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A comparative perspective on the oath of a new burgher

Przysięga nowego mieszczanina na tle porównawczym

Streszczenie: Rola imigracji w życiu późnośredniowiecznego i nowożytnego miasta była ważna. Kluczową częścią tego procesu (i najlepiej uchwyconą w źródłach pochodzenia miejskiego) była integracja nowego mieszczaństwa z istniejącymi miejskimi strukturami społecznymi i gospodarczymi. Podobnie jak większość ówczesnych stosunków władzy i gospodarki, indywidualny stosunek mieszczanina do grupy opierał się na wzajemnych

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gwarancjach potwierdzonych przysięgą składaną przez nowo przyjętego członka. Artykuł skupia się na znaczeniu i użyteczności wczesnonowożytnych i nowoczesnych kodyfikacji przysięg miejskich w celu zbadania rozwoju struktur miejskich w późnym średniowieczu i wczesnej nowożytności. Koncentruje się również na porównaniu treści przysięgi nowego mieszczaństwa zarówno w ogólnym kontekście przysięg stosowanych w środowisku miejskim, jak i w kontekście specyficznego rozwoju społeczności miejskiej na rozpatrywanym obszarze (śląskie i północnomorawskie miasta na prawach magdeburskich) w porównaniu z sytuacją w zachodniej części Cesarstwa Rzymskiego.

Abstract: The role of immigration in the life of the late medieval and early modern town was important. A key part of this process (and best captured in the sources of urban origin) was the integration of a new burgher into existing urban social and economic structures. Like most of the power-economic relations of this time, the individual-burgher relationship to the group was based on mutual guarantees confirmed by an oath taken by a newly-accepted member. The essay will focus on the relevance and usability of early modern and modern codifications of urban oaths to explore the development of urban structures in the late Middle Ages and Early Modernity. It will also focus on comparing the content of the oath of the new burgher both in the general context of the oaths used in the urban environment and in the context of the specific development of the urban community in the area under consideration (Silesian and north Moravian towns based on Magdeburg rights) compared to the situation in the Western part of Holy Roman Empire.

Słowa kluczowe: przysięga, nowe mieszczaństwo, późne średniowiecze, wczesna nowożytność, Śląsk, Morawy Północne

Keywords: oath, new burgess, Late Middle Ages, Early Modernity, Silesia, Northern Moravia

There is clearly no need to highlight the significant role of immigration in the life of a late medieval and early modern age town, which was able to substitute the insufficient ability within the town's community to self-reproduce.¹ Integration of newcomers in the town's social and

¹ More on the issue, cf. e.g. A. Portes, *Immigration and the metropolis: Reflections on urban history*, "Int. Migration & Integration" 2000, vol. 1, no. 2, pp. 153–175; on the Middle Ages in the Czech context, cf. e.g. M. Nodl, *Sociální aspekty pozdně středověkého městského přistěhovalectví* [Social aspects of migration into towns in the late Middle Ages], in: *Sociální svět středověkého města* [The social world of the medieval town] (Colloquia mediaevalia Pragensia 5), ed. M. Nodl, Praha 2006, pp. 3–96; and also M. Čapský, *Příspěvek*

economic structures subsequently became an integral part of this process. A different course, extent and success in the integration of newcomers was observed due to a range of factors, the most significant of which included the individual's or family's social and economic background. This process of integrating a new burgher, either a newcomer or a longer settled burgher, among the fully-fledged members of the town community is best captured in the town's historical sources. Similar to most power and economic relations of the era², the circumstances of an individual burgher within a group or town community was based on mutual guarantees secured through a pledge made by the newly-admitted member. Such a pledge became a bond within the town community not only spiritually but also legally and a necessary condition of successful integration.³ If a candidate fulfilled the conditions imperative for joining this legally privileged class of residents,

k problematice pozdně středověké městské imigrace. Opavští měšťané v Krakově [A contribution on the issue of immigration into towns in late Middle Ages. Opava burghers in Krakow], in: *Sociální svět středověkého města [The social world of the medieval town]* (Colloquia mediaevalia Pragensia 5), ed. M. Nodl, Praha 2006, pp. 97–105. For the Polish context, cf. e.g. M. Wyżga, *Migrations to the city of Cracow, 1400–1800*, "Altreitalia" 2017, vol. 54, pp. 5–26.

² On the issue the oath as the foundation of the political and power structure in the pre-modern era, cf. P. Prodi, *Der Eid in der europäischen Verfassungsgeschichte*, in: *Glaube und Eid. Treueformeln, Glaubensbekenntnisse und Sozialdisziplinierung zwischen Mittelalter und Neuzeit*, ed. P. Prodi, München 1993, pp. VII–XXIX. Further e.g. S. Esders, "Faithful believers": *Oaths of allegiance in post-Roman societies as evidence for eastern and western "visions of community"*, in: *Visions of community in the post-Roman world: The West, Byzantium and the Islamic world, 300–1100*, eds. W. G. Pohl, R. Clemens-Payne, Farnham 2012, pp. 357–374.

³ According to the German historian Gerhard Dilcher, the current historiography of towns distinguishes two basic approaches to an oath made to a town. The first approach is characterised by the oath as an act referring to the original "affiliation" which gave rise to the community. This understanding is opposed by some scholars who claim that the emphasis on the significance of the burgher's swearing an oath in building the foundations of the town's community is a myth which sidelines more important phenomena playing part in building and structuring the town community, such as social stratification and mobility; e.g. G. Dilcher, *Bürgerrecht und Bürgereid als städtische Verfassungsstruktur*, in: *Neubürger im späten Mittelalter. Migration und Austausch in der Städtelandschaft des alten Reiches (1250–1550)*, "Zeitschrift für Historische Forschung", vol. 30, ed. R. Ch. Schwinges, Berlin 2002, pp. 83–97.

he was able to become a member of a “community bound by the pledge” through an oath to the council and mayor.

Such oaths represent certain manifestations of universally valid and accepted values which incorporate basic rights and the obligations of an individual towards a community and define his standing within the community, towards its representatives and the surrounding world. The oath as a form of communication was used frequently as a form of internal and external communication within the town community. It was used to delineate mutual relations between the town residents and their masters (the oaths of the town community to their ruler) and the town representatives (the oaths of the representatives of the town administration and jurisdiction). It was an important part of the legal system and disputes (legal oaths, oaths of released prisoners and oaths of new burghers) and defined the legal rights of the employees of a town’s administration (oaths of office workers and employees in the town’s administration). All types of oaths used in late medieval and early modern towns served to define rights, duties and obligations to authorities (religious and secular). However, this phenomenon was impacted by changes. Statutory statements have to a significant degree reflected shifts within and outside of the power, political and religious structures of towns. Depending on the type and application, an oath reflected modernisation processes, such as professionalisation of town administration, confessionalisation, secularisation of public conduct, social discipline imposed by autonomous administration bodies on the town’s inhabitants etc. Although the contents, form and meaning ascribed to oaths by the late medieval and early modern town community changed, these texts and particularly those used to swear new burghers can be understood as information about the permanent principles upon which the town community was built and the way it worked.

Briefly on the state of research

The Italian historian Paola Prodi’s research on the phenomenon, whose arguments provided the theoretical grounding for this study, is regarded

as ground-breaking in the field.⁴ Prodi analysed the institution of oath in the long-term. According to him, the changes in function and form of this phenomenon reflect the changes in social structures and enable examining modernisation processes within European society and particularly the development in relations between religious and secular powers. Subsequently, the oath of new burghers and its significance in the process of integration of new members in the town community was examined by German historiography. German legal historian Wilhelm Ebel attempted to change the generally accepted understandings of the medieval town as the predecessor of the modern state and the way it worked based on extensive research of the principal component of municipal law – the oath of a new burgher.⁵

His monograph analysing the standing and significance of an oath within the municipal legal system based on examples of towns in the German Empire has inspired, and continues to inspire, scholars specialising in the phenomenon of migration and integration in towns of the late medieval and early modern era. In more recent times, another German scholar, Gerhard Dilcher, focused on the town oath in examining self-understanding and self-identification of town gentry and their perspective on power relations within the town community.⁶ The topic of the oath of new burghers was investigated by other scholars specialising in municipal law and gentry as a specific social group. These included, e.g. Bruno Koch⁷ and more recently Martin Scheutz⁸ who focused particularly on obligations and

⁴ P. Prodi, op. cit.

⁵ W. Ebel, *Der Bürgereid als Geltungsgrund und Gestaltungsprinzip des deutschen mittelalterlichen Stadtrechts*, Wiemar 1958.

⁶ G. Dilcher, op. cit., pp. 83–97.

⁷ B. Koch, *Integration von Neubürger in die Städte des späten Mittelalters*, in: *Migration und Integration: Aufnahme und Eingliederung im historischen Wandel, Stuttgarter Beiträge zur historischen Migrationsforschung*, vol. 3, eds. M. Beer, M. Kintzinger, M. Krauss, Stuttgart 1997, pp. 75–86.

⁸ M. Scheutz, *Bürger und Bürgerrecht. Rechte, Pflichten und soziale Felder der mittelalterlichen und neuzeitlichen Bürger im Heiligen Römischen Reich*, in: *Städte im lateinischen Westen und im griechischen Osten zwischen Spätantike und Früher Neuzeit. Topographie – Recht – Religion*, eds. E. Gruber et al., Wien 2016, pp. 123–148.

responsibilities as conditions of joining a community and an integral part of the new burgher oath.⁹

Research work of Polish historians also focuses on the oath and its use in medieval and early modern law. The legal historian W. Nistorowicz focused on the oath and its role within the legal system in the 1930s.¹⁰ Stanisław Szczotka¹¹, Władysław Szafrąnski¹² and Bogdan Lesiński¹³ were among other Polish historians who investigated the oath from the perspective of the legal process. Zygmunt Szultka and Wiesław Wydra¹⁴ or more recently, Witold Jemielity¹⁵ for instance, published research on the indul-

⁹ E.g. V. Zábřanský generally focused on the swearing in of new burghers in the Czech context (particularly of the early modern age), V. Zábřanský, *Některé aspekty přijímání měšťanů do měst ve světle novoměstské knihy měšťanských práv 1612–1658* [Some aspects of admitting new burghers into towns in the light of the new town book of municipal rights], in: *Sborník prací z 12. celostátní studentské vědecké konference HISTORIE 2006* [Proceedings of the 12th national student conference, History 2006], ed. A. Zářický, Ostrava 2007, pp. 31–41; idem, *Noví měšťané pražští v první polovině 17. století – migranti z Norimberku* [New burghers of Prague in the first half of the 17th century – Nuremberg migrants], in: *Ztracená blízkost. Praha – Norimberk v proměnách staletí* [Lost proximity: Prague – Nuremberg, changes through centuries], *Documenta Pragensia* 28, ed. O. Fajtová, Praha 2010, pp. 381–389; idem, *Migrace měšťanů do měst pražských v kontextu třicetileté války. Sociální aspekty a radní praxe* [Migration of burghers to Prague in the context of the 30-Year War], “*Theatrum Historiae*” 2015, vol. 16, pp. 135–151. His theses are drawn from previous research on the topic – cf. e.g. R. Ch. Schwinges, *Neubürger und Bürgerbücher im Reich des späten Mittelalters: Eine Einführung über die Quellen*, in: *Neubürger im späten Mittelalter...*, “*Zeitschrift für Historische Forschung*”, vol. 30, ed. R. Ch. Schwinges, Berlin 2002, pp. 12–50.

¹⁰ W. Nestorowicz, *Oskarżony i jego przysięga w rozwoju historycznym procesie karnego*, Warszawa 1933.

¹¹ S. Szczotka, *Stosowanie przysięgi na słońce w polskim sądownictwie wiejskim XVIII wieku*, “*Czasopismo Prawno-Historyczne*” 1949, vol. 2, pp. 452–458.

¹² W. Szafrąnski, *Dowód z przysięgi stron w procesie kanonicznym*, “*Prawo Kanoniczne: kwartalnik prawno-historyczny*” 1962, vol. 5, no. 3–4, pp. 91–138.

¹³ B. Lesiński, *Przysięga na duszę jako dowód w średniowiecznym prawie polskim*, “*Czasopismo Prawno-Historyczne*” 1972, vol. 24, no. 2, pp. 19–37.

¹⁴ Z. Szultka, W. Wydra, *Pomorskie przysięgi holdownicze z początków XVII wieku*, “*Slavia Occidentalis*” 1989–1990, vol. 46–47, pp. 301–325.

¹⁵ W. Jemielity, *Przysięga władcom Królestwa Polskiego z udziałem duchowieństwa katolickiego*, “*Prawo Kanoniczne: kwartalnik prawno-historyczny*” 2002, vol. 45, no. 3–4, pp. 211–242.

gence oaths. Stefania Ochman-Staniszevska¹⁶ conducted research on the sworn oath and its forms in the Polish Sejm in the early modern age. The municipal oath in the early modern age later became the focus of research by Lech Kokociński.¹⁷ In particular, he investigated the inhabitants of the royal town of Lviv. He examined the texts of municipal oaths since the 15th century through existing historical documents of the town in order to show the changes in the formula reflecting the internal and external changes of the town. Of particular interest to him was one of the existing historical books of the town called the *Golden Book*, which contains records of sworn burghers and their oaths. He used the records in the *Golden Book* to show the changes in the texts of the oaths, their language, expressions and form related to the developments in the power, political and economic conditions. He examined the texts of sworn oaths and their forms until 1937, which was the last entry, to reflect the turbulent events which accompanied the conception of this source and its use in administration practices (division of Poland, reforms and privileges of Joseph II, the Spring of Nations, First World War etc.). He noted the changes in the content and form of the records, and highlighted that the burghers' oaths should be perceived as a historical symbol of a kind through which the emancipated inhabitants of "the royal town of Lviv" acknowledged a tradition which corresponded with their power ambitions. Kokociński's research is a good example of the growing interest shown by more recent Polish historiography in the oath as a source of understanding the new modern but also medieval society and

¹⁶ S. Ochmann-Staniszevska, *Sprawa przysięgi hetmańskiej na drugim sejmie 1654 roku*, "Śląski Kwartalnik Historyczny Sobótka" 1996, vol. 51, no. 1–3, pp. 85–92; eadem, *Przysięga marszałka poselskiego na sejmach lat 1648–1668*, "Czasopismo Prawno-Historyczne" 1995, vol. 47, no. 1–2, pp. 201–214.

¹⁷ L. Kokociński, *Przysięgi obywatelskie lwowskich mieszczan w czasach nowożytnych*, "Rocznik Lwowski" 2006, vol. 12, pp. 25–41. Peter Benka focused on the oath of newly sworn burghers in the early modern age in the Slovak context, P. Benka, *Mestské prisahy v Bardejove v ranom novoveku ako prameň kultúrnych a sociálnych dejín* [*Municipal oaths as a source of cultural and social history in early the early modern age Bardejov*], "Historický časopis" 2018, vol. 66, no. 1, pp. 27–54.

the processes within them. In comparison, Czech historiography has paid little attention so far to the phenomenon of the oath.¹⁸

Geographical context and sources of research

This research primarily focused on Silesian and North Moravian sources. The geographical demarcation of this research largely coincides with the jurisdiction of the town of Wrocław, i.e. towns which fall within the Wrocław jurisdiction as described by Theodor Goerlitz.¹⁹ The selection of municipal districts was not primarily distinguished through territorial self-governing units but based upon the use of the same model of municipal law – in this case the North German or Magdeburg law which was adopted from parent to subsidiary municipalities and subsequently adapted to local conditions where the original municipality served as the Council of Appeals for the subsidiary municipality. The selection of towns was also influenced by the availability of existing historical resources. Records of different types of oath formulae from the given era (late medieval and early modern) were found among the historical resources of the towns of Wrocław and Złotoryja which adopted the Wrocław municipal law in 1292, and Opava and Olomouc which followed Wrocław municipal law until the beginning of the 18th century.²⁰ A complete record of municipal oaths is kept by the

¹⁸ The best existing oaths are burgher oaths to the sovereign and oaths of representatives of municipal autonomous administration; for most current research on the issue of municipal oaths to the sovereign, refer to M. Nodl, *Člověčenství v českých středověkých městech* [*Homagium in Czech medieval towns*], in: *Jdi svou cestou a nech lidi mluvit: variety sociálních a kulturních dějin* [*Go your way and let people talk: varieties of social and cultural history*], eds. O. Chládek et al., Praha 2018, pp. 715–723 (the case of the royal town of Stříbro).

¹⁹ T. Goerlitz, *Verfassung, Verwaltung und Recht der Stadt Breslau, Teil I Mittelalter*, Würzburg 1962, pp. 108–111.

²⁰ M. Sobotková, *Ze vztahů mezi městy Vratislavi a Olomouci (I. Do roku 1650)* [*On the relations between the towns of Wrocław and Olomouc (until 1650)*], in: *Wrocław w Czechach – Czesi we Wrocławiu (Literatura – język – kultura)*, eds. Z. Tarajło-Lipowska, J. Malicki, Wrocław 2003, p. 293; R. Heck, *O wpływie wrocławskiego prawa miejskiego*

town of Świdnica which adopted the North German legal model directly from Magdeburg.²¹

There are sporadic records of municipal oaths found in the oldest municipal historical books (of mixed or memorial type), more frequently found in municipal court or council books, and later in administrative tools – collections of oath forms which became more widespread with rationalisation of municipal administration, and represent the most relevant source of information.²²

These auxiliary administrative books held records of the oaths, possibly further information on the person who took the oath, and the date (occasionally the place). Collections of oath forms were continuously supplemented and modified, and mostly contained examples of previously used oath formulae. Such continuous collections kept throughout the researched period and jurisdiction exist only in Olomouc (the burghers of Olomouc adopted the corpus of municipal laws from Wrocław in 1363).²³ The article will thus primarily focus on the phenomenon in two towns, i.e. on the oaths of new burghers in Olomouc and Świdnica. These two towns were also selected for the reason that, for comparative purposes, both municipalities hold existing records of oaths from older sources as well as collections of oaths forms from the 18th and 19th centuries. The texts of the oath formulae are analysed in this article. The article then focuses on the relevance and use of codification of municipal oaths in the early modern and modern age to investigate late medieval and early modern age municipal structures. It then focuses on the comparison of the contents of

na Morawach w XIV–XVI wieku, “Śląski Kwartalnik Historyczny Sobótka” 1969, vol. 4, p. 488.

²¹ Świdnica directly followed the Magdeburg model and developed its own circle of subsidiary towns which adopted its legal model; refer to *Świdnica. Zarys monografii miasta*, ed. W. Korta, Wrocław–Świdnica 1995, p. 58.

²² In the Czech context, they were established at the turn of the 15th and 16th centuries, although only the following century saw their greatest expansion; see R. Nový, *Městské knihy v Čechách a na Moravě 1310–1526* [*Town books in Bohemia and Moravia between 1310 and 1526*], “Acta Universitatis Carolinae Philosophica et Historica” 1963, vol. 4, p. 27.

²³ T. Goerlitz, op. cit.; *Świdnica...*, p. 58.

new burgher oaths in the broader context of their use in towns but also in a more specific context of the development of the municipal district within the given region compared to the German Empire.

The continuity of the oath

As mentioned above, Olomouc and Šwidnica are examples of towns which continuously kept collections of oath forms, or in other words, municipalities with a long-term use of oath formulae. Older examples of oaths used in earlier times were re-written into new administrative aids and subsequently supplemented, modified or replaced by newer, more suitable formulae. Thanks to this practice, the auxiliary books of the 16th and 17th centuries contain records of earlier oaths and their impact can be distinguished from the texts of subsequent oaths. This approach can be documented through an analysis of a 16th century collection of oaths from Olomouc.²⁴ Apart from the fact that the introduction to this auxiliary book declares that the collection incorporates older oaths, this practice is also confirmed by a comparison of an oath of a bailiff included in this collection with an earlier version incorporated in a memorial Olomouc town book by Václav of Jihlava from 1430–1492.²⁵

²⁴ Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [The Archive of Olomouc], sig. 248, inv. No. 533, Formulář přísah [The book of oaths] (Iuramenta), Příklad bičice [Oath of a whip] (Praeconum), fol. 16, in Czech and German. The original collection of oath forms, which includes an index, contains existing seventy oath forms of different ages. Approximately 70% are in German, 20% are in both German and Czech and only 8% are just in Czech. Additionally included oaths are largely in German, there are oaths to the regional sovereign (Ludvík Jagellonian, Rudolf II), councillors' oaths in German, and sworn and mayoral oaths are duplicated as they are included in the form. This type of tool was used until the first quarter of the 18th century (i.e. the last recorded oaths date from that period). Another collection of oaths for the town of Olomouc includes records until 1899–1922. Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [The archive of Olomouc], inv. No. 508, sig. 6392, Juramentenbuch [The book of oaths].

²⁵ Oaths of bailiffs are recorded in the Memorial Book, so-called Codex of Václav of Jihlava, edited as: *Památná kniha olomoucká (kodex Václava z Jihlavy) z let 1430–1492*,

The municipal oath is to a large degree a changeable phenomenon which reflects cultural, religious and power relations within the town community. Particularly the oaths of employees of the autonomous municipal administration (which included the Olomouc town bailiff) were the ones that changed the most. They were tailored to the changing demands of the particular profession, changes in the autonomous administration structures, changes in religiosity in towns, and also developments and changes in public communication. Despite this, both records of oaths have similar structures and wording, certain passages are repeated and their contents differ only slightly (specifically in the area of expanding responsibilities within the particular profession). Thanks to a number of records of certain types of oaths (within the same municipalities) dating from different periods, we are able to separate the repeating core of the oaths from what was added and changed.

This aspect is more compelling in the Świdnica collection of oaths which was assembled gradually and used over a long period of time, specifically between the 15th and 18th centuries.²⁶ Compared to the Olomouc collection, the Świdnica collection is not internally structured and formally integrated. It does not contain an index (which started appearing in similar office aids in other towns in around the 17th century).²⁷ The oaths were recorded here as they were used, changed and copied over from older books. An example of such a practice is a word for word copy of three oaths from 1442 (oaths of councillors, sworn oaths and an oath of a town scribe), orig-

1528 [*The Memorial Book of Olomouc (Codex of Václav of Jihlava) of 1430–1492, 1528*], eds. L. Spáčilová, V. Spáčil, Olomouc 2004, vol. II/dis. 1, p. 266, No. 205.

²⁶ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [*Documents of the city of Świdnica*], sig. 63, Księga ławnicza [Book of the council], XV–XVIII w. More than 120 oath formulae were recorded here (in German using Latin legal terms), which largely include oaths of servants and lower town clerks. However, a number of court oaths and oaths to the sovereign are also included. Other, newer versions of oath form collections from Świdnica date from 1669–1722; Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [*Documents of the city of Świdnica*], sig. 73; Iuramentum und Instrukcione et sig. 72; Eydcs Buch [The book of oaths] 1722.

²⁷ See e.g. already mentioned collection of forms from Olomouc or newer collections of oaths from Świdnica.

inally recorded in the Świdnica council book of 1430–1456.²⁸ Unsatisfactory oaths which were crossed out and replaced by newer versions in other parts of the aid represent an invaluable source of information concerning the changes in municipal structures.

Thanks to the ability to compare the original and modified versions of the oaths, we are able to identify changes in the contents and form of the oath. Some sworn oaths were recorded in the Świdnica collection in three or four versions. Some were updated only by changing the royal title in the address of the oath or by changing the final swearing oath to a transcendent authority due to, for example, changing religiosity in towns.²⁹

Based on a comparison of examples oaths of new burghers recorded in the Świdnica collections: the mentioned collection (*juramentum civium*, of around 1600)³⁰ and the newer collections from the 18th century (e.g. *das Burger Eid* from 1722)³¹, we may infer that the sworn oath of new burghers has changed to a lesser extent than the oaths of town servants. Comparing these records, similar passages were repeated, and there were changes only in the royal title at the beginning and the extent of the final sworn oath to transcendent authorities which was more extensive in the older versions, whereas the 18th century oaths were reduced to a final “So wahr mir

²⁸ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 181, pag. 55–56.

²⁹ This practice was common, for instance, in Opava town books where swearing on the Bible was added to the final section of the oath. Státní okresní archiv Opava [State District Archive Opava], collection: *Archiv města Opavy* [The archive of Opava], sig. IBb11 (1493), inv. No. 221, *Knih sentencí města Opavy* (Ratesspiegel) od Jindřicha Polana z Polansdorfu [The book of oaths of the town of Opava (Ratesspiegel) by Jindřich Polana of Polansdorf]. Martin Scheutz mentions oaths where during the battles around confession, some cities of the German Empire expanded oaths by passages which may be referred to as “claiming allegiance with the right religion”, depending on the confession of the nobility. See M. Scheutz, op. cit., p. 133.

³⁰ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 63, *Księga ławnicza* [Book of the council], XV–XVIII w., pag. 104.

³¹ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 72; *Eydes Buch* [The book of oaths] 1722, pag. 18.

Gott helfe und etc.”³² We may thus assume that the oaths of new burghers remained relatively unchanged in their contents and forms, compared to the oaths of leading representatives of autonomous municipal administration. This is very important, given that the sources from the late medieval period are in a poor state of preservation. The oldest records of oaths have not survived. For instance, on the front of the Kłodzko Town Book of 1412–1466, there are two versions of a brewer’s oath, oath of a publican and a general text of an oath of town clerks and other office workers.³³

A newer town book of Złotoryja from between 1481–1499, which contains the oaths of councillors, sworn oaths, the oaths of a notary, clerks and a court oath, does not include the oaths of new burghers either.³⁴ There are a few explanations for this. It is possible that the new burgher oaths were recorded in a different type of source, e.g. a book of newly sworn burghers, which has not survived. However, this is unlikely in the case of the two above-mentioned town books, due to their origins, period and the way they were used, given the size of the town administration. This explanation may be plausible for Świdnica or Olomouc, i.e. larger municipalities, for which we do not have any records of burgher oaths either, only previously mentioned collections of forms. For instance, in the oldest book of newly sworn Olomouc burghers of the second half of the 17th century which survived, there is no evidence of such a practice.³⁵

³² This corresponds with the process of secularisation and rationalisation of the internal procedures and administration of town districts as described by P. Prodi, based on the oaths; P. Prodi, op. cit. The transcription convention by J. Šebánek was used to transcribe German and Czech titles of oaths and citations of passages, *Pomocné vědy historické I. Paleografie [Auxiliary historical sciences, I. Paleography]*, Praha 1958.

³³ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Kłodzka [Documents of the city of Kłodzko]*, sig. 2, Stadtbuch 1412–1466 [Town book 1412–1466].

³⁴ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Księstwo Legnickie [The Duchy of Legnica]*, sig. 482, Stadtbuch von Goldberg, 1481–1499 [Town book of Złotoryja, 1481–1499], pag. 3–8.

³⁵ Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce [The archive of Olomouc]*, inv. No. 2191, sig. 32, a) –, b) 20 Matrika měšťanů [Burgher register] (Matricula Civium), 1668–1742. The reason why the example of a new burgher oath was missing in this book may have been caused by the fact that

Research by Wilhelm Ebel may provide another explanation as to why records of new burgher oaths have not survived. He distinguished burgher oaths from cyclical oaths of the entire districts, and noted that the oath of a burgher as an individual drew on the contents and form of district oaths.³⁶ It is thus possible that the reason why one of the oath types has not survived was that the same or similar oath was used in both socio-legal contexts. This may be supported by the same labelling of both oaths in the Świdnica form collection. The entire district oath as well as the oath of a new burgher are recorded as *juramentum civium* after 1600.³⁷ The contents of both oaths are also similar. In both cases, very similar general formulae were used (only new burgher responsibilities towards the council and community are described in more detail, see later) and both address the sovereign in the same way. The Olomouc source differs slightly. The Olomouc collection contains a significantly different oath to the sovereign (*homagium, Mannschaft, humanity*) from the individual burgher oath (*Bürger Recht*) not just in the title but also in whom the oath is addressed to – the new burgher oath is addressed to the council and district, not the sovereign as is the case of the entire district oath. The district oaths do not contain some passages related to, for example, the responsibilities of the individual burgher to defend and protect the council and entire town community.

If we evaluate the nature of both the oaths, how they were used and their meaning, we come to a conclusion that both the oaths drew on the same generally accepted values and principles declared by the community, and that is why they were incorporated in the oaths. The similarities in certain passages of both the oaths are therefore obvious. These sources unfortunately do not inform us on how these oaths worked in practice and whether the district oaths were used as indicated above. Later we focus on the basic principles upon which the town (and burgher) community

there was an existing collection which did contain this example. With each record, the register just mentions that new burghers were sworn in.

³⁶ W. Ebel, op. cit., p. 16.

³⁷ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 63, Księga ławnicza [Book of the council], XV–XVIII w., pag. 58 et 104.

was built. The Olomouc and Świdnica collections contain one basic new burgher oath together with three slightly different versions of district oaths to the sovereign (in terms of addressing the sovereign, sequence of individual sections etc.). Neither of these oaths survived in the town books of Złotoryja and Kłodzko. One of the newer collections of forms from Kłodzko (1520–1689) contains oaths entitled “Holdung [*sic!*] der Stadt Untertanen”³⁸ addressed to a group and their contents corresponds to that of district oaths. They are not aimed at the sovereign ruler but at the representatives of the town’s autonomous administration – the mayor, councillors and the whole town community. The general title, “Untertanen”, indicates that the oath served a similar purpose to that of a district oath and was aimed at a broad section of the town population.

The text of a new burgher oath

According to Wilhelm Ebel, the basic purpose of the oath in an urban context was to exercise and fulfil legal obligations and responsibilities.³⁹ The texts of sworn oaths listed the basic responsibilities of burghers towards their fellow townsmen and the council, alongside references to civil and religious authorities. Comparing the development of the legal systems in pre-industrial towns of the studied region (Silesia and North Moravia) and towns in the German Empire, it may be argued that the key difference is in the way these developed. While developing municipal law in German cities was a long-term process, complete collections of legal instructions and norms were adopted by Czech cities: they were brought over from one of the more significant municipalities – a parent municipality. This reality was subsequently reflected in the oath themselves. The oldest medieval oaths of burghers in the German Empire, as described by Martin Scheutz and

³⁸ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Kłodzka* [Documents of the city of Kłodzko], sig. 20, *Town book 1520–1689*, “Holdung der Stadt unterthane”.

³⁹ W. Ebel, op. cit., particularly p. 95 onward.

Wilhelm Ebel⁴⁰, were a lot more detailed on the responsibilities of burghers, for instance in protecting their town (defence and fire safety) or in relation to foreign authorities.⁴¹ The Silesian and Moravian oaths were more general in those aspects but they followed the same structure and contents.

Let us examine more closely the contents and structure of the new burgher oath as it appears in the sources discussed here. Similar to most municipal oaths, the burgher oath followed a standard structure. The text was divided into three main parts. The first included basic identifiers related to the sworn individual (name) and of whoever the oath was addressed to. New burghers swore an oath to God⁴² and the civil authorities – the council and town community or the sovereign. To whom the oath was addressed depended on the political and power structures. If we compare records of different ages, we may observe clear centralisation tendencies directed from the sovereign to towns.

The oldest surviving collection of oaths from Olomouc (end of 15th–16th centuries)⁴³ contains oaths sworn to the council and town community.⁴⁴ In a later new burgher oath from the Świdnica collection (recorded possibly after 1600), the burgher swore an oath to the council “current

⁴⁰ Scheutz focused in more detail on Austrian towns, and along with Ebel lists obligations which are not incorporated in the Olomouc and Świdnica oaths – such as, so-called “Brandbekämpfung” or sections related to foreign trade and “visitors” etc. See M. Scheutz, op. cit., pp. 132–135; W. Ebel, op. cit., pp. 96–126.

⁴¹ M. Scheutz, op. cit., p. 133.

⁴² The Olomouc burgher oaths mention also “the respectable Mother of God and all saints” among those to whom the oath is addressed. The references to the Virgin Mary were added in the text of the Olomouc oaths later; they were added both in the initial address and the final swearing; Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [*The archive of Olomouc*], sig. 248, inv. No. 533, Formulář přísah [Collection of oaths] (Iuramenta), pag. 19 et 20.

⁴³ The text of the oath may be even older, if we consider the practice of adding older oath formulae in new collections of oaths.

⁴⁴ Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [*The archive of Olomouc*], sig. 248, inv. No. 533, Formulář přísah [Collection of oaths] (Iuramenta), pag. 19 et 20, three versions of new burgher oaths are recorded here: twice in German (older and newer) and once in Czech. All these texts were subsequently modified (inscriptions, crossing out).

and future” and particularly to the sovereign and his heirs.⁴⁵ If we examine even newer texts of new burgher oath formulae, e.g. the already mentioned Świdnica collection of 1722⁴⁶ or oaths from the Wrocław collection from the mid-18th century⁴⁷, we note the gradual disappearance of the pledge of loyalty and obedience to the council and district, and a significant part of the initial address is devoted to the sovereign and identification of the burgher’s relation to the sovereign. The text of the Wrocław oath of the second half of the 18th century entitled “Neuer Bürger Eid”⁴⁸, no longer incorporates references to the council and district. The new burgher swears oath just to the Prussian king, as a faithful subject and member of the municipal district and state.

We may argue that the second part – the crux of the oath which contains the obligations to the authority – is a part where the different types of municipal oaths differ the most, despite the fact that most oaths contain the same sections largely related to the pledge of loyalty to the district and council, reporting obligation, solidarity with fellow inhabitants of the town and equal treatment of “the poor and rich of the town” – i.e. the principles and norms upon which the idea of the town community was built. These general obligations were most frequently a part of the new burgher oath. This was how a new burgher in Świdnica and Olomouc (and similarly in German towns) pledged loyalty, protection and obedience to (the council,

⁴⁵ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 63, Księga ławnicza [Book of the council], XV–XVIII w., pag. 104.

⁴⁶ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy* [Documents of the city of Świdnica], sig. 72; Eydes Buch [The book of oaths] 1722, pag. 18.

⁴⁷ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Wrocławia* [Documents of the city of Wrocław], sig. 897, Eidbuch enthaltend Formularien der von den verschieden artigen Beamten der Stadt bei Übernahme ihres Amtes zu schwörenden Amtseide 17 Jhd. Bei manchen Eiden sind auch die Inhaber der Stellen für das ganze 17 Jhd. Eingetragen (later just as Eidbuch); Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Wrocławia* [Documents of the city of Wrocław], sig. 898, Novus hic Iuramentorum Liber (later just as Iuramentorum Liber).

⁴⁸ Iuramentorum Liber; fol. 2.

or the mayor as mentioned by Scheutz for German cities, and the district or sovereign). He pledged to follow the customs, rules and regulations, to keep “allen Ordnungen” in the case of Olomouc or “Statuta und Ordnungen” in Svídnice. He pledged not to oppose the council decisions⁴⁹ or take contrary actions and disrupt order in the community. If a burgher were to find out that anybody tried to break any of these rules or had done so, he should report this to the council without delay. In other words, he would behave as a loyal and true burgher. The Czech version of this section of the Olomouc new burgher oath enabled the burgher to select among a few later modified versions (such as “fellow inhabitant or fellow burgher” or “fellow burgher” or “servant and fellow inhabitant” and “inhabitant” added later).⁵⁰ The text of the oath was possibly used even for those who were not sworn to become full burghers but those who had rights of “settled” inhabitants of the town. The German version included the general title “Inwohner” and the Świdnica oaths did not contain this section.

The third, and final part of the oath contained references to transcendent authorities which were supposed to help the individual taking oath to fulfil his obligation and guarantee his full role among the fully-fledged burghers of the town. This part of the oath was later modified according to the confessional changes within town communities (swearing on the cross tended to be replaced by swearing on the bible etc.).⁵¹ The Olomouc collection included texts where most oaths – including the new burgher oaths in all language versions – were supplemented by references to Virgin Mary which may have been related to the expanding cult of Virgin Mary. With the secularisation of town administration, the passages devoted to transcendent authorities became more limited and the newer versions of the oath often only included those references in the final part. This trend,

⁴⁹ This part of the new burgher oath played a significant role in battles between the elite-run councils and burghers of the early modern era, as pointed out by B. Koch; see B. Koch, op. cit., passim.

⁵⁰ Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [*The archive of Olomouc*], sig. 248, inv. No. 533, Formulář přísah [Collection of oaths] (Iuramenta), pag. 20.

⁵¹ Refer to the above related to Opava.

which was described for instance by P. Prodi⁵², is apparent particularly in the oaths of municipal administration employees. However, with a new emphasis on religious allegiance in the third part of the oath, a reference to religious allegiance is included, for instance, in the Wrocław collection of new burgher oaths of the mid-18th century. The new burgher oath contained three versions of the final part – for Protestants, Catholics and Jews.⁵³

There were different language versions of new burgher oaths which was, e.g., related to the mostly bilingual format of the Olomouc oath collection. The texts of the oaths were adapted to the existing municipal structures, where, for instance, Olomouc had both Czech and German speaking population. The Wrocław 18th century collection contained burgher oaths in several languages – German, French, Polish and Italian. Such linguistic diversity pointed particularly to the political and economic significance of a particular town, to transformation of power structures and undoubtedly to the advantages of integration to the holder of municipal law, for example, in the area of trade.

Apart from the standard burgher oaths and whole community oaths to the sovereign, the analysed Olomouc and Świdnica collections also contained oaths of narrowly specified groups of full burgher candidates. As Bruno Koch⁵⁴ mentioned, the municipal immigration policy of certain periods was shaped by strategies to attract certain types producers, tradesmen, who would benefit the development of the town.

The oath entitled “Bürg[er] Recht pro mechanicis”⁵⁵ included in the Olomouc collection of oaths indicates the possibility of this practice in this Moravian town. The text of the original burgher oaths was modified to suit the legal relation between the new burgher-tradesman and the town council and guild. The new burgher-tradesman oath, similar to the classic burgher oath, pledged loyalty and obedience to the town council and loyalty to the town community. Apart from the obligation to keep order and

⁵² P. Prodi, op. cit., passim.

⁵³ Iuramentorum Liber; fol. 2.

⁵⁴ B. Koch, op. cit.

⁵⁵ Státní okresní archiv Olomouc [State District Archive Olomouc], collection: *Archiv města Olomouce* [The archive of Olomouc], sig. 248, inv. No. 533, Formulář přísah [Collection of oaths] (Iuramenta), pag. 20.

follow regulations of the municipality, the tradesman also pledged loyalty and obedience to the guild – its elders and sworn members. These oaths were recorded in two languages – Czech and German – and these versions were identical. Similar to the new burgher oath, the Czech version of this oath included two legal levels that the tradesmen could achieve within the town structures. The tradesman thus swore to fulfil his obligations as “faithful fellow burgher (or inhabitant)”. The same section of the German version only included the expression “Inwohner”.

Given the status of women in the late medieval and early modern age town and the restrictions on their legal activities, it is not surprising that there are typically no oaths for women among the collections.⁵⁶ This situation started to change slightly during the 17th century when certain socio-disciplinary tendencies started to occur in towns, e.g. when legal aspects of female labour needed to be addressed by the oath, as women worked in socially exposed roles (such as midwives or jail staff).⁵⁷ This trend started to appear also in the oath collections. The early 17th century Świdnica collection includes an oath of a new female burgher. However, the oath entitled *Frauen Jurament zum Bürger Recht*⁵⁸ was not intended for the female herself to take in front of the council or one of its members. The text was modified in such a way so that her representative, a male, could take the oath.

Three records of formulae from between 1619–1621 document practical use – they state the name of the female and her representative. Similarly to the Świdnica burgher oath, the oath is addressed to the council and sovereign, in this case the Bohemian king and his heirs. Through

⁵⁶ On the legal status of women in late medieval town communities, see M. C. Howell, *Citizenship and gender: The problem of women's political status in Late Medieval cities of Northern Europe*, in: *Women and power in the Middle Ages*, eds. M. Erler, M. Kowaleski, Athens 1987, pp. 37–60.

⁵⁷ On the oaths of serving midwives, see K. Pękacka-Falkowska, *Dyscyplinować i pomagać – toruńskie akuszerki miejskie w XVIII w. (Kilka uwag na marginesie przysięg i porządków akuszerskich)*, “Medycyna Nowożytna. Studia nad kulturą medyczną” 2013, vol. 19, no. 2, pp. 65–105.

⁵⁸ Archiwum Państwowe we Wrocławiu [State Archive in Wrocław], collection: *Akta miasta Świdnicy [Documents of the city of Świdnica]*, sig. 63, Księga ławnicza [Book of the council], XV–XVIII w., pag. 95.

her representative, the sworn female burgher pledged to follow the rules and regulations given by the council and report a third person potentially breaking those. The oath is concluded by a plea for God's help in fulfilling the female burgher's obligations. The records of the three oaths show the date, and also inform us that the three women were married, so we can assume that all of them were widowed at the time of taking their oath. In one case there is also information about the marriage. The records also included information about the representative. In two cases, this was the same male. This could have been any professional specialising in such legal services. In none of the three cases, judging by the surname of the female (maiden and married), the representative was a direct relative of the female.

Conclusion

While some municipal oaths varied and were modified quite substantially in terms of their contents and form, and they reflected a range of modernisation processes within town structures and also within the entire society, the new burgher oath remained relatively unchanged. This is not to say that its meaning and function did not change. Drawing on Wilhelm Ebel, it may be argued that its original function of building a town community – “affiliation” – gradually lost its meaning in favour of its disciplinary and integrating role. Its contents and form reflected this. The records of sworn oaths which survived in continuous collections – collections of oaths from Świdnica and Olomouc – were analysed. From the beginning of its use, the contents of a sworn oath included two components: an obligation towards a transcendent authority and its legal content which distinguished the relation of an individual to a community and representatives of town (or territorial) administration. Despite the stated unchanged contents of the oath drawing on the principles upon which the idea of town community was based, the format of the oath was modified according to the individual taking it (oaths of burghers-tradesmen, oaths of women, oaths in different languages) and also the needs of the town administration (change in authority, religious allegiance, different versions depending on the level of legal rights of an individual within the town). It is argued that the basic

principles articulated in new burgher oaths in the German Empire, were also present in a more simplified form in the Silesian and North Moravian oaths in towns which adopted the Magdeburg law. Integration in a community of fully-fledged burghers formally meant swearing to uphold the same values which formed the town community – devotedness and loyalty to the ruler, council and community, obligation to protect and uphold set rules and reporting their potential breaking. Examining the phenomenon of burgher oath in the analysed sources, the changes in the contents of the oath reveal a shift from an act of legal integration into the highest strata of town society to an act of expressing loyalty and obedience (and belonging) to a central authority.