

Marcin Kamler

PENALTIES FOR COMMON CRIMES IN POLISH TOWNS 1550–1650

Up to now, the problem of penalties issued in the Polish municipal judicial system during the sixteenth and seventeenth centuries for criminal felonies had not been presented in a sufficiently thorough manner. General information on this subject is to be found in textbooks; more details are contained in the monographic study by W. Maisel dealing with penal law in Poznań although here too the question has been interpreted from the formal-legal point of view, and no attempt has been made to determine the mutual proportions of the penalties; the same holds true for an analysis of at least the most important departures from the commonly observed praxis¹. Punishments meted out to women, especially in cases of prostitution, are mentioned in articles by A. Karpiński; penalties for theft in Cracow and Poznań in the second half of the sixteenth century have also been superficially discussed². The above mentioned works, however, are fragmentary and do not offer a complete picture of the phenomenon in question. Also the size of this article has restricted it to basic issues which, nonetheless, can constitute a reference point for future investigations; I have resigned, unfortunately, from a comparison of the gathered material with the already copious outcome of studies referring to Western Europe. Prime attention will be, therefore, concentrated on types of penalties applied for crimes, their

¹ W. Maisel, *Poznańskie prawo karne do końca XVI wieku (Penal Law in Poznań up to the End of the Sixteenth Century)*, Poznań 1963.

² A. Karpiński, *Prostytucja w dużych miastach polskich w XVI i XVII w.: Kraków, Lublin, Poznań, Warszawa (Prostitution in Large Polish Towns During the Sixteenth and Seventeenth Century: Cracow, Lublin, Poznań, Warsaw)* "Kwartalnik Historii Kultury Materialnej" 1988, no 2, pp. 277–304; *idem*, *Prostytutki, złodzieje, czarownice. Z badań nad kobiecą przestępczością w Poznaniu w drugiej połowie XVI i w XVII wieku (Prostitutes, Thieves, Witches. Selected Research into Female Criminals in Poznań in the Second Half of the Sixteenth and in the Seventeenth Century)*, "Kronika miasta Poznania" 1993, no 1–2, pp. 110–132; M. Kamler, *Kary za kradzież w Krakowie i Poznaniu w 2 połowie XVI wieku (Penalties for Theft in Cracow and Poznań in the Second Half of the Sixteenth Century)* in: *Spółczesność staropolskie. Studia i szkice (Old Polish Society. Studies and Sketches)* vol. 4, ed. A. Izydorczyk, A. Wyczański, Warszawa 1986, pp. 7–17.

mutual proportions and the various departures from the universally binding or recommended principles of punishment.

The foundation of the following reflections are composed of 1, 793 sentences (men — 1, 440, women — 353) passed by municipal courts in Cracow (treated jointly with neighbouring Kazimierz) from the 1550–1635 period (450 sentences concerning men and 56 — women), Lublin, from the years 1550–1565 and 1622–1648 (respectively 145 and 16) and Poznań from the period 1550–1633 (respectively 845 and 281)³. I have bypassed cases which in my conviction cannot be classified as a crime, such as brawls (which did not end in death or bodily grievances), vagrancy (universally punished by relegation from the given town and sometimes by whipping), libel and various administrative misdemeanours⁴. Felonies of this category were not regarded by the Polish lawyers of the period as crimes nor, as a rule, were they examined by the town criminal courts or recorded in court registers, suitable for this type of offense⁵. Finally, I have also not taken into consideration sentences dealing with magic.

In each of the examined towns, the judges based themselves on the same directives of the Saxon–Magdeburg penal law (the *Speculum Saxonum* and the *Weichbild*) which in the 1550s were adapted to Polish conditions, made available in a Polish version by Bartłomiej Groicki and in 1582 translated from Latin into Polish by Paweł Szczerbic⁶. The penalties can be

³ Akta Miasta Krakowa /Acts of the town of Cracow/ — (further as: *AMKR*), 864–866; Acta Castriensia Cracoviensia (further as: *ACC*), 1101; Akta Miasta Kazimierza /Acts of the town of Kazimierz) — (further as: *AMKaz.*) K 266–268 and K 280; Akta Miasta Lublina /Acts of the town of Lublin/ — (further as: *AML*), 139–142; Akta Miasta Poznania /Acts of the town of Poznań/ — (further as: *AMP*), I 638–641 and I 657–666.

⁴ A different attitude is revealed by J. A. Sharpe, *Crime and Delinquency in an Essex Parish 1600–1640*, in: *Crime in England 1550–1800*, ed. J. S. Coburn, London 1977, p. 90 sqq; idem, *Crime in Early Modern England 1550–1750*, London 1984, pp. 4–6; a discussion with this stand in: M. Kamler, *O niektórych problemach badawczych historia kryminalistyki w okresie nowożytnym. Na marginesie książki Jamesa A. Sharpe'a Crime... (Certain Research Problems of the Historian of Crime During the Modern Era. On the Margin of J. A. Sharpe's Crime...)*, "Przegląd Historyczny" 1987, fol. 2, pp. 291–293, and idem, *Świat przestępczy w Polsce XVI i XVII wieku (The Criminal World of Sixteenth and Seventeenth-Century Poland)*, Warszawa 1991, pp. 7–8.

⁵ W. Maisel, *Prawo karne w statutach miast polskich do końca XVIII wieku (Penal Law in the Statutes of Polish Towns up to the End of the Eighteenth Century)* "Czasopismo Prawno-Historyczne", 1974, fol. 2, p. 101.

⁶ B. Groicki, *Porządek sądów i spraw miejskich prawa magdeburgskiego w Koronie Polskiej (The Order of the Courts and Urban Cases of Magdeburg Law in the Polish Crown)* ed. K. Koranyi, Warszawa 1953; idem, *Artykuły prawa magdeburgskiego. Postępek sądów około karanania na gardle. Ustawa płacej u sądów (Articles of the Magdeburg Law. Court Conduct and the Death Penalty. The Court Fine)*, ed. K. Koranyi, Warszawa 1954; translations by P. Szczerbic: *Speculum Saxonum abo prawo saskie i majdeburgskie... (Speculum Saxonum or the Saxon and Magdeburg Law) and: Ius municipale to jest prawo miejskie majdeburgskie... (Ius municipale that is the Magdeburg Town Law)* (3rd. ed.—Warszawa 1646).

divided into two basic groups: various types of the death penalty and all the others. The death penalty was, in turn, divided into ordinary penalties which entailed hanging, beheading or drowning (the latter was basically applied in cases of female felons) and the so-called classified penalties — quartering, breaking with the wheel and burning at the stake. Classified death penalties were most frequently resorted to in cases of crime which met with special social condemnation such as robbery combined with manslaughter, sacrilege, arson, the production of counterfeit money and sodomy. Death by hanging or drowning was regarded as dishonourable and this is the reason why acts of mercy replaced it by beheading⁷, usually thanks to the intervention of persons who enjoyed common esteem. In order to intensify the effect of humiliating criminals who had committed particularly repulsive misdeeds, the convicts were subjected to public tortures prior to the carrying out of the ultimate sentence. Their bodies were torn with red-hot forceps, the convicts were whipped, had their hands cut off and then they were quartered, broken with a wheel or burnt at the stake. In 1583, Krystyna, the wife of a Poznań hatter was charged with murdering a woman whom she planned to rob, and was *forpicibus in 4 partibus circuli lacerata, deinde circe patibulum capite plexus et in rotam posita*⁸. At times, the death sentence was carried out first and then the body of the felon was quartered, hung on gallows, stretched on a wheel or twined into it⁹; the head was publicly displayed on a pole. In 1597, a verdict passed in Poznań against Maciej of Stryków for the murder and robbery of a Jew on a woodland road announced: *apud patibulum caput ipsi amputari [...] palo infigi, corpus vero rotae alligare*¹⁰.

In the second group of penalties the most painful effects for the condemned was the cutting off of an ear (rarely, of both ears) leaving a permanent trace of his criminal profession visible to all¹¹. The most frequently applied punishment was whipping carried out next to a pillory (sporadically in the four corners of the square), combined with exile from

⁷ The dominating expressions found in court registers include: “Beheaded thanks to honourable people”; “Beheaded by request”; “Beheaded by way of mercy”; *Ad intercessionis decolatus*; “For those evil deeds [...] and due to the request of people the court sentenced him to death by beheading”; *AMKr.*, 864 f. 67; *AMKaz.*, K 266, f. 87, 88, 92, 95, 250, 252, 256, 276; *ibidem*, *AMP*, 1641 f. 265.

⁸ *AMP*, 1639 f. 227–227v; see also: *AMKaz.*, K 266 f. 111, 121, 145, 148; K 267 f. 13; *ACC*, 1101 f. 375; *AML*, 140 f. 271; 141, f. 162–162v; f. 306; *AMP*, 1639 f. 9 35–35v.

⁹ On the application of the execution wheel see: W. Maiseł, *Archeologia prawna Polski*, (*The Legal Archeology of Poland*), Warszawa 1982, p. 182 sqq.

¹⁰ *AMP*, 1640, f. 165v; other similar examples: *AL*, f. 255–256, 272, 308; 139, f. 149v; *AMP*, f. 96; 1641, f. 50.

¹¹ A verdict passed in Cracow in 1641 and concerning two thieves declared: “[...]It was ordered to merely whip them and to mark their ears so that it would become known that they were handled by the hangman”, *AMKr.*, 864, f. 371–372.

town (theoretically for always or, rarely, for a concrete period of time — a year, five years etc.). A more lenient form of this punishment, announced in cases of lighter misdemeanours (for instance, single cases of theft) was the lash in the cellars of the town hall on a bench or a stump, known as the bishop; it was carried out not by the hangman but by the court usher, and was not regarded as a form of humiliation. A penalty of a particular type was applied very infrequently, e.g. the lash alone or relegation from the given town. In an overwhelming majority of cases the penalties were combined — whipping at the pillory or next to the town hall was accompanied by exile, or the cutting off of an ear was followed by the lash and relegation. Only in exceptional cases did the registers record the number of lashes to which the condemned was to be subjected; in instances known to me, it oscillated between 10 and 60.

The construction of tables of penalties issued for a given crime made it particularly difficult, especially in cases of professional criminals who committed numerous and varied felonies, to classify a certain person to a type of crime. The fundamental criterion of classification is the principle that the decisive factor is the rank of the offense; a recidivist who had committed robbery together with manslaughter was classified as a member of a group of persons sentenced for assault; a trickster or middleman who had also killed a person was regarded as a murderer while a common thief who had committed sacrilege, arson or produced counterfeit money was ascribed to one of those three groups. The inclusion of a felon into a given group was frequently facilitated by the rules which at the time were applied rather rigorously, and which were binding for the passing of sentences for various types of crimes: ordinary theft was punished by hanging, manslaughter — by beheading, sacrilege, arson and the production of counterfeit money as well as sodomy — by death at the stake, and robbery combined with murder — usually by quartering or breaking with a wheel. If, therefore, a multiple thief, and, in addition, a murderer was condemned to beheading (and there is no trace of the punishment being changed to a more lenient one), then it becomes obvious that it was precisely the latter crime which was decisive for the penalty. This principle was also observed in connection with other types of offenses.

In an overwhelming majority of cases the penalties remain in accordance with our expectations, based on a familiarity with the court praxis of the period. Nonetheless, one can also come across astonishing examples. In 1556 five thieves, recidivists but petty felons were tried in Cracow; they “conspired, tied together two torches and two brooms, added sulphur and having lit them, placed them under the butcher’s slaughterhouse in order to

set fire to the town so that when people would be throwing (their property) out of the houses, they could steal it and leave town; but when the people noticed the fire, they put it out and the thieves ran away”¹². We are dealing here, therefore, with a form of activity whose consequences could have easily caused a catastrophe for the whole town. It would seem that the only possible penalty would be the stake (applied even in cases of fire set to bales of hay drying in the meadows) but all the accused were hung, as befits thieves. The perpetrator of a great robbery of valuable property and at the same time, the murderer of his peasant employer was hung for theft and not beheaded (Cracow 1591)¹³. In the same year, four men were tried in Poznań for breaking into a closed house during the night, dragging a girl out into the garden and committing rape¹⁴. Two of the men were, in accordance with the prevalent praxis, beheaded; the fate of the third man had not been registered in the court record although we are entitled to believe that he too was to be beheaded since he had not been accused of any other crime, while the fourth rapist — Maciej, the *scultetus* of Rokitka — who slightly earlier had stolen money, a silver belt and assorted clothes in Poznań, was hung as a thief. A multiple thief of valuable objects, horses and considerable sums of money who nine years earlier had abandoned his wife and six years later remarried, was beheaded as a bigamist (Poznań, 1576)¹⁵. On the other hand, Błażej Czuryło, tried in Cracow in 1602 after having admitted to multiple important thefts and highway robbery but also to sodomy which was, as a rule, punished by burning at the stake together with the animal involved, was hung as a thief¹⁶. Probably correctly, it was decided that thefts and robbery were a greater threat to society than sodomy which was a violation of divine law.

Particular attention is due to penalties applied in cases of theft. In accordance with the law binding at the time, the range of punishment for this type of offense should have been decided by the value of the stolen objects, the circumstances of the act — whether the accused had committed his first misdemeanour or had been previously punished for it, whether he was caught redhanded or whether his misdeed had been disclosed later; finally, the place and object of the theft, its time (day or night) or the fact whether the crime had involved breaking in or not were also taken into account¹⁷. In court praxis, however, basic significance was ascribed to two

¹² *AMKr.*, 864, f. 42–48.

¹³ *Ibidem*, 865, f. 48–50.

¹⁴ *AMP*, I 640, f. 21–28 and I 660, f. 38–38v.

¹⁵ *AMP*, I 639, f. 170–172.

¹⁶ *AMKaz.*, K 266, f. 261–264.

¹⁷ B. Groicki, *Porządek sądów*, pp. 201–202; *idem*, *Artykuły prawa majdeburskiego*,

factors: the worth of the stolen goods and the number of committed offenses of this type i.e. whether they could be regarded as a single or multiple crime. The time and object of the theft played an essential role only in infrequent instances — when the crime had been committed in a church and especially when there arose the possibility of sacrilege. It seems, therefore, that the other above mentioned circumstances did not exert a great impact on the final decisions of the judges.

In accordance with the legal regulations applied at the time in Polish towns, the death penalty was taken into consideration in cases of so-called great thefts which exceeded 3 zlotys¹⁸. In practice, however, this principle was not observed, and the limit of value above which the death sentence became a rule, was usually much higher. It is impossible to determine its level because it depended upon a great number of factors, the majority of which elude the scholar who has at his disposal only the text of the confession registered in the court records. Essential importance was ascribed not only to the value of the stolen objects, the sum of money involved or the circumstances of the single or multiple theft but also to the position and attitude (demands) of the accuser, the origin and age of the accused and, in particular, the impression which he made upon the judges. The establishment of the precise value of part of the stolen objects mentioned in the confession, and especially of clothes, jewelry and ornaments, is also impossible. As a rule, their detailed list, sometimes accompanied by a description, as well as frequent thefts of objects whose value is calculable (e.g. cloth, food, fowl, farm animals), not to mention sums of money, make it feasible to present an estimate classification of the given larceny as “small” or “large”¹⁹. A division into those two groups as well as into individual (1–2), multiple (3–8) or even more frequent thefts allows us to become acquainted with the shaping, within these groups, of proportions of the death sentence in relation to other penalties.

Generally speaking, 47 per cent of the 956 men was sentenced to death for having committed a theft (453 persons). As a rule, this denoted hanging; only 6 per cent of the offenders was beheaded, almost always as a result of the intervention of an outside person. At least one large theft had been

pp. 44–45; W. Maisel, *Poznańskie prawo karne*, pp. 160–179, 262–284; also M. Kamler, *Kary za kradzież*, p. 9; the problem of increased penalties for recidivists is discussed by M. Kamler in his: *Recydywa w przestępczości kryminalnej w Polsce drugiej połowy XVI i pierwszej połowie XVII wieku (Recidivism in Crime in Poland during the Second Half of the Sixteenth Century and the First Half of the Seventeenth Century)*, “Czasopismo Prawno–Historyczne” 1992 [1993] fol., 1–2, pp. 123–131.

¹⁸ B. Groicki, *Porządek sądów*, p. 201.

¹⁹ Great larceny included, above all, precious clothes (furs, ornamental apparel, coats etc.), jewelry, valuable decorated weapons, horses and cattle and, of course, large sums of money.

Penalties for criminal acts — men

Type of crime	Death		Cutting off of a hand		Cutting off of an ear, public whipping relegation		Public whipping		Whipping in the town hall cellar, relegation		Whipping in the town hall cellar		Relegation		Work while fettered		Others [a]		Release		Total			
	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%		1		
1. Theft	453	47.4	—	—	56	5.9	202	21.1	18	1.9	107	11.2	54	5.6	23	2.4	15	1.6	1	0.1	27	2.8	956	
2. Robbery	91	91.0	—	—	2	2.0	3	3.0	—	—	—	—	—	—	1	1.0	—	—	—	—	3	3.0	100	
3. Sacrilege [b]	26	74.2	—	—	1	2.9	3	8.6	—	—	4	11.4	—	—	1	2.9	—	—	—	—	—	—	35	
4. Murder	129	99.2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	0.8	130	
5. Infliction of wounds	3	37.5	5	62.5	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	8	
6. Rape of a woman	19	82.6	—	—	—	—	1	4.3	—	—	—	—	—	—	—	—	3	13.1	—	—	—	—	23	
7. Arson	5	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5	
8. Counterfeit money	7	87.5	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	12.5	8
9. Fraud, gambling	1	10.0	—	—	2	20.0	3	30.0	—	—	1	10.0	—	—	1	10.0	—	—	—	—	2	20.0	10	
10. Illegal hideout	9	36.0	—	—	—	—	4	16.0	—	—	1	4.0	2	8.0	8	32.0	—	—	—	—	1	4.0	25	
11. Accomplice, assistance	4	8.7	—	—	1	2.2	12	26.1	2	4.3	7	15.2	4	8.7	12	26.1	1	2.2	—	—	3	6.5	46	
12. Bigamy	10	76.9	—	—	—	—	—	—	—	—	—	—	—	3	23.1	—	—	—	—	—	—	—	13	
13. Adultery	15	44.1	—	—	—	—	6	17.7	—	—	7	20.6	2	5.9	3	8.8	—	—	1	2.9	—	—	34	
14. Procuring	—	—	—	—	—	—	—	—	—	—	—	—	—	1	100.0	—	—	—	—	—	—	—	1	
15. Sodomy	6	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6	
16. Others [c]	4	10.0	—	—	2	5.0	10	25.0	2	5.0	7	17.5	5	12.5	8	20.0	—	—	—	—	2	5.0	40	
TOTAL	782	54.3	5	0.3	64	4.5	244	17.0	22	1.5	134	9.3	67	4.7	61	4.2	19	1.3	2	0.1	40	2.8	1,440	

[a] The pillory, prison and fine

[b] Together with other thefts in churches

[c] Return to town after relegation, the purchase of stolen goods, immoral deeds, attempted rape, the release of prisoners from arrest, torture by a private person, threats of setting fire to the town, as well as unjustified suspicion of a criminal act.

Penalties for criminal acts — women

Type of crime	Death		Cutting off of an ear, public whipping, relegation		Public whipping, relegation		Public whipping		Whipping near the town hall, relegation		Whipping near the town hall		Relegation		Pilory		Others [a]		Release		Total
	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%	1	%	
1. Theft	30	16.8	3	1.7	57	31.8	4	2.2	43	24.0	20	11.2	10	5.6	1	0.6	4	2.2	7	3.9	179
2. Sacrilege [b]	1	12.5	—	—	4	50.0	—	—	2	25.0	1	12.5	—	—	—	—	—	—	—	—	8
3. Murder	7	87.5	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	12.5	8
4. Infanticide	20	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	20
5. Arson	3	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3
6. Counterfeit money	1	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1
7. Illegal hideouts	4	21.0	2	10.5	7	36.8	1	5.3	1	5.3	—	—	3	15.8	—	—	—	—	1	5.3	19
8. Accomplice, assistance	3	9.4	—	—	3	9.4	1	3.1	8	25.0	5	17.7	8	25.0	2	6.2	—	—	2	6.2	32
9. Bigamy	2	100.0	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2
10. Adultery	15	38.5	—	—	8	20.5	—	—	7	17.9	1	2.6	8	20.5	—	—	—	—	—	—	39
11. Prostitution	—	—	—	—	4	14.8	1	3.7	3	11.1	4	14.8	8	29.6	1	3.7	—	—	6	22.3	27
12. Procuring	1	10.0	1	10.0	2	20.0	—	—	3	30.0	—	—	3	30.0	—	—	—	—	—	—	10
13. Others [c]	2	40.0	—	—	1	20.0	—	—	2	40.0	—	—	—	—	—	—	—	—	—	—	5
TOTAL	89	25.2	6	1.7	86	24.4	7	2.0	69	19.5	31	8.8	40	11.3	4	1.1	4	1.1	17	4.8	353

[a] "Saved head"

[b] Together with other thefts in churches

[c] A return after exile, unproven suspicion of criminal act.

committed by 478 men, of whom 82 per cent (392 persons) was sentenced to death. An identical group of men was found to be guilty of petty thefts; here, 13 per cent (61 men) was sentenced to death. All told, multiple (large and small) thefts had been committed by 374 men, of whom 79 percent received the death sentence; 32 per cent of the 118 men accused of multiple thefts (38 persons) was sentenced to death, and 26 percent (120 persons) of the 464 men was sentenced to death for single acts of theft. We can see distinctly a much larger percentage of the death penalty among the recidivists, and rather similar percentages among those who had committed larceny upon a single or few occasions. It also seems worthwhile to draw attention to the fact that as many as 42 per cent of the death sentences was issued for petty thefts in cases of recidivists, and only 6 per cent in instances of thieves who had committed a single or several offenses. These proportions remain in accordance with our anticipations; almost as a rule, recidivists who had committed theft were deeply submerged in the criminal world and the judges were quite justified to regard them as professionals, who were highly dangerous to society and who showed little hope for improvement.

Types of death sentences

Manner of execution	Men		Women	
	number	%	number	%
1. Hanging	406	51.9	4	4.5
2. Beheading	214	27.4	32	36.0
3. Drowning	1	0.1	28	31.5
4. The stake	33	4.2	5	5.6
5. Quartering	35	4.5	—	—
6. The wheel	6	0.8	—	—
7. Burial alive and piercing the body with a stake	—	—	10	11.2
8. Undetermined punishment [a]	87	11.1	10	11.2
TOTAL	782	100.0	89	100.0

[a] The majority of the men were probably hung, and the women — beheaded or drowned.

Those thieves who were not condemned to death (503 sentences) were usually whipped at the pillory (40 percent) or in the cellars of the town hall (21 percent); in both cases, they were also banished from town. Only 17 per cent (87 persons) of those who were sentenced to death, and who had survived, avoided being exiled (23 per cent, together, with those who were

released); as a rule, they were the perpetrators of petty, occasional thefts, only sometimes of a multiple nature.

The verdicts, presented in the table and discussed above, were passed in cases of male thieves; they are based on the whole material concerning the three towns taken into consideration, and call for additional commentary. The calculations which were made separately for each of the cities provide the following results: in Cracow, the death penalty was received by as many as 75 per cent of the thieves (227 persons out of a total of 304), in Lublin — 70 per cent (50 out of a total of 71) and in Poznań only 30 per cent (176 out of a total of 581). The contrasting result, obtained for Poznań, could have been caused by two factors: the passing of more lenient sentences by the local court, and the smaller participation of larger and multiple thefts in the general structure of accusations in that particular town. I had already drawn attention to the harsher treatment of thieves in Cracow than in Poznań²⁰. Now we should consider the second factor which could be the outcome of the lesser intensity of professional crime in Poznań at the time or the result of different principles of keeping court records in both towns. In this case, these circumstances occur simultaneously. In the general structure of court cases dealing with thieves, accusations mentioning great thefts consisted 66 per cent of all court cases in Cracow, 76 per cent in Lublin and only 38 per cent in Poznań; multiple thefts comprised respectively 68 percent, 37 percent and 24 percent only. Since great and multiple thefts were usually punished by death, they exerted a decisive impact on the general participation of the death penalty among all punishments issued in cases of theft. The reason for a domination of such thefts in Cracow and Lublin is not merely a larger intensification of professional crime but to a considerable degree, the consequence of the fact that the extant records of the criminal court in Cracow registered probably only a small part of the petty and occasional offenses, as well as similar cases involving accomplices, prostitution, adultery etc.²¹. On the other hand, the much less numerous material from Lublin is dominated by confessions of several score accused, compiled into a series of great trials which took place in the years 1644–1645 against professional groups of thieves and robbers which usually ended with a death sentence. Both the material from Cracow and Lublin reveal that proportions between accusations concerning serious offenses, entailing the death penalty and crimes of a lighter caliber, are distinctly uneven. It would be impossible, however, to even estimate what part of the less important court cases was noted down in non-extant court registers. Certainly, however, one can

²⁰ M. K a m l e r, *Kary za kradzież*, p. 14, and tables on p. 11.

²¹ More extensively on this subject in: M. K a m l e r, *Świat przestępczy*, pp. 15–16.

accept that the average 47 per cent of death sentences in cases involving theft, obtained for all three towns, is much too high; apparently, the correct result is to be located between that figure and the 30 per cent calculated for Poznań.

The penalties applied in cases which concerned male offenders found guilty of other types of crimes remain, basically, in accordance with the directives of Groicki, and do not require such copious commentary. Robbery was punished almost always by death, and there was no exception in the application of this penalty for robbery accompanied by manslaughter. Verdicts issued for those found guilty of robbery without murder were dominated by hanging and beheading (altogether over 65 per cent), while in the second case (robbery together with murder) the most frequent form of death was quartering and breaking with a wheel. Sacrilege (the desecration of the Holy Host, the theft of the monstrance or the cross from the altar as well as liturgical vessels) led to death at the stake. Other thefts of church objects, usually tablecloths or various liturgical vessels were punished by death in more or less half of the instances (hanging but also 2 cases of the stake) or the lash and relegation²². Regardless of the circumstances, murder was always punished by death²³, of course, unless conciliation was reached between the victim's family and the offender; accidental death signified hanging while murder with premeditation (for example, that of a lover's husband) or for the sake of robbery was usually punished by quartering or breaking with a wheel although just as frequently, as an act of mercy, by beheading. The affliction of wounds was punished by death in those cases when the victim was a municipal official (guard); otherwise, the offender's right hand was cut off. Arson was always punished by the stake, similarly to the production of counterfeit money, which also resulted in beheading. The same penalty, with special exceptions, was also applied in cases of rape. Verdicts concerning bigamy and adultery depended on various circumstances. If the bigamist was capable of persuading the judges that when marrying for the second time he was earnestly convinced about the death of the first wife, he could count on a lenient sentence; otherwise he was always beheaded. In almost over 75 per cent of instances of adultery with a married woman the penalty was death, usually by beheading, while the same offense committed with a free woman was treated less severely — the penalty was

²² For example, in 1627 a professional recidivist in Lublin who also plied his trade in churches where, however, he stole only tableclothes and antependia (in one case, he took beads which were probably a votive offering) was accused of sacrilege and burnt at the stake, *AML*, 140, f. 85–95v.

²³ In only one case, a death sentence (by drowning) was issued when a minor was drowned by his father (with premeditation), *AMKr.*, 864, f. 361.

identical for both parties tried for that particular offense²⁴. Sodomy was almost always punished by death at the stake.

Sentences passed in cases involving women accused of theft were clearly more lenient. An examination of the pertinent data depicting the situation in the three towns under investigation, and illustrating the percentage of the death sentence, must draw attention to the fact that 81 per cent of all cases come from Poznań where the penalties were relatively not as harsh. The death sentence was applied in 17 per cent of all cases (usually the penalty was drowning); 38 per cent of the female offenders were punished for great thefts, 42 per cent — for multiple offenses, and only 4 per cent — for petty misdemeanours. The remaining penalties — similarly to the men — were dominated by the lash and relegation from town. Other death sentences and their categories were close to those meted out for male offenders. In Poznań, infanticide was without exception punished by burial of the living offender; subsequently, the body was pierced with a stick; in Cracow, the penalty was beheading or drowning, and in Lublin — beheading²⁵. Adultery involving a married woman and a married man was always punished by beheading; that of a married woman or a free one committed with a bachelor or widower was treated with more clemency (78.5 per cent).

A thorough comparison of numerous sentences issued in similar cases enables us to notice a large number of totally unjustified departures from the obligatory (or at least recommended) legal norms. We encounter many court cases which resorted to drastically harsh or unproportionate penalties. For example, a female servant in Poznań was sentenced to death for having stolen a small amount of girl's clothes and a silver belt, probably not of great value; the same fate befell a man found guilty of stealing two small sacks of saffron and a man accused of stealing used clothes and bread²⁶. A thief was hung for having stolen a horse (1567) but in 1570 a similar crime ended with the lash and banishment from town²⁷. In the years 1610 and 1611 two offenders were only whipped near the town hall for having stolen an ox while the same punishment, albeit intensified with relegation, was meted out for the theft of an eiderdown quilt; another man received it for the theft of a loaf

²⁴ *AMKr.*, 864, f. 144–145; *AML*, 140, f. 384v–387v; *AMP*, 1 639, f. 67–67v, 74v–75; 1 640, f. 105–105v, 105v–107v, 172, 177v, 182–183; 1 665, f. 45–46, 191v–194v and 203v; sexual intercourse between a stepfather and stepdaughter, and, according to the girl's confession, initiated by force, tried in Poznań in 1576 resulted in the immediate beheading of the male offender; the same fate befell the female after giving birth to a child, *AMP*, 1 639, f. 142–143 and 146v.

²⁵ On this subject — M. K a m l e r, *Infanticide in the Towns of Kingdom of Poland in the Second Half of the 16th and the First Half of the 17th Century*, "Acta Poloniae Historica" 1988, vol. 58, pp. 33–49.

²⁶ *AMP*, 1 639, f. 272–272v, 276v–277; 1 640, f. 109v–110v (the years 1585, 1586 and 1595).

²⁷ *AMP*, 1 639, f. 43v. and 66.

of bread²⁸. We also come across surprisingly meek sentences, issued without any outside intervention and in cases of offenders whom it would be difficult to suspect of enjoying the particular favours of the court (for example, due to noble origin or the rank held in town by their fathers). For example, in Cracow which was the scene of the harshest punishments, two thieves were (independently) sentenced for multiple, large thefts to the lash (in one case, the punishment was carried out near the town hall) and relegation (1611)²⁹. Numerous verdicts from Poznań in the 1552–1629 period frequently mentioned multiple and great larceny (for instance, worth tens of zlotys — in one case even 80, horses and oxen) but were punished only by the lash, at the pillory or next to the town hall, and exile³⁰.

Very frequently, court records include information about the alteration of a penalty to a less severe form thanks to the intervention of persons who were not members of the court. Such interventions, obviously, concerned not only the above mentioned change of hanging to beheading but also other sentences as well as a total release of the accused. As a rule, their authors were anonymous “honourable” or “august” lords; only exceptionally, mercy was shown by the accusers³¹. We know of intercessions in cases of professional offenders, guilty of multiple great thefts or even robbery who, in accordance with the norms of the period, should have been sent to the gallows³². Only exceptionally do we learn the names of the benefactors — in 1597 blacksmith Sebastian Kawka, a resident of Poznań, was assisted by the castellan of Kalisz, Piotr Potulicki³³. In several instances in Poznań the intervention was performed by the general starosta of Great Poland³⁴. Effective intervention was also carried out by the owners of villages from which the accused peasants came³⁵. Particularly astonishing is the finale of

²⁸ *Ibidem*, I 665, f. 47v–48v, 116v, 174v, and 180v.

²⁹ *AMKr.*, 864, f. 349–354.

³⁰ *AMP*, I 638, f. 170; I 639, f. 68–69v, 116v–118; I 665, f. 347v–348; I 641, f. 74v–76v, 32v; I 400, f. 1069–1070.

³¹ In Cracow a certain Knoch, whose servant was robbed by a highwayman, “saved the head” of the offender who, as a result, was sentenced only to relegation from the town, *AMKr.*, 864, f. 279 and 865, f. 133; *AMP*, I 641, f. 1–1v.

³² In this manner, a number of offenders were spared in Cracow: in 1559 — the professional recidivist Sebastian of Czarna Wieś (*AMKr.*, 864, f. 80–82), in 1592 the gambler and swindler Jan Włosek from Zamość, proclaimed totally innocent (*AMKr.*, K 266, f. 202–205) and in 1615 Stanisław Górski of Czukowice who was condemned only to performing work in the town while fettered (*AMKaz*, K 267, f. 56–62).

³³ *AMP*, I 640, f. 142v.

³⁴ In 1557 such a role was played by Janusz Kościelecki (*AMP*, I 639, f. 13v–14) who also in 1560 requested the release of Anna Sotnicka, a noblewoman guilty of organizing the murder of her heretofore lover (*ibidem*, f. 28v–29); in 1574 the same function was fulfilled by Wojciech Sędziwój Czarnkowski (*ibidem*, f. 122–122v).

³⁵ For example *AMP*, I 639, f. 4–4v; I 665, f. 208v.

a trial which took place in Cracow in August 1616 against Wojciech Roza who admitted to over a hundred various offenses, including those committed in the church of St. James in suburban Kazimierz (he was accused by the parishioners); condemned to death, the offender was for reasons unknown to us “released thanks to the intercession of His Honour Aniołowic and other secular and lay persons”³⁶. Infrequent interventions disclose traces of a humanitarian stance which moderated the cruelty of the law of the period — in 1589 three young Cracow residents raped a certain Zuzanna on her way home and faced the death penalty and beheading. The verdict announced: “The honourable lords recognized their great foolishness and young age, and showed mercy by ordering the offenders to be put in fetters and to work for over half a year for their crime”³⁷. In several other examples of an alteration of the verdict, the motivation also referred to the old or young age of the accused³⁸.

At times, the offenders were released without any intercession or at least no trace of the latter is extant in court records³⁹. Almost never do we find justification why an obvious felon was set free, the only exception being a sentence passed in Poznań in 1571 and concerning a certain Wojciech of Krajna who had slaughtered and eaten a stolen pig: *Libere propter eius egestate dimissus*⁴⁰.

An attempted ascertainment whether the century under question witnessed an evolution towards more lenient or severe penalties applied in cases of similar crimes did not bring a conclusive result. Both the presence of the death penalty in the general structure of punishment, and the manner in which particular types of crime were punished, did not demonstrate in successive decades any constant tendencies which would entitle us to formulate conclusions.

(Translated by Aleksandra Rodzińska-Chojnowska)

³⁶ *AMKaz.*, K 267, f. 71–78.

³⁷ *AMKr.*, 865, f. 36–37.

³⁸ *AMKr.*, 864, f. 299; 865, f. 167.

³⁹ Particularly difficult to understand is the release of Maćko of Jazłowiec who was tried in Cracow in 1596 for multiple thefts, *AMKr.*, 865, f. 124–125; *AMP*, I 665, f. 284v and I 639, f. 176v–178.

⁴⁰ *AMP*, I 639, f. 89.