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# Participation and Protest. Actors and Interests in the Early Modern Legislation Process. A Case Study from the Prince-Bishopric of Bamberg

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## ABSTRACT

This chapter analyses the possibilities subjects of an early modern territory had to influence the legislative process. The focus is on the ecclesiastical territory of the Prince-Bishopric of Bamberg, in which, at the end of the 16th century, a potters' guild order was enacted. The decisive question is whether the subjects were passive victims of authoritarian discipline, as some authors have claimed, or whether they tried to influence the process of legislation actively. To clarify this question the drafting and the implementation of the order are examined and also, how the potters' guild acted in this process. Step by step it will appear that, in this case, there were mainly two kinds of influence: participation and protest.

*Die hier vorgestellte Fallstudie untersucht die Frage, welche Möglichkeiten sich den Untertanen in einem frühneuzeitlichen Territorium boten, auf den Gesetzgebungsprozess einzuwirken. Im Mittelpunkt steht dabei das geistliche Territorium des Hochstifts Bamberg und die dort zu Ende des 16. Jahrhunderts erlassene Handwerksordnung für die Zunft der Hafner. Dieser dem Bereich der „Guten Policy“ zuzuordnende legislative Akt und die darauffolgenden Reaktionen zeigen verschieden Varianten der Einflussnahme auf, die anhand von Fragestellungen der „Kulturgeschichte der Politik“ analysiert werden können. Konkret geht es dabei um die Untersuchung der Interaktions- und Kommunikationsprozesse, die Machtbeziehungen zwischen der Obrigkeit – dem Bischof, seiner Administration und dem Domkapitel – sowie den Untertanen – die Hafnerzünfte der einzelnen Städte – konfigurierten und widerspiegelten.*

*Verallgemeinernd können zwei Formen ausgemacht werden: Einem Teil der Hafnerzunft des Hochstifts, namentlich den Zünften der Städte Bamberg, Forchheim und Staffelstein, gelang es durch die Einbringung einer Supplikation an den Bischof, den Erlass einer Ordnung für ihr Handwerk zu erwirken. Zudem war es Ihnen auch gelungen, den Inhalt der*

*Ordnung maßgeblich zu bestimmen, indem sie der Supplikation einen Entwurf beigelegt hatten. Schon vor Erlass der Ordnung hatte sich innerhalb der Zunft jedoch Widerstand entwickelt, der maßgeblich von den Hafnern der Stadt Kronach ausging und sich nach dem Erlass auch auf andere Gegenden des Hochstifts ausbreitete. Durch diesen Widerstand, der sich die meiste Zeit innerhalb legaler und von der Obrigkeit akzeptierter Formen des Protests bewegte, gelang schließlich eine Revision der Ordnung, die beide Seiten zufrieden stellte.*

*Aus dem dargestellten Fall wird ersichtlich, dass die Zünfte des Hochstifts Bamberg keine wehrlosen Objekte obrigkeitlicher Disziplinierungsmaßnahmen gemäß der Interpretation Gerhard Oestreichs waren, sondern dass sich ihnen im frühneuzeitlichen Normgebungsprozess entscheidende Partizipationsmöglichkeiten boten: Schon der erste Schritt, nämlich die Initiative zur Ordnung, ging nicht auf den Bischof bzw. seine Administration zurück, sondern vielmehr war hier der Wunsch der Hafner maßgeblich. Es wird ferner deutlich, dass die obrigkeitliche Verwaltung auch am zweiten Schritt, der Ausarbeitung der Ordnung, wenn überhaupt, nur in sehr geringem Maße beteiligt war. Hier waren ebenfalls die Bamberger und Forchheimer Hafner federführend. Nur der dritte Schritt, die Erhebung zum Gesetz durch „Confirmation“, war dem Bischof sowie dem mit Vetorecht ausgestatteten Domkapitel vorbehalten. Der vierte Schritt, die Publikation, lag dann erneut in den Händen des Handwerks, ebenso übrigens wie der fünfte Schritt, die Kontrolle bzw. Sanktionierung, mit der die Zunftmeister und das Gericht des Zunfttages beauftragt wurden.*

*Dem Bischof als Obrigkeit gelang durch diese Inkorporierung der traditionellen genossenschaftlichen Regeln in seine eigene Normgebungskompetenz eine reibungslose und akzeptierte Etablierung als legislative Autorität. Zudem konnte er sich durch die Einbindung der Zunftorgane in die landesherrliche Administration auch in der Implementation der Normen auf deren traditionelle Ordnungs- und Regulierungsfunktion stützen.*

## GUTE POLICEY – THE WELL-ORDERED POLICE STATE

In the last two decades a pivotal concept of early modern political theory, legislation and governance, has attracted increased attention from historical researchers. On the initiative of the Max Planck Institute for European Legal History in Frankfurt am Main, a field of research has developed which is focused on the concept of *Gute Policy* whose theoretical, thematic, temporal and spatial dimensions have been examined from various perspectives<sup>1</sup>.

But what does this central term mean? In spite of regional and semantic variations, which have to be taken into account, historians have come to agree upon three semantic contents, which encompass the nuances of the concept *Gute Policy*. These semantic fields correspond to two synonyms, which often appear in combination with the term *Gute Policy*.

The first combination of synonyms is *Gute Policy und Ordnung* [order]. Thus *Gute Policy* means the good order of the commonwealth, the overriding aim of authoritarian legislation. The manner in which this order is to be established is indicated by the second pair of synonyms: *Gute Policy und Regiment* [regulation]. Thus, in its second semantic meaning *Gute Policy* points at the activity of regulation which seeks to establish the desired order of the commonwealth.

Regulation had two aspects. On the one hand it was legislation aimed at establishing public norms. On the other hand it was governance, the implementation of norms in situ, i.e. the control of the decreed norms by higher and lower magistrates and officers as well as the sanctioning of legal offences in court.

The police legislation of the Prince-Bishopric of Bamberg, a south German ecclesiastical state, which is the focus of my research, was not an autonomous regional phenomenon, but took place within the framework of the Empire and general developments in Europe. Various political, social, religious and economical changes of the late Middle Ages caused a slow corrosion of the traditional (ecclesiastic, social and corporative) strategies of order. To compensate these signs of social disintegration, the maintenance and (re-)establishment of *Gute Policy und Ordnung* by legislative activity were increasingly taken over by municipal, then by princely authorities<sup>2</sup>. Gradually the power of voluntary and positivistic legislation constituted a new phenomenon: the traditional common law, which had been legitimated by God, was now replaced by statutory law, which was – at least theoretically – exclusively imposed by the supreme will of the legislator. Its main characteristics were its regulatory function as well as its flexibility and its timeliness<sup>3</sup>.

The legitimation of this new authority was established in contemporary discourse by ideas of sovereignty and reason of state<sup>4</sup>, but also by theological conceptions of retribution and by the demands of the subjects, who craved for the return to an idealised past state of the commonwealth<sup>5</sup>. Connected with this, the pivotal early modern concept of the *Gemeine Nutz* [the Common Good], pursued by an authority which cared for its subjects' welfare, often appears in the sources<sup>6</sup>.

In the 16th and even more in the 17th century, most fields of public, private and religious life came into the focus of authoritarian regulation due to these political claims and legal concepts<sup>7</sup>.

The aim of the following chapter is to describe how the subjects acted during and after the legislation process<sup>8</sup>. The decisive question is whether they were passive victims of authoritarian discipline, as Oestreich<sup>9</sup> or Raeff<sup>10</sup> have claimed, or whether they tried to influence the process of legislation actively<sup>11</sup>. As an empirical example, I shall examine the drafting and implementation of a new guild order in the Prince-Bishopric of Bamberg in the late 16th century. The chapter is divided into six parts. The first comprises the present introductory comments. The second will explain in what manner the case

study presented here refers to the problematics of culture and power. It is also important to describe briefly the research on resistance in German-speaking areas as well as to present the Prince-Bishopric of Bamberg. This will be done in the third and fourth parts. The main part will be the fifth, in which an example of the early modern legislation process is demonstrated. Finally, in the conclusion the chapter will be recapitulated by presenting some results.

## CULTURE AND POWER

The reflections presented in this chapter are influenced by the New Political History, that is the Cultural History of Politics, as it has developed in Germany roughly in the last decade. In contrast to the so-called 'traditional', 'classic' or 'old' Political History, it pursues an approach that is geared to issues of culture and prefers a concept of politics that goes beyond 'Great Men' and the 'primacy of foreign policy'<sup>12</sup>. The anthropological definition of culture that is used in this concept presumes that human beings ascribe sense and meaning to all facets of their environment. The result of this production of meaning is culture. The instruments used to produce these meanings are symbols: on the one hand this concerns systems of symbols in a broader sense like language or writing. On the other hand it refers to symbolism in a narrower sense, for example pictures and paintings, artefacts, rituals, ceremonies etc. For the historian this implies that the entire world, and consequently all historical phenomena, are the result of a production of meaning as well as of social construction and cannot be understood by themselves, only through their symbols. As basically everything can become a symbol, and therefore everything can also be provided with different meanings, a constructivist premise has to be maintained.

Thus the historian must not presume to comprehend from today's perspective the symbols which were used for the production of meaning in the past. Consequently he must take 'an ethnological perspective', from which he tries to decipher those symbols, which are understood as alien and by no means self-evident.

In doing so, particular attention must be paid to the symbolism of language that produces meaning, which finds concrete expression in the establishment of – verbal and non-verbal – processes of communication. Communication is considered as a reciprocal relation between people that occurs when, firstly, information exists that, secondly, is conveyed and, thirdly, understood as a message. The qualitative differentiation between the perception of information and the realisation that a certain reaction is expected to it is of decisive relevance: communication relies on reciprocity<sup>13</sup>.

The chances of reciprocal comprehension are the higher the more communication is embedded in a collective social connectivity that offers a set of rules and standards generally understandable. In this manner supra-individual structures and individual actions influence each other. The structures affect communication, but are vice versa also changed by every single communicative act<sup>14</sup>. This model offers a novel approach to objects of research

like administrative bodies, governing procedures or 'authoritarian' statements, which do not appear as 'firm institutions' any longer but dissolve into 'communicative practices'.

In his reflection on the concept of power Michel Foucault also refers to its communicative aspect. He denies the idea of power as a material that can be distributed, allocated, concentrated and acquired. According to Foucault power must rather be understood as something that is exerted, namely in social relationships, and by communicative practices.

Therefore power exists only as an action that defines relationships, and not as a property: you cannot *own* power, you only can *exert* it. Thus, the historian is not to examine the question of who possesses power but of how power is exerted. The main way power is exercised is not by force or conflict or treaty-making but by governance: influencing the behaviour of others. The exercise of power is always dependent on the acceptance of the opposite side, which can choose among different options for action. Consequently each manifestation of power, like the state or its institutions, is reliant on the subjects' reaction. This reaction can consist of agreement but also of resistance. When the relations of power are being blocked by one side and the other side's options therefore are being constrained, Foucault no longer refers to 'power', but prefers the term 'rule'<sup>15</sup>.

Concerning our case study it is therefore assumed that actors who were involved in relations of power possessed various options for action within the legislation process. Which of these alternatives were used by the subjects in a particular situation can be inferred by examining the communicative relations between the participating actors.

## RESEARCH ON POPULAR RESISTANCE

Resistance research in German-speaking central Europe has identified three types of protest in the early modern period<sup>16</sup>:

1. Resistance as a legal form of protest, for example the submission of a petition or supplication to the prince in which the subjects ask for the redress of grievances. More controversially, German communities might sue their rulers in the imperial high courts<sup>17</sup>.
2. 'Everyday' or 'silent' resistance. This concerns the avoidance of manorial requirements (manpower, taxes) or social delinquency (poaching, infringement of forest laws).
3. Revolt as a form of public, collective resistance attended by symbolic protest or by force.

Historians in the German-speaking lands have concentrated especially on this third form, particularly on municipal and peasant rebellions<sup>18</sup>. There is also one study on violent resistance against police legislation<sup>19</sup>.

The main intention of the analysis presented here is to pursue the question whether subjects, in their established relations of power to the bishop, made use of legal resistance as one of their options for action.

## THE PRINCE-BISHOPRIC OF BAMBERG

The Prince-Bishopric of Bamberg was an ecclesiastical territory, founded by Emperor Henry II in the year 1007 and that continued to exist until its incorporation into the electorate of Bavaria during the secularisation in 1802/03. Situated in south central Germany, it bordered on the duchy of Saxony-Coburg in the north; on the Prince-Bishopric of Würzburg in the west; on the southern rural territory of the imperial city of Nuremberg as well as on the margravates of Brandenburg-Kulmbach and Ansbach, both under the rule of the dynasty of Hohenzollern, in the south and the east. In the 17th century it spanned an area of about 3,600 square kilometres, with an estimated population of 90,000 inhabitants<sup>20</sup>.

As is common for an early modern central European territory, the prince-bishopric was characterised by rural settlements and an agrarian economy; the degree of urbanisation was very low. Apart from the 15 municipal towns and “the capital and residence of Bamberg”, which was referred to by this term already in contemporary sources, the fortresses of Kronach and Forchheim deserve special mention, as they were also termed “capitals” and defended the territory against invasions from the north and the south.

Like all ecclesiastical territories of the Holy Roman Empire, the Prince-Bishopric of Bamberg was not a hereditary monarchy under the rule of one family, but an elective monarchy, in which a new bishop had to be elected upon the death of the incumbent. The cathedral chapter, which acted as the elective council, consisted of twenty noble canons. Each election was preceded to the candidate’s agreement to a set of principles and stipulations. Thus the chapter was able to obtain extensive rights of participation and control, which manifested themselves in the allocation of important functions and positions. The appointment of civil servants as well as the enactment of decrees was also dependent on the chapter’s agreement. Furthermore, the chapter possessed extensive landed estates, on which it exercised feudal rights. Its most important dominion was the district of Staffelstein, in which the cathedral chapter administrated high penal jurisdiction<sup>21</sup>.

Police legislation in the prince-bishopric of Bamberg began with a municipal order for the town of Lichtenfels in the year 1413. Important steps were marked by the harvest order enacted in 1482 by prince-bishop Philipp von Henneberg and especially by the guild order of the ropemakers enacted in the following year. For the first time, these orders were not addressed to a single town or district but applied to the whole bishopric<sup>22</sup>.

Up to 1628, the end of the period we examine here, there is a marked tendency for the bishop to take over the legislative function from the municipal authorities. A major exception is the guild legislation, on which the city council of Bamberg enacted more ordinances than did the prince-bishop.

Altogether, between 1413 and 1628 about 1350 provisions or laws were enacted, whose contents can be divided into five different categories<sup>23</sup>: 1. religion, social order and es-



Map 1  
The Prince-Bishopric of Bamberg in the Early Modern Period.

tates; 2. public safety and order; 3. welfare, education and public health; 4. economic order; 5. real estate and construction. The majority of these acts concerned the sphere of the economic order. The following example also belongs to this category.



## THE POTTERS' GUILD ORDER OF 1582 AND ITS IMPLEMENTATION

### Participation

The potters, who were called “Hafner” in the southern part of Germany, were local craftsmen who produced clay goods upon demand and offered their commodities for sale at local markets. In the procession orders for the Feast of Corpus Christi of 1440 and 1450, which are indicators of the social hierarchy within the town of Bamberg, the potters' guild assumed the 18th rank. Thus it was positioned behind the glaziers, painters and carpenters but directly in front of the chandlers.

Given the fact that the order contained only 22 ranks, the potters clearly had a subordinate position within the social structure of the town<sup>24</sup>.

The guild order of 15 March 1582 designates the initial point of the territorial police legislation aimed at the potters of the entire prince-bishopric<sup>25</sup>. Its matters were similar to those in various orders of other guilds<sup>26</sup>, especially to the guild order for the potters of the town of Forchheim, which had been enacted in the year 1566<sup>27</sup>. Viewed in the context of the general guild policy of the prince-bishopric the rules laid down in this order were not unusual: they fixed the admission requirements for mastership like legitimate birth and personal honesty, the examination practices required to achieve the status of master, the number of apprentices and journeymen, the interdiction against enticement of apprentices and journeymen, the marriage of deceased masters' widows or children with other craftsmen etc.

Furthermore, in article 6 of the order a rule was enacted that was to cause some agitation within the potters' guild. The article stated that the masters of the prince-bishopric were permitted to sell their goods only in the localities where they lived and produced. This rule applied especially to the fairs and markets in Bamberg and Forchheim. According to the article, it was the aim of the regulation that no one should either besiege or press the others with his goods<sup>28</sup>.

The document's arenga or preamble provides a clue as to who initiated this order: “our beloved loyal subjects”, the masters of the potters' craft, “have pled humbly” for protection against “foreign masters and other interferers, who have not learned the trade”. Therefore they requested the drafting of a territorial guild order. Similar references to supplications from interested parties can be found in almost every guild order. Although this is definitely peculiar in comparison to other fields of police legislation, it could also be a simple formula of legitimation, similar to the *gemaine Nutz* [Common Good], which also appears in the order<sup>29</sup>.

Thus it is necessary to examine the genesis of the order to evaluate to what extent and with what motivation the potters were really involved in the legislation process<sup>30</sup>. A letter to the ruling prince-bishop Martin von Eyb (1580-1583) written in spring 1582 elucidates the circumstances of the genesis and identifies the decisive actors. As initiators the potters'

guilds of the towns of Bamberg, Forchheim and Staffelstein are especially named. Their guild masters had already travelled through the prince-bishopric the year before, in the spring of 1581, to rally support. Their aim was to obtain an order from the prince-bishop which would bring about the closure of fairs and markets for foreign masters. The potters' request for an order refusing access to the local fairs to foreign masters can be explained by an oversupply of master potters and their goods in these particular towns<sup>31</sup>.

The local craftsmen deemed it necessary to restrict foreign potters' access not only to the weekly markets but also to the annual markets and fairs, which were actually open and rather important for interregional commerce<sup>32</sup>, in order to maintain their *Nahrung* [decent sustenance]<sup>33</sup>. Consequently, one faction in the potters of the prince-bishopric united under the leadership of the guilds from two of three capitals of the bishopric – Bamberg and Forchheim – to petition for the enactment of a territorial guild order not limited to particular towns and enacted under the ruler's authority.

The petition itself is not preserved in the archives, but there are hints that it was not just a supplication against certain nuisances. In fact, the potters proposed the necessary measures in the form of an elaborated bill. This can be presumed because the bill for the mentioned guild order of Forchheim of 1566 suggested by the local guild is still preserved<sup>34</sup>. A comparison with the published order reveals a high degree of analogy; only in some points are marginal variances detectable with respect to the bill.

Furthermore, the above mentioned report by the potters of the town of Kronach from spring 1582 demonstrates that the masters of Bamberg and Forchheim had rather precise notions about the content of the order when they visited the guilds of other towns in 1581. In their letter the potters of Kronach appealed to the bishop well before the publication of the order to protest against the controversial article 6, because “[...] we have come to know how an honest craft of Bamberg as well as of other mentioned towns and places intends to erect a territorial order and to apply to the bishop to confirm such [...]”<sup>35</sup>. This statement also indicates that the Bamberg guild masters had shown a rather detailed bill to their colleagues from Kronach.

## Protest

The report of the craftsmen of Kronach not only provides evidence that one faction of the potters participated in and decisively shaped the legislation process, but also hints at another means of communication: the articulation of protest. Indeed, the enactment of the order on 15 March 1582 signified a temporary success for the potters of Bamberg and Forchheim who had achieved the closure of the fairs. But the potters of the town of Kronach had already entered their objection before the act was published and had especially protested against the ominous article 6, and therefore against exclusion from the fairs of Bamberg and Forchheim. According to them, this “had never been refused nor denied from ancient times”<sup>36</sup>. Albeit this supplication, which argued on the basis of

*dem alten Herkommen* [ancient and customary rights], initially did not have any effect, protest was voiced for the first time.

Furthermore, during the process of publication following the enactment it appeared that, in addition to the potters of Kronach, potters of other towns and villages also filed objections. When the order was gradually made public to the different authorities and guilds of the prince-bishopric – again by a master from Bamberg and one from Forchheim – the consequences became obvious also to these guilds, which had not been involved in the process until then.

For example, the potters of the small villages of Priegendorf and Lußberg appealed to the prince-bishop in a supplication. Their actual concern was their readmission to the Bamberg fairs. “Since an honest craft of Bamberg has recently erected a new guild and order”, which demanded of the potters of the surrounding villages “to abstain totally from our ancient custom to peddle, and to visit the markets from time to time as well”<sup>37</sup>, they were faced with financial ruin along with their families. Two categories of legitimation for resistance against authoritarian norms appear in this document: ancient customary rights and the need for decent sustenance<sup>38</sup>.

Supplications were also sent to the bishop by masters of other territories: when two masters from Bamberg and Forchheim came to the village of Gräfenberg (which was situated in the territory of the imperial city of Nuremberg but close to the prince-bishopric), to publish the order among the local masters, a complaint about the exclusion from the commerce of the prince-bishopric was promptly handed to them. On 24 May an answer was dispatched; it was not written by the Court Council or the Chancellery, but by the potters’ guild of the town of Bamberg. Its tenor was that in the meantime all surrounding territories and imperial cities had enacted potters’ guild orders with the exception of Bamberg. For this reason the potters of the prince-bishopric had been burdened by competition from outsiders and thus had been forced to supplicate, united, for an order to redress their grievances<sup>39</sup>.

That the craftsmen’s “unity”, mentioned in this letter, was not entirely established is already evident from the conflict between the potters of Bamberg and Forchheim on the one side and those of Kronach on the other. It is also apparent in a long-lasting conflict between the potters of Staffelstein<sup>40</sup>, a town under the feudal lordship of the cathedral chapter, and those of the neighbouring town of Lichtenfels. While there is no need to go into the details, the dispute concerned the intention of the Lichtenfels potters to visit the market of Staffelstein. Their wish was rejected by the potters of Staffelstein with reference to article 6 of the new order. As a consequence, the Lichtenfels artisans protested not only to their own municipal council, causing it to intervene in written form with the prince-bishop, but also sent a supplication to the prince-bishop themselves, articulating their objections to article 6 and demanding admission to the market of Staffelstein<sup>41</sup>.

To solve the conflict that had got partly out of hand and therefore threatened to escalate from legal form to violent resistance, the magistrates of Staffelstein appealed to their feudal lord, the cathedral chapter<sup>42</sup>. The chapter, however, answered that the dispute was totally superfluous, since the guild order clearly stated that only the fairs in Bamberg and Forchheim were closed to foreign masters, whereas in all the other towns, according to the order, the fairs were accessible. This applied to Staffelstein, too<sup>43</sup>.

This interpretation is somewhat surprising in view of the text of the order, which clearly states that the regulation is valid for all towns<sup>44</sup>. The reasons for this idiosyncratic interpretation, by which the chapter acted totally against the interests of its own potters, cannot be ascertained. The chapter may have thought that it could contribute to settling the conflict in this way.

The magistrates were not able to comprehend the answer either, but they had no choice but to accept the chapters' reply. Still, they did note that the article was in no way as clear as the chapter claimed. Furthermore, they alluded to the fact that the conflict could have been avoided if the magistrates had been asked for a report to explain the situation of the fairs and the relationship between the opponents<sup>45</sup>.

This indicates that the conflict between the potters of Staffelstein and those of Lichtenfels had been virulent for quite some time and – more importantly in this context – it becomes clear that the magistrates of Staffelstein would have liked to participate in the legislation process. In this way they could have issued a statement about this project supported by the potters' guild of Staffelstein. Thus it could have warned against the emerging difficulties. In their view the chapter should have interviewed the representatives of the town about possible consequences, which means it should have involved them in the legislation process before it agreed to the order proclaimed by the prince-bishop<sup>46</sup>.

This critique reveals that – at least in regard to craft policy – at the end of the 16th century the concept of unilateral, authoritarian legislation by the prince-bishop is not applicable. Instead, various groups like the magistrates and guilds of the concerned towns did not consider it unusual to request participation. Such a claim was also generally supported by the prince-bishop. Hence the most important point on the agenda of the annual guild assembly, which, destined by the new order<sup>47</sup>, took place on 3 July and which was attended by masters from the entire prince-bishopric, was the debate on the order itself, particularly on article 6. In response to the numerous complaints and to the controversies within the craft, prince-bishop Martin von Eyb stipulated that the order should be discussed again before being enacted finally in a unified and harmonious manner<sup>48</sup>.

During the discussion, taking place at the guild assembly, almost all of the 12 articles of the order were considered indisputable. Thus articles 1-5 and 7-12 were approved generally by the masters. As the only exception, the controversial article 6 was subject to a change that constituted a compromise: all fairs and markets of the prince-bishopric,

including those in Bamberg and Forchheim, were open to outside potters and could be visited by other masters. This opening was compensated by two restrictions, which were approved by the guild assembly: the permission was valid for only one and a half days and the volume of imported goods destined for sake should not exceed the weight of one *fuder*<sup>49</sup>.

Thus both sides had achieved a partial success. The potters of Bamberg and Forchheim, but also those of Staffelstein, had to give up their original aim but had succeeded in receiving a temporary and quantitative limitation of imports and hence an improvement of their own situation. The other side, represented by the potters of Kronach, Lichtenfels and the countryside, had been able to prevent the most unfavourable situation by their continuous protests and to maintain a partial access to the markets which were so important to them. The prince-bishop had obtained the desired conciliation within the guild assembly as well, which was legalised in form of an ordinance in the year 1586 at the latest<sup>50</sup>, but probably issued sooner<sup>51</sup>.

## CONCLUSION

In conclusion it becomes apparent that the guilds of the prince-bishopric were not defenceless victims of authoritarian measures in the sense of Oestreich's concept of social disciplining (*Sozialdisziplinierung*), but had extensive possibilities to participate in the early modern legislation process. Even the first step, the initiative for the drafting of a new order, did not come from the prince-bishop or his administration, but from the potters (especially those from the towns of Bamberg and Forchheim) whose demands were crucial. Moreover, it is clear that the authoritarian administration was involved in the second step, the elaboration of the order, to a very small extent, if at all. Only the third step, its elevation to law through the act of confirmation, was reserved to the prince-bishop and the cathedral chapter that had a right of veto. The fourth step, the publication of the order, was part of the potters' responsibility again, as well as the fifth step, the control and the sanctioning of the order, for which the guild masters and the court of the guild assembly held the responsibility<sup>52</sup>.

Since the addressees of norms – in this case the potters' guild – can not be regarded as a homogenous bloc and the territorial guild was an association of various town guilds with their own different objections, the order was not simply agreed to. Although, there was an attempt to achieve a common position before the enactment of the order, the goal to act in unity could not be achieved. When finally one faction of the territorial guild succeeded in having the order enacted by the bishop, this caused protests from many different sides. These protests spread from one of the major towns of the prince-bishopric, Kronach, via the countryside to neighbouring territories. Protest was expressed by the instrument of supplication, which offered one of the few possibilities for legal resistance accepted by the authorities. Two topics, which were often mentioned

were the violation of ancient customary rights and the endangerment of the craftsmen's obtaining a decent sustenance<sup>53</sup>.

Continuous protests as well as the danger of a violent escalation finally caused the prince-bishop to refer the topic to the annual guild assembly. With this measure he not only forced a compromise between the guild factions, but also received a suggestion for the solution of the problem regarding fairs, which he could legalise by a change of the order.

Of course, participation as well as protest were carried out within a legal framework of communicative practices. The subjects did not abandon their cooperative relations with their prince-bishop when they resisted article 6. In doing so, they would have lost the possibility to influence the relations of power in a legal way. This is also evident from the fact that the authorities' competence to legislate was never doubted by the potters. Only the content and the concrete form of the legal norms were considered negotiable. On the other hand the bishop was not interested in stigmatising the protest as insubordination or as a refusal of due obedience, and hence to brand the protests as illegal. Thus, he would have blocked the relations of power and would have turned to 'ruling', according to Foucault.

Both for the bishop as legislator and for the guilds as addressees of the norms, this form of cooperation presented certain advantages. The guilds had the possibility to contribute their ideas to the drafting of orders and edicts via their influence on the prince-bishop and on the other actors involved in the legislation process. For their part the authorities gained acceptance for their rules as legislators by incorporating traditional cooperative practices into the legislative process. Finally, the authorities could rely on their traditional power of regulations in the implementation of norms by integrating the guilds into the administrative process.

## NOTES

- <sup>1</sup> K. Härter, M. Stolleis (eds.), *Repertorium der Polizeyordnungen der Frühen Neuzeit*. vol. 1, *Deutsches Reich und geistliche Kurfürstentümer (Kurmainz, Kurköln, Kurtrier)*, Frankfurt 1996.
- <sup>2</sup> H. Maier, *Die ältere deutsche Staats- und Verwaltungslehre*, Munich 1980, pp. 63-73; P. Preu, *Polizeibegriff und Staatszwecklehre. Die Entwicklung des Polizeibegriffs durch die Rechts- und Staatswissenschaften des 18. Jahrhunderts*, Göttingen 1983, p. 16.
- <sup>3</sup> A. Landwehr, *Policy im Alltag. Die Implementation frühneuzeitlicher Polizeyordnungen in Leonberg*, Frankfurt 2000, p. 61; A. Holenstein, "Gute Policy" und lokale Gesellschaft im Staat des Ancien Régime. *Regieren und Verwalten im Spannungsfeld von Normen und lokalen Verhältnissen – das Fallbeispiel der Markgrafschaft Baden(-Durlach)*, Pfendorf 2003, pp. 32-39.
- <sup>4</sup> M. Stolleis, *Condere leges et interpretari. Gesetzgebungsmacht und Staatsbildung in der frühen Neuzeit*, in Id., *Staat und Staatsräson in der frühen Neuzeit. Studien zur Geschichte des öffentlichen Rechts*, Frankfurt am Main 1990, pp. 167-196.
- <sup>5</sup> Landwehr, *Policy* cit., pp. 68-74; T. Simon, "Gute Policy". *Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit*, Frankfurt 2004, pp. 104-167.
- <sup>6</sup> For the *gemeiner Nutz* see e.g. W. Schulze, *Vom Gemeinnutz zum Eigennutz. Über den Normenwandel in der ständischen Gesellschaft der Frühen Neuzeit*, in "Historische Zeitschrift", 1986, 243, pp. 591-626.
- <sup>7</sup> K. Härter, M. Stolleis, *Einleitung*, in Id. (eds.), *Repertorium* cit., p. 3.
- <sup>8</sup> I have already presented this case study reflecting another methodological aspect: J. Staudenmaier, *Zur Implementation frühneuzeitlicher Handwerksordnungen. Das Beispiel der Bamberger Hafnerordnung von 1582*, in M. Häberlein, K. Kech, J. Staudenmaier (eds.), *Bamberg in der Frühen Neuzeit. Neue Beiträge zur Geschichte von Stadt und Hochstift*, Bamberg 2008, pp. 49-76. You can find an online-version in [http://www.opus-bayern.de/uni-bamberg/volltexte/2008/139/pdf/BHS\\_1\\_opus\\_08.05.08.pdf](http://www.opus-bayern.de/uni-bamberg/volltexte/2008/139/pdf/BHS_1_opus_08.05.08.pdf).
- <sup>9</sup> G. Oestreich, *Strukturprobleme des europäischen Absolutismus*, in Id., *Geist und Gestalt des frühmodernen Staates. Ausgewählte Aufsätze*, Berlin 1969, pp. 179-197.
- <sup>10</sup> M. Raeff, *The well-ordered police state. Social and institutional change through law in the Germanies and Russia, 1600-1800*, New Haven 1983.
- <sup>11</sup> The subjects' scope for action is stressed by authors like Landwehr, *Policy* cit., pp. 29-38; A. Holenstein, *Bittgesuche, Gesetze und Verwaltung. Zur Praxis "guter Policy" in Gemeinde und Staat des Ancien Régime am Beispiel der Markgrafschaft Baden (-Durlach)*, in P. Blickle (ed.), *Gemeinde und Staat im alten Europa*, Munich 1998, pp. 325-357; U. Rublack, *Frühneuzeitliche Staatlichkeit und lokale Herrschaftspraxis in Württemberg*, in "Zeitschrift für Historische Forschung", 1997, 24, pp. 347-376. Also see C. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth Century England*, Cambridge 1987; M.J. Braddick, J. Walter (eds.), *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland*, Cambridge 2001; S. Hindle, *The State and Social Change in Early Modern England, c. 1550-1640*, London 2000.
- <sup>12</sup> See e.g. B. Stollberg-Rilinger, *Einleitung. Was heißt Kulturgeschichte des Politischen?*, in Id. (ed.), *Was heißt Kulturgeschichte des Politischen?*, Berlin 2005, pp. 9-24; U. Frevert, *Neue Politikgeschichte*, in J. Eibach, G. Lottes (eds.), *Kompass der Geschichtswissenschaft: Ein Handbuch*, Göttingen 2006, pp. 152-164. Also see P. Collinson, *De Republica Anglorum: Or History with the Politics Put Back*, in Id., *Elizabethan Essays*, London 1994, pp. 1-30; T.C.W. Blanning, *The Culture of Power and the Power of Culture. Old Regime Europe, 1660-1789*, Oxford 2002.
- <sup>13</sup> B. Stollberg-Rilinger, *Symbolische Kommunikation in der Vormoderne. Begriffe – Thesen – Forschungsperspektiven*, in "Zeitschrift für historische Forschung", 2004, 31, pp. 489-527, at p. 493; A. Landwehr, *Diskurs – Macht – Wissen. Perspektiven einer Kulturgeschichte des Politischen*, in "Archiv für Kulturgeschichte", 2003, 85, pp. 71-117, at p. 103.

- <sup>14</sup> Stollberg-Rilinger, *Symbolische Kommunikation* cit., p. 494f.
- <sup>15</sup> For Foucault's concept of power see e.g. *Gespräch mit Michel Foucault*, in M. Foucault, *Analytik der Macht*, ed. D. Defert, F. Ewald, Frankfurt 2005, p. 95. Original: *Intervista a Michel Foucault*, in A. Fontana, P. Pasquino (eds.), *Microfisica del potere: interventi politici*, Turin 1977, pp. 3-28; M. Foucault, *Die Maschen der Macht*, in Id., *Analytik* cit., pp. 220-239, here p. 224. Original: *„As malhas do poder“*, in *Barbarie*, 1981, 4; 1985, 5; M. Foucault, *Subjekt und Macht*, in Id., *Analytik* cit., pp. 240-263, at p. 255. Original: *The Subject and Power*, in H. Dreyfus, P. Rabinow (ed.), *Michel Foucault. Beyond Structuralism and Hermeneutics*, Chicago 1982, pp. 208-226.
- <sup>16</sup> A. Suter, *Regionale politische Kulturen von Protest und Widerstand im Spätmittelalter und in der Frühen Neuzeit. Die schweizerische Eidgenossenschaft als Beispiel*, in "Geschichte und Gesellschaft", 1995, 21, pp. 161-194, at p. 161. For England see D. Underdown, *Revel Riot and Rebellion: Popular Politics and Culture in England 1603-1660*, Oxford 1985.
- <sup>17</sup> P. Blickle, *Beschwerden und Policy. Die Legitimation des modernen Staates durch Verfahren und Normen*, in P. Blickle, P. Kissling, H.R.Schmitt (eds.), *Gute Policy als Politik im 16. Jahrhundert. Die Entstehung des öffentlichen Raumes in Oberdeutschland*, Frankfurt am Main 2003, pp. 549-568; Holenstein, *Bittgesuche* cit.
- <sup>18</sup> P. Blickle, *Unruhen in der ständischen Gesellschaft von 1300 bis 1800*, Munich 1988.
- <sup>19</sup> P. Dubach, *Policy im Konflikt. Gesetzgebung und Widerstand im hochstiftisch-augsburgischen Pflegamt Rettenberg*, in Blickle, Kissling, Schmidt (eds.), *Gute Policy* cit., pp. 343-391.
- <sup>20</sup> H. Caspary, *Staat, Finanzen, Wirtschaft und Heerwesen im Hochstift Bamberg (1672-1693)*, Bamberg 1976, p. 60. For the history of Bamberg see e.g. K. Dengler-Schreiber, *Kleine Bamberger Stadtgeschichte*, Regensburg 2006.
- <sup>21</sup> For the cathedral chapter see C. Mann, *Das Bamberger Domkapitel im späten 18. Jahrhundert. Lebensstile, Parteigungen, Reformfähigkeit*, in Häberlein, Kech, Staudenmaier (eds.), *Bamberg* cit., pp. 319-345.
- <sup>22</sup> Staatsarchiv Bamberg [State Archive of Bamberg] (StABa), B 21, 9, fol. 64.
- <sup>23</sup> Härter, Stolleis, *Einleitung* cit., pp. 16-17.
- <sup>24</sup> W. Reddig, *Handwerker und ihre Organisationen in Bamberg. Von der Zunft zum Gewerbs-Verein*, Bamberg 1991, p. 22.
- <sup>25</sup> StABa, A 38, L 387, Nr. 154.
- <sup>26</sup> Between 1475 and 1582 35 guild orders had been enacted by the Prince-Bishop.
- <sup>27</sup> StABa, A 38, L 387, Nr. 164.
- <sup>28</sup> [dass] *keiner den andern, mit wahren überführen noch betragen* [solle]. StABa, A 38, L 387, Nr. 154.
- <sup>29</sup> *Weyln wir dann in unserm Landt und unter den vnsern ein Redlich Ordentlich wessen, nach gemainem Nutz in Ordnung zu pringen und zubalten genaigt* [...]. StABa, A 38, L 387, Nr. 154.
- <sup>30</sup> This is also postulated by J. Ehmer, *Zünfte in Europa in der frühen Neuzeit*, in H.-G. Haupt, *Das Ende der Zünfte. Ein europäischer Vergleich*, Göttingen 2002, pp. 87-126, at p. 93.
- <sup>31</sup> Also StABa, A 38, L 387, Nr. 163 (Supplication from the potters' guild of the town of Forchheim): *Dieweil bede unsere Stetten Bamberg undt Vorchhaim, die zimlich mit dem handtwerckh der haffner versehen* [...].
- <sup>32</sup> For the fairs of Bamberg see C. Gödel, *Die Jahresrechnungen des Bamberger Stadtbauhofes. Bemerkungen zu einem Rechnungsbestand des 15. Jahrhunderts*, in U. Dirlmeier, R. Elkar, G. Fouquet (eds.), *Öffentliches Bauen in Mittelalter und Früher Neuzeit*, St. Katharinen 1991, pp. 56-88, at p. 75 f.
- <sup>33</sup> For the concept of *Nabrung* see R. Blickle, *Nabrung und Eigentum als Kategorien in der ständischen Gesellschaft*, in W. Schulze (ed.), *Ständische Gesellschaft und soziale Mobilität*, Munich 1988, pp. 73-93;



- P. Blicke, *The Common People and the Process of State Formation: Some Conclusions*, in Id. (ed.), *Representation, Resistance and Community*, Oxford 1997, pp. 325-338.
- <sup>34</sup> StABa, A 38, L 387, Nr. 163.
- <sup>35</sup> Da “[...] wir gleichwoln in erfarnus gebracht, wie ein erbar handtwerck der haffner zu Bamberg neben oberzelten Städten vnnnd flecken ein Landtsordnung auffzurichten, vnnnd bei S.F.G. derentwegen solche zu confirmieren anzuschen in vorhabens [...]”. StABa, A 38, L 387, Nr. 161.
- <sup>36</sup> “Da ihnen vor alters hero solchs nit gewehret noch gewaigert worden”. StABa, A 38, L 387, Nr. 161.
- <sup>37</sup> “Nach dem ein Loblich handtwerck die Heffner zu Bamberg, in Neulligkeit ein Neue Zunfft vnd Ordnung auffgericht, die auch von den Hafnern der umliegenden Orte verlange, vns vnser alltens herkommens, als haussieren, auch hin vnd wider die merck zu besuchen, gantz vnd gar darselbigen zu enteussern”.
- <sup>38</sup> StABa, A 38, L 387, Nr. 162. Both the potters, who wanted a closure of the fairs, and the potters, who asked for a free admission, referred to the legitimation of decent sustenance.
- <sup>39</sup> “[...] mit vberfahren, tragen vnd anderer störeyer beschwerdt worden, derowegen gedrunghenlichen verur-sacht (weiln allenthalben ainigkeyt) vmb gnedige Ordnung vnderthenig anzulangen”. StABa, A 38, L 387, Nr. 157.
- <sup>40</sup> G. Dippold, *Staffelstein zur Zeit von Adam Ries*, in *Town of Staffelstein* (ed.), *Adam Rieß vom Staffelstein. Rechenmeister und Cossist*, Staffelstein 1992, pp. 39-86.
- <sup>41</sup> StABa, A 38, L 386, Nr. 165.
- <sup>42</sup> StABa, B 86.1 (protocol of the cathedral chapters’ session), 15, fol. 154; StABa, A 38, L 387, Nr. 165.
- <sup>43</sup> StABa, B 86.1, 15, fol. 155.
- <sup>44</sup> StABa, A 38, L 387, Nr. 154, article 6.
- <sup>45</sup> StABa, B 86.1, 15, fol. 162.
- <sup>46</sup> See StABa, B 86.1, 15, fol. 77; StABa, B 86.1, 15, fol. 82.
- <sup>47</sup> StABa, A 38, L 387, Nr. 154, Art. 12.
- <sup>48</sup> StABa, A 38, L 387, Nr. 155 (protocol of the guild assembly).
- <sup>49</sup> Id., 1 Fuder = 1176 liters.
- <sup>50</sup> StABa, A 38, L 387, Nr. 156, Art. 6 (potters’ guild order of 21 January 1586).
- <sup>51</sup> StABa, A 38, L 387, Nr. 154, Art. 6 (undated bill).
- <sup>52</sup> StABa, A 38, L 387, Nr. 156, Art. 14 (potters’ guild order of 1586).
- <sup>53</sup> StABa, A 38, L 387, Nr. 162; StABa, A 38, L 387, Nr. 165; StABa, A 38, L 387, Nr. 167.

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- Id., *"Gute Policey" und lokale Gesellschaft im Staat des Ancien Régime. Regieren und Verwalten im Spannungsfeld von Normen und lokalen Verhältnissen – das Fallbeispiel der Markgrafschaft Baden(-Durlach)*, Epfendorf 2003.
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