible in Howard Kaminsky's recent article on medieval feud.⁴⁰ Kaminsky has approached the late medieval feud extensively relying on Brunner's ideas. Similar to Brunner, Kaminsky stresses that medieval feud and enmity can be seen as an institution endowed with a sense of legitimacy in its own terms. Kaminsky has also highlighted another crucial point of Brunner's conception, that is, the understanding of feud as the main constitutional principle on which the idea of medieval social order was based. This understanding of feud played an important role in Kaminsky's trenchant criticism of some anachronistic statist interpretations of the medieval state and order. Kaminsky has turned his criticism mostly against the tendency to explain medieval polity and feud by applying terms and concepts appropriate for modern state and civic society. He has argued against attempts to locate the medieval polity on an evolutionary line in the development of the modern state and to focus primarily on the medieval origin of the modern state. According to Kaminsky, this has resulted in highly anachronistic and irrelevant interpretations of all social phenomena that do not fit the notion of modern state, like feud and enmity, as anarchy and disorder. Kaminsky has rightly noted that Max Weber's idea of the state exclusive

³⁸ Otto Brunner, *Land and Lordship: Structures of Governance in Medieval Austria*, translation and introduction by Howard Kaminsky and James van Horn Melton (Philadelphia: University of Pennsylvania Press, 1992).

³⁹ For, instance, critics have pointed out the impossibility of differentiating between a rightful claim for feud and the illegal practice of noble pillage and assault that was widespread in late medieval Germany (*Raubrittertum*). See Werner Rösener, "Zur Problematik des spätmittelalterlichen Raubrittertums," *Festschrift für Berent Schwineköper zu seinem siebzigsten Geburtstag*, eds. Helmut Maurer und Hans Patze (Sigmaringen: Jan Thorbecke, 1982), 469-88. For an overview and criticism of Brunner's conception of feud, one can also consult: Hilla Zmora, *State and Nobility in Early Modern Germany: The Knightly Feud in Franconia, 1440-1567*. (Cambridge: Cambridge University Press, 1994), 4-9.

⁴⁰ Howard Kaminsky, "The Noble Feud in the Later Middle Ages," *Past and Present* 177 (2002): 55-83.

monopoly on the use of violence was alien to the Middle Ages. Kaminsky has used a case of French historiography to demonstrate how persistent, and at the same time and irrelevant, is the thinking about the medieval state in terms of this “developmental paradigm.”

The recent controversy over the so-called “feudal revolution” thesis provides another instructive example of attempts to problematize the category of violence in the direction pointed out by Brunner. In a simplified manner one can discern two points of view with respect to the role violence played in the social transformations that took place in Europe of the tenth and eleventh century. Should one, as Thomas Bisson has argued, take the evidence about the rise of violence in decades around the year 1000 as the most evident indicator of the final breakdown of the Carolingian order and the emergence of new regime of “oppressive lordship” and political institutions of a new feudal society? Or should one be more skeptical with taking such evidence at face value? Scholars, like Stephan White, who have been reluctant to accept Bisson’s thesis about the radical breakdown in structures of governance and social order between Carolingian and post-Carolingian Europe, have built their arguments on the problematic character of the notion of violence in the contemporary sources.⁴¹ At this point S. White explicitly referred to Brunner’s ideas in his polemic with Bisson by stressing how multiple meanings and complex disputing relationships could be hidden beyond the stereotyped medieval representations of violence. Furthermore, White justly noted that, “Calling a particular regime, society or period ‘violent’ is a complex rhetorical and historiographical manoeuvre because it involves comparisons with regimes, societies or periods implicitly judged less violent or even non-violent.”⁴²

As important as the emphasis on viewing medieval violence as the key constituency of medieval order and means of dispute negotiation is, however, it has its own limitations and shortcomings. As Piotr Górecki and Warren Brown have recently noted, such interpretations of medieval violence reflect mainly the point of view of power holders in medieval society.⁴³ With regard to subordinated classes, at whose cost noble feuds and disputes were carried out,

⁴¹ T. N. Bisson, “The ‘Feudal Revolution’”, *Past and Present*, No. 142 (1994): 6-42 and Stephen D. White, “‘Feudal Revolution’: A Debate,” *Past and Present* 152 (1996): 205-223. For an overview of the debate and valuable comments, see: Warren C. Brown and Piotr Górecki, “Where Conflict Leads: On the Present and Future of Medieval Conflict Studies in the United States,” in *Conflict in Medieval Europe*, esp. 281-2.

⁴² S. White, “‘Feudal Revolution’: A Debate,” 206. Compare also quite similar thought on the problems involved in defining medieval violence expressed by Philippa C. Maddern in her study *Violence and Social Order. East Anglia 1422-1442* (Oxford: Clarendon Press, 1992), esp. 7-10.

⁴³ See, Warren C. Brown and Piotr Górecki, “Where Conflict Leads,” 282.

their experience and perception of medieval violence would be mostly pain and oppression, as has been brilliantly shown by Bisson in his last study.⁴⁴

The conceptual framework offered by the studies mentioned above provided the main basis for conducting my own research. I start my investigation with an analysis of the legal context of noble enmities. First, I shall provide a general overview of the basic principles and norms of criminal law and justice in the Late Medieval Kingdom of Poland. I also address such problems as the knowledge of statute law, the interaction between writing and oral modes of communication in the legal process, manipulations of oath-taking, and shortcoming of court procedures. Last but not least, I investigate the question of the effectiveness of royal justice in preventing and settling noble disputes. I examine the institutions and mechanisms (penalties, institutions of *fideiussoria* and *vadium*, private arbitration) as well as various groups of people of the law (court bailiffs, and attorneys) through which both royal officials and members of the noble community made efforts to control violence and settle disputes.

In the second part of my dissertation I analyze patterns and social implications of noble violence. I shall approach the problem from a twofold perspective. First, I shall try to give an answer to the question of the frequency of enmity and violence among local nobility. Such an analysis can be helpful for answering one central question: to what extent one can regard violence as an endemic factor in the life of the nobility.

This approach will be combined with a more close examination of some cases of noble enmities to view how various conflict issues and interests were interrelated and integrated in the course of a conflict. This will also serve to exemplify the stages, techniques of litigation, and court disputes. Such an approach will help me to trace individual itineraries and various experience of noblemen involved in enmities with emphasis on multiple meanings, attached to the uses of violence. Through this analysis a number of other important issues will be addressed as well. It will be important to establish how the uses of violence operated as a means to maintain nobles' social status and honor. It will also be interesting to examine possible correlations between the nobles' capacity to produce violence and their status as lords, approaching lordship as a noble's ability to impose dominance and to provide protection in the local competition for peasants, land, and resources.

In the last part of the thesis I focus on the role of private arbitration as an extra-judicial means of conflict resolution in noble community. It is usually pointed out that medieval

⁴⁴ T. N. Bisson, *Tormented Voices: Power, Crisis, and Humanity in Rural Catalonia* (Cambridge, Mass.: Harvard University Press, 1998).

institutions and the practice of peacemaking were governed by the rules of compensatory justice and aimed at restoring the peace between parties. Instead, I shall argue that in the context of noble disputes in the Late Medieval Kingdom of Poland the peacemaking process was not so much centered on consensual conclusion of conflicts. Though presented in the forms of amicable reconciliation, institutions of peacemaking were closely integrated into the structure of “official” noble courts and the judgment of arbiters conformed more to the principles of adjudication than that of mediation. My point is that peacemaking was not an alternative to the official courts way of dispute settlement, but represented an essential channel through which royal justice tried to enforce the law and support the social order. Another problem I address here is the importance and variety of social ties among disputants and various sorts of arbiters. The constitution of the network of nobles involved in the amicable dispute settlements is analyzed by using the example of one single kin group from Przemyśl land of the Rus’ palatinate.

Sources

My principal source material is supplied by legal records of the court registers of the Rus’ palatinate. The emergence of the court registers in Galicia was a one of the basic consequences of the radical institutional changes of the years of 1430-1434. The privilege of Jedlno, issued by King Władysław Jagiełło in 1430, and the privilege of his son Władysław III from 1434, sanctioned the final introduction of the Polish legal and administrative system into Galician Rus’ and endowed the Galician nobles with rights equal to the nobility of other lands of the kingdom. Galician Rus’ was transformed into the Rus’ palatinate with its main administrative center in L’viv. The palatinate itself consisted of four administrative-territorial units, called “lands” (*ziemie*): L’viv, Halych, Przemyśl, and Sanok. These, in turn, were divided into districts (*powiaty*).

In each of the lands, the system of the castle (*grodzkie*) and land (*ziemskie*) courts as well as the hierarchy of Polish offices was established. Land and castle courts represented major institutional sites for administering justice and settling disputes in Late Medieval Kingdom of Poland. The land courts originated in the second half of the fourteenth century. In the course of the fifteenth century land courts became the principal institution of noble self-government. The land courts dealt first of all with property relations. What gives the land courts special significance was the so-called right of eternity (*prawo wieczności*). The land courts served as major *loca credibilia* for local nobles, thus substituting for the institution of public notaries. Copies of charters concerned with the circulation of land property or

inheritance were usually recorded in land court's registers. In this way they became endowed with timeless legal significance and could be consulted at any time in the court as legal proof. In addition, the land courts were actively involved in settling land disputes, including cases of violent conduct. The evident shortcoming of the land court was the fact that they did not operate on a daily basis: their sessions took place several times in a year. For example, *Formula processus* from 1523 prescribed, codifying the already established practice, that sessions of land courts of the Rus' palatinate should be held only six times in a year.⁴⁵ The sessions of land courts were widely attended since they were the only possible times to gain access to the court register.

The most valuable and richest information about noble disputes and enmity is contained in registers of the castle courts. The castle courts were headed by royal captains – principal royal officials – who were in charge of prosecuting crimes. It is not surprising, therefore, that it was exactly castle courts that were considered a major judicial forum for judging major criminal offences and settling noble enmities. In contrast to land courts, castle courts were characterized by much more frequent sessions. Castle courts were open to people of various social statuses who willingly brought their cases for consideration. This made the castle court one of the mostly often attended and popular venues among litigants. As a result, castle courts handled a much wider range of cases than was prescribed by the legislation.⁴⁶

In the period after the years of 1430-34 noble courts witnessed an overall increase in activity, which led to a marked growth in the volume of their legal records. The earliest preserved court register coming from the lands of Galicia is that of Sanok. Its records survived starting from 1423, that is, before the official introduction of the Polish law and administrative system in Galician Rus'. The court registers of other lands survive from the decades that immediately followed the years 1430-1434. In Przemyśl land, the register of the local land court is preserved from 1436. The earliest records of castle courts of Przemyśl land are of later date – starting with the year 1466. The reverse situation can be found in the case of L'viv land. Here the first available court register is the castle, not the land court. Its earliest

⁴⁵ *Corpus Iuris Polonici*, ed. Oswald Balzer, vol. 4, pars 1: *Annos 1523-1534* (Cracow, 1910), p. 59, # *Constitutiones celebrationis terminorum in partibus Russiae*.

⁴⁶ For these traits of the castle court jurisdiction, see the observation by Antoni Gąsiorowski, "Początki sądów grodzkich w średniowiecznej Polsce" (The origins of castle courts in medieval Poland), *Czasopiśmo Prawno-Historyczne* 26, no. 2 (1974), 72-3. The author also contends that cases that fell under the so-called captain's four paragraphs and concerned the prosecution of major crimes (arson, murder, rape, and assault on the free royal road) comprised only a minority of cases, considered by castle courts of the first half of the fifteenth century.

records were written down starting from 1440. Records of the L'viv land court from the fifteenth century survived only in pieces – the earliest ones from 1453 and 1461-63.⁴⁷

In general, the court's registers of the Rus' palatinate are richly suggestive in describing nobles' disputing strategies and attitudes toward various aspects of law by giving special attention to speeches in the courts.⁴⁸ Court notaries, while writing down lawsuits, took an explicit interest in rendering essential information about dispute in the form of third-person direct speech. Accounts of a rival's violent conduct, nuances of legal procedure, and details of the verbal exchange between parties in the courtroom – all these were frequently put into the mouth of the principal actors. This broadly applied narrative technique, by allowing historical actors to speak for themselves and by creating a multivocality effect, clearly informs the law and violence with much ambiguity. It often shows how much legal practice and legal process departed from the written legal prescriptions and statute law or how enmity was essential for the noble code of honor and proper noble conduct. From the perspective of the incessant talks, held in the courtroom, the law turned out to be much susceptible to individual manipulations and appropriations.

It is true that legal records are often too fragmentary and stereotyped. It is also true that they are filtered through the conceptual mindset of those who wrote them down in the court register. They were also distorted in the process of translation from the vernacular into Latin, and strongly influenced by the formulas and terminology of the legal discourse. Nevertheless, in my opinion, this type of evidence offers an insight into the problem of human agency in the legal context. These wars of words and legal arguments provide a unique opportunity for glimpsing at the subjective senses and meanings that people attached to the law and enmity. They convey the image of local nobles as shrewd, experienced and intelligent litigants, able to interpret and manipulate the law in their own terms.

⁴⁷ Most of the legal records, contained in the court registers of the Rus' palatinate for the fifteenth century were published during the second half of the nineteenth and beginning of the twentieth century in one of the most ambitious and largest source editions, undertaken by the Polish historians, called *Akta grodzkie i ziemskie z czasów Rzeczypospolitej Polskiej, z archiwum tak zwanego Bernadyńskiego we Lwowie w skutek fundacji A. Stadnickiego* (henceforth – AGZ), ed. Oktaw Pietruski, Ksawery Liske, and Antoni Prochazka, vol. 11-19, (L'viv, 1886-1906).

⁴⁸ In one of her penetrating essays on the early medieval law and dispute settlement Susan Reynolds noted, that: "Little is generally said about any discussion or argument before judgments were made, but some reports say just enough to suggest that it sometimes took place." See Susan Reynolds, "Rationality and Collective Judgment in the Law of Western Europe before the Twelfth Century," *Quaestiones Medii Aevi Novae* 5 (2000), 8. In comparison with this observation, the historian of the fifteenth-century Galician Rus' is in a more privileged position concerning the investigation of this aspect of legal process and legal dispute. The crucial importance of disputants' speeches and oratory for the study of actors' strategies and intentions in dispute, has been also emphasized by Simon Roberts, "The Study of Dispute: Anthropological Perspective," 18.

Another type of sources widely used in this work is the evidence of the statute law.⁴⁹ Scholars traditionally attributed the beginnings of the statute legislation in the Late Medieval Kingdom of Poland to the promulgation of the Statutes of Casimir the Great. They constituted a law code that laid down the foundation for the further development of statute law over the next few centuries. There were in fact two different Statutes issued by King Casimir, for Little and Great Poland, respectively. The statutes for Little Poland initially consisted of 59 paragraphs. Nothing certain can be said about the date of their issue; some scholars contend that these statutes were most probably issued around the year 1347 at the diet in Wislica. The statutes for Great Poland were promulgated in approximately the same period of time and were comprised of 34 paragraphs. The statutes were by no means a comprehensive codification of all fields of law: they treated mainly what is called criminal law and legal process, while this codification touched “civil law” only slightly. As was usual in such collections, customs were frequently raised into norms; much less often, new legal norms were introduced to suppress or substitute for existing customs. During the reign of Casimir the Great the initial set of paragraphs of the statutes was enlarged by new legal provisions (48 paragraphs) which are generally referred to in the historical literature as *extravagantes* and *prejudicates*. The *prejudicates* were probably compiled by the scribes of the royal court during the reign of Casimir the Great. They were drawn from the evidence of court practice with the aim of exemplifying various aspects of the process of dispute settlement.⁵⁰

It is also very interesting to follow the lines of the rich textual history of the Statutes after its promulgation. From the beginning of the fifteenth century, the Statutes of Casimir were intensively and constantly re-written. Actually, the earliest surviving manuscript version of the Statutes came from the beginning of that century. In the course of the century, the textual diffusion of the Statutes resulted in the emergence of various versions and manuscripts with several variants. They could vary considerably among themselves in regard to the number and kinds of paragraphs included. One type of Statutes that appeared in the second and third decades of the fifteenth century seems to be especially worth mentioning. This was

⁴⁹ The Statutes of Casimir the Great were consulted in the edition prepared by Oswald Balzer. See: *Statuty Kazimierza Wielkiego*, ed. Oswald Balzer (Poznań: Nakładem Poznańskiego Towarzystwa Przyjaciół Nauk, 1947). As for the fifteenth-century statutes, I made use of two classical editions: *Volumina legum* (henceforth: VL), vol. 1 (St. Petersburg, 1859), and *Jus Polonicum, codicibus manuscriptis et editionibus quibusque collatis* (henceforth: *Jus Polonicum*), ed. Jan V. Bandtkie (Warsaw: Sumptibus Societatis Regiae Philomathicae Varsaviensis, 1831).

⁵⁰ An informative overview of the composition, manuscripts, and the origin of the Statutes of Casimir the Great, is given in Stanisław Kutrzeba, *Historja źródeł dawnego prawa polskiego*, vol. 1 (L'viv: Wydawnictwo Zakładu Narodowego im. Ossolińskich, 1925), 159-78.

manuscript versions of the Statutes that included paragraphs coming from the Statutes of both Little and Great Poland. Some scholars see in the emergence of such united Statutes the evidence of the growing unification of the legal system in the kingdom. The text of such united Statutes is most often known from the fifteenth century in the version of the so-called *Dygesta*. Soon the Statutes were translated into Polish. The earliest known text of the Polish translation of the Statutes of Casimir the Great was made by Warsaw cleric Świątosław of Wojcieszyn before 1449. This translation also included the text of the fifteenth-century Warta statutes. Later, the Statutes of Casimir the Great were also translated into Ruthenian. These vernacular texts also brought some changes into the content and meaning of the Statutes.

During the fifteenth century the body of statute law was considerably enlarged and elaborated by the promulgation of new statutes. In the chronological sequence, the first of these were Statutes initially issued in 1423 at the diet of kingdom in Warta and then confirmed by the king. The Statutes of Warta were comprised of 30 paragraphs. Some paragraphs were intentionally promulgated as amendments to the Statutes of Casimir the Great. It is not surprising, therefore, that the Statutes of Warta and the Statutes of Casimir the Great were often copied together and regarded as single manuscript collection of Polish law.

In addition to the Statutes, some royal privileges also augmented the legislation of the fifteenth century.⁵¹ Some of these, such as the Cracow privilege of 1420, became an integral part of the later issued Statutes of Warta. Others, like the privileges of Casimir Jagiellonczyk, issued in Nieszawa in 1454, took on the force of the statutes after their confirmation and enlargement by the Casimir's successor, Jan Albert, in 1496. In general, the period of the last decades of the fifteenth and the beginning of the sixteenth century was especially remarkable in regard to the legislative activity. In that time a number of important legal statutes and privileges were issued, like the promulgation of the Statutes of King Jan Albert from 1493 and 1496, the confirmation of the *Customs of Cracow Land* by King Alexander in 1506, the issue of two crucial collections of the procedural law – the *Processus iuris* from 1506 and the *Formula processus* from 1523. The period was also marked by growing efforts to the general codifications of Polish law. However, this initiatives failed (the best known of these efforts was the project of the general condification of Polish law in 1532).

Finally, besides court records and statute law, historical narratives, such as the *Annals* by Jan Długosz, and political treatises, like Jan Ostrorog's *Monumentum*, and Andrzej Frycz Modrzewski's *Books on the Emendation of Republic* offer important evidence on both social

⁵¹ On the statutory character of many paragraphs included in these privileges, see Stanisław Kutrzeba, *Historja źródeł*, 84.

and legal conditions and their – mostly negative – perception by contemporaries.⁵² All three types of sources – legal records, statute law, and historical narratives/treatises – provide different research perspectives on the problems of law and violence. Comparison of the evidence from legal records and statute law permits an examination of how legal norms were applied and how they corresponded to the practice of violence and litigation in the local context. In turn, historical narratives or legal and political treatises offer a good opportunity for understanding the general background of mental attitudes and perceptions, against which the culture of noble violence and disputes functioned in the Late Medieval Kingdom of Poland.

⁵² Ioannis Dlugosii, *Historiae Polonicae libri XII* (henceforth: J Długosz, *Historiae Polonicae*), eds. Ignatius Żegota Pauli and Alexander Przezdziecki, vol. 4-5, in Ioannis Dlugosz, *Opera Omnia*, ed. A. Przezdziecki, vol. 13-14, (Cracow: “Czas”, 1877-8); Clarissimi Baronis Joannis Ostrorog, juris utrusque doctoris, Monumentum Pro comitis generalibus Regni sub Rege Casimiro Pro Reipublicae Ordinatione congestum. /Pamiętnik, dla naprawy Rzeczypospolitej na Sejmie na Kazimierza Jagiellonczyka zamierzonej, Przez Jana Ostroroga doktora obojga prawa ulozony b. r. I m. (henceforth: Jan Ostrorog, *Monumentum*); Andrzej Frycz Modzrewski, *Commentariorum De Republica Emendanda*, ed. K. Kumaniecki, in *Opera omnia*, vol. 1 (Warsaw: Państwowy Instytut Wydawniczy, 1953).

Chapter 1 – Ex bonis nobilibus fures effecti: Noble violence and its representation in the Late Medieval Kingdom of Poland

Under the year of 1466 Długosz wrote a quite extensive passage in his *Annals*, devoted to the trenchant criticism of the moral situation of fifteenth-century Polish society.⁵³ Długosz started with a note that the present and past years were a time when Poles gave themselves up abundantly to all kinds of malice.⁵⁴ He took care to compile a detailed list of the corrupted mores of fifteenth-century Polish society. In his criticism, Długosz was particularly concerned with what might be called a “feminization” of contemporary Polish men. The author’s broad usage of gendered metaphors and stereotypes served to sharpen the image of the moral decay of contemporary society. He expressed his strong disapproval of men, who, according to contemporary fashion, rivalled with women in effeminacy of the body and appearance. Długosz noted that it was the fashion for many men to curl their hairs; to refine their clothes for women’s allurements and flattery; to dress their long hair with the jewelry, to wear jewels at home and in public, by day and night; and to embellish their chests with splendid ribbons, which otherwise were suitable only for women.⁵⁵

The historian referred to various causes in his attempt to account for the rise of these depraved customs among the contemporary Poles. Seeking a possible explanation of this collapse of social and moral order, Długosz called attention to the growing impunity for crimes, the long duration of the incessant wars, and, finally, to the heaven’s disfavor. The author connected the breakdown of public customs and morals with a widespread sense of impunity and laxity. Długosz noted that “the wickedness of the perverse rose up above usual due to the lax license of impunity.”⁵⁶

According to Długosz, this state of moral decay was the consequence of the

⁵³ Joannes Długosz, *Historiae Polonicae*, vol. 5, libri XI-XII, in his *Opera omnia*, ed. Alexander Przezdziecki, vol. XIV, (Cracow: “Czas”, 1878), 471-72, “Deprivati mores Polonorum recensentur.” [henceforth - J. Długosz, *Historiae Polonicae*].

⁵⁴ Ibid., 471: “Tempus apud Polonos non anni tantummodo praesentis, sed et transactorum, omni genere malitiae quodammodo foecundam erat, sive ex impunitate scelerum, sive ex diuturnitate vigentium assidue bellorum, sive ex Coelestium inclementia proveniens...”

⁵⁵ Ibid.: “capillum enim adversantem frangere et in circinos cogere, ad muliebres blanditias amictum expolire, caesariem peplis, foris et domi, nocte et interdiu obvolvere, mollitie corporis cum foeminis certare, capillo ex caesarie permisso illas vincere, pectoris loca fasciis splendoris, quod alias vix feminis permittebatur obvolvere, illorum temporum grande extabat specimen...”

⁵⁶ Ibid.: “illorum temporum grande extabat specimen, et perversorum nequitia per dissolutam impunitatis licentiam supra solitum excrescente.”

unprecedented expansion of violence and crime.⁵⁷ He reported that such a deluge of crimes inundated the kingdom in those years that it seemed to exceed all possible limits. Many nobles, having little esteem for their property and squandering their patrimonies, ended up committing robbery and theft.⁵⁸ To illustrate how greedy, insolent, effeminate, and degenerate were the minds and consciences of his contemporaries, Długosz emphasized that they did not seek to amend their evil conduct. Quite the contrary, culprits took pride in their wrongdoings, regarding such a mode of conduct as virtue, puffed up with their wrongs and hailing them as great and heroic deeds.⁵⁹

Following the well-elaborated stereotype of medieval ecclesiastical thought, Długosz's criticism of the social vices was strengthened by representing them as sins and sacrilegious transgressions against the precepts of God and the Christian faith. Especially the last part of his account can be regarded as the lament of a cleric for the sinful and godless character of a contemporary Polish society. In this regard, Długosz sought to show, in particular, the rise of hideous crimes, committed with hostility and disrespect for the divine law and the fundamentals of Christian teachings. It is noteworthy that Długosz was tempted to charge the whole Polish people with culpability for these moral and religious lapses, regardless of whether they personally merited censure as guilty or not. This is clear from Długosz's remark saying that he consciously speaks of "us", that is, the entire people, not single wrongdoers, in order to emphasize the widespread character of the disobedience and contempt for God and the Church that was widespread among Poles. Therefore, the whole community, according to Długosz, shared responsibility for their sins and bore the divine punishment.⁶⁰ In this respect, the image of the kingdom as being submerged in social chaos and having lapsed in all possible types of crime was portrayed by Długosz to convince the readers that the moment of divine wrath had already arrived.

Długosz's highly critical remarks in regard to the spread of violence and crimes are by no means restricted to general stereotypical censure and lamentations. Portraying an impressive and monumental picture of the fifteenth-century life of kingdom, his *Annals*

⁵⁷ On the moral implications of the concept of crime in the medieval context, see: Claude Gauvard, "Fear of Crime in Late Medieval France," in *Medieval Crime and Social Control*, ed. Barbara A. Hanawalt and David Wallace (London and Minneapolis: University of Minnesota Press, 1999), 1-49.

⁵⁸ J. Długosz, *Historiae Polonicae*, 471: "Sic in annis illis scelerum diluvium inundavit, quod omnes facinorum terminos transcendisse videbatur et metas. Plerique nullam habendo patrimoniorum aestimationem, effuso censu in furta dilabebantur et rapinas."

⁵⁹ Ibid.: "...non se malebat et praevaricationes suas emendare, sed superos et superiorum suorum factis, virtutibus aut imaginibus superbiens, loquebatur grandia, totus tumebat, quasi alta et heroica ipsemet fecisset..."

⁶⁰ Ibid., 471-72: "Itaque ut non de singularibus personis, sed de universis iustius scribam: leges divinas et scita contemnendo irridemus et floccifacimus, nec satis scripturarum cominationibus credimus, nec divina imperia aperto pectore haurimus..."

contain detailed and telling evidence about social violence.⁶¹ His focus on the problems of social disorder and crimes became especially acute in his description of the troubled times of the interregnum after the death of Wladislaw III in 1444 and the first decades of the reign of his brother, Casimir IV. For the period from the 1440s to the 1460s, reports about most notorious crimes and evildoers became, in fact, one of the most frequent rubrics on the pages of the *Annales*.⁶² To better appreciate the significance of the Długosz's concern with the spread of violence and downfall of the system of justice in the general structure of his historical narrative, it is worth mentioning here that Długosz started to write his great historical work exactly in the years, when, according to his reasoning, the social and moral turmoil had reached its peak.⁶³

Długosz conveyed an image of the kingdom in the middle of the fifteenth century as a country, full of thieves and criminals, inflicted by highwaymen on the roads, and ruled by a king and barons unable and unwilling to proceed against all these crimes. In this regard, some of the titles which he gave to his rubrics devoted to the problem of social disorder and violence, are especially telling: "the great multitude and the force of the external and domestic robbers in the Kingdom of Poland" (1447), "the impunity and audacity of thefts and felons excessively increased in the Kingdom of Poland" (1450).⁶⁴ Długosz did not hesitate to blame, first of all, the Polish nobles for this situation. He represented the nobility as the main instigators and perpetrators of the social violence. Describing the murder of a Cracow

⁶¹ It is surprising that the abundant evidence of noble criminality and violence, found in the last book of the Długosz's *Annals*, has escaped the attention of the scholars, who have studied Jan Długosz and his *Annals*. This ignorance is evident in Michał Bobrzyński and Stanisław Smolka, *Jan Długosz, jego życie i stanowisko w piśmiennictwie* (Cracow: Wydawnictwo K. Przeczdzickiego, 1893), an outstanding achievement of the nineteenth-century Polish historiography, still the best synthetic analysis of the worldview of Długosz and his work. In recent historiography, the collected work, devoted to the five-hundredth anniversary of the historian's death, provides an instructive example. Of the 13 articles, which are found there, no one deals with the topic of Długosz's perception of violence; see: *Długossiana. Studia historyczne w pięćsetlecie śmierci Jana Długosza* (Cracow: Wydawnictwo Uniwersytetu Krakowskiego, 1980). The same holds true for such major works on Długosz as Marian Biskup, „Jan Długosz (1415-1480) jako historyk Polski i krajów Europy środkowej”, in Marian Biskup, Karol Górski, Kazimierz Jagiellończyk. *Zbiór studiów o Polsce drugiej połowy XV wieku* (Warszawa: Polskie Wydawnictwo Naukowe, 1987), 316-336, and Urszula Borkowska, *Treści ideowe w dziełach Jana Długosza. Kościół i świat poza kościołem* (Lublin: Katolicki Uniwersytet Lubelski, 1983). It is noteworthy that the detailed and learned chapter on the problem of social control of morals and violence in the late medieval Poland by Hanna Zaremska, written for the history of Polish medieval culture, touched only slightly upon the evidence, presented by Długosz, see: Hanna Zaremska, "Grzech i występki: normy a praktyka moralności społecznej" (Sin and transgression: norms and practice of communal morality) in *Kultura Polski średniowiecznej, XIV-XV w.* (The culture of medieval Poland), ed. Bronisław Geremek (Warsaw: "Semper", 1997), 557-8.

⁶² On the crime reporting in the late medieval historical narratives, see: Claude Gauvard, "Fear of Crime," esp. 2-6.

⁶³ Michał Bobrzyński and Stanisław Smolka indicated the year of 1455 as the time, when Długosz started to write his work, composing simultaneously two parts of his narrative – the old and contemporary history of Poland, see: Michał Bobrzyński and Stanisław Smolka, *Jan Długosz, jego życie i stanowisko*, 69.

⁶⁴ J. Długosz, *Historiae Polonicae*, 40-41, „Praedonum externorum et domesticorum in Regno Poloniae magna vis et copia;” Ibid., 70-71, „Impunitas in Regno Poloniae furum et praedonum audaciam nimium auxit.”

dignitary and the audacious robbery of Cracovian merchants in 1447 by criminals from Silesia and Hungary, he noted: “nobody promulgated more vigorously such evils than the Polish Kingdom’s own nobles, citizens and natives, who accustomed themselves to live by rape and theft.”⁶⁵ In order to censure the malice of the fifteenth-century Polish nobility as strongly as possible the historian employed the metaphor of the degeneration of Polish nobility “from the good nobles into the criminals”: *ex bonis nobilibus fures effecti*.⁶⁶ In his pursuit to illustrate the process of this debasement of the Polish nobility, Długosz inserted in his text several very extensive accounts of some of the most notorious cases of the noble criminality in his time. These stories of crimes undoubtedly struck the imagination of the contemporary Poles and were widely known and discussed. It is also important that some of Długosz’s most detailed narratives are particularly revealing in regard to stressing the motif of the divine vengeance, working to punish these crimes and injustice.

One such story concerns a certain Lucas Slupecki, a native noble of Sandomierz land.⁶⁷ The author portrays Slupecki as a person particularly given to violence, who earned his ill fame during the reigns of Wladislas III and Casimir IV, due to his many abominable and criminal transgressions. Długosz speaks of Lucas Slupecki as a highly brutal malefactor, who terrorized his own subjects for many years as well as his neighbors - both nobles and plebeians who felt too weak to resist his acts of aggression. Długosz points out that violence was a trait innate in Lucas’ family. Lucas’ father - Groth Slupecki - had a similar bad reputation as a man responsible for committing numerous crimes. Długosz mentions that among other wrongs Groth was blamed for murdering another member of the local aristocracy - Jan Ossoliński, the castellan of Wislica. The conviction that the taste for violence can be inherited with the blood of an evil ancestor is strongly emphasized by Długosz: “... he [Groth] handed down to his successor as a patrimony not only his estates but also his turn for crime. So, impiety of his father, though already dead, continued to live in his son Lucas.”⁶⁸

Wealth that Lucas Slupecki obtained by pillaging the weak allowed him to enter the ranks of the most rich and powerful nobles of his land. Information mentioned by Długosz about Lucas’ matrimonial alliance provides remarkable evidence for the high social position enjoyed by Slupecki in contemporary noble society. Długosz says that Lucas’ wife, Sbignea,

⁶⁵ Ibid., 41: “Nullus tamen tanta mala fortius promovebat, quam proprii Regni Poloniae nobiles, subditi et terrigenae, raptu et furto vivere soliti.”

⁶⁶ Ibid.

⁶⁷ Ibid., 284-88.

⁶⁸ Ibid., 284: “hunc non solum bonorum sed et scelerum reliquerat haereditarium successorem, in quo parentis sui Grothonis, quamvis mortui, vivebat tamen impietas.”

was a daughter of one of the highest dignitaries of the kingdom - Zbigniew of Brzezie, the marshal of the kingdom. The historian describes Slupecki as a prosperous, lustful, and greedy noble, who was blinded and hardened in his wrongs and unaware of the approaching divine vengeance. Though with some delay, comments Długosz, the divine force finally struck Slupecki with severe punishment, surrendering him directly into the hands of Satan. Długosz was thoughtful enough to write down the precise date of the event: "In God's year 1459, on December 28, the evil spirit invaded him, and by God's permission started to torture him gravely."⁶⁹

Thus the account which Długosz started to tell as a story of crime turned into that one of the diabolic possession. In this way, the story best served to illustrate the involvement of supernatural forces in the pursuit of justice and the inevitability of the divine punishment for the crimes committed.⁷⁰ Długosz emphasizes that in the case of Lucas Slupecki the diabolic possession inflicted upon the culprit was, in fact, a form of healing the social evil. Lucas' enormous sufferings, represented by Długosz as a triumph of the divine justice, were not only called on to avenge the grievances of his victims. Lucas' diabolic possession and the pain he had to bear worked as a form of recovery from serious disease and were aimed at helping the culprit to come to his senses and undertake serious penance.⁷¹

However, this is the story of a recovery that failed. It appears that the Lucas' diabolic possession had a devastating effect on his family relations. All of Slupecki's family - his wife, son, Jan, and other relatives - left home, struck by the fear of a demon and unable to bear the terror of the possessed. Długosz further narrates that Lucas' kin turned for help to the local exorcist, the priest, Jan Kazimierski, who was himself a Slupecki relative and deeply moved by Lucas' fate. Notwithstanding, the attempts at expelling the demon through exorcism were in vain. Though calmed down by the exorcism, the demon successfully resisted the endeavor at "tearing away from his hands the slave, over whom he had acquired power."⁷² Furthermore, in addition to severely torturing Lucas, the demon manifested his

⁶⁹ Ibid., 285: "Anno itaque domini millesimo quadringentesimo quinquagesimo nono, die vicesima octava mensis Decembris, invasit illum spiritus nequam, et permittente deo, gravi tortura exagitabat eum."

⁷⁰ It seems that Długosz liked to mention the fact of the demonic possession in his condemnation of especially wicked men. See, for instance, another account by Długosz, describing the death of Jan Gruszczyński, one of the major enemies of the Zbigniew Oleśnicki's faction in the struggle over the Cracow bishoprics during the 1460s. Jan Długosz, who was closely connected with Zbigniew Oleśnicki, says that Gruszczyński died in 1473 without taking final confession and being possessed by a demon. Consider a short comment by Urszula Borkowska, *Treści ideowe*, 116.

⁷¹ J. Długosz, *Historiae Polonicae*, 285: "... sed differebatur ad poenam contra cuius impietates, in caput eius relatura supplicia Divinitas consurrexit, tradens illum in interitum Satanae, ut plagis suis afflicto, a sordibus suis quondam resipisceret, et propitiationem quereretur divinae pietatis."

⁷² Ibid., 285.

presence by harranging against other people. As one of the most apparent evidence for the *opus demonis* directed against Lucas' relatives, Długosz describes the case of the tragic and terrible death of a two-days-old baby which occurred in Lucas' house. The unusual and terrible circumstances of the death left its witnesses in no doubts that it had been done by a demon: the baby's body and head were found to have been pushed with inhuman force into the very narrow hole of the hot oven.⁷³

Długosz reports that Jan Kazimierski spent six weeks at the bed of Lucas, striving in vain to cure him and bearing with patience the demon's numerous offences and tricks. Seeing the futility of his efforts, the exorcist tried to persuade Lucas during his short intervals of calm to return to the original owners all the goods that he had unjustly plundered to the original owners. In this manner, Kazimierski argued, Lucas would show his repentance and gain God's grace of liberation from the demonic possession. In a rare moment of contrition Lucas agreed to the priest's proposal. Following the exorcist's advice, Lucas invited to his residence the numerous men who had suffered from his injustices and violent attacks for long years. By doing this Lucas showed his willingness to make restitution to the wronged men for all the goods and livestock that he had taken from them by force. When the invited people had arrived, Lucas commanded to his officials to divide his own livestock from robbed animals. It turned out that almost all the cattle which were in Lucas' possession at that moment had been unjustly seized by force from other people. Długosz relates that Lucas became infuriated, realizing how much his estate would decrease as a result of his intention to compensate for his wrongs. Having been instigated by the demon, Lucas rapidly changed his mind and refused to return the stolen livestock. People who had arrived with the hope of taking back their property retreated after being menaced by the possessed man. Following these events, Jan Kazimierski left Slupecki for home. Długosz says that the exorcist gave up his hope of success in the demoniac's recovery and was gravely upset because of Lucas' stubbornness and bad temper.⁷⁴

After these events Lucas Slupecki lived for twelve years more. The exact date of Slupecki's death, on July 18, 1471, was again accurately written down by Długosz in his Annals.⁷⁵ As Długosz noted at his death, he died with his mind darkened by the devil, never having repented properly for his crimes. Death brought Lucas' soul no liberation from the

⁷³ Ibid., 285-86.

⁷⁴ Ibid., 286-87.

⁷⁵ Ibid., 287: "Vixit autem Lucas Slupczski post hanc plagam et passionem annis duodecim ... anno Domini millessimo quadrigentesimo septuagessimio primo, die Mercurii, decima octava mensis Iulii, facta confessione et salutari sumpto viatico, nulli tamen eorum, quos rapinis concusserat, substantia reformata, filio Iohanni et coniugi Sbigneve illam demandans, expirat."

demonic power. Długosz relates that horrible things were said to occur continually at Lucas' grave, located in the Dominican monastery of Saint Jacob, outside the town walls of Sandomierz. In his chronicle Długosz recounts some of the fearful stories circulating about this place: terrifying voices and cries were heard on the tomb of Lucas; columns of fire rose over the Lucas' grave, which struck the imagination of witnesses as if the whole church was consumed by flames; a horrific face of the ghost of Lucas, enveloped by flames, chased and frightened local monks, demanding the return of his horse, taken by the monks during his funeral.⁷⁶

The most instructive of these stories is the appearance of Lucas to a certain sleeping monk. Waked from his dreams by Lucas' ghost knocking at the door, the spirit forced the monk to promise to visit Lucas' widow, Sbignea, and his son Jan. The monk was obliged to remind them to make restitution to people for all their property Lucas had seized. This late repentance, which was communicated by Lucas' spirit, was said to be able to soften his horrible sufferings in hell. Frightened by the menacing spirit, the monk visited Lucas' family and tried to persuade them to fulfill the request of the dead. However, the monk's words were taken by Lucas' relatives as nonsense. At this point, Długosz ceases his narrative about Lucas Slupecki. The negative response of Lucas' relatives set a pretext for Długosz to develop another line of the narrative and expound his ideas about the importance for living family members to care for the souls of their dead relatives.

The concluding words Długosz uses as a reason for the long and detailed exposition of the life and death of such a spoiled and undignified man as Lucas Slupecki, are noteworthy. Długosz remarks that he perhaps may be regarded as small-minded in devoting so much attention to such a repulsive and terrible case. In Długosz's words, pondering so long upon the fate of a man of the noblest pedigree, afflicted by an infernal punishment during his life, was, nevertheless, completely justified. Długosz considered that placing the account of Lucas Slupecki's possession on the pages of the Annals contributed to urgently needed efforts to divert the Polish nobles from their propensity to violence and robbery.⁷⁷

Długosz intentionally exploited the motif of supernatural intervention and punishment in two other crime stories. The first focuses on the execution of Wladislas of Domaborz, the castellan and captain of Naklo, and the second on the liberation of Jan Rzeszowski, the

⁷⁶ Ibid., 287-88.

⁷⁷ Ibid., 288: "Morosiolem forsitan me gessi in referendo, casu tam tetro et terribili, quam sat fuit, Polonorum procures ab insita eis rapina et concussione aversurus, dum animadverterunt, sui generis atque gentis satrapam, Lucam Slupieczsky, quamvis poena gehennali, dum viveret, a daemonibus tortum, vitam suam per annos tredecim salutary poenitentia non emendasse reformationem vero iniuste ablaturum, neque filium, neque uxorem, quamvis in vita et post mortem demandatam curae habuisse."

captain of Nowy Korczyn, from robbers' hands.⁷⁸ Wladislas of Domaborz is portrayed as one of the major wrongdoers in the kingdom, who appeared in great numbers during the troubled period of the thirteenth-year war with the Teutonic Order.⁷⁹ He was one of the war commanders who had invested his own money in waging military campaigns, but whose expenses were not reimbursed by the king after the end of the war. As a head of a band of similarly unpaid mercenaries he incessantly disturbed the country with constant pillaging and robbery. Długosz did not miss the opportunity of mentioning his major evildoings, which were listed as: the capture by fraud of the royal castle of Sluchow, the imposition of an unlawful tribute on the local population, the torture and murder of many nobles of the Sluchow district, the devastation of the estates of the church of Gniezno, and the minting of counterfeit coins. When this notorious felon was finally caught and decapitated in 1467 by the Poznan captain, Peter Szamotulski, almost all the inhabitants of the region rejoiced at this work of justice. Wladislas of Domaborz's belonging to the highest rank of the Polish nobility did not spare his life. Długosz comments with approval on his execution: "if only this sort of justice was extended to other such malicious men, God would certainly watch the kingdom and its public affairs with a more auspicious eye."⁸⁰

The second story, recounting the case of Jan Rzeszowski, shows once again to what extent fifteenth-century Polish society was a world of insecurity, dominated by the social violence. It is bewildering how it was possible that such a high official as the royal captain and the Cracow canonic Jan Rzeszowski was captured by a band of highwaymen on his way to visit the king. It is also noteworthy that it happened on the free royal road connecting two highly important towns of the fifteenth-century Kingdom of Poland: Piotrków, the traditional gathering place of the diet of the kingdom, and Korczyn, the centre of the Rzeszowski's captainship, the gathering place of the Little Poland diet and a frequent royal station. Długosz mentions that the felons who bore responsibility for this wrongdoing were outlawed local nobles, ill-famed for their numerous crimes. However, Rzeszowski's captivity did not last long. The captive was lucky enough to flee from the hands of the robbers in the middle of the day near the town of Częstochowa. Długosz notes that Rzeszowski owed his successful escape to the divine assistance of the Virgin Mary and Saint Stanislas, to whom he had dedicated many vows and prayers while having been imprisoned.

⁷⁸ Ibid., 479-80, 480-1.

⁷⁹ The evidence given by Długosz for the years 1460 and 1462, telling about the criminal activity of a certain Polish noble Borziwoy de Skrzin, provides another example of the notorious wrongdoer in the period of the middle of the fifteenth century, Ibid., 304, 350.

⁸⁰ Ibid., 480: "quod si eadem iustitia in caeteros extenderetur malignos, benigniori oculo Deus Polonicum Regnum et eius rem publicam intueretur."

It is highly interesting that these stories are presented as two complementary narratives. The description of the wrongdoings of Wladislas of Domaborz and his capital punishment are contrasted with the wonderful salvation and pious conduct of John Rzeszowski. Długosz achieved this effect by emphasizing the chronological coincidence of the major events in these two accounts. It happened that both men were captured at the same time and the date when their fate was finally determined also coincided. According to Długosz, the destiny of these characters was complementary and guided by divine providence according to what they really merited: “one was decapitated, while another was liberated.”⁸¹

The third story of crime narrated by Długosz concerns the case of the murder of Jacob Boglewski, a distinguished noble from the region of Mazovia. Długosz provides a detailed account of this *cause celebre* in his *Annals* under the year 1466.⁸² According to, Jacob Boglewski was slain while sleeping in the bed in his house by Jan Pieniążek, a young presbyter and former archdeacon of Gniezno. Długosz stresses the active involvement of the closest members of Boklewski’s household in his assassination was the most hideous feature of this homicide. Boglewski’s wife, Dorothy, who had an affair with Pieniążek, and Boglewski’s three most intimate familiars – his notary Jacob Jaszczewski, Plichta and Konarski - helped plot the crime and actively assisted Pyenyanszek in perpetrating the murder. Jacob Boglewski was reported to have been slaughtered and cut into pieces in the most horrible manner with swords, lances, and axes. Długosz relates that the body of the murdered man, found the next day after the crime had been committed, was so heavily disfigured by numerous wounds that it was impossible to recognize.

The evidence Długosz’s *Annals* supply about the attempts to punish the perpetrators of this crime suggests an inefficiency of the public prosecution in late medieval Kingdom of Poland. All the felons involved in this horrible slaughter were easily identified and caught by Nicolas Boglewski, the palatine of Warsaw and the brother of the dead man. According to Długosz, the quick pace of the inquest was partly due to the confessions extorted from the familiars, who had quickly been captured and tortured. Moreover, the details of the crime also came to light due to the discovery of letters written by Pieniążek to Dorothy, in which the plan of the assassination had been discussed and worked out. Of all the felons, however, Boglewski’s servants were the only men who bore the just and merited punishment. Długosz mentions the fate of Jacob Jaszczewski, who was quartered and pieces of his body put on

⁸¹ Ibid., 481: “...et qui uno die capti fuerant, uno die pertulerunt destinata sibi a Deo stipendia, unus liberationis, alter truncationis.”

⁸² Ibid., 424-5, 426, 429-30.

display in various parts of the town where his execution had taken place.

As concerns Jacob Boglewski's wife, the Warsaw palatine and his men, who had caught Dorothy and her maidservant, first wanted to bury them alive according to an old legal custom. Nicolas Boglewski, however, retreated from his initial intention, having been moved by pity after many supplications by the Warsaw mendicants. Długosz reports that after some time in custody, Dorothy took flight to Prussia, not waiting for the penalty. There she found shelter and protection with a commander of Czech mercenaries.

The case of Jan Pieniążek is the most interesting. The Warsaw palatine and other relatives of the murdered man brought their accusations to the spiritual court at the synod of Łęczyca, which was specifically established to consider the criminal cases of clerics. In order to strengthen their claim the plaintiffs presented the above-mentioned letters, allegedly written by Jan Pieniążek to Dorothy, as a proof of crime. Długosz notes that many people were convinced of Pieniążek's culpability after scrutinizing the letters and recognizing Pieniążek's handwriting. Długosz also says that many clerics who attended the synod, with copious tears, publicly deplored such an abhorrent misdeed by the archdeacon of Gniezno. With overall concord and approval of the synod, the sentence was passed, recommending that the Gniezno archbishop set out the supreme judicial inquisition against Jan Pieniążek. The task of the inquisition was to carry out the proper and diligent examination of the testimonies of witnesses involved in this case. It was stipulated by the synod's decision that if the official inquest proved the guilt of Pieniążek, he would be disfranchised of all ecclesiastical benefices and put into prison for the rest of his life in order to repent his sins and crimes. However, this appears to have been a way of concealing the crime and letting the culprit evade severe punishment. As Długosz indignantly notes, Jan, archbishop of Gniezno had no intention of establishing an inquisition and did not want to proceed against Pieniążek. He was rather inclined to hush up the scandal which had erupted in his church. In the end, Jan Pieniążek, though disfranchised of his benefices, managed to escape imprisonment, being hidden away by powerful relatives.

It is interesting to note that Jan Pieniążek appears once again in the pages of the Długosz's *Annals*. Under the following year, 1467, Długosz tells the readers how this ignominious felon was finally imprisoned.⁸³ This time Długosz starts his account by describing Jan Pieniążek as being at the head of a gang of youths whose members belonged to the noblest families of the Cracow and Sandomierz lands. Długosz relates that many of

⁸³ Ibid., 498. The rubric is entitled: "Ioannes Pyenyanszek olim archidiaconus Gnesnensis per patrem suum captus, episcopo Cracoviensi, carceri coniiciendus ob patratum homicidium, traditur."

these young brigands lived in excessive luxury, throwing away their paternal estates and not sparing money on a splendid retinue, dress, horses, and so on. In order to recoup their expenses the gang frequently raided the houses of local nobles and pillaged merchants on the roads, taking advantage of the absence of the royal captain, Jacob of Dębno, from the country.

The story does not lack an ironic twist, since punishment fell on Jan Pieniążek from the most unexpected side. The presbyter's father, the Cracow sub-chamberlain, Nicolas Pieniążek himself captured his son and delivered him into the hands of the Cracow bishop. In this regard the account is illuminating in stressing the role of self-help in the pursuit of justice in late medieval society. Długosz relates that Jan Pieniążek spent three years and six months imprisoned in the dark and hideous dungeon of the church castle of Iłża. It is worth mentioning that Długosz did not spare the harsh words for Nicolas Pieniążek in his account of the murder of Jacob Boglewski, charging the Cracow sub-chamberlain with the main responsibility for saving his son from the penalty he merited. Notwithstanding this, Nicolas Pieniążek is depicted as a man who came to realize the danger of his son's infamous behavior for both his personal and his kin group's reputation.

Describing the murder committed by Jan Pieniążek and his accomplices, Długosz tended first of all to put forth its enormity and incomprehensibility. As horrendous and incongruous as it was, Długosz exclaimed, such a crime had been never known to occur since the time Poles had accepted the Christian faith. This was what forced Długosz to take up pen and write down the case with the aim of transmitting it as an admonition to future generations.⁸⁴ Evidence presented by Długosz demonstrates how the extension of noble violence was accompanied by visible growth in social tolerance towards even the most abominable crimes. Indeed, the story echoes motifs of lamentation for the deplorable morality of fifteenth-century Poles, mentioned at the beginning of this subchapter. Hence, it was perhaps not a simple coincidence that in the general order of the Długosz's historical narrative his harsh "Censure of the Depraved Mores of the Poles," which can be regarded as a culmination of his denouncement of the moral failures of Polish society, followed and was put under the same year as his account of the murder of Jacob Boglewski.

All three accounts by Długosz presented here render noble violence as a phenomenon completely incompatible with the idea of social order. Długosz evidently intended to deprive

⁸⁴ Ibid., 424: "Contingit interim causa et casus horrendous et immanis cuius magnitudo et raritas impulit me ad scribendum, cui par a tempore suscepta a Polonis sacrae fidei, per similitudinem exemplum non reor apud eos contigisse; et quanquam speciem prefati facinoris silere magis et suppressere quam proloqui delectet: in favorem iustitiae et in scaeleris enormissimi execrationem, mandato illud literis et annalibus..."

the noble feud and violence of any possible claim to legitimacy. Within the spectrum of fifteenth-century attitudes towards violence, Długosz's stance represented perhaps the ultimate condemnation of noble violence. At the same time, it is also legitimate to ponder to what extent the scholars can trust Długosz's evidence and take his descriptions of contemporary events and people uncritically.⁸⁵ It seems that the reliability of Długosz's evidence should be considered against narrative patterns and models accepted by other clerical authors in their representation of the lay violence during the Middle Ages. Some scholars argue that the focus on the excesses and enormity of noble violence found in some clerical narratives of the Middle Ages was an expression of the clerical ethos, traditionally hostile towards the warrior valor of the nobility. Furthermore, historical writings that focused on, and probably exaggerated, the scale of the noble feud and atrocities met some pragmatic aims for monastic and church institutions, being one of the techniques of waging disputes with their lay adversaries. If one accepts this point of view, Długosz's narrative represents the culturally and socially biased image of the noble society of his times as it sank into violence and disorder.⁸⁶

It is true that the moment of divine intervention and punishment figures prominently in all three Długosz's stories of noble wrongdoings. This is a trait which makes Długosz's narrative quite a similar to other accounts of noble violence written by clerical authors. Still, I will argue that Długosz's representation of noble violence cannot be dismissed as the mere rhetorical strategy of a clerical author who used his narrative as an instrument to condemn the powerful lay enemies of the Church. I will rather suggest that Długosz's narrative exceeded the limits of the traditional clerical representation of violence and that it can be linked with a wider preoccupation with social violence and disorder that was on rise among some representatives of the Polish political and intellectual elite in the fifteenth century.

⁸⁵ For a sceptical view of the truthfulness of the Długosz's accounts of his own time, consider Karol Górski, "Rządy wewnętrzne Kazimierza Jagiellończyka w Koronie," in Marian Biskup and Karol Górski, *Kazimierz Jagiellończyk*, 82.

⁸⁶ For this pattern of the representation of noble violence in ecclesiastical authors, see: Barbara H. Rosenwein, Thomas Head and Sharon Farmer, "Monks and Their Enemies: A Comparative Approach," *Speculum* 66, no. 4 (1991): 764-96. On two opposite value systems represented by the clerical and lay attitudes towards violence and feud in Middle Ages, see: Howard Kaminsky, "The Noble Feud in the Later Middle Ages," *Past and Present* 177 (2002), 82; Otto Brunner, *Land and Lordship*, 70-71. The question of the trustworthiness of the representations of the noble violence in clerical narratives has become the central in the present-day historiographical debates about the limits and possibilities of examining the role of violence in medieval society. The arguments by Stephen White, developed in his polemics with Thomas Bisson over the role of violence in the social changes in the period around 1000 (the so called "Feudal Revolution" thesis) is the most significant for these debates. See: Stephen D. White, "'Feudal Revolution': A Debate," *Past and Present* 152 (1996), 209-10, 216-17. For an overview of the debate and valuable comments, see: Warren C. Brown and Piotr Górecki, "Where Conflict Leads: On the Present and Future of Medieval Conflict Studies in the United States," in *Conflict in Medieval Europe*, esp. 281-2.

To demonstrate this suggestion I propose to pursue further investigation in two directions. The first direction is to show the persistence of the theme of noble violence in Polish historical and political writings by extending the temporal perspective towards the sixteenth century. With the second direction, I shall try to contextualize the Długosz's narrative by drawing on some additional evidence from his time that shows the similar attitudes towards the problem of violence and order. My attempts will be restricted to some general and introductory observations. This is explained basically by the poor state of research on social violence in the Late Medieval and Early Modern Kingdom of Poland in general, and on the perception and public opinion regarding violence in particular.⁸⁷

As for my first point, the writings of the prominent sixteenth-century Polish thinker, Andrzej Frycz Modrzewski, offer valuable evidence demonstrating how the problem of the spread of violence and noble enmity remained a burning issue in the context of the new moral and political discourse of humanist's thought. The Modrzewski was one of the most acute and attentive observers and critics of contemporary society, known for his taste for detail in describing vicious customs and abuses of law.⁸⁸ A number of examples can be drawn from his great treatise *Commentariorum de Republica Emendanda* to illustrate his deep preoccupation with the grim reality of violence and enmity. For instance, Modrzewski devotes a separate chapter to a strong condemnation of the spread of duels. There he also takes issue with those who defended the right to avenge wrongs by using force, and advanced such right as an expression of noble fortitude and one of the principal human virtues.⁸⁹ It is significant that in his criticism of the attitude towards violence as virtue Modrzewski also revealed strong communal support for the violent mode of conduct. He points to the existence of a public audience of enmities - men who closely followed the course of enmities, commented upon the steps and incited the inimical parties to further action.⁹⁰ In another

⁸⁷ For instance, a consideration of the problem of violence and social order is completely absent from the most comprehensive review of the internal politics of Casimir Jagiellończyk yet written, by Karol Górski, "Rządy wewnętrzne Kazimierza Jagiellończyka w Koronie". The same holds true for a discussion of implications violence had on the social crisis in the late medieval Poland. Characteristic in this regard is the article by Marian Dygo, „Czy w Polsce późnośredniowiecznej był kryzys gospodarczy,” *Przegląd Historyczny* LXXX no. 4 (1989): 753-64. Historians' lack of attention to the issue of social violence, as represented in Długosz's *Annales*, has been already pointed out in the footnote no. .

⁸⁸ For this quality of Modrzewski's works, see Waldemar Voisé, *Frycza Modrzewskiego nauka o państwie i prawie* (Warszawa: Książka i Wiedza, 1956), 27, 303.

⁸⁹ Andrzej Frycz Modrzewski, "Liber de moribus," in his *Commentariorum de Republica Emendanda*, caput XXVI, esp. 148: "Velim atem mihi respondeant, qui ultionem fortitudinis ac magnanimitas nomine ornare audent, quid de contempione iniuriarum statuendum putent? Etenim si ferina ista rabies tanti fit, ut ei uirtutis nomen imponatur, quid igitur est lenitas, quid placabilitas, quid animi remissio?"

⁹⁰ Ibid., 149: "Et tamen non tantum qui iniuria extimulati sunt, affectui suo indulgendum putant se ulciscendo, sed alii quoque idipsum et sentiunt et loquuntur... ." Ibid., caput XXVIII, 156: "Accedit ad haec mala ingens

chapter of his work devoted to the necessity of forbidding the right to carry a weapon Modrzewski demonstrates the scale of contemporary violence that erupted because of the abuses of this right. In doing this, he stresses that for his time he knew of no gathering of men that had finished without incidents of fighting, wounding and homicide.⁹¹ This is not to deny that Modrzewski's writings were conceived as a comprehensive project for the reform of contemporary society, and for this reason tended to exaggerate some of its vices. However, it is also true that an alternative understanding of law and justice, rooted in the noble right to exercise private violence, though condemned and stigmatized, looms implicitly in Modrzewski's text.

To illustrate how Długosz's evidence echoed and reflected a broader communal concern with the maintenance of order during his own time, it is appropriate to start with the case of the failed efforts to fight social violence in the Cracow palatinate in 1450-1451. The essence of these measures was to establish an official inquisition and prosecution of crimes, called *Rug*. This special sort of inquisition was designed to put more executive authority into the hands of royal officials to pursue and punish offenders against the law.

Again, it is Długosz, who offers valuable observations about these unsuccessful attempts to introduce *Rug*.⁹² Behind this initiative was an idea of sharpening the struggle against the thieves and criminals who ranged the public roads and regularly robbed and killed the merchants and other people. Długosz provides an account of how these plans for enforcing the law and maintaining order were thwarted by the nobles' propensity to enmity and violence. As Długosz notes opinions were divided among the barons concerning the expediency of such an inquisition. The majority of the royal council viewed the institution of *Rug* as *res optima et salubris*, considering it as a remedy necessary for the improvement of conditions of justice and social order. The minority, led by the Cracow palatine, Jan of Tęczyn, opposed this plan with vigor. Finally, the issue went to the diet of the Cracow land for approval. And there the royal initiative failed. According to Długosz, the motives of those who resisted the introduction of *Rug* were clear. In his words, many common nobles as well as some of the barons of the kingdom made many impediments to the *Rug*, fearing that their

multorum improbitas ac nequitia, qui uel excitent alantque aliorum discordias tum per se, tum per alios leuitatis suae administros..."

⁹¹ Ibid., caput XXVII, 151: "Nulli sunt fere conuentus hominum, in quibus aliquot uulneratos, mutilatos, caesos et iniuriis innumeris affectos non uideas."

⁹² J. Długosz, *Historiae Polonicae*, 84-5. The account is given under the following rubrics: 1) "Kazimiri Regis conatus de instituendi inquisitione Rug dicta contra fures et praedones in cassum abiit, reclamantibus non paucis regnicolis;" 2) "Oscitantia Kazimiri Regis in depellendis aut vindicandis subditorum iniuriis." About the institution of *rug*, *rugowanie*, consult an overview by Stanisław Borowski, *Ściganie przestępstw z urzędu w średniowiecznym prawie polskim* (Warsaw, 1933), 70-2.

own or their relatives' involvement in criminal activity would be identified in the course of the inquisition.⁹³ At this point Długosz adds a further commentary, emphasizing that the institution of such an official inquisition was not useful or necessary, especially for the barons of the kingdom who, as public fame and gossip held, had become accustomed to live from robbery and theft.⁹⁴ The fact that the communal appeal for a more effective system for the official prosecution of criminals, as described by Długosz, was quite strong, can be suggested by some other evidence. It can be inferred from a letter of Jan of Tęczyn, who was accused of having secretly acted against this initiative. In his letter he was forced to justify himself publicly by declaring his support to the introduction of the inquisition.⁹⁵

This and other evidence drawn from Długosz's historical narrative leaves no doubt of the seriousness of concern with the problem of crime and disorder faced by Polish society in the middle of the fifteenth century. Additional sources can be cited to confirm the fact of the rapid expansion of social violence as well as the urgency of this issue in the public opinion of that time. For instance, the constant and repeated emphasis on the spread of violence and injustice which endangered the foundation of the kingdom can be found in letters regularly sent by the Cracow bishop and Długosz's patron, Zbigniew Oleśnicki, to kings Wladislas III and Casimir IV.⁹⁶ It is striking how the perception and assessment of the internal situation of

⁹³ Ibid., 84: "per aliquos primores barones impedimenta non mediocre iniecta et subministrata sunt, ne aut ipsi, aut ipsorum fratres aut consanguinei, de furtis, spoliis et aliis multifariis forefactis fuissent notati."

⁹⁴ Ibid., 85: "Sed et baronibus nec utilis nec necessaria visa est, cum furto et rapto vivere assuetos publica vox et clamor proderet."

⁹⁵ Consult the letter by Jan of Tęczyn from June, 1451, sent to the senators, gathered in Piotrków, in *Codex epistolaris saeculi decimi quinti*, ed. Augustine Sokołowski and Józef Szujski, vol. 1, (Cracow: Nakładem Akademii Umiejętności Krakowskiej, 1876), (hereafter - *Codex epistolaris saeculi decimi quinti*), no. CXII, 121: "Innotuit etiam mihi qualiter ad notitiam Sermi. Dni. Nri. Regis esset deductum, illam institutionem, quae pro forum praedonumque et maleficorum castigatione terraeque purgatione fuit inventa et quae alias Rug appellatur per nullius alterius resistantiam et conditionem quam meam fuisse dilatam. Velint igitur v. d. memoriae reducere, an omni vestrum vel mea tantum resistantia ipsa terrae purgatio pro illo tempore effectum non est sortita. Sique Serenitas sua pariter cum Vrum. Dom. Communi consensus ipsam furum falsariorum proditorum et caeterorum maleficorum institutionem et castigationem per totum regnum decurrendam ad praesens dignabitur efficere irrecuse pariter cum v. d. ad ipsius finem et consecutionem volo assentire."

⁹⁶ *Codex epistolaris saeculi decimi quinti*, vol. 1, no. CXXI (Letter to King Wladislas III from the year 1442), 134: "Audivit enim puto et intellexit v. s. quantis damnis, persecutionibus, spoliis etiam incendiis anno transacto in regno vestro publice diffidatus, molestatus fuerim, et nunc eadem exspecto propter eas, quas nuper effudi, correctiones." Ibid., no. LXCXVII (Letter to Casimir IV from 1448), 72-3: "Illos etiam nobiles de Wladzyn gravissime spoliis et captivationibus terrigenarum Regnum vestrum infestantes, ... Et Capitanei atque officiales V. Serenitatis modicam curam adhibent pro defensione Regni vestry et vestrorum subditorum." Ibid., no. CVIII (Letter to Casimir IV from 1451), 115: "quod pluribus iam exactis diebus vestrae Serenitatis et nuntiis et literis expetebat presentiam reverti, et pro eius defensione, quae in hanc diem neglecta est consurgere, cum a pluribus orbibus gravi impetatur laesura sed et avarii ad praedam et offensam illius provocantur hostes." Ibid., no. CXVIII (Letter to Casimir IV from 1451), 128: "Perpendat igitur V. S. Regni sui et nostra gravamina, perpendat et mortes bonorum virorum, quas illis unus latrunculus intulit, et de quibus nec V. S. ullam compassionem aut memoriam visa est monstrasse, et aliquando pro defensione et tutela terrarum et dominiorum suorum atque illorum bono statu et regimine consurgat atque venationum opera aliis tractanda relinquat." Ibid., no. CXXXV (Letter to Casimir IV from 1454), 147: "Subditi vestry per finitimos et saepe per intestinos et proprios praedones rediguntur aut in captivitate aut in mortem, mercatoribus prae multitudine furum nusquam est tutus incessus."

the kingdom which emerges from Oleśnicki's letters resembles opinions found in the Długosz's *Annals*. The pressure from part of the political community, represented by such influential figures as Zbigniew Oleśnicki, demanding sharper legal actions against criminals and improvement of the administration of justice had its repercussions in the royal legislature. The influences of such demands can be traced, for instance, in one of the articles promulgated at the diet of the nobility of Little Poland held in Nowy Korczyn in October, 1456. The article speaks of the king's promise to convene the diet of the kingdom upon his return from Lithuania - its proceedings would be specifically devoted to reform of the system of justice.⁹⁷

This promise of the future amendments of the system of justice was formulated by Casimir IV in response to multiple critical voices, blaming, first of all, the person of king for the miserable state of justice and for the collapse of social order. For instance, Długosz understood and condemned the shortcomings in the exercise of justice in close relation to his criticism of the politics and person of King Casimir IV. Długosz's disapproval of the king's behavior is especially noteworthy in this episode of failed attempts to establish the *Rug*. Describing the growing activity of criminals as a consequence of the failure of the royal plans for the introduction of the inquisition in 1450-1451, the historian remarks that the king became discouraged about undertaking any further steps for the improvement of the state of justice and devoted himself to other business. In Długosz's words, the grievances of the people who suffered from the activity of criminals no longer moved the ruler.⁹⁸

It is common knowledge that the ideal and practice of efficient government and a system of justice in the Middle Ages were commonly associated with the person of the king and royal authority. The king was considered the supreme guardian of the social order, the main source of justice and mercy. Maintaining peace and security among his people was first and foremost among king's obligations and was always conceived of as a touchstone of royal ideology and government.⁹⁹ It was, for example, generally believed that no lawsuit was

⁹⁷ *Jus Polonicum*, 298-99: "videlicet nobis de Lithuania redeuntibus, satisfacere promittimus et spondemus, inprimis: quod captato congruo et competenti termino, in altero ex solitis locis pro conventionibus generalibus celebrandis, prout nostrae placuerit Majestati, indicemus, instituemus et celebrabimus conventionem generalem totius regni pro reformatione duntaxat instauratione et emendatione status regni et dominorum nostrorum, ac justitia reddenda et administranda super querimoniis, injuriis nec non defectibus quibuscunque, incipiendo a capite, puta a nostra Majestate, ad singula membra et subposita regnicolorum cujuslibet status regni nostri descendendo..." Provisions of the diet were analyzed by K. Górski in his „Rządy wewnętrzne Kazimierza Jagiellończyka w Koronie,” 104-5.

⁹⁸ J. Długosz, *Historiae Polonicae*, 85: "Verum Kazimirus Rex aliis rebus curam iniecerat, nec afflictio et gravamen subditorum eum movebat."

⁹⁹ For the context of the late medieval Kingdom of Poland it is important to mention the famous passage from the Chronicle by Janko of Czarnkow, describing Casimir the Great as "bonorum et iustorum piissimus tutor et

finally settled unless it went to the king's judgment. These principales were represented as formative for the image of king as *rex iustus*, *dispensator iusticiae* and *iudex supremus*. However, the Polish kings of the middle of the fifteenth century failed in most situations to fulfill these expectations.

The long period of political crisis and instability that the Polish monarchy entered following the death of Wladislas Jagiełło in 1434 should be considered a major cause for the decline in the administration of justice. It is worthwhile to provide here a very brief survey of the history of this social and political instability, which lasted from the 1430s to the 1460s. The period of political turmoil started with a fierce internal struggle for the power among various magnate factions in the years of the nonage of the Jagiełło's son and successor Wladislas III (1434-1438). The crisis reached its peak during the period of the Hungarian campaigns of Wladislas III (1440-1444). The Hungarian wars, which ended unhappily with the death of the king in the battle of Warna, worsened the situation with maintaining of the order in the kingdom. The conditions were further aggravated because of the uncertainties of the interregnum (1444-1447), which was followed by a sharp conflict between the newly elected King Casimir IV and the ruling group of Little Polish magnates.¹⁰⁰ Because of this conflict the king prolonged his stay in Lithuania even after his election to the Polish throne in 1447, leaving the kingdom without proper royal government. The contemporary sources are consistent in representing the lasting absence of kings from the kingdom as having an especially damaging effect on the internal situation. Finally, the state of social order and justice was further worsened, because of the long and exhaustive war with the Teutonic Order (1454-1466). It is, perhaps, a simple coincidence that Długosz's "Censure of the Depraved Mores of the Poles" was put down in his *Annals* exactly under the year 1466. One can hardly provide a satisfactory answer to the question of whether the year was deliberately chosen by the author for this account to mark and sum up the social experience of this particular period. However, it would be rather hard to deny that many people of Długosz's generation perceived this period as a time of social crisis, and that the rise of violence and a decline in the administration of justice were considered the major signs of this crisis.

defensor, malorum vero, predonum, violentorum, calumniatorum saevissimus persecutor. Nam quicumque latrocinia sive furta feciebant, quantumcunque fuerant nobiles, ipsos mandabat decolari, submerge et fame mortificari... calumniatores vero quos reperit, ipsos ferro ignoto in facie aduri mandabat. Ipsius temporis nullus potens dominus seu nobilis pauperi audebat facere violenciam, sed in statera aequitatis omnia dirigebantur." Quoted in Stanisław Borowski, *Ściganie przestępstw z urzędu w średniowiecznym prawie polskim*, 38.

¹⁰⁰ For a history of the conflict, consult: Karol Górski, „Rządy wewnętrzne Kazimierza Jagiellończyka w Koronie,” 84-90.

Chapter 2 – Galicia and its nobility in the Later Middle Ages

Galician Rus' was among the provinces of the kingdom, which seems to have been most heavily affected by the crisis of the 1430s-1450s. Contemporary Polish sources offer many insights into the great damages and suffering that the population of the region experienced in that period. The evidence is consistent in singling out two main causes responsible for the rapid worsening of the situation in Galicia during this period - the constant Tatar raids and the rise of internal strife and disorder. As for the Tatar raids, the deep concern with this problem found due reflection in contemporary correspondence. The letters of the Cracow bishop, Zbigniew Oleśnicki, suggest that he was seriously concerned with danger from the Tatars. In a letter from 1442 to King Wladislas III he reported the deplorable consequences of the Tatar invasion of Galicia in that year. According to the bishop the Tatars went as far as the suburbs of Lviv, leaving behind ruined and depopulated settlements. The letter further stresses huge losses in people, who had been either killed or taken captive by the invaders.¹⁰¹ It is also worth mentioning here a letter from the barons of the kingdom to the king from August 26, 1444. The letter also speaks of *Tartarorum rabies*, pointing out the almost complete desertion and emptiness of the lands of Galician Rus' and Podillya, because of the invasions.¹⁰² The letter also reveals a state of absolute despair, which came from the realization of the defenseless of the kingdom's borderlands as well as the impossibility of restoring and rebuilding the ruined provinces in the near future.¹⁰³

Voices about the deplorable situation of Galicia also came from the province itself. A particularly telling example of how seriously the local nobles felt devastated by Tatar raids, both materially and morally, can be found in a letter of the dignitaries of the Rus' palatinate to their peers in Little Poland from March 1451. It is a response of the Galician dignitaries to an invitation to attend the forthcoming diet in Brześć. They apologize for being unable to come

¹⁰¹ *Codex epistolaris saeculi decimi quinti*, vol. 1, no. CXXI, 134: "Diebus sequidem Pentecostem proxime transactis, Tartari v.s. et fidei catholicae hostes crudelissimi, terras Russiae ingressi, magnum catholicorum numerum in perpetuam servitutem cum rebus et peccoribus multis abduxerunt, in tantumque furor et audacia eorum ascenderat, ut usque ad suburbia Leopoli grassati sunt, multasque villas etiam ultra Leopolum depopulati. Complevit dominus Deus furorem suum et gravissime se per vos offensum indicat, dum eius ira atque ultio per rabiem barbarorum in nos desaeviat. Multa enim millia virginum et omnis sexus hominum partim trucidata partim abducta sunt."

¹⁰² Ibid., no. CXXV (Piotrków, August 26, 1444), 142: "... laceratum est per Tartarorum rabiem, qui aliquorum illecti donis, promissionibus et suggestionibus, crebris vicibus in terris Russiae et Podoliae grassati sunt et in terras huiusmodi plures insiliunt atque ex improvise multa millia nobilium et sexus utriusque personarum in perpetuam servitutem abducunt, ita ut paene iam tota terra Russiae et Podoliae sterilis et deserta hominibusque vacua sit..."

¹⁰³ Ibid.: "nec putamus aliquem reperiri posse, qui illarum ruinas, damnas calamitates et miseriam digne deploret."

to the diet because of the incessant danger of Tatar invasions and threats by the Wallachians. The letter complains that the Galician nobles “could not breathe any more because of the grave oppressions and afflictions” by these enemies of the kingdom. The dignitaries excused their non-attendance by saying that in those hard times they themselves could not afford to bear the cost of the travel to the diet. According to them, the whole land had totally collapsed into ruin and extreme poverty due to the incessant Tatars and Wallachian attacks.¹⁰⁴

In addition to the plague of the numerous Tatar raids, internal strife added to the difficult conditions of nobility in Galicia in the 1430s and 1460s. The numerous conflicts that flared up in the local noble community had at the root a widespread of mortgage of royal estates initiated by the Jagellonian kings. Granting the royal domain in a mortgage reached its peak during the reign of Wladislas III. A large number of the royal estates were donated as mortgage holdings to Polish magnates and nobles by Wladislas III as rewards for their participation in the king’s Hungarian and Turkish wars. The territory of Galician Rus’ suffered most from the donation policy of Wladislas III. The high volume of mortgages granted against the lands of the Rus’ palatinate resulted in the disorder and chaos in the donation policy. In many cases the same estates were mortgaged to several people at the same time. These contradictory mortgage grants gave rise to many bitter disputes. The large number of these disputes recorded in the registers of the local courts suggests that this unlimited distribution had seriously negative consequences for the stability of the local noble community. Moreover, the donation policy of Wladislas III severely affected the hereditary property of many nobles, especially those of Ruthenian descent, who did not possess written records of their ownership.

The devastating effects of this policy for many Galician nobles were also noticed by Długosz. He relates that the king, satisfying the ambitions and greed of the Polish barons, donated many royal towns and lands in Galicia and Podillya. As a result, many of the old owners were expelled from the estates which had been earlier granted to them by Wladislas’ III predecessors. A particularly revealing detail reported by Długosz is that some of the Ruthenian nobles, having been deprived of their estates, joined the Tatars, and then plundered their former native lands in revenge.¹⁰⁵

¹⁰⁴ Ibid., no. CIX: “... quia tempore graminum instante invasiones et depopulationes Tartarorum in terris Russie nobis imminare speramus, quae iam tam ab insultibus Tartarorum, quam perfidorum a molestiis et graviminibus Walachorum eiulanter afflictæ nequint respirare et adeo oppressionibus undequaque sunt affectæ et nos universi paupertate oppressi et tam sumus collapsi, quod nedum ad prefatam conventionem generalem fiendam dignitarios aliquos ex nostris ditigere,”

¹⁰⁵ J. Długosz, *Historiae Polonicae*, vol. 4, (Cracow, 1877), 683: “Multiplicanter itaque Regno Poloniae mala, ut et hostibus premeretur, vastationibus et regalibus donationibus et obligationibus deflueret. Augebat etiam

Yet, for Galicia the period from the 1420s to the 1460s was not only a time of the deep social crisis, but also of crucial institutional and political transformations. A successful campaign led by King Wladislas Jagiełło and Queen Jadwiga in 1387 resulted in the final establishment of Polish rule in Galicia, ending an almost half-century-long struggle among Hungary, Poland, and the Grand Duchy of Lithuania for the lands of the former Halyč-Volynian Principality.

The final incorporation of Galicia into the Kingdom of Poland was crowned by the issue of the privileges of 1430 and 1434. By these privileges, kings Wladislas Jagiełło and his son, Wladislas III, extended the corporate rights of the Polish nobility to the Ruthenian landowning elite and introduced Polish law and the administrative system in Galicia. One of the most visible effects of the privileges was a change of Galician Rus' into the Rus' palatinate with the further subdivision into "lands" and "districts". Four lands were created, with the centers in Halyč, L'viv, Przemyśl, and Sanok. The formation of the palatinate was also followed by the implementation of a system of the land and castle courts and a hierarchy of land offices similar to those existing in other parts of the kingdom. The capitals of each land became the centers of the land and castle courts.

The privileges of 1430 and 1434 proved to be crucial for the social development of the Galician nobility. Before 1430-1434, some features of the social status of the Galician landowning elite set Galician noblemen apart from the rest of the nobility of other Polish lands. They were, in fact, excluded from the advantages of the corporate privileges won by Polish nobles from the second half of the fourteenth century onward. Limitations on the rights of Galician nobles were maintained and established mainly through the donation policy of the rulers, which imposed a set of particular obligations on the recipients of landed property in Galician Rus'.¹⁰⁶ The royal donations illustrate that the king's primary expectation from the

huiusmodi malum baronum Poloniae ambitio, qui a Rege donationibus oppidorum et villarum in terris Russiae et Podoliae impetratis, antiqua incolas et haeredes de illis excluderant, qui inopia et egestate pressi et quodam desperatione compulsi ad Tartaros confugiebant, illosque postmodum ad vastandum terras Russiae et possessiones, quae quibus eiecti fuerant, inducebant." For the analysis of the donation policy of Wladislas III in Galicia and its consequences for the relationships among the local nobility, see Andrzej Janaczek, "Polska ekspansja osadnicza w ziemi lwowskiej w XIV - XVI wv" (Polish settlement expansion in the L'viv land in the fourteenth through sixteenth centuries), *Przegląd Historyczny* 69 no. 4 (1978), 610; Mykhajlo Hrushevs'kyj, *Istoria Ukrainy - Rusy* (History of Ukraine-Rus'), vol. 5 (Lviv, 1905), 23.

¹⁰⁶ Various aspects of royal donation policy and the nature of the noble landownership in Galician Rus' were analyzed in Mykhailo Hrushevs'kyj, *Istoria Ukrainy-Rusy*, vol. 5, 75-6, 78, 80; Ivan Linnichenko, *Cherty iz istorii soslovij v Juho-Zapadnoj (Halickoj) Rusi XIV-XV vv.* (The features of estates in southwestern (Galician) Rus' in the fourteenth and fifteenth centuries), (Moscow, 1894), 34-8; Ludwik Wroblewski, *Ród Dragów- Sasów na Węgrzech i Rusi Halickiej* (The Drag - Sas clan in Hungary and Galician Rus'), (Cracow: Nakładem Polskiego Towarzystwa Heraldycznego, 1932), 138-141; Andrzej Janaczek, "Ekspansja osadnicza w ziemi lwowskiej," 608-610; Stanisław Gawęda, *Możnowładztwo małopolskie w XIV i w pierwszej połowie XV wieku* (The magnates of Little Poland in the fourteenth and the first half of the fifteenth century), (Cracow:

grantees in Galician Rus' was military service. The specific trait of such service was precisely defined in terms of the numbers of armed people whom the grantee was obligated to supply for every military campaign. This number of armed men varied depending on the size of the estate. The importance which the kings and their governors attached to the implementation of this military service can perhaps be best demonstrated by the practice of adding this obligation to previously issued donations, that did not include them.¹⁰⁷ In his account of the events surrounding the promulgation of the privilege from 1434 by Wladislas III Długosz provides interesting details about these duties of by saying that any payment or compensation was foreseen for Galician nobles for the participation in military campaigns. Długosz also specifies that the military service was performed *cum quibuscumque hostibus et quotiescumque*, which virtually suggests its rather unlimited character.¹⁰⁸ Perhaps for these reasons, military service was seen by the Galician nobles as an especially heavy burden, which sometimes led to protest. Długosz conveys the story of such a protest by the Galician nobility in 1426, when some nobles refused to join the campaign, requiring first that they be paid the sum of the five marks for every lance, as it was stipulated for the Polish nobility in the privilege of Piotrków (1388).¹⁰⁹

Two other obligations can be regarded as complementary to military duty. The first obligation required from the grantee to take up permanent residence in the area where the estate was situated. This condition was perhaps motivated by the king's intention to create a strong network of knightly settlements able to defend the borders of Galician Rus' against the raids of the Tatars. That this was a burning issue for the eastern military policy of the Polish

Wydawnictwo Uniwersytetu Jagiellońskiego, 1966), 61-62. The most up to date and most thorough scholarly overview of the donation policy is provided by Andrzej Janeczek, "New Authority, New Property, New Nobility. The Foundation of Noble Estates in Red Ruthenia During the Fourteenth and Fifteenth Centuries," *Quaestiones Medii Aevi Novae* 7 (2002): esp. 86-109.

¹⁰⁷ During the revision of the charters issued for Rus' in 1413 in Horodok, officers of the royal chancellery made the following addition to the donation charter issued to Michael Buczacki by Wladislaw Jagiełło in 1392: "huic donationi adiunctum est servitium unum lancae et duorum sagittariorum in armis et equis valentibus ad quamlibet expeditionem immanentem," in *Materiały do historii suspił'no-politycznych i ekonomichnykh vidnosyn v Zakhidnij Ukraini* (Source materials on the socio-political and economic relations in Western Ukraine), (henceforth - Hrushevs'kyj, *Materiały*), ed. Mykhajlo Hrushevs'kyj, in *Zapysky Naukovoho Tovarystva im. Shevchenka* 63-4 (1905), no. 7. For an overview of the revision of 1417 and information about two other documents, see Irena Sułkowska-Kurasiowa, *Dokumenty królewskie i ich funkcja w państwie Andagawenów i pierwszych Jagiellonów* (Royal documents of the state of Anjou and the first Jagiellons), (Warsaw, 1977), 87-8.

¹⁰⁸ J. Długosz, *Historiae Polonicae*, vol. 4, 548.

¹⁰⁹ J. Długosz, *Historiae Polonicae*, 543. For commentary see Stanisław Kutrzeba, *Przywilej jedlnieński z r.1430 i nadanie prawa polskiego Rusi* (The privilege of Jedlno and the granting the Polish law to Rus'), (Cracow, 1911), 20; Mykhajlo Hrushevskyj, *Istoriya Ukrainy-Rusy*, vol. 5, 85. For an overview of the provision of the Piotrków privilege, see *Jus Polonicum*, 192.

kings is demonstrated by frequent complaints about the deficiency of population in Galician Rus', which often follows just after a statement of permanent residence.¹¹⁰

The second condition was conceived with the same aim of providing defense for the lands of Rus' and was in some ways a continuation of the requirement of permanent residence. This obligation stipulated the necessity of obtaining special royal permission to sell the granted property.¹¹¹ Though few royal charters speak about the king's privilege of free disposal of endowed land,¹¹² it is likely that royal consent functioned as a generally accepted rule. Documents of land transactions between nobles show quite clearly that the parties who concluded the bargain as well as the king or his governors tried to enforce this provision.¹¹³ In addition, the king reserved the right to substitute an already granted estate for other landed property. Such a replacement had more chance of being fulfilled in the case of some exceptional circumstances, such as, for instance, the need to compensate a knight who had been captured and later released or the discovery of gold, salt or other metals on an estate.¹¹⁴

Royal charters are quite inadequate when it comes to noting other services. Except for the responsibility of an annual payment of two *grossi* from every peasant home, which is present in almost all charters, the privileges have little to say about other tributes. Most do not contain any mention of them or describe them without sufficient precision, providing nothing more than a general clause. Nevertheless, some pieces of evidence crucial for illuminating these duties are available. A report compiled by the Przemyśl judge, Costko, and sent to King Władysław Jagiełło refers to a tribute in oats collected from all the nobles of Przemyśl land.¹¹⁵ The payment of oats by the Galician nobility was also mentioned in the Brest privilege issued by Władysław Jagiełło for the Polish estates in 1425. This tax was to be paid until the death of Jagiełło.¹¹⁶ Another source for the services of Ruthenian nobles is Długosz. Writing about the release of the Galician nobility from extraordinary duties in 1434, he enumerates *multa et graviora tum tributa tum onera*, which burdened Galician nobles during the reign of Władysław Jagiełło and included along with military service, support for building the royal

¹¹⁰ AGZ, vol. 2, no. 4; vol. 4, no. 16 and 22; vol. 7, no. 10; vol. 8, no. 9.

¹¹¹ See, for example Ibid., vol. 2, no. 6, 14 and 19; vol. 4, no. 16; vol. 8, no. 9.

¹¹² Hrushevs'kyj, *Materialy*, no. 6; Maria Peshchak, ed., *Hramoty XIV st.* (The charters of the fourteenth century) (henceforth - Peshchak, *Hramoty*), (Kyiv: Naukova Dumka, 1974), no. 29 and 70.

¹¹³ As examples, consider Hrushevs'kyj, *Materialy*, no. 16 and 33; Peshchak, *Hramoty*, no. 20, 53 and 80; AGZ, vol. 9, no. 13; vol. 2, no. 37; vol. 7, no. 23; Stanisław Kuraś, ed., *Zbiór dokumentów małopolskich* (Collection of documents of Little Poland), (henceforth - ZDM), vol. 8, (Wrocław: Zakład Narodowy imienia Ossolińskich, 1975), no. 2560.

¹¹⁴ Peshchak, *Hramoty*, no. 51; ZDM, vol. 8, no. 2541; AGZ, vol. 8, no. 13.

¹¹⁵ Peshchak, *Hramoty*, no. 38.

¹¹⁶ *Codex epistolaris saeculi quindecimi quinti*, vol. 2, ed. Antoni Lewicki, (Cracow, 1891), no. CXLIX: "salvis tamen avene contributionibus, de quibus nobis ad tempora vite nostre respondebunt..."

castles, and an annual payment of two measures of oats, two measures of rye and four *grossi* in money.¹¹⁷

This set of obligations remained almost the same in spite of changing legal titles of the property granted, which varied depending on the distribution policy of the particular ruler. Generally, two types of endowments can be singled out following the criteria of the legal titles of the recipients to the donated estates. In the first case, the grantees were endowed with hereditary rights to the land property, and in the second case, their rights were defined as donations *iure feodali*. Chronologically, the hereditary endowments, first of which went back as far as to the time of Casimir III, preceded the emergence of *iure feodali* grants, which appeared for the first time during the rule of Wladislas of Opole. Almost all the charters of Wladislas of Opole, with few exceptions,¹¹⁸ contain the condition of *iure feodali*. During the reign of Wladislas Jagiełło, hereditary grants prevailed again in the royal donation policy though *iure feodali* endowments were occasionally distributed as well.¹¹⁹

In addition, various groups of privileged populations were widely present in the social structure of Galician society, and carried an obligation of military service. Members of these groups, due to the peculiarities of their social and legal status, were situated on the margins of the noble estate. Such groups appeared in Galician Rus' either as a result of the intensive settlement movement based on German or Wallachian laws or as survivals of the institutions of the *Ius Ruthenicale*. It is likely that the Ruthenian law had remained from the time of the Halych-Volynian Principality and was a local version of the *ius ducale*, a specific model of social organization widely known in Central and Eastern Europe in the early Middle Ages. The settlements on German and Wallachian laws were usually headed by the *soltys* (German - *Schultheiss*, Latin - *scultetus*), the *wojts* (German - *Vogt*, Latin - *advocatus*), and knezes. *Soltys*, *wojts* and knezes acted as agents, endowed with special power and the responsibility to found villages or towns based on German or Wallachian law, and, in return, they obtained part of the land as well as privileges. The special settlement privileges, granted to the *soltys*' and the knezes also included the obligation of *ius militare*. Settlements on German and Wallachian law became an important element of the king's attempts to establish an effective

¹¹⁷ J. Długosz, *Historiae Polonicae*, vol. 4, 548: "Sed dum relaxeret eorum multa et graviora tum tributa, tum onera, ad quaelibet bella, que ipse et sui successores Regni Poloniae, cum quibuscumque hostibus et quotiescumque, gererent sine aliquo donatio ire, ad castrum aedificationes suos homines mittere, ac de quolibet laneo posesso duas avenae, duas siliginis mensuras et quatuor grossos monete usualis sibi et mensae sue regali singulis annis solvi, voluit esse temporibus perpetuis astrictos et obligatos." For the commentary, see Stanisław Kutrzeba, *Przywilej jedlnieński*, 16-7; Mykhaylo Hrushevs'kyj, *Istoriya Ukrainy-Rusy*, vol. 5, 83.

¹¹⁸ AGZ, vol. 2, no. 6 and 14.

¹¹⁹ Several examples of *iure feodali* endowments from the time of Wladislas Jagiełło are given in Ivan Linnichenko, *Cherty iz istorii*, 42.

defense system in Galician Rus'. This left the concept of nobility and noble status not clearly defined in late medieval Galician Rus'. As a result, late medieval Galician society was characterized by high social mobility and blurring social barriers. This contributed on a large scale to the imprecision of the status and property rights of many Galician nobles.

These types of relationships between the royal power and the noble community of Galician Rus', based on the tributary and subordinate position of the nobles, lasted officially until the 1430s. During the last decade of the reign of Wladislas Jagiełło the first signs appeared of changes in the king's policy towards the Galician nobility. For the first time a promise to extend Polish law, which actually meant granting the privileges of the Polish nobility to the Galician nobility, was mentioned in the Brest privilege of 1425.¹²⁰ The politics of Wladislas Jagiello towards the Galician nobility were strongly interdependent with the intricate dynastic games played by the king at that time to keep the Polish crown for his sons. It seems that at a certain moment the king agreed to enlarge the privileges of the Galician nobility in return for support for his dynastic plans. Yet this political stance was marked by serious inconsistencies, which can be taken as general characteristics of the "Galician" policy of Wladislas Jagiełło. For instance, in the Brest privilege, declaration of the intention to grant the Galician nobility the same rights as those of their Polish fellows is followed by the preservation of the oats' tribute, which had to be paid by the Galician nobles up to the death of the king. The same preservation of the oats' tribute is also included in the text of the privilege of Jedłno, issued by Wladislas Jagiełło in 1430, which sanctioned the introduction of the Polish legal system in Galician Rus'.¹²¹ There are reasons to suppose that this obligation went much further than simply preserving the tribute in oats. The privilege of Wladislas III from 1434, which has been preserved only in the form conveyed by Jan Długosz, referred to release from many other types of obligations.

The privilege of Wladislas III from 1434 finally confirmed the new status of the Galician nobility. If one is to credit Długosz, then the issue of the privilege did not pass without resistance on the part of Polish magnates. Długosz relates that some of the Polish barons and prelates regarded the endowment of the nobility of Rus' with the same rights as other Polish nobles as offensive and incongruous with the public interest of the kingdom.¹²² It

¹²⁰ *Codex epistolaris saeculi quindecimi quinti*, vol. 2, no. CXLIX, # 18: "Item pollicemur, quod omnes terras nostras regni Polinae, eciam terram Russiae incluendo -salvis tamen avene contribucionibus, de quibus nobis ad tempora vite nostre respondebunt, - ad unum ius et unam legem communem omnibus terris reducemus..."

¹²¹ *Ibid.*, no. CLXXVII, #18.

¹²² See J. Długosz, *Historiae Polonicae*, vol. 4, 548: "Quod pluribus praelatis et baronibus Regni incongruum et rei publicae offensivum visum est: presertim cum Wladislaus Rex mortuus, non tam amplam, nec tam largam et

is highly likely that the magnates' opposition to the royal initiative was a main cause that pushed the nobility of the newly created Rus' palatinate to set up a confederacy. At the gathering of Galician noblemen held nearby the town of Vyshnya on July 10, 1436, the nobility of Galician Rus' declared the creation of a *conjuratio* with the aim of standing by the king and defending their privileges and property.¹²³

The royal privileges became the basis for the growing self-perception of Galician nobles as a local estate corporation. Sources offer evidence of some collective actions and rituals, which were centered on the preservation of the privileges of the land. One such political action that took place in 1454 was documented, for example, by the issue of a special charter. It was issued in the names of all the major dignitaries of the Rus' palatinate, who gathered in L'viv on July 31, 1454.¹²⁴ The purpose of the meeting was to deposit all the major privileges of the Rus' palatinate for safekeeping *ad manus fidelis* of the L'viv citizens. There were altogether three documents which were handed down for the care of the L'viv citizens – the charters of Queen Jadwiga, and the kings Wladislas Jagiełło and Wladislas III. Described as a solemn public event, such a ritual constituted an important occasion for manifesting and re-affirming a sense of intra-estate solidarity among the nobility of the Rus' palatinate.

Two years later, in 1456, the privileges were confirmed by the charter of the new king, Casimir IV.¹²⁵ In its preamble, the document specifically singles out that one of the causes for its issue was the great merits of the local people in organizing a defense against Tatar raids. Besides the general clause confirming the old privileges, the document also contained some amendments. Among the most significant new articles was one in which the king made a promise to not act in matters that concerned the lands of Galician Rus' without taking counsel and without obtaining the consent of the local magnates and dignitaries. The second important provision concerned the way in which the king was to administer justice during his visits in Galicia: the king promised that on his stays in Galician Rus' he would employ only judges from among the natives of the land.

The political struggle of the Galician nobility for their rights reached its peak during the late 1450s and early 1460s, caused by the conflict with the mightiest magnate family of the Rus' palatinate – the Odrowążs. They were the largest mortgage holders of royal domains in the Rus' palatinate and attempted to expand their power by confiscating estates belonging

pingneam libertatem praefatis terris dandam decrevisse scitus est.” For commentary, see Stanisław Kutrzeba, *Przywilej jedlnieński*, 16; Ivan Linnichenko, *Cherty iz istorii*, 25.

¹²³ *Codex epistolaris saeculi decimi quinti*, ed. Anatoli Lewicki, vol. 3, pars 2 (Cracow, 1894), no. XXXIX, 550-51.

¹²⁴ *AGZ*, vol. 5, no. CXXXVI.

¹²⁵ *Jus Polonicum*, 292-93.

to the middle and petty nobles. Odrowąż's politics invoked strong resistance among the nobility. Supported by the citizens of L'viv, the nobles of the Lviv land and Zhydachiv district organized a confederacy against Odrowąż in 1464. The document of the confederacy was signed by sixty four nobles of the L'viv and Zhydachiv districts and by the town of L'viv. The conflict ended with the sudden death of the Rus' palatine and the L'viv captain, Andreas Odrowąż, in 1465, and the subsequent intervention of the king, which resulted in the redemption of the Lviv and Zhydachiv districts from the hands of the Odrowąż family.¹²⁶

The establishments of the Vyshnya' and L'viv confederacies correspondingly marked the beginning and the end of this period in the history of Galicia, remarkable for the intense political engagement of the local nobility. This political activity was mainly manifested through various collective actions, which involved a considerable number of nobles and were meant to protect and re-confirm the estate's corporate privileges. Such forms of local politics as diets and confederacies had great significance for the process of gradual consolidation of the corporate consciousness of the local noble community. They developed into the major institutionalized forms of the political organization of the nobility, through which the local noble identity was reproduced and maintained. Thus, the political movements of the Galician nobility from this period brought about a crucial contribution to the rapid growth of corporate solidarity.

¹²⁶ For details see Antoni Prochazka, "Konfederacja Lwowska 1464 roku" (L'viv Confederation of 1464), *Kwartalnik Historyczny* 6 (1892): 740-78.

Chapter 3 – Statute law and criminal justice in the Late Medieval Kingdom of Poland

Some fundamental features of the functioning of the penalty system and the administration of justice in the fifteenth-century Kingdom of Poland are of crucial significance for understanding the context and causes of enmity in the fifteenth century. Below I shall attempt to outline the development of the legislature in the sphere of criminal justice in the course of the fourteenth and fifteenth centuries. This will help to clarify what legal means and modes of proceeding were chosen to cope with the most serious criminal offences. Such an overview will be also useful for understanding how these basic legal norms and provisions framed inimical relationships and disputing strategies.

The statute law of the fourteenth and fifteenth centuries reflects the ambiguous status of violence in late medieval Polish society. Like many other laws of medieval Europe, legislation on the criminal justice in the late medieval Kingdom of Poland was mostly restricted to fixing the level of fines and monetary compensation for various sorts of criminal offences. In this respect, the system of fines and compensatory payments evidently tended to dominate penalties and the legal means of control and prosecution of violence.¹²⁷ A further significant feature of the system of criminal justice was that it was grounded for the most part on the principles of private accusation. This meant that the accusation had to be brought to the court by the litigants themselves. Prosecution *ex officio* had a very limited application and was only conducted against a few major wrongs, designated as public crimes, like violent assault, public pillage, rape and arson. In general, the system of criminal law and justice tended to favor judicial principles and norms which focused on compromise in dispute settlement and the prevention of crimes rather than on the actions of official prosecution. Starting from the Statutes of Casimir the Great from the middle of the fourteenth century and throughout the whole fifteenth century this set of rules was adopted with some reservations in all major legislative acts.

So far as crimes against the person are considered, it is worthwhile to start the overview with the law of homicide. In Polish medieval law homicide was a crime emendable with a monetary compensation. The predominance of monetary fines in punishing capital

¹²⁷ M. Handelsman, *Prawo karne w Statutach Kazimierza Wielkiego*, 143.

cases was already visible in the Statutes of Casimir the Great.¹²⁸ The statute issued for Little Poland proposed an elaborate gradation of fines, taking as guidance the social status of the victim: sixty marks for the murder of nobles; thirty marcs for the nobles called *scartabellati*; fifteenth marks for nobles raised from the peasantry; and for a dead peasant the murderer had to pay four marcs to the lord and six marks to the relatives of the murdered person.¹²⁹ In contrast to Little Poland, the statutes issued for Great Poland had a simpler classification of the penalties for the crime of homicide. The statutes for Great Poland set up an equal fine for homicide regardless of the social status of the murdered person. According to the Great Polish version of the statutes, the head of the killed man was valued at thirty marks.

These fines were a private penalty which represented a symbolic substitution for capital punishment and was paid to the family of the murdered person. If the felon refused or was unable to pay the plaintiff was entitled to demand from the court to hand the felon over to him for capital punishment. In addition to the private penalty imposed on the person convicted of murder, the Statutes of Casimir the Great instituted public fines, which had to be paid to the king (*siedemdziesiąt*) and to the court (*pietnaście*). The law of homicide also considered some other special cases in which an additional monetary penalty was prescribed. For example, an additional public fine, called *ruszyca*, was set up for the murder of women. By late medieval custom it was usually paid to the queen and in Mazovia to the prince.¹³⁰ Felons convicted of the murder of court judges or court bailiffs were also liable for an additional public penalty.

The fifteenth-century legislature extended the old categories and penalties for capital cases and instituted new ones.¹³¹ In the fifteenth century new legal amendments to the law of homicide appeared for the first time as clauses of the diet of the nobility of Great Poland, gathered in the town of Colo in 1472.¹³² However, the effect of the promulgated norms at the Colo diet was diminished by the fact that they were declared to be valid only for a period of three years starting from the date of their issue. Most significant legal norms, which were

¹²⁸ For the development of a monetary payment for the crime of homicide in the Polish medieval law, consult A. Pawiński, *O pojednaniu w zabójstwie według dawnego prawa polskiego*, 29-33; S. Kutrzeba, *Mężobójstwo*, 50-68.

¹²⁹ *Statuty Kazimierza Wielkiego*, no. XLIX, 378. For the treatment of the cases of homicide in the Statutes of Casimir the Great, see: M. Handelsman, *Prawo karne*, 161-164.

¹³⁰ For the penalty of *ruszyca*, consult: S. Kutrzeba, *Mężobójstwo*, 78-80; J. Bardach, *Historia państwa i prawa Polski do połowy XV wieku* (Warsaw: PWN, 1957), 529-30.

¹³¹ For a general overview of the fifteenth-century legislation on the homicides and the broader context of the efforts to tighten control over the crimes, see: A. Pawiński, *O pojednaniu w zabójstwie*, 61-64.

¹³² The evidence of the Colo provisions comes from the royal letter, dated on December 18, 1472. In his letter King Casimir IV informs the captain of Łęczyca about these important amendments that had passed at the Colo diet. See: *Codex epistolaris saeculi XV*, vol. 1, pars 2, no. CCXXVII, 270.

initially decreed at the Colo diet, acquired legal force by promulgation in the Statutes of King Jan Albert from the years of 1493 and 1496.¹³³

The statutory law of the fifteenth century singled out two categories of felons, reflecting the different circumstances of the murder committed. The first category was casual murderers (*homicidae casuales*) and second was violent invaders and murderers (*Invasores domorum, violentique homicidae*). The weight of punishment was differentiated along the line of division designated by these two categories. In comparison with the Statutes of Casimir the Great, the pecuniary penalty for the crime of murder was doubled during the fifteenth century. It was ordained that casual murderers must be punished with a fine of one hundred and twenty marks.

The most important fifteenth-century legal novelty, found first in the Colo provisions and then confirmed by the Statutes of Jan Albert, was the establishment of a public, non-pecuniary penalty for the crime of homicide. It was imposed in addition to the usual pecuniary compensation paid to the relatives for the head of the murdered person. Felons found guilty of the crime of homicide had to be put in prison for a period of one year and six weeks. This was the most significant amendment to the law of homicide, which was known to rely explicitly on the assistance of prosecution *ex officio*. In order to prevent those convicted of murder from avoiding the penalty by imprisonment, the law forbade the parties to settle capital cases through private reconciliation. The Statutes of 1496 also specified that the felon who had committed the murder and fled, fearing the king's justice, had to be proscribed and declared outlawed. The Statute from 1496 established a separate mode of proceeding and type of penalty for casual murderers who had committed the homicide while defending themselves on public roads. Such murderers were bound to pay only the sixty marks without being exposed to the penalty of detention. This mitigated penalty was conditioned by the procedure of expurgation demanded from such murderers, which they had to undergo with the support of testimonies from six witnesses¹³⁴

Needless to say, punishment by imprisonment or fine, set up by the aforementioned statutes for the crime of homicide, concerned exclusively the members of the nobility. Commoners found guilty of murder were punished with the capital penalty. In fact, the commoner convicted of the murder of a noble relied on the mercy of the plaintiff. The noble plaintiff who brought to court an appeal of the murder was granted the option to decide the

¹³³ For the Statute of 1493, see: *Jus Polonicum*, 325, # VIII, "De solutione et poena capitis occisi." For the Statute of 1496, see: *VL*, vol. 1, 125-126.

¹³⁴ The Statute of Jan Albert from the year 1496., the article "De homicidio in sui defensione casu praesertim in via commisso." See *VL*, vol. 1, 126.1. For the comments, see: S. Kutrzeba, *Męzobójstwo*, 16.

fate of the convicted commoner by choosing between the death sentence and a monetary compensation. The same principle was applied to the cases of wounding in which the noble suffered from the violence at the hands of commoners. The injured nobles had the right to demand cutting off the hand of the felon instead of taking the monetary payment.

In this way criminal law worked to strengthen the privileged position of the noble estate within the political and social body of the late medieval and early modern Kingdom of Poland. This situation was perceived by many contemporaries as a grave injustice that went against major principles of natural and divine laws. A devastating criticism of the Polish law of homicide was developed, for example, in the sixteenth-century writings of Andrzej Wolan, and Andrzej Frycz Modrzewski. Modrzewski, especially, vigorously condemned the existing legal norms, which granted exemption from capital punishment for the crime of murder to members of noble estate. An urgent call for a new law of homicide based on the principles of social equity became one of the central points in Modrzewski's broadly envisaged project of the social, legal and political reform of the Kingdom of Poland.¹³⁵

With regard to the category of violent murderers, Polish statute law conceived of it as closely connected with a violent assault on a private house or public road.¹³⁶ Such assaults, if they resulted in murder or serious injuries, were considered as circumstances heavily loading the measure of the penalty. The Statutes of Casimir the Great already had additional monetary fines for cases of murder, committed in the house of the victim. For such cases of homicide the *poena capitis* was complemented by the imposition of special fine, known as *siedmdziesiąt*, paid to the royal court, and fine of *piętnadzieścia* to the sons of the murdered person. During the fifteenth century, first, the provisions of the Cola diet, and, then, the Statutes of Jan Albert instituted capital punishment for the crime of homicide committed during a violent assault on a house. By the Statutes of 1493 and 1496 a special procedure was enacted for the trial of capital cases which involved the violent assaults. It was established that the fact of such an assault must have been proved by the plaintiff before the court with the support of the testimony of six reliable witnesses chosen from the body of eighteenth men of good fame. If the plaintiff succeeded in this, the convicted culprit would be sentenced to the death.

The severity with which the statute law upheld the prosecution of violent assault may account for the explicitly public character of this criminal offence. Violent assaults on a

¹³⁵ For further details consult Waldemar Voisé, *Frycza Modrzewskiego nauka o państwie i prawie* (Warsaw: Książka i Wiedza, 1956), 239-45.

¹³⁶ For the punishment of the violent murderers and its relation to the violent assault on a private house, see S. Kutrzeba, *Mężobójstwo*, 72-3.

private house were considered a major challenge to the “royal peace”. These crimes undermined the social order and the state of security which the concept of the “royal peace” was meant to guarantee to all royal subjects.¹³⁷ The same underlying principle of the broken royal peace was at work in the prosecution of robbery on the public roads, theft, rape and arson. Such crimes as attacking royal judges and officials or violence exercised at a court session were regarded as a breach of the royal peace as well.

Similar to the violent assault, the law conceived and handled these wrongs as public crimes, which meant that they had to be prosecuted *ex officio*. In accordance with the Statutes of Casimir the Great, the public penalty of *siedemdziesiąt*, which was also called by the Statutes “unmerciful” (*niemiłosiwa*), was envisaged for such *furta et latrocinia*.¹³⁸ In addition, the punishment of violent raiders, professional thieves, brigands, and highwaymen was made more severe by the confiscation of all their property and by delivering the sentence of the outlawry upon them. The statutes contain an interesting article on nobles who had been outlawed for the exercise of robbery and theft and had fled outside the kingdom’s borders. Such outlaws often sought the assistance of their relatives to obtain a royal pardon and regain their lost honor: by the statutes’ amendment such outlawed nobles were forbidden under any circumstances to be restored and made equal in honor and good repute with the rest of the nobility.¹³⁹

The cases of the patricide and fratricide represented another important exception from the pattern of penalties centered on of monetary compensation. The Statutes of Casimir the Great established that such a murderer and his descendants had to be deprived of the right to inherit the patrimonial estates. Infamy and outlawry were added to this as complementary penalties.¹⁴⁰ In comparison with the Statutes of Casimir the Great, Mazovian law foresaw the capital sentence for felons found guilty of murdering close kinsmen. In the course of the fifteenth century the nobility of the Crown strove to make punishment for this type of homicide more severe in the direction indicated by the Mazovian legislation. The efforts to introduce capital punishment for the killing of relatives were manifested, for instance, in the

¹³⁷ For a better understanding of the significance of the concept of the public peace in the royal ideology of the fourteenth century Poland, it is worth looking at the solemn phraseology and rhetoric, employed by the legislators of the Statutes of Casimir the Great. One of the most revealing items of evidence is provided by the article, devoted to the punishment of the arson. Seeking to impose the capital punishment on those convicted of arson, the article invokes the support of imperial law: “Ex lege imperiali clara luce nobis constat quomodo incendarii et exustores voluntarii domorum horreorum aut quorumvis bonorum morte crudeli et inpiissima puniantur...” See: *Statuty Kazimierza Wielkiego*, no. L, 379-80.

¹³⁸ *Ibid.*, no. IV, 259-60.

¹³⁹ *Ibid.*, no. XVI, 292: „Et infamem talem reputamus, neque aliis nobilibus, qui nunquam profugi extiterunt in fama et in sublimitate honoris poterunt adequari.” Consult also M. Handelsman, *Prawo karne*, 183-4.

¹⁴⁰ *Statuty Kazimierza Wielkiego*, no. XXXVIII, 354.

petition of the nobility of Little Poland sent to the king in 1492. However, this noble's initiative failed and was never implemented in the form of a statutory law.¹⁴¹

Pecuniary fines dominated the punishment for wounding and mutilation. Already the Statutes of Casimir the Great listed a great variety of types of wounds, valued differently according to the circumstances involved in the act of wounding.¹⁴² The statutes discern simple wounds (*pro simplici vulnere*) from the bloody wounds (*vulnera cruenta*). The statutes also mention injuries, inflicted by the sword (*pro vulnere gladiali*). Their amendments also specify whether the wounds were inflicted with deliberate intentions or not, and whether wounding occurred during collective brawls and discords (*in contentione et discordia*). Separate penalties were reserved for bloodshed that occurred in the presence of some categories of people – before the king and at the royal court, before royal captains, archbishops, judges and during the court proceedings. The wounds that appeared as a result of dog's bite were also treated separately. There were considerable differences between statutes, issued for Little and Great Poland, in regard to for the penalty of mutilation. The statutes for Little Poland put the crime of mutilation under the one, general category. Instead the Statutes for Great Poland provided more detailed differentiation, defining the worth of the most important parts of the human body, like fingers, hands, legs, nose, etc. Similar to the law of homicide, the size of the fines imposed as a penalty for wounding, was valued according to the social standing of the victim and the offender. The accumulation of payments was the most important principle that governed the penalty for wounding. It meant that each wound inflicted was fined separately. The final size of the penalty was thus counted as a total the fines paid for each wound.¹⁴³

In spite of the great attention Polish statutory law paid to the regulation of violence and crime,¹⁴⁴ the principle *nullum crimen sine lege* was unknown to the late medieval Polish legislation. Some serious aspects and types of violent conduct which might have been defined as crimes and offences against the law in the early modern times were only slightly touched upon by late medieval statutory law, while others remained the domain of unwritten customs during the fourteenth and fifteenth centuries. This was the case, for instance, of such a serious

¹⁴¹ For the analysis of the petition from 1492, see: S. Kutrzeba, *Męzobójstwo*, 71.

¹⁴² The system of fines for wounding, as it was elaborated in the Statutes of Casimir the Great, has been analyzed in details by M. Handelsman, *Prawo karne*, 164-167.

¹⁴³ On the accumulation of fines for wounds inflicted, see: Józef Rafacz, *Zranienie w prawie mazowieckim późniejszego średniowiecza* (Lwów, 1931), 29-33. The author also points out that the norm, accepted by the law of medieval Germany, according to which the total sum of fines, counted for all wounds, could not be higher than the capital fine, was alien to the Polish medieval law.

¹⁴⁴ Of the general number of 166 articles, which are found in the Statutes of Casimir the Great (the version of the *Digesta*), almost 100 articles dealt with the questions of criminal law. See: J. Bardach, *Historia państwa i prawa*, 511.

crime as rape. The Statutes of Casimir the Great devoted a single article to the treatment of this crime. It spoke of the frequent practice of rapists to take refuge under the protection of the German law. The Statutes only forbade this evil custom, postulating that all felons found guilty of the crime of rape, had to respond before the courts of Polish law. The provisions of the Statutes, however, did not specify what kind of the punishment was to be established for this sort of wrongdoing.¹⁴⁵ In vain one can look in the statutes of the fifteenth century for the detailed regulation of the ‘beginning’ - *initium* (*początek*) – a customary approved practice giving the right to the defendant to use force against a person, who initiated a brawl.¹⁴⁶ Men who had justified their violent conduct in terms of a response to the “beginning” given by their enemy had a chance to escape punishment, even in the capital cases.¹⁴⁷

The gaps in the Crown statute law, which left many types and aspects of criminal offences without proper normative and procedural regulation, are best visible in comparison with the statute law of the Mazovian principality. As far as capital cases are concerned, punishment by imprisonment for those convicted of murder was introduced in Mazovia much earlier than in the Kingdom of Poland.¹⁴⁸ The law of homicide promulgated in the Crown did not single out the murder of a husband by a wife as a separate category of crime worthy of a special penalty, as it was in the Mazovian law.¹⁴⁹ The rituals accompanying the private settlements of cases of murder and blood vengeance, such as public penance and pilgrimage (*pokora*, *wróżba*), were widely reflected in Mazovian law, but found no place in the Crown legislation.¹⁵⁰ The Mazovian law also had imposed much more elaborate system of fines and punishments, imposed in cases of wounding.¹⁵¹

¹⁴⁵ *Statuty Kazimierza Wielkiego*, no. LI, 383. See also: M. Handelsman, *Prawo karne*, 169-170.

¹⁴⁶ There are only a few traces in late medieval statutory law referring to the practice of “beginning”. One of the *prejudicates*, found in the Statutes of Casimir the Great, provides an opinion on the judgment of a brawl in relation to the “beginning”. Consult *Statuty Kazimierza Wielkiego*, no. LX, 411. Statutory law only provided a detailed regulation of the practice of “beginning” starting from the sixteenth century. This was done by the constitution of 1588. See: P. Dąbkowski, *Jeszcze raz o odpowiedzi w prawie polskim*. (Lwów, 1899), 6, 14-15.

¹⁴⁷ For a detailed analysis of the *iniciu*, see: A. Pawiński, „Odpowiedź według obyczaju rycerskiego w prawie polskim,” *Ateneum* 2 (December 1896): 389-401; P. Dąbkowski, *Jeszcze raz o odpowiedzi*; S. Kutrzeba, *Mężobójstwo*, 38-45; J. Bardach, *Historia państwa i prawa*, 517-18.

¹⁴⁸ In the Mazovian principality the penalty of detention for the crime of murder was introduced by the statute from 1453. This punishment was applied in a case when the felon refused to obey the penalty of *wróżba* and leave the country. See S. Kutrzeba, *Mężobójstwo*, 85.

¹⁴⁹ S. Kutrzeba, *Mężobójstwo*, 7.

¹⁵⁰ By *wróżba* the Mazovian law meant the pilgrimage, which was viewed as part of a symbolic penance, the murderer had to undergo in order to compensate the wronged party for the crime committed. According to the terms of *wróżba* the murderer had to depart from the country for a certain prescribed period of time. On the ritual of public penance and pilgrimage, involved in the settlement of the capital cases, and its legal regulation in the late medieval Polish law, see, A. Pawiński, *O pojednaniu w zabójstwie*, esp. 19-26, 33-47, 50-59; S. Kutrzeba, *Mężobójstwo*, 74-77. Evidence for the ritual of public penance from Galicia have been analyzed by P. Dąbkowski, *Zemsta, okup i pokora na Rusi Halickiej w wieku XV i pierwszej połowie wieku XVI*, esp. 937-61.

There were also some differences between the law of the Crown and Mazovia in their attitude towards the concept and meaning of private accusation. As has already been mentioned, the redress of wrongs was to a great extent a matter of the private accusation. Mazovian law, however, was much more consistent in compelling the victims to bring their accusations to the court. Some legal mechanism and sanctions conceived by Mazovian law made it almost mandatory for the victims to take an appeal to court. Otherwise the victims themselves would be liable for a fine. The fine, called *rocznica*, imposed for cases of violence that erupted during the court proceedings, can be regarded as an exemplary for illustrating this trend in the Mazovian legislation.¹⁵² If the victim neglected to bring an accusation against his wrongdoer to the court, then the captain had the power to prosecute the wrong from his office. It was then both wrongdoer and victim who were exposed to the danger of the captain's justice. The captain had a choice as to whether to prosecute either one or the other. The same principle was employed to redress peasant's wounds. The wounded peasant was obliged to bring his case to court to obtain satisfaction for his injuries. If he did not do this, it was then he who would pay the same fine, called *bite*, to his lord. Lying behind this rule were obvious fiscal interests of the lords, which offered them the possibility of benefiting from fines for the wounds of their subjects.

Perhaps the most instructive example of such a comparison is provided by the case of blood vengeance and the collective culpability of the kin group for its members' wrongdoings.¹⁵³ It is surprisingly how much space in the Mazovian statutes was devoted to regulating blood vengeance. They listed precisely the circle of relatives who the vengeance could encompass, set time limits after which the vengeance must end, stipulated exceptional cases of murder, for which the blood vengeance was forbidden, and designated the legally approved forms in which the vengeance was permitted to be pursued.

In contrast to the Mazovian law, the question of blood vengeance was almost completely omitted by the late medieval legislation of the Crown.¹⁵⁴ The only known traces of some concern with the problem of blood vengeance in the law of the Crown are supplied by

On the absence of vestiges of these important aspects in the legal enactment of capital cases in the Crown's legislation, see S. Kutrzeba, *Męzobójstwo*, 75.

¹⁵¹ For details, consult: Józef Rafacz, *Zranienie w prawie mazowieckim*, 64-86.

¹⁵² Józef Rafacz, *Zranienie w prawie mazowieckim*, 46-7.

¹⁵³ On the issue of the blood vengeance and the customs of collective culpability in the Mazovian statutory law, see: A. Pawiński, *O pojednaniu w zabójstwie*, 10-19; S. Kutrzeba, *Męzobójstwo*, 17-21, 45-8.

¹⁵⁴ This lack of legislative regulations on the issue of vengeance in the Kingdom of Poland contrasts with the rich evidence of the noble enmities, found in the court registers of various regions of the Crown. For the case of the Rus' palatinate, see: P. Dąbkowski, *Zemsta, okup i pokora na Rusi Halickiej*.

provisions of the so-called Confederation of the twelve knightly kindreds from 1438.¹⁵⁵ One of its rules ordered forbearance from avenging murder, which had been committed by members of the kindreds belonging to the alliance. Such capital cases had to be settled by the seniors of these kindreds through arbitration. Another article of the Confederation stipulated that members of the kindreds had to withdraw from supporting a kinsman who was notorious for committing certain grave crimes like assaults on a house, robbery, or rape. It is necessary, however, to note that these legal enactments were accepted as obligatory only by the members of this particular group of kindreds. Therefore, they bear the mark of a non-public law which had not been approved by the diet or confirmed by the king. Second, an even more important problem with the document of this Confederation is that some scholars have serious reservations about its authenticity suggesting that both the event and the document behind it are fictitious.¹⁵⁶

Such inattentiveness to the question of vengeance can partly be accounted for by attempts towards the individualization of culpability visible in the legislation of the late medieval Kingdom of Poland. This process can be traced back to the Statutes of Casimir the Great. One of the Statutes' legal norms spoke of the non-responsibility of the father for the misdeeds of his sons, and vice versa. This principle was extended to other relatives, too. This rule, however, was conditioned by the necessity of undergoing expurgation in the court. The members of the kin group were freed of the culpability for the crimes of their co-relative on the condition that they successfully expurgated themselves in court. One important exception to this provision was established concerning the collective culpability of the members of a family who held their inheritance in common, undivided possession.¹⁵⁷ The Statutes of Casimir the Great also abolished the older legal custom allowing the convicted servants to be released from punishment if they acknowledged acting on the order of their lord.¹⁵⁸

In general, the statute law dealt at length with the culpability of a lord for the criminal activity of his servants. This was especially the case of servant's wrongdoings which took the form of grave offences as homicide, raiding, theft, and serious wounds. The lords were liable for the penalty if it was proved that they had acted as instigators of their servants'

¹⁵⁵ See S. Kutrzeba, *Mężobójstwo*, 48-9.

¹⁵⁶ Maria Koczerska, "Composicio clenodium – fikcyjna konfederacja" (Composicio clenodium – a fictional confederation), in *Parlament. Prawo. Ludzie. Studia ofiarowane profesorowi Juliuszowi Bardachowi* (Parliament. Law. People. Studies dedicated to Janusz Bardach) (Warsaw: Wydawnictwo sejmowe, 1996), 104-111.

¹⁵⁷ See: S. Kutrzeba, *Mężobójstwo*, 19-20.

¹⁵⁸ *Statuty Kazimierza Wielkiego*, no. II, 250-51. For comment, see: J. Bardach, *Historia państwa i prawa*, 516. The statutes' provisions regulating various aspects of the legal responsibility for the misdeeds of other people have been discussed in details in S. Kutrzeba, *Mężobójstwo*, 10-15.

wrongdoings. The Statutes of Casimir the Great imposed, for example, the penalty of outlawry and infamy on lords who were involved in the criminal activity of their servants and took a share of the pillaged goods.¹⁵⁹ The Statute of 1496 extended to the lords the responsibility of administering justice and punishing their familiars found guilty of carrying out domestic violence in the form of organized raids. A lord who rejected proceeding against such familiars, was himself subject to the penalty prescribed for this criminal offence. Additionally, the lord was bound to undergo personal expurgation if his familiars who had been convicted of the exercise of violent assault escaped the royal justice by taking flight. The lord was then obliged to appear in court to swear an oath with two oath-helpers stating that the act of violence had been conducted without his knowledge and order.¹⁶⁰

Private forms of the exercise of violence and law enforcement were allowed considerable place among the range of legally approved means of redressing wrongs. First of all, private forms of administering justice were conceived and expressed in terms of the widely understood concept of self-help. It was viewed, for instance, as legitimate to act according to an ancient principle sanctioned as one of the basic norms of the natural human right: *vim vi repellere licet*. This principle was, for example, clearly invoked in the amendments to the law on homicide listed by the constitutions of 1493 and 1496. By singling out the category of *homicidae casuales*, the provision postulated that *casualem homicidam minime esse reum homicidii, quod vim vi repellendo evenit*. The above-mentioned custom of *inicium* or *poczqtek* can be also seen as one of the most evident expressions of the principle of *vim vi repellendo*.

Private violence was also judged to have been not punishable, even legitimate, if exercised on certain categories of felons or dishonourable people.¹⁶¹ In some cases the acts of violence were not penalized at all if directed against people exempted from the law and royal peace, like notorious thieves, outlawed robbers, and murderers. For instance, the Statutes declared that a man who had caught and executed a thief as he was stealing his property was not liable for the crime of homicide. In a similar manner, a murder went unpunished if a thief was pursued, caught and executed after the immediate discovery of his crime by the proprietor. In other cases, like the assaults on prostitutes, the penalty was substantially

¹⁵⁹ *Statuty Kazimierza Wielkiego*, no. XVI, 292: “Similiter illum dicimus infamem, qui occulte insidiando habitatoribus regni, fures et profugos servat et partitur cum eis rapta et male conquisita; tales non possunt se dicere probos, cum in pares probis viris reputentur.”

¹⁶⁰ *VL*, vol. 1, 125: “De domus violatione et in ea violenta vulneratione ac homicidio et complicitibus eius,” “De eo qui inculpatur quod familiaris suos domum violaverit,” “De servitore violatore domus fugiente, quid cum domino faciendum.”

¹⁶¹ See: J. Bardach, *Historia państwa i prawa*, 517-18.

mitigated. In this respect it is worth referring to one curious provision in the the Mazovian law concerning the specific case of a noble, wounded by commoners. The commoners who had wounded noble were to be freed from the penalty if the victim was known to have been sitting and drinking in an ale-house together with the accused commoners at the time when the brawl occurred.¹⁶² Self-help was also tolerated if it was part of the terms of a private agreement. Some such agreements went so far as to permit private capital punishment for breaking the agreement's terms.¹⁶³

The evidence of statute law clearly suggests that some legal actions and procedures could hardly be discerned from the exercise of brute force by the parties, involved in the dispute. The Statutes of Casimir the Great make it clear that the exercise of private violence was admissible at different stages of a dispute, starting from its initiation and ending with legitimate judgment and enforcement of a sentence.¹⁶⁴ The Statutes abolished, for example, the right of a castellan to set off an inquisitorial process in order to investigate cases of homicide. Instead, by its provisions, finding proof and preparing an accusation became completely a matter of private initiative by the relatives of a murder victim.¹⁶⁵ Another of its articles states that it was in the custom of many litigants to bring crowds of their relatives and familiars to court hearings. By making threats and making a great deal of noise, such bands of supporters sometimes played decisive role in determining the court's judgement.¹⁶⁶ According to another article of these Statutes, the execution of a court sentence, which usually meant the adjudication to the winner of the right to enter the estate of the losing party, often turned into a real pillage of such estate. The Statues reveal that both judges and litigants were involved in this sort of misconduct.¹⁶⁷ Such abuses of the law, though condemned and prohibited by the Statutes, show how much the execution of a sentence relied on the private power of the winning party. Under different circumstances, the Statues not only forbade, but encouraged

¹⁶² See: Józef Rafacz, *Zranienie w prawie mazowieckim*, 89.

¹⁶³ In this regard the terms of agreements, to which people submitted *sub colli privacione*, are especially revealing. See: S. Kutrzeba, *Mężobójstwo*, 36.

¹⁶⁴ The evidence of the Statutes of Casimir the Great, informing about the role of the private execution of the court sentences, and its abuses, have been briefly reviewed by J. Rafacz, *Ekzekucja w Małopolsce od statutu wislickiego do końca średniowiecza* (The enforcement of law in Little Poland from the Statute of Wislica to the end of the Middle Ages) (Warsaw, 1927), 9-10.

¹⁶⁵ *Statuty Kazimierza Wielkiego*, no CIII, 518: "Item dum ignoratur, quis commisit homicidium, decrevimus, quod castellania de hoc non moveat aliquam questionem, sed consanguinei et proximiores, culpabilem inquirentes causam, dum potuerint, prosequantur iuxta iuris formam."

¹⁶⁶ *Ibid.*, no. I, 248.

¹⁶⁷ *Ibid.*, no. III, 255: "quia per frequentem pauperum inpignoracionem plerumque pauperes plurima dampna et oppressiones multiplices paciuntur, videlicet in eo, quod catervatim et in turbis, non per modum iusticie potestatis, adaliquam villam inpignoratores accedentes, dampnabiliter et plerumque absque iudici mandato et sine culpa domini ville vel villanorum committere plurimas presumunt rapinas." *Ibid.*, no. XV, p. 287: "Consuerunt avari iudices et eorum officiales, ut postquam pro penis in iudicio lapsis aliquos pauperes aut nobiles inpignorant, statim spolia dividunt, nullam gratiam cum pignorado facientes."

private initiatives in enforcing court judgement. The losing party who refused to pay his/her adjudicated fine could be immediately given over into the hands of an opponent. The winner was empowered to imprison the disobedient loser until the penalty was finally paid. However, if the prisoner managed to escape from jail, the winner would lose the further right to carry on with his claim, except for the cases of theft.¹⁶⁸ A similar rule was applicable in case of dispossessed nobles (*impossessionati*, seu *odarti* alias *holota*). If such a dispossessed noble lost his case in the court, he was left at the mercy of the winning party, who might arrest him immediately after the verdict was given.¹⁶⁹

In general, too much ambiguity and inconsistency underlay the normative principles of the administration of justice and dispute settlement. Such a situation stimulated the demand for private violence. The criminal law of the Late Medieval Kingdom of Poland opened vast opportunity for private forms of law enforcement involving a broad repertoire of extra-judicial, violent forms of pursuing the court's judgment. The line between wrongdoing, private execution of the court's sentence and self-help was too thin if and sometimes not visible at all. It allowed litigants to cloak and represent the violent actions as legitimate pursuit of justice and just judgment. The opposite was true as well – legitimate, private actions aimed at law enforcement or self-help could be denounced as an offence against the law. This ambiguous interdependence of law, justice, and violence was constantly at work in the enmities and disputes of the nobility.

¹⁶⁸ Ibid., no. VIII, 271: "Postquam victi fuerint in iudicio, ad manussuorum adversariorum ligati tradantur. Et si in captivitate manentes effugerint, a potestate ipsorum sunt liberi et soluti ipso facto et omni debito, quod tenentur, preter debitum furti, quod semper dampnati solvere tenebuntur."

¹⁶⁹ See the confirmation of the customs of the Cracow land by King Alexander: VL, vol. 1, 150.1.

Chapter 4 – The legal process and litigation

Noble enmity operated in the context of a developed and sophisticated legal system. All evidence about noble violence and enmity comes to us in the legal context. It is therefore important to provide a general outline of the legal rules and procedures of waging litigation as they were established in the course of the fifteenth century. This will allow seeing how the pursuit of enmity and redress of wrongs were shaped by the normative constraints and possibilities of legal action and litigation.

4.1 Summons and the beginning of the litigation

In medieval Polish law a lawsuit was usually initiated as private charges that one person pleaded against another in court. The general rule accepted by Polish law was that there could be no lawsuit without a plaintiff.¹⁷⁰ A dispute was started by issuing a summons. The delivery of a summons meant that a plaintiff sued his opponent in court to respond to charges, demanding a redress of wrongs that he had suffered from his opponent's actions. A summons was therefore almost completely a matter of a private initiative. It was the plaintiff's responsibility to present it to the judges of the court, to be sure it was recorded in the court register, and to hire a bailiff to deliver it to his adversary.¹⁷¹

There were basically two major written instruments by which a letter of summons took shape – citation and mandate. The main difference between these two forms of summons seems to have been that a citation was a larger version of a summons, which became the generally accepted practice of fifteenth-century courts. In contrast, a mandate usually lacked a detailed description of the plaint and claim. Sued by a mandate, it was only at the first court session that a defendant was able to learn about the essence of charges brought against him and the size and type of penalty he was liable for. Some historians believe that a mandate originated from the so-called short citation, for which the enlarged form was gradually substituted.¹⁷²

¹⁷⁰ Consult, for example, a frequently quoted article of the Statutes of Casimir the Great: "ut quicumque citaverit vel citari procuraverit aliquem sine legitimo actore, vulgariter przezs povoda, taliter citato ipse citans vel procurans talem citacionem vulgariter pentna penam solvere tenetur." See *Statuty Kazimierza Wielkiego*, no. XL, 359. For comments, consult Marcei Handelsman, *Prawo karne w Statutach*, 137; Oswald Balzer, *Przewód sądowy polski w zarysie (wykład uniwersytecki)* (The outline of Polish legal process) (Lwów: Nakładem Towarzystwa Naukowego, 1935), 22; Juliusz Bardach, *Historia państwa i prawa*, 537.

¹⁷¹ The plaintiff's initiative in delivering a summons is strongly emphasized, for instance, by Oswald Balzer, *Przewód sądowy*, 47.

¹⁷² The origin of the Polish law of summons became the subject of controversy between two prominent Polish legal historians - Adam Vetulani and Romuald Taubenschlag in the 1930s. Both scholars came to recognize the crucial importance of the influence of medieval Roman law on the formation of the Polish legal conception of

A written citation was usually drawn up in two identical exemplars – one was kept by the plaintiff, and the other was delivered to the defendant. A letter of summons was sometimes cut off into two parts, which must have served as a confirmation of its authenticity.¹⁷³ By the statute law a citation *ex officio* was reserved only for major criminal offenses. In practice, however, most criminal cases were initiated as private suits (based on private pleading).

The pursuit of a dispute was an endless process of mustering the litigant's allegations. The logic of dispute continually forced the litigants to look for new accusations and to keep them in reserve in order to advance them at suitable moment of the lawsuit. The experienced disputant was the one who was able to overcome his rival's counterarguments by multiplying his allegations in the course of the court proceedings. This explains the spread of the practice of *meliorando citacio*, which allowed a plaintiff to add new charges to his original citation in the course of litigation.¹⁷⁴ Besides the original citation with which one of the parties initiated the suit, other kinds of citations had to be prepared at the next stages of the litigation. A special second citation (*concitatio*, or *przyposzew/przypowiaŝt*) had to be issued to summon the defendant to the court session where the definitive sentence would be handed down and payment of the adjudicated penalty made, or the execution of the sentence was to be declared. Moreover, it was also important for the plaintiff to be supplied with the all necessary kinds of citations at every stage of the dispute. At the closing court session a defendant was entitled to demand that a plaintiff had to present the original citation that had opened the suit.¹⁷⁵ A plaintiff's failure to provide the judges with an original citation (*citacio originalis prioris*)

summons. However, they differed in their opinions about the source of that influence. While R. Taubenschlag saw the processual law of the Lombard *libellus* as the main source of the reception, Adam Vetulani emphasized instead the role of the Roman-canonical legal process and the practice of ecclesiastical courts, based on its application. A. Vetulani was also the first to identify the rise of the pragmatic literacy and its role in the emergence and the development of the Polish procedural law. See: Adam Vetulani, *Pozew sądowy w średniowiecznym procesie polskim* (Summons in medieval Polish legal process) (Cracow: Nakładem Polskiej Akademii Umiejętności, 1925); Idem, "Wpływ zasad procesu rzymsko-kanonicznego na polski pozew pisemny w średniowieczu" (The influence of roman-canonical law on Polish written summons in the Middle Ages), *Pamiętnik Historyczno-Prawny* vol. 2, no. 4 (1931); Romuald Taubenschlag, *Geneza pozwu pisemnego w średniowiecznym procesie polskim* (The origin of the written summons in medieval Polish legal process) (Cracow: Nakładem Polskiej Akademii Umiejętności, 1931); Idem, "Jeszcze o genezie polskiego pozwu pisemnego (Odpowiedź p. Doc. Dr. A. Vetulaniemu)" (Once Again about the origin of Polish written summons. The Answer to prof. Vetulani), *Pamiętnik Historyczno-Prawny* vol. 2, no. 4 (1931): 272-293. A useful and detailed overview of the discussion is provided by Zygfryd Rymaszewski, "Wokół problematyki średniowiecznego pozwu polskiego" (Toward the problem of medieval Polish summons), in: *Symbolae historico-iuridicae Lodzienses Iulio Bardach dedicatae* (Łódź, 1997), esp. 66-112.

¹⁷³ Consult, VL, vol. 1, 150.2: "De intercisio citationum componendis." See, also Adam Vetulani, *Pozew sądowy*, 77.

¹⁷⁴ Examples of "meliorando citacio" can be found in AGZ, vol. 14, no. 381 (April 20, 1442); Ibid., no. 2403 (February 19, 1451).

¹⁷⁵ Ibid., vol. 18, no. 2726.

could be denounced as a way of pleading, made *non iuxta iuris formam*. In such cases even the availability of the second citation (*concitatio*) in the hands of the plaintiff would not save the situation and he would lose his suit.¹⁷⁶

The procedure of summoning/pleading was one of the most significant elements of the legal process, which was deeply affected by the diffusion of writing. In the course of the fifteenth century the written citation became the predominant form of suing an opponent at law.¹⁷⁷ Suits initiated exclusively by oral pleading and summons, made, for instance, with assistance of the court bailiff, were regarded as insufficient. Such complaints and claims, if not additionally supported by the text of a written citation, could be effectively refuted by the opponent.¹⁷⁸

Citations had to be composed according to strictly established rules. The slightest mistake in the text of a citation, if identified by the opponent, could turn out to be fatal. The examination and identification of sometimes very small and insignificant mistakes in the texts of summons was able to alter the course of a dispute. Citations composed in the wrong way were usually denounced and classified in the sources as *mala, inordinata, indecenta cittacio*.¹⁷⁹ Such improper summons created fertile ground for the manipulation of legal procedures and were widely a used strategy of challenging the opponent's claim. They could result in delaying the judgment or even terminating the lawsuit.

¹⁷⁶ This was, for instance, the case of the litigation between Stanislas Bandtkowski and the Sanok chamberlain, Peter Czeszik of Riterowycze. The details of the disputes are reported by the record, dated on November 14, 1475. The dispute concerned the murder of Stanislas' brother, Jan Bandtkowski by one of the Czeszik's peasants. Stanislas Bandtkowski lost the case, because he failed to produce in the court the text of his initial plea (*citacio originalis prioris*) against Czeszik. Therefore the judges regarded his allegations against Czeszik as having been laid down *non iuxta iuris formam*. The fact that Bandtkowski had at his disposal the document of his second citation against Czeszik (*concitacio*) was considered insufficient by the court, see Ibid., vol. 18, no. 777.

¹⁷⁷ The oral form of pleading was still recognized by the Statutes of Casimir the Great. See: Józef Rafacz, *Dawny proces polski* (Warsaw, 1925), 108.

¹⁷⁸ AGZ, vol. 11, no. 1916 (May 26, 1444): "Ibidem domina Steczkowa de Tarnawa et dominus Fredricus de Iaczmierz Gladifer Sanocensis contendebant invicem iure pro eo, quia domina Steczkowa asserebat, quod dominum fredricum citaverat pro violencia scilicet, quod ei pignora percussit. Sed dominus Fredricus volebat videre literam citacionis et domina Steczkowa literam non habuit, sed cum ministeriali ipsum dominum Fredricum citaverat. Quare dominus Fredricus voluit habere pro lucrato, quod ministerialem nec literam citacionis habuit. Ideo damus eis ad interrogandum ad quatuor septimanis." For similar cases see Ibid., vol. 11, no. 25 (February 15, 1424); Ibid., vol. 15, no. 198 (after December 9, 1457): "Et doms. Vicecaps. Terminum transtulit..., quia non fuit ausus ipsos homines iudicare... quia pro ipsis hominibus datus est terminus facialis knezowi et non est cittatus litera."

¹⁷⁹ Errors in the texts of summons, and their role in the late medieval Polish legal process were carefully studied by Romuald Tabubeschlag and Adam Vetulani. Both historians considered the attention, which judges and litigants paid to the scrutiny of texts of summons for orthographic mistakes as one of the crucial proofs for their conceptions of the decisive influence of the medieval Roman law on the origin of the Polish procedural law of summons. See, comments by Zygfryd Rymaszewski, "Wokół problematyki średniowiecznego pozwu polskiego", 79, 85-6, 93.

The multiple evidence of very detailed and careful scrutiny of the content and formal characteristics of the text of a summons by the disputing parties offers one of the best insights into how the literate mode of thinking penetrated the process of conducting disputes. This sort of judicial expertise became a commonplace in the legal practice of the fifteenth-century Galician courts. The field of expertise of identifying grammatical mistakes in summons covered a wide range of issues. The mistakes found in the titles of men sued at court could often be considered as a cause for rejecting a summons.¹⁸⁰ This sort of mistake was taken very seriously if identified in the title of a king. In 1504 Alexander Orzechowski lost his case in the Przemyśl land court to Jan Irzman of Sliwnica because, as Sliwnicki indicated, the royal title in Orzechowski's summons was written down in grammatically incorrect form – instead of *Rex Polonie* it had *Polonne*.¹⁸¹ The summons could be challenged by classifying it as “mute”, since the text contained only the surname without indicating the first name of the sued person.¹⁸² Incorrectness identified in the names of the saints or holy days was used as a pretext for a claim to quit the suit. One report has it that in response to accusations the representative of the defendant did not miss an opportunity to draw the judges' attention to the wrong, “disgraceful” way the date of the appointed court session was written down in the plaintiff's plea. The date was indicated as the nearest sixth day before the holiday of “the saints of Pentecoste” (*feria sexta prox. ante f. sanctorum Pentecostes*), which, according to the defendant's arguments was nonsense. The representative of the defendant reasonably emphasized that putting the word “saints” in the plural was completely irrelevant in reference to Pentecoste. Pentecoste meant the holyday of the Holy Spirit and was only one, not many, Holy Spirits.¹⁸³ In another case the defendant developed the opposite line of arguments,

¹⁸⁰ AGZ, vol. 17, no. 3097 (March 4, 1499): “Gsus. Iohannes Fredro de Pleschowicze actor in termino concitatorio affectavit satisfacionem iuxta duas concitaciones, pro quolibet seorsum, contra gsum. Andream Czurilo de Sthoyanicze Dapiferum Premisliensem. Qui respondit domine Iudex, affecto evasionem et hoc ideo, quia meritum meum in istis concitacionibus stat aliter, non ita sicut est meum meritum et hoc in isto, quia scripsit me dapiferum Leopl. Et ego sum Premisliensis, et propter hoc sunt concitaciones insufficientes alias nuedosthatheczne, peto evasionem.”

¹⁸¹ Ibid., vol. 18, no. 4254 (April 11, 1504).

¹⁸² Ibid., no. 622 (March 7, 1475): “Nob. Nicolaus Roza de Gorky actor [iuxta] citacionem videlicet pro indebita ac inordinta condemnacione super nob. Nicolaum de Balycze proposuit. Et Balyczsky dixit: domine iudex, ista citacio, iuxta quam super me proponit, est mutua alias nyemy, quia est inscriptum in ea: tibi nobili heredi de Balycze et non est scriptum in ipsa citacione nomen meum propirium videlicet Nicolaus, ergo citacio est muta et eo volo evadere ipsum Roza.”

¹⁸³ Ibid., vol. 17, no. 4047 (June 7, 1504): “Exadverso procurator Anne dixit: dom. Iudex, vestra dominacio audivit, quia ego dixi: antequam ad citacionem et propositionem Nicolai Romanowszky respondebo, defectus citacionis non omisi et nunc non omitto in citacione contentos; et primo dico contra indecenciam citacionis et assignacionem termini in citacione contenti, quia in citacione est scriptum feria sexta prox. ante f. sanctorum Pentecostes et non debet scribi “sanctorum” tantum debet scribi ‘festum Pentecostes’, quia tantum est unum festum Spiritus sancti et non plura. Et propter quam indecenciam rogo decerni michi penam cum lapsu citacionis.”

accusing the plaintiff of negligence for adding the adjective “saints” to the names of Saints John and Paul.¹⁸⁴ The omission of some words in the date of a summons, like for instance the word “thousandth” (*millessimo*), was also indicated as a cause for the liability of the litigant for some small fines.¹⁸⁵ In their search for mistakes litigants would go so far as to consider the different uses of tenses in the corresponding Latin phrases of *cittacio* and *concittacio* as a serious fault in the summons.¹⁸⁶ It can be suggested that this seemingly insignificant aspect of legal disputes was feared by many litigants. The issue of *indecenta cittacio* could become the object of special regulation between people who came to make a contract concerning property, money, and so on. The exclusion of close examination of the text of a pleading for mistakes was sometimes specifically stipulated as one of the conditions envisaged in case of a future lawsuit which which erupt as a result of the violation of the terms of the agreement. The party blamed for the breach and sued at court made a special promise to not look for petty mistakes in the texts of summons. Such mistakes in the text of a summons were not to be seen as a serious impediment to bringing the opponent to the court.¹⁸⁷ Most of the abuses that emerged around the written summons and resulted in the scrambling of court procedures were abolished by provisions in the statute legislation. The so-called Customs of the Cracow land, confirmed by the King Alexander in 1506, proclaimed that all errors found in a summons, like omissions of titles, mistakes in names, dates, etc., should not bring about an annulment of the legal case. A plaintiff who compiled and presented to a court an erroneous citation was only liable for a penalty of three marks.¹⁸⁸ A similar legal norm was promulgated in a major official collection of legal regulations of Polish procedural law – the so-called *Formula processus* of 1523.¹⁸⁹

There were a few exceptions, which permitted initiating a lawsuit without having recourse to any form of written summons. Among these exceptions was first the so-called citation by touch (*pozew taktowny*). The citation by touch was probably utilized most often as

¹⁸⁴ Ibid., vol. 15, no. 2697 (July 28, 1498): “qui Vanyko evasit prefatos homines propter indecentem datam et hoc ideo, quia in ipsa data continentur: “datum Leopoli feria tertia ipso die Iohannis et Pauli” et non nominavit eos sanctos.”

¹⁸⁵ Ibid., vol. 19, no. 86 (June 21, 1474): “Iudicium decrevit tres marc. pene super rev. in Christo patre dom. Nicolao epo. Premisl solvere in manus mfi. Spithko de Iaroslav Palat. Russie, pro inordinata data in citatione, quia non est descriptus in ea: millessimo.”

¹⁸⁶ Ibid., vol. 17, no. 3909 (July 22, 1502): “E adverso procurator a nob. Iohani Lopaczynsky dixit: domine Iudex, decernatis michi evasione et hoc ideo, quia doms. Vladislaus magis proposuit in concitacione quam in citacione stat capitali prima et hoc in eo, quia in citacione stat, quia ipsum cittat et in concitacione: ideo ipsum citaverat.”

¹⁸⁷ Ibid., vol. 18, no. 2348 (April 8, 1494): “et ulterius quod dominus Stanislaus obligatus est, quod si haberem indecentiam citacionis aut concitacionis, illud non obese sed prodesse mihi debet.” See also Rafacz, *Dawny proces polski*, 114.

¹⁸⁸ VL, vol. 1, 149.1, “De data, titulo et literis abecedarij citaciones destruentis.”

¹⁸⁹ *Corpus Iuris Polonici*, ed. by Oswald Balzer, vol. IV.1 (Cracow, 1910), no. 16, cap. 5, p. 50.

a form of *concittatio*, the second citation - needed to summon a defeated defendant to compensate a plaintiff for already adjudicated damages and penalty. Resorting to a citation by touch occurred most often at court proceedings, which were attended by both plaintiff and defendant. Then, at the request of the plaintiff, a court bailiff touched or took hold of an adversary, thus forcing him to listen to plaintiff's charges. Legal records that highlight this moment of the dispute, usually describe it in a direct quotation of the plaintiff, addressed to a bailiff: *bailiff hold (tange alias tkni) here noble Prandota Vilga*¹⁹⁰ Such a touch by the bailiff was a symbolic gesture, which by imitating physical constraint, dramatize tensions aroused in the court room between opponents. In this way, a citation by touch was seen as a legitimate procedural step to prevent the defendant from withdrawing from the courtroom before the plaintiff could finish his complaint against him. This idea is nicely articulated in one legal record do: "...not allow him to recede from the law until the listening to her allegation would have been finished and the law would have been exercised" (*ut a iure non recederet, donec cum ipsa Zophia iure experiretur alias prawem rosparsya exaudita querela*).¹⁹¹ Some scholars came to argue that a citation by touch developed in the fifteenth century legal process from more severe and brutal forms of enforcing court sentences. Traces of such forms of enforcement of court judgment are still clearly visible in the Statutes of Casimir the Great, which listed the norm of handing over a litigant who had lost his case in the court to the winner immediately after the delivery of the verdict.

There were also some other possibilities of bringing a case to the court without resorting to a written citation. One of them concerned a summons made during sessions of the royal court (so called *rok nadworny*). Another form of citation without a written summons was foreseen for cases in which a court bailiff pursued a wrongdoer immediately after his crime had been committed. A summons could be given orally by a bailiff in the course of an investigation if the bailiff's scrutiny resulted in some findings that made it possible to convincingly establish a wrongdoer's guilt (*lic, rok licowy, ocularis*).¹⁹²

According to late medieval Polish law, the dispute settlement was governed by principles of *ius dispositivum*.¹⁹³ This meant that litigants could arrive at a private agreement about some of the rules of conducting litigation, which could vary from prescribed norms of

¹⁹⁰ AGZ, vol. 17, no. 4155 (April 21, 1505): "Et recepto ministeriali procurator Zophie dixit: ministerialis, tange, alias thkni hunc nobil. Prandotha Vilga, ex quo stat hic coram iure personaliter, ut a iure non recederet, donec cum ipsa Zophia iure experiretur alias prawem rosparsya exaudita querela, super que eum querelata fuerit."

¹⁹¹ Ibid.

¹⁹² All three types of oral summons were discussed shortly by Stanislas Kutrzeba, *Dawne prawo polskie sądowe w zarysie*, (Lwów-Warszawa-Kraków, 1921), 66.

¹⁹³ For this aspect of the Polish legal process in Late Middle Ages, see: Józef Rafacz, "Zasada dyspozytywności w dawnym prawie polskim," *Przegląd Historyczny*, vol. XXVII.2 (1929).

processual law as established by the statutes. By such agreements, parties could choose a court, where their case could be judged, even if such a case was not within its competence. Taking a case out of the judgment of an official court and submitting it to private arbitration was also an expression of the principles of *ius dispositivum*. Parties could also diminish the number of court sessions needed for considering a case and delivering a sentence by establishing the first hearing of the case as the final one. All this shows restricted application of the norms of statute law, which did not operate as *ius cogens*, but was subject to reconsideration according to the interests and motives of the litigants.

4.2 Bailiffs

It is impossible to think of the late medieval and early modern Polish legal process in general, and of the procedure of summoning in particular, without taking into consideration the role of court bailiffs. The institution of bailiffs had a long history that originated from special court officials (*komornik, camerarius*) whose role in court proceedings is attested starting as early as the thirteenth century.¹⁹⁴ The bailiff was a crucial court officer, responsible for delivering a summons and announcing a suit to a disputant. A paragraph in the Statutes of Casimir the Great made this point especially clear by postulating that court judges were not permitted to delegate the duty of delivering a summons to any other person, except a bailiff.¹⁹⁵ How much legal due process and litigation relied on the service of bailiffs can further be seen from the *Customs of Cracow Land*, recorded in the early sixteenth century. According to one of its customary norms, a defendant was entitled to decline any response to a plaintiff's allegations until the bailiff who had delivered the summons was presented to the court. The bailiff needed to be there, so he could be interrogated by the defendant and judges about the details of the delivery. A plaintiff's failure to present a bailiff resulted in postponing the case to the next court session.¹⁹⁶

The law prescribed no uniform rule about how a bailiff had to summon a person to court. An aspect of delivery which became highly controversial was whether a letter of summons must be handed personally to the defendant. Some defendants insisted on the

¹⁹⁴ See: Oswald Balzer, *Przewód sądowy*, 49.

¹⁹⁵ *Statuty Kazimierza Wielkiego*, no. XXXIX, 357: "Quapropter statuimus quod penitus nullus iudex per aliquam aliam personam quam per certum suum officialem seu ministerialem faciat et expediat suas citaciones." The given provision mentions one exception from this rule that is crimes, committed in a courtroom in the presence of judge.

¹⁹⁶ *VL*, vol.1, 148.2, "De ministeriali in primo termino ante responsionem dando." This norm can be detected in the legal practice of the Rus' palatinate. Consider, for example the following record: "quia sibi idem Nicolaus respondere noluit, donec idem ministerialis conspiceret, ubi iniuria dicte est illata secundum cittacionem ipsorum..." see in *AGZ*, vol. 14, no. 29.

personal delivery of a summons, and refused to respond to suits if summoned in any other way. The Statutes of Casimir the Great provided clear instructions on how bailiffs were to summon people to court, highlighting the still prevailing oral character of summons in the fourteenth century.¹⁹⁷ According to one article, a bailiff, upon his arriving in a village, where a lord resided who was being sued, had to approach the lord's house and, rapping the door with his stick, announce the summons in a loud voice. In his announcement a bailiff was obliged to mention the name of a judge by whose mandate he brought the summons, the person who was suing the defendant at law, and the essence of the charges. The Statutes specified that the summons must be delivered exclusively to the sued lord of a village. The bailiff was forbidden to disturb and burden peasants living there, unless they were involved in the crime. This provision in the Statutes of Casimir the Great seems to favor the rule of the personal delivery of summons. Customs and court practice, however, displayed a much richer repertoire of modes of summoning. In the words of one bailiff, to thrust a letter of summons into the door of sued man's house was also a legitimate action. The bailiff was convinced that such a manner of delivering a summons accorded with a custom of the land.¹⁹⁸ Other modes of delivery were applied as well. For instance, if a lord to whom a bailiff was sent to summon him to court was not found on his estate, then the bailiff was entitled to lay the letter of summons before any inhabitant of the village. Another custom offered bailiffs the possibility of leaving a letter of summons in a slash on the piece of wood (*in lignum recisum*) if he arrived at a deserted village. In this last case, the bailiff was able to declare a letter of summons in a parish church. The statute law of the early sixteenth century confirmed all of these modes of summoning, which first originated in customary practices.¹⁹⁹

In practice, it happened that a bailiff proclaimed a letter of summons to several different servants and officials of a lord, when he encountered them on his way to find the lord.²⁰⁰ In some cases, a bailiff delivered the letter of summons in spite of the refusal of the lord's servants to accept it.²⁰¹ It was also often left to bailiff's consideration to choose where to lay a letter of summons if a lord, whom a bailiff was to summon, had several patrimonies.

¹⁹⁷ *Statuty Kazimierza Wielkiego*, no. XXIX, 326.

¹⁹⁸ AGZ, vol. 17, no. 2323 (January 3, 1491): "et cttacionem in porta iuxta consuetudinem terr in curia in Przybyschowka infixit alias wethknął."

¹⁹⁹ The most authorized and complete collection of prescriptions on the competence of bailiffs in this sphere was gathered and published in the *Formula processus*. See: *Corpus Iuris Polonici*, vol. IV.1, no. 16, cap. 10-11, p. 50. Comment on putting a letter of summons in "lignum recisum" can also be found in A. Vetulani, *Pozew sądowy*, 91.

²⁰⁰ AGZ, vol. 17, no. 1959 (September 6, 1484).

²⁰¹ Ibid., vol. 13, no. 6161 (November 20, 1466).

This right of bailiffs did not go unquestioned, however, and often became an issue of controversy between them and the defendants.²⁰²

In theory, all a bailiff's actions that pertained to a given legal case were to be recorded in the court register. It was mandatory for a bailiff to record the fact and the circumstances of the delivery of a summons in the registers of the castle and land courts. Such recorded 'recognizance' (*recognitio*) usually contained the names of persons, who employed the bailiff to deliver the summons, and to whom the letter of summons was given. The bailiff's recognizance also contained information about the date of delivery as well as names of the men in whose presence the action of summoning took place. Norms of the law also prescribed that bailiffs must be accompanied on their visits to deliver summons to a defending party by one or two witnesses chosen from the local nobility.²⁰³

In addition to a delivery of summons, bailiffs were concerned with a wide range of important activities indispensable for dispute settlement and the proper functioning of the legal system. At the request of a disputing party, a bailiff was obliged to investigate damages and signs of violence caused by an opponent, and then testify before the court about the results of his investigation. Such an investigation, if conducted upon recent traces of a crime, could result in the citation of a wrongdoer, immediately in the place, where he was caught with proof (*facie, lice*) of his crime. It could be done by a simple touch of the wrongdoer and proclamation of a summons in his presence (the so-called *terminus ocularis*) without the need for compiling and delivering a formal letter of summons.²⁰⁴ Scrutiny of the number and severity of wounds inflicted by one rival on another and the bodies of murder victims were also among bailiff's duties. Only upon having a recognizance of a bailiff about the results of an investigation, could a victim or his/her relatives to bring charges to court. Bailiffs heard a litigant's oath, or even recited its text, and then testified about conformity to oath's performance. Bailiffs were also needed to execute the court's sentence and provide the legal introduction of the winner of a dispute onto the estate of the loser.

²⁰² In one case a powerful lord of Przemysl land, Jan Odrowąż of Sprowa sought to decline summons by arguing that the bailiff did not delivered a letter of summon to his estate in Sambir, where he usually resided, but laid it down in his another estate. The bailiff's answer is noteworthy: "a lord John is a big lord, he had many courts and estates, including a residence in Kupnovychi, from which he was sued." See: Ibid., vol. 13, no. 6161. For another similar case, see: Ibid., vol. 14, no. 2920 (August 31, 1453).

²⁰³ VL, vol. 1, 150.2, "De nobilibus quo numero cum ministeriali habendis."

²⁰⁴ AGZ, vol. 14, no. 1076 (May 8, 1444); Ibid., no. 1344 (April 1, 1445); Ibid., no. 1348 (April 2, 1445); Ibid., no. 2201 (February 22, 1449).

Bailiffs were almost exclusively of plebeian origin.²⁰⁵ It can not be excluded that some of them were of unfree origin. This is suggested by several accusations of defamation that litigants made of bailiffs when they came to deliver summons.²⁰⁶ They were appointed by the palatine. The procedure of appointment included an oath of fidelity that a candidate had to swear to the palatine and a ritual of shaving the head of the nominee, which gave rise to the adverb *tonsus*, usually added to the Latin designation of a bailiff (*preco, ministeriales*).²⁰⁷ The sources provide some hints suggesting that bailiffs constituted a clearly distinctive professional group of court servants. The evidence of mutual marriages and intra-familial affiliations, rare as they are, still allows discerning mechanisms upon which the close intra-group interaction and solidarity of bailiffs could have been grounded.²⁰⁸ What is much better reflected by the legal records is the representation of bailiffs as a network built upon the active circulation of information, shared and exchanged by its members about the details of legal cases.²⁰⁹

The institutional subordination and loyalty of bailiffs were not clearly established. On the one hand, in their every-day activity bailiffs were often dependent on the authority of judges, who conferred on bailiffs the power to conduct their duties.²¹⁰ This was particularly true for bailiffs of castle courts. Some of them seem to have owed the service of bailiff to the castle and its captain in exchange for a small estate, belonging to the castle.²¹¹ On the other hand, due to the fact of their nomination by a palatine, bailiffs enjoyed a certain autonomy in

²⁰⁵ Mazowsze served here as an exception for the lands of the Kingdom of Poland. Local bailiffs were almost always of the noble origin. See: Jozef Rafacz, *Dawny proces polski*, 80. The situation with the social status of bailiffs was also different in the Great Duchy of Lithuania. In the neighbouring to Galicia region of Volyn', for instance, men, who fulfilled duties similar to those of bailiffs, belonged to the special privileged group of servicemen. Consult: Volodymyr Poliščuk, "Oficiyni svydky – vyži Luc'koho zamkovoho uriadu v 1566-1567 rr.," *Socium*, vyp. 5 (2005): 13-39.

²⁰⁶ AGZ, vol. 14, no. 108 (October 28, 1440): "cum ad ipsum venit ipsum ad citandum, eundem percutere voluit et cum hoc ipsum infamavit, dicens ipsum gauconem alias Smarddze."

²⁰⁷ For the example of the text of bailiff's oath, consult a collection of formularies of oaths, compiled by Jan Laski: VL, vol. 1, 153.1: "Juramentum ministerialium quando tonduntur per palatinum."

²⁰⁸ At least one such familial group, within which the office of a bailiff seemed to be inherited and transmitted through two or even three generations, is testified in the sources. This is the familial group, of which the first known representative was Matthew Pyeczony, the bailiff of the Lviv land in 1441-70. Immediately after Matthew was stopped to be mentioned in the local register as the bailiff, Jacob Pyeczony started to figure in this role. Jacob's son-in-law Gregory also mentioned as a bailiff. For the last evidence, see: AGZ, vol. 15, no. 1502 (June 10, 1476).

²⁰⁹ For example, in 1472 Jacob Pyeczony, the bailiff of L'viv land, reported to the local castle court some details of the investigation that had been conducted by another bailiff - Matthew and then related to Pyeczony. See: Ibid., no. 1131 (November 23, 1472).

²¹⁰ Consider a statement, spelled out by a bailiff in the L'viv castle court on May 24, 1448: "I do not have to obey here nobody other, but a lord judge (et Ministerialis dixit: ego hic non habeo aliquem alium audire nisi dominum Iudicem)" in Ibid., vol. 14, no. 2077.

²¹¹ Consult the mention of the obligation of Gregory, the bailiff of the L'viv castle court to the perpetual service to castle in return for a house, which he got into possession at the Lviv suburb. Ibid., vol. 15, no. 1502 (June 10, 1476).

their legal actions. For instance, some plaintiffs felt free to call for a bailiff's assistance in pursuit of a legal action without asking the permission of a captain or judge. Another practice, attested by legal records, was a bailiffs' liberty to transfer some of his duties, including the delivery of summons, to servants and familiars of plaintiffs.²¹² Some bailiffs, like Jan Possoka, bailiff of Przemyśl land, were not strictly affiliated with a certain court, but fulfilled their duties for several different courts.²¹³

This uncertainty about the institutional subordination of bailiffs, rather loose control over their activities by court judges, and the considerable role of litigants, who actively recruited bailiffs to assist in waging disputes, brought about many disagreements between parties and judges regarding who and in what manner was empowered to deal with the assignment of bailiffs. A defendant could question a bailiff's right to deliver summons which had been made as a simple request of a plaintiff without the proper instruction of a judge or a captain. In such cases a plaintiff did not forget to remind his opponent or the judges of the bailiff's privileged position as a nominee of the palatine in the system of justice.²¹⁴ Bringing a bailiff from a different district by one of the litigants also raised voices of protest from the side of the opposing party.²¹⁵ Some litigants vigorously opposed court attempts to assign a bailiff without their agreement or knowledge, even if the authority of such a bailiff "was approved and praised by all lords and natives of the land in accordance with the confirmation

²¹² *Ibid.*, vol. 17, no. 3037 (July 16, 1498); *Ibid.*, vol. 18, no. 3195 (May 23, 1503); *Ibid.*, vol. 15, no. 830 (April 26, 1471).

²¹³ Some evidence can be drawn of his services for the Przemyśl land court. See *Ibid.*, vol. 18, no. 347 (September 29, 1472); *Ibid.*, no. 797 (December 12, 1475); *Ibid.*, no. 1126 (December 1, 1478); and for the Przemyśl castle court. See *Ibid.*, vol. 13, no. 5934 (October 2, 1465); *Ibid.*, no. 947 (April 27, 1473); *Ibid.*, vol. 17, no. 507 (February 13, 1471).

²¹⁴ In one case, recorded in the Przemyśl castle court register in 1490, this right of bailiffs to independent action was clearly stated by the pleading party in a debate with the defendant. The defendant asked whether it was the judge or the captain, who entitled the bailiff to conduct an investigation of signs of violence and sue him to the court. The plaintiff responded that the right to empower the bailiff in his activity belonged exclusively to the palatine, and it stemmed from a ritual of shaving. The plaintiff further insisted that neither the captain nor the judge dispose such a right. See: *Ibid.*, vol. 17, no. 2298 (November 2, 1490): "domine Iudex, controversiam non intrando neque super causam respondendo, volo videre et audire, quis potestatem dedit ministeriali super hanc arestacionem et cittacionem pro prefato homine si domus. Captus. Aut Iudex ipsius. Ministerialis recognovit, quia non fuit datus per Captm. Neque Iudicem ipsius. Actrix iterum dicebat per suum procuratorem: domine Iudex, sunt quidam articuli, pro quibus non debet recipere ministerialis potestatem a domo. Capteo. Neque dom. Iudice ipsius, quia data est sibi potestas a domo. Palatino terrarum Rusie, dum et quando tonsus est, ut iste articulus unus est ex his articulis, quia ministerialis non debet affectare a domo. Capto. Potestatem neque a Iudice ipsius super aliquam arestacionem alias lyczowane."

²¹⁵ In 1448, a noble of the Przemyśl land Heinrich of Domahostychi protested in the local land court against the suit of Gregory, the peasant from the same village. To confirm his charge and observe his wounds, received from Heinrich, Gregory took the bailiff not from the local Przemyśl court, but from the neighboring Sambir district. This was, according to Heinrich, improper way of taking assistance of bailiffs, and he refused to admit the recognizance of this bailiff. See *Ibid.*, vol. 13, no. 3716 (November 8, 1448): "recepit se ad ministerialem Iohannem de districtu Sambor. Et Henricus noluit admittere eundem ministerialem dicens, quia iste ministerialis depelleretur de isto districtu premisl neque ipsum nosco neque volo superadmittere recognicionem eandem."

of the lord palatine.”²¹⁶ In their attempts to discredit a bailiff’s recognizance, some litigants went so far as to raise doubts as to whether a man entrusted with duties of bailiff was a true bailiff.²¹⁷ Beyond all these cases of struggle over the power to assign bailiffs or question their right to fulfill duties, there seems to have been an awareness of the fact that the ‘proper’ choice of a bailiff could influence the outcome of a dispute. This also indicates a degree of distrust in the recognizance or suspicion of the bailiff’s partiality. Occasional mentions in legal records of bailiffs’ expurgation from charges of producing false recognizance suggest that such suspicions were not entirely groundless.²¹⁸

Bailiffs indeed sometimes appear in sources as troublemakers and offenders of the law. Few legal records speak about crimes and wrongdoings, such as thefts and assaults, in which bailiffs were involved as offenders.²¹⁹ The spread of abuses and corruption in the activity of bailiffs is much better illuminated by the evidence of statute legislation. The Statutes of Casimir the Great are especially explicit on this point. The Statutes mention numerous laments and complaints about greedy bailiffs, who, ranging across a country, burdened and troubled poor knights and clergy. The Statutes say that such bailiffs summoned people to court of their own will without any grounds for suits. Poor knights and villagers, having no means to cover the expenses of such suits, were forced to pay bailiffs with money.²²⁰ Another *consuetudo inequissima* of bailiffs, noted and forbidden by the Statutes of Casimir the Great, concerned the bailiffs’ custom of despoiling bodies and taking clothing of

²¹⁶ See, for example, the speech of a judge, in which he declined to delay a lawsuit on demand of one of the litigants, who refused to accept the bailiff, assigned by court. Ibid., vol. 11, no. 3556 (July 1, 1460): “Et Iudex dixit: non suscipio terminum proterea, quia vos non vultis tenere nostrum ministerialem, quem omnes domini et terigene Sanocenses laudaverunt et susceperunt tenere iuxta confirmationi mfi. Dom. Andree Odrowansch Palat. Russie.”

²¹⁷ Ibid., no. 2098 (January 11, 1446): “idem dominus Fredricus Gladifer increpaverat alias przyganyl ministeriali terr. Czerny, quod non esset verus ministerialis.”

²¹⁸ Consult, a short record of an expurgation of Nicolas, the bailiff of the Przemyśl land from accusations of fraud and falsification, advanced against him by Nicolas Stadnicki in 1443. See: Ibid., vol. 13, no. 7267 (November 25, 1443). For another similar case of expurgation of Lucas, the bailiff of the same land, see Ibid., vol. 17, no. 2797 (January 11, 1496).

²¹⁹ Consider, for example a case of Nestor, the bailiff of the Drohobych district from 1467, who took obligation to pay sum of money to a certain noble Marcus on the condition of his detention. The record noted that Nestor subdued himself to this condition as the thief. See: Ibid., vol. 13, no. 6696 (August 3, 1467). Another case, worthwhile mentioning is an accusation, advanced by Stibor of Vyshnya, the vice-judge of L’viv land, against Nicolas, the bailiff of Przemyśl land. The accusation is of the assault on the village Dubanevychi that Nicolas carried out in the manner of noble enmity with the assistance of ten nobles and fourteenth commoners. See: Ibid., vol. 14, no. 2082 (May 31, 1448).

²²⁰ *Statuty Kazimierza Wielkiego*, no. XXXI, 337: “Flebili querela sepius recepimus, quod ministeriales, per terram girantes, pauperes milites et villas religiosum fatigandi et vexandi... idem ministeriales ipsos milites pauperes seu villanos sine culpa et sine causa et absque iudicii precepto citant occasione vexationis faciendo, terminus pro libitu sue voluntatis assignantes et statuantes eisdem; et sic idem pauperes milites et villani, non valentes redimere aliter vexationem, sepeissime de certa summa pecunie component.”

murdered persons about whose death they were called to testify.²²¹ This practice probably had semi-legal character, since the Statutes designate this custom as *krwawe* and call it *ius ipsorum*.

At the end of this period, one can discover similar voices in the sources accusing bailiffs of grave abuses. For instance, Jan Ostrorog, in his *Monumentum*, probably dating from the first decades of the sixteenth century, openly speaks of bailiffs' falsification of their recognizance as a common practice. The author stresses that bailiffs' misuse of their duties resulted in many unjust and wrong verdicts. Ostrorog proposed depriving bailiffs of the right to search for and to testify in court about evidence of a crime. It would be enough, he maintained, if their services were restrict to delivering summons, observing wounds, and announcing legal actions in the presence of judges.²²²

On the other hand, to be a bailiff in late medieval Poland was quite a dangerous profession. Legal actions, commissioned to bailiffs by judges and plaintiffs, like delivering summons, or visiting a litigant's estate with the intent of executing court's sentence, were usually considered by litigants as dishonoring and insulting. It is not surprising, therefore, that bailiffs were often at risk of falling victims of litigant's anger, which may have resulted in threats and acts of violence. The most extreme manifestation of such rage is undoubtedly the evidence of furious litigants forcing bailiffs under the threat of violence to eat summons they were trying to deliver.²²³ As extraordinary as such cases may appear they nevertheless point to the normality of the practice of displaying the anger against bailiffs. Litigants' rage, displayed against bailiffs, could take a variety of forms. Raphael of Jaroslaw, himself the royal captain of L'viv land and a representative of the most powerful magnate family of Przemyśl land, warned John Possoka, bailiff of Przemyśl castle court in such words: "you, bailiffs, don't dare cross the border of my tenure Vyshnya to sue my people." If they did the captain promised to beat them and shed their blood: *vos ministerialis audiat et nolite in bona tenue mee Vyshnya inequitare ad citandum homines meos alias percuciemini, quod crura rumpentur in vobis*.²²⁴ In another case, Janusz, the court bailiff of the L'viv castle court, reported how he had been threatened by Stanislas, son of Martin Kalenyk while

²²¹ Ibid., no. CVI, 526.

²²² Jan Ostrorog, *Monumentum*, XXX, 49: "Ministerialibus nimium profecto creditor, quorum recognitione prava multoties falluntur, homines et iudices false judicare contingit. Eorum itaque officio satis esset, citationem ferre, vulnera conspiciere, in conspectu iudicii proclamare, ita tamen, ut probatio sufficiens in contrarium contra eosdem admittatur."

²²³ See a special study of such cases by Julia Mrukówna, "O zmuszaniu woźnego do połykania pozwu. (Przyczynek do dziejów szlacheckiej obyczajowości prawnej)" (About forcing bailiffs to eat summons. Towards the history of legal customs of the nobility), *Czasopismo Prawno-Historyczne* vol. XXII, no. 2 (1970): 159-168.

²²⁴ AGZ, vol. 17, no. 282 (March 7, 1470).

attempting to introduce the opposing party onto the Kalenyk estate. According to the bailiff's account, Stanislas became infuriated because the captain himself had adjudicated the introduction into Kalenyk's village and had ordered the bailiff sent to execute the sentence. "How dared the captain to deliver the bailiff upon me," - exclaimed Stanislas - "while shaking the knife before my face," - the bailiff later related to the court judges.²²⁵ Some of these threats ended in injury to bailiffs.²²⁶ Whatever the degree of danger bailiffs faced in carrying out their duties there was nevertheless no evidence of a case of a bailiff's murder recorded during the whole fifteenth century.

Violence directed against bailiffs could serve the practical purpose of blocking the path of litigation. In a legal system that heavily relied on formalism and ritual, legal actions and sentences that failed to be fulfilled by bailiffs due to threats, affronts, and impediments were often considered invalid. For some litigants, any means, including violence, were useful to prevent bailiffs from carrying out their duties. In 1485, the Przemyśl castle court bailiff, Bartosz, related to the court the story of how he was denied access to the village of Hniewnowice, on the estate of Jacob Siennowski.²²⁷ Siennowski had lost his case in the local court against Jan Golambek of Zamiechow. Hniewnowice was the estate of Siennowski upon which the adjudicated fine was laid down. The bailiff was sent out to introduce the winner onto the estate to help him to collect his money. But the winner's introduction onto Hniewnowice encountered some unforeseen impediments. On their way to the village, the bailiff and two nobles accompanying him, found that the free royal road that led to Hniewnowice was heavily blocked by tree trunks (*invenit viam liberam regalem stratam reclusam and fortissime roboribus et lignis circumspectam*). Upon their arrival in the village, not without difficulty, the bailiff and his companions started to interrogate two local women as to whether their lord was at home or not. In both cases they received negative answers. The account goes on that immediately afterwards they noticed servants rushing from the village to the lord's house (*de villa ad curiam currebant*), closing a door of the house and shouting the peasants (*clamores super villanos fecerunt*). The text implies that in this way Siennowski's servants tried to prevent the bailiff from access to the lord and his peasants. The same inference also seems to follow from the subsequent bailiff's reaction to such an inimical

²²⁵ Ibid., vol. 15, no. 926 (October 25, 1471): "quid est potens Capitaneus super me addere ministerialem, et cultrum super me Ministerialem movebat alias pomykal." For other evidence, informing about threats cast against bailiffs see: Ibid., vol. 14, no. 3415 (July 17, 1455); Ibid., vol. 17, no. 564 (April 1, 1471); Ibid., vol. 17, no. 2341 (January 24, 1491).

²²⁶ Ibid., vol. 13, no. 2973 (November 29, 1446); Ibid., vol. 17, no. 924 (March 8, 1473); no. 2677 (February 16, 1495); no. 4077 (August 2, 1504); Ibid., vol. 14, no. 182 (January 27, 1441).

²²⁷ Ibid., vol. 17, no. 1976 (January 31, 1485).

stance. Having seen such insolence, Bartosz and his followers left the estate. To complement this picture one should mention that bailiffs often faced even more hostile attitudes from the side of lord's servant.

Even worse things had happened to the aforesaid Bartosz a year before, in 1486, when he was sent on behalf of Jacob Siennowski to the village of Stojanci to summon Siennowski's rival Andreas Czurylo to court.²²⁸ In his complaint against Czurylo that was put down in the register, Bartosz said that upon his arrival to the said estate he was met by armed servants who forbade him to deliver a letter of summons and sue their lord. In general, abuses and violation of bailiffs' duties by litigants reveal how violence could be closely interwoven with the legal process.

4.3 Pleading the case, petitioning, and the court debate

Pleading a case was the indispensable next step for initiating a lawsuit. It usually took the form of a petition, which was presented by the plaintiff before the judges and defendant. In medieval Polish law a petition had the force of a formal complaint, and was fashioned into a *libellu*, – a form of petition, generally accepted in the legal process of medieval canon and Roman law. Similarly to the letter of summons, a petition usually contained essential information about the charges brought by the plaintiff against the defendant. The content of the petition had to be in accordance with that of the summons (*iuxta cittacionem*). This meant that the plaintiff was not allowed to introduce new changes into his petition which would make it different from the text of the summons.

As a rule, a petition of the plaintiff was followed by an answer (*responsio, replica*) of the defendant. The defendant's immediate response was the formal opening of the lawsuit (*litis contestation alias prza*). In terms of legal process, a party's willingness to go for the *litis contestatio* meant that a lawsuit would have to result in a formal verdict of the court, to which a plaint and claim were presented. The beginning of the verbal exchange of arguments between parties at the first stage of the dispute precluded the transfer of the case to another judicial institution. It did not matter at all whether the case fell within the jurisdiction of the given court or not. As an example one can take the lawsuit of Stanislas Krzywycki against Andreas Malechowski, which was written down in the L'viv castle register on October 26, 1444.²²⁹ Krzywycki accused Malechowski of a broken promise. According to the record, Malechowski had given assurance with his own mouth (*suo ore proprio*) in the presence of a

²²⁸ Ibid., vol. 17, no. 2038 (February 13, 1486).

²²⁹ Ibid., vol. 14, no. 520.

witness that he would send a runaway maidservant back to Krzywycki. Malechowski's attorney, in his vigorous response (*vigorosum respondit*), did not question the fact of this promise, but insisted on sending the case to the land court. The judges declined to accept Malechowski's appeal, regarding his attorney's comment as an official response to an opponent. Since Malechowski first gave arguments in the courtroom and only after that had advanced his request for the dispute's transfer, the court adjudicated the case to Krzywycki and imposed a penalty on Malechowski.²³⁰

Before entering into a formal debate with an opponent, the defendant was entitled to plead legally permissible exceptions. Such exceptions usually had a procedural character. In their exceptions, defendants often insisted on delaying the hearing of a case for various reasons until the next court session. An exception could also mean an appeal to transfer a case to another type of court under whose jurisdiction the case should fall, according to defendant's reason. Sometimes exceptions were more substantial and focused on procedural errors that an opponent had committed while pleading his case and advancing accusations. By presenting exceptions, defendants were at least able to gain time for mustering support and legal arguments. But some exceptions could result in rejection of the plaintiff's claim and thus brought about the defendant's victory. There was always a risk that judges would consider a defendant's exceptions insufficient or, even worse, take them as a formal response to an opponent, as a defendant's decision to accept the official verdict of the judges at this particular session. It was probably this sort of hidden danger of legal procedure that led to the insertion of numerous cautious clauses like *controversiam non intrante* into the texts of lawsuits on defendants' insistence.

Judges did not always recognize exceptions as serious. Therefore, if they failed in their pleading of exceptions, many defendants simply tried to leave the courtroom before a plaintiff managed to start or end his own pleading. Such a withdrawal meant a defendant's denial to accept the trial and judgment, which were regarded in advance as unjust and illegal. But even if a pleading of exception was accepted by the court, it did not always save a defendant from a continuation of the suit and even judgment in the same court session. Therefore, some defendants left the courtroom immediately after pleading their exceptions. Otherwise their presence in the court during their rival's pleading and listening to the

²³⁰ Ibid.: "Sed ex quo predictus procurator recognovit bis, quod Andreas eidem Stanislaio dixit suo ore proprio et fideiussit restituere et ipsam adhuc ancillam habet apud se, tunc istam causam sibi non dedimus ad ius terrestre, ex quo prius intravit realitatem alias weprzi cum procuratore domini Krzywyeczsky et post ea se extrahebat ad ius terrestre, sed ipsam ancillam domino Krzywyeczsky cum culpa predicta ipsius et iudiciali ad terminum prefixum adiudicavimus. Adiudicatum."

accusation was frequently perceived as a sign of litigant's readiness to accept judgment. It was necessary for some defendants to emphasize before the court that they had first managed to plead their exceptions to the lawsuit and only after that did the plaintiffs start to plea their case.²³¹

Court proceedings and debates were dominated by highly ritualistic and formal rules. Priority was given to legal ritual and the peculiarities of procedure over legal facts in the court room. This can be inferred from the fact that the notaries as well as litigants usually showed little interest in writing down such important details of disputes as circumstances, justifying their violent conduct or attempts to explain their misbehavior in terms of previous relationships with their rivals or emphasis on their emotional state of mind at the time of the conflict. All these facts were largely ignored or found on the margins of written accounts of conflicts. Court scribes most often tended to write into the record of litigation the debates about the conformity of one's pleading to the established rituals of conducting litigation. These formal aspects of lawsuits sometimes seemed to be of more significance for the process of adjudication than the legal facts that had given a rise to the lawsuit. The mode of conduct and speech in the court, that is, whether or not it conformed to the accepted legal rituals and procedural customs in the eyes of judges and the public, could strongly influence the course and outcome of the suit.²³²

Legal records occasionally offer insights into the mode of speaking in the courtroom, emphasizing the verbosity of litigants as a distinctive feature of waging litigation, like *plures hoc locutus est et repetebet*, or *et post multas altercationes et multa verba honorum*.²³³ Some fifteenth-century statute provisions were specifically concerned with excessive speech and debates in the courtroom, trying to impose a restriction.²³⁴ These attempts were doomed to

²³¹ See, for example, a speech by Andreas Prokop of Zadovyche in his litigation with John Urminski from Gluchovychi, written down in the court register on September 19, 1505. In his answer to plaintiff's allegation Andreas Prokop turned the attention of court assessors to the fact of his pleading for exception from the suit, which he had made before the Urminsky's accusation was brought against him "quia prius se excipiebat, quam proposicionem audiret." The defendant's claim for exception was that the case must be transferred to the court of another district, where his estate was located and of which he believed to be the native possessor (terrigena). See: *Ibid.*, vol. 17, no. 4189.

²³² This point is worth mentioning in view of the arguments, developed by Susan Reynolds. S. Reynolds tends to question the image of medieval law and legal process as heavily irrationalized and dependent on ritual. In her opinion the discussions, held in the court, must be taken as one of the proofs suggesting that the settlement of dispute was not completely devoid of some elements of rationality. The only problem with her explanation is that she completely overlooked the possibility that those debates themselves could be strongly bound by ritual and procedures, which sometimes escape a possibility of being decoded as "rational" by the mind of modern scholar. See her "Rationality and Collective Judgment", 9.

²³³ AGZ, vol. 17, no. 2344 (February 21, 1491); *Ibid.*, vol. 19, no. 664, 3111.

²³⁴ Consult one of the paragraphs of the privilege from 1454, issued in Cerekwica for the nobility of Great Poland: "Statuimus insuper, quod partes, quaerelans suas in iudiciis deponents, et responsiones facientes,

failure and such mode of waging dispute was widespread during the fifteenth and sixteenth centuries. Too verbose speeches, not directly related to the essence of legal cases, and vainglory that infused nobles' speeches at court proceedings were nicely described and ridiculed by Andrzej Frycz Modrzewski.²³⁵ But, as Modzrewski noted in another place in his work, the cases' hearings were by no means dominated by purely empty talks. According to him, the speeches of disputants or their attorneys were characterized by a great deal of sophistry and jeering, seeking to damage each other's arguments; both disputants relied heavily on contrived cunning and malice.²³⁶ The art of delivering speeches in the courtroom as well as a good knowledge of the highly ritualized and formal rules which governed the course of debate was highly esteemed among local nobles. The skillful application of this very peculiar art of making arguments, which involved a lot of trickery and inventiveness, mattered much more for the successful outcome of the dispute than a rightful appeal to legal norms and facts.

The presentation of charges and the following debate opened the door to nasty emotions displayed in the courtroom. Quarrels, outbursts of anger, threats or even acts of violence were not random for court proceedings. A courtroom often became a suitable place for a public display of power and status by noblemen. The Statutes of Casimir the Great attempted to prohibit the practice of bringing a large number of relatives or familiars to court hearings under the threat of penalty, called *penthnadzisce*. The Statutes explain that such a severe law was necessary because by the uproar and improper audacity of their supporters some litigants disturbed court proceedings and obtained favorable judgments.²³⁷ This situation of violence and turmoil erupting at court proceedings, as described in the Statutes of Casimir the Great, underwent little change in the course of the next two centuries. Legal provisions against violence in the courtroom repeatedly appeared in fifteenth-century legislation.²³⁸ Such legal enactments apparently had little success. In the middle of the sixteenth century, Andrzej Frycz Modrzewski still spoke of the arrival of litigants at court, accompanied by a body of armed and numerous supporters, as a widespread abuse of the law contradicting the

duntaxat judicentur, nec impugnationes, alias wspory, prout ante consvetum erat deinceps fieri admittantur." See *Jus Polonicum*, 267.

²³⁵ See Andrzej Frycz Modzrewski, "Liber de Legibus", in his *Commentariorum De Republica emendanda*, cap. XVIII.1, 212-213.

²³⁶ *Ibid.*, cap. XVI.14, 202: "Multae in causis existere solent cauillationes excogitatae astutia et militia partium in suam ipsorum perniciem mutuo incubentium."

²³⁷ *Statuty Kazimierza Wielkiego*, no. I, 248.

²³⁸ See, for example, the paragraph "De violentia in iudicio commissa" of the Statutes of Casimir IV from 1465, issued in Nowy Korczyn in *VL*, vol. 1, 71.2; the paragraph "De temerario ad iudicium ingressu" of the Statutes of Jan Labert from 1493 in *Jus Polonicum*, 323; and the paragraph "De armis ad domum iudicii non inferendis" of the Statutes of the same King from 1496 in *VL*, vol. 1, 124.2.

principles of the administration of justice. “To what end are all these armed crowds of supporters brought to the court, if not for threatening the judges and adversary?” – the author asked rhetorically. His remedy against such an evil custom was identical to that of the Statutes of Casimir the Great: all armed men crowded around litigants must be removed from the court.²³⁹

The evidence of legal records also speaks of the incidence of violence that occasionally disrupted the course of court proceedings. It is reported that in some cases the judges specifically appointed guarantors, who agreed to prevent the defendant from any violence against the plaintiff.²⁴⁰ Such precautions were by no means useless. One record of the L’viv castle court from 1492 has it that during the hearing in the suit between two local nobles, Peter of Lahodiv and Paul of Pechykhvosty, the litigants started to throw dangerous and contumacious words at each other in the presence of the captain.²⁴¹ The record relates that in the end, upon listening to such dishonest speeches the captain decided to impose a pledge of peace on the litigants in order to mitigate their feelings. The evidence suggests that some nobles threatened the life of their adversaries just at the time, when the latter spoke out their accusations in the court.²⁴² Behind the threats advanced in response to legal actions initiated by an opponent was perhaps the perception of legal charges as something dishonest and damaging to the reputation of the accused. Deeds easily followed words. It is, therefore, not surprising to read in the legal record that two defendants, infuriated by the charges against them, rushed with unsheathed swords at their opponent and wounded him.²⁴³

Murderous threats were also directed against the judges and court personnel. Legal records provide some occasional but remarkable descriptions of such plays of fury, complemented by note of not only the offenders’ words addressed to the judges but also of their threatening gestures. By recording these insignificant but colorful gestures in their accounts of litigations notaries perhaps sought to charge the conflictual situation in the courtroom with more emotional intensity, to dramatize the feelings of social actors, and to strengthen the effect of the delinquency of this kind of behavior. It is reported, for instance,

²³⁹ Andrzej Frycz Modrzewski, “Liber de legibus”, in his *Commentariorum De Republica emendanda*, caput XVIII.1, 214: “Illud enim minimum ferendum est in accusatoribus defensoribusque, ut magna hominum frequentia stipati aut etiam armis accincti ueniant in iudicium. Quorsum enim et caterue eiusmodi, et arma pertinere intelligenda, quam ad metum incutiendum et iudici et aduersario?”

²⁴⁰ AGZ, vol. 14, no. 2782 (March 26, 1453): “Fideiussit pro eodem Mathia, quia non debet minari hominibus, qui ipsum inculpauerunt.”

²⁴¹ Ibid., vol. 15, no. 2258 (November 17, 1492).

²⁴² Ibid., no. 1448 (December 1, 1475): “quia super eundem Officalem movebat manu coram iure in vim diffidacionis ei signum faciens.”

²⁴³ See the case of a penalty of fourteenth marks, to which Jan and Heinrich of Rzeszów were fined for wounding their adversary Nicolas Gronostay in the courtroom: Ibid., vol. 17, no. 198 (December 18, 1469).

that a certain noble, Rafael of Chesaczicze, was fined three marks for serious contempt of court. The record specifies that Rafael quarrelled with the judge, banging his fist on the table and uttering threats against him.²⁴⁴ In another case from 1440, the judges of the Lviv castle court fined a local noble who dared to start a quarrel in the presence of the captain and refused to keep silence when the judges were considering their judgment.²⁴⁵ Other records attest to the other sorts of gestures which reveal negative emotional stance adopted by litigants towards the court procedures. One of the records relates, for example, that upon denouncing the delivered sentence as unjust one of the litigants insulted the judge by throwing the small amount of money which he had to pay as a fine under the table.²⁴⁶ Captains, having been the highest representatives of the royal power in the locality and heads of the castle courts, could also receive such threats. In 1469 the Przemyśl captain, Jacob of Konieczpole complained in the presence of the king against Iwan, son of Fedir of Pukennica, denouncing him for raiding the captain's estate in the royal town of Drohobycz and threatening him by raising weapons and exclaiming rude words.²⁴⁷ Some lords went as far as trying to defend their clients from an arrest ordered by the captain by using weapons in the court in the presence of the royal captain.²⁴⁸ Displays of anger and exaggerated feelings of resentment constituted emotional responses to summons or sentences, which men perceived as unjust and dishonorable. By overemphasizing contempt toward the court servants, judges and their sentences, such a mode of emotional conduct was conceived as a public posture, aimed at challenging the court's decision and legitimizing the litigant's claims to seek further justice by both legal and extra-legal means. It is worth noting that judges behaved in a similar way, threatening the lives of men who came to respond before them. For instance, in 1465, Sigismund of Calyshany took the judge of the L'viv land Peter of Branci to the L'viv castle court stating that the judge had threatened to kill him.²⁴⁹ On the part of judges, the use of this sort of emotional talk served as an extension of the exercise of their judicial power, helping to enforce their judgments.

²⁴⁴ Ibid., vol. 14, no. 1485 (September 1, 1445): "Raphael de Czeschaczicze luit penam tres marcas ob hanc causam, quia iudicium in honore non habuit rixas faciendo cum Iudice, manu percuciens in mensam, minas Iudici imponendo." It is interesting to notice that not only litigants, but also bailiffs were notorious for such scandalous behavior in the court. The one of the bailiffs of the Lviv castle court threatened the judge with his feasts and was therefore fined. See Ibid., vol. 14, no. 1445 (August 2, 1445).

²⁴⁵ Ibid., no. 34 (July 15, 1440): "Nob. Clemens de Lopuschna succumbuit penam, quia coram iudicio domini captanei clamavit et silere noluit, quam domini adinveniunt."

²⁴⁶ Ibid., vol. 11, no. 1134 (August 30, 1438): "Et propterea dominus Fredricus Iudicem increpavit alias ruszyl, quia super ipsum penam iniuste sentenciavit. Et ibidem dixit dominus Fredricus: proiciam Iudici sex scotos sub mensam acz mye przepzie."

²⁴⁷ Ibid., vol. 17, no. 30 (February 14, 1469): "est super me erectus wszdrzuczyl armis et verbis inhonestis super me Capitaneum terre..."

²⁴⁸ Ibid., no. 3201 (August 20, 1499).

²⁴⁹ Ibid., vol. 15, no. 261 (October 18, 1465).

4.4 Delays

Frequent delays of sessions can be considered one of the most fundamental features of fifteenth-century litigation. Abuses of this practice were undoubtedly one of the biggest plagues of the legal process. Late Medieval Polish legislation tried to regulate, with limited success, the issue of delays of sessions, determining the causes as well as the number of prorogations permissible during a lawsuit by both plaintiff and defendant. The most complete list of the causes recognized as legitimate was given in the *Correctura* from 1532. It listed the following causes for postponing the hearing: disease, flood and storm, destruction of a bridge or boat, a domestic funeral, assault by brigands, public or private detention, the session of more a significant lawsuit, held at another court (*pro maiori*). Disease and *pro maiori* were the two most important and widespread causes for delays.

Concerning the delay called *pro maiori*, it originated from division between legal actions, generally accepted in the Polish law, that were initiated on the ground of major causes (*causae maiores*) and minor causes (*causae minores*).²⁵⁰ The major cause covered all disputes that concerned patrimonial conflicts, and cases in which a plaintiff pleaded for the redress of wrongs that exceeded a certain sum of money. In different times and for different regions that amount varied from forty to one hundred marks. One of the effects of such an established difference was the primacy in hearing given to the cases for major causes.

As for delay by illness, the Statutes of Warta represented one of the earliest legislative attempts to establish regulation of the practice of delays. Before the promulgation of the Statutes of Warta in 1423, the customary practice allowed the testimony of a priest to prove that the serious illness caused the non-attendance at the court session. A priest, called upon to serve last communion and hear confession, had then to testify before the court the fact of hearing communion by swearing an oath. One of the paragraphs of the Statutes of Warta criticized and expressed serious concern with this way of delaying cases. The paragraph speaks of the spread of “perverse customs,” which led to improper ways of swearing an oath in the matter of postponing lawsuits and resulted in perjury. The legal provision specified that the procedure was endangered by perjury, mainly because priest had sworn an oath to the fact of hearing communion, but not to the fact of illness. The provision then focuses specifically on delays of the session of two courts – the land court and the judicial assembly, the so-called *colloquia*. The Statutes established the possibility for defendants to miss two sessions of

²⁵⁰ For details, see: Oswald Balzer, *Przewód sądowy*, 40.

colloquia and three sessions of land court without any necessity to produce proof of alleged disease. Only the defendant's absence at the third session of the assembly and the fourth session of a land court had to be confirmed by a defendant at the next session by his personal oath.²⁵¹ The statutes of Casimir IV from 1465 included one important amendment to the mode of oath-taking in cases of delayed sessions. It established that a defendant was required to bring two oath-helpers to back up his personal oath.²⁵²

The fifteenth- and sixteenth-century enactments of law showed great diversity and inconsistency in dealing with the problem of delays. Compared the Statutes of Warta, slightly different rules were adapted by the *Processus iuris*, compiled by Jan Laski by the order of King Alexander in 1506. The *Processus* permitted a delay of four sessions, three of which could be postponed for the reason of the simple disease. The aforementioned *Formula processus* from 1523 established much more rigid rules in regard to the possibilities for postponing lawsuits. According to its provisions, a defendant was allowed to postpone only the first session because of the simple disease. The second session, considered decisive (*rok zawity*), could only be delayed in case of the serious illness and had to be supported by swearing an oath with two oath-helpers. Non-attendance at the second, decisive, session, if not justified, and failure at oath-taking caused the loss of the case. The *Formula processus* tended to underprivilege a plaintiff compared to the defendant. A plaintiff was permitted to delay only one, the first, session, and only for the reason of the serious illness. Similarly to a defendant, a plaintiff was required to take an oath to back up his statement of illness. Possibilities of postponing were planned to be further restricted in the project of codifying Polish law, called the *Correctura legis* in 1532. Contrary to the previous legislation, the *Correctura legis* was designed to abolish inequities between disputing parties with regard to the number of sessions they would be entitled to delay. Both a plaintiff and defendant were to have equal rights to postpone only one, first, session for the reason, of the simple illness.

4.5 Appeals and transfer cases

The dense network of judicial institutions opened a wide range of possible channels for appeal and transfer of cases. The following evidence of one particular dispute exemplifies the litigants' trajectories in maneuvering between the overlapping, conflicting, and often

²⁵¹ VL, vol. 1, 32.1, "De antiqua consuetudine in transpositione terminorum servata." This provision was first issued in the Cracow privilege by Władisław Jagiełło, and dated on 1420 or 1421. About the date of the privilege and the provision that concerned the regulation of delays, consult Wacław Uruszczak, "O genezie i dacie statutu krakowskiego Władysława Jagiełły" (The origin and date of the Cracow statute of Władisław Jagiełło) *Czasopiśmo Prawno-Historyczne* 20, no. 2 (1968): 59-65.

²⁵² VL, vol. 1, 71.2, "De terminorum dilatione per infirmitatem."

unclearly established competence of various courts and institutions, and turning them to their advantage.

The case in question is the lawsuit between Jan Ossolinski, captain of the town of Stryj, and a nobleman from the same district, George or Iuchno Nagwasdan of Stankiv. Some interesting circumstances surrounding the course of this conflict were recorded in the Przemyśl court register on May 29, 1482.²⁵³ Evidence of the dispute was recorded in the register in the form of a testimony by Jan, the bailiff of Zhydachiv castle court, on the order of the captain of the same district, Felix Paniowski. Jan gave an account of this suit to Nicolas, the bailiff of the Przemyśl land court. The account of the lawsuit was thus related by one court bailiff to another. Otherwise, it was usual that the plaintiff himself/herself presented his/her plea; accounts of conflict were related in the form of third-person speeches in the court registers. Here the main protagonists had no direct access to the court and their voices, even if put in the form of third persons' words, are transmitted to us through the mouth and pen of two intermediates.

The bailiff's account is thus an eyewitness' report relating a story about an unjust summons and abuse of the law that had occurred in the castle court of Stryj to the aforesaid Iuchno in his conflict with the local captain Jan Ossolinski (*que ipsi Iuchno in iure castr. Striensi facta fuerunt*). In his report the bailiff first pointed out that Iuchno was illegally summoned to the court by the Stryj captain. He stated that Jan Ossolinski assigned a new term for the court proceedings without informing Iuchno. In this way the captain cancelled the previous date of the session, which had been established earlier based on his order. Having learned about the suit by chance (*resciens*), Iuchno hurried to the session, accompanied by the aforementioned bailiff, Jan. At the court hearing, he sought to deny the right of the captain to judge his case. Iuchno argued that the case concerned a runaway peasant and thus belonged to the land court's jurisdiction. Afterwards Iuchno pleaded to send the case for the consideration of other judicial institutions. It is interesting to note that the notary who compiled the account of Iuchno's plea regarded it worthy enumerating the institutions and agents, which Iuchno viewed as legitimate to administer justice in his case: the land court, the Rus' palatine, the land judicial assembly, and even the king himself (*aut ad ipsum Regem*). The bailiff further related that the captain showed no willingness to admit the right of Iuchno's plea and instead wanted to pass judgment against him. In his turn, Iuchno, by making use of the presence of the bailiff, asked Jan to sue Jan Ossolinski, the court judge Iwashko Bratkowski, and the court

²⁵³ AGZ, vol. 18, no. 1690.

notary Dobeslas in the royal court upon the king's expected arrival in Przemyśl. The bailiff noted that none of those sued by Iuchno wanted to meet his demand for new litigation. After that, the account contains a description of an interesting legal ritual, whose meaning in the context of this court dispute remains rather unclear. According to the bailiff's recognizance, Iuchno himself put a coin in a hat (most probably of bailiff's), thus requesting proclamation of a suit against them: *Ipse Iuchno cum mitra in eam grossum imponens eodem modo, ut dictum ipsis terminum assignavit*. Bailiff Jan also reported that at the same court hearing Iuchno took the occasion to sue Prunycz, the bailiff from the neighboring town of Drohobych because the latter had refused to carry out Iuchno's request to deliver summons to Ossolinski and Bratkowski.

As concerns the institutional and geographical setting of the dispute, Stryj, Drohobycz and Zhydachiv – all major towns mentioned in the text of the dispute – lay in proximity of each other in south-eastern part of the Przemyśl land, close to the foot of the Carpathian Mountains. Each of these towns was a district center. Courts, captains and bailiffs who came from these towns and set the scene for the dispute thus represented the lowest level of the judicial pyramid of the fifteenth-century Rus' palatinate. Their courts and judicial personnel were survivals of a more decentralized system of jurisdiction that had operated in Galicia in the period before 1430-34. These district courts witnessed a gradual decline in significance after the creation of the Rus' palatinate and its subdivision into lands in 1430. This led to a rapid rise in the importance of the courts in the land seats (Lviv, Przemyśl, Halych and Sanok). No registers produced by the chancelleries of these district courts have survived from the fifteenth century. The only vestiges which testify to their activity can be found in the registers of the land courts. The castle courts in these districts disappeared completely in the first half of the sixteenth century.

This dispute clearly exemplifies how significant access to the power resources and the opportunity of exercising it in court was. As a lawsuit in which one of the parties was represented by the captain himself the case between Jan Ossolinski and Iuchno Nagwasdan is especially revealing in this regard. Granted almost unlimited power in the territory of their districts, the captains could easily abuse the law and interpret legal norms in their own favor. Since the captains controlled the castle courts, they could easily manipulate legal procedures in order to win favorable judgments. Therefore, nobles involved in disputes with captains rightfully saw it as an abuse of the law to be summoned to respond before his castle court. In the analyzed case the captain's omnipotence in administering justice is clearly manifested in

the unlawful extension of the castle court's jurisdiction beyond the basic principles of statute law.

This dispute shows how the administration of justice could move far from the idea of impartial judgment. Not only captains themselves, but also other nobles, serving as court assessors or fulfilling court services as judges, could easily take advantage of their positions to pursue their own feuds and suits. It was probably not an accident that Iuchno Nagwasdan also sued the presiding judge Iwashko Bratkowski along with Jan Ossolinski. The Przemyśl court register provides evidence of several bitter conflicts between Nagwasdan and Bratkowski, running from the 1460s through the 1480s.²⁵⁴ According to one allegation, propounded by Nagwasdan against Bratkowski, the latter allegedly sent his son Vasyl and servants wanting to kill Nagwasdan's attorney.

Evidence of the dispute between Ossolinski and Nagwasdan gives clues as to how various and competing networks of personal and institutional patronage were mobilized in the dispute, and influenced its course and outcome. It could be suggested, for instance, that Ossolinski pursued not only his own goal in the dispute with Nagwasdan, but provided support to his client Bratkowski, who was in a state of permanent enmity with Iuchno Nagwasdan. It is also revealing that Jan, the bailiff of the Zhydachiv district, - who played a crucial role in legitimizing Iuchno's claim for appeal to another judicial institution, - acted on the order of his supervisor, the Zhydachiv captain, Felix Paniowski. One can see it as an attempt by Iuchno Nagwasdan to seek the protection of a powerful patron in his conflict with John Ossolinski, one who was able to provide him with an alternative channel for an appeal against the Stryj court judgment. Possibilities for advancing claims for transferring cases were thus strongly determined by personal involvement in the various webs of patron-client relations. These webs provided access to the important power brokers and thus widened the channels for appeal and facilitated the pursuit of dispute.

At the same time, a litigant's successful claim in other courts is not explicable only in terms of the ability to gain a protection of various institutional agents and can not be seen only as a consequence of skillfully playing on conflict between local power-holders. A litigant's success depended greatly on his personal efforts and determination as well as shrewdness and knowledge in presenting and manipulating the legal arguments in court. Nobles' claims for transfer were constantly challenged and tested by court judges and

²⁵⁴ AGZ, vol. 13, no. 6135-36 (October 29, 1466); Ibid., vol. 18, no. 1784-85 (April 8, 1483).

assessors or the opponent, who tried to enforce his right to have the case heard in his chosen court.

For example, it is instructive to follow the lawsuit between Pelka of Czeszky and Martin of Piotruszowice, himself a *burgrabius of Przemysl*. The legal record of the case is extant in the Przemysl castle court register under the date of May 10, 1479.²⁵⁵ The case is enlightening as to how the claims of one party to escape judgment, and his supporting legal arguments raised legally substantiated counterclaims from the side of the court. According to the record, Pelka was summoned to the court to respond to the allegations of Martin of Piotruszowice, in which Martin accused Pelka of breaking the surety given for a certain Stanislas, servant (*familiaris*) of the nobleman John of Rudnyky. Pelka had guaranteed to submit Stanislas to the castle court, but failed to fulfill this obligation and was therefore sued by Martin. Pelka's response to the accusation was short – a negation of the right of the judges to deliver a sentence in his case. The refusal to submit his case to the judgment of the castle court was followed by a claim for his right to submit his case to the captain himself: *domine Iudex, noli me iudicare, des michi hanc causam ad dom. Capitaneum*. The judge's response to Pelka's demand is revealing. He expressed no objection to Pelka's claim, answering his request in these words: "Sir Pelka, the lord captain is present here, go and approach him" (*domine Pelka, est hic presens dominus capitaneus, accedes eum*). Pelka got access to the captain, but his plea to the royal governor to take his case to the land court failed. In his response, the captain pointed out that Pelka was liable to castle court judgment only, because Pelka had promised in this same court to serve as surety (*domine Pelka, ex quo exfideiussisti de potestate castrensi Stanislaum predictum, hic in castro teneris respondere*).

There is nothing surprising in this reasoning. Similar arguments can be found, for instance, in a suit of Peter of Chlopchyci against Jan of Conushky, which was pursued before the Przemysl castle court in 1488.²⁵⁶ Peter charged Jan with trespass on his property, cutting trees on the territory of his estate and breaking the royal pledge, which had been previously imposed upon the parties by the court. Jan defended his right to be judged by the land court only. In his words, his case did not really fall under castle jurisdiction and was not in accord with the four castle paragraphs.²⁵⁷ In a lucid explanation he clarified the real essence of the four paragraphs: *Duntaxat quatuor articulos iudicat: incendii, publice strata predacio,*

²⁵⁵ Ibid., vol. 17, no. 1694 (May 10, 1479).

²⁵⁶ Ibid., no. 2202 (June 16, 1488).

²⁵⁷ Ibid.: "Prefato Conyvszczky controversia non intrante et petente se remitti ad ius terr. pro eadem cittance cum pena trium marc. dicente, quod iste articulus non esset iuris castri, quia nullum articulum ex quatuor, qui ad ius castr. pertinent, contingit."

oppressio mulierum et violencia domestica, ut continetur in statutes in capitulo. Nevertheless, Peter insisted on his claim to take his case to the castle court by stating that the broken pledge had been laid down in this court itself and therefore the defendant should face trial there. In his turn, Jan justified his claim for transfer to the land court by alleging that the pledge was established by arbiters as a private agreement, and not imposed by the court. It seems that by pursuing this argument he managed to escape liability in the castle court.

A widely utilized legal rule regulating the practice of appeal in fifteenth-century court proceedings provided the opportunity to accuse a judge of an unjust sentence. This meant that the judge was forced to expurgate himself before another, often superior, judicial institution. It opened automatically the possibility for a defendant to move his case up to that superior judicial institution. This was exactly what occurred in the lawsuit between Pelka of Cheshky and Martin. After the captain forbade Pelka to transfer his case to the land court and decided that the case was liable exclusively for castle court judgment, the disputant immediately lodged a new case against the judge. Pelka sued the judge in the court of the Rus' palatine and the nobles, who were about to gather for the noble diet in the town of Vyshnia.

During the fifteenth century, litigants also widely exploited the king's position as the supreme distributor of justice in their lawsuits. One of the most common strategies of dispute was to obtain a special kind of royal writ (*litterae inhibitoriae*), which prohibited suing and judging the holder of the letter in a local court. Such letters provided the main grounds for nobles' claim to release from or delay of a lawsuit. Sometimes the royal chancellery unscrupulously misused this practice by issuing two contradictory charters, giving first an exception from the dispute for one litigant, but then confirming the right of another litigant to sue his adversary. This happened, for example, in a lawsuit between Orthodox bishop of Przemyśl and a Przemyśl magistrate in 1470s.²⁵⁸ This form of royal intervention in local justice provoked many complaints by the nobility. Demands to abolish the practice of royal inhibitory letters were repeatedly raised by the nobility in fifteenth-century statutes and privileges.²⁵⁹

These patterns of appeal show that in the vast repertoire of litigants' techniques one could always be found that would allow the litigants to continue the dispute in order to seek compensation for damages and restore justice caused by the unfavorable judgments made in previous stages of the dispute.

²⁵⁸ Ibid., vol. 17, no. 281 (March 7, 1470).

²⁵⁹ See, for example, provisions of the Cerekwica privilege from 1454 in *Jus Polonicum*, 266.

Blurred and contradictory spheres of competence among various judicial institutions were not the only cause which was frequently exploited by litigants in their attempts to bring the case before another type of court. There seems to have been a much more fundamental principle of jurisprudence operating beyond the widespread practice of claims for transferring cases. The right of the disputing parties to move the case to another court can be seen as a corollary of the idea of collective judgment. It was a common belief that a “just” court sentence should reflect a sort of overall community consensus formed in the process of its imposition.

Therefore, courts faced a constant demands and pressure from litigants to administer justice by as large, authoritative, and representative body of assessors as possible. The pattern of the judgment in cases before the supreme authorities is clearly visible in the castle courts’ proceedings. Litigants that brought their suits there demanded that a captain himself judged the case. If for some reason a captain was not able to be present at the given court session, one of the parties often regarded it as justifiable to dismiss the assessors and disagree with their sentence, alleging his right to be judged by the captain alone. Attempts to bring a case to the bench of the king as *iudex supremus* were an extreme manifestation of the principal of just judgment.

4. 6 Knowledge of law and the practice of interrogation

On May 8, 1444, the scribe of the L’viv castle court wrote down in the register one of the stages of the lawsuit between Andrew of Sienno and George Strumilo of Kamianka. The case was one of the most common kinds of noble disputes. It concerned a fugitive peasant, a certain Jacob, who had fled from Siennowski to Strumilo. The record focuses on the parties’ debate concerning the plaintiff’s right to plead his case before the court of the L’viv captain. Such a right was questioned by the defendant, George Strumilo, since it apparently went beyond the jurisdiction of the castle court. According to the Statutes of Warta the castle courts were restricted to dealing only with cases that fell under the so-called four articles. This point was emphasized in defendant’s speech with particular clarity. He claimed to support it by the law of the land (*iura terrestria*) as well as the Statutes of Casimir the Great. Nevertheless, defendant’s arguments seem not to have been considered by the judges as weighty enough. The judges remained uncertain about the court that was proper for the settlement of this

dispute. They decided to send the case to the palatine upon his arrival in L'viv to clarify to what kind of jurisdiction, castle or land, the case should be submitted.²⁶⁰

In the following analysis I shall be particularly concerned with inquiry into several closely connected aspects of this case, that is, knowledge of the statute law, uses of statutory norms in the course of the lawsuit, and the procedure of prorogation of cases for further counsel. My first observation concerns the reference to the Statutes of Casimir the Great which is found in this case. To my knowledge this is the only explicit mention of the Statutes of Casimir the Great in the fifteenth-century court registers of the Rus' palatinate.²⁶¹ Furthermore, it is very important to observe that the reference to the Statutes of Casimir of Great seems to be rather irrelevant to the normative background of the court debate. The debate was focused on the conformity of the case to the jurisdiction of the castle court which was regulated by the so-called "four paragraphs". These four paragraphs, however, were never listed in the Statutes of Casimir the Great. They were promulgated as the statute norm for the first time almost a century later, in the Statutes of Warta in 1423. The invocation of the Statutes of Casimir the Great in the context of this lawsuit raises some questions about the scope of familiarity with the norms of these and other Statutes in the fifteenth-century Kingdom of Poland. The case suggests rather poor knowledge of statute law in the fifteenth-century Poland. It is reminiscent of the words of Jan Laski, who explicitly pointed to this fact in the introduction to his collection of the Polish law, issued on the very beginning of the next sixteenth century. Jan Laski noted that in his time no one knew the old laws except two or three dignitaries and that he had met no one who possessed those laws gathered in one collection.²⁶²

The limited application of the norms of the statutes in the legal practice of the fourteenth and fifteenth centuries was noted by scholars of the late nineteenth century, such as Romuald

²⁶⁰ Ibid., vol. 14, no. 1074: "Dedimus ad dom. Paltm. Wthori pyathek ad eius adventum et ibi invinire debet, si est articulus terrestris vel castrensis iuxta eorum citaciones, si debet amittere vel litisquestionem alias prza habere."

²⁶¹ There is one more reference to the *[s]tatuta Regis Kazimiri* contained in the Halych land court register under the date October 12, 1456: "Item Castelanis Haliciensis fideiubet pro Muszilone, quod officiales ipsius Snyathensis [non] debet iudicare officiales nec servos Andree in villis nec in castro [Snyat]enensi, nisi pro quatuor articulis secundum [s]tatuta Regis Kazimiri," see Ibid., vol. 12, no. 2774. If the date of this entry - 1456 refers to the time of the described action than it would be highly likely that the mentioned Statutes of the king Casimir are those of Casimir Jagiellonczyk, issued in Nyeszawa and Opoki in 1454. One entry of the Statutes of 1454 confirmed the restriction of the captain justice to the mentioned four paragraphs. See the confirmation of this Statute by the Casimir's successor Jan Olbrecht, dated by 1496 in: VL, vol. 1, 115.1. However one can not exclude a possibility that the mention of the Statutes of the King Casimir meant that of Casimir the Great. In this case the record offers additional evidence for the suggestion of how problematic the knowledge of the statute law could be in the fifteenth-century Kingdom of Poland.

²⁶² Quoted in Waław Uruszczak, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku. Korektura praw z 1532 r.* (The attempts at condificatio Polish law in the first half of the sixteenth century. *Korektura praw* from 1532) (Warszawa: PWN, 1979), 35.

Hube and Oswald Balzer.²⁶³ Twentieth-century scholarship further highlighted this feature of the functioning of statute law in late medieval Polish society. For instance, the prominent legal historian Stanisław Roman drew attention to the ignorance of the norms of the Statutes of Casimir the Great in his study of the time prescription in Polish medieval law. S. Roman stressed that the paragraph of the Statutes of Casimir the Great that determined the period of three years as the time prescription valid for initiating legal actions was generally ignored in court proceedings in late fourteenth-century Kingdom of Poland.²⁶⁴ Ludwik Lysiak also took a highly skeptical view of the significance of the Statutes of Casimir the Great in the legal world of late medieval Poland. By examining a wide spread practice of the postponement of cases and the frequent counsels about the proper ways of their judgment L. Lysiak showed how rarely norms of the Statutes were applied and how poor was their knowledge in the legal practice.²⁶⁵ He maintained that the judges' inability to pronounce verdicts, which was expressed in the constant need for counsel, stemmed mostly from their poor knowledge of the statute law. Another Polish historian, Bogdan Lesiński, noted that during the whole fifteenth century there are no mentions in the sources that the judges made any use of the *prejudicates*, when taking cases *ad interrogandum*.²⁶⁶ Medieval law was by its nature a law of precedent. The *prejudicates* were recorded as a more or less stable set of the court sentences and added to the Statutes of Casimir the Great. In this way the *prejudicates* were designed to function as precedents and to be used as an important normative guide in the process of dispute settlement. The *prejudicates*, however, although they had been recorded in the Statutes of Casimir the Great, were almost never mentioned at court proceedings as a normative framework of reference, usable for dispute settlements. A similar picture appears from Bogdan Sobol's study of the legal and legislative aspects of the incorporation of the Principality of Mazovia into the Crown during the 1520s and 1530s. B. Sobol noted several times in his text how problematic was the application of the Crown's statutes was in the legal

²⁶³ Consider important remarks by Oswald Balzer in his "Uwagi o prawie zwyczajowym i ustawicznym w Polsce" (Notes on customary and statutory law in Poland), in his *Studia nad prawem polskim* (Studies of Polish law) (Poznań, 1889), esp. 102-4.

²⁶⁴ Stanisław Roman, "Z badań nad dawnością w prawie polskim XIV wieku" (Investigation of the antiquity in Polish law of the fourteenth century), *Czasopiśmo Prawno-Historyczne* vol. XVII, no. 2 (1965), esp. 75-81.

²⁶⁵ Ludwik Lysiak, "Statuty Kazimierza Wielkiego w małopolskiej praktyce sądowej XV wieku" (The Statutes of Casimir the Great in the court practice of Little Poland in the fifteenth century) *Studia Historyczne* vol. 19, no. 1 (1976): 25-39. For a short but informative summary about gulf between the statute law and the legal practice in the late medieval Poland, see also: Hanna Zaremska, "Grzech i występki: normy a praktyka moralności społecznej" (Sin and transgression: norms and practice of communal morality) in *Kultura Polski średniowiecznej, XIV-XV w.* (Culture of medieval Poland), ed. Bronisław Geremek (Warsaw, 1997), 539-40.

²⁶⁶ For this observation, see: Bogdan Lesiński, "Prejudykaty jako źródło prawa ziemskiego w dawnej Polsce" (*Prejudicates as the source of the law of the land in old Poland*), *Czasopiśmo Prawno-Historyczne* vol. XLII, no. 1-2 (1990), 20.

practice of the newly incorporated lands and how ignorant or reluctant local nobles were to accept the Crown's legislation.²⁶⁷

The picture of the complete ignorance of statute law, drawn by Lasky and supported by the case above, however, should not be taken at face value. It can still be argued that understanding of the codified law was not as completely absent as a first reading of the case between Siennowski and Strumilo might suggest. The text of the case speaks of details which might make it possible to propose a slightly different explanation. The interpretation might be that the mention of the Statutes of Casimir the Great in this record referred to one of the numerous collections of the statute law which circulated in the fifteenth century and which often contained several different statutes. In this regard it is worth mentioning the most popular and widely used fifteenth-century collection of statute law, known as *Digesta*. It contained the Little Polish version of the Statutes of Casimir the Great, some Great Polish paragraphs from these Statutes, and the Statutes of Warta.²⁶⁸ The *Digesta* collection is often believed to have constituted a kind of official law collection of the kingdom in the fifteenth century. Furthermore, it was precisely the *Digesta* collection which was taken as the basis for the first published book of Polish law in 1488, the so-called *Syntagmata*.²⁶⁹ Since the various statutes were compiled as one collection, it is possible that some of its users felt free to substitute the norms from one part of the collection for another. This could be especially true since some of the paragraphs of the Statutes of Warta explicitly referred to those of the Statutes of Casimir the Great. From this point of view the Statutes of Warta were regarded by its compilers as a kind of novellas to those of Casimir the Great.²⁷⁰

The record also shows that Strumilo was able to articulate the correct legal norm to support his objection to being sued in the castle court. The evidence seems to suggest that the judges possessed some knowledge of the Statutes of Casimir the Great and other statutes, but still found it more appropriate to delay judgment and take the counsel of some superior

²⁶⁷ Bogdan Sobol, „O podstawie prawnej stosowania statutów i zwyczajów sądowych na Mazowszu w latach 1532-1540” (Legal grounds for applying statutes and customs in Mazovia in 1532-1540), *Czasopiśmo Prawno-Historyczne* vol. IX, no. 1 (1957), esp. 53, 55, 60-1.

²⁶⁸ Stanisław Roman, „Dygesta małopolsko-wielkopolskie a dążenia do unifikacji prawa polskiego na przełomie XIV i XV wieku” (The Little and Great Polish *digesta* and efforts to the unification of Polish law on the eve of the fourteenth and fifteenth century), *Czasopiśmo Prawno-Historyczne* vol. X, no. 2 (1958), 106-7.

²⁶⁹ The *Syntagmata* was the first published collection of the Polish statute law. It appeared in print in the late fifteenth century (approximate date – 1488). It was in the version of *Syntagmata* that the Statutes of Casimir the Great were republished by Jan Lasky and in this way became widely known in the sixteenth century. See preface by Adam Vetulani and the introduction of Stanisław Roman in: *Polskie Statuty Ziemskie w redakcji najstarszych druków (Syntagmata)*, ed. Ludwik Łysiak and Stanisław Roman (Wrocław-Kraków: Zakład im. Ossolińskich, 1958), 7-14, 17-21, 26-36.

²⁷⁰ This is suggested by one of the best experts of the late medieval Polish statutory law Stanisław Roman in his „Dygesta małopolsko-wielkopolskie”, 107.

authority. Considering these circumstances, it would perhaps be more reasonable to speak not only about poor knowledge of law, but also about the place and meaning which were ascribed to the codified, written law in administering justice in a local context. The case in question seems to suggest that uses of statutory norms were contingent to the context of local knowledge of the law, local customs and rules accepted for court proceedings. It further suggests that a choice between the norms of local and statute law was a process of constant negotiation and power play among all the major actors, involved in dispute settlement. It also shows that the ability to assess the relevance of norms from each of these normative systems and their applicability to the case judgment was not so dependent upon purely legal considerations, but was also related to the wider context of the politics of disputing and dominant values of the noble community.²⁷¹

This is not to deny that fifteenth century Polish society witnessed a gradual expansion of the application of the norms of statutory legislation. The legal records of the Rus' palatinate from the middle of the fifteenth century provide evidence showing how litigants insisted on their right to be judged according to the statute law (*Ipse dom. Iohannes dixit: Domini, iudicatis me iuxta librum iurium*),²⁷² or how judges had recourse to consulting collections of statute law while resolving difficult cases (*et conscriptum est inter ipsos et quesicionem in libro statutorum de causis ipsorum*).²⁷³ Some judges required that a litigant confirmed his/her claim for transferring his/her case to another court with support of the statutes (*Et iudex dixit ulterius: da michi ad statutum iuris terrestris et velle statute ponere, si est articulus iste terrestris aut castri*).²⁷⁴ The plaintiff was in danger of losing the case, even such a serious crime as rape, if he/she was not able enough to sue the wrongdoer under the required procedures of the written law.²⁷⁵

²⁷¹ For the comparison, consider valuable observations by János M. Bak on the complex interplay between norms of statutory law and customs in the process of dispute settlement in medieval Hungary. See: János M. Bak, "Introduction," in *Custom and Law in Central Europe*, ed. Martyn Rady (Cambridge, 2003), 8-9.

²⁷² AGZ, vol. 12, no. 2396 (February 1, 1451).

²⁷³ Ibid., vol. 14, no. 53 (July 29, 1440). See also another example: "Inter nob. Elizabethh de Ostrin actricem et dom. Iohannem de Lythwinow distulimus ad futuros terminos ad librum iurium seu statuta terrestria" in Ibid., vol. 12, no. 2399 (February 1, 1451). For other similar cases: Ibid., vol. 14, no. 35, 37 (July 15, 1440).

²⁷⁴ Ibid., vol. 14, no. 3329 (May 5, 1455).

²⁷⁵ Ibid., vol. 15, no. 1286 (October 22, 1473): "hec Vowda proposuit super Baschynsky, quod eam sturpasset, sed non proposuit quod hanc sturpacionem alicui denunciasset iuxta iura scripta, ergo Baschynsky paratus est evadere ipsam, prout ius decreverit. Cui decretum est evadere metseptimo in duabus septimanis cum testibus sibi similibus." For further references to the statutory law in the local court registers from the middle of the fifteenth century see: "ergo ego eundem Iohannem Kmetham iuxta citationem et statuta terrestria sentencio alias sdawan," see in Ibid., vol. 11, no. 3366 (May 7, 1457); "tali conditione servata, si ius terrestre in Regno fuerit proclamatum," in Ibid., no. 482 (November 2, 1431); "Et ipse flectabit ante Crucem et recepit hoc ad ius scriptum, si debet iurare vel iam in hoc stare" in Ibid., vol. 14, no. 2040 (April 5, 1448).

One should also not forget that worries about the implementation of the statutes figured prominently in the fifteen-century legislative ideology of the Kingdom of Poland. Royal privileges and statutes regularly encouraged the local courts to make wider use of the norms of the statute law in their activity. This appeal reflected the trend in royal legislative ideology towards the unification of the legal norms and customs that existed in the various parts of the kingdom.²⁷⁶ Because important royal privileges and statutes in the fifteenth-century Kingdom of Poland always bore the mark of the collaborative efforts of the king and nobility, the provisions of the codified law must then have reflected to some extent the legal equipment and mentality of the representatives of the noble estate.

However, the references to the statutes, that one comes across in the fifteenth-century court registers, still bears a dispersed and occasional character. This rather poor state of the application of statute law in practice was owed mostly to its relation with local customs. The law, enacted and promulgated in the form of the royal Statutes, was complementary rather than a substitute to a vast realm of rarely specified and fluid *consuetudines et laudes terrestres*. The statute law of the fifteenth century failed to supersede local legal customs which were thriving in that period of time.

Some of these local laws and customs were fixed and written down as statutes of the land or palatinate due to the legislative activity of the local noble corporations. It was usual for the fifteenth century that many of the local legal provisions were passed at local diets or court proceedings, attended by a representative body of dignitaries and nobles.²⁷⁷ Such local legislation bore a court-oriented character and was most frequently concerned with the rules of dispute settlements and regulation of the courts' procedures. The local diets and gatherings of dignitaries often functioned as forums for clarifying some conflicting and difficult legal

²⁷⁶ See for example the clause of the general confirmation of the privileges and rights of the Kingdom, issued by Władysław Jagiełło in Czerwinko in 1422: "Caeterum cum omnibus terris quas Regni nostri ambitus comprehendit velut unicus princeps et dominus aequaliter dominemur, non est aequum, ut variis modis iudicandi populus nobis subjectus et sub nostro existens regimine, in varios ritus iudiciorum dilabatur. Propterea perpetuo edicto statuimus, ut omnes et singuli homines regni nostri cujuscunque conditionis, status, dignitatis aut gradus fuerint, causas in iudicijs nostris terrestribus proponentes vel proponere volentes, singulariter singuli et generaliter universi eodem jure, modis, consuetudinibus et ritibus per Regnum nostrum potiantur; nec audeant iudices sedibus et tribunalibus iudiciorum nostrorum praesidentes alios modos, ritus et consuetudines, circa terminos et sententias observare: nisi illos quos praefati domini Casimiri praedictus liber et consuetudines doceant et informant, ad quem semper recurrant. Quidquid autem per ipsos aliter fuerit iudicatum et sententiatum, irritum remaneat et nullius roboris vel momenti." See in VL, vol. 1, 37.1.

²⁷⁷ For the legislative activity of diets of the fifteenth-century Rus' palatinate, see: Henryk Chodynicki, *Sejmiki ziem ruskich w wieku XV* (Diets of the Rus' lands in the fifteenth century) (Lwów, 1906), esp. 56-73, 88-100, 111-112; Marjan Karpiński, *Ustawodawstwo partykularne ruskie w XV wieku* (Local legislation of Rus' lands in fifteenth century) (Lwów, 1935), esp. 18-22, 27-29. On the concept of medieval law as collective activity of various groups and corporations consults works by Susan Reynolds. For overview see also: Warren C. Brown and Piotr Górecki, "What Conflict Means: The Making of Medieval Conflict Studies in the United States, 1970-2000," in *Conflict in Medieval Europe*, 14-15.

issues. Such diets and court sessions frequently served as courts of appeal, to which nobles transferred their cases for verdicts. Judgments and decisions taken at such gatherings constituted the body of the official or semi-official legislature, and are often referred in the sources as statutes. In fact, every significant verdict of a court could assume the character of a legal norm as a precedent and could be used subsequently as a prejudicate in court practice. Thus local courts became major sites for the creation and reproduction of local law, especially norms that concerned dispute settlement and court procedure.²⁷⁸

The scattered evidence offers the possibility of unfolding some details of the enactment of such statutes and norms. Some of these statutes were re-enacted and reconfirmed through the ritual of “reminding” and memorizing their provision which took place repeatedly during local diets. In this way the norms of such local statutes regained and re-established their importance in the current legal practice. This was, for example, the case of the statute promulgated by the diet of Halyč land in 1444 regulating the persecution of thieves. The record of the diet’s proceedings reveals that in addition to some newly enacted legal provisions the nobles present at the gathering “reminded” the law about thieves that had already been enacted at previous diets. The nobles also ordered that this law be written among other decrees passed at the diet.²⁷⁹ The records further supply some revealing evidence regarding the disagreement between nobles engaged in local law-making, showing their debates over the conformity of the promulgated law of the land to the Statutes of the kingdom. At the subsequent gathering of the whole palatinate judicial assembly (*Colloquium generalis*) the representatives of Halyč land were reproached by some dignitaries of other lands for enacting the aforementioned statute because it went against already existing statute law.²⁸⁰

²⁷⁸ Consult remarks of H. Chodynicky about the role of diets in the interrogation process, which resulted in creating new legal norms, H. Chodynicky, *Sejmiki ziem ruskich w wieku XV*, esp. 11-112. For the attempt to compile and classify the body of the local legislative texts from the fifteenth-century Rus’ palatinate see Marjan Karpiński in his *Ustawodawstwo partykularne ruskie*. The principles, according to which M. Karpiński classified some of the court decisions as local legislature, but disregarded others, remained without proper explanation. It seems that M. Karpiński underrated the fact that all court decisions could be considered as constitutive elements of the local case law.

²⁷⁹ Ibid., vol. 12, no. 1395 (July 2, 1444): “Primo memoraverunt invencionem felicis recordy magnifici Michaelis Pallatini Podolie et domini Odrowansz Pallatini et Capitanei terre Russie generalis, quod cum aliquem dominum vel terrigenam vel eius officialem predestinabit pro fure de castro.” The short comment on this legislative decision of the Halych diet can be found in Henryk Chodynicky, *Sejmiki ziem ruskich w wieku XV*, 95.

²⁸⁰ Ibid., vol. 12, no. 1525 (January 15, 1445): “Que statute in generali colloquio coram domino Pallatino terre Russie generali naraverunt et domino Sencone et aliis dignitaries et terrigenis. Qui dominus Pallatinus et dominus Senco: male fecistis, quia ultra consweta statute omnia hec fecistis, sed tamen illud, quod statuistis, ante se procedat et iudicatur de premissis hominibus.”

The history of some of these land statutes provides glimpses of attempts to enforce promulgated local law in practice. For example, the noble community of Halyč land put pressure on individuals who showed contempt for or were reluctant to accept some of the local statutes' provisions. Nobles could be sued in court for the reason of not adhering to the listed local norms. Some of them, however, justified their conduct by drawing on the fact of their ignorance of recently promulgated statutes. In such cases the court judges and assessors bound such contemptuous nobles to swear an oath to prove their ignorance of the new law.²⁸¹

The same designations, like *statuta terrestria* or *lauda terrestria*, which were widely used to describe all existing kinds of law, sometimes make it difficult to discern between a reference to the kingdom's Statutes, local diet's statutes, and unwritten local customs.²⁸² This evidence nicely demonstrates one particular feature of the legal system of the late medieval Kingdom of Poland. The law of the kingdom consisted of competing and often irreconcilable norms and rules. As a consequence, agreement on the classification of crimes found in the statute law was not something that could be taken for granted. What kind of norms and procedures to apply while judging a case was a matter of permanent debate at court proceedings. Orality, which governed the legal process, the fluidity of the court's composition, and the nonprofessional communal character of the legal knowledge, which allowed almost every member of the community to participate in interpreting the legal norms and adjudication, stand out as significant factors that led to the inconsistency and fluency of norms' application. Resulting picture was uncertainties about existing legal norms as well as a lack of clearly established rules and procedures in the application of the codified law in the practice of local courts. This situation was deplored by many contemporary observers, mainly in the sixteenth century. According to the *Monumentum* by Jan Ostrorog, such a diversity of laws and legal traditions in the single kingdom was contrary to reason.²⁸³ The prologue of the fifteenth-century Polish translation of the Statutes of Casimir the Great, named for Świętosław of Wojcieszyn, voiced similar worries about the state of the administration of justice. The author criticized the bad customs of contemporary courts that had become

²⁸¹ Ibid., no. 1539 (January 15, 1445): "Familiaris Teodrici reclamabat, quia Theodricus nescivit compositiones seu statute istas novas de hominibus." Ibid., no. 1540: "Dominus Michael Buczaczsky iurare habet in duabus septimanis adversus dominum Iudicem pro homine, quod nescivit de compositione ista nova."

²⁸² See the following examples: "tali conditione servata, si ius terrestre in Regno fuerit proclamatum" in Ibid., vol. 11, no. 482 (November 2, 1431); "quos recepisti ab reclinatione et tenes contra statutum terrestrem eosdem" in Ibid., vol. 12, no. 117 (October 29, 1436); "quia quinque porcos, unumqueque per marcā taxando, in silva sui domini recipiens violenter eosdem mactasti contra statutum terrestre" in Ibid., vol. 12, no. 491 (January 19, 1439); "decreverunt terminos particulares seu terrestres iudicare secundum statuta usque ad occasum solis" in Ibid., vol. 12, no. 3140 (February 6, 1464); "Et iudex dixit ulterius: da michi ad statutum iuris terrestris et velle statute ponere, si est articulus iste terrestris aut castri" in Ibid., vol. 14, no. 3329 (May 5, 1455).

²⁸³ Joannis Ostrorog, *Monumentum*, 51: "quae diversitas in uno praesertim regno non est rationi consona."

accustomed to employ different norms and rules in judging similar cases.²⁸⁴ A similar critique was conveyed with particular vigour by Andrzej Frycz Modrzewsky who used the term “monstrous” to express the unnatural situation of the existence of such a great variety of laws in one kingdom.²⁸⁵ He also considered the diversity of legal customs and norms as the main source for the proliferation of litigants’ subterfuges in the courts, which in turn resulted in the endless terms of a great number of disputes.²⁸⁶

It is not surprising, therefore, that the statute law was regularly challenged in the courtroom by reference to local customs. There is plenty of evidence to exemplify this aspect of court proceedings. A telling story is provided, for instance, by the record of the dispute between Paul Burzynski and Nicolas Stadnicki, held in the Przemyśl land court in 1474. Burzynski maintained, referring to the provisions of the Statutes of Warta, that the plaintiff had a right to postpone the case once for the reason of the simple illness. Instead, Nicolas Stadnicki denied such a right on the grounds of an existing land custom. He backed up his claim with the letter of pleading, in which Burzynski himself sued Stadnicki. The letter stipulated that Stadnicki must appear at the first court session, which, according to the custom of the land, would be regarded as the final one.²⁸⁷

Some private agreements, concerned with payment of debt or mortgaging property, explicitly excluded the possibility of canceling the terms of the contract or avoiding the responsibility in court under the pretext of old, existing or future norms of statute law: *et non Sbroslaum evadere Stansilaus debet nec mandates Regis, nec colloquio generali, nec convencionibus generalibus neque particularibus, neque aliquot laudo antique, moderno et futuro*.²⁸⁸ People could be accused of negligence to hold this particular term of contract. For instance, in 1466, the Lviv patrician Mathias Snyathyn brought a suit against the sons of a local noble, Olechno of Cheremoshna to the L’viv castle court.²⁸⁹ Olechno had mortgaged one

²⁸⁴ „...w ziemiach państwu naszemu poddanych wiele rzeczy w sądziech niejednostajnie, ale podług umysłów rozmaitości jakokolwiek o jeden i tenżeisty uczynek inako a rozmaicie rozstrzygniony a skazany bywają”. Quoted after Wacław Uruszczak, *Próba kodyfikacji prawa polskiego w pierwszej połowie XVI wieku*, 24-5.

²⁸⁵ Andrzej Frycz Modrzewski, “Liber de Legibus”, cap. XXI. 5, 224: “Nam hoc profecto monstri simili esse uidetur, ut in una respublica uiuunt quique uni principi obtemperant diuersis legibus utantur.”

²⁸⁶ Ibid., 225: “Nam propter legum diuersitatem et professores diuersi sunt et multae iuris cautiones multaeque tergiuersationes natae, quae lites infinitas et multorum annorum spaciis durantes pepererunt.”

²⁸⁷ AGZ, vol. 17, no. 497 (February 12, 1474): “Qui Paulus ipsum Nicolaum pro iniusta condemnatione citavit et trahebat se pro corulo ad statutum Varthense, quod actor potest semel terminum suum reponere simplici infirmitate. Et pars respondit, quia tu non habuisti potestatem reponere simplici infirmitate terminum tuum et hec iuxta laudum terr., quia tua citatio canit, ut in primo termino pareret Stadniczsky peremptorio iuxta laudum terr.”

²⁸⁸ Ibid., vol. 12, no. 2969 (July 21, 1460).

²⁸⁹ Ibid., vol. 15, no. 305 (April 21, 1466): “domine Iudex. Doms. Mathie Sniathyn dicit se tenere predictas curias in cittance contentas per unius anni decursum pacifice et quiete et iam ab octo annis in eadem possessione non est. Et statuta canunt, quod quicunque per decursum unius anni et sex septim. Violenciam suffert, merito non est peramplius protegendum nec se ultra tueri potest. ... pater ipsorum gsus. Olechno de

of his estates to Snyathyn guaranteeing to defend the new owner against all possible claims and wrongdoings that might be raised or conducted against him. In his allegation Snyathyn blamed Olechno's successors for refusing to stick to these terms of agreement. In their turn the nobles from Cheremoshna justified their refusal to provide further defense for Mathias Snyathyn's possession on the grounds of existing statutory law. The statutes stipulated, the defendants argued, that the defense must last no longer than one year and six weeks, after which the prescription of the time for defense expired. This argument was refuted by Snyathyn, however, who claimed that Olechno had promised Snyathyn to defend him, excepting himself from all existing legal norms which concerned time prescriptions of owner's defense.

This coexistence of local customs and the statute law, which most often turned into superiority of the local customs over, did not mean that the codified law was not mastered and accommodated by local courts and litigants. During the fifteenth century the statutes gradually became one of the touch-stones of noble ideology and self-government. Frequent appeal to the statutes was employed to guarantee the autonomy of noble justice and effectively challenge royal encroachment on noble privileges. These ideological implications of the diffusion of statute law were reflected in the course of disputes, invoked in the speeches of litigants.

We have Constitutions and a Law of the Kingdom which are confirmed by His Majesty the King, who assured us that he would keep them untouched. In addition we have one particular constitution about the royal letters, by which the Royal Majesty promised to give no one the pre-judicial letters

– claimed one of the litigants while challenging the royal right to intervene in his suit by issuing letters of inhibition which gave the right to one of the parties to postpone the final judgment.²⁹⁰ The words that the notary added at the end of his account of this litigation are significant. He noted that this speech was followed by the voices of nobles present in the court, who joined the speaker in their disapproval of the royal action:

then all nobles and natives shouted loudly protesting against judging the case in such a way, because it was believed to be harmful to the law of the land."²⁹¹

Czeremeschna se rescripsit prenomiatum Mathiam nullo iure evadere nec literis regalibus nec bello Thartarorum nec prescripcione et hic ipsum prescripcione evadere pretendunt filii ipsius post mortem patris ipsorum."

²⁹⁰ Ibid., no. 4553 (April 13, 1498): "nos habemus et constitutiones terrestres et laudum Regni, quia regia Maiestas ea confirmavit et promisit nobis tenere. Et precipue habemus unam constitutionem ad literas regales, quia regia Maiestas se inscripsit nemini literas pariudiciales dare."

²⁹¹ Ibid.: "exinde omnes terrigene et nobiles clamoriosa voce dixerunt affectantes et petentes ne tales res iudicantur, quia hoc est in detrimentum iurium terrestrium."

The pattern which can almost always be observed in cases invoking conflicting legal rules was postponing the case and taking it for further consideration. Prorogation of the case for further counsel appeared most often in the legal records in the form of the note *ad interrogandum*. Such clauses can be taken as one of the most noticeable clues indicating the ambiguity and multiplicity of norms invoked in legal actions in the late medieval Kingdom of Poland. The clauses *ad interrogandum* burgeoned in records of the fifteenth-century courts, attesting to the constant hesitation of court judges about the rules and norms of delivering final sentences.²⁹²

Following the arguments of L. Lysiak, a poor knowledge of law can be seen as the most plausible explanation for a proliferation of *ad interrogandum* clauses. Plenty of evidence can be drawn from the legal records of the Rus' palatinate to support this point of view. Judges quite willingly and frequently confessed their inexperience or incompetence in judging cases. One can find passages in the records on occasion of the prorogation of cases like *Ideo nescimus diffinire*,²⁹³ *Nos autem horum tamquam imperiti ad interrogandum recepimus*,²⁹⁴ *Unde pro tali articulo non su[mus] competentes*.²⁹⁵ Sometimes their ignorance could take very curious forms. In one case, for instance, judges managed to deliver a sentence, adjudicating the wounds of the plaintiff, but uttered their inability to define the fine which the guilty person had to pay: *sentenciamus, quod Woythka conthoralis eiusdem Korzyen lucrata est duo vulnera nobilia cruentata, sed solucionem vulnerum ignoramus sentenciare*.²⁹⁶

Speaking about the negative aspects of the practice of endless postponement of cases for interrogation, it must be added that this procedure was endowed with some ambiguous meanings in the public opinion of contemporary society. On the one hand, it was considered one of the most evident shortcomings in the administration of justice in the late medieval Kingdom of Poland. Some sense of this negative side of the *ad interrogandum* procedure can

²⁹² Historians have not pay enough attention to such a wide spread practice of postponement of cases and interrogation. The first observations about the practice of interrogation and its connection with the bad knowledge of law were made by Henryk Chodynicki, in his study of diets in the fifteenth-century Rus' palatinate. H. Chodynicki pointed out the role of local diets as institutions, to which various sorts of courts turned for the interrogation while considering doubtful cases. See Henryk Chodynicki, *Sejmiki ziem ruskich w wieku XV*, esp. 58-63, 70. The scholar who was particularly interested in examining the problem was Ludwik Lysiak. In one of his studies, L. Lysiak addressed the question *ad interrogandum* in more general context of the application of the Statutes of Casimir the Great in the legal practice of the fifteenth century Little Poland. See, Lysiak L., "Statuty Kazimierza Wielkiego w małopolskiej praktyce sądowej XV wieku" (The Statutes of Casimir the Great in the court practice of Little Poland in the fifteenth century) *Studia Historyczne* 19. 1 (1976): 25-39.

²⁹³ AGZ, vol. 14, no. 772 (June 21, 1443).

²⁹⁴ Ibid., vol. 11, no. 3317 (March 24, 1456).

²⁹⁵ Ibid., vol. 12, no. 4233.

²⁹⁶ Ibid., vol. 14, no. 435 (June 22, 1442).

be acquired by looking more closely at two pieces of evidence. Both concern long-lasting disputes and situate the reader in the middle of the litigation. In the first case, the plaintiffs blamed their opponent for refusing to return things which he had misappropriated after murdering the plaintiffs' father.²⁹⁷ The opponent objected to this accusation by maintaining that the judges' sentence had freed him from both guilt and penalties. Both rivals then claimed to support their mutually exclusive statements by referring to the court sentence, which must have been written in the register. Upon consulting the register, it was discovered that no definite outcome had ever been reached in the case. Instead, it was revealed that some times before the case had been postponed for the interrogation of the captain. However, because of the judges' or captain's disregard, such an interrogation had never taken place and hearings of the case had not been renewed until the time of this action.²⁹⁸ Similar pieces of evidence demonstrate how lawsuits fell into oblivion because of the negligence of the judges who took the case for interrogation.²⁹⁹ This sort of evidence seems to suggest that an *ad interrogandum* procedure served as an occasion for deliberate or accidental forgetting about cases in the practice of the fifteenth-century courts. The neglect of judges in interrogating other officials about ways of settling a dispute could also be taken by one of the litigants as a favorable chance to raise a request for sending the case to be judged by another court.³⁰⁰

Another record, dated in the Przemyśl land register to June 25, 1505, demonstrates how much pressure the litigants must have sometimes exerted on the judges in order to obtain the needed advice of higher dignitaries.³⁰¹ Simultaneously the case shows that judges were able to abuse the practice of interrogation and pursue their own goals in the disputes by manipulating the procedure of interrogation. The text covers one of the last phases in the dispute between the plaintiff Jan Vyrzba of Grodna and Jadwiga Cholowska, the daughter of Budzywoy de Wolczyszczowycze. By the time of the events described the case had been already postponed by the judge for the interrogation of the palatine. The record relates that John Vyrzba attended the court session in the hope of obtaining both the palatine's clarification and the judge's final sentence. However, his hopes were in vain. The judge

²⁹⁷ Ibid., vol. 13, no. 5178 (June 13, 1463).

²⁹⁸ Ibid.: "Et in inscripcione secunda et libro tempore domini Slawsky invenimus, quia adhuc nullum lucrum ipsis filiis fuit adiudicatum, sed causa ad dom. Capitaneum suspensa fuit."

²⁹⁹ Ibid., vol. 17, no. 603: "Terminum ad decernendum pro iuramento et dampno inter nob. Thomam Lopaczensky actorem et Iohannem cum Raphaele super dampnum quadraginta marcar. Minus una occasione oblivionis et non receptione minute de domo inscribere fecit ad quatuor septim."

³⁰⁰ Ibid., vol. 18, no. 4054 (April 5, 1502): "Iudex respondit non interorgavi alias nye vypythalem. Woyczehowsky pars citata postulavit dominum Iudicem, dum interrogacio non exivit date michi domine iudex ad dominum regem et non faciastis vobis difficultatem in isto..."

³⁰¹ Ibid., vol. 18, no. 3421.

admitted that he had not interrogated the palatine yet. The notary wrote into the register the following dialogue between Vyrzba and the judge on this occasion. Words, in which Vyrzba addressed the judge, imply that he did not believe the judge. It seems that he was inclined to think that the interrogation had in fact taken place: “I know that you did interrogate the sir palatine.” However, the judge denied this fact. The judge justified his delay in interrogating in these words:

Because of some errors in his writing the sir palatine badly informed me, therefore, it would be better for me to deliberate more on this issue and request the case to be considered again by the palatine in order to avoid the wrong judgment.

Following the judge’s response, Vyrzba claimed the assistance of the bailiff and summoned the judge to a higher court (*movit iudicem*).

The practice of prolonging interrogation was seen as *dilatio iustitiae* and in this regard represented a serious abuse of the law. Postponing of cases for further interrogations came to be viewed as a symbol of the negligence, inefficacy, and corruption of the courts. This point was strongly emphasized by Andrzej Frycz Modrzewski. In his *De Republica emendanda* Frycz Modrzewski voiced a contemporary opinion contending that the people who had suffered wrongs considered the prorogation of cases as the most odious custom. Instead those men who were blamed for wrongdoing benefited from the constant postponement of cases, making use of them in order to avoid punishment.³⁰² According to Frycz Modrzewski, judges must be charged with their part of the responsibility for this state of justice. The author said that judges who disregarded simple cases as difficult were deserving of much reprimand. Not caring to examine such cases and deliver justice, they postponed hearings for other dates. This mode of conduct was castigated by Frycz Modrzewski as abuse of the law, appropriate not for true judges, but for men who sought to corrupt the courts and turn this situation to their profit.³⁰³ Another negative aspect of the practice of delaying judgments was revealed by Jan Ostrorog in his *Monumentum*. Ostrorog observed that as the mass of delays of cases increased, it were usually representatives of aristocracy, who, due to their influences and

³⁰² Andrzej Frycz Modrzewski, “Liber de Legibus” in his *Commentariorum*, cap. XIII, 191: “prorogationes dierum in nostris iudiciis receptae odiosissimae sunt hominibus qui patiuntur iniuriam, iis vero qui intulerunt optatissimae.”

³⁰³ Ibid., cap. XVI.15, 203: “magno digni sunt odio isti, qui rerum quamlibet leuium causa difficiles se in adeundo praebent, causas exacte cognoscere not curant iusticiamque in diem ulteriorem reiiciunt. Non est hoc agere personam iudiciis, sed eius, qui sibi rebusque suis consulat et ad suum emolumentum omnia conferat.”

power, got their cases adjudicated first. Poor and middle sort nobility were often left without settlement of their disputes.³⁰⁴

It is not surprisingly therefore that some local legislative initiatives, approved by the king, were undertaken to regulate this practice. For example, the legal customs of Cracow land, written down and confirmed by King Alexander in 1506, specified that if something dubious was raised in judging a case the judge could postpone the case for interrogation for no longer than until the time of the third hearing of the case.³⁰⁵ The general period of time given to the judge for making the case expedient by interrogation was set by customs as seventeen weeks.

However, these interpretations of the spread interrogation did not exhaust all the possible ways in which meanings of the *ad interrogandum* procedure could be explained. It can be suggested that there were other reasons governing the decisions judges made to ignore the prescribed norms, to delay judgment, and to appeal for further interrogation. The use of interrogation in legal practice revealed the judges' constant worries about their empowerment to promulgate the verdict. This uncertainty about the legitimacy of their judgment, which led to cases' postponements, emerged with particular clarity from such court statements as *Et pro sententia diffinitiva receperunt ad interrogandum, utrum sunt potentes eandem causam vadii adiudicare*,³⁰⁶ *hoc nos discernere non valentes dedimus a feria secunda prox. Ad quatuor septimanis*.³⁰⁷ The insistence on legitimacy is also visible in attempts to justify the recourse *ad interrogandum* by the need to provide the parties with better justice, or as one record put it, *pro meliori iusticia*. In their pursuit of legitimacy and better justice, judges could first adjudicate the case to one of the litigants and, nevertheless, then turn for further interrogation to institutions or men of higher position. Such counsel, received, for instance, from the royal court or land's judicial assembly, would be used to deliver a judgment as the decisive sentence.³⁰⁸

The issue of the legitimacy of the judgment was also raised in connection with the frequently emphasized paucity of men present at the court session. It was seen as an enough

³⁰⁴ Jan Ostrorog, *Monumentum*, 49, no. XXXI., "De admittendis personis ad iudicium."

³⁰⁵ VL, vol. 1, 143.1: "Item cum iudex accipiet ad interrogandum aliquam dubietatem alias rem, ulterius protrahere non potest nisi ad tertios terminos, sed in tertijs terminis interrogationem dicere teneatur et Iudex castren. in sedecim septimanis debet expedire interrogacionem, pro eo potest Iudex moneri, si non expediverit interrogationem tempore medio ad interrogandum habito et praeterito; cum autem fit interrogatio partes nec interrogationi interesse nec eam audire debeant."

³⁰⁶ AGZ, vol. 13, no. 3717 (November 8, 1448).

³⁰⁷ Ibid., vol. 14, no. 196 (February 25, 1441).

³⁰⁸ See, for example, the case between Frederick of Jacimieraz and Margaret of Bolestraszytze: Ibid., vol. 13, no. 3717.

excuse for postponing the case for interrogation. In one record the court assessors clearly stated that since there were only a few of them present at the court session they did not want to deliver the sentence, but instead suspended the case until the arrival of the captain as well as, in hopes of better attendance by nobles: *Tunc nos apparebat esse paucos et diffinire noluimus et suspendimus ad dominum Capitaneum, quousque plures fient nobiles.*³⁰⁹ A similar line of reasoning can be found in many other records as well: *Ideo nos recipimus ad interrogandum ad diem crastinam ad pluralitatem dominorum eandem causam,*³¹⁰ *prorogamus a feria proxime ventura per unam septimanam, quia tunc pluralitas aderit dominorum magnatorum.*³¹¹ The same pattern is visible in records in which the litigants themselves claimed the right to send the case to the consideration *ad plures dominos*.³¹²

While judging a case the body of assessors was supposed to be as representative as possible. This meant not only the quantity but also the quality of the people who participated as court assessors in the adjudication process. In their quest for legitimacy and better justice (*meliora justitia*), as is revealed behind some of *ad interrogandum* clauses, the judges and assessors sought to provide, first of all, the participation of powerful men, whose opinion about a case could be indispensable for preventing a possible accusation of an unjust judgment.³¹³ Sometimes even very powerful men, gathered in court to participate in its proceedings, regarded it as better to postpone the case in view of the absence of some of their fellows. This was, for example, the case of a hearing in the Halych land court held on October 18, 1462, attended by the highest representatives of the local elite – the Halych and Lviv castellans and, the Halych land judge. Despite their high status, those dignitaries expressed no wish to judge the case themselves (*solī discernere nolentes*), but postponed the adjudication to the Palatinate's diet, where the arrival of other members of local elite – the Lviv catholic archbishop and the Rus' palatine and captain - was expected.³¹⁴

The spread of *ad interrogandum* clauses clearly demonstrates to what extent the legal process in the late medieval Kingdom of Poland was dominated by the idea of collective

³⁰⁹ Ibid., vol. 11, no. 25 (February 15, 1424).

³¹⁰ Ibid., no. 2498 (November 27, 1447).

³¹¹ Ibid., no. 2500 (November 28, 1447).

³¹² Ibid., vol. 12, no. 1525 (January 15, 1445): "dominus Iohannes Castellanus Haliciensis querelam proponebat contra dominum Clementem Byeletzsky pro homine, qui Clemens clamabat se ad plures dominos."

³¹³ On the role, prescribed to the powerful to represent the law of community in the Medieval West see: S. Reynolds, "Rationality and Collective Judgment," 6.

³¹⁴ Ibid., no. 4172: "Que premissa exaudientes et soli discernere nolentes, hanc rem dedimus ad rev. Archiepiscopum et mfcum. Palatinum et Capitaneum Terre Russie generalem ad convencionem que in proximo celebrari debet Leopoli..."

judgment.³¹⁵ The administration of justice was seen as a common right, even an obligation of all members of the local noble community. Legal knowledge and the right to interpret law did not represent a domain monopolized by a group of professional lawyers, but was rather dispersed among all those who belonged to the noble estate. In general, dispute settlement was often much more susceptible to what can be called, following Fritz Kern, a common legal sense of community, whose basic principals tended to strengthen idea of equity and justice, rather than legal facts and norms of statutory law.³¹⁶

The best justice was one, whose foundations were grounded on the consent and advice of all the members of community. This idea is clearly articulated in a legal text postponing a case to the further interrogation:

if all lords are not able to come and discuss the mentioned parties, then the captain should give the parties a further hearing with the participation of other lords in order to prevent the occurrence of any injury to both litigants.³¹⁷

Let me repeat once again that for judges and disputants of the late medieval Rus' palatinate to speak about justice meant to speak first of all about collective judgment and overall community consent. Therefore, finding a prorogation of a case for further interrogation is not random; it indicates the hope of winning the time to seek terms of judgment, on which all judges and assessors would be in concord. When, in 1446, for example, the judges and assessors of the Lviv castle court held seriously differing opinions in judging the dispute between Michael Muzilo and Christopher of Sant Romulo the decision was passed "not to hasten with delivering the judgment, but to aspire to gain the equity for both parties," postponing the case for the next judicial assembly of the land.³¹⁸ This principle postulating that final verdicts do not require haste is strikingly reminiscent of the words of Fredrick

³¹⁵ About the idea of collective judgement as central for the understanding of the medieval legal process and norms of procedure, consider Susan Reynolds, "Rationality and Collective Judgment," 8-9; William I. Miller, *Bloodtaking and Peacemaking*, 251.

³¹⁶ Fritz Kern, "Law and Constitution in the Middle Ages", in his *Kingship and Law in the Middle Ages* (New York and Evanston: Harper Torchbooks, 1970), 156-158.

³¹⁷ AGZ, vol. 14, no. 552 (December 5, 1442): "Si autem omnes domini non convenient vel non discucient partes predictas, extunc ipsis Captis. Dabit terminum ulteriorem cum ceteris dominis taliter, quod utique nulla parcium fiat iniuria."

³¹⁸ Ibid., no. 1804 (October 20, 1446): "Et domini omnes prefati conductantes invicem, nolentes in hac causam precipitare, sed unicuique parti equitatem facere." For some other examples showing the lack of common consent as a cause for prorogation the case for counsel see: Ibid., no. 2114 (September 4, 1448): "Et domini non potentes concordare sentenciare hoc factum, receperunt ad crastinam diem s. Michaelis, dom. Palatinum ad interrogandum."

Maitland about one of the major principles of medieval law: “Law must be slow in order it may be fair.”³¹⁹

The prorogation of the case *ad interrogandum* was, therefore, seen as a means of avoiding *injuria* in delivering judgment and reflected the overall quest for *meliora justitia*. These principles underlying the spread of *ad interrogandum* clauses made the practice of interrogation and postponement close in meaning to private arbitration and peacemaking. In this regard it worth noting that there is a striking similiarity between the wide use of *ad interrogandum* and *ad concordandum* procedures in the practice of fifteenth-century Galician courts. Both clauses could be seen as two, complementary sides of the application of the same legal concept, aimed at promoting the ideology of justice and communal agreement.

Legal practice rooted in the principles of collective judgment apparently tended to break through the lines of jurisdictions that the fifteenth-century legislature tried to set up. The cases mentioned above show that some allegations were brought to the castle court despite the fact that they openly contradicted the norms of the statute law of Warta, which called for regulating the activity of the castle court. What seems to follow quite clearly from the records of some of these lawsuits is that the opinion of court judges in determining, which court or which norms were regarded as appropriate for judging this or that case were not necessarily a corollary of acceptance of the written law promulgated on the level of the kingdom.

Furthermore, the clarification of cases taken for interrogation was focused on the process of asking questions and receiving answers – procedures with essentially an oral character.³²⁰ Thus, law-making implicitly involved in the procedure of the interrogation was rooted in the oral mode of communication. The process of judgment and dispute settlement was less governed by abstract written legal provisions. What was understood in fifteenth-century Galicia as the law was not a systematic law code, a body of written, unified and unchanging legal provisions. In view of the spread of the practice of interrogation, the law and law-making were a process of constant oral communication and negotiation about the meaning and substance of the legal norms.

The practice of taking counsel represented a major channel for the constant reproduction of local customary law, and was not particularly influenced by the statute law. Local customs and their application in the disputing process appear as the process of incessant negotiation

³¹⁹ Frederick Pollock and Frederick W. Maitland, *The History of English Law before the Time of Edward I*, 2nd ed. with a new introduction by S. F. C. Milsom, vol. 2, (Cambridge and New York: Cambridge University Press, 1968), 591.

³²⁰ On the oral character of the procedure of interrogation about the law in the Middle Ages, see Hanna Vollrath, “Rechtstexte in der oralen Rechtskultur des früheren Mittelalters”, in Michel Borgolte ed., *Mittelalterforschung nach der Wende 1989* (München: R. Oldenbourg, 1995), esp. 339.

about the norms and meaning of the law. In the process of permanent recourse to interrogation a local noble corporation constituted itself as a sort of “interpretative community”, a community of common law. This aspect of noble justice served to enhance the ideology of intra-estate solidarity and cohesiveness, particularly important for a society torn by endless conflicts and enmity.

4.7 Attorneys

Following the establishment of the Statutes of Casimir the Great, the Polish legal process regarded the claim to legal assistance and defense as a part of the natural human right.³²¹ This idea provided a legal and ideological background for widespread resort to the help of attorneys and advocates in late medieval courts. In some cases the legal assistance of an attorney was almost mandatory. The Statutes of Nieszawa listed a provision for the mandatory assignment of an advocate by court judges to a litigant who proved to be ignorant of law, lacked friends or was physically unable to speak for himself/herself.³²² According to the *Correctura statutorum* from 1532 attorneys who denied legal assistance to such persons were exposed to punishment by a fine.

The statutes of the fifteenth and early sixteenth centuries provided other legal enactments to regulate the activity of attorneys. One of the articles of the Statutes issued in Opatowiec in 1474 provided a legal sanction against a litigant who wounded the attorney of his opponent. If such an assault ended in the wounding of an attorney, and was then proved in court, the litigant found guilty of this offence would lose his case.³²³

On the other hand, various punishments were handed out against persons, who took up the duties of an attorney without valid and proper authorization from a litigant. A special paragraph, called *de malo procuratore*, was included, for instance, in the customs of Cracow land, confirmed and approved by King Alexander in 1506. It prescribed that an attorney who appeared in court to speak in defense of his client without a proper letter commissioning to him this duty was liable for a fine of three marks if a case was heard in the land court and six *scotos* if the legal action was held in the castle court.³²⁴ The *Correctura statutorum* imposed an extremely harsh penalty on a man who dared to initiate a legal action in name of another

³²¹ *Statuty Kazimierza Wielkiego*, no. XIX, 300: “Quia cuilibet summa defensio non est denegata, ideoque statuimus, quod in iudiciis nostri regni quilibet homo, cuiuscunque sit status et condicionis, potest et debet habere suum advocatum, procuratorem seu prolocutorem.”

³²² Consult a confirmation of the Nieszawa statutes by the King Jan Albert in 1496: VL, vol. 1, 116.1, “De eo, qui procuratore caret aut proponere nescit.”

³²³ *Jus Polonicum*, 314, VII, “De vulneratione alicujus procuratoris.”

³²⁴ VL, vol. 1, 149.1.

person without latter's proper mandate. A person, if convicted of such fraud, was to be condemned to the mark of a hot iron on his face.³²⁵

In general, attorneys did not enjoy a good reputation in the public opinion of contemporary Polish society. In fact, plenty of loathing and hatred was spelled out against attorneys during that time. In his *Monumentum*, Jan Ostrorog questioned the right of litigants to hire attorneys, unless they were widows, orphans or poor. According to him, litigants must speak for themselves in the court.³²⁶ Andrzej Frycz Modrzewski also devoted some passages of his *De Respublica emendanda* to the pernicious role of attorneys. Modrzewski accused attorneys of being the principal enemies of the brevity and clarity of law – qualities, which, he maintained, were fundamental for good government and justice. Furthermore, by playing on their deceit, argued Modrzewski, attorneys intentionally entangled legal cases and delayed judgment for many years. In this way they grew rich at the cost of their clients.³²⁷ To prevent abuses by attorneys, Modrzewski proposed forcing them to swear an oath of decent conduct in court and establishing a level of payment for their services above which they would not be able to demand more from their clients. Even more radical in the display of his hatred towards attorneys was a late fifteenth-century Italian humanist, Callimachus Experiens (Phillipo Bounacorsi). In one of his treatises, written after his escape to Poland and dedicated to one of his patrons, the L'viv Archbishop Gregory of Sanok, Callimachus demanded expelling and banning all attorneys to remote islands, considering them major corruptors of law and the worst type of men.³²⁸

A social portrait of the group of attorneys who spoke and interpreted law on behalf of litigants in court proceedings of the fifteenth-century Rus' palatinate displays a great variety

³²⁵ *Correctura Statutorum et Consuetudinum Regni Poloniae anno MDXXXII decreto publico per Nicolaum Taszycki et socios confecta*, in *Starodawne Prawa Polskiego Pomniki*, vol. III, ed. Michał Bobrzynski, (Crakow: Nakładem Akademii Umiejętności, 1874), 62: "Si quis autem in iudicio alieno nomine absque mandato illius, cuius nomen procuratorium continet, comparuerit et actus gesserit vel causam perdiderit et de hoc legitime convictus fuerit, facies eius in signum maleficii ardenti cauterio notetur cum characteris impressione. Et nihilominus parti, cui per falsum procuratorium damnum irrogavit, ad interesse teneatur." It is interesting to compare this provision with the article of the Lithuanian Statute from 1523, which threatened such procurators with the penalty by burning. Another highly suggestive comparison came from the municipal German law, which enlisted the punishment of outlawry and infamy for the "treacherous procurator".

³²⁶ Jan Ostrorog, *Monumentum*, 49, # XXIX: "Nulla causa est, propter quam liceret alicui litiganti procuratoris uti auxilio, praeter viduarum, orphanorum, et miserarum personarum, quarum causas procurare teneatur vicecamerarius terrestris. Aliae vero personae causas suas disponere per se debent et hoc facto citius optatum iustitia sortietur effectum."

³²⁷ Andrzej Frycz Modrzewski, "Liber de Legibus", in his *Commentariorum*, caput XVIII.4, 215: "Si leges ea breuitate et perspicuitate conciberentur, ut facile disci et a quouis intelligi possent, certe illud quoque fieret, ut multi causas suas iudici exponerent neque necesse haberent casidicorum opera uti, qui profecto suis fucis causas saepe intricatiores reddunt et in multos annos extrahunt. Sic enim ex fortunis clientum suorum ditescere didicerunt. Itaque interest reipublicae iuratos causidicos habere, atque precia constitui, ultra quae nihil a cliente illis petere liceat."

³²⁸ Consulted after Waldemar Voisé, *Frycza Modrzewskiego nauka o państwie i prawie*, 230.

of social positions. In fact, anyone could take up the role of attorney in contemporary Galician society. On the one hand, it could be representatives of local magnate families who did not scorn to provide personal legal help to their less powerful and well-off neighbors.³²⁹ On the other hand, familiars and servants could be appointed to serve the interests of their lords in the courtroom. Some of them were unexperienced in waging dispute, and were even fined for incompetence in expounding a case in the way prescribed by law.³³⁰ Moreover, such attorneys themselves could have serious problems with the law, having been involved in theft and other criminal activities.³³¹ It was often during court proceedings when they came to serve as attorneys that major charges were brought against them. It is not surprising that attorneys of such rank were often viewed with suspicion and disdain. To respond to arguments advanced by such folk was sometimes perceived as beyond the dignity of well-respected nobleman. “You are not worthy even to speak with pigs, let alone good men, because by the efforts of Lord Strumilo you are released from pillory” – such dishonorable words were recorded as having been cast into the face of one such attorney.³³²

However, most often it was representatives of the middle-level nobility, respected members of local noble community, who fulfilled the duties of attorneys. Some of these noblemen were probably bound to intervene in legal disputes as attorneys because of obligations that stemmed from ties of kinship or friendship. Others were called to serve as attorneys because of their experience and knowledge of law. It is interesting that some of these nobles figured both as attorneys and as jurors interchangeably at the same court proceedings. Besides this group there were attorneys who were already involved in the legal business on a more permanent, professional basis. In general, the composition of the group of attorneys and jurors can be taken as further evidence of the communal character of local jurisdiction.

³²⁹ See, for example, Andres of Siennio serving as an attorney of Iwasko of Borshchiv. See *AGZ*, vol. 15, no. 1284 (October 15, 1473).

³³⁰ Consider a very revealing piece of evidence: “Pene Iohannis. Iohannes procurator Chodor kmethonis domini Volczkonis succubuit tres fertones iudicio et Georgio Strumilo alias tres fertones, quia stans coram iudicio licencia non habita retrocessit a iudicio. Item pro eo, quia nescivit causam dirigere.” See *Ibid.*, vol. 14, no. 856 (October 9, 1443).

³³¹ Even to such well-known attorneys, like Stanislas Kapustka, whose activity as a professional advocate is well testified by the records of courts of Przemyśl land, it happened to face accusations of some criminal offences. See: *Ibid.*, vol. 17, no. 673 (November 11, 1471).

³³² *Ibid.*, vol. 15, no. 1284 (October 15, 1473): “et in hoc dixit procuratori Petro: tu non esses dignus cum scrophis loqui et non cum bonis hominibus alias o nyesrkącz, quia tu per dom. Stromilo es repetitus alias odproschon a patibulo.”

4.8 Court sentence and its execution

In theory, all legal suits and actions were to end with the delivery of a definitive sentence. As a form of final judgment, a definitive sentence embraced two types of compensation for which a plaintiff pleaded his suit at court. First was a penalty determined by the law for the offence of which the defendant had been accused. The second penalty concerned not the offense itself, but the size of the material damages that a plaintiff had suffered as a result of the offense. A definitive sentence did not touch upon additional smaller fines, the so-called *poena accessoria*, that could be raised in the course of litigation, such as defects in letters, errors of attorneys, intercession of accomplices, and so on. Such charges were usually satisfied by the delivery of complementary sentences.

It seems to have been common practice during the fifteenth century that a sentence was delivered orally by the judge, not read from a script composed in advance. It was the responsibility of the litigant to approach a court notary with the request to put down such a sentence in written form. This way of giving verdicts provoked severe criticism in the sixteenth century. Andrzej Frycz Modrzewski condemned it vigorously as a bad custom that must be corrected. He noted how many quarrels and enmities arose from the wrong interpretations of such oral sentences by the parties. Each party requesting a notary to write down the sentence insisted on his/her own versions of the content, which made a reached settlement of dispute null and void. To contrast this bad custom with some better modes of delivering sentences, Modrzewski drew attention to the practice of ecclesiastical courts and procedures of Roman-canon law as possible model for imitation. He pointed out that judges of an ecclesiastical court had always a script of the sentence prepared before proclaiming it to the parties.³³³

Statute legislation provided the opportunity for judges to deliver a definitive sentence immediately after hearing a plaintiff's petition and a response by the defendant.³³⁴ In case the convicted party did not take the opportunity to use his right of appeal, the adjudication of a definitive sentence opened a stage in litigation that concerned the so-called *res iudicata*, that

³³³ Andrzej Frycz Modrzewski, "Liber de Legibus", in his *Commentariorum de Respublica emendanda*, caput XVI.8, 199: "Iudices rerum ecclesiasticarum nunquam (quod quidem sciam) causas, nisi de scripto lata sententia definire consueuerunt. Magis cur iudices rerum profanarum non imitentur, causa nulla est, feruntur nec in dubium uocari possunt, quae scriptis mandata sunt. Scio post iudicis cuisudam de causa prope criminosa sententiam sine scripto dictam inter litigantes certamen exitisse magnum, dum uterque pro se uersutia quadam menti notarii caligines offundare studeret."

³³⁴ This is clearly stated, for example in the confirmation the Statutes of Nieszawa by the King Jan Albert in 1496. The article, dealing with the procedure of adjudication, prescribed the abolition of all debates between litigants after they had finished the presentation of their petition and response. See: VL, vol. 1, 115.2, "De controversiis et responses": "...post responsionem vero rei super propositione actoris, iudex amputates controversijs et altercationibus superfluis, unicunque partium faciat justiciam expeditam."

is, the definitive sentence acquired binding force and by law the winner had the right to *res iudicata* and the sentence's execution.³³⁵

During the fifteenth century an adjudicated penalty was usually executed on the estate of the convicted. Such an execution tended to substitute for the execution on the person of the convicted. The latter type was mentioned as a widespread form of obtaining compensation in the Statutes of Casimir the Great. According to one of the Statutes' provisions, a person who lost his/her case was forbidden to leave the court before compensating the winner with all the fines and penalties adjudicated by the court. If a losing party denied or failed to do so, he/she had to be immediately detained and handed over to his/her adversary. The winner thus had a power to detain a convicted person until the full compensation of penalties and damages was paid.³³⁶ In the fifteenth century, however, such a form of execution underwent changes. This form of execution was abandoned except for the cases of especially serious crimes or dispossessed litigants.

In the fifteenth century achieving a definitive sentence and its execution became much more perplexing and was circumscribed by a wide range of legal actions. A detailed description of a variety of legal actions that were available to disputants in their efforts to reach a definitive sentence is given in two major early sixteenth-century texts, dealing with legal procedure and process. The *Processus iuris*, compiled by Jan Laski and submitted to King Alexander for confirmation in 1506, listed two possible procedural tracks by which a settlement of dispute could arrive at definitive sentence.³³⁷ The first dealt with the personal presence of a losing party at the court proceedings and the second covered the situation when a convicted party was represented by an attorney.

The *Processus* foresaw two possible options on how to proceed, depending on the behavior of a convicted party present in court when a definitive sentence was promulgated. The first possibility dealt with the situation when the convicted party agreed to accept the judgment and satisfy the wrongs done to the opposing party. A convicted person had to show

³³⁵ This is very explicitly articulated, for example, in the paragraph of the Statutes of Casimir the Great about a sentence of a judge that had not been challenged by litigant in proper time. See *Statuty Kazimierza Wielkiego*, no. XC, 493: "Nos itaque huiusmodi sententiam iudicis, quod non fuit aliqua provocacione suspense, Polonice nenganona, declaramus transivisse in rem iudicatam."

³³⁶ *Ibid.*, no. VIII, 271: "Quia victus victori tenentur satisfacere de eviccione et de iudicio prius non recedere, nisi satisdet in quo est condemnatus, quidam inopia vel rebellione ducti recedunt de iudicio condemnati, nullam satisfaccionem adversario reddentes. Propter que volumes, ut tales inobedientes de malicia ipsorum commodum no reporent. Postquam victim fuerint in iudicio, ad manus suorum adversariorum ligati traduntur." See also comments about an execution on a person by Józef Rafacz, *Ekzekucja w Małopolsce od statute wislickiego do końca średniowiecza* (The enforcement of law in Little Poland from the Statute of Wislica to the end of the Middle Ages) (Warsaw, 1927), 9, 15.

³³⁷ See in VL, vol. 1, 156.2 – 157.1.

a willingness to abide by a definitive sentence by further actions. He or she had to provide sureties who would guarantee the payment of a penalty. This had to be written into the register as an official inscription of the future pledging of his/her estate for the amount of the penalty. However, the *Processus* also foresaw the possibility that a convicted party might refuse to obey the judgment, and withdraw from the courtroom. For a display of such disobedience the convicted person was to be punished by additional penalties of *piatnodziesta* (payment of three marks to a winner and to the court) and *siedmodziesta* (payment of forty marks to a king). These penalties had to be put in effect following the condemnation uttered by a winner. These penalties were also to be enforced by pledging an estate of the convicted person.

If the judgment was pronounced only in the presence of an attorney, then a convicted party acquired the right to an additional session, the so-called *terminus concittacionis alias przypowieszczony*. Possible unawareness of the details of a verdict by the convicted and the necessity to communicate the sentence personally to him are given as the major reasons for allowing the convicted person the right to such a proceeding.³³⁸ At this proceeding, after having heard the condemnation and sentence, the convicted was obliged to yield to all obligations as they were established for the first option.

The *Formula processus* of 1523 considerably enlarged and elaborated the statute legislature on the legal process. Furthermore, it also integrated into the body of statute law some customary procedures that governed the process of adjudication that had emerged in the practice of court proceedings in the fifteenth century. Perhaps the most significant of these new norms regulated the procedure of oath-taking at the stage of final judgment and execution. By its provision, the *Formula processus* stipulated that on the demand of the convicted person who came to attend a *terminus concittacionis*, the winner was obliged to swear an oath on the amount of damages adjudicated to him.³³⁹

In both the *Processus iuris* and the *Formula processus*, the execution on an estate took the form of a pledge (*pignoratío*). Pledging an estate represented the main form of recovering

³³⁸ The term and meaning of the *terminus concittatus* is nicely explained in the text of “*Processus iuris*”: “Si autem citatus non est praesens circa iudicium, sed suus procurator, cum procuratorio, dum sententia definitiva, contra ipsum promulgatur, tunc insuper sit unus terminus essentialis, videlicet concittationis, quem in aliquibus terris regni sic interpretantur vulgari, uti latinum sonat, in aliis vero dicitur vulgari nostro przypowieszczony, ad satisfaciendum pro re iudicata seu perlucris et iure acquisitis, ea ratione, quod fortasse nollet scire convictus in iudicio absens de re iudicata, ideo concitatio ad hoc est in terminis iudiciorum introducta, tanquam munitio et avisatio (ut ille qui est convictus, et contra quem absentem, sed per procuratorem suum comparentem, in sui absentia, sententia definitiva prolata fuit) pareret rei iudicatae et pro convictis satisfaceret” in *VL*, vol. 1, 157.1. Compare also “*Formula processus*”, in *Corpus Iuris Polonici*, vol. IV.1, no. 16, cap. 24, p. 50.

³³⁹ *Ibid.*, cap. 23.

damages and penalties by a winner and implied the introduction of the winner into an estate of the convicted.³⁴⁰ The introduction provided a winner with rights to exploit the resources of an estate for the purpose of getting income equal to the pecuniary penalty, adjudicated by the definitive sentence. A legitimate introduction had to be completed by a court bailiff with two nobles assisting him.³⁴¹

This form of the execution, however, was complicated by another set of legal procedures, which transformed the execution into a time-consuming and wearisome procedure. In the fifteenth century the sentence's enforcement in the form of introduction onto an estate was conditioned upon the voluntary consent of a convicted party. This offered the convicted the possibility to delay time of surrendering the estate into hands of the opponent. If the convicted refused to let a winner enter an estate for the first time, then the introduction had to be repeated. The permissible number of attempts at introduction was regulated differently depending upon the local customs. Throughout the fifteenth century one can observe the tendency of a constant growth in the numbers of such permissible attempts. According to the customs of the Cracow Land, confirmed by King Alexander, an introduction was to be attempted twice;³⁴² by the provisions of the *Processus iuris*, it was raised to three times.³⁴³ Only the enactment of the *Formulla processus* in 1523 brought a significant cut off in the permissible numbers of declined introductions. It established only a single attempt of introduction.

Each failed introduction had to be testified to in court by a bailiff's recognizance.³⁴⁴ Furthermore, for each refusal the convicted person was liable for an additional pecuniary penalty. At the end of the fifteenth century royal pledges started to be established to bind a losing party with obligation to surrender an estate on time.³⁴⁵ The size of the pledge was established as equal to the pecuniary penalty, adjudicated by the final sentence, and was doubled after each case of defeated introduction. If the winner was beaten off by the convicted party at his last permissible attempt at introduction, the winner obtained the right to turn to a captain with a request for legal assistance from the royal arm (*brachium regale*). It was then the captain who took over the responsibility for introducing a winner into an estate.

³⁴⁰ Pledging and introduction into an estate as a main form of sentence's execution in late medieval Polish law are discussed in Józef Rafacz, *Ekzekucja w Małopolsce*, 15-16.

³⁴¹ See: VL, vol. 1, 156.2; *Corpus Iuris Polonici*, vol. IV.1, no. 16, cap. 22, p. 51-52; cap. 26, p. 52. On the role of bailiffs in the process of execution and introduction, see also: Józef Rafacz, *Ekzekucja w Małopolsce*, 13.

³⁴² VL, vol. 1, 149.1, "De executione rei iudicatae."

³⁴³ *Ibid.*, 158.2, "Realis instructio ad possessionis assignationem circa executionem rei iudicatae."

³⁴⁴ *Corpus Iuris Polonici*, vol. IV.1, no. 16, cap. 27, p. 52.

³⁴⁵ The imposition of pledges and its role in the practice of the introduction are highlighted by Józef Rafacz, *Ekzekucja w Małopolsce*, 19.

Such an introduction with the help of *brachium regale* was complemented by a new suit, lodged by the captain himself against the rebellious nobleman.³⁴⁶ According to the *Formula processus*, if a matter of introduction fell into hands of a captain, a convicted person still had the chance to appear before the captain and officially surrender his estate to the introduction (*terminus innotescientiae*). The agreement of the convicted to let a winner onto his estate was strengthened at this stage by the imposition on the convicted of a triplicate pledge. In a case of persisting disobedience, the captain was empowered to make use of armed force in order to introduce a winner. The result of an armed introduction was that the sum of the penalty on which the convicted was forced to pledge his estate was augmented by the payment of a triplicate pledge (*vadium*).³⁴⁷ Finally, if a defeated party persevered in his disobedience and resisted an action of introduction led by a captain he was convicted of the penalty of infamy and proscription.³⁴⁸

This elaborate and detailed set of procedures and actions, conceived to regulate the process of a sentence's execution, was clearly set up with the idea of preventing possible abuses. As was mentioned in the previous chapter, the enforcement of a court verdict too easily and too often opened a door to the exercise of violence. Already the Statutes of Casimir the Great show a great deal of concern with abuses of a sentence's execution by stressing how often the process of introduction was accompanied by actions of brutal violence.³⁴⁹ The evidence in question has been already discussed above, but it is still worthwhile to reiterate them here again. One of the articles of the Statutes states, for example, that poor people often suffered from damage and oppression that arose from illegal and violent ways of exerting a pecuniary compensation on their estates that had been adjudicated by the court. It specified that winners often illegally intruded into estates of their opponents with crowds of supporters, causing a great deal of pillage and destruction. Such a form of introduction was usually done without taking an official mandate and declaration of damage by a judge and without the permission of a local justice. As a way of correcting this bad custom, the Statutes allowed a winner to arrive at an estate on which a court pledge was imposed in company of only two familiars and a baliff.³⁵⁰ On another occasion the Statutes condemned avarious judges and their officials who immediately after proclaiming sentences set off to divide the spoils extracted from the convicted person as a penalty.

³⁴⁶ *Corpus Iuris Polonici*, vol. IV.1, no. 16, cap. 27-8, p. 52-3.

³⁴⁷ *Ibid.*, cap. 30.

³⁴⁸ *Ibid.*, cap. 31, p. 53.

³⁴⁹ See comments by Józef Rafacz, *Ekzekucja w Małopolsce*, 10.

³⁵⁰ *Statuty Kazimierza Wielkiego*, no. III, 255.

New difficulties of enforcing a sentence, however, appeared as a body of legal norms dealing with this question became more and more comprehensive and specific during the fifteenth century. Minute treatment of issues of procedures of introduction not only helped to regulate and prevent abuses of the law in this sphere, but also set an additional normative background for the intensification of the litigation process. Legal records from local courts make it clear how easily the legality of attempts at enforcing a sentence could be put in doubt by a convicted person. Sources reveal that a legal action undertaken by a winner with the aim of enforcing a court sentence and executing his right to introduction could easily be denounced as an offence of the law. This happened in a case when the winner failed to adhere to and complete all the procedural steps prescribed by the law. A winner who was too eager to hasten the process of execution and omitted the prescribed number of introductions permissible to a convicted person for denial could be blamed for not acting in accordance with the *gradus iuris*.³⁵¹ The introduction could be also challenged by a convicted person on the grounds of his absence from the estate at the time of execution.³⁵² A winner's attempt to execute a sentence could also be encountered with a counter-claim of violence if the convicted person decided that a group of clients directed to his estate by the winner was too numerous. Relevant evidence can be found in the record of the dispute between the Lviv Catholic archbishop and the royal captain of Halyč, found in the L'viv castle court register under 1445.³⁵³ The captain was accused of invading the archbishop's village and with the illegal seizure of twenty-one oxen. The captain, through his attorney, defended himself by claiming his action to have been just since he had taken the said oxen as a fine adjudicated to him by the court. He was also ready to prove the rightness of his action by referring to the text of the sentence, recorded in the court register. In his turn, the attorney of the archbishop did not question the right of the captain to take the oxen as a fine, but in his opinion the captain was guilty of sending too many people to the archbishop's village. In this way an improper execution of a court sentence was turned into an act of illegal violence³⁵⁴. The evidence here shows that litigants who lost their cases by a proclamation of unfavorable judgment were

³⁵¹ For the example of the accusation of not passing all steps of law during the introduction into estate, consult the dispute between Elizabeth of Gologory and Jan Hermanowski. See: AGZ, vol. 15, no. 390 (November 7, 1466): "... quia tu intromissisti te in villam Vyaczen ipsius Elizabeth non pertansiendo omnes gradus iuris, quia prius debuisti prima, secunda, tertia vicibus pignorare et hoc non fecisti neque cum aliquot ministeriali super pignorationem equitasti nec etiam in libro castr. Leopold."

³⁵² See Józef Rafacz, *Ekzekucja w Małopolsce*, 20.

³⁵³ AGZ, vol. 14, no. 1465 (August 13, 1445).

³⁵⁴ Ibid.: "domine Iudex, istos boves, pro quibus propositum est, domus. Parawa ipsos recepit in suis penis et ofert se probaturum ad librum castri Halic. Iohannes Burgrabius dixit: ex quo dicit se ipsos recepisse in penis, sed fecit ultra consuetudinem terr. Quia [cum ministeriali ipsos non recepit - perekresleno] plures destinavit, quam debuit."

quite capable of exploiting complexities in the legal procedures related to pledging and introduction onto their estate to avoid or delay a sentence's enforcement. Counter-claims manufactured out from the inconsistent nature of legislation were the principle resources that permitted keeping a dispute alive.

4.9 Super tali re dubia periculosum est iuramentum: The uses of oath-taking in the disputing process

Among many evil customs which came under the criticism of Andrzej Frycz Modrzewski in his famous treatise *De respublica emendanda* and which he denounced as signs of corruption and deterioration in the legal system of the Kingdom of Poland in the sixteenth century one was related to the practice of oath-taking. In his comments on oath-taking Modrzewski noted that the proposal to swear an oath did not necessarily end up with actually doing it. It was possible for a plaintiff to excuse and release a defendant, who had been ordered to take an oath from the burden of swearing. At the plaintiff's request the judge could excuse the defendant from swearing. Usually this happened if the plaintiff was content with seeing the defendant's willingness to take the oath. Modrzewski further specifies that the defendant's readiness to swear an oath must be convincingly expressed and conveyed by his whole demeanor – his voice, his kneeling body and all other possible gestures.

This mode of proceeding with swearing oaths, however, said Frycz Modrzewski, implied great danger. It came to evolve into the bad custom that the whole scenario of abandoning the claim of swearing an oath had often been settled secretly by parties before coming to court. At the court hearing, they just simulated the whole procedure and ritual of proposing and abandoning the oath. In this case, the author explains, all the misfortunes (disadvantages) which stemmed from such a mode of freeing the defendant from the oath fell on a third person, that is, the judge. The judge, who may have been unaware of the deceit of the parties, was virtually forced to proceed with the case as if the trial by oath had really taken place. Thus, the judge unintentionally shared the responsibility for plotting the fraud surrounding the oath-taking.

Modrzewski went further, discussing whether such a stratagem must be condemned as a form of perjury. He stressed that the defendant probably did not feel guilty of committing perjury because while kneeling he had not spoken the words of the oath. As Modrzewski reasonably noted, however, such a perception of the crime and sin of perjury was wrong, because swearing an oath must be carried out by both words and gestures. For Modrzewski, to establish whether the swearer committed perjury or not, meant to judge not only the verbal

pronouncing of the oath, but also all the gestures involved in the swearing. This was because all the verbal and bodily acts, which constituted the rite of swearing, as the author explains, should not be exposed to the judgment of the soul of the person who is put under the oath. Words and gestures enacted in the course of oath-taking are addressed to and must be judged by God alone, because it is His power and grace that the oath-takers strive to invoke and turn to their needs. These two kinds of actions, embedded in both words and gestures, could not be split. Taken together they were believed to constitute a distinctive wholeness of swearing the oath, especially if they sought to obtain divine help. Modrzewski concluded his critique with words of warning. The stratagem mentioned above, if employed with the aim of deceiving judges and influencing the outcome of litigation, should be blamed as a lie and perjury. Men who were not terrified of this sort of perjury and considered themselves equal to God in judging an oath did not believe in God's care for mortal things and in His ability to inflict divine vengeance upon the impious.³⁵⁵

These observations by Frycz Modrzewski can serve as a starting point for examining the role of swearing oaths in dispute settlements in late medieval Galicia. I am particularly interested in addressing three closely connected issues, which seem to be especially significant for understanding how the possibilities for oath-taking were integrated into dispute strategies in the fifteenth-century courts of the Rus' palatinate. First, I would like to point out the perception of swearing as one of the most extreme situations which could be encountered in a dispute. In this regard the litigant's readiness to appeal to an oath or a proposal to the adversary to take an oath stand out as a very unyielding posture of enmity, aimed at sharpening the conflict and intimidating and dishonoring the rival. Second, I intend to stress the supernatural and religious implication of swearing an oath. Due to the explicitly sacral character of an oath, there was a widely held opinion about the damaging effects of oath-

³⁵⁵ Andrzej Frycz Modrzewski, "Liber de legibus" in *Commentariorum De Republica Emendanda*, caput XV, 195-96: "Cum autem reo iurisiurandi decretum esset, petitor eiusdem iurisiurandi gratiam illi fecit, contentus uidelicet rei uoluntate, qua mille uultu, uoce, genuum flexu et omni gestu declarabat ac si ad iurandum paratus esset; itaque iudex reum absoluit. Sed res inter partes simulate et ex composito agebatur, omne enim incommodum ex absolutione rei ad tertium, in quem faba illa cudebatur, redundauit. Erant in eo iudicio multa periniqua. Iudici impositum est: qui etsi doli illius fortasse ignarus non erat, tamen aliter iudicare non potuit, quam ut causa erat instructa. Reus periurii se reum minime putabat, quod flexis genibus uerbis non iurasset, quasi uero uerbis tantum periurium committantur, non omni gestu, quem perinde homines habeant atque si uerbis conceptis iurasset. ... Quicquid agatur seu uerbis, seu gestibus, seu conniuentia, seu quauis alias ratione fallendi alicuius causa, omne id in uitio ponendum est. Omnes illae significationes non nostra, sed eius, cuius interest, gratia fiunt. Nemo enim sua causa iurat, sed laterius. ... Non igitur uerba, non gestus ad mentem tuam, quia iuras, sed eius in cuius gratiam iuras, sunt interpretanda. Deinde omnis attestatio, seu uoce, seu nutibus fiat, cui diuina autoritas obtenditur, iurisiurandi uim habere putanda est. Quae attestatio, si fiat fallendi alicuius causa et a sententia nostra discrepet, mendacium est et periurium. Qui periurria non exhorrent, illi de Deo parum recte sentient nec eum res mortalium curare, nec impietatem ulcisci credunt." For the short comment on the Modrzewski's criticism of the methods of oath taking in the sixteenth-century Poland, see: Waldemar Voisé, *Frycza Modrzewskiego nauka o państwie i prawie*, 229.

taking on the soul of the litigant. Swearing an oath was regarded as a sort of ordeal, which meant the appeal to divine force in order to support one's claim of rightness and ensure supernatural intervention in the dispute settlement. Third, I want to highlight in particular a problem that emerged as a corollary to the interplay of the two: cases noted above in which the proposal of an oath was first advanced but then abandoned in the following stage of the dispute.

In pursuit of the last point, I will draw on the conclusions reached by Stephen White in his investigation of the uses of the ordeal in eleventh-century France.³⁵⁶ In his study S. White has noted that a substantially large number of proposals of ordeal never ended up in a trial. Instead, the claims to an ordeal were withdrawn at a later stage of the litigation and the disputes settled in other, more peaceful, ways. In White's interpretation the proposal and avoidance of ordeal represented "a distinctive strategy of political confrontation," a form of deliberate judicial and political strategizing which helped disputants to assert their interpretation of the conflict, to alter the balance of political power in the court, and thus to secure more favorable terms in the dispute's outcome. My suggestion is that, similar to what Stephen White demonstrated in his analysis, demanding and surrendering the claim of swearing an oath served as an instrument of power relationships, which could be employed by disputants with the aim of influencing the course of the dispute.

Litigants coming to the courts in the late medieval Kingdom of Poland frequently faced situations in which taking an oath seemed inescapable. The system of proof in Polish law relied heavily on oath-taking.³⁵⁷ This feature of the Polish legal system was well articulated in one late sixteenth-century treatise on Polish legal order and the administration of justice, designed as a dialogue between a Pole and an Italian. The opinion, put into the mouth of the Italian, was that almost every aspect of the Polish legal process depended upon oaths and court bailiffs. The Italian further stressed that winning a court dispute was highly unlikely in contemporary Poland without having recourse to swearing an oath.³⁵⁸ As an act of invocation of supernatural power for assistance in conflict, swearing was the ultimate and unilateral means of proof. Theoretically, it was impossible to appeal against the rival's statement if it was backed up by an oath. Even inquisitorial procedures, which gradually evolved and were

³⁵⁶ Stephen D. White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050-1110," in *Cultures of Power. Lordship, Status and Process in Twelfth-Century Europe*, ed. Thomas N. Bisson (Philadelphia: University of Pennsylvania Press, 1995), 89-123.

³⁵⁷ S. Borowski, *Przysięga dowodowa w procesie polskim późnego średniowiecza* (The oath-taking in Polish legal process of Late Middle Ages). (Warsaw, 1926), 17.

³⁵⁸ See Łukasz Górnicki, *O elekcji, wolności, prawie i obyczajach polskich rozmowa Polaka z Włochem*, ed. S. Turowski. (Sanok, 1855), 46: „Mało nie wszystko prawo wasze na woźnym i na przysiędze zawisło. Nie wygrać u was żadnej rzeczy bez przysięgi.”

employed in court proceedings, were not able to compete with the oath of compurgation. A plaintiff usually lost his cases if his accusation of violence, the prosecution of which was based on recent evidence of the crime of the accused and bailiffs' testimony, was challenged by a defendant's oath of expurgation.³⁵⁹

In terms of intensity in disputing relationships, a trial by oath meant that the dispute had reached one of its most extreme points. Swearing an oath represented a critical and decisive moment of dispute, which cut off opportunities for more peaceful conflict resolution by arbitration or mediation.³⁶⁰ In this regard the proposal to swear an oath was seen as the most explicit manifestation of the enmity between people. It was therefore not a matter of simple coincidence that in the language describing hostile relationships the oath, together with the open exercise of physical violence, became a synonymous with the enmity. This perception of oath-taking was sometimes clearly articulated in the legal records of fifteenth-century Galicia. The sources employ a formal yet simultaneously telling vocabulary, describing litigants who demanded that their opponents swear an oath as *animo litem contestandi detulit ipsius Dorossii iuramento corporali* (sic).³⁶¹ At the same time, court records also provide evidence of the very individual assessment of the role of swearing in the origin of hostile relationships. For instance, in 1444, Mathew of Panthelowice brought a complaint to the Przemyśl land court against Jan Mzurowski of Bystrowice. The fact that Mzurowski refused to negotiate with Mathew in the matter of the payment of debt as "friend with friend" served the pretext for Mathew to open lawsuit against Mzurowski. What followed was an attempt by Mathew to secure relations through initiating a lawsuit and by demanding the formal act of swearing an oath.³⁶² The oath thus represented a way of carrying out a dispute, which was symbolically opposite to an amicable relationships or reconciliation. This rule was not always followed in practice, since arbiters could also require that the disputing parties take an oath.³⁶³ Litigants were most often described in the sources, however, as being put in the situation of two

³⁵⁹ See for example the accusation of theft brought against certain Jan Rysz before the Halyč land court on the basis of the semi official prosecution known as "rug": "per Rvgowanye terrigenarum fuerat inculpates pro furticino". The accusation was successfully defied by the subsequent oath of compurgation of the accused. See AGZ, vol. 12, no. 595 (May 11, 1439). For other cases showing the failure of plaintiffs' accusations against the defendants' oath, see: Ibid., vol. 17, no. 1315 (March 11, 1477); Ibid., vol. 17, no. 4110 (October 22, 1504); Ibid., vol. 14, no. 1736, 1739, 1740 (after July 1, 1446).

³⁶⁰ For the similar observation regarding ordeal see: Stephen D. White, "Proposing the Ordeal", 104

³⁶¹ AGZ, vol. 17, no. 1651 (January 26, 1479).

³⁶² Ibid., vol. 13, no. 2391 (December 21, 1444): "sicut me non petivisti, sicut amicus amicum, pro predicta pecunia, sic iura vel ego iurabo."

³⁶³ Ibid., vol. 17, no. 4227 (March 20, 1506).

alternative and mutually exclusive choices: to settle the dispute by means of concord or take an oath.³⁶⁴

The swearing an oath often led the dispute towards embittered and hostile tension. There is evidence that discussing the oath was interrupted by debates and quarrels between litigants, which caused the abrogation of oath-taking.³⁶⁵ Descriptions of scenes of the oath-taking often leave the impression that this moment was a really pivotal and dramatic event in the dispute, often infused with anger and vengeance. Let us look at an account of a dispute highlighting the moment of the dramatic enactment of swearing the oath in the court room. In 1479, in the Przemyśl castle court, Dorosh, the Valach kniaz from Lyethnia, accused a noble of Przemyśl land Jan Solecki of murdering his son, Fedir. According to Dorosh, the murder was committed in an ambush arranged by Solecki with numerous accomplices on a free royal road. Solecki tried to negate the accusation and *animo litem contestandi* demanded that Dorosh swear an oath to his allegations. Dorosh reacted immediately to the challenge. As the text of the record emphasizes, he started at that instant (*statim*) to swear the oath. Putting his two fingers on the cross and kneeling, he swore in these words: “I, Dorosh swear and pledge my soul (*in animam meam recipio*) that no one else but Jan Solecki present here, murdered my son Fedir.” The litigants’ determination to pursue their statement by all means, the immediacy of their response and readiness to repudiate their opponents’ allegations in the next moment by having recourse to the oath – all these elements create an image of oath-taking as social and emotional drama.

This enactment of emotions should not be underestimated, especially taking into account the fundamental role of the performative dimension of the swearing. The words and gestures, entailed in the oath’s performance had indissoluble integrity – exactly what was so strongly emphasized by Frycz Modrzewski. The litigants’ personal acting capacities, properly and masterfully staged and articulated as a combination of gestures, emotions, and words, were crucial elements in the complicated game of the persuasion of the audience. They were carried out to dramatize the moment of oath-taking and presented observers with a sense of the litigant’s righteousness. Let me repeat that there was not some objective criteria of truth that decided the falsity or veracity of the claim and plea, put under the trial by oath. The oath-

³⁶⁴ Ibid., vol. 13, no. 339 (May 13, 1437): “Nicolaus actor cum Allexandro de Prochnik receperunt se ad concordandum. Et si non concordaverint, in proximis terminis Allexander debet iuramentum prestare.” See the similar cases: Ibid., no. 308, 646, 1564, 2123.

³⁶⁵ Ibid., no. 2262 (November 2, 1444): “Iohannes de Mislaticze debuit iuramentum prestare ad instanciam Henrici de Orzek et cum iurare incepit prefatus Iohannes, statim prefati ambo inceperunt inter se litigare et destruxerunt pronuncciationem iuramenti ministeriali. Et domini receperunt ad interrogandum ad dominos ad alios terminos, si prefatus Iohannes debet emittere causam vel secundario iurare debet.”

taking has to be seen as a kind of social drama, in which the conformity of an individual's emotional and bodily conduct, his capacity to sustain his personal worth, dignity and honor in the performance of swearing, were assessed and tested by the judges and audience.

The swearing of an oath was potentially damaging not only to social relations but also to the personal psyche of litigants. For the medieval mind the swearing of an oath was perceived as a serious challenge to a person emotional condition. The moment of oath-taking was often surrounded by fear and hesitations.³⁶⁶ Both Christian and pagan roots can be identified as contributing to such perceptions.³⁶⁷ The oath, as a call for the intervention of the divine in mundane matters, was considered a dangerous way of tempting God which people would do better to avoid. Swearing an oath entailed a moment of uncertainty, since it often meant balancing on a thin line between a sanctified statement of truth and perjury. Due to these sacral and religious implications, a trial by oath involved a close examination of individual consciousness.

This interconnection between the rite of swearing and concern for the soul of the oath-taker was explicitly pointed out by Modrzewski. According to him, a litigant demanding an oath from his adversary must be sure that he is pursuing his case in good conscience. If he did not stick to this requirement, then let him lose his case. Modrzewski insisted on punishment for those who imposed or demanded an oath from their adversary while aware that such a claim was a wrongdoing, seriously false, and plainly made against the judgment of their soul (*contra animi sententiam*). Men, who swore in the right and religious manner, however, paid tribute to the honor of God. Modrzewski further emphasized that God is the only witness of our secret thoughts and intentions (*cogitationum nostrorum rerumque occultarum*) at the moment of swearing, and a severe avenger of perjuries. He also called upon the clergy, who preached to people in the churches, to explain the force and sanctity of oath-taking, to

³⁶⁶ The connection of fears of an oath, with the sacral character of oath was emphasized by S. Borowski. *Przysięga dowodowa*, 16; P. Dąbkowski, *Litkup: w dodatku o przysiędze i klątwie: studyum z prawa polskiego* (Litkup: complemented by the study about oath-taking and swearing) (Lviv: Nakładem Towarzystwa dla popierania nauki polskiej, 1906), 58; Vladimir Procházka, "Przysięga w postępowaniu dowodowym narodów słowiańskich do końca XV w.," *Czasopismo Prawno-Historyczne* 12 (1960), 25-26. For the anthropological perspective one can consult interesting observations on the attitudes towards the oath by salt among the Ilongot people: Renato Rosaldo, *Ilongot Headhunting, 1883-1974. A Study in Society and History* (Stanford, 1980), 77, 99.

³⁶⁷ For the Biblical references see for example Mt. 5: "...ego autem dico vobis, non iurare omnino." For pagan beliefs one can consult evidence, provided by Helmold's Chronicle, about the fear of oath, common among the western Slavs in early Middle Ages: "Iurationes difficilime admittunt, nam iurare apud Slavos quasi periurare est ob vindicem deorum iram." Quoted after: Vladimir Procházka, "Przysięga w postępowaniu dowodowym," 26, footnotes 94, 96.

encourage them to strive to swear to the truth alone, to call on God as a witness of the veracity of their swearing and to terminate all their enmities.³⁶⁸

The desire to establish the truth alone, but not the hot anger or the spirit of vengeance must be the only motif behind people's desire of swearing. It became a wide spread normative precept in medieval law that a person who was in the state of enmity with a conflicting party was not allowed to swear an oath.³⁶⁹ "The lust for vengeance was vicious" - emphasized the Church in its condemnation of the practice of medieval feuding. Therefore it was considered one of the greatest sins to allow the feeling of revenge and anger to infuse and contaminate the sacred rite of the Christian oath.³⁷⁰

This interdependence between care for litigant's soul and his oath-taking was also reflected in the vocabulary of court proceedings of the Rus' palatinate. While swearing, as one of the legal records put it, litigants literally "pledged their soul" (*in animam meam recipio*).³⁷¹ Perhaps the most telling and elaborate statement in the legal record about the negative effects of swearing an oath on the conscience and soul of disputants is that in the case of the Cracow *burgravius* and the captain of Radłów, Nicolas Lanckoronski of Brzezine. Here is an explicit warning by Lanckoronski about the dangers and uncertainty of swearing recorded in the register of the Sanok chamberlain's court during the arbitration between Peter Odnowski and Nicolas Bal over their estates' borders. The account of the conflict and perambulation is recorded in the register for the year 1511. Lanckoronski was appointed as a superarbiter of this arbitration. When the arbitration came to a deadlock, one of the litigants proposed to the other to resort to swearing an oath in order to establish the truth about the disputed borders and thus to settle the conflict. This offer met strong objections from Nicolas Lanckoronski. He warned the parties how burdensome it was for the soul to tempt God in such a vague matter as the borders of estates, and how difficult for him, as for the superarbiter, it would be to judge the veracity of such an oath. Furthermore, he strongly advised the disputants and their friends to be good judges of their consciences, to have the fear of God, and not to push the dispute as far as swearing an oath. Finally, he reminded the

³⁶⁸ Andrzej Frycz Modzrewski, "Liber de Legibus," in his *Commentariorum De Republica Emendanda*, cap. XV, 196-97.

³⁶⁹ For details see Vladimir Procházka, "Przysięga w postępowaniu dowodowym," 69.

³⁷⁰ On the Church social teaching of sins in relations to the practice of medieval feud, see Paul R. Hyams, *Rancor and Reconciliation*, 44-59. For the common for medieval law idea of the condemnation of litigations, that were provoked by hot anger and sense of vengeance, see:

³⁷¹ AGZ, vol. 17, no. 1651 (January 26, 1479): "ego Dorossius iuro et in animam meam recipio."

disputants about the perils of perjury: divine punishments and eternal torments awaited those who undertook oath with a guilty conscience.³⁷²

Reminding the parties of the spiritual dangers of swearing an oath, Lanckoronski appears as a speaker for communal ideals of solidarity and peace. This arbitration reveals the channels through which the individual emotional and religious responses to the oath-taking were mediated by broader social interests and pressure. Self-fashioned speakers of community interest, like Lanckoronski, could effectively exploit the dominant discourse of the fear of divine vengeance and uncertainty about the results of oath-taking in order to prevent disputes from being resolved by swearing an oath. In this way it became possible to influence the possible trajectory of the dispute settlement. From this point of view, the ambiguous concern of people with swearing an oath could be turned into an effective means of community control of dispute settlements.

IN staging a trial by swearing an oath the disputants had to bear in mind broader communal implications. Trial by oath was a public event where the assessment of the veracity of the oath closely interplayed with the community's opinion about its performance. Evidence shows that not only the correctness of swearing but the proposal of the swearing itself was subjected to community judgment. Facing the disapproval or doubts of the audience, the litigants might give up their attempt at oath-taking. This is exactly what happened in the case of the arbitration between Peter Odnowski and Nicolas Bal. The account of the peacemaking relates that Odnowski and Bal were unable to start a perambulation of estates, because they disagreed on the length of the mile. Finally the decision was reached that the choice of the standard of mile should belong to Peter Odnowski. Odnowski's proposal of the standard distance for measuring a mile was made on condition that it would be supported by his personal oath. The distance he proposed for the first time, however, was refuted by the audience of the arbitration. The men attending the arbitration voiced their doubts about the validity of the oath Odnowski intended to undergo to back up his version of the mile's distance. The account of the dispute relates that they warned Odnowski that swearing on a

³⁷² Ibid., vol. 19, no. 3113, p. 667-668: "Legavi vobis formam iuramenti actoris et formam iuramenti testium, quam quamvis est et consciencie onerantia, iurare enim per verba de presenti certa, quod hec terra pro qua iurabit actor est ipsius hereditarie possessoria ab ipso et eius antecessoribus pacifice possessa, cum quidem apparet, quod vestri antecessores et vos post ipsos pro eadem terra inter se semper aliquid habuistis questionis et pacifica possessione nulli vestrum hec terra cessit in dominii proprietatem et super tali re dubia periculosum est iuramentum, testor Deum quia res est mihi nimis onerosa talia decernere iuramenta, et si importune instabitis officium superarbitrarium per vos mihi impositum coget me ea decernere que iuris sunt. Rogo tamen sitis vos custodes et boni iudices conscienciarum vestrarum, timeatis Deum per prophetam comminantem ulcionem periurii usque ad novam generacionem de domo periurantis non exire."

dubious length could be onerous for his soul and damaging to his reputation.³⁷³ In the end, Odnowski was pressed to give up his proposal and choose another, more appropriate, version of the distance for measuring a mile.

It is not incidental, then, that doubts about the expediency of oath-taking, raised during arbitration, brought about a withdrawal from swearing. This kind of attitude may have played a significant role in the settlement of many disputes, contributing to the litigants' reluctance to bring their dispute to a trial by oath. Worries about the potential dangers of burdening the conscience with sins during the trial by oath were sometimes clearly voiced by the litigants themselves and presented as the main reason for dropping the claim to swear an oath. For instance, in 1464, Andrew Zymny brought to the Sanok land court an accusation of arson against a certain Mathew Slanczka, townsman of Sanok. The case was about to end with Mathew Slanczka's oath of compurgation, for which he also called the assistance of oath-helpers. At the last moment, however, the plaintiff changed his mind and released the accused from swearing. In Zymny's words, he decided to release his adversary from oath-taking because of the fact of "expecting to have another fire and fearing to burden his own conscience" (*et propriam timens conscientiam onerare*).³⁷⁴

This sort of concern about oaths, if not articulated with such particular clarity as in this case, is nevertheless recognizable in various ways in the sources. Occasional hints allow one to infer that many disputants were sharply aware of the emotional discomfort caused by the fears of perjury during oath-taking. Some documents, for example, specifically point out the negative impact of oath-taking by adding clauses about the litigants' audacity in pushing the case to swearing, such as ... *Si vero Vaszyl ausus fuerit iurare*.³⁷⁵ The fear of lapsing into the sin of perjury can also be suspected in cases when people openly rejected confirming their statement made in court by swearing an oath.³⁷⁶ It happened that even men blamed for serious wrongdoings like theft refused to undertake the oath of compurgation, but preferred to suffer the penalty.³⁷⁷ Other litigants did not dare to take the oath a second time to confirm the

³⁷³ Ibid., vol. 19, no. 3111, p. 663: "...et facta est aliquantulum inter homines communiter omnes astantes et presentes quedam disceptatio, quod nominatio miliaris de Boyska ad civitatem Sanocensem nimis onerosa et inconveniens uno miliari esset."

³⁷⁴ Ibid., vol. 16, no. 28 (February 1464).

³⁷⁵ Ibid., no. 518 (April 2, 1468). For other similar formulas in the late medieval Polish documents consult: S. Borowski, *Przysięga dowodowa*, 15-16.

³⁷⁶ See for example Ibid., vol. 18, no. 3195 (May 23, 1503): "Pars citata dixit: volo videre familiarem qui michi posuit citationes. Statuerunt familiarem. Iudex requisivit familiarem tu posuisti citationes; qui recognovit quia posuit in domo nobilis Georgii. Dom iudex decrevit sibi iuramentum, qui familiaris dixit: non iurabo. Iudex recepit hanc controversiam ad deliberandum."

³⁷⁷ See for instance the case of certain noble Iwashko, the client of the Lviv chamberlain Volchko Rokuthy of Kłodno, who served as latter's procurator in the litigation against Volchko's neighbor George Strumilo. While

veracity of their first swearing, and thus lost their case in court.³⁷⁸ The coercion to swear an oath in someone's favour, made under the threat of death, could be advanced in court among other charges against a wrongdoer.³⁷⁹

Some litigants, especially powerful men, sought to gain the assistance of court personnel in their attempts to avoid swearing. In one case, a local magnate, Theodor Buczacki, while denying the accusation of his personal participation in a violent raid against his adversary, was called on to swear an oath together with his accomplices of his personal non-involvement in the assault. The court bailiff helped Buczacki avoid swearing the oath. He agreed to testify in court against what was alleged by Buczacki's opponent. The bailiff stated that he had not seen the lord while visiting the victim's home where the assault had been made. Relying on this testimony, the court assessors freed Buczacki from the burden of oath-taking. However, this decision did not affect Buczacki's accomplices, who were obliged to defy the victim's allegation by swearing an oath.³⁸⁰

Spiritual anxieties about swearing were closely interwoven with and expressed in peculiarities of the physical conditions of the litigants. Scribes sometimes noted unusual bodily signs in the speech or gestures of the swearer, which were taken very seriously by the court assessors. One can not be sure whether such evidence betrayed a person's anxieties of the soul at the moment of oath-taking or not. However, they are certainly important as evidence of the audience's response to the oath-taking, who judged such bodily signs as impediments or deviation from the accepted rules of swearing. For instance, a noblewoman's stammering during the oath-taking was considered a serious impediment to recognizing the oath as valid.³⁸¹ Special physiological states of the body could also give rise to serious doubts

having been accused by Strumilo as "proditor, fur et profugus," Iwashko instead of challenging this accusation with the oath acknowledged to the alleged crimes. See *Ibid.*, vol. 14, no. 906, 909 (November 22, 1443).

³⁷⁸ *Ibid.*, vol. 15, no. 3411 (February 27, 1467).

³⁷⁹ *Ibid.*, no. 19 (January 3, 1457): "extrasti me de domo mea et incalcasti me in littum ante domum et fecisti michi violenter iurare, volens me interficere et percuciens me volens, ut nunquam contra te essem et deturpasti me verbis turpibus, asserens me filium meretricis, que ministerialis audivit."

³⁸⁰ *Ibid.*, vol. 14, no. 158 (February 13, 1441): "Gen. dominus Teodricus de Buczacz evasit n. Georgium osynd pro eo, quia sibi culpam impinxerat, quod ipse personaliter in curiam ipsius violenciam fecisset alias synd et sic solus iurare non debet, quia Georgius dixerat, quod ministerialis personaliter solum dominum vidisset. Sed tum ministerialis recognovit, quod non vidit ipsum personaliter et ideo domini sedentes pro tribunali adiudicaverunt ipsum solum non iurare et super hoc adiudicatum idem dominus Teodricus solvit."

³⁸¹ *Ibid.*, vol. 17, no. 2982 (January 22, 1498): "quia iuramentum prestitit, sed verbis bene non expressit alias zayakalaszye. Et super hoc ambe partes memoriale posuerunt quod iudicium recepit. Iudicium vero distulit hanc causam ad dom. Castlum."

and hesitation about the expediency of swearing. In one case, for instance, pregnancy was advanced as a serious argument for justifying a woman's attempt to avoid the trial by oath..³⁸²

In one case, the evidence even speaks of a wondrous bodily transformation, which occurred during a discussion of the possibility of a trial by oath. The record of the Sanok castle court relates that on November 27, 1447, the Sanok captain, Albert Michowski, summoned Balko, the kniaz of Olshanica, to respond to the accusation of a certain Nicolas in the castle court in Sanok. The record says that Nicolas blamed Balko for plotting to set fire to the captain's castle in Sanok.³⁸³ It is further recounted that on the next court hearing, when Balko was prepared to prove his innocence by swearing an oath and produce oath-helpers, Nicolas declared his readiness to renounce his charges and release Balko from swearing. The most astonishing aspect of this case is that at the first court hearing Nicolas had pretended to be mute and unable to speak. All the allegations against Balko were spoken by the captain. When it came to disclaiming his accusation, however, Nicolas suddenly regained his ability to speak and declared by his own mouth the surrender of his allegations.³⁸⁴ Many highly significant details are missing in the account of this case. Is it possible, for instance, that lies and calumny were the main driving forces behind Nicolas' serious accusations in the initial stage of the lawsuit? Is it not then possible to suggest that it was his soul's scruples and fear of God's judgment, caused by the danger of his opponents' swearing, which came to light in the form of this strange metamorphosis of the "mute"?

The legal records of the fifteenth-century Rus' palatinate provide no explicit evidence for the spread of such an abusive way of quitting an oath-taking, as described and condemned by Modrzewski. Nevertheless some findings can be seen as leading the interpretation in the direction, suggested by Modrzewski. Occasional evidence about last minute release from oath-taking seems to be especially consonant the Modrzewski's description of such fraudulent procedures. There are cases when the release of the opponent from oath occurred exactly at the time when the opponent was putting his fingers on the crucifix (*iam circa passionem existente*).³⁸⁵

³⁸² Ibid., vol. 18, no. 3760 (February 4, 1494): "Ex adverso procurator domine Zophie dixit: domine Iudex et subiudex salva reverentia, domina Zophia est pregnans, et habet spem quod deberet iacere in puerperio, igitur si iacebit in puerperio non poterit iurare. Et dominus iudex et subiudex receperunt hoc ad interrogandum."

³⁸³ Ibid., vol. 11, no. 2498 (November 27, 1447): "...et hoc tibi Nicolaus actor recognoscit ad faciem, quia tu ipsum convenisti, quod castrum Sanok debuisti fraudare et eciam me cremare."

³⁸⁴ Ibid., no. 2509 (December 7, 1447): "Prout Nicolaus, qui non loquebatur et se fecerat mutum, inculpaverat Bolkonem kniasium de Olschanycza ... idem Nicolaus, qui fuit mutuus antea, revocavit et reclamavit coram iudicio dicens: isti homines, quos inculpavit, sunt iusti et innocentes in causa predicta."

³⁸⁵ Ibid., vol. 15, no. 3246 (June 15, 1464). For other similar cases, see: *Ibid.*, vol. XIV, no. 2750 (January 26, 1453).

A particularly revealing case for this mode of conduct comes from 1502 describing the dispute between Jan Rzeszowski and his uncle Jan Sopichowski. Rzeszowski summoned Sopichowski to the Przemyśl castle court with the allegation he had violently seized a mill. Rzeszowski claimed the mill belonged to him as his paternal inheritance. In his plea, Rzeszowski stated that the disputed mill had been given by his father, Augustine Rzeszowski, to Sopichowski in pledge for the amount of one hundred and forty florins. Later, Augustine redeemed the mill. However, following his father's death in the Moldavian campaign, Sopichowski violently seized and unjustly held the mill. In his response, Sopichowski agreed to return the mill, but insisted that Rzeszowski's guardian, – Nicolas Radochonski, confirm the repayment under oath. Radochonski accepted the challenge. The record relates that when the court had decided on oath-taking, the judges delivered the text of the oath to the court bailiff and all the men present went to the cross to listen to Radochonski, who was about to start swearing oath. At that very moment Sopichowski came forward and declared that he had decided to release Radochonski from the oath. The account of the case ends with Sopichowski's statement of his readiness to satisfy the Rzeszowski's claim and return the contested mill.³⁸⁶

In view of the litigants' ability to manipulate oath-taking, it is also worth taking a closer look at evidence of alleged errors made during swearing (*potyczek*). Rigid and formal as the ritual of oath swearing was, it put very strict requirements on the oath-takers in regard to its correct performance. According to the legal customs, dominant in the fifteenth-century Kingdom of Poland, an especially appointed pleader, usually the court bailiff, was the first to pronounce the text of the oath. The swearer was only obliged to repeat the text correctly, word by word, after the pleader. Even minor mistakes in speech or gestures were noticed and discussed by the judges. Special terms were developed in the legal vocabularies of East-Central Europe for designating these kinds of errors, such as *zmatek* (in Czech), *kléska* (in Moravian), *potyczek* (in Polish), *lapsuta*, *dejuratio*, *deviatio* (in Latin).³⁸⁷ Failure in pronouncing the oath usually raised doubts regarding the veracity of the litigant's statement. Mistakes made during oath-taking were variously judged by jurors – sometimes they resulted

³⁸⁶ Ibid., vol. 17, no. 3401 (July 11, 1502): "Domine capitaneae si dominus Nicolaus Radochonsky tutor prefati orphani iuramentum prestabit quod michi solvit doms. Augustinus florenos predictos quos habui modo obligatorio super molendino, extunc libere dimittere paratus sum predictum molendinum predicto orpahno. Quod iuramentum Nicolaus Radochonsky suscepit iam ex decreto dom. Capitanei et iudicii. Postquam iudicium rotham iuramenti ministeriali predixit et iverunt ad crucem audire iuramentum, idem Sopichowsky libere ipsum dimisit de predicto iuramento et coram iudicio recognovit quia sibi satisfactum est de predictis flor. Centum marc. et quadraginta et suum inscripcionem mortificavit."

³⁸⁷ See S. Borowski. *Przysięga dowodowa*, 65-72; Vladimir Procházka, "Przysięga w postępowaniu dowodowym," 59.

in a defeat in the litigation,³⁸⁸ but sometimes the swearer and his oath-helpers were simply required to take oath a second time.³⁸⁹ During the later Middle Ages litigants and their oath-helpers were permitted to retake an oath two, three, and in some cases, even ten times.³⁹⁰

It can not be excluded, however, that some litigants, facing the problem of the dubious character of their swearing, made deliberate errors in the text of the pronounced oath, trying to escape the fault of perjury in this way. In what sources describe as *potyczek*, it seems legitimate to suspect crafty wiles played with the text of oath. In this fashion, small and allegedly unintentional omissions or changes in the pronunciation of the words in the text of the oath could be interpreted as a deliberate disputing stratagem for deceiving court jurors and the rival. From this perspective the above-mentioned case of a noblewoman, who stammered, instead of clearly pronouncing the oath, could be also read as conscious juggling and not as a bodily sign of commotion. One of the most revealing pieces of evidence about *potyczek* in which language tricks could be suspected is provided by a case from the L'viv castle court on October 6, 1497. The record speaks of a humble peasant who was accused of theft and had to expurgate himself by swearing an oath. However, while taking the oath according to Ruthenian law he did not pronounce properly one word in its text. The judicial record notes that instead of uttering "I did not steal, he said: I did not take it" (*ubi debuit dicere: non sum furatus, illic dixit: non recepi*).³⁹¹

Another case, which can be interpreted as an attempt to manipulate the text of an oath was recorded in the Sanok castle court register in 1494. It concerns the dispute between two local nobles, – Jan of Targowiska and Albert, familiar of Stanislas Slotnycki.³⁹² On the captain's order, Albert and his six oath-helpers had to swear to the fact of having returned to Jan of Targowiska some valuable objects and the sum of one thousand twenty marks. It is recounted that while swearing the oath Albert committed a gross mistake. In the oath he

³⁸⁸ AGZ, vol. 14, no. 355 (February 9, 1442): "Sed quando Lucz fecit iuramentum iuxta decretum nostrum, erravit alias pomyalsch. Tunc ministerialis recognovit, quod Lucz erravit alias pomyalscha, propter quod decrevimus, quod Mykytha est liber, pro quo fuit citatus per Mytilinsky."

³⁸⁹ Ibid., no. 384 (April 19, 1442): "Pro causa, que vertitur inter eos ad interrogandum dominos, si pop suam causam amisit, quia unus testis non ita iuravit, sicut data est sibi rota, vel non, vel utrum testis, qui erravit in iuracione, debet dicere rotam secundario, vel si iam suam causam amisit."

³⁹⁰ S. Borowski. *Przysięga dowodowa*, 15, 68; Vladimir Procházka, "Przysięga w postępowaniu dowodowym," 79.

³⁹¹ AGZ, vol. 15, no. 2568. The case is mentioned by Vladimir Procházka in his "Przysięga w postępowaniu dowodowym," 79. The author mentioned the given case in the context of the spread of the necessity to repeat oath, if some mistakes occurred in the course of its swearing. According to V. Procházka, the practice emerged in the fifteenth century as a consequence of the growing rationalization of the legal process and caused a gradual decline in the importance of the oath in the dispute settlement. The author's interpretation suffers from too evolutionary approach. In addition, he did not consider at all the above discussed problem of the fears of swearing and the ways of avoiding it.

³⁹² AGZ, vol. 16, no. 2222 (August 23, 1494); no. 2223 (September 5, 1494).

mentioned not one thousand twenty marks but one hundred twenty marks. This error was immediately noticed by the opposite party and it was claimed that the oath had been sworn improperly. In defense of his familiar, Stanislas Slotnycki said that it was not deliberate on the part of Albert. He argued that the mistake happened due to the negligence of the specially elected pleader whose words Albert had to repeat.³⁹³ Another accusation was also advanced against Albert in connection with his swearing. He was also blamed for imposture during selecting and administering the oath of his oath-helpers. It turned out that instead of Jan Slanczka, who had been appointed earlier as one of the oath-helpers, Albert brought to the oath-taking a certain Simon Szlaczka. The record of the hearing ended with a denunciation of Albert's swearing by his opponent as false and a denial of its validity.³⁹⁴

In general, the withdrawal or the postponement of swearing developed into a common pattern in the practice of litigation in the late medieval Galician Rus'. This is suggested by the entries of the Lviv land and castle court registers from the period from 1457 to 1500, which indicate a large number of cases in which nothing certain is known about the swearing of an oath. Two main reasons seem to explain this phenomenon. First the trial by oath might have been postponed, which often meant giving it *ad concordandum*, and parties never insisted on the necessity of oath-taking again (12 entries). Second the dispute might have been settled by means of renouncing the claim of swearing (11). Together these two ways of withdrawing from oath-taking comprise only slightly fewer number than the cases, in which trial by oath really took place (31). This picture can be further complicated by adding the evidence about cases in which the trial by oath was cancelled and the sentence passed without recourse to oath-taking because either the swearer (4) or his opponent (2) did not appear. To this set of cases can be added entries about cases in which the absence of the swearer did not lead to his defeat, but resulted in a simple delay of the trial (3). Finally, two cases are significant (2) in which oath-taking was followed by further legal action and attempts to challenge the sentence, based on trial by oath. In one of these two cases, the swearing of the defendant, though successfully accomplished, did not prevent him from losing the case. It is reported

³⁹³ Ibid., no. 2222: "Hinc Thargowyczsky audiens, quod tantum pro centum et viginti marc. iuravit, proposuit coram Iudice: domine Iudex, propono, quia Albertus tantum pro centum et viginti marc. iuravit, ideo minus iuste. Doms. Stanislaus Slothnyczsky dixit: servus meus non fecit hoc ex se ipso, sed quemadmodum eum prelocutor adducit."

³⁹⁴ Ibid., no. 2223: "hic non est testis, qui nominatus est coram mfo. Iohanne Amor Castelano Cracouiensi videlicet Iohannes Slanczka sed Simon Szlaczka hic est. Doms. Szlothniczsky dixit: hic est testis, quem prius idem Albertus statuebat et nominatur Simon. Mathias a filiastro posuit memoriale, quia non Simonem sed Iohannem statuere debuit, ut est decretum pro illo tempore. Postea Iudex dedit iuramentum Alberto. Et fecit iuramentum corporale. Cum et ipsi testes iurare debuerunt. Mathias Wszdowsky a filiastro suo noluit admittere, predicto Szlaczka iuramentum dicens, quod est falsus."

that upon swearing the oath, he forgot or refused to pay the customary payment to the court, which served to record the legal action and the court sentence (*memoriale*). Judges waited in vain for the payment until dusk, but the swearer failed to appear. This refusal to pay the *memoriale* was taken by the judges as contempt of court and the case was adjudicated to the swearer's opponent.³⁹⁵

The variety of litigant's individual trajectories in dealing with oath-taking call for one comment regarding the interaction of legal norms and the human agency in the context of dispute settlement in fifteenth-century Galicia. Analysis of the practice of avoiding trial by oath shows great variability in the litigant's behavior in face of the rigidity of the ritual of oath-taking. In spite of the highly rigid and formalized character of the procedures and rules, involved in the process of oath-taking, the oath as a means of dispute strategizing, did not lack a certain degree of flexibility. As a crucial technique of carrying on litigation, the trial by swearing covered a wide range of moves and was not restricted to only the moment of swearing and factual statement made under the oath. What seem to have been much more important were litigants' individual capacities to control the pace of the dispute, to guide the entire path to the moment of oath-taking by skillful manipulation of the possibilities of proposing and withdrawing the claim of swearing. Once again it must be stressed that threats of a trial by swearing, which led to the reconfiguration of power relations in the dispute and invoked a great deal of fears and uncertainty, sometimes mattered more in the disputing game than the swearing itself. Behind these shrewd and inventive techniques of proposing and avoiding oath-taking, was an attempt by the litigants to widen the opportunities for negotiations and create new perspectives and favorable terms for the dispute's settlement.

4.10 Ego huic inscriptione non credo, ... ipse scribere potuit, quod voluit:

Writing and dispute

The words quoted in the title of this subchapter were spoken by Nicolas Czajkowski, nobleman of L'viv land, during his lawsuit with Nicolas Tyczka, a L'viv patrician. The case was held in the L'viv castle court and recorded on May 5, 1501.³⁹⁶ Nicolas Tychka blamed Czajkowski for negligence in defending him on an estate, called Chajkovychi. It is reported that the village of Chajkovychi had been in the possession of Jan Zubrski, father of Nicolas Czajkowski, who had inherited it from Nicolas Pustomyski. Later, Jan Zubrski mortgaged this estate to Tyczka. It was usually stipulated in this sort of contract that the person who

³⁹⁵ AGZ, vol. 15, no. 2324 (July 12, 1493).

³⁹⁶ Ibid., vol. 17, no. 3785.

mortgaged the estate was obliged to defend the new owner against possible claims of his/her relatives. This was what Tyczka claimed to have been an essential part of his agreement with Jan Zubrski. When Jan Zubrski died this obligation passed on his son, Nicolas Czajkowski, who showed no interest in fulfilling his obligation. In Tyczka's words, Zubrski took no care to provide for the defense against the claim of Rosa, the wife of Jacob Chąstowski and daughter of Nicolas Pustomycki. To support his allegation Tyczka produced in the court a copy of the charter of the mortgage and stated that if necessary he would be ready to take recourse to the court register to confirm the charter's authenticity: *et si necesse est actis eandem copiam confirmabo*. After declining Czajkowski's request to give the case to the land court, the judges ordered a reading of the copy of the contract which had been inserted in the court register in order to check on the correctness of Tyczka's statement. The reading confirmed that both copies agreed on the point of the conditions of the contract. Immediately afterwards the account of the dispute gives the words Czajkowski addressed to the captain who presided over the court hearings:

Sir Captain, I trust neither the document that he produced as his own copy, nor the document, that had been put down into the register; he could write down everything that he wanted to do.³⁹⁷

Afterwards the scribe noted the response of Tyczka, who turned to the captain, calling his attention to the fact that Czajkowski held the register of the captain's court in contempt.³⁹⁸

In the following analysis this case will serve as a starting point for addressing the problem of the interrelation between writing and dispute in the legal practice of the fifteenth century Galician courts. I intend to examine how the rise of a new literate mentality during the fifteenth century affected the practice and meaning of writing in the context of litigation and how the usage of written documents shaped the disputing strategies. Additionally, I shall try to show how new techniques of litigation depended on writing, and interacted with more traditional oral patterns of proofs and legal process. My suggestion is that the strong persistence of elements of orality in the practice of court disputes resulted in ambiguity in accepting written documents as the principal means of proof. I shall further argue that the interplay and interdependence of two modes of legal pursuit, oral and literate, opened a wider

³⁹⁷ Ibid.: "ego huic inscriptione non credo, quam ipse in copia ponit, nec huic inscriptioni credo, que fuisset in actis inscripta; ipse scribere potuit, quod voluit."

³⁹⁸ For mocking the adversaries' reliance on the written document in medieval disputes one could consult Susan Reynolds, "Rationality and Collective Judgment," 8-9, and Hanna Vollrath, "Rechtstexte in der oralen Rechtskultur des früheren Mittelalters," esp. 333.

space for individual dispute trajectories and the manipulation of legal norms in the course of litigation.

The context, first and foremost, in which this case must be situated, is the profound transformation of the field of literacy that Galician society witnessed during the fifteenth century. The fifteenth century was a turning point in the history of literacy and record making in late medieval Galicina Rus'. In the period under consideration one observes a radical shift in the status of the written document, which changed the social and cultural landscape of the region.³⁹⁹ The extension of writing resulted in the emergence of a new literate mentality, characterized by new attitudes towards the written word. Care for the systematic accumulation and preservation of official and private documents and a sharp awareness of the role of the written document as a key instrument in exercising power and the administration of justice were among the most characteristic traits of this newly emerged literate mentality in fifteenth-century Galicia. These two features can further be linked to other significant changes in the mode and means of communication that are usually associated with the spread of literacy in traditional societies.⁴⁰⁰ Writing became a crucial technological device which broadened opportunities for fixation, transmission and accumulation of knowledge in unprecedented way. The spread of literacy enhanced critical thinking and facilitated an incessant and growing rationalization and skepticism of human thought. Writing developed into the most effective tool for verifying and classifying information due to the effect of the spread of literacy.

One of the most immediate and apparent manifestations of the impact of the literate mode of transmission in the Galician context was the survival of the first registers of the local courts, which were kept on a regular basis starting from the late 1420s on. This evidence is pivotal in showing the introduction of new and more sophisticated techniques of record keeping. This new politics of record preservation resulted in a rapid growth in the quantity of

³⁹⁹ The consequences and contexts of the rapid transformation of the social and political order in Galician Rus' under the impact of literacy has been recently highlighted by Thomas Wünsch, "Verschriftlichung und Politik in Rotrußland (14.-15. Jh.): Zum Kulturgeschichtlichen Aussagewertmittelalterlicher Geschichtsaufzeichnungen," in *The Development of Literate Mentalities in East Central Europe*, eds. Anna Adamska and Marco Mostert (Turnhout: Brepols, 2004), 93-105.

⁴⁰⁰ On the structural transformations in the field of social knowledge and patterns of communication in the traditional societies undergoing the process of the rapid spread of literacy see recent anthropological studies by Jack Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977); Jack Goody and Ian Watt, "The Consequences of Literacy," in *Language and Social Context. Selected Readings*, ed. Paolo Giglioli (London, 1972), esp. 312-19. On this aspect of the relationships between the written and the oral forms of communication in the medieval culture, see for example: Brian Stock, *The Implication of Literacy. Written Language and Models of Interpretation in the Xth and XIIth Centuries* (Princeton and New Jersey: Princeton University Press, 1983), esp. 3-15, 42-59; M. T. Clanchy, *From Memory to Written Record. England 1066-1307* (Oxford and Cambridge: Blackwell, 1993), esp. 254-99; Patrick Geary, *Phantoms of Remembrance : Memory and Oblivion at the End of the First Millenium* (Princeton: Princeton University Press, 1994), esp. 12-5.

preserved records of the judicial institutions of the Rus' palatinate. This large scale output of various sorts of written documents which resulted from the courts' activity is particularly impressive if compared with the scattered and occasional documents revealing the process of the administration of justice in the previous period of the earliest decades of Polish rule in Galicia. A gradual process of establishing the court's network as sites of record keeping also had another significant implication related to the proliferation of literacy. The impressive increase in the volume of documentary production of the courts brought a larger part of Galician society into contact with literacy. It was during this period that the uses of writing advanced beyond the circle of the social elite – the nobility and patricians of the great towns. The evidence suggests the literacy went down the social ladder and the resources of writing became accessible and familiar to representatives of various plebeian groups.⁴⁰¹ To illustrate the process of accommodation and appropriation of writing in the context of dispute settlement, it is relevant to take a closer look at some important and interrelated aspects of the legal process – the uses of the written documents and court registers.

Similar to the cases of *mala, inordinata citacio* analyzed above (see the pages devoted to letters of summons in the chapter on the legal process), the uses and misuses of registers provide a good example of how the knowledge of writing and expertise in legal documents became inscribed in the politics of dispute. Due to its role as the principal site of the preservation of written evidence and verification, court registers emerged as the main reservoir of social memory and developed into one of the elements of noble identity in the course of the fifteenth century. They framed noble identity by inscribing individuals, families, and signs of their daily business into a particular local context. Reference to a specific court register was usually employed to testify that one belonged to particular local community – a fundamental form of organization in the lives of nobles. This local identity, manifested and supported through constant recourse to the register, was frequently invoked in disputes.

The Polish legal process followed the well-known rule saying that *actor sequitur forum rei*. This meant that the law worked to privilege the defendant in regard to the choice of the court where citation was to be brought and the legal case judged. In Polish medieval law this rule was mainly understood by the reference to the defendant's territorial belonging. The

⁴⁰¹ A very nice piece of evidence showing the circulation of writs among the members of the lower strata of the Galician society is provided by the legal record from the Sanok castle register, dated on March 18, 1447. According to the text of the record two men of plebeian origin the smith Clymek from Prosek and Mathwey from Boiska agreed to serve as sureties of certain Dmytr, peasant from Wolyca. The text goes on saying that mentioned sureties were called to guarantee that Dmytr would bring in four weeks to the Sanok castle the writ confirming the fact of the purchase of some fish by the mentioned Dmytr in the town Sambir. See AGZ, vol. 11, no. 2399.

defendant had the right to respond primarily in the court of the district or the land where he resided and where his patrimony was located. A plea or a citation brought to a court situated outside the district of the defendant's residence was regarded as invalid, and the plaintiff himself was liable for the penalty. Some exception to this rule existed in Polish medieval law. These exceptions embraced primarily legal cases that concerned the most notorious criminal offenses and came under the jurisdiction of the so-called captain's four paragraphs. An offender was obliged to respond before the captain and the court of the place where the crime had been committed. Legal cases that came directly to the consideration of the king or the land assembly (*colloquia*) also belonged to this group.

In general, appeals for the "proper" district were widely used by litigants, who sought to dismiss summons from courts of lands where they did not feel sure enough to win the case. One stages of a dispute between two branches of the Voyutycki family exemplifies this litigious strategy. The family originally settled in Przemysl land, and one branch later migrated to neighbouring L'viv land. The relevant record of dispute was put into the Przemysl land court register under the year 1475. One of disputing groups requested the judges to allow the case to be transferred to the court of L'viv land. Records of tax payments and copies of the purchases of the disputed property were consulted in the register of the L'viv land court to prove the belonging of that branch of the family to the land's noble community.⁴⁰²

The case between Tyczka and Czajkowski is also revealing on the point of litigants benefiting from the opportunities created by the establishment of the court register; the case highlights, in particular, the litigants' capacity and shrewdness in utilizing the registers for a systematic check of the oral or written statements of proof. The functioning of the court registers turned out to be crucial for transforming the whole framework of factual reference and the system of proof operating in court proceedings. The case testifies to a wide spread practice in which the veracity of a party's oral statements and arguments spoken during court debates were subjected to control and challenged by comparing them with the texts of pleading or contracts, written in court registers earlier.

Cross-examination of legal writings with the assistance of the register encompassed a broad spectrum of texts related to various procedures, involved in the pursuit of a dispute. This kind of scrutiny sometimes helped to identify considerable discrepancies between two

⁴⁰² Ibid., vol. 18, no. 631 (March 7, 1475): "Nob. Stanislaus Capustka cum procuratorio dixit: ... ut ipsos velitis remittere cum pena ad distr. Leopol. Exadverso Osswyńczym dixit: quo diceret districtum. Capustka respondit: ipsi docent et approbant regestrum, quia ibi in Leopoli semper contributiones et fumaes regales dant et etiam docent, quia ibi Leopoli emptio dictorum bonorum in libro terr. inscripta est. Sed quia nec regestra predicta nec literas aliaquas dicte empcionis coram iudicio reproduxerunt, igitur domi. Iudex et subiudex prehabito consilio ipsorum assessorum [de]creverunt, quia hic in isto districtu respondere debent."

versions of a text, that is, between the copy of a charter, which belonged to one of the disputants and was presented by him/her in the court as a legal proof, and the copy, which had been inserted in the register earlier.⁴⁰³ In similar fashion, the content of the text of the first citation, taken from the register, could be surveyed to check the facts presented or compared with the text of the second citation to refute an allegation of an adversary. The evidence shows that the copies of citation extracted from the register were also used to check on the testimonies of the witnesses called to support litigant's statement. Differences between factual statements presented in the text of a citation and a witness's testimony were considered enough to dismiss claims of the opponent and cancel the lawsuit.⁴⁰⁴ Making recourse to the court register legitimized the claim of the litigant who intended to oppose the decision of the court judges. In one case, for instance, the litigant rejected obedience to the court's attempt to settle the dispute, which favored his opponent, on the grounds that the terms of settlement ran against the record of the agreement that the disputants had made previously and inserted in the court register (*et non est sibi factam iuxta inscriptionem libri*).⁴⁰⁵ Some litigants went so far in their challenge of court judgments as to claim their readiness to prove, with the assistance of the register, the ignorance and the oblivion of the judges (*quod iudicium recepit ex ignorantia et oblivione*), who had first adjudicated them to be free from advanced charges, but then "forgot" and began to judge their case again.⁴⁰⁶ It was also common to debate the proper or improper way of putting down or extracting the needed document from the register. During such debates the litigants called attention to the absence of the judge from the court at

⁴⁰³ In 1463 Jan Budzywoy required from Jan Karas payment of debt in amount of 40 marks. In support of his claim he presented to the court the charter, in which the mentioned amount of debt had been indicated. However, upon consulting the register, that contained the copy of the agreement between two parties, it became revealed that the sum of debt comprised not forty but thirty marks. Afterwards Jan Karas condemned the Budzywoy's letter as false. See Ibid., vol. 13, no. 5236 (September 6, 1463). Consult also Ibid., vol. 14, no. 2914 (August 10, 1453).

⁴⁰⁴ Ibid., vol. 17, no. 2782 (December 7, 1495): "Iudicium decrevit, ex quo doms. Nicolaus Zavyanza prout obtulerat se probaturum, quod debuit statuere testes iuxta inscriptionem superius in actis contentam quod videlicet obdestinabat dom. Iohannem Fredro de Pleschowicze iuxta proposicionem et conversionem eorum et testis unus nobil. Demettrius testificatus est, quia locatus fuerat per eundem nobil. Zavyanza in iudicio, sed non recognovit, quod equitaret in legacione et nuncio ad ipsum Fredro. Et Fredro memoriale posuit in hec verba: ex quo non probavit sufficienter quia testis aliter testificatus est et aliter acta canunt et petivit sibi adiudicari equos cum curru illumque pena puniri Iudicium memoriali accepto equos pariter cum curru in duabus septimanis ita bonos sicut tres marce adiudicavit restitutionem ipsi Iohanni per Zavyanza ipsumque zavyanza punivit pena trium marc. parti et iudicio alia. Memoriale iudicium receipt."

⁴⁰⁵ Ibid., vol. 14, no. 2715 (November 20, 1452).

⁴⁰⁶ Ibid., vol. 18, no. 3901 (June 4, 1499): "Postmodum veniens Iwaszko Blazowsky cum causam suam predicta Fyedka Baranyeczka que debuit iurare non dans neque coram iure commitens, posuit memoriale, volens evadere pro decem marcis et totidem damni, posteris alias naposzlyadkv, quod iudicium recepit ex ignorantia et oblivione, et sibi eadem evasio est inscripta in acta."

the time of recording or questioned the hand of the court notary responsible for writing the document into the register.⁴⁰⁷

The question of seals, which had to be attached to the copies issued, was the point on which the parties focused perhaps the most often in such debates on expertise. The legal practice in the castle court as well as statutory law stipulated that copies of documents which came out of the court chancelleries and were based on the registers must be substantiated by the seals of the men supervising the court activity and register: the captain as the head of the castle court, the court judge, the vice-judge.⁴⁰⁸ The rules were not strictly applied, however, and disputants before the court judges often questioned the acceptability of charters which were not sealed according to the prescribed norms. Documents submitted to the court as legal proof in disputes sometimes lacked some necessary seals of the court officials. This gave opponents an occasion for dismissing the charter presented. For instance, debate erupted on the point of whether a charter with the seal of the vice-captain, suspended on the parchment instead of that of the captains, could be considered legitimate enough to be used in a dispute. The party who presented the document sealed in such an incorrect way argued nevertheless for its validity on the grounds that the case's settlement was commissioned by the captain himself to his assistant – the vice-captain.⁴⁰⁹ In a debate over seals a party could support his/her position by resorting to other sorts of expertise of legal writing. In one case the disputant presented the charter to the court sealed only by the court judge, but lacking the seal of the vice-judge; he claimed his readiness to prove its authenticity by checking the handwriting of the court notary responsible for issuing the copy.⁴¹⁰ Those who held charters sealed in an improper way might also succeed by swearing the oath or calling on the support of witnesses' testimonies. Recourse to supernatural support in the form of oath-taking was especially needed, or even required, by the opposing party if the charter presented had only damaged seal none at all.⁴¹¹

⁴⁰⁷ Ibid., vol. 17, no. 2796 (January 11, 1496): "a quo nobil. Andreas Rosborsky stans tanquam procurator, cui causam suam coram iure commiserat personaliter, controversiam non intrando dixit: domine Iudex, hec res minus iuste et indirecte in librum intravit et hoc ideo, quia non est manus Notarii castrensi neque Iudex castri pro tempore illo fuit neque idem nobil. Adam Lowcze personaliter coram iure erat."

⁴⁰⁸ See for example the words of one of the procurators concerning the proper way of sealing the issued charters: "litere hujusmodi nihil probant, quia non alie littere debent teneri in iure nisi ille, que sigillis Regie Maiestatis et Capitanei aut Iudicis et Subiudicis terrarum essent sigillate et roborate." In Ibid., vol. 18, no. 4340 (March 4, 1505).

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid., vol. 15, no. 2755 (December 15, 1498): "Pyrka dixit: domine Iudex, ista litera non est sifficiens, quia tantum Iudicis sigillum habet et subiudicis non. Et procurator Andree dixit: hic in ista litera est manus Notarii terrestres, qui protunc hic sedit et si difimas hanc literam, ego volo ipsam subiuvare iuxta iuris formam."

⁴¹¹ Consider the following example: in the record from 1442, the Ruthenian priest Vasylo of Peredrymkyh while passing the charter on the part of the village Nahorci to a certain woman Panka had to swear oath with

The usage of registers evolved into the most significant instrument of power relations in the context of the disputing process. Access to the court register, the possibility of writing down a protest, appeal or summons, and efforts to assert one's power over the output of the court chancelleries became the part of power game, showing one's empowerment to control and manipulate the resources of the law in litigation. As for the power to manipulate the registers in the disputing process, the sources are particularly revealing on the role of court officials charged with the responsibility of controlling the work of the court chancelleries and supervising the input and output of documents into and out of the registers. The sources sometimes offer insights into the court notary's ability to decline or accept the request to write down a protest or summons in the register and thus provide a legitimate basis for the next phase of the dispute. Judges' arbitrary use of registers sometimes resulted in accusations of their involvement by one of the disputing parties or partial judgment.⁴¹² Some nobles voiced their protest against the abuse of the registers by court judges in a straightforward way. In one revealing example, Andrii Pankratovych of Czajkowychi, noble of Przemyśl land, advanced an accusation against the L'viv land judge, Jan Golambek of Zymnawoda, claiming that the judge *male et false littere exirent de iudicio terrestri*. However, Golambek managed to win over the opinion of local nobility, who agreed to confirm that he was not guilty of such charges: *prout nobiles super eum famabant, ut esset iustus istius negotii infamie*.⁴¹³

In this regard one of the most illuminating cases is provided by the record of the controversy between Jan of Sienno, the captain of Olesko, and Hlibko of Chylchyci, noble of the Olesko district. In 1449, Hlibko brought a case against Jan Oleski to the L'viv castle court, blaming the latter for unjust seizure of two oxen. Responding to the accusation, Jan Oleski stated that the said oxen had been taken by him as a fine that had been adjudicated upon Hlibko in the local castle court of Olesko. To support his statement, he produced minutes of the judgment, issued by the chancellery of the court in Olesko. Hlibko countered this claim by uttering the opinion that Jan of Sienno, as a head of the court in Olesko, "could write down in the register, what he wanted" (*potuisti facere scribere, quid voluisti*). It was without doubt a very strong allegation. In his reply Oleski could not even help concealing his

another priest before the judges of the Lviv castle court to the fact that the aforementioned charter had been given to his father without the seal, see Ibid., vol. 14, no. 368 (March 9, 1442). For making usage of the witnesses to confirm the validity of damaged seals see: Ibid., vol. 11, no. 35 (March 18, 1424).

⁴¹² Ibid., vol. 18, no. 1165 (December 1, 1478).

⁴¹³ Ibid., vol. 14, no. 2042 (April 5, 1448).

bewilderment at such dire talk, which was noted by the scribe of the controversy in the following words: “and you vigorously discredit the register” (*et forte derogas acta*).⁴¹⁴

It is striking to find out how similar Hlibko of Chylchyci’s arguments sounded to those of Nicolas Czajkowski. In both cases the litigants explicitly expressed their doubt about the validity of the written evidence, presented by their opponents. In both cases the litigants articulated with particular clarity their suspicion on the point of their rivals’ ability to control the output of the documents from the register and turn it to their benefit in the dispute. The vituperation of written proof found in those two cases was by no means exceptional in the disputing practice of the fifteenth century Rus’ palatinate. The same sort of worries about the veracity of documents combined with charges brought against the register and the judge are reported in the account of the dispute between Peter Mzurowski and Jan Hermanowski. The dispute was held in the Przemyśl land court in 1447. Peter Mzurowski inculpated the charter of Jan Hermanowski which the latter produced in the court as a proof of Mzurowski’s obligation to pay thirty marks for surety taken on behalf of another local nobleman Stanislas Stroski. Mzurowski claimed that the document was issued by the court chancellery in the wrong way (*quia ista litera exivit infideliter vulgariter nyeweyrnye wised*) and therefore could not be estimated as trustworthy (*est idem litera infidelis*). To confront this challenge, Jan Hermanowski set out to expurgate the charter by consulting the register in which the text of the agreement had been previously put down. The comparison of the charter with the register proved the correctness of Hermanowski’s claim. It did not stop Mzurowski, however, who afterwards inculpated the register, stating that the text of the agreement was inscribed in the register in the incorrect form. When the judge wanted to expurgate the register Mzurowski went further and accused the judge by saying that the judge had allowed the charter to be issued incorrectly. The outcome of the debate was the prorogation of the case for the next court hearing in order to have time to take counsel of the body of dignitaries who were to attend the session of the land judicial assembly (*colloquia*) in Vyshnya.⁴¹⁵ Underlying such

⁴¹⁴ Ibid., no. 2183 (January 31, 1449).

⁴¹⁵ Ibid., vol. 13, no. 3138 (January 22, 1447): “Nob. Iohannes de Hermanowicze proposuit contra nob. Petrum Mzurowski tali condicione videlicet pro intercessionem pro Stanislao Stroski pro novem kmethonibus in Knezicze obligatis in triginta marcis, si cum literam posuit super eandem obligationem idem Iohannes, tunc Petrus eadem infamavit vulgariter przyganyl dicens, quia ista litera exivit infideliter vulgariter nyeweyrnye wysed et est idem litera infidelis. Tandem Iohannes libro incepit expurgare et liber terrestris concordatus est cum eadem litera taliter, prout in eadem litera scriptum est. Et Petrus eciam librum infamavit dicens, quia et in libro infideliter est inscriptum Nyeweyerne yest pysano. Et Iudex sedens in presencia volebat librum expurgare et ipse eciam Iudicem infamavit dicens, quia infidelicet literam de libro fecit dare. Idcirco Camararii eandem causam receperunt ad iinterrogandum ad dominos in colloquio Wislicien. Et terminum habent ad alios terminos. Et in terminis prox. debent ipsos sentenciare.”

defamation of letters, registers, and judges was a suspicion of fraud on the part of judges of the court, who could plot together with an adversary with the aim of falsifying the documents.

The vituperation of letters appeared not only as a corollary or reaction to an increase in abuses of writing in the course of disputes, reflecting social distrust or anxieties. It seems that the practice itself could easily be turned to systematic abuse by the litigants. Thus, the vituperation of charters appeared as a disputing pattern that contributed to a rich repertoire of crafty strategies of litigation. To question the validity of the charter first, but withdraw the accusation and recognize the document as genuine in the following stage of the lawsuit was a move employed in the fifteenth century practice of dispute.⁴¹⁶ Cases in which the litigants failed in their accusation against written proof and their rivals succeeded in proving the validity of the defamed charters also suggests that distrust of writing could be pragmatically played with as a deliberate stratagem in the disputing game. For instance, a record of the Przemyśl land court from 1438 relates that following the mandate which had passed during the gathering of the local diet in Mostyska, Frederick of Jacimierz, nobleman of Sanok land, expurgated himself and his written document, which he used in his dispute with a certain Dorothea Komanowa. The expurgation was supported by the assistance of seven witnesses, recruited among local nobles. The witnesses testified under oath that Frederick of Jacimierz had not invited the cleric to his house, and had not ordered him to compose false documents which could be damaging for other men.⁴¹⁷ From an earlier record inserted in the Sanok castle court's register and dated November 25, 1435 one can learn that the first charges, advanced by the attorney of the said Komanowa against the charter of Frederick, were built on another sort of suspicions. The rivals of Frederick doubted whether the charter had ever been issued by the court chancellery. According to this suspicion, the charter lacked the judge's seal, which should have been suspended next to the captain's seal.⁴¹⁸

It is interesting to note that a decade later Frederick of Jacimierz resorted to the same disputing strategy in his lawsuit with Margaret of Bolestraszice. Frederick of Jacimierz refused to pay to Margaret the amount of four hundred marks, which he had pledged in the

⁴¹⁶ Ibid., vol. 13, no. 1481 (January 2, 1441): "Znyn literam acceptavit alias spravil, quam prius increpavit dicens, quia est bona litera." Ibid., no. 1513 (January 30, 1441): "Stanko de Chlopicz subcubit penam iudicio tres marcas, quia literam increpavit, post ea ipsam in iudicio solus approbavit, eam esse bonam et veram." See also the document of the concordance between Thomas Lopaczenski and Stanislas Czelatycki from 1476. By the terms of the concordance Czelatycki acknowledged to the veracity of the Lopaczenski's letter of mortgage, which he had previously vituperated as false, see Ibid., vol. 18, no. 833 (February 8, 1476).

⁴¹⁷ Ibid., vol. 13, no. 803 (February 24, 1438): "ita nos Deus adiuvat et s. Crux, quod Fridrich predictus de Iaczimirz clericum non recepit in domum suam et non fecit sibi literas falsas scribere in membrane, que essent nocive alicui persone vel ad lucrum vel ad perdicionem."

⁴¹⁸ Ibid., vol. 11, no. 757.

agreement between himself and Margaret. Frederick supported his denial by defaming the letter of pledge, which contained the mention of this sum and which Margaret produced in the court to prove the rightness of her claims. In his words, the document presented by Margaret, did not agree in its content with the copy in the court register. Upon the vituperation of the document the judges read both Margaret's and the register's copies aloud to check on their contents on the point of concordance. In the sentence the court judges confirmed the concordance of both copies and adjudicated the case to Margaret. However, this did not mean the end of the lawsuit. After that both copies underwent the procedure of comparison twice more by being read aloud and discussed. The second time it was during the proceedings of the king's court held at the Diet in Lublin. There the king, who stood at the head of the gathered lords, confirmed by his verdict the correctness of the previous sentence of the local land court in Przemyśl. Then both letters were again sent back to Przemyśl for the consideration of the local land court. Once more the reading aloud and expertise of both copies was set out and the final judgment (*sentential deffinitiva*) was passed in favour of Margaret.⁴¹⁹ In general, such cases testify to the existence of a pattern in the dispute process which played on the ambiguous attitude and even mistrust in writing on part of some litigants.

There is a certain danger of one-sided and oversimplified interpretation in considering the multiple cases of the examination of the authenticity of written documents as only a sign of the advanced and sophisticated skills of the art of charters' critique that evolved under the influence of the rapidly growing sphere of pragmatic literacy. The cases of *vituperatio litterae* show that mustering the usage of written documents in the disputing process sharpened the awareness of opportunities for abusing and manipulating the written word in the legal context. The practice of the vituperation of charters also suggests that the perception of writing in Galician society was characterized by anxiety and distrust towards written word. This spread of the feeling of distrust was most likely due to the strong dependence of the legal process and litigation on the oral means of transmission. This feeling of distrust towards writing as well as manipulation of the fears connected with the uses of writing should be situated at the crossroads of both the written and oral modes of transmission utilized in administering justice in the fifteenth century Galicia.

Oral transmission mediated the presentation of written evidence in the court in several significant ways. In order to obtain a legitimate meaning of legal proof, the written document had first to be vocalized, that is, read aloud in the court room, and exposed to the judgment

⁴¹⁹ Ibid., vol. 13, no. 3717 (November 8, 1448); Ibid., no. 3771 (December 4, 1448).

and consideration of the noblemen present in the court. This suggests that the meanings and interpretation of written evidence in the courts were elicited as a result of the public debate held in the courtroom. This made the presentation of the written text too contingent on the oral, performative context of case hearings.⁴²⁰ This performative dimension, found in nobles' attitudes towards writing, is highly important for understanding how the use of written documents was subjected to and governed by a set of sometimes odd and strictly formalistic rules of conduct in presenting proofs and exchanging arguments in the courtroom. The sources are clear on the point of how the usage of writing was deeply embedded in the formalistic structure of the legal process. Nobles were perfectly aware of this and utilized any opportunity opened by the dependence of writing on the rituals and formulas of oral performance. It is worth noting in this regard that debates over the rules of conduct and of the presentation of cases mattered sometimes more to the parties and judges than the factual evidence, which gave rise to conflict.

The procedure of reading charters aloud also involved a problem of knowledge, understanding and interpretation of the Latin language in general and Latin judicial terminology in particular. The evidence suggests that understanding of the Latin text of charters by disputing parties could be wrong or sometimes differ substantially from the real content of a document. The sources reveal that due to a poor knowledge of Latin some litigants were not always sure and correct on the content of documents that had been issued in the court by its officials in the previous phases of dispute. For instance, the record of the dispute between Stanislas Kryowski and Nicolas Mzurowski, written in the Przemyśl castle register on September 5, 1491, gives information about the unusual controversy between these two nobles.⁴²¹ The parties varied in opinions concerning the type of accusation in the letter of summons by which Mzurowski sued Kryowski to respond to before the court. Kryowski claimed that the letter of summons contained no mention of the violent assault on a private house. Therefore, he saw it legitimate to appeal to the land court, because according to the law the case did not belong to the castle jurisdiction. Instead, Mzurowski insisted that the text of summons classified the violent conduct of Kryowski as a violent assault on the house and thus he was liable for the penalty of the castle court. Both litigants presented their copies of the summons for the scrutiny by the court officials. At this point comes the most interesting

⁴²⁰ On this aspect of the interrelation of the oral and textual in the context of the medieval disputes see especially Patrick Geary, "Oblivion between Orality and Textuality", in *Medieval Concepts of the Past. Ritual, Memory, Historiography*, eds. Gerd Althoff, Johannes Fried, and Patrick J. Geary (Cambridge: Cambridge University Press, 2002), 111-122.

⁴²¹ AGZ, vol. 17, no. 2404.

moment of the controversy. It turned out that Kryowski was mistaken concerning the content of the document he had in his possession. The summons indeed made reference to the violent assault.

Another important aspect of the interplay of textuality and orality in court was that the questioning of written evidence resulted in altering the framework of proof in the dispute. It meant a shift in preference from the written to the oral means of proof. The institution of oath-helpers, whose testimonies were widely used in the court to support vituperated written evidence contained in the written documents, was perhaps the clearest manifestation of this dependence.⁴²² But the repertoire of oral techniques of proof and transmission was by no means restricted to witnesses' testimonies. The sources, for example, make reference to material objects used to memorize and strengthen legal actions or claims grounded on written evidence. The legal record of the dispute between Sonka of Stanymyr and Nicolas Slappa from 1453 is particularly revealing in this regard.⁴²³ Blamed for the death of Sonka's child by cutting off the cords of the cradle, Nicolas Slappa wanted to escape judgment by referring to his ignorance of the lawsuit. He insisted that he had never received the letter of summons to the court to respond to Sonka's allegation. However, the court bailiff's testimony, given in court, contradicted Slappa's statement. In the course of his interrogation by the judges, the bailiff confirmed the fact of the delivery of the summons. In support of his recognizance, the bailiff produced before the court a piece of wood (*signum*) which he had cut off while summoning Nicolas to the court session (*Ministerialis recognovit, quia cittavit Nicolaum et signum ostendit, quod excidit, dum eundem Nicolaum cittavit*). In their turn, the judges ordered the bailiff to prove his statement. According to the court decision, the bailiff was obliged to visit Nicolas' estate again and re-apply the piece of wood to the place from where it had been felled. Afterwards he had to decide whether the piece fitted or not.⁴²⁴

In general, it might be suggested that the kind of mistrust that was expressed in the practice of vituperation of written documents was inherent in a worldview still deeply rooted in oral culture. It seems that in fifteenth-century Galicia lasting and firm relationships could not be built upon the power of the written document alone without having permanent recourse to the resources of oral transmission and being open to a ceaseless process of negotiation and

⁴²² Ibid., vol. 13, no. 1373 (December 5, 1440): "Hryn debet literam supportare sex testibus om quatuor septimanis, quia Stanko increpavit ipsius litere asserens ipsam falsam." Ibid., no. 1571 (January 9, 1441): "Symek ministerialis aquisivit iure XX marcas super Vaskone de Premisla et induxit testes super eodem debito, qui iuramento literam supportaverunt, quia Vasko literam increpavit."

⁴²³ Ibid., vol. 14, no. 2804 (April 21, 1453).

⁴²⁴ Ibid.: "ministerialis debet equitare ad Nicolaum et applicare signum ligneum excisum in illum locum, ubi excidit et in duabus septimanis ministerialis debet recognoscere, si signum conveniat loco, an non."

adjustment every time one of the parties involved felt it necessary. Within this culture of mistrust of written proof, the uses of the vituperation of documents were endowed with certain degree of legitimacy and generated an incessant demand for oral testimonies necessary to support written documents.

Chapter 5 – Royal captains and the administration of justice

5.1 Captains and the system of governance in the Late Medieval Kingdom of Poland

The office of the royal captain (Polish - *starosta*) represented the key element in the administration of justice in the late medieval Kingdom of Poland. Royal captains appeared in Poland at the beginning of the fourteenth century during the reign of the Přemyslid king, Wenceslas II (1291-1305). The office of a captain was first instituted in the region of Great Poland during the reign of the said Wenceslas II and his successor, Władysław Lokietek. In Little Poland the office of a captain was established only after the death of Casimir the Great.

The gradual process of the centralization of the structures of power that took place in the Kingdom of Poland throughout the fourteenth century transformed the office of captain into one of the most effective tools in the hands of the kings for the control over provinces. In the fourteenth-century it was captains of the Great Poland, who were known for their broad competence. As royal governors, the captains were invested with the broad power to organize the defense of the province, and stand at the head of the province's nobility during military campaigns. They were also authorized to levy taxes and manage the royal estates. The proclamation and execution of royal mandates, the jurisdiction over the nobility of the province, and the enforcement of law and court's sentences belonged to the competence of the captains as well.⁴²⁵ This broad judicial and police authority, concentrated in the hands of the captains, was nicely described by the fourteenth-century Polish chronicler Jan Długosz of Czersk. He characterized the captains as *defensores pacis et tranquillitates zelatores, predonum atque forum persecutores*.⁴²⁶

In contrast to Great Polish captains, the power of the captains in Little Poland was much more restricted. In the fourteenth century Little Polish captains neither enjoyed the police competence in prosecuting crimes (these functions were reserved for the special royal justices), nor they played a significant role in the jurisdiction over the local nobility. Their

⁴²⁵ For an overview of the history of the office of the captain in the late medieval Poland consult the out-of-date study by Stanisław Kutrzeba, *Starostowie, ich początek i rozwój do końca XIV wieku* (Captains, their beginnings and development until the end of the fourteenth century) (Cracow, 1903). Valuable observations about the appearance and competence of captains are contained in the informative article by Antoni Gąsiorowski, "Początki sądów grodzkich w średniowiecznej Polsce," *Czasopiśmo Prawno-Historyczne* 26, no. 2 (1974): esp. 59-65. The short history of the formation of the office of captain in medieval Poland can be also found in the recent valuable study by Janusz Łosowski, *Kancelaria grodzka chełmska od XIV do XVIII wieku* (The chancellery of the Chełm castle court from the fourteenth to the eighteenth century), (Lublin: , 2004), esp. 33-40.

⁴²⁶ Stanisław Kutrzeba, *Starostowie*, 41.

role was mainly confined to the management of the royal estate that pertained to their single castle and to the administration of some judicial matters that were not covered by jurisdiction of the noble assemblies and courts.

A special term, *brachium regale* (the royal arm), which was used to designate the office of the royal captain in contemporary documents, clearly expressed the high prestige of the captains. By invoking the language of a bodily metaphor it stressed the captain's closeness to the person of the king. The high position of captains was also well reflected in the Statutes of Casimir the Great. According to them, a person who dared to unsheathe a sword before the captain was to be punished under the same penalty as for the same offense committed in the presence of the king. Two centuries later Martin Kromer still wrote about royal captains in a similar fashion. He presented them as the principle guardians and defenders of the peace and order within the borders of the districts and provinces assigned to them. He further pointed out that captains were responsible for prosecuting acts of violence ruthlessly and for purging the land of robbers and criminals. According to Kramer, because of these tasks the captains possessed broad judicial and executive power not only in relation to the villagers and townsmen, but also to members of the nobility.⁴²⁷ The significance of the office of captains in the system of governance was also emphasized constantly in the privileges for the noble estate issued by the kings of the Anjou and Jagiello dynasties throughout the fourteenth and fifteenth centuries. The privileges repeatedly mention the kings' promise, exerted from the rulers by the nobility, not to confer the office of captain on foreigners.

During the fifteenth century the power of captains was framed by two significant social and institutional processes which stand in clear opposition to each other. On the one hand, one can discern evident signs of the further consolidation of the captains' authority. On the other hand, there were repeated legislative attempts to reduce the the captain's sphere of competence in favor of the institutions of noble self-government.

5. 2. Captains and the royal donation policy in the fifteenth-century

The captains' influence seems to have increased due to some important changes in the royal donation policy during the reign of the first two Jagellonian kings when during the first half of the fifteenth century, the institution of mortgaging royal estates became one of the chief sources of revenue for the royal court and one of the main tools for governing the state. The

⁴²⁷ Marcin Kromer, *Polska czyli o położeniu ludności, obyczajach, urządach i sprawach publicznych Królestwa Polskiego księgi dwie* (Poland, or the location, people, customs, offices and deeds of the Kingdom of Poland) (Olsztyn, 1984), 136.

institution of the mortgage was based on an agreement in which the debtor placed the object of the mortgage as collateral under the management of the creditor for a specified amount of money. Because in the fifteenth century the Polish kings experienced both increasing expenses and decreasing revenues, the estates belonging to the royal domain appeared to be ideal objects for mortgage transactions, providing the Polish monarchy with cash.⁴²⁸ On the other hand, investing in royal loans and receiving royal land in return resulted in a considerable change in the distribution of property and power in late medieval Poland, facilitating the upward mobility of nobles as well as the growth of the magnates' political predominance.⁴²⁹

The reign of Wladislas III (1434-1444) provides a particularly striking case in this history of mortgaging royal domains. It was exactly during his short rule that a large number of royal estates was mortgaged, becoming the main source of capital which the young king needed to cover the expenses for his continuous campaigns abroad and to reward the services of the Polish nobility.⁴³⁰ Suffice it to say that mortgages comprised approximately 60% of all known documents issued by King Wladislas III, which is especially notable compared to the number of mortgage documents available from the reign of his father, which amounted to only 25%.⁴³¹ The analysis of the king's creditors demonstrates that most royal loans were extended by high officials and people connected to the royal court through their service. Royal captains constituted the core of this group; they had either obtained the office as a reward for loans or added already existing amounts for which the captainships had been mortgaged to them earlier.

5.3 The captains' competence and its legislative regulation

As in case of the royal policy of the distribution of mortgages, the legislative regulation of the captains' power became especially visible during the reign of the Wladislas Jagiełło and his

⁴²⁸ The pattern of royal government, based on the mortgaging of royal estates became dominant all over Europe during the late Middle Ages. With regard to the spread of the pledges, a comparative perspective can be provided by the study of Hillay Zmora, who pointed out the importance of the pledge practice in the relationships between rulers and the nobility in late medieval Germany: Hillay Zmora, *State and Nobility in Early Modern Germany. The Knightly Feud in Franconia, 1440-1567* (Cambridge: Cambridge University Press, 1997), 42-61.

⁴²⁹ For a general overview of the pledge policy in late medieval Poland, see Anna Sucheni-Grabowska, *Odbudowa domeny królewskiej w Polsce 1504-1548* (The rebuilding of the royal domain in Poland in 1504-48) (Wrocław: Zakład Narodowy im. Ossolińskich, 1967), 20-31.

⁴³⁰ The history of the reign of Wladislas III in Hungary is presented in the detailed study of Jan Dąbrowski, *Władysław I Jagiełłończyk na Węgrzech (1440-1444)* (Wladislas I Jagiełłończyk in Hungary, 1440-44), (Warsaw: Wydawnictwo Kasy Pomocy dla osób pracujących na polu naukowym imienia Mianowskiego, 1923). The author also briefly discussed the devastating effect that the policy of Wladislas III had on the royal finances: Jan Dąbrowski, *Władysław I Jagiełłończyk*, 74, 78.

⁴³¹ Irena Sułkowska - Kurasiowa, *Dokumenty królewskie i ich funkcja w państwie Andagawenów i pierwszych Jagiellonów* (Royal documents of the state of Anjou and of the first Jagiellonias), (Warsaw, 1977), 45, 72.

followers. The earliest indication of this process is the Czerwinski privilege issued in 1422. One of its paragraphs stipulates that captains should have no right to confiscate nobles' estates without a sentence from the land court. Another paragraph was added to this one, which forbade the same person to occupy the posts of the captain and of the land judge simultaneously.⁴³²

The Statute of Warta from 1423 codified the judicial power of captains in the field of the criminal justice by promulgating it as the so-called "captain's four paragraphs." These paragraphs, which were listed as a codified norm for the first time in the Cracow privilege of 1420 and then confirmed in Warta in 1423, made captains responsible for prosecuting four major crimes - violent assaults on free roads, arson, violent raids on private houses, and rape. As usual for medieval law, the Statutes of Warta promulgated the four castle paragraphs as a statutory norm on the basis of existing customary practice. The formulation of the policing competence of captains in the form of the four captain's paragraphs can be found in the sources of Little Poland starting as early as the late fourteenth century.⁴³³ Some scholars have maintained that the reference to the four captain's paragraphs reflected the process of the gradual appropriation by Little Polish captains of responsibilities in the sphere of criminal justice that first belonged to justices (*justiciarii*, *oprawcy*).⁴³⁴ In this way the Statutes of Warta worked to diminish differences existing in the competence of the Great Polish and Little Polish captains.

The political and legal advances of the noble estate were confirmed by the following privileges of Brest (1425), Jedlno (1430) and Cracow (1433). Furthermore, these privileges listed a new, highly important, legal norm which concerned the captains' competence. They established that no noble was allowed to be put in jail if he had not previously been sentenced by the land court.⁴³⁵ This norm, which had an enduring effect on the Polish system of criminal

⁴³² VL, vol. 1, 37.1.

⁴³³ See VL, vol. 1, 34.2, "De causis quae soli Capitanei judicare possunt." For the importance of the four paragraphs of the Warta Statutes in the development of the Polish criminal system during the late medieval and early modern period, see: Karol Koranyi, "W sprawie genezy czterech artykułów starościnskih" (Concerning the origin of the four captain's paragraphs), *Sprawozdania Towarzystwa Naukowego we Lwowie* 9, no. 1 (1931): 19-22; Janusz Bardach, *Historia państwa i prawa Polski do połowy XV wieku*, 478.

⁴³⁴ Antoni Gąsiorowski, "Początki sądów grodzkich w średniowiecznej Polsce," 67-9, 71, has recently strongly emphasized that the criminal competence of a royal captain, regulated by the four captain's paragraphs, was established for the first time in Little Poland. According to him, this Little Polish version of captain's judicial power was different from the older model, existing in Great Poland. There, royal captains enjoyed much broader competence in regard to the life of the local noble community by presiding over land courts, and controlling the circulation of property. The Little Polish model of captains' judicial responsibility was further extended to other lands of the kingdom and gained significance throughout the kingdom during the first three decades of the fifteenth century. See also J Łosowski, *Kancelaria grodzka chełmska*, 36.

⁴³⁵ Consider, for instance, "statuta de libertatibus regnicolarum," issued by Wladislas Jagiełło in Jedlno in 1430, in VL, vol. 1, 41.2.

justice, was generally known in old Polish law as the principle *neminem captivabimus*. The power of captains was also a matter of concern in the privilege issued for the noble estate in Nieszawa in 1454. This privilege contained an prohibition against castellans and palatines holding the office of captain.⁴³⁶ During the next decades the nobility sought to put further restrictions on the judicial and policing power of captains. For instance, a provision promulgated at the Diet of 1468-9 envisaged that captains would be allowed to capture and punish notorious wrongdoers only after having held consultations with the palatine, castellan and other representatives of the local nobility.⁴³⁷ It must be noted that various provisions concerning the captains' power, which appeared in the noble privileges at different times faced serious difficulties in their implementation into practice. They were often declarations of intentions representing merely the program of diminishing the power of captains.⁴³⁸

While striving to set restraints on the captains' jurisdiction, the provisions of the royal privileges and statutes shed light on some spheres of legal process misused by captains. As usual, it were aspects of judicial practice, which came into the focus of the legislators for the first time and which had not been regulated by statute law before. In the absence of regulation by written statute norms, the captains laid claims to these fields of law by the force of custom. Royal edicts, issued at the diet held in Radom in 1505, offer interesting insights into the captains' encroachments in the exercise of justice. They speak of the range of complaints, which were advanced by the nobility of Great Poland against the excesses of captains' jurisdictions and presented to King Alexander. Amidst the amendments included in the king's decrees as a response to the nobles' grievances one can find a prohibition on adjudicating a case at the first hearing of the captain's court.⁴³⁹ To consider the first hearing of a case as the final one was, according to the text of the royal decree, to equate the authority of the captain's court to that of the king's. For, as the text further specifies, it was even unusual in cases judged before the king himself to deliver the final sentence at the first hearing. The decree

⁴³⁶ Consult the text of the confirmation of this privilege by King Jan Albert from 1496, in VL, vol. 1, 114.2, "In capitaneos non constituentur dignitarii."

⁴³⁷ The provisions of the diet were found and published by Antoni Gąsiorowski, "Uchwały piotrkowskie i nowokorczyńskie roku 1468" (Piotrków's and Nowy Korczyn's provisions from 1468), *Czasopiśmo Prawno-Historyczne* 20, no. 2 (1968), esp. 74. It can be assumed that this provision was issued in connection with the case of the execution of Włodek of Domaborz by the general captain of Great Poland, Peter of Szamotuły. It is reported that the case was debated at the Diet of 1468 and some noblemen raised voices of protest against the captain's "unlawful" (in their words) mode of conduct.

⁴³⁸ The example of this provision of the Diet of 1468 can be regarded as highly illuminating in this regard. As its publisher, A. Gąsiorowski has noted the only preserved version of the legislation of this diet is available in the court register of the minor castle Kcyn, located in Great Poland. This fact suggests that the provisions of the diet including the paragraph on the captains were never used in practice. See A. Gąsiorowski, "Uchwały piotrkowskie", 69. Consult also J. Łosowski, *Kancelaria grodzka chełmska*, 38.

⁴³⁹ VL, vol. 1, 137.2, "De primo termino iudicii Capitaneorum."

also mentions the unlicensed payments of ten marks that captains required from litigants who won the case in a captain's court and called for the captain's assistance (*brachium regale*) to be introduced onto the estate of the losing party.⁴⁴⁰ Yet another amendment concerned excessive captains' summons *ad querelam*, which are described in the text as particularly burdensome.⁴⁴¹ By his decree the king instituted the application of the summons *ad querelam* to two types of cases only – for the expulsion of women from property that they possessed as a dower; and for the recent crimes committed within the time of one year and six weeks. The Radom amendments also show that many features of captains' justice, which became subject of the revision in fifteenth-century legislation, bore a distinctively local character.

The amendments of the statute law explicitly tended to condemn these and other aspects of the captains' administration of justice as abuses of the law. The confirmation of the Statutes of Nieszawa by Jan Albert in 1496 relates other examples of the captains' misuses of the law. The Statutes of Nieszawa mentions the undue payments levied by captains on the occasion of transfers of property that remained undivided between relatives.⁴⁴² Other Statutes of Jan Albert from the same year forbade captains to hold sessions of the castle court in inappropriate places, which had been widely practiced in the previous period.⁴⁴³ The same Statutes prohibited captains from keeping the old registers of the castle courts in private places.⁴⁴⁴ This custom, which was reproved as running "against all law, justice and reasons of common equity," made it quite difficult for nobles to get access to such registers. Another consequence of such improper preservation was an increase in the price for receiving copies of the register's records.

This critical stance of the statute law provides one of the best glimpses into a broader sense of widespread discontent with the captains' jurisdiction in the fifteenth-century. In addition to the statute law, other sources supply evidence of the frequently voiced opinion, directed against captains, denouncing the general inefficiency of captain's justice, their negligence in policing crimes and maintaining social order. The letters by the Cracow Bishop

⁴⁴⁰ Ibid., "De salario Capitaneorum ab intromissione." The reprimand of this practice first appeared in the Piotrków Statutes of Jan Albert from 1493, see in *Jus Polonicum*, 329, # XIX, "De Solario capitanei ab introligacionibus non excipiendo."

⁴⁴¹ VL, vol. 1, 137.2, "De citacionibus Capitaneorum ad querelam." Summons *ad querelam* also became the subject of the royal regulation in the so-called "Consuetudines terrae Cracoviensis," confirmed by King Alexander in 1506. Here the application of a summons *ad querelam* was reserved for three situations – an expulsion of a widow from the dotal property; a discord between brothers, unable to divide familial property; or the expulsion from a peaceful possession of tenure. See Ibid., vol. 1, 149.1, "De literis per Capitaneos in tribus casibus ad querelam dandis."

⁴⁴² VL, vol. 1, 115.1, "De solariis capitaneorum a resignationibus fratrum indivisorum."

⁴⁴³ Ibid., 118.1, "De locis iudiciorum capitaneorum et quatuor articulis iudicandis."

⁴⁴⁴ Ibid., 127.2, "De servandis libris capitaneorum."

Zbigniew Oleśnicki from the 1440s are perhaps one of the most revealing pieces of evidence of such criticism. For instance, in one of his letters from 1442 Zbigniew Oleśnicki wrote to King Wladislas III: “The abuses and evildoings of those, whom Your Serenity had appointed as captains and officials, has overwhelmed all parts of the Kingdom so much that the clamor of the oppressed calls for the vindication from heaven.”⁴⁴⁵ In order to enhance the description of people’s suffering and the injustices that emerged as a result of the spread of such disorder and the inefficacy of the royal governors, Oleśnicki further addressed the king in language which imitated the Bible: “your people, like cattle, is pulled in the most barbarous manner into the perpetual servitude.”⁴⁴⁶ On the other hand, the Cracow bishop stressed that some inferior people, too, noticing the captains’ dullness and negligence in the exercise of justice, had started to exhibit contempt for captain’s authority and refused to obey their orders. Afterwards in his letter the bishop gave a short account of the enmity between Boleslas, the duke of Opole, and the family of Szafraniec, a powerful clan of Little Polish magnates. At this point Oleśnicki noted that this feud caused “great damage, and great dishonor” to the kingdom. He directly blamed the royal captains and the king himself for such a deplorable state of security and order:

but much greater was the laxity of those whom Your Serenity had left in the command of the administration of justice. They did not take care of correcting any wrongs, or defending the land before numerous invasions of enemies. Instead, by their dissemblance, they incite audacity and raise the spirit of the enemies of the Kingdom.⁴⁴⁷

A similar negative judgment can be also found in Oleśnicki’s letter addressed to Wladislas’ successor, Casimir IV, dated on September 27, 1448. Informing the king about the constant pillaging of the lands of the kingdom, exercised by the nobles from Wladzyn, the Cracow bishop maintained that “the captains and officials of Your Serenity took very little care for defending your Kingdom and your subjects.”⁴⁴⁸ The prevalence of such critical attitudes towards royal governors, charging them with the main responsibility for badly administered justice, provides another evidence of the period of the 1440s and 1450s as the time of the crisis in the administration of justice, of which I wrote in the first chapter.

⁴⁴⁵ *Codex epistolaris saeculi XV*, vol. 1, no. CXXI, 134: “...et eos, quos vestra serenitas illarum partium constituit capitaneos et rectores conviciis et maledictis quam plurimis obruant, vindictam, quae e caelo vocibus et clamoribus expostulent.”

⁴⁴⁶ *Ibid.*: “gens vestra quasi pecus barbarorum manu pellitur in perpetuam servitatem.”

⁴⁴⁷ *Ibid.*: “Magnum hoc damnum, maior ignominia, sed multa maior eorum, quod v. s. pro administratione regni nobis reliquit inadvertentia, qua plures hostium invasiones, nulla defensione, nulla repressione curarunt corrigere, quinimo sua dissimulatione hostes incitant, et animum illorum nutriunt ad audendum in dies maiora.”

⁴⁴⁸ *Ibid.*, no. LXVII, 73: “Et Capitanei atque officiales V. Serenitatis modicam curam adhibent pro defensione Regni vestry et vestrorum subditorum.”

5.4 Emergence of the office of captain in Galician Rus'

The appearance of royal captains in Galician Rus' was among the first and most tangible effects of the conquest of Galicia by the Poles.⁴⁴⁹ The earliest traces of the existence of royal captains in Galicia come from as early as the time of Casimir the Great. In 1351 there is the first mention of a royal captain of Galician Rus'. In the period of 1351 to 1372 the governance of the newly conquered lands of Galicia was in the hands of the general captain of Rus'. Designated in the sources as *capitaneus terrae Russiae*, or *capitaneus Russiae generalis*, the office of the general captain of Rus' seems to have been the only innovation introduced in the administrative structure of Galician Rus' during the reign of Casimir the Great and the following Hungarian rule. In that period of time the system of administration still preserved many features inherited from the time of the Halych-Volynian Principality. This concerned, for example, the group of lower-ranking officials subordinate to the general captain of Rus', which Galician Latin sources from the second half of the fourteenth century defined as *pallatini*, *castellani* or *burgrabii*. It is possible to speculate whether these officials represented, in fact, the institution of the *voievoda*, well-known from the time of Rurikids and Romanovychi states, and were responsible for governing the traditional administrative units, called *volost'*. L. Erlich has argued that most of the districts mentioned in Galician documents in the period from 1351 to 1387 were headed by such *voievodas*, but not by captains.⁴⁵⁰

⁴⁴⁹ My overview of the history of the office of captain during the first decades of the Polish and Hungarian rule in Galicia is based on the study by Ludwik Erlich, *Starostwa w Halickiem w stosunku do starostwa Lwowskiego w wiekach średnich (1350-1501)* (The office of the starosta in Halych and its relations to the office of the starosta in L'viv in the Middle Ages), (Lviv, 1914). Among other works touching on the problem of captains, it is worth mentioning Przemysław Dąbkowski, *Podział administracyjny wojewódstwa ruskiego i belzkiego w XV w.* (The administrative division of Rus' and Belz voievodships in the fifteenth century), (Lviv, 1939); Mykola Krykun, "Poshyrennia pol'skoho administratyvno-terytorial'noho ustroju na ukrainskykh zemliakh" (The spread of the Polish administrative-territorial model in the Ukrainian lands), *Problemy Sloviانوznavstva* 42 (1990): 24-32; Idem, "Zems'ki uriady na ukrainskykh zemliakh XV-XVIII st." (The land offices of the Ukrainian lands during the fifteenth to eighteenth centuries), in *Zapysky NTSh* 228 (1994): 65-122. Consider also valuable suggestions by Maciej Wilamowski, "Magnate Territories in Red Ruthenia in the Fourteenth and Fifteenth Centuries. Origin, Development, and Social Impact," in *On the Frontier of Latin Europe. Integration and Segregation in Red Ruthenia, 1350-1600 / An der Grenze des Lateinischen Europa. Integration und Segregation in Rotreußland, 1350-1600*, ed. Thomas Wunsch and Andrzej Janeczek, (Warsaw: Institute of Archeology and Ethnology of the Polish Academy of Sciences, 2004), 88-93. The problem of the emergence and functioning of the office of captain in the fifteenth-century Galician Rus' is also examined in J Łosowski, *Kancelaria grodzka chełmska*, 40-6.

⁴⁵⁰ Ludwik Erlich, *Starostwa w Halickiem*, 28. Consult also the valuable observations by Władysław Margasz in his discussion with Romuald Hube on the character of the administration of justice in Galician Rus' during the period before the introduction of the Polish law: Władysław Margasz, "W sprawie sądownictwa czerwonoruskiego przed 1435" (Concerning the administration of justice in Red Rus' before 1435), *Przegląd Powszechny* 6, vol. 21 (1889): 46-52. See also: Romuald Hube, "Wyrok lwowski z roku 1421," *Biblioteka umiejętności prawnych*, (Warsaw, 1888); Ksawery Liske, "Kilka uwag o sądownictwie czerwonoruskim" (Remarks about the administration of justice in Red Rus'), *Kwartalnik historyczny* 2 (1888): 388-399.

After the renewal of Polish dominance in Galicia in 1387, one can observe the process of dissemination of the office of captain. Following the conquest of 1387, royal captains appeared in Sanok, Halyč, and Przemyśl. They were established and started to function in those towns on a permanent basis. It is highly important to note that as a result of the multiplication of captains in Galician towns the authority of the general captain of Rus' was gradually shrinking and came to be virtually limited to L'viv land.

In the years from 1351 to 1430 the royal captains were of particular importance in relationships with the Galician landowning class. The crucial position of captains in regard to the local nobility is reflected, first of all, in their role as the principal agents of the royal government. To provide few examples of this aspect of the captains' competence, it can be noted that captains were responsible for the implementation of royal mandates to transfer nobles from one estate to another – a practice common in Galician Rus during the second half of the fourteenth and the beginning of the fifteenth century. Some captains went so far as daring to initiate and carry out their own donation policies. Evidence shows that captains had the power to grant royal estates to nobles: the grantees then had to take care of obtaining royal confirmation.⁴⁵¹

The figure of a captain stood out in the eyes of nobles as the most powerful and effective patron, capable of providing a stable channel of communication with the royal court. The captain's intervention was indispensable for a noble who wanted to obtain royal permission to sell a property granted earlier or to replace one noble estate with another.⁴⁵² The role of royal governors was also crucial in providing nobles with assistance in their quest for new estates from the king. Some royal donations explicitly mention that the endowment was made on the petition of the local captain.⁴⁵³ As a person entrusted with the defense of the borders of the province against Tatar raids, the captain could plead before the king for rewarding the nobles regarded as the most merit-worthy in the military campaigns.⁴⁵⁴ Moreover, the captains of Rus' lands successfully exploited their involvement in the defense against Tatars to stress their own peculiar merits before the Crown. Their military service was often presented to the kings with the demand for special distinction in the form of benefits and

⁴⁵¹ AGZ, vol. 1, no. VIII; Ibid., vol. 9, no. VI (January 4, 1397).

⁴⁵² Ibid., vol. 2, no. XXXVII (June 1, 1410); Ibid., vol. 9, no. XIII (October 31, 1404).

⁴⁵³ See, for instance, the donation charter of King Casimir the Great for Waclaw Gołuchowski saying that it was given "ad petitionem Militis Domini Ottonis Capitanei terre Russiae," in Ibid., vol. 2, no. II. For other similar cases, see: Ibid., vol. 8, no. LXVII.

⁴⁵⁴ Ibid., vol. 5, no. CXXXI (September 10, 1451).

grants. This image of the borderland military leaders was self-fashioned by the captains in their communication with kings.⁴⁵⁵

Institutional reforms in Galicia 1430-1434 marked a new stage in the development of the office of captain in the region. As noted above, as a consequence of the series of royal legislative acts issued in 1430-1434, the Ruthenian landowning elite obtained the corporate privileges and rights of the Polish nobility. Another important corollary of the privileges of 1430-1434 was that Galician Rus' became the Rus' palatinate, with its main administrative center in L'viv. The palatinate itself was sub-divided into four administrative-territorial units, called "lands" (*ziemie*) with their centers in L'viv, Halyč, Przemyśl, and Sanok. The lands, in turn, were divided into districts (*powiaty*). Captains were set up in each of the lands and districts.

5.5 *Iudicium terrestre in Sanok: Captains, nobility, and local justice in the 1420s-1430s*

The beginning of the captains' jurisdiction in Galicia, however, was not directly connected with the institution of castle courts and the four captain's paragraphs, as they were known in Little Poland in the early fifteenth century. Only later they were generally accepted as the only possible model of administration of justice by captains. The initial pattern of captains' jurisdiction functioning in Galicia before the 1430s reveals more similarity to the model that existed in Great Poland.⁴⁵⁶ Similar to late fourteenth century Great Poland, there were no separate castle courts in Galicia and local captains usually presided in the land courts. Like the captains of Great Poland, the captains of Galician Rus' enjoyed broad competence in the fields of administration, justice, taxes, and war.

This similarity in the captain's jurisdiction between Great Poland and Galician Rus' is well attested by the evidence of the captain's court proceedings, held in Sanok during the

⁴⁵⁵ See, for example, the request of Prince Sigismund from January 21, 1503, pleading before King Alexander for leaving Stanislas Chodecki in the possession of the L'viv captainship. The request stressed in particular the merits of the Chodecki family in the defence of the Rus' lands. The document mentions Stanislas' ancestors who perished in fights against the Tatars. See in *Akta Aleksandra, króla polskiego, Wielkiego księcia Litewskiego i t. D. (1501-1506)*, ed. Fryderyk Papée (Cracow, 1927), no. 144, pp. 225-226.

⁴⁵⁶ Antoni Gąsiorowski, "Początki sądów grodzkich w średniowiecznej Polsce," 69, footnote 57. The existence of the captain's jurisdiction in the Galicia before 1430-1434, which resembled that of Great Poland creates some difficulties in respect with the understanding of what did the term "Ruthenian law" really mean. Could it be, as the majority of scholars have contended until now, the legal norms and institutions that survived from the times of Halyč-Volynian Principality? This point of view is summarized in J Łosowski, *Kancelaria grodzka chełmska*, 43. Or could it be the specific configurations of local customs and practices that emerged already under the new political regimes in the period following the fall of the Halyč-Volynian polity? Similar to the case of the competence of the Galician captains, which imitated the model of Great Poland, this "Ruthenian law" could have been installed in Galicia by the rulers, to whom Galicia belonged started from the second half of the fourteenth century.

1420s. The evidence shows the Sanok captain as the head of the land court, which had jurisdiction over all members of the local noble community. The title of the Sanok captain, Scibor of Ogłędów, found in the document from 1402, illustrates this position of captains well. The captain calls himself *iudex iuris provincialis terrigenarum supremus*.⁴⁵⁷ Similar to the royal governors of Great Poland, the captains of Sanok land held the authority to settle the property disputes of local nobles and control the circulation of their property. Their right to intervene in the property relations of nobles was grounded on the fact that the captain's court in Sanok was the only institutional site where every possible kind of land transactions was made and noble land disputes were settled. The record of the Sanok court register from March 10, 1442, has been especially frequently invoked by scholars to illustrate this dimension of the power of the Sanok captains. It says that in "the time of the Ruthenian law" it was the custom to bring all cases and make all judicial records in the presence of captain: *tempore iuris Ruthenicalis erat moris inscriptiones facere coram capitaneis pro causis quibuscumque*.⁴⁵⁸

Another resemblance is revealed by the same name of the court, over which the Sanok captain presided. It was usually referred to in the register as *iudicium terrestre*, thus tending to highlight the idea of land representation in the process of judgment. The same holds for the phrasing of legal procedures involved in the court proceedings. The language they invoked constantly referred to the moment of communal engagement. It emphasized the need to consulting nobles while making a judgment or stressed the deficiency of noblemen during the court session while prorogating the cases for the next session. Some evidence clearly suggests that captains themselves were unable to proceed further with cases without submitting them to the consideration and approval of the nobles.⁴⁵⁹ Furthermore, according to the record's

⁴⁵⁷ AGZ, vol. 7, no. XXIII.

⁴⁵⁸ Ibid., vol. 11, no. 1445. For commentaries on this passage, see Władysław Margasz, „W sprawie sądownictwa czerwonoruskiego,” 41; Mykhaylo Hrushevs'kyj, *Istoriia Ukrainy-Rusy*, vol. 5, 311-312; Ivan Linnichenko, *Cherty iz istorii*, 17. It is interesting that traces of this Great Polish model of the captain's power can be detected in some other lands of Galician Rus' too. Consider, for example, the record of the Chełm land court from 1465. Giving a positive assessment of the legal validity of the local captain's document, dated by 1417, the judges specifically noted that at the time of the document's issue the land judge and vice-judge had not yet been established in Chełm land, but all legal cases and records were put before the captains: "iudex et subiudex terrestres non fuerunt in terra Chelmensi instituti sed omnes reformationes coram capitaneis reformabantur et agebantur." Quoted from Janusz Kurtyka, "Z dziejów walki szlachty ruskiej o równouprawnienie: represje lat 1426-1427 i sejmiki roku 1439" (From the history of the struggle of Rus' nobles for rights: the repressions of 1426-1427 and the diets of 1439), *Roczniki historyczne* 66 (2000), 84. This record is not mentioned by Janusz Łosowski in his study of the Chełm castle chancellor.

⁴⁵⁹ See, for example, the case of the prosecution, initiated by the Sanok captain Janusz of Kobylany against Hedwig, the wife of Frederick of Jacimierz in 1424. According to the captain's writ, the trial was postponed for the reason of the necessity "to proceed in this case according to law with the assistance of the native nobles" ("procedendum in causam coram terrigenis iudicialiter proponendo"). See: AGZ, vol. 11, no. 85 (August 9, 1424). It seems that A. Gąsiorowski is not correct in suggesting that the practice of sending cases for further consultation with nobles, frequently employed by captains, was a proof of the inferiority of the captain's court compared to the land court. Consult his "Początki sądów grodzkich w średniowiecznej Polsce," 70.

formulas, it was the captain or his deputy acting together with the body of the nobles present, in whose name the cases were heard and the sentences delivered.⁴⁶⁰

The communal implications of the captain's justice in Sanok castle in 1420-1430 can be further sharpened by examining the court composition of the captain's court in Sanok. The evidence of the Sanok court proceedings suggests that the court relied in its functioning on the support and collaboration with local political communities. The court records note a comparatively large number of representatives of the local nobility, who figured as assessors in the captain's court. They show that local nobles regularly came to assist the captain in administering justice, attended the court sessions as assessors and actively participated in the process of delivering verdicts. Some nobles found themselves in the group of assessors simply because they were attending that particular court session as litigants. For others, participation in court proceedings was considered a prestigious public function. It is perhaps no coincidence that the nobles who were called most frequently as assessors in the Sanok court proceedings in 1420s, like Mathias of Boyska, Sigismund of Srogow, Climaszko and Paul of Pobyedna, and Peter Smolicki were members of the most respectable and powerful families of the land. It is interesting that some of them, like Mathias of Boyska, regularly brought their sons to the court sessions too.⁴⁶¹ They perhaps regarded attendance at the court hearings as having an important socializing and educational effect on their sons. Some court sessions were especially well attended. Due to the multiplicity and high status of the participants, they evolved into a solemn manifestation of the unity of whole political community of the land.⁴⁶² The proceedings of the L'viv and Sanok courts, when attended by the high dignitaries of the kingdom, were also used to create or re-affirm links between the members of the power elites of the different lands of the kingdom.⁴⁶³

⁴⁶⁰ See for instance: "Nos Ianussius Capitaneus Sanocensis significamus et terrigene Sanocenses" in Ibid., vol. 11, no. 26 (February 15, 1424); "Idcirco nos iudex et terrigene iudicaliter diffinimus..." in Ibid., no. 244 (January 24, 1428); "Eodem die coram terrigenis nobilibus protunc presentibus litera Regie Maiestatis perlecta..." in Ibid., no. 227 (August 23, 1427); "Et quod si constituere doctos homines Fredericus non neglexerit, extunc emendam solvere tenebitur dictus Fredericus, quidquid terrigene decreverint" in Ibid., no. 208 (January 25, 1427).

⁴⁶¹ See for instance the mention of "Petrus filius Mathiasch de Boyska" in Ibid., no. XXII (July 1, 1424); no. XXVII (August 5, 1424); no. XLV (July 7, 1425); no. LI (August 25, 1425); no. LIII (September 13, 1425), and that of *Bal filius Mathiasch* in Ibid., no. XXXIII (October 14, 1424); no. LXXI (August 23, 1427).

⁴⁶² The session, dated on June 5, 1428, was attended by fifteen men, whose names were written down by the scribe. Among them, there were mentioned the Sanok captain, the Przemysl Catholic bishop, and some other *magnifici* and *strenui* nobles of the Sanok land. See: Ibid., no. LXXXIX.

⁴⁶³ The evidence of the L'viv court proceedings is especially telling in this regard. For example, the list of men, present at the court proceedings from September 5, 1440, includes not only the L'viv captain Rafael of Tarnow, but also the Cracow castellan and governor of the kingdom, Jan of Czyżow, and three other castellans – Vincent Szamotulski, Senko of Sennow, and Jan of Knyhynychi. See: Ibid., vol. 14, no. XXII. For other similar evidence see Ibid., no. CXLVIII (November 7, 1442); no. CCI (March 15, 1443); no. CCCXX (January 28, 1444); no. CCCXXIV (February 3, 1444); no. CCCXXX (February 26, 1444); no. CCCXCI (October 20, 1444).

The importance of the representatives of local communities in the captain's administration of justice was accompanied by the instability of court offices and changing court personal. Local noblemen were able to take responsibility of being an officer just for the duration of the one or two sessions. The evidence of the Sanok court demonstrates, for instance, that there was no permanent office of vice-captain in 1420s. Deputies of the captain were elected from the group of the most experienced and esteemed noblemen for times when the captain was absent.⁴⁶⁴ Thus, being the vice-captain meant to fulfill a kind of provisional communal obligation rather than to be an officer employed in the permanent service of the captain.

It is of some interest to compare the model of the Sanok *iudicium terrestre* of 1420s with the functioning of the later captains' castle courts of the Rus' palatinate. In chronological sequence, the first records of a castle court headed by a captain come from L'viv land starting from the 1440s. The evidence of the court proceedings of the L'viv castle court suggests that despite some new procedures and institutional elements adopted in the administration of captain's justice the role of the local noble community was regarded as indispensable. In contrast to the Sanok castle court of the 1420s, the vice-captains of the L'viv castle court in the 1440s were officers subject to the authority of the captain, who carried out their duties on a permanent basis. Parallel to the office of the vice-captains, however, there were also deputies of the captain elected for one or two sessions. Similar to the Sanok court, they were usually chosen from the influential nobles of the land and were named in the records as *locumtenentes* of the captain.⁴⁶⁵ Another feature remarkable in the L'viv castle court proceedings was that they were regularly attended by the judge and vice-judge of the land, that is, the heads of the land court and major representatives of the local noble self-government. The records seem to suggest that the judges of the land court actually presided at the castle court proceedings from time to time. Some evidence offers information that the captains delegated to the land judges specifically the power to try some castle cases.⁴⁶⁶ In general, the lower-ranking officials of the Sanok and L'viv courts seem to have been endowed

⁴⁶⁴ Clymashko of Pobyedna is the most frequently mentioned as fulfilling the duty of vice-captain of the Sanok castle. Other nobles were also occasionally called to serve as vice-captain, like Sigismund of Srogow in Ibid., vol. 11, no. XVI (May 27, 1424), and Peter, the advocate of Sanok in Ibid., no. LXVII (February 22, 1427).

⁴⁶⁵ In 1443-44 as *locumtenenti* of the captain, Peter of Sprowa, are mentioned: Andreas Malechowski in Ibid., vol. 14, no. CCXIX (May 3, 1443), Nicolas Gologorski in Ibid., no. CCXXVI (May 19, 1443), Senko of Siennow, the castellan of Lviv in Ibid., no. CCXLV (July 29, 1443), Peter Romanowski in Ibid., no. CCCLIV (May 23, 1444); no. CCCLXXVII (September 18, 1444).

⁴⁶⁶ Ibid., vol. 14, no. 3100 (April 30, 1454): "Nobil. Iaroslaus procurator a magnifico domino Andree Odrowansch de Sprowa Palatino et capitaneo Terre Russie generali attemptabat terminum contra nob. Petrum de Hrumpno pro eo, quia veluti tibi dederamus Iudicem dom. Stiborium terrestrem et alios quam plures dominos."

with quite a broad autonomy in trying cases. For instance, the officials of the Sanok court subordinate to the captain like the court judge, palatine, and vice-captain, are known to have been able not only to promulgate their own verdicts, but also to issue documents in their own names.⁴⁶⁷ They seemed to be able to do this without consulting the captain.

In general, the evidence from the court registers of L'viv and Sanok castles, if put under a more nuanced examination, seems to complicate the picture of the relationships between the captain and local nobility. The evidence of the composition of court assessors tends to undermine the image of the captain's court proceedings as purely dependent upon the exclusive will and empowerment of the person of the captain. The composition suggests considerable collective involvement of local noblemen in the administration of the captain's justice. It also suggests that the captain's empowerment depended and operated through the community representation and approval. Furthermore, there was no strict division between the captain's castle court, seen purely as the channel of judicial control by royal authority over local communities, and the land court, seen as the institution called to represent the self-government of local nobility.

5.6 Instruments of conflict regulations: Pledges of peace

As has been already mentioned, captains relied broadly on judicial mechanisms and institutions which were rooted in communal traditions and customs of the exercise of justice. All these account for the preference in the administration of captain's justice given to the means of preventing, mitigating, and arriving at compromise over prosecution in their efforts to regulate violence and settle disputes. The wide usage of such legal instruments of conflict regulation as the pledge of peace (*vadium*) and sureties (*fideiussoria*) provide an important perspective on the community-oriented character of the captains' jurisdiction.

In regard to the pledge of peace, it fulfilled several significant tasks in the administration of royal justice. First of all, the pledge aimed to pacify inimical relationships between parties by threatening them with the imposition of a penalty. Second, the pledge was frequently employed to secure the implementation of the court's sentence. The broad usage of the pledge as an instrument of the law enforcement was manifested in various ways. For instance, the pledge was often added as one of the terms by which the parties were bound to

⁴⁶⁷ In the Sanok court register from the second half of the 1420s one can find documents issued by both the vice-captain and court judge, Ibid., vol. 11, no. 30 (February 12, 1424); no. 84 (July 29, 1424); no. 88 (August 12, 1424); no. 110 (December 9, 1424); no. 191 (March 12, 1426); no. 215 (February 22, 1427); documents issued by the vice-captain alone - Ibid., no. 144 (July 7, 1425); documents issued by a court judge alone - Ibid., vol. XI, no. 55 (June 3, 1424); documents issued by a palatine alone, Ibid., no. 96. (sub September 2, 1424); documents issued by both a palatine and court judge, Ibid., no. 233 (September 27, 1427).

accept the captain's judgment. Introduction onto the estate of the losing party could also be secured by the imposition of the pledge. By the terms of the pledge, the fine would have been paid in the case of denying the winner access to the estate. Thus the institution of the pledge was considered one of the major legal tools on which the assistance of the *brachium regale* in enforcing the court decision was founded and operated.⁴⁶⁸

The importance of the pledge of peace in the royal judicial system can also be inferred from its usage as an element of the royal ideology of justice and government. It is noteworthy that the issue of the letter of pledge was sometimes consciously taken by the royal chancellery as an occasion to reflect upon significant topics related to royal ideology and propaganda in the sphere of law and justice. Hence, the letters of pledge are sometimes found to contain short but revealing rhetorical formulas, which highlights the role of the pledge as an important legal instrument in the hands of the royal power for law enforcement.⁴⁶⁹

It is important to emphasize that it was litigation pursued by the parties in the court which usually led to the imposition of a pledge. As mentioned above, the pledge was meant to help resolve disputes by means of law, but not through the use of violence. Therefore, captains were entitled to establish the pledge between parties regardless of what the litigants might think of the necessity of such pledges. The use of the pledge as a means of preventing noble conflicts was completely at the free command of captains. On the other hand, the application of pledges could also arise from the initiative of the litigants as well. Rival noblemen themselves often sought to address the king or captain with a request to impose the pledge. Thus, it was common that letters of pledge were issued in response to pleas submitted by one of the parties involved into the enmity. Such letters often mirrored the situation of insecurity and embarrassment experienced by one opponent because of the actions of another.⁴⁷⁰

Many channels were open to the royal government to intervene in a noble enmity and try to settle it through use of the pledge of peace. In some cases captains were able to exploit the network of local gossip about the noble enmity in order to set up pledges between the

⁴⁶⁸ See, for example, Ibid., vol. 17, no. 2634 (September 19, 1494).

⁴⁶⁹ Consider, for example, the preamble of the letter of pledge, which addressed such issues as the law enforcement, the condemnation of the impertinence and the disobedience of the law by the wrongdoers, etc., in Ibid., no. 2858 (June 7, 1496): "vanum esset iura condere, nisi sit, quia ea tueatur et debite execucioni demandet, quoniam daretur occasio ceteris proterviendi, sed ut pena rebelles minibus imperancium substernet, quod ipsa inobediencia fecerat contumacies..."

⁴⁷⁰ See, for example, the words of the letter of pledge, imposed on the Rus' palatine and the Sambor captain, Jan Odrowąż, in response to the complaint of the community of the town of Sambir: "quibus ab eodem comprimuntur coram nobis exposuerunt, velle intollerabilibus graviminibus et iniurias turbari in mortemque et destructionem quorundam machinari" in Ibid., vol. 17, no. 1801 (June 11, 1482).

parties.⁴⁷¹ In other situations, a quarrel between the litigants that erupted in the courtroom in the middle of a hearing might provoke the captain's immediate reaction and result in establishing the pledge.⁴⁷² However, whatever the channels or circumstances involved in the issue of the letters of pledge might have been, most of its sanctions encompassed both rivals.

It was also the custom of royal officials to arrange for delivery of the letter of pledge to the residences of the conflicting parties. This was usually done to avoid problems with the legality of summoning the potential offender of royal peace to the court. Some letters of pledge mention that many nobles, summoned to respond in court for a breach of the peace, pretended to be unaware of the pledge's imposition.⁴⁷³ It was the duty of the court bailiffs to hand such letters to the conflicting parties. Records in court registers says that some bailiffs put special recognizance into the court registers testifying to the fact of such a delivery. In rare cases both the captain's letter of the pledge as well as the bailiff's recognizance of its delivery to the litigant are available in the registers. By comparing the dates under which these two types of letters were inserted in the court registers it is possible to establish how effective the work of the captain's administration was in terms of time span.⁴⁷⁴

The sanction, for which rivals were liable in case of a breach of the pledge of peace, usually took the form of a pecuniary fine. Starting from the middle of the fifteenth century the value of such pecuniary fines was usually set above one hundred marks. The data which I was able to collect about the size of pledges for the L'viv captains during the period of 1440 to 1495 confirms this observation. The data shows clearly that the pledge fines from one to three hundreds marks were the most numerous group. Pledges of the lowest and highest values, those correspondingly below one hundred marks, and those equal to or above one thousand marks comprised a small minority. A correlation is also identifiable between the size of the established pledge and the social position of the litigants. The more notable status of the litigants was, the higher was the value of the pledge.

⁴⁷¹ For example, the pledge between Jan Senyawski and Katherine of Brzosdowicze on the one side, and Jan of Stenyatyn and Clychna of Brzosdowicze on the other, was imposed by the L'viv captain, Spithko of Jaroslaw on the basis of the information, related to him by certain people. See Ibid., vol. 15, no. 1610 (September 27, 1482): "Certorum veridica relacione fueramus informati..."

⁴⁷² Ibid., vol. 15, no. 2258 (November 17, 1492): "Vallavit vadium ducentarum marc. inter nob. Petrum de Lahodow et paulum de Pyeczycosty, qui coram nobis stantes personaliter verbis obrobriis et contumeliosis super se extendebant."

⁴⁷³ See, for example, an explicit statement in one of the letters of pledge: "Quod quidem vadium in domum vestram dirigimus ne de contrario ignoranciam pretendatis aliqualem" in Ibid., vol. 17, no. 1485 (June 22, 1478).

⁴⁷⁴ In one case it took ten days from the time the letter of pledge was issued to its delivery to the litigant. Compare the dates of the letter by which the L'viv captain Nicolas Creza of Bobolicze announced the establishment of the pledge between Rafael of Senyawa and Anna, the tenant of the village Liatske in Ibid., vol. 15, no. 2780 (January 15, 1499), and the bailiff's recognizance of handing the letter over to the said Anna that had took place on her estate of Liatske in Ibid., no. 2785. (January 25, 1499).

Captains	Below 100 marks	100-300 marks	400-600 marks	1000 and more	Unknown	Total
1) Rafael and Spytek of Tarnów, 1440-1442	1 (20%)	4 (80%)				5
2) Peter of Sprowa, 1443-1450	1 (8,3%)	7 (58,3%)	2 (16,7%)	1 (8,3%))	1 (8,3%)	12
3) Andreas of Sprowa, 1451-1456	4 (22,2%)	9 (50%)	2 (11,1%)	2 (11,1%)	1 (5,6%)	18
4) Rafael of Jaroslaw, 1466-1476	6 (11,5%)	32 (61,5%)	8 (15,4%)	4 (7,7%)	2 (3,8%)	52
5) Spytko of Jaroslaw, 1481-1495	12 (17,6%)	43 (63,2%)	8 (11,8%)	4 (5,9%)	1 (1,5%)	68

Similarly to the L'viv captains, the royal governors of other Rus' lands also tended to favor pledges of high sums. I can confirm this observation with one example of the politics of the pledge of the Przemyśl captain, Jacob of Koniecpole. For the period between 1469 and 1479, 41 of his letters of pledge were recorded in the register of the local castle court. Compared with the pledges of the L'viv captain, Rafael of Jaroslaw, which cover approximately the same period of time, the figures of the size of pledges issued by Jacob of Koniecpole give a quite similar picture. Pledges valued at one thousand marks and more constituted 7,3 % of the total number of 41, pledges between four and eight hundreds marks amounted to 36,6%, pledges between one and three hundreds marks amounted to 48,8%, pledges below one hundred marks in value amounted to 2,4 %. Compared to the pledges of the L'viv captain, the figures of the Przemyśl captain's pledges are higher in the group of four to eight hundreds marks. This stands for one short comment. Apparently Jacob of Koniecpole preferred to apply the high pledges even more consistently than his L'viv peer. This pattern of the pledge's size remained stable from the middle of the fifteenth century. One may doubt whether the situation was the same in the first half of the century: the pledges secured by the Sanok captains in the 1420s rarely exceeded the sum of sixty marks. Hence, it seems that the rapid increase in the size of pledges occurred in decades after the 1430s and 1440s.

Such high values of pledges gave rise to many complaints from nobles. Some noblemen openly refused to accept the captain's pledge, delivered to them by bailiffs, arguing that it was unfairly high. For instance, in 1504, Paul Pomyanowski, a noble of Przemyśl land denied the captain's right to impose a pledge on the grounds that it was higher than sixty marks. In the testimony which was brought to the court to record the fact of denial, the court bailiff also mentioned that Pomyanowski had expressed his contempt of the captain's pledge in highly dishonorable and rude words: "clean (scour) my buttocks with this letter, because this is unjust of the lord captain to secure pledges with such high fines, but only those that valued sixty marks."⁴⁷⁵

Additional sanctions are rarely found in the letters of pledges. In one letter of pledge the addressee was prohibited from moving from his place of residence until the final settlement of his dispute.⁴⁷⁶ Another pledge contained the threat to confiscate the property of one of the litigants. This record of the pledge specifies that in case the addressee possessed no estate then he would be liable for the penalty by imprisonment and that this penalty was to be extended to his wife and children as well.⁴⁷⁷

The king's direct involvement in pledge imposition usually took the form of a mandate sent to the captain, ordering him to intervene in the conflict and secure peace with the help of a pledge. On rare occasions the king's order to impose the pledge between parties was addressed to two captains simultaneously. The captain's negligence in establishing pledges was given in one such royal letter as the main reason behind the repeated character of the royal mandates. This royal letter also suggests that the king had reason to suspect that the captain's negligence stemmed in fact from the intention to favor one of the parties.⁴⁷⁸ The need to duplicate the order of pledge imposition and deliver it to two captains was also

⁴⁷⁵ Ibid., vol. 17, no. 3481 (April 10, 1504): "...et Paulum Pomyanowsky tricentarum marc. in domum et curiam in qua moratur dictus Paulus, quod vadium Paulus suscipere noluit solum copias eiusdem recepit dicens: terge mihi eo vadio culum quia non est decens vadium nec ipse domus. Capitaneus posuit vallare tantum vadium solum sexaginta marc."

⁴⁷⁶ Ibid., no. 3244 (January 27 1500).

⁴⁷⁷ Ibid., vol. 13, no. 5550 (October 8, 1464): "sub ipso vadio facere debet sub ipsius bonis, si que haberet et illis deficientibus sub captivitate ipsius, uxoris et liberorum."

⁴⁷⁸ Consider, for example, the royal mandate, sent by King Alexander to the L'viv captain Stanislas of Chodecz. By his mandate the king ordered the L'viv captain to impose a pledge between Prandotha Vilga, the advocate in Chyniv, from the one side, and Jan and Felix of Opporow from the other. The king mentions that a similar mandate had been delivered to the Horodok captain, Stanislas of Pilcza. At the same time, the king shared with Stanislas of Chodecz his fear that the Horodok captain might be reluctant to carry out the royal order, because of his support to one of the conflicting parties, in Ibid., vol. 17, no. 4235 (March 20, 1506): "Et quamvis gsi. Stanislao de Pilcza Capitaneo nostro Grodeczens. Identidem aliis nostris litteris, faciendum commiserimus, tamen ex superhabundanti, si ille ob favorem partes negligentem se exhibuerit Siceritati Tue committimus..."

explained in the king's letters by the long absence of one of the captains.⁴⁷⁹ In general, the king's role in the regulation of noble enmities by means of pledges appears to have been rather insignificant. This is implied by the random references to the royal mandates found in the captains' letters of pledge. To confirm this observation, I will turn again to the data of pledges from the L'viv captainship. Pledges, in which the royal command was mentioned, appear only in one case, issued by Andreas of Sprowa (1451-1456), in one other by Rafael of Jaroslaw (1466-1476), and in 4 out of 68 pledges issued by Spytko of Jaroslaw (1481-1495). The king's intervention in the captains' politics of pledge imposition was more apparent in the Przemyśl captainship, where the pledges set up by the Jacob of Koniecpole mention the royal order in 15% (6 cases).

During the second half of the fifteenth century the vice-captains became increasingly important figures in the process of pledge imposition. This is clearly attested to by a rapid increase in the number of letters of pledge which were issued in the name of vice-captains. If one can judge on the basis of the available letters of pledges from the L'viv captainships of the middle of the fifteenth century, the involvement of vice-captains was still hardly visible. The pledges of Peter of Sprowa provide just one example of a letter issued by the vice-captain Jan Wysocki.⁴⁸⁰ The same holds true in case of Peter's successor Andreas of Sprowa. His vice-captains are known to have imposed pledges in only two cases.⁴⁸¹ However, this picture underwent radical change during the captainships of Rafael and Spytko of Jaroslaw. These captains started to delegate the power to secure pledges to their deputies very actively. The case which stands as exceptional in this regard is of Pelka Lysakowski, the vice-captain of Rafael of Jaroslaw. Lysakowski figures as responsible for the issue of 28 pledges in the period of 1466 to 1481, which amounted to 53,9% of all pledges imposed during the captainship of Rafael of Jaroslaw. In some years it was exclusively Lysakowski who took responsibility for securing the pledges.⁴⁸² The vice-captains of Spytko of Jaroslaw, Stanislaus Maldrzyk of Chodowanice and Peter of Zwartow, although unable to match the activity of Pelka Lysakowski, still showed extensive engagement in the establishment of pledges. 25 pledges, which amount to 36,8% of all the pledges of Spytko of Jaroslaw, are known to have been imposed by these two vice-captains.

⁴⁷⁹ Ibid., vol. 15, no. 1951 (June 15, 1488): "Ad mandatum mfi. Dom. Spithkonis de Iaroslaw Palatini Sandomiriensis et capitanei Russie generalis., in absencia vero mfi Felicis de Panyowo Castelanii Leopoliensis et Capitanei Zydaczouiensis."

⁴⁸⁰ Ibid., vol. 14, no. 2090 (June 14, 1448).

⁴⁸¹ Vincent Chochlowski in Ibid., no. 2534 (January 1, 1452) and Barthosius, *burgravius castri superiori Leopoliensi* in Ibid., no. 2965 (November 15, 1453).

⁴⁸² In 1471, for instance, all 9 known pledges were imposed in the name of the vice-captain.

In rare cases the imposition of pledges was also influenced by or required the consent of other powerful noblemen of the land. This can be inferred from the appearance of members of the power elite of the Rus' palatinate in some letters of pledge. For instance, the Rus' palatine, Stanislas of Chodcza, was present at the issuing of four letters of pledge by the Przemyśl captain, Jacob of Konięcpole, in 1469.⁴⁸³ It is also known that a group of noblemen could be called to assist the captain in the imposition of pledge. According to the letter of the Lviv captain, Peter of Sprowa, from February 11, 1448, three powerful nobles attended the establishment of the pledge between Jan of Jacimierz and Nicolas, advocate of Horodok.⁴⁸⁴ In the same manner, Jacob of Konięcpole's letter of July 8, 1471, named six noblemen who had witnessed the pledge's imposition.⁴⁸⁵ To enhance the communal moment in the captain's politics of pledge further, it is necessary to mention the sureties. Sureties were sometimes chosen by the captain to back up the force of the pledge. Though only occasional, these traces of collective legal actions involved in the pledge's imposition reveal once more the consensual and community-oriented perspective of the captains' justice.

5.7 Instruments of conflict regulation: Surety

Perhaps no other institution better displayed the close interaction between captains and community in administering justice than that of sureties. The legal records show the universal character of the institution of sureties in medieval law by demonstrating its usage in a great variety of legal practices. As a rule every major legal deal in late medieval Galicia had to be secured by drawing sureties to guarantee the inviolability of its terms. With regard to criminal prosecution sureties fulfilled several important tasks, which were mostly related to the penalty of detention. A man convicted in court was usually put in jail if he was unable to secure payment of the penalty imposed by presenting sureties.⁴⁸⁶ Sureties were called to guarantee that the culprit would satisfy the payment of the penalty after release. If guarantors failed to do it, then they were liable for the punishment instead of the culprit.

⁴⁸³ Ibid., vol. 17, no. 138-41 (August 14, 1469).

⁴⁸⁴ Ibid., vol. 14, no. 2002. The pledge was secured in the presence of "Iohannes de Syenno succamerarius Premisliensis et capitaneus Oleschko, Iohannes Kmiczicz de Sobna, Iohannes de Rokythnycza sibpincerna Premisliensis." For another similar piece of evidence from the register of the L'viv castle, see: Ibid., no. 2648 (July 29, 1452).

⁴⁸⁵ Ibid., vol. 17, no. 630.

⁴⁸⁶ Consult, for instance, the following records: Ibid., vol. 13, no. 3684 (July 19, 1448); no. 6592 (February 28, 1467); Ibid., vol. 14, no. 1033 (March 20, 1444). Noblemen without land estates (*impossessionati*) were also endangered by the penalty of detention. This was due to the fact that such noblemen lacked an estate where they could offer the winner an introduction as a form of the satisfying the penalty. See: Ibid., vol. 13, no. 5550 (October 8, 1464).

Preventive detention and presentment of sureties could be used by captains in the cases of especially bitter enmities which embraced a large number of people and could have serious consequences. For instance, in 1473, the Sanok captain forced all the male inhabitants of the village of Hlomcha in Sanok land to take up surety for one member of their community. The potential culprit was arrested because for menacing the whole town of Tyrawa, boasting that he would set it on fire.⁴⁸⁷ By standing surety for the release of the suspected man from the jail, the guarantors were bound to present the potential culprit at the first demand of the captain or the plaintiff, under threat of penalty. In another, similar, case, the whole village community took up surety before the captain for two of its members. This was done on the condition that the guarantors had to detain these wrongdoers and surrender them to the captain if the culprits attempted to break the peace.⁴⁸⁸ The second record of this surety specifies the obligations under which the wrongdoers submitted themselves to their guarantors. It is interesting that its terms envisaged not only the possibility of the wrongdoers' detention, but also gave the guarantors the power to exercise capital punishment in the case of a breach of the peace.⁴⁸⁹ It seems that such heavy sanctions as capital punishment or the confiscation of the property were imposed as terms of surety on people who were mostly of plebeian origin.⁴⁹⁰

The institution of surety was a major instrument in the hands of captains, used to facilitate, enhance, and even force the bringing of private accusations for criminal offenses. Two examples will illustrate this point further. The first case is the complaint brought by Hrycko of Hryckova Vola, a petty noble of the Przemysl land, against Masha, a maidservant of another local noble, Kostko of Melniv. The said Masha was accused of multiple thefts, committed to the damage of the plaintiff. Her lord took up her case, declaring his readiness to defend Masha against the accusations. At this point the account of the litigation provides the most interesting detail. The record relates that the plaintiff submitted surety to the captain by promising to pursue his legal action to the end and convince the defendant in court. In case of a refusal to continue the dispute, the captain would acquire the right to introduce himself and hold the estate of the plaintiff until the sum of the surety was paid.⁴⁹¹ By a second surety, the

⁴⁸⁷ Ibid., vol. 16, no. 954 (October, 1473).

⁴⁸⁸ Ibid., no. 1314 (July 25, 1478).

⁴⁸⁹ Ibid., no. 1315: "Mathwey et Paschko de ibidem obligati sunt prescriptis fideiussoribus in omnibus causis premissis supra treugas pacis habere, sub amissione omnium bonorum suorum et colli ammissione."

⁴⁹⁰ See, for example Ibid., vol. 11, no. 136 (June 23, 1425); Ibid., vol. 17, no. 320 (April 2, 1470); Ibid., no. 1026 (November 27, 1473).

⁴⁹¹ Ibid., vol. 17, no. 893 (January 25, 1473): "ipse Hriczko se submitit Capitaneo actionem principalem erga ipsum Melnowsky agere alias konacz ad duas septm. Si non prosequeretur causam pro huiusmodi inculpacione

captain forced a group of petty nobles to guarantee the appearance of the defendant at the court session when the case was to be tried.⁴⁹² Finally, the captain established the pledge of peace between the plaintiff and the guarantors of the defendant.⁴⁹³ What emerges from these sureties secured by the captain is an attempt to bind the plaintiff to continue his accusatory action on the one hand, and on the other hand to prevent the defendant and his friends from possible actions of vengeance.

The second case is related by the legal record of the Sanok court, inserted into the register on February 19, 1424.⁴⁹⁴ The record provides details of the cooperation between one of the most powerful local nobleman, Matias of Boyska and the captain in fighting theft and robbery on the territory of Sanok land. It reveals in particular how captains were able to combine information, surveillance, and threats to enforce private initiative in the field of criminal justice. The record suggests that the captain had reason probably by exploiting local opinion to suspect the said Matias of Boyska of favoring and supporting robbers and highwaymen. After having been admonished by the captain, Matias detained all suspected men. Keeping them under arrest, Matias ordered a proclamation on the market days of all major towns of the land. In his proclamation Matias invited everyone who had suffered any damage from the wrongdoings of the arrested men to come to his estate to advance charges and punish the suspected men. Furthermore, by Matias' order, the arrested men were presented for the king's judgment in the captain's court. Matias arrived personally at the court session, wishing to expurgate his honor of the suspicion of favoring criminals.

In general, surety and imprisonment were two mechanisms through which the system of justice forced culprits or suspected men to respond to charges that were brought against them by private plaintiffs.⁴⁹⁵ As a rule, such suspected men would be set free from jail or from surety if non one appeared to condemn them.⁴⁹⁶ The captain could also require surety to

contra Costhkonem, extunc Capts. Potens est in omnem porcionem ipsius Hriczkonis se intromittere et tenere ad solucionem sexaginta marc."

⁴⁹² Ibid., no. 898 (January 29, 1473).

⁴⁹³ Ibid., no. 901 (January 30, 1473).

⁴⁹⁴ Ibid., vol. 11, no. 32.

⁴⁹⁵ In one case the record contains a reference to words of the captain that he addressed to the culprit: "quem propter diffamacionem dominus ipsius mfus. Mathias de Bnyn incarceravit dicendo: prius te non dimittam, quosque expurgeris de difamacione prefata" in Ibid., vol. 17, no. 2027 (January 9, 1486).

⁴⁹⁶ Consult the case, in which a nobleman begged the captain to exonerate him from a surety, imposed because of the suspicion of some crimes. The captain ordered the suspected man to appear three times at sessions of different courts. The suspected nobleman was obliged to attend those sessions, waiting for an occasion to expurgate himself from the possible accusations advanced against him. See, Ibid., vol. 15, no. 2821 (May 18, 1499). For other cases of the private detention, presenting sureties before a captain, and the subsequent release from culpability because of no charges were brought at the court session, see Ibid., vol. 15, no. 2829 (June 19, 1499).

guarantee that the culprit would not attempt to escape from jail.⁴⁹⁷ In one case such surety was required as an additional measure, securing that a nobleman who, although in the captain's detention, was not put into the tower and probably enjoyed some freedom of movement in the territory of the castle.⁴⁹⁸

The captain's jurisdiction appears thus as acting through the dense networks of local solidarities and interdependencies. In fact, the records supply almost no cases of captains' prosecution *ex officio* as such. All captains' actions were mediated to some degree by the intervention or assistance of the members of the noble community. The institutions of surety and detention permit one to see how two basic principles of justice, those of private accusation and official prosecution, were used by captains as complementary and mutually interdependent in the administration of justice.

5.8 Captains' personal attendance of court sessions

However, as significant as the dependence of the captain's court on communal participation might have been the pronouncement of verdicts and their enforcement were impossible without the person of the captain.⁴⁹⁹ The constant practice of postponing cases for the consideration of the captain provides the best proof in this regard.⁵⁰⁰ How urgent the demand for the personal presence of a captain at court proceedings could be is nicely illustrated by the evidence of the captain's administration of justice in Przemyśl land in the early 1470s. The Przemyśl castle court proceedings give a large number of court sessions which were simply canceled without any case being heard or judged. This occurred mostly because of the absence of the captain. In the four years between 1469 and 1472, 78 (23%) of the total number in 339 sessions were terminated in such a way. The refusal of the Przemyśl court officials to try cases without the presence of the captain can most likely be explained by the expansion of the practice of the litigants' appeal for the captain's personal presence at judgment. It is possible to assume that

⁴⁹⁷ Ibid., vol. 17, no. 1768 (February 11, 1480).

⁴⁹⁸ Ibid., vol. 14, no. 1970 (December 12, 1447).

⁴⁹⁹ The evidence from the fifteenth-century Rus' palatinate clearly tends to disprove the argument of Ludwik Łysiak, developed in the discussion with Barbara Waldo. Łysiak strongly emphasized the increasing separation of the person of the captain from the court proceedings and the work of the chancellery of the castle court in the course the fifteenth century. According to Łysiak, the chancellery and office of the castle court became an almost completely autonomous institution, operating and administering justice without direct intervention of a captain. See, his "Małopolscy starostowie grodzcy w XV i XVI wieku (Uwagi w związku z rozprawą Barbary Waldo)" (The castle captains of Little Poland in the fifteenth and sixteenth century), *Czasopiśmo Prawno-Historyczne* 38, no. 2 (1986), esp. 140, 148-9, 150. In her response to the Łysiak's criticism, B. Waldo was inclined to accept this interpretation of her critique. See: Waldo, Barbara. "Urząd starosty sądowego w Małopolsce w XV i XVI w. W związku z krytycznymi uwagami Ludwika Łysiaka" (The castle captains of Little Poland in the fifteenth and sixteenth century). *Czasopiśmo Prawno-Historyczne* 40, no. 1 (1988), 148.

⁵⁰⁰ For a comparison, consult Antoni Gąsiorowski, "Początki sądów grodzkich w średniowiecznej Polsce," 70.

the spread of such a practice tended to undermine or diminish the legitimacy of a trial held without the person of the captain.

It is important to note that this highly interesting aspect of the captain's administration of justice in Przemyśl land coincides in time with the years which, as I have already mentioned, were perceived by many people as a period of worsening conditions of social order and justice in the Kingdom of Poland. Therefore, the question which seems to be worth pondering upon is how the captains of the Rus' palatinate administered justice during this period of growing insecurity. In order to pursue this task I explore the frequency of captains' personal attendance of court sessions. In view of the constant appeal of nobility for the personal presence of the captain at court proceedings, and especially at the time when sentences were delivered, the frequency of the captain's attendance can be taken as a significant indicator of the effectiveness of the captain's justice. The mode of record-keeping of the court registers facilitates such inquiry. The records of each court session contain a special introductory entry with the date of the court session as well as names of the most important officials and assessors present, including the captain. The available introductory entries furnish the main body of evidence for establishing the captains' attendance.

Furthermore, in an attempt to trace the captains' presence at court hearings the two different captainships of Sanok and L'viv were chosen for analysis for two different five-year periods. I examined the Sanok court proceedings for the first five years of the captainship of Janusz of Kobylany (1424-1429), and the L'viv castle court proceedings for the years of 1440-1444, that is, a period which fell under the captainship of three different persons: Rafael of Tarnów (1440-1441), Spytko of Tarnów (1442), and Peter Odrowąż of Sprowa (1443-1444). In the diachronic perspective, the periods in question correspond with the last years of the reign of Władysław Jagiełło and the end of the reign of his son Władysław III. These dates can be roughly related to the years immediately preceding the beginning of the period of instability and the years that covered a crisis' peak during the military campaigns in Hungary.

If one can judge by the evidence provided by the collected data about the captain's attendance, the administration of justice really witnessed a deterioration in the period between the late 1420s and the earlier 1440s. In Sanok land, Janusz of Kobylany frequented about half of all court session, from the lowest figure of 38,9% in 1429, to the highest, – 58,3% in 1425. These figures are approximately two times higher than those of the L'viv captains. The most diligent of the L'viv captains, Peter of Sprowa, attended 25,4% of all sessions in 1443 and 25% in 1444. The highest and lowest frequencies of attendance are shown in case of Rafael of Tarnów, who was testified as having been present at 31% of all court hearings held in 1440,

and at only 10,4% in 1441. It is also of interest to examine the longest intervals of a captain's presence and absence at court proceedings in order to illustrate further the differences in the administration of justice that existed between the Sanok and L'viv captainships during the two periods in question. Janusz of Kobyliany's longest participation in the Sanok court proceedings lasted for almost three months, from March 17 to June 9, 1425.⁵⁰¹ No one introductory entry written in the Sanok court register in this period indicates his absence from court sessions. His longest absence from court proceedings is indicated in the register as covering the period of 1 month and 1 week.⁵⁰² The case of the L'viv castle court in the 1440s demonstrates a slightly different situation. Here the captain's personal attendance was much shorter, and the absence much longer. The duration of captain's visits to the court proceedings varied a few days to two weeks. The duration of Rafael of Tarnów's presence at the court proceedings in December 1440, which lasted almost three weeks (December 12- December 30, 1440), can be regarded as exceptional for its length in the practice of the L'viv captains.⁵⁰³ All three captains are known for their long-lasting personal detachment from the administration of justice in the L'viv land – Rafael of Tarnów was twice absent from court proceedings for almost three months in 1441;⁵⁰⁴ Spytko of Tarnów was absent first for six months and 21 days, and then for two months in 1442;⁵⁰⁵ and Peter of Sprowa was absent for one month and 22 days in 1443 and three months in 1444.⁵⁰⁶

5.9 Extension and abuses of captains' authority

In considering the captain's justice as cloaked in communal forms and enacted through the judicial institutions of the community, it is important not to forget about the captains' ability to assert their jurisdiction by means of force. In general, it was not norms of statute law or community interference, but the captains' position as local powerful lords and their control over the resources of royal justice and domains which were of crucial significance for determining the scope of their real judicial and administrative power. It is not surprising, then, that the broad judicial power of captains could easily be turned into an arbitrary and oppressive treatment of the law.

⁵⁰¹ AGZ, vol. 11, no. XXXVI-XLI (March 17- June 9, 1425).

⁵⁰² Ibid., no. CXIV- CXVII (September 3- December 10, 1429).

⁵⁰³ Ibid., vol. 14, no. XLI- XLII.

⁵⁰⁴ Ibid., no. XLV- LXIII (January 13-March 31, 1441); no. LXXVI- IXXXIXa (May 29- August 25, 1441).

⁵⁰⁵ Ibid., no. XCVIII –CXXXIV (February 3- August 24, 1442); no. CXXXVII- CXLVI (September 7- November 2, 1442).

⁵⁰⁶ Ibid., no. CCXXXVIII- CCLV (June 28- August 19, 1443); no. CCCXXIX- CCCLV (February 26- May 29, 1444).

The fifteenth-century court records are consistent in showing captains extending their judicial power beyond the legal provisions of the statute law. The four captain's paragraphs provide a good starting point to illustrate this. The clause insisting on the restriction of a captain's jurisdiction to the four paragraphs was constantly repeated in the statutes in the course of the fifteenth century.⁵⁰⁷ As the practice in the local castle courts demonstrates, however, the enforcement of the legislation on these paragraphs often failed at the local level. It is noteworthy, for example, that the question of the four paragraphs could become the subject of special agreement between individual nobles and the captain. Such agreements assured the captain's promise to not summon the noble's men and peasants to the castle court except for the wrongs listed in the four paragraphs. This is nicely illustrated by the agreement between Andreas Fredro of Pleshovychi and the Sniatyn captain, Michael Mużyło of Buczacz, from 1456, recorded in the Halych land court register. It foresaw the intercession for the captain in order to prevent him from judging Fredro's servants and peasants in the castle court unless their wrongs were punishable under the four captain's paragraphs⁵⁰⁸

As for other facts of captains' encroachments, valuable evidence is offered by the Korczyn privilege from the year 1456, an important royal privilege specifically issued for the lands of Galician Rus'. One of the clauses of the privilege refers to the fact that local captains were accustomed to imprison peasants accused of the theft without the consent of the culprits' lords.⁵⁰⁹ This custom was decried in the privilege as running against the legal norms accepted in other lands of the kingdom. Another custom, mentioned in the same privilege, is rather unclear. It seems to be an attempt at regulating the practice by captains of putting the peasants of noble lords into the servitude. This may have something to do with the terms of sureties under which some nobles and commoners submitted themselves to the grace of a captain. This shows explicitly that these royal governors were real masters of the lives and property of the felons.⁵¹⁰

⁵⁰⁷ See, for instance, the privilege of Nieszawa from 1454 in *VL*, vol. 1, 115.1, the Statutes of Jan Albert from 1493 in *Jus Polonicum*, 324, and the Statutes from 1496 in *VL*, vol. 1, 118.1.

⁵⁰⁸ *AGZ*, vol. 12, no. 2774 (October 12, 1456): "... quod officiales ipsius Snyathenesis [non] debet iudicare officiales nec servos Andree in villis nec in castro [Snyat]enensi, nisi pro quatuor articulis secundum [s]tatuta Regis Kazimiri."

⁵⁰⁹ *Jus Polonicum*, 293.

⁵¹⁰ See for example, *Ibid.*, vol. 17, no. 320 (April 2, 1470): "Hryn Baythko de Poszdzacza mfo. Iacobo de Conyeczpole capto. Premisl tenetur equum ambulatorium bene valentem dare pro f. Penthecostem affuturum, quem sibi adoptaverit sub detencione, mancipacione et colli privacione alias iuxta placitum suum Capitaneus potens erit secum facere, in vita et collo punire aut in bonis suis repetere." For another example see *Ibid.*, no. 434 (September 10, 1470): "Iohannes dictus Thymko de Nyehrebka subdidit se sub omnia sua bona dom. Capitaneo parere iuridice."

Granting all the major captainships of the Rus' palatinate as mortgage holdings to the representatives of aristocratic families had the result that captains' jurisdiction was much affected by partiality and abuses of law. The territory of Galician Rus' became one of the main areas influenced by the mortgaging of captainships under the Jagellonian kings. The mortgage-holdings of royal captainships became a decisive factor in the emergence of a group of "new" aristocratic families in the Rus' palatinate during the first half of the fifteenth century.⁵¹¹ For example, the Chełm captainship was mortgaged to Dzierśław of Rytwiany for 2700 marks and 3360 florins. Later this amount was transferred to another district of Sandomierz which the family of Rytwianski held in mortgage for the following forty years. Perhaps the most impressive example is the case of Peter Odrowąż. The Sambir district, which had already been mortgaged to him by Wladislas II Jagiełło in 1429, became the main object of receiving mortgages in the time of Wladislas III. The district was mortgaged by a series of royal documents for a total value of 8090 marks. In addition to the district of Sambir, in 1439-1440 Peter Odrowąż was granted seven mortgages in the Halyč district for the sum of 1500 marks and 2000 florins. In 1440 the Halyč district was redeemed from his hands by another major royal creditor, Mikolaj Parawa of Lubin, the founder of the magnate fortune of Chodecki family.⁵¹² After Odrowąż had lost the Halyč district, in 1442 he acquired the L'viv captainship. In 1442, by extending the king loans of 2200 florins, he obtained royal permission to redeem the L'viv district from the previous captain, Spytek Tarnowski of Jarosław. In the same year, his mortgage on the L'viv district was increased for a new loan of 2500 marks.⁵¹³ The high values of the mortgages as well as the king's lack of money did not allow him to redeem the mortgaged districts. As a consequence, these mortgaged captainships were transmitted within the same families through generations as their hereditary property.⁵¹⁴

The exceptional status of such captains as almost hereditary owners of the districts gave them broad abilities to exert control over the local population in general and over the nobility in particular. Especially nobles who had taken over the royal estates in mortgage in the territory of the districts mortgaged earlier were forced to recognize their dependence on

⁵¹¹ Consider, for instance, Antoni Gąsiorowski, "Czynniki rozwarstwienia stanu szlacheckiego w średniowiecznej Polsce" (Factors of the differentiation of the noble estates in medieval Poland), in *Struktura feudalnej społeczności na ziemi Czechosłowacja i Polska do przełomu 15. a 16. stulecia* (The structures of feudal society in the lands of Czechoslovakia and Poland on the eve of the fifteenth and the sixteenth centuries), eds. Ján Čierny, František Hejl, Antonín Verbík (Prague: Ústav československých a světových dějin, 1984), 82.

⁵¹² *ZDM*, vol. 8, no. 2272 and 2320.

⁵¹³ *Ibid.*, no. 2423.

⁵¹⁴ For treating the long-term pledges as a hereditary holdings, see Ludwik Erlich, *Starostwa w Halickiem*, 75-6; Jacek S. Matuszewski, *Zastaw nieruchomości w polskim prawie ziemskim do końca XVI stulecia* (Pledges in the Polish land law until the end of the sixteenth century), (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 1979), 174-5.

the authority of the captains as the supreme holders of the whole royal domain of the district. This position of subjection of the noble holders of mortgages is probably best formulated in one of the records: *Dominus Czebrowsky tenet bona regalia ... et dominus Pallatinus et capitaneus est tutor bonorum regalium*.⁵¹⁵ Moreover, the captains themselves widely practiced the mortgaging of estates, mortgaged to them –sub-letting them so to say – thus raising money for new loans to the king and building up a network of clients.⁵¹⁶ Some evidence also suggests that the consent of the captains was needed for nobles to take into possession of the estates granted them in mortgage by the king.⁵¹⁷

Captains did not hesitate to use violence against men to whom the king had mortgaged estates in the territory of their captainships. This happened particularly if such men tried to take possession of the royal estates without the captain's permission. Some captains pursued their actions of expelling other royal grantees regardless of royal prohibitions, showing thus no fear of the king's possible anger and disfavor. King Casimir IV complained bitterly against such abuses by the captains in a letter of to the L'viv captain, Peter Odrowąż, from January 22, 1453. The letter reveals how much impertinence and disobedience the captains were able to display in the face of royal orders.⁵¹⁸ The letter is full of reproach and indignation, directed against the captain and castellan of Kamianec', Theodor Buczacki. The king was outraged by the fact that a certain Italian merchant, Julian the Italian of Caffa, had been expelled from royal estates which the king had mortgaged to him as compensation for the loan of two thousands florins. As the royal letter put it, Theodor Buczacki dared to carry out the violent action against the said Julian, "challenging and scorning the king's numerous letters of admonitions," which had been sent regularly to the Kamianec' captain in this matter. The letter is written in words of great amazement and resentment at such contempt of his person and authority:

we are astounded at such insolence which he [the captain] exhibited to us by disrespecting our letters, and [incidentally] overwhelmed us with confusion and displeasure. We are also astounded at such injustice existing in this land, which causes us to contemplate its fate with sorrow and a bitter heart.⁵¹⁹

⁵¹⁵ AGZ, vol. 14, no. 2910.

⁵¹⁶ *Materiały archiwalne wyjęte głównie z Metryki Litewskiej od 1348 do 1607 r* (Materials excerpted mainly from the Lithuanian Metrics from 1348 until 1607), ed. Antoni Prochazka (Lviv, 1890), no. 126 and 216; AGZ, vol. 12, no. 2909, 2461 and 4286.

⁵¹⁷ AGZ, vol. 5, no. 128.

⁵¹⁸ Ibid., vol. 14, no. 2749.

⁵¹⁹ Ibid.: "... quomodo gsus. Theodricus de Buczacz Castelanus. et capitaneus Cameneczensis spretis literis et mandatis nostris sibi in eo facto sepius scriptis et representatis de bonis, que super eo occasione duorum milium floren., dudum eidem debitorum cum dampnis, exinde per eum perceptis, coram certis Dignitariis et officialibus nostris mediante iure acquisivit, in qua bona per ministerialem de iure et iudicio datum seu missum sibi realis

This case of the violent abuse by the captain reveals to what extent the king's control over the actions of his own officials was limited .

Captains' abuses directed against the rest of the nobility, especially other mortgage-holders, even led to the open expression of disappointment and protest by the nobility. One protest of the nobility took the form of a massive action encompassing the nobles of the whole land. This was the conflict between the Odrowąż family and the nobility of the L'viv and Zhydachiv districts, mentioned above, which developed into a serious crisis in Galician society around 1460. The evidence suggests that it was caused to great extent by the attempts of Andreas Odrowąż to confiscate the estates of other nobles (mortgaged to them by the king) and thus improve his own financial situation, which showed signs of deterioration in the middle of the fifteenth century. Describing the course of events, Długosz gives some revealing details of the relations between the Odrowąż family and the Galician nobility. He mentions that after the death of Andreas Odrowąż in 1465, nobles brought three hundred lawsuits against his successor and brother, Jan.⁵²⁰

It is interesting that the court registers contain no information to confirm Długosz's evidence about these lawsuits. We know too little of the events and circumstances surrounding this conflict, because all registers of the L'viv castle court from the late 1450s and the early 1460s were destroyed. One can suspect that this had been done on the order of the Odrowązs, who, as the L'viv captains, kept all court registers under their control. This involves the highly intriguing question of how much our knowledge of the captains' abuses of the law is limited and shaped by the politics of the record keeping. The court records usually do not say too much about bullying of the law and justice by the royal governors, which is easily explainable in view of the captain's control over the process of record-making. This can be taken as a feature common to all records of the courts. The straightforward accusations of captains which point out their oppressive and unjust actions are exceptions in the registers. Some of the charges against a captain's unjustness or even violence were preserved through luck in the castle register simply because they were not brought against the captain of that particular castle.

Thus, a few protests by L'viv merchants, directed against the wrongdoings of the captains of other lands, fortunately came to be preserved in the register of L'viv castle. They

intromissio fuerat assignata, prout super eo ipse Iulianus dicit esse petentes literas, de prefatis bonis per ipsum Theodricum vi et violencia est expulsus et miramur de tanta sua protervitate, quam erga nos exhybet nostras vilipendendo literas et in eo confusione et displicentia nos obruit, miramur eciam de tanta iniustitia, que agitur in illa terra, propter quam sorte et proch dolor cum amaritudine cordis recolimus..."

⁵²⁰ J. Długosz, *Historiae Polonicae*, vol. 5, 410.

show that some captains, though endowed with the competence to fight against violent assaults committed against merchants on the free royal roads, were themselves liable for such crime.⁵²¹ One of many Italians who came to do business in fifteenth-century Galicia a certain Baptista, notary of the Italian merchant and noble Christofer Fragi of Genoa, left an impressive account of the misfortunes he had faced in an encounter with the Sniatyn captain, Michael Mużyło Buczacki, recorded in the register of the L'viv castle court under May 13, 1443. His protest starts with narrating how he had been sent with merchandise of the said Christofer to Wallachia, how he had arrived in Sniatyn, looking for some station, and how he had been detained there by the said Michael Mużyło. Baptista emphasizes that no clear charges had been advanced against him which might have served as the cause for his arrest. Instead, Baptista had been compelled to surrender himself to the obligation of the captain and had been pressed to put all the merchandise at Mużyło's disposal. Baptista further recounts that having suffered very much from the conditions of the detention and having been in fear for his life, he had yielded to the demands of the Sniatyn captain. At this point of the account Baptista adds the most revealing comment: "...and he [Baptista] would have agreed to yield, so to speak, the whole world to the said Mużyło, if only it had permitted him to escape alive from the hands of the captain."⁵²² Afterwards the protest skips to the list of the goods and merchandise which had been taken by the Sniatyn captain.

In most cases, however, the voices of the complaints about the captains' abuses of justice preserved in the registers are usually put in the legal framework, which tended to silence many important aspects of such an uproar. This often makes understanding of the details of such conflicts quite problematic. The evidence of the conflict between the Przemyśl captain Przedbor of Koniecpole and a noble of the same land, Iwasko Tustanowski can be taken as another example of the difficulty in discerning the captains' misuses of power in relations with nobility in the legal exercise of justice. By his letter of pledge from June 26, 1493, King Jan Albert secured the peace between two opponents. The pledge was established

⁵²¹ See, for instance, the accusation of the assault and robbery, advanced by the Lviv citizen Peter Goldis against the Zhydachiv Captain Auctus of Paniow in *Ibid.*, vol. 15, no. 2657 (March 26, 1498).

⁵²² *Ibid.*, vol. 14, no. 745: "...quomodo dum idem Baptista gressus suos direxit versus partes Valachie cum pannis et aliis quibusvis mercanciis domini suis Christofori et dum devenisset Snyathyn et paussasset tamquam in loco stacionis, idem Mużyło, ipsius Baptiste nullius demeritis exigentibus, eundem fecit captiavari et vinculis recludi omnia sibi recipiendo, compellens ipsum, ut se sibi propria manu obligaret, ut de eisdem mercanciis pro usu suo reciperet, quantum vellet. Qui Notarius Aptista (sic) replicavit ad illam compulsoriam dicens, mercancia predictas non fore suas sed dom. Christofori. Et nichilominus Baptista videns se multum Gravari in vinculis, desperans de vita, coactus per vim et metum in receptionem particulatam rerum consensit iuxta libitum ipsius Mużyło et compulsus per vim inscipsit se sibi manu propria in receptionem particulatam rerum; qui non tamen obligationem huiusmodi, dixit, se fecisse, sed eciam et totum mundum sibi obligasset, si possibile est fari, ut solum manus eius evassisset."

in response to the plea of the said Iwasko. The letter mentions that Tustanowski had presented his grievances before the king, pointing out how much oppression and threat he had suffered from the Przemyśl captain.⁵²³ Other manifestations of this conflict, however, are difficult to identify in the register of the Przemyśl castle court. The only traces which can be found there are a series of broken sureties, recorded in the register starting from the late 1460s.⁵²⁴ They show that the captains compelled the members of Tustanowski family to take sureties for their peasants and servants who had been blamed for wrongdoings. By the terms of surety the Tustanowskis were obliged to bring the felons to court to be subject to the captain's judgment. As a rule, the Tustanowskis refused or failed to uphold the conditions of the surety and were pressed to bear the burden of a pecuniary penalty. No mortal threats, no violent assaults or any other particular sort of oppressions directed against the Tustanowskis are mentioned in such records. What is left to the historian is to guess how sharp and uncompromising were the tensions hidden under the dry formulas. It is important to note that in most cases the castle court records tended to represent the legal actions undertaken by the captains against nobles as legally sanctioned responses to wrongs which had been inflicted initially on the men and estates controlled by the captain. The lines along which the captain's proceeded in their charges against such wrongdoers were identical to private noble enmities.

The evidence suggests that captains constantly manipulated and misused the track of court proceedings in their cases against nobles. The following case of the nobles Peter and Iwanko of Chłopchyci against the Przemyśl captain, Jacob of Konięcpole, for example, was recorded on November 22, 1468 in the local castle register. According to the record, the Chłopchycis complained about the captain's oppressive actions against them. The plaintiffs stated that without convicting them in court, Jacob of Konięcpole unjustly seized their cattle, valued up to the considerable sum of four hundred marks. Peter and Iwanko of Chłopchyci even managed to recruit some support of local noblemen for their case. Six nobles agreed to serve as witnesses and provide testimony to uphold the plaintiffs' accusations. The deposition of witnesses' testimonies was not allowed by the court judges, however, due to procedural errors and the case was adjudicated to the captain.⁵²⁵ The account seems to imply that the

⁵²³ Ibid., vol. 17, no. 2501 (July 16, 1493): "quomodo tu sibi et amicis suis prefatis magnas et intollerabiles faciens iniurias et cominatus esses atque diffidares eis omnibus ita, quod in domibus eorum propter tuas cominationes omnes mutuo manere non sunt secure."

⁵²⁴ Ibid., vol. 13, no. 6668 (June 30, 1467); Ibid., vol. 17, no. 319 (March 29, 1470); Ibid., no. 336 (April 9, 1470); Ibid., no. 508 (February 13, 1471); Ibid., no. 1641 (January 21, 1479); Ibid., no. 1687 (April 5, 1479); Ibid., no. 1688 (April 5, 1479).

⁵²⁵ Ibid., vol. 13, no. 6860 (November 22, 1468). It is interesting to add that according to the Przemyśl castle records ten years later the same nobles from Chłopchyci were accused and had to expurgate themselves of the crime of minting false coins. See: Ibid., vol. 18, no. 1084 (April 7, 1478).

captain manipulated the procedure which resulted in the failure of the Chlopchyckis. Other records show that litigants involved in disputes against captains went so far as refusing from the beginning of the suit to respond before the castle court. To have a case with the captain in the court, over which the captain presided himself, was regarded as a prerequisite for biased justice and was advanced as a main reason for such a denial.⁵²⁶

It is therefore possible to see the cultural logic behind the captains' lawsuits against nobles which was close in its meanings to private enmity. In general, captains' justice seems to have been embedded in local politics and governed by the private pursuit of power.

⁵²⁶ Consider, for instance, the reason, given by Jan Korytko of Rykhchyci for his insistence on transferring his suit with the captain Jacob of Koniecpole to the king's court: "Corithko proposicione exaudita dixit: domine Iudex, peto michi hanc causam dari discernendam ad dom. Regem, quia hic nolo respondere super citacione ista, quia titulus dom. Capitanei in citacione continentur et sua causa est propria," see in *Ibid.*, vol. 17, no. 730 (January 21, 1472).

Chapter 6 – Noble enmity and violence: People and patterns

Violence and enmity emerge from fifteenth-century Galician sources as located at the centre of the social and moral world of the local people. Peace and friendship on the one hand, and enmity and violence on the other were central and all-embracing categories of social perception. These concepts framed the ways in which the interpersonal relationships were understood and structured within local communities.⁵²⁷ The exercise of violence was usually perceived as the most apparent manifestation of the state of inimical relationships existing between rivaling nobles. Violence deeply affected daily experience and penetrated all social strata of society. It was one of the most common strategies of enmity and one of the most apparent signs of the breach of communal peace and inter-personal friendship. The exercise of violence was aimed at asserting one's self-will and at inflicting material, physical or symbolic damage on the opponent. Its repertoire encompassed a wide range of actions, such as murder, wounding, theft, pillage, verbal insults, and threats, and so on.

Contingent to the social fields of the local government, lordship and family, to mention just the most important ones, violence was one of the crucial social gears that affected the dynamics of power relations. In this connection it is also important to say that the significance of violence as a social agency lies in the fact that the opportunity for and efficacy of its exercise strongly determined the position of the individual and family within the local hierarchies of power and prestige. A noble's empowerment and reputation were often seen as a corollary of the use of violence. Another basic observation concerns the close interrelation between the exercise of violence and the disputing process. The settlement of noble disputes was situated and understood primarily within the broader context of the noble culture of enmity. Seen as a permissible and even legitimate instrument of conflict resolution, violence, along with other expressions of enmity like court litigation, was inscribed in the pursuit of legal rights as well as claims for justice.

Noble enmity represented one of the central categories of the noble ethos and the domain of customary noble culture. On the other hand, it was not allowed sufficient legitimate room by Polish statutory law. The late medieval law of the Polish Kingdom lacked an elaborated and clearly defined legal concept to describe the phenomenon of noble enmity. This feature of the legislation influenced the practice of the local courts in a way that there are

⁵²⁷ For the opposite and mutually complementary meanings of the categories of peace and enmities, see Otto Brunner, *Land and Lordship*, 17-18.

only a few mentions in the court registers of terms describing a state of enmity. There was also an apparent geographical variance in the usage of such terminology, depending on the particular land of the palatinate. The courts of L'viv and Przemysl lands contain no such mentions at all. Some traces of such wording can be found in the court registers of Sanok land, and mostly of Halyč land. Furthermore the available evidence testifies to the absence of a unified terminology used by the court notaries to describe and designate the state of inimical relationships between nobles. Some royal letters of pledge speak of private noble enmities, as about “dissentions and unusual wars,” carried out “against the Statutes of the Kingdom and the land.”⁵²⁸ Another letter of pledge condemned the exercise of noble violence, reasoning that the fight between subjects of the king must be considered as an inappropriate way of conflict resolution.⁵²⁹ Occasional mentions which appear in the context of court litigation also provide references to enmity (*inamiticia*), anger (*ira*), and hatred (*odium*) as feelings which were causes of the unjust and calumnious accusations.⁵³⁰ The same usage of such terminology duly indicates how problematic the nobles' claims to the legitimacy of their enmity might have been.

These general observations about the importance of violence in late medieval Galicia set a broad background against which I will address three crucial questions – first, the intensity of violence and enmity, second, the social tolerance of violence, and the third, the limits of violence, as it was practiced by nobles of the fifteenth-century Rus' palatinate.

6.1 Pledges of peace and intensity of inimical relationships

In their quest to explain the place of violence in the late medieval and early modern noble society, historians usually came to face the problem of the veracity of legal records. Therefore, it is useful to begin with few short remarks touching on the nature of the legal records. In their essence, the legal records tend to illuminate primarily conflictual moments of human relationships. Because of this feature of legal records, scholars have often been at odds in regard to the value of this type of source for the study of enmity and violence. This

⁵²⁸ AGZ, vol. 16, no. 1527 (July 4, 1481): “...propter dissensiones et bella inconvensa, contra statuta regni et terre huius Sanocensis.” See also text of another pledge, which mentions dissensions and hatred as causes of enmity. The captain imposed the pledge between Clemens Strumilo and Wlodek of Kuchany wanting “nonnulla odiorum et dissensionem incrementa pullulare” in Ibid., vol. 15, no. 700 (September 12, 1468).

⁵²⁹ Ibid., vol. 15, no. 658 (May 31, 1468): “...non decet, quia ipsi unius domini existentes bellare inter se debent.”

⁵³⁰ Ibid., vol. 11, no. 2507 (December 7, 1447): “...quia idem Crzistek non est culpabilis in eodem spolio, sed quod ipsum ex odio et ex ira inculpasset;” Ibid., vol. 11, no. 2764 (September 22, 1449): “...ego peto pro isto homine meo, quem ex inimicia inculpaverunt;” Ibid., vol. 15, no. 2640 (March 2, 1498): “Idem Stanislaus Hynek recognovit, quod super prefatum Stanislaum Szobymadr nullam ira debet habere...”

difference of opinion has concerned especially cases which tended to highlight extreme manifestations of violence. On the one hand, many such exceptional cases were drawn to demonstrate the great propensity of the Polish nobility for violence. On the other hand, they were used to undermine the credibility of legal records as a reliable type of sources by showing them as biased and giving a one-sided image of the degree of social tension in noble society.⁵³¹ What can be proposed in order to overcome such contradictory judgments about reliability of legal records? It is right to suggest that the value of some unique cases of extreme violence can not be underestimated. At the same time “the exceptional normality” of such cases must be tested against the background of findings which reveal more mundane and calm forms of tensions, and which are more appropriate for the establishment of the level of social violence.

In this respect the evidence of the pledge of peace, secured by the royal captains with the aim of restraining noble enmities, may be a good starting point to analyze the pervasiveness of enmity in the daily experience of the Galician nobility. It is true that the evidence of the pledge allows one to delineate only very general and vague contours of the incidence of violence and enmity in this society. Letters of pledge were often imposed as a means of conflict prevention, and therefore they represent violence not as an accomplished fact, but as a potential and dangerous scenario for hostile relations. However, it is exactly this aspect of the pledge evidence, which permits one to see violence grasped in its potentiality and latent possibility, which matter most. By its reference to the horizon of non-outspoken dispositions and tacitly accepted modes of violent conduct, the pledge evidence provides an understanding of how violence was widely dispersed through the texture of the late medieval Galician society and how deeply it permeated the sensibilities of local noblemen at the daily, routine level.

The data collected about pledge evidence come from the castle court registers of the two central lands of the Rus’ palatinate – those of Przemyśl land for the period 1469 to 1506, and of L’viv land for the period 1440 to 1500. These findings make it possible to outline some preliminary indications in regard to the frequency and scale of noble violence. The number of pledges for Przemyśl land consists of 130 cases. They were imposed on the representatives of

⁵³¹ Debates on the phenomenon of noble violence have a century-long tradition in the Polish historiography. They go back to the book of Władysław Łoziński, the prominent Polish historian from Galicia. W. Łoziński was blamed by later generations of Polish historians for misusing the rich material of the court registers of the Rus’ palatinate from the first half of the seventeenth century, which resulted in a too-dark picture of the contemporary social relations. W. Łoziński strongly emphasized the central role of violence and enmity in the noble life of that time. For the criticism, consider, for example, comments by Kazimierz Piwarski in his introduction to the one of the later editions of the Łoziński’s work, see Władysław Łoziński, *Prawem i lewem. Obyczaje na Czerwonej Rusi w pierwszej połowie XVII wieku* 6th ed. (Cracow, 1960), XIII-XIV.

91 noble families. The general number of pledges for L'viv land comprises 191 cases. They encompassed the members of 138 families. It is interesting to compare the numbers of noble families who figured in the letters of pledge with the overall number of noble families who are known to have inhabited these lands throughout the fifteenth century. Approximately 110 noble families (260/310 noblemen) are estimated to have lived in Przemyśl land in the fifteenth century.⁵³² For L'viv land, the estimated figure is 134 noble families.⁵³³ A simple comparison shows that the number of noble families whose enmities were secured by pledges seems to be only slightly lower than the overall number of families living in the land. As shaky as these figures are, they give some grounds to suggest that almost every family or its members were involved in inimical relations at least once.

It sometimes happened that the single pledge was not sufficient for pacifying the enemies seized by especially bitter and enduring feelings of hostility. As a result, frequently repeated pledges, imposed twice on the same opponents, can be found in the registers. The necessity to secure inimical relations with repeated pledges accounts for breaches of the pledges and the noble's desire to continue the hostility. The evidence of repeated pledges also seems to imply that at least in some cases the captains and their officials were able to keep track of the enmity and step in when hostility was about to enter into its next violent stage. Such repeated pledges represent, however, a minority of cases. Altogether, 12 cases of such repeated pledges are recorded for L'viv land, and 10 cases for Przemyśl land.

The distribution of the pledges according to individual families also yields interesting observations. The distribution is quite uneven and one can discern a group of families which were most often targeted by the pledges. In L'viv land, the figures of secured pledges for a single noble family reached as many as 12 to 15 cases (the magnate family of Olesko and Siennio – 15 cases, those of Seniawa – 12 cases). These two families with the highest number of pledges are followed by a more numerous group (7 families) with 6 to 10 pledges imposed.⁵³⁴ The third group comprises noble families with 4 to 5 cases.⁵³⁵ The data of the Przemyśl land gives slightly lower figures of pledges imposed on individual families. The highest numbers of pledges, which count up to 6-9 cases, are attested for four families.⁵³⁶ The second largest group of 18 families had inimical relations that were secured by 3 to 5

⁵³² S. Pashin, *Peremyshlskaja shliakhta*, 142.

⁵³³ A. Janeczek, „Osadnictwo w ziemi lwowskiej,” 612.

⁵³⁴ Krzywieckis – 10 cases, Romanowskis – 9 cases, of Borshchiv – 8 cases, Wnuczek – 7 cases, Czebrowskis, Strumilo and of Ostalowicze – all 6 cases.

⁵³⁵ Of Chylchyci, of Derevyatnyky, Gologorskis, Lahodowskis, of Malchyci, of Pechychvosty, of Podusiv – 5 cases each; Branickis, Bileckis, Kulikowskis, and of Cheremoshna – 4 cases each.

⁵³⁶ Of Siennio – 9 cases, Rzeszowskis – 8 cases, of Cusenice – 7 cases, Bybelskis – 6 cases.

pledges.⁵³⁷ It is also worth mentioning the comparatively large number of individuals whose inimical relationships came most often into the light due to the number of pledges imposed. For instance, the findings from L'viv land provide the evidence about 13 noblemen who were known for the relatively high figures of pledges (from 4 to 6 cases each).⁵³⁸ In general, to judge from these figures, there were large groups of noble families in both lands (20-21 families), who were regularly involved in the pursuit of enmity and whose inclination to violence seems to have been especially spectacular.

6.2 Enmity and neighborhood

Pledge findings are quite helpful in the closer study of enmity in some particular noble neighborhoods. Enriched by other sorts of legal records, they clearly show that some localities really did witness particularly intense phases of hostile tensions among nobles during relatively short periods of time. To exemplify how far the social relationships in a noble neighborhood could be torn apart by enmity, I will focus on the northeastern part of L'viv land. The choice of this particular locality can be justified by the fact that the families from this area are known to have been most frequently touched by royal pledges.

In the eastnorthern part of L'viv land, the magnate family of Olesko and Siенno clearly dominated the scene of local politics. The case of the magnate family of Olesko makes it clear how the local political leadership was closely connected with the capacity to exercise and reproduce violence. In this regard it is not incidental that the family of Olesko and Syенno was known for the extraordinarily high number of pledges imposed on them by the royal authority to restrain their violent conduct. A possible explanation for the high rate of noble violence in this part of L'viv land might be that it was a specific feature of the local nobility settled on the border of the kingdom. Furthermore, this part of L'viv land was one of the major areas affected by the war with Swidrygiello in the early 1430s. The high rate of interpersonal encounters and affronts may have been rooted in the hostilities that originated and spread during that war.

What is particularly revealing about the Oleskis-Siennowskis family is the fact that not only were they the most powerful and violence-prone family in the locality, but they were

⁵³⁷ Fredro – 5 cases, of Darowice, Mzurowskis, of Orzek, Wapowskis, of Zamoscze – 4 cases each; Bolanowskis, of Chlopoczychi, Czurylos, of Zamiechow, of Grodzysko, of Koniecpole, Korytkos, Mathweys of Sidlyska, of Mlodovychi, pelkas of Cheshki, of Zabloczice, of Big Zurowice – 3 cases each.

⁵³⁸ Nemyerza de Borschow – 6; Iohannes Msciszek de Coltow, Paulus de Pyeczochosty, Stephanus Romanowski, Raphael de Synyawa, Iacobus Krzywyeczski – 5 cases each; Andreas de Syенno, Venceslaus Narayowski, Georgius Strumilo, Andreas Wnuczek, Petrus Krzywyeczski, Iohannes Gologorski, Franciscus de Drzewyatnyky – 4 cases each.

also newcomers to this part of L'viv land. In fact, the family name – the Oleskis were of the recent provenance and it was derived from the castle and captainship of Olesko, situated close to the Galician-Volynian border. The appearance of these members of the Sienno family on the Galician-Volynian border can be viewed as an attempt to consolidate Polish rule in this region after the end of the war between Wladislas Jagiełło and Prince Swydrigiełło. The family received this captainship only in the 1440s. It was first granted in a mortgage to Jan of Sienno, the sub-chamberlain of Przemyśl land by King Wladislas Jagiełło in 1432, and then confirmed by Wladislas III in 1441.⁵³⁹ It is also interesting that Andreas of Sienno, Jan Oleski's brother, came to live in L'viv land as well. Along with land grants, the Oleskis used marriage to facilitate entering the ranks of the local nobility. Andreas of Sienno married Elizabeth Gologorska, daughter of an influential noble of L'viv land Jan Gologorski.

To assess the scale of tension in this neighborhood, it is useful to start with a unique case of a pledge. The pledge in question was recorded in the register of the L'viv castle court on November 1, 1476. Its uniqueness lies in the fact that no other letters of pledge are known from the registers of the Rus' palatinate to encompass so many nobles at once. By its issue, the L'viv captain tried to secure a truce between Barbara, the widow of Jan Oleski, and her four sons Paul, Peter, Dobeslaw, and Sigismund on the one side, and five native nobles on the other - Peter Cebrowski, Bohdan of Cheremoshna, Jan Belzecki, Fedko of Khylychyci, and Mathias of Trybrody on the other side.⁵⁴⁰ From further inquiries it becomes clear that this pledge was the most important of a large group of other pledges established between the Oleskis and individual noblemen and families mentioned as Oleskis' rivals in the pledge from

⁵³⁹ The document of confirmation by Wladislas III is dated on May 24, 1441, see: *ZDM*, vol. 8, no. 2308. In the register of the L'viv castle court proceedings Jan of Sienno is mentioned for the first time as the captain of Olesko on February 14, 1442, see: *AGZ*, vol. 14, no. 360. For the recent scholarly highlights of the history of the family and their estates in Galician Rus' consider the comments by Maciej Wilamowski in his edition of the document of the division of the estates between members of Sienno family from February 3, 1451. See, his "Nieznany dokument Zbigniewa Oleśnickiego z 3 lutego 1451 roku w sprawie podziału dóbr synów Dobiesława z Sienna" (Unknown document of Zbigniew Oleśnicki from February 3, 1451 related to the division of the estate among sons of Dobieslas of Sienna), in *Zbigniew Oleśnicki, Księżę Kościoła i Mąż Stanu* (Zbigniew Oleśnicki. Statesman and the prince of the Church), eds. F. Kyrk and Z. Noga (Cracow: Secesja, 2004), 289-96. M. Wilamowski maintains that Jan of Sienna as the captain of Olesko was endowed with the jurisdiction over the local nobility. This seems to be a rather wrong suggestion, especially in view of numerous sharp conflicts between members of the Olesko family and local nobles. Such conflicts usually went to the consideration of the Lviv castle court.

⁵⁴⁰ *AGZ*, vol. 15, no. 1529.

November 1, 1476.⁵⁴¹ In addition, several other letters of pledge are listed in the legal records, displaying the Oleskis' involvement in conflicts with other noble families of the locality.⁵⁴²

What can be discovered behind this wide range of pledges is a wave of violence that this noble vicinity was immersed in the late 1460s and 1470s. The Oleskis took the lead among the local nobles in the production of violence. For the period of 1464 to 1476 the legal records supply evidence about seven accusations of violent raiding and assaults,⁵⁴³ and three unspecified court cases brought against the Oleskis and their clients by local nobles.⁵⁴⁴ Furthermore, two accusations of mortal threats were recorded against Andreas of Siенno, one of which concerned the menacing against the L'viv archbishop.⁵⁴⁵ In their turn, during this period the Oleskis brought two cases against their adversaries, charging them with violence against their clients.⁵⁴⁶ It is interesting that the beginning of some of these enmities, like those with nobles from Khylychyci, Cheremoshna and Chemerenci, went back as far as to the 1440s.

The Oleskis were by no means the only family responsible for the high level of noble violence in the locality in the decade around 1464 to 1476. Observing the landscape of violence in that vicinity, it can be noted that almost every major noble family had its own experience of hostile and violent relations. For instance, the old enemies of Oleskis – the nobles from Khylychyci – were torn by the intra-familial enmity in the 1470s.⁵⁴⁷ This conflict was further extended by including relatives of the Khylychycis – nobles from Ostalovychi.⁵⁴⁸

⁵⁴¹ See, for instance, the pledge imposed between the Oleskis and Peter Cebrowski of Stoky in *Ibid.*, vol. 15, no. 920. (October 4, 1471); between the Oleskis and John Belzecki in *Ibid.*, no. 1608 (September 27, 1482); between Jan Oleski and members of the family from Trybrody in *Ibid.*, no. 1619 (December 18, 1482); between close relative of Oleskis Andreas of Syенno and Andreas-Bohdan of Cheremoshna in *Ibid.*, no. 1411 (July 25, 1475).

⁵⁴² See the pledges between Paul Oleski and Fedko Jarmolynski in *Ibid.*, no. 1876 (February 10, 1487); two pledges between the Oleskis, and Katherine of Chekhy in *Ibid.*, no. 916 (October 4, 1471; *Ibid.*, no. 921 (October 4, 1471).

⁵⁴³ Accusations of raiding were brought against the Oleskis by Ihnat of Khylychyci in *Ibid.*, no. 256 (October 11, 1465); by Peter Cebrowski of Stoky in *Ibid.*, no. 902, 906-07 (October 4, 1471); by Katherine of Chekhy in *Ibid.*, no. 916 (October 4, 1471). Accusation of raiding was brought against Andreas of Siенno by Iwashko Chemerynski in *Ibid.*, no. 974 (January 20, 1472); and by Peter Cebrowski in *Ibid.*, no. 929-30 (October 25, 1471). There is also one case of the intra-familial conflict. See the accusation of raiding on the village Zhukiv, brought by Elisabeth of Gologory, the sister of the wife of Andreas of Siенno, against Jan of Olesko in *Ibid.*, no. 3267 (July 14, 1464).

⁵⁴⁴ See the lawsuits between Ihnat of Khylychyci and Jan Otha of Sulychi in *Ibid.*, no. 248 (October 7, 1465); between the Oleskis and Fedko and Bohdan, brothers from Cheremoshna in *Ibid.*, no. 3617 (January 4, 1471); between Katherine of Pidhayci, the wife of Martin Kalenyk, and the Oleskis in *Ibid.*, no. 1001 (February 17, 1472).

⁵⁴⁵ *Ibid.*, no. 449-50 (March 9, 1467); *Ibid.*, no. 1194 (February 8, 1473).

⁵⁴⁶ Consult the charges of assault, brought by Jan Otha of Sulychi against Marusia of Khylychyci in *Ibid.*, no. 1475 (January 25, 1476); and charges of the wounding of Jan of Vovkiv, the servant of Katherine of Gologory, against Jan Budzywoy of Ianchyn in *Ibid.*, no. 1014-15 (February 28, 1472).

⁵⁴⁷ See two cases from 1475. The first is an accusation of assault on a house that was brought by Ihnat of Khylychyci against Marusia in *Ibid.*, no. 1390 (March 10, 1475); and a vice versa accusation, in which Marusia blamed Ihnat for pillage on the free royal road in *Ibid.*, no. 1397-98 (March 10, 1475).

⁵⁴⁸ See, for instance, the pledge of peace that secured the truce between Ihnat of Khylychyci and Fedko of Ostalovychi, the husband of Oluchna of Khylychyci in *Ibid.*, no. 927 (October 25, 1471). The letter of pledge was

Southeast of Olesko and Khylychyi, bitter intra-familial hostilities raged within the family of Borshchiv. To assess how much the family of Borshchiv was torn apart by internal enmity, it is enough to say that five out of eight pledges which concerned the family of Borshchiv were imposed among its members. Three of these eight pledges are dated to the years 1470 to 1473. Furthermore, one representative of the family, Nyemyerza of Borshchiv, had the highest number of pledges (six pledges) imposed on the individual of all the nobles of L'viv land. To highlight his experience of enmity a bit more, it can be noted that in 1471 Nyemyerza of Borshchiv brought a suit against his relative Michno, charging him with expulsion from his patrimony.⁵⁴⁹ Two years later, in 1473, Nyemyerza of Borshchiv experienced two assaults on his house: the first led by Stephen Romanowski and the second by Nyemyerz'a relative, Iwanko of Borschiv.⁵⁵⁰ Iwanko organized an assault on the house of Nyemyerza once more, in 1476.⁵⁵¹ West of Borshchiv was the village Romaniv, the patrimony of the noble family of Romanowski, who were another source of constant troubles during the 1470s. Eight of nine pledges that were called to secure peaceful relations between Romanowskis and their neighbors were issued during the period of 1470 to 1476.

Taken together, this mass of incidents of violence and enmity shaped a particular experience and perception of violence as one of the basic modes of daily existence of the local nobles. Stories about cases of violence circulated as part of local gossip and turned into a significant element of the local knowledge; obligations to provide support for members of one's kin group involved into the enmities; a constant demand for protection by peasants and servants, – all these factors formed a sharp awareness of omnipresence of violence and impossibility to escape from its influence. In general, no member of the local noble community had a chance to be left outside a dense web of enmities and violent encounters.⁵⁵²

6.3 Diversity of experience: winners and losers of noble enmities

Yet, a coherent image of the noble culture of violence starts to dissolve into a much more diverse ensemble of attitudes and perceptions under the closer scrutiny of the individual histories. A shift of focus from the level of the noble neighborhood to a more nuanced inquiry

written down in the register for second time a few months later in Ibid., no. 973 (January 20, 1472). There are also some traces of the litigations, held in the L'viv castle court between Fedko of Oslalovychi, his wife Olukhna of Khylychyi versus Olukhna's uncles – Ihnat and Iacko of Khylychyi in Ibid., no. 3591 (January 4, 1471).

⁵⁴⁹ Ibid., no. 823 (April 26, 1471).

⁵⁵⁰ Ibid., no. 1143 (January 2, 1473); Ibid., no. 1284 (October 15, 1473).

⁵⁵¹ Ibid., no. 1496 (May 24, 1476).

⁵⁵² Compare the observations by Miller about the social significance of feud in medieval Iceland, which, as the author argues, "... made it a part of the given of social experience; feud was in the air, it was a part of the natural order of things." In W. I. Miller, *Bloodtaking and Peacemaking*, 182.

into the individual and family trajectories of inimical relations reveals a much broader spectrum of experience and dispositions towards violence among nobles.

The records make it clear that there were many noblemen for whom this form of violent conduct was first and foremost the means of conflict resolution and who viewed the excessive exercise of violence as an indispensable part of their lifestyle. Consider, for example, the case of Jan Korytko of Rykhchyci, a noble from the Drohobych district of Przemyśl land, who was probably one of the most notorious raiders known in this locality in the late 1460s and 1470s. The register of the Przemyśl castle court from 1468 to 1478 informs about seven cases of serious wrongdoing of which Korytko was accused. The wrongs listed such serious offences as assault, pillage on the public roads, and killing. It must be noted that the most numerous group of these offences concerned Korytko's conflict with the royal captain of Przemyśl land Jacob of Koniecpole. Besides regular acts of pillage directed against royal peasants and forests Jan Korytko went so far as arranging an assault on the captain's house in Drohobych.⁵⁵³ Without doubt Korytko's most notorious offense was the murder of Nicolas of Vilcze, an official of his enemy Jacob Włodek of Stebnyk.⁵⁵⁴ In his accusation Jacob Włodek stated that the murder was committed during a raid carried out by Korytko on Włodek's meadow, located in Stebnyk. Jacob Włodek also pointed out that Korytko carried out the raid despite a pledge, which had been imposed earlier by a king's letter on both parties prohibiting renewal of the hostility. There are some grounds for suggesting that Korytko was not punished for this murder. The legal records make it possible to follow the lawsuit initiated by Jacob Włodek together with Andreas of Vilcze, the brother of the murdered man, against Jan Korytko, for two years, 1475-1477. During this period of time Jan Korytko ignored summons to the court and refused to give Włodek and Andreas of Vilcze introduction to his estate. As was quite typical for many noble enmities from that time, no records of the final stage of the hostility between Korytko and Włodek are left in the court register. It is also noteworthy that Jan Korytko's notoriety and propensity for violence are evidently underrated if judged by the number of pledges imposed on him.

The instances of the excessive use of violence can be multiplied. It does not exclude, however, other, more peaceful, modes of conduct in the pursuit of enmity and litigations.

⁵⁵³ AGZ, vol. 17, no. 730 (January 21, 1472). For Korytko's other acts of violence, exercised during the period of 1468-1478 see: 1) a raid and pillage of the royal village Pochayovychi in Ibid., vol. 13, no. 7130-31 (December 22, 1468); 2) a raid and pillage of the royal meadow nearby Drohobych in Ibid., vol. 17, no. 1119 (July 19, 1475); 3) violence towards the townsmen of Drohobych in the royal forests in Ibid., no. 1559-1572 (November 17, 1478); 4) an assault on the house of Jan and Rafael of Rybotice, which happened in L'viv in Ibid., no. 1235 (February 1476); 5) robbery of the servants of Jacob Kierdej on the public road in Ibid., no. 270 (March 3, 1470).

⁵⁵⁴ The fact of murder is known from the accusation recorded in 1475 in Ibid., no. 1180 (October 18, 1475).

Being litigious did not necessarily mean to be particularly violent. The numerous lawsuits of Nicolas Róža of Górka, a nobleman from Przemyśl land, show an almost complete lack of violent actions. Of his 20 lawsuits, recorded in the Przemyśl castle and land court registers between 1469 and 1485, only one case suggests the use of violence on his side.⁵⁵⁵ As exclusive as the case Nicolas Górka might appear, it suggests, nevertheless, that some nobles were able to pursue their lawsuits while having quite limited recourse to violence. In their case, violence was rather regarded as *ultima ratio* among the techniques of dispute settlement.

At the other end of the spectrum of the experience of violence one can see noblemen and families who emerge from the records of enmity mainly as its victims. To see how frequently some nobles experienced injury and sufferings one can turn to the case of the noble family of Clus from L'viv land. Paul Clus of Krosno was wounded twice in 1446 and 1456, as a result of assaults on his house waged by Olechno of Borshchiv and Clemens Strumilo.⁵⁵⁶ Above all, his pregnant wife, Fyenna, was beaten during an assault waged by Jan Dawidowski in 1472.⁵⁵⁷ Other members of the family also fell victim to the hostilities. George Clus of Krosno suffered injuries from an assault on his house by Theodor Buczacki in 1441.⁵⁵⁸ Jacob Clus experienced an assault on his house by Demeter Spykloski in 1443.⁵⁵⁹ Sigismund of Krosno was murdered in 1494.⁵⁶⁰

Similar painful experience of violence can be found in the case of Jan Volkowski, a native noble of L'viv land. To start with, Volkowski lost his son Nicolas, who was killed by Stachno of Pletenycze in 1476.⁵⁶¹ Moreover, he himself was wounded in this clash. It is further reported that a few years before this fatal incident, while serving as an official of Katherine Gologorska, he had been also injured and robbed on the free royal road by Jan Budzywoy, tenant of Janchyn.⁵⁶² Similar examples can be identified in Przemyśl land. Local records provide the highly telling example of Stanislas of Crisowice, who was wounded twice and survived four violent raids against him in the period of slightly more than ten years, 1491 to 1503.⁵⁶³

⁵⁵⁵ Consider the case brought by Margaret, the widow of Lassota of Myslatice, against Nicolas Róža accusing him of violent expulsion from her property in Ibid., no. 1994 (April 11, 1485).

⁵⁵⁶ Ibid., vol. 14, no. 1688 (May 6, 1446); Ibid., vol. 15, no. 19 (January 3, 1457).

⁵⁵⁷ Ibid., vol. 15, no. 1126 (November 1472).

⁵⁵⁸ Ibid., vol. 14, no. 153 (January 3, 1441).

⁵⁵⁹ Ibid., no. 840 (September 30, 1443).

⁵⁶⁰ Ibid., vol. 18, no. 2401 (September 30, 1494).

⁵⁶¹ Ibid., vol. 15, no. 1488 (May 24, 1476).

⁵⁶² Ibid., no. 1014-15 (February 28, 1472).

⁵⁶³ During the period from 1491 to 1503 the following cases of violence directed against Stanislas of Crisowice are found in the registers of the Przemyśl castle and land court. Stanislas of Crisowice is known to have brought to the courts two accusations of wounding against Nicolas Mzurowski of Strzelczice in Ibid., vol. 17, no. 3320

6.4 George Strumilo and his enmities

Between these two extreme points, however, one can locate a considerable number of nobles whose frequent involvement in enmities was combined with a measured use of violence. The case of George Strumilo will serve to demonstrate this. By descent, George Strumilo belonged to one of the most notable Mazovian families. He settled in Galicia in the late 1430s or early 1440s as a result of a series of donations by King Wladislas III. George Strumilo was one of many Polish nobles whom the king rewarded richly with the mortgaged royal estates in Galician Rus' for their participation in the Hungarian campaigns. Strumilo obtained in mortgage the captainship of Kamianka in northern part of L'viv land, together with a few villages pertaining to the captainship. During his long life, Strumilo became one of the most powerful lords of L'viv land, holding the highest offices, first as Lviv chamberlain and then as castellan. He is believed by some historians to have been the leader of the confederacy of L'viv nobility against the Odrowąż family.⁵⁶⁴

It can be noted from the beginning that the four pledges of George Strumilo which permit placing him among the most litigious men of L'viv land still represent only a small part of his rich experience of violence and disputes. In this regard, the case of George Strumilo illustrates well that pledges are certainly not without shortcomings as to their ability to reflect the scale of inimical relations. The shift in the evidence from the data of pledges findings to another sort of legal records can significantly correct the assessment of the frequency of violence.

To judge by the registers of the L'viv castle court, George Strumilo was a man for whom enmity and litigation represented a natural and permanent state of relationship with his numerous neighbors. The records extant from the years 1441 to 1488 inform about 50

(June 14, 1501); Ibid., no. 3367 (April 4, 1502), and against Martin Motyl, a peasant of Biedrzych of Trzyniec in Ibid., vol. 18, no. 2996 (April 5, 1502). In addition, four cases of raiding and assault against his house and estate were brought to the court. Appeals of assault were brought against the said Nicolas Mzurowski in Ibid., vol. 17, no. 3320 (June 14, 1501); no. 3367 (April 4, 1502); against Stanislaw of Makowniow in Ibid., vol. 18, no. 4136-37 (May 23, 1503); against Jan of Rostwo in Ibid., no. 2154-55 (November 3, 1491); and against Stanislas Jasienski in Ibid., vol. 18, no. 2870 (August 1, 1496). In the last case, Stanislas Crisowski stated in his accusation against Stanislaw Jasienski that the offender assaulted his house with twenty accomplices of the noble origin and of the same number of inferiors, casting the mortal threats against him and wanting "eum colo et vita privare."

⁵⁶⁴ For the life and activity of George Strumilo, one can consult the recent study by Sławomir Jakubczak, "Jerzy Strumiło – przywódca konfederacji lwowskiej 1464" (Jerzy Strumiło – the leader of the Lviv confederation in 1464), *Spółeczeństwo Polski średniowiecznej* vol. 5, (Warsaw, 1993), 245-54; pp. 248-50 are especially informative for the beginning of his career in the Rus' palatinate. It is necessary to take into account that the life of Strumilo has been reconstructed by the author, drawing mainly on the rich evidence of Strumilo's disputes. In this connection it is not without interest for the characteristics of the dominant attitude of the recent Polish historiography towards the problem of noble enmity that the author mentions Strumilo's disputes in just one paragraph. See Ibid., 251.

noblemen and two Jews with whom George Strumilo waged the lawsuits and enmities. Altogether, the legal records provide information about six assaults that carried out by Strumilo against his opponents, and six assaults on him and his subjects by his enemies. To these most important manifestations of violence one can add an accusation against Strumilo of expelling another noble from his patrimony, two accusations of mortal threats, two accusations against Strumilo's subjects of pillage and five accusations of capturing subjects of other lords.

The suspicion is that the available evidence tends to underrate the scale of violence exercised in the course of all Strumilo's litigations. Such reasoning is mainly based on what is known about the nature of the preserved records. The truth is that there are no ways of knowing the details of most of Strumilo's lawsuits. Our knowledge of most legal cases nearly always comes from a single record. Such records simply inform that a legal appeal or summons had taken place or that the court hearing of the case was postponed. Even for the most informative cases, however, the records highlight only a few phases of the disputes keeping silence about the essence of the accusations or the final verdict. In general, George Strumilo's enmities and litigations appear to be reflected by legal records in a fragmentary and disjointed manner.

Records provide some details about the essence of the disputes only for 24 out of 52 men altogether who were involved into the disputes with Strumilo. Eighteen of them had an experience of violent encounter during their inimical relations with Strumilo. For nine noble families it is known that their enmities with Strumilo were renewed and bore a lasting character. For three of these families there is no evidence about the use of force in the process of conflict settlement. All this suggests that the circle of the most meaningful enemies was not too wide. In most cases the enmities were short-lived and the use of violence had only an occasional character. It seems to have been a common pattern that after an act of violence, usually aimed to redress previous wrongs, and the following legal action, which brought complaints to court, further signs of inimical relations tended to disappear from the records.

Another observation is that the configuration of Strumilo's enemies and friends throughout the period was in constant flux. For instance, an influential nobleman of L'viv land, Jan Chodorowski, is presented in the legal records from 1455 as a *procurator* of George Strumilo in the latter's lawsuit with Volczko Rokuty.⁵⁶⁵ The records, which were put into the register two years later, in 1457, portray both men as being already in a state of bitter enmity.

⁵⁶⁵ AGZ, vol. 14, no. 3389 (July 27, 1455).

Inimical relationships are clearly manifested in the charges which George Strumilo brought to the castle court against Jan Chodorowski. Strumilo accused Chodorowski of a violent assault on his house and the illegal detention and execution of his servants.⁵⁶⁶ A similar pattern is seen in Strumilo's multiple contacts with the representatives of two related families from Streptiv and Zhelekhiv. The various forms of collaboration and enmity constantly interchanged each other in the relationships of the two sides during the period of the 1450s-70s.⁵⁶⁷

One should not omit another episode from the life of George Strumilo which concerned his relationship with his younger brother Clement Strumilo. Clement most probably moved to Galicia simultaneously with his older brother. Starting from the 1440s he is permanently mentioned in the legal records as the holder of the royal village of Hai, near L'viv. Nothing seems to predict that the peaceful and friendly relationships between two brothers during the 1440s would break out into a mortal enmity, which consummated a great deal of their energy and efforts during the next two decades. The records from the 1470s are especially revealing in regard to the intensity of the hostile relationships between George and Clement Strumilo. Both sides exchanged assaults and violent seizure of the property and goods twice.⁵⁶⁸ It is also reported that in the course of the enmity the royal pledge and the concordance were broken.⁵⁶⁹ Clement seems to have been especially eager to present his complaint in court, displaying how much he had suffered from the damages, mortal threats, and even wounds.⁵⁷⁰ Thus, inimical relationships can be represented as a network of unstable and constantly shifting alliances in which even the closest relatives and friends could easily be turned into the dangerous enemies.

As concerns Strumilo's lasting enmities, the most important, in which he was involved for most of the time he resided in L'viv land, was with his neighbor, the L'viv sub-chamberlain, Volchko Rokuty of Klodno. The legal records testify that George Strumilo and Volchko Rokuty were in a state of enmity from at least the beginning of the 1440s. Nothing is known for certain about the relationship between Strumilo and Vochko Rokuty before they appeared in the legal records in the early 1440s. It can be guessed, however, that both men

⁵⁶⁶ Ibid., vol. 15, no. 94 (May 27, 1457).

⁵⁶⁷ Ibid., vol. 14, no. 3086, 3105, 3111, 3380, 3423, 3465, 3510; Ibid., vol. 15, no. 48, 949.

⁵⁶⁸ George Strumilo accused Clemens of a raid on the village of Cheshky and material damage. The accusation failed because of the inability to produce witnesses. See Ibid., vol. 14, no. 3068 (March 22, 1454). Clemens accused George of a violent raid on his house in Klodno and wounding, in Ibid., vol. 15, no. 1093 (August 29, 1472); George Strumilo accused Clemens of a raid on his house in Hai, wounding his servant and material damage. See Ibid., vol. 15, no. 1139 (December 17, 1472).

⁵⁶⁹ See the Clemens' denial of giving introduction to George in his estate, which was accompanied by breaking the pledge (Ibid., vol. 15, no. 1097 (September 3, 1472).

⁵⁷⁰ Clemens accused George of a raid on Clodno with the intention of murdering him and of material damage, in Ibid., vol. 15, no. 1181 (January 30, 1473).

had had occasion to meet each other at the court of the Grand Prince Vitautas. It is known that Strumilo was in the service of Vitautas in the 1430s. As far as Vochko Rokuty is concerned, he himself came from Lithuania and belonged to the boyar elite of the Grand Duchy. He figures on the document of the Union of Horodlo from 1413 among the names of other Lithuanian boyars who agreed to accept the coats of arms of Polish knight clans. How he came to appear in the Rus' palatinate remains rather obscure. It is likely that he acquired his Galician possessions and the office of the L'viv sub-chamberlain via his influential position in neighboring Chełm land, where he is known to have held the office of the captain.

The episodes of enmity are attested in the legal records from around 1441 to 1468. Throughout this time at least 20 legal cases were initiated in the L'viv castle court by both parties. If judged by the number of charges (nine), the period of 1441-1445 was a time when the conflict came to a head. During this period two charges of raiding were recorded in the register, under the years 1441 and 1444. An accusation of raiding from 1441 was advanced by Volchko Rokuty's attorney charging Strumilo with inflicting material damage on Volchko's peasants from Klodno.⁵⁷¹ The second instance of raiding, from 1444, was charges brought this time by Strumilo, accusing Volchko of assault with a huge crowd of accomplices, numbering up to three hundred men. Strumilo's attorney alleged that the assault was made on two villages – Darniv and Lanivci – and that his lord suffered great damage, which the *procurator* alleged to be worth one hundred and thirty marks.⁵⁷² It cannot be excluded that this charge was calumnious, since Volchko denied the fact of raiding and expressed readiness to prove his innocence with oath-helpers. Two aspects of these two accusations of raiding are especially noteworthy. Their texts do not mention the casualties of the assaults and they did not result in court verdicts against the alleged wrongdoers and their accomplices. The second peak of the enmity occurred during 1455, when six charges were written down in the castle register. For that year, one case of raiding by the Volchko's familiar, Jan Gnyewek, on the village Chastyn and two cases of pillage and robbery committed by peasants of both nobles were inserted in the court register.⁵⁷³

In spite of quite a large number of charges, the overall impression left by the legal records is that the violent actions exercised during the hostility between Strumilo and Volchko Rokuty were not particularly fierce and enduring. Summing up, only three charges of raiding are known to have been recorded in the court register, including one accusation of

⁵⁷¹ Ibid., vol. 14, no. 320 (August 25, 1441).

⁵⁷² Ibid., vol. 14, no. 951 (January 31, 1444).

⁵⁷³ Ibid., no. 3270 (January 24, 1455); no. 3390 (July 27, 1455); no. 3421 (July 21, 1455).

assault, which was denied by the opposing party. The lords appear to have been rather reluctant to engage personally in violent actions. Opponents preferred to draw on more mundane and usual techniques to support the state of hostility. Verbal dueling by attorneys at the court proceedings; fines imposed on attorneys for procedural errors; charges advanced against attorneys, denouncing them as dishonorable men; presenting a large number of peasants as plaintiffs in court, claiming that they were victims of raids; the small clashes between peasants and familiars; the occasional capture of opponent's peasants; cases of petty theft and pillage were most customary forms of violence, which manifested the inimical relationships between lords. Organized raiding and large-scale pillaging of opponent's peasants which brought about wounding and killing were infrequent and served as signs of the renewal of the active phase of an enmity. This rather dull character of the enmity between Strumilo and Volchko, which lacked the sharp confrontations and violent clashes, accounts perhaps for the fact that this enmity was not touched by royal pledges at all.

George Strumilo's case suggests that the scale of violent pursuit or its expediency could vary significantly as the enmity passed from one stage to another. The exercise of violence in the form of organized assaults and raiding, with the mobilization of a large number of men, appear to have been infrequent. Hostilities waged in such extreme forms were usually limited to one or two cases throughout the whole enmity. Recourse to assault was usually taken by one of the parties who felt he had been particularly wronged and was convinced that violence was the best and only possible way to redress the wrong.

The reasons for maintaining such a rhythm of violence are clear enough. To keep exercising violence for a long time, especially in the form of organized assaults, involved a complicated and time-consuming process of mustering support and was also quite expensive. In addition, the excessive exercise of violence was most likely to run against the public opinion of the local noble community. It also exposed notorious wrongdoers to the danger of official prosecution by the royal captains. All this acted to limit noble violence.

Nevertheless, organized assaults and raiding are clearly discernable in the sources as the most important techniques of waging hostilities. The legal records testify to the high rate of some major offenses committed during organized raids and assaults. For instance, quite a substantial number of cases of wounding is recorded as having occurred during violent raids on private houses or on the public roads. In cases in which a noble was accused of injuring another noble, an organized raid is given as the context of the wrong committed in 15 of 28 cases from Przemyśl land (54%), and for 16 of 38 cases from L'viv land (42%).

After a wrong was inflicted, the parties usually moved to legal arguments and transferred their enmity to court. Most of the legal actions initiated in response to the acts of violence did not lead to final sentences being recorded. Of 12 records of raid and assault organized or suffered by Strumilo, the records of a sentence are available only in two cases. The rest of the cases of assault either lack any mentions of a verdict (seven cases) or speak of the failure of the accusation (three cases). The rarity of the records of the final verdicts given to end enmities must be seen as one of the most fundamental feature of the disputing process in the fifteenth-century Rus' palatinate.

6.5 Toleration of noble violence

Contingent on the wide spread of noble violence was the high degree of social tolerance and impunity for the wrongs committed. The attitudes towards cases of homicide illustrate well the widespread toleration of crime. The murder of Jan, the son of the Belz palatine Dobeslas of Byszow, committed by a noble of L'viv land Nicolas Branicki in 1484 provide evidence to illustrate these attitudes. This is, for sure, one of the most notorious cases of murder ever known to have been recorded in the court registers of the Rus' palatinate in the fifteenth century. It is equally significant that it offers the best example of how the toleration of homicide as well as impunity for murder manifested themselves in the most visible way. The court record reports that Jan of Byszow was first invited to and hosted as the guest in the house of Nicolas Branicki, and then treacherously murdered by the master of the house assisted numerous accomplices.⁵⁷⁴ The case greatly affected the public opinion of the local nobility as well as that of the whole kingdom. Its wide repercussion is suggested by a royal letter from January 23, 1484, addressed to the Rus' palatine. The letter's phrasing is remarkable in revealing king's deep concern as well as his amazement at the notoriety and unusualness of such a murder: "we are annoyed above all possible measure, because a crime so horrendous has not been heard of among our subjects since the beginning of our reign."⁵⁷⁵ One can also learn from the letter that, because of its novelty and wickedness, the case came under special consideration of the king and the royal council. Upon due consultations with his dignitaries, the king set out to instruct the palatine how to proceed with this capital case. The king ordered that an inquest into all the circumstances of the murder be held, that the case be

⁵⁷⁴ Ibid., vol. 15, no. 1743 (July 9, 1484).

⁵⁷⁵ Ibid., no. 1720: "...de quo molesti sumus supra modum presertim, quia a tempore dominacionis nostre tam immanem nunquam inter subditos nostros audiverimus casum, super quo, ut novo et nephario ita apud nos indigesto consiliarios nostros nobis hac in convencionem assidentes consulti invenimus." The letter was put down in the court register under the date of May 10, 1484.

judged as quickly as possible and that Nicolas Braniecki be put into prison until further royal instructions.

At the local level, however, the work of justice and community attitudes seemed to differ considerably from what the royal court expected. The record of L'viv castle court from July 9, 1484, shows that Nicolas Braniecki was found guilty of the murder and imprisoned in the tower of L'viv castle.⁵⁷⁶ It is interesting to add that this sentence was not passed without some procedural difficulties and was conditioned on the oath-taking of Dobeslas of Byszow, by which the Belz palatine confirmed the charges. The case nicely demonstrates how far the local practice of imprisonment varied from the prescriptions of the statutory law. According to the fifteenth-century Statutes, a nobleman found guilty of the crime of murder had to be punished not only with a monetary fine, but also with the penalty of imprisonment for one year and six weeks. The case of Nicolas Braniecki suggests, however, that he spent less than half a year in prison. The record from October 6, 1484, makes it clear that by then Nicolas Braniecki had already been released from jail due to the intercession of four local nobles who agreed to serve as the culprit's sureties.⁵⁷⁷

Some noblemen found guilty of homicide and sentenced to a pecuniary penalty and detention ignored the judgment. They seemed to do it without bearing any serious consequences for their stubbornness. This was, for instance, the case of a noble of L'viv land, Christian of Pepelnyky, found guilty of the murder of the relative of another local noble, Albert of Orlow. The series of the protests inserted in the court register by the bailiff who was brought in by the court to execute the court sentence, testify to the enduring contumacy of the convicted. Christian's unruly behavior was manifested, first of all, by his pertinent and repeated refusals to obey the summons to court and accept voluntarily the penalty of detention.⁵⁷⁸ Murderers' disobedience was augmented in the face of the corruption of court officials, who regularly displayed reluctance and abuses in prosecuting capital cases. In this regard it suffices to draw attention to cases where the appeals of the murder failed and the cases were even adjudicated to the murderers. The appeals were unsuccessful because the plaintiffs were unlucky enough to make some insignificant procedural errors.⁵⁷⁹ Tolerance of the crime of homicide can be also seen in the widespread practice of private arbitration

⁵⁷⁶ Ibid., no. 1743.

⁵⁷⁷ Ibid., no. 1759.

⁵⁷⁸ See: Ibid., vol. 15, no. 1726 (May 11, 1484); Ibid., no. 1733 (May 25, 1484).

⁵⁷⁹ See, for example, the defeat of Stanislas Bądkowski in his accusation of murder, advanced against a peasant of the Sanok sub-chamberlain Peter Czeszyk of Rytarowicze, in Ibid., vol. 18, no. 777 (November 14, 1475). An identical case, in which the appeal of murder failed, is known to have happen in the litigation between Alexander Orzechowski and John Irzman of Sliwnica, in Ibid., no. 4254 (April 11, 1504).

accepted for settling capital cases. Sometimes the plaintiffs agreed to start private arbitration and withdrew their appeals of murder even after the verdicts were already passed.⁵⁸⁰ It is particularly revealing that private settlements of capital cases persisted despite repeated attempts at prohibiting this practice by the royal Statutes and the diet's constitutions from 1472 and 1496.

The sources also supply evidence of cases of fratricide which do not seem to have been prosecuted at all. The record of the Przemyśl castle court from July 21, 1466 relates the case of a fratricide that occurred within the noble family of Crisowice.⁵⁸¹ According to this record, Nicolas of Crisowice was obliged to submit at the next court hearing for the judgment his son Mathias, described as *occisor fratris sui*. It is really surprising that Mathias appears in the legal records of 1470s without any hints at the penalty of outlawry and the confiscation of the property that were prescribed by statutory law for this kind of wrongdoing. On the contrary, it turns out that the man who had been found guilty of such a horrible crime ten years before enjoyed the proprietor's rights fully and was in charge of managing part of the patrimonial estate. The details are revealed by the records of the litigation between Nicolas Górka of Myslatice and Mathias of Crisowice against Mathias' two nephews, Jan and Stanislas of Crisowice. The litigation was held in the Przemyśl land court in the years of 1478 to 1479. Jan and Stanislas of Crisowice protested at court against the agreement that Mathias had concluded with Nicolas Górka. The object of the agreement was that part of Crisowice, which had been run peacefully by Mathias and which he had decided to sell to Nicolas Górka in the years when the nephews were minors. Mathias' nephews claimed that the agreement was illegal. They protested against Górka's refusal to return the property to them in exchange for the sum of money which had previously been paid by Górka to Mathias for the same estate. The reason advanced by the complainers was clear and based on the norms of statutory law. They stated that Mathias, guilty of fratricide, had to be deprived of all rights to inheritance.⁵⁸² Jan and Stanislas of Crisowice seem to have won the case and got their

⁵⁸⁰ See, for example, the appeal of murder advanced by Hlibko of Khylychyci against Stanislas Mitolynski. Mitolynski was accused of capturing and hanging Alexander, the son of the said Hlibko, on the free road. On December 7, 1442 the judges of the L'viv castle court found Mitolynski guilty of the crime and sentenced him to the penalty of the sixty marks, in Ibid., vol. 14, no. 555. However, on the next day, one reads in the register that Mitolynski appeared in the court asking the judges to give the case to private reconciliation. It is even more surprising to find that Hlibko of Khylychyci seems to have given his consent to Mitolynski's proposal, see Ibid., no. 556 (December 8, 1442).

⁵⁸¹ Ibid., vol. 13, no. 6407.

⁵⁸² Ibid., vol. 18, no. 1044 (April 7, 1478): "Exadverso Podlessyeczksky dixit: non potuit Mathias quidquam filiastruo suo Iohanni secum indiviso perdere, ipso Iohanne annos discrecionis non habere, nam et solus Mathias ibidem nihil habuit, quia iuxta iura et statuta scripta partem suam totam perdidit, quia fratrem suum germanum interfecit et fecit de vivo mortuum."

property back. It is interesting, however, that the situation appears quite differently in the light of the records from 1471, when the agreement was mentioned for the first time. At that time the transfer between Mathias of Crysowice and Nicolas Górka seems to have been an accomplished fact. It is amazing that the court had not objected to Mathias' intention to write down the document of the agreement in the register of the land court.⁵⁸³ Moreover, he had managed to recruit sureties among local nobles. The sureties took on the obligation to assist Mathias in bringing his nephews to court when they reached legal age and compelling them to recognize the validity of the agreement.⁵⁸⁴

Cases like these seem to point to a broad sense of estate solidarity which helped many noble wrongdoers escape a deserved penalty. Equally important is the fact that this estate solidarity was able to manifest itself and to be embedded in recurrent, routine practices by taking forms of various legal actions. The weak, ineffective and corrupt system of official prosecution, the powerful network of patronage, and support of the neighborhood or kin group, strengthened by the awareness of the exclusiveness of the noble status, operated as means of shattering even the most notorious offenders. Besides the aforementioned cases of homicide, this principle can be further illustrated by examples drawn from the practice of noble pillage and theft. In some cases the conjecture could be made that the solidarity of common belonging to the noble estate manifested during the trial extended as far as perjury.

In this regard, the following case is worth noting. A legal record of the L'viv castle court from 1505 relates that a local noble, Stanislas Krzmylowski, was accused of robbing merchants from Poznań on the public road. The wrongdoer was subsequently detained by the L'viv citizens, who perhaps acted on behalf of their Poznań fellows.⁵⁸⁵ After some time he was released from jail and summoned to the captain's court to respond to the charges. He appears to have been able to expurgate himself with the help of witnesses. The witnesses, among whom were three sons of the palatine of Podillia, testified that on the day when the robbery of the said merchants took place, they, together with Krzmylowski, had been hunting for the whole day.⁵⁸⁶ The last passage in the record leaves the impression of some behind-the-scene negotiation between the parties: the Poznań merchants finally had to recognize the innocence of Krzmylowski. Having seen Krzmylowski in the courtroom they claimed that he was not the one who had participated in assault. The case suggests quite clearly that the party

⁵⁸³ Ibid., vol. 18, no. 267 (July 16, 1471).

⁵⁸⁴ Ibid., no. 268.

⁵⁸⁵ Ibid., vol. 17, no. 4141 (February 21, 1505).

⁵⁸⁶ Ibid.: "...qui paruit et expurgatus primum per filios magnifici Pallatini Podolie prefati videlicet Iohannem, Stanislaum et Nicolaum ac nob. Trayanum factorem de Glyniany, cum quibus eadem die dum ipsi mercatores sunt spoliati, ipse cum eis cum valtribus equitabat per totam diem."

who did not win the support of the captain to start an official prosecution or was not powerful or determined enough to assert the penalty by the exercise of self-will, was forced to start negotiation with the offender in the hopes of bargaining for terms of compensation.⁵⁸⁷

The toleration of noble violence and criminality is further attested by legal records about nobles accused of theft. It is worth mentioning that the norms of statutory law worked in favor of nobles charged with this crime. According to the statutes, a personal oath without assistance of oath-helpers was most often enough for the nobles who wanted to clear themselves of accusations of theft. This was especially true if such accusations were advanced by commoners against nobles.⁵⁸⁸ The personal expurgation of nobles from the accusation of theft became widely accepted in the practice of local courts during the fifteenth century. Of 29 cases of accusations of theft recorded in the registers of the L'viv castle court from 1440 to 1500, 10 cases (34,5%) ended with the successful expurgation of the nobles by taking a personal oath.⁵⁸⁹ The extent of this mode of expurgation becomes even more apparent if compared with the infrequent use of the other mode of expurgation of the accusation of thefts, that is, the assistance of oath-helpers. For the period of time studied only one case of expurgation with oath-helpers can be found for L'viv land.⁵⁹⁰ Nobles suspected of the crime of theft are known to have taken personal expurgation against the accusation of commoners as well as their peers. The permission for expurgation by personal oath-taking extended as far as to charges brought by the captain himself.⁵⁹¹ Some cases suggest that this mode of expurgation, though widely practiced, was not taken for granted by some court assessors. In one case the court judges, before passing the verdict, felt the necessity first to take counsel of

⁵⁸⁷ This case seems to belong to the well described type of disputes, known in the historical literature as "lumping it". It suggests that the unequal resources and access to power caused the weaker party to surrender to the conditions, favorable to the stronger offender. On such cases see, for instance William I. Miller, *Bloodtaking and Peacemaking*, 244.

⁵⁸⁸ Consult, for instance, the constitutions of Łęczyca land, recorded in 1418-1419. One of its provisions states that a personal oath was enough for the nobles, who were charged with the crime of theft for the first time and were known to have been of *bonae famae*. See *Jus Polonicum*, 194: "Quando nobili culpa furti datur, et ipse honeste vivit, et bonae famae existat, ita, quod de ipso nunquam audiebatur malum, pro prima culpa proprio juramento evadat..."

⁵⁸⁹ This provision was known to be the practice of courts of other lands of the Rus' palatinate too. See, for instance, the evidence from the Przemyśl castle court, which furnishes a case of the personal expurgation, undertaken by a noble of the Przemyśl land, Zanko of Uniatychi against the charges, advanced by a commoner, Nicolas Dubas and his wife, in AGZ, vol. 17, no. 1315 (March 11, 1477).

⁵⁹⁰ Ibid., vol. 14, no. 787 (June 24, 1443). The accusation was advanced against Stecko Brechowych de Pohorci.

⁵⁹¹ Consider, for instance, the accusation of theft, brought in 1470 by the L'viv captain Rafael of Jaroslaw against three local nobles. All of them succeeded in cleaning themselves from the accusation by taking the personal oath. See: Ibid., vol. 15, no. 715-17 (January 4, 1470).

the dignitaries present at the local diet. Only afterwards did they confirm the right to the personal expurgation.⁵⁹²

6.6. Toleration of crime and ambiguities of noble honor

The widespread social toleration of nobles' thefts had one significant implication for the concept of noble honor. This is clear from the accusations of theft which were first brought and then withdrawn by the plaintiffs. Altogether four such cases are preserved for L'viv land for the period of 1440 to 1500. They are particularly revealing for offering insights into the interplay and manipulations of local knowledge, gossip, and reputation in the course of litigations. The first of these cases was recorded in the L'viv castle court on May 23, 1455. The record is a condemnation of theft brought by Jacob Clus of Solowa against Danko of Stanymyr. The record relates that the defendant immediately claimed his willingness to justify himself by taking an oath. What follows in the text was the public repudiation of his allegation by the plaintiff. In his acknowledgment, Jacob Clus denied that he intended to "name Danko of Stanymyr the thief and stated also that he knew nothing bad, but only good" of the accused.⁵⁹³ Another record from 1468 gives quite similar words of justification by Michno of Borshchiv, pronounced on the occasion of his withdrawal from the accusation of theft against his brother, Nemyrka. Having been summoned to the court to attend Nemyrka's personal oath of expurgation, Michno claimed that all he had said against Nemyrka, "had been said because of anger, and that he knew nothing but good of his brother." Michno further maintained that similarly to other noblemen of the neighborhood he "had the opinion that his brother was a good man."⁵⁹⁴ A slightly different reason justifying recanting an accusation of theft can be found in a legal record from 1499. The account of the case states that the townswoman of L'viv Ann Czudna recognized in court that she had unjustly charged the noble Paul of Pyechykhvosty with the crime of the theft. She added to her recognizance an important detail by saying that she had done this from "the inspiration of evil people." It is highly interesting to find the words by Paul Pyechykhvostski inserted just after the Ann's acknowledgment. In his *memoriale* Pyechykhvostski stated that "as was known to all good men, he always lived honestly starting from his early youth." As the account further relates,

⁵⁹² Consider the case of Rafael of Streptow, accused of the theft by peasants of Andreas Bylina of Rapniv, in *Ibid.*, vol. 14, no. 2822 (May 15, 1453): "...et dom. Iudex et subiudex terre Leopold. cum ceteris dominis ipsis dederant ad Convencionem Ascensionis Domini in Vysznya prox. preteritam ad requirendum dominos existentes in Convencione et qualiter debent se iustificare ad instanciam kmethonum inferioribus status."

⁵⁹³ *Ibid.*, vol. 14, no. 3350: "Iacobus statim negavit dicens: non apello te furtem nec scio quidquid de te mali, nisi omne bonum."

⁵⁹⁴ *Ibid.*, vol. 15, no. 636 (April 8, 1468): "Michno dixit: quod dixi, ex ira dixi, sed de ipso fratre nichil mali, solum omne bonum scio habeoque eum po bono homine, veluti ceteri homines ipsum habent."

the judges decided to accept his statement and “retain him in his honor.”⁵⁹⁵ Perhaps Pyechykhvostski had sufficient reason to insist on including his statement into the record of the case, since it was already the second time that he had been blamed for theft.⁵⁹⁶

The interpretation of these cases has two slightly different tracks. First, it is significant that such abandoned charges had the potential to work in favor of the noblemen suspected of the crime of theft. As has been suggested above, this kind of accusations targeting an opponent’s reputation, not only exploited, but also consciously transformed the flow of local gossip. Withdrawal from the accusation of theft, accompanied by the proper public recognition of the opponent’s good reputation, operated as a ritual of expurgation without the need for oath-taking. By disclaiming their accusations the plaintiff could re-assert the questionable reputation of the accused and re-confirm the status of the suspected person as a member of the noble estate. It is interesting to add that this practice was well known to the contemporaries and criticized by them.⁵⁹⁷

Secondly, the given cases seem to suggest that nobles whom local gossip cast with the reputation of being thieves were largely tolerated by their peers. In some cases the plaintiffs had no intention of pursuing their charges to the end, but perhaps preferred to negotiate with the opponent the terms of the withdrawal from the charges. This toleration, however, appears to have had some negative consequences for the suspected noblemen. The opponent’s ill-fame for theft could be consciously utilized and further enhanced in the course of the litigation with the aim of destroying his trustworthiness. In this regard, to advance such an accusation and then abandon it represented a shrewd disputing strategy which often balanced on the line of calumny. By bringing charges of theft against his opponent, the plaintiff made public his suspicion about the ill-famed activity of his rival, and perhaps strengthened public opinion about the latter’s bad reputation. At the same time, the withdrawal of the claim allowed the

⁵⁹⁵ Ibid., no. 2914 (October 9, 1499): “Anna stans dixit: domine Palatine, ego ipsum Pyeczychostsky non inculpo nec quitquam mali de ipso scio, solum quod ex inspiracione malorum hominum ipsum inculpaveram. Paulus memoriale posuit et dixit, quod notum est bonis hominibus, quomodo ex iuventute mea me servabam et honestatem meam. Nos ipsum circa honestatem ipsius remansimus.”

⁵⁹⁶ Ibid., no. 2761 (December 22, 1498).

⁵⁹⁷ Andrzej Frycz Modrzewski describes one such case, pointing out its duplicity. See his, “Liber de moribus”, cap. XXV.3, 146: “Res ad arbitros delata ita inter ipsos composita est, ut uterque ab altero erratorum suorum ueniam precarentur, alter, quod et furti crimen et pugnum impeggerit, alter quod quasi conuicium dixerit. Ridicule haec quidem omnia. Quasi uero uel iste labem furti eluerit uerbum mendacii iactando, uel ille falsi crimen effugerit aliam incutiendo. Cur et a mendacii et a furti crimine non potius purgat se quisque uel testibus, uel aliis legitimis rationibus? Non debes existimare te a crimine, cuius insimulatus es, liberum fore, uel si eum, qui te insimulauit, occideris. Sunt legitime rationes, quibus homines de criminibus obiectis purgare se debent. His quamdiu usus non fueris, tamdiu et culpae criminisque in te collate reus et conuiciis hominum expositis uideberis.”

plaintiff to avoid the accusation of calumny. Such accusations could be intricately played with and opened up additional possibilities for negotiations in nobles' enmities.

6.7 The limits of noble violence

Intense and tolerated as the noble violence was, it was nevertheless limited.⁵⁹⁸ Cases of homicide furnish the best evidence to support this suggestion. If we are going to trust the findings of the legal records, it is possible to say that the frequency of murder committed among nobles was rather low throughout the period in question. The legal records of the Przemyśl castle and land courts for the period of 1436 to 1506 speak of 21 nobles murdered and 29 nobles accused of homicide. A similar picture emerges from the registers of the L'viv castle court for the period of 1440 to 1506. They give approximately the same figures: 17 nobles murdered and 25 nobles, blamed for committing murder. In addition, a few noble families in both lands, who were involved in committing more than one case of homicide. In L'viv land the family of Branickis, mentioned above, was known for the repeated cases of committing murder.⁵⁹⁹ Besides the Branickis, two cases of committing homicide were recorded for the Mitolynski family.⁶⁰⁰ In the Przemyśl land the Tyszkowskis are attested as guilty of two homicides.⁶⁰¹ As a further confirmation of the low level of homicide one can also mention the rarity of murders that occurred among the close relatives. For the whole period, the only one case of fratricide, mentioned above (the family of Crysowice from the Przemyśl land), is known to have taken place.⁶⁰²

Furthermore, some casual evidence suggests that blood vengeance was rather untypical for the noble enmity of the Rus' palatinate. It is noteworthy that rare cases of group violence with more than two nobles involved rarely resulted in the killing of the opponents.⁶⁰³

⁵⁹⁸ For the emphasis on the limited character of violence in medieval society, see, for instance Stephen D. White, 'Feudal Revolution': A Debate," 152, 212-13.

⁵⁹⁹ Peter Branicki, the L'viv land judge and the father of Nicolas Branicki, the murderer of Jan, the son of Dobeslas of Byszow, was known from the legal records as the murderer of the son of Chodor Horbacz de Dubrowlyany. See Ibid., vol. 14, no. 18 (June 17, 1440).

⁶⁰⁰ Ibid., no. 555 (December 7, 1442). Wlodek Mitolynski was accused of raiding on the free road and murdering two royal servants from Borshchovychi, see in Ibid., no. 2203-05 (February 13, 1449).

⁶⁰¹ Oleksa Tyszkowski is mentioned as guilty of the murder of John Kokotek Solecki, see in Ibid., vol. 18, no. 1803-04 (June 3, 1483); Olefir and Senko Tyszkowskis are mentioned as guilty of the murder of Senko of Kopystno, see in Ibid., vol. 13, no. 4812-13 (August 1462).

⁶⁰² Ibid., vol. 13, no. 6407 (July 21, 1466); Ibid., vol. 18, no. 1044 (April 7, 1478).

⁶⁰³ In the registers of the Przemyśl land and castle courts, the following capital cases were recorded, mentioning two and more men found guilty of homicide or falling victims of the murder – Hrycko of Boryslav and Jacko of Rozhorci recognized their obligation to pay compensation for the head of the murdered Rafael of Mykolaiv, see in Ibid., vol. 13, no. 4557 (October 7, 1460); Olefir and Senko of Teszkowicze were called to compensate for the murder of Senko of Kopystno, see in Ibid., no. 4812-13 (August 1462); the record of concordance between the Kłodnyckis and Lubyneckis speaks of two nobles, Peter and Michno of Lubinci, as guilty of killing Andreas of

It seems that such collective clashes, if they happened, ended with simple wounding.⁶⁰⁴ It is also important to note that it appears from the legal records to have been highly unusual that such collective confrontations were renewed. In one curious case a nobleman responsible for wounding his opponent even agreed to provide money to hire a doctor to tend the wounds of his victim.⁶⁰⁵

Similarly the cases showing a noble's intention to avenge the murder of close relatives by using force were also rare. In only one capital case, between Olexa Tyshkowski and members of the Kokotek family, was the revenge for the murder victim explicitly stated in the legal record. It is noticeable, however, that the murder of Jan Kokotek Solecki, committed by Olexa Tyszkowski, was avenged by the brothers of the murdered man not on the enemy or his relatives, but on two peasants from Tyszkowice.⁶⁰⁶

6.8 Enmity and its legal implications

Of course, this does not imply that a sense of vengeance was alien to the culture of noble enmity in late medieval Galicia. But it seems to have been rather the practice of many nobles to pursue capital cases by initiating a lawsuit against a murderer demanding pecuniary compensation. The court and litigation, not violence, appears to have been the major means of satisfying revenge. The court turned out to be the principal public forum for the dramatic enactment of hostile feelings and the articulation of relations of enmity.⁶⁰⁷

The interconnection of vengeance and litigation in the case of homicide can be inferred from the some peculiar legal procedures reserved for capital cases. It was common, for instance, that the procedure of summoning a murderer to the court or declaring him guilty

Kolodnycia, see in *Ibid.*, vol. 18, no. 1303 (December 14, 1479); Alexander Rybotycki of Hubyczsiolo was liable for killing Stecko of Letynia and his son Mykhailo, see in *Ibid.*, vol. 18, no. 200-01 (March 25, 1471).

⁶⁰⁴ For the group fights among nobles that resulted in wounding, see, for example, legal records of the L'viv castle court about the enmity between Demeter of Lahodiv and Danko, Wasko and Iwasko, brothers from Stanymyr, in *Ibid.*, vol. 14, no. 1042 (April 3, 1444); no. 1129 (July 17, 1444). Other similar cases speak of affronts between Nicolas Hermanowski on the one hand, and three brothers: Andreas of Trzebownice, Jacob and Francis of Dereviatnyky, see in *Ibid.*, vol. 14, no. 1392, 1400 (June 1, 1445); between Peter Mishych of Stratyn on the one hand, and Woytka, the wife of Iwanko Korenevych of Stratyn, and her son Andreas, see in *Ibid.*, no. 434-35 (June 22, 1442).

⁶⁰⁵ The case in question concerned the wounds, inflicted by Nicolas Mzurowski on Stanislas of Krysowice. See, *Ibid.*, vol. 18, no. 3305 (April 11, 1504): "...quia tenetur debiti decem marc. nob. Stanislaio heredi de Kryschowycze pro expensis alias za naklad, quas fecit super medicum dum ipsum vulneravit..."

⁶⁰⁶ Consider the recognition by Olexa Tyszkowski, written down in the register of the Przemyśl land court on June 3, 1483. It states the compensation made to him by Jan Kokotek for the murder of two peasants. The record mentions in slightly confused manner that the killing was committed "quos homines nob. Iohannes et Stiborius Kokothkovye patrem predicti Iohannis vindicando fratrem suum nob. Iohannem Solyczsky patrem predicti Iohannis Thezkowsky interfecerant," see in *Ibid.*, vol. 18, no. 1804.

⁶⁰⁷ For the comparison, consult the analysis by Paul R. Hyams about the role the judicial vengeance played in the enmity culture of thirteenth-century England. See his, *Rancor and Reconciliation*, esp. 243-46, 249-51. On the law as a substitute for the vengeance, see also William I. Miller, *Bloodtaking and Peacemaking*, 190, 231-33.

of the homicide took place near the tomb of his victim.⁶⁰⁸ One case, which comes not from the Rus' palatinate, but from the neighboring Belz palatinate, provides some revealing details of such legal rituals of vengeance. The evidence in question is the deposition of the bailiff's recognizance of an appeal of murder recorded in the register of the Belz castle court on April 10, 1469.⁶⁰⁹ The appeal of murder was set out by a certain Mathias, advocate of Ornathowice, against the noble, Jacob of Polodow. Jacob of Polodow was accused by Mathias of the murder of his brother, Sigismund. The bailiff recognized that the said Mathias took him to the cemetery and the church and showed him the tomb where, according to Mathias' words, the corpse of his brother was buried. The bailiff's further attestation suggests how much Mathias had been affected by feelings of revenge while proclaiming the appeal of murder. The bailiff remarked that the plaintiff had not only taken him to the tomb, but had also had the resolute intention of digging up and exhibiting the corpse of his murdered brother. Fortunately, as the bailiff noted, he had not been allowed to do it because of the intervention of the local priest. Such a form of proclaiming a legal case clearly bore the mark of a public ritual enacted to make the feeling of grievances and the state of enmity known as widely as possible. Another example of the appeal of murder which took the form of a ritualized public proclamation is provided by the capital case of Nicolas of Vilcze, the official of Jacob Wlodek of Stebnyk killed by Jan Korytko in 1475. An interesting piece of testimony is preserved which was inserted in the Przemyśl castle court register by Andreas, the bailiff of Drohobych castle, on the occasion of that murder. The bailiff recognized that, after having observed the body of the murdered Nicolas of Vilcze, he was requested by Jacob Wlodek to declare publicly "at the four corners of the town of Drohobych" the appeal of murder against Jan Korytko.⁶¹⁰

Regarding the legal underpinning of the feeling of vengeance, one kind of lawsuit seems to deserve special attention. One can find lawsuits initiated by the children of murder victims who claimed to have been under age when the homicide was committed. Therefore the plaintiffs stated that they had been unable to appeal to the court immediately after the

⁶⁰⁸ Consider, for example, the following passage from the record of the capital case between Olexa Tyszkowski and the relatives of the murder victim Jan Kokotek: "Quam interfeccionem Iohannis nobilis prefati Martinus et Iohanes ministeriali in tempore et hora obduxerunt et super te proclamacionem circa sepulturam fecerunt," in *Ibid.*, vol. 18, no. 794 (December 12, 1475).

⁶⁰⁹ *Ibid.*, vol. 19, no. 1911: "quia nobilis Mathias advocatus de Ornathowycze adduxit ipsum in Trzesczany super cimiterium et in ecclesiam ubi in ecclesia protestatus est ostendens sepulcrum dicens, qualiter iacet frater meus Sigismundus interfectus, quem occidit nob. Iacobus de Polodow et petivit extumulari ipsum funus interfecti, sed plebanus non admisit; ipse vero Matheus proclamavit super nob. Iacobum de Polodow, quia sibi fratrem interfecit Sigismundum et ego ministerialis vidi et conspexi tumultum et locum ubi est interfectus prout per me ministerialem cum terrigenis est protestatum et tunc ipse Iacobus fuit in ecclesia."

⁶¹⁰ *Ibid.*, vol. 17, no. 1090 (May 17, 1475): "...cum hoc proclamatum causam interfeccionis inferendo nobili Iohanni de Richczicze in quatuor angulis in civitate Drohobicz proclamare interfeccionem ipsius Nicolai per ipsum Richcziczsky vita privatum."

murder of their father or mother.⁶¹¹ Such capital cases seem to suggest that the desire for revenge could be maintained and perhaps even fostered for quite a long period of time.⁶¹² In this connection it is also interesting to draw attention to some of the private agreements concerning such capital cases. According to the terms of such agreements, the relatives of the murdered person often took on an obligation to defend the murderer against the possible accusations of the small children of the murdered person.⁶¹³ In one case the parties failed to reconcile, precisely because the relatives of the murdered nobleman refused to accept this condition. The record says that the murderer agreed to allow an introduction onto his estate to compensate for the capital punishment on the condition that the opposite party would provide surety for the children of the murdered person. By taking surety, the side of the murdered party had to guarantee that in the future the murderer would not be sued in court by the children. The nobleman who represented the side of the murdered person declined this condition.⁶¹⁴

6.9 Enmity and slander in court

The interdependence of litigation and violence had another interesting dimension. The growing number of legal statutes promulgated in the fifteenth century to categorize and penalize various types of transgression as violent and criminal significantly broadened the possibilities for their prosecution in court. Paradoxically, this increase in volume and importance of the statute's provisions to regulate violence and crimes had unexpected effects.

⁶¹¹ The emphasis on the under-age status of a plaintiff was important, especially taking into consideration the normative context of pleading a capital cases. The Polish statutory law on homicide established that an appeal of murder had to be brought within a time span of three years from the time of the murder was committed. Otherwise, the law considered such an appeal of murder that exceeded this time limit as a calumny. See: *Statuty Kazimierza Wielkiego*, no. LXXX, 467.

⁶¹² Consider, for example, the case pursued by Jan Vyrzba of Bolechowka against Hedwig, the daughter of Jan Budzywoj of Volchyschovychi. The case was recorded in the Przemyśl in 1499. It follows from the text of the record that Jan Vyrzba initiated a case first against the said Budzywoj. The essence of the case was an accusation of the murder of Vyrzba's mother, which happened due to the serious wounds she had received during an assault on her house organized by Budzywoj. By 1499 Budzywoj was already dead and his son, Stanislas, whom Vyrzba summoned to respond for the wrongdoing of his father, disappeared during the Moldavian campaign. Therefore, Jan Vyrzba believed it legitimate to sue Hedwig as the only available successor of Budzywoj. For the details of the case see: AGZ, vol. 18, no. 2727 (October 29, 1499); no. 2757 (November 26, 1499); no. 2779-80 (January 7, 1500); no. 3421 (June 25, 1505). For a similar case between Jan Koszczej, the son of the murdered Nicolas Koszczej of Lashky, and Dorothy, the daughter of the alleged murderer Jan Klokowski of Nowosilky, see in *Ibid.*, no. 3452 (December 9, 1505).

⁶¹³ See, for example, *Ibid.*, no. 4361 (March 4, 1505).

⁶¹⁴ *Ibid.*, vol. 19, no. 2359 (June 2, 1494): "Et in instanti ipse Valentinus de Koczmyń dixit: domine iudex, paratus sum dare inromissionem in bonis meis Koczmyń in areas possessionatas iuxta quod decretum per vos fuerit nisi per prius ipse Stanislaus fecerit mihi pacem et proteccionem caucionis fideiussorie prout facere de iure debet, ut ego per amplius per pueros aut alios propinquos Abrahe interfecti pro quo causa agitur pro capite eiusdem et ut non inequitaret aut mei in post successores. Et idem Valentinus Koczmyńsky requirebat ipsum Stanislaum Myreczsky coram iure, si vult sibi pro pace fideiubere an non. Qui Stanislaus fideiubere noliut."

The body of law not only worked to restrain the noble enmity and violence, but also offered additional resources for expanding and sharpening the litigiousness of the society. One of the most explicit manifestations of this excessive litigiousness was the spread of slanderous claims. Seeking revenge through the law, some nobles did not stop before bringing to court evidently spurious accusations of violence. This shows how reality and the imagery of violence were combined in waging litigation.

Some records informing about the cases of rape and abduction exemplify very well this aspect of the local practice of enmity. One of the most revealing pieces of evidence was recorded in the register of the L'viv castle court on August 14, 1456. This piece of evidence is a short recognizance presented to the court by a noblewoman, Anna, daughter of Thomas Kosch of Lexowka, a familiar of the Przemyśl sub-chamberlain Jan Derszniak of Rokitnica. The recognizance was put forward to refute her own father's charges, brought against a certain Jacob, son of a noble Nicolas Scholtiszek of Seciesza. In his accusation Thomas Kosch alleged that the said Jacob Scholtiszek not only raided and broke into his house, but also violated and dishonored his daughter. Instead, by her recognizance, Anna insisted that Jacob Scholtiszek was not guilty of the crime as was alleged by her father. She claimed a readiness to prove her words by swearing an oath, arguing that Scholtiszek had neither assaulted the house of her father nor attempted to violate her honor. She further added a highly interesting and important detail to her statement by saying that it was another man who ravished her and her father knew well who it was.⁶¹⁵ This is all that is known of the case. It is not known whether Anna appeared in court again. The name of her true (or alleged) rapist as well as the outcome of this litigation also remained unknown. It can be suggested that case was recorded in the court register of the L'viv castle court by pure chance, perhaps only due to the unusualness of Anna's recognizance or because of impediments to laying a deposition in the court registers of her native Przemyśl land. In this regard it is also important to add that both the plaintiff and defendant were petty nobles, employed into the service of great lords.

⁶¹⁵ Ibid., vol. 14, no. 3634 (August 14, 1456): "Nobil. Anna filia Thome Kosch de Lexowka sub generoso domino Iohanne Derschnyak de Rokythnicza subcamerario Premisliensis recognovit, quia prout nobil. Thomas pater suus citavit nobilem Iacobum filium nobilis Nicolai Scholtiskonis de Syeczescha ad presenciam dom. Iohanni de Pylcza aut coram suo iudicio pro eo, quia Iacobus superequitavit violenter super domum ipsius Kosch et quod domum sibi percussisset violenter alias roszbyl et quod filiam Annam sibi dehonestaret et nescio quo ipsam fecit. Que Anna personaliter recognovit et iuramentum parata fuit facere, quia Iacobus nunquam super domum patris eius violenter superequitavit nec percussit domum nec sibi Annam violenciam aliquam fecit, nec unquam aliquam verecundiam ab eo suscepit, nec ipsum in aliquot malo cognovit, sed pater meus scit bene, quis me dehonestavit, sed non Iacobus filius nobilis Nicolai Scholtiskonis et pro isto parata essem ius facere, quia sum innocens ab ipsis Iacobo filio Nicolai Scholthiskonis, si necessitas foret istius iuramenti. Et si mfus. Doms. Iohannes Pyleczski michi daret treugatam alias mir benivole venire et viceversa regredi, parata sum hoc recognoscere coram eo et ius facere, quia sum ab ipso Iacobo iusta vulgariter prawa in omnibus rebus malis. Nicolaus Scholthissek posuit memoriale."

Therefore it is no coincidence that the record mentions that the case had initially been brought before the patrimonial court of one of the most powerful magnates of the Przemysl land, Jan of Pilcza. The final words of Anna's recognizance were also offered to Jan of Pilcza, petitioning for permission to defend the veracity of her statement before his court.

Two other cases in which the involvement of the spurious claims can be suspected speak rather of what can be termed as abduction. Some cases of abduction were clearly connected with the matrimonial intentions of nobles. Abduction, real or alleged, sometimes figured as one of the steps leading to a clandestine marriage. It was employed to overcome the resistance of parents who preferred other marital choices for their daughters. A suit lodged by Anna Cebrowska of Zhabokruky and Rafael of Seniawa against Wlodek of Bilka provides a good illustration of the interrelation of abduction and clandestine marriage. A short account of this alleged abduction and arguments of the parties were recorded on December 18, 1492, in the register of the L'viv castle court.⁶¹⁶ The account starts with an accusation by Anna Cebrowska against Wlodek, in which Wlodek was charged with the crime of abducting Anna's daughter, Agnes. Anna Cebrowska also stated that Agnes was already promised to Rafael of Seniawa. Anna also claimed that the abduction took place during an assault arranged by Wlodek on the Cebrowskis' house. In his turn, Rafael of Seniawa extended the accusations against Wlodek by saying that during his raid Wlodek robbed the house and took many domestic goods, including a fur coat bought by Rafael for Agnes as a wedding gift.

Wlodek challenged this allegation by presenting an alternative version of events. The defendant argued that he did no violence to the said Agnes, but took her as his legitimate wife. In his defense, Wlodek insisted that Agnes had personally pledged him a promise of marriage. According to his version, Anna Cebrowska also gave him the aforesaid fur coat voluntarily. Wlodek alleged that this had happened when he had sent a carriage for Agnes, as his wife, to the Cebrowskis' house. It is revealing that at this stage of debate the court scribe put down a short note of Agnes' testimony herself admitting the veracity of Wlodek's words.

Afterwards the judges decided to transfer the case for judgment to the king's court, held at the next diet. The later stages of the dispute, including its consideration by the king's court, remain unknown. Though sources give no explicit evidence about the sentence adjudicated in this case, there are some reasons to assume that Wlodek succeeded in winning this dispute. Under the next year, 1493, one finds in the register a record of the testimony deposited by three local nobles who came to support Wlodek's side in the dispute.⁶¹⁷ In their

⁶¹⁶ Ibid., vol. 15, no. 2262 (December 18, 1492).

⁶¹⁷ Ibid., no. 2272 (January 5, 1493).

recognizance these nobles claimed to bear witnesses to the following fact – they said that they had been present in Bilka, enjoying the company of Wlodek, exactly at the time when the carriage with Agnes had arrived there. An interesting detail was included into their testimony. They testified that they saw how Agnes got out from the carriage wearing the fur coat to which Rafael of Seniawa had laid his claims. The sense which can be inferred from this recognizance is the insistence on the non-violent, peaceful and voluntary character of Wlodek's conduct in the matter of his marriage to Agnes.

A number of cases reports about the abduction of women who were already married. This can be considered as one of the most interesting features of the practice of abduction in the fifteenth-century Galicia. Still, doubts can be raised in regard to allowing some of this evidence too much weight. Records of such cases usually never went beyond the stages of a plaintiff bringing the charges to the court or the preparation of a defendant for the process of expurgation. It seems that some plaintiffs easily surrendered their claims in face of defendant's determination to prove his honesty by swearing an oath and presenting oath-helpers. For instance, no further actions are recorded in the dispute between Nicolas of Vavelnytsia and Michael of Jazlovec' after the latter took up a preparation to expurgate himself from charges of assaulting Nicolas' estate and kidnapping his wife.⁶¹⁸ Another lawsuit, in which Jan of Orfyn brought an accusation of the abduction of his wife against nobles of Nyesluchiv, ended up on the record, yielding information about attempts at peacemaking.⁶¹⁹

As was mentioned at the beginning, some allegations could apparently be spurious. In 1471, Andreas of Sienna, a representative of the local magnate family, lodged a suit in the L'viv castle court against Jan, son of Iuchno Nagwasdan, noble of the Zhydachiv district.⁶²⁰ The crime Jan was charged with and the evidence presented to the court to prove his culpability seem to have been serious. Andreas of Sienna claimed that Jan Nagwasdan was guilty of kidnapping his wife. Furthermore, the record relates that having seen his wife abducted by the said Jan, Andreas gave chase, following the assailant by his recent tracks (*ferventi vestigio alias gorącym kopythem*) and captured him with material evidence of his crime (*cum facie*). The record does not specify what sort of evidence Andreas discovered at the capture of Jan. It is also silent about what happened to Andreas' wife after the abduction.

⁶¹⁸ Ibid., no. 3517 (March 31, 1470 - termini regales).

⁶¹⁹ Ibid., vol. 14, no. 1236 (November 26, 1444); no. 1251 (December 11, 1444).

⁶²⁰ Ibid., vol. 15, no. 786 (January ¾, 1471).

The father of the alleged culprit vigorously objected to the charges and the course of events, presented by Andreas of Sienno. Iuchno Nagwasdan said that at the moment of capture his son refused to acknowledge as his all the things that were presented as alleged proof of his crime. Jan Nagwasdan made this protest in the presence of all the inhabitants of the village where he had been captured. In addition, in all the villages and towns through which Jan had been carried detained by the familiars of Andreas of Sienno he publicly protested against the illegal character of his detention before local nobles and commoners, who came out to watch the event. The aim of such protests was to make public to observers the unjustness of his capture by claiming that no evidence of his guilt had been discovered by Siennowski's familiars when he was seized. Iuchno Nagwasdan further specified that in response to his son's protests Siennowski's familiars had failed to display to witnesses the *facie*, on which Jan's arrest was based. All the persons, mentioned in the speech of Iuchno Nagwasdan as witnesses to his son's arrest and protests came to court and confirmed the veracity of Iuchno's account.

The record ends up with the formal judgment. On the basis of the witnesses' depositions, the judges declared Jan Nagwasdan to be innocent of the alleged crime and restored his honor to him. It is noteworthy that Andreas of Sienno suffered no penalty for his violent conduct and false appeal. It is also not without interest that under the same year the register contains traces of the counter-suit of Jan Nagwasdan against Andreas of Sienno and, surprisingly, also against Andreas' wife, Katherine of Gologory.⁶²¹ The legal record mentions eight citations brought against the Siennowskis by Nagwasdan. This attests to the seriousness of Nagwasdan's claim, but unfortunately the record provides no information about its factual content. It cannot be excluded that this suit was unleashed by Jan Nagwasdan to avenge his honor, which had been damaged as a result of charges of abduction and detention.

It seems that the pursuit of claims of abduction in court was potentially damaging to the honor of all the actors, regardless of the role they played in such litigation. Some of the charges of abduction can be seen as the logical consequences of the excessive litigiousness of contemporary society. The widely spread spurious and contumacious accusations are evidence suggesting the high intensity of disputing in the local society. In this regard, it is remarkable how lenient was Polish statute law was in prosecuting calumnious charges. On the one hand, the statute law came to recognize the seriousness of the problem of calumny in the

⁶²¹ Ibid., no. 829-30 (April 26, 1471).

legal process.⁶²² On the other hand, it appeared to be unable to provide rules for diminishing its effects on the course of litigation. The major fifteenth-century legal norm enacted by the Nieszawa Statutes from 1454 and confirmed by King Jan Albert in 1496 is exemplary in this respect. By its provisions, a calumniator, condemned three times for bringing slanderous charges, escaped any serious punishment (except for a small fine of three marks, paid to the court and to the person who expurgated himself/herself from calumny). Only if convicted of slander for the fourth time was such a person to be severely punished in the most dishonourable manner – by cutting off his nostrils.⁶²³

The description of these cases provides clear evidence of how much uncertainty about the veracity of claims and proofs and how much suspicion of calumny from all sides were revealed in the course of legal actions. The disruptive force of such charges apparently tended to undermine the fundamental ties of solidarity and trust that were needed to cement a noble society. Moreover, some of the cases of abduction are quite consistent in representing fathers and husbands as unscrupulous calumniators, who were ready to pursue suits to the end at all cost, including damage to their daughters' and wives' honor. However, bringing such accusations had unintended but ruinous consequences for plaintiff's own honor. Charges which failed to be proved and thus aroused a suspicion of being pure calumny undermined the plaintiff's own trustworthiness – a quality which was otherwise valued as one of the basic criteria of the noble ethos and identity.

To sum up, violence figured prominently among the means and forms of social communication in noble society. The omnipresence of violence in the life of nobles of late medieval Galicia renders the image of that society as a world of intense social strife. The capacity to assert self-will and act violently was the most significant way by which noblemen measured their status and self-esteem. Through the exercise of violence nobles asserted their own positions and challenged the positions of others. The permanent recourse to violence reflected the incessant struggle for the status, power, and resources that took place in the local noble communities.

At the same time noble violence was by no means unrestricted in its usage. The limited character of noble violence can best be explained by viewing the noble enmity as a process which went through different stages, each employing various disputing techniques.

⁶²² Consult for instance the passage of the paragraph of the Statutes of Casimir the Great regarding the calumny in capital cases: "Consueverunt etenim multum quidam litigiosi calumpniose viros innocents de crimine homicidii commissi ante multos annos querulose accusare." See: *Statuty Kazimierza Wielkiego*, # LXXX, 466-7.

⁶²³ See the text of confirmation by Jan Albert in *VL*, vol. I, p. 115, col. 2: "De calumnia objecta, de calumiatore et de calumniato."

Violence served the purpose of questioning the legitimacy of a rival's claim or right that was at the stake in the dispute. In general, every crisis in a relationship which ruined the previously existing state of the relationship could provoke an outbreak of violence. In this way violence could be used to create a new *status quo* and force the opposing party to accept a new reality that emerged as a consequence of the violent pursuit, or at least to start negotiating new terms.

Another dimension was also visible in the interconnection between violence and the legal process. The ineffective administration of justice appears to have been one of the major causes of the thriving culture of noble violence in late medieval Galician Rus'. One of the most common aims behind the use of violence was an attempt to redress wrongs which one party felt could not be restored by appeal to the court. In a situation where the courts usually failed to deliver a final sentence and could not guarantee the proper enforcement of such sentences, self-help, built on the use of violence, often remained the only possible form to assert one's right in a conflict.

Chapter 7 – Public threats and uses of emotions in noble enmities

In this chapter I will examine the traces of emotional discourse in the context of social violence and litigation in the fifteenth-century Rus' palatinate. More specifically, I will pursue two aims. First, I want to address the problem of public threats and the set of emotional concerns that can be discovered behind the practice of enmities. Second, I am going to discuss the importance of the legal context in which this kind of emotional expressions operated. In so doing I will inquire why and on what occasions the notaries of the local courts considered it important to note the evidence of such threats in their accounts of enmities and disputes.

Public threats can be regarded as essential elements of the noble culture of enmity in late medieval Galicia. Murderous claims threatening to put the adversary to death or inflict serious bodily injuries constituted the background of the emotional language of enmity used by noblemen in the fifteenth-century Galicia.⁶²⁴ This gives an understanding of the basic emotional vocabulary which verbalized the state of hostility, articulated a personal strong bid for vengeance, and urged to redress the injustice in a particularly expressive way. Furthermore, the evidence of public threats provides a link to the world of other sensibilities involved in the play of enmity in the late medieval Poland. Feelings of fear, fury, arrogance, shame – traces of all of these emotional attitudes can be detected in accounts of murderous threats.

As a rule, the court records speaking about the public threats are quite short and poor in detail. In their descriptions of this sort of emotional attitudes, notaries of the courts did not go beyond a very schematized and conventional terminology, like *diffidare*, *minas inferre*, *minatur interminere*, *in vitam suam minando* or *machinando*. Records that specify the phrases and words in which people expressed their hostile intentions towards their enemies are rather rare. Only a few cases contain a developed articulation of hostile emotions. One such case is the evidence of lawsuit from 1494 between two nobles of L'viv land – Hawrylo Neslukhiwski and Iwashko Balaban. The crucial record of the litigation is the bailiff's recognizance, from which one can learn that Iwashko Balaban refused to give Hawarylo Neslukhiwski an introduction onto his village of Stratyn, as it had been adjudicated by court. The record of the recognizance says that Balaban justified his behavior before the bailiff in the following words: "I do not deny the introduction, but if he [Neslukhiwski] is going to damage

⁶²⁴ For a comparative background it is worth consulting Paul Hyams' analysis of the language of social emotions in the feuding cultures of medieval England: Paul R. Hyams, *Rancor and Reconciliation*, 34-68.

something there, I swear God, I shall suspend him, or cut him into pieces.”⁶²⁵ Another telling example is provided by a record from the Sanok court from 1457. It tells of the threats delivered in a dispute between two brothers - Wilhelm and Nicolas of Grabownica. It is reported that Wilhelm warned his adversary in the presence of the court bailiff “not to sleep at home, nor visit a church or a field, since he wanted kill and put Nicolas to death.”⁶²⁶ Yet, in another case, one adversary expressed his hostility towards another by threatening to cut off the hands and legs of his rival’s servants: *quomodo ipse hominibus ipsius diffidat, minatur interminere, manus et pedes amputare*.⁶²⁷

The threats advanced in the dispute between Iwashko Balaban and Hawrylo Neslukhiwski and between Nicolas and Wilhelm of Grabownica demonstrate well how the emotional context constructed in the process of delivering threats infused hostile relations with a feeling of overall insecurity. This also suggests that emotional attitudes and words that set out someone’s hostile posture were designed to convey to the adversary the situation and feeling of constant danger in which he/she found himself/herself after the declaration of enmity. Regular delivery of threats added to the intimidation and emotional discomfort of an adversary. Some complaints brought to court to denounce threats put special emphasis on the repeated character of the threats, presenting them as a cause of emotional annoyance. One complainant reported to the court, for example, that his rival regularly disturbed him, riding to his estate more and more frequently and threatening to kill him in his house: *quomodo tu insolitas sibi in bona sua sepius ac sepius infers inequitaciones sibique ad mortem machinaris*.⁶²⁸

By strengthening the feeling of danger, murderous threats operated as a form of symbolic violence. Taking into account the role of the cult of violence in shaping the noble identity, such public claims were perceived as complementary to material or physical violence. This meaning of murderous threats became particularly evident if combined with other forms of symbolic violence such as verbal insults and public shaming. In one complaint, the noble Derslas of Big Zurowice related to the captain during the court hearings that his rival, Stanislas Deshniak, insulted him publicly before many good people by calling him a son of bitch and by promising to put him to death: *ipsum Derslaum filium meretricis appellavit et ipsum turpiter dehonestavit in presencia multorum bonorum hominum ipsi cominaciones et*

⁶²⁵ AGZ, vol. 15, no. 2392 (March 21, 1494): “non denego intromissionem, sed, sibi ibi aliquid recipiat, iuro Deo, quod ipsum suspendam aut ad porciones secabo.”

⁶²⁶ Ibid., vol. 11, no. 3375 (August 18, 1457).

⁶²⁷ Ibid., vol. 15, no. 523 (July 24, 1467).

⁶²⁸ Ibid., no. 1225 (June 25, 1473).

multas inproperaciones faciendo et in vitam suam minando.⁶²⁹ It is important to point out that such emotion talk, centered on insulting and shaming the opponent, complemented the emotional context of the hostile relations set out by the threats.⁶³⁰ The close links between threats and insults seem not to have been a coincidence. Threats themselves were regarded not only as dangerous, but also as shaming and damaging a rival's reputation.

The case of the threats and insults, brought by Stanislas Derszniak against Derslas of Big Zurowice demonstrates the crucial importance of the concept of sexual, especially female, honor and gender symbols for the discourse of inimical relations. A considerable number of legal disputes, enmities, and violence started with slanderous, defamatory words targeting the sexual reputation of the adversary by stressing his illegitimate origin. As an example, let us consider the two records of the Przeworsk local court from October and December of 1462, relating details of the mutual assaults and raids committed by two local nobles – Alexander of Small Orzewice and Conrad of Cusenice. Both accounts of the violent actions carried out by Alexander and Conrad are strikingly similar with regard to stressing the significance of female honor in the origin and management of noble enmity. The first record is the charges brought by Conrad of Cusenice against his rival. It says how Alexander raided with his three men the house of Conrad on his possession of Long Zurowice. The assault culminated in beating and dishonoring Conrad's wife Katherine by naming her *meretrix alias kurwa*.⁶³¹ In the second record Alexander appealed to the court against Conrad, blaming him for committing the act of violence. According to the plaintiff's claim, Conrad led an assault on Alexander's house that resulted in beating and defaming his wife with dishonorable words.⁶³² The rhetoric of whoredom was thus an integral part of the language of enmity.

Stanislas Derszniak's threats against Derslas of Big Zurowice also demonstrates that one of the principal aims of murderous threats was to publicize and manifest to a wider public the state of enmity existing between adversaries. Threats seem to have been consciously conceived as public enactment which follows explicitly from pointing out the presence of an audience during such a declaration. Other accounts of threats also confirm the existence of this pattern. For example, Gothard of Crukynycki accused his cousin Jan of menacing him *coram hominibus quampluribus bonis*.⁶³³ Threats lodged before the court bailiff, as seen in

⁶²⁹ Ibid., vol. 17, no. 2048 (March 31, 1486).

⁶³⁰ See, for instance, Daniel Lord Smail, "Hatred as Social Institution in Late-Medieval Society," *Speculum* 76 (2001), 102-104.

⁶³¹ AGZ, vol. 13, no. 4991 (October 7, 1462).

⁶³² Ibid., no. 5047 (December 29, 1462).

⁶³³ Ibid., vol. 17, no. 1875 (December 22, 1483).

the case of brothers from Grabiwnica, also served the same purpose of making a wider audience familiar with the state of enmity.

The open menace cast by one of the disputing parties seems to have been quite close to another legal category frequently found in the sources in its meanings and function of publicizing violence – the *inicium*. The *inicium* also exemplifies a connection between two forms of violence – verbal and physical. In fact, as can be inferred from a number of records, it was the verbal insult which symbolized the beginning of an enmity and constituted the essence of the *inicium*:

because you with six similar to you and the same number of inferiors invaded Prochnyk, namely that part of the town which belonged to Sofia, and made with your supporters *inicium* in offensive words against the house of Thomas, a townsmen of the said Sofia, and drawing out swords cut off and broke the doors of the given house.⁶³⁴

The fact that an enmity did not ensue from *inicium* or public threat, but was acted without notification, was sometimes considered as an additional sign of the illegal character of violence. For instance, Iwanko of Stanymyr mentioned in his charge against Dmytro Lahodovskyj of Pohorilci that the latter *non diffidando* (without public threats) assaulted and injured him as he had passed through the market place in L’viv.⁶³⁵ Due to its public overt character such forms of threat were viewed as means to legitimize the exercise of violence.⁶³⁶ In general, public threats marked an important turning point in a dispute. They transformed latent and hidden conflictual relationships into the open and explicit hostilities. Threats thus set out the enmity as a public event.

Later, during the sixteenth century, it became the rule to publicize a state of enmity through spreading the threats in the form of written letters and by writing them down into the court register. Such letters were seen as a way of providing one of the rivals with legitimacy for his/her claims to enmity. Some rare traces of this practice have survived in the fifteenth century registers of the Rus’ palatinate. Traces of such letter of threat can be found, for instance, in the case between Derslas of Zurowice and Nicolas Szerszen, brought to the

⁶³⁴ Ibid., no. 2558 (January 27, 1494): “quia tu cum sex tibi similibus et totidem inferioribus superequitans super opidum Prochnyk sortis Zophie et cum eisdem coadiutoribus *inicium* faciendo turpibus verbis irruisti super domum Thome opidani ipsius Zophie et evaginatīs galdiis seccasti et fregisti hostia pallacii et stube domus predicte.”

⁶³⁵ Ibid., vol. 14, no. 1129 (July 17, 1444): “Iwanko de Staminir actor deputavit in secundo termino nobilem Dimitr de Pohorelcze in non paracione pro eo, quia stans secum in iure non diffidando sibi, dum in Leopoli Regali civitate per plateam transivit per suam necessitatem...”

⁶³⁶ The importance of the public, overt character of the pursuit of a feud can be seen as a universal idiom of feuding cultures. For comparison, consult the case of the medieval Iceland or medieval England. See William Miller, *Bloodtaking and Peacemaking*, 249; Paul R. Hyams, *Rancor and Reconciliation*, 6.

Przemysl castle court in 1492. Nicolas was accused of breaking the royal pledge and of disobedience to the law of the land. According to the plaintiff's charge, the defendant's unruly conduct was expressed in an illegal pronouncement of an enmity against Derslas. The plaintiff supported his claim by saying that defendant had put his threats in the form of letters. As a proof of his allegation Nicolas presented this letter to the court.⁶³⁷

The intention to present enmity as a public event were also evident in case of rendering the threats in the form of public boasting, claiming the man's desire to continue the hostility. By making a public boast and threats of violence, wrongdoers aimed at influencing the opinion of the local community, who closely followed the course of the enmity, by showing that neither the victim nor royal justices were able to uphold the challenge of violence. Such boasting involved another set of emotional attitudes, strengthening the sense of impunity of the wrongdoer. "I killed his servant, and I am going to kill him as well," boasted Nicolas Romanowski while advancing a threat against his adversary, Sigismund of Kalyshany.⁶³⁸ Some evidence of such boasting exemplifies in a particularly explicit way the wrongdoer's determination to challenge the court's decision and pursue justice by extra-legal means. Under the year 1495 one can find inserted into the register an interesting account of the court bailiff's encounter with a certain Jacob Kamieniecki. The bailiff came to deliver the captain's mandate, summoning Kamieniecki to court to respond to the charges of his adversary, Nicolas Raskowski. The bailiff recounted that upon taking and reading the captain's mandate, Kamieniecki returned it to the bailiff with the following words: "You, bailiff, tell the sir vice-captain, that what I conceived I will do. I am going to kill Roskowsky even if I have to pay the sixty florins."⁶³⁹ A similar hostile and arrogant stance is also clearly evident when adopted, for instance, in the form of the promise to kill highly placed officials or ecclesiastics. The sources, for example, reported that once a local noble even threatened to put the L'viv Catholic archbishop to death.⁶⁴⁰

A complaint to the court was one of the most immediate consequences of producing such public threats. In the courtroom, public threats took on the meaning of a legal offence,

⁶³⁷ AGZ, vol. 17, no. 2437 (April 9, 1492): "Quapropter attenta prefati Schyrschen inobediencia iurique comunis fraccione propter diffidacionem quam erga eundem Derslaum literaliter fecit, quas literas hic coram actis reponebat."

⁶³⁸ Ibid., vol. 15, no. 1289 (October 22, 1473): "...interfeci suum servitorem et ipsum interficiam."

⁶³⁹ Ibid., vol. 17, no. 2684 (March 16, 1495): "Et tu miniternalis dicas domino Vicecapitaneo, quia quod delibavi, hoc faciam, si eciam sexaginta florenas apponere debeam et Nicolaum Raskowsky interficiam."

⁶⁴⁰ Ibid., vol. 15, no. 1194 (February 8, 1473): "Raphael de Iaroslav Succamerarius Premisliensis et Capitaneus Russie generalis generoso et strenuo Andree de Syenno notum facimus, quomodo domus. Gregorius Archiepiscopus Leopoliensis detexit in querela quomodo tu superveniens super eundem Archpm. Ipsum interficere voluisti."

which allowed the conflicts to be continued through the courts. During the fifteenth century the murderous threats were regularly denounced in the court as offences against the law. Some records specifically presented public threats as going against the norms of the law of the land: *obmisso iure communi, in quo cuilibet passim agitur iusticia, pro quibuslibet iniuriis illum diffidaverit in mortemque machinaretur*.⁶⁴¹ Thus the *diffidatio* or *minae* expressed not only the emotional state of the people involved in the enmity, but also represented a legal category which was used in the court.⁶⁴² Such threats were barely punishable, however, if they did not result in acts of violence. As one noble, accused in the court of threatening to beat the bailiff, nicely put it: *voluntas non iudicatur pro facto*.⁶⁴³

Perhaps the most tangible implication of denouncing the threats as offences and bringing the case to court was the establishment of high pledges of peace between the parties. The pledges, sometimes additionally supported by obligations of the body of guarantors, functioned to prevent the further escalation of enmity. Behind this move one can clearly see the court's intention to create the favorable conditions for starting a private arbitration between enemies. It is very revealing, for example, that in case of the enmity between the two brothers from Grabownica, mentioned above, the initial display of hot anger and threatening words of one of the brothers was quickly pacified by a high pledge imposed on the parties by the captain. The dispute was thus brought to court, and, what is particularly important, the hearing of the case was postponed for an indefinite period of time until the arrival of the captain in Sanok. Meanwhile the court assessors invited the parties to start making peace by stating that the rivals were allowed to locate friends who could help them bring the enmity *ad concordandum*.⁶⁴⁴

What has been said above concerning the relations between threats and courts does not exclude the possibility that the verbal insults and threats could easily turn into the act of physical violence. People usually took threats against them very seriously, which is attested by their frequent complaints to the court. Fear was perhaps one of the most common emotional responses to such promises of violence. The sources speak quite frequently of fear while denouncing threats. A petty Ruthenian noble complained to the king that because of the great and intolerable injustices and threats against him by the royal captain, he feared for his

⁶⁴¹ Ibid., vol. 17, no. 2257 (June 23, 1489).

⁶⁴² For similar meanings of hatred in the enmities of fourteenth-century Marseille which simultaneously denoted an emotional and legal stance, see: Daniel Lord Smail, "Hatred as Social Institution," esp. 100.

⁶⁴³ AGZ, vol. 14, no. 108 (October 28, 1440): "Ipso vero respondit, quod voluit percutere, sed non percussi et voluntas non iudicatur pro facto."

⁶⁴⁴ Ibid., vol. 11, no. 3370 (June 17, 1457); no. 3377 (August 23, 1457).

life and felt insecure staying at his estate.⁶⁴⁵ In another record one of the court bailiffs spoke in court about his fear of making a second visit to the estate of a nobleman who had embarrassed him with threats. An official of the noble, threatened with death by the son of his lord's rival, quit his business and service in order to save his life.⁶⁴⁶ Such attitudes are quite understandable in view of the widespread of violence in the daily life of the fifteenth-century inhabitants of Galicia. The fear of violence without doubt deeply penetrated the sensibilities of people. The constant expectation and fear of violence were part of daily routine in the fifteenth-century Galicia. The danger of violent assault was expected from all sides. Sometimes it was quite hard to identify whether it was an invasion led by a hostile neighbor or a Tatar raid. A good example in this regard is furnished by the narrative of violent assault on Jacob and Elizabeth of Neslukhiv arranged by their neighbor, John Mschishek of Zelekhiv and recorded in the L'viv castle court register on October 26, 1498. The victim's procurator, who gave an account of the invasion in the courtroom, did not miss an opportunity to mention that during the intrusion the wrongdoer sought out his opponent, exclaiming threats that he would put him to death. The record also includes one particularly revealing detail. He pointed out that Elizabeth fled from the estate in a great fear, taking the invaders of her house for Turks or Tatars: *domina ipsius Iacobi Elizabeth fugiens pre magno terrore violento existimans Turcos vel Tartaros*.⁶⁴⁷

Therefore it is not surprising that a murderous threat spoken by one litigant against another could be presented in the courtroom as sufficient excuse to ignore a summons to courts. For example, Jan Rychczycki, justifying his unwillingness to respond in court to the allegations brought against him by his uncle, Stanislas Corythko, pointed out that only his fear of menaces by Corythko stopped him from seeking justice in court.⁶⁴⁸

Fear aroused as a consequence of a threat could also push people as far as calumny. In 1501 unnamed person acknowledged before the L'viv castle court that he had unjustly inculpated a certain Andreas Bartkowski of the crime of theft. As a result of those accusations Bartkowski had been put in jail and suffered. In his confession the anonymous person further stated that he had been provoked to speak out against the "good man" Bartkowski because of the fear that had grown out of murderous threats. As can be inferred from the text of this

⁶⁴⁵ Ibid., vol. 17, no. 2501 (July 16, 1493): "quomodo tu sibi et amicis suis prefatis magnas et intollerabiles faciens iniurias et cominatus esses atque diffidares eis omnibus ita, quod in domibus eorum propter tuas cominationes omnes mutuo manere non sunt secure."

⁶⁴⁶ Ibid., vol. 13, no. 6136 (October 29, 1466): "filium tuum Vasył mettercium cum comminans super domum procuratoris mei fecisti eum interficere. Et idem filius contradixit procuratori meo, qui procurator meus custodiens se ante ipsum tardavit laborem meum ac alia negocia mea velut viginti marce et totidem damni."

⁶⁴⁷ Ibid., vol. 15, no. 2735 (October 26, 1498).

⁶⁴⁸ Ibid., vol. 17, no. 3372 (May 2, 1502).

testimony, the threats of murder had been cast against him by Bartkowski and his brother Martin. At the moment of deposing his testimony, however, the anonymous person maintained that he had previously spoken slander “as a dog” against the Bartkowskis’ brothers and at present knew nothing bad about these “good men”.⁶⁴⁹

The fear of violence that stemmed from such public challenges was not groundless at all. Sources leave few doubts that behind murderous threats lay a strong determination to pursue vengeance by extra-legal means aimed at inflicting real physical and material damage on a rival. Rather than seeking to force the opposite party to start negotiation, such threats could reflect the desire to keep the state of enmity alive. In this context the verbal expressions of hatred operated to support other means of pursuing enmity. The process of public menacing usually went together with various sorts of actions which targeted the health, life or honor of the adversary. In this regard threats represented an important technique in the noble’s repertoire of carrying out enmity. Performed in the course of violent attacks or accompanied by verbal insults or inflicting wounds, public threats were closely linked in narratives of violence with the victims’ humiliation and damage to their honor. The sources furnish evidence showing close links between threats and subsequent physical assault. This was a case, for instance, of allegations brought by Paul Clus of Krosno against Clemens Strumilo, written down in the L’viv castle court register on January 3, 1457.⁶⁵⁰ Paul Clus stated that he was the victim of a violent raid by his adversary. The intrusion was followed by particularly humiliating treatment by the aggressor. If one could make sense from his account, Clus was violently dragged out of his house and forced to swear an oath that he had nothing against Strumilo. In the course of his violent actions Strumilo also insulted Clus, calling him a son of bitch and threatening to put him to death. Clus claimed his readiness to back up his allegation against Strumilo with testimony by the court bailiff.

Summing up, it is necessary to say that the public threats exemplified very well one fundamental feature of noble violence in the late medieval Kingdom of Poland. Legal records are full of the voices of noblemen complaining to the court that their lives had been threatened by other people. Such mortal threats, however, quite rarely resulted in homicides. According

⁶⁴⁹ Ibid., vol. 17, no. 3767 (April 17, 1501): “Quemadmodum nobil. ... Gdaschycze inculpaverat... Andream Barthkowsky [pro] furticiniis, qui Andreas de... in carcerique positus et marter[isatus] minus iuste, veniens itaque [ad presenciam] dominorum dixit: domini, quidcumque sum locutus [contra] hunc bonum hominem videlicet ... Barthkowsky locutus sum ex tim[ore], ne me iinterfecerent unacum fratre suo Martino, sed tamen menciebar super ipsos sicut canis et nichil de ipsis mali scio, tantum quod sunt boni homines.”

⁶⁵⁰ Ibid., vol. 15, no. 19: “quia tu eadem invasione violenta cum novem tibi similibus nobilibus et totidem levioribus extrasti me de domo mea et incalcasti me in littum ante domum et fecisti michi violenter iurare, volens me interficere et percuciens me volens, ut nunquam contra te essem et deturpasti me verbis turpibus, asserens me filium meretricis, que ministerialis audivit.”

to my list of homicides that were committed and registered by the courts of the Rus' palatinate during the fifteenth century, none of the nobles who came to court to denounce murderous threats against them are known to have been murdered as a result of such threats. Violence in relationships between nobles served a purpose of not so much of killing, but of humiliating and frightening an enemy, forcing him/her to accept conditions for the settlement of a dispute beneficial for the wrongdoer. The evidence of murderous threats suggests the importance of the symbolic dimension of noble violence, aimed at the adversary's honor, which caused its limited character.

However, mortal threats, which were enacted as a symbolic means of inter-noble communication, easily materialized into acts of brutal aggression, directed primarily against the subordinate population. A public challenge of an enemy, combining verbal threats with physical violence, often took the form of the violent raids meant to plunder the opponent's property and terrorize servants and peasants. The highly brutal and humiliating forms of physical violence exercised on the peasants and servants of an opponent were themselves threats against the lord of the victims.

Chapter 8 – Noble Violence and Plebeian Voices.

The objective of this chapter is to investigate the forms of interaction between the nobility and representatives of lower social strata in the face of the omnipresent violence in Galician society. I shall be particularly interested in examining how the uses of violence affected the social ties and relations between the representatives of various estates and social classes. Related to this is a question of the possible role of violence in shaping the identity of subordinated groups. My suggestion is that the social phenomenon of medieval violence can not be strictly located within or linked with existing social hierarchies and identities. I shall argue that violence itself was a powerful force in construing and changing the basic parameters of the social structure in late medieval Galicia. An underlying idea is to approach the social structure not as a set of categories and social ties ontologically exterior to the actions and thoughts of the people, but as a dynamic system of social relations which underwent a process of permanent reconstitution and transformation as a result of social practice and everyday interactions.

Debates on how the uses of violence affected social relations and contributed to the social transformations of medieval society have dominated the field of research for a long time.⁶⁵¹ To illustrate this, it is enough to mention Otto Brunner's classical study *Land and Lordship*. Hailed as a one of the major achievements of German historiography in the twentieth century, this study of the structures of power and social relations in late medieval Germany laid a foundation for the further investigation of medieval feud and noble violence. An emphasis on the close interaction of the lords and their subjects became one of the central issues in the historian's whole model of the medieval feud. According to one recent comment, the Brunner's observations on the social implications of the feud for lord-subject relations can be regarded as his most lasting contribution to the investigation of the late medieval feud.⁶⁵²

⁶⁵¹ Many scholars, investigating the use of violence in various cultures in various times, come to emphasize its significant role in the process of consolidating lordship, dominance, and protection. As the most recent example of the medieval scholarship, one can consult the works of Thomas N. Bisson, who demonstrated the importance of violence as a means of new form of lordship and as an agent of social change in the social transformations and emergence of the new feudal order in the period of eleventh and twelfth centuries. Consider Thomas N. Bisson, "The 'Feudal Revolution'" *Past and Present* 142 (1994): 6-42, and many responses to his article. Bisson's argument has been further developed in his *Tormented Voices: Power, Crisis, and Humanity in Rural Catalonia* (Cambridge: Harvard University Press, 1998). For a comparative perspective, consult the important anthropological study by Anton Block, *The Mafia of a Sicilian Village, 1860-1900. A Study of Violent Peasant Entrepreneurs* (Oxford: Blackwell, 1974), esp. 210-12.

⁶⁵² Hillay Zmora, *State and Nobility in Early Modern Germany. The Knightly Feud in Franconia, 1440-1567*. (Cambridge, 1997), 104. This study also provides a valuable and critical discussion of Brunner's conception of the feud. See: *Ibid.*, 5-9.

Brunner's vision of the medieval feud was developed as a part of his devastating critique of contemporary liberal-bourgeois nation-state historiography. Nineteenth and early twentieth-century historiography preferred to view medieval violence and feud as a social anomaly, deemed to be rooted out in the course of the formation of modern European states. According to this teleological and statist vision, the feud represented, as Brunner put it: "disorder, chaos, anarchy – a non-state or the law of the fist." Contrary to this point of view, Brunner stressed the importance of understanding the medieval polity and social order in their own terms and categories. Brunner maintained that the feud was not considered during the Middle Ages as a social and political phenomenon incompatible with the idea of social order. One of the greatest merits of Brunner's work was his attempt to interpret the feud as a legitimate way of pursuing the rights of lordship. Brunner argued that "the feud was not the expression of an atavistic drive for revenge and destruction, but a battle for Right."⁶⁵³

The claim for the legitimacy of the noble feud was a corollary of the de-centered model of the social order, in which the state institutions and royal power had no monopoly on the exercise and control of violence and the administration of justice. In Brunner's model of medieval feud it was the Land, viewed as "a community of peace and Right,"⁶⁵⁴ consisting of the lords and nobles inhabiting a certain locality, which constituted the structure for maintaining and reproducing the social order. The Land represented a legal and political structure, an alternative to royal authority in regard to the forms and mechanisms of the administration of justice and dispute settlement. Brunner insisted that it was exactly within the framework of the Land that the waging of the feud and the exercise of violence received their legitimate and semi-legal character.

According to Brunner, the interplay and interconnection of the lordship and violence shaped the practice and perception of the feud in the most significant way. Lordship was another concept central to Brunner's interpretation of the medieval state, order, and constitution. Brunner viewed lordship as a basic social category which moulded the texture of medieval society. Lordship penetrated and structured social and power relations at every level, starting from household lordship (*Hausherrschaft*) through the seigneurial lordship (*Grundherrschaft*) to the territorial principality (*Landesherrschaft*) and even kingship (*Königsherrschaft*). The medieval *Herrschaft*, as seen by Brunner, was grounded on the mutuality of the relationships between lords and their subjects. Within the structure of power relationships, set up and reproduced by the practice of lordship, the primary obligation of

⁶⁵³ O. Brunner, *Land and Lordship*, 81.

⁶⁵⁴ *Ibid.*, 82.

lords was to protect their subjects (*Schutz und Schirm*), and subjects in their turn were obliged to provide aid and counsel to their lords.

This conception had one important implication for the Brunner's interpretation of the interrelations between lords and their subjects in the context of the feud. As rightful and legitimate as a feud could be, it concerned only the members of the nobility and aristocracy. The right of feuding belonged exclusively to lords and nobles. As a consequence, Brunner put all forms of plebeian extra-legal pursuit of rights which entailed the exercise of violence under the rubrics of illegal and criminal offences such as brigandage, murder, arson and so on. The only possible and legitimate behavior of peasants facing noble violence was to appeal to their lord for the help and defense against the aggressor. What was required from nobles as lords in this system of mutual obligations was their capacity to challenge the aggression and provide effective defense for their subjects. Subjects considered lord's failure to secure their lives and goods against violent raiding by an enemy as a sufficient condition to reclaim their fidelity to the lord. The subjects' loyalty to their lords was thus built on the latter's successes in mastering and applying feuding techniques and skills. From this perspective, feuding represented a crucial strategy in the politics of competition for control over subjects and material resources. In general, Brunner took his analysis of feuding to illustrate the importance of the semi-patriarchal forms of protection the lords extended over their subjects. As one of the major reification of the social order of the Old Europe, the ties of mutuality existing between lords and subjects pre-dated the feud and noble violence. For Brunner, the feud simply represented just one of many occasions when these ties and solidarities were manifested and tested.

An alternative perspective on the problem of the feud and lordship in late medieval society has recently been proposed by Gadi Algazi.⁶⁵⁵ In his studies of the social meanings of private wars in late medieval Germany, Algazi explicitly set his arguments as a polemic with Brunner. Brunner's thesis of the mutuality of the obligations of nobles and peasants came under the most devastating criticism of Algazi. Viewing lordship and the practice of the noble

⁶⁵⁵ See: Gadi Algazi, *Herrengewalt und Gewalt der Herren in späten Mittelalter: Herrschaft, Gegenseitigkeit und Sprachgebrauch*. (Frankfurt und New York: Campus, 1996). The author's major arguments were also presented and developed in a series of articles. See, for example: Gadi Algazi, "Pruning Peasants: Private War and Maintaining the Lords' Peace in the Late Medieval Germany," in *Medieval Transformations. Texts, Power, and Gifts in Context*, eds. Esther Cohen and Mayke B. De Jong (Leiden-Boston-Köln: Brill, 2001), 245-273; idem, "Lords Ask, Peasants Answer: Making Traditions in Late-Medieval Village Assemblies," in *Between History and Histories: The Making of Silence and Commemorations*, eds. Gerald Sider and Gavin Smith (Toronto-Buffalo-London: Toronto University Press, 1997), 199-229. For a polemical response to the Algazi's conception, consider a penetrating and critical review by Howard Kaminski in *Spaeculum* vol. 73, no. 3 (July 1998): 799-802. For a recent interpretation of the late medieval feud in its relation to lordship that stands under Algazi's influence, see Hillay Zmora, *State and Nobility*, esp. 102-111.

feud as integral and closely interconnected elements of the same configuration of power relations, Algazi argues vigorously that it was the incessant exercise of noble violence that reproduced the peasants' demands for the lord's safeguard. Feud, represented by Algazi as the exclusive prerogative of noble status, operated first of all as means of terrorizing and frightening the subjects' population. Thus Algazi sees violence against peasants not only as a simple by-product of noble private wars, but as a powerful autonomous social force, crucial for maintaining the existing social and political regime in late medieval Germany. Through the permanent exercise of violence against peasants the feud served to make the peasants aware of their subordinate position. Plebeians' self-awareness of their identity in the social world of late medieval Germany emerged as a result of the politics of noble feuding. Peasants' social identity was constantly reinscribed on them in the course of noble private wars and was inherent in the peasants' experience of pain and suffering gained from the feud. According to Algazi's interpretation, the noble feud and violence were thus powerful tools for maintaining and reaffirming the subjugated position of plebeians. In Algazi's words, social violence, inflicted by nobles on peasants, reproduced and strengthened existing social hierarchies and borders.

In spite of all the differences, there is one striking similarity in both Brunner's and Algazi's approaches to the medieval feud. Both scholars tend to represent the social categories of nobles and peasants as social entities closed and rigidly separated from each other. In their analyses, two historians took as an *a priori* presumption that the borders between two groups were clearly established and their members could not go beyond the set of norms and modes of behavior prescribed to them. In the context of the feud this means that nobles and peasants were restricted in their behavior to the social roles correspondingly of producers and consumers of violence. Where Brunner and Algazi differ indeed is the way they both make use of this emphasis on a strictly imposed dichotomy of nobles' and peasants' social roles. For Brunner, lordship carried more positive, protective functions in the context of the medieval feud. The ties of lordship were one of the most apparent embodiments of the vertical, inter-group solidarities which he viewed as essential for the societies of Old Regime's Europe. In contrast, for Algazi, lordship represents a social and discursive formation which provided legitimacy to the unlimited and excessive exercise of brutal force by the nobility on the plebeian classes. Thus he regarded both lordship and violence as complementary social forces, operating to enhance social distance, not ties of solidarity, between dominant and subordinated classes.

However, this image of the strictly demarcated social identities and clearly set up social borders, which figures so prominently in both Brunner's and Algazi's analyses of the feud, does not fit very well into the social reality of the Kingdom of Poland in general and the late medieval Galicia in particular. In contrast to the situation of late medieval Germany, scholars dealing with the Kingdom of Poland in that time are rather inclined to single out the inconstancy of the social boundaries and the high inter-estate mobility as features fundamental to late medieval Polish society.⁶⁵⁶ It is further argued that the process of the formation of the estates' society, especially the closing of the noble estate, was quite far from having been finished during the fifteenth century.

Another problem which calls for the reconsideration in view of the Galician evidence is the variety of forms of action which peasants and subjects could adopt in their responses to the reality of the noble feud. For all their merits, both interpretations, especially that of Algazi, seems to suffer from underestimating of the agency of peasants in the context of noble violence. There is a tendency, found in the conceptions of both scholars, to restrict the range of peasants' possible behaviors exclusively to the role of passive recipients and victims of noble violence. My suggestion is that social violence did not constitute a domain where the nobility had an exclusive monopoly. Moreover, not only the violence of the noble class was viewed and perceived as a legitimate instrument of dispute settlements. In this regard it is important to gain an understanding of how the exercise of violence by ordinary people and the participation of representatives of plebeian groups in nobles' violent conduct produced a specific configuration of social relations based on what could be called the shared inter-group experience of violence.

In my attempt to compare the Algazi's and Brunner's interpretations of the feud with the Galician evidence I shall start with an analysis of the data about the social positions of people involved as offenders and offended in two types of wrongs – homicide and wounding. The gathered data consists of various types of evidence about accusations of these wrongs recorded in the castle and land court registers of L'viv (1440-1506) and Przemyśl (1436-1506). This does not mean that such accusations were proved in court and sentence was delivered. The second specific feature of the evidence is that charges of murder and wounding

⁶⁵⁶ For the emphasis on the high inter-estate relationships in late medieval Polish society, consult following studies: Kazimierz Tymieniecki, *Procesy twórcze formowania się społeczeństwa polskiego w wiekach średnich* (Warszawa, 1921); Henryk Samsonowicz, "Społeczeństwo polskie XV wieku. "Kreśli kulturowe i ich wzajemne przenikanie," in *Sztuka i ideologia XV wieku* (Warsaw, 1978), 55-65; Idem, "Relacje międzystanowe w Polsce XV wieku," *Społeczeństwo Polski średniowiecznej* 2 (Warsaw, 1982), 244-265; Jacek Wiesiołowski, "The Nobility in Town. Movements and Migration of the Nobility between the Village and Town in Poland during the 15th Century," in *Polish Medieval Nobility*, ed. A. Gąsiorowski (Wrocław, 1984), 255-296.

were most often brought against nobles. This, however, does not imply that in all such cases nobles committed these crimes themselves. The data on homicides comprises 45 entries for the Przemyśl land and 40 entries for the L'viv land. The data of wounding consists of 95 entries from the Przemyśl court registers and 105 entries from the L'viv court registers.

It is important that the figures, related to charges of homicide and wounding reveal slightly different picture of distributions according to the social standing of the offenders and offended. The data on the accusations of homicide show that nobles were almost equally represented in both the groups of murderers and murdered. 26 men accused of homicide and 21 murdered men are identified as nobles in the Przemyśl court registers. Evidence found in the L'viv court registers gives similar figures – 25 men of the noble status were blamed for committing murder, and 17 men are mentioned as having perished by homicide. Of the total number of 26 nobles charged with the crime of murder before the courts of Przemyśl land, 18 were accused of murdering members of the same noble estate. Plebeians murdered by nobles constitute an evident minority in the Przemyśl court registers (8). These figures clearly suggest the propensity for intra-estate violence among nobility. This observation can be extended to members of the lower social strata as well. This is most clearly revealed by the fact that plebeians outnumbered nobles in murdering other plebeians (16).

In comparison with Przemyśl land, the data of the L'viv court registers seems to suggest a lesser intensity of intra-estate homicide among nobles. The number of accusations of homicides in which both the murderer and murdered belonged to the nobility comprises 13 cases. This is almost equal to the number of entries in which nobles were blamed for murdering plebeians (12). Men of common origin were charged with killing other plebeians in 11 cases. Both the Przemyśl and L'viv data are quite similar in showing a low number of the cases of homicides committed by plebeians against members of the noble estate, - three and four entries, respectively. In general, the data on homicide shows a comparatively high level of casualties among nobles as well as a number of plebeians blamed for this sort of wrongdoing. These observations call for correcting two principal statements made by Algazi – first, that nobles' lives were not too much threatened by the feud, and second, that it was almost exclusively plebeians' lives and property which were exposed to suffering and damage in the course of enmity. The only point, which seems to suggest a social distinction between nobles and plebeians in regard to their ability to produce violence, is the quite rare occurrence of cases of plebeians murdering nobles.

If complemented by entries of wounding, however, the Galician evidence better fits a vision of the feud as pursued mainly at the cost of plebeians. Representatives of the nobility

comprise the prevailing majority of offenders in the data of both lands. In the Przemyśl courts' data, nobles were accused of wounding in 78 entries and were mentioned as wounded in only 33 entries. The L'viv data gives 85 entries in which members of the noble estate were presented as offenders against 46 entries telling of nobles suffering from wounds. Regarding plebeians, the data provide inverse proportions of offenders and offended. 62 entries in the Przemyśl data and 59 entries in the L'viv data inform about wounded plebeians. It is highly significant that in the majority of these cases plebeians fell victim to noble violence (50 and 47 cases). Plebeians were described as aggressors, responsible for inflicting wounds in only a tiny minority of entries – 16 cases in the Przemyśl and 20 cases in the L'viv data. These numbers become even less if restricted to the cases in which plebeians were blamed for wounding nobles – only 4 and 7 cases in the Przemyśl and L'viv data respectively.

The court registers of the Rus' palatinate are overwhelmed with the voices of representatives of the lower strata of Galician society, complaining about plundering, beating, injuries, and jailing exercised on them by nobles during their raids. Some illuminating cases can be drawn to provide further insights into the forms and meanings of noble violence against plebeians in the context of lordship. My first and principal example is the record of the Przemyśl castle court dated on February 21, 1491. This is an account of an invasion, carried out by the representative of the magnate family from Przemyśl land, Andreas Rzeszowski of Przybyszowka, on Sandzyszow, town owned by Beata of Tęczyn.⁶⁵⁷ The account relates that upon the siege and capture of Sandzyszow, Andreas Rzeszowski of Przybyszowka and his people chose as a prime victim a certain Nyedzwyadek, whom they beat seriously and detained. Then all the townsmen, expelled from their houses, were gathered in town square. There they had to observe the detained and bleeding Nyedzwyadek and listen to the speech of Rzeszowski, which he addressed to them. Rzeszowski's address made it clear that he considered his incursion on the possession of Beata Tęczynska and harsh treatment of her people as an act of vengeance for the unjust seizure of his servant, Rafael. Rzeszowski also threatened to expel all the citizens from the town and bring them out detained as criminals (*tanquam latrones ligatos abinde deducam*) in case their mistress refused to release Rafael. Rzeszowski further humiliated the people of Sandzyszow by deprecating and mocking the ability of Beata of Tęczyn to challenge his violence and defend her people. Simultaneously, his words were a promise of the continuation of the violence:

⁶⁵⁷ AGZ, vol. 17, no. 2344.

if you are planning to stay here longer, then you will behold whether your mistress will defend you and whether she will release you when I carry you fettered by neck.⁶⁵⁸

The violence and threats had an effect. In his complaint, the procurator of Beata of Tęczyn noted that following the incursion fifteen townsmen, privileged with municipal law, left the town. One can observe in this case a really horrific dynamics between the verbal and physical violence.

The case of the Rzeszowski's raid is typical in many respects of most of the evidence about plebeians suffering from the noble violence. The case shows with particular clarity that the brutal and humiliating forms of physical violence exercised on the peasants and servants of the opponent were themselves symbolic threats against the lord of the victims, communicating and manifesting the state of enmity that existed between parties. The evidence of the assault on Sandzyszow is quite explicit in representing the subordinated groups as a major target against which the power and ability of their lords to provide the defense and security were tested. The record is clear on the point that the lord's inability to defend his subjects forced them to leave the place of their residence and seek the protection of another lord. The account of Rzeszowski's raid is not unique in highlighting the episodes of subjects' deserting their lord as a consequence of a violent assault. This issue came to light in the description of many other cases. For instance, the account of the raid organized and carried out by the L'viv land bailiff Nicolas on the village of Dobanevychi in 1448 specifically noted that some villagers who had fled, escaping the dangers of the assault, refused to return to their lord, leaving their houses empty and land uncultivated.⁶⁵⁹ In similar fashion, in 1492 Jan Zamiechowski sued his relative, Martin of Zamiechow, in the Przemysl land court, complaining that the latter had expelled two peasants from Jan's estate.⁶⁶⁰ The record reveals that these peasants were forced to leave because of the violence and mortal threats Martin made against them.

It is not surprising that Rzeszowski's words addressed to the citizens of Sandzyszow, threatening to detain and remove them were considered a very serious menace. In the fifteenth-century Rus' palatinate, taking into captivity was without doubt the most "plebeian" offence when it concerned the social standing of the victims. The following data convincingly illustrate the extent to which detention was directed against men of common origin. Of 33

⁶⁵⁸ Ibid.: "...si hic peramplius manebitis extunc videbitis, utrum domina vestra vos defendet et de manibus meis erripiet, quando vos legatos per colla vestra ducam."

⁶⁵⁹ Ibid., vol. 14, no. 2082 (May 31, 1448).

⁶⁶⁰ Ibid., vol. 18, no. 2197 (January 17, 1492).

cases providing information about the social status of the detained, which come from the registers of the Przemyśl castle and land courts for the period of 1436-1502, peasants and people of plebeian origin are mentioned as victims in 30 cases. This social dimension of the practice of private detention can be further enhanced if one looks at the social standing of those accused of this wrongdoing. The figures about the social status of offenders point to a pattern totally opposite to that of the victims. Nobles constituted an overwhelming majority of those blamed for the offence of detention (32 of 33). A similar picture emerges in the sample gathered from L'viv castle and land court registers from the years of 1440-1500. 32 of 40 cases speak of men of plebeian origin as captured in the course of a violent misdeed. Regarding the social position of men against whom the charges of taking into captivity were brought, the sample closely resembles that of Przemyśl land. According to the collected data, 37 of 40 offenders belonged to the noble estate.

Legal records furnish evidence of the variety of occasions and contexts in which plebeians were taken into captivity. Noble violent raiding and assault on the villages of their adversaries provided perhaps the most frequent, though not the only opportunity for detaining peasants. The sources frequently speak of peasants who were captured on the free royal road on their way to home or while having been sent by their lords on some business.⁶⁶¹ As some cases demonstrate, peasants could be exposed to the danger of capture even within the city walls.⁶⁶² It can be implied on the basis of some evidence that such captivity was indeed a form of abduction. The lord of the detained peasant was actually forced to bargain with the wrongdoer over the price and condition of releasing his subject from captivity.⁶⁶³ Among other situations which resulted in plebeians' detention, there was one closely related to the peasants' right to pass, under certain conditions, to another lord. This privilege, which the peasantry enjoyed widely and utilized in the course of the fifteenth century, was often contested by lords. Such conflicts ended sometimes with the detention of peasants who expressed a will to leave their lords.⁶⁶⁴

A subject's detention was usually accompanied by other forms of physical violence. The judicial records usually use a very general and formalized mode of describing a noble's violent conduct against ordinary people. Therefore, it is sometimes very hard to imagine how

⁶⁶¹ Ibid., vol. 17, no. 2584 (May 23, 1494); Ibid., no. 3167-68 (July 1, 1499); Ibid., vol. 14, no. 1348 (April 2, 1445); Ibid., no. 1373 (April 27, 1445).

⁶⁶² Ibid., vol. 14, no. 1776 (August 30, 1446).

⁶⁶³ Ibid., vol. 15, no. 188 (November 25, 1457): "quia in libera via ante villam Brancze detinuerunt sibi hominem Iwan et in domum ipsorum dederunt captivum, quem de captivitate non prius miserunt quoadusque in ipso Iwan decem marcas receperunt."

⁶⁶⁴ Ibid., vol. 14, no. 3180 (September 13, 1454).

far the nobles could go in their atrocities against peasants. It is only some occasional highlights suggesting that the most ferocious and humiliating forms of the treatment of the common people indeed occurred in the course of incursions. In this respect, mentions of pulling out or burning out peasants' beards by invaders are especially illuminating. It was, beyond doubt, one of the most excessive and shaming forms of cruelty exercised on subjects. A legal record of the suit brought to the L'viv castle court in 1458 by the L'viv land judge Stiborius of Vyshnya against the nobles Katherine and Nicolas of Pechykhvosty provides a good example in this regard. The record of the lawsuit has it that the nobles from Pechykhvosty were accused of abducting the servant of the judge. It is further reported that upon the abduction this servant was severely beaten, flogged, and his beard was burnt off.⁶⁶⁵

In the description of Rzeszowski's raiding the captivity is presented as a threat whose reality was enhanced by the treatment of Jan Nyedzwyadek. The latter's fate served to remind the citizens of Sandzyszow how easily threats of violence could be turned into action. One can only guess what happened to this poor townsman from Sandzyszow. Several other cases of raiding, recorded in the Przemyśl castle court at approximately the same time, are more telling of the fate of such detained peasants. In one case, the victim was carried in the estate of the invader, tried by him, sentenced to death, and decapitated.⁶⁶⁶ In the lawsuit brought against the wrongdoer, the lord and the son of the murdered man denounced such short shrift as homicide and offence against public law.

This kind of revenge, carried out by nobles on their rivals' peasants, suggests that the state of enmity and vengeance was projected on the lower social level so that the subjects could easily have become personal enemies of feuding nobles. Some evidence of noble raiding is especially telling in stressing the personal thirst for vengeance that inflamed noble invaders against a rival's subjects. This was, for instance, the case of the suit brought to the local castle court by the noble of Przemyśl land, Gotard of Crukynychi, against his relative Jan of Crukynychi, in 1483. In his complaint Gotard accused Jan Crukynycki of an assault on his house in Crukynychi. In his accusation the plaintiff specifically pointed out that animosities

⁶⁶⁵ Ibid., vol. 15, no. 212 (January 21, 1458): "Et dampnificaverunt ipsum in totidem, quem hominem post abdicacionem percusserunt et verberaverunt circa extraneos homines et barbam sibi excusserunt, alias wizgli..." For the similar account mentioning the pulling out of beards of peasants, see: Ibid., vol. 14, no. 1077 (May 8, 1444), "Demum requisitus ministerialis dixit, quod ibi in huiusmodi violencia restavit et vidit, quod kmethoni barbam eruerunt..." Shaming meanings of pulling of hairs is also stressed by Piotr Wawrzyniuk in his analysis of the plebeians' brawls, recorded in the eighteenth-century registers of the Lviv consistory court, see: Piotr Wawrzyniuk, *Confessional Civilising in Ukraine. The Bishop Iosyf Shumlyansky and the Introduction of Reforms in the Diocese of Lviv, 1668-1708*. Södertörn Doctoral Dissertations 3 (Södertörn, 2005), 138.

⁶⁶⁶ The case in question is the assault by Andreas of Sobyen and Rączyna against the peasant Iwan Pudlo, a subject of Nicolas Pyotraszowski from the village of Siennow, see AGZ, vol. 19, no. 219, 225 (June 13, 1481).

existed between Jan Crukynycki and Gotard's official, also named Jan. According to the plaintiff's charges, one of the purposes of the invasion by Jan Crukynycki was to find and kill this official. When the invaders had failed to discover the official, they severely beat the latter's wife, leaving her *semivivam* on the devastated estate.⁶⁶⁷

There were also other reasons behind attacking peasants and servants of the opposing party. By shifting the focus of violence from the lord to his peasants or servants, the wrongdoer could keep the enmity alive. This feuding strategy also broadened the possibility for maneuvering in court and escaping judgment. It is clearly stated, for example, in the record of the suit brought by Conrad of Kusenice against Derslas of Big Zurowice and the following controversy between parties, held in the Przemyśl castle court on August 1, 1491.⁶⁶⁸ Conrad alleged that Derslaus had broken the *vadium* which had been previously established in order to keep peace between two sides by injuring and humiliating his servant, Matthew Rozek. Derslas countered this accusation by stating that he did not break the pledge of peace, since it concerned only the lords, but not the peasants. Therefore, he argued that his action should not be liable for breaking the peace between parties. Thus, even having been restricted by the law and local authority on one level, many other channels remained which allowed the hostile relationships to be continued.

Besides the most evident motive – causing material damage to the enemy or undermining his/her symbolic capital as a lord – violent incursions could also pursue the aim of imposing control and obedience over the rival's peasants. This can be seen especially in cases of the contested patrimonies to which different relatives raised their claims. Attempts to enforce rival's peasants to obey authority of an invader were, for example, among the charges advanced by Stanislas Korytko against his nephew, Jan Korytko of Rychczycki, in 1502. According to Stanislas' charge, Jan Rychczycki, while invading Stanislas' village forced the inhabitants, under threat of using violence, to disclaim obedience to their lord, to stop working for him, and to stop paying him traditional tribute: *ipsisque hominibus in prefata villa obedienciam inhibuit, ut sibi non obedirent neque laborarent eosdemque hominibus ad dandum sibi victum violenter astrinxit*.⁶⁶⁹ The issue of peasants' obedience also figured in cases of violent expulsion from mortgaged estates, for instance, in the lawsuit brought by Hawrylo Nyslukhivski against Ivashko Balaban to the L'viv castle court in 1494.⁶⁷⁰ Hawrylo Nyslukhivski accused Ivashko Balaban of expelling him from the village which Ivashko had

⁶⁶⁷ Ibid., vol. 17, no. 1873 (December 22, 1483).

⁶⁶⁸ Ibid., no. 2391 (August 1, 1491).

⁶⁶⁹ Ibid., no. 3372 (May 2, 1502).

⁶⁷⁰ Ibid., vol. 15, no. 2386 (March 14, 1494).

earlier mortgaged to Hawrylo. The violence, as was stressed in the complaint, was accompanied by disclaiming the peasants' obedience. The scribe who wrote the text of the pleading in the court register specifically noted that Balaban *homines ab obediencia recepit*. Furthermore, the revocation of obedience had the character of a public event, since it was done in the presence of the court bailiff.

Violence could be employed to reconfirm the power of lords over disobedient peasants. The legitimacy of lords' violence against their proper subjects especially was taken for granted and presented in court by the offenders as something unquestionable and self-evident. For instance, the noble Francis of Derewyatnyky, while responding in 1441 in the L'viv castle court to the charges of the peasant Levko, justified his assault and injuries of this peasant in the following words:

this man was adjudicated to me by the court, this was my man, and I had the right to administer justice on him, and the bailiff of this court can testify to the rightness of my statement.⁶⁷¹

Similar arguments were spoken out in 1496 in the Przemyśl castle court by another noble, Andreas Wapowski, in his response to the accusation of attacking and wounding Andreas Conyeczko, a peasant from the patrimony of the Wapowski family – the village Wapowci. Wapowski acknowledged the fact of invasion, but simultaneously emphasized that the man he had attacked belonged to him as did the victim's goods, of which unjust and violent misappropriation he had also been accused.⁶⁷²

Sometimes courts legitimized such a mode of conduct by their sentences. This is clearly seen, for instance, in the verdict given by the land court of Sanok on February 26, 1468, in the lawsuit brought by the Sanok land sub-judge Pankossius against a certain peasant called Leonard. Since Leonard had declined to appear in court during the case's hearing, the court adjudicated to Pankossius the right to pursue, capture and punish this peasant for what he merited. This judgment was, however, conditioned by the necessity for the winner to take an oath condemning Leonard. Pankossius probably disliked this condition, since he left the court without agreeing to the verdict.⁶⁷³

⁶⁷¹ Ibid., vol. 14, no. 166 (January 20, 1441): "Super quo predictus Franczek respondit dicens, quia in hunc hominem ius adiudicavit et est homo meus et super eo habeo iusticiam alias pravo et ministerialem de iudicio ipsius iudicii et libere approbare volo."

⁶⁷² Ibid., vol. 17, no. 2856 (June 20, 1496).

⁶⁷³ Ibid., vol. 16, no. 512: "ex quo kmetho in primo et secundo termino non paruit neque in tertio, extunc domine Subiudex debes ipsum detinere iure mediante et ipsum convincere mediante proprio iuramento et facere cum eo secundum quod promeruit. Subiudex sentenciam non suscipiendo a iure recessit."

The question which is certainly worth posing in the context of the investigation of noble enmities is how the exercise of violence by nobles framed the plebeians' social position and identity. Some fifteenth-century legal records provide glimpses into the peasant's cognizance of his own social status, by linking it with the idea of the peasant's incapacity to make violent assault against nobles. In 1500, a peasant named, Olesko, from the village of Korytnyky, brought a suit against the local noble Martin Biernaszowski in the Przemyśl land court. Olesko accused Biernaszowski of a violent raid on his house in Korytnyky and the exercise of cruelty upon him (*crudelitatem tuam exercuisti*), which meant beating and wounding. It is further reported that Biernaszowski was also blamed for advancing unjust and slanderous charges against Olesko.⁶⁷⁴ According to the plaintiff's complaint, Biernaszowski had charged Olesko with the responsibility for a violent incursion upon Biernaszowski's house. Challenging the Biernaszowski's accusation as calumny, Olesko tried to convince the judges that there was no reason to believe in such a groundless accusation. How such an allegation could be taken on trust at all, and would it be possible to credit to the fact, – Olesko said in court – that the assault had been carried out by him alone, a peasant, who carried no weapon, except for a stick.⁶⁷⁵

It is remarkable how the social identity of peasants and their ability to conduct violence against nobles, considered as means of conflict resolution, were represented by Olesko as categories mutually exclusive and incompatible. However, Olesko's insistence on representing peasants' vulnerability and defenceless in face of the noble violence as one of the key attributes of the group's social identity, offers a distorted image of peasants' place in the world of social violence of late medieval Galicia. This is not to forget that Olesko's humble social position was cleverly set forth to construct the legal case and undermine the arguments of the opposing party in court. This legal context, which inevitably influenced the way in which the Olesko's testimony had been presented and recorded in court, should make one cautious in assessing the trustworthiness of his words.

It seems misleading to speak about the lower social strata of Galician society only as the victims of noble violence. In general, the ethos and habits of violence were phenomena connected to the status and identity of all social groups. Notions of vengeance and honor as well as the perception of violence as a legitimate means of conflict resolution constituted a

⁶⁷⁴ Ibid., vol. 18, no. 3089 (July 26, 1502).

⁶⁷⁵ Ibid.: “quod non est fidei dignum, quod ipse unus homo et kmeto violenciam et invasionem domesticam facere posset et presertim cum protunc nulla ferebat arma preterea exilem corulum quem in manibus gestabat.”

shared cultural code, accessible and permissible for members of plebeian groups, too.⁶⁷⁶ In this regard it is appropriate to reiterate the fact of the military experience of the common people of Galicia during the Middle Ages. According to the royal ordinances plebeians were constantly recruited for military service and participated in the defense of the land in wars against Turks and Tatars.⁶⁷⁷ Fierce fights or lasting enmities between the village communities are also significant evidence. Some records suggest that such plebeian enmities could be carried out on the large scale and caused many casualties. For instance, the legal record of a violent clash between the peasants of Vhelnyky and the royal stablemen of Vitoshynici, recorded in the Przemyśl castle court on November 27, 1478, relates that three were men killed and two wounded, just from one side of the conflict.⁶⁷⁸ Similar evidence reports that in the fight between people from the village Plekhiv and the Orthodox priest and peasants of the village Romaniv, the subjects of Stephan Romanowski, in L'viv land, two men were killed and two other wounded⁶⁷⁹

Cases of violent encounters between nobles and common people represent another kind of evidence which is worth drawing on here. Such everyday forms of inter-estate affronts allow one to situate violence among the patterns and norms of behavior which were perceived by members of subordinate groups as accorded to their social identity. Plenty of evidence can be found in the court registers concerning ability for plebeians to cast threats against nobles and setting measures to prevent such threats. Arrangements that were set out to restrict plebeian violence and threats against nobles usually took the form of pledges of peace, which were guaranteed by sureties.⁶⁸⁰ Source references to such forms of preventing plebeian violence show that even people of humble origin dared to cast threats against big men of magnate status threatening to set their estates on fire and demanding money for not doing it.⁶⁸¹ Some of these pledges are particularly revealing on the point of the nasty feelings harbored by plebeians against nobles and presented in the sources as verbal expressions of the pursuit of

⁶⁷⁶ See Przemysław Dąbkowski's observations regarding the spread of the practice of threats among plebeians, which was similar to the pattern of waging noble enmity, in P. Dąbkowski, *Jeszcze raz o odpowiedzi w prawie polskim* (Once again about the answer in Polish law) (Lwów, 1899), 5.

⁶⁷⁷ Consider, for example, the ordinance of King Alexander from the end of 1502. The ordinance provided detailed regulation of the participation of the common populace in the defense of the Rus' palatinate, see: *Akta króla Alexandra*, no. 133, p. 202.

⁶⁷⁸ AGZ, vol. 17, no. 1520-24 (November 27, 1478). For other cases of plebeians' violent conflicts in the Przemyśl land, see: *Ibid.*, vol. 13, no. 412 (June 10, 1437); no. 6006 (January 7, 1466).

⁶⁷⁹ *Ibid.*, vol. 15, no. 3801-05 (March 1, 1476).

⁶⁸⁰ *Ibid.*, vol. 11, no. 3312a (January 27, 1456); *Ibid.*, vol. 13, no. 5518 (September 10, 1464); *Ibid.*, vol. 16, no. 1521 (June 13, 1481).

⁶⁸¹ *Ibid.*, vol. 11, no. 2237 (July 20, 1446): "exfideiusserunt Woythkonem familiarem domini Frederici statuere ipsum coram iure, quando venerit aut destinaverit dominus Castellanus Lubliensis, prout idem Woythko minas incussit ignis incendio et quingentas marcas ab ipso per minas voluit extorquere."

vengeance. These pledges usually deal with wrongs which had been inflicted in the past by nobles on men of plebeian origin. Sureties who were selected to guarantee the terms of pledges undertook obligations to secure the safe existence of nobles, promising that the injured person would not threaten the life and property of his wrongdoer. The text of one such pledge concerns, for example, the brothers and sons of a certain woman, Agnes, a citizen of Sanok, who was put in jail by the representative of one of the most powerful noble families of the Sanok county, Jan Bal, *dapifer* of Sanok. The pledge stipulates that Agnes' relatives would never make threats or attempts to retaliate the wrongs done that led to Agnes detention.⁶⁸² The terms of this pledge were secured by Agnes' husband, who acted as a surety.

Another relevant manifestation of plebeian violence is provided by cases, in which members of the noble estate perished at the hands of their plebeian adversaries. This sort of evidence is particularly noteworthy for illustrating how acts of violence directed by the members of subordinated groups against nobles operated to reinforce the plebeians' sense of collective identity and social self-perception. These communal implications of plebeian violence against nobles can be clearly seen, for example, in the case of murder brought to the Przemyśl castle court by the noble Ivanko of Nehribka against the local Orthodox priest, Panko, and his son Dorofey.⁶⁸³ The judicial records supply two competing and mutually contradictory narrations of the events which were told by the parties in court. Bartholomeu Lankorski, the attorney of Ivanko of Nehribka, alleged that the priest was guilty of committing the homicide. According to the attorney's version of events, Panko attacked the house of the noble family from Nehribka, and killed Matthew, Ivanko's brother. The priest claimed that he had done it defending his own house and his life against a violent invasion by Ivanko. He further declared his readiness to support his innocence by testimonies from the local community and the court bailiff. It is noteworthy that the people of the neighborhood, summoned to court, did not hesitate to offer testimonies in favor of the priest, whom they called their neighbor (*vicinus noster*). The overall communal consensus and collective legal action undertaken to provide support to their members was a principal source of the legitimacy of such forms of plebeian violence exercised against nobles. Cases of murder created very favorable occasions for manifesting and reaffirming the collective identity of peasants. Most of the evidence shows that such solidarities were usually invoked in

⁶⁸² Ibid., vol. 16, no. 930 (February 2, 1473).

⁶⁸³ Ibid., vol. 17, no. 2814-15 (February 28, 1496). The case has been mentioned by Jerzy Wyrozumski in his study of village communities in the late medieval Kingdom of Poland, see: Jerzy Wyrozumski, "Gromada w życiu średniowiecznej wsi polskiej," *Spółeczeństwo Polski średniowiecznej*, vol. 3 (Warsaw, 1985), 237. However, the author mistook the Ukrainian word *bathko* – a term which was widely used to designate the status of Ruthenian Orthodox priests in fifteenth-century Galicia – for the personal name.

connection with the negative consequences of such cases for village communities. The pattern frequently observed in this type of murderous cases was that whole village community was liable for the noble's murder, summoned to respond to court, and borne penalties.⁶⁸⁴ The most extreme instance of such forms of peasants' collective liability can be found in the case of the village community of Iaksmanychi, accused in 1471 by the Przemyśl captain of murdering his official. All the villagers had been first sentenced to death. This sentence was mitigated, however, and after begging pardon and submitting themselves to the captain's grace, they were bound to secure pledges for each other.⁶⁸⁵

Not questioning the possibility for representatives of subordinate groups to act autonomously in their exercise of violence, it is most often in the context of lordship and noble enmity that peasants and subjects are portrayed as the principal offenders of the law and peace. The evidence explicitly demonstrates that common people were recruited in the service of their lords and employed as accomplices in all possible sorts of wrongdoings. In this regard it is highly important to emphasize that the court narratives of raiding are consistent in representing the group of invaders as comprised of two parts – one of nobles and another of plebeians. The latter's status is usually designated as *inferiores*, *dissimiles*, *podleysi* by way of stressing their subordinate subject position in respect to their lord. It is difficult to say how victims and witnesses of acts of violence defined the status of raiders. It is revealing, however, that the legal norms accepted without reservation the possibility of plebeian participation and liability in noble enmity.⁶⁸⁶

Peasants could be specifically singled out as participants in their lord's raiding against the lord's own unruly subjects or the estates of other nobles.⁶⁸⁷ Peasants are mentioned as participating in capturing and guarding detained subjects of their lords' rival.⁶⁸⁸ It is reported that peasants actively assisted their lords in repulsing a rivals' rightful attempts to enter their

⁶⁸⁴ Consult, for example, the case of the noble of L'viv land Vanko Lahodowski, against "rusticos kmethones masculos de Bathathycze totam communitatem alias gromada de villa prefata," who were blamed for murdering Peter Lahodowski, Vanko's brother, in AGZ, vol. 15, no. 2593 (January 12, 1498). See also the similar case of Nicolas Drzewyantka against peasants of the village of Macoshyn in L'viv land, in Ibid., vol. 14, no. 3436 (July 25, 1455); no. 3584 (June 10, 1456); no. 3606 (July 16, 1456). For observations on the collective actions of peasant communities in the late medieval courts, see Jerzy Wyrozumski, "Gromada w życiu średniowiecznej wsi polskiej."

⁶⁸⁵ AGZ, vol. 17, no. 667 (November 31, 1471).

⁶⁸⁶ The question of the phraseology in the contemporary sources regarding the plebeians and nobles taking part in assaults is addressed by Antoni Gąsiorowski, "Dobrzy i podleysi. Przyczynek do dziejów kary w późnośredniowiecznej Polsce" (The good and ignoble. From the history of penalty in late medieval Poland), *Czasopiśmo Prawno-Historyczne* 37, no. 2 (1985): 89-99.

⁶⁸⁷ AGZ, vol. 17, no. 2856 (June 20, 1496): "quia ipse cum duodecim kmethonibus suis coadiutoribus superveniens cum curribus violenter super domum ipsius Andree Conyeczeko repercussit valvam, quam fregit et ipsum percussit et intulit sibi vulnus cruentum..."

⁶⁸⁸ Ibid., vol. 13, no. 5904 (August 19, 1465).

village – such introductions onto the rivals’ estate were the usual form of indemnity adjudicated by the judges to those who had won their case in court.⁶⁸⁹ Peasants, following the orders of their lord used violence against royal officials who visited the villages to collect the customary payments imposed by the Crown.⁶⁹⁰ The legal records speak of subjects’ theft, favored and patronized by their lords. Confessions made in court by peasants captured while committing the theft reveal that such petty crimes could be designed and guided by lords in their enmities with noble neighbors.⁶⁹¹ Nobles were repeatedly charged with protecting and employing for their own benefit notorious thieves and brigands, recruited from their peasants.⁶⁹² Some subjects, accused by their lords of committing serious offences, are known to have taken flight and found protection with the other nobles. Refusals to hand over such brigands and put them on trial gave rise to enmities among nobles.⁶⁹³ Some legal records furnish evidence of nobles who organized attacks on neighboring villages in order to liberate thieves who had been captured and were about to be put on trial.⁶⁹⁴ Peasants could be actively engaged in such assaults. In one case it is reported that a peasant community, headed by their lord, dared to attack and inflict wounds on royal officials in order to set free brigands who had been arrested.⁶⁹⁵ In general, stories of the bands of peasants, acting as brigands under the protection of their lords, plundering and killing the people on the roads are a recurring theme in the fifteenth-century legal records.⁶⁹⁶

The evidence suggests that the violence of common people was closely interwoven and integrated into the larger context of noble enmities. The resulting picture was the emergence of a complex configuration of inimical relationships. The evidence from the royal pledges of peace imposed on parties to prevent further escalation of conflict offers a view of the enmities

⁶⁸⁹ Ibid., vol. 14, no. 2899 (July 25, 1453).

⁶⁹⁰ Ibid., vol. 15, no. 850 (April 26, 1471): “Ministerialis tonsus Leopoliensis Mathias Pyeczony recognovit, quia cum venit in Dworcze ad pignorandum in exactione Regali pro non solutione fertorum, extunc ibidem Tywn cum hominibus pignorationem percussit hominemque Regalem de Slonka nomine Iakow, qui cum Ministeriali ad pignorationem missus fuit, violenter percusserunt.” For another similar case, see Ibid., vol. 17, no. 4077 (August 2, 1504).

⁶⁹¹ Ibid., vol. 14, no. 3154 (August 22, 1454): “Labor. Nicolaus de Pyeczochosty, qui fuerat detentus et raptus, dum furabatur frumenta et triticum in Czystyn bonis in tenuta dom. Georgii de Dynoszyn Strumilonis Vexfri. Leopoli., extunc idem Nicolaus existens liber libere recognovit, quia ea frumenta recepit de mandato nobil. dom. Katherine de Pyeczochosti de dotacio, que frumenta recepit in campo in Czystyn, quem hominem Vexfri. Statuit coram iudicio presenti...”

⁶⁹² For the noble’s protection extended to brigands, and refusal to hand peasants liable for the crime of brigandage over to the court or plaintiffs, see Ibid., vol. 15, no. 2646 (March 3, 1498).

⁶⁹³ Ibid., vol. 17, no. 3037 (July 16, 1498); Ibid. no. 3915 (August 5, 1502); Ibid. no. 4020 (November 4, 1503).

⁶⁹⁴ Ibid., vol. 15, no. 1119 (October 30, 1472).

⁶⁹⁵ Ibid., vol. 11, no. 1381.

⁶⁹⁶ See, for example, an accusation brought against subjects of Fedko of Pukynnycia, in Ibid., vol. 13, no. 5978 (November 13, 1465); Ibid., vol. 17, no. 34 (February 14, 1469); no. 594 (May 2, 1471); against peasants from Wroblowychi, subjects of Nicolas Korytko, in Ibid., vol. 17, no. 1664 (February 25, 1479).

as networks of interpersonal violent encounters of people of various social standings. The royal or captain's letters of pledge sometimes specifically singled out, besides lords themselves, the lords' subjects – his familiars, peasants and townsmen – as encompassed by the sanctions of the pledges.⁶⁹⁷ By shifting the focus of inquiry from the captains' letters of pledge to the judicial records of the pleas and complaints brought by rivals to the local courts, it is possible to trace such inimical communities, led by their lords, in their violent actions. For instance, in a lawsuit launched by Jan Budzywoy of Volshchyschovychi, a noble of Przemyśl land, against Demeter of Bolanovychi, two principal allegations were advanced by the plaintiff. According to the first allegation, Demeter of Bolanovychi was called to respond for the offences of his peasants from Zlochkovychi, who had murdered one of Jan's subject peasants from Volshchyschovychi. In addition to the accusation of homicide brought against his people, Demeter himself was blamed for intruding with his peasants into the Jan's camp, and violently seizing the whole supply of wheat from the plaintiff's subjects.⁶⁹⁸ The case offers insights into how acts of violence, while manifesting the enmity of the lords, could be dispersed throughout the social space and embrace a wide circle of people of lower social strata, able to the semi-autonomous conduct and the pursuit of violence.⁶⁹⁹

This image of noble enmity as hostile relationships that could be acted out on various levels with the participation of many people of different social standings can be further exemplified by the lawsuit between the representatives of the same noble family of Przemyśl land - Peter and Rafael of Prochnik. The records of this enmity are found in the Przemyśl castle court register under the year 1506. This time, the lords' subjects figure in the records as the main instigators and active producers of violence. The evidence is accounts of brawls between people of two lords, highlighting the responsibility of servants for escalating violence and for turning the relationships between lords into a new enmity and litigation. The first entry, dated January 5, 1506, is an accusation brought by Peter Prochnicki against Rafael Prochnicki. Peter blamed Rafael for breaking of the pledge of peace established earlier by instigating his people to attack and wound Peter's servants.⁷⁰⁰ The record relates that two of Rafael's retainers (literally bread-eaters – *comestores panis*) burst into the ale-house (*super*

⁶⁹⁷ See, for example, the clause of the captain's pledge enforced on Bernard, Nicolas and Derslas of Crzywcz from the one side and Alexander Orzechowski from the other. The letter of pledge was addressed to Alexander Orzechowski and designated the group of people involved in the discord on Orzechowski's side as *te et filios ac kmethones et subditos tuos*. See in Ibid., vol. 17, no. 3279 (May 18, 1500). For similar cases: Ibid., vol. 15, no. 2043 (January 22, 1490); Ibid., vol. 17, no. 1112 (June 26, 1475).

⁶⁹⁸ Ibid., vol. 13, no. 6006-07 (January 7, 1466).

⁶⁹⁹ Compare the remarks by William I. Miller about the interconnection between the powerful and subordinate in the context of medieval Icelandic feud in his *Bloodtaking and Peacemaking*, 246-7.

⁷⁰⁰ Ibid., vol. 17, no. 3576 (January 5, 1506).

hospicium ubi cervisia protunc propinabatur) where Peter's peasants from the village of Chorzow and his other subjects were sitting at that time. Upon making verbal insults, which the account describes as *inicium*, Raphael's retainers had started a brawl with the use of swords, in which one of Peter's people, a certain Venceslas, had been stabbed in the stomach. The evidence shows that it was a lord who was charged with the responsibility for assault performed by servants. This was a common strategy of the victims of violence, who usually tended to emphasize the role of the lord as an instigator of the felony of his/her servants. The setting, in which the act of violence occurred, however, does not preclude the possibility that the brawl had erupted spontaneously or that Rafael's retainers had acted on their own initiative. At least this can be inferred from the speech of Raphael, who tried to justify himself by referring to the pattern of defense noted above. He emphasized that the pledge which had established the state of peace between the parties, concerned only the lords and the lords exclusively. In his reply he further denied his responsibility for the wrongs done by his people. Rafael stated that he had never given his consent or support to their transgressions.

The second record, placed in the register just next to the first one, can be read as a story of vengeance carried out by Peter's people on their adversaries.⁷⁰¹ In his counter-claim Rafael Prochnicki accused Peter's servants of a raid organized against his subjects. Rafael recounted in the court that a gang of Peter's familiars and peasants from Węgerka and Tuliczow, armed with swords and lances and led by Peter's notary, Bernard, the familiar Stanislas, the local tavern-keeper Nicolas, and a certain Iarosh Holovchych had invaded the house of Stanislas, Rafael's tailor in Prochnik. The record further specifies that in the course of the raid the invaders heavily wounded Rafael's servant Jan. The case in question demonstrates that different groups of servants and even peasants were able to play an active and autonomous role in producing violence and could perhaps pursue their own purposes in a feud.

The accounts of Prochnicki's enmity seem to point out the lords' detachment from the violent attacks, focusing exclusively on their servants' violence. Lords are described as staying behind the scene of violence and pretending to be unable to prevent their subjects from initiating violent brawls and incursions. In this exchange of violent assaults, the lords were rather reluctant to guide and orchestrate the actions of their subjects. They personally intervened in the conflict only at a later stage when the enmity was brought and debated in the court.

⁷⁰¹ Ibid., no. 3577.

Other legal records also represent the plebeian violence as a troublesome matter for the lords. Excesses of plebeian violence could indeed threaten and sharpen relationships between lords against their original will. In all probability this was the case in the litigation between Alexander Orzechowski and the Krzywiecki brothers recorded in the Przemyśl land court in 1502. Alexander Orzechowski complained in court that despite the terms of an amicable reconciliation reached earlier, the nobles from Krzywczyna neglected to surrender to Orzechowski their peasant, Jan from Hrycpole, blamed for murdering two of Orzechowski's subjects – townsmen from Krzywczyna. The Krzywieckis did not deny their promise to hand Jan over to Orzechowski. The defendants stated, however, that at the time when the agreement had been negotiated and concluded, the felon had been out of their reach. As the Krzywieckis further related, first they had had to acquire the felon from the hand of the Castellan of Cracow, but had evidently failed to do so by the time the lawsuit began.⁷⁰² This case clearly demonstrates that the good will of the parties concerning compensations and punishments for plebeian's wrongdoings could easily be crushed, turning peaceful relations into litigation, if met with the difficulties of enforcements.

Another pattern seen in the interaction of lords and plebeians in enmities is the lords' direct engagement in brawls with the servants or peasants of their adversaries, even falling victims to such violent encounters. Sometimes such clashes became the central moment of a conflict. A good example of this is offered by the record of arbitration from 1504 which ended a dispute among members of the Grabownicki family from Sanok land. Among the many terms of the reconciliation reached by the Sanok chamberlain, Paul Pelka of Grabownica, on one side with his numerous nephews on the other, one concerned a certain Stanislas, Paul Pelka's tavern-keeper. A series of violent brawls between the said tavern-keeper and Stanislas Grabownicki, one of Paul Pelka's nephews, are described in the text of arbitration as one of the central episodes of the enmity. Paul Pelka alleged that his nephew beat the and also injured the tavern-keeper's wife. The record relates, however, that Stanislas Grabownicki also suffered one wound in the affray. The record further specifies that Stanislas, the tavern-keeper, shot Grabownicki with an arrow. The arbiters settled this case of violence in the following manner. On arbitration, Stanislas Grabownicki had denied the fact of his violence against the tavern-keeper and his wife on his honor and conscience. The

⁷⁰² Ibid., vol. 18, no. 3080 (July 26, 1502): "quia vos extradidistis sibi Iohannem kmethonem vestrum de Hreczpolye iuxta conductamen vestrum, quod fecistis coram bonis hominis, qui kmetho interfecit duos oppidanos fratres germanos Bartholoneum et Iohannem de Crzywczyna sortis ipsius. Pars adversa respondit: nos negamus quod non sic conductamen fuit coram bonis hominibus, sed fuit quando aquiremus alias dobedzemy hominem predictum apud mfcum. Castlm. Cracov illum diximus sibi extradere."

arbiters agreed to accept this statement as truthful. Instead, Paul Pelka's tavern-keeper was required to undergo a ritual of public penance and humiliation. According to the arbiters' decision, the tavern-keeper, in the company of his two followers, had to manifest his humility and penance by kneeling before Stanislas Grabownicki and begging him for pardon. At the same moment Grabownicki was allowed to unsheathe his sword or knife and make a sign over the kneeling body of the Pelka's subject.⁷⁰³ Though allowed to touch Stanislas' body with the sword, Grabownicki was at the same time forbidden to harm the penitent. By giving Grabownicki the power over the defenseless body of his enemy, and simultaneously forcing him to spare his adversary, the rite turned into a symbolic act of mercy and reconciliation. The last point of the settlement concerned the wife of the tavern-keeper.

One aspect of this account appears the most striking. This is how the procedures and institutions usually reserved exclusively for nobles and their dispute settlements were extended to members of the subordinated groups. It is possible to suggest on the basis of the given evidence that plebeians' liability for inflicting wounds on their noble adversaries could be mitigated or their punishment be given in such honorary forms as public penance if considered in the framework of the noble enmity. Further inquiries show that plebeian wrongdoers, if enjoying protection of their lords, could escape punishment even for such serious crimes as a noble's murder.⁷⁰⁴

One important suggestion can be made on the basis of the description of these litigations and cases of violence. It seems that the exchange of violence between a lord's subjects on the ground could barely die out. The lords kept scores and waited for the moment when the conflict entered the phase of escalation. This could happen when one of the litigants decided to take care of his people, perhaps not without pressure from their side, and bring the allegations to court. What happened then is that his adversary could challenge the suit with

⁷⁰³ Ibid., vol. 16, no. 3034 (October 24, 1504): "Item pro eo sicut questus est Paulus Pelka, quomodo Stanislaus filiaster ipsius sibi vulnerasset tabernatricem ipsius et tabernatorem percussisset ratione istius, quia ipse tabernator ipsum Stanislaum sagitta vulneravit, quem ipse se non percussisse nec vulnerasse uxorem ipsius sub honore et conscientia sua asseruit, debeat ipse tabernator contra eum cum duobus hominibus humilitatem exhibere flexis genibus petendo, ut sibi culpam dimitteret, ipse vero Stanislaus evaginato cultro vel gladio debet solum signo ostendere supra eum sed non ledere eum tanquam sit vindicaturus sanguinem suum et culpam sibi dimittere; quod debet facere tunc, quando ibi prefati domini intererunt. Tabernatrix vero si rescierit aut scit, quis eam vulneravit et si fuerit kmetho ipsorum fratrum, debent sibi iusticiam facere aut mandare homini suo eam, quomodo poterit preinvenire et reconciliari eciam pro tempore predicto." This case of the public penance was analyzed by P. Dąbkowski, *Zemsta, okup i pokora na Rusi Halickiej w wieku XV i pierwszej połowie wieku XVI* (Vengeance, retribution and humiliation in Galician Rus' in the fifteenth and first half of the sixteenth centuries) (Lwów, 1898), 938-39.

⁷⁰⁴ Consult, for example, the case of the murder of the noble Jan Bądkowski by the peasant Jan from Korito, a subject of Peter Czeszik of Riterovycze, the chamberlain of Sanok. The brother of the murdered noble lost the case in court and the said peasant was not punished due to the intervention of the Sanok chamberlain. See AGZ, vol. 18, no. 777 (November 14, 1475).

counterclaims, producing his own list of offences which had been inflicted upon his men. The evidence often provides an image of the enmity as multi-channeled and multi-leveled violent relationships which brought about an accumulation of wrongs on both sides. Such hostilities could not be satisfied by the single act of settlement. These relationships opened the gates to numerous possibilities and pretexts of a renewal of violence and various forms of legal actions taken in court.

The social dynamics of violence and the interrelations between plebeians and nobles in its production had one significant implication for the forms and meanings of the legal actions undertaken by the members of both groups in the court. The evidence shows explicitly that plebeian violence was indissolubly linked with the expectation of legal protection and aid from the side of the lords. In other words, the subjects liable for some crimes and wrongs sought and usually gained the support of their lords in legal cases and prosecutions initiated against them.

Ties of lordship provided the most effective shelter for plebeian culprits in their attempts to escape punishments. Nobles who wished to prosecute the subjects of other nobles in the official courts, or wanted to pursue the punishment of plebeian culprits by means of self help often faced a challenge to their actions by the culprits' lord. Prosecution was condemned as a violation of one of the principal privileges of lordship – a lord's right of jurisdiction over his own men. The right of a lord's jurisdiction over his subjects was an essential privilege of immunity, endowed on the villages with the so-called German law. Lords who came to court to defend their subjects, guilty of some criminal offences claimed their exclusive privilege to judge such culprits.⁷⁰⁵ A highly instructive account of a lord's insistence on his monopoly to administer justice among his people is offered by the dispute between the L'viv citizen Frederick Fricz and the inhabitants of the suburb of Vyshnya.⁷⁰⁶ The account, recorded in the L'viv castle court register in 1505, begins with the complaint, Frederick Fricz made against men from Vyshnya before the judges. Frederick Fricz related that he had been pursued, attacked, robbed and injured by the citizens of Vyshnya on the free royal road running from Vyshnya to Mostyska. Fricz also sued Jan Lysakowski, who, as the advocate of Vyshnya, was the natural lord of the accused men. Fricz blamed Lysakowski for reluctance to bring the culprits to the court. As an excuse for ignoring the summons to the court session, Lysakowski

⁷⁰⁵ Consult similar evidence drawn by Kazimierz Tymieniecki in the context of late medieval Mazowsze. See his, *Historia chłopów polskich* vol. 2, (Warsaw: PWN, 1966), 180.

⁷⁰⁶ AGZ, vol. 17, no. 4178 (August 20, 1505); no. 4188 (September 19, 1505).

stated that he saw no reasons for the culprits' appearance in the castle court. He further developed his arguments by saying the following words to the judge:

I am not obliged to bring them [the accused] here. Give this case to my law, which I share with them. Since I am a hereditary advocate of the town in which they reside, I hold them in my power. Therefore I myself am able to set the trial with them according to the captain's letter if Fricz appropriately pleads with me.⁷⁰⁷

This sort of argument comes out even more strongly in the appeal of Conrad of Jasnyska made in the L'viv castle court in 1501 during his litigation with Andrushko from the same Jasnyska. Taking over the defense of his peasant, who had been accused of stealing wood and captured without appropriate trial by mentioned Andrushko, Conrad's procurator clearly put it that "nobody can judge my lord's people in the same manner as he himself is entitled to do."⁷⁰⁸

In general, the dominant pattern of litigations was that lords were sued to respond in court for their subjects' misdeeds, regardless of whether such violence was initiated and supported by lords or not. The lords inevitably partook in the liability for their subjects' wrongdoings. One important corollary of this was the appearance of the ties and networks of solidarities based on the common legal actions and shared responsibility in court. The practice of serving as a surety for offenders of the law in the courts highlights in particular the existence of the inter-estates' communities of legal responsibility, which emerged on the basis of the intermingled networks of nobles and plebeians.

The case of the surety taken by Frederick of Jacimierz, a powerful lord of Sanok land, for his peasant, Stepan from Ratnawica, illustrates well how large and complex such legal communities could be. The beginning of the case is marked by a number of accusations of criminal offences brought against the said Stepan and recorded in the Sanok castle court during September, 1449.⁷⁰⁹ It is difficult to follow these charges in detail and discover more about what led up to these events. In the context of the present discussion it is more important that the case offers an opportunity to highlight the ways in which Frederick of Jacimierz

⁷⁰⁷Ibid., no. 4188: "non deberam statuere, sed des michi hoc ad ius meum, in quo ego cum illis resideo, nam ego sum advocatus hereditarius et habeo in potestate eos mea et faciam predicto Frycz cum eis, si me optaverit, iuxta tenorem literarum."

⁷⁰⁸ Ibid., vol. 17, no. 3736 (February 5, 1501): "et nemo potest sibimet iusticiam facere, prout ipse fecit; nam dominus meus Cunradus fecisset sibi iusticiam cum homine suo, si quid fuisset sibi reus." For similar evidence from the earlier period, see: Ibid., vol. 11, no. 1739 (July 31, 1443).

⁷⁰⁹ See, the accusation of breaking into a house, advanced by Ihnat of Huzelow, in Ibid., vol. 11, no. 2762 (September 19, 1449); the accusation of arson and theft, brought by Closz Czepsar of Poraz, in Ibid., no. 2770 (September 22, 1449); three unspecified charges brought by the peasants of Odrechova and a fourth which concerned the robbery of a peasant of the same village, in Ibid., no. 2766 (September 22, 1449).

strove to defend the culprit, relying on the support and loyalty of his subjects. The judicial record tells that Frederick first came forward stating that Stepan was accused *ex inimicitia* and claiming his exclusive right to judge his subjects. According to the record, Frederick supported his claim by referring to a royal privilege granting him the right to condemn and punish the men of his lordship.⁷¹⁰ It seems that he failed to produce a confirmation of such rights as was demanded of him by the captain and was forced to withdraw his claim.

What is narrated as a next stage of the trial, where Frederick proved to be really successful, is the evidence of the process of recruiting the oath-helpers and sureties to expurgate the accused Stepan. Three groups of peasants were enlisted as oath-helpers of Stepan – each group to help the felon to refute a single accusation advanced against him. The court register provides the lists of the oath-helpers of two such groups. Altogether, they named as oath-helpers 41 people coming from nine localities (Prosszek, Sanoczek, Nyebiszczany, Rathnouicza, Volicza, Wyelepole, Strosze, Pobyedne, Markowce).⁷¹¹ Furthermore, the expurgation of the said Stepan by the oath-helpers was strengthened by numerous sureties. It is reported that the body of sureties consisted of Frederick of Jacimierz himself and all his advocates and peasants from Nyebyeschany, Wyelepole, Ratnaucza and Vola. The named sureties pledged to the captain to bring Stepan to the court session at which he promised to present oath-helpers and undergo an expurgation from the charges. The sureties were bound to bring Stepan to the court under the payment of the fine of three hundred marks. The evidence suffices to make one to realize the impressive scale of collective legal actions mustered by lords in order to support their peasants.

The significance of the noble-plebeian interaction in court can be further illustrated by data about the social status of persons who served as sureties and those for whom sureties were pledged before the Przemyśl captain for the period of 1469 to 1500. It is noteworthy that entries of inter-estate sureties in which nobles figured as guarantors of plebeians comprise the most numerous group (35) from a total of 96 entries. This group is larger than the cases of intra-estate sureties among nobles (32), and among plebeians (17). The cases of sureties

⁷¹⁰ Ibid., no. 2764 (September 22, 1449): “et ego iura super dominium meum habeo Regalia puniendi et condemnandi.”

⁷¹¹ 28 people from Prosszek, Sanoczek, Nyebiszczany, Rathnouicza, Volicza, Wyelepole to support Stepan against charges of Ihnat from Huzelow. See Ibid., vol. 11, no. 2765 (September 22, 1449), and 13 people from Strosze, Pobyedne, Markowcze and Nyebiszczany to assist Stepan to respond to the accusation of Closz Czepsar of Poraz. See Ibid., no. 2767 (September 22, 1449). There was probably a third group, called to expurgate Stepan against charges of the said Closz Czepsar, since one record clearly refers to *tertii testes* which had to be presented before the court. See Ibid., no. 2770 (September 22, 1449). Another record also mentions that Stepan submitted himself to the community of Odrechowa, asking for expurgation from the chargers. See Ibid. no. 2766 (September 22, 1449).

secured by nobles for plebeians reveal a great variety of inter-estate collectivities and configurations of ties which emerged in the course of legal actions. As can be expected, sureties given by nobles for their own peasants were the most numerous. Similar to the case of Frederick of Jacimierz's surety, lords most often pledged the captain to bring their plebeian culprits to the trial or took up *exfideiussio* of their peasants from the captain's prison (9). There are also cases of noble sureties provided for the peasant of another lord (4). All these cases are sureties in which a single noble offered surety for a single peasant. Another kind of inter-estate surety relates to the larger collectivities taking responsibility to bring the culprits to the court. These sureties were secured by a group of nobles for a single or a group of plebeians (6).⁷¹² Perhaps the most interesting are cases when nobles and plebeian representatives of one or more village communities created a unified body of sureties while pledging for plebeian culprits (6).⁷¹³ The institution of surety brought into action the network of solidarities created in daily life by lordship. It shows how lords and subjects were connected among themselves by common legal actions. It also makes clear that the practice of taking surety repeatedly reaffirmed the ties of lordship by operating as a mechanism for legal responsibility and defense in court.

Another form of common noble-peasant legal actions emerged around wrongs which peasants suffered during the noble enmities. Lords usually took care of bringing their peasants to court and assisting them in pleading their own cases against wrongdoers. The number of peasants and their charges mustered by lords in legal actions against their opponents could be quite numerous.⁷¹⁴ Peasants were thus actively involved in litigations on the side of their lords and represented a significant resource for waging enmities and setting out legal actions in the court. By mobilizing their peasants as plaintiffs, the nobles were able to multiple the number of accusations raised against an opponent and thus widened the scope of opponent's liability.

It may be concluded, therefore, that the ties of support and protection which emerged as a result of the interplay of the practice of lordship and feud were a multi-faceted phenomenon. The demand for protection and aid expected by subjects from their lords in the course of noble enmities took various forms. It not only concerned the lord's ability to provide a safeguard for subjects against an enemy's violent assaults. Lords were equally expected to

⁷¹² Ibid., vol. 17, no. 441, 598, 842, 1131, 1499, 3334.

⁷¹³ Ibid., no. 448, 1379, 2691, 2748, 3331, 3348.

⁷¹⁴ In 1444, for example, George Strumilo brought to the L'viv castle court fourteen peasants from the village of Darnow to assist him in his lawsuit with Volchko Rokuthy. Each of Strumilo's peasants advanced his accusations against Volchko Rokuthy, blaming him for the damage caused during the raid on Darnow. See Ibid. vol. 14, no. 952-966.

offer assistance and shelter to subjects who were known as notorious offenders of the law and peace and who faced legal prosecutions against them.

In general, the social interactions between lords, servants and peasants in the context of the exercise of violence suggest the importance of vertical ties in this society. This idea is certainly not new, remembering the Brunner's emphasis on the fundamental role of the ties of protection existing between lords and subjects in the context of the feud. In case of the late medieval Galicia, however, a more complex reality lay behind these ties of protection and help that originated in the context of the enmity. What is highly significant for understanding the enmity culture of the late medieval Kingdom of Poland is the emergence of the social nexus of ties and the set of solidarities which ran across the borders of the officially established estates and which were grounded on common participation in violent actions and common responsibility in court.

Involvement in the violent conduct of nobles represented a crucial strategy of survival for the peasants and members of the other plebeians' groups in at least two respects. First, fifteenth-century Galician Rus', located on the border of the kingdom, economically undeveloped, thinly populated and constantly exposed to the danger from Tatars' raids, was a world of extreme scarcity. This scarcity concerned the most fundamental things – human and natural resources. This fact determined the social significance of the practice of pillaging in the everyday life of Galician society. In this regard it is not surprising to find the court narratives of violence so obsessed with providing as precise as possible information about grain supplies, livestock, wood, and other goods which were plundered during noble raids. By participating in lords' violent assaults, peasants and subjects were able to partake and benefit from this economy of pillaging.

At the same time, the peasants' engagement into noble enmities and common legal actions operated as the most effective mechanism of the lords' protection of their subjects. Lords offered safeguard and aid first of all to the subjects who actively supported them during an enmity. Thus the enmity, which allowed subjects to be intimately involved in noble disputes and enmities as co-producers of violence, became a significant source of social privileges and power resources in the communal life of the lower social strata. Subjects who enjoyed the status of being the lords' determinant and constant accomplices and were enmeshed in the complex and interlocking nexus of ties that crystallized around the lord's violent conduct obtained privileged social positions among other plebeians. This served as an important channel for social communication with lords widening the opportunities for the members of lower social groups to establish unequal but reciprocal relationships with their lords.

Social difference was not only tied to the estates' privileges or economic success, but also to the uses of violence. Inter-estate networks and communities built on the experience of violence, shared by both nobles and plebeians, coexisted and even contested with the officially accepted order of estates. From this perspective, fifteenth-century Galicia was not only a society of estates, but also a world of feuding factions, going down the social ladder. The solidarities which originated based on the exercise of violence constituted alternatives for the estates, even though they were more informal criteria for social hierarchy and social classification. In general the violence and enmity emerge from the sources as a force of fundamental significance in structuring and reshaping social identities and social hierarchies in this society.

Chapter 9 – Peacemaking and Private Arbitration

Peacemaking in medieval Europe often represented an alternative to the official law's way of dispute settlement. The law and love, according to the famous medieval phrase, were situated on the opposite ends of human interrelations. Medieval imagery frequently identified recourse to the law and lawsuits with a declaration of enmity. The decision of one of the parties in a conflict to take the case to court usually implied the purpose of inflicting material and moral damage on the rival by getting a sentence in his/her favor. From this point of view, litigation was considered a way of satisfying someone's bid for vengeance. Instead, according to the medieval ideology of peacemaking, the purpose of the private forms of dispute settlement reflected attempts to reconcile rivals, to compensate their mutual wrongs, and to avoid further escalation of the conflict. In so doing, the task of private arbiters was often conceived as aimed less at making judgments, than at trying for mediation and peacemaking. It implied an appeal to a more widely understood set of moral and ethical norms in order to obtain and restore the social harmony and peace – social values that lay at the base of every true Christian community.⁷¹⁵ In the view of what has been said above, it seems quite understandable that the process of peacemaking was often perceived and represented in religious or quasi-religious categories. The religious meanings of peacemaking were also evident in the active role that the church and its institutions tried to play in encouraging the use of private forms of settlement.⁷¹⁶

This medieval representation of peacemaking viewed private modes of conflict resolution as opposition to dispute and enmity. Instead, in this chapter I propose a more

⁷¹⁵ For a detailed analysis of the practice and institution of medieval peacemaking, see: Patrick Geary, "Living with Conflicts in Stateless France," 127-128, 150-159; Thomas Kuehn, "Law and Arbitration in Renaissance Florence," in his *Law, Family and Women*, 19-74; William I. Miller, *Bloodtaking and Peacemaking*, 259-299; Adam J. Kosto, *Making Agreements in Medieval Catalonia. Power, Order, and the Written Word, 1000-1200* (Cambridge, NY: Cambridge University Press, 2001). For the opposition between the concepts of law and Christian love, see, especially: Otto Brunner, *Land and Lordship*, 18; Michael T. Clanchy, "Law and Love in the Middle Ages," in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 140-152. For the moral and ethical dimensions of private amicable agreements, see: Craig Muldrew, "The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England," *Historical Journal* 39 (1996), 920-921.

⁷¹⁶ The role of the cult of saints, of religious and church institutions in the process of peacemaking is highlighted in the following studies: Peter Brown, *The Cult of the Saints. Its Rise and Function in Latin Christianity*, (Chicago: The University of Chicago Press, 1981), 101-105; Geoffrey Koziol, "Monks, Feuds, and the Making of the Peace in Eleventh-Century Flanders", in *The Peace of God: Social Violence and Religious Response in France Around the Year 1000*, eds. Thomas Head and Richard Landes (Ithaca and New York: Cornell University Press, 1992), 250. For the activity of celergymen as peacemakers in sixteenth-century France, see: Stuart Carroll, "The Peace in the Feud in Sixteenth and Seventeenth Century France," *Past and Present* 178 (2003), 90-93. For the role of religious confraternities in promoting a culture of reconciliation, see: John Bossy, *Christianity in the West, 1400-1700* (Oxford, 1985), 59-60.

nuanced study of those aspects and meanings of peacemaking, which made it contingent on the context of the noble enmity in the late medieval Kingdom of Poland. First and foremost I want to point out that in late medieval Galician Rus' the line separating peacemaking from litigation was quite blurred.⁷¹⁷ In spite of their informal and private character, the institutions of peacemaking were closely interwoven with the institutions of royal justice and noble self-government.⁷¹⁸ This was one of the most fundamental features of the institutions of private dispute settlement in Galician Rus. In view of the interdependence between the extra-judicial forms of dispute settlements and the official courts, opportunities to investigate the forms of private reconciliation as an "autonomous" process and institution are minimal for the period of the fifteenth century.

9.1 Arbitration and official courts

All the evidence about peacemaking comes from the context of official court proceedings. They often represented one phase of an official lawsuit. In addition, they were the product of the activity of the chancelleries of the castle and land courts. Taking into account the significance of oral communication in concluding private reconciliations, many key aspects of such settlements remain unknown. What were procedures and phases of private settlements? How did the process of negotiations look? What arguments were invoked in its course? Those questions were of little interests to the notaries and scribes of the court chancelleries and, therefore, they did not find their way into the documentation of the official judicial institutions. Records concerned with peacemaking inserted in the official court registers usually speak of the terms of final reconciliation, or they mention sanctions which were foreseen in the case of a breach of the private settlement that had been reached, or if there was a refusal to accept a sentence. The records also often contain the names of arbiters who participated in dispute settlement. Quite rarely indeed is information present about the scope of the responsibilities given to the arbiters to set and implement the terms of amicable settlement.

Due to its character, available evidence is particularly illuminating for analysis of the crossroads in the activity of the official and extra-official judicial institutions. Similar to official courts, private arbitrations made wide use of pledges of peace (*vadium*) to prevent a

⁷¹⁷ In this regard it is appropriate to quote a suitable remark by Simon Roberts: "... the picture of negotiation is on the whole too beautiful; we cannot necessarily present negotiation and adjudication as law and love respectively." See his, "The Study of Dispute: An Anthropological Perspective," 15.

⁷¹⁸ For quite similar observations concerning another region of medieval Europe, see Thomas Kuehn, "Law and Arbitration in Renaissance Florence," 21-22.

breach of the reconciliation. In the case of broken settlements, part of the pledge had to be paid not only to another party or arbiters, but also to the captain or even the court judge.⁷¹⁹ Another quite telling feature of records of peacemaking is that the court bailiffs – the key figures in the functioning of official courts – were regularly present during arbitration and testified to the implementation of the decision of the arbiters.⁷²⁰ The evidence shows that the responsibilities and functions of arbiters, on the one hand, and judges of official courts, on the other hand, were frequently closely connected. For instance, some actions and steps, such as oath-taking, which the parties involved into the private settlement were bound to carry out following the decisions of private arbiters, could take place before the judges of official courts.⁷²¹ The sources also supply evidence about arbiters taking counsel from the judges of castle or land courts, especially when the opinions of arbiters varied on some points in the process of peacemaking. It also happened that the arbiters took responsibility for implementing the judgment made before the official court.⁷²² The choice of the space for arranging a reconciliation also displays the interplay of official and unofficial elements in the institution of peacemaking. The arbitration could be held either in the private places (like private houses), remote from administrative centers, or in public places (like the royal court, diet, or church).⁷²³

The most common type of records from the fifteenth century with information about the private forms of settlement is the postponement of a case held at the session of castle court to next hearing with short note *ob spem concordie et amicabile compositionis*, or with indication that *partes receperunt ad concordandum*. Behind this sort of court decisions lay an expectation that in the meantime the parties would be able to reach reconciliation.⁷²⁴ In some

⁷¹⁹ One record is quite revealing in this regard: “Hanc concordiam partes tenere debent sub vadio triginta marcarum, videlicet domino Capitaneo decem marc., dom. Iudici castrensi decem marc et arbitris decem marcas,” see in AGZ, vol. 13, no. 5880 (July 18, 1465). Consider also very similar case: “Si non condescenderit, succumbet sexaginta marcas vadii adinventi per arbitros, Budzywogio medium et Capitaneo medium,” in Ibid., no. 5969 (October 31, 1465).

⁷²⁰ See Ibid., vol. 17, no. 3480 (April 10, 1504); Ibid., vol. 13, no. 5969 (October 31, 1465).

⁷²¹ See in Ibid., vol. 17, no. 4227 (March 20, 1506), “Quemadmodum nobil. Olechno Boloban de Strathyn de hodierna debuit iurare pro quadam summa ad instanciam nobil. Trochyn Svmno officialis de Ianczyn ex invencione arbitrorum, quod iuramentum domns. Iudex ad fer. Sextam prox. post Conductum Pasche prox. Transposuit”; For another similar evidence, see Ibid., vol. 18, no. 4155 (June 20, 1503).

⁷²² Ibid., vol. 13, no. 909 (March 24, 1438).

⁷²³ Note the evidence mentioning private residences as places of arbitration in Ibid., vol. 18, no. 946 (January 14, 1477); Ibid., vol. 13, no. 3993 (November 12, 1449); Ibid., vol. 17, no. 746 (February 3, 1472). At the same time, the court register contains references to districts’ or the kingdom’s diets as a space used for peacemaking. See Ibid., vol. 18, no. 2539 (May 17, 1496); Ibid., vol. 13, no. 3899 (March 18, 1449); Ibid., vol. 17, no. 354 (April 30, 1470). In some cases sacred buildings could also be chosen for arbitration, see Ibid., vol. 15, no. 3272 (July 14, 1464).

⁷²⁴ The postponement of cases by judges operated as an effective strategy for encouraging peacemaking in the late medieval Florence. See: Thomas Kuehn, “Dispute Processing in the Renaissance. Some Florentine Examples,” in his *Law, Family and Women*, 82. Kuehn makes a reference to a telling example of Francesco

cases, one can hardly come to a definite conclusion whether a court record refers to terms reached as a private agreement or a sentence adjudicated at castle or land court proceedings. For example, the Przemyśl land court register mentions under the year of 1437 two delays in the hearing of a lawsuit between Alexander of Rybotycze and Nicolas Rychlik. The delays occurred because the parties agreed to have case settled by private arbitration (*ad concordandum*). The subsequent sentence, recorded in the register in the first half of 1438, however, makes no reference to the way in which it was promulgated.⁷²⁵

Evidence suggests the active role of royal officials in promoting private forms of dispute settlement.⁷²⁶ For example, court records often speak of private arbitrations initiated *ex officio* on the basis of the court decision or the captain's will.⁷²⁷ A private reconciliation could even occur in the middle of the court proceeding before the captain, who could take on the role of the arbiter: *et doms. Capitaneus in iudicio residens more arbitri invenit inter partes*.⁷²⁸

The arbitration, if settled between representatives of powerful magnate's families, could be initiated by the king. The king on such an occasion addressed a special mandate to his captain, charging him with the responsibility to starting the peacemaking.⁷²⁹ Some evidence from the royal legislation of the fifteenth century confirms the impression of the active role of the king and royal officials in encouraging peacemaking. The royal efforts in promoting peacemaking were explicitly articulated, for instance, in one of the paragraphs of the royal privilege issued for the Crown's estates in Jedlno in 1430. The paragraph allowed

Guicciardini's opinion on this point: "In my various administrative posts I have observed that whenever disputes came before me which for one reason or another I wanted to settle, I never mentioned a settlement. Instead by proposing various postponements and delays, I caused the parties to seek a settlement themselves. And thus, a proposal which would have been refused had I made it at the start, came to appear so attractive at the proper time that they would beg me to make it."

⁷²⁵ See AGZ, vol. 13, no. 366 (May 13, 1437); no. 646 (December 9, 1437); no. 831 (April 7, 1438).

⁷²⁶ Interesting parallels can be also drawn from evidence supplied by Paul Hyams in his analysis of the peacemaking duties of the royal chief justiciar in Angevin England, see Paul Hyams, *Rancor and Reconciliation*, 207-8.

⁷²⁷ AGZ, vol. 17, no. 3595 (October 13, 1506): "Magnificus Dominus Palatinus Russie et Premisliensis Capitaneus ex officio suo terminos in quocumque gradu iuris pendeant inter nob. Stanislaum Ioannem et Nicolaum filios olim Stanislai Derschniak de Rokythnycza ex una et Michaellem Hlyeb de Syennow partibus ab altera ob spem concordie et amicabile compositionis ad f. S. Stanislai..."

⁷²⁸ Ibid., vol. 15, no. 482 (April 17, 1467). Consider also a telling evidence of a legal record from the Sanok castle court: "quam quidem causam pro se accepit dominus Capitaneus ad arbitrandum inter ipsos..." in Ibid., vol. 11, no. 59 (June 10, 1424).

⁷²⁹ Ibid., vol. 17, no. 4107 (November 8, 1504). Another similar example is provided by Ibid., vol. 17, no. 3433 (March 20, 1503).

nobles of the kingdom involved in disputes before the royal courts to take recourse to peacemaking without paying fines for their withdrawal from an official court.⁷³⁰

Frequent recourse to peacemaking can be explained in terms of the sources of its legitimacy. Private forms of dispute settlement were one of the most apparent expressions of the idea of collective judgment which shaped the medieval understanding of law and justice. Peacemakers acted as spokesmen for the wider noble community. Their decision was designed to rely on such dominant values of noble culture as public consensus and overall agreement. In this way arbiters had to guarantee that their judgment would reflect the will and opinion of a wider communal concern about an outcome of a dispute. A social demand for peacemaking stemmed basically from its ability to provide an indispensable level of social peace, trust and solidarity in a society where dispute settlement was dominated by the frequent use of violence and inefficacy of royal administration of justice. This is, for instance, what was spelled out with considerable clarity in the *De emendanda Republica* by Andrzej Frycz Modrzewski. By discussing the role of peacemaking in contemporary society he noted that:

human life is subjected to so many lapses, errors and vices that unless we are to condonate and reconcile with each other the human community and ties of solidarity will not last longer.⁷³¹

Perhaps due to its close interdependence with official justice, the evident majority of private settlements coming from the Rus' palatinate ended up in the form of arbitration, not that of the mediation. In some cases the language of reconciliation explicitly reflects the preferences given to the arbitration and its quasi-judicial terminology rather than to the mediation.⁷³² Some documents intentionally used phraseology which was more characteristic for the official courts, like *adiudicare* instead of *componere* or *invenire*. As a rule, the judgment of arbiters was a binding decision, which often bore the mark of a sentence imposed on only one of the disputing parties. The process of peacemaking could, thus, quite easily

⁷³⁰ VL, vol. 1, 42.1: "Item si qui terrigenae, aut quivis alij incolae Regni Poloniae praedicti pendente lite in iudicijs, pro quibuscunque causis concordare voluerint; a poenis nostris, et Iudicium ac subjudicium, Palatinorum ac castellanorum, eosdem liberos facimus et solutos."

⁷³¹ Andrzej Frycz Modrzewski, *Commentariorum De Republica Emendanda*, 154: "Tot lapsibus, erroribus et uitiiis obnoxia est humana uita, ut nisi in multis connueamus ac errata nobis mutuo condonemus, non diu haec societas et coniunctio hominum inter ipsos duraret."

⁷³² AGZ, vol. 18, no. 1063 (April 7, 1478): "Quibus arbitris ambe parte debent dare firmiter in manus et quidquid ipsi arbitri inter ipsos invenerint, hoc totum partes tanquam de iure debent pati." Ibid., vol. 13, no. 847 (April 7, 1438): "Que pars non locaret aut hoc tenere, quod arbitres invenirent, nollet et iste ambe partes firmiter debet istis amicis dare ad manus."

depart from some of its basic principles, that is, a mutuality in compensation and reparation of wrongs. This type of arbitration can be taken as an example of how, in preserving traditional form and rhetoric, peacemaking institutions tended to imitate the rules and procedures of official courts. Giving preference to private forms of dispute settlement, judges sought to promote the dominant legal and social ideas of the noble society that hailed the priority of the compromise over the law. At the same time, private forms of dispute settlement often served as an extension of the official judicial system. From this point of view, the aim of peacemaking was twofold. On the one hand, the widespread recourse to private arbitration created an opportunity to avoid much feared and severely criticized shortcomings of official courts such as corruption or permanent delays in hearing cases. On the other hand, by providing noblemen with an alternative channel of administering justice and cloaking adjudication in the form of arbitration, private reconciliation disguised and mitigated the real defeat of one of disputants. This aspect of private settlements is particularly important, since official adjudication that meant a defeat in litigation was usually regarded in medieval society as humiliating and damaging to one's public reputation and honor – values, which constituted the core of noble identity and ethos.

9.2 Peacemaking and ties of solidarity: The case of the Korčaks' arbitrations

Arbiters were key figures in the process of peacemaking. They were usually recruited by the conflicting parties. The number of arbiters proposed by each litigant usually ranged from one to three persons. In exceptional cases the number of people involved in a private settlement could exceed these numbers substantially. The document of the private arbitration between Jan Barzy and Elizabeth, widow of the Przemyśl chamberlain Jan-Ivanko Derszniak of Rokytnica, recorded in the Przemyśl land court on March 19, 1460, exemplifies what numerous and diverse could be the networks of people, united by the common obligations, could be created in the process of peacemaking.⁷³³

The Barzy and Derszniak families represented two closely related branches of one influential local noble clan of Ruthenian origin. Nicolas-Senko of Orzewice and his brother, Khodko Derszniakowych, who was mentioned in 1393 as royal *comornik*, were sons of Derszniak Dvorskovych. The latter was a brother of one of the most powerful Halych boyars from the second half of the fourteenth century, Khodko Dvorskovych.⁷³⁴ The Przemyśl

⁷³³ Ibid., vol. 13, no. 4443 (March 19, 1460).

⁷³⁴ The genealogy and family links of Barzy and Derszniak have been examined in Franciszek Sikora, "Krag rodzinny i dworski Dymitra z Goraja i jego rola na Rusi" (The family and court circles of Dymitr of Goraj, and

chamberlain, Jan-Ivanko Derszniak of Rokytnica, and Jan Barzy were the first cousins, since the former was the son of Khodko Derszniakovych and the latter was the son of Nicolas-Senko of Orzewice. Both families still held their land estates in common possession in the 1430s. Traces of common ownership can be identified in the legal record, inserted in the Przemyśl land court register under the date August 10, 1439. According to this record, Nicolas-Senko of Orzewicze and Jan-Ivanko Derszniak divided the village Olexivka, which had been possessed until then by both families.⁷³⁵ Following the division, the Derszniaks and Barzys kept up the close property and familial relationships. Under 1449 in the Przemyśl land court register one can find the record of a failed attempt of exchange of their estates. The same court register, under the year 1451, notes an amicable agreement between the families, although it provides no information about the content.⁷³⁶

The arbitration from 1460 was concluded because of the death of Jan-Ivanko Derszniak. The reconciliation aimed at settling mutual claims that had arisen among the relatives of the deceased man. The parties involved in the peacemaking specified mutual obligations and agreed to commission rights of the guardianship over the children of Jan-Ivan Derszniak. As follows from the text of the agreement, various groups of mediators – sureties, arbiters or superarbiters – joined the process of peacemaking at different stages. Each of these groups took up a part of the responsibility for guaranteeing the terms of the arbitration. According to the agreement, ten arbiters gathered at the royal court, settled the terms upon which Elizabeth, the widow of Jan-Ivan Derszniak, was appointed as the guardian of her children and the administrator of the estates of her dead husband. The arbiters also established a high pledge of peace between the parties and chose one surety for each party, who had to guarantee the inviolability of the pledge. Simultaneously, the arbiters freed another group of nobles (3 men) from another pledge of peace they had previously been appointed at the Piotrków Diet as sureties of Jan Barzy. This second group of sureties had to warrant that Jan Barzy would pass the privileges pertaining to the estates of the deceased Przemyśl chamberlain to Elizabeth. As a rule, the presence of sureties in amicable compositions tended to intensify and widen the social pressure on disputants in order to prevent them from

his role in Rus' lands) in *Genealogia – kręgi zawodowe i grupy interesu w Polsce średniowiecznej na tle porównawczym* (Genealogy – professional circles and groups of power in medieval Poland in comparative perspective) (Toruń, 1989), 76-77; Sergey Pashin, *Peremyshl'skaya shliakhta vtoroy poloviny XIV- nachala XVI veka* (The Peremyshl' nobility from the second half of the fourteenth to the beginning of the sixteenth century) (Tumen, 2001), 17-20.

⁷³⁵ AGZ, vol. 13, no. 1229.

⁷³⁶ Ibid., no. 3961 (May 20, 1449); Ibid. no. 4301 (March 25, 1451).

breaking a settlement.⁷³⁷ The breach of a private settlement not only meant the renewal of litigation or the beginning of a new enmity between disputants. Such a breach also automatically multiplied the number of lawsuits that disputants ensued against sureties of their adversaries or sureties against their fellow disputants. This growth of tension was certainly not welcomed by local nobles and public opinion of the community run against those who dared to disturb the established peace.

In addition to sureties, the arbiters elected a special group of superarbiters (7 men) who were entitled to inspect how Elizabeth administered the estates and conducted the guardianship of her children. The superarbiters were also endowed with the power to appoint a new guardian or reserve the administration of the estates for themselves in case they detected any abuses in Elizabeth's guardianship. Moreover, Elizabeth was obliged to pay the superarbiters thirty marks annually from the estate's income. Also in the 1460, three of the superarbiters, assembled together with Jan Barzy and two of his brothers, confirmed the transfer of the guardianship to Elizabeth.⁷³⁸ The next stage of the implementation of the terms of this arbitration is reflected in another record of the Przemyśl land court register from the same year. The record offers some details of animosities between parties from before the time the arbitration was reached. It relates that Jan Barzy was forced by the arbiters to expurgate himself from accusations advanced against him by Elizabeth. She alleged that Jan Barzy had misappropriated the goods, weapons and cattle of her deceased husband. As follows from the record, Elizabeth recognized the fact of Jan Barzy's expurgation.⁷³⁹

Family ties and belonging to the local power elite played the most important roles in the recruitment of arbiters in the case of the reconciliation between Jan Barzy and Elizabeth. As concerns the family ties in private settlements, they apparently facilitated the resolution of intrafamilial conflicts in peaceful and amicable ways. At the same time, the interactions of relatives in private reconciliations operated as a forum for the manifestation and affirmation of solidarities within kin groups. The documents of the arbitration between Jan Derszniak and Jan Barzy provide insight into how various networks of family ties operated behind the process of peacemaking. As noted above, the Derszniaks' and Barzys' were relatives. Together with the few other families, that is, the Bybelskis, Prochnickis-Rozborzskis, Siennowskis, Boratynskis-Bolianowskis, and Czurylos they constituted the core of a powerful noble clan of Ruthenian origin called Korčak. All these families mostly inhabited Przemyśl

⁷³⁷ For the role of sureties in peacemaking, see Adam J. Kosto, *Making Agreements*, 124-33.

⁷³⁸ AGZ, vol. 13, no. 4563 (October 7, 1460).

⁷³⁹ Ibid., no. 4564-65.

land and held prominent positions in the local power and wealth hierarchy of this land and the Rus' palatinate until the 1460s. Ancestors of these Korčaks' families were among the first and most numerous local privileged group (their belonging to the boyar Halyč aristocracy from the time of Romanowyči can not be verified with certainty), who had benefited greatly from the support given to the Piasts and Anjous in their struggle for the lands of Halyč-Volyhnia State in the second half of the fourteenth century. In this context it is enough to mention that the earliest donations or confirmations of land property the Polish king Casimir the Great made for representatives of Ruthenian boyars were endowed exactly on the first known members of the Korčak families. Following the introduction of the Polish administrative and judicial system in the Galician Rus' and the extension of the privileges of the Polish nobility to the Ruthenian landowning elite in 1430-1434, the Przemyśl Korčaks strengthened their role in local Galician politics.

During the first half of the fifteenth century one can observe a highly significant trend in the kinship politics of these families. The sources from that time provide evidence about a series of marriages among the members of these Korčaks' families. This evidence shows a clear trend in the Korčaks' matrimonial politics towards endogamy and the closing of the group in the mid-fifteenth century. This should be seen as the main clue pointing to the process of the formation of local knightly clan. It seems that this was the crucial moment in the process of transforming the kindred, based on loosely connected and continually changing family alliances, into a heraldic knightly clan. Strengthening intrafamilial ties by mutual marriages during the first half of the fifteenth century, the Korčaks defined at the same time the boundaries of a new kin community, which was conceptualized as a heraldic clan according to the dominant norms of Polish noble culture. The extension of the Polish legal and administrative system and the grant of the privileges of the Polish nobility to the Galician landowners in 1430-1434 accelerated the pace of Korčaks' integration into the ranks of the Polish ruling class. These kin and matrimonial strategies of the descendants of Ruthenian boyars represented a sort of response to the new institutional and social reality introduced by the reforms of 1430-1434. The construction of the knightly clan of the Korčaks reflected ways in which the Ruthenian landowning elite appropriated and accommodated the ideology and values of the Polish noble class. It is important to mention that in a later period, starting from the 1470s, evidence for the mobilization of large groups of clan members is lacking in the sources. Perhaps with coming of new generations into the scene ties established from the 1430s to 1450s underwent a process of dissolution. The generational changes that took place

in the configuration of family ties after the 1460s created new circles of the closest and most important relatives.

The available sources from the period of the 1430s-1450s often portray the Przemyśl Korčaks as a broad kin community with strong intrafamilial ties. These ties were most frequently manifested and revealed in the collective actions of wide groups of kinsmen, who intervened in family disputes and the affairs of their relatives. Private reconciliations represented one of the most common occasions for such manifestations. These decades can be discerned as a peak in the activity of one or two generations of the Korčak families, who actively participated in the implementation of the reform of 1430-1434 and who succeeded in concentrating all major offices of Przemyśl land in their hands. The frequent recourse to private reconciliation among the Przemyśl Korčaks from the 1430s to the 1460s should be viewed in the context of the close interaction between the members of those generations aimed at creating and reinforcing the borders of a new heraldic clan.

The agreement between Jan Barzy and Elizabeth Dersziak from 1460 can be taken as an example demonstrating how their Korčak relatives exerted a strong influence on the course and the outcome of the reconciliation. The parties' closest kinsmen, the members of Prochnickis-Rozborzskis, Siennowskis and Czurylos, were involved in the dispute settlement in all possible capacities. Three out of ten arbiters (the Halyč cup-bearer, Jacob of Siennow, the Przemyśl *podstoli* Alexander of Prochnyk, and his brother Jan of Rozborz), all two sureties, who warranted the pledge (the said Jacob of Siennow and his brother, the Halyč *stolnik* Andreas of Siennow), and four out of the seven superarbiters (the said Andreas and Jacob of Siennow, Jan of Rozborz, and Jan Czurylo of Stojanci) belonged to this circle of families. Some men, like Jacob of Siennow and Jan of Rozborz, fulfilled several duties as peacemakers (arbiters and sureties). It is also revealing that the document did not omit to mention precise terms for the kin affiliations that linked the conflicting parties with the superarbiters. The representatives of Prochnickis-Rozborzskis, Siennowskis, Czurylos, and Mzurowsky are referred to in the document as uncles and grandfathers of the children of Jan-Ivan Derszniak: *quatuor patruis et duobus avunculis puerorum videlicet Andreas de Sennow, Iacobus de Sennow, Iohannes de Rozborz, Iohannes Czurilo de Stoyanicze, et venerabilis dominus IOhannes de Strzelcze cum domino Stanislao fratre suo.*

The members of the Prochnicki and Siennowski families also appear regularly in other records that are enlightening on the relations between the Barzys and Derszniaks. Four out of seven witnesses to the document of the exchange of the estates between Jan Barzy and Jan-Ivan Derszniak from May 20, 1449, belonged to the Korčak families (the Przemyśl castellan

Peter of Prochnyk, his brother the Przemyśl *podstoli* Alexander of Prochnyk, the Przemyśl *stolnik* Jacko of Byblo, the Halyč cup-bearer Jacob of Siennow, and perhaps Shymko of Bobrka). Two out of six arbiters of the peacemaking between Jan Barzy and Jan Derszniak in 1451 represented the Prochnycki and Siennowski families (the Przemyśl castellan Peter of Prochnyk and the Halyč *stolnik* Andreas of Siennow).

Representatives of the Siennowskis and Prochnickis seem to have established especially close links as peacemakers in dispute settlements of their kinsmen. Besides the evidence of their intervention in the family affairs of other close relatives that have been mentioned above, it is also worth mentioning another case. In 1460, the body of the Korčaks, which included almost the same people as in the case of the arbitration between Jan Barzy and Elizabeth Derszniak, conferred the guardianship over the children of the late Hlib of Boratyn to the brother of the deceased – Dmytro of Bolanovychi. This body of decision-makers consisted of two members of the Prochnickis (the brothers, Alexander of Prochnik and Jan of Rozaburz) and two members of the Siennowskis (Andreas and Jacob of Siennow).⁷⁴⁰

The significant role of kinsmen in the peacemaking process was just one of many forms of mutual support and aid which were widely employed by the Korčaks in their daily interactions. In this regard it is worth looking at the long-standing and amicable relationship between the Przemyśl chamberlain Jan-Ivan Derszniak and the Przemyśl castellan Peter of Prochnik. Peter Prochnicki was among arbiters who fixed the fate of the children of Jan-Ivan Derszniak in 1460. Before his death, Jan Derszniak had even appointed Peter of Prochnik as the guardian of his children.⁷⁴¹ In 1441, both dignitaries had figured as arbiters of a dispute settlement between their neighbors, Nicolas Szerszen of Pantalowice and Jan of Lopuszka.⁷⁴² In the court record from 1443, Jan Derszniak and Peter of Prochnik are mentioned as *avunculi* and guardians of the daughters (or granddaughters) of the Przemyśl mayor.⁷⁴³ In addition, the sources supply evidence that Peter of Prochnik took up the function of attorney for Jan Derszniak during the court proceedings. Both men provided each other with financial aid and served together as sureties of other nobles.⁷⁴⁴

The principle of mutuality that underpinned the interfamilial cooperation in peacemaking can be found in the cases of other Korčaks as well. For example, two members of Korčak families, that is, the representative of the Boratynski family, Demeter of

⁷⁴⁰ AGZ, vol. 13, no. 4541 (7 October 1460).

⁷⁴¹ Ibid., no. 4253.

⁷⁴² Ibid., no. 4115.

⁷⁴³ Ibid., no. 1912 (25 February 1443).

⁷⁴⁴ Ibid., no. 977, 1678, 2396.

Bolanovychi and his kinsman, the representative of Bybelski family, Jacko of Byblo, provided support for each other in private reconciliations. The list of peacemakers of the private arbitration between Peter of Vapovychi and Demeter of Bolanovychi from 1447, included, among others, Jacko of Byblo and Peter of Prochnik.⁷⁴⁵ In 1463, Jacko of Byblo as the single arbiter settled the dispute between the relative of Demeter of Bolanovychi, Jacko of Uherci, and Jan Czurylo of Stojanci.⁷⁴⁶ In his turn, Demeter of Bolanovychi participated in 1465 as the mediator in concluding an amicable agreement between the brother of Jacko of Byblo Senko and Gregory Riedl, a townsman from Nove Misto.⁷⁴⁷

9.3 Arbitration and local powerholders

The process of peacemaking did not only depend on the good will of both parties. The active involvement of kinsmen often meant the possibility of exerting pressure on conflicting parties. Kin loyalties and their mobilization in the peacemaking process operated as an effective mechanism of putting constraints on enmities and disputes within and outside family groups. A kin group interested in preventing an escalation of conflicts between relatives had to invest some efforts and resources in its settlements. It is not surprising, therefore, that peacemaking was first of all a business of the most powerful members of family groups, those who were endowed with authority, capital, and an influential position to bring the dispute to a definitive end. The dominance of members of the power elite is clearly visible, for example, in the case of the agreement between Jan Barzy and Elizabeth Derszniak. The composition of the group of arbiters of this reconciliation shows that the nine out of ten arbiters belonged to the group of office-holders of in Przemyśl and Halyč land. The same pattern can be seen in the case of the arbitration between Jacko Bybelski, on the one side, and Jan Barzy and his wife Ann, on the other. The record inserted into the Przemyśl land court register in 1442 has it that the conflicting parties agreed to transfer the resolution of their dispute into the hands of four arbiters. According to the agreement, at the head of this body of arbiters stood the *heberman*, that is, the superarbiter, the L'viv castellan, Senko of Siennow perhaps the most powerful member of the Przemyśl Korčaks at that time.⁷⁴⁸ In 1446 the same Senko of Siennow, acting on the order of the Przemyśl captain, attempted to settle a conflict by arbitration between his relatives, the Prochnickis and latter's neighbors, the Mzurowskis.⁷⁴⁹

⁷⁴⁵ Ibid., no. 281

⁷⁴⁶ Ibid., no. 5226

⁷⁴⁷ Ibid., no. 6324.

⁷⁴⁸ Ibid., no. 1779

⁷⁴⁹ Ibid., no. 3027.

Magnates commonly carried out the duties of arbiters in fifteenth-century Galicia. Of twenty seven records of private reconciliation found in the Przemyśl land court register for the period of the fifteenth and the beginning of the sixteenth century for which the names of arbiters are available, arbiters who held no land offices in the local power hierarchy figured in only three cases. In this sample the role of arbiters was most frequently taken by members of following magnate and influential noble families – the Prochnickis (7 times), the Herburtis (5 times), the Fredros, Siennowskis, and Jaroslawskis (4 times), the Koniecpolskis, Rybotyckis, and Mzurowskis (3 times). These data confirm once again the importance of members of the power elite among arbiters: successful arbitration and the following enforcement could only be achieved with the help of noblemen equipped with the necessarily power resources and prestige.

On the other hand, the frequent involvement of magnates in private settlements of disputes between common nobles was not only conditioned by their power capacities, but was also considered as a part of their public obligations. The intervention of powerful men was welcomed, or even required, because it conformed to the wider expectations of the nobility about the public functions and responsibilities of members of the magnate group.⁷⁵⁰ In the context of peacemaking, representatives of the power elite were viewed as an informal social body, able and obliged to guarantee the stability and peace of the community. This kind of social ideas is clearly rendered in the sources by cases of appeal to members of the magnate group for help in resolving difficulties that peacemakers encountered during arbitration. For instance, a document of the private arbitration between Jan Lipski and Jan Czurylo of Stojanci from 1468 plainly stipulated that if the arbiters were unable to come to an agreement they had to hand the case over for the consideration of the Rus' palatine Stanislas of Chodcza, the L'viv castellan Paul Odrowąż, the Przemyśl castellan Dobieslas of Żurawica, and the Przemyśl chamberlain Spytek of Jaroslaw.⁷⁵¹ By assuming the role of arbiters, representatives of the magnate group were seen as guardians of the public order and justice in the

⁷⁵⁰ An analysis of public functions of the magnate group in the late medieval Kingdom of Poland can be found in Piotr Węckowski, *Działalność publiczna możnowłasztwa małopolskiego w późnym średniowieczu. Itineraria kasztelanów i wojewodów krakowskich czasach panowania Władysława Jagiełły (1386-1434)* (Warsaw, 1998). The obligation of kinsmen and powerholders to intervene in a dispute and bring compromise to disputing parties is pointed out in the analysis of the feuding culture of medieval Iceland in William I. Miller, *Bloodtaking and Peacemaking*, 259-260.

⁷⁵¹ AGZ, vol. 13, no. 7046 (July 12, 1468): "Et si arbitri medium inter partes invenire non poterint, extunc in instanti ibidem mittere debent pro hiis omnibus super magnificos Dominos Pallatinum Russie generalem Stanislaum de Chothech, Paulum Odrowansch de Sprowa castellanum Leopoliensem, Dobeslaum de Zyrawicza castellanum Premisliensem, et dominum Spithkonem de Iaroslaw Succamerarium Premisliensem. Et si horum quis ibi non fuerit, tunc hii, qui ex hiis hic denotatis fuerint, erunt potentes iure medianti inter ipsas partes medium invenire."

neighborhood. The figure of the influential and powerful neighbor frequently looms behind the dispute settlement of his more modest *vicini*. For instance, in 1457 Bartosz and Nicolas Semp of Zhelekhiv on the one side, and Jan of Neslukhiv on the other side agreed to pass their dispute to the L'viv banner-bearer George Strumilo of Dynoszyn for private settlement.⁷⁵² George Strumilo, as holder of the Kamianka captainship, was the most powerful man among the nobility of the northeastern part of L'viv land. The sources also provide evidence about the cooperation of magnates in settling the property disputes of their more modest neighbors. In 1469 a group of powerful neighbors from the southeastern part of Przemyśl land, that is, the Halyč castellan Andreas Fredro of Pleshovychi, the Przemyśl *stolnik* Jacko of Byblo, his brother Senko of Byblo, and Jan Barzy of Boloziv made an arbitration of an inheritance dispute between members of the Koscej family, who lived in this neighborhood, but were of a more humble position.⁷⁵³ In another example of this sort, the representatives of the Herburt family regularly figured as arbiters in private dispute settlements in the Sambir district, a region where the position of this magnate family was particularly strong during the second half of the fifteenth century.⁷⁵⁴ The public activity of magnates as peacemakers could be mingled with their more private role as patrons of the lesser nobility. In this regard, the appeal of humble nobles to their powerful patrons for assistance in arbitration represented a significant dimension of the patron-client relationships. For a powerful man, to provide protection and help to a client involved in a dispute was to behave in accordance with the principle of reciprocity inherent in client relationships.

In general, the active involvement of magnates in the politics of peacemaking represented a natural extension of the idea of noble self-government. The intervention of office-holders in the process of peacemaking made a unclear and blurred line that divided an official adjudication from private, extra-judicial forms of dispute settlement. As is generally known, government and the exercise of power in medieval society lacked a modern anonymity, bureaucratic technologies, and division of authority. Instead, the government was much more grounded on personal ties and dependencies. It is thus justifiable to suggest that the legitimacy and efficacy of a court judgment did not depend so much on the type of judicial institutions, but rather relied on the individual influence and power of members of the

⁷⁵² Ibid., vol. 15, no. 48 (January 30, 1457).

⁷⁵³ Ibid., vol. 18, no. 59 (April 14, 1469).

⁷⁵⁴ See, for example, peacemaking between the Kolodnycki and Liubenecki families in 1479. The list of arbiters is headed by the Przemyśl *stolnik*, Herbord of Lozow, see Ibid., vol. 18, no. 1303 (December 14, 1479). The L'viv banner-bearer Severin of Fulstein and Miklash of Lozov are mentioned as arbiters of the reconciliation between Margaret, wife of Stanislas from Vanevychi and Hedvig, wife of the Sambir townsman Miklash, and the reconciliation between Vasko Tustanovski and the Mykhajlovski family, see, Ibid., no. 1887 (April 7, 1489); Ibid., no. 2127 (October 4, 1491).

body called upon to give a verdict. This lack of a clear distinction between private and public in the administration of justice had one important consequence – the persons who held the highest offices of the palatinate or the land were able to legitimate and sanction decisions reached during private settlements. Peacemaking as a form of public activity of the local power holders worked to enhance their exclusive position within the noble estate. A reputation as an effective and experienced arbiter could expand the social capital of an individual and strengthen his place in the hierarchy of power and prestige.⁷⁵⁵ Furthermore, concentration of peacemaking functions in the hands of magnates also reinforced vertical ties of solidarity within the noble community.

9.4 Labour of arbitration

There seems to be one crucial contradiction between the norms and practice of peacemaking. On the one hand, normative prescriptions and expectations viewed the institution of private arbitration as an instrument of maintaining and enforcing the peace. On the other hand, peacemaking was strongly influenced by the pursuit of enmity. Court records reflecting preliminary stages of the peacemaking process constantly mention the possibility of the arbitration failure, or returning a case for the judgment of an official court: *et si arbitri semet ipsi in unum componere alias zgodzicz non possent, extunc partes habent talem terminum, qualem hodie habere debuerunt*.⁷⁵⁶ Frequent failures of arbitration are also suggested by records of an accusation against an opponent for neglecting to present his arbiters to start peacemaking⁷⁵⁷ or an accusation of careless conduct of the duties against arbiters of an adversary or even worse, of the deliberate breach of the peacemaking process.⁷⁵⁸ Other cases of arbitration report about withdrawal from a private settlement reached earlier, or a refusal of one of the parties in a conflict to accept the sentence of arbiters.⁷⁵⁹

A detailed reading of one particularly rich case will provide glimpses into how the process of arbitration could be hindered because of the conflicting intentions of disputants, and how many difficulties arbiters met on the way to reconciliation. The case in question is

⁷⁵⁵ For the participation in peacemaking as a source of enhancing one's prestige, see: William I. Miller, *Bloodtaking and Peacemaking*, 264.

⁷⁵⁶ AGZ, vol. 18, no. 1063 (April 7, 1478).

⁷⁵⁷ Ibid., vol. 17, no. 354 (April 30, 1470).

⁷⁵⁸ Ibid., vol. 17, no. 4182 August 22, 1505: "quod arbitrium locatum fuerat inter eundem Czesaczski et gsum. Petrum de Krziwczicze Iudic. Castr. Leopold. in quibusdam certis eorum controversiis, que ambe arbitros locare debuerunt, extunc arbitri pro parte Iohannis Czessaczski locati nullum finem faciendo de arbitrio surrexerunt, quare Iohannes vadium decem marc. ad instanciam Petri transgressus est..." Consider also Ibid., vol. 18, no. 422 (March 30, 1473).

⁷⁵⁹ See, for example Ibid., vol. 18, no. 2023 (May 10, 1491).

the arbitration between the L'viv chamberlain and the captain of Biecz, Peter Odnowski of Fulsztyn, on the one side, and the Sanok land notary, Nicolas Bal of Hoczew, on the other. Disputants represented two of the most powerful magnate families of the Rus' palatinate, that is, the Herburts and Bals. They were also relatives. The mother of Peter Odnowski, Susan of Boiska, was a daughter of Peter of Boiska, and a granddaughter of Mathias of Boiska. In his turn, Nicolas Bal was a greatgrandson of the same Mathias of Boiska.⁷⁶⁰

The dispute and arbitration between Peter Odnowski and Nicolas Bal concerned the perambulation of and piling up border markers on their estates. The estate borders which aroused the dispute were part of the old patrimonial possessions of the Bal family, with the centre in the village of Hoczew, located in the upper San River.⁷⁶¹ Records illuminating the course of this peacemaking are of comparatively late date. They were put in the register of the Sanok chamberlain court in 1511.⁷⁶² The evidence offered by these records can be divided into two parts. The first part is a detailed account illuminating the controversy about the procedure that must be adopted for the perambulation. The second part describes the process of perambulation itself. I am going to focus on the analysis of first part, which is especially valuable for revealing details of the process of negotiations that took place during the peacemaking. The account is especially rich in describing the activity of the superarbiter – the Cracow *burgrabi*us and the captain of Radłów Nicolas Lanckoronski of Brzezcie.⁷⁶³ It should also be added that a sufficient part of the account is conveyed in the form of “direct speeches.” The text creates the effect of getting direct access to the voices of the disputants and arbiters by allowing them to discuss and comment upon the procedure of arbitration. This narrative technique is a commonplace in records of the land and castle courts. Texts of arbitrations from the fifteenth-century Rus' palatinate, however, usually lack such narrative elements. These records will make it possible to see the arbitration as an enduring and tiresome process of negotiation, halted by frequent changes in the positions of the litigants. The records also show to what extent the successful outcome of arbitration depended upon the

⁷⁶⁰ For the geneology of both families, see Adam Boniecki, *Herbarz Polski*, vol. 1 (Warsaw, 1901), 90-92; Ibid., vol. 7, (Warsaw, 1904), 257.

⁷⁶¹ Formation of these estates of Bals has been analyzed in details by Adam Fastnacht, *Osadnictwo ziemi sanockiej w latach 1340-1650* (The settlement of Sanok land in years 1340-1650) (Wrocław: Zakład Narodowy im. Ossolińskich, 1962), 165-170; Idem, *Słownik historyczno-geograficzny ziemi sanockiej w średniowieczu* (Historical and geographic vocabulary of Sanok land during the Middle Ages), vol. 1 (Brzezów: Muzeum regionalne PTTK w Brzozowie, 1991), 150-154.

⁷⁶² AGZ, vol. 19, no. 3110-3113, p. 657-668.

⁷⁶³ For a biographical sketch of Nicolas Lanckoroński, see Irena Kaniewska, “Lanckoroński Mikołaj z Brzezia, h. Zadora,” *Polski Słownik Biograficzny*, vol. 16, no. 3 (Wrocław-Kraków-Warszawa, 1971), 446.2-447.1.

mediating skills of an arbiter, his art of persuasion, and his ability to force disputants to accept his version of a final settlement.

Records present the superarbiter Nicolas Lanckoronski as a central figure of the arbitration. Therefore, it seems appropriate to start with a short outline of the institution of a superarbiter and its role in peacemaking. Galician legal records from the fifteenth century refer to two types of peacemakers, namely, the superarbiter and the arbiter. This division originated in a distinction drawn between the institutions of the arbiter and the arbitrator elaborated by theorists of medieval Roman law. Both terms, arbiter and arbitrator, point to two different types of procedure adopted in medieval peacemaking. The arbiter settled disputes according to existing legal rules, following procedures and norms of the statutory law. In contrast to the arbiter, the arbitrator was an *amicabilis compositor*, whose activity as a peacemaker accorded to more flexible notions of justice and peace rather than to strict norms and procedures of the positive law. In addition, the roles of arbiter and the arbitrator varied in the scope and nature of their competence. The arbiter was empowered to impose his own judgment, which was compulsory for disputing parties. In contrast, the arbitrator sought to make peace, not a judgment. This implies that an arbitrator's duties were reduced to mediating and convincing parties to accept an amicable agreement.⁷⁶⁴

In context of the late medieval Rus' palatinate, the institution of the superarbiter corresponded most closely to that of the arbiter in medieval Roman law. The fifteenth-century evidence is quite clear on the point of the superarbiter's capacities to deliver a judgment during peacemaking. The documents of the arbitration between Peter Odnowski and Nicolas Bal also put an strong emphasis on this aspect of the competence of the superarbiter. The account of the arbitration opens with the declaration, inserted by Nicolas Lanckoronski into the court register when he was elected the superarbiter. While specifying his responsibilities, the record stipulates that the disputing parties had to abandon their attempts to contradict the superarbiter's decisions and, instead, had to take firm obligations to obey the terms of his judgment. The record also mentions the request of the parties addressed to the superarbiter to deliver the definite sentence in the arbitration: *in quantum partes ipse a nobis exigebant et*

⁷⁶⁴ For a short overview of this distinction between the arbitrator and the arbiter elaborated by the commentators of medieval Roman law, one can consult: Thomas Kuehn, "Law and Arbitration in Renaissance Florence," 24-26. The distinction between arbitrator and adjudicator, as it has appeared in anthropological research, is also stressed by Simon Roberts, "The Study of Dispute: An Anthropological Perspective," 12-3. For a general classification of various types of peacemaking viewed in the context of disputing strategies of medieval society, see also: William I. Miller, *Bloodtaking and Peacemaking*, 261.

*optabant atque volebant esse diffinitivam iudicatum.*⁷⁶⁵ The joint statement of the parties, which they put into the court register on December 19, 1510, expresses a similar understanding of the obligatory nature of the judgment of the superarbiter. In this statement the disputants point out that superarbiter's definite sentence should be consonant to the law: *tenebitur ferre sententiam diffinitivam iuri consonam.*⁷⁶⁶ At the same time, this record makes one significant reservation concerning the mode according to which the superarbiter had to proceed while delivering his sentence. The record makes it clear that Nicolas Lanckoronski as the superarbiter was obliged first to work together with the group of arbiters to get the parties to a peaceful reconciliation by means of mediation and negotiation.⁷⁶⁷ Only if the mediation failed, the superarbiter would acquire the authority to settle the dispute by passing his own sentence.

According to the record, Peter Odnowski and Nicolas Bal also made other arrangements necessary for the beginning of peacemaking. They set the date of the arrival of the parties at Nicolas Bal's estate called Hoczew, where the parties planned to appoint their arbiters. The disputants also agreed to cancel all the suits which they had previously launched against each other in court. At this point another document was added proclaiming that the parties were forbidden to renew litigation. This provision was backed by the imposition of a high pledge of peace, which amounted to one thousand florins. Moreover, the parties appointed a group of sureties who were charged with the duty to pay the said pledge if the agreement were broken. Each of the disputants recruited two sureties in his support to guarantee this pledge of peace. The network of sureties backing up peacemaking was further enlarged by setting up two more warrants. The same sureties of Peter Odnowski from the previous group took on the additional obligation to guarantee that Odnowski would accept the superarbiter's judgment without objection.⁷⁶⁸ In addition, one more body of sureties took up a warrant for the superarbiter. These sureties guaranteed that Nicolas Lanckoronski would pronounce his judgment in case the mediation failed between parties. They guaranteed that Lanckoronski would comply regardless of the circumstances of a future perambulation.⁷⁶⁹

⁷⁶⁵ AGZ, vol. 19, no. 3110, p. 657: "in quantum partes ipse a nobis exigebant et optabant atque volebant esse diffinitum iudicatum; quia partes predictae per quod eorum causis eramus Superarbiter designatus obligaverunt et se submiserunt litteris nostre superarbitrarie facultatis tam papireis quam pergameneis firmiter credere et eisdem non contradicere sed eas firmiter observare et tenere..."

⁷⁶⁶ Ibid., p. 658-659.

⁷⁶⁷ Ibid., p. 658: "quod predictus superarbiter arbitros ad se appositos et per partes utrasque ut prefertur locatos in modis et condicionibus vel clausulis in componendo, concordando et arbitrando inter prefatos partes."

⁷⁶⁸ Ibid., p. 659.

⁷⁶⁹ Ibid., p. 659-660.

The next document depicts events and actions which occurred in the various places, starting from May 13, 1511.⁷⁷⁰ The text starts by recording how Peter Odnowski and Nicolas Bal, surrounded by a numerous company of local nobles, came to Hoczew to nominate their arbiters. Four arbiters were chosen to represent each side. The nomination and composition of the group of arbiters confirm the pattern which already observed in case of other reconciliations. Some arbiters appointed by Peter Odnowski and Nicolas Bal had already been actively participating in dispute settlement as sureties.

On the same day the parties and elected arbiters departed to inspect the locality (*ad videnda loca*) where the disputed border had to be marked. The document describes the place where the disputants and their companions arrived as marshland, situated to the east behind Mchwa, a village of Peter Odnowski. Nicolas Bal argued that the true and just border between the estates of the disputants, Mchwa and Stężyca, ran exactly in this place. In stating this he pointed to the bark of a red alder tree (*arborum cortices alias olschey rubus*) as a mark of the border's line. Instead, Peter Odnowski claimed that the border should lie further east and led the participants in the arbitration to a place where the spring called Maxin flowed into the Hoczew River.⁷⁷¹ The rest of the day passed in visiting other places, where each party presented his version of the borders. Because of this preliminary perambulation, the company had no time to start the arbitration that day. Therefore, the superarbiter ordered the court bailiff, who was present on that occasion, to announce the postponement of the arbitration until the following day.

A new document that opened a new session of arbitration on May 14, 1511, describes actions held on the estate called Zahoczew between Hoczew and Zernica rivers.⁷⁷² The account relates that the company had a serious metrical problem there while trying to pile up markers between the estates of the disputing parties. The gist of the conflict concerned the way of measuring three quarters of one mile. It was in the area, which, as Nicolas Bal said, his ancestors had ascribed to the village Zahoczew when their patrimony was divided. According to the division of the property, that area together with the said estate passed to the family line

⁷⁷⁰ Ibid., p. 661-662.

⁷⁷¹ Ibid., p. 661: "Tandem hiis peractis exivit superarbiter prefatis cum arbitris predictis ad videnda loca differenciarum et ad complanandas discordias granicierum inter hereditates parcium prefatarum tanquam principalem et causam omnium discordiam et venerunt ad locum quendam paludinosum versus orientem retro villam Mchwa Petri Odnowski in quo loco paludinoso erat aliquod arborum cortices alias olschey rubus, in quo loco dixit Nicolaus Bal, quod hic veri et iusti sunt limites et granicies inter hereditatem Mchwa domini Petri Odnowski et inter villam meam Sthesnyca. Ex adverso Petrus Odnowski dixit: non hic est verus limes et granicies inter meam et tuam hereditates sed ulterius se granicies protendunt et ulterius versus orientem duxit nos et pervenimus usque ad torrentem dictum Maxin ..."

⁷⁷² Ibid., no. 3111, p. 662-665.

represented by Peter Odnowski. The narrative is not particularly clear on how disputants' opinions varied on the point of the size of the given area. Nicolas Bal insisted that Odnowski showed a much longer and broader piece of land, than the well-measured three quarters of a mile contained in itself. In contrast, Odnowski maintained that three quarters of a mile would indeed extend much further, if it were measured "in all parts" (*ad omnes partes*). This measurement "in all parts" was, perhaps, the principal point in the parties' disagreement. In response to Odnowski's speech, Bal said that the letters and privileges clearly showed that this portion of land had to contain no more than three quarters of a mile. In a case of extending three quarters of mile in all parts, he went on, the estate would covers in fact an area of more miles, to which the privileges made no reference.⁷⁷³

The scribe noted that afterwards arbiters made many labors and efforts to bring the parties to concord about measuring of the said three-quarters of a mile and piling up the markers. However, all these attempts failed.⁷⁷⁴ At this stage of peacemaking the parties for the first time addressed the superarbiter with the request to give his verdict concerning the measurement of the three-quarters of a mile and piling up the markers. The superarbiter passed his sentence, which said the village should have the boundaries of the three-quarters of mile and no more. By his sentence the superarbiter further enacted that the distance of the three-quarters of a mile should be measured in length and width. The process of measurement, however, was impeded by the fact that no uniform length was known to exist for a mile in that part of the kingdom. Therefore, the superarbiter requested Peter Odnowski and Nicolas Bal to nominate their own versions of the standard length of a mile. Peter Odnowski proposed two possible versions to be measured and then asked Nicolas Bal to accept one of them. Bal refused this proposition and instead named his own mile. Since the parties had been not able to reach a compromise on what constituted the length of a mile, the superarbiter decided that they would draw lots.

⁷⁷³ Ibid., p. 662: "Perlecta littera dixit Nicolaus Bal: domine Superarbiter et domini arbitri, antecessori domini Petri Odnowski antecessores mei, quando ex divisione patrimonii dederunt villam Zahoczewye, nominaverunt sibi et descripserunt ad hanc villam limites trium quartalium unius miliaris et videtur, quod ille ostendit limites suas multo longius et lacius quam trium quartalium unius miliaris bene proporcionata longitudo in se habere potest et continue. E converso Petrus Odnowski dixit: longe ulterius extenderet se mensura trium quartalium miliaris, si actu et effectu mihi emensuraret ad omnes partes. Et Bal e converso dixit: privilegium seu littere divisionis clare ostendunt, quia unius miliaris trium quartalium villa Zahoczewye debet habere granicies et limites et si ad plures partes deberet habere tria quartalia miliaris, tunc non haberet unius miliaris tria quartalia granicies a villa sed plurium miliarium et hoc littera non disponit neque canit..."

⁷⁷⁴ Ibid., p. 662: "Fuerunt tandem multi conatus et labores per superarbitrum atque arbitros ut possent prefate partes Nicolaus Bal et Petrus Odnowski ad concordiam pro graniciebus ville Zahoczewe Petri Odnowski hereditate in vim trium quartalium miliaris concordari uniri et concorditer sipandas granicies granicies reduci. Sed frustra laboratum est, nam non potuerunt partes induci neque flecti ad concordiam."

The account is admirably revealing in its description of the details of the preparation for drawing lots. It relates that the superarbiter took two pieces of paper and made of them two rolling balls of green wax, equal in size and quality (*fecit duos globulos equales unius et qualitatis et quantitatis de cera viridi*). One of the pieces of paper was empty. The other contained the phrase: “in my hands are my lots” (*in manibus meis sunt sortes mee*). The disputant who chose the lot with writing would be given right to nominate his standard for measuring the mile. Peter Odnowski came out as a winner from casting the lots, and he obtained a right of naming the mile.⁷⁷⁵ His choice was not arbitrary, however, and did not depend exclusively on his own will. According to the superarbiter’s sentence, the veracity of the standard should be supported by an oath sworn on the sacraments (*tacto sacramento*) with the assistance of seven oath-helpers of both noble and plebeians status.

The immediate physical contact with the sacraments which occurred at the moment of oath-taking was meant to invoke God’s intervention and support in order to prove the veracity or falsehood of the statement. In this regard, swearing an oath by implying the involvement of Divine Judgment in a dispute settlement was perceived and understood in medieval society as a kind of ordeal. Since Christian doctrine saw perjury as a mortal sin the oath-taking was generally considered as a risky enterprise which people were usually advised to avoid. Some underwent oath-taking on the understanding that they were absolutely convinced in their rightness and, in addition, if swearing an oath was consonant with the opinion of the wider community, who were ready to endorse the person’s statement. It is highly significant to note that Peter Odnowski did not succeed in gaining the necessary support for one of his proposed standard distances for the mile’s measurement. The wider audience of observers present at peacemaking varied in their opinion on the acceptability of the proposed distance between the towns of Boiska and Sanok. The scribe compiling the account explicitly noted an active exchange of thoughts among the men in reaction to Odnowski’s proposal. People had doubts whether an oath designed to prove the accordance of the given distance to a mile would not be

⁷⁷⁵ Ibid., p. 663: “Tandem superarbiter fecit duos globulos equales unius et qualitatis et quantitatis de cera viridi, in quibus inclusit duas cedulas papireas unam rasam, in qua nihil scriptum est et aliam in qua scripta erant istaverba: in manibus meis sunt sortes mee. Et tandem dixit partibus: in istis globulis cereis, quos hic videtis sunt incluse due cedule papiree, una in qua nihil est scriptum et alia cum scriptura; ideo qui receperit globulum sorte in quo inclusa est carta cum scriptura, ille lucrabitur nominacionem et probacionem miliaris unius et eiusdem notorietatus. Et tandem de consensus Petri Odnowski Nicolaus Bal primus et principaliter recepit in vim sortis unum globulum de viridi cera, quo disrupto et resoluta inventa est in eo cedula rasa nihil scripture in se continentur. Patrus autem Odnowski recepit globulum in quo erat cedula cum scriptura et lucratus est nominacionem miliaris unius notorii...”

too onerous and uncertain.⁷⁷⁶ It was most likely this lack of communal agreement which resulted in Odnowski's final decision to give preference to another distance – that between Boiska and Zarszyn.

When everything had been prepared for starting the measurement – the distance was selected, the parties had their representatives, the superarbiter made a measure with his own hands which, as the record specified, had the length of one Cracow elbow,⁷⁷⁷ and all company was about to start measuring – a sudden turn occurred in the arbitration. The account reports that Peter Odnowski changed his mind and addressed Nicolas Bal with a proposal to start the peacemaking over by altering its form, that is, renouncing the sentence and releasing the superarbiter from his service. At that moment, it seems that Nicolas Bal agreed to this offer of his rival. The text stresses that both noblemen agreed on the point that they had no need of the service of the superarbiter; four arbiters would quite enough for settling their dispute. It is worth noting that upon their agreement to initiate a new arbitration the parties also relinquished the establishment of the pledges and sureties. They decided that a simple promise, backed up, as Peter Odnowski put it, by his firm and irrevocable word (*verbo meo constanti et infallibili*), would be enough for keeping the terms of the arbitration inviolable. The whole process of elaborating this new decision is portrayed by the scribe as plunging into endless talk, altercations, mutual appeals to words of honor, and promises of amicable agreement: *et post multas altercationes et multa verba honorum et concordiam*.⁷⁷⁸

The record goes on saying that Peter Odnowski also turned to Nicolas Lanckoronski, informing him about the parties' decision to give up measuring the said three-quarters of a mile.⁷⁷⁹ In his response, Lanckoronski first drew the disputants' attention to the evident contradiction in their behavior. The superarbiter pointed out to the parties that his decision about the way of measurement had been done at parties' own request. Then Nicolas Lanckoronski inquired again whether the disputants indeed wanted to release him from the

⁷⁷⁶ Ibid., p. 663: "...et facta est aliquantulum inter homines communiter omnes astantes et presenstes quedam disceptacio, quod nominacio miliaris de Boyska ad civitatem Sanocensem nimis onerosa et inconveniens uno miliari esset."

⁷⁷⁷ Ibid., p. 664: "Tandem superarbiter fecit mensuram unius ulne Cracouiensis manu propria et cum eadem ulna mensuravit duas cordas de suberibus alias lyczanv contortas."

⁷⁷⁸ Ibid., p. 664: "Et iam superarbiter in presencia collegarum emensuraverat septuaginta quinque cordas, tunc venerunt uterque Nicolaus Bal et Petrus Odnowski et post multas altercationes et multa verba honoris ad amicitiam et concordiam instancia dixit Petrus Odnowski Nicolao Bal: domine Bal, dms quatuor bonos homines arbitros, tu duos ego duos, at quidquid illi arbitri fuerint de limitibus trium quartalium unius miliaris uterque nostrum firmiter teneamus. Et consensit ad hec verba Nicolaus Bal et nominavit Petrus Odnowski duos fratres suos Andream Herborth et IOannem Herborth et eosdem in arbitros ex sua parte assignavit. Nicolaus vero Bal nominavit Nicolaum Lanczkorvnski et IOannem Woyschyk."

⁷⁷⁹ Ibid., p. 664: "Hiis peractis tandem in presencia plurium bonorum hominum et in presencia miisterialis Andree de Brzozow Petrus Odnowski dixit, domine superarbiter iam ego dimitto dominum Bal de istis mensuracionis trium quartalium miliaris et renuncio eidem mensuracioni."

service of superarbiter, to renounce his sentence, and to start over a new peacemaking. This speech of the superarbiter brought about some changes in the position of Nicolas Bal. In contrast to Peter Odnowski, who kept insisting on a complete resignation of the superarbiter from the arbitration, Nicolas Bal did not exclude the possibility of calling for the help of the superarbiter, especially in the case of inefficacy in the mediation of the arbiters.⁷⁸⁰ The narrative then describes the process of a new negotiation. It is reported that the arbiters, among them also Nicolas Lanckoronski, descended from their horses and started a new peacemaking. According to the record, the day ended in ceaseless debates, consultations, and voting of new arbiters, who in vain strove to bring the parties to an agreement.⁷⁸¹ Finally, in the presence of the bailiff, the disputants, and arbiters, Nicolas Lanckoronski postponed the arbitration until the next day.

The document that illuminates the course of the arbitration during the next day (May 15, 1511), opens with a new oration by Nicolas Lanckoronski.⁷⁸² The superarbiter began his speech with a bitter complaint. He said that two days had already passed as he and the arbiters had vainly sought to reconcile the parties. All attempts to work out some rules and procedures which could facilitate the successful outcome of the arbitration turned out to be only a futile waste of time and cost a great deal of efforts. You knew well, Lanckoronsky rebuked the disputants, what a burden you laid on me, what a responsibility, what a pain and feelings. He could not have suffered any more while fulfilling this onerous office, all this crafty talk, said Lanckoronski: *Uterius me in hoc officio oneroso istis cavillationibus detineri non paciar*. Therefore, the parties had two options the superarbiter went on, either they would concur to the reconciliation or he would give their dispute back for the consideration of the official court. He would resign from the office of superarbiter, threatened further Lanckoronski further, if the parties did not show a willingness to accept his demands.⁷⁸³ In the end, the

⁷⁸⁰ Ibid., p. 664: “Et respondens Nicolaus Bal dixit, ego non dimitto nec te exonero potestate superarbitraria nec a superarbitralia auctoritate recedere volo. Et petrus Odnowski dixit, ego nulla vadia facere volo neque cauciones, sed verbo meo bono constanti et infallibili promitto tenere, quidquid isti quatuor arbitri inter nos concorditer concluderint et invenerint. Et e converse Petrus Bal dixit, ego eciam promitto tenere quidquid domini arbitri invenerint et concorditer inter nos concluderint ab superarbitralia facultate non recedendo.”

⁷⁸¹ Ibid., p. 665: “Herborth et ceperunt diversas inter se volvere opiniones et per sua vota invenire modos concordie, sed errant discrepantes in votis et distulerunt ad diem crastinum negotium eisdem comissum propter temporis brevitatem.”

⁷⁸² Ibid., no. 3112, p. 665-667.

⁷⁸³ Ibid., p. 665: “ita incipit dicere et est concionatus: duos dies domini mei iam consumsimus laborantes inter vos spe concordie, nec usque modo saltim aliqua principia concordie inter vos fundata sunt et sic multum temporis vanitate laboris et tergiversacionibus frustra contrivimus, scitis quid oneris mihi imposuistis et quid officii quid denique pene et mulcte mihi indixistis. Si negligens et remissus fuero in exequendo officio meo superarbitrali diversis iam modis tentata est inter vos concordia et spe fiende concordie multum temporis consummatum. Uterius me in hoc officio oneroso istis cavillationibus detineri non paciar, aut concordiam ineatis aut iure contra vos procedatis. Et ego paratus sum ad utramque partem officio meo satisfacere aut si non vultis in

superarbiter set a water clock before Odnowski and Bal and gave them three hours to decide which option they would prefer.⁷⁸⁴

The parties varied in their response to the words of Nicolas Lanckoronski. Since neither disputant was inclined to change his positions, it led to the raising of arguments between them. Peter Odnowski, referring to his agreement with Nicolas Bal from the previous day, wanted to dismiss the superarbiter and give the arbitration into the hands of four newly elected arbiters. However, Nicolas Bal raised an objection to this proposition. He saw the presence of the superarbiter as indispensable for obtaining reconciliation. Odnowski responded that if Bal wanted to insist further on the participation of the superarbiter, then he would feel freed from the aforesaid agreement and wanted to renew the measurement of the three-quarters of a mile according to the decision of the superarbiter. The Bal's attorney objected to Odnowski by arguing that Odnowski could not return to the sentence, which he himself had previously reclaimed. The attorney also added that Bal had no intention of allowing the execution of this sentence either. In his turn Odnowski opposed the attorney by reiterating that he had agreed to renounce the superarbiter's sentence only on the condition that the parties would take recourse in the mediation of arbiters. But since Nicolas Bal failed to keep this term of agreement, Odnowski said, did not feel obliged to adhere to the agreement and had, therefore, the right to demand a renewal of the sentence of the superarbiter.⁷⁸⁵ At the end of the controversy the parties seemed to find a path to concord. They confirmed the competence of the superarbiter and renewed his decision concerning the measurement of the three-quarters of a mile. Moreover, one important stipulation was added to the renewed concord – Peter Odnowski would accept any sentence of the superarbiter in the future.

But having closed the controversy on one set of issues, the parties continued debating on others. Peter Odnowski insisted that Nicolas Bal must take the role of a plaintiff in the future process of perambulation.⁷⁸⁶ In terms of the contemporary Polish boundary law this

causis vestris concordia vel iure procedere, extunc concordibus sensu et voto exonerate me hac superarbitralia potestate.”

⁷⁸⁴ Ibid., p. 665: “Et tunc superarbiter recepto horologio fluxibili statuit illud in medio astancium et dixit, ecce domini Petre Odnowski et Nicolae Bal, habetis tempus trium horarum ad tentandum concordiam, quo tempore effluxo, si concordiam non inibitis et non concordemini extunc procedatis ad actos iudiciarios in causis et negociis vestris, secus enim si feceritis ego facta protestacione competendi de vestra negligencia et de mea promittitudine ad exequendum iudicium et offium meum superarbitrale recedam exoneratus ab hoc officio, quod mihi satis onerosum imposuistis sine vadio per vos in me imposito ammisione...”

⁷⁸⁵ Ibid., p. 665-666.

⁷⁸⁶ Ibid., p. 666: “Tandem post sentenciam dixit Petrus Odnowski sine omni longo iuris strepitu: ego do actoriam Nicolao Bal facto iuramento iuxta consuetudinem iuris granicialis, equitet ubi voluerit et faciat sipare granicies qualiter voluerit.”

meant that Bal had to undergo oath-taking and then establish the borders by his own will. His version of borders had to be accepted by the other party, court judges or arbiters without any objection as completely true.⁷⁸⁷ Replying to Odnowski, Bal's attorney advanced a counterclaim, suggesting that it should be Odnowski who should act as the plaintiff in the ongoing perambulation. The attorney also reminded to Odnowski that it was up to the competence of the superarbiter to decide who would perform what role in the perambulation.⁷⁸⁸ The disputants' attempts to avoid the role of plaintiff in the process of marking borders were primarily determined by their unwillingness to undergo the oath-taking. As Nicolas Lanckoronski warned the parties, recourse to swearing an oath in litigation was considered from many points of view to be an onerous and dangerous act. The superarbiter further cautioned the parties, emphasizing that the oath-taking was especially demanding and burdening for the conscience in disputes over borders: *grave est iuramentum de graniciebus et in consciencia valde scrupulosum*. Because of this danger, Lanckoronski begged the parties to resort once more to the advice of their friends and good men.⁷⁸⁹ During the rest of the day the disputants are depicted as spending time in the circles of their friends, taking their counsel, and pondering upon the words of the superarbiter.

A new speech of the superarbiter the scribe commenced a new document and new day of the arbitration (May 16, 1511) can be regarded as a turning point in the dispute settlement.⁷⁹⁰ Describing the moment of the delivery of the speech, the scribe in a particularly distinct way portrays the place of action and the behavior of the participants. He focuses on some, at first glance, insignificant details of topography, actions, and gestures of actors. Though insignificant at first glance, these details are very revealing for a better understanding

⁷⁸⁷ This provision is contained in "Processus iudiciarius observandus circa faciendos limites" published in *Formula processus iudicarii in terris Poloniae Minoris observanda*. See *Corpus Iuris Polonici*, vol. 4.1, ed. Oswald Balzer, (Cracow, 1910), no. 59, p. 57: "In quo quidem termino campestri non licebit citato aliquas controversias facere coram succamerario vel eius officio super actoriatu, quem iam in iudicio terrestri amisit, sed actor ducet officium iuxta suam voluntatem et suam conscienciam, facietque granicies, scopulos sipando et alia signa metalia faciendo, non obstante quavis contradictione citati nec quibusvis documentis literatoris vel signis evidentionibus, si quae protunc ostenderit. Quibus finitis circa finalem et acialem scopulum iurabit actor cum sex testibus sibi in genere similibus super vera et iusta limitatione, ita videlicet quod nihil terrae et haereditatibus citato ademit et ab eo alienavit."

⁷⁸⁸ AGZ, vol. 19, no. 3112. p. 666: "Ex adverso Iohannes Grzegorzowski ... dixit: ad vota tua non tenetur dnus. Nicolaus Bal suscipere actoriam, sed cui parcium decreverit Superarbiter actoriam ille de iure tenebitur eam suscipere..."

⁷⁸⁹ Ibid., p. 667: "iam advesperascit et deest tempus ad procedendum ulterius in hac materia oportet ut in crastinum negotium differatur sed vellem a vobis domini scire, si si cras vultis concordari pro limitibus an iure pro eisdem experiri; grave est iuramentum de graniciebus et in consciencia valde scrupulosum; hoc vos bene nostris quoniam satis discreti ex utraque parte estis et bonorum virorum consilio fulciti, nec opus est, ut ego inter vos longa faciam de hac materia verba, unum dictatis mihi die crastina concordie, ne an iudicio presidere debeam."

⁷⁹⁰ Ibid., no. 3113, p. 667-668.

of the whole episode of peacemaking. One can hardly escape an impression of a stopped videotape while reading the narrative: the whole company came to a stop in a field (*locus campestri*), situated between the villages Upper and Lower Zernica, the superarbiter took a seat on a long tree trunk, laying on the ground (*in trunco arboris oblonge in terra iacentis*); the disputants, their friends and arbiters took seats on both sides of the superarbiter.⁷⁹¹ At this point in the account Nicolas Lanckoronski addressed a speech to the men present. At the beginning the superarbiter deplored again the futility of his numerous efforts and labors as well as the waste of time to bring the parties to the agreement. He said he was almost ready to judge the case and conduct the perambulation by the means of the law (*media iuris*), but still deemed it is his duty to restrain the parties (*sed adhuc paucum vos commonere libet*) and give them a last chance to try to settle their controversy by peacemaking.⁷⁹² Afterwards the superarbiter devoted a long discourse to the problem of how dangerous and undesirable it would be for the dispute to be resolved by means of the law and by oath-taking. It would be a great affliction for the consciousness, the superarbiter emphasized, to swear with the firm certainty that the disputed land was in the peaceful, unchallenged possession (*pacifica possessio*) of the ancestors of opponents. If it came to light, Nicolas Lanckoronski further cautioned, that in reality the family of the oath-taker had been involved in numerous and long-lasting lawsuits about the given land then it would be highly precarious to swear in such a dubious case. It would be a very hard and unpleasant business for him, Lanckoronski said, to consider such an oath-taking valid. Therefore, the superarbiter turned to the parties with an invigorated appeal, infused with moral and religious meanings. Nicolas Lanckoronski called on them to be guardians and good judges of their conscience, to have a fear of God. He strengthened his warnings by reminding the parties that God had constantly warned mankind through the prophets about the terrible Divine vengeance against perjurers, who were condemned to eternal torments and would not be rescued on the Day of the Last Judgment.⁷⁹³

⁷⁹¹ Ibid., p. 667: “in loco campestri inter villas Zernycza Inferior et Zernycza Superior, sedens in trunco arboris oblonge in terra iacentis ad utramque latus ipsis partibus cum suis amicis consedentibus hec in medium protulit verba Nicolaus Lanczkorunski superarbiter.”

⁷⁹² Ibid., p. 667: “Satis me arbitror fecisse laboris et conatus cum coarbitris per vos ad me locatis, ut vos postergatis iuramentis et iuris rigore honesties mediis pro graniciebus componere potuissem, sed frustra et laboratum et tot temporis contritum est, flectere enim animos vestros ad honesta media concordie non potui, iam paratus sum ad optata vestra media iuris pro eisdem graniciebus hereditatumstrarum inter vos diffinire, sed adhuc paucum vos commonere libet.”

⁷⁹³ Ibid., p. 667-668: “Legavi vobis formam iuramenti actoris et formam iuramenti testium, quam quamvis est et consencie onerantia, iurare enim per verba de presenti certa, quod hec terra pro qua iurabit actor est ipsius hereditarie possessoria ab ipso et eius antecessoribus pacifice possessa, cum quidem apparet, quod vestri antecessores et vos post ipsos pro eadem terra inter se semper aliquid habuistis questionis et pacifica possessione nulli vestrum hec terra cessit in dominii proprietatem et super tali re dubia periculosum est iuramentum, testor Deum quia res est mihi nimis onerosa talia decernere iuramenta, et si importune instabitis officium

At the end of the speech, the superarbiter addressed his words specifically to the friends of the disputants, soliciting them not to spare their efforts to dissuade the parties from taking recourse to the law and the oath.⁷⁹⁴ Afterwards Lanckoronski ordered the bailiff to proclaim that the parties were going to start the lawsuit before the official court and settle the dispute according to existing legal norms. The arguments and threats, advanced by the superarbiter seem to have succeeded this time. Upon the counsel with their friends, the parties surrendered the case for final settlement into the hands of the superarbiter and abandoned attempts to make use of the official courts and law.

What is especially striking in this case is that the account explicitly renders the psychological climate surrounding the arbitration in rather dark colors.⁷⁹⁵ It is enough to mention again the words of superarbiter, who repeatedly lamented his service as onerous and the disputants as ungrateful, pointing out many times his personal annoyance arising from his participation in the arbitration. I believe that this sort of evidence could not account exclusively for the rhetorical and empowering strategies employed by a superarbiter with the purpose of obtaining a more influential voice to dominate the course of the arbitration. The whole process seems to have been really sunk into the atmosphere of mutual distrust, suspicion and embarrassment. The account permits one to infer that at the moment of concluding the final agreement about the procedural rules of the arbitration, all the participants felt deep frustration because of the endless quarrels and sudden changes in the positions of the opponents.

The process of arbitration appears thus as a field of permanent conflict, which required a permanent reaffirmation of their status and position from all participants. In the context of peacemaking, a superarbiter, arbiters, disputants, and their friends actively exploited chances for pursuing their own interests and goals. Peacemaking stood out, therefore, as another sort of power game in the context of the politics of enmity. Nothing could be certain or predicted in this game; its rules were created and changed many times in the course of arbitration.

superarbitrarium per vos mihi impositum coget me ea decernere que iuris sunt. Rogo tamen sitis vos custodes et boni iudices conscienciarum vestrarum, timeatis Deum per prophetam comminantem ulcionem periurii usque ad novam generationem de domo periurantis non exire.”

⁷⁹⁴ Ibid., p. 668: “Vos vero domini mei seniores amici utriusque partis consultores, agite opera vestra, ne isti boni viri amici vestry ad tam rigida puncta iuris ad tam gravia iuramenta deveniant. Vos enim hic labor hec spectat provincia, nec vobis placeat inspicere amicos vestros vel rancorso vel dolente corde ne dicam lacrimosis oculis ad tam rigida iuramenta iudices digitos aptare genua flectere manus cruci apponere. Agite igitur summis conatibus vestris, ut si quid est rigidum in cordibus amicorum vestrorum vestris suasionibus et verborum solercia flectatur et ad amicabilem compositionem emolliatur.”

⁷⁹⁵ For comparison one can consult the research on peacemaking in sixteenth and seventeenth-century France, which identifies cases with a similar ugly atmosphere, see Stuart Carroll, “The Peace in the Feud in Sixteenth and Seventeenth Century France,” 109.

The case of Peter Odnowski and Nicolas Bal conveys the image of arbitration as infused with hidden distrust and a spirit of rivalry. It conforms well to some penetrating observations on the process of peacemaking made by Andrzej Frycz Modrzewski in his *De Republica emendanda*. In order to strengthen the importance of Christian values such as an amicable love, mutual forgiveness, and penance in obtaining reconciliation, Frycz Modrzewski points to the opposite set of emotional habits often entailed in peacemaking. Construing the opposition between a right and wrong way of making peace, Frycz Modrzewski introduced a fictitious case of peacemaking between two imagined men – Peter and Paul. According to the text, Peter and Paul sought to settle mutual injuries and wrongs they had wreaked on each other earlier. On their way to reconciliation they did not hesitate to call for the assistance of many great men. During their efforts at peacemaking, however, both men started to charge each other with the principal guilt for the beginning of the enmity. In so doing, they tried to exaggerate the wrongdoings of each other and underestimate their own misbehavior.⁷⁹⁶ Frycz Modrzewski directed most of his criticism against this mode of conduct during peacemaking. Modrzewski presents his arguments within the framework of Christian teaching and doctrine of sin, penance and forgiveness. In his words, the success of peacemaking lies in the ability of the disputants to acknowledge their own wrongs and forgive others. The parties' unwillingness to act in accordance with these basic Christian precepts during reconciliation was viewed as a major source of fragility and inefficiency in the institution of peacemaking in the sixteenth-century Polish society. Mutual distrust, unjust accusations, and tensions spelled out in the course of peacemaking would result at the end in the renewal of the enmity. Frycz Modrzewski exclaimed:

In vain one will draw the good customs before the eyes of the disputants, in vain one will recall the judgment of good men, in vain one will bring into the centre of the settlement the Christian precepts. Anger, hatred and lust for killing will emerge from this insanity and mental blindness. Unless driven out in the proper time, they will bring about much greater crimes –
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⁷⁹⁶ Andrzej Frycz Modrzewski, *Commentariorum De Republica emendanda Libri quinque*, 152: “Studebant Petrus cum Paulo ex iniuriis, quas mutuo sibi fecerant, in gratiam redire atque ad hanc rem multorum praestantium uirorum opera uti non dubitabant, Narrat prior Petrus, quam atrocem acceperit iniuriam a Paulo ac culpam in eum transfert, contra Paulus non minoribus se a Petro iniuriis affectum ac culpam in eo ait esse omnem, uterque sua in alterum peccata dissimulant aut certe extenuant, uterque alterum sontem et iniuriae acceptae reum peragere conantur.”

⁷⁹⁷ Ibid., 153: “Frustra nobis boni mores ob oculos ponuntur, frustra bonorum uirorum iudicia recitantur, frustra Iacobina et Christiana praecepta in medium afferuntur. Ira, odium et cupiditas nocendi praecipites uos dederunt in hanc amentiam et mentis caecitatem, quae nisi depellantur, grandiora secum scelera pertrahant necesse est.”

In his disapproval of the ugly emotions and ambitions that dominated the process of peacemaking, Frycz Modrzewski singled out another quite telling aspect. “There are people,” he said, “too prompt to offend others, however, too lazy or completely negligent to make peace with their adversaries.” If by some urgent need they are forced to reconciliation, then they will assess their participation in peacemaking as an insult to their honor. For this reason they seek to worm into peacemaking, rather than join it publicly. Therefore, such occult reconciliations that originate in public offences are not lasting, but often erupt into new disorder and enmity.⁷⁹⁸

9.5 Peacemaking and the dynamics of enmity

Peacemaking appears, thus, to have been quite an ambivalent instrument of conflict resolution. On the one hand, it was primarily designed to promote a Christian peace. But on the other, it could easily evolve into another cycle of hostile relations. Private forms of dispute settlement had often a provisional character and could easily be disclaimed by disputants. It seems that hostile relations between parties were too dynamic and unstable to be settled by the terms of a single arbitration. For the same reason it was highly unlikely that a single arbitration could regulate the long-standing relationships between parties. The temporary and unstable nature of private arbitrations can be inferred from the fact that the texts of arbitrations usually contain no reference to terms of arbitration that had been previously reached and then broken by the parties. In this regard it is instructive to compare texts of two amicable agreements, concluded in 1441 and 1461 by Jacko and Senko of Byblo on the one side, and Jan Barzy and his wife Ann-Dukhna on the other.⁷⁹⁹ Both Korčaks families were very close cognates, since Ann-Dukhna was a sister or, perhaps first cousin of the Bybelski brothers. Together with members of the Peredilnycki, Fredro and Prochnicki families they comprised a group of numerous hairs to one of the largest estates in Przemysl land, that of the boyar family of the Bybelskis. In the course of the division of the Bybelski's estates, which is recorded in the Przemysl land court register on January 2, 1441,⁸⁰⁰ some issues that concerned the disputed property remained unsolved. These contested rights over property became a source for a series of private agreements between individual members of this group of hairs. Two arbitrations between the Bybelskis and Barzys from 1441 and 1461

⁷⁹⁸ Ibid., 154-55: “Sunt enim quidam ad offendendum alios ualde prompti, ad placandum uel tardi uel prosus negligentes. Si qua necessitas cogat eos ad reconciliationem, tamen turpe sibi existimant, si id prae se ferant. Irrepere malunt ad concordiam quam palam igredi... Itaque tales occultae reconciliationes ex offensionibus palam factis non solent esse diuturnae, plerumque etiam in turbas et tumultus erumpunt.”

⁷⁹⁹ AGZ, vol. 13, no. 1779 (October 29, 1442); no. 4682 (January 27, 1461).

⁸⁰⁰ Ibid., no. 1489.

which followed the general division of the estates reflect this stage in the relationships between hairs. The terms of the arbitration from 1461 deal with the same issues as those of the arbitration from 1441, namely, a conflict over the common use of forests. However, and this is highly important in context of this problem, the text of the arbitration from 1461 contains no mention of the arbitration of 1441. Instead, the terms of the arbitration of 1461 only make reference to the document of the general division from 1441 between all the hairs, and do not take into consideration the terms of a previously concluded private reconciliation between two families. It must be also noted that in the following decades, when the discord over the forests turned into the open enmity between the Bybelskis and Barzys, including the use of violence, attacks on peasants, trespassing on property, and mutual lawsuits, none of the adversaries made any reference to these arbitrations and did not try to use them as legal arguments during court hearings.

The evidence about withdrawals from earlier obtained reconciliations shows the limited possibilities of the institution of peacemaking to exert an enduring influence which would result in an end to the conflicts. The previous experience of inimical relations and the scale of the enmity often turned out to be incomparable with the set of issues regulated by the terms of amicable agreement. Physical, material and moral injuries inflicted during previous stages of enmity could be too numerous, the scores too high, and feelings of injustice too fervent to be pacified by means of a single reconciliation. Additional support for such a suggestion can be found in a comparison of the evidence of accusations brought before the court by one of the parties, which described in detail the material and physical damage, with texts of the subsequent reconciliations, which usually kept silent about the most brutal episodes of the enmity.⁸⁰¹

The interdependence between the use of violence and subsequent attempts at peacemaking also had another important dimension. An amicable agreement that ended an enmity, could indirectly back up the favorable position of one of the conflicting parties that had been gained through the use of violence during the early stages of hostilities. In this regard, the stronger party who was the winner of enmity and gained more profit from the exercise of violence often benefited from a dispute settlement by peacemaking. In this way the arbitration appears to represent a public consensus and the communal opinion concerning the outcome of the dispute. The act of peacemaking symbolically transformed the brutal use of violence into a legally permissible and legitimate technique of litigation.

⁸⁰¹ Compare, for instance, the description of the violent raid of Stanislas Czelatycki on Thomas Lopatynski during their dispute over Solomonychi with a text of the later reconciliation, in *Ibid.*, vol. 18, no. 566-570, 833.

The dispute between two noblemen from Przemyśl land, Jan Karas of Hrushevychi and Budzywoj of Volchyschchovychi, exemplifies this meaning of private arbitration. Under the date April 1, 1465, one can find a detailed account of violent trespass made by Jan Karas on a village called Dunkowice of the said Budzywoj.⁸⁰² The record has it that in the course of an attack Jan Karas' expelled Budzywoj, unjustly seized his house and estate, wounded and dishonored him. In his complaint, Budzywoj emphasized that Karas had no right to the said estate, and called him the dispossessed (*impossessionatus*), which in the noble culture of the medieval and early modern Kingdom of Poland sometimes apparently had insulting connotations. Further evidence relates that after this act of violent aggression the conflict entered a peaceful phase and the parties resorted to peacemaking. This stage of the enmity is reflected in the record inserted into the Przemyśl land court register and dated October 31, 1465.⁸⁰³ It says that according to the terms of arbitration, Budzywoj acknowledged that Karas had the right to stay in the disputed estate for a definite period of time. After that the village had to be returned to Budzywoj. The conjecture is that arbitration was used by Karas as a legal instrument for confirming and justifying *post factum* his claims to Dunkowice that had been initially advanced through the use of violence. As soon as the reconciliation had been obtained, Karas did not hasten to give Dunkowice over to Budzywoj. In fact, the reconciliation appears to have been ineffective and the enmity was renewed. In the next year, 1466, one can find new complaints in the register, brought again by Budzywoj against Karas, accusing him of unwillingness to restore the estate.⁸⁰⁴

Fifteenth-century legal records from the Rus' palatinate are consistent in rendering the image of noble enmities as endless circles of violent raids, seizures of property, lawsuits, unsuccessful attempts at private reconciliation, and impositions of pledges of peace. This pattern of noble enmities stands out explicitly in the case of a long-standing dispute between two families of Przemyśl land – the Prochnickis and Mzurowskis. The references displaying efforts to start peacemaking between the parties appear regularly in the court register under the years 1437, 1444-1445, 1446-1447, 1448.⁸⁰⁵ But all these attempts apparently failed and the enmity broke out again. Records of attempts at peacemaking are regularly followed by evidence of new mutual accusations and royal pledges of peace aimed at preventing the outbreak of violence (1443, 1446, 1447, 1448, 1449, 1451).⁸⁰⁶

⁸⁰² Ibid., vol. 13, no. 5803.

⁸⁰³ Ibid., no. 5969.

⁸⁰⁴ Ibid., no. 6342, 6425.

⁸⁰⁵ Ibid., vol. 13, no. 2389-90, 2565, 3468, 7215, 7316, 7360.

⁸⁰⁶ Ibid., no. 3027, 3254, 3805, 4083, 4214, 7255.

The intervention of men of the highest status, like the L'viv castellan Senko of Siennow in 1446, appears not to have been particularly helpful in pacifying the relationships of the Mzurowskis and Prochnickis. Another failed attempt at peacemaking between representatives of the two families was initiated by a group of powerful men in 1463. The text of the arbitration relates how the group of arbiters, composed of the Przemyśl captain, Nicolas of Konieczpole, Alexander of Prochnik, Jan-Jacko of Rozborz, Jan Czurylo of Stojanci, and Jan Lysakowski, tried to reconcile Jan Mzurowski and Nicolas and Olekhno, sons of the late Przemyśl castellan Peter of Prochnik. It is interesting to note that among the *compositores* of the document from 1463 one can find noblemen who also figured as participants of the conflict in the failed peacemaking in 1446. According to the terms of arbitration, the sons of Peter of Prochnik were obliged to pay six marks to Jan Mzurowski and his peasants from Bystrowice and Vankovice and restore some carts of wood that had been felled by Prochnickis' peasants. By their sentence the arbiters also cancelled all suits that both parties had brought to court against each other. However, this judgment was immediately challenged by Olekhno and Nicolas Prochnicki. The record of arbitration ends with the very telling note inserted by a scribe saying that *Olechno cum Nicolao canonico germani de Prochnik rebelles a iure recesserunt non dantes memoriale ab inscriptione, ideo luerunt penam iudicio XIII marcas causa pertinencie seu rebellionis*.⁸⁰⁷ Both families endured further in their enmity. A few years later the Przemyśl land court again took recourse to the high pledge of peace in order to prevent the growing tension between the rivals.⁸⁰⁸

The frequent challenge of terms of arbitration accepted earlier which led to the renewal of enmity, illustrates one fundamental structural pattern of the settlements of noble disputes. The renewal of enmity by means of the law or by recourse to violence pursued the aim of changing the existing format of relationships between disputants and securing a more favorable outcome for one of the opponents. The party who lost the case was especially inclined to consider reconciliation as a temporary compromise. As has already been mentioned, a settlement by arbitration often cloaked the real defeat of one of rivals in honorable form. The losing party was often forced to accept terms of such an arbitration under the pressure of circumstances and the wider community. It was not random that such arbitrations were broken on the first possible occasion. From this perspective, peacemaking

⁸⁰⁷ Ibid., no. 5158.

⁸⁰⁸ Ibid., vol. 13, no. 6428 (August 5, 1466).

was perceived by disputants as just one of the techniques of and stages in a lasting enmity.⁸⁰⁹ Thus arbitration could end up as only one particular cycle of enmity, reflecting the balance of force that existed between the parties at a certain moment of their inimical relations.

⁸⁰⁹ This view of peacemaking as a phase of enmity in medieval society is emphasized by William I. Miller, *Bloodtaking and Peacemaking*, 259, 264; Stuart Carroll, "The Peace in the Feud in Sixteenth and Seventeenth Century France," 109.

Conclusions

Fifteenth-century statutory law provided litigants with an elaborate and sophisticated legal framework for dispute settlement. It offered disputants a wide range of legal procedures and actions necessary for conducting litigation, and it conceived a detailed system of fines and penalties as punishment for all major criminal offenses.

Though the fifteenth-century legislation failed to elaborate the legal concept of enmity or feud, legal process and statutory norms put considerable constraint on the exercise of noble violence by criminalizing the most notorious kinds of wrongs and by offering courts and legal actions as alternative channels for pursuing an enmity. In other words, the law considerably influenced the practice of noble enmity, determining how the noble enmity was carried out, and how it was subsequently presented and debated in the courtroom.⁸¹⁰ In their pursuit of enmity, nobles had always to keep an eye on the compatibility of their actions with the official law. Violent trespass on property, assaults on houses and persons, bloody brawls, violent treatment of peasants and servants – all these manifestations of enmity were usually denounced before courts as illegal breaking of norms and were criminalized as actions that disturbed and violated the rules of peaceful, communal coexistence.

The visible growth of a body of legal provisions regulating the conduct of litigation and enmity during the fifteenth century created a demand for the legal resources and for appeal to official courts as forums for settling disputes. An elaborate and detailed set of legal actions and a network of courts established as a result of statutory legislation and customary practice offered disputants alternatives to violence for conducting an enmity. This process turned the law into the major instrument of waging enmity. With regard to the ability to exploit and manipulate the resources of the law, whether it goes about written legal instruments or oath-taking, fifteenth-century evidence presents Galician noblemen as experienced and shrewd litigants.

In practice, however, this institutional and legal framework appears to have been weak and ineffective in many respects. Legislative initiatives aimed at better administration of justice were usually thwarted by local legal cultures, rooted in customary and non-professional traditions of law. The principles of collective judgment and communal consent

⁸¹⁰ One can repeat after Chris Wickham, applying his observation about uses of violence in the twelfth-century Tuscany to the modes of dispute settlement in the fifteenth-century Galicia: “Litigants were capable of using violence strategically, and opposing it normatively at the same moment,” see Ch. Wickham, *Courts and Conflicts*, 304-5.

were clearly given preference over the norms and provisions of statutory law. Shortcomings in the administration of justice are perhaps best visible in crime prosecution and law enforcement. Royal captains as the main agents responsible for the administration of justice and the maintenance of order preferred to restrain noble enmity through compromise and preventive means such as sureties and pledges of peace. Penalties imposed as a result of the official prosecution initiated by captains were rare indeed. In addition, evidence of legal records from the fifteenth-century Rus' palatinate suggests that the captains' presence at court proceedings, the element crucial for effective judgment and enforcement of law in the practice of contemporary courts, gradually declined in the course of the fifteenth century.

Enforcement of court sentences was grounded on complicated and contradictory legal mechanisms that allowed convicted men to resist its execution effectively. As a consequence, many sentences were never executed and wrongdoings went unpunished. In general, these shortcomings of the system of justice as well as some provisions of the statutory law resulted in the situation where many disputes were settled by extra-legal means, including peacemaking, direct violent actions and self-help.

In the fifteenth-century Rus' palatinate, peacemaking and arbitration represented modes of conflict resolution that were not alternative, but rather complementary to official court proceedings. Judges of castle and land courts frequently initiated arbitration between disputants, or used the practice of postponing cases to provide parties with a time for private settlement. The practice of arbitration reveals the crucial significance of informal ties based on kin solidarities and patron-client relations in the administration of justice. As the analysis of the Korčaks peacemakings from the period of the 1440s to the 1460s clearly demonstrates, the practice of arbitration could be used to re-configure and reinforce the intra-kin bonds within a large group of noble families. It is also clear that the practice of arbitration was used by local power-holders to strengthen their position within the noble community. This explains the predominance of local magnates as arbiters in peacemaking. Most arbitrations were temporary compromises that were unable to regulate the long-lasting relationships between disputants. This provisional nature of peacemaking is important for highlighting the processual dimension of noble enmity. As a process noble enmity went through changing circles of peacemaking and renewal of hostile relationships. Arbitrations were broken and the enmity renewed every time one of the parties wanted to change the terms of the agreement. Dispute settlement appears thus as a process of permanent negotiations in which chances of reaching a final, lasting reconciliation were small.

The wide spread of pledges of peace imposed by kings and royal captains on nobles to guarantee their peaceful coexistence provides the main evidence of the thriving culture of enmity in late medieval Galicia. To judge by the evidence of pledges of peace, almost all major noble families of the region in the fifteenth century were involved in the pursuit of enmity. Most of these enmities were short-lived. As a history of George Strumilo's disputes suggests, the circle of foes with whom one was involved in lasting, life-long enmities was not particularly wide. Another feature of inimical relationships was that friends easily became enemies, and in the same vein easily turned into friends again. Enmity as a structuring principle of social relationships within the noble community offers thus an image of this community as dynamic and constantly changing webs of alliances.

Noble enmity also had serious social implications for inter-estate relationships. On the one hand, it operated to reproduce and strengthen social distance between nobles and the subordinated classes. On the other hand, inimical relationships between nobles were often continued on the level of their subjects and even peasants, resulting in the creation of vertical inter-estate social groups based on shared experience of the exercise of violence.

Though inimical relationships could take a variety of forms, opponents usually drew on a more or less fixed and recognized set of moves, which, following Stephen Whites, constituted a kind of "inventory of enmity." Violence, real or imagined, can be identified behind most of these techniques. Inimical relationships could be manifested through the exercise of direct violence like organized raids and assaults with accomplices on an estate or house; terrorizing attacks on subjects and peasants, personal affronts between enemies at court and in public places. Violence could also loom behind inimical relationships in its potential, and even imagined, forms like public threats, slanderous accusations of violence in court, and rituals of public penance. Legal actions, especially if they ended with favorable verdicts, also implied and foresaw the possibility of the exercise of violence. Therefore, regardless its forms and techniques, enmity always opened the door for the exercise of violence, making it one of the most possible scenarios in the development of inimical relationships. In this sense enmity and violence can be considered synonymous.

A conviction that in some situations the redress of wrongs can be achieved only through the exercise of direct violence, not by means of the law, was dominant in contemporary noble society. This conviction which made possible a frequent recourse to violence in dispute settlement, stemmed from a set of values crucial for noble identity and ethos. Noble reputation, the politics of lordship, and the sense of honor – all these key concepts of noble identity were grounded on the ability to exercise violence. Furthermore,

local noble society appears in sources as a world of constant conflict and rivalry, which demanded continual readiness to assert and confirm their position and status from its members. This is how the social tolerance of violence as well as claims to legitimacy and justice lying behind the uses of violence can be explained. Though tolerated, noble violence was limited. This is clearly suggested by the comparatively small number of murdered noblemen as well as murders committed by nobles during the fifteenth century.

The practice of noble enmity and violence were thus situated at the crossroads of competing representations and perceptions that varied from the openly articulated harsh condemnation to the more implicit yet identifiable social tolerance and legitimacy. These various discourses on violence generated a multiplicity of ways in which the legitimacy of violence, its techniques and borders were constructed. The legitimacy of noble enmity as well as the basic structures of social order were simultaneously postulated and undermined in the course of a dispute depending on the positions of the litigants. The idea of social order and justice was evidently perceived as based on both judicial and extra-judicial means, which informed the same categories of legal norms, justice or social order with much inconsistency and fluidity. Viewed from this perspective the categories of legal norms, justice or social order seem to have been elusive and unstable. Their meanings were subject to permanent negotiation, challenge, and adjustment by individual disputants and institutions involved in the enmity or dispute. These categories appear thus as a corollary of the interplay between the personal strategies of disputants and the normative framework of the enacted law on violence. Disputants' subjective perceptions of what is just and unjust, their senses of honor, obligations and expectations stemming from their status as lord and patron, the memory of previous disputes and enmities with an adversary were the most significant of the variables that were tested against the background of impersonal normative principles of order, justice and statutory law.

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