BOOK REVIEWS

Júlia Derzsi
Delict şi pedeapsă: Justiţie penală în oraşele săseşti din Transilvania în secolul al XVI-lea
(Crime and punishment: The functioning of criminal jurisdiction in the Transylvanian Saxon towns in the 16th century)
Kolozsvár: Egyetemi Műhely Kiadó; Bolyai Társaság, 2022

Júlia Derzsi is a researcher at the Romanian Academy, the Institute of Social Sciences and Humanities of Sibiu. This book is a revised version of her Ph.D. thesis, defended in 2012.

The author conducted a comparative analysis of criminal courts in three Transylvanian cities: Sibiu (Hermannstadt, Nagyszeben), Braşov (Kronstadt, Brassó), and Bistriţa (Nösen, Beszterce), which were representative in two ways: first, because, as free municipalities, their legal competence was well-limited; and secondly, because, through their political, administrative, and legal union, these autonomies were often subject to regulations. The analysis itself is divided into two parts: in the first part, she sketched the court organizations and outlined their evolution in both institutional and local terms. She also presented the characteristic features of judicial proceedings. In the second part, she outlined a picture of judicial practice in terms of concrete cases brought before the courts.

The results of the research on the organization and jurisdiction of municipal courts show that since the second half of the sixteenth century, the courts were organized and structured based on territorial competence. Municipal courts were to make decisions under a single legal regime no later than the last third of the century. However, in the organization and structure of the courts, cities retained their own customs. At the beginning of the sixteenth century, the court forums' organization and structure already had a strong, differentiated network. Municipal jurisdiction and authority spread over the districts, whose powers were previously held by the cities. However, the organization of the courts remained relatively complex: the court and city magistrate were not the only competent bodies to settle disputes among the municipality's inhabitants; minor disputes were settled by the lower courts. Additionally, the Church also had an alternative role in prosecuting crime to a certain extent.

Regarding the organization of ordinary courts in the Saxon towns of Transylvania, the decisive differences in structure between districts or seat types remained. It seems that during the sixteenth century, under pressure from the Saxon University (*Universitas Saxonum*), there was an attempt to achieve uniformity in structure and judicial powers across all municipalities. This led to an assimilation of the college and district centers system, without institutionalizing the *coiudex* function. From the beginning of the sixteenth century, the city magistrate fulfilled this role in all municipalities. It had the power to resolve criminal cases prosecuted in the great trial, in the first instance.

In the appeal structure, there was a difference between seat and district organization. Districts had a more or less pronounced role in the jurisdiction of appeals. During the appeal process, the Saxon University represented the superior court in the Saxon territory. Based on old freedoms of the Imperial Land, according to which a Saxon person could only be cited before their judge, towns and villages could not be evoked in the Princely/Royal Table, or, after the establishment of the Principality, in the Princely Table. However, they had the right to ultimately appeal to the country sovereign. This right served as a fundamental pillar for their privileged status. In the Table, where the nobility enjoyed the right of priority, only the Saxon village could be raised, not the individual, or only under charges of committing a criminal offense. Criminal and civil processes were not very clearly differentiated; offenses that are now seen as criminal offenses were settled through compensation of victims and punishment of the offenders, typically for private offenses like contempt of honor, defamation, injury, and violence. Public offenses were considered serious criminal acts. The criminal procedure also included the institution of a pursuit of the criminals (potera). By the beginning of the sixteenth century, Transylvanian Saxon cities already possessed the essential elements of criminal prosecution. Municipalities had rights and freedoms similar to those of counties: they could pursue, capture, and judge public criminals within their territory. They could ask other municipalities for the extradition of criminals, and residents were allowed to track stolen goods (riding and burden animals). On their land, municipalities benefited from protection against abuse by noble troops.

The analysis of judicial sources reveals that formal sources of law were not automatically given, just as behavior in public bodies regarding suffered damage or observed irregularities was not obvious. By examining the preserved sources of law, we see how courts resorted to establishing and implementing exemplary punishment, primarily in extraordinary cases, defined by the legal terminology of the time as the stellar court: in serious criminal cases (such as executions for theft, robbery, premeditated murder, and sexual offenses like incest, bigamy, and sodomy). Additionally, political offenses were included. The actions started with claims relevant to criminal law fall into four groups of offenses. If we exclude offenses of forgery, which were to be judged in superior courts, high crimes of betrayal and minor forgery, forgery with weights and measures, etc., were resolved by lower courts (guilds, vilicus, etc.). These actions corresponded to the structure of the criminal code *Das Eigen-Landrecht der siebenbürger Sachsen* (1583).

Offenses against property, crimes of violence, injury, and sexual offenses were the primary categories of cases brought before the magistrate. To align the law (the norm) with legal practice for a case that relied on both law and customs, it seems that in their judgments, magistrates closely followed the law. Their rulings were based only to a lesser extent on judicial appreciation. Judicial practice was not particularly severe; the court sought to resolve cases in litigation in accordance with judges' expectations, often offering means of compromise between the parties. In many cases, sentences were unnecessary because the parties reconciled, or the court dismissed the parties if their quarrel was found to be too trivial. Penalties were harsh mainly when the interests of people in punishment were evident, especially in defense of property (most death sentences were issued for theft), and offenses com-

mitted with unusual cruelty and perversity, such as robbery, murder, infanticide, incest, rape, and bigamy.

This volume is the result of extensive research, both in libraries and especially in archives, providing historians with an overview of the functioning of justice in 16th-century Transylvanian Saxon cities.

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Ferenc DÁniel Páll-Szabó

Monarhia Habsburgică (1848-1918). Vol. III, **Problema naţională**
(La Monarchie habsbourgeoise, 1848-1918. Vol. III, La question nationale)
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Après plus d'un siècle depuis l'effondrement de l'ensemble multiethnique et pluriconfessionnelle qui avait été la Maison d'Autriche, ce sujet continue à occuper une place importante dans la production culturelle issue des sciences humaines et sociales, depuis les débats historiographiques et la création littéraire à la spéculation philosophique et aux études de politique économique et d'histoire du droit. Placée sous ces auspices favorables, la réflexion inspirée par l'impact de cet insolite projet politique d'origine médiévale, qui avait conféré une certaine spécificité à la modernisation de l'Europe centrale-orientale et était devenu une composante essentielle de l'équilibre de forces en Europe, a été dominé par ce *corsi et ricorsi*, définitoire pour la philosophie de l'histoire professée par Giambattista Vico. Blâmée et tenue pour une prison des peuples par le discours identitaire des nations central-est européennes et considérée comme un bastion du conservatisme social et de l'immobilisme institutionnel par les adeptes des options libérales et révolutionnaires modernes, la Monarchie des Habsbourg a bénéficié de réévaluations enthousiastes, formulées dans le contexte des dilemmes issus des disputes nationales exacerbées pendant l'entre-deux-guerres et, surtout, du revirement des options politiques intégrationnistes, qui identifiaient l'expérience de la Mitteleuropa à une construction européenne avant la lettre. De telles interprétations influencées par les sensibilités du temps sont nuancées par les auteurs qui estiment que le dialogue entre le pouvoir et la société initié par la Maison archiducale allemande a été une prémisse de la diffusion dans cet espace des valeurs éthiques et culturelles modernes. Ils considèrent également que les vulnérabilités ayant mis en cause l'existence même de ce creuset ethnique et juridictionnel ont illustré les capacités d'adaptation des structures qui avaient survécu aux crises confessionnelles, aux menaces et aux révolutions.

Dans la série de controverses qui avaient stimulé des analyses approfondies sur cette insolite réalité historique, tout en assumant les risques de mettre l'investigation historique au service du militantisme identitaire, la relation entre l'État et les communautés ethniques unies sous l'autorité d'un souverain commun et divisées par l'apparition de leurs propres agendas politiques, a fourni les principales justifications pour l'effondrement de la monarchie, dans le contexte des échecs subis par les efforts d'articulation d'une identité commune, de la soi-disant nation autrichienne, forgée par l'appel au loyalisme dynastique et l'élaboration de solutions législatives capables de répondre aux intérêts des communautés nationales reconnues comme telles.