

Benedykt Zientara

SOCIO-ECONOMIC AND SPATIAL TRANSFORMATION OF POLISH TOWNS DURING THE PERIOD OF LOCATION

1. Seventy years have passed since Polish economic history freed itself from the influence of legal historians and their simplified views of historical reality. Since that time, towns of the Middle Ages have ceased to be defined as mere autonomous legal-political units. Franciszek Bujak noted that the term "town" also deserved to be applied to centers operating on a money economy, which existed in Poland prior to the appearance of German law.¹

The turning point in the study of towns proved to be an article by Kazimierz Tymieniecki, *Zagadnienie początków miast w Polsce* [*The Problem of the Beginnings of Towns in Poland*],² appearing in 1919. Tymieniecki examined Polish handicraft and trade centers prior to their "location", e.g. foundation under municipal law, in comparison with their counterparts in both other Slavic countries and Hungary. He pointed out the similarities of Polish towns to the better-known trade emporia of Western Pomerania and towns in Russia during their initial phase of development, and concluded that the town as an economic centre was capable of develop-

¹ F. Bujak, *Studia nad osadnictwem Małopolski* [*Studies on Settlement in Little Poland*], "Rozprawy Akademii Umiejętności, wydział historyczno-filozoficzny," vol. XLVII, 1905, pp. 225 ff.

² "Przegląd Historyczny," vol. XXI, 1919, pp. 319-345. Cited here from the reprint in: K. Tymieniecki, *Pisma wybrane* [*Selected Writings*], Warszawa 1956, pp. 205-228.

ing without either autonomy or separate law. Simultaneously, Tymieniecki recognized the "epochal" significance of "location", which "undoubtedly signified a turning point in the history" of a town by its acceptance of "German law as a more refined form of organization and political structure".³

In this manner, Tymieniecki broke away from the legal definition of a town as a distinct, legally autonomous centre by emphasizing economic factors as criteria by which one may differentiate a town—a settlement of handicraft-trade character—from a village. He ascertained that a town thus understood was not merely an entity artificially transplanted from abroad to Polish soil by German colonists, but arose from local needs in response to the degree of development of a money economy. Although he saw economic development as an economic process, Tymieniecki recognized that town law was of foreign origin. However, it was here in the sphere of legal development that he paved the way for his successors by pointing to the possibility of evolutionary development of town law from market institutions. "There must have already existed certain distinct customs and institutions connected with the market, especially prior to the disenfranchisement of the entire population of a settlement from the general land courts," states Tymieniecki, adding that "the matter remains open, demanding deeper study."⁴

Today, one is struck by the care and cautiousness with which these words were formulated, as this has been an essential research topic for Polish historiography for a half-century.

The direction that research on towns outlined by Tymieniecki has taken has been determined by fate. Max Weber, in a study published in 1921, distinctly presented the multiformity of the phenomenon called a "town," placing less importance on the role played by the type of town found in Western Europe. To Weber, the Western European town was merely one of many types, and definitely not the most widespread one.⁵ Archaeological research

³ *Ibidem*, pp. 214, 222, 223.

⁴ *Ibidem*, p. 227.

⁵ M. Weber, *Die Stadt*, "Archiv für Sozialwissenschaft und Sozialpolitik," vol. XLVII, 1921, pp. 621 ff. This work has been reprinted several times.

has confirmed the existence of settlements of an urban character among the Western Slavs prior to the appearance of towns under German law. After the accidental discoveries in Opole and Wolin made by German archaeologists, Józef Kostrzewski and his students undertook systematic research of early medieval centres of the Polish State, beginning with excavations in Gniezno and Poznań.

From the very start scholarly discussion became entangled in political controversies. Beginning with the polemical battle between Oswald Balzer on one hand and Teodor Mommsen and Rajmund Kaindl on the other, Polish-German arguments on the social value of the Slavs and their role in European culture increased in intensity, reaching a high point during the period of Hitlerism.⁶

Postwar archaeological research conducted on a large scale has confirmed that all of the larger administrative centres in Poland evolved from suburbs of a handicraft-trade character already in existence by at least the 10th century. These archaeological discoveries have been well noted outside Poland and have led many German scholars to change their positions concerning the origin of Polish towns. Nevertheless these discoveries have given rise to a tendency in Polish historiography to belittle the significance of location under German law. In opposition to the colonial theory of the origin of Polish towns, a theory of organic evolutionary development appeared in which German law⁷ and the moment of location of a town was accorded less and less importance.

I do not, however, mean to exaggerate the significance of these

⁶ These polemics are discussed in: Z. Kaczmarczyk, *Kolonizacja niemiecka i kolonizacja na prawie niemieckim w średniowiecznej Polsce* [German Colonization and Colonization under German Law in Poland in the Middle Ages], in: *Stosunki polsko-niemieckie w historiografii*, Part I, Poznań 1974, pp. 218 ff.

⁷ The origin of the term "German law" and its many meanings have continually caused scholars problems. Cf. R. Köttschke, *Die Anfänge des deutschen Rechtes in der Siedlungsgeschichte des Ostens (jus Teutonicum)*, "Berichte über die Verhandlungen der Sächsischen Akademie der Wissenschaften, phil.-hist. Klasse," vol. XCIII, 1941, No. 2, pp. 14 ff., 31, 47 (not very accurate); J. van Winter, *Vlaams en hollands recht by de kolonisatie van Duitsland in de 12^e en 13^e eeuw*, "Tijdschrift voor Rechtsgeschiedenis," vol. XXI, 1953, pp. 210 ff., 216 ff. Van Winter rightly emphasizes the dual meaning of the term "German law" earlier also "Flemish law" and "Dutch law": (1) a body of liberties and laws vested in free colonists; (2) a set of legal customs brought in by colonists which underwent further development in Poland.

tendencies within Polish medieval studies. The most extreme positions have provided material for sharp polemical debates, and the struggle between these extremes has served to divert attention from formulations inconsistent with historical realities, i.e. those maintaining the completely independent development of Polish towns, law and municipal institutions, which became wide-spread in regional historiography, in textbooks and popularized accounts. Although the significance of location was never completely disregarded, it was attributed less importance; the number and influence of German immigrants were also minimalized.

Thus ended a period of research during which many achievements were produced, but also during which many false hypotheses were propagated. At this moment it seemed expedient to retreat and reread Tymieniecki's aforementioned article of 1919, which provides many refreshing ideas, despite the fact that the author later abandoned his carefully weighed and cautious thesis.

A monograph by Karol Buczek, *Targi i miasta na prawie polskim* [*Markets and Towns under Polish Law*], appearing in 1964, opened a new period in the study of the origin of Polish towns. Buczek engages in a comprehensive, critical discussion of the problem of the origin of Polish towns, "without being drawn into a struggle against the colonial theory of the origins of our towns, and without being consequently pushed into taking either a nationalistic or chauvinistic position."⁸ Thanks to Buczek it has finally been established just what "towns under Polish law" were and were not. We know today that they did exist, and no one can now stand behind the remarks of Richard Koebner that in Poland "*la fondation des villes s'effectua sur une table rase.*"⁹ We also know that these towns did not possess self-government, separate municipal institutions or a system for town planning, although in regard to appearance and layout they of course differed from villages. Town populations, although not yet comprised of a class of

⁸ K. Buczek, *Targi i miasta na prawie polskim (okres wczesnośredniowieczny)* [*Markets and Towns under Polish Law (Early Middle Ages)*], in: *Prace Komisji Nauk Historycznych Oddziału PAN w Krakowie*, No. 11, Wrocław 1964, p. 21 (quotation).

⁹ R. Koebner, *Dans les terres de colonisation: marchés slaves et villes allemandes*, "Annales d'histoire économique et sociale," vol. IX, 1937, p. 547.

townsmen as such, differed from the peasantry not only by occupation, but in their consciousness as well.

Location brought to Poland new urban models of spatial planning which had already been tried and tested in areas between the Elbe and Odra. This new system provided for the legal distinction, and simultaneously equalization, of town populations by granting basic liberties to townsmen, and introduced a separate town law and growing autonomy. This was thus a revolutionary moment in the history of a town, as it acquired a new quality. But this revolution, I believe, was rarely a violent one. Instead it took the form of a series of gradually introduced changes, and it is difficult to say which of these changes was the deciding one.

Again I must revert to the thesis of Richard Koebner, one of the keenest students of location and the most eminent opponent of the case for evolutionary emergence of towns in Poland. Koebner was not at fault in his emphasis upon the significance of location—for even today we can find agreement here on many points—but he erroneously maintained that the Slavic economic system, within the framework of a strong governmental organization of a military character, was not conducive to economic progress. Koebner had thus backed into a blind alley from which there was no escape. The Slavic economic system—in Koebner's opinion—had to be replaced in one blow by an entirely different one, by the legal-economic system of German law.¹⁰

This thesis, although constituting in itself an interesting intellectual formulation, is faulty. First, research by German scholars, especially Walter Schlesinger and Carl Haase, has uncovered a type of fortress-town settlement, similar to Slavic towns, in Saxony and other parts of Germany, which, like their Slavic counterparts, did not draw directly from Roman traditions during the course of their development. Settlements of this type were transformed into towns with well-developed self-government partly through evolution and partly through borrowing from Rhineland and Italian models.¹¹ Secondly, we are able to assert

¹⁰ R. Koebner, *Das Problem der slavischen Burgsiedlung und die Oppelner Ausgrabungen*, "Zeitschrift des Vereins für Geschichte Schlesiens," vol. LXV, 1931, pp. 113 ff.

¹¹ W. Schlesinger, *Stadt und Burg im Lichte der Wortgeschichte*, "Studium Generale," vol. XVI, 1963, pp. 433 ff.; W. Schlesinger, *Städ-*

today that Poland did not accept German law *en masse*, but gradually incorporated its elements in accordance with economic needs and prevailing socio-political conditions. At the moment when German law began to be accepted in Polish lands, it did not yet itself constitute a homogeneous system which could have been received as a whole.

2. In turning to a detailed examination of the transformations connected with location, it is necessary to examine more closely the term "location"¹² itself, because the establishment of its many meanings is of utmost importance for us in this study.

The term "location" entered into historical terminology directly from the sources without thorough analysis of all its possible meanings, and has given rise to many misunderstandings. It has been colloquially interpreted as the "foundation" (*locatio = fundatio*) of a town or village, usually accepted as the beginning of either the existence of a settlement or at least of its urban character. This has found expression in the numerous observances in Poland of seven-hundredth anniversaries of the towns whose earlier existence has been definitely established. More modern administrative conventions have given rise to another tendency, mainly appearing in encyclopedic publications, of interpreting location as the "granting of town privileges." This tendency—despite its complete schematism and anachronism—represents certain progress, while still retaining old errors; location in these publications is generally identified with the privilege of location.

The first analysis of the term "location" was undertaken by Richard Koebner in 1929 in an article¹³ on which I will comment later.

tische Frühformen zwischen Rhein und Elbe, in : *Studien zu den Anfängen des europäischen Städtewesens, Vorträge und Forschungen*, Bd. IV, Lindau und Konstanz 1958, pp. 297 ff.; C. Haase, *Die Entstehung der westfälischen Städte*, 2nd ed., Münster 1965.

¹² Translator's note: Historians and translators writing in English use the nominal and adjectival forms of this term ("location," "locator," "located"—often appearing in quotes), but—to my knowledge—have been reluctant to use the verbal form, using instead the term "to found." For the sake of conformity I have adhered to this convention, contributing only the term "pre-located" to facilitate translation.

¹³ R. Koebner, *Locatio. Zur Begriffssprache und Geschichte der deutschen Kolonisation*, "Zeitschrift des Vereins für Geschichte Schlesiens," vol. LXIII, 1929, pp. 1 ff.

In addition to the first meaning of the word *locare*, "to place," scholars had to deal with it as a term of Roman law meaning "to lease" or "rent out." After some reflection, Koebner rejected the latter definition of this word.¹⁴ Then Tymieniecki, without presenting any evidence, asserted that "the term *locatio* has an exclusively legal meaning, as does the Roman term *locatio-conductio*, and it is in effect possible to connect it with this Roman concept." He further maintained that location was a contract by virtue of which the "locator" (Polish: *zasadźca*) took a village or town on lease from the lord of the land, and then himself leased out plots to peasants or townsmen, "who can be called sublease-holders."¹⁵

To my knowledge, Tymieniecki's hypothesis has not undergone critical analysis, and is therefore worth taking under brief consideration. The assumption that institutions of Roman law were mechanically transplanted to Central-European soil already raises serious doubts. In medieval Latin, the term *locare* was primarily used in its basic meaning "to place." Ernst von Schwind, in thoroughly researching Rhineland area contracts concerning landholding under hereditary law void of any form of personal dependency on the part of the possessor, noted that the term *locare* first appeared in this context (*locavimus seu concessimus iure hereditario*) in 1267, whereas the expressions *iure hereditario concedere*, *iure hereditario possidendum suscipere*, etc., had been used earlier.¹⁶ I believe that the late appearance of the term *locare* in the meaning "to lease land" in the Rhineland is connected with the spread of influence of Roman law in this area, and has nothing in common with the term used in Central Europe.¹⁷ One also notes that Tymieniecki's conception of location as the leasing of a

¹⁴ *Ibidem*, p. 4.

¹⁵ K. Tymieniecki, *Prawo czy gospodarstwo? [Law or Husbandry?]*, "Roczniki Dziejów Społecznych i Gospodarczych," vol. VIII, 1946, pp. 280 ff.

¹⁶ E. von Schwind, *Zur Entstehungsgeschichte der freien Erbleihen in den Rheingegenden und den Gebieten der nördlichen deutschen Kolonisation des Mittelalters*, Breslau 1891, pp. 25, 27.

¹⁷ However, the term *locare* appears in connection with the leasing of a mint, e.g. in a document issued in 1268 by Otto V of Brandenburg concerning Upper Lusatia (Milsko). "*Quando autem locanda erit moneta*"—*Urkunden und erzählende Quellen zur deutschen Ostsiedlung im Mittelalter*, I, No. 54, ed. by H. Helbig and L. Weinrich, Darmstadt 1968–1970. Subsequently cited as UEQ.

village or town by the locator is in contradiction with the texts of location documents, e.g. charters, in which the locator and not the lord of the village is clearly the motivating force behind the act of location. In Roman law, the term *locator* designated the lord, the party leasing out the land,¹⁸ whereas in agreements between lord and locator of a town or village during the period concerning us here, it designated the would-be lease-holder, the locator. I believe that on the basis of these observations, the concept of *locatio* as a synonym for “lease” in the sense of Roman law can be excluded from our considerations.

There remains then the meaning of *locare* (also *collocare*), “to place, put on a place,” correctly analyzed by Koebner¹⁹ in regard to its origin and the variants derived from it. Initially, this term had a single meaning ; in 12th-century documents dealing with the colonization of the region between the Weser and Odra, it always appears with a supplement : *locare incolas, cultores, habitatores, colonos*, etc.

The first change or modification of meaning occurred, as Koebner has explained, under the influence of German terminology during the period of intense colonization. During the second half of the 12th century, the German term *besetzen*, “to occupy, settle,” appeared in use as a colloquial, technical term. The chancelleries of German dukes and bishops, where Latin was used exclusively, encountered difficulty in their search for a Latin equivalent. On the Baltic, i.e. in Pomerania and other areas, the verb *possidere* and its nominal derivative *possessio* were used. In the Latin of this region, *possessio* did not necessarily denote possession as it was not derived from the second conjugation *possideo*, *-ēre* (denoting “to possess, have”), but from the third conjugation *possīdo*, *-ēre* (“to take into possession”). The closeness of the German verbs *besetzen* and *besitzen* (“to possess”) probably influenced the popularization in areas bordering on the Baltic of the equally similar

¹⁸ R. Leonard, E. Weiss, *Locatio-conductio*, in : *Pauly-Wissowa Real-Encyclopädie der classischen Altertumswissenschaft*, vol. XIII, (Stuttgart 1927), columns 938 ff. The person receiving land was referred to by the term *conductor*. Cf. Ae. Forcellini, *Totius Latinitatis Lexicon*, 5th ed., vol. II, Prato 1861, pp. 369, vol. III, Prato 1865, p. 786.

¹⁹ R. Koebner, *Locatio*, pp. 4 ff.

sounding (and equally confusing) Latin terms which have caused historians attempting to analyze them considerable trouble.²⁰

To the south of the Baltic area, in the region where the colonization liberties that eventually reached Poland in the form of German law were mainly formed, the word *besetzen* was translated as *locare*, which had previously been used in documenting acts of colonization. The meaning of this word was only slightly expanded; whereas it had earlier appeared as *locare homines, rusticos, colonos*, it subsequently appeared as *locare villam hominibus, rusticis, colonis*. Thus the people settled on the land were shifted to a position of lesser importance than the land itself. One of the oldest examples of such a change in the meaning of the term *locare* is found in the undated charter of Schartau, drawn up sometime between 1152 and 1185, undoubtedly by Archbishop Wichman of Magdeburg.²¹

There are cases where the word *locare* occurs with two different meanings in the same document. In the well-known privilege of Bolesław Rogatka and Henry III granted in 1247 to a monastery of canons regular in Wrocław, the following phrases appear: *quod duas villas ipsorum iure Teutonico locent, unam [...] in quo Polonos iure Teutonico locabunt [...], reliquam [...] in qua Teutonicos locabunt.*²² In the first case the object of the action is land, whereas in the second case it is people.

In this manner location became a technical term of colonization and found its way from the chancelleries of Magdeburg archbishops and other German rulers in the region between the Elbe and Odra into documents issued by Polish dukes. And here this term assumed three different meanings.

The first of these three meanings denoted the founding of a new settlement. The term in this meaning occurred especially in

²⁰ Thus, if in the agreement between Barnim I and Bishop Herman of Kamień concerning the tithes of 1273 we read of "*possessores villarum, qui pro quarto manso villas possidebunt,*" we must translate *possessores* as "locators" and *possidebunt* as "they will settle" or "they will carry out location" (Cf. UEQ, I, No. 97). In the documents it appears as *cum Teutonicis, cum Slavis possidere*. Also therein: *ius possessionis, quod theotunice besittinghe nuncupatur*, "Pommersches Urkundenbuch," vol. II, No. 687, Stettin 1885.

²¹ UEQ, I, No. 14.

²² UEQ, II, No. 28.

documents in which an unnamed territory appears which the feudal lord transfers to the locator *ad locandum*, i.e. as in the document of Bishop Thomas I of Wrocław, issued in 1237 to *scultetus*²³ Peter of Nysa concerning the location of several new villages in the northern part of the Nysa region.²⁴

In its second meaning, location designated the transformation of the spatial layout of an already existing settlement on the basis of principles established in the region between the Elbe and Odra ; i.e. the privilege of Henry III granted in 1261 to Wrocław, mentioning an area *inter fossata prime locacionis*,²⁵ undoubtedly referring to an act of spatial location.

In contrast to these two processes concerning the establishment of a settlement, the colonization of its people and the granting of a spatial layout, the third meaning of the term "location" deals with its political structure and law. In this sense, location was a legal act performed either by the issuance of a document or by public declaration, i.e. at a public meeting.²⁶ On the basis of immunity granted by the sovereign to the lord of the village, the act of location separated a settlement from the ducal administration and judiciary, and brought its population under the homogeneous jurisdiction of German law. In official language, this term underwent further terminological expansion ; the expression *locare iure* (*Teutonico, Novoforensi*, etc.) denoting the legal differentiation of a located settlement, appeared for the first time in a privilege granted in 1223 by Bishop Lawrence of Wrocław to Walter of Nysa, the locator of Ujazd.²⁷

²³ Translator's note : *Scultetus* (German : *Schultheiss, Schulze* ; Polish : *soltys*) and *advocatus* (German : *Vogt* ; Polish : *wójt*) are sometimes rendered in English as "headman," i.e. of a town or village.

²⁴ UEQ, II, No. 20.

²⁵ UEQ, II, No. 34.

²⁶ A. Gieysztor, *Les chartes de franchises urbaines et rurales en Pologne au XIII^e et XIV^e siècle*, in : *Les libertés urbaines et rurales du XI^e au XIV^e siècle*, 1968, pp. 113 ff. Gieysztor rightly expresses doubt as to the authenticity of the privileges of location from the first half of the 13th century, pointing out the fact that oral testimony was more common than written testimony in the practice of Polish courts and offices of this period.

²⁷ UEQ, II, No. 22 : "*tam locum forensem quam villas [...] eodem iure quo utitur novum forum ducis Henrici, quod Szroda dicitur, volumus [...] locari.*" In the privilege of 1229 granted by Barnim I of Szczecin to the Knights of St. John of Jerusalem (UEQ, I, No. 83), permission is granted : "*ut [...] libere possint hospites qualescunque iure Teutonicali [...] collocare.*"

In the legal sense, the act of location, especially in later periods, sometimes contained provisions concerning a town's political system and defining its liberties, thereby giving rise to an interpretation sometimes appearing in historical literature as the granting of self-government to a town. This view, however, is not supported by the sources from the period we are dealing with here; thus we can set aside the matter of autonomy for the moment.

The transformation of centres fulfilling the economic function of towns into separate, legally autonomous towns occurred in stages throughout Poland. Many errors and misunderstanding in older historiography have served to lump all of these stages into a single one, e.g. the granting of the privilege of location. Such a privilege could have been connected chronologically with urbanistic reconstruction or the granting of German law, or also could have recapitulated all the stages of development experienced by a town, encompassing all elements of its legal-political structure and administration acquired over a long period. It should be noted that the majority of the so-called "privileges of location" were charters granted for the benefit of the locator, and therefore primarily concerned his rights, incomes and obligations. Most of the decisions concerning a town's transformation and development were originally made without written documents.

3. The formation of urban communities in Poland can be conceived in the following pattern from which particular centres differed in various ways. This pattern is characteristic primarily of the largest trade-handicraft centres and may be applied to smaller towns only with utmost reservation.

Pre-located towns, e.g. towns under Polish law, or to use a term that Bernhard Töpfer has recently proposed, pre-communal towns,²⁸ were settlement complexes composed as a rule of a fortress (*gród*) and suburb (*podgródzie*) encircled by settlements of which at least some had markets. Within this complex, the property of the duke was intertwined with that of the magnates, and part of the land belonged to various ecclesiastical institutions. The inhabitants of this complex included knights, clerics, foreign

²⁸ B. Töpfer, *Neue Publikationen zur Stadtgeschichte der Feudal-epoche*, "Jahrbuch für Wirtschaftsgeschichte," vol. IV, 1973, p. 241.

guests, "unattached" Poles, and serfs and slaves of the duke, magnates and Church. Freeman fell under the jurisdiction of the duke's or castellan's court, while serfs and slaves were under the jurisdiction of their lords. The freemen of the complex were equal with the remaining rural freemen of the castellany, and could take part in the judicial meetings at which public matters were also decided.

Karol Maleczyński, in incorrectly interpreting the terms *libertas fori* and *ius fori*, has advanced the thesis that markets, e.g. market settlements, did not fall under the jurisdiction of the castellan, but possessed a separate set of laws constituting the embryo of Polish town law. The guardian of this jurisdictional distinction was, according to Maleczyński, a special representative of the duke—a market judge (*judex fori*)—who is supposed to have been the prototype of the *scultetus* or *advocatus* (*wójt*, *Vogt*) of the located town.²⁹ Maleczyński's thesis has acquired widespread popularity since World War II. While Gerard Labuda carefully probed the institution of "market peace" enforced by the duke, as the "nucleus of town law,"³⁰ Zdzisław Kaczmarczyk observed in the development of market law "an evolutionary and natural road leading to the modernization of Polish towns and their adaptation to the model of the more highly developed towns of Western Europe [...]. Thus in the markets, and especially the free markets, we find definite traces of the existence in Poland of town law and towns under Polish law."³¹ Stanisław Pazyra had even fewer reservations: "When speaking of a native town law, there can be no doubt that such a law existed during the period before location... . Towns during this period must have been governed by an town law of native origin. This original Polish town law operating in

²⁹ K. Maleczyński, *Najstarsze targi w Polsce i stosunek ich do miast przed kolonizacją na prawie niemieckim* [The Oldest Markets in Poland and Their Attitude to Towns Before Colonization under German Law], "Studia nad Historią Prawa Polskiego," vol. X, No. 1, Lwów 1926, pp. 94 ff., 104 ff.

³⁰ G. Labuda, *Miasta na prawie polskim* [Towns under Polish Law], in: *Studia historica w 35-lecie pracy naukowej Henryka Łowmiańskiego*, Warszawa 1958, p. 183. This article has also appeared in French: *Villes de "droit polonais,"* in: *Les origines des villes polonaises*, Paris-La Haye 1960.

³¹ Z. Kaczmarczyk, *Początki miast polskich, zagadnienia prawne* [Beginnings of Polish Towns, Legal Problems], "Czasopismo Prawno-Historyczne," vol. XIII, 1961, No. 2, p. 29.

pre-located towns existed under the name of *jus fori* or *libertas fori*.³²

What then has been proved by Karol Buczek's analysis of the scholarly contributions to the study of markets since the appearance of Maleczyński's work? Buczek has, I believe, definitely demonstrated that *libertas fori* was an immunity under which ducal market incomes were transferred either as a whole or in part to the grantee of the immunity, and under which the duke's market representatives were replaced by delegates of its new lord. Thus *forum liberum* was a market free of ducal interference and fiscal claims.³³ Buczek has also demonstrated that the market judge was merely the castellan's deputy providing in his name supervision and administration of summary justice in criminal cases arising at the market,³⁴ and that he had jurisdiction only over the market and the people present at it, and not over the entire settlement in which the market was located.³⁵

One can therefore find neither the nucleus of town law in market law, nor the representative of a separate judicial district, the initiator of development of town autonomy, in the market judge. It is worth noting, however, that *ius fori*, undoubtedly comprising a constituent part of a general ducal law, must have contained elements of a trade law, and the market judge—as Buczek himself maintains—could have been transformed from a casual deputy of the castellan into a specialist on market affairs with a separate, objective, temporary and personal sphere of jurisdiction.³⁶ In this sense, these institutions undoubtedly played an important role in the development of a money economy in Poland.

The first stage of legal differentiation of town populations was not the appearance of the market judge, but the granting of legal autonomy (under direct supervision of the duke) to foreign merchants (in Poland, usually to Germans) clustered in larger centres, on the model of the well-known privilege of Soběslav II, granted c. 1175 to Germans from Prague.³⁷

³² S. Pazyra, *Geneza i rozwój miast mazowieckich* [Origins and Development of Mazovian Towns], Warszawa 1959, pp. 178 ff.

³³ K. Buczek, *Targi i miasta*, pp. 44 ff.

³⁴ *Ibidem*, pp. 64 ff.

³⁵ *Ibidem*, pp. 54 ff., 66 ff.

³⁶ *Ibidem*, pp. 65 ff.

³⁷ UEQ, II, No. 93.

Individual foreign merchants arriving in Poland were under special care of the duke, and were given the same legal protection enjoyed by the knights.³⁸ When a larger group of foreigners permanently settled in a town, the natural tendency on their part was to unite in the defense of common interests against the duke, his officials and the local population. Also the merchant guilds, the tradition of which had been brought from Germany, had been leaning toward autonomy.³⁹ All this served to direct the efforts of this group toward the acquisition of official recognition of their rights to both mediation of internal disputes and formulation of a common external policy under the leadership of their chosen representative. Such autonomous communities of Germans under the leadership of their own *scultetus* appeared in Szczecin at the end of the 12th century, and in Wrocław and Cracow at the beginning of the 13th century. A similar situation surely existed among miners in Złotoryja (*ospites de Auro*) to whom Henry the Bearded granted the right to self-rule according to "Magdeburg customs" in 1211.⁴⁰ An analogous situation might also have existed among a group of Walloons in Wrocław about whom nothing is known except that they lived together and had their own church. Jews also had their own separate communities, but neither the Walloons in Wrocław, nor various Jewish communities played a role in the development of town autonomy.

During the second stage of development, spatial location occurred with the concentration of town buildings in a relatively small area, legally separated from rural terrain and now operating under German law. The autonomous group of Germans subse-

³⁸ K. Buczek, *O tak zwanym "rittermeszig man" i o "gościu" w najstarszym spisie prawa polskiego* [On the so-called "rittermeszig Man" and a "Guest" in the Oldest Roster of Polish Law], "Czasopismo Prawno-Historyczne," vol. XII, 1960, No. 1, p. 141 ff.

³⁹ K. Fröhlich, *Kaufmannsgilden und Stadtverfassung im Mittelalter*, in: *Festschrift Alfred Schultze zum 70. Geburtstag dargebracht*, Weimar 1934, pp. 85 ff. I am citing here from the reprint in *Die Stadt des Mittelalters*, vol. II, published by C. Haase, Darmstadt 1972 (Wege der Forschung, Bd. CCXLIV), pp. 11 ff.; W. Schlesinger, *Die Markt als Frühform der deutschen Stadt*, in: *Vor- und Frühformen der europäischen Stadt im Mittelalter*, Teil I, Göttingen 1973, p. 284.

⁴⁰ In this case, the community of German guests was almost completely identical with the inhabitants of this new mining settlement. Thus the granting of Magdeburg law related to the settlement as a whole. Other organized communities of guests can be found in Skaryszew and Rogoźno.

quently assumed control over the entire area of the town. As a result, the merchants belonging to this community became the autonomous ruling group, thus giving the town and its policies a specific class and ethnic character. Simultaneously, the majority of the former magnates, both secular and ecclesiastical, as well as the people dependent upon them, were ousted from the town proper. Due to the feudal dependence of the *scultetus* or *advocatus* upon the duke, the latter retained a significant amount of control over the town and its economy (rents from the market stalls, market fees, etc.). During the 13th century, these processes often went unrecorded in any form of written document.

4. Whether or not the location of a town was documented, it had a decided importance for its future development. Both the spatial and legal concepts must have been very closely related to each other, even where extensive urbanistic changes did not occur; the range of town jurisdiction must have been limited, even when the town was not to have been encircled by a wall or earthen rampart.

In the overwhelming majority of cases, the located town was a continuation of the previously existing urban complex, but it always encompassed only part of the complex area. Delimitation was of course necessary if the town was to be surrounded by a wall, and buildings had to be built very close together. However, this was neither the only, nor the main reason for delimiting the located town. As has been previously mentioned, land in the pre-located town formed a mosaic of diverse ducal, church and magnate holdings. In order to form a close-knit legal-structural unit, the town lord had to be the sole owner of municipal land; he was thus, at enormous expense, forced to buy up all town land and all claims by feudal owners.

This was the reason why the site of a town was often actually moved at the time of location. As Gerard Labuda recently observed, one can speak of the "continuation" of towns during the period of location only in the sense of an expanded area, and not of the continuation of the point of original settlement. It was easiest for the town lord to move the town being located to a virgin or sparsely settled area, or at least to an area where complicated

ownership problems would not arise. Therefore in the majority of cases, the entire located town arose beyond the area of the pre-located town (henceforth referred to as "Old Town," or by its former name preceded by the adjective "Old"), or was moved to the periphery of the pre-location town, so that fewer problems would be encountered in the unification of ownership rights.⁴¹ Characteristic was the tendency for large church foundations—cathedrals, collegiate churches and monasteries—to remain outside the town radius, thereby not only preventing ownership conflicts and costly transactions, but also freeing the new centre from a foreign body in the form of church institutions with their immunities and exemption from the jurisdiction of town law.

The carrying out of the location action in a region encountered significant difficulties. Tadeusz Lalik, in his classic treatises on the Old Town in Łęczyca, presents numerous examples of town translocation and location outside the radius of the pre-located centre. But this cheapest of all methods of location could not be applied everywhere. It could not be applied in old centres with great traditions, where ducal residences and church centres played a role in assembling merchants and craftsmen, thereby holding the located town in a state of economic dependence. Poznań, Cracow, Wrocław and Płock had to be founded on previously enclosed and built up areas, and the new spatial systems had to contend not only with the shape of the area, but also with existing brick and stone structures, especially churches, which had to be preserved. The most far-reaching compromise in relation to the existing state of affairs took place in Szczecin where the town plan is so irregular that spatial location was surely performed with only minor changes.

Archeological research on located towns has shown that the thesis of Henryk Münch concerning the origin of their shape during the period before location⁴² is completely wrong. Thus it is

⁴¹ T. Lalik, *Stare Miasto w Łęczycy. Przemiany w okresie poprzedzającym lokację: schyłek XII i początek XIII wieku* [Old Town at Łęczyca. Transformations in the Period Before Location: End of the 12th and Beginning of the 13th Cent.], "Kwartalnik Historii Kultury Materialnej," vol. IV, 1956, pp. 631 ff.

⁴² H. Münch, *Geneza rozplanowania miast wielkopolskich XIII i XIV w.* [Origins and the Planning of Towns in Greater Poland in the 13th and 14th

necessary to direct our attention to the heretofore underestimated efforts of the technicians of location, the locators and professional surveyors (rarely were they the same person). Tadeusz Zagrodzki, who initiated the study of the medieval art of land-surveying and planning techniques, emphasizes the importance of the town plan as—among other things—the result of the unification of functional needs with aesthetic concepts.⁴³

Unfortunately, we have no accounts of the operations of locators or surveyors in Polish lands, although traces of their activity can be found in the sources.⁴⁴ I believe, however, that 12th- and 13th-century texts from the areas where the colonization movement that eventually reached Polish lands began, can provide a reasonably representative illustration. From these areas came at least some of the specialists who brought their surveying techniques to Polish lands. Through the works of Boethius and Gerbert, these specialists derived their knowledge straight from Roman *agrimensores*, thus explaining why the checkerboard urban layout is so reminiscent of that of a Roman camp.⁴⁵

Especially illuminating is the description of the walled enclosure and rebuilding of the town of Ardres in French Flanders, recorded in the chronicle of the Guines counts by Lambert of Ardres. Here are described numerous activities connected with street demarcation and land-surveying, performed by specialists includ-

Cent.], Kraków 1946 and other works. Cf. criticism of Münch's method in : K. Jażdżewski, *W sprawie Gdańska wczesnośredniowiecznego i metody planistycznej jego badania* [On Early Medieval Gdańsk and a Plan Method of Research on It], "Kwartalnik Historyczny," vol. LX, 1953, No. 3, pp. 196 ff.; T. Zagrodzki, *Regularny plan miasta średniowiecznego a limitacja miernicza* [Regular Plan of a Medieval Town and Measurement Limitation], "Studia Wczesnośredniowieczne," vol. V, 1962, pp. 8 ff., especially p. 18, footnote 19; K. Buczek, *Targi i miasta...*, pp. 120 ff.

⁴³ T. Zagrodzki, *Regularny plan...*; T. Zagrodzki, *Uwagi o podstawach metodycznych badania planów miast zakładanych w średniowieczu* [Remarks on Rudimental Methods of Studies of Plans of Towns Founded in the Middle Ages], in: *Miasta feudalne w Europie środkowo-wschodniej*, Toruń 1974, pp. 10 ff.

⁴⁴ For example, in the Annals of the Cracow Chapter there is mention of demarcation by locators (*scultetus*) of the market square, houses and plots, *Monumenta Poloniae Historica*, vol. II, Lwów 1872, p. 806. A valuable but heretofore unused source is the *Geometria Culmensis* from c. 1400, which, although deals with a later period, contains descriptions of surveying methods basically representative of those utilized in location processes in Polish lands. Cf. H. Mendthal, ed., *Geometria Culmensis*, (Leipzig, 1886).

⁴⁵ T. Zagrodzki, *Regularny plan...*, pp. 29 ff.

ing measurers and a certain Master Simon, undoubtedly a trained surveyor.⁴⁶ Simon is the counterpart of the *mensores literati*, as opposed to the simple measurers, *mensores layci*, both mentioned in the Prussian *Geometria Culmensis*.

The location of Wrocław and Cracow must have occurred in a similar fashion; here also houses were raised and gardens destroyed, and the inhabitants surely cursed the measurers. All transporting and land-measuring in ducal towns were surely performed by peasants as part of their obligations to the duke. Peasants of the Cracow area prepared the terrain for the town to which the duke strictly forbade them to move.⁴⁷

5. The act of location disconnected a settlement from its previous jurisdiction and established ownership regulations. It also created a separate court, with the *scultetus* or *advocatus* at its head, constituting the only court of first instance with jurisdiction over the town's inhabitants. But the act of location itself created neither the town, nor town autonomy. From the numerous charters from the 13th century, it is difficult to distinguish the towns from the villages, as the location of a village under German law also provided for a separate judicial district, and its inhabitants received analogous rights to land in exchange for rents.⁴⁸ Even the existence of craftsmen was provided for in privileges concerning villages, and sometimes the peasants were granted permission to carry on trade.

The lack of clear distinction between town and village is evident in the terminology used in the sources: in the first Silesian documents concerning location, the terms *villa forensis* or *forum*

⁴⁶ *Lamberti Ardrensis Historia Comitum Ghisnensium*, published by J. Heller, in: *Monumental Germaniae Historica, Scriptores*, vol. XXIV, p. 640.

⁴⁷ Also of interest is the description of the location of the town of Lippstadt c. 1260, in: G. Laubmann, *Magistri Justini Lippiflorium*, 1872; cf. H. Reineke, *Über Städtegründung. Betrachtungen und Phantasien*, "Hansische Geschichtsblätter," vol. LXXV, 1957, reprinted in: *Die Stadt des Mittelalters*, published by C. Haase, Darmstadt 1969, (*Wege der Forschung*, Bd. CCXLIII), p. 341.

⁴⁸ K. Buczek, *Targi i miasta*, pp. 113 ff.; Z. Rymaszcwski, *Miejskośc czy wiejskośc prawa niemieckiego w Polsce [Municipal or Rural Character of the German Law in Poland]*, "Zeszyty Naukowe Uniwersytetu Łódzkiego, Nauki Humanistyczno-Społeczne," series I, No. 69, Łódź 1970, pp. 65 ff.

appear instead of *civitas* or *oppidum* in connection with settlements of an urban character located under German law. In accepting German law and locating settlements on western models, Polish dukes and bishops often attracted people from other regions, but did not—at least during the first half of the 13th century—utilize ready-made plans. Instead they attempted to select the features they considered most appropriate to their needs from German law and organizational rules of colonization previously established beyond Poland's western border. They approached liberties and autonomy for townsmen particular with restraint. In eastern Germany, organizational forms were still considerably differentiated and the Magdeburg *Weichbild* had not yet been created.

Duke Henry the Bearded of Silesia drew from the experiences of Wichman of Magdeburg, the most prominent colonization organizer in the 12th century, and widely applied the settlement-complex method. Entire regions were organized directly into economic complexes connected by common economic ties to a market settlement, e.g. a town, located in the centre of each complex.⁴⁹ Henry also accepted Magdeburg law which he granted to colonists in Złotoryja, Lwówek and the newly located towns of Wrocław and Krosno. He retained, however, strong personal control over the newly organized towns by appointing trusted people to the position of *scultetus*, and, to the dissatisfaction of the townsmen, by closely supervising town life and controlling trade from which he reaped large profits. Due to the intervention by Magdeburg townsmen on behalf of their counterparts in Wrocław, and also possibly as a result of political conflicts with the Archbishop of Magdeburg, Henry became indisposed toward Magdeburg and attempted to create a new type of handicraft-trade centre. This he did in founding a "new market" in Środa under Flemish law, heretofore used exclusively in the colonization of villages. This move was followed on the estates of Bishop Lawrence of Wrocław, who founded Nysa and Ujazd under this law. It is also quite possible

⁴⁹ For more, see : B. Zientara, *Zur Geschichte der planmässigen Organisierung des Markets im Mittelalter. Wirtschaftliche Grundlagen der Weichbilde im Erzbistum Magdeburg und in Schlesien im 12.-13. Jahrhundert*, in : *Wirtschaftliche und Soziale Strukturen im saekularen Wandel. Festschrift für Wilhelm Abel zum 70. Geburtstag*, Hannover 1974, vol. II, p. 345 ff.

that Flemish law was used in the first location of Cracow by Duke Leszek the White. This system, however, did not work out satisfactorily, and Henry returned to Magdeburg law in 1234 when he procured a text of the law for Środa—however, not from Magdeburg, but from Halle. This text became the basis for what was later to be called “Środa law,” which is not to be confused with the earlier law granted to this settlement evolving from Flemish law.⁵⁰

Similar apprehensions were shared by Conrad of Mazovia when he founded Plock in 1237. Unlike Leszek the White, a friend of Henry the Bearded, Conrad did not turn to Silesia for a model, but created his own kind of town system composed of elements of German law (i.e. an autonomous judicial district with a court presided over by the *scultetus*) and Polish knight’s law which had been heretofore applied in Poland to foreign merchants.⁵¹ This group law, which contained regulations pertaining to merchants, was to be applied to the population of a given region. In a similar fashion, merchant group law existing in Germany during the 10th and 11th centuries gradually evolved into town law.⁵²

The Teutonic Knights, on the other hand, did take advantage of Silesian models, experience and even of inhabitants of the area in creating their own version of German law, subsequently called “Chelmno (Kulm) law.”

But even the establishment in Poland of a homogeneous town type, based on German law with a *scultetus* at its head, did not facilitate the complete transformation of towns into autonomous legal-political units. Located towns were for the moment still pre-communal towns in the sense that there was still no one to repre-

⁵⁰ For more, see B. Zientara, *Henryk Brodaty i jego czasy* [*Henry the Bearded and His Times*], Warszawa 1975.

⁵¹ UEQ, vol. II, No. 60. Also in *Codex diplomaticus et commemorationum Masoviae generalis*, published by J. K. Kochanowski, No. 362, Warszawa 1919. The lively discussion recently arising concerning this location has not yet produced a complete picture of the situation and events. Cf. W. Kuhn, *Die Entstehung der deutschrechtlichen Stadt Plock*, “Zeitschrift für Ostforschung,” vol. XIII, 1964, pp. 1 ff.; K. Buczek, *Sprawa lokacji miasta Plocka* [*The Problem of the Town of Plock Location*], “Kwartalnik Historyczny,” 1967, pp. 1013 ff.

⁵² K. Fröhlich, *Kaufmannsgilden*, pp. 17, 27 ff. Cf. W. Schlesinger, *Der Markt als Frühform*, pp. 278 ff., for his astute observations on Magdeburg, Bremen and Halberstadt.

sent the town in a wider sense. The *scultetus*, a vassal of the duke or bishop, was himself a great feudal lord, sometimes richer than the magnates, and close to them in social prestige. There were yet no representatives of town opinion; townsmen were chosen to serve as justices (Polish: *lawnicy*; German: *Schöffen*), but they were in fact appointed by the duke (the town lord) from among a group of merchants who took part in the location and later increased their ranks by co-optation.

In opposition to this body stood the commonalty—*communitas civium*—which soon formed its own organ, the town council. This was to become the first fully autonomous organ of urban self-rule for which there was no village counterpart.⁵³ The town council began a bloodless struggle for power in Polish towns, aimed at abolishing ducal intervention in internal town affairs, either by buying out the right of the duke to town incomes, or by converting this right into an obligation on the part of the town to pay the duke a fixed tax (Polish: *olbora, orbeta*; German: *Urbar*). The ultimate goal of the town council—not always achieved—was to buy out the office of *scultetus* or to eliminate it entirely.

6. The appearance of an urban political policy and an organ to give it a means of expression facilitated an increased tempo of trade and handicraft development. The new town ruling body became a powerful political force, promoting merchant interests and exerting pressure at every opportunity upon the dukes and feudal ruling groups. In this manner towns acquired trade privileges, customs exemptions and other rights, all of which promoted and speeded the development of trade. Towns also concluded agreements among themselves for the purpose of protecting commerce and transportation. However, the trend toward increased cooperation among urban centres soon began to give way (as early as the 14th century) to political policies of self-interest. Towns strove to

⁵³ H. Samsonowicz, *Z zagadnień ustrojowych miasta średniowiecznego* [Problems of the Political System of a Medieval Town], in: *Wiek średni—Medium aevum. Prace ofiarowane Tadeuszowi Manteufflowi w 60 rocznicę urodzin*, Warszawa 1962, pp. 151 ff.; H. Samsonowicz, *Samorząd miejski w dobie rozdrobnienia feudalnego w Polsce* [Municipal Self-government in the Period of Feudal Disintegration of Poland], in: *Polska w okresie rozdrobnienia feudalnego*, Wrocław 1973, pp. 133 ff.

acquire favoured trading status for their own merchants in the form of staple policies (Polish: *prawo składu*, German: *Stapelrecht*), a regulation requiring visiting merchants to stay in a particular town with their goods on sale for a specified minimum number of days before moving on, and a law restricting traveling merchants to specified routes, thereby preventing them from bypassing towns possessing the staple privilege. The instruments of a developing trade technology (town scales, standardization of weights and measures, product control at the markets) became the instruments of oppression directed against the craftsmen and remainder of the urban population, as well as the peasants in surrounding areas. Guilds were organized in defense of the handicraft industries, but guilds in Poland did not, at least initially, encounter the difficulties experienced by their counterparts in the West. The guilds waged struggles on two fronts: against the town council, representing the interests of wealthy merchants and favouring imported goods at the expense of local production, and against the consumer and their own journeymen and hired labourers. The regulation of guild production, the limit of the number of workshops and workers, the maintenance of high prices and low wages, and the liquidation of handicraft production within the town mile (*Bannmeile*), all formed but one side of guild activities. Simultaneously, production quality control, the training of craftsmen, securing raw material supplies and lessening opportunities for speculation on raw materials, all helped to maintain the high level of medieval handicrafts.

The town was charged with the protection and maintenance of its entire area (buildings, streets, squares and public utility installations), and provided for a collective defense, social assistance in the form of hospitals and orphanages, and also education.

The dimension of the changes in spatial configuration introduced during the process of location under German law varied according to the state of the site and its buildings. In general, an attempt was made to utilize a plan previously worked out in the region between the Elbe and Odra, e.g. a checkerboard of blocks formed by streets usually intersecting at right angles. One of the blocks was reserved for the market square, another for the parish

church and cemetery.⁵⁴ Elongated town layouts with one-way streets predominated. Much attention was given to the demarcation of the market square, the main site of trading activity, whose dimensions reflected the size and importance of the town at the time of location. Difficulties in selecting an appropriate site facilitating drainage resulted in an asymmetrically located market square. An attempt was also made to provide a frontage system ensuring adequate lighting.⁵⁵ The old network of roads naturally had an influence on the layout of a town, and medieval planners knew how to adapt their plans to this network. Sometimes the town was bisected by a trade route that had been widened to provide for a market square before the location of the town, thus leaving the market square in an elongated shape. This was the case at Środa Śląska which has recently been studied in detail.⁵⁶ A central market square was never built in Szczecin, whose street system differs greatly from the ideal urban layout of medieval planners: exceptional difficulties must have been encountered here during location.⁵⁷

After the demarcation of the town border and streets, lots were measured off, intended for the heritable use of the townsmen (though theoretically the property of the town lord).⁵⁸ First, the lots near the market square were delimited and distributed among the wealthiest merchants taking part in the location. In larger cen-

⁵⁴ T. Zagrodzki, *Regularny plan...*, pp. 12 ff.

⁵⁵ J. Pudełko, *Rynki w planach miast Śląska* [*Market Places in the Plans of Silesian Towns*], "Kwartalnik Urbanistyki i Architektury," vol. IV, 1959, pp. 235 ff.

⁵⁶ J. Pudełko, *Uwagi o niektórych zagadnieniach rozplanowania miast średniowiecznych w świetle studiów nad układem Srody Śląskiej* [*Remarks on Some Problems of Planning Medieval Towns in the Light of Studies on Spatial Layout of Środa Śląska*], "Kwartalnik Urbanistyki i Architektury," vol. VII, 1962, pp. 71 ff.; T. Kozaczewski, *Z zagadnień urbanistycznych Srody Śląskiej* [*Problems of Town Planning of Środa Śląska*], "Kwartalnik Urbanistyki i Architektury," vol. VII, 1962, pp. 331 ff. Valuable is the establishment of the fact by H. Pudełko that Środa was founded on an area equal to one Flemish hide (c. 15 hectares).

⁵⁷ H. Chłopocka, *Początki Szczecina* [*Beginnings of Szczecin*], "Roczniki Historyczne," vol. XVII, 1948, pp. 315 ff.; H. Lesiński in: *Dzieje Szczecina*, ed. by G. Labuda, vol. II, Warszawa 1963, p. 72.

⁵⁸ The origin of municipal landed property has best been illustrated by S. Rietschel, *Die Entstehung der freien Erbteile*, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung," vol. XXII, 1901, pp. 181 ff.

tres additional market squares for special markets, i.e. fish, horse, vegetable and hay markets, were created. Craftsmen settled on streets often bearing the name of their handicraft specialty, while Jews were settled in peripheral areas. Baths and hospitals were constructed on the edge of town or outside the town wall. Tanners, not generally welcomed in the centre of town due to the smells emitted from their workshops, also often settled in outlying areas. Mills, bleacheries, cutlery workshops and fulling-mills were also constructed beyond the town wall on a river or moat. These outlying handicraft concentrations constituted the beginnings of development of the suburbs.

Some flourishing trade-handicraft centres outgrew their original boundaries during the 13th century and expanded by extending their walls to include new areas, as was done in Wrocław, or by promoting the location of new urban centres in nearby areas, i.e. Śródka near Poznań, Kleparz and Kazimierz near Cracow. In other towns much of the area within the walls was not built upon and was utilized as pastures or gardens. Also, not all town area had to be converted into lots during the location period. In a speculation move, the *scultetus* reserved a significant portion of town land for himself in order to reap profits from lots created at a later date.

Changes in the composition of the town population were primarily connected with the vacation of the town proper by magnates, who had to liquidate their holdings and remove their serfs. Only in a few cases did the *nobiles* remain in town, joining the ranks of the patriciate, i.e. the Schlieffens in Kolobrzeg, Spitemirs in Cracow, Slanczes in Wrocław. The emigration of magnates was responsible for the almost homogeneous German character of the patriciate in the majority of large towns. The situation was different in small towns, especially those founded after the 13th century. In Mazovia, a significant portion of the gentry held municipal offices.

Despite the external similarities shared by large and small towns, e.g. the same law and town plan, the function and development of small towns constitute a separate problem. It is neither possible to attribute the features of large towns to small ones, nor, as Tadeusz Lalik has warned, can one assume that allegedly

“archaic” elements functioning in small towns reflect earlier stages of development of large towns.⁵⁹

The old group of Polish merchants, still being reinforced by newcomers from without, was connected with merchants of German towns by both mercantile interests and kinship. This group comprised the so-called urban patriciate in large towns, monopolized municipal offices and determined town political policy. Initially, the ranks of the town patriciate were reinforced with knights (more often German, than Polish). It was not until the 14th century that a division between the town patriciate and gentry was established. This trend later reversed itself with the patriciate leaving town to join the ranks of the landed gentry. The *scultetus* connected originally with the patriciate, grew, as a vassal of the duke, to a position of political independence and ceased to represent the interests of the town.

Craftsmen were partly recruited from among the free inhabitants of the pre-located town, but larger centres experienced a significant immigration of foreign craftsmen, generally Germans, who gained control of the guilds and determined the ethnic composition of these organizations. Dukes either limited or prohibited the flow of the local population to handicraft industries, thus promoting the immigration of foreign craftsmen.

Town inhabitants engaged in agriculture, usually of native origin, played a role in small towns rather. Townsmen in larger towns, even wealthy merchants, owned agricultural holdings, but agriculture was not their primary interest.

The propertyless town inhabitants (the populace), not actually possessing townsman status, comprised a fluid element ; they came from local villages and often returned to them, and their stay in town was often illegal. The difficulty in advancement into the ranks of the German speaking townsmen was to a degree due to the language barrier.

Despite attempts to form a legally homogeneous urban society, certain groups of people not falling under the jurisdiction of town

⁵⁹ T. Lalik, *Z zagadnień genezy miast w Polsce* [Problems of the Origins of Towns in Poland], “Przegląd Historyczny,” vol. XLIX, 1958, pp. 473 ff.

law remained in town or in its immediate vicinity. These were people employed in the ducal castle and by the clergy, especially that connected with cathedrals and collegiate churches which did not come under the auspices of the town. The chapters of these church institutions were staffed with persons not connected with the town, most of whom were of gentry origin. Their immunity and use of it on the town market created continual conflicts with the town authorities. On the other hand, parish churches and mendicant monasteries were more closely associated with the townsmen, who were often employed in these institutions, and did not generally give rise to such conflicts.

Jews continued their own separate way of life, reaching back into the pre-location period, based on communal (*kahal*) organization which provided for social care and a court system with jurisdiction in minor matters within the community. In more important matters and in conflicts with Christians, Jews came under the auspices of town authorities. Jews enjoyed the benefits of German law, and were because of the language tied to the German population which they initially formed a faction of, and the anti-Jewish attitudes were for a long time an internal problem of German townsmen. Jews were also granted ducal protection, thus limiting opportunities for interference on the part of town authorities in the life of the Jewish community.

7. Although the problem of the transformation of pre-located towns into towns under German law has been dealt with extensively in historical literature and it remains of great interest to historians and non-historians alike, and, although the technical aspects of location have recently given rise to lively discussion among urbanist-historians, later stages of development of the urban community have not only gone unresearched, but have all been ignored by scholars. The beginnings of the guilds, relations between craftsmen and town authorities, the struggle between the town community and *scultetus* and its subsequent effects require special studies with reference to the vast background. The formation of an town social consciousness has recently been treated by

Henryk Samsonowicz.⁶⁰ From the moment of location, and especially from the moment of obtaining their own representative body in the form of the town council, towns became political forces whose influence grew during the 13th century.⁶¹ This problem has also been dealt with only superficially by scholars. Town political policies have often been treated as mere manifestations of foreign intrigue, and rarely have they been juxtaposed against the growing class antagonism between the town and the knights, which sometimes assumed the form of a nationality conflict. Finally, a matter of great importance is that of the growing conflict between townsmen and the clergy resulting from the clergy's exemptions from the jurisdiction of town law and municipal taxation. This created a peculiar urban religious climate characterized by anticlerical sentiment, especially directed against the lay clergy.

(Translated by Charles Edward Railsback)

⁶⁰ H. Samsonowicz, *Ideologia mieszczańska w Polsce w XIII w.* [*Bourgeois Ideology in Poland in the 13th Cent.*], in: *Sztuka i ideologia*, Wrocław 1974, p. 153.

⁶¹ An important factor in strengthening the political position of towns was the building of town walls, thereby making the town a strong fortress under the control of the town council. Cf. J. W i d a w s k i, *Miejskie mury obronne w państwie polskim do początku XV w.* [*Town Defensive Walls in the Polish State till the Beginning of the 15th Cent.*], Warszawa 1974. The role played by town walls in the formation of a class consciousness among townsmen is evident in the appearance of walls in the coats-of-arms of numerous towns.