

L'épée et la corde. Criminalité et justice à Fribourg

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Patrick J. Gyger, *L'épée et la corde. Criminalité et justice à Fribourg (1475-1505)* (Cahiers Lausannois d'histoire médiévale 22, édités par Agostino Paravicini Bagliani), Lausanne 1998, 424 S., 7 schwarz-weiße Abb., ISBN 2-940110-12-3

The focal point of the present book are the first three surviving volumes of a series of registers (38 in total) known as "Thurnrodeln." These Thurnrodeln, the first of which are referred to as "Livres Noirs", are Chancery registers, currently kept in the State Archives of Fribourg. The "Livres Noirs" contain a large number of documents exclusively concerning criminal justice in the Seignior of Fribourg. The first three registers cover the years 1475-1505. They coincide with the time when Fribourg entered the Swiss Confederation. However, the tradition of the "Livres Noirs" is much older: an early reference to them dates from 1393.

Apart from various short introductory notes, the registers contain the following types of documents: (1) reports establishing the citation and subsequent failure to enter appearance of suspects of homicides (only reports related to the citation of defaulters have been included) (2) "assurances" (*Urfehde, assurance*) (for which see below) and (3) reports of interrogations of suspects (i.e. the *processus*) including a note concerning the execution of the judgment. All documents concern crimes punished by corporal punishment (e.g. theft, sexual offences, homicide, heresy). In most cases these documents are in the vernacular (German and French) and only occasionally in Latin. The author concentrates on the French and Latin texts. Documents in German are only occasionally taken into consideration.

The "Livres Noirs" are a rich source for both historians and legal historians. The reports of interrogations of suspects are of particular interest as containing information on the lower classes of late medieval and early-modern society. Since the language is often the vernacular, the reports are likely to closely follow the actual account given by the suspect during his interrogation.

The criminal procedure reflected by the Thurnrodeln is, as might be expected in this period, inquisitorial in nature. Unfortunately, as regards the start of the procedure, the registers do not contain information on the reasons for arresting particular individuals. Nevertheless, it is likely that often information on crime was brought to the notice of the authorities by individual members of the Fribourg community. After all, these individual members were obliged to inform the judicial authorities of any crime within their knowledge. If they did not do so, they risked punishment themselves.

After the crime had become known to the authorities, absent suspects were cited to make an appearance. From the reports of citation it appears that the crime(s) of which the defaulter was accused were read aloud during the public citation. In cases where the defaulter was suspected of homicide, his crime was read from a document known as "Todslag Brief" or *littera homicidii*. The citation was repeated on two separate occasions. If on these occasions the suspect still did not enter an appearance, the crime was taken as confessed and the defaulter officially banished from Fribourg.

In cases where the suspect was arrested, he or she (below I will only use the masculine) was subsequently questioned. The "Livres Noirs" do not contain much information on the use of torture at this juncture. However, other sources (accounts) do contain such information. It appears that young people and the elderly were excluded from torture. No exception was, however, made for women. For a modern spectator it is indeed surprising that the administration of torture was not covered by legislation: it was applied at

the sole discretion of the judges. According to Dr. Gyger, restraint was exercised by the judges in this matter: torture was only applied in cases of grave suspicion of culpability.

If a suspect was released after the interrogation (for example because he had not admitted the crime), he had to swear an assurance (the so-called “*Urfecht*”), by which he promised not to take revenge for the criminal proceedings which had been brought against him. If the accused was not released, however, he was taken to the Fribourg city hall and brought before his judges (where he was not assisted by counsel). There, the registrar read aloud the report of the interrogation (the so-called *processus*). The accused could not revoke his confession. According to Dr. Gyger, it is important to note that the judges did not have to decide about the culpability of the accused for his culpability had already been established at the interrogation.

Deliberation as to sentence most likely took place behind closed doors. The judges had great freedom in deciding the punishment. It seems that they could even ignore the applicable legislation if necessary, for example where they took into consideration circumstances which were not listed in the relevant statutes. This makes it extremely interesting to study the outcome reached in individual cases, which according to Dr. Gyger may have been influenced by the “compassion” accorded to the individual offender by his judges, his sex and whether or not he was a repeated offender. It was also possible that the judges pronounced their judgment and immediately decided to reduce the punishment. This is one of the reasons why it may be concluded that the Fribourg criminal justice system showed a more human face than may be deduced from statutes and related sources.

Judgment was reached by a majority of votes. It contained the particular corporal punishment which was to be inflicted on the criminal. These corporal punishments had a degrading character, and in case of death sentences one also finds a determination as regards the disposal of the body. As was usual in criminal proceedings throughout Europe in this period, appeal was not possible. Pardon could however be obtained. In fact, more than half of the Fribourg judgments were not executed.

Usually the corporal punishment was administered the very day the judgment was pronounced. This expediency resulted in the period of time between the conclusion of the interrogation of the offender and the administration of the punishment only being some three days.

The study of the “*Livres Noirs*” ultimately gives rise to many questions. The first question is, of course, why only particular documents were included in the “*Livres Noirs*”, e.g. only reports of citation if the suspect had not entered an appearance. Dr. Gyger argues that this may have been the case because defaulters were considered to be guilty and having one’s name entered in the “*Livres Noirs*” was punishment in itself. If the suspect did make an appearance, the citation report could be omitted because other documents concerning his case would be included in the register if found guilty. Selectivity in entering documents concerning criminal cases resulted in the registers only containing names of persons who were considered to be guilty of a crime or who had sworn an assurance. The fact that appearance of one’s name in the “*Livre Noir*” was considered to be punishment is shown by a case in which a person whose name had been entered successfully pleaded to have his name struck from the register.

Another question concerns the above mentioned fact that half of the Fribourg judgments were not executed. The reason for this may be sought in different directions. Apart from cases in which the criminal was pardoned, a lack of efficiency in the Fribourg system of criminal justice springs to mind.

Additionally, the registers give rise to questions concerning the competence of the Fribourg court. One may be surprised to find that the “*Livres Noirs*” contain many cases concerning crimes which had been committed outside the Seignior.

Dr. Gyger's study is important for various reasons. In the first place it makes accessible the first three of a series of registers containing important information on crime and criminal law in the late medieval period. This is not only due to an extensive discussion of the contents of the Livres Noirs, but also because at the end of his study Dr. Gyger includes a list of the documents in the first three Thurnrodels. The author transcribes various of these documents *in extenso* and renders the remaining ones in summary. Additionally Dr. Gyger offers an insight into the lives of ordinary men and women in this period of history and shows that the study of judicial records is a worthwhile undertaking in this respect. On the basis of his sources, the author makes it for example very plausible that in late medieval Fribourg "[l]a criminalité demeure profondément ancrée dans la banalité de la vie quotidienne - particulièrement dans le monde rural - liée aux problèmes d'argent, aux appétits sexuels, aux colères passagères."

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