LEGAL CULTURE IN A TURBULENT TIME:

LAW AND SOCIETY IN EARLY MODERN SAXONY

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Preface

Currency

In the sixteenth century, the gulden was the principal currency in Freiberg. One Meißener gulden equaled twenty-one groschen; one groschen equaled twelve pennies (or pfennige); and therefore one gulden equaled 252 pennies. There were also schockgroschen which were labelled either as old (*alt*), new (*neu*) and/or good (*gut*). A schock was a measurement, indicating a sum of sixty. A new or good schockgroschen, thus, had a value of sixty groschen. An old schockgroschen had a value of three new schockgroschen, or twenty groschen. Therefore, one new schockgroschen equaled approximately two and six-sevenths gulden (i.e., seven new schockgroschen equaled twenty gulden), whereas an old schockgroschen had a value of slightly less than a gulden.[1]

The Taler, the currency whose name served as the inspiration for the dollar, was being produced as early as 1517 in Joachimsthal (it was named after this city), but it did not come into widespread use in Freiberg until the late sixteenth century. For the reader's convenience, all sums have been converted to gulden, groschen, and pennies.

Conversion table on values of Saxon currencies

	gulden	**groschen**	**pennies**	**neu/good schockgr.**	**alt schockgr.**
1 gulden	--	21	252	7/20	21/20
1 groschen	1/21	--		1/60	1/20
1 pennies	1/252		--	1/720	1/240
1 new/good schockgr.	20/7	60	720	--	3
1 alt schockgr.	20/21	20	240	1/3	--

[1] See Walter Schellhas, "Das sächsische Geld des 16. Jahrhunderts," *Mitteldeutsche Monatsheft* 10 (1926): 76-80.

Dates

During the sixteenth century, Freiberg adhered to the Julian calendar, with the calendar year beginning on 1 January. All years mentioned in this thesis and in the archival records are given in this form.

The date of the changeover for the city council was two weeks after Easter. When referring to the year of the council, 1500/01 is used to refer to the year that began in spring 1500 and continued until spring of 1501.

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As a bachelor and master's student at York University, Tom and Libby Cohen inculcated a passion in me for history and legal anthropology. They opened my eyes to the wonderful world and possibilities of early modern legal sources, I remain grateful for their ongoing mentorship, advice, and friendship.

The early modern historians of the Technical University of Dresden gave me a home and patiently helped me find my way through the expansive German historiography on *Kriminalitätsgeschichte, Soziale Kontrolle*, and *Policeygesetze/Normdurchsetzung*. They read numerous papers and draft chapters, providing rigorous and collegial feedback. Every chapter in this dissertation benefitted from their help. As a DAAD supervisor, Gerd Schwerhoff was patient, allowing me freedom to explore but also making sure to nudge me away from dead ends. Ulrike Ludwig consistently shared her expertise on Saxon legal history and provided many helpful pieces of advice. Sebastian Frenzel unfailingly supplied me with countless copies of German secondary literature which greatly enhanced this project. Franziska Neumann, Eric Piltz, and Alex Kästner have provided valued friendship, guidance, and insightful feedback that I hope I can continue to repay. I remain particularly indebted to

Eric for making me aware of Harriet Rudolph's review article on legal culture. With that article, I finally found a way to connect the legal anthropology of the Mediterranean that I had learned from the Cohens, with the German scholarship on crime and social control.

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List of abbreviations

Main Text

r.	reigned

Archival

StAFB	Stadtarchiv Freiberg
SHStA Dresden	Sächsisches Hauptstaatsarchiv Dresden

Footnotes

Lndr	Landrecht, section of the *Sachsenspiegel*
MFA	*Mitteilungen des Freiberger Altertumsvereins*
r	recto
v	verso

1. Introduction

1.1 A Day in Court

Friday, 7 May 1568 was an ordinary day for the municipal court of Freiberg. Held on the market square in front of the town hall, the proceedings of the court were as much a part of life on the square as selling and trading, as talk and gossip. They were public and open for all to see, to hear and to note. On this morning, the court was presided over by the judge Bernhard Hanneman, the court scribe Adam Bellman, and (likely) the six experienced *Gerichtsschöffen*: Hans Alnpeck, Hans Buttner, Merten Lanzberg, Ulrich Liebe, Nicol Hammermüller, and Christoph Rudolph.[1]

We can reconstruct much of the business that the court of this Saxon silver-mining town dealt with on this spring morning. Four cases deserve our attention. The first was a quarrel between two citizens who had verbally jousted with one another. The court helped to resolve it by requiring both Hans Forster and Christoff Rulicke to name a guarantor (*Bürge*), and, in time-honoured tradition, pledge that they would behave peacefully towards one another, in both words and deeds.[2] Second, the court heard testimony from a maid, Regina Falcke, who claimed that her master, the surgeon Andres Gerloch, had raped her the previous September and caused her pregnancy.[3]

While the first two cases dealt with criminal infractions, such cases represented only a small part of the court's daily docket. Civil actions, particularly financial cases, were a

[1] With the exception of Rudolph, each of the six were serving at least their third year as a *Gerichtsschöffe* (Rudolph was in his second, and final year; the following year, he became a councillor). See Walther Herrmann, ed., *Das Freiberger Bürgerbuch 1486-1605* (Dresden: Historische Kommission der Sächsischen Akademie der Wissenschaften zu Leipzig, 1965), 156. Also potentially present: members of council and the *Bürgermeister*.
[2] Sächsisches Hauptstaatsarchiv Dresden (hereafter SHStA Dresden), 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr 385, fol 112v.
[3] Stadtarchiv Freiberg (hereafter StAFB), Merkregister (1568-1569), I Ba 4c, fol 2r.

sphere of much greater activity. This day was no exception. In the third case, the court registered a thirty groschen loan from the baker Georg Kunelt to Wentzel Leuschner; and in the fourth, the purchase of a house for forty-eight gulden by butcher Paul Zeiner.[4]

There is no single record of the court's activities. Each of the above cases were recorded in a separate register, and when appropriate, cross-referenced with other registers. Besides the four registers used on this day, there were multiple registers that the court scribe could be required to retrieve at any point. Administering the court was a burdensome task, yet one the court scribes competently handled.

This thesis studies the culture of Freiberg's municipal court. It looks at the kinds of cases that the court dealt with on a daily basis, not the specific or sporadic offences, such as illicit sex or murder, that so often have grabbed historians' attention.[5] By looking at the minutiae of the court, the ethnographer can see how a court typically operated, both in its internal practices, and how it mediated between legal codes and the needs of its residents.

Legally guiding the court was Freiberg's municipal law (*Stadtrecht*) from 1296/1305 which remained in effect until 1572. Opposite the law were the people of Freiberg, and it was they who played a pivotal role in shaping the cases that the court adjudicated. Their decisions on when to turn to, or to turn away from, the court reveal what roles they wanted the court to play in their lives. The culture of a court is, therefore, a two-way street. Freibergers placed demands on the court, and in turn, the court responded. Through studying this give-and-take relationship, we can understand the court's role and place in daily life, and its effect on social interaction and communal bonds.

[4] As chapter two details, houses typically cost much more but the house mentioned was located outside the town walls and thus came cheaper. For the house purchase, see SHStA Dresden, 12613, Kaufbuch der Altvorstadt von Freiberg (1548-1618), Nr 96, fol. 107r; for the loan, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr 384, fol 490r.

[5] For this reason, sexual violence is outside the scope of the thesis: it was a rare event, and only partially under the jurisdiction of the court. To satsfy the curious reader: the court did not believe Regina Falcke's story, and she was banished on 19 July. See StAFB, Merkregister (1568-1569), I Ba 4c, fol 36r.

Studying legal culture requires incorporating both criminal and civil jurisprudence. Legal historians began the mining of criminal law, and social historians have continued this work. For early modern Germany, however, this subfield has been thoroughly tapped. The *Arbeitskreis für Kriminalitätsgeschichte*, founded in 1991 by Dieter Bauer, Andreas Blauert, and Gerd Schwerhoff, ceased meeting in 2010 because most topics had been exhausted for the early modern world.[6] In comparison, civil jurisprudence has been under-researched for early modern Germany (and Europe). Outside of a few limited studies, our knowledge of civil law is lacking.[7] This deficit needs to be rectified since most people encountered legal institutions through civil, not criminal, actions. The focus on criminal law in recent historiography has tended to distort our understandings of early modern legal practice. Legal culture offers a means to redress this imbalance without excluding or ignoring criminal jurisprudence.

1.2 Social Control and Legal Culture

Studying the legal culture of a court and its socio-economic context fits into larger narratives on the growth and development of the early modern state, the law, and social order. All three topics have been of particular interest to historians in the last century. The historiographical sea change of the 1970s and the 'new' cultural history brought fresh attention to these themes as historians such as Carlo Ginzburg and Natalie Zemon Davis demonstrated new ways in which court records could be read and imaginatively interpreted.[8]

[6] See Gerd Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt: Campus, 2011), 16-17.
[7] For studies on civil law in early modern Germany, see Christian Wollschläger, "Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries, 1549-1984," *Law & Society Review* 24.2 (1990): 261-282; and Christine Schedensack, *Nachbarn im Konflikt: zur Entstehung und Beilegung von Rechtsstreitigkeiten um Haus und Hof im frühneuzeitlichen Münster* (Münster: Aschendorff, 2007).
[8] Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, trans. John and Anne Tedeschi (Baltimore: Johns Hopkins University Press, 1980); and Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge: Harvard University Press, 1983).

Historians of early modern Germany have struggled to find productive methodological and theoretical frameworks to investigate the relationship between law and society. Whereas Ginzburg turned to folklore, and Davis to anthropology, historians of early modern Germany most often turned to social theorists and sociologists for guidance.[9] Max Weber, Gerhard Oestreich, and Michel Foucault, and their respective theories of rationalisation, social discipline (*Sozialdisziplinierung*), and discipline and punish, greatly influenced early studies.[10] As the German sociologist Stefan Breuer has noted, at the heart of each of these theories stands discipline, and its role in reforming an idolatrous peasantry into a well-behaved (or at least less prone to vice), productive workforce and docile subjects, and the growth of the modern state to accomplish this.[11] For Weber, discipline came from the reformist ethos of Protestantism, which became embedded in the growing bureaucracy of private capitalism.[12] For Oestreich, (social) discipline was a coercive force that rulers used to reform all aspects of life (political, religious, social, economic, and military) during the age of Absolutism (which Oestreich defines as roughly 1650 to 1800).[13] For Foucault, discipline

[9] One could also say Ginzburg turned to the Marxism of Gramsci to write a history of the 'subordinate classes.' See Ginzburg, *Cheese and the Worms*, 129-30.

[10] See for example the work of Dirk Blasius, *Bürgerliche Gesellschaft und Kriminalität: zur Sozialgeschichte Preussens im Vormärz* (Göttingen: Vandenhoeck und Ruprecht, 1976); and *Kriminalität und Alltag: zur Konfliktgeschichte des Alltagslebens im 19. Jahrhundert* (Göttingen: Vandenhoeck und Ruprecht, 1978).

[11] See Stefan Breuer, "Sozialdisziplinierung. Probleme und Problemverlagerungen eines Konzeptes bei Max Weber, Gerhard Oestreich und Michel Foucault," in *Soziale Sicherheit und soziale Disziplinierung: Beiträge zu einer historischen Theorie der Sozialpolitik*, ed. Christoph Sachsse and Florian Tennstedt (Frankfurt: Suhrkamp, 1986), 45-69.

[12] Max Weber, *Economy and Society: An Outline of Interpretative Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, (1968) 1978).

[13] Gerhard Oestreich, "Strukturprobleme des europäischen Absolutismsus," in *Geist und Gestalt des frühmodernen Staates* (Berlin: Duncker & Humblot, 1969), 179-197. Of the group, Oestreich is the only historian. German historians often try to accommodate him by arguing that his concept of 'social discipline' belongs to the history of ideas (*Ideengeschichte*) rather than the world of social history, where most of its reception has been. See for example, Gerd Schwerhoff, *Aktenkundig und Gerichtsnotorisch: Einführung in die historische Kriminalitätsforschung* (Tübingen: Edition discord, 1999), 86-7. That a 'history of ideas,' disconnected from historical reality, is of minimal use is often overlooked. A significant shortcoming is that Oestreich's article never specifies under what conditions his concept of 'social discipline' could be empirically tested. For an erudite treatment of how social discipline could be studied in practice, see Winfried Schulze, "Gerhard Oestreichs Begriff 'Sozialdisziplinierung in der frühen Neuzeit,'" *Zeitschrift für Historische Forschung* 14 (1987): 265-302.

was implemented through legal verdicts, first in the physical maiming and execution of convicts, and later in the development of prisons.[14]

For historians, the first problem is that each of these theories seeks to explain the transition from a 'pre-modern' to a 'modern' world and the concomitant behavioural changes it entailed. This has had a malign influence on historians who by focusing on the end result of modernity and the modern state, lost sight of the early modern world in its own terms. Instead of trying to understand the past, *wie es einmal eigentlich gewesen*, historians became preoccupied with trying to conceptualize how it gave birth to present-day society. The cart had been put before the horse.

The second problem with these theories is that, whether advertently or inadvertently, they favoured a selection and reading of sources in a top-down manner. Many studies focused on legal codes and/or the plethora of new statutes and ordinances of the sixteenth to the eighteenth centuries that aimed to reform and regulate alcohol consumption, games, dress (sumptuary laws), and sexual/marital practices. But as the convincing essays by Jürgen Schlumbohm and Achim Landwehr clearly demonstrated, these studies, especially those by legal historians, rarely considered actual legal practice to see how the new laws were implemented and whether they actually brought about changes in behaviour.[15]

Instead, they made two central assumptions as to why these must have been successfully implemented. First, the power of the nascent state was strong enough to ensure

[14] Foucault is admittedly the least cited of the group and his influence appears to have been more diffuse. See Michel Foucault, *Discipline and Punish: the Birth of the Prison*, trans. Alan Sheridan (London: Allen Lane, 1977). As Gerd Schwerhoff points out, Foucault was not the first to hypothesise such a role for criminal punishments. In a 1939 monograph, Georg Rusche and Otto Kirchheimer argued that the cruel punishments of medieval justice were an instrument in class warfare to create more productive workers. See their *Punishment and Social Structure* (New York: Columbia University Press, 1939). For the Schwerhoff reference, see, *Historische Kriminalitätsforschung*, 31-2.

[15] Jürgen Schlumbohm, "Gesetze, die nicht durchgesetzt werden – ein Strukturmerkmal des frühneuzeitlichen Staates?" *Geschichte und Gesellschaft* 23 (1997): 647-663; and Achim Landwehr, "'Normdurchsetzung' in der frühen Neuzeit? Kritik eines Begriffs," *Zeitschrift für Geschichtswissenschaft* 48 (2000): 146-162. Within English-speaking historiography, the most obvious parallel of the shock-and-awe treatment of the law is Douglas Hay et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Allen Lane, 1975). For a similar critique, see John H. Langbein, "Albion's Fatal Flaws," *Past and Present* no. 98.1 (1983): 96-120.

a law's implementation. As such, the actual people, whose behaviour was supposed to be reformed, merited no analysis and were granted no agency.[16] Second, they assumed laws must have been successfully implemented or else we could not have arrived at the modern world.

Both assumptions were false. The second is purely teleological and based on an idealised understanding of law and order in the modern world. One need only glance at the unpunished jaywalker or inner city neighbourhood to see there are many domains of life beyond the ordinary reach of the law and the modern state. The first assumption rested on questionable theoretical grounds. As legal anthropologists have long held, laws and norms are never fixed or static, but rather constantly contested. Their implementation and role in regulating life is an ongoing negotiation between state and subject, and even amongst subjects themselves.[17]

Empirical evidence chipped away at the model of a repressive, reforming early modern state. New studies repeatedly demonstrated that the early modern state did not have the power or resources to force values and mores on their subjects. Instead, authorities needed the co-operation of citizens to implement new laws and standards, and thus aimed at consensus.

For German history, the 1980s was the key decade of historiographical change. While some studies continued to look primarily at the practices of elites and argued in favour of top-down discipline, many studies opted for a more pluralistic optic that incorporated both elites and non-elites.[18] These new studies emphasised the negotiatory nature of the

[16] Foucault's influence is especially apparent here. As Stanley Cohen wrote, one of the main tenets of Foucault's work is a "structuralist denial of human agency." See Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Cambridge: Polity, 1985), 10.
[17] Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7 (1973): 719-46; and Sally Falk Moore, "Uncertainties in Situations, Indeterminacies in Culture" in *Law as Process* (Boston: Routledge & K. Paul, 1978), 32-53.
[18] Some elite-focused studies include Marc Raeff, *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800* (New Haven: Yale University Press, 1983); Gerald Strauss, *Law, Resistance, and the State: the Opposition to Roman Law in Reformation Germany*

relationship between the nascent state and its population.[19] With a few minor exceptions, scholarship of the last twenty years has repeatedly confirmed and reaffirmed this negotiatory model.[20]

Besides the new cultural history's push for a more bottom-up approach, the major impetus for change in German histororiography was the incorporation of the sociological model of social control. The conceptual leap from Foucault, Weber, and Oestreich's theories on discipline to social control was not a large one. As Stefan Breuer aptly noted, boiled down to their essentials, all these theories sought to understand how society responded to

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(Princeton: Princeton University Press, 1986); and R. Po-chia Hsia, *Social Discipline in the Reformation: Central Europe, 1550-1750* (New York: Routledge, 1989). Although, Hsia's work has more to do with the confessionalisation thesis, his monograph primarily concerns itself with elite practices. One could include the confessionalisation theory, as postulated by Heinz Schilling and Wolfgang Reinhard, as taking a top-down approach. Joel Harrington has argued that the aims of social discipline and confessionalisation were "practically identical." However, confessionalisation with its focus on the connection between religion and state-building, lies outside the scope of this study. For the Harrington quotation, see *Reordering Marriage and Society in Reformation Germany* (Cambridge: Cambridge University Press, 1995), 13. On confessionalisation, see Ernst Walter Zeeden, *Die Entstehung der Konfessionen: Grundlagen und Formen der Konfessionsbildung im Zeitalter der Glaubenskämpfe* (Munich: R. Oldenbourg, 1965); Heinz Schilling, *Konfessionskonflikt und Staatsbildung : eine Fallstudie über das Verhältnis von religiösem und sozialem Wandel in der Frühneuzeit am Beispiel der Grafschaft Lippe* (Gütersloh: Gütersloher Verlagshaus Mohn, 1981); and Wolfgang Reinhard, "Gegenreformation als Modernisierung? Prolegomena zu einer Theorie des konfessionellen Zeitalters," *Archiv für Reformationsgeschichte* 68 (1977): 226-52.

[19] The major texts in English were David W. Sabean, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge: Cambridge University Press, 1984); and Thomas W. Robisheaux, *Rural Society and the Search for Order in Early Modern Germany* (Cambridge: Cambridge University Press, 1989). In German, Susanna Burghartz, *Leib, Ehre und Gut: Delinquenz in Zürich Ende des 14. Jahrhunderts* (Zürich: Chronos, 1990); Gerd Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn: Bouvier, 1991); and Andreas Blauert and Gerd Schwerhoff, eds., *Mit den Waffen der Justiz: zur Kriminalitätsgeschichte des Spätmittelalters und der Frühen Neuzeit* (Frankfurt: Fischer, 1993).

[20] An exception: Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999). The confirmations: Joachim Eibach, "Städtische Gewaltkriminalität im Ancien Régime: Frankfurt am Main im europäischen Kontext," *Zeitschrift für Historische Forschung* 25 (1998), 359-382; Karl Härter, "Berichte und Kritik: Soziale Disziplinierung durch Strafe? Intentionen frühneuzeitlicher Policeyordnungen und staatliche Sanktionspraxis," *Zeitschrift für Historische Forschung* 26 (1999): 365-79; Peter Schuster, *Eine Stadt vor Gericht: Recht und Alltag im spätmittelalterlichen Konstanz* (Paderborn: Schöningh, 2000); Martin Dinges, "Justiznutzungen als soziale Kontrolle in der Frühen Neuzeit," in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Constance: UVK, 2000); Ulrich Henselmeyer, *Ratsherren und andere Delinquenten: die Rechtsprechungspraxis bei geringfügigen Delikten im spätmittelalterlichen Nürnberg* (Constance: UVK, 2002); and Stefan Brakensiek, "Herrschaftschaftsvermittlung im alten Europa. Praktiken lokaler Justiz, Politik und Verwaltung im internationalen Vergleich," in *Ergebene Diener ihrer Herren?: Herrschaftsvermittlung im alten Europa*, ed. Stefan Brakensiek and Heide Wunder (Cologne: Böhlau, 2005), 1-21. Such an approach has also resonated within the English-speaking world. See Michael J. Braddick and John Walter, *Negotiating Power in Early Modern Society: Order, Hierarchy, and Subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001).

behaviour it considered deviant.[21] Within sociology, how society reacts to deviant behaviour is termed 'social control.' The sociologist Stanley Cohen defined social control as: "the organized ways in which society responds to behaviour and people that it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way or another."[22]

For early modern Germany, Gerd Schwerhoff was the first historian to successfully place deviance and labelling at the forefront of a study. Tellingly, he did not use Cohen's definition of social control and instead looked to Robert Merton and his anomie theory. Following Merton, for Schwerhoff, the central dynamic was not whether deviant behaviour was criminal or not, but rather contemporaries' reactions to it.[23] Behaviour became deviant only when contemporaries defined it as such ***and*** took clear steps against it. By taking steps against it, contemporaries labelled certain behaviour as deviant (the 'labelling-approach'). These steps did not have to be formal and legal: informal and extra-legal sanctions are as much a part of social control as formal and legal ones.

For Schwerhoff and those that followed him, the 'labelling approach' model of social control has been effective because it expanded the scope of research. By including both informal and formal mechanisms of social control, historians could look at the larger field of deviant behaviour, instead of being constrained to legal codes and practice. Where previous studies had considered only vertical (top-down) social control, room was now granted for horizontal social control. This broader optic brought an acknowledgment that courts were only one of many instruments for reacting to deviant behaviour. As Ulrike Ludwig put, "there has been a paradigm change in how we look at the role of justice. No longer is it

[21] See Breuer, "Sozialdisziplinierung bei Weber, Oestreich und Foucault," 62.
[22] Cohen, *Visions of Social Control*, 1.
[23] See Schwerhoff, *Köln im Kreuzverhör*, 26-7. More recently, he has given credit to Howard Becker as the 'founding father' of the labelling approach. See *Aktenkundig und Gerichtsnotorisch*, 77. For Merton and the anomie theory, see Robert Merton, *Social Theory and Social Structure*, rev. ed. (Glencoe, Ill: Free Press, 1957). For Becker and the labelling approach, see Howard Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963). Appearing a year earlier than Schwerhoff's *Köln im Kreuzverhör*, Susanna Burghartz's *Leib, Ehre und Gut* used delinquency as a leading concept, rather than deviance and social control.

characterised as a means of repression, rather [the law] is now considered to be one of many possibilities."[24]

As helpful as the concept of social control has been, it is not without limitations and problems. Even though historians using the concept claim to look at the larger world of deviance, state and legal institutions remain overwhelmingly the leading actors, both as providers of sources, and as regulators of deviant behaviour. If these institutions are to remain central, then there is a need for a model that better reflects their centrality in these processes. To this end, I employ Lawrence Friedman's concept of legal culture.[25]

In a 1969 essay, Friedman defined legal culture as "the network of values and attitudes relating to law, which determines when and why and where people turn to law or government, or turn away."[26] Friedman highlighted three specific assessment foci for studying it. "First…the demands made upon legal institutions, calling for action of one sort or another; second, the responses made by the legal institutions; third, the impact and effect of these responses on the persons making the demands, and on society as a whole."[27] It is an investigative model that incorporates both the users (those who place demands on a legal institution) and the structures (courts, division of powers), as well as substantive features (codes, verdicts, rules) that are integral to a legal system. Studying legal culture permits the ethnographer to assess the place of the disputants, the judiciary, and the law in a given society.

As I see it, the concept of legal culture offers four distinct advantages over social control. First, studies on social control rarely place adequate emphasis on the choice of forum. In the early modern world there were multiple forums, including many non-

[24] "Insgesamt vollzog sich also ein Paradigmenwechsel in der Einschätzung der Rolle der Justiz, die nun nicht mehr als Mittel der Repression charakterisiert, sondern vielmehr als eine Möglichkeit unter anderen verstanden wird." Ulrike Ludwig, *Das Herz der Justitia: Gestaltungspotentiale territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens* 1548-1648 (Constance: UVK, 2008), 18.
[25] Lawrence Friedman, "Legal Culture and Social Development," *Law & Society Review* 4 (1969): 29-44.
[26] Ibid., 34.
[27] Ibid., 33.

institutional ones, such as peers, friends, neighbours, and co-workers, for dealing with deviant behaviour. A court, or legal institution, was only one option. As a result, individuals had the ability to 'shop' for the best forum to apply the label of deviance.[28] Yet, most scholars primarily examine courts, and not these other forums. The choice to 'apply' the label deviant in court rather than elsewhere was an active one.[29] Historians often love to call their subjects 'actors' but forget that actors act. And they do not merely follow a script. Instead, they make informed (or uninformed) choices based on weighing possible outcomes. Studying legal culture puts this decision at the forefront of consideration – where it belongs.[30]

Second, when individuals decide for the forum of a court, the court is not a silent player in applying the deviance label. As Simon Roberts pointed out many years ago,

> In any culture we must expect some disparity between the form in which a dispute appears in court and the "real" substance of the quarrel which gives rise to it. Even in the absence of specialization which characterizes the courts of contemporary legal systems, there is likely to be some gap between the way in which the parties conceive of their quarrel and the manner in which it is seen by interveners. The disputants will probably know this and thus present the matter in such a way that the court will be prepared to hear it.[31]

How then can we distinguish an individual's criteria of deviance from the court's? The ethnographer cannot tell where labelling ends and framing a case for the court begins. Moreover, disputants may have had multiple motivations for initiating a legal case, none of which may have had anything to do with deviance. For example, Daniel Smail has shown that in medieval Marseille the court was a common forum to pursue enmity and grudges.[32]

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[28] On forum shopping, see Keebet von Benda-Beckmann, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra," *Journal of Legal Pluralism* 19 (1981): 117-159.
[29] Also implicit in this choice was the decision to apply the label in a particular court: every European polity contained multiple courts, often with overallping jurisdictions.
[30] In this regard, legal culture has a lot in common with Martin Dinges' concept of "Justiznutzung," the idea that launching a legal case was often a bargaining gambit in a larger game. The goal was not to have the court settle the dispute, but rather to pressure an adversary to settle, often out of court. See Dinges, "Justiznutzungen."
[31] Simon Roberts, "The Study of Dispute: Anthropological Perspectives," in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 20-22.
[32] Daniel Lord Smail, "Hatred as a Social Institution in Late-Medieval Society," *Speculum* 76.1 (Jan., 2001): 90-126.

Third, one of the major short comings of the labelling approach is that it is rarely clear whose label of deviance we are using.[33] The root of this problem can be traced to Stanley Cohen's definition of social control (the most commonly used definition by German historians). Cohen's definition has been rightly criticised for not specifying who or what he means by "society" – individuals, groups, or the state?[34] Unless we are willing to assume that conceptions of deviance were homogeneous across society, or that that there was a singular conception of deviance, such a framework needs reworking.[35] Legal culture avoids this definitional problem of labelling, and looks instead at instances when courts were used (or not used).

Fourth, even granting Schwerhoff and other historians' desire for a wider societal optic when studying crime and the law, using deviance to do this is problematic. The type of conflicts that German *Kriminalitätsgeschichte* most frequently engages with are honour conflicts that progress ritually from insults, to the pulling of knives, and finally to open violence, brawls, and fights. These conflicts were not acts of deviance: they were routine parts of daily life in early modern Europe. Those who insulted, drew knives, and fought were not deviants living on the margins: they were ordinary townsmen and burghers engaging in customary behaviours.[36] Yet, when searching for a theoretical framework to investigate such communal insiders, historians turned to sociologists working on communal outsiders, such as

[33] On the difficulty of using internal labels to create analytic categories, see William Twining "Review: A Post-Westphalian Conception of Law," *Law & Society Review* 37 (2003): 225-31.
[34] Pieter Spierenburg, "Social Control and History: An Introduction," in *Social Control in Europe: vol. 1 (1500-1800)*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus: Ohio State University Press, 2004), 7.
[35] Gerd Schwerhoff notes the critiques of Fritz Sack who argues that the labelling approach masks how social inequalities between the labeler and deviant play a role in this process, and of Trutz von Trotha who argued that the deviants themselves are granted no agency and turned merely into reacting figures (*Reaktionsdeppen*). See Schwerhoff, *Historische Kriminalitätsforschung*, 38-9.
[36] I am not suggesting that those on the margins did not partake in these activities – they did. Rather my point is that those on the margins have not been the central focus of studies on crime and deviance. On the divisions within German social structure, see Christopher Friedrichs, "German Social Structure, 1300-1600," in *Germany: a New Social and Economic History, vol. 1, 1450-1630*, ed. Sheilagh Ogilvie and Bob Scribner (London: Arnold, 1996), 238-247.

juvenile delinquents, thieves, and other marginal figures.[37] A thoroughly discordant choice. Why?

Historians of early modern Germany have tended to turn to the sister discipline of sociology, rather than anthropology (and more specifically legal anthropology).[38] The differences between the disciplines play out in a number of ways. Sociology is more inclined to focus on 'deviant behaviour'; whereas, legal anthropology concentrates on disputes which can include deviant behaviour but is not restricted to it. The difference is instructive because anthropologists accept conflict as a normal part of daily life. Deviance, however, denotes something gone awry with daily life.

The unit of study differs as well. Sociology, especially the sociology of deviance, studies the modern state, a thoroughly unsuitable paradigm for early modern Europe.[39] While the tribal and acephalous societies that anthropologists study are equally distant from early modern Europe, they free the ethnographer to look beyond the state. In legal anthropology, "the 'socio-legal' includes formal juridical institutions and their social surroundings, [but] also encompasses law-like activities and processes of establishing order in many other social

[37] See for instance the contributions to Stanley Cohen's *Images of Deviance* which consider soccer hooligans, drug users, and thieves. (Harmondsworth: Penguin, 1971). Drug users were also one of the subjects of Becker's *Outsiders*.

[38] It is intriguing to speculate why legal anthropology has gained such minimal traction with historians of early modern Germany. Andre Gingrich explains that in the aftermath of World War II and until the past few decades, V*ölkerkunde* (sociocultural anthropology) was isolated both from international interaction and from related social science disciplines. "The German Speaking Countries," in Frederick Barth, et al., *One Discipline, Four Ways: British, German, French, and American Anthropology* (Chicago: University of Chicago Press, 2005), 137-153. Franz von Benda-Beckmann, himself a German legal anthropologist, observed that in the post-War period, legal anthropology had little presence in German universities. See "Riding or Killing the Centaur? Reflections on the Identities of Legal Anthropology," *International Journal of Law in Context* 4 (2008): 90. One reason that can be excluded is lack of translations. Major texts, such as Simon Roberts' *Order and Dispute*, have been translated into German. See Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth: Penguin Books, 1979). In German as *Ordnung und Konflikt: eine Einführung in die Rechtsethnologie*, trans. Florian Weidenfels (Stuttgart: Klett-Cotta, 1981).

[39] Paul Rock notes the overlap between crime and deviance: "Deviance includes crime (and it is most often crime that sociologists of deviance study)." Rock goes on to note that "Deviance is probably not a very good word. It is not a legal or clinical term. Neither is it commonly employed in everyday life." See Paul Rock, "Crime and Deviance," in *The Blackwell Dictionary of Twentieth-Century Social Thought*, ed. William Outhwaite and Tom Bottomore (Oxford: Blackwell Reference, 1993), 122.

domains, formal and informal, official and unofficial, in our own society and others."[40] The use of sociological models has placed undue emphasis on the state. Returning to legal culture, it, like legal anthropology, makes no pretence of judging the deviance of early modern people. Instead, it accepts conflict as a part of daily life and seeks to understand what role courts played in their processing.

Legal culture, therefore, offers a way to reconceptualise our understanding of how early modern legal systems worked. Studying legal culture is an attempt to understand what type of business and activity courts were engaged in, including both the types of conflicts and cases in which courts sought to involve themselves, and the types of conflicts and cases in which the people of Freiberg sought to involve the courts. The focus thus is not on assessing whether the people of Freiberg were 'reformed' or 'disciplined' or on how deviant behaviour was treated. Instead, the goal is to probe the strategies that individuals and courts used when interacting with one another. Simply put: when did the law (or the court) come into peoples' lives and when did it not? And when it did, what were the dynamics?

Despite its long history in legal scholarship, legal culture has remained relatively on the side lines within history as other research foci have dominated the playing field. Some signs point to this changing. Leslie Peirce used the concept successfully to investigate the Ottoman court of Aintab in the sixteenth century.[41] To a lesser extent, Daniel Lord Smail

[40] See Sally Falk Moore, "General Introduction," in *Law and Anthropology: a Reader*, ed. Sally Falk Moore (Oxford: Blackwell, 2005), 1. Legal anthropological studies on other early modern European polities have proven valuable which suggests there exists potential for early modern Germany. See for instance, James R. Farr, *Authority and Sexuality in Early Modern Burgundy, 1550-1730* (New York: Oxford University Press, 1995); Thomas Kuehn, *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago: University of Chicago Press, 1991); Thomas V. Cohen, *Love & Death in Renaissance Italy* (Chicago: University of Chicago Press, 2004); and Guido Ruggiero, *Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (Oxford: Oxford University Press, 1985). Susanne Pohl-Zucker's article on the ritual of *Stallung* in early modern Zurich is an exemplar of legal anthropology applied in a German-speaking polity. See **"**Uneasy Peace: The Practice of the *Stallung* Ritual in Zürich, 1400-1525," *Journal of Early Modern History* 7 (May 2003): 28-54.

[41] Peirce described her approach as, "While the book takes an interest in the Ottoman legal system as a whole and in the laws that it enforced, it is primarily an attempt to understand the culture of a local court: that is, the nature of dispute resolution that occurred within it and its vision of social justice. Legal codes – Islamic sharia and Ottoman imperial law – were of course critical in shaping the legal life of communities like Aintab, but it

used it to investigate how people in medieval Marseille 'consumed' justice.[42] In a 2004 review article, Harriet Rudolph presented legal culture as an investigative model that allows historians to move beyond old research paradigms and gain new and deeper insights into the entire legal system, including its functions and uses.[43] But no scholar has yet used it to investigate early modern Germany.

1.3 Time and Place

Scholarship on early modern Germany, especially on crime and the law, has not been evenly distributed geographically; the south and west of Germany have long received disproportionate attention. The northern and eastern regions of the Holy Roman Empire have been relatively neglected. Nor has the type of polity studied been equitably distributed. Most studies have looked either at entire territories, or at free imperial cities.[44] Territorial cities which had to fit into the larger legal framework of their territory have been understudied. Admittedly, imperial cities had to fit into the larger legal frameworks of the Empire, but the

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was only in local interpretation that formal rules acquired vitality and meaning." *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 1.

[42] Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca: Cornell University Press, 2003).

[43] Rudolph focuses her advocacy of legal culture on how it could help legal historians, rather than considering how it could be a better model than social control for historians of crime. In doing so, she ignores the concept's advantages over social control. See Harriet Rudolph, "Rechtskultur in der frühen Neuzeit: Perspektiven und Erkenntnispotentiale eines modischen Begriffs," *Historische Zeitschrift* 278 (2004): 347-374. My thanks to Eric Piltz for this reference.

[44] For studies on a municipal level, see for Cologne, Schwerhoff, *Köln im Kreuzverhör*; for Frankfurt, Joachim Eibach, *Frankfurter Verhöre: städtische Lebenswelten und Kriminalität im 18. Jahrhundert*, (Paderborn: Schöningh, 2003); for Zurich, Burghartz, *Delinquenz in Zürich*; for Constance, Schuster, *Stadt vor Gericht*; for Augsburg, Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford: Clarendon Press, 1989); for Nuremberg, Andrea Bendlage, *Henkers Hetzbruder: das Strafverfolgungspersonal der Reichsstadt Nürnberg im 15. und 16. Jahrhundert* (Constance: UVK, 2003); and Henselmeyer, *Ratsherren und andere Delinquenten*; and for Ulm, Jason Coy, *Strangers and Misfits: Banishment, Social Control, and Authority in Early Modern Germany* (Leiden: Brill, 2008).

For studies on a territorial level, see, for Wurttemberg, Robisheaux, *Rural Society*; Helga Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Cologne: Böhlau, 1997); and Rublack, *Crimes of Women*. For Bavaria, see Wolfgang Behringer, "Mörder, Diebe, Ehebrecher: Verbrechen und Strafen in Kurbayern vom 16. bis 18. Jahrhundert," in *Verbrechen, Strafen und soziale Kontrolle*, ed. Richard van Dülmen (Frankfurt am Main: Fischer Taschenbuch Verlag, 1990), 85-132.

Empire and the Appeals Court (*Reichskammersgericht*) were often quite distant from most imperial cities, lessening their influence.

Besides a geographic imbalance, there are several reasons why more work on Saxony is justified. Chief amongst them is that there were significant religious and legal differences between Saxony and the southern and western reaches of the Empire. Religiously, the Reformation came later to Albertine Saxony. Not until 1539 did the Reformation find vitality in Albertine Saxony, well over a decade after it had taken hold in many other Germanic cities. This later reception of the Reformation meant that Saxony was largely spared the reforming zeal that blazed in cities like Nuremberg, Zurich, and Strasbourg. By the time the Reformation took hold in Saxony, these fires no longer burned as brightly.

The sixteenth century was an era of great legal change in Europe. With the increasing reception of Roman law and its reliance on judicial proofs, medieval legal codes and their reliance on oaths began to fall by the wayside. Where medieval law had relied on accusatorial procedure, early modern law favoured inquisitorial procedure.[45] For most of the Holy Roman Empire, this change found its culmination in the *Constitutio Criminalis Carolina* (Carolina), the reformed criminal code of Charles V proclaimed in 1532. But at the Imperial Diet of 1530 in Augsburg, Saxony rejected the Carolina, noting that it had a perfectly functional system of Saxon law. Not until 1572 did Saxony institute a reformed legal code, the Saxon Constitution (*Kursächsische Konstitution*).[46] These religious and legal differences suggest that new findings can be gleaned from Saxony, findings that could readjust our understandings of early modern Germany.

[45] On the change from accusatorial to inquisitorial procedure, see Günter Jerouschek, "Die Herausbildung des peinlichen Inquisitionsprozesses im Spätmittelalter und in der Frühen Neuzeit," *Zeitschrift für die gesamte Strafrechtswissenschaft* 104 (1992): 328-360.
[46] See Heiner Lück, "Sühne und Strafgerichtsbarkeit im Kursachsen des 15. und 16. Jahrhunderts," in *Neue Wege strafrechtsgeschichtlicher Forschung*, ed. Hans Schlosser (Cologne: Böhlau, 1999), 83.

In recent years, Saxony has been the subject of renewed historical attention. Heiner Lück has investigated Saxon legal institutions.[47] Alex Kästner and Manfred Wilde have examined specific offences (suicide and witchcraft respectively).[48] Günter Jerouschek and others have studied the prominent Saxon jurist Benedict Carpzov.[49] Ulrike Ludwig has probed the interplay of the law and society in Saxony on an electoral rather than municipal level.[50]

Despite this growth of interest and potential for new results, studies on the law, legal processes, and jurisprudence in Saxon municipalities are still lacking. Lars Behrisch's work on Gorlitz began to fill this gap, but significant differences existed between Gorlitz and Freiberg.[51] Gorlitz, as part of the Kingdom of Bohemia, lay outside Saxon jurisdiction, whereas Freiberg was one of the Electorate of Saxony's leading cities. Further, Gorlitz's legal practice was guided by the Magdeburg Municipal Legal Code (*Magdeburger Recht*) and advised by the Magdeburg judges' colloquium (*Schöffenstuhl*) while Freiberg adhered to its own municipal law, and sought guidance from the University of Leipzig.[52] Their positions within their respective territories at this time created difference in how they administered the law. Gorlitz, facing an erosion of its municipal power and royal doubts over its ability to effectively run its court, began to prescribe increasingly harsh punishments from 1530 onwards in order to display its power.[53] Freiberg, on the other hand, faced no such pressures and was able to continue its traditional practices.

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[47] See his *Die Kursächsische Gerichtsverfassung 1423-1550* (Cologne: Böhlau, 1997); and *Die Spruchtätigkeit der Wittenberger Juristenfakultät* (Cologne: Böhlau, 1998).
[48] Alexander Kästner, *Tödliche Geschichte(n): Selbsttötungen in Kursachsen im Spannungsfeld von Normen und Praktiken (1547-1815)* (Constance: UVK, 2012); and Manfred Wilde, *Die Zauberei- und Hexenprozesse in Kursachsen* (Cologne: Böhlau, 2003).
[49] Günter Jerouschek, Wolfgang Schild, and Walter Gropp, eds., *Benedict Carpzov: neue Perspektiven zu einem umstrittenen sächsischen Juristen* (Tübingen: Edition diskord, 2000).
[50] See Ludwig, *Das Herz der Justitia*.
[51] Lars Behrisch, *Städtische Obrigkeit und soziale Kontrolle: Görlitz 1450-1600* (Epfendorf am Neckar: Bibliotheca-Academica, 2005).
[52] Saxon cities had been banned from consulting foreign legal faculties since 1432. See Lück, *Spruchtätigkeit*, 63. Despite this, they continued to consult them.
[53] Behrisch, *Städtische Obrigkeit*, 48-51, 158-64.

When looking at cities within the Electorate of Saxony, there are many reasons to choose Freiberg as a setting. Foremost, the surviving source material from the sixteenth century is broad enough to permit exploration of its legal culture, including both criminal and civil jurisprudence. Moreover, on account of its independent legal tradition, Freiberg is an interesting test case. Not only did it seek to preserve its own legal traditions, it also had to fit into the larger trajectory of Saxon law and practices. And unlike other Saxony cities such as Leipzig, Dresden, or Wittenberg, Freiberg was, with one minor exception, distant from external sources of legal pressure.

The sheer volume of sources required to study legal culture mandate a strict geographical and temporal scope.[54] Peirce, in her study of Aintab, considered only one year of cases. To this end, this study examines the city court of Freiberg from 1519 to 1573. This canvas is narrow enough to permit a feasible investigation, but broad enough to paint a fuller picture of the legal culture of an early modern court.

In 1519, the city court began to develop individual registers for different types of court business, in lieu of the one all-purpose court book used previously. If we follow Daniel Smail's lead in his work on late medieval Marseille that "bureaucratic categories typically evolve naturally, as a product of use rather than planning, this growing conceptual distinction suggests that the practice of recording lawsuits in all their minutiae was still something of a novelty in the early fourteenth century."[55] *Mutatis mutandis***,** a similar argument can be made for Freiberg. Freiberg was undergoing a significant bureaucratic evolution, designed to better accomodate an increasing amount of court activity.

The study concludes in 1573, the year the elector rejected Freiberg's petition to maintain its municipal law, and not adopt the Saxon Constitution. What transpired

[54] A point Rudolph also makes in her article. See Rudolph, "Rechtskultur," 362.
[55] Smail, *Consumption of Justice*, 250.

subsequently is a different story, one already told by other historians.[56] The study investigates Freiberg and Saxony's customary legal practices in their last incarnation before the implementation of Roman-reformed law. It offers a chance to see how a substantially customary medieval legal code functioned (and, at times, thrived) in the sixteenth century.

The study is divided into four substantive chapters. Chapter two introduces the reader to the world of Freiberg: the founding, the mines, the municipal government, the court, and the quarters or neighbourhoods. Chapter three examines *Bürgen* (guarantors) and the variety of ways they were used to provide security. Given the limited police forces and short reach of early modern legal institutions, risk assuagement generally depended upon third-parties, such as guarantors. *Bürgen* helped to provide surety in an uncertain world. Chapter four probes Freiberg's unique way of processing assault cases: that of the formal contractual settlement. In other contemporary polities, such contractual settlements remained infra-judicial whereas in Freiberg, they were processed judicially. Chapter five examines borrowing and lending (the most frequent form of interaction between citizens and the council) as a social and legal practice. In any given year, approximately half of Freiberg's citizens entered into a new loan agreement (all debts had to be registered with the council).

Throughout the thesis, three questions guide the analysis: how and with what type of legal devices did the council adjudicate cases, how effective were the court's processes and interventions, and what was the impact of the court's actions (and non-actions) on disputants and their habitus as they processed conflicts. The result is the reconstruction of the legal culture of a significant sixteenth-century Saxon town.

[56] On the effect of the changes on legal practice on the territorial level, see Ludwig, *Das Herz der Justitia*; on stewards, judges and other administrators of the law, see Ulrike Ludwig, "'Ambts halber' kompetent. Die gutachterliche Tätigkeit von Schössern in Straf- und Supplikationsverfahren im 16. und 17. Jahrhundert," in *Experten und Expertenwissen in der Strafjustiz von der Frühen Neuzeit bis zur Moderne*, ed. Alexander Kästner and Sylvia Kesper-Biermann (Leipzig: Meine Verlag, 2008), 73-83; on law faculties, Lück, *Spruchtätigkeit*; on the changes to the legal standing of women, Ernst Eberle, *Probleme zur Rechtsstellung der Frau nach den kursächsischen Konstitutionen von 1572* (Heidelberg, Univ., Ph.D. Diss., 1964).

2. Freiberg

2.1 Saxon Dynastic Roots

The sixteenth century was an age of tumultuous change. Confessional lines were drawn and redrawn, political power redistributed, and legal systems restructured. While cities such as Wittenberg, Munster, or Augsburg played more of a leading role, Freiberg was hardly a mere bystander. Two future Saxon electors (Moritz, r. 1541-1553, and his brother, August, r. 1553-1586) were born in this Saxon mining city in the 1520s.[1] One would affect the course of European history, the other the course of Saxony.

The regnal shifts in Freiberg started two decades prior in 1505 when Moritz and August's father, Duke Heinrich the Pious, made it his seat. For most of his life, Heinrich, as a second son, was able to indulge his predilection for hunting, while his older brother, Georg the Bearded (r. 1500-1539) ruled Albertine Saxony from the ducal court in Dresden. But on 17 April 1539, Georg died without a male heir, and in spite of the steps Georg had taken to prevent it, the Albertine line passed to Heinrich.[2]

The brothers were markedly different in that Georg, as a follower of the old faith, was a staunch opponent of Martin Luther, whereas Heinrich had converted to Lutheranism under

[1] Thomas Brady provides an astute overview and analysis of the 'Reformations' of this period in the German lands. See his *German Histories in the Age of Reformations, 1400-1650* (Cambridge: Cambridge University Press, 2009), 161-245. For a Freiberg-centric interpretation of these events, see Walter Schellhas, "Drittes Kapitel: 1470 bis 1658," in *Geschichte der Bergstadt Freiberg*, ed. Hanns-Heinz Kasper and Eberhard Wächtler (Weimar: Böhlau, 1986), 99-108. For a Saxon-centric interpretation, see Katrin Keller, *Landesgeschichte Sachsen* (Stuttgart: Ulmer, 2002), 125-39. Additional details on the main Sachsen participants (Heinrich, Moritz and August) can be found in their profiles in *Deutsche Biographie* (http://www.deutsche-biographie.de/index.html).

[2] The Wettin family ruled Saxony from 1423 to 1918 (prior to 1423, the family were Margraves of Meissen where their lineage can be traced back to 982). In 1485 as part of the Treaty of Leipzig, the family split into two branches, the Ernestine and the Albertine, named after the then current dukes and brothers, Ernest and Albert, who decided to split the Saxon lands in two. Ernest and his successors got most of the western part of the territory, including Thuringia, Saxe-Wittenberg and the electoral powers for the Holy Roman Empire, while the territory of Albert and his heirs was the eastern side, focused around the former Margrave of Meissen. Karlheinz Blaschke, *Geschichte Sachsens im Mittelalter*, 2nd ed. (Berlin: Union Verlag, 1991), 294-8; and Keller, *Landesgeschichte Sachsen*, 51-70.

the influence of his wife Katharina of Mecklenburg. Fearful of, and financially reliant on his older brother, Heinrich made minimal effort to spread the new dispensation while Georg lived. But with financial support from Johann Friedrich II, (elector of Saxony, (r. 1532-1547), and nephew of Frederick the Wise, Luther's protector at the Diet of Worms), Heinrich introduced the Reformation to Freiberg in 1536.

Shortly thereafter, on 27 May 1537, the first Lutheran service was held in Freiberg. Reform could not spread further in Albertine Saxony until Heinrich became duke whereupon the Reformation was rapidly introduced and a Lutheran service held in Leipzig on 25 May 1539 to celebrate the occasion. Freiberg and Albertine Saxony thus embraced reform much later than Ernestine Saxony, or for that matter, many other Germanic polities.

Heinrich's reign as duke was to be short. On 18 August 1541, two years after becoming duke, he died aged sixty-eight, and was succeeded by his son Moritz.[3] Moritz stepped into a heated political situation. Tensions were brewing between the Catholic Holy Roman Emperor Charles V and the Protestant Schmalkaldic League, led by Johann Frederich, elector of Saxony and Moritz's cousin, and Philip, Landgrave of Hesse and Moritz's father-in-law. When war broke out, Moritz betrayed his kin and faith, and fought on the side of the Emperor, helping to defeat the Schmalkaldic League at the battle of Mühlberg. The resultant Wittenberg Capitulation saw Johann Frederich stripped of his electoral title, jailed, and eventually reduced to being duke of Weimar. For his loyalty to the Emperor, Moritz gained the electoral seat of Saxony for the Albertine line as well as some smaller territories of Ernestine Saxony. The Albertine line of the Wettin dynasty were no longer mere dukes, but now prince electors.

Moritz's loyalty to Charles did not last long. Four years later, the 'Judas of Meissen,' as some Protestants called him, switched sides again and fought with King Henry of France

[3] On Moritz, see Karlheinz Blaschke, ed., *Moritz von Sachsen, ein Fürst der Reformationszeit zwischen Territorium und Reich: internationales wissenschaftliches Kolloquium vom 26. bis 28. Juni 2003 in Freiberg (Sachsen)* (Leipzig: Verlag der Sächsischen Akademie der Wissenschaften zu Leipzig, 2007).

against the Emperor.[4] As Henry and Moritz rapidly advanced on Innsbruck, Charles was forced to flee to Italy, and his brother Ferdinand stepped in to negotiate the Treaty of Passau (1553), whose terms served as a basis for the Peace of Augsburg two years later in 1555. As Tom Brady aptly observed, '[t]his law sheltered, with one spectacular failure, the Empire's civil peace for centuries to come.'[5]

The Imperial Diet of Augsburg proceeded without Moritz who had been killed in the Battle of Sievershausen in July 1553. His younger brother August became elector and set Saxony on a quieter path. Where Moritz had fought with and against kings and emperors, August was more provincial in scope, maintaining a strong alliance with Ferdinand's successor, Maximilian II. He instituted several religious, political, legal, and administrative reforms in Albertine Saxony. After his death in 1586, August, like his father Heinrich, brother Moritz, and all future Saxon electors, was buried in the Freiberg Cathedral.[6]

Within and without this dynastic cauldron lies the social history of Freiberg in the sixteenth century. Stories of life and love, and hope; stories of enmity, disappointment and revenge. Freiberg is not just the city where Moritz and August were born and buried, but a city with its own history to tell. The balance of this chapter is an introduction to the social, political, legal, and religious world of sixteenth-century Freiberg, the context, the fabric, within which the cases discussed in the subsequent chapters take place.

2.2 The Founding and the Mines

Located thirty-five kilometres southwest of Dresden, Freiberg lies on the northern edge of the *Erzgebirge* (ore mountains), the mountain range that divides Saxony and Bohemia. In the early twelfth century, the region was not yet settled and a vast forest, the

[4] Brady, *German Histories*, 227.
[5] Brady, *German Histories*, 228.
[6] Freiberg's Cathedral (*Dom*) remained the burial place of Saxony's electors until Friedrich August I (the Strong, r. 1691-1733) reverted to Catholicism to be able to become king of Poland.

Zellwald, stretched across the land between the Stregis and Mulde rivers, both eventual tributaries of the Elbe. As part of the general trend towards eastern expansion (*Ostsiedlung*), settlement began in the *Zellwald* in the mid-twelfth century. One such was the hamlet of Christiansdorf consisting of seven or eight farmsteads.

In 1166, shortly after its founding, rich silver deposits were found in the hills to the east of Christiansdorf. At the time, the territorial overlord was Otto, Margrave of Meissen. Quickly realizing the potential of such deposits, Otto applied for and received from Emperor Friedrich Barbarossa the imperial mining rights to all precious metals from these deposits.[7] To make the region more attractive for settlers, Otto made it 'free' to mine. Whereas in other regions miners had to enter into agreements with feudal lords or other landowners, in the area around Christiansdorf, miners could prospect where they chose. If they found silver, they were required to offer the landholder a stake in the mine, but the landholder had to pay his share of the costs.[8]

With the discovery of silver and the freedom to mine, settlement boomed. Next to Christiansdorf, miners and the merchants and craftsmen who supplied them formed the burgeoning settlement of Sächsstadt. Between 1186 and 1188 (the original document no longer survives), Sächsstadt was renamed Freiberg (the free mountain) and raised to the legal status of a city.[9]

In the years after its founding, representatives of the Margraviate of Meissen, namely a steward (*Vogt*), mine master (*Bergmeister*) and mint master (*Münzmeister*) governed the city. In time, the city council assumed responsibility, although the exact date of its founding

[7] This decree was proclaimed either at the Imperial Diet in Bamberg in 1169, or in Erfurt in 1170. See Hanns-Heinz Kasper and Reiner Groß, "Freiberg als Bergstadt in der sächsischen Geschichte," *Sächsische Heimatblätter* 32 (1986), 119-20.

[8] This freedom to mine was later codified in the Freiberg mining law (*Bergrecht*). The two relevant passages are found in *Bergrecht A*, point nine: "where a man wants to search for ore, he can do so legally" (*Wo eyn man ercz suchen wil, das mag her thun mit rechte*); and "the village lord can do nothing about it" (*Der dorffherre hat darane nicht*). See Hubert Ermisch, ed., *Urkundenbuch der Stadt Freiberg in Sachsen*, vol. 2, (Leipzig: Giesecke & Devrient, 1886), 268-9.

[9] After 1185, the name Christiansdorf falls out of the historical record.

is not known: perhaps as early as 1186 or as late as 1223.[10] Following the contemporaraneous pattern of other German cities in the thirteenth century, the council sought and gradually received greater autonomy from the Margraviate of Meissen. By the end of the thirteenth century, the council, headed by a *Bürgermeister*, had assumed administrative and judicial control not just of Freiberg, but of the entire mining district.

While Freiberg's legal and political autonomy was budding, the mines continued to thrive. Silver was being exported as far as northern Italy, Flanders, Poland, and the Hanseatic cities. With the mint functioning as a bank, Freiberg became the largest trading city in the Margraviate of Meissen, serving as a vital link for trade between Bohemia and Halle/Magdeburg.[11] The mines were generating wealth, not only for the miners, but also for the craftsmen and merchants. Contemporary and modern estimates put Freiberg's population at this time at about 5000.[12]

The initial boom was not to last. By the late fourteenth century, the surface deposits of silver had been exhausted. Whereas in the mid-fourteenth century (1352-1357), the average annual yield of the mines was 2500 kilograms of silver, by the late fifteenth century (1458-1485), output had declined to 120 kilograms.[13] Production had fallen so far that the weekly output of most mines was not sufficient to cover the weekly expenses. With the mines producing significantly less silver and lead, Freiberg ceded its position as the wealthiest and largest trading city in the Margraviate of Meissen to Leipzig. At the same time, Freiberg's leading position within Saxon mining was challenged. Beginning in 1470, silver was found in the western Erzgebirge and several rival mining cities were founded.[14]

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[10] Kasper and Groß, "Freiberg als Bergstadt," 121-3; Manfred Unger, "Erstes Kapitel, 1162 bis 1307," *Bergstadt Freiberg*, 30-1.
[11] Manfred Unger, *Stadtgemeinde und Bergwesen Freibergs im Mittelalter* (Weimar: Böhlau, 1963), 66-71, 76-77.
[12] Unger, "Erstes Kapitel," *Bergstadt Freiberg*, 32-33.
[13] Peter Langhof, "Zweites Kapitel, 1307 bis 1470," *Bergstadt Freiberg*, 70. On the decline of mining in this period, see Unger, *Stadtgemeinde Freibergs*, 94-107.
[14] Schneeberg in 1471, Annaberg in 1496, Buchholz in 1505, Joachimsthal (today: Jáchymov, Czech Republic) in 1520, and Marienberg in 1521.

Traditional mining had been at or near the surface (to a maximum depth of about fourteen metres), and could be carried out by small collectives (*Gewerkschaften*) of five to seven men. In the late fifteenth century, technological innovations, especially the ability to pump out large quantities of sub-surface water, and to more efficiently and safely work underground, made it possible to mine at depths of 650 to 1000 metres.[15] These innovations necessitated a different economic and organisational model: larger work teams backed by significant capital.[16]

With new capital from the Saxon dukes, local patrician families, wealthy merchants and the city councils of Dresden, Leipzig, and Magdeburg, the Freiberg mines began to produce again and the city entered into a second *Blütezeit* (boom) in the sixteenth century. Whereas the first *Blütezeit* had been driven by silver, in the second, lead, copper, and tin took their place alongside silver as important minerals. Reflecting Freiberg's senior place amongst Saxony's mining communities and its resurgent mines, in 1542 Elector Moritz created an *Oberbergamt* in Freiberg to oversee the new *Bergämter* (mining districts) in Schneeberg, Annaberg, and Marienberg.[17]

From shortly after its founding in the mid-thirteenth century through the mid-sixteenth century, the main mint for the Margraviate of Meissen (and later the Duchy of Saxony) was located in Freiberg, and turned raw silver into coinage or bars of silver for export.[18] In the sixteenth century, additional mints were founded in Schneeberg and Annaberg. But in 1556, Elector August, worried about embezzlement and debasement of

[15] On the technological changes in mining in the Erzgebirge, see Klaus Schwarz, *Untersuchungen zur Geschichte der deutschen Bergleute im späteren Mittelalter* (Berlin: Akademie-Verlag, 1958), 15-17.
[16] Adolf Laube, *Studien über den erzgebirgischen Silberbergbau von 1470 bis 1546: seine Geschichte, seine Produktionsverhältnisse, seine Bedeutung für die gesellschaftlichen Veränderungen und Klassenkämpfe in Sachsen am Beginn der Übergangsepoche vom Feudalismus zum Kapitalismus* (Berlin: Akademie-Verlag, 1974). Laube's monograph remains a pioneering and valuable study, even though it inevitably, given when and where it was published, is burdened with Marxist ideology.
[17] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 96-8.
[18] The date of the mint's founding is not known; the first mention dates to 1244. See Unger, "Erstes Kapitel," *Bergstadt Freiberg*, 54.

coinage, closed all three mints and centralised all minting at the ducal seat in Dresden. Freiberg protested in vain, as it lost a pillar of its identity and economy.[19]

2.3 Employment, Wealth and the Cost of Life

The miners of Freiberg were organized into a brotherhood (*Knappschaft*) rather than a guild. The differences play out in a number of ways. A guild has a clear hierarchy from an economically independent master down to his economically dependent journeymen and apprentices. This kind of structure was not applicable to mining, both because there was no defined career ladder, and because there were several distinct skill sets within a mine: digger (*Heuer*), ore separator (*Erzscheider*) workman (*Knecht*); mining-clerk (*Bergschreiber*), share clerk (*Gegenschreiber*), shaft/tunnel-manager (*Steiger*), shaft/tunnel foreman (*Schichtmeister*), and many others.[20] Further, mining in the sixteenth century was too dependent on external capital for any one person to be financially independent the way a master craftsman could be. As a result, the main function of the *Knappschaft* (the miners' brotherhood) in the post-Reformation period was to care for widows and injured miners.[21] Women were employed in mines, as they were in the workshops of craftsmen. Typically, they did not work underground as diggers, but above ground, washing and separating ore, and making briquets.[22]

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[19] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 113-4.

[20] Susan Karant-Nunn, "The Women of the Saxon Silver Mines," in *Women in Reformation and Counter-Reformation Europe: Public and Private Worlds*, ed. Sherrin Marshall, (Bloomington: Indiana University Press, 1989), 34-5. According to Karant-Nunn, the difference between the two clerks (mining and share) is that the mining clerk was the chief record keeper, and the share clerk was responsible for 'keeping track of investors' earnings and owings in writing.'

[21] See Hermann Löscher, "Die erzgebirgischen Knappschaften vor und nach der Reformation," *Blätter für deutsche Landesgeschichte* 92 (1956): 162-90.

[22] For a thorough examination of women's involvement in the various stages of mining, see Karant-Nunn, "Women," 30-5; and Christina Vanja, "Bergarbeiterinnen: Zur Geschichte der Frauenarbeit im Bergbau, Hütten- und Salinenwesen seit dem späten Mittelalter," *Der Anschnitt. Zeitschrift für Kunst und Kultur im Bergbau* 39 (1987), 2-15.

Aside from mining, Freiberg shared economic similarities with most early modern German cities of similar size. Bakers, butchers, shoemakers, merchants, cloth-makers, goldsmiths, and other traditional trades all had a marked presence in the city. The statutes of six guilds (baker, butcher, shoe-maker, tailor, merchants, and one other) were codified as appendices to Freiberg's municipal legal code at the end of the thirteenth-century (1296/1305).[23] An additional eight to ten guilds were founded in the fourteenth and fifteenth centuries. During the sixteenth century twenty-two new guilds were founded, raising the number of guilds in Freiberg to a robust thirty-six.[24] The proliferation of guilds was largely caused by greater specialization. For example, the smiths, knife-makers, locksmiths, ironsmiths, mining smiths, and farriers (horse hardware) each split off from the general smith's (*Schmiede*) guild to form their own. [25]

In the mid-sixteenth century, the shoemaker's guild was the largest with sixty members having obtained the status of master. Second was the cloth-maker's with forty-eight masters, and third was the tailor's with forty-four masters. For a city of Freiberg's

[23] The other guild was a second merchant's guild. Having two merchant's guilds one (*Krämer*) for local trade, and one (*Kaufmann*) for long distance trade was not unknown in Saxony at this time. Such a situation existed in Leipzig. But Manfred Unger doubts the existence of a second merchant's guild for long-distance trade for Freiberg at this time, noting that there was no indication of a *Kaufmann* guild being active until the end of the fifteenth century. Unger, *Stadtgemeinde Freibergs*, 71-2. Franz Schulze, however, suspects that a Freiberg *Kaufmann* guild did exist as of the thirteenth century, either as its own entity or as a branch of the tailor or linen-weaver's guild, and he regards it as the sixth guild of the Freiberg *Stadtrecht*. See Franz Schulze, "Die Handwerkerorganisation in Freiberg i. Sa. bis zum Ende des 16. Jahrhunderts," *MFA* 52 (1917), 29-31.

[24] The founding articles of many guilds have been lost which makes precise dating difficult. In certain cases, there is evidence that guilds existed before their statutes were codified. The complete list of guilds and the date of their founding: merchants (*Krämer*) 1283; baker (*Bäcker*) 1296/1305; shoe-maker (*Schuster*) 1296/1305; butcher (*Fleischer*) 1296/1305; tailor (*Schneider*) 1296/1305; merchant (long-distance) (*Kaufleute/Gewand-schneider*) 1296/1305; cloth-maker (*Tuchmacher/Wollweber*) 1350; smith (*Schmiede*) 1380; furrier (*Kürschner/Weißgerber*) 1390; linen-weaver (*Leineweber*) 1390; knife-maker (*Messerschmiede*) 1390/1440; cooper (*Böttcher/Bender*) 1450; ironsmith (*Sensenschmiede*) 1465; goldsmith (*Goldschmiede*) 1466; farrier (*Huf-und Wassenschmiede*) 1477; locksmith (*Schlosser*) 1467/1544; rope-maker (*Seiler*) 1520; saddler/saddle-maker (*Sattler*) 1520/1571; barber surgeon (*Bader*) 1530; (wood)-turner (*Drechsler*) 1533; hat-maker (*Hutmacher*) 1534; leather workers (*Beutler*) 1539; potter (*Töpfer*) 1542; leather workers (*Taschner*) 1545; cabinet-maker/joiner (*Tischler*) 1545; tinsmith (*Kandel/Zinngießer*) 1546/1570; leather workers (products for horses) (*Riemer*) 1548; cloth-cutters (*Tuchscherer*) 1549; brick-layer/stone mason (*Maurer und Steinmetz*) 1550; tanner (*Gerber*) 1554; mining-smith (*Bergschmiede*) 1563; sword-maker (*Langemesserer*) 1563; ironworker (*Gürtler*) 1563; hatmaker (*Barettmacher*) 1576; bookbinder (*Buchbinder*) 1577; wire drawer (*Nadler*) 1579; glazier (*Glaser*) 1594; and wheel-wright (*Stellmacher/Wagner*) 1596. See Schulze, "Die Handwerkerorganisation," 5-8, and 29-36.

[25] The knife-makers guild, which split off from the smith's guild between 1390 and 1440, would split into separate guilds in 1562: one (*Langenmesserschmied*) for extensive pieces of work ("*der langen Arbeit*," likely swords), and one for smaller items. See Schulze, "Die Handwerkerorganisation," 34.

moderate size, Franz Schulze argues the number of qualified masters exceeded the effective demand of the urban population. Competition from Dresden and Chemnitz also contributed to the difficulties faced by craftsmen in Freiberg, and the sixteenth century is considered to be a depressed period for most guilds in Freiberg.[26] Unfortunately, this contention is impossible to test empirically. Financial data on how much master craftsmen earned in sixteenth-century Freiberg is non-existent.

As far as other professions, the weekly and/or annual salaries can be partially reconstructed. Apprentices earned five to six groschen per week (on top of room and board). During harvest season, a day labourer in the fields, something many miners might have done to supplement their income, could earn nine groschen a day (*ohne Kost*).[27] Employees of the city council earned slightly more. The guard of the salt supplies (*Salzwächter*) earned twelve groschen a week, the water master (*Röhrmeister*), and the tower guard (*Türmer*) eighteen groschen a week (the tower guard also received an annual bonus of thirty groschen). The city scribe, who typically had some form of legal training, earned sixty gulden a year, while the two city doctors each earned ninety gulden a year. In 1562, the city council set the salary of the surgeon (*Barbier*) at one gulden per week, or about fifty gulden annually.[28] All such

[26] Schulze, "Die Handwerkerorganisation," 39-43.
Konrad Knebel wrote a wonderful series on Freiberg's guilds in the early modern period, which include biographical sketches of many of the masters, for the *Mitteilungen des Freiberger Altertumsvereins*. See "Die Freiberger Goldschmiede- Innung, ihre Meister und deren Werke. Erster Beitrag zur Geschichte des sächsischen Kunsthandwerkes," *MFA* 31 (1894), 1-116; "Künstler und Gewerken der Bau- und Bildhauerkunst in Freiberg. Zweiter Beitrag zur Geschichte des sächsischen Kunsthandwerkes," *MFA* 34 (1897), 1-145; "Die Mal- und Zeichenkunst in Freiberg. Dritter Beitrag zur Kenntnis des älteren Kunsthandwerkes in Sachsen," *MFA* 36 (1899), 7-114; "Die Seidenstickerei in Freiberg. Vierter Beitrag zur Kenntnis des älteren Kunsthandwerkes in Sachsen," *MFA* 37 (1900), 13-37; "Rot-, Zinn- und Glockengießer Freibergs. Fünfter Beitrag zur Kenntnis des älteren Kunsthandwerkes in Sachsen," *MFA* 39 (1903), 7-76; Balistarii, Schußmeister oder Armbrustmacher. Sechster Beitrag zur Geschichte des älteren Handwerkes in Sachsen," *MFA* 40 (1904), 29- 68; "Die Freiberger Kupferschmiede. Siebenter Beitrag zur Kenntnis des älteren Handwerks in Sachsen," *MFA* 43 (1907), 34-45; "Die Zarworchten, Plattner oder Panzermacher. Achter Beitrag zur Kenntnis des älteren Kandwerkes in Sachsen," *MFA* 43 (1907), 46-50; and "Die Gewerken der Schmiedehandwerke, besonders der Waffenzünfte Freibergs. Neunter Beitrag zur Geschichte der Kunst und des Handwerks," *MFA* 44 (1908), 83-128.
[27] Schellhas, "Drittes Kapital," *Bergstadt Freiberg*, 124.
[28] StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fol 126r.

employees of the city council had opportunities to supplement these salaries through other work, fees for services rendered, or gifts at major feast days and markets.[29]

Mining remained a difficult profession in which to earn a living. In 1565 at the Kippersberg mine near Freiberg, an ore separator (*Erzscheider*) or a workman (*Knecht*) earned eight to sixteen groschen a week, a digger (*Heuer*) twenty groschen, and a shaft-manager (*Steiger*) twenty-one groschen. Conversely, a smelter (*Schmelzer*) earned twenty-three groschen and four pennies per week.[30] Miners were supposed to be paid on Saturday, regardless of the mine's yield that week.

Women working in mining typically earned less than their male counterparts, but could earn ten to eighteen groschen a week for certain types of work, particularly the mixing of coal dust and clay to make briquettes that were used to separate copper and silver. Often, wives worked alongside their husbands. Susan Karant-Nunn relates the story of a husband and wife working in a mine near Annaberg in the late 1530s; the husband received sixteen groschen a week, and his wife four to eight.[31] Uwe Schirmer has argued that if the wife and children also worked part-time, they could supplement a family's income by one-third. As a result, it seems most families would have had at least thirty-five to forty gulden annually on which to subsist.[32]

Reconstructing the cost of daily life in the sixteenth century to provide context for the purchasing power of these weekly wages is no easy task. The range of available food was different: potatoes and carrots were not yet staples. Prices for grains and cereals are often

[29] The mayor (*Bürgermeister*) was paid fifty gulden and city councillors fifteen gulden a year for their services. Typically, this was not their main source of income. See Schellhas, "Drittes Kapital," *Bergstadt Freiberg*, 123-5.
[30] On the wages in Kippersberg, see Bergrat Wengler, "Eine Rechnung der Grube Kieppersberg obere nächste Maß auf das 1. Vierteljahr 1565," *MFA* 53 (1919), 59-60. On the wages of a smelter, see Schellhas, "Drittes Kapital," *Bergstadt Freiberg*, 99.
[31] On women's wages in mining, see Karant-Nunn, "Women," 38.
[32] Uwe Schirmer, "Ernährung im sächsischen Erzgebirge zu Beginn des 16. Jahrhunderts. Produktion, Handel und Verbrauch," in *Landesgeschichte in Sachsen: Tradition und Innovation*, ed. Rainer Aurig, et al. (Bielefeld: Verlag für Regionalgeschichte, 1997), 132.

given per bushel (*Scheffel*), a measurement that far exceeded weekly consumption.[33] Uwe Schirmer has calculated that the foodstuffs (*Nahrungsmittel,* including beer and milk) for a family of five in the western Erzgebirge around 1500 would have amounted to approximately twenty-three gulden per annum. Schirmer also notes that as of 1530 prices began to rise, and it is likely that by mid-century, a higher sum was necessary.[34]

Prices for beer were fairly clear. A measure (*Faß*) of beer cost five gulden. A measure of beer at this time contained 440 tankards (*Kannen*). Each tankard was 0.936 litres and typically cost three to four pennies (when purchased individually).[35] Walter Schellhas notes that on a salary of five groschen a week, an apprentice could buy a pair of trousers and a jerkin.[36] Further complicating matters is that many exchanges of the early modern economy were done with credit rather than with coins.

Besides food, accommodation/housing was a major expense, one that could leave the purchaser indebted for several years. For example, Dominic Groß bought a house from the heirs of Hans Hein on 11 February 1540 for the significant sum of 360 gulden. It took Groß thirteen years to repay Hein's heirs.[37] Not surprisingly, many chose to rent rather than buy.[38]

But to gain citizenship rights (*Bürgerrecht*) in Freiberg, one had to be a property owner, and to be a property owner one had to be a citizen. This stipulation stemmed from a 1516 amendment to the Freiberg *Stadtrecht*.[39] Frequently new citizens would purchase both their citizenship and a house on the same day. For example, on 30 June 1544, Kilian Richter

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[33] Each *Scheffel* contained 103.8 Litres.
[34] Schirmer, "Ernährung," 133-4.
[35] See for instance SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 370v; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384, fol. 509v. And as Ulrike Ludwig has noted, on account of the poor quality of drinking water, the consumption of alcoholic drinks was a normal feature of daily life. See *Das Herz der Justitia: Gestaltungspotentiale territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens* 1548-1648 (Constance: UVK, 2008), 86.
[36] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 124.
[37] Groß steadily made a string of ten to twenty gulden payments to complete the purchase. See SHStA Dresden, 12613, Kaufbuch Nr 1 von St Jacobi in Freiberg, (1521-1617), Nr. 86, fols 284v to 286v.
[38] As a general rule, apprentices, journeymen, maids and other dependent workers lived with their employer.
[39] See "Ratsbeschluß über Entrichtung der Bürgerrechtsgebühren," Hubert Ermisch, ed., *Urkundenbuch der Stadt Freiberg in Sachsen*, vol. 3 (Leipzig: Giesecke & Devrient, 1891), 171.

both bought a house in Freiberg and was granted citizenship.[40] So while property was expensive, it was essential to becoming a citizen and an established community member. The cost of acquiring citizenship was minimal; in 1577, it typically cost one or two gulden.[41]

No mid-sixteenth century municipal tax registers for Freiberg have survived. The city's annual account books list its revenue and expenses for a given year, but rarely provide data on specific families. The best surviving source is a tax levied by Elector Moritz in 1546 to finance the upcoming Schmalkaldic War.[42] Each Freiberg house owner had to assess their personal wealth (*Vermögen*) and pay a tax of one and two-fifths pennies for every gulden of personal wealth.[43] Those with a personal wealth of less than seventeen gulden were only required to pay one or two groschen each. Apprentices, journeymen and others who did not own property were exempt from the tax.

In total, 1170 people paid the tax. Of these, the richest group consisted of sixty-nine house owners (5.9%) with a personal of wealth of more than 1000 gulden. Another 117 (10.0%) declared a personal wealth of between 600 and 999 gulden, and were also amongst the wealthy. A large middle class was made up of 512 (43.8%) house owners who reported a personal wealth of between 100 and 599 gulden. A total of 441 (37.7%) house owners reported a personal wealth between seventeen and 100 gulden. Lastly, thirty-one (2.6%) Freibergers were of the poorest group who paid only one or two groschen each.

Compared to contemporary Saxon cities, Freiberg appears to have been prosperous. In 1542, Grimma (sixty-five kilometres northwest of Freiberg) went through a similar

[40] For Richter gaining citizenship, see StAFB, Vertragsbuch (1541-1557), I Bf 33c, fol 124r; on the house purchase, see SHStA Dresden, 12613, Kaufbuch Nr 3 von St. Nicolai in Freiberg, (1539-1654), Nr. 73, fol 305v.
[41] Not including the offspring of existing burghers, 50 new people gained citizenship in 1577. Combined, they paid 102 gulden, 15 groschen and 6 pennies. See Heinrich Gerlach,"Eine Freiberger Stadtrechnung vom Jahre 1577," *MFA* 9 (1872), 827.
[42] For a published version of the tax register, see "Ein Freiberger Steuerregister aus dem Jahre 1546," *MFA* 19 (1882), 25-60. My calculations are based on the *Mitteilungen des Freiberger Altertumsvereins* transcription of the register.
[43] The tax register does not indicate whether the sums represented one's moveable (*bewegend*) or ummoveable (*unbewegend*) wealth. In some ways the distinction is immaterial; as chapter five will show, unmoveable goods such as property were frequently used as collateral in financial transactions in a manner that suggests Freibergers knew exactly what their value was.

exercise, having to pay a tax to finance the war with the Turks (*Türkensteuer*). Much smaller than Freiberg (only 348 houses compared to Freiberg's 1170), the personal wealth of house owners in Grimma was much less than those in Freiberg. Of Grimma's 348, 213 (61.2%) had a personal wealth of 100 gulden or less. Where Freiberg's richest house owner had a wealth of 7700 gulden, Grimma's richest homeowner had a wealth of only 1400 gulden. And only ten (2.9%) of Grimma's house owners had a wealth of 500 gulden or greater.[44]

Table 2.1 Wealth in Freiberg according to the 1546 Tax Register Wealth (by gulden)

Quarter	**>1000**	**600-999**	**300-599**	**100-299**	**50-99**	**17-50**	**<17**
Petri	47	56	75	42	12	7	1
Nicolai	10	35	63	70	9	4	1
Dom/Virginis	11	21	47	64	16	6	2
Jacobi	1	4	18	60	43	28	4
Vorstädte	0	1	5	68	82	234	23
TOTAL	**69**	**117**	**208**	**304**	**162**	**279**	**31**

The 1546 tax register complements the general financial picture of Freiberg in the sixteenth century. At the top was a small group of families with a personal wealth exceeding 600 gulden. As far as the other eighty-three percent of Freiberg's house owners are concerned, the sums in the tax register and housing price data would indicate that most people had a modest competence, sufficient wealth to live. On the other hand, low weekly wages, over-abundance of guild masters, and changes in mining (external investors supplying most of the capital, but also receiving most of the profits) suggests a populace facing uncertain and potentially difficult times.[45] The reality probably fell somewhere between the two poles: for some, scratching out an existence would have been a challenge; for others, while not rich, most years they had enough.[46]

[44] On the *Türkensteuer* and wealth in Grimma, see Uwe Schirmer, *Das Amt Grimma 1485 bis 1548: demographische, wirtschaftliche und soziale Verhältnisse in einem kursächsischen Amt am Ende des Mittelalters und zu Beginn der Neuzeit* (Beucha: Sax, 1996), 88-96. Like the Freiberg tax register, the Grimma *Türkensteuer* included both moveable and immoveable goods.

[45] One of the difficult aspects of working on this period and region is that so much of the literature comes from either East German historians who were naturally inclined to emphasize the class struggle between a wealthy elite and the general populace, or from scholarship that is now well over 100 years old.

[46] Those without their own property – apprentices, journeyman and others – were obviously financially dependent on their masters.

2.4 Urban Spaces: Neighbourhoods and Places

Topographically, Freiberg was unremarkable as an early modern city. It was surrounded by a town wall, at least from 1392, perhaps earlier.[47] In the early fifteenth century, the wall encompassed thirty-nine towers and five gates to the city. As in other cities, every citizen was responsible for guarding the towers, and each guild was assigned a certain number of towers (e.g., the cloth-makers were responsible for four towers). Beyond the wall, an eight- to ten-metre-wide moat (*Stadtgraben*) provided added security.[48]

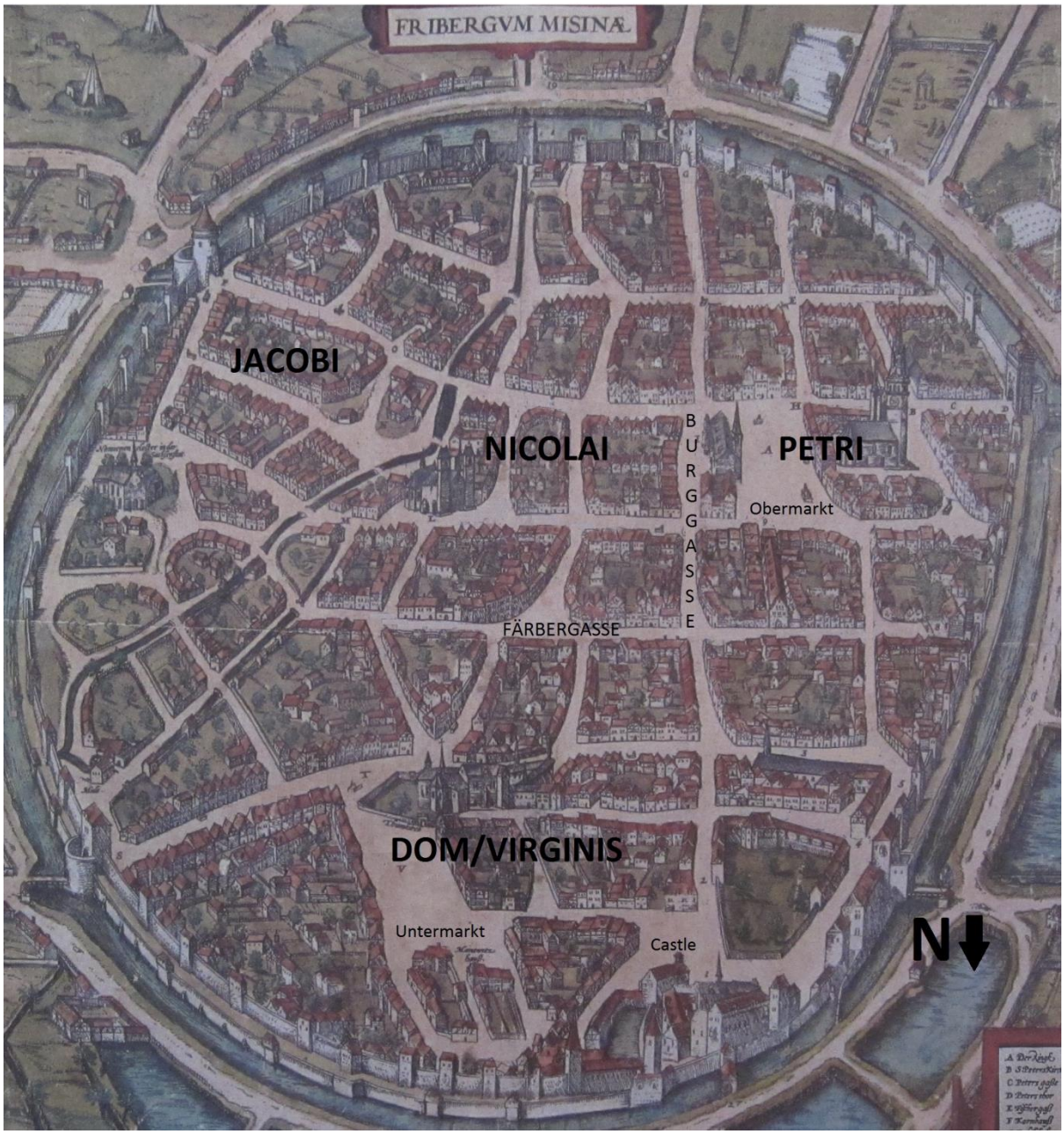
Fires in 1375, 1386, 1471 and 1484 caused significant damage to Freiberg but did little to alter the layout of the city. The last of these in 1484, combined with the second *Blütezeit* in the mines, helped sparked a wave of construction in the early sixteenth century. Many buildings were (re)built, most often in a late gothic style. The subsequent chapters will consider what the court records reveal about spatial patterns of interaction and the extent to which they were affected by the residential affiliation of the parties, so it is useful to sketch the characteristics of the four quarters of the city, and the settlements outside its walls (*Vorstädte*).

Within the town walls were four separate quarters (Jacobi, Petri, Nicolai, and Dom/Virginis), each based around a parish church that gave it its name.[49] The shape of each quarter took form shortly after Freiberg's founding. The miner's settlement of Sächsstadt became Jacobi. Next to it was Nicolai, named after the patron saint of the merchants' guild. North of these two quarters was the Cathedral (*Dom*) quarter which in the thirteenth century contained the main market square in Freiberg. The last quarter to be built was Petri which was centered around the *Obermarkt*. By 1218, the four quarters within the town walls had been established. Although the characteristics of each quarter would certainly change, the

[47] The first mention of a thick stone wall, typical of most late-medieval cities, is not until 1392. The exact date of the wall's construction is not known.
[48] Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 77-80.
[49] The parish church of St. Nicolai was destroyed in the fire of 1484. It lay in ruins until it was rebuilt in 1578. See Heinrich Gerlach, "Kleine Chronik von Freiberg," *MFA* 12 (1875), 38.

early founding dates meant that by the sixteenth century, each quarter had its own history and personality.

Map 2.1 Freiberg-Meissen 1588 (*Civitates Orbis Terrarum*)



The boundaries between the four quarters were fluid. Except for the town wall, and the *Munzbach*, a canal encircling Jacobi, streets rather than topographical features, served as the boundaries. Erbischestrasse and Burggasse, the main north-south axis partitioned Petri on

the west side of the city. Färbergasse, a main east-west axis separated Nicolai and Dom. For the *Vorstädte* outside the town walls, the town wall served as a natural divider.

The city council recorded all purchases and sales of real property, and the surviving registers assist the historian to sketch a pattern of the different quarters.[50] Based on the 1546 tax register, there were 818 houses within the town walls, and another 320 in the *Vorstädte*. I have reviewed 163 transactions within the walls, and thirty-one in the *Vorstädte*.

Petri. The richest and most powerful quarter was Petri. On the 1546 tax register, forty-seven of the sixty-eight house owners who declared their personal wealth at more than 1000 gulden lived here. Included amongst them were many councilmen, and members of the mining and merchant elites, such as Simon Bogner, *Bergmeister* from 1541 to 1545, Valten Buchfurer, councillor and wealthy book dealer, Jorg Lieskirchner, *Ratsbauherr*, and Wolff Hilliger, *Bürgermeister* and a famous tinsmith.[51] Most houses in this quarter sold for between 800 to 1200 gulden.[52] But houses located on the *Obermarkt*, such as the one bought by Mathias Hachenbergk in 1554, could cost between 1500 to 2000 gulden.[53] Petri was not completely domiciled by the rich. Other homes, further away from the *Obermarkt*, such as the one bought by Lorentz Zipser near the *Obercloster*, sold for as little as 150 gulden.[54] And of the 240 house owners in the 1546 tax register, twenty assessed their wealth as 99 gulden or less.

[50] Despite their availability for many Germany cities, housing registers are an understudied source. We lack studies on the price of houses, the frequency with which people moved, and whether they moved between quarters, and the role of the rental market. On renting in London, see William C. Baer, "Landlords and Tenants in London, 1550-1700," *Urban History* 38 (2011), 234-255.
[51] According to the 1546 tax register, Lieskirchner (6000 gulden), Hilliger (5000 gulden), and Buchfurer (4500 gulden) were respectively the second, fourth, and fifth richest men in Freiberg. On Hilliger as a tinsmith, see Otto Hübner, "Die Familie Hilliger," *MFA* 42 (1906), 15-20.
[52] For example, see SHStA Dresden, 12613, Kaufbuch Nr 1 von St. Petri in Freiberg (1524-1559), Nr. 40, fols 300r (800 gulden); 390r (900 gulden); 306r (1200 gulden).
[53] Hachenbergk bought the house for 1900 gulden, but then sold it three years later at a loss for 1500 gulden. See SHStA Dresden, 12613, Kaufbuch Nr 4 von St. Petri in Freiberg (1538-1620), Nr. 43, fols 391r to 397v.
[54] SHStA Dresden, 12613, Kaufbuch Nr 4 von St. Petri in Freiberg (1538-1620), Nr. 43, fol 470v.

Besides being the central landmark in the quarter of Petri, the *Obermarkt* was also the most important square in Freiberg. On its eastern side was the Rathaus.[55] On its northern side was the merchant's hall (*Kaufhaus*) where the tailors, weavers and furriers conducted much of their business.[56] In the sixteenth century, a row of houses formed its western side; previously the square had stretched without interruption to the Petri church. On the southern side was the premises of Andreas Alnpeck, mint master from 1546-1556, *Bürgermeister* thirteen times between 1521 and 1552, and the richest man on the 1546 tax register (he assessed his wealth at 7700 gulden). During Alnpeck's years as mint master, the mint was located within his property.

The *Obermarkt* filled vital economic and judicial roles. Markets were regularly held on the square, and in some cases, when there was an excess of merchants, would also spill over onto the surrounding streets. Criminal court cases were tried outside on the *Obermarkt*.[57] The city pillory (*Pranger*) was also located on the *Obermarkt*. In certain cases of banishment, offenders would be whipped and then chased from the pillory out of town through Peter's gate (*Peterstor*).[58]

Nicolai. To the east of Petri was Nicolai. As the street names make clear (*Gerbergasse, Färbergasse, Fleischergasse, Kesselgasse*), Nicolai was the quarter of the merchants and craftsmen. Geographically, it was a middle ground: it shared borders with each of the city's other three quarters. Financially, this gave Nicolai a mixed population: it

[55] The original Rathaus was destroyed in the 1376 fire, and a new one built between 1410 and 1416 on the same spot.
[56] Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 80-1. The 1471 fire caused significant damage to the *Kaufhaus*, and it was not until the mid-sixteenth century that a new one was constructed.
[57] Outdoor courts were customary and common in medieval Saxony. Only in the sixteenth century do courts began to move indoors. See Heiner Lück, *Die Kursächsische Gerichtsverfassung 1423-1550* (Cologne: Böhlau, 1997), 231-2. The move to indoor courts in the sixteenth century was not distinct to Saxony. Gerd Schwerhoff and Susanne Rau note it as a general change of the period, one that they tie to the rise of inquisitorial procedure. See their "Öffentliche Räume in der Frühen Neuzeit: Überlegungen zu Leitbegriffen und Themen eines Forschungsfeldes," in *Zwischen Gotteshaus und Taverne: öffentliche Räume in Spätmittelalter und Früher Neuzeit*, ed. Gerd Schwerhoff and Susanne Rau (Cologne: Böhlau, 2004), 41.
[58] See for example, SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 14r.

had its share of wealthier residents, but also its poorer ones.[59] Most however were in the middle: of its 192 house owners on the 1546 tax register, 133 (69.3%) had a personal wealth between 100 and 599 gulden.

The range of wealth is reflected in housing prices. Some were as cheap as 145 gulden.[60] One house in Nicolai was sold five times within six years (1538-1544) for prices ranging from 168 to 260 gulden.[61] Others were more expensive, particularly those on Burggasse/Erbischestrasse (the street that divided Petri and Nicolai). Some of these houses sold for as much as 1600 to 1800 gulden.[62] There were also an extensive group of houses that were sold for prices between these extremes, including prices of 350, 600, 700 and 1000 gulden.[63]

Dom/Virginis. After Nicolai and Petri, Dom/Virginis was the third wealthiest quarter within the town walls. Three features characterised it. First was the Freiberg Cathedral (*Dom*). Although Freiberg was never the site of a bishopric, it was raised to the status of a collegiate church (*Kollegiatstift*) and thus acquired the nickname of 'Dom'. First built in 1180, the original church was almost completely destroyed by the 1484 fire, but a new church was rebuilt on the same spot. The Dom was the most prestigious church in Freiberg. It was here that Elector Heinrich had the first Lutheran service preached. And it was here that Heinrich and all Saxon electors until Friedrich August I (the Strong, r. 1691-1733) were buried. Its southern entrance, *die Goldene Pforte*, in its richly sculpted sandstone manifests

[59] Amongst its wealthier residents was Ulrich Groß, four-time *Bürgermeister* (1542, 1544, 1548, 1551) and a councillor since 1503. Groß, with a personal wealth of 5100 gulden, was the third richest man in 1546.
[60] For example, see SHStA Dresden, 12613, Kaufbuch Nr 3 von St. Nicolai in Freiberg (1539-1654), Nr. 73, fol 57r.
[61] See SHStA Dresden, 12613, Kaufbuch Nr 2 von St. Nicolai in Freiberg (1523-1574), Nr. 72, fols 309r to 310v.
[62] For the 1600 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 3 von St. Nicolai in Freiberg (1539-1654), Nr. 73, fols 168v to 174v; for the 1800 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 4 von St. Nicolai in Freiberg (1538-1619), Nr. 74, fols 100r to 101v; 110r to 112r.
[63] For the 350 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St. Nicolai in Freiberg (1523-1574), Nr. 72, fol 275r; for the 600 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 1 von St. Nicolai in Freiberg (1524-1577), Nr. 71, fol 233r; for the 700 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 4 von St. Nicolai in Freiberg (1538-1619), Nr. 74, fol 148r; for the 1000 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 5 von St. Nicolai in Freiberg (1569-1681), Nr. 75, fol 234r.

Freiberg's early wealth. Across from the *Goldene Pforte* was the Freiberg Gymnasium. Founded in 1517 as a Latin school, it blossomed with the introduction of the Reformation and the leadership of Valten Appel and Dr. Hieronimus Weller.[64]

The second major feature of the quarter was the royal castle of Freudenstein. Likely built between 1171-1175, the castle was one of the earliest landmarks in Freiberg. But until Heinrich in 1505 took up residence, no Saxon margrave or duke had lived there. Instead, its primary tenants were the territorial stewards (*Vögte*) who originally governed Freiberg in the thirteenth century, and who then later governed the Saxon district (*Amt*) of Freiberg. The castle attracted a range of court staff and other employees of the territorial *Vogt*, most of whom typically lived either in the castle or the quarter.

The third physical feature of the quarter was the *Untermarkt*, a market square located next to the Dom. The *Untermarkt* served both judicial and economic functions: it was the site of the proceedings of the district court, and in the thirteenth century, the main trading square in Freiberg (a role the *Obermarkt* gradually usurped). Until the Reformation, there existed a cloistered nunnery on the *Untermarkt*. After the Reformation, the council purchased the cloister (and the rights to two other villages) from (then) Duke Moritz for 451 gulden.[65] The nuns were permitted to stay, provided they gave up their habits. Alternatively, they were offered an annual sum of thirty gulden if they left the nunnery.[66]

In terms of house prices, the Dom slides in slightly below Nicolai. Most houses cost between 300 and 700 gulden, including many of the houses on Meißnischgasse that sold for

[64] Many of the students did not come from Freiberg but rather from the surrounding area. Electors Moritz and August both studied at the Freiberg Gymnasium. See Werner Prössel, "Mitteilungen über das Gymnasium zu Freiberg," *MFA* 5 (1867), 422-7. The Gymnasium was not the first school in Freiberg. There are records of schools in Freiberg since the thirteenth century, but it was the Gymnasium that became the most significant. See Emil Preuss, ed., *Quellenbuch zur Geschichte des Gymnasiums in Freiberg von der Zeit vor Reformation bis 1842* (Leipzig: Gerlach, 1915).

[65] Randeck (ten kilometres south of Freiberg) and Falkenberg (six kilometres northeast of Freiberg) were the villages. See Ermisch, *Urkundenbuch*, vol. 1, 524-5.

[66] On the secularisation of the nunnery, see Ermisch, *Urkundenbuch*, vol. 1, 511-24.

between 500 and 600 gulden.[67] Dom was not completely without expensive houses: one house on Meißnischgasse sold for 1500 gulden.[68] On the other end of the spectrum, in marked contrast to the *Obermarkt*, some of the houses on the *Untermarkt* sold for as little as 130 to 170 gulden.[69]

Jacobi. Jacobi, the oldest quarter and original settlement of the miners, was the poorest quarter within the town walls, and thus reflected that being a miner was not a road to riches. As the eastern-most quarter, Jacobi was closest to the mines, where many of its residents plied their trade. On the 1546 tax register, 135 (85.4%) of its 154 house owners assessed their personal wealth as 299 gulden or less. Only one resident, Hans Schmid, listed his personal wealth at 1000 gulden. Four others, including Blasius the Knacker (*Abdecker*) listed their wealth at between 600 to 800 gulden. This relative poverty was also reflected in the lowest average housing prices in Freiberg. Most houses sold for 200 to 300 gulden, including some for as little as 20 to 50 gulden.[70] But Jacobi was not completely impoverished; a few houses sold for more than 600 gulden.[71] Until the Reformation, a nunnery was attached to Jacobi church. It included a school for girls. Prior to the Reformation, plans existed to expand the school, but implementation was delayed until 1555.[72]

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[67] For two separate 500 gulden houses, see SHStA Dresden, 12613, Kaufbuch Nr 1 von St Virginis in Freiberg (1523-1584), Nr. 57, fols 227r and 297r; for two 600 gulden houses, see SHStA Dresden, 12613, Kaufbuch Nr 3 von St Virginis in Freiberg (1538-1590), Nr. 59, fols 356r and 473r.

[68] SHStA Dresden, 12613, Kaufbuch Nr 3 von St Virginis in Freiberg (1538-1590), Nr. 59, fol 175r.

[69] For the 130 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 1 von St Virginis in Freiberg (1523-1584), Nr. 57, fols 215r to 217r; for the 170 gulden house, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St Virginis in Freiberg (1538-1590), Nr. 58, fol 296r.

[70] For the twenty and fifty gulden houses, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St Jacobi in Freiberg (1541-1619), Nr. 87, fols 121r and 108v (respectively). For a house that cost 200 gulden, see SHStA Dresden, 12613, Kaufbuch Nr 3 von St Jacobi in Freiberg (1541-1621), Nr. 88, fol 5r; for a house that cost 220 gulden, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St Jacobi in Freiberg (1541-1619), Nr. 87, fol 113r; and for a house that cost 260 gulden, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St Jacobi in Freiberg (1541-1619), Nr. 87, fol 147r.

[71] See for example, SHStA Dresden, 12613, Kaufbuch Nr 3 von St Jacobi in Freiberg (1541-1621), Nr. 88, fol 328r & 328v.

[72] See L. Rauschenbach, "Die Jungfrauen-Schule zu Freiberg. 16. Jahrhundert," *MFA* 30 (1893), 88-96.

Vorstädte. Many miners chose to live in the *Vorstädte* outside the town walls because houses were cheaper, land more abundant (which meant they could keep livestock), and closer to the mines. Compared to the quarters within the city walls, the residents of the *Vorstädte* were significantly poorer. On the 1546 tax register, 82.4 percent (623 of 756) of the house owners within the town walls assessed their wealth as 100 gulden or more. In contrast, outside the walls, 82.1 percent (339 of 413) assessed their wealth as ninety-nine gulden or less.

Thomas Steffan, a digger in the mines, had the highest personal wealth of 350 gulden. Most houses sold for between 50 and 100 gulden.[73] The poverty of the *Vorstädte* is captured perfectly by the nickname given to the settlement just outside Jacobi and Donat's Gate (*Donatstor*): Beggars' city (*Bettelstadt*).[74] A couple of houses sold for more than 100 gulden, including one that went for 300 gulden.[75] But these houses were all located outside Peter's Gate which meant they were close to the city's richest quarter. Whether certain *Vorstädte* beyond the town walls were better off is difficult to determine. The 1546 tax register divides the *Vorstädte* into three groups (one, two and three), and the registers of house purchases divide them into two groups (new and old); but neither indicates where each of the settlements lay.

Despite their relative poverty, the *Vorstädte* were an important part of Freiberg's urban dynamic. With 390 tax-paying house owners (many of whom were citizens), the *Vorstädte* represent a significant portion of Freiberg's population. It was also in the *Vorstädte*, that Freiberg's two hospitals were located. St. Johannis, outside Peter's Gate was

[73] See for fifty gulden: SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. A (1536-1616), Nr. 97, fol. 309r; for sixty gulden: SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. D (1555-1615), Nr. 100, fol. 434v; and for sixty-seven gulden, SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. B (1549-1587), Nr. 98, fol. 152r.
[74] Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 82. This name was still in use in 1569. See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 129r.
[75] For 300 gulden; see SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. B (1531-1625), Nr. 95, fol. 389r; for 100 to 120 gulden houses, see SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. B (1531-1625), Nr. 95, fols. 1r to 2r.

the hospital for less serious illnesses, while St. Bartholomäus (also called Fernesiechen) was a lepers' hospital.

Amongst the many things we do not know about early modern urban living patterns is whether people moved between quarters or not. Most of the Freibergers I have come across seem to have remained in one quarter, and many houses were only sold upon the death of the family patriarch. But some, like Heinrich Konigsdorff, did move between quarters. Over a span of ten years, Konigsdorff owned houses in the quarters of Jacobi, Nicolai and Dom/Virignis. After his death, his widow bought a house in Petri.[76]

Regardless of which quarter someone lived in, the movements of daily life would have brought Freibergers to different quarters. Petri, as the main market square, and location of the city court and town hall, would especially have been a point of congregation. Further, the area within the town walls was moderate; today one can walk the diameter of the walled city in less than fifteen minutes. Population estimates for the sixteenth century vary. Most suggest that at mid-century, Freiberg's population was between 9000 and 10,000.[77] This moderate size and concentration would have meant that Freibergers would have known something of many of their fellow denizens, and been conducive to a sense of community.

In this sense, Freiberg was a 'German hometown.' Although Mack Walker's concept of German hometowns has been challenged, his description of the communal bonds within

[76] For the house in Nicolai, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St. Nicolai in Freiberg (1523-1574), Nr. 72, fols 309r; for the house in Dom/Virignis, see SHStA Dresden, 12613, Kaufbuch Nr 2 von St Virginis in Freiberg (1538-1590), Nr. 58, fol 271v; for the house in Petri, see SHStA Dresden, 12613, Kaufbuch Nr 1 von St. Petri in Freiberg (1538-1615), Nr. 42, fol 253r. For the 1546 tax register, Konigsdorff was listed as living in Jacobi. See "Ein Freiberger Steuerregister," 38.

[77] Karlheinz Blaschke estimates the population at 9015 in 1550. *Bevölkerungsgeschichte von Sachsen bis zur industriellen Revolution* (Weimar: Böhlau, 1967), 78. For 1548, *Das Historische Ortsverzeichnis von Sachsen* counted 1073 citizens with property (*besessene(r) Bürger*) inside the town walls and an additional 240 outside the town walls. (http://hov.isgv.de/Freiberg_%281%29). Karlheinz Blaschke, *Historisches Ortsverzeichnis von Sachsen*, 4 vols. (Leipzig: Bibliographisches Institut, 1957).

them still resonates.[78] In light of the peripatetic way that so many miners lived, these relationships between long-term residents take on new importance. An importance that left its mark on Freiberg's legal culture, and the cases that played out before the city court.

2.5 The Council, the Courts, and the Law

The Council

As was typically the case in early modern European cities, Freiberg was governed by a council (*Rat*) and a *Bürgermeister*. The *Stadtrecht* of 1296/1305 stipulated that there were to be twelve councillors serving staggered two year terms, such that six were elected each year.[79] Thus in any given year, the council would be made up of six 'old' (*alt*) members who had been on the council for a year, and six 'new' (*neu*) members who had just been elected.[80] The stipulation does not appear to have been rigorously applied as there are numerous instances of councillors serving several years in succession. New councillors were technically supposed to begin their posts at Candlemas/Presentation of Jesus at the Temple (*Mariä Lichtmess*) but Manfred Unger notes that the council changeover was often not fixed in the fourteenth and fifteenth centuries.[81] In the sixteenth century, the changeover consistently happened two weeks after Easter.

In 1498/1500, Duke Heinrich made two major changes to Freiberg's council. The first was to expand the size of the council to twenty-two members, while retaining the distinction between new and old councillors. The second was to change the length of a councillor's term: instead of being elected for two years, councillors were now elected for

[78] Mack Walker, *German Home Towns: Community, State, and General Estate, 1648-1871* (Ithaca, N.Y.: Cornell University Press, 1971).
[79] See Section 48.1 of the *Stadtrecht*, Ermisch, *Urkundenbuch*, vol. 3, 146.
[80] This rule of six rotating councilors was confirmed by Friedrich, margrave of Meissen, in 1307. See Ermisch, *Urkundenbuch*, vol. 1, 44-5.
[81] Unger, *Stadtgemeinde Freibergs*, 107-8.

life.[82] The changes meant that councillors now served as new councillors for one year, and as old councillors the following year, whereupon they became new councillors again (and the process repeated itself until a councillor died or resigned). With a larger council, the distinction between old and new took on increased importance as governance was the responsibility of the new councillors. In contrast, those serving as old councillors rarely attended council meetings, and their role was more ceremonial.[83]

At the head of the council was a *Bürgermeister*.[84] While Freiberg's municipal legal code includes sections on the court scribe, beadle, mine master, mint master, district court judge, and toll collector, and their respective duties, there is no corresponding section on the *Bürgermeister*, or his relationship to the council.[85] What is apparent is that while the *Bürgermeister* was never simultaneously a councillor, his tenure was tied in with the structure of new and old councillors. In the sixteenth century, the common pattern was for a Freiberger to serve as *Bürgermeister* every third year. In the intervening years, he would serve first as an old councillor for a year, then as a new councillor for the following year. In the third year of the cycle, he would serve as *Bürgermeister*, whereupon the cycle would repeat itself. For example, Wolff Loß was a new councillor in 1537, *Bürgermeister* in 1538, and an old councillor in 1539, and then a new councillor again in 1540, and *Bürgermeister* in 1541.[86] Like the councillors, the post of *Bürgermeister* appears to have been life-long: almost every *Bürgermeister* in the sixteenth century followed this three year cycle until their

[82] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 101. Freiberg was not alone in life-time appointments for its councillors; a similar provision existed in Leipzig. See Katrin Keller, "Gemeine Bürgerschaft und Obrigkeit: Zu Wirkungsmöglichkeiten von Handwerksmeistern innerhalb städtischer Selbstverwaltungsorgane Leipzigs im 16. Jahrhundert," in *Verwaltung und Politik in Städten Mitteleuropas: Beiträge zu Verfassungsnorm und Verfassungswirklichkeit in altständischer Zeit*, ed. Wilfried Ehbrecht (Cologne: Böhlau, 1994), 185.
[83] 'Active' and 'passive' are perhaps better terms to describe the difference between new and old councillors.
[84] A full list of councillors and *Bürgermeister* from 1223-1605, for 1223-1485, see Ermisch, *Urkundendbuch*, vol 3, 428-59; and for 1486-1605, see Walther Herrmann, ed., *Das Freiberger Bürgerbuch 1486-1605* (Dresden: Historische Kommission der Sächsischen Akademie der Wissenschaften zu Leipzig, 1965), 140-52. In all my calculations regarding *Gerichtschöffen*, councillors, and *Bürgermeister*, I have used the names and dates provided by these sources.
[85] See sections 35 to 40 of the *Stadtrecht*, in Ermisch, *Urkundenbuch*, vol. 3, 129-37.
[86] See *Das Freiberger Bürgerbuch*, 145, 150.

death prevented them from serving another year as *Bürgermeister*.[87] I have yet to find archival confirmation of this structure being a formal rule, but its frequency suggests it was official.

The life-time terms of councillors and *Bürgermeister* meant that Freiberg appeared to be governed by a closed elite. New positions on the council only became open when an existing councillor or *Bürgermeister* died or resigned. Until 1498/1500, citizens had been responsible for voting for the new councillors.[88] With the change of 1498/1500, this no longer took place.[89] Who elected the *Bürgermeister* is not clear. Quite likely it was other councillors since almost every *Bürgermeister* had previously served as a councillor.

The dominance of a select few was not a new phenomenon in Freiberg. Patrician families had long dominated the council. Through the thirteenth and first half of the fourteenth centuries, a group of families who derived their wealth from mining and long-distance trade exercised effective control. But with the end of the first mining *Blütezeit*, many of these families left urban life and retired to estates outside the city.[90] After 1350, the guilds gradually began to assert themselves on the council but their power was initially checked by a new wave of patrician families, particularly the Monhaupts, Magdeburgs, Borners, Wigharts, Hartuschs, Goswins, Gehards, Berbisdorfs, Grosses, and after 1400, the Osanns, Wellers, Schönbergs, Am Endes and Alnpecks. Like the first wave of patrician families, this second wave was composed of families with extensive property holdings elsewhere in Saxony. By the sixteenth century, all but the Borners, Gerhards, Grossses, Am

[87] For example, Peter Alnpeck served as *Bürgermeister* in 1556, 1559, and 1562. He died in 1563 before he could serve his coming term in 1565. Instead, Nicol Landsberg replaced him and served as *Bürgermeister* in 1565 until his death in 1566. See *Das Freiberger Bürgerbuch*, 145.
[88] This was codified in section 48.1 of the *Stadtrecht*, see Ermisch, *Urkundenbuch*, vol. 3, 146.
[89] Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 86.
[90] Unger, *Stadtgemeinde Freibergs*, 120-36.

Endes, Wellers, and Alnpecks had retired to their estates, and are no longer present in Freiberg's leadership.[91]

Instead, a new wave of families came to dominate Freiberg's council.[92] Most were wealthy. In 1546, the year of the tax register, every councillor possessed a personal wealth of greater than 1000 gulden, placing them in the richest six per cent. Like their predecessors, most belonged either to the merchant or mining elite, but not all. Nicol Lanzberg, a cloth-maker, and Wolff Hilliger, a tinsmith, were both councillors in this year. The emergence of these new families indicates that city leadership was not completely closed. New families, provided they achieved sufficient wealth and respect, could also become councillors.

The Courts

As commonly the case in German cities, the city court and council were the bodies primarily responsible for the administration of law. In legal matters where the activities of one began and the other ended is often opaque. The surviving records do little to help clarify matters. Regular council minutes survive only from 1549.[93] Alongside entries on the water system and purchases of wood, legal matters such as testimony or the release of a prisoner from jail are also recorded. Beyond the council minutes, there are a range of court registers (*Gerichtsbücher*) where such legal matters were typically recorded. In a handful of instances, one can trace specific cases through both the council minutes and court registers.

[91] Ibid., 137-59. The Alnpecks were of particular significance and their trajectory in Freiberg's governance can be taken as typical of their status. Having immigrated to Saxony in the fifteenth century, they made their fortune through mining. In the 1546 tax register, the patriarch of the family, Andreas, was the richest man in Freiberg with a self-assessed worth of 7700 gulden. Andreas was active in the governance of Freiberg, serving as the *Bürgermeister* thirteen times between 1525 and 1553. From 1545 until its closure a decade later, he was the mint master (*Münzmeister*). But when Elector August moved the mint to Dresden, Andreas Alnpeck retired from Freiberg to the family's feudal lands, and the Alnpecks ceased to be a prominent family in Freiberg, and instead became a Saxon noble family. See Otto Hübner, "Stammbaum der Freiberger Patrizierfamilie Alnpeck," *MFA* 44 (1908), 71-82.

[92] Included in this new wave were the Hilligers, Hausmans, Losers, Buchfurers, and Meußgens.

[93] Called alternatively *Merkregister*, *Stadtbuch*, or *Stadtprotokoll*. Previously, the council had sporadically maintained *Stadtbücher* from 1378 to 1541. The first three, covering the years 1378-1485, have been published. See Ermisch, *Urkendbuch*, vol 3, 266-92, and 303-69.

The leadership of the court was tied to that of the council. The council appointed two of its own to be judges (*Stadtrichter*). As judges, these councillors were responsible for the administration of the court. Typically, whichever councillor was on the 'new' council was the more active of the two (although this was not always the case). The tenure of a judge's appointment was indeterminate and many held their position for an extended period of time.[94] Judges were responsible for a broad array of legal matters, including presiding at trials, investigating crimes, questioning witnesses, recording peace pacts, and notarising debts, wills, and property transactions.

In carrying out their duties, judges were supported by men filling other municipal posts. The court scribe (*Gerichtsschreiber*) had studied at university, and had legal training. He was pivotal in the effective administration of the court. Three of them, Michael Hempell, Jacobus Franckenberger, and Adam Bellman, are identifiable for the mid-sixteenth century. From all indications, they were quite competent.

The *Stadtvogt*, or bailiff, was another key aide. In the sixteenth century, Freiberg only employed one bailiff. From 1522 until his death in 1570, Gregor Gerolt held this position.[95] Supporting the bailiff was a group of *Gassenschöffen*, a sort of neighbourhood watchmen. What exactly the position entailed is unclear. There is some evidence that in the fourteenth and fifteenth centuries, cleaning and/or keeping the streets clean was part of their duties.[96] *Gassenschöffen* were appointed for a term of one year (the posts were renewable) and each

[94] Bernhard Hanneman, for example, was on the 'new' council in 1558, 1560, 1562, 1564, 1566, 1567, 1569, 1570, 1572, and 1574, and served as a judge from 1560 to 1575. And Wolff Thiel was a judge from 1547 to 1555, after having graduated from the University of Leipzig in 1520, and served as city scribe from 1526 to 1540. See *Das Freiberger Bürgerbuch*, 151.

[95] Gerolt's death seemed to move Bernhard Hanneman who noted his passing at the beginning of a new court register. See SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch der Stadt Freiberg (1570-1580), Nr. 685.

[96] Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 81-2. In sixteenth-century Nuremberg, they were responsible for the maintenance of order. It may be that they fulfilled a similar function in Freiberg. See Andrea Bendlage, *Henkers Hetzbruder: das Strafverfolgungspersonal der Reichsstadt Nürnberg im 15. und 16. Jahrhundert* (Constance: UVK, 2003).

quarter, including the *Vorstädte* outside the town walls, employed three to four *Gassenschöffen* per year.[97]

The *Gerichtschöffen* (juror/decision-finder) were active during the investigation of a crime. From their title, the *Gerichtschöffen* played a role in the court reaching a decision in a case, but how this took place is opaque. Six *Gerichtschöffen* were appointed annually by the city council. The posts lasted for a year, but many appointments were renewed, and most *Gerichtschöffen* held the position for three to four years. Upon taking up their posts, *Gerichtschöffen* swore an oath, promising to both uphold and spread awareness of the law, indicating that legal knowledge was part of the job.[98]

Most *Gerichtschöffen* were craftsmen from the guilds. For those that were not part of the merchant or mining elite, serving as a *Gerichtschöffe* was their best chance to become involved in municipal governance. At times, it could serve as a stepping-stone to becoming a councillor or judge. Of the 112 men who served as *Gerichtschöffe* from 1500 to 1600, forty-nine (43.8%) went on to become councillors. Conversely, of the 128 men who served on the council in the sixteenth century, sixty-three (49.2%) had previously been a *Gerichtschöffe*.[99] Of the nine judges that I can identify from 1530 to 1582, five served as a *Gerichtschöffe*, typically for a couple of years, before becoming a judge.[100] Service in deciding cases was how non-elite people were incorporated into processes of governance.

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[97] For the complete list of *Gassenschöffen* from 1486 to 1605, see *Das Freiberger Bürgerbuch*, 189-207.
[98] Written by the Magdeburg *Schöffenstuhl* in the second half of the fifteenth century, the full text of the oath reads : *Ich swere gote zuvoran, unnsernn erbhern und allen ynwonern der stad, noch mynem vermogen das recht zu leren und zu sterken, das unrecht zu weren, yn roth gehorsam zu sienn, den nicht zu melden itezt und zu ewigen geczeiten, deme armen als deme reichen zu sitczenn, das nicht loßen widder durch liep, ap sich eincher unwillen zcwischin uns ergebe, das nicht furder zu tragenn, sundern das den rath zu billichen und zu scheiden laßen, der stad ire freiheit und gerechtikeit zu erhalden*. See Ermisch, *Urkundenbuch*, vol. 1, 325-6.
[99] See *Das Freiberger Bürgerbuch*, 147-57.
[100] The five judges who had first been *Gerichtschöffe*: Martin Hilliger/Kanngisser* (*Stadtrichter*, 1523-1537; *Gerichtsschöffe* 1510); Clement Khun (*Stadtrichter*, 1545-1553; *Gerichtsschöffe* 1537, 1538, 1540); Bernhard Hanneman (*Stadtrichter*, 1560-1575; *Gerichtsschöffe* 1550-52, 1554-57); Friderich Loser (*Stadtrichter*, 1575-80; *Gerichtsschöffe* 1562-63); and Hans Buttner (*Stadtrichter*, 1582-; *Gerichtsschöffe* 1563-68). The four who had not: Frantz Hacker (*Stadtrichter*, 1547-1555); Wolff Thiel (*Stadtrichter*, 1544-1547); Wolff Reichel (*Stadtrichter*, 1558-1580); and Valten Hausman (*Stadtrichter*, 1560-1565).

Below the city court were the guilds. Unlike in Augsburg or Ulm where the guilds played a leading role in disciplining illicit behaviour of their members, the guilds did not play such a role in Freiberg. A few guilds, such as the bakers, butchers, and knife-smiths were allowed to issue *Morgensprache* to deal with guild matters, but they were not allowed to pass judgment on their members' behaviour.[101] Instead, the guilds' function in Freiberg was restricted to business matters like inspecting the quality of goods. In the event they were determined to be inferior, the guild master/head could fine the offending party, but half of the fine was given to the council.[102]

As a territorial city, Freiberg had to fit into the larger world of Saxon jurisprudence and legal institutions. Every person in Saxony had the right to appeal to the elector, and the elector had the right to involve himself in every case. Written communication from the elector is rare in the court registers.[103] When in need of legal guidance, the Freiberg city court typically applied to the Leipzig *Schöffenstühl*, the jurists at the University of Leipzig's law faculty. The Leipzig *Schöffenstühl* would respond with further guidance, and sometimes in capital cases, issue the verdict.[104] Freibergers had the right to appeal cases to higher Saxon courts like the ducal courts (*Hofgerichte*) in Wittenberg and Leipzig, and after 1559, the

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*In court records at the time, Martin Hilliger typically signed his named as "Kanngisser" on account of the family trade. As tinsmiths, the Hilligers fame and business extended beyond Freiberg. On Martin Hilliger, see Hübner, "Hilliger," 12-15.

[101] Other guilds such as the goldsmiths, ironsmiths and linen-weavers were not allowed to issue *Morgensprache*. Whether a guild was allowed to issue *Morgensprache* or not was specified in their founding statues (all of which were codified as part of, or added as supplements, to the *Stadtrecht*). See sections 42-47, and additions (*Zusätze*) 3-10, Ermisch, *Urkendbuch*, vol 3, 138-45, and 159-69.

[102] See Langhof, "Zweites Kapitel," *Bergstadt Freiberg*, 87. The system of guilds forwarding half of the fine to the council or court was common in Saxony. See Lück, *Gerichtsverfassung*, 263.

[103] Exactly how frequently the elector became involved in Freiberg cannot be quantified owing to the surviving records, and their disparate categorization. Ulrike Ludwig has found that electoral involvement in legal cases was more frequent in a city where the elector, or other superior legal body, resided. See Ludwig, *Das Herz der Justitia*, 28-9, 33-5.

[104] The records of the Leipzig *Schöffenstühl* were almost completely destroyed in the nineteenth century when the *Schöffenstühl* was disbanded, so it is difficult recreate their exact jurisprudential role. See Ludwig, *Das Herz der Justitia*, 31. The other significant law faculty in Saxony was in Wittenberg but Freiberg rarely consulted its *Schöffenstühl*.

appeals court (*Appellationsgericht*) in Dresden. Little indicates they did.[105] Instead, most appeals were handled by the city court itself (its jurisdictional competence included appeals). When the city court handled an appeal, it was typically a request for a judicial pardon, most often in criminal cases.[106] What typically occurred was the court reduced an offender's punishment from execution to banishment.[107]

As with every early modern legal polity, Freiberg was legally pluralistic.[108] Besides the city court, there were three other legal institutions that met regularly in Freiberg, all of which were tied into larger Saxon frameworks. First, and most closely connected to Freiberg's council, was the mining court (*Berggericht*). It was the primary court for all matters pertaining to mining, including theft from the mines (despite being a criminal offence, this form of theft was not part of the city court's jurisdiction).[109] It was tightly linked with Freiberg's council as the *Schöffen* of the mining court were members of Freiberg's council. Reflecting Freiberg's central place within Saxony mining, the Freiberg mining court retained appellate jurisdiction for all mining courts in Saxony, creating yet another bond between mining and the city.[110]

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[105] In a sample of 750 appeals to these courts from 1593 to 1647, Ulrike Ludwig found two appeals that originated from the Freiberg city court. See Ludwig, *Das Herz der Justitia*, 32-5.

[106] Ulrike Ludwig has carried out exemplary research on pardons on the territorial level in Saxony. See her *Das Herz der Justitia*, 151-271.

[107] This practice is best captured in the *Urfehdebücher*, see SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425; SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421; and SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420.

[108] This holds regardless of whether the definition of legal pluralism is restricted to state legal pluralism, or not. Advocates of a broader definition of legal pluralism (one including non-state law) include John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 24 (1986), 1-55; Gordon R. Woodman, "Ideological Combat and Social Observation: Recent Debate about Legal Pluralism," *Journal of Legal Pluralism and Unofficial Law* 42 (1998), 21-59; and Franz von Benda-Beckmann, "Who's Afraid of Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law* 47 (2002), 37-82. For critiques of this approach, see Simon Roberts, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain," *Journal of Legal Pluralism and Unofficial Law* 42 (1998), 95-106; Brian Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism," *Journal of Law and Society* 20 (Summer 1993), 192-217; and Brian Tamanaha, "A Non-Essentialist Version of Legal Pluralism," *Journal of Law and Society* 27 (June 2000), 296-321.

[109] For a published version of many of the *Urfehden* from the mining court, see Stephan Adlung, *Bergkriminalsachen des 16. Jahrhunderts im Freiberger Bergbaurevier*, 2 vols, (Kleinvoigtsberg: Kugler, 2003).

[110] The legal code for the mining court was the Freiberg mining law (*Bergrecht*). Codified in two parts shortly after the *Stadtrecht* (*Bergrecht* A, 1310/1327, *Bergrecht* B, 1346/1375), the Freiberg mining law was the official

Second, were the religious institutions of the Lutheran church. In the wake of the Reformation, superintendencies and church courts (*Konsistorien*) were founded to handle religious offences, including sexual offences. At the base were the parish priests, followed by the superintendents. As a prominent Saxon city, Freiberg was home to a superintendency. Founded in 1539, Freiberg's superintendency was the oldest in Albertine Saxony. The superintendency was connected to the city court, and marital cases were to be decided by the superintendent, the *Bürgermeister*, and two citizens.[111] Above the superintendent was the *Konsistorium*, but the nearest one to Freiberg was in Meissen (approximately thirty kilometres from Freiberg), limiting its impact on legal life in Freiberg.[112] In the event that the *Konsistorium* needed guidance, as of 1548, they were to turn to the jurists and theologians of the University of Leipzig.[113]

Third, was the district court (*Amtsgericht*) which had jurisdiction for the areas of the district beyond the reach of Freiberg's city court. It met every fourteen days in front of castle Freudenstein and was run by the district steward (*Vogt*). Completely separate from the city court, the district court reported to the prince elector.[114] The surviving records for the district courts, superintendent and *Konsistorium* for the sixteenth century are fragmentary making it

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mining code for all of Saxony through the fifteenth century. Its influence spread beyond Saxony, as mining cities in Bohemia and Silesia adopted it. See Walter Schlesinger and Herbert Wolf, " Freiberg," in *Handbuch der historischen Stätten Deutschlands*, ed. Walter Schlesinger, vol. 8 (Stuttgart: Alfred Kröner Verlag, 1965), 102-3. But with the new mining boom in the western Erzgebirge in the late fifteenth and early sixteenth centuries, the Annaberg mining ordinance (*Bergordnung*) replaced it as the principal mining code in Saxony.

[111] See Lück, *Gerichtsverfassung*, 142-50. The influence of the *Bürgermeister* may explain why some marital and sexual cases are found in the records of the city court. In dealing with these types of cases, the court's record was mixed. In some cases, like the adulterous relationship between Magdalena Ulbrecht and Greger Merten (Magdalena was married), the court punished one party (Ulbrecht was banished for life from the Electorate of Saxony). See SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol. In other cases, such as when Jorge Schorff impregnated Anna Libscher, the court provided for the care of one of the parties (in this case, the court negotiated a settlement whereby Jorge had to pay Anna twenty gulden for the care of the child). See SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch der Stadt Freiberg (1542-1556), Nr. 681, fol 388r.

[112] Only the *Konsistorium* was technically a court. The parish priest and superintendent were local figures who could gather information and remonstrate parishoners for misbehaviour.

[113] Prior to 1548, they had only been required to consult the law faculty. See Lück, *Gerichtsverfassung*, 150.

[114] On the district court, see Lück, *Gerichtsverfassung*, 208-9.

nearly impossible to gauge the extent to which these institutions worked together, or competed against each other.

In 1553, Elector August began major reforms to Saxony's judiciary. These reforms included the streamlining of the appeals processes, including the creation of an appeals court (*Appellationsgericht*) in Dresden in 1559. The reforms also took aim at the district courts with two particular intentions. The first was to clarify the geographic scope of each district court's jurisdiction. The territorial gains from the Wittenberg Capitulation and secularisation of church lands had nearly doubled Albertine Saxony's territory, and brought the total number of districts to over 100.[115] Providing further difficulty was that local nobles held the jurisdiction over many rural courts. August's reforms to establish who held jurisdiction over specific domains were sorely needed. The second was to ensure the district courts were staffed with learned and trained personal. Many of the nobles in charge of both the district courts and nobles' courts (*Rittergüter*) lacked training and knowledge in administering the law. Until appropriate staffing could be achieved, each district was given a handbook (*Amtserbbücher*) with precise procedural guidelines.[116]

As we shall soon see, these winds of change not only affected Saxon legal institutions, such as district and appeals courts, the Freiberg city court and its legal code would soon be caught up in this storm.

The Law

Compiled between 1296 and 1305, and written in high medieval German, the primary legal code in Freiberg was its *Stadtrecht* (municipal law).[117] With forty-nine chapters and

[115] Ludwig, *Das Herz der Justitia*, 40-1; and Lück, *Gerichtsverfassung*, 161.
[116] The handbooks have now all been digitalised and can be found online. See André Thieme "Die kursächsischen Amtserbbücher aus der Mitte des 16. Jahrhunderts und ihre digitale Erfassung," *Neues Archiv für sächsische Geschichte* 74/75 (2003), 413-22.
[117] The *Sachsenspiegel*, one of the most influential medieval legal codes, was never officially adopted by either the Margraviate of Meissen or the Duchy of Saxony. Instead through its frequent use and application in the

174 pages, it was a long, comprehensive legal document. Thematically organised, it included sections on inheritance law (*Erbrecht*), criminal offences such as theft, murder, assault, and regulations on municipal posts such as mint master, mine master, and beadle. It established the conditions for becoming a citizen, and the geographical scope of Freiberg's writ, which extended beyond the city walls.[118] Further, it banned Freibergers from commencing legal processes and complaints at territorial or royal courts. Instead, it mandated that all legal matters be handled by the Freiberg city court.[119] The code proved durable, and was still in use and being cited in the sixteenth century.[120]

But beginning in the late medieval period, and continuing into the early modern era, there was a fundamental shift in the concept of law and in its judicial administration. First was the rediscovery of the Justinian corpus which led to an appreciation of the law as a systematic, rational code, aligned with Christian beliefs. Second was the shift away from conflict being strictly a personal contest, judged by God in some form of ordeal. In its place came reliance upon the confession (since the sinful should confess), stricter rules of evidence,

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courts, both rulers and the larger population embraced it and so bestowed authority on it. Further, as the *Sachsenspiegel* was a compilation of traditional Saxon laws, it in turn continued to influence other Saxon legal codes.

The *Sachsenspiegel*, in conjunction with Magdeburg municipal law (*Magdeburger Recht*) and the Magdeburg *Schöffenstuhl* were instrumental to the spreading of law in the Eastern reaches of the Holy Roman Empire. In the Polish Duchy of Silesia, cities such as Goldberg (1211), Breslau (before 1241), Neumarkt (1235), Glogau (1263) adopted these codes, either partially or fully, as their own. The spread of these codes went as far as Krakow (1308), Lithuania (Vilnius 1387), Belarus (Brest-Litowsk 1390; Grodno (now Hrodna) 1391), and the Ukraine (Kiev 1494-1497). My suspicion is that legal practices of these polities would bear great similarities to Saxony. To date, such research has not been carried out (or published in either English or German). On the influence of these codes, see Heiner Lück, *Sachsenspiegel und Magdeburger Recht: Europäische Dimensionen zweier mitteldeutscher Rechtsquellen* (Hamburg: ADIUVAT-Anwaltschaft hilft Anwaltschaft, 1998), 25-30, 40-55. The manner in which the eastern European cities adopted these legal codes is another example of Alan Watson's argument that law is more often transplanted than invented; cf. *Legal Transplants: an Approach to Comparative Law*, 2nd ed. (Athens: University of Georgia Press, 1993).

[118] The geographical reach of the *Stadtrecht* was not clear. At times, it makes reference to the *Bannmeile* (Section II.12-13), to a four mile radius (Section 5.39), and to the *Weichbild* (Section 40.12-13). See respectively, Ermisch, *Urkendbuch*, vol 3, 28, 42, and 136. For a discussion of the different scopes, see Unger, *Stadtgemeinde Freibergs*, 30-4.

[119] See Section 34.4, Ermisch, *Urkendbuch*, vol 3, 128.

[120] See for example, StAFB, Merkregister (1565-1568), I Ba 4b, fol 140v. The *Stadtrecht* had likely existed since the mid-thirteenth century, but it was not until 1296 that Albrecht I, Margrave of Meissen, ordered it to be recorded. See Unger, *Stadtgemeinde*, 8-12.

and the use of torture. Third was the establishment of law as a university subject, and the expectation that judges should be trained in the law.[121]

Saxony was in retard of these developments and through much of the sixteenth century continued with its customary, medieval practices while the world around it changed. However, once the political turmoil of the 1540s and 1550s had settled down, Elector August set about to reform not only Saxony's legal institutions, but also its legal code to conform with the influence of Roman law. He assigned the task to the jurists of the universities of Leipzig and Wittenberg. After twelve years of thorough work, the jurists completed their task and the new code, the Saxon Constitution, was brought into effect in 1572.

Written in four sections, the Saxon Constitution is an extensive document considering both civil and criminal law. Its aim was not to create an entirely new legal code, rather it examined contentious legal issues of the period, assessing the practices of customary Saxon law, Roman law and the Carolina, before deciding on how an issue should be handled in the future.[122] Indicative of the authors (themselves trained jurists), it effected three major changes on Saxon jurisprudence. First, building on the reforms of the district courts, it provided clear guidelines on legal procedure; second, it ensured that legal verdicts were written and made by learned jurists from one of Saxony's two universities;[123] and third, it expanded the list of criminal punishments, and stipulated specific punishments for individual offences.[124]

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[121] See Manlio Bellomo, *The Common Legal Past of Europe: 1000-1800*, tran. Lydia G. Cochrane (Washington, D.C.: C.U.A Press, 1995); Harold J. Berman, *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge: Harvard University Press, 2004); and Franz Wieacker, *A History of Private Law in Europe: with Particular Reference to Germany*, trans. Tony Weir (Oxford: Clarendon Press, 1995).

[122] A running theme throughout is a rejection of the Carolina.

[123] Two years after the Constitution was implemented, it was declared that only the Leipzig *Schöffenstuhl* could issue verdicts in criminal cases. Having both Leipzig and Wittenberg *Schöffenstühle* issuing verdicts had proved ineffective. See Heiner Lück, *Die Spruchtätigkeit der Wittenberger Juristenfakultät* (Cologne: Böhlau, 1998), 88-9.

[124] For a valuable overview of the Saxon Constitution and the changes it brought, see Ludwig, *Das Herz der Justitia*, 77-94. Ludwig notes despite this increasing clarity and classification of offences and punishments, the application of punishments continued to be flexible.

Freiberg was dubious of the new code. The Constitution's concern over legally untrained councillors and lay judges administering the law did not resonate. In Freiberg, members of the city council had legal training. Both Wolff Loß, *Bürgermeister* in 1538 and 1541, and new councillor in 1537, 1540 and 1543, and Michael Jäger, *Bürgermeister* five times between 1554 and 1564, possessed law doctorates.[125]

As a result, Freiberg with its long tradition of an independent legal culture beseeched the elector to permit the city to continue to use its traditional municipal law. In light of these learned leaders, Freiberg's complaints and resistance to adopting the Saxon Constitution takes on a new light. To Freiberg's municipal leaders, they had an effective system of jurisprudence, built on centuries of experience and administered by trained officials. What need did they have for this new legal code? In March 1573, Lorentz Fleischer, Wolff Hilliger, and Wolff Prager, *Bürgermeister* of Freiberg for 1571, 1572, and 1573 respectively, went to Dresden and personally met with Elector August and Dr. Cracau, the principal author of the Saxon Constitution to try and preserve Freiberg's municipal law.[126] The elector's response was quick and decisive: territorial law supplanted municipal law (*Landrecht bricht Stadtrecht*).[127] As with the mint in 1556, Freiberg's protests had been in vain.[128] A new era in Freiberg's legal history would begin.

[125] Jäger was *Bürgermeister* in 1554, 1555, 1558, 1561 and 1564, and a new councillor in 1552, 1553, 1557, 1560, 1563 and 1566. Both Loß and Jäger would die before the promulgation of the Saxon Constitution; Loß before 1556, and Jäger in 1566. See *Das Freiberger Bürgerbuch*, 145-6, 149-50. Loß, who had compiled a new edition of the *Sachsenspiegel* in 1545, fell on the wrong side of Elector Moritz when he alleged that Moritz wanted to make Saxony Catholic again. See Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 114-5.
[126] Starting in 1566, Hilliger Prager and Fleischer alternated serving as Freiberg's *Bürgermeister* in a three-year cycle (thus Hilliger was *Bürgermeister* in 1566, 1569, 1572 and 1575). This pattern continued until Hilliger's death in 1576. The three of them were, to say the least, experienced administrators. See *Das Freiberger Bürgerbuch*, 145-6.
[127] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 114-5.
[128] The impact of the influential Saxon jurist Benedict Carpzov (1595-1666) would not be felt until the seventeenth century. On Carpzov, see Günter Jerouschek, et al., eds., *Benedict Carpzov: neue Perspektiven zu einem umstrittenen sächsischen Juristen* (Tübingen: Edition Diskord, 2000).

The following three chapters look at the period before the Saxon Constitution to try and determine what it was that Freiberg's municipal leaders had fought to preserve. What had made those old practices so durable and effective? Did Freiberg have a coherent legal culture whose tenets were widely accepted by its denizens? And if so, what were the principal characteristics of this culture? The first element to be considered is *Bürgen* (legal guarantors).

3. *Bürgen*

3.1 *Bürgschaft*

On Monday, 24 August 1556, four men appeared before Freiberg's city council after two of them had quarrelled in public.[1] Ortwing Urban was the oldest, a miner who had become a citizen forty years prior, and, holding a master's degree (*Magister*), was well educated. We know little about Urban Graupitz, the other party to the quarrel. Less than nine months previous, the council had fined him twenty groschen and ordered him to pay it without borrowing in eight days.[2] In the conflict with Ortwing Urban, he was deemed the offender and confined to jail. The other two men present had agreed to act as *Bürgen* (guarantors)[3] for Graupitz, and on the basis of their assurances, the council released Graupitz on condition that he behave peacefully towards Urban as well as Urban's wife and children. If he did not observe the conditions, his *Bürgen* were required to bring him back before the council.[4] The cause of the quarrel is unknown but may have partly been a function of the difference in social standing between the two men.

[1] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 85r.
[2] For Urban Graupitz's 8 December 1555 council appearance that resulted in a fine, StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 26r. The nature of the offense is not given. There is no record of Graupitz having been granted citizenship, nor of his having purchasing property.
[3] In the glossary and her translation of the *Sachsenspiegel*, Maria Dobozy uses 'guarantor' and 'bondsman' as translations for *Bürge*. See *The Saxon Mirror: a Sachsenspiegel of the Fourteenth Century* (Philadelphia: University of Pennsylvania Press, 1999), 187, and *passim*. Given the differences between Germanic and common law legal systems, I have chosen throughout the dissertation to retain the German term *Bürge* rather than adopt an imperfect English approximation. For the *verbürgte Person*, the beneficiary of the *Bürge*'s efforts, there exists no good term in either German or English. Although not a noun, I have chosen to use the German "*verbürgt*" as best encompassing the intended meaning.
[4] Valten Avenhans, one of the *Bürgen*, was a significant member of the community. He had become a citizen in 1524, and council records show him to have been a frequent financial borrower and lender. See SHStA Dresden, 13749: Gelübdebuch der Stadt Freiberg Nr. 382 (1547-1561), fols 281, 317, 339 and 361. The other *Bürge*, Lorentz Mercker, is not recorded as a citizen nor as a property purchaser. A Lorentz Mercker became a citizen in 1568, but it is doubtful that he is the person.

Graupitz's troubles did not, however, end there. While in jail, the tailor Hieronimo Bulmann assaulted him.[5] Bulmann had become a citizen in 1548, and seems to have been a troublesome character. For assaulting Graupitz, he was fined an undisclosed sum and held in jail an additional three weeks until 14 September.[6] Nine months later, Bulmann was once again in jail, this time for having broken the peace with his wife and brother-in-law.[7] In each instance, Bulmann was released from jail with the support of two *Bürgen*.[8]

The above examples illustrate three of the primary functions that *Bürgen* filled in early modern Germanic legal culture: first, to secure someone's release from jail; second, to provide surety for peaceful behaviour between two disputants; and third, to guarantee that a fine would be paid. The repertoire of *Bürgen* extended well beyond these three roles. In addition, *Bürgen* were used to provide surety that a debt would be paid; to ensure a person's attendance in court; to guarantee that a dispute would be processed in court, and not extra- or infra-judicially; to promise that the terms of an *Urfehde* would be upheld; and to guarantee that assailants would compensate their victims, the surgeon and the court.[9] Only in theft and robbery cases did the Freiberg *Stadtrecht* prohibit the use of *Bürgen*.[10]

Despite its ubiquity and importance in early modern Germanic legal culture, *Bürgschaft*, has remained below the purview of most social and legal historians. They have instead focussed on the nature or type of crimes, the type of penalties (*Strafen*) imposed, and other elements of the legal system, such as the change from accusatorial to inquisitorial

[5] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 85r.
[6] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 93r.
[7] StAFB, Stadtbuch (1557-1558), I Ba 3c, fol. 11r.
[8] Benedict Löbichen and Hans Forster were the *Bürgen* on the first occasion; Asmus Zencker and Thomas Hoffmaier on the second.
[9] *Bürgen*'s role in brawls, fights, and fracases is examined in chapter four.
[10] See sections 20.1 (*der voit oder sine gewalt sullen den man lazen halden unde den roup dazu unde sullen zu rechte keinen burgen von im nemen*) and 22.1 (*He mac keinen burgen gehaben noch insal*) which can be found in Hubert Ermisch, ed., *Urkundenbuch der Stadt Freiberg in Sachsen*, vol. 3 (Leipzig: Giesecke & Devrient, 1891), 74-5, and 79. There are, however, a few *Urfehde* cases where in addition to being banished, thieves also named *Bürgen*.

practice. As a result, most criminal historians mention *Bürgen* only in passing if at all.[11] For fifteenth-century Constance, Peter Schuster shows that *Bürgen* were used to commute a one or two-year jail sentence to a fine, but he does not pursue whether *Bürgschaft* played a broader role.[12] Neither have historians of civil jurisprudence (admittedly not as well-researched as criminal jurisprudence) paid much attention to *Bürgschaft*.[13] From existing research, it is unclear how often, and in what roles, *Bürgen* were used in other German cities. It is possible that in these scant references, we are seeing merely the tip of the iceberg.

Alternatively, one might hypothesize that *Bürgen* were used more frequently in Saxony on account of the *Sachsenspiegel* and customary Saxon law. Lars Behrisch's work on Görlitz (which adhered to the *Sachsenspiegel*), and my results on Freiberg, would certainly support this, since in both cities *Bürgen* were a central part of the legal culture.[14] But without a clearer picture of their use in other polities, no conclusive statement can be made on how distinctively Saxon, or more generally Germanic, *Bürgen* were.

It is not as if historians have completely ignored *Bürgschaft*. During a period of intense interest in the reception of Roman law in the 1960s and 1970s, legal historians produced several works on *Bürgschaft*. But this work tended to be legally formalistic in nature, focusing on the evolution of *Bürgschaft* through legal codes and statutes, and how

[11] I have yet to find references to *Bürgen* in Susanna Burghartz's *Leib, Ehre und Gut: Delinquenz in Zürich Ende des 14. Jahrhunderts* (Zürich: Chronos, 1990); Helga Schnabel-Schüle's *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Cologne: Böhlau, 1997); Ulinka Rublack's *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999); or Joachim Eibach's *Frankfurter Verhöre: städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn: Schöningh, 2003). Gerd Schwerhoff and Ulrich Henselmeyer mention the use of *Bürgen* in Cologne and Nuremberg respecitively, but only in passing; see Gerd Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn: Bouvier, 1991), 133; and Ulrich Henselmeyer, *Ratsherren und andere Delinquenten: die Rechtsprechungspraxis bei geringfügigen Delikten im spätmittelalterlichen Nürnberg* (Constance: UVK, 2002), 77, 139, 143, 145.
[12] See Peter Schuster, *Eine Stadt vor Gericht: Recht und Alltag im spätmittelalterlichen Konstanz* (Paderborn: Schöningh, 2000), 160-1, 211.
[13] See for example, Christine Schedensack, *Nachbarn im Konflikt: zur Entstehung und Beilegung von Rechtsstreitigkeiten um Haus und Hof im frühneuzeitlichen Münster* (Münster: Aschendorff, 2007).
[14] Lars Behrisch, *Städtische Obrigkeit und soziale Kontrolle: Görlitz 1450-1600* (Epfendorf am Neckar: Bibliotheca-Academica, 2005).

Bürgschaft was affected by the reception of Roman law.[15] This work was less concerned with how *Bürgschaft* actually worked in practice.

Claudia Susan Hoppe's *Die Bürgschaft im Rechtsleben Hamburgs von 1600 bis 1900* was a modest move in the direction of social history, but is still primarily concerned with statutes, and with the use of *Bürgen* in commerce.[16] Hoppe's focus on financial cases is representative of much of the legal literature which is often solely concerned with the role of *Bürgen* in financial transactions, and ignores their role in peacekeeping and other legal actions.[17]

As a legal concept and institution, *Bürgschaft* has ancient roots. Roman law recognized the *fideiussor* who provided a guarantee for a debt.[18] German customary law and early vernacular codes incorporated *Bürgschaft*: both the *Sachsenspiegel* (1235) and the Freiberg *Stadtrecht* (1296/1307) contain many sections that stipulate when and how *Bürgen* were to be employed.[19] Both codes antedate the limited and uneven reception of Roman law. In an abbreviated form, *Bürgschaft* remains a part of early modern legal codes such as the Carolina (1532) and the Saxon Constitution (1568/1572).[20] In concert with the move towards a more inquisitorial model of law, these codes are concerned with specific penalties for

[15] See for example, Martin Löhnig, "*Bürgschaft*," in *Enzyklopädie der Neuzeit*, Vol. 2, (Stuttgart, Metzler, 2005), 602-604; Christian Hattenhauer, "*Bürgschaft*," in *Handwörterbuch zur deutschen Rechtsgeschichte*, ed. Adalbert Erler and Ekkehard Kaufmann (Berlin: Erich Schmidt Verlag, 2005), vol. 1, 770-74; Karlheinz Rudolf Maier, *Die Bürgschaft in süddeutschen und schweizerischen Gesetzbüchern* (Tübingen: Mohr, 1980); Rolf Martin, *Das* [*sic*] *Bürgschaft Nord- und Ostdeutschlands im späten Mittelalter* (Frankfurt, Univ., Diss., 1961); Werner Ogris, "Die persönlichen Sicherheiten im Spätmittelalter. Versuch eines Überblicks," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung* 82 (1965):140–189; Peter Walliser, *Das Bürgschaftsrecht in historischer Sicht: dargestellt im Zusammenhang mit der Entwicklung* (Basel: Helbing & Lichtenhahn, 1974). Two works that shaped early discussion, but that are now rather dated, are Frantz Beyerle, "Der Ursprung der Bürgschaft," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung* 47 (1927): 565-645; and Victor Platner, *Die Bürgschaft: Eine germanistische Abhandlung* (Leipzig: Brockhaus, 1857).

[16] Claudia Susan Hoppe, *Die Bürgschaft im Rechtsleben Hamburgs von 1600 bis 1900* (Frankfurt: Lang, 1997).

[17] For example, Maier looks only at financial cases in *Die Bürgschaft*.

[18] Adolf Berger, "Encyclopedic Dictionary of Roman Law," *Transactions of the American Philosophical Society*; New Series, 43: 2 (1953): for *fidejussor*, 471; for *adpromissio*, 350-351, and references.

[19] Some examples from the *Sachsenspiegel* include Lndr (*Landrecht*) I.6, I.61, III.9 and III.11; from the Freiberg *Stadtrecht*, sections 2, 24.1, 26.2, and 27.9.

[20] For the Carolina, see *Items 12-14, 17*, in *Die peinliche Gerichtsordung Kaiser Karls V. von 1532*, ed. Gustav Radbruch (Stuttgart: P. Reclam, 1960), 32-34, 37. For the Saxon Constitution, see sections IV, subsections iv-xii in Johann Christian Lünig, ed., *Codex Augusteus: oder, neuvermehrtes Corpus juris Saxonici* (Leipzig: Gleditsch, 1724), vol 1, 117-20.

specific offences, establishing conditions for the use of torture, and the circumstances in which a law faculty should be consulted.[21]

Reconstructing the social history of *Bürgschaft* is made problematic by the nature of the extant source material. While *Bürgen* appear with great frequency in different types of records – contract books, debt registers, *Urfehde* registers, and city council minutes – it was rare for court registers to be dedicated specifically to them.[22] In Freiberg, the city maintained a *Bürgschaftsbuch* only from 1533 to 1545.[23] Similar types of records can be found in the *Gelübdebuch* (vow/promise book) of *Real und Verbalinjurien* for the years 1561-1589, but these two registers recorded mainly peace-making processes.[24] For financial cases, court appearances, and other usages, one has to examine the council minutes (*Ratsprotkolle*), debt registers (*Gelübdebücher*), and *Urfehde* registers.

The records usually provide only skeletal data: the names of the participants and the type of vow (for example, to behave peacefully; to contract with the court, surgeon, and victim). Other basic information, such as the place of residence of the participants, as well as vital legal information, such as judicial testimony, was rarely recorded or no longer survives.[25] All of this constrains the questions the historian can answer.

And yet despite these problems, *Bürgen* are too important a part of late medieval and early modern legal culture to ignore. In Freiberg, in any given year in the mid-sixteenth century, slightly less than half of the citizenry would have entered into a legal agreement that included the use of *Bürgen*, either by acting as a *Bürge* themselves; being the beneficiary of a *Bürge*'s pledge (*Verbürgt*), or being another party, such as the victim of an assault, the

[21] Rolf Martin argues that the introduction of inquisitorial procedure with its focus on judicial confessions (through the use of torture, if necessary) lessened the importance of *Bürgschaft*. Martin, *Bürgschaft*, 23-4.
[22] *Bürgschaft* had been a part of Freiberg's legal practice since the thirteenth-century. Besides the *Stadtrecht*, one encounters *Bürgen* in the *Verzählbuch* and *Stadtbücher* of the fourteenth and fifteenth centuries. See Ermisch, *Urkundenbuch*, vol. 3, 177-292; and 303-412.
[23] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425.
[24] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385.
[25] In some fights and brawls, an "X" is drawn over the record to indicate that the *Verbürgt* had fulfilled their part of the vow.

recipient of an insult, or the lender of money. *Bürgschaft* was a central part of Freiberg's legal culture and we must expect its residents to have had a corresponding familiarity with it. Most adult male Freibergers would have experienced *Bürgschaft* first-hand at some point in their lives.[26]

Table 3.1 Annual Average Number of Cases of *Bürgschaft from 1528 to 1573.*[27]

Type of Case	**Average cases per year**[28]
Financial	7.7
Release from Jail	6.2
Urfehde	0.9
Court Summons	7.1
Breach of the Peace	34.7
Fights	68.3
Total	**145.5**

3.2 The Uses of *Bürgen*

Financial Cases

Bürgen are most well-known for their use in financial cases. In early modern Hamburg, this was their most frequent usage.[29] Within the spectrum of financial cases, personal or business loans, and legal fines, were the most common types of cases in which *Bürgen* were employed. For example in 1555, when Nickel Heder borrowed the moderate sum of one gulden and nineteen groschen from Urban Gitzelt, Heder named Jorge Berthold as his *Bürge*.[30] Or in 1542, Ulrich Rulein acted as the *Bürge* for an unnamed journeyman/apprentice in the mines (*Berggesell*) who had been ordered to pay a two

[26] Although significantly modified from its early modern usage, *Bürgschaft* remains part of current German law; see Hans Georg Lambsdorff and Bernd Skora, *Handbuch des Bürgschaftsrechts* (Munich: Beck, 1994).
[27] For financial cases, data on *Bürgen*'s use in loans was taken from 1528, 1533, 1548, 1568, and 1573 (see chapter five for more details). Data on fines, releases from jail, breaches of the peace and fights were compiled from the council minutes from the 1550s, the *Bürgschaftsbuch* and the *Gelübdebuch* of *Real und Verbalinjurien*. Sample years of 1533, 1543, 1561 and 1568 were taken from the latter two. The number of *Urfehde* is based on an examination of the 212 *Urfehden* sworn between 1535-1578 (see the subsection of this chapter on 'Release from Jail' for further details).
[28] Given the range of registers in which *Bürgschaft* was recorded, one cannot be certain of having captured all cases.
[29] Hoppe, *Bürgschaft in Hamburg*, 32.
[30] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 379r.

groschen fine within two weeks.[31] In these cases, the *Bürgen*'s role was to vouch for Heder and the unnamed miner's ability and trustworthiness to pay the amounts owing.

For fines, time was of the essence. In 1556, N. Kuttner was assessed a one gulden and nineteen groschen fine, and given four weeks to pay it. He named Andreas Lehnmann as his *Bürge*.[32] In a 17 October 1554 case, Bastian Ulrich was fined four gulden and sixteen groschen. He was given until Christmas to pay, or else be banished from Freiberg. To signal his desire and ability to pay, he named four men as his *Bürgen*.[33]

As Gerd Schwerhoff has pointed out for Cologne, the court only imposed fines when they thought the person could and would pay. If the court doubted the willingness or ability of a culprit to pay a fine, there were a multitude of other penalties that could be imposed.[34] And in Freiberg, not every person who was fined was made to name *Bürgen*. For instance, the linen-weaver Oswalt Zenker was fined ten gulden in 1554 and did not name *Bürgen*.[35] *Bürgen*'s use in fine cases represents something of a middle ground. On the one hand, in fining a person, the court indicated that they believed in the person's ability and willingness to pay the fine. On the other hand, by requiring them to name *Bürgen*, the court indicated that some doubt existed over whether the fine would be paid. *Bürgen* provided the court with security for payment.

As we have already seen, *Bürgen* were used to reassure lenders of the ability of borrowers to repay a loan.[36] At times, *Bürgen* went even further and committed themselves to be personally liable (*selbstschuldig/selbstschuldnerisch*) for making payments on behalf of a defaulting debtor. When they were not recorded as being personally liable, *Bürgen* rarely

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[31] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 182r.
[32] Henceforth, a name preceding the archival reference will be that of the *Bürge* or *Bürgen*. StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 61r.
[33] *Bürgen*: Simon Besserer, Jorge Boll, Hans Trautte, and Michel Albrecht. StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 116r.
[34] Schwerhoff, *Köln im Kreuzverhör*, 132.
[35] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 82r.
[36] It is important to note that *Bürgen* were not the only form of collateral used to back personal loans. As chapter five shows, other forms of collateral, particularly property, were extensively employed.

made payments on behalf of the borrower, and their function was simply to vouch for the creditworthiness of the borrower. In the aforementioned case of Jorge Berthold and Nickel Heder, Berthold was not described as personally liable. His presence as a *Bürge* in this case was to vouch for Heder's ability to repay the loan (which Heder did). Neither the *Sachsenspiegel* nor the Freiberg *Stadtrecht* acknowledge the distinction between personally liable and non-personally liable *Bürgen*. The distinction appears to have come about later since it was formally codified in the Saxon Constitution which stipulates that *selbstschuldige Bürgen* were formally responsible for the debts of a lender, whereas *nicht selbstschuldige Bürgen* were not.[37]

Bürgen who were not personally liable did occasionally make payments. For example, in 1568, Mathias Graupener, one of Joachim Kunelt's two non-personally liable *Bürgen* (Hans Berthold was the other) paid one-third (one gulden and two pennies) of Kunelt's three gulden and six pennies debt to the surgeon Peter Muller.[38] But such cases were not the norm. In 1548, Paul Etzelt lent Wolff Sommerschuh six gulden with Jacob Steinbrecher acting as Sommerschuh's non-personally liable *Bürge*. No record exists of the debt being repaid nor is there a record of Steinbrecher making a payment on Sommerschuh's behalf.[39]

When *Bürgen* did assume personal liability, they were responsible for making payments on behalf of a defaulting debtor, but did not normally assume responsibility for the full principal outstanding. Thus in 1553, Wolff Lindener's personally liable *Bürgen* paid two

[37] Section II.xviii of the Saxon Constitution in *Codex Augusteus*, vol 1, 90. It reads: *Ob es wohl ettliche dafür halten, dass ein Bürge, wann er sich, als der gleich dem nicht renunciiret, nicht vorwenden noch haben könne, so seynd doch Unsere Verordnete heirinnen einig: wo denen Bürgen die specificirte und ausdrückliche Renunciation seiner Wohlthaten nicht hinderlich, daß er sich des Beneficii excussionis, wann der Sachwalter zu bezahlen hat, gebrauchen möge. Aber in Fällen, derer von denen Rechtslehrern ettliche erzehlet werden, da der Bürge das Beneficium excussionis, nicht vorwenden kan, da muß er als selbstschuldige hafften, wann er sich gleich nicht als Selbstschuldiger verpflichtet; dabey Wir es auch also bleiben lassen.*
[38] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384, fols. 478v and 498r.
[39] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 23r.

gulden of Lindener's twenty-five gulden debt to the miner's guild (*Knappschaft*).[40] In 1573, when Elias Simon borrowed thirty-one gulden and three groschen from Kilian Steck, Michel Hempel was Simon's personally liable *Bürge*, and Hempel ended up paying twenty-three gulden of Simon's debt.[41] Claudia Susan Hoppe notes that following Roman law, the custom in Hamburg was that *Bürgen* were not expected to pay more than the debtor.[42] Practice in Freiberg generally adhered to this, but as the Elias Simon case demonstrates, there were exceptions.

The *Bürgen*'s role in financial cases was fairly straightforward. They pledged for the trustworthiness and good character of a debtor. But they also provided a pivotal link between debtor and creditor, regardless of whether the creditor was an individual, or in the case of fines, the court. This link gave the proceedings added surety. For the creditor, it was a second assessment (after their own) of the debtor's character and ability to repay; and in certain instances (especially when the *Bürge* was personally liable) that someone else would make payments for a debtor who was unable or unwilling.

Release from Jail, and *Urfehden*

In the summer of 1541, Kilian Klemm found himself in the Freiberg jail after a mining hammer (*Fäustel/Fausthammer der Bergleute*) was found in his possession. Klemm alleged he had bought it from a woman. The court was dubious, and decided to hold Klemm in jail while it investigated.[43]

[40] *Bürgen*: Nickel Schendel and the tinsmith (*Kannengießer*) Hans Schmeltzer. SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 34r.
[41] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 239v.
[42] Hoppe, *Bürgschaft im Hamburg*, 112.
[43] StAFB, Vertragbuch (1541-1557), I Bf 33c, fol 4r.

In the fifteenth and sixteenth centuries, town jails served several purposes. One was to hold the disobedient or the suspicious – people such as Klemm.[44] A second was to hold recalcitrant debtors who refused to repay a loan. A third was to serve as a judicial punishment. Gerd Schwerhoff relates the story of a man who spent seven weeks in the tower in Cologne in the winter of 1569, at which point, he was released because the court felt he had suffered enough.[45] With the flexible application of punishments (*Strafzumessung*) of early modern Germany, time in jail could be substituted for fines and vice versa.[46]

In Saxony, jail was rarely used as a punishment on its own. In her study of Saxon jurisprudence at the territorial level, Ulrike Ludwig finds only fifteen cases of *Haftstrafen* from 1548 to 1648. Banishment was resorted to much more frequently.[47] The minimal use of incarceration as a judicial penalty is striking because section IV of the Saxon Constitution explicitly permits using jail in lieu of corporal or capital punishment for many offences. Despite this, Saxon authorities chose to retain their historical preference for banishment.[48]

The incarcerated had two ways to secure their release. One, they could swear an *Urfehde*. In its original late-medieval guise, an *Urfehde* was an oath to end a feud or disagreement between two parties. By the early modern period, as Bob Scribner puts it, "it was a legal document issued on the release of a person from custody, by which he swore that he accepted the treatment accorded him, accepted any penalty imposed, and would not seek

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[44] Andreas Blauert, *Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der frühen Neuzeit* (Tübingen: Bibliotheca-Academica, 2000), 60.
[45] Schwerhoff, *Köln im Kreuzverhör*, 101.
[46] Schwerhoff, *Köln im Kreuzverhör*, 127; and Schuster, *Stadt vor Gericht*, 160-1, 211.
[47] In that same period, Ludwig counts 175 cases of banishment. Ulrike Ludwig, *Das Herz der Justitia: Gestaltungspotentiale territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens* 1548-1648 (Constance: UVK, 2008), 90.
[48] Work-houses (*Arbeits- oder Zuchthäuser*), were used in London and Amsterdam as early as the mid-sixteenth century. The first demand for a *Zuchthaus* in Saxony was in 1615, but it was not until the end of the seventeenth century that the idea acquired momentum; a shortage of funds delayed the opening of the first Saxon *Zuchthaus* until 1716. On work-houses in London and Amsterdam, see Peter Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe* (New Brunswick, N.J: Rutgers University Press, 1991), 25-6. On Saxony, Falk Bretschneider, "Die glückliche Verdrängung des mittelalterlichen Strafvollzugs? Zur Geschichte freiheitsentziehender Sanktionen in Sachsen (18. und 19. Jahrhundert), " in *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, ed. Rebekka Habermas and Gerd Schwerhoff (Frankfurt: Campus-Verlag, 2009), 114-122.

further redress, either within the law or outside it."[49] Throughout much of Germany, this was the oath commonly sworn when one was released from jail.[50]

As part of an *Urfehde,* the accused was sometimes required to name *Bürgen* who were responsible for the future conduct of the released as well as ensuring that he or she upheld the terms of their oath.[51] In Freiberg, *Urfehden* were most frequently employed for serious criminal offences like theft or robbery, offences that typically ended with the perpetrator's banishment. For example, after having stolen several things, Christoff Knoffel of Bertelsdorf spent an unspecified period of time in Freiberg's jail before swearing an *Urfehde*. The *Urfehde* secured his release, but permanently banished him from Freiberg and Saxony.[52]

Generally, in cases of banishment, *Bürgen* were not named. Knoffel's case is rather unusual in that he not only named (or was required to name) *Bürgen* but designated ten of them. Of the 212 *Urfehden* sworn in Freiberg between 1533 and 1578, only thirty-one stipulated the appointment of *Bürgen* (see table 3.2). Of these thirty-one cases, only seven imposed banishment, corporal punishment, or both. Instead, as table 3.3 makes clear, *Bürgen* were most often included in *Urfehden* when the accused was released after time in jail with no further penalty imposed. For example in 1539, after Frantz Ditterich had committed adultery, he swore an *Urfehde* and twelve men vouched their support and acted as his *Bürgen*. He was released from jail without further punishment.[53] Similarly, after associating

[49] Robert Scribner, "Police and the Territorial State in Sixteenth-century Württemberg," in *Politics and Society in Reformation Europe*, ed. Tom Scott and E.I. Kouri (New York: St. Martin's Press, 1987), 109.
[50] Schwerhoff, *Köln im Kreuzverhör*, 116. Generally, see Blauert's *Urfehdewesen*.
[51] For a detailed treatment of how *Bürgen* were used in *Urfehde* cases in the German south, see Blauert, *Das Urfehdewesen*, 59-70.
[52] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol. Since the terms of the *Urfehde* and the commitments of the *Bürgen* did not apply once the *Verbürgt* had left Freiberg or Saxony, presumably the purpose of the *Bürgen* was to ensure that the person did indeed depart, and did no further damage before he did so.
[53] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.

himself with dubious company (*böser Gesellschaft*), Thomas Weigel was released from jail after swearing an *Urfehden* and naming three *Bürgen*.[54]

Table 3.2 *Bürgen* in the *Urfehde* cases[55]

	1535-1538	1539-1558	1559-1578	Total
Number of *Urfehde*	19	58	135	212
Number of *Urfehde with Bürgen*	7	14	10	31

Table 3.3 Type of punishment in *Urfehde* cases with *Bürgen*

Punishment	***Number of Cases***
Only Jail	21
Banishment	6
Corporal Punishment	3
Banishment and Corporal Punishment	1
Total	**31**

But most people committed to jail in sixteenth-century Freiberg were released without swearing an *Urfehde*. Hans Weinrich insulted Hans Buttner and his wife in 1561, and was promptly sent to jail.[56] Only when the tanner (*Gerber*) Friderich Steger, and the baker Mathias Kraus vouched for Weinrich as his *Bürgen*, was Weinrich released from jail; he was not required to swear an *Urfehde*.[57]

The major difference between those who were released from jail with an *Urfehde* and those without is the number of *Bürgen* they named. Typically, when someone swore an *Urfehde*, a minimum of four, and in certain cases eight to ten, *Bürgen* were required. For those without an *Urfehde*, one or two *Bürgen* typically sufficed. Presumably, the difference

[54] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.
[55] The temporal span of the table is provided by the individual registers. For 1535-1538, see SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425; for 1539-1558, see SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421; and for 1559-1578, see SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420.
[56] Buttner was no minor figure. Two years after the incident, he became a *Gerichtsschöffe*, a post he held for the next five years (1563-1568). In 1569, he became a councillor, a position he held until 1592.
[57] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 4r. Weinrich paid the tax in 1546. He lived in a *Vorstadt*, and assessed his wealth at thirty-four gulden; he served as a *Bürge* in 1561.

lay in the court's assessment of the accused: the higher the suspicion, the greater the number of *Bürgen* and the greater the formal legal documentation (i.e., an *Urfehde*) required.

Although it was not adopted by Saxony, the Carolina stipulated that to secure release, an incarcerated person had to name *Bürgen*. If he could not find *Bürgen* or if the judge rejected the *Bürgen* proposed, the incarcerated remained in jail. If he were released, the paroled had to give an address where he could be found or summoned.[58] Not surprisingly, since jails were yet to become a central part of Germanic penal practice, neither the *Sachsenspiegel* nor the Freiberger *Stadtrecht* make direct reference to the release of an accused person from jail.

It is important to recall that after release, the offender was technically not free, since numerous conditions were usually placed on the paroled and their *Bürgen*, and legal processes could be restarted at any time. Let us return to Kilian Klemm, the man whose story started this section, and his suspiciously acquired mining hammer. With the support of seven *Bürgen*, he was released from jail on 15 August 1541 on the condition that before the end of September, he present to the council the woman who sold the hammer to him. If he failed to do this, his *Bürgen* were to bring him back to jail.[59]

In certain instances, such as the Klemm example, the court stipulated that the *Bürgen* had to ensure that the released party reappear before the court on a given date. In other cases, the court did not specify a precise date, and instead required that the *Bürge* bring the released back only if and when the court demanded it. This is what occurred in 1556 when Nickel Helmann was released from jail on account of the *Bürgschaft* of his father, Greger. The court let Nickel go, but only on condition he reappear if the court deemed it necessary.[60] Regardless of whether the court named a specific date for the released to reappear, the intent

[58] See *Items 12-14, 17* in Radbruch, ed., *Die peinliche Gerichtsordung*, 32-34, 37. This is the only mention of *Bürgen* I have found in the Carolina.
[59] Unfortunately, no further record of the case exists.
[60] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 57r.

of the system was clear: *Bürgen* provided the court with assurance that those released from jail could be brought back to court when necessary.

The *Bürgen*'s role could also extend to being accountable for the released party's future conduct. After Donat Lange insulted the executioner (*Nachrichter*) in 1561, calling him a scoundrel (*Schelm*), he was sent to jail. As Susanna Burghartz notes, the insult of *Schelm* did not just comment on the recipient's reputation, it also indicated dishonourable behaviour.[61] That the person insulted was the executioner – a notoriously dishonourable trade, yet one that city courts were required to protect – would only have heightened the tension.

By 1561, Donat Lange was a long-time member of the community, having obtained citizenship in 1515. On the annual roll of new citizens, he was not listed as the son of an existing burgher, indicating that he was not part of an established local family and had likely moved to Freiberg from another city. In the 1546 tax register, Lange was living in the suburbs and assessed his worth at only forty-three gulden. Whether his financial situation had improved since 1546 is not known, but at least at that point, he was among the poorer citizens of Freiberg. Supported by two *Bürgen*, Lange was released from jail on the condition that he behave peacefully in words and actions (*sich mit worten und werken friedlich verhalten*) towards the executioner. If he failed to do this, his *Bürgen* were responsible for bringing Lange back to jail.[62] The *Bürgschaft* appears to have been effective since there are no further entries in the registers.

By making *Bürgen* responsible for bringing the released back to jail, the court made sure the released remained within their grasp. Further, if the court's concern were elevated, it

[61] Burghartz, *Leib*, 127. The insult was likely a *double entendre* since *Schelm* could refer to a cadaver. In addition to their official duties, executioners often acted as healers and one of their remedies was human fat. See Kathy Stuart, *Defiled Trades and Social Outcasts: Honour and Ritual Pollution in Early Modern Germany* (Cambridge: Cambridge University Press, 1999), 153-8.

[62] *Bürgen*: Brosius Turck, a fur-trader/skinner (*Kurschener/Korßener*), and Greger Fritzsche, a cooper (*Bender/ Böttcher*). SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 4v. Both Turck and Fritzsche were likely younger than Lange; Turck obtained citizenship in 1540; Fritzsche in 1550.

could make the jailed person swear an *Urfehde* and name multiple *Bürgen*. If its concern was not as high, one or two *Bürgen* sufficed.

Court Attendance and Dispute Processing

Bürgen were often used to ensure that someone would appear before a legal body. For example, on Monday, 26 February 1554 the baker Michael Dresler, acting as *Bürge* for the surgeon Herman Rabe, pledged that Rabe would reappear before council in two days time.[63] Or on Monday, 1 December 1561, Jacoff Wetzel and Ilgen Heupt vouched as *Bürgen* to bring Simon Wentzel, Mathias Wentzel, and Jorge Grimmer back before the court on Saturday.[64]

In other instances, as with the jail cases, no date was specified and the *Bürge* had to bring the *Verbürgt* back only if the council or court demanded. Thus in 1568, Balthasar Springer and Balthasar Wilhelm promised to bring Elias Springer from Kemnitz back before the council upon demand.[65] Or in 1561, Jorge Borman's *Bürge* undertook to see that he reappear before the council should Thomas Beher demand it.[66] Beher had no special official standing: he was not a councillor, judge, or decision finder (*Gerichtsschöffe*). It is likely he was the opposing party, and this suggests that as such he had the right to demand Borman's presence in court.

Freiberg often used *Bürgen* when it wanted to see that a case was resolved in court rather than outside it.[67] In a 1568 dispute between Merten Fehmel and Simon Dieze's daughter, the court made both parties name *Bürgen* to support the commitment to process the

[63] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 15r.
[64] StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fol 47r
[65] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 117r.
[66] *Bürge* Lucas Leonard. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 15v.
[67] The larger sphere of violence, and *Bürgen's* role in it, is explored in greater depth in chapter four.

conflict in court.[68] In another example, after an unnamed journeyman/apprentice (*Gesell*) had assaulted his master Christoff Borman, Borman named a *Bürge* to assure that the case would be treated in court.[69] For matters that were under the jurisdiction of another court (such as mining or sexual offences), the city court could make the person(s) in question name *Bürgen* to ensure he (or she) proceeded with the case and appeared in the other court. For instance on Monday, 8 December 1555, the council mandated Lorentz Weigeler to appear before the *Konsistorium* in Meissen the following Monday.[70]

By making the disputants submit to a judicial resolution, the court sought to restrain the disputants from pursuing their conflict in other arenas. This would reduce the likelihood of further escalation of a conflict, and since the court was public, would mean that there would be more general awareness of the outcome.

Making and Maintaining the Peace

Reducing violence and maintaining urban peace constituted a fundamental goal and dynamic of late medieval and early modern urban life. Through the oaths they took upon becoming citizens and in some cities renewed annually, burghers were obliged to uphold the urban peace, and by extension, municipal law.[71] This ideal of peace and refraining from conflict was drawn from and reinforced by Christian beliefs. In sixteenth-century Württemberg, parishioners were forbidden to receive communion when they were in a state

[68] *Bürgen*: Elias Fischer for Dieze's daughter, and Donat John for Fehmel. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 112v.
[69] *Bürge*: Mathias Gemperlein. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 5v.
[70] *Bürgen*: Greger Kunrath and Fabian Weigeler. StAFB, Stadtprotokoll (1555-1557), I Ba 3b, fol 26r.
[71] On the urban peace, see Joachim Eibach, "Institutionalisierte Gewalt im urbanen Raum: 'Stadtfrieden' in Deutschland und der Schweiz zwischen bürgerlicher und obrigkeitlicher Regelung (15.-18. Jahrhundert)," in *Gewalt in der Frühen Neuzeit*, ed. Claudia Ulbrich, et al. (Berlin: Duncker & Humblot, 2005), 189-205; and Joachim Eibach, "Burghers or Town Council: who was Responsible for Urban Stability in Early Modern German Towns," *Urban History* 34 (2007), 14-25. On the annually-renewed oaths of citizenship and what they entailed, see Wilhelm Ebel, *Der Bürgereid als Geltungsgrund und Gestaltungsprinzip des deutschen mittelalterlichen Stadtrechts* (Weimar: H. Böhlaus Nachfolger, 1958), 11-18. The historiographical debate on the matter of violence and its reduction is treated at the beginning of chapter four.

of enmity.[72] But as anthropologists are keen to remind us, conflict is a concomitant of social life, and this rosy ideal of peace and harmony often was fractured.[73]

When tempers flared and tensions boiled, fellow burghers were responsible for restoring the urban peace. In Swiss cities this happened through the *Stallung* ritual whereby third parties were required by law to intervene and demand *Stallung* ("to quit a fight") from the participants. If disputants refused to submit to *Stallung*, or violated it subsequently, they faced a substantial fine.[74]

In other Germanic polities, this process was not as formalized but burghers were still responsible for intervening and preventing escalation. This intervention could either be verbal (by pleading with the disputants to remember their oath to keep the peace), or physical (if the altercation had turned violent). Physical intervention was a risky matter, and early modern court archives are full of examples of third parties who wound up injured or dead from attempting it.[75] In many altercations, town guards and beadles were passive observers who waited to act until other burghers had cooled the tension.[76]

For Freiberg, the archives are silent on who intervened in the heat of the moment; only the official processing was recorded. As a result, it is not possible to see if the disputants' *Bürgen* were the same people who acted as third-party peacemakers. *Bürgen* were formally named in court, and it is quite possible that they would have been different from the third-party peacemakers who happened to be on the scene at the time.

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[72] David Warren Sabean, *Power in the Blood: Popular Culture and Village Discourse in Early Modern Germany* (Cambridge: Cambridge University Press, 1984), 37-60.
[73] On dispute processing, see the introduction in Simon Roberts and John L. Comaroff, *Rules and Processes: the Cultural Logic of Dispute in an African Context* (Chicago: University of Chicago Press, 1981), as well as Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth: Penguin Books, 1979).
[74] On Stallung in Zurich, see Susanne Pohl-Zucker, "Uneasy Peace: The Practice of the *Stallung* Ritual in Zürich, 1400-1525," *Journal of Early Modern History* 7 (May 2003): 28-54.
[75] To protect third-party peace-makers, in 1515 Württemberg no longer required them to intervene physically. Instead, they were to intervene from a safe distance. See Scribner, "Police," 112.
[76] See Eibach, "Burghers." Andrea Bendlage has also found that the intervention of guards and beatles only served to further inflame tensions and often resulted in conflicts turning violent. See "Städtische Polizeidiener in der Reichsstadt Nürnberg im 15. und 16. Jahrhundert," in *Unsichere Großstädte? Vom Mittelalter bis zur Postmoderne*, ed. Martin Dinges (UVK: Constance, 2000), 95-6.

It is difficult to assess how frequently these types of conflicts occurred because the peacemaking role ascribed to and fulfilled by citizens meant many conflicts would have been resolved infra-judicially and thus left no archival footprint.[77] When cases were processed through the court, *Bürgen* played a vital role in re-establishing and maintaining peace. This was in fact the second-most commonly recorded use of *Bürgen* in Freiberg (the most common is their use in cases of violence).

Pursuant to section eight of the Freiberg *Stadtrecht*, once a breach of the peace (*Friedensbruch*) reached the court, the most common result was for the court to demand that one or both parties behave peacefully towards the other. Stemming from the *Stadtrecht*, the phrase still being used in the sixteenth century was to behave peacefully in words and actions (*sich mit worten und werken friedlich verhalten*).[78] In the example of Donat Lange calling the executioner a scoundrel, we have already seen how the court made a disputant swear to behave peacefully in words and actions towards an adversary. But while Lange spent time in jail, this was atypical.

There certainly were breaches of the peace that were resolved without *Bürgen*.[79] Consider the case of Wolff Knorr and Caspar Thiel. Knorr was a personage in sixteenth-century Freiberg. He became a citizen in 1540, served as a *Gerichtsschöffe* in 1552 and 1553, and a new and old councillor from 1554 to 1563. Resident in Freiberg's Petri quarter, Knorr assessed his wealth at 750 gulden for the 1546 tax register, a sum that placed him on

[77] On the infra-judical conflict resolution in sixteenth-century Augsburg, see Carl A. Hoffman, "Außergerichtliche Einigungen bei Straftaten als vertikale und horizontale soziale Kontrolle im 16. Jahrhundert," in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Constance; UVK, 2000): 563-579. The term infra-judicial used to describe, what in English would be called extralegal, stems from the French historian Benoit Garnot. Through the work of Francisca Loetz and others, it spread into German histororiography and is now commonly employed. See Benoît Garnot, ed., *L'infrajudiciaire du Moyen Age à l'époque contemporaine* (Dijon: Éditions Universitaires de Dijon, 1996); and Francisa Loetz, "L'infrajudiciaire: Facetten und Bedeutung eines Konzepts," in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Constance: UVK, 2000), 545-62.

[78] In the *Stadtrecht*, words and actions were used to described how the peace was broken (*unde brach den vride an im mit worten unde mit werken*). See section 8.2 in Ermisch, *Urkundenbuch*, vol. 3, 49-50.

[79] See for instance, StAFB, Stadtbuch (1553-1556), I Ba 3a, fols 85v, 88v, 117r, 128r; StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fols 35r, 40r, 44r, 47r, 114r, 129r; StAFB, Stadtbuch (1557-1558), I Ba 3c, fols 21r, 25r, 54v, 64r, 103r, 116r; and StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fols 13r, 22r, 23r, 83r, 87v, 116r.

the fringe of the wealthiest decile. On May 12, 1554, Saxon Elector August granted him a fiefdom (*Erblehngut*) in Loßnitz, just outside Freiberg and near Schloss Freudenstein, the former residence of August's father, Heinrich.[80] Of Caspar Thiel, less is known. He became a citizen in 1564, nine years after this incident. It seems likely that his father was Wolff Thiel, city scribe from 1526 to 1540 and councillor from 1541 to 1547. If he was Wolff Thiel's son, then both Caspar Thiel and Wolff Knorr came from Freiberg's wealthiest segment.

In 1555, when we encounter Wolff Knorr and Caspar Thiel, the peace between them had been breached. (Knorr was an old councillor at this time). On 29 April, Thiel made the standard promise of peaceful behaviour towards Knorr. No *Bürgen* were named.[81] For many cases chronicled in the council minutes (*Ratsprotokolle*), such a promise – without naming *Bürgen* – sufficed. For Knorr and Thiel, it did not. Six weeks later, on 10 June, they appeared again before the council. Thiel once again promised civil behaviour towards Knorr. Again, no *Bürgen* were named.[82] The council minutes do not elucidate the reappearance but a further incident must have re-ignited the discord.

Eight months of archival silence follows, until February 1556 when the two quarrelled again, this time in a tavern in the presence of councillor Christoff Meschel, *Gerichtsschöffe* Moritz Thumb, and Hans Alnpeck.[83] Insults flew in both directions but resulted in no violence. When the matter returned to council, Knorr promised to behave peacefully towards Thiel (previously the promise of peaceful behaviour had been made only by Thiel). Thiel, for his part, again repeated his vow of civil behaviour, and named a *Bürge*.[84]

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[80] See "Freiberg Urkunden Sammlung," *MFA* 3 (1864), 256-7.
[81] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 154r.
[82] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 164r.
[83] Hans Alnpeck would become a *Gerichtsschöffe* six years later in 1562. He came from one of the most wealthy and powerful families in Freiberg. His uncle Andreas was the wealthiest man on the 1546 tax register, and for many years mint master, councillor, and *Bürgermeister*. On the Alnpeck family, see Otto Hübner, "Stammbaum der Freiberger Patrizierfamilie Alnpeck," *MFA* 44 (1908), 71- 82.
[84] *Bürge*: Thomas Beier. StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 166r; and StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 42r.

The case is instructive. The council initially attempted to implement a truce between Thiel and Knorr without resorting to *Bürgen*. When this proved ineffective, the more persistent offender was required to name a *Bürge*. No further record of the dispute exists, so it appears that the resolution was successful (or at least the dispute was no longer pursued before Freiberg's courts). There is no indication that the tavern incident constituted a rupture of the initial truce; at least Thiel was not reprimanded for breaching his pledge of peaceful behaviour. In Württemberg, a verbal breach of a formal peace would have resulted in a ten gulden fine (a 'breach in deed' meant the loss of three fingers).[85] In Zurich, *Stallungsbruch* was punished with a 10 mark fine.[86]

While the Knorr-Thiel case shows a steady escalation until *Bürge* was named, in many other cases *Bürgen* were named at the outset. The dispute between Wolff Reus and Heinz Knechtlein is typical. When they appeared before the court in the summer of 1533, a *Bürge* was named for each.[87] The brevity of the records unfortunately offers no insights into why *Bürgen* were used from the start in some cases, but not in others.

If both parties had broken the peace, it was understandable and equitable that both disputants should have to name *Bürgen*. Thus in a 1561 case, after discord arose between Ilgen Koler and Jorg Andreas, they both named *Bürgen* and promised to behave peacefully towards one another.[88]

To add further surety beyond *Bürgen*, the Freiberg court began in the 1540s to stipulate that if disputants did not follow through on the terms of their promise to behave peacefully, they would face a mandatory fine. For example, after Galle Mechel's wife had

[85] Scribner, "Police," 112-3.
[86] Pohl-Zucker, "Uneasy Peace," 30. It is surprising how few cases I have found where the pledge of peaceful behaviour proved ineffective. Records from other polities would indicate that these resolutions not infrequently failed. Why I have not found more in Freiberg still puzzles me.
[87] Both Reus and Knechtlein worked as *Bälgemacher*, (food caterers for mine-workers). *Bürgen*: Wolff Bernssdorff for Reus, and Hans Hertzog for Knechtlein. SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 27r.
[88] *Bürgen*: Veit Lorman for Koler; Merten Held for Andreas. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 8r.

scolded Hederich's wife (first names are not given), and the typical promise of civil behaviour, supported by *Bürgschaft* (Mechel served as his wife's *Bürge*) was obtained, the court threatened the Mechels with a twenty groschen fine if peace was not maintained.[89] Similarly, in 1576, after Mathias Steiger's wife had verbally impugned the honour (*ehrrürigen Worter*) of Christoph Steiger and his wife, the Mathias Steigers were faced with a twenty groschen fine were they to break the terms of the agreement.[90]

In a 1556 case, Frantz Krumpugel and Jacob Fritzsche were reconciled without *Bürgen*, but were warned that if either of them broke this truce, they would face a significant fine of twenty-eight gulden and twelve groschen.[91] A year later, two judges from Berthelsdorf and Mulda (two villages outside of Freiberg) were threatened with a one gulden and nineteen groschen fine if they broke their pledges of peaceful behaviour towards one another.[92] While never directly stated, the court's goal was to increase the onus on the parties to perform.

What kind of conflicts sparked a breach of the peace? The causes of disputes were not often recorded and we learn only of the promise of peaceful behaviour. The Freiberg *Stadtrecht* lists verbal attacks, the drawing of knives (without inflicting a wound on the other party), and brawls (*roufene*) as constituting a breach of the peace.[93] Insults were another common cause of commotion: Peter Schuster relates the tale of a youth who sang an insulting song and ended up in jail.[94] In Württemberg, Bob Scribner lists threatening and seditious speech, and domestic and neighbourly quarrels as other offences.[95]

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[89] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 108r.
[90] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 185r.
[91] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol. 83r.
[92] StAFB, Stadtbuch (1557-1558), I Ba 3c,fol. 21r.
[93] See section 8.1 in Ermisch, *Urkundenbuch*, vol 3., 49. The drawing of knives was a common, almost ritualistic stage in many late medieval and early modern conflicts, albeit one that could bring a reprimand from the city council. Eibach "Institutionalisierte Gewalt," 192-5. In fifteenth-century Constance, drawing a knife typically earned a six month banishment and one mark fine. See Peter Schuster, *Der Gelobte Frieden: Täter, Opfer und Herrschaft im spätmittelalterlichen Konstanz* (Constance, UVK: 1995), 57-8.
[94] Schuster, *Stadt vor Gericht*, 73.
[95] Scribner, "Police," 113.

From the archival data, it seems Freibergers quarrelled about similar issues. Neighbourly conflicts are common. After Marcus Reissig's stepson broke Leonhard Unger's window, Reissig undertook to repair the window and behave civilly towards Unger's widow.[96] As we see from Donat Lange calling the executioner a *Schelm*, and Galle Mechel's wife scolding Hederich's wife, many of these conflicts were verbal in nature. The standard oath sworn, to behave peacefully in words and actions (*sich mit worten und werken friedlich verhalten*), is another indication that many of these cases stemmed from insults. In sixteenth-century Cologne, the archival notation of *Verletzung mit Worten oder Werken* was used to indicate insults.[97] Unfortunately, as in fifteenth-century Constance, the actual insult was rarely recorded. In other polities, "rogue" and "thief" were common insults for men and "whore" for women.[98] These insults touched a person's honour and demanded a response.

Besides insults, threats were another common cause of social rupture. For example, in 1568, Valten Rudiger poured wine on and verbally threatened his adversary Pavel Schmidt. There is no indication that Schmidt retaliated and when they found themselves in court, the usual promise of civil behaviour was extracted from Rudiger, and *Bürgen* were named.[99] From Schmidt's perspective, other than a promise of future civility from Rudiger (supported by a *Bürge*), it is difficult to see what he gained. The offence by its nature would certainly have been dishonouring. Perhaps third parties intervened before he had a chance to retaliate. Susanne Pohl-Zucker has shown that Zurichers were often quite strategic on exactly

[96] *Bürge*: Jorg Hoffmann. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 10v. On neighbourly conflicts in Munster, see Christine Schedensack, "Formen der außergerichtlichen gütlichen Konfliktbeilegung. Vermittlung und Schlichtung am Beispiel nachbarrechtlicher Konflikte in Münster (1600-1650)," *Westfälische Forschungen* 47 (1997): 643-668.
[97] Schwerhoff, *Köln im Kreuzverhör*, 271.
[98] Barbara Krug-Richter, "Von nackten Hummeln und Schandpflastern. Formen und Kontexte von Rauf- und Ehrhändeln in der westfälischen Gerichtsherrschaft Canstein um 1700," in *Streitkulturen. Gewalt, Konflikt und Kommunikation in der ländlichen Gesellschaft (16.-19. Jahrhundert)*, ed. Magnus Eriksson, and Barbara Krug-Richter (Cologne, Böhlau: 2003), 290-296; and Gerd Schwerhoff, "Early Modern Violence and the Code of Honour: From Social Integration to Social Distinction," *Crime, Histoire & Sociétés* 17 (2013), forthcoming.
[99] *Bürgen*: Mathias Gemperlein and Hans Korppe. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 113r and 114r.

when to make the demand for *Stallung*: third parties often waited until a friend had gained the upper hand.[100]

Breaches of the peace were common occurrences in all early modern cities. Once cases reached a legal institution such as a court, the court endeavoured to prevent the further spread of discord and to restore civility between the adversaries. Freiberg seemingly differs from other cities in that rather than admonishing, fining or punishing disputants, the court used pledges from the disputants, typically backed by *Bürgen*, to restore the peace. As chapter four will show, in spite of the court's best efforts, many of these quarrels turned violent before *Bürgen* could be named.

3.3 Property, Gender, and Time

Conditions for *Bürgschaft*

We have seen that there was a plethora of ways in which *Bürgschaft* was employed. Let us turn to the requirements for acting as a *Bürge*, many of which had been codified in the Freiberg *Stadtrecht*. Foremost was that a *Bürge* had to be resident in Freiberg and have property and possessions (*Eigen und Erbe*) in the city.[101] The property qualification was essential because in the event that the *Verbürgt*, the person who had been vouched for, broke the terms of their agreement, his or her *Bürge* stood to forfeit his property and possessions.[102]

[100] Pohl-Zucker, "Uneasy Peace," 40-1.
[101] Section 2 of the *Stadtrecht* fully details all the conditions to be considered a property owner in Freiberg. Section 2.1 includes the exact stipulation requiring *Bürgen* to be property holders. Sections 5.16 to 5.18 detail the stipulations on forfeiting one's property. See Ermisch, *Urkundenbuch*, vol 3., 25-28 and 37.
[102] As chapter two discussed, the court recorded all purchases and sales of residential and commercial properties (and indexed them by the first-name of the buyer), making it easy to check whether someone held property in Freiberg. The case of Wolff Schubart shows that Freiberg occasionally allowed exceptions. In February 1575, after Hans Hengst had got Rebecca Andresin pregnant, Hengst was required to pay Rebecca twelve gulden for the loss of her virginity and the care of the child. Hengst named Wolff Schubart as his personally liable *Bürge*. Schubart, however, like Hengst, hailed from Middle Seyda, a town about 120 kilometres north of Freiberg, or twenty kilometres east of Wittenberg. Schubart was clearly not resident in Freiberg, and my examination of the property registers did not reveal any holdings for Wolff Schubart at this time. See SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1570-1580), Nr. 685, fol 222r.

While this stipulation is rarely stated in the entries appointing *Bürgen*, it does appear occasionally. For example, in 1576, after David Fritzsche allegedly impregnated Hans Trunck's daughter, Rosina, Jacob Friese and Thomas Herden promised to bring Fritzsche back before the court or council, should either demand it. The record is explicit that Herden and Friese pledged their houses (*davur vorpfenden sie ihre heuser*).[103]

The rarity with which the stipulation was referred to may have to do with the brevity of most records of *Bürgschaft* which typically only listed the name of the participants (the *Bürge(n)*, the *Verbürgt* and any other parties) and the type of case. In the more extensive records pertaining to *Bürgschaft*, such as the *Urfehde* registers, the stipulation was commonly recorded.[104]

While I have yet to see a case where a *Bürge* was called to forfeit assets, a *Bürge* needed to be mindful of his commitment's enduring legal validity. Cases from other polities, especially financial ones, certainly point to the risks of being a *Bürge*. In Ernestine Saxony when Dietrich Rabel borrowed money from Valentin Mellerstadt, Martin Luther acted as Rabel's *Bürge*. As Luther grew to doubt Rabel's ability to repay Mellerstadt, he endeavoured to be relieved of this commitment so that he would no longer be responsible for Rabel's debts.[105] In an *Urfehde* case from southern Germany, a "Junker Ulrich" acted as the *Bürge* for Claus Scheer and his son, putting up a bond of 600 Rheinischen gulden that the Scheers would reappear before the court. When they did not, the court moved to seize the bond, which prompted Junker Ulrich to bring the Scheers back before the court.[106]

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[103] See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 185v.
[104] See for example the *Urfehde* of Hans Bischoff whose *Bürgen* swore that his *Urfehde* would be adhered to or that they would forfeit their property (*ire habe vnd gutter farende vnd ligende vorpfandet, do got vor sei, wan bischoff an dem geschwornen urfride bruchtig wurde, man sich an iren guttern zuerholden*). SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 42r.
[105] Luther's efforts to extricate himself were intricate. As the future Elector Johann Frederick apparently owed Rabel money, Luther wrote to Hans von Minkwitz to get Johann Frederick to pay Rabel, so Rabel could repay his debt to Mellerstadt. See Martin Luther, *Werke, Kritische Gesamtausgabe: Briefwechsel* (Weimar: H. Böhlaus Nachfolger, 1930-), vol. 3 (1523-1525), 242-243.
[106] Blauert, *Urfehdewesen*, 68-70.

Aside from the property qualification, there were few other set requirements on who could be a *Bürge*. *Bürgen* came from all of Freiberg's four quarters and three suburbs. Nothing suggests that there was a propensity for *Bürgen* to come from a particular district. Members of all trades acted as *Bürgen*. Nor does citizenship appear to have been a strictly enforced requirement. For example, in 1568, the organist Balthasar Springer served as *Bürge* for his relative Elias Springer, but it was not until two years later that Balthasar became a citizen.[107]

The richest Freibergers, however, rarely acted as *Bürgen*. Instead, the vast majority came from the lower and middle socio-economic groups. Based on the 1546 tax register, the estimated personal wealth (*Vermögen*) of most *Bürgen* was between 100 and 900 gulden. Yet people whose declared personal wealth was seventeen gulden or less acted as *Bürgen*. To put that amount in context, those with a personal wealth of seventeen gulden or less were exempt from paying the tax, but were still eligible – and did – act as *Bürgen*.

Nor did prior misbehaviour disqualify one from acting as a *Bürge*. Only a couple of months after Hans Weinrich was arrested and held in jail for having insulted Hans Buttner, we find him acting as a *Bürge* for Christoff Braun, pledging that Braun would behave peacefully towards Donat Koler and his wife (they also named a *Bürge*).[108]

Additional financial conditions were sometimes placed on *Bürgen*. Thus on 18 November 1549, Lorentz Klemm and Jacuff Strasbergk were released from jail on account of the *Bürgschaft* of four men. Klemm and Strasbergk were required to reappear before the council one week later. To ensure their attendance, the four *Bürgen* posted a bond of eleven gulden and nine groschen for Klemm, and five gulden and fifteen groschen for Strasbergk. If either man failed to appear, the four *Bürgen* would forfeit their bond and be held in jail as

[107] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 117r. The case of Wolff Schubart cited in footnote 102 provides another example.
[108] See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 4v (for the Buttner case); fol 9v (for the Braun case).

well (how long they would remain in jail is not specified).[109] The *Bürgen* had a clear motivation to ensure that Klemm and Strasbergk reappeared.

Property was clearly the fundamental requirement to act as a *Bürge*. Those with it could be *Bürgen*; those without it, could not. Considering the medieval roots of *Bürgschaft*, this distinction is not surprising. Not having property signified that one was either a temporary or potentially non-permanent member of the community. Having property indicated one was a landed resident and likely citizen – the type of person whose pledge had credibility, and type of person who had something to lose.

Gender

The Freiberg *Stadtrecht* does not discuss women's legal standing in any depth. It stipulates that married women were not allowed to have legal guardians (their husbands fulfilled that role), but nothing is said as to the legal rights or standing of non-married women or widows.[110] The point was picked up by the writers of the Saxon Constitution who noted that Saxon law had never considered the question of legal emancipation of women and children from their fathers (*patria potestas/väterliche Gewalt*) that was a major part of Roman law.[111] They ruled that children (and by extension, women) only became legally emancipated from their fathers when they moved out of their parents' house.[112] The Saxon Constitution provided that unmarried women and widows had to have a guardian in all legal transactions.[113] If they did not have one, the court was to appoint one (*kriegischen Vormund*). The one exception the Saxon Constitution allowed was that women were allowed to make

[109] *Bürgen*: Bastian Fischer, Peter Keller, Gregor Klissiger, and Nickel Schubart. StAFB, Merkregister (1549-1550), I Ba 2c, fol 17v.
[110] For the stipulation on married women, see section 44, subsections 23-26. The only other significant reference to women is in section one, and is mainly concerned with inheritance rights and children. Ermisch, *Urkundenbuch*, vol 3., 150-1.
[111] On *patria potestas* and the use of legal guardians in Italy, see Thomas Kuehn, *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago: University of Chicago Press, 1991), 197-237.
[112] See Section II of *Pars Secundia de Contractibus, Vel Quasi*, *Codex Augusteus*, 87.
[113] *Lndr II* 65 of the *Sachsenspiegel* also stipulates that women had to have legal guardians.

their own wills (*Testamente*).[114] Actual legal practice in Freiberg differed from these restrictions since there are numerous examples of women acting independently, both bringing cases to court, and borrowing and lending money.[115]

The precise question of women acting as *Bürgen* is not considered by either the Saxon Constitution or the Freiberg *Stadtrecht*. But given women's subordinate legal standing, it seems unlikely that women would have been allowed to act as *Bürgen*, and indeed, I have found only one case of a woman doing so.[116] Codes of other German polities support this conclusion. Hamburg, which required women to have a guardian until 1732, did not permit women to act as *Bürgen* until 1870.[117] In Lubeck, women were allowed to be a *Bürge* in financial cases, provided the quantum did not exceed 3.5 pennies, a trivial sum. For higher sums, they required a guardian or a *Bürge*.[118] In Hannover, women acted as *Bürgen* in just under ten per cent of debt cases.[119] The Magdeburg *Schöffenstuhl* created one exception when it allowed wives to serve as *Bürgen* for their husbands.[120] In the sole case I have found of a Freiberg woman acting as a *Bürge*, this was the form it took. On 12 September 1573, the shoemaker David Zipser borrowed the paltry sum of five gulden and three groschen from Barthel Vogt. He named his wife as his *Bürge*. The debt agreement called for Zipser to make weekly payments of two groschen until the sum was repaid.[121]

Though women rarely acted as *Bürgen*, they were not entirely excluded from this legal practice since there are several cases where women named *Bürgen*. In cases relating to

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[114] See Section XV of *Pars Secundia de Contractibus, Vel Quasi*, *Codex Augusteus*, 87.
[115] See chapter five for borrowing and lending by women in Freiberg.
[116] The *Sachsenspiegel* did permit women to own and manage property (*Lndr* I 45) which might have made it possible for women to act as *Bürgen*.
[117] Hoppe, *Bürgschaft im Hamburg*, 82-7.
[118] Martin, *Bürgschaft*, 40-1.
[119] Beate Sturm, *'Wat ich schuldich war' Privatkredit im frühneuzeitlichen Hannover (1550–1750)* (Stuttgart: Steiner, 2009), 102.
[120] Martin, *Bürgschaft*, 39-42.
[121] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 308r. Like most other debts recorded in this period, there is no indication whether or when the debt was repaid. The lender, Barthel Vogt, faced with many debts of his own, passed the loan (*übergehen*) to Hans Rese. For Barthel Vogt's debts from 1572, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 214v, 294v, 295r and 295v.

court appearances and release from jail, women feature less prominently, which is hardly surprising since men were likely to be incarcerated and women would often have had a guardian acting on their behalf. Instead, the promise to behave peacefully is the type of *Bürgschaft* case where one most commonly encounters women. In 1543, after Magdalena Avenhansin insulted (*geschmehet*) and hit (*Übel geschlagen*) Pessler's daughter, she undertook to behave civilly towards the daughter and named a *Bürge*.[122] In a 1561 case, a verbal dispute erupted between Rebecca Strempelin, and Greger Schneider and his wife. Both parties named *Bürgen* to support their commitment to behave peacefully towards each other, or in the case of the Schneiders, towards Strempelin's children.[123] Beyond the roles of *Bürge* and *Verbürgt*, women could also be involved in *Bürgschaft* when they were insulted or attacked. In 1533, when Andreas Fischer's wife was visiting the butcher Brosius Braun, Braun hit her. When the case was processed before the court, Braun named his fellow butcher Nickel Fleischer as his *Bürge* to assure that he would behave peacefully towards Fischer's wife.[124]

Bürgschaft was clearly a gendered practice that women participated in far less frequently than men. This was partly because of women's subordinate legal standing, but also because *Bürgschaft* dealt with matters in which women were less frequently involved (violence, breaking the peace, release from jail), or else were typically represented by male guardians (court attendance).

A Timely Commitment: the Duration of *Bürgschaft*

Being a *Bürge* was a commitment that could last for several years. On 16 August 1568, Georg Maukisch was named as *Bürge* for Andreas Haupt from Dresden. Haupt was

[122] *Bürge*: Michael Behr. SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 196r. There are several men with the surname Pessler who could have been the father of the insulted woman.
[123] *Bürgen*: Lorentz Leffler for Strempelin; Hans Straff for the Schneiders. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 14r.
[124] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 32r.

required to appear before the Freiberg court should the court demand it. But it was not until 6 November 1582 – fourteen years later – that the court required Haupt's presence. Haupt appeared and Maukisch was released as his *Bürge* (*diese Bürgschaft ist los*) because Haupt had fulfilled the terms of the agreement.[125]

In a different case, Abraham Linthofer was released from jail on the condition that he come to terms (*vertragen*) with his creditors. If he failed to come to terms, his *Bürge* (Jorg Schaffer) was to bring Linthofer back to jail. Linthofer apparently failed because Schaffer brought him back to jail, at which point, Schaffer was released from being Linthofer's *Bürge*.[126] That both Schaffer and Maukisch went to the trouble of getting a formal acknowledgment that their *Bürgschaft* had ended is another sign of the risks that *Bürgen* undertook: they wanted formal confirmation that their contingent liability had ended.

In financial cases, there was a clear termination point to being a *Bürge*: *Bürgen* were released from their duty when the loan was repaid. With the recalcitrance or impecuniosity of some debtors, the exposure of *Bürgschaft* could last for several years. On 28 November 1554, Peter Beseler borrowed four gulden and fifteen groschen from Caspar Horn. It took Beseler until August 15, 1572 to repay the loan.[127]

Where peaceful behavior between disputants was the issue, the duration of *Bürgschaft* is never explicitly stated. In peaceful behaviour cases, unlike other forms of *Bürgschaft*, there are seldom notations that *Bürgen* had been released from their duty. A case from 1554 indicates that it could happen. When Mathias Walter and Severus Harlans appeared before the city council on 10 August, they shook each other's hand, pledged that they wanted nothing more than *liebe, ehr and alles gutes* from each other, and promised to behave

[125]SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 118r.
[126]SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 10r.
[127] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 355r.

peacefully towards each other.[128] At this point, the *Bürgschaft* was deemed complete (*der burgschaft losgezelt*).[129] Unfortunately, no earlier record of this case exists so it is not possible to calculate how long it took Harlans and Walter to reach this stage. I have yet to come across a stipulation in Freiberg that limited *Bürgschaft* temporally. For Hamburg, such a provision did not exist until 1840.[130]

Being a *Bürge*, therefore, was not something one undertook lightly. To act as a *Bürge* was an indication to city council and other disputants that the *Bürge* believed the *Verbürgt* was an honourable, reputable, reliable person, and he was therefore prepared to back this belief with his own reputation and financial assets. It was an act fraught with potentially long-term consequences and risk.

3.4 The Legal Culture of *Bürgschaft*

Having looked at the uses, restrictions, gender dynamics, and length of *Bürgschaft*, the focus now shifts to what *Bürgschaft* meant to each of the parties: the court, the victim, the wronged or the lender, the *Verbürgt*, and the *Bürge*.

The Court

When considering *Bürgschaft* from the court's perspective, it is important to remember that early modern police forces, when they existed, were nugatory, which meant courts had limited ability to monitor and enforce their decisions.[131] In sixteenth-century

[128] Different symbolic gestures and acts signaled the end of a quarrel. In Zurich, the legal state of *Stallung* lasted until the adversaries 'drank off' the *Stallung*, formally signifying the end of open hostility. See Pohl-Zucker, "Uneasy Peace," 36. In Freiberg, a handshake typically indicated the end of hostilities, but it is not clear whether the handshake took place on the day *Bürgen* were named or at some point in the future. For examples of handshakes marking truces in Freiberg, see the above Walter-Harlans case, StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 53r; StAFB, Stadtprotokoll (1555-1557), I Ba 3b, fol 61r; and StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fol 13r.
[129] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 98r.
[130] Hoppe, *Bürgschaft im Hamburg*, 169.
[131] See Andrea Bendlage, *Henkers Hetzbruder: das Strafverfolgungspersonal der Reichsstadt Nürnberg im 15. und 16. Jahrhundert* (Constance: UVK, 2003).

Freiberg, a town of 9000 inhabitants, one bailiff (*Stadtvogt*) was supported by a team of *Gassenschöffen* (part-time neighbourhood watchmen). Each of the four city quarters, plus the settlements outside the walls (*Vorstadt*) had three or four *Gassenschöffen*, which meant there was a total 'police force' of approximately twenty.[132]

The effectiveness of early modern court personnel was constrained by their poor pay and low social status. The income derived from being a *Gassenschöffe* was insufficient to live on. In Nuremberg, Andrea Bendlage suspects many did this type of work only to supplement their income from other sources.[133] The tenures of Freiberg's *Gassenschöffen* support this image: the posts were tenable for one year, and most people held them for a maximum of three to four years.[134]

The result was that the policing and supervisory powers of Freiberg's municipal court were in practice severely limited. In this context, its frequent reliance on *Bürgen* becomes quite understandable. Instead of state institutions being solely responsible for monitoring court decisions and settlements, *Bürgschaft* transferred the responsibility from legal and governmental institutions to the social realm of personal relationships.

Consider the case of the imprisoned from the court's perspective. As noted earlier, those who found themselves in jail had likely already demonstrated themselves to be unruly or suspicious. For a polity with minimal oversight capacity, releasing such individuals back into society without some kind of guarantee was perilous. Who would see that the released did not cause more problems? Enter *Bürgschaft*. The imprisoned could be released, and

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[132] The duties of Freiberg's *Gassenschöffen* are not specified but in Nuremberg, they were responsible for the night watch, fire protection, tax collection, and implementing new laws. See Bendlage, "Städtische Polizeidiener," 89-90. On the ratios of 'police' to citizens, see Schwerhoff, *Köln im Kreuzverhör*, 61.

[133] Andrea Bendlage, "Von schergen und pütteln. Rekrutierung und soziale Herkunft niederer Polizeiknechte im 16. Jahrhundert" in *Policey in lokalen Räumen: Ordnungskräfte und Sicherheitspersonal in Gemeinden und Territorien vom Spätmittelalter bis zum frühen 19. Jahrhundert*, ed. André Holenstein (Frankfurt am Main: Vittorio Klostermann, 2002), 82-5. Bendlage discusses the social status of these trades, noting that while they were not dishonourable (bailiffs and guards drank with other tradesmen in taverns), they were certainly not prestigious. See Ibid., 89-90.

[134] The names and years of duty of Freiberg's *Gassenschöffen* can be found in Walther Herrmann, ed., *Das Freiberger Bürgerbuch 1486-1605* (Dresden: Historische Kommission der Sächsischen Akademie der Wissenschaften zu Leipzig, 1965), 189-207.

should they misbehave or breach the terms of their agreement, their *Bürge(n)* would bring them back to court or to jail. And since the *Bürgen* had pledged their property as collateral, the court knew the *Bürgen* had strong financial motivation to ensure that the terms were upheld. Similar rationales hold for the use of *Bürgen* in the paying of fines, the upholding of civil relations, and the guaranteeing of court attendance. In each case, *Bürgen* provided surety for the court (that the fine would be paid, that peace would be maintained, that the person would appear in court) that the court could not provide on its own.

By functioning as intermediaries between courts and court users, *Bürgen* provided a fundamental link between social and legal domains. As Susanne Rau has pointed out, the maintenance of social order was (and is) not entirely dependent on state institutions. Instead, urban inhabitants, and the network of relationships among them, were the pivotal forces.[135] Through the use of *Bürgen*, the court structured and formalised this matrix.

The Victim, the Wronged, and the Creditor

For the person relying on *Bürgschaft* – the creditor in a loan, the victim in a fight, the recipient of an insult – the benefits of *Bürgschaft* are obvious. *Bürgschaft* gave them protection and security that a wrong would be righted, a threatening person restrained, or a debt repaid.

For financial cases, *Bürgen* were not the favoured form of collateral (property was). Although data on loan repayment is often incomplete, there is sufficient evidence to indicate that many debtors were often late repaying a loan.[136] *Bürgen* gave creditors an animate form of collateral (all other forms were inanimate) that they could turn to in order to check on the status and likelihood of repayment, and which in certain cases constituted an additional avenue to pursue repayment. No formal legal stipulations existed on the wealth of a *Bürge*,

[135] Susanne Rau, "Public Order in Public Space: Tavern Conflict in Early Modern Lyon," *Urban History* 34 (2007), 104.
[136] See chapter five for further details.

but legal historians like Hoppe and Martin have argued that the person(s) chosen as *Bürge(n)* had to be approved by the lender who would naturally want a person with the necessary financial ability or personal integrity to ensure that a loan would be repaid.[137] A *Bürge* without either the appropriate financial means or personal integrity would have done little to assuage the concerns of a lender. Whether such an intricate dance over the suitability and approbation of *Bürgen* actually occurred in Freiberg is beyond the gaze of the historian. To date, I have yet to encounter any indication of someone being rejected as a *Bürge*. The court was obviously not a silent player in assessing the suitability of someone to act as a *Bürge* but besides the already discussed stipulation of possessing property, the archives offer no clues as to any other factors being of interest to the court.

It is equally unclear whether the injured party had the power to accept or reject someone as a *Bürge*. Consider the case of Andreas Arnolt and Hans von Hallebrun. After discord had developed between them in December 1572, Arnolt went to court and complained. Von Hallebrun promised peace and civility to Arnolt. But Arnolt was not satisfied, and desiring greater security, asked van Hallebrun to name *Bürgen*, which at the court's insistence, he did.[138]

The case clearly demonstrates that the promise of peace was not enough to placate Arnolt. Only once *Bürgen* were named was he satisfied. The presence of the *Bürgen* meant there were two additional people with a decided interest in ensuring that van Hallebrun behaved properly towards Arnolt. Unfortunately in most cases, it is not clear at whose behest *Bürgen* were named: the council's, the disputants' or both. Given the relative impotence of early modern police forces, it is not surprising that either the council or the victim would have desired the added security that *Bürgen* offered.

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[137] Hoppe, *Bürgschaft im Hamburg*, 102; Martin, *Bürgschaft*, 36-41.
[138] *Bürgen*: Hans Bierschrotter and Wolff Bleifelder. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 167v and 168r.

In that sense, Martin Dinges' concept of *Justiznutzung* appears to have played little role here. Dinges, summarizing the works of several historians, noted that the majority of early modern legal processes ended without verdicts and argued the reason for this was that going to court was a bargaining gambit (presumably used once private means of resolution had failed).[139] It was a move made by disputants to increase pressure on an adversary to settle. If the pressure was successful, the disputants settled their differences out of court and the court let the matter drop, content that a resolution had been found.

But that does not appear to be what is taking place in these peacemaking *Bürgschaft* cases in Freiberg where the majority of cases reached a legal resolution. In going to court, the victim's goal was not to lever or compel an adversary towards an extra-legal settlement, but rather to get a court-sanctioned resolution monitored by *Bürgen*.

One suspects that in going to court, another goal of a disputant was to publicize a conflict (and ideally its resolution).[140] In sixteenth-century Freiberg, court was held on the market square in front of the town hall which meant that its proceedings would have been public knowledge.[141] Publicly naming *Bürgen* ensured that the entire city could have known who the *Bürgen* were, not just the disputants. By publicly including more people in a

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[139] Martin Dinges, "Justiznutzungen als soziale Kontrolle in der Frühen Neuzeit," in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Constance: UVK, 2000), 503-544.

[140] In recent years, there has been significant research on public spaces and publicity. See Esther-Beate Körber, *Öffentlichkeiten der frühen Neuzeit: Teilnehmer, Formen, Institutionen und Entscheidungen öffentlicher Kommunikation im Herzogtum Preussen von 1525 bis 1618* (Berlin: Walter de Gruyter, 1998); Susanne Rau and Gerd Schwerhoff, ed., *Zwischen Gotteshaus und Taverne: öffentliche Räume in Spätmittelalter und Früher Neuzeit* (Cologne: Böhlau, 2004); and Gerd Schwerhoff, ed. *Stadt und Öffentlichkeit in der Frühen Neuzeit* (Cologne: Böhlau, 2011). The introduction to *Stadt und Öffentlichkeit* provides an erudite overview of the historiography. The majority of this work has focused on markets, taverns, and churches. Courts as public forums for dissemination of information have not been thoroughly studied. One suspects this is in part because as Gerd Schwerhoff and Susanne Rau note, in the course of the sixteenth century, as inquisitorial procedure took on greater significance, courts were no longer held publicly, but rather privately. See Rau and Schwerhoff, *Zwischen Gotteshaus*, 41. Yet as Daniel Smail has provocatively shown for late medieval Marseille, much can be gained when we assess courts as public spheres. See Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca: Cornell University Press, 2003).

[141] Andreas Blauert, "Sühnen and Strafen in sächsischen Freiberg vom 15. bis 17. Jahrhundert," in *Interaktion und Herrschaft: die Politik der frühneuzeitlichen Stadt*, ed. Rudolf Schlögl (Constance: UVK, 2004), 173.

dispute, *Bürgschaft* nourished a civic culture where numerous people had a stake in upholding truces and supporting urban peace.

The Adversary/*Verbürgt*

Regardless of the nature of their case, the *Verbürgt* clearly found himself in a difficult position before he named *Bürge(n)*. In all likelihood, he or they had violated one or more social and/or legal norms. Legal anthropologists would urge us to remember that the *Verbürgt* would not automatically be stigmatized by their breach of social norms nor would they necessarily be inclined to settle. Indeed, many disputants were happy to remain in a state of conflict provided they were in an advantageous position.[142]

Even so, necessity must have compelled many adversaries to settle. Those that were incarcerated faced two problems. First, merely being in jail was dishonouring, and second, being in jail prevented one from working.[143] The need for sustenance and to preserve honour would have induced many to settle. Those who had been fined could face the difficult choice presented to Bastian Ulrich: either pay the fine or be banished from Freiberg.[144] And where necessity alone was not enough, legal pressures, such as those faced by breachers of the peace, could be. When adversaries were inclined to settle, *Bürgschaft* offered the most effective means to do so. It was not the only legal route out of a predicament, but it was often the most practical.

Those who had the requisite social capital to name *Bürgen* generally found themselves in a better position. For those who could not find *Bürgen*, the court offered a different path. They had to swear by *Schuld, Landrecht* and *der höchste Bus* that they would uphold the terms of their oath. If they failed to so, then they were to receive the harshest

[142] See Smail, *Consumption of Justice*.
[143] On jails being dishonourable, see Schwerhoff, *Köln im Kreuzverhör*, 94-5. Schwerhoff notes the average jail stay in Cologne was less than two weeks. Ibid, 103.
[144] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 116r.

penalty prescribed by Saxon law (*Landrecht*) for their given offence.[145] Thus those who could find *Bürgen* were at a distinct advantage. Rather than putting their own necks on the line (both figuratively, and in some cases literally), the risk was transferred to their *Bürgen*.

In 1561, Wolff Rabener was insulted by Jorge Reiser. Reiser came from the village of Lichtenberg[146] and was unable to find a *Bürge* to vouch for him. Instead, he swore by *Schuld, Landrecht* and *der höchste Bus* to behave peacefully in words and actions towards Rabener.[147] In a separate case from 1561, the baker Tobias Hase and his assistant were insulted by Jacob Richter and Andreas Lippmann. Richter was able to find two *Bürgen*. Lippmann, who came from Marienberg (another Erzgebirge mining town, about thirty-five kilometres south of Freiberg), could not find *Bürgen* and thus had to swear by *Schuld, Landrecht* and *der höchste Bus*.[148]

Both Richter and Lippmann gave the standard promise to behave peacefully in words and actions towards Hase and his assistant. But Richter and those who found *Bürgen* were at a distinct advantage because their liability was distributed across their *Bürgen* as well as themselves. If they were deemed to have broken the terms of their pledge, it was their *Bürgen*'s house that was at stake. In contrast, those like Lippmann and Reiser who could not find *Bürgen*, had to face the dangers of *Schuld, Landrecht* and *der höchste Bus* on their own. If they broke the terms of their oath, the harshest penalty of Saxon law awaited them.

In many of the cases in which *Bürgen* appear, their role was similar to that of a character witness for the *Verbürgt*. *Bürgen* demonstrated to the court that the *Verbürgt* had social capital (or access to it). As early modern Europe became increasingly mobile, and

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[145] As a very Saxon legal phrase, *Schuld, Landrecht* and *der höchste Bus* does not translate easily into English. '*Schuld*' refers to the oath being sworn; *Landrecht** to the *Sachsenspiegel*, and '*der höchste Bus*' to the highest punishment.
*The first three books of *Sachsenspiegel* are entitled *Landrecht* (or territorial law); *Lehnrecht* (feudal law) was the title of the fourth book.
[146] There were several Lichtenbergs in Germany, but Reiser probably came from the one about ten kilometres south of Freiberg.
[147] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 1v and 2r.
[148] *Bürgen* for Richter: Peter Heckler and Mathias Richter. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 3r.

unknown persons were suspected or feared, an affirmation of one's good character took on greater significance. In a mining region like the Erzgebirge, where miners were notorious for leaving one mine and town for another, this positive assessment would have been of even greater importance.[149] For the *Verbürgt* then, *Bürgschaft* was vital to allaying a victim's, a lender's and/or the court's concerns over their character and trustworthiness.

The *Bürge*

Considering the requirements and risks, agreeing to be a *Bürge* was a major commitment and not something to be undertaken lightly. The example of Jorge Reiser, Andreas Lippmann, and Tobias Hase from the previous section is quite instructive. Despite both Richter and Lippmann having insulted Hase and his assistant, Richter's *Bürgen* only vouched for Richter, and not for Lippmann. Why? Presumably because they either did not know Lippmann well enough to vouch for him, or they doubted his capacity and willingness to follow through on the terms of the agreement. Either way, it is clear that the *Bürgen* did not want to expose themselves to the risks posed by someone of whom they were unsure.

Returning to 1556 and Hieronimo Bulmann, a similar pattern emerges. We first met Bulmann at the start of this chapter, when he was fined an undisclosed sum for punching Valten Graupitz while they were both in jail.[150] On 14 September, three weeks after that incident, Bulmann was released from jail with Benedict Löbichen and Hans Forster as his *Bürgen*. He gave the standard promise to behave peacefully in words and actions.[151] Nine months later, on 21 June 1557, Bulmann was again released from jail (we do not know why

[149] On the movements of miners, see Adolf Laube, "Zum Problem des Bündnisses von Bergarbeitern und Bauern im deutschen Bauernkrieg," in *Der Bauer im Klassenkampf: Studien zur Geschichte des deutschen Bauernkrieges und der bäuerlichen Klassenkämpfe im Spätfeudalismus*, ed. Gerhard Heitz, et al. (Berlin: Akademie-Verlag, 1975), 87-91; and Susan Karant-Nunn, "Between Two Worlds: The Social Position of the Silver Miners of the Erzgebirge, c. 1460-1575," *Social History* 14 (1989), 309-12.
[150] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 85r.
[151] StAFB, Stadtprotokoll (1555-1557), I Ba 3b,fol 93r.

he was there). But Forster and Löbichen were no longer his *Bürgen*. Instead, Asmus Zencker and Thomas Hoffmaier now filled that role.[152]

Why the *Bürgen* from the first case were not willing to act as *Bürgen* again is not recorded but it seems likely that they wanted to remove themselves from further liability with Hieronimo Bulmann. One of the most fundamental elements of *Bürgschaft* is that if the *Verbürgt* failed to follow through on the terms of his agreement, the *Bürge* stood to lose his property.

Given all the risks of being a *Bürge*, it is reasonable to ask, why did they do it? Why be a *Bürge*? The answer, I think, is two-fold. Early modern Europe was a highly contingent world, subject to the vagaries of weather, disease, warfare, feud, and, in Freiberg, mining. In the face of this contingent world, people sought ways to bring security to an uncertain world. In *Economia barocca*, Renata Ago showed that in business transactions, early modern Italians routinely bound themselves to one another through a series of debts and credits to create webs of mutual obligations.[153] Thomas Cohen took Ago's argument further and argued this 'entangling' of oneself was not restricted to just business transactions, but extended to social and legal processes as well.[154] I think acting as a *Bürge* fulfilled a similar function in Freiberg. It allowed people to create, develop and foster social ties that could be used to combat the contingencies and uncertainties of their world.

Key in this line of reasoning is the notion of exchange. The sociologist Jeremy Boissevain reminded us that the practices of pledging and guaranteeing were also transactions

[152] StAFB, Stadtbuch (1557-1558), I Ba 3c, fol. 11r.
[153] Renata Ago, *Economia Barocca: Mercato e Istituzioni nella Roma del Seicento* (Roma: Donzelli, 1998).
[154] Thomas Cohen, "Entanglement: how the whole world worked, and how Jews latched on" (paper presented at the Ninth Annual Early Modern Workshop in Jewish History, Brown University, Providence, Rhode Island, 26-27 February 2012).

and exchanges.[155] With all the risks it entailed, acting as a *Bürge* was a transaction from the *Bürge* to the *Verbürgt*. As studies of gift-giving have shown, these types of transactions were typically reciprocal.[156] Precisely what, and when, the *Bürge* received out of the bargain, however, remains below the gaze of the historian. One thing that it did not deliver was reciprocal *Bürgschaft*. I have yet to find a case where *Bürgschaft* was reciprocated (i.e., that the *Verbürgt* acted as a *Bürge* in a later case for someone who had been a *Bürge* for them). Instead, like gift-giving, the expected reciprocity for being a *Bürge* was open-ended and not formally defined. For the short-term, it sufficed that a bond between the *Bürge* and *Verbürgt* had been created, strengthened and fostered.

Besides fostering webs of mutual obligations, *Bürgschaft* was fraught with implications for one's social capital and credit.[157] By acting as a *Bürge*, Freibergers staked their social capital on one another. But to be able to stake one's social capital, one had first to possess it. That one could stake their social capital was evidence that one had it. For those on the margins, but nevertheless property holders, *Bürgschaft* provided a forum for them to demonstrate that they too had credit.

Credit and social capital, like financial assets, fluctuate in value. When things go well, they grow. When things go poorly, they diminish. *Bürgschaft* is no exception. Because of its public nature, acting successfully as a *Bürge* would have increased one's social capital, not just with the *Verbürgt*, but more generally. As Daniel Smail and Thelma Fenster pointed out in their work on *fama*, "it was understood that one's acts would be discussed and

[155] Jeremy Boissevain, *Friends of Friends: Networks, Manipulators and Coalitions* (Oxford: Basil Blackwell, 1974).
[156] Natalie Zemon Davis, *The Gift in Sixteenth-Century France* (Oxford: Oxford University Press, 2000).
[157] For early modern England, Craig Muldrew has shown the centrality of financial credit (which he posits was inseparable from social credit) to daily life. See his *Economies of Obligation: the Culture of Credit and Social Relations in Early Modern England* (Houndmills, Basingstoke: Macmillan, 1998). Also see Alexandra Shepard, "Manhood, Credit and Patriarchy in Early Modern England c. 1580-1640," *Past and Present* no. 167 (2000), 75-106. There is no evidence that *Bürgen* in Freiberg were financially compensated by the *Verbürgt* or anyone else. *Bürgschaft* was not a trade. If it had been, one would see names reoccurring in the entries; one does not.

evaluated, and that some sort of *fama* would eventually emerge."[158] Being a *Bürge* thus offered a means to enhance one's credit on a larger stage. While *Bürgschaft* was a practice grounded in law and custom, it was freighted with social implications which undergirded its effectiveness. *Bürgschaft* gone wrong threatened not only a loss of financial credit, but social credit as well.

The system of *Bürgschaft* was so prevalent in sixteenth-century Freiberg that most Freibergers would have thoroughly understood it, and would likely have had direct experience with it (either as a *Bürge*, *Verbürgt*, or victim/creditor/disputant), probably several times in their lifespan. And even if they had not had direct experience, given the city's size, most people would have gained a basic understanding through the experiences of their families, peers, co-workers, and neighbours. In view of this deep local knowledge, Freibergers continued patronage of the city court for *Bürgschaft* is a clear sign of their approbation of it.

While this chapter has looked at the roles that *Bürgen* filled, and what it meant to be a *Bürge*, it has not looked at the type of case in which they were most frequently used: assault cases. The following chapter goes into the world of criminal jurisprudence, to see how *Bürgen* and other resolutions were employed in the legal processing of violence.

[158] Thelma S. Fenster, and Daniel Lord Smail, eds., *Fama: the Politics of Talk and Reputation in Medieval Europe* (Ithaca, N.Y.: Cornell University Press, 2003), 4.

4. Violence

4.1 An Overview of Violence

In May 1561, Barthel Kretzschmar and Lorentz Griff appeared before Freiberg's city court. Barthel, a potter, was the elder of the two; he had become a citizen 25 years earlier in 1536. He was sufficiently respected to have served six times as head (*Vormeister*) of the potters' guild. Before that, he had been a *Gassenschöffe* (a neighbourhood watchman) for one of the settlements (*Vorstädte*) just outside Freiberg's town walls for four years.[1] Biographical information on Lorentz Griff is more elusive. We know only that three years after this court appearance, he became a citizen. His profession and residence remain a mystery.

Kretzschmar and Griff were in court because they had gotten into a physical altercation. The older Kretzchmar was clearly the aggressor, having thrown and then struck Griff with a pot.[2] The rather odd choice of weapon aside, Griff's injuries were serious: four wounds to the head, each requiring the surgeon's attention, which no doubt endowed Griff with enduring cicatrices. Yet Griff survived and became a burgher three years later. The court ordered Kretzschmar 'to come to terms' (*vertragen*) with Griff, the surgeon, and the court itself. We will return shortly to exactly what these terms meant.

Kretzschmar and Griff hardly had a monopoly on violence in Freiberg. Every human society experiences conflict, and benefits from positive differences in ideas, commitments, and interests of its members. At times, however, conflict escalates into interpersonal

[1] Kretzschmar served as *Vormeister* 1551-53, 57, 59, and 1560, and a *Gassenschöffe* in 1547, 1551-53. See *Das Freiberger Bürgerbuch*, 184, 204.
[2] Lars Behrisch has noted that in Gorlitz the weapons most commonly used were whatever people readily had at hand. *Städtische Obrigkeit und soziale Kontrolle: Görlitz 1450–1600* (Epfendorf /Neckar: Bibliotheca-Academica-Verlag, 2005), 130.

violence, a less desirable but omnipresent component of virtually every human society. This is not to suggest that violence is socially acceptable in every culture, but rather to indicate its near universality.[3] In early modern Europe, physical violence was simply part of everyday life. For nearly half a millennium, it was the principal offence that courts dealt with. Only in the eighteenth century do property offences, such as theft, start to surpass violence in the frequency in which they appear in court.[4]

In recent years, violence has been a major topic of historical investigation.[5] Much of this work has been stimulated by Norbert Elias and his theory of a 'civilizing process,' beginning in the aristocracy and trickling down to other orders. It has hardly been universally accepted.[6] But it has sparked significant work on the cultures of violence and how they have changed over the last half-millennium, including the disputed claim that incidents of violence decreased dramatically in western Europe.[7] Duelling, a form of violence typical in later centuries, has also received significant attention from historians.[8] In analysing violence in early modern cultures, historians have tended to stress the importance of honour, particularly male honour, which when slighted, ignited so many of these conflicts.[9] Historians have also readily acknowledged the incendiary role that alcohol and the tavern often played.[10]

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[3] For an insightful examination of violence and its historiography, see Stuart Carroll's introduction to *Cultures of Violence: Interpersonal Violence in Historical Perspective*, (New York: Palgrave MacMillan, 2007), 1-43.
[4] Gerd Schwerhoff, *Historische Kriminalitätsforschung* (Frankfurt am Main: Campus-Verlag, 2011), 115-17.
[5] A useful synthesis is Julius Ruff, *Violence in Early Modern Europe* (Cambridge: Cambridge University Press, 2001).
[6] See, for instance, the debate between Gerd Schwerhoff and Peter Spierenburg: Pieter Spierenburg, "Violence and the Civilizing Process: Does it Work?," *Crime, Histoire & Sociétés* 5.2 (2001), 87-105; Gerd Schwerhoff, "Criminalized Violence and the Process of Civilisation: a Reappraisal," *Crime, Histoire & Sociétés*, 6.2 (2002), 103-126; and Peter Spierenburg, "Theorizing in Jurassic Park: A Reply to Gerd Schwerhoff," *Crime, Histoire & Sociétés* 6.2 (2002), 127-128.
[7] See Carroll, *Cultures of Violence*; Peter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity Press, 2008); Steven Pinker, *The Better Angels of our Nature* (New York: Viking, 2011), and Robert Muchembled, *A History of Violence* (Cambridge, England: Polity Press, 2012).
[8] See Barbara Krug-Richter, Ulrike Ludwig and Gerd Schwerhoff, eds., *Das Duel: Ehrkämpfe vom Mittelalter bis zur Moderne* (Constance, UVK: forthcoming); and Ute Frevert, *Ehrenmänner: das Duell in der bürgerlichen Gesellschaft* (Munich: Beck, 1991).
[9] Two of the most important texts to make the initial connection between honour and violence were Katharina Simon-Muscheid, "Gewalt und Ehre im spätmittelalterlichen Handwerk am Beispiel Basels," *Zeitschrift für Historische Forschung* 18 (1991), 1-31; and Rainer Walz, "Agonale Kommunikation im Dorf der Frühen Neuzeit," *Westfälische Forschungen* 42 (1992), 215-51. A recent article by Gerd Schwerhoff provides a

This chapter does not seek to expatiate on these themes. Instead, it looks at the legal dynamics of violence, what legal resolutions the Freiberg court chose to employ, and how the resolutions differed between assault and murder. As the previous chapter on *Bürgschaft* demonstrated, the power of the court was limited and relied on intermediaries such as *Bürgen* to enforce verdicts. This chapter investigates to what extent legal resolutions for assault cases were adhered to.

Historians of crime have also turned their attention to violence.[11] Most German studies have focused on Imperial cities, particularly in the south and west where the Carolina, or local legal codes like the *Schwabenspiegel*, established the legal norms.[12] The penultimate

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portrait of the current historiography. Gerd Schwerhoff, "Early Modern Violence and the Code of Honour: From Social Integration to Social Distinction," *Crime, Histoire et Societé*, 17 (2013), forthcoming.

[10] B. Ann Tlusty, *Bacchus and Civic Order: the Culture of Drink in Early Modern Germany* (Charlottesville: University Press of Virginia, 2001); and A. Lynn Martin, *Alcohol, Violence and Disorder in Traditional Europe* (Kirksville, Missouri: Truman State University Press, 2009).

[11] For Italy, see Guido Ruggiero, *Violence in Early Renaissance Venice* (New Brunswick, N.J: Rutgers University Press, 1980); for France, see Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford: Oxford University Press, 2006); and for England, see Lawrence Stone, "Interpersonal Violence in English Society 1300-1980," *Past and Present* no. 101 (1983), 22-33; J. A. Sharpe, "The History of Violence in England: Some Observations," *Past and Present* no. 108 (1985): 206-15; J. S. Cockburn, "Patterns of Violence in English Society: Homicide in Kent 1560-1985," *Past and Present* no. 130 (1991), 70-106; Robert Shoemaker, *The London Mob: Violence and Disorder in Eighteenth-Century England* (London: Hambledon and London, 2004), 153-76; and J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 77-112. Beattie neglects assault cases, preferring to study homicide, infanticide, and rape. Many of the major works on early modern England do not focus specifically on violence, but rather on the legal processes and social dynamics of crime in general.

[12] Some examples include Gerd Schwerhoff, *Köln im Kreuzverhör: Kriminalität, Herrschaft und Gesellschaft in einer frühneuzeitlichen Stadt* (Bonn: Bouvier, 1991), 275-322; Peter Schuster, *Stadt vor Gericht: Recht und Alltag im spätmittelalterlichen Constance* (Paderborn: Schöningh, 2000), 86-103; Joachim Eibach, *Frankfurter Verhöre: städtische Lebenswelten und Kriminalität im 18. Jahrhundert* (Paderborn: Schöningh, 2003), 203-286; Joachim Eibach, "Städtische Gewaltkriminalität im Ancien Régime: Frankfurt am Main im europäischen Kontext," *Zeitschrift für Historische Forschung* 25 (1998), 359- 382; Susanna Burghartz, *Leib, Ehre und Gut: Delinquenz in Zürich Ende des 14. Jahrhunderts* (Zürich: Chronos, 1990), 139-54; Ulrich Henselmeyer, *Ratsherren und andere Delinquenten: die Rechtsprechungspraxis bei geringfügigen Delikten im spätmittelalterlichen Nürnberg* (Constance: UVK, 2002), 83-100; Valentin Groebner, "Der verletzte Körper und die Stadt. Gewalttätigkeit und Gewalt in Nürnberg am Ende des 15. Jahrhunderts," in *Physische Gewalt: Studien zur Geschichte der Neuzeit*, ed. Thomas Lindenberger and Alf Lüdtke (Frankfurt: Suhrkam, 1995), 162-89; Susanne Pohl, "'Ehrlicher Totschlag' - 'Rache' - 'Notwehr': Zwischen männlichem Ehrencode und demPrimat des Stadtfriedens (Zürich 1376–1600)," in *Kulturelle Reformation: Sinnformationen im Umbruch 1400*-1600, ed. Bernhard Jussen and Craig Koslofsky, 239–83; and Wolfgang Behringer, "Mörder, Diebe, Ehebrecher: Verbrechen und Strafen in Kurbayern vom 16. bis 18. Jahrhundert," in *Verbrechen, Strafen und soziale Kontrolle*, ed. Richard van Dülmen (Frankfurt am Main: Fischer Taschenbuch Verlag, 1990), 85-132. Jason Coy does not specifically study violence, but it is a running theme through his examination of banishment practices in Ulm. *Strangers and Misfits: Banishment, Social Control, and Authority in Early Modern Germany* (Leiden: Brill, 2008).

section of this chapter compares Freiberg's practices with those elsewhere in the Empire to assess whether, and if so how, Saxon legal culture was distinctive.

Two court registers, the *Bürgschaftsbuch* from 1533 to 1545, and *Gelübdebuch* (vow/promise book) of *Real und Verbalinjurien* from 1561 to 1589 constitute the primary archival sources for this chapter.[13] It was in these two registers that verdicts on cases of violence were typically recorded. No register of either kind (*Bürgschaft* or *Gelübde*) survives for the years 1546 to 1560, possibly because of disruptions caused by the Schmalkaldic War.[14] Consequently, I have chosen 1533 and 1543 as sample years from the former, and 1561, and 1568 from the latter.[15] To supplement the sample and include records on harsher punishments, I also examined the *Urfehdebücher* from 1539 to 1578.

Table 4.1 Cases of Violence per year

Year	Cases of Violence
1533	70
1543	82
1561	95
1568	11
Totals	**258**

4.2 The Legal Stages and their Timeframes

To reconstruct Freiberg's legal culture, it is necessary to chart the steps involved in the court's processing of a serious offence such as assault. This is not immediately evident since few cases are completely documented from the assault all the way through to a judicial

[13] Andreas Blauert looked at these two registers for a previous article; Blauert's work, however, was concerned with development of official criminal law, and left sufficient scope for further work to be done within these registers, especially as they relate to legal culture. See "Sühnen and Strafen in sächsischen Freiberg vom 15. bis 17. Jahrhundert," in *Interaktion und Herrschaft: die Politik der frühneuzeitlichen Stadt*, ed. Rudolf Schlögl (Constance: UVK, 2004), 170-2.

[14] The thoroughness with which the debt registers were maintained for these years would suggests that the Schmalkaldic War did not cause major, long-term disruptions (see chapter five).

[15] 1575 was originally chosen as a sample year but there are no cases of violence to be found in the *Gelübdebuch der Real und Verbalinjurien* from that year. There are only eleven cases of violence in 1568; a decrease which seem statistically improbable. It is possible the court started to record such cases in a separate register that I have yet to encounter. This was still four years before the implementation of the Saxon Constitution which banned local courts from adjudicating felonious criminal offences such as assault and murder. They could only investigate and submit their findings to the Leipzig *Schöffenstuhl* which would issue the verdict. See Ulrike Ludwig, *Das Herz der Justitia: Gestaltungspotentiale territorialer Herrschaft in der Strafrechts- und Gnadenpraxis am Beispiel Kursachsens* 1548-1648 (Constance: UVK, 2008), 77-80.

resolution. The Freiberg *Stadtrecht* required all wounds, lethal and non-lethal, to be reported to court; however, it did not specify a time within which it must be done.[16] From the archival records, it appears that the parties, or at least the victim, often came to court by the following day, but most cases are silent on timing. We rarely know how much time elapsed between the actual assault and the parties meeting in court.

There are however, a small number of cases which enable the ethnographer to piece together the various steps and how long it took to complete the entire process. The best documented is the 1563 case of Bastian Henichen and Jorge Schmidt. On 11 June, Henichen left Freiberg and set out for his hometown of Schneeberg, another mining city of the Erzgebirge, seventy-five kilometres southwest of Freiberg. A short distance outside Freiberg, on the grounds of St. Johannis Hospital, Henichen was attacked by Schmidt (we don't know the motive). The assault was vicious: it left three bone-deep (*beinschrötig*) stab wounds near his left elbow, two more in his left hand, and one in his right arm.[17] Despite his injuries, Henichen survived; perhaps he received immediate attention from the hospital.

The following day (12 June), Greger Gerolt, the bailiff of Freiberg, formally accused Schmidt of the assault in court, and Schmidt was arrested and confined in the town jail. For the next two weeks, nothing appears to have happened (at least in court).[18] Then on 26 June, Schmidt's unnamed wife and his father, Hans, appeared in court and began the process of achieving a settlement with Henichen. The Schmidts named three *Bürgen* (Paul Wentzel, Christoff Nesteler, and Valten Schauslandt) who were mandated to negotiate on behalf of the Schmidts and to agree to settlements with Henichen, the surgeon, and the court.

[16] See section 27.1 (*Wo wunden geslagen werden, di sal man klagen zu rechter*) in Hubert Ermisch, ed., *Urkundenbuch der Stadt Freiberg in Sachsen*, vol. 3 (Leipzig: Giesecke & Devrient, 1891), 88.
[17] The two main records of the case are SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 24r; and SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 40v.
[18] Some time was no doubt required to determine whether Henichen would survive, and if so, how debilitating his injuries would be.

It was standard practice in sixteenth-century Freiberg for the court to order an assailant to reach a contractual settlement with his victim. Of the 258 assault cases in the sample, 155 (60.1%) required a contractual settlement. The goal of a settlement was to bring the feud to a formal end. To ensure a contract was made, and to deter disputants from further pursuing the conflict, assailants were required to name *Bürgen* (as Jorge Schmidt did).[19]

Until a formal contract could be reached, Schmidt's *Bürgen* were to pay Henichen an initial sum of two gulden, followed by weekly payments of eighteen groschen because he was unable to work. The payments were to be deposited with the court, another indication of how Freiberg's legal culture buffered and brokered transactions amongst disputants. This obviated the need for direct contact between the parties which could have been occasions of tension. For the next five weeks, negotiations ensued between Henichen and the *Bürgen*. By 2 August, they had agreed to a settlement, and all the parties – the Schmidts, their *Bürgen*, and Henichen – appeared in court to ratify it. In addition to the weekly sum, Henichen was to receive eight gulden, four on this day (2 August) and the other four on St. Michael's Day (29 September). (There is no mention that the *Bürgen* and/or the Schmidts still needed to contract with the court and the surgeon.) Finally, on 12 October, Henichen confirmed he had received the second payment of four gulden and the case was closed. The entire process had taken four months.

In terms of mapping Freiberg's legal culture, the pertinent time frame is the seven weeks that it took the parties to forge an agreement. Compared to other cases, this fell within the standard range. For example, after assaulting Hans Hachenberg, Hans Keller appeared in court towards the end of January, naming a *Bürge* and agreeing to contract with

[19] Other types of resolutions existed and are discussed later (see section 4.3). For cases of violence, the Freiberg *Stadtrecht* makes a particular point of noting that the *Bürgen* must have property and possessions in Freiberg. See section 27.7 in Ermisch, *Urkundenbuch*, vol. 3, 90.

Hachenberg.[20] On 5 February, a contract was agreed to (approximately two weeks after the initial court appearance).[21]

Other cases took much longer. Jacoff Stamm and Brosius Kuhn assaulted a woman in Freiberg's brothel (*gemeinen Frauenhaus*) on Friday, 17 October 1533. They were held in the town jail over the weekend, but released on the following Monday (20 October) under express instructions not to return to the brothel. Stamm, however, did return, and two days later, he was back before the court for having again assaulted a woman in the brothel. This time, he was ordered to contract with the court – which he did on 20 January 1534, three months after the assault.[22] It took Cristoff von Halle and Daniel Spor even longer to reach a settlement: their initial court appearance was on 11 November 1562, but it was not until 5 April 1563 that a contract was reached, more than four months later.[23]

Generally, the court did not prescribe deadlines for the disputants to agree to a contract. Instead, it let disputants pursue a contract at their own pace. In a few cases the court tried to expedite the process. On Sunday, 17 February 1544, Hans Zapp, Hans Petzelt, and Simon Zscheckel got into a donnybrook. The next day, they appeared in court and agreed to contract with the court within two weeks.[24] Valten Krumpugel appeared in court on 21 August 1543, after having blasphemed and attacked a court messenger (*Gerichtsknecht*). He was given until the end of September to contract with the court (and pay a five gulden fine).[25] The time frame the court prescribed (two to six weeks) was slightly shorter than the time it took disputants to contract on their own (two weeks to four months).

[20] No precise date was given for this case but the preceding and following cases were dated 18 and 30 January.
[21] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 198r.
[22] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 32r.
[23] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 34v.
[24] No record exists of them doing so. SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 199r.
[25] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 189v.

From these cases, it appears there were two well-defined stages in resolving assault cases. First, within a day or two of the physical altercation, the victim and assailant appeared in court. The court made an initial determination as to who was the assailant and therefore had to name *Bürgen*.[26] Once *Bürgen* were named, the type of resolution (contractual settlement, fine, peace oath) was agreed to. This step halted open hostilities, established the negotiating process, and thus enabled the process of reconciliation to begin. By bringing the assailant to bay, the hearing in public court restored a victim's honour and legal standing. The appointment of *Bürgen* discouraged the aggressor from renewed violence. Time was often required as well to determine the seriousness of the injuries to the victim and the extent to which his ability to work would be affected, since this would affect the financial settlement.[27]

The initial court appearance also enabled a gradual process of catharsis that continued until tensions had dissipated to the point that a contract could be agreed. At the date of the first appearance, emotions were still seemingly too high to reach a formal settlement. So until they ebbed, Freibergers waited. With time, the discord eased, and the second stage of agreeing to a contract could occur.

The second court appearance took place once the parties had agreed on a contractual settlement, and usually occurred two weeks to four months after the first. The court would ratify the contractual settlement, and collect the fines. Freiberg had developed a process which enabled peace to be restored and the tear in the body public to be mended. The frequent use of *Bürgen* provided restraint on the aggressor and assurance to the victim. And

[26] In some instances, both parties were deemed assailants and made to name *Bürgen*. See for example the fight between Christoff Steger and Abraham Thiel. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol. 12r.

[27] In some cases, time was needed to determine whether the victim would survive the attack. For example, Kilian Meiner died nine days after Anthonius von der Tribe stabbed him in the neck and throat. See SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol. Hans Hederich did not die until six weeks after Israel Maukisch had attacked him. See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 108r-110r. If the victim died, the legal circumstances of the case obviously changed. But this factor is only applicable in the handful of cases where the injuries were life-threatening.

the financial penalties imposed an additional layer of deterrence. The assailant was not criminalised and returned to his place in the social order.

4.3 Legal Resolutions

Assault

When violence occurred, the court had a diverse array of legal remedies at its disposal. In the sixteenth century, the contractual settlement was the most commonly employed, but the court could – and did – fine, banish, and execute. Each sanction will be considered in turn.

The legal basis for the settlement lay in the Freiberg *Stadtrecht* which permitted assailants to contract with their victims.[28] The circumstances of each case dictated with whom it was necessary to contract; the victim, the surgeon, and the court are the most common. As Table 4.2 shows, of 155 contractual settlements from the sample years, this was the resolution in ninety-three (60.0%) of them. In the other sixty-two, assailants were only required to contract with one (or two) of the three. The need to contract with these three reflected the contemporary understanding of who had been damaged by a brawl or a fight. Settling with the victim was not just about restoring the damage done to the victim's body, it was also intended to restore the victim's honour and legal standing, both of which were damaged by an assault. Similarly, fights and brawls were breaches of the city's urban and legal peace, which had to be restored.[29] Surgeons had to be compensated for having treated the victim.

[28] See section 14.1 (*SWo (Wo) wunden oder totslege bezzert (gebusset, gebessert) werden mit rate, daz heizet mit erhaften luten geebent (vertragen), daz biderbe lute (biderleuthe) dazwisschen gehn unde theidingen also lange biz daz man iz in in di hant gibet beidersit, di gehn denne zusamene unde raten, wi si daz ebenen wollen.*) in Ermisch, *Urkundenbuch*, vol. 3, 63-64.
[29] See Julius Ruff, "Popular Violence and Its Prosecution in Seventeenth-and Eighteenth-Century France", in *Crime, Law and Popular Culture in Europe, 1500-1900*, ed. Richard McMahon (Cullompton: Willan, 2008), 39.

Table 4.2 The parties to settlement contracts (cases per year)

Year	Court, Victim & Surgeon	Court & Surgeon	Court & Victim	Court alone	Other	Totals
1533	2	1	1	1	3	**8**
1543	23	5	7	20	2	**57**
1561	64	0	5	15	0	**84**
1568	4	1	0	1	0	**6**
Totals	**93**	**7**	**13**	**37**	**5**	**155**

Surgeons. Surgeons frequently appear in assault cases for two reasons. First, the Freiberg *Stadtrecht* explicitly required that each wound had to be seen and documented by the court.[30] Physicians were rare and expensive, and in any event did not treat wounds. Such bloody and messy injuries were the province of surgeons, and to a lesser extent, chemists.[31] Since surgeons were employed by the council, their reports constituted a legal document to satisfy the *Stadtrecht*. Medical reports often provided only rough descriptions. For example, that a wound needed to be sewn together (*ein Haft getan*), or was one limb (*Glied*) long, or two fingers or bone deep (*beinschrötig*). The numbers of wounds that needed to be sewn were counted. Some victims had as many as eight wounds, each requiring a surgeon's stitches.[32]

Second, when the injuries were severe enough to require summoning a surgeon, it was incumbent on the assailant to pay the cost. Thus in a fight between Cristoff Sateler and Mathias Schmidt, Sateler's four *Bürgen* pledged to pay the doctor who treated Schmidt.[33] In a later case from 1569, Matz Kirpacher injured Adam Lange so badly that both a chemist

[30] See section 27.5 (*wende di wunde besehn unde besait si*) in Ermisch, *Urkundenbuch*, vol. 3, 90. The *Stadtrecht* did not require this inspection to be done by a doctor or surgeon, but by the sixteenth century, they commonly performed it.
[31] Surgeons were members of a barber- surgeon's guild (*Bader*). Freiberg had two apothecaries in the sixteenth century, but neither played a significant role in treating these injuries. On apothecaries in Freiberg, see Reinhard Kade, "Freibergs alte Apotheken: Die Elephanten- und die Löwen-Apotheke," *MFA* 28 (1891), 9-30.
[32] See for example the case of Bastian Steinmetz and Jorge Hasch. SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 10r.
[33] StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 80v.

(*Apotheker*) and a surgeon were needed. As part of the settlement, Kirpacher agreed to pay the fees of both.[34]

Victims. Victims were understandably parties to most contractual settlements, appearing in 110 (70.9%) of the cases. Depending on the extent of their injuries, victims could receive financial compensation from their assailants. In some cases where the victim was incapacitated, the assailant had to pay them a small weekly sum until they were fit to work again (*Kost/Schmerzensgeld*). For instance in 1543, the brothers Hans and Martin Schilling broke three fingers on Christoff Hoffman's left hand. Besides meeting the surgeon's costs, the Schilling brothers had to pay Hoffman eleven groschen a week until he recovered.[35] In another case from the summer of 1561, Hans Weingarten attacked Hans Benedict with an axe, inflicting a bone-deep wound in his head. The wound was so severe that Benedict was left speechless for five weeks and unable to work for a longer period. As a result, Weingarten had to pay Benedict a lump sum of six gulden and an additional eighteen groschen for every week that Benedict could not work.[36]

If the assailant did not have the financial wherewithal to make these payments, it could be incumbent on his *Bürgen* to make the payments on his behalf. Such a scenario played out in the spring of 1561 when an intoxicated Simon Opitz punched and stomped on Hans Lindener. Opitz had to contract with Lindener and the court (but apparently not the

[34] SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch der Stadt Freiberg (1563-1572), Nr. 680, fol 219r. Presumably, the surgeon's fees increased when there were a greater number of wounds that needed to be dressed. There is precious little documentation of the fees of surgeons in sixteenth-century Freiberg. In 1562, the city council set the salary of the surgeon at one gulden per week, or about fifty gulden annually. See StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fol. 126r. In one case from 1569, an unnamed surgeon was paid two gulden for treating a boy in a brick barn (*Ziegelscheune*). See StAFB, Merkregister (1568-1569), I Ba 4c, fol 27r. In an earlier case from 1562, the surgeon Peter Moller was paid five gulden for treating a man who had fallen off his house. See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 24r.
[35] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 192r.
[36] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fols 11v and 19v.

surgeon), and his *Bürgen* were responsible for paying Lindener a weekly sum (*Kostgeld*) until he was healthy enough to return to work.[37]

Aside from compensation for being unable to work, it is not clear whether contractual settlements included a 'penalty' payment to the victim. As will be discussed later, most of the contracts are no longer extant, which makes it difficult to determine exactly what 'contracting with' a victim entailed. It could very well be that it only brought a formal end to the hostilities without any remuneration.

The Court and Fines. 'Contracting with the court' was not simply a matter of being assessed and paying a fine. The court appears to have maintained a conceptual distinction between a fine and a contract. In thirty-eight cases, the assailant was ordered to come to terms with the court ***and*** pay a fine. After hitting Blasius Behem in the head with a beer mug, Blasius Horn was ordered to contract with the court, surgeon and victim, ***and*** pay a twelve groschen fine.[38] In a later case from March 1561, a disagreement between Marcus Bauer and Steffan Hans broke out in front of Sigmund Roling's house, on Freiberg's market square. The disagreement ended with Bauer punching Hans in the face. For this assault, Bauer was required to pay a fine of one gulden and to come to terms with the court.[39]

There were twenty-six cases where assailants had to contract with the court, but were not assessed a fine, nor required to contract with the surgeon or victim. For example, in the course of one evening, Valten Riess managed to get into two altercations with Paul Urban, striking him both times. Urban's injuries were not significant enough to merit summoning the surgeon, and Riess was required only to contract with the court.[40]

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[37] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 8v.
[38] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 188r.
[39] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 2r. One wonders if the matter would have been dropped had it not happened in front of Roling's. Roling, at the time was a *Gerichtsschöffe* (a decision-maker, similar to a modern juror) of Freiberg's city court. His presence may have inclined the others to ensure the matter was processed officially.
[40] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 30r.

Further indication of a conceptual separation is provided by the forty-three cases where the assailant was fined, but not ordered to contract with the court, surgeon or victim. In 1533, Nickel Schuster was fined twenty groschen for hitting Hans Wolkenstein above the eye. He was given two months to pay, but was not required to reach a contractual settlement.[41] Ten years later, the shoe-maker Peter Schick received a head wound from Lorentz Glaser and 'die Jorge Vogelin'. Glaser and Vogelin were fined four gulden, but were not required to contract with the court.[42] Lastly in 1561, Nickel Roth and Andreas Walter attacked each other with weapons drawn on a street near Walter's house. Roth, who had also blasphemed, was fined two gulden and eighteen groschen, but did not have to contract with the court.[43] Although none of these assailants had to contract with the court, the surgeon or their victims, they all named *Bürgen* to attest that they would uphold peace and the pay the fines. Clearly, the court had separate conditions for assessing a fine, and for requiring assailants to contract with the court.

Pledges. In sixty of the cases, the court neither imposed a fine nor required a contractual settlement. Instead, assailants had to pledge they would behave peacefully, or with peace and justice (*Friede und Recht*), towards the victim. This oath, supported by *Bürgen*, was particularly prevalent in 1533 (see Table 4.3). But as the century progressed, the contractual settlement and/or judicial fine surpassed it.

Table 4.3 Processing of violent conflicts in Freiberg (number of cases)

Years	Total Cases	Contract alone	Contract & Fine	Fine alone	*Pledges* or *Bürgen* only
1533	70	7	1	17	45
1543	82	36	21	17	8
1561	95	70	14	8	3
1568	11	4	2	1	4
Total	**258**	**117**	**38**	**43**	**60**

[41] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 31v.
[42] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 189v. The presence of a female assailant in this case was extremely unusual: victims and assailants were overwhelmingly male.
[43] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 14v.

Banishment and Capital Punishment

Contracts, fines, and pledges represent the lighter sanctions used by the city court, but they were not the only means the court had for penalising violence. Punitive measures like banishment, often combined with an *Urfehde*, and/or corporal punishment, were also employed. Andres Meisner, for one, was banished from Freiberg, after he used a stone to crack a hole in an unnamed woman's head.[44] Banishments and beheadings constitute rare exceptions for assault cases at this time in Freiberg. From 1535 to 1578, only nine were banished and forced to swear an *Urfehde* for assaulting someone. In contrast, in 1543 alone, fifty-seven reached a contractual settlement supported by *Bürgen*. Typically, to trigger one of these punitive sanctions, assailants had to either repeatedly transgress or violate additional legal norms.

One such additional legal norm which often determined the severity of the punishment was the concept of *Hausfriede*. *Hausfriede*, or the peace of someone's house, was sacred in early modern Germany, and any violation of it was taken seriously by both magistrates and burghers. *Hausfriede* is enshrined in the *Stadtrecht* which devoted a section to it.[45]

If a person wanted to initiate or pursue a grudge with an adversary who was in the safety of their own house, there was a clear ritual as to how the conflict should proceed. First, the challenger would appear outside his adversary's house, and unleash a series of insults and challenges, culminating in challenging or calling an adversary out of their house (*Herausfordern aus dem Haus*).[46] There were a multitude of ways in which the adversary

[44] His *Urfehde* did not include corporal punishment. SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.
[45] Subsections 1 to 3 of section 28 (*Heimsuchung*) of the Freiberg *Stadtrecht* elucidate the legal sanctity of the house. See Ermisch, *Urkundenbuch*, vol. 3, 97-8.
[46] In recent years, *Herausfordern aus dem Haus* has been the subject of renewed historical interest, but no study has examined it in great depth. Instead, most make reference to it in passing. See for example, Joachim Eibach, "The containment of violence in Central European cities, 1500-1800," in *Crime, Law and Popular Culture in Europe, 1500-1900*, ed. Richard McMahon (Cullompton, Devon: Willan, 2008), 59-61; Burghartz, *Leib*, 133; Schwerhoff, *Köln im Kreuzverhör*, 267-8; Schwerhoff, "Early Modern Violence,"; and Henselmeyer,

could respond: he could come out and fight; he could seek help from his neighbours; he could try to get word to the court and ask for its assistance. To not answer the challenge was dishonouring. Throughout this process, everything took place *outside* the house. At no point was the challenger permitted to enter his adversary's house; to do so would violate *Hausfriede*. At most, he could plunge a knife into the adversary's door or break a window. The adversary's response also took place outside the house - indoors remained sacred.

Merely breaking someone's *Hausfriede*, as Hans Zacke did, could trigger a strong punishment: Zacke was banished from Freiberg for four years.[47] But if *Hausfriede* was broken, and the owner of the house assaulted, the punishment rose steeply. In 1572, Mathias Kramer did just this, breaking Martin Trauzelt's *Hausfriede*, and then fighting with him. For this, Kramer was permanently banished from Freiberg and the Electorate of Saxony.[48] Kramer got off lightly: the *Stadtrecht* permitted execution for breaking *Hausfriede*.[49]

Besides *Hausfriede*, social capital figured prominently in the meting out of punishments. Those without it – outsiders, vagrants, nomads, ne'er-do-wells – were more apt to be harshly punished. Banishment, corporal punishment, or in extreme cases, the death penalty, was their fate. In a case from March 1542, three transient miners broke Cuntz Steiger's *Hausfriede* in the night, and assaulted Steiger and a neighbour. In their *Urfehde*, the court noted that the three could have been beheaded but on account of a supplication (*Fürbitte*) from the Miners' Brotherhood (*die Knappschaft*), they were only banished from Freiberg for six years.[50] One of the miners, Hans Peseler, did not stay away. One year later, he found himself back before the court for having assaulted someone else. This time the

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Ratsherren und andere Delinquenten, 82-3. Although older, the two most thorough examinations of the practice remain Karl-Sigismund Kramer, "Das Herausfordern aus dem Haus: Lebensbild eines Rechtsbrauches," *Bayerisches Jahrbuch für Volkskunde* (1956), 121-38; and Hermann Heidrich, "Grenzübergänge: Das Haus und die Volkskultur in der frühen Neuzeit," in *Kultur der einfachen Leute*, ed. Richard van Dülmen (Munich: Beck, 1983), 17-41.

[47] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.

[48] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fols 91v and 92r.

[49] See section 28.14 in Ermisch, *Urkundenbuch*, vol. 3, 104.

[50] Miners: Lorentz Liebekindt, Nickel Lindener and Hans Peseler. SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.

court was not so lenient, and nor did the Miners' Brotherhood come to his aid. For having broken the terms of his *Urfehde* and assaulted a second person, Peseler was beheaded.[51] Still, Peseler's case represents something of an exception. Most assailants, even transient miners like Peseler, were fined or ordered to reach a contractual settlement rather than beheaded, banished, or whipped.

Established community members were not formally exempt from banishment or beheading, but typically they had to transgress social and/or legal norms repeatedly to trigger such penalties. Fabian Seiffart, for many years the town shepherd, could not stay out of trouble. After an unspecified altercation, he was released from the town jail on 22 May 1556 with the support of two *Bürgen*, and promised to behave peacefully towards the court.[52] Nine months later, he was again in jail for having disturbed the peace. This time, no one came forth as a *Bürge* to support him and instead, he swore by *Schuld, Landrecht* and *der höchste Bus* to behave peacefully.[53] Six months later, he was back before the court, again swearing by *Schuld, Landrecht* and *der höchste Bus* to behave peacefully, this time towards an unnamed butcher.[54] On April 4, 1558, he found himself again in jail for yet another altercation.[55] For the next two years, his archival presence is minimal.[56] But on 21 March 1560, he again appeared before the court for having gotten into a brawl and for uttering threatening words.[57] On their own, these offences would have only merited a fine or contractual settlement. But the court had had enough of Seiffart and his cantankerous ways. He was permanently banished from Freiberg.[58]

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[51] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.
[52] StAFB, Stadtprotokoll (1555-1557), I Ba 3b, fol 62r.
[53] StAFB, Stadtprotokoll (1555-1557), I Ba 3b, fols 121r and 121v.
[54] StAFB, Stadtbuch (1557-1558), I Ba 3c, fol 25r.
[55] StAFB, Stadtbuch (1557-1558), I Ba 3c, fols 79r and 80r.
[56] His lack of court appearance may be due to a lack of surviving sources. The council minutes, where his previous trangressions had been recorded, do not survive from 1558 to 1561.
[57] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 2r.
[58] The *Urfehde* appears not to have been completely effective. After being banished, Seiffart retreated to his home village of Lichtenberg, twelve kilometres southeast of Freiberg, but continued to be troublesome. On 12 December 1565, after having again been incarcerated in Freiberg's jail, he swore a third *Urfehde*,

Use of a weapon did not invoke stronger sanctions. Carrying a weapon, typically a dagger, was a central part of male identity in late medieval and early modern Europe, and many artisans would have carried them for work-related reasons. But as state institutions came to fear citizen unrest, carrying weapons was banned in most cities.[59] In Freiberg, the carrying of swords and other weapons was banned by the policing ordinance (*Polizeiordnung*) of 1487.[60] Yet, of the twenty-eight cases in which a sword, axe, dagger, or knife is identified as the weapon employed, no harsher penalties such as banishment were incurred. Weapon-wielding assailants were still made to reach contractual settlements or pay a fine.

Murder

The cases discussed thus far have been ones in which the victim survived and recovered, at least partially, from his injuries. But what happened if the victim died and the assault became manslaughter or murder?[61]

If it appeared that an assault was likely to be lethal, the first step was for the victim's family or neighbours to raise the hue and cry (*Zetergeschrei*).[62] In its original medieval guise, the *Zetergeschrei* was a cry for help, made by someone who was in danger, or immediately after a crime had been committed. The purpose was to summon neighbours, bystanders, or the town judge for assistance and to catch the culprit in the act. If the culprit

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acknowledging that he had violated the terms of his first two *Urfehden* and was re-banished from Freiberg. For the third *Urfehde*, see SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 36r. No record of the second *Urfehde* survives.

[59] The effectiveness and success of these measures appears questionable. See Joachim Eibach, "Institutionalisierte Gewalt im urbanen Raum: 'Stadtfrieden' in Deutschland und der Schweiz zwischen bürgerlicher und obrigkeitlicher Regelung (15.-18. Jahrhundert)," *Gewalt in der frühen Neuzeit*, ed. Claudia Ulbrich (Berlin: Duncker & Humblot, 2005), 197-9.

[60] The *Polizeiordnung* can be found in Ermisch, *Urkundenbuch*, vol. 3, 471.

[61] In Germanic law, there was a fundamental difference between manslaughter and murder. Manslaughter (*Totschlag*) was an unplanned act, committed without intended malice by the perpetrator. Murder (*Mord*) was a planned act, committed with malice, and thus incurred harsher punishments. See Schwerhoff, *Köln im Kreuzverhör*, 275.

[62] *Zetergeschrei* is the Saxon word; *Gerüfte* is the standard German. On the origins of the *Zetergeschrei*, see Blauert, "Sühnen," 172-3.

was caught, the *Zetergeschrei* would be repeated before the court. According to the Freiberg *Stadtrecht*, the *Zetergeschrei* was to be raised at the beginning of an assault or murder trial. The victim (or his representatives) were to repeat three times, "Lord Judge, I cry out about a Heinrich* who wounded and attacked my friend Conrad*."[63]

By the sixteenth century, the *Zetergeschrei* was used exclusively in murder cases. The aims of raising it were dual: to publicise a murder, and, if possible, to identify, and catch, the offender while he was still at or near the scene. Apprehending the culprit immediately after the crime was an important objective. In Cologne, it was frequently impossible to identify the murderer if he or she fled before they could be apprehended.[64]

Once raised, the judge, the bailiff and *Gerichtsschöffen* would go to the scene, examine the corpse, and note the wounds incurred. For example, in 1543, as he was walking back to his home in the neighbouring village of Brand-Erbisdorf, Donat Leffeler was assaulted in a field outside Freiberg. His attackers left him in the field and during the night, he died. The next morning his body was discovered by a group of miners on their way to work and transported back to Brand-Erbisdorf. Three *Gerichtsschöffen* went to Brand-Erbisdorf, investigated the body, and noted the fatal wounds to Leffeler's chest, and additional wounds to his left hand. From questioning village residents, they were able to discern the likely culprits.[65]

Besides inspecting the corpse, it was standard practice for the bailiff to take a body part from the deceased (*Lebenszeichen*), typically, a finger or hand, as proof that the person had indeed died. Only then could the body be buried.[66] This practice was long lasting: as late as 1574, when Michael Cuntz, an apprentice tailor from Brand was killed, one of his

[63] Heinrich and Cunrat were generic names used by the Freiberg *Stadtrecht*. See section 27.11 (*Cetar (Czether) ubir einen Heinrich der minen vrunt Cunrat* used *gewunt unde gewatschart hat*) in Ermisch, *Urkundenbuch*, vol. 3, 91.
[64] Schwerhoff, *Köln im Kreuzverhör*, 277-8.
[65] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.
[66] This relates back to section 27.1 of the Freiberg *Stadtrecht* which required the observation and documentation of each wound by the court.

hands was taken as a *Lebenszeichen*.[67] Alternatively, instead of summoning the *Gerichtsschöffe* to the deceased, the corpse could be brought to court on the *Obermarkt* in front of the *Rathaus*. This is what Heinrich Eyfflender's family did after he was murdered by Hans Ramm in 1541.[68] Such a practice was unusual and definitely outdated by the sixteenth century.

After a murder, Saxon and Freiberg law gave the deceased's family two options. One was to launch a criminal (*peinlich*) action, the other a civil (*bürgerlich*) action.[69] If they chose the criminal path, the accused would be tried, and if found guilty, executed. Alternatively, if they pursued a civil case, a contractual settlement with remuneration (*Wergeld*) for the deceased's family was the standard outcome. However, practice was not so straightforward. In his gloss on the *Sachsenspiegel*, Johann von Buch provided for a "mixed" (*gemischt*) action, where the trial could begin as a criminal case, but could be converted to a civil case if a settlement could be reached.[70] The result was that many cases started out as criminal trials as a strategy to coerce the accused to accept a contractual settlement. Facing a choice between their potential execution and a contractual settlement, many of the accused chose, not surprisingly, to settle.

In the sixteenth century, the Saxon electors repeatedly tried to stem the tide of murder trials being converted from criminal to civil proceedings, by making the heirs of the deceased pay a fee for changing the type of case, and from 1555, requiring Electoral approval as well.[71]

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[67] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fols 117v.
[68] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.
[69] The *Sachsenspiegel* did not differentiate between criminal and civil proceedings. This distinction was made by Johann von Buch in his influential gloss on the *Sachsenspiegel* in the fourteenth century. Heiner Lück, "Beginn, Verlauf und Ergebnisse des 'Strafverfahrens' im Gebiet des sächsischen Rechts (13.-16. Jahrhundert)," in *Sachsen und Anhalt. Jb. d. Historischen Kommission für Sachsen-Anhalt* 21 (1998), 134-5.
[70] Lück, "Beginn," 135-8.
[71] Lück, "Beginn," 143-4. The first step in this process took place in 1465 when Dietrichs von Schönberg, then bishop of Meissen, refused to ratify a *Sühnevetrag* for two of his subjects, and instead ordered them to get a legal decision from Magdeburg. Citing a passage from the *Sachsenspiegel* and part of Johann von Buch's gloss, the decision was clear: no contract would be allowed, and corporal punishment was to be enforced. On its own this case did not bring about a sea change in Saxony, but it did mark the turning of the tide. See Heiner Lück, "Ein Magdeburger Schöffenspruch für den Bischof von Meißen und das 'peinliche Strafrecht' im

In spite of these attempts, contractual settlements (*Sühneveträge*) remained the standard procedure in Saxon jurisprudence for murder cases through the sixteenth century.[72]

As murderers waited to learn their fate, many chose to flee to escape the court's jurisdiction and thus negotiate from a potentially stronger position. After killing Martin Jäckel on 22 August 1556, Pavel Knoblauch fled from Freiberg to his hometown of Schneeberg where he remained for the next nine years.[73] In March 1565, he was granted safe passage to Freiberg. There he reached a settlement with Martin Jäckel's father, Wolff, and the Freiberg council.[74] The contract is unusual in that it required Knoblauch to pledge his house and hearth in Schneeberg as well as name two *Bürgen*, both from Schneeberg, who would guarantee that Knoblauch would fulfill his end of the contract.[75]

As with assault contracts, few of the murder contracts survive today.[76] The few that do indicate the financial compensation for murder cases was significantly higher than that in assault cases. Knoblauch had to pay Jäckel's family twenty-eight gulden and twelve groschen, and twenty gulden to the court as a fine. In 1549, after he had killed Christoff

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frühneuzeitlichen Kursachsen," in *Landesgeschichte als Herausforderung und Programm*, ed. Uwe John and Josef Matzerath (Stuttgart: Steiner, 1997), 241-257.

[72] Andreas Blauert has even found *Sühneveträge* in the seventeenth century. See Blauert, "Sühnen," 174-5. Gerd Schwerhoff relates the story of the Saxon jurist, Heinrich Rauchdorn, who, writing in 1556, argued that murders committed without planning or anger (*Arglist*) should not result in execution. Schwerhoff, *Köln im Kreuzverhör*, 280-1.

[73] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.. Despite Schneeberg and Freiberg both being under Saxon jurisdiction, it does not appear that the Schneeberg authorities tried to evict or return Knoblauch to Freiberg.

[74] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 65r.

[75] Whether Knoblauch had no one willing to act as a *Bürge* for him in Freiberg, or whether in his case, the court placed a higher value on *Bürgen* from Schneeberg, is unclear. Regardless, Knoblauch was made to name two non-Freiberg *Bürgen*. As with footnote 102 in chapter 3, the court occasionally granted exceptions to the requirement that a Bürge possess property in Freiberg.

[76] In an examination of the Saxon State Archive in Dresden, Heiner Lück found approximately eighty for the entire Electorate of Saxony. See Heiner Lück, "Sühne und Strafgerichtsbarkeit im Kursachsen des 15. und 16. Jahrhunderts," in Hans Schlosser, ed., *Neue Wege strafrechtsgeschichtlicher Forschung* (Cologne: Böhlau, 1999), 86. One of the best documented cases was the murder of Abraham von Hartitzsch by the apprentice tanner Magnus Heide. The Hartitzsch had been a Freiberg patrician family in the fifteenth century but had retired to their rural land holdings in the sixteenth century. See SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fols 50v and 51r; SHStA Dresden, 13749, Alfons von Hartitzsch auf Voigtsdorf gegen den Kürschnergesellen Magnus Heiden wegen Mordes an Abraham von Hartitzsch (1568), Nr. 129; and SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch der Stadt Freiberg (1563-1572), Nr. 680, fol 280r.

Rösch, Hans Hase paid twenty-four gulden to Rösch's brothers, Hans and Georg.[77] Israel Maukisch was required to pay Hans Hederich's heirs fifty gulden.[78] Similarly, after having killed Hans Lobetanz, Wolff von Egra was required to pay fifty gulden to Lobetanz's heirs.[79] These sums were markedly higher than those paid in assault cases, where compensation was not guaranteed.[80] Besides compensating the deceased's family, and the court, murderers could also be made to place a stone cross at the site of the murder, and, before the Reformation, make a pilgrimage to Rome, or pay for masses for the victim.[81]

The city court had a modest financial interest in allowing the system of *Sühneverträge* to continue. While the amounts from the fines paid to the court were a pittance compared to Freiberg's overall revenue, they were nonetheless welcome. Executions, on the other hand, required a significant financial outlay by the court. The difference between expending and receiving money was a secondary reason for continuing to use *Sühneverträge* at such a late date.[82]

The legal processing of assault and murder/manslaughter cases was remarkably similar in Freiberg. As murder was a more serious offence, the financial compensation increased. The paucity of surviving contracts make it impossible to ascertain the frequency with which a contract settlement was reached. But the small number of executions indicates

[77] SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1542-1556), Nr. 681, fol 446r.
[78] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 109v.
[79] SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1542-1556), Nr. 681, fol 401r.
[80] Heiner Lück says the standard sum paid for murder (*Wergeld*) was twenty-two gulden and eighteen groschen (*note: this sum is standardly given* in alte schockgroschen, *for which the amount is twenty-four*) in the sixteenth century. My investigation of contractual settlements in murder cases has not been exhaustive but I have yet to encounter this sum. Lück, "Beginn," 142. Lars Behrisch has found the same sum for Gorlitz. In Gorlitz, this sum equated to the approximate annual wages of a carpenter or bricklayer. See Behrisch, *Städtische Obrigkeit*, 134.
[81] Lück "Sühne und Strafgerichtsbarkeit," 88. Placing a stone cross was part of the Freiberg *Stadtrecht*. See section 27, subsections 15-17 in Ermisch, *Urkundenbuch*, vol. 3, 95-6.
[82] For small Saxon counties (*Ämter*) like Liebenwerda, executions could represent huge expenses. For example, the trial and execution of one witch in 1583, amounted to eight percent of the district's expenses that year. See Lück, "Beginn," 149.

that contractual settlements were the norm.[83] Even with manslaughter and murder, the general system of preventing further escalation and of re-establishing peace between disputants remained at the core of Freiberg's legal culture. Punitive and retributive punishments were relegated to the periphery.

4.4 Enforcement

In a ground-breaking article in the 1980s, the anthropologist Keebet von Benda-Beeckman taught us not to blithely assume that all court verdicts were enforced.[84] Historians have heeded Benda-Beeckman's call and have begun to investigate whether legal decisions were carried out. For assault cases in Freiberg, the question is a central one. In most cases, the exact terminology was that assailants should either pay a fine or come to terms with the court, the surgeon, and the victim. Whether they did so or not is the question.

With fines, there is a problem of record keeping. As with personal or business loans, it was not part of Freiberg's legal culture to chronicle repayment.[85] But there is a basic difference between private loans as compared to municipal fines. Lenders were responsible for registering repayment of loans which they did not always do. In contrast, the court itself was responsible for noting repayment of fines. As Table 4.4 shows, fifty-eight of seventy-three fines (79.5% – a high proportion) were paid.[86] Freiberg thus stands in good stead when compared with other late medieval and early modern Germanic cities. Fifteenth-century Constance had a slightly worse rate of repayment: 219 out of 384 fines (57.0%) were

[83] From 1539 to 1578, I have found only four executions (three of which were for murder) in the *Urfehdebücher*. It is likely that there other executions recorded in different registers, but the fact remains, execution was not commonly administered in Freiberg.
[84] Keebet von Benda-Beeckman, "The Social Significance of Minangkabau State Court Decisions," *The Journal of Legal Pluralism and Unofficial Law* 23 (1985),1-68.
[85] See chapter five.
[86] When a fine was recorded as paid, typically the sum was crossed out or an "X" drawn over the entry. No date was noted so one cannot calculate the time it took for the fine to be paid. According to the *Stadtrecht*, for breaches of the peace and light injuries, half the fine was supposed to be paid in fourteen days, and the other half eight days subsequent. See section 8.4 in Ermisch, *Urkundenbuch*, vol. 3, 51.

registered as having been paid within two years of having been levied.[87] In Zurich, Susanna Burghartz has also found that the majority of fines were paid on time, although she notes other cities where this was not the case.[88]

Table 4.4 Repayment of Fines

Years	Total Fines* Levied	Recorded as Repaid	No Evidence of Payment
1533	18	8	10
1543	38	29	9
1561	22	19	3
1568	3	2	1
Totals	**73**	**58**	**23**

**The total number of fines in a given year includes cases where the assailant had to pay a fine and reach a contractual settlement, as well as cases where the assailant only had to pay a fine.*

Contracts, however, are harder to pursue through the records. Freiberg had no dedicated, serially-compiled register to record and chronicle them. In 1542, the court introduced a new register for wills, testaments, and contracts (*Erbsonderungs-, Vertrags- und Testamentsbuch*).[89] The majority of these cases deal with estates and inheritance, listing the outstanding debts, credits, and inventories of the deceased. Occasionally, tucked in amongst these entries, are contractual settlements for assault cases.[90] The registers for wills, testaments and contracts were not the only place where contracts could be recorded. The *Urfehde* registers contain occasional contracts for assault. One in 1558, when Jacob Simon cut off two of Nickel Schlesinger's fingers, records that Simon agreed to pay Schlesinger fifteen gulden.[91]

[87] Schuster, *Stadt vor Gericht*, 234.
[88] Burghartz, *Leib*, 88-90. One of the things that makes this type of research difficult is that early modern judicial penalties could often be changed from one form of punishment to another. Peter Schuster and Helga Schnabel-Schüle have both found numerous examples of short jail sentences being converted into fines (and vice-versa). See Schuster, *Stadt vor Gericht*, 160-1, 211; and Helga Schnabel-Schüle, *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems strafrechtlicher Sanktionen im frühneuzeitlichen Württemberg* (Cologne: Böhlau, 1997): 141-2.
[89] Previously, wills and testaments had been recorded in one register, and contracts in another.
[90] For examples of formal assault contracts, see StAFB, Vertragbuch (1541-1557), I Bf 33c, fol 19r; SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1552-1565), Nr. 678, fol 180r; SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1570-1580), Nr. 685, fol 372r; and SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1580-1587), Nr. 679, fol 277r.
[91] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1539-1558), Nr. 421, unfol.

Until 1548, the court maintained a contract register (*Vertragsbuch*) where assault contracts such as the one between Nicol Lantzberg, Hans Salbart, and Kilian Meiner were recorded. The fight happened in Meiner's house, and despite a few bruises, no one was seriously injured. (Lanzberg and Salbart were guests of Meiner, and therefore, this was not a case of *Hausfriedensbruch*.) Lanzberg and Salbart each paid a fine of one gulden and one groschen, and the parties shook hands and agreed that all was forgiven.[92] However, this register received minimal use, and other types of contracts are more prevalent than ones for assaults.

The vast majority of cases did not result in a formal, written contract. On average, there is only one such contract every two years.[93] For most of the entries in the *Bürgschaftsbuch* and the *Gelübdebuch der Real und Verbalinjurien*, there exists no formal follow up. Instead, in many cases, an 'X' was drawn over an entry to indicate a contract had been agreed upon. In a minority of cases, in place of an 'X', the court scribe merely wrote 'is contracted' (*ist vertragen*). As Table 4.5 shows, in most assault cases, disputants agreed to some kind of settlement and informed the court that this had been done. (From the lack of surviving contracts, it appears they rarely informed or registered the exact terms of the settlement with the court.) Where no 'X' was made, it is unclear whether a contract was never agreed upon, or agreed upon not but recorded with the court, or agreed upon but the record no longer survives.

For the small minority of cases in which an assailant was banished, a different path would be followed. Culprits could be banished from just the city of Freiberg, or from the entire Electorate of Saxony. When the banishment only applied to the city, Freiberg was in a better position to enforce it since it could control who entered the city through the five

[92] StAFB, Vertragbuch (1541-1557), I Bf 33c, fol 25v.
[93] For the *Erbsonderungs-, Vertrags- und Testamentsbücher*, from 1543 to 1584, I have found only twenty contractual settlements for assault, a pittance compared to the 155 cases from the sample years alone that were supposed to have ended with a formal contract.

gates.[94] Carl Hoffman has shown for Augsburg that tower guards were given explicit instructions on whom to allow into the city, and whom to exclude, including a list of the banished. The instructions contained a list of questions that all prospective entrants were to answer.[95]

Table 4.5 Follow-Through in Contract Cases

Year	Total Contracts	Contracts Agreed To	No Evidence of Contract
1533	8	3	5
1543	57	35	22
1561	84	68	16
1568	6	3	3
Totals	**155**	**109**	**46**

Even with these strict controls, many were able to slip back into town. Once back, the fate of the banished depended on their friends, family, and neighbours. If they remained silent, the banished might be able to remain in the city and later apply for a pardon.[96] But whereas in large cities, like Cologne, Augsburg and Nuremberg, the banished could slide back into daily life with a degree of anonymity, this would have been much more difficult in a moderate-sized city like Freiberg.

Banishment was a thoroughly public punishment. Both the trial and announcement of the verdict took place on the *Obermarkt*, the square in front of the town hall. As in Cologne, Ulm, and most German cities, banishments in Freiberg were usually accompanied with some form of shaming (often time spent in the *Pranger*, stocks or pillory).[97] Valentin Groebner

[94] On an Electorate-level, given its vast size and complex administrative structure, enforcing banishment must have been even more difficult. Consider the Saxon district (*Amt*) of Delitzsch which contained one city (Delitzch), one "*Städtchen*" (Landberg) and fifty-one villages. The district had judicial responsibility for twenty-two of the villages (an additional ten paid taxes but were not part of the county's legal jurisdiction). The district split jurisdiction of the remaining nineteen villages with local nobles (*Rittergutbesitzern*). In addition, the city of Delitzsch had its own city court. And that was only one of the more than one hundred districts in Saxony. Tracking banishments across so many different counties would have been beyond the administrative capacity of early modern polities. On Delitzch, see Ludwig, *Das Herz der Justitia*, 107-8.
[95] Carl A. Hoffmann, "Der Stadtverweis als Sanktionsmittel in der Reichsstadt Augsburg zu Beginn der Neuzeit," in Hans Schlosser, ed., *Neue Wege strafrechtsgeschichtlicher Forschung* (Cologne: Böhlau, 1999), 218-23.
[96] Ibid., 227-36.
[97] On Cologne, see Schwerhoff, "Vertreibung als Strafe," 59-60; on Ulm, see Coy, *Strangers*, 113-136. Schwerhoff's examples of shaming combined with banishment come from the late-seventeenth century.

documents that even in the late medieval period, lists of the banished were compiled, periodically read out in church, and circulated to neighbouring towns.[98] All this meant that considerable public knowledge existed about banishments.

Information on the banished is exceedingly hard to come by. Many simply vanish from the historical record. The best avenue to pursue whether banishments were carried out is to look at the cases of repeat offenders. On 8 January 1560, Hans Fritzsche swore his first *Urfehde* after having stolen Stollen (*Christbroth*), the traditional Saxon Christmas cake. He was punished with permanent banishment from Freiberg. But less than six months later, on 5 July 1560, Hans swore a second *Urfehde* because, amongst other offences, he had stolen clothing, *and* because he had violated the terms of his first punishment by returning to Freiberg.[99] For this, he was again banished permanently from Freiberg, and threatened with the death penalty should he return.[100] No further record of Hans Fritzsche exists, so one presumes he complied with the new terms. What is significant in this and other cases of repeat offenders, is that merely breaking the terms of the *Urfehde* (their banishment) itself was often not enough to elicit a further penalty. It was only when they committed a further offence (in Fritzsche's case, stealing clothes) that they were brought before the *Stadtgericht* again.

It is not possible to calculate how many of the banished were able to return to Freiberg. Their very status (banished) would have disinclined them from appearing before a legal body and thus from leaving a written record of their return. Certainly, there were some people who were able to slide back into daily life despite their banishment. But it seems unlikely that every person that the court banished could have remained in Freiberg and so

[98] Valentin Groebner, *Who Are You?: Identification, Deception, and Surveillance in Early Modern Europe*, trans. Mark Kyburz and John Peck (New York: Zone Books, 2007), 70-77.
[99] SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch (1559-1578), Nr. 420, fol 9r.
[100] Gerd Schwerhoff has found that threats of a death sentence were often empty rhetoric used by the Cologne city council. It was rare for someone to be executed for breaking the terms of their banishment. Schwerhoff, *Köln im Kreuzverhör*, 152-3. The case of Hans Peseler from earlier in this chapter shows, however, that the rhetoric was not completely empty.

openly taunted the judicial system. On the other hand, the lack of serious punishment for returning means it is not improbable that some did stay and flout their banishment.

The data on enforcement clearly indicates that judicial resolutions were carried out: fines were paid, and contracts agreed to. While violence in Freiberg, both its initiation and its legal processing, shared some similarities with the rest of Europe, there were significant ways in which it differed.

4.5 Comparing Freiberg

The Progression to Violence and Scope of Injuries

In Southern Germany, conflicts often progressed in a ritualistic manner from verbal insults (or other perceived slights), to the drawing of knives, to actual assault with fists or weapons. As the conflict progressed from stage to stage, participants had the option either to escalate or to quit the fight – although the latter risked compromising one's honour.[101] Crucial to this ritualised progression was that participants did not seek to maim or kill their opponent, but rather to uphold or avenge their honour. As a result, serious injuries or death were generally rare, and most conflicts stopped with just mere words or the drawing of knives.[102] Only a minority of clashes proceeded to actual violence. The presence of other citizens, who were legally required to intervene and stop fights from escalating, also served to impede conflicts from turning deadly.

Lars Behrisch's work on Gorlitz paints a different picture. Here significant injuries and death were common outcomes of quarrels. Antagonists did not just seek to defend their

[101] Rainer Walz's article on agonal communication was instrumental in establishing the ritualistic nature of these conflicts. See Walz, "Agonale Kommunikation." Since then our understandings of these conflicts has continued to evolve; a valuable syntheses can be found in Eibach, "Institutionalisierte Gewalt," 189-205. An English approximation of this text can be found in Eibach, "The Containment of Violence," 52-73.
[102] Schuster, *Stadt vor Gericht*, 90-1.

honour: they fought to kill. The head was by far the most frequently targeted part of the body in fights. And whereas victims could survive attacks to their arms, legs, and shoulders, attacks to the head were often fatal.[103]

Freiberg's culture of violence appears to have been more extreme than its southern neighbours, but not as violent as Gorlitz. Compared to the south, there were many more quarrels that ended with open violence rather than just an insult or a rupture of the peace. For example, in 1543, there were eighty-two assaults, compared to thirty-seven cases that stopped short of physical violence. When quarrels turned violent, the head was also the most targeted part of the body. Of the 133 instances in which a part of the body is named, ninety-two included attacks to the head. Whether these attacks were intended to be fatal is debateable. For sixty-three of the ninety-two cases (68.5%), the weapon was the assailant's hands, a beer mug, a pot, or a stone.[104] Although these weapons could still inflict significant bodily harm, none of them were likely to lead to death. In only seven of the attacks to the head was a more fatal weapon, such as an axe, sword, dagger, or knife, used.[105]

While assailants may not have sought to kill or maim, the injuries often required medical attention. When surgeons were summoned, it was incumbent on the assailant to pay the surgeon's fee. Freiberg was not unusual in this practice. In seventeenth- and eighteenth-century France, the aggressor had to pay the surgeon for medical costs.[106] The same was true for Cologne, Constance, Nuremberg, and many other German cities in the fifteenth and sixteenth centuries.[107] There was some discretion, as Peter Schuster points out for Constance, in cases where the victim was considered to have escalated the conflict, in which case the assailant was absolved from having to pay the surgeon. In this sense, the requirement to pay

[103] See Behrisch, *Städtische Obrigkeit*, 132-3.
[104] Stones were thrown rather than used in close combat, mitigating the damage they could do.
[105] In ten of the cases, no weapon is identified, only that the head was the target of the attack. In the other twelve, the records merely use the term hit (*gehauen*) where it is unclear whether assailants used their fists or an actual weapon. The root verb, *hauen*, encompasses both meanings.
[106] Ruff, "Popular Violence," 39.
[107] See Schwerhoff, *Köln im Kreuzverhör*, 291; and Groebner, "Der verletzte Körper," 174.

the medical bills was a clear sign of guilt. Freiberg differs from these other polities in the frequency with which assailants had to cover the medical costs. In Constance from 1430 to 1460, Schuster found only eight such cases.[108] In Freiberg, 100 of the 155 contractual settlements involved compensating the surgeon or apothecaries.[109]

Fines

Freiberg's assessment of fines did not differ greatly from its contemporaries. As in Zurich and Augsburg, most fines were for a few gulden.[110] In Freiberg, twenty-seven of eighty-one fines (33.3%) were for less than one gulden. A further forty-four (54.3%) were for less than four gulden. As discussed in chapter two, most families in Freiberg would have earned a minimum of thirty-five to forty gulden a year. Thus for married Freibergers with a family, an average fine amounted to a week or two's salary.

Table 4.6 Size of Fines (by gulden)

Year	**< 1**	**1 to 4**	**> 5**	**Unknown**
1533	15	3	0	0
1543	12	20	5	1
1561	0	20	2	0
1568	0	1	2	0
Totals	**27**	**44**	**9**	**1**

Valentin Groebner and Peter Schuster have both argued that the economic penalties of early modern Germany created an unfair playing field: those with money were, if not immune, relatively unaffected by these small fines; but for those on the margins, these sums could threaten their subsistence.[111] In Freiberg, the financial consequences do not appear to have been as dire. According to the 1546 tax register, of the 1170 who paid the tax, 860 assessed their personal wealth as fifty gulden or more, and 698 of whom assessed their wealth

[108] Schuster, *Stadt vor Gericht*, 92-3.
[109] Differences in legal and medical practice may have accounted for some of this divergence, but it is another indication that conflicts in Freiberg were more likely to turn violent.
[110] Comparing the sums of fines is obviously inexact because the purchasing power of currency varied between polities.
[111] Groebner, "Der verletzte Körper," 174; and Peter Schuster, *Der Gelobte Frieden: Täter, Opfer und Herrschaft im spätmittelalterlichen Konstanz* (Constance, UVK, 1995).

as 100 gulden or more.[112] These people could have afforded a fine of a few gulden.[113] For dependent workers, the penalties would obviously have been a greater challenge but an apprentice earned (on top of room and board) five to six groschen a week.[114] It may have taken an apprentice a month of work to earn enough to pay a one gulden fine, but pay it he could. None of this negates that the wealthier would have been less affected by court fines, but it does demonstrate that the position of those on the margins may not have been as vulnerable as previously thought.

The low levels of the fines also meant that they were not a major source of revenue for the court or council. In 1561, the fines from assault cases amounted to sixty-seven gulden and six groschen, a small fraction of the council's revenue. The salaries of the scribe, councillors, and *Bürgermeister* alone amounted to over 200 gulden.[115] Sixteen years later, in 1577, the council's revenue totaled 18,521 gulden. In that year, the total fines amounted to 118 gulden.[116] For the Freiberg court and council, judicial fines were not prescribed out of financial self-interest: the sums they brought in were not enough to make a noticeable difference in their finances.[117]

Banishment and Contracts

This system of contractual settlements and *Bürgen* in assault and murder cases contrasts, at times slightly, and at times starkly, with other contemporary German cities. Standing in greatest contrast is fifteenth-century Constance where punches (*Schläge*) were typically punished with a one- to six-month banishment (or time in the tower, depending on

[112] See chapter two.
[113] It is likely that some of this wealth was related to property, and thus not easily realised. However, as chapter five, shows, property was a fluid form of collateral that could be pledged.
[114] On the wages of an apprentice craftsmen, see Walter Schellhas, "Drittes Kapitel: 1470 bis 1658," in *Geschichte der Bergstadt Freiberg*, ed. Hanns-Heinz Kasper and Eberhard Wächtler (Weimar: Böhlau, 1986), 124.
[115] See chapter two.
[116] See Heinrich Gerlach, "Eine Freiberger Stadtrechnung vom Jahre 1577," *MFA* 9 (1872), 828.
[117] Gerd Schwerhoff has found similar results for Cologne. See Schwerhoff, *Köln im Kreuzverhör*, 135-6.

the offender's social status). Inflicting stab wounds led to a one year banishment and one mark fine.[118] Banishment was also common in sixteenth-century Ulm. Assailants were initially given a small fine and short jail sentence, and if they continued to fight, they were banished. In the second half of the sixteenth century alone, fifty-six people were banished for brawling.[119] Closer to Freiberg's practice were late medieval Zurich and sixteenth-century Augsburg where assaults/fights (*Frevel*) incurred fines of two marks and two gulden, respectively.[120] In Augsburg, the fine was doubled if blood was drawn.[121]

Similar and more stringent penalties existed for murder. In fifteenth-century Constance, murderers were typically banished for a year and given a substantial twenty mark fine.[122] In fourteenth- and fifteenth-century Zurich, honourable murder was punished with a ten mark fine, and dishonourable murder with a twenty mark fine. Beyond fines and banishment, lurked execution.[123] In sixteenth-century Augsburg, life-time banishment was the common sentence for manslaughter.[124] In sixteenth-century Cologne, besides executions, there were *Sühneverträge*, but these were rarely registered with the city court.[125] In Gorlitz, the first execution for murder was in 1530. Over the next forty years, a mixture of one-year banishments and contractual settlements existed alongside executions.[126]

While fines, banishment, and executions may have been the punishments of choice in those cities, Freiberg was not alone in its use of contractual settlements. In Cologne and many parts of France, contractual settlements were common. Unlike Freiberg, most of these contracts occurred infra-judicially. In France, this was because of the high costs of going to

[118] Schuster, *Stadt vor Gericht*, 87, 237.
[119] Coy, *Strangers*, 90-1.
[120] Burghartz, *Leib*, 88.
[121] B. Ann Tlusty, "Violence and Urban Identity in Early Modern Augsburg: Communication Strategies between Authorities and Citizens in the Adjudication of Fights," in *Cultures of Communication from Reformation to Enlightenment: Constructing Publics in the Early Modern German Lands*, ed. James Van Horn Melton (Aldershot: Ashgate, 2002), 13.
[122] Schuster, *Stadt vor Gericht*, 88.
[123] Pohl, "'Ehrlicher Totschlag."
[124] Tlusty, "Violence," 11.
[125] Schwerhoff, *Köln im Kreuzverhör*, 277-82.
[126] Behrisch, *Städtische Obrigkeit*, 157-61.

court and the uncertainty of what a criminal trial could bring.[127] In sixteenth-century Cologne, the court was content to let disputants reach their own settlements in assault cases.[128] In rare circumstances assailants in Cologne and Constance could be made to pay *Kostgeld* (compensation for victims too injured to work).[129] In Freiberg, this was not common, nor was it rare. Of the ninety-five assaults in 1561, five had this form of compensation.

Lars Behrisch assumes a similar system of infra-judicial settlements existed in Gorlitz, since there are no extant records of assault cases from the sixteenth century.[130] Behrisch does not express an opinion as to whether *Bürgen* were part of these settlements or not. If the cases remained entirely infra-judicial, as he hypothesises, then the importance of *Bürgen* was likely minimal since it was the legal stipulations, namely the pledging of one's house, that served to empower *Bürgen*. Considering that both Freiberg and Gorlitz practised forms of Saxon law, it is surprising that the cities diverged in this manner (one with *Bürgen* and court-ratified contracts; the other without *Bürgen* and extra-legal settlements), and indicative that Saxon law was not uniformly understood or administered.

The city closest to Freiberg in the judicial administering of brawls was late fifteenth-century Nuremberg. Here there was a near identical system of ***court-registered*** contractual settlements, often supported by *Bürgen*. How prevalent this system was is difficult to establish as the registers for punishments and judicial decisions (*Straf-* and *Urteilsbücher*) for this period are no longer extant. In spite of this, Valentin Groebner argues that contractual settlements were the prevailing practice in Nuremberg. Groebner does not discuss *Bürgen*'s

[127] See Stuart Carroll, "The Peace in the Feud in Sixteenth- and Seventeenth-Century France," *Past and Present* no. 178 (2003), 74-115.
[128] Schwerhoff, *Köln im Kreuzverhör*, 288-91.
[129] See Schuster, *Stadt vor Gericht*, 94; and Schwerhoff, *Köln im Kreuzverhör*, 132.
[130] Behrisch, *Städtische Obrigkeit*, 163-4.

role in the proceedings beyond noting that they were there to ensure payment. Whether they were also responsible for maintaining the peace, as they were in Freiberg, is not clear.[131]

Freiberg's practice of contractual settlements and *Bürgen* was therefore not entirely singular. Contractual settlements were certainly a common resolution to fights in late medieval and early modern Europe. What was distinct about Freiberg (and Nuremberg) was that the contracts were registered with and formally approved by the court, whereas in most other polities, contracts were an infra-judicial matter. But Freiberg went further than Nuremberg in this practice. Whereas in Nuremberg, city law forbade contractual settlements, and the contracts appear to have been agreed to at the behest of the disputants, in Freiberg, municipal law permitted contractual settlements, and the court *ordered* disputants to contract with another.

There is an important caveat. Groebner's study on Nuremberg focuses on the late-fifteenth century, as compared to my work on mid-sixteenth century Freiberg. While the temporal gap between the two may seem minor, it was long enough to encompass a climactic major shift in law and procedure that culminated with the promulgation of the Carolina in 1532. Saxony rejected the Carolina and it was not until 1572 that it implemented its own reformed legal code, the Saxon Constitution.[132] The later reception of a reformed-Roman law inspired legal code was without doubt important in allowing Freiberg to continue its customary legal practice of contracts and *Bürgschaft*. As the world around it changed, Freiberg retained its old legal practices.

[131] Groebner, "Der verletzte Körper," 169-74.
[132] On the reception of Roman Law in Saxony, see Heiner Lück, "Zur Entstehung des peinlichen Strafrechts in Kursachsen. Genesis und Alternativen," in *Justiz = Justice = Justicia?*, ed. Harriet Rudolph and Helga Schnabel-Schüle (Trier: Kliomedia, 2003), 271-86.

4.6 Legal Culture of Violence

Having looked at the manifold ways – contractual settlements, fines, *Bürgen*, banishment – in which assault cases could be handled, the focus now shifts to the legal culture of this practice. What effects did the practice have on each of the involved parties: the victim, the aggressor, the court, and the *Bürge*? In doing so, we must remember that interpersonal violence was a thoroughly normal part of daily life in early modern Europe. As long as the rules of the fight were followed, assailants were not socially stigmatised or isolated.

The *Bürge*

Generally, being a *Bürge* in an assault case would not have been fundamentally different from being a *Bürge* in the types of cases discussed in chapter three. However, in assault cases, one additional factor that *Bürgen* had to take into account was the extended duration of their liability. When a formal contract was agreed to, it was standard that each side would have two or three helpers (*Beistände*) or people on their side (*auf seine/ihre Seite*). The helper's role was dual. First, they helped to negotiate the contract, acting as intermediaries between the feuding parties. Second, once the contract was agreed upon, they helped to ensure that its terms would be adhered to.

Many of the formal contracts cannot be traced back to the original *Bürgschaft* entry as they date from a time when the city did not maintain a *Bürgschaft* register. In the few cases it is possible to link the formal contract with the original *Bürgschaft* entry, the *Bürgen* typically were also the helpers for the assailant. In 1543, after brawling with, and then attacking Ilgen Burckhart with a stone, Andreas Lehnmann named Franz Fritzsche and Simon Wolckenstein

as his *Bürgen*.[133] Two years later when the formal contract was ratified with the court, Fritzsche and Wolckenstein served as Lehmann's intermediaries.[134]

For *Bürgen*, this meant an extension to their liability as a guarantor. They were not just charged with ensuring that peace was maintained and a contract agreed to, as helpers in a contract, it was incumbent on them to see that the terms of a contract were upheld. In this manner, their liability did not end with ratification of the contract, but rather continued after it, further prolonging the risk attached to being a *Bürge*.

Yet Freibergers did not hesitate to act as *Bürgen* in assault cases: in no other type of case were *Bürge* employed as frequently as they were in assault cases. Why? As with *Bürgschaft* generally, prestige played a role. The ability to successfully negotiate a contract could increase one's honour while failure to negotiate a successful contract could reflect negatively. *Bürgen* were consequently inclined to ensure the settlement was effected and maintained. It was yet another way in which social bonds were used to ensure that legal resolutions were upheld.

The Court

In processing assault and murder cases, the aims of the city court in Freiberg were clear: stop conflicts from escalating further, and reconcile the participants. The Freiberg *Stadtrecht*'s provision that all wounds be reported to the court ensured that the court became aware of violent conflicts and could respond accordingly.[135] If the court doubted a victim's willingness to pursue legal action, it sometimes made the ***victim*** name *Bürgen* who

[133] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 184v.
[134] SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1542-1556), Nr. 681, fol 389r.
[135] Similar regulations existed in other German cities. Since the end of the fifteenth century, Gorlitz required all serious injuries to be reported to the council, and from 1475 in Nuremberg, doctors and surgeons were required to report all serious injuries they had treated to the council. On Gorlitz, see Behrisch, *Städtische Obrigkeit*, 155-6; on Nuremberg, see Groebner, "Der verletzte Körper," 169.

guaranteed that the victim pursued the case in court. For example, after Christoff Steffan broke Marx Kneufel's nose with a *Ziegelhammer*, the court made Kneufel, the victim, name a *Bürge* to assure he would pursue the case in court.[136] Such a manoeuvre prevented further escalation as victims could not retaliate without endangering their *Bürgen's* property.

Once a case reached the court, the principal manner in which it was handled was the contractual settlement. The court, and where necessary, the victim and the surgeon, were compensated for their damages and work, and the parties/disputants (theoretically) reconciled. What makes Freiberg unique in this regard is that the contracts were permitted by municipal law, and registered and recorded by the court. In other polities, these type of contracts slide to the background and typically become part of the infra-judicial realm in the sixteenth century. In Freiberg, the opposite is true. The court not only approved and registered the contracts, they also ordered disputants to agree upon them.

This is not to suggest that banishment or corporal punishment were never imposed in assault cases but rather that they were the exception. Violence was rarely punished, and when it was, it was usually because some other norm, such as *Hausfriede*, had been transgressed. Nowhere in the legal practice of the court is there evidence that it tried to root out violence from happening by harshly punishing it.[137]

That violence was not harshly prosecuted and financial settlements were the norm does not signal an approbation of or desire by the court to profit from violence. The financial windfall from fines and contracts was not enough to make a significant impact on the council's revenue and expenses. Instead, this practice of contractual settlements indicates that the court accepted violence as a part of everyday life. It was still a rupture of social and legal norms, and one that could not be left to fester without judicial involvement.

[136] Kneufel did follow through and a couple of days later, Christoff Steffan named a *Bürge* and swore that he would come to terms with Kneufel, the surgeon, and the court. See SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 3r.

[137] The question of whether harsh punishments are an effective psychological deterrent is an entirely separate matter.

Lastly, the consistent manner in which the court handled assault and murder cases would have created a culture in which disputants knew what to expect when they sought a legal resolution. The unpredictability that characterises the verdicts of other contemporary courts in Europe, and thus deterred many from turning to the law, is not something one sees in Freiberg. Instead, the court's consistency in its application of contractual settlements and refrain from corporal or capital punishment invited the business of its citizens.

Victims

Victims of assault, or the kin of the deceased, had a range of options open to them as they set about trying to deal with the damage done to their bodies, honour, and legal standing. At their disposal were both judicial and infra-judicial options. Of the latter, the simplest, physical retaliation at a later date, would have righted the wrong, but brought a separate set of legal problems. If other burghers had intervened to stop the fight and *Bürgen* had been named, then a victim attacking an assailant would have been a breach of the restored peace. As historians have long noted, one of the central aspects of the legal change from the medieval to early modern period was the juridification of the feud.[138] Vendettas and other extra-legal conflicts were increasingly harshly punished. All of this made physical retaliation a difficult or dangerous course to pursue.

Another option would have been to attempt to work out an infra-judical settlement with their adversary. In other polities, particularly France, many assaults never reached a court of law because of the high costs of going to court, the unpredictability of the legal system, and the harsh penalties one could incur. Instead, many cases were initiated in the French courts as a bargaining gambit to induce an adversary to settle.[139] If neither party

[138] Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca, N.Y.: Cornell University Press, 2003).
[139] See Carroll, "The Peace," and Ruff, "Popular Violence," 32-51.

pursued the case further, the court was content to let the matter drop.[140] Such an approach seems unlikely in Freiberg. Harsh punishments were rare and the judicial response was generally predictable.

The standard manner (to name *Bürgen* and contract with the court, surgeon, and victim) in which the city court processed assaults would have made it an appealing forum for victims to turn to. The court offered a means of securing financial compensation for one's damages (either physical or legal). Here, the seriousness of a victim's injuries played a deciding role. Where the injuries were significant enough to merit summoning a surgeon or prevented the victim from working, the victim could assume that the court would make the assailant cover the surgeon's fees, and possibly pay the victim a weekly sum for the period they could not work. In these cases, victims would naturally have had a strong financial motivation to pursue a legal remedy through the court.

As Andreas Blauert points out, financial compensation could not be the sole reason for seeking a legal resolution, since it was not guaranteed.[141] Instead, two other factors made the city court a likely site for the processing of violent conflicts. First, since the court's location and proceedings were public, it offered a public forum for victims to have their honour restored. Second, in the vast majority of cases, the assailant had to name *Bürgen* who provided the victim with surety that the truce would be upheld and that they would have nothing to fear from their assailant in the future. Freiberg was a small enough community, even if a slightly nomadic one, for there to be a strong chance that victims and assailants would continue to encounter each other. While it may have taken several weeks for tensions to cool, eventually assailant and victim were going to have to bury the hatchet. *Bürgen* helped it to stay buried.

[140] The classic German text on using courts as bargaining gambits is Martin Dinges, "Justiznutzungen als soziale Kontrolle in der Frühen Neuzeit," in *Kriminalitätsgeschichte: Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, ed. Andreas Blauert and Gerd Schwerhoff (Constance: UVK, 2000), 503-544.
[141] Blauert, "Sühnen," 172.

This is not to suggest that all fights, brawls, and assaults were legally processed before a court. No doubt there were many fights whose participants never appeared before a court. In Freiberg, these types of cases rarely left a paper trail for the historian, making it difficult to gauge their frequency or significance.

Assailants

For assailants, the question is not so much why process a case in front of the city court, but rather how to best respond either before or after the victim launched the action. There existed little reason for an assailant to try to keep an altercation in the infra-judicial realm. The standard resolution of naming *Bürgen* and contracting with the court, surgeon, and victim was not particularly onerous, provided one had the necessary social capital for *Bürgschaft*, and financial capital to compensate the respective parties.

This legal resolution, moreover, did not serve as a blot on one's escutcheon. Indeed, the archives are rife with examples of men who got into fights and brawls, and then went on to assume leadership positions in Freiberg. Melchior Bachmann assaulted someone in 1533, but went on to become a *Gerichtsschöffe* twenty years later in 1554.[142] Three years after becoming a citizen in 1540, Brosius Forchheim stabbed Hans Krumpoltz in the back; twenty years later, by fine irony, Forchheim became the head of the sword-makers' (*Langmesser*) guild in 1563.[143] There was not always a such lengthy gap between brawl and leadership position. In 1561, one year after becoming a citizen, Bastian Schneider hit Simon

[142] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 29v. On his time as a *Gerichtsschöffe*, see *Das Freiberger Bürgerbuch*, 159.
[143] SHStA Dresden, 13749, Bürgschaftsbuch der Stadt Freiberg (1533-1545), Nr. 425, fol 187v. On his citizenship and guild leadership, see Konrad Knebel, "Die Gewerken der Schmiedehandwerke, besonders der Waffenzünfte Freibergs," *MFA* 44 (1908), 102.

Schneider's daughter on the market square. Three years later, he became head of hat-makers guild, a position he held until 1576.[144]

The other advantage of a court settlement was that it marked a formal end to the conflict. For assailants, this could be a way of safeguarding themselves from future retaliation by their victims. Legally, the penalties for those who broke the terms of a contract were high for victims and assailants alike. While legal resolutions may not have stopped victims and assailants from continuing quarrels in fifteenth-century Zurich, rare is the instance in Freiberg of conflicts persisting after *Bürgen* were named.[145] If they did persist, it happened at a level below the gaze of the historian. Therefore, for most Freibergers, judicial settlements to assault cases were not something to fear, but rather to embrace.

The one obvious exception to this were those without the necessary social and financial capital to name *Bürgen* and pay the compensation. Instead, they faced the more punitive measures of the judiciary: banishment and corporal or capital punishment. Amongst this group, some may have desired to reach an infra-judicial settlement. But their marginal social and economic status would have limited what they had to offer their victims in exchange for bypassing the courts.

The financial aspects of these settlements should not be forgotten. While the sums were generally moderate, they still represented an expenditure in an age where sustenance was a struggle for many. Sustenance and finance are a natural segueway to the theme of the next chapter: borrowing and lending. Here, we leave the criminal world of violence, and move to civil jurisprudence to probe a different dimension of Freiberg's legal culture.

[144] SHStA Dresden, 13749, Gelübdebuch: Real und Verbalinjurien (1561-1587), Nr. 385, fol 15r. On his citizenship and guild leadership, see *Das Freiberger Bürgerbuch*, 167.
[145] See Susanne Pohl, "Uneasy Peace: The Practice of the *Stallung* Ritual in Zürich, 1400-1525," *Journal of Early Modern History* 7 (May 2003), 44-53.

5. Borrowing and Lending

5.1 Debts and Loans

In sixteenth-century Freiberg, loans were registered with the city court, a practice conspicuously different from most other European polities where they were more commonly recorded by private notaries.[1] Freiberg was not completely alone in this practice since in Ulm and some of the neighbouring Bohemian mining towns, loans were also recorded by the council.[2] To date such documents have received little attention from historians, and as a result, our understanding of urban authorities is more partial than it need be. The councils of early modern German towns are typically characterised as having filled a dual role in internal governance: first, judicial authority, maintaining order and disciplining illicit behaviour; and second, civic administrator, regulating housing practices, disposal of waste, the weight of bread, and so forth. In recording debts, the city court started to fill a third role: that of record-keeper and financial mediator.

In Freiberg, the court's practice of recording loans dates back to at least the thirteenth or fourteenth century. However, these early cases tended to be business transactions between foreign merchants and Freibergers.[3] As the practice progressed, personal loans came to be

[1] On the use of notaries in recording debts in France, see Julie Hardwick, *The Practice of Patriarchy* (University Park, PA.: Pennsylvania State University Press, 1998), 34-41, 181-93; Bernard Schnapper, *Les Rentes au XVIe siècle: histoire d'un instrument de crédit* (Paris: S.E.V.P.E.N., 1957.). For England, see Craig Muldrew, *The Economy of Obligation: the Culture of Credit and Social Relations in Early Modern England* (Houndmills, Basingstoke: Macmillan, 1998).

[2] For Ulm, see Schuldgelübdebücher 1486 – 1495, 1520 – 1521, 1541 (A 3957 – A 3961). (http://www.onlinekatalog-stadtarchiv.ulm.de/A.l.html). I thank Sebastian Frenzel for this reference. For transcriptions from the Bohemian city of Česká Lípa, see Ivana Ebelová, ed., *Pamětní kniha města České Lípy 1461-1722* (Ústí nad Labem: Univerzita Jana Evangelisty Purkyně, 2005), 133-5. Other German cities did not have similar registers. In her study of private credit in Hannover, Beate Sturm notes the council maintained a register of who owed it money, and to whom it owed. It was not until the late seventeenth century that the council started to record loans among Hanoverians. See Beate Sturm, *'Wat ich schuldich war' Privatkredit im frühneuzeitlichen Hannover,1550–1750* (Stuttgart: Steiner, 2009), 165-77.

[3] See Manfred Unger, *Stadtgemeinde und Bergwesen Freibergs im Mittelalter* (Weimar: Böhlau, 1963), 86. The *Stadtrecht* provides protection for merchants (section 12), but has no section on loans. See Hubert Ermisch, ed., *Urkundenbuch der Stadt Freiberg in Sachsen*, vol. 3, (Leipzig: Giesecke & Devrient, 1886), 55-60.

recorded side-by-side with business transactions, and in the sixteenth century, the loans include both personal and business transactions.

In addition to commercial and personal loans, the court recorded the purchase and sale of houses. Prior to 1519, the court had maintained a general register (*Stadtbuch*) to record all manner of business.[4] In 1519, the growing numbers of financial transactions led the court to devote a new register, a *Gelübdebuch* (literally, vow book), solely to them. The first register is a motley: personal loans, business loans, wills/testaments, purchases of gardens and butcher stalls, and above all else, purchases of houses.[5]

Over the next five years, the court apparently realized that using one register to record all financial transactions was insufficient. Individual registers (*Kaufbücher*) were created to record the purchase and sale of houses within each city quarter, and a new *Gelübdebuch* was started to record loans.[6] Two things signify that the new *Gelübdebuch* was the beginning of a new internal categorisation by the courts. First, unlike the previous register from 1519-1523, the new register was bound, rather than being a collection of loose folios. Second, contemporary scribes referred to it as *Gelübdebuch* A; the previous *Gelübdebuch* carried no letter.[7] In the initial years, there was still some uncertainty as to exactly what was to be recorded. The majority were loans, but there are *Urfehden* and financial settlements for

[4] For three examples, see SHStA Dresden, 12613, Gerichtsbuch der Stadt Freiberg (Hans Ludolfs Richters Buch) (1493-1501), Nr. 583a; SHStA Dresden, 12613, Gerichtsbuch der Stadt Freiberg (1501-1507), Nr. 582; and SHStA Dresden, 12613, Gerichtsbuch der Stadt Freiberg, genannt das dicke gelbe Gerichtsbuch (1507-1515), Nr 585.
[5] See SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1519-1523), Nr 378.
[6] See SHStA Dresden, 12613, Kaufbuch Nr 1 von St Jacobi in Freiberg (1521-1617), Nr. 086; SHStA Dresden, 12613, Kaufbuch Nr 1 von St Virginis in Freiberg (1523-1584), Nr. 57; SHStA Dresden, 12613, Kaufbuch Nr 1 von St. Nicolai in Freiberg (1524-1577), Nr 71; SHStA Dresden, 12613, Kaufbuch Nr. 1 von St. Petri in Freiberg (1524-1559), Nr. 40; and SHStA Dresden, 12613, Kaufbuch (Vorstadtbuch) Lit. A (1524-1617), Nr. 94.
[7] See SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379. Future *Gelübdebücher* were labeled B, C, D, and so forth. The practice of using letters to sequence court registers became standard in the sixteenth century in Freiberg. Besides the *Gelübdebücher*, letters were also used for the *Kauf-*, *Vertrags-*, *Erbsonderungs-*, and *Testamentsbücher*.

assault cases.[8] But within a decade, the *Gelübdebücher* are being used almost solely for loans.

The creation of theme-specific court registers fits into the general trend of what in German is called *Verschriftlichung*. As cities, territories and states grew, they wrote down more of their daily practices to better govern their populace and communicate with other polities.[9] To keep track of the ever increasing records, registers with specific foci were created. This process was not unique to the German lands. Lesley Peirce and Daniel Lord Smail have found a similar phenomenon in sixteenth-century Aintab (part of the Ottoman Empire) and fourteenth-century Marseille respectively.[10] Freiberg's creation of the debt registers and neighbourhood-based *Kaufbücher* were thus part of a broader historical development.[11]

Concerns over usury, a growing problem since the late Middle Ages, likely also motivated the court to utilize the new registers. Despite being formally banned at the diet (*Reichstag*) of 1500, concerns over usurious lending persisted.[12] In policy ordinances (*Reichspolizeiordnungen*) throughout the sixteenth century, the Holy Roman Empire repeated this prohibition.[13] Fears of usury centered mainly on Jewish private lending, but the Jews had been nominally expelled from Saxony in 1536.[14] To combat private lending, the diet of 1551

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[8] See for example SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fols 120v, 127v, 129r, 149r, 344r, and 351r.

[9] The best overview of this process for Germany is Eberhard Isenman, "Gesetzgebung und Gesetzgebungsrecht spätmittelalterlicher deutscher Städte," *Zeitschrift für Historische Forschung* 28 (2001), 1-94, 161-261.

[10] Lesley Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 279-80; and Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca: Cornell University Press, 2003), 250.

[11] Although "*Gelübde*" is best translated as vow or promise, I will use the term 'debt registers' to refer to the archival series of *Gelübdebücher* as it best describes the content of these registers.

[12] A usurious rate of interest was defined as more than five percent per annum. *Reichspolizeiordnungen* have recently become a focus of historical scholarship. See for instance, see Karl Härter's landmark, *Policey und Strafjustiz in Kurmainz. Gesetzgebung, Normdurchsetzung und Sozialkontrolle im frühneuzeitlichen Territorialstaat* (Frankfurt am Main: Klostermann, 2005).

[13] As exemplified in the *Reichspolizeiordnung* from 1530, 1548 and 1577. The full text of each can be found in Matthias Weber, ed., *Die Reichspolizeiordnungen von 1530,1548 und 1577: historische Einführung und Edition* (Frankfurt am Main: V. Klostermann, 2002).

[14] See J. Burckhardt, "Die Judenverfolgungen im Kurfürstentum Sachen von 1536 an," *Theologische Studien und Kritiken*, 70 (1897), 593-598. How active they remained after the expulsion is unclear. It was certainly not

required loans by Jewish lenders, but not others, to be registered with local authorities.[15] Freiberg's practice of registering loans predated the mandate, and applied to all Freibergers, not just Jews.

Because registration was a long-standing practice in Freiberg, the imperial mandate does not appear to have led to an increase in the number of loans recorded. In 1548, 190 loans were registered; in 1553 and 1554, 229 and 216 loans respectively. The difference among the years is insignificant and more likely explained by normal annual fluctuations rather than the impact of the mandate.[16] Recording loans was a practice that had been part of Freiberg's legal culture long before the mandate, and remained so long after it.

During the sixteenth century, approximately 200 new loans were registered annually. At mid-century, Freiberg's population was a little over 9000, with approximately 1100 holding citizenship rights (*Bürgerrecht*). While I have yet to see a prohibition against lending to non-citizens, such as journeyman or labourers, their itinerant lifestyle and their economic dependence on their masters would have discouraged a prudent lender.[17] This is not to suggest that borrowing was restricted to male citizens. Women did borrow and lend money, but their presence in the debt registers is minimal (and will be discussed in greater depth). Servants rarely seem to have borrowed themselves, but would carry out minor transactions, such as registering payments, on behalf of their masters. Even accepting that

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without risk for Jews to stay in Saxony. See for example the *Urfehden* of the brothers Leipolt and Jacob, sons of a Prague goldsmith, who each received a one-hundred gulden fine. See SHStA Dresden, 13749, Urfriede- und Zetergeschreibuch der Stadt Freiberg (1539-1558), Nr. 421, unfol.

[15] See *Abschiedt der Römischer Keyslicher Maiestat vnd gemeyner Stend vff dem Reichstag zu Augspurg vffgericht Anno Domini M.D.LI.* Meyntz 1551, folios 21 and 22. The full-text can be found on VD16 (http://daten.digitale-sammlungen.de/bsb00029311/image_48). Neither the Freiberg *Stadtrecht* nor subsequent statutes required loans to be registered with court.

[16] Part of the reason the mandate likely did not have a significant impact on Saxony was that 1551 fell in the middle of Schmalkaldic War and the Saxon Elector Moritz was in the midst of betraying Emperor Charles V.

[17] Early modern Europe was quite nomadic and this would have been especially true in the Erzgebirge where mining was the leading economic sector. Miners were notorious for leaving one mine to go work at another where better wages were offered. See Adolf Laube, "Zum Problem des Bündnisses von Bergarbeitern und Bauern im deutschen Bauernkrieg," in *Der Bauer im Klassenkampf: Studien zur Geschichte des deutschen Bauernkrieges und der bäuerlichen Klassenkämpfe im Spätfeudalismus*, ed. Gerhard Heitz, et al. (Berlin: Akademie-Verlag, 1975), 87-91; and Susan Karant-Nunn, "Between Two Worlds: The Social Position of the Silver Miners of the Erzgebirge, c. 1460-1575," *Social History* 14 (1989), 309-12.

some non-citizens engaged in borrowing and lending, about half of Freiberg's citizens were party to a new loan agreement in any given year.[18]

As the most common and best documented legal transaction in sixteenth-century Freiberg, borrowing and lending offers insight into a vital part of Freiberg's legal culture: that of its civil legal practice. Probing the relationship between borrowers, lenders, and the court stands at the heart of this chapter. Borrowing and lending were not just activities grounded in law, they were rife with economic and social considerations, and in order to properly grasp the legal dynamics, these dimensions need to be examined as well. This means looking at who borrowers and lenders were, what was being exchanged, and what safe-guards existed for lenders.

To analyse this practice both within specific periods and diachronically over the course of the sixteenth century, sample years of 1528, 1533, 1548, 1553, 1568, and 1573 were selected.[19] With the exception of 1528, the number of loans registered per year varied between 175 and 231. The decrease in loans for 1528 (only 137 were registered in that year) is explained by the paucity of loans in August, September, and October. Typically, there existed little seasonal fluctuation in the number of loans registered. That only fifteen loans were made during those months seems unlikely. It is more probable that many from those months were never entered into the debt register.

[18] Borrowing and lending permeated daily life in early modern Europe, and extended well beyond money. As the Italian historian Renata Ago has shown, early moderns lived in an entangling web of mutual obligations. *Economia Barocca: Mercato e Istituzioni nella Roma del Seicento* (Roma: Donzelli, 1998). Ulinka Rublack has illustrated how even the borrowing and lending of clothes and jewelry was common: *Dressing Up: Cultural Identity in Renaissance Europe* (Oxford: Oxford University Press, 2010), 265.

[19] The loans from 1528 and 1533 can be found in SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fols 115 to 153 for 1528; and fols 344 to 381 for 1533; for 1548 and 1553, SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 13 to 49 for 1548; and fols 344 to 381 for 1553; for 1568, SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fols 478 to 542; and for 1573, SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 227 to 312.

The sums of money involved were often modest**.** For the sample, there were on average 191 loans created per year (or 202, if 1528 is omitted). On average, 89.5 (46.9%) of these were for less than ten gulden; 127.8 (66.9%) for less than twenty gulden. Thus the majority of loans had principal amounts equivalent to a few months' to a half year's income. There does not appear to have been an increase in the size of loans as the century progressed. Most loans remained at a quantum of less than twenty gulden.

Table 5.1 Principal Amounts and Percent Distribution of Loans

Loan amount (in gulden)	Number of Loans per Year						Total No. of Loans		Annual average (no.)	Annual average (%)
	1528	1533	1548	1553	1568	1573				
0 to 4	47	50	49	61	55	39	301		50.3	26.3
5 to 9	33	36	39	43	52	32	235		39.2	20.5
10 to 19	23	30	38	53	36	50	230		38.3	20.1
20 to 29	10	18	10	15	9	21	83		13.8	7.2
30 to 39	6	8	16	17	6	18	71		11.8	6.2
40 to 59	6	18	14	12	9	18	77		12.8	6.7
60 to 79	4	1	1	6	2	10	24		4.0	2.1
80 to 99	2	1	1	5	3	2	14		2.3	1.2
100 or more	3	2	8	10	4	28	55		9.2	4.8
Unspecified	3	11	14	7	8	12	55		9.2	4.8
Totals	**137**	**175**	**190**	**229**	**184**	**230**	**1145**		**190.8**	**100**

The debt registers do not capture every loan extended in Freiberg. There are two classes of exceptions. First, loans were occasionally recorded in the council minutes (*Ratsprotokolle*) themselves.[20] Second, unregistered, and thus extra-legal, loans were made. Since this realm of lending seldom came into the purview of the court, records of such cases are rare, which makes it impossible to gauge their frequency.

The case of Christoff Merten and Mathias Fochtmann is revealing on several levels. Merten had lent Fochtmann the rather large sum of 115 gulden. In registering his loan to Fochtmann at court, however, Merten revealed to the town that he possessed significant

[20] See for example, StAFB, Stadtprotokoll (1555-1557), I Ba 3b, fol 61r. The reason is unclear; such loans do not seem different in quantum or the status of the participants from those regularly registered by the court judges.

capital, a fact of great interest to his several creditors; none of their loans had been registered with the court.[21] This did not make these debts legally invalid. Instead, when the loan to Fochtmann was entered into the debt register, Merten's creditors came forward seeking repayment. The judge noted each of the creditors and how much Merten owed them.[22] As part of the loan agreement with Fochtman, Merten undertook to repay his creditors, even though their loans were an entirely separate matter from his case with Fochtmann. The case offers a vivid demonstration of both how the court was apparently an effective mediator in resolving disputes between lenders and borrowers, and, perhaps even more significantly, the value to creditors of loans being publicly registered.

The existence of extra-legal lending is not surprising. As Craig Muldrew and others have shown, a loose series of exchanges based on credit was central to daily life in early modern Europe, and we cannot expect that all of these transactions, much less every loan, would be registered with a court, even when the law required it. But it does raise the question of why so many loans were registered with a court, especially when so many of them were for small sums.

The answer appears to lie in the security that the court offered. Notaries were almost non-existent at the time in Freiberg. From 1510-1580, the list of new citizens compiled each year contains no one with the stated profession of notary.[23] Thus, if a borrower or lender desired a written record documented by a third party, the court offered the only local source.[24] Towards the latter years of the sample, there are increasing references to one of the

[21] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 310r. For another example of extralegal lending coming to light in the debt registers, see fol 353r of the same register.
[22] The creditors included Clara Metzwerin (thirteen gulden and thirteen groschen), Abrahm Schmidin (four gulden), Esonias Bernhard (seven gulden), Jonas Eberlein (eleven gulden), and Lucas Beck (two gulden and six groschen).
[23] See *Das Freiberger Bürgerbuch*, 14-105. There are occasional references to lawyers in the court records but most lawyers were resident in Dresden, not Freiberg. Each mine had a mining clerk (*Bergschreiber*) and share clerk (*Gegenschreiber*) but I have found no evidence to suggest these scribes engaged in notarial work.
[24] Lesley Peirce has found similar results for sixteenth-century Aintab (modern-day Syria) where creating a formal record of a loan with the court was increasingly important as written documents gained primacy in

parties desiring a copy of the agreement, presumably so a borrower or lender could prove the loan existed without having to go court. Most people in Freiberg at this time had basic literacy and would have been able to read and understand such a record.[25] The cost of this added security appears to have been minimal. There are occasional references to a debtor or lender paying one or two groschen in registration costs (*Schreibgeld*).[26] The city budget from 1577-78 lists no income from fees paid by borrowers and lenders to register a loan.[27] This suggests that Freibergers generally complied with the requirement to register loans because of the security offered by a public record of the transaction. Further, as the Merten–Fochtmann case illustrates, both lenders and borrowers recognized that they benefited from access to information on the financial status of their counter-party.

5.2 Reasons for Borrowing and Lending

The *Gelübdebücher* make clear that Freibergers were borrowing and lending on a regular basis. But why did they need to borrow so frequently in the first place? The debt registers are rarely explicit on why people borrowed, but the limited number of cases that do are informative.

When business transactions were recorded, it was principally for larger purchases of goods necessary to a given trade. As a result, craftsmen's purchases of raw materials were, at times, recorded in the debt registers. For example, the shoemaker Thomas Zschipgen bought an unspecified quantity of leather for four gulden and ten groschen.[28] The rope-maker

settling disputes. See *Morality Tales*, 233-4, 282. Beate Sturm has found private records of debts in Hannover but notes such records rarely survive. See Sturm, *Privatkredit im Hannover*, 162.
[25] On education in Saxony, see Katrin Keller, *Landesgeschichte Sachsen* (Stuttgart: Ulmer, 2002), 225-7.
[26] See for example, SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 378r; or SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fols 483r and 496v.
[27] See Heinrich Gerlach,"Eine Freiberger Stadtrechnung vom Jahre 1577," *MFA* 9 (1872), 821-44.
[28] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 21v.

Bastian Zipser bought 134 pieces of leather for 150 gulden and eighteen groschen.[29] The linen-weaver Michael Windisch bought seventy-six pieces of thread for thirty-five gulden and two groschen.[30] Purchases of metal are mentioned as well. In 1573, the brothers Michael and Andreas Lehnmann, both tinsmiths, bought a measure of tin for 130 gulden from Wolff Prager, the electoral tithe master (*Zehnter*) and Freiberg's reigning Bürgermeister.[31] Later that year, Mathias Zeuner bought two measures of tin.[32]

Saxony, including Freiberg, was marked by a high percentage of people living in towns rather than the country, which made it necessary to import food from the surrounding polities, particularly Lower Saxony and Bohemia.[33] Some of these transactions are captured in the debt registers. For example in 1573, Georg Beier paid twenty-eight gulden for an unspecified quantity of honey.[34] Twenty-five years earlier, Jacoff and Frantz Fischer had paid twenty-one gulden, ten groschen and six pennies for herring.[35] These sums suggest that they were intended primarily for resale rather than personal consumption.

Bread, meat, and beer were the staples of the Saxon diet. Purchases of all three can be found in the debt registers. These purchases were not made by individuals for personal consumption but rather by bakers and butchers. For example in 1528, the baker Mathias Neudeck bought 100 bushels (*Scheffel*) of grain from Hieronimo Zigler for forty-seven gulden and thirteen groschen (each bushel cost ten groschen).[36] Twenty-five years later,

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[29] The size of each piece (*Stück*) is not specified; each piece cost twenty-seven groschen. SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fols 253v, 437r, and 474r; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 214v and 294v.
[30] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 43v.
[31] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 223v.
[32] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 277v.
[33] Uwe Schirmer's study on the nearby district of Grimma demonstrated how thoroughly Freiberg was integrated into regional trade. Iron, wood, linen, cattle, and beer were just some of the products exchanged between the two locales. Grimma rarely appears in the sample years and these transactions were presumably recorded elsewhere. See Uwe Schirmer, *Das Amt Grimma 1485 bis 1548: demographische, wirtschaftliche und soziale Verhältnisse in einem kursächsischen Amt am Ende des Mittelalters und zu Beginn der Neuzeit* (Beucha: Sax, 1996), 147-8, 229, 255, 293-9, 308-11.
[34] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 256v.
[35] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 23r.
[36] Each bushel had a volume of 103.8 litres. SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 121v.

Michael Drechssler, also a baker, purchased nineteen bushels of wheat, and later an unspecified amount of grain, from Wolff Wagner.[37] In 1573, another baker, Johann Hermann, bought 100 bushels of grain from the noble Heinrich von Polnitz for 180 gulden and 20 groschen.[38] Butchers frequently registered the purchase of livestock, often from rural nobles.[39] For example in 1548, the butcher Jacoff Walter bought four oxen from Nickel Backisch for seventeen gulden.[40] Twenty years later, Georg Maukisch and Hans Meiner, both butchers, bought several cuts of lamb from Hans von Schlieben.[41]

When purchases of beer appear in the debt registers, it is as a finished product rather than the raw ingredients necessary to brew beer. The common unit purchased was a measure (*Faß*) of beer. Each measure contained 440 tankards (*Kannen*); each tankard was 0.936 litres.[42] Most purchases were for one or two measures, such as when Jorge Engelberger bought one measure of beer from Christoff Buchfurer in 1555 for five gulden.[43] Fifteen years later, the baker Jacoff Nitzsche paid five groschen more for the same quantity.[44] Even factoring in the higher alcohol consumption of the period, such a quantity would have sufficed for many months.[45]

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[37] The wheat cost one gulden per bushel and the grain fifty-one gulden in total. For the wheat transaction, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 277; for the grain transaction SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 332.

[38] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 270v. The purchase agreement in 1573 was part of a long-standing business relationship between Hermann and von Polnitz, see also SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384, fols 372v; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 431r.

[39] Lesley Peirce has also found that the court in Aintab was used to record similar kinds of cattle trades. See Peirce, *Morality Tales*, 75.

[40] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 20v.

[41] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fol 474v.

[42] Individual tankards usually cost three or four pennies each. On the trends in beer, grain, wheat, and other food prices, see Walter Schellhas, "Drittes Kapitel: 1470 bis 1658," in *Geschichte der Bergstadt Freiberg*, ed. Hanns-Heinz Kasper and Eberhard Wächtler (Weimar: Böhlau, 1986), 122-3.

[43] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 370v.

[44] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fol 509v.

[45] Uwe Schirmer estimates that that an average person, including children, drank 150 litres of *Dünnbier* (weak beer) in a year. Thus a family of five would have consumed approximately 750 litres, or slightly less than two measures of a beer in a year. See Uwe Schirmer, "Ernährung im sächsischen Erzgebirge zu Beginn des 16. Jahrhunderts. Produktion, Handel und Verbrauch," in *Landesgeschichte in Sachsen: Tradition und Innovation*, ed. Rainer Aurig, et al. (Bielefeld: Verlag für Regionalgeschichte, 1997), 137-8.

There are a handful of loans detailing personal matters. Some involved animals, such as in 1533 when Wolff Kretzschmar bought a horse from Nickel Thumb for ten gulden.[46] Or when Urban Hammer lent his brother Mathias a cow for the summer of 1553. In exchange, Mathias agreed to pay Urban eleven groschen for the use of the cow.[47] Others involved exchanges of clothing. Skirts were a common item lent between women, such as in 1548 'die Christoff Schmidin' borrowed one from 'die Mathias Kolerin.'[48] 'Die Christian Starckin' also borrowed a skirt from 'die Wolff Dreslerin' in 1573.[49] Another common reason for personal loans was to support the sustenance of a debtor (*märktliche Forderung seiner Nahrung*). Thus Wolff Hilliger lent Mathias Hustig and his wife twelve gulden for their nourishment.[50] Margaretha Heuptin lent her son Valten thirty gulden for his sustenance.[51]

One possible cause for the endemic borrowing was a pervasive shortage of coinage in the sixteenth century. In its place, many transactions were carried out using credit. Since the late medieval period, credit had become paramount to long-distance trade between cities and empires.[52] But in the sixteenth century, it began to take on increased importance for local, interpersonal exchanges as inflation rose and countries like England did not have the gold or silver resources to monetize enough specie to keep pace. Further, those who possessed good

[46] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 375v.
[47] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 282r.
[48] Women's first names were often not recorded in early modern Germany. Instead, their husband's or father's name was used, with 'die' (the German feminine form of the definite article) added before the first name and the feminine ending '-in' added as a suffix to the surname. See SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 22r.
[49] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 260r.
[50] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 309v.
[51] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 275r.
[52] A vast literature exists on this topic. See John H. A. Munro, *Bullion Flows and Monetary Policies in England and the Low Countries, 1350-1500* (Aldershot: Variorum, 1992); Herman van der Wee, *The Growth of the Antwerp Market and the European Economy, Fourteenth-Sixteenth Centuries*, 3 vols. (Louvain: Bureaux de Recueil, Bibliothèque de l'Université, 1963); and Michael North, *Kredit im spätmittelalterlichen und frühneuzeitlichen Europa* (Cologne: Böhlau, 1991) . For an extensive literature review, see Michael North, *Kommunikation, Handel, Geld und Banken in der frühen Neuzeit* (Munich: R. Oldenbourg, 2000), 45-95. A lot of this work has emanated from the field of numismatics; see Markus Denzel, *Europäische Wechselkurse von 1383 bis 1620* (Stuttgart: Steiner, 1995).

coinage often hoarded it because there was so much debased coinage in circulation. As a result, people resorted to borrowing and credit to overcome the shortfall in coinage.[53]

For Saxony, however, the Erzgebirge (ore mountains) mining region was one of the principal suppliers of European silver.[54] Saxony had three regional mints (in Freiberg, Annaberg and Schneeberg) and after 1556, one central mint in Dresden. Much of the silver went to the mints to be monetized, but large quantities were also exported to major trading centres like Nuremberg, Augsburg and the Hanseatic cities. Was Saxony short of specie? Adolf Laube notes that workplaces would sometimes import foreign specie to pay Erzgebirge miners – to which the miners did not respond well.[55] Their lack of enthusiasm for being paid with foreign coins would seem to indicate that they were used to getting paid with local coins. The coinage shortfall throughout Europe seems too significant not to have affected Saxony and it is possible that some of Freiberg loans were due to a lack of coinage in circulation.

Two significant types of business transactions were not part of the debt registers: external trade and investment in beer and mining. As a city with brewing rights, beer represented an important part of Freiberg's trade with other cities, and Freiberg exported beer to many surrounding Saxon, Bohemian and Polish cities. When purchases of beer appear in the debt registers (including the cases discussed above), both the purchaser and seller were residents of Freiberg. These entries reflected local consumption.[56]

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[53] Craig Muldrew, "'Hard Food for Midas,' Cash and its Social Value in Early Modern England," *Past and Present* no.170 (2001), 88-89. See also his "Wages and the Problem of Monetary Scarcity in Early Modern England," in *Wages and Currency: Global Comparisons from Antiquity to the Twentieth Century*, ed. Jan Lucassen (Bern: Peter Lang, 2007). Carla Rahn Phillips has found similar results for early modern Spain. See her *Ciudad Real, 1500-1750: Growth, Crisis, and Readjustment in the Spanish Economy* (Cambridge: Harvard University Press, 1979), 60-64.

[54] Ward Barrett, "World Bullion Flows, 1450-1800," in *The Rise of Merchant Empires: Long-Distance Trade in the Early Modern World, 1350-1750*, ed. James D. Tracy (Cambridge: Cambridge University Press, 1990), 224-254; John U. Nef, "Silver Production in Central Europe, 1450-1618," *Journal of Political Economy* 49 (1941), 575-591.

[55] Adolf Laube, "Zum Problem des Bündnisses im deutschen Bauernkrieg," 91.

[56] The quantities exported would have far exceeded the one or two measures that one typically finds in the debt register. On the beer industry in sixteenth- and seventeenth-century Freiberg, see Ulrich Thiel, "Das Brauwesen

Mining was the principal industry in Freiberg and required large amounts of capital to finance it. Investment in mining was divided into shares (*Kuxe*). Until the late fifteenth century, there were thirty shares per mine shaft; after that, this more than quadrupled to 128 shares.[57] Individual miners could buy shares but as the costs of mining rose, most shares were purchased by the Saxon Elector August, local nobles, and wealthy merchants from Nuremberg, Leipzig, and the Hanseatic cities. Nowhere in the debt registers is there any reference to a *Kux* and the cost of these shares would have far exceeded the modest sums found in the debt registers. Mining shares were investments, not loans or promises like the other transactions in the debt registers. Simply put, the debt registers do not capture these practices at all.

The above cases cover a wide spectrum of reasons of why people borrowed: business considerations, often for purchases of raw materials; and personal loans, for things necessary to daily life.[58] But in the vast majority of cases, no reason for the loan is given.[59] Instead, the sum is merely recorded and it is not clear whether most loans were for personal or business purposes.

Interest Charged On Loans

In Freiberg, most recorded loans make no mention of interest. Whether this was because interest was not part of the loan, or whether it was included in the principal is not

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im 16. und 17. Jahrhundert," *MFA* 81 (1998), 4-96. Uwe Schirmer estimates in 1577 that 1.9 million litres (more than 4600 measures) of beer were brewed in Freiberg. See Schirmer, *Grimma*, 103.

[57] Schellhas, "Drittes Kapitel," *Bergstadt Freiberg*, 94; and Adolf Laube, *Studien über den erzgebirgischen Silberbergbau von 1470 bis 1546: seine Geschichte, seine Produktionsverhältnisse, seine Bedeutung für die gesellschaftlichen Veränderungen und Klassenkämpfe in Sachsen am Beginn der Übergangsepoche vom Feudalismus zum Kapitalismus* (Berlin: Akademie-Verlag, 1974), 86.

[58] In Hannover, Beate Sturm has found people were in debt for similar reasons. See Sturm, *Privatkredit im Hannover*, 43-64.

[59] In Aintab too, it is difficult to identify whether most loans registered with the court were for personal or business transactions. Peirce, *Morality Tales*, 172.

clear.[60] Carola Lipp notes that early modern French and German debt contracts typically included interest in the principal amount, (if interest was charged).[61]

Interest is referred to in a small number of Freiberg loans. In 1528, Walpurg Tubelin borrowed five gulden from the abbot of Freiberg's nunnery, and agreed to pay three groschen of interest per year (a rate of just under three percent).[62] In 1568, Hans Trautwein borrowed forty gulden from 'die Nickel Lockelin' and agreed to pay two gulden of interest annually (a rate of exactly five percent).[63] Five years later, Mathias Fochtmann borrowed 115 gulden from Christoff Merten, and agreed to pay five gulden of interest annually (a rate of slightly less than five percent).[64] That same year, 'die Wolff' Thielin borrowed forty-seven gulden from Caspar Horn and agreed to pay two and a half gulden in interest (a rate of slightly more than five percent).[65]

In each of the above cases, the interest rate does not exceed five percent,[66] which was the maximum permitted by the Imperial Policy Ordinance of 1500. Registering a loan with an interest rate of greater than five percent would have been senseless since such a loan would have been usurious, and therefore illegal. This is not to suggest that usurious lending did not happen in sixteenth-century Freiberg, but rather to indicate the folly of making the court aware of it.

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[60] In Aintab**,** in accord with Islamic law, loans were commonly interest-free. Peirce, *Morality Tales*, 225. In Hannover, when interest was present, it, too, was almost exactly five per cent. Sturm, *Privatkredit im Hannover*, 132.

[61] See Carola Lipp, "Aspekte der mikrohistorischen und kulturanthropologischen Kreditforschung," in *Social Praxis des Kredits: 16. bis 20. Jahrhundert*, ed. Jürgen Schlumbohm (Hannover: Hahn, 2007), 31. Interest was not routinely specified until the nineteenth century.

[62] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 132r.

[63] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fol 505v.

[64] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 310r.

[65] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 281r.

[66] In the Thielin case, an interest rate of five percent on a quantum of forty-seven gulden would have amounted to two gulden, seven groschen and four pennies. The rate paid (two gulden, ten groschen and six pennies), therefore, only exceeded the legal limit by three groschen and two pennies, a relative pittance. The likely reason for the higher interest rate is that rather than recording, "two gulden, ten groschen and six pennies" as the interest rate, the judge wrote "2.5 gulden." Had the judge taken the time to write out the full amount, the rate likely would have been at the acceptable five percent.

5.3 Borrowers and Lenders

A coinage deficit, personal needs, and business requirements were major financial reasons that Freibergers borrowed, but this does not tell us who was borrowing and lending. Socio-economic and financial data on borrowers and lenders is limited, but Freiberg's 1546 tax register does provide some context as to the personal wealth of those involved.[67] The tax was levied to finance Elector Moritz's campaign in the forthcoming Schmalkaldic War. Each Freiberg householder had to assess their personal wealth (*Vermögen*) and pay a tax of one and two-fifths pennies for every gulden of personal wealth.[68] Those with a personal wealth of less than seventeen gulden were exempt from the tax. Journeymen, labourers, and maids who lived with their masters paid one or two groschen each.

In total, 1170 people paid the tax. Of these, the richest group was made of 186 house owners (15.9%) who had a personal of wealth of 600 gulden or more. Another 208 (17.8%) were on solid financial footing with a declared a personal wealth of between 300 and 599 gulden. Joining them in the middle class were another 304 (26.8%) with a personal wealth of between 100 and 299 gulden. A further 441 (37.7%) house owners reported a personal wealth between 17 and 100 gulden. Lastly, thirty-one (2.6%) Freibergers were of the poorest group who paid only one or two groschen each.

To create a more manageable and relevant sample size, the tax register was compared with borrowers and lenders from 1548. There are significant temporal gaps between my other sample years (1528, 1533, 1553, 1568, and 1573) and the tax register, during which the financial situations of Freibergers could have changed markedly, (as would the population itself). Their financial situations might have changed somewhat by 1548, but only eighteen

[67] For the published version of the tax register, see "Ein Freiberger Steuerregister aus dem Jahre 1546," *MFA* 19 (1882), 25-60.
[68] The tax does not appear to differentiate between moveable and unmoveable goods (*bewegliche/fahrende und unbeweglich/liegende Güter*). As will be discussed later, Freibergers had a keen appreciation of their financial standing, regardless of whether their wealth was derived from moveable or unmoveable goods.

to thirty months had elapsed since the tax was assessed in July 1546. This shorter time span limits the potential for significant financial change.

Of the 208 debtors from 1548, 143 can be matched to people in the tax register.[69] Of the sixty-five who do not appear on the tax register, thirty-nine can be identified as citizens (many of whom gained citizenship after 1546, and thus likely did not own property until after the tax was assessed). Six did not live in Freiberg. For the other twenty, I have been unable to find further data (for many of them, only their first or last name was recorded, making cross-referencing nigh impossible). Of the 202 lenders, only seventy-nine can be matched with the tax register. An additional forty held citizenship but were not on the tax register. Forty-four of the lenders were not from Freiberg (typically, fifteen to twenty percent of all lenders were not from Freiberg). Lastly, there were thirty-nine lenders whom I was unable to cross-reference.

The financial profile of borrowers and lenders from 1548 was mixed. The poorest tax payers, those who assessed their personal wealth as less than 50 gulden, accounted for 26.5% of all tax-payers, but only 6.3% of all debtors, and 8.9% of all lenders. The next group, those with a personal wealth between fifty and ninety-nine gulden are better represented amongst borrowers (10.5% of all borrowers, as compared to 13.9% of all tax payers), but underrepresented amongst lenders. The middle class, those with a personal wealth between 100 and 600 gulden, are overrepresented as debtors, but proportionately represented as lenders: this group made up of 43.8% of all tax-payers, but accounted for 67.9% of all identifiable debtors. Lastly, the wealthiest, those with a personal wealth of 600 gulden or more, are proportionately represented as borrowers, but overrepresented as lenders (see Table 5.2).

[69] A handful of the 190 loans registered in 1548 featured multiple debtors and/or lenders. For the purpose of this sample, every borrower and lender was included, thus bringing the total number of borrowers and lenders above 190. If the borrower or lender was female, I used the nearest, identifiable male relative's (typically the father or husband) financial data.

Table 5.2 Identifiable Debtors and Lenders

Personal Wealth (*Vermögen*)	**17-49**	**50-99**	**100-299**	**300-599**	**600-999**	**1000+**	**Total**
Number of Debtors	9	15	66	31	13	9	143
Number of Lenders	7	3	16	18	15	20	79
Number of Tax Payers	279	162	304	208	117	69	1139
Percentage of Debtors	6.3	10.5	46.2	21.7	9.1	6.3	100
Percentage of Lenders	8.9	3.8	20.3	22.8	19.0	25.3	100
Percentage of Tax Payers	23.9	13.9	26.0	17.8	10.0	5.8	97.4

What this suggests is that the loans captured by the debt registers represent a subset of lending by those with a solid financial standing. The largest group of borrowers, those with a declared wealth of 100 to 299 gulden, while not rich, were on firm financial ground. Conversely, those on shakier financial terrain (a personal wealth of less than fifty gulden) rarely partook in this practice. Instead, when they were in need of a loan, there were (presumably) other sources that they turned to. There was little correlation between personal wealth and quantum: both poor and rich borrowed small and large amounts; both moderately and extremely wealthy lent small and large amounts.[70] In one curious case, despite a personal wealth of 1200 gulden, Hans Fritzsche borrowed an insignificant eight gulden and twelve groschen from Fabian Herolt.[71]

While the rich were most likely to lend, not all of Freiberg's wealthiest citizens lent. Of the fifteen wealthiest citizens, only Valten Buchfurer lent with any frequency. The rest of Freiberg's elite did not routinely engage in this practice. Buchfurer is an interesting case study because he was a member of Freiberg's council. With the court acting as recorder of all loans, council members theoretically held an advantageous position since they were or

[70] In Hannover, the wealthiest were the most frequent borrowers and lenders (60.3% of borrowers; 77.7% of lenders); while the poorest rarely borrowed or lent (less than 1% of borrowers and lenders). Sturm, *Privatkredit im Hannover*, 82.
[71] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 20r.

could have been privy to information on the flows of money: who had it; who needed it? Yet I have found no indication that they sought to exploit this intelligence. Frantz Harker and Clement Kuehn, the two judges who initialized every entry in 1548 and 1553, never lent (or borrowed) money. Some councillors made the occasional loan, but Buchfurer was the only one to lend regularly. The dates of his loans do not correlate with the dates of his attendance at council meetings: when he attended council meetings, he did not lend.

Gender

Borrowing and lending was mainly a male practice. As Tables 5.3 and 5.4 show, of the 1145 loans from the sample period, there were 1009 (88.1%) males who borrowed money and 1041 (90.9%) males who lent money. Women accounted for only 121 (12.0%) of the borrowers and 93 (8.8%) of the lenders. There were also a handful of cases with multiple borrowers and lenders.[72] Fifteen (1.3%) of them featured co-male and female borrowers; twelve (1.0%) co-male and female lenders. Men were certainly predominant in this process. But women were clearly active both as borrowers and lenders.[73] One perceptible trend is that as the century progressed, women became increasingly involved. In 1528 and 1533, only around five percent of debtors or lenders were female. By 1568 and 1573, this had risen to approximately thirteen percent.

At times, they acted on their own; at times they were assisted by a legal guardian (*Vormund*).[74] Guardians tended to be male relatives. In the case of the 'die Valten Avenhansin' who had borrowed 117 gulden from Caspar Horn, her guardian was her son

[72] If the multiple borrowers (or lenders) were of the same gender, they have been counted in the respective gender column.
[73] On women as borrowers and lenders in early modern England, see Craig Muldrew, "'A Mutual Assent of her Mind'? Women, Debt, Litigation and Contract in Early Modern England," *History Workshop Journal*, 55 (2003), 47-71. In Hannover, there was also a prevalence of males: 85.2% of debtors, and 88.1% of lenders were male. Only 14.2% of debtors, and 11.8% of lenders were female. Sturm, *Privatkredit im Hannover*, 66.
[74] There are a few instances where males, presumably children, had the assistance of a *Vormund*, but generally males did not have *Vormünder*. Male guardians for female litigants was a common aspect of the early modern judicial system. See Thomas Kuehn, *Law, Family & Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago: University of Chicago Press, 1991), 197-237.

Paul.[75] Alternatively, women turned to experienced borrowers and lenders to be their guardians. For example 'die Jorg Schafferin' who borrowed five guldens and ten groschen on 9 November 1553 from Sebalt Schmutterherr, used a man named Wolff Schwalme as her guardian.[76] Prior to acting as Schafferin's guardian, Schwalme had borrowed and lent money in 1553. First, he borrowed thirty-one groschen from Valten Buchfurer in March,[77] and then later lent two gulden to Paul Schilling in September.[78] From Schafferin's perspective, Schwalme was an experienced borrower and lender, and thus a knowledgeable person to have as a guardian.[79] Another common person to turn as a guardian were the legally

Table 5.3 Borrowers by Gender

Year	Total Loans	Gender of Debtor (numbers)			Gender of Debtor (percentage)		
		Male	Female	Mixed	Male	Female	Mixed
1528	137	128	9	0	93.4	6.6	0.0
1533	175	161	13	1	92.0	7.4	0.6
1548	190	170	17	3	89.5	8.9	1.6
1553	229	204	24	1	89.1	10.5	0.4
1568	184	149	26	9	81.0	14.1	4.9
1573	230	197	32	1	85.7	13.9	0.4
Totals	**1145**	**1009**	**121**	**15**	**88.1**	**12.0**	**1.3**

Table 5.4 Lenders by Gender

Year	Total Loans	Gender of Lender (numbers)			Gender of Lender (percentage)		
		Male	Female	Mixed	Male	Female	Mixed
1528	137	128	9	0	93.4	6.6	0.0
1533	175	171	4	0	97.7	2.3	0.0
1548	190	170	17	3	89.5	8.9	1.6
1553	229	215	13	1	93.9	5.7	0.4
1568	184	157	20	8	85.3	10.9	4.3
1573	230	200	30	0	87.0	13.0	0.0
Totals	**1145**	**1041**	**93**	**12**	**90.9**	**8.9**	**1.0**

[75] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 268v.
[76] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 302r.
[77] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 275v.
[78] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 297v.
[79] I am unaware of the social relationship between Schafferin and Schwalme and whether the court or Schafferin decided who her *Vormund* would be. There is some indication that women could request a specific guardian. See for example the case of 'die Nicolai' who requested Valten Schubart as her guardian (the woman's last name was not given). SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 40v. In Florence, it was the notary's task to appoint the Guardian. See Kuehn, *Law, Family & Women*, 213-4.

knowledgeable. 'Die Bastian Turschin' used the former judge Frantz Harker as her guardian in 1548.[80]

Women did not generally have guardians when they borrowed money. Of the 121 female borrowers shown in Table 5.5, eight-seven (71.9%) did not have a guardian. In 1533, 'die Simon Gentschin' bought two bushels of hops from Kilian Hegewalt for five gulden without the help of a guardian.[81] In 1553, Dorothea Franckin borrowed the rather large sum of thirty-one gulden and nine groschen from Valten Ebenhans without a guardian.[82] When women lent, they were even less likely to have a guardian. Of the ninety-two female lenders, only seven (7.6%) had a guardian. Thus we find 'die Michael Fischerin' lending three gulden and sixteen groschen to Katherina Kerbnerin without a guardian.[83] And it was not only when women lent to women that they dispensed with guardians. In 1528, Anna Mullerin lent Pangracius Trinis fifteen gulden without a guardian.[84] In 1553, Margaretha Graupitzin lent Lorentz Elsner eighteen gulden without the help of a guardian.[85]

Women were not restricted to borrowing and lending. In certain instances, they acted on behalf of their husbands. When Bernhard Sprenger's physical incapacity prevented him from going to court to register his debt to Johan Mentzel, his wife went on his behalf.[86] Through the mid-sixteenth century, women clearly had the legal capacity to act on their own behalf – and they showed a greater tendency to do so when lending money as opposed to borrowing it.

[80] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 362v.
[81] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 374r.
[82] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 281v.
[83] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 351v.
[84] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 125r.
[85] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 311.
[86] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 235v. For another example, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 272v.

Table 5.5 Uses of Guardians by Females (*Vormünde*)

Year	Female Debtors			Female Lenders		
	With a Guardian	Without a Guardian	Total	With a Guardian	Without a Guardian	Total
1528	0	9	9	0	9	9
1533	1	12	13	1	3	4
1548	8	9	17	2	15	17
1553	13	11	24	0	13	13
1568	2	24	26	0	19	19
1573	10	22	32	4	26	30
Totals	**34**	**87**	**121**	**7**	**85**	**92**

5.4 Registration and Repayment Plans

Having seen what the Freiberg archival records can tell us about who borrowed and lent, and for what purposes, let us look at how entries were recorded, and what they have to say about repayment plans.

The vast majority of the entries in the debt registers say nothing about whether it was the debtor or the lender who registered the transaction with the court, or about how the information on the loan was received by the court. Often, it seems that it was the borrower who transmitted the information. For example, on 16 November 1554, Peter Fischer from Munzbach wrote the court to report that he had borrowed thirty gulden from the honourable Andreas Edelmann.[87] Similarly, Valten Hantzsch wrote the court on 16 November 1553 to inform it that he had borrowed twenty gulden from Wolff Kuehn and committed to repay it by 4 February 1554.[88] In both cases, it was the debtors who registered the debt with the court, not the creditor. In many ways, it makes sense for the debtor, not the creditor, to register the loan: it was or could be a safeguard against creditors falsely registering a loan. A letter from a borrower constituted an acknowledgement that the loan had indeed been made.

[87] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 356v.
[88] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 345v.

The text of the Fischer and Hantzsch communications were both written in the first person by the debtors themselves and then submitted to the court. Yet the vast majority of the debt register entries are written in the third-person since they were a scribe's or judge's summary of the letter (almost every entry was initialled by a judge), or oral report. The original first-person letters were typically discarded but for both the Fischer and Hantzsch cases, the original can be found as loose sheets inserted into the debt register.[89]

There was often a delay between the date of the borrower's letter and the date the loan was entered in the debt register. Fischer wrote the court on 16 November 1553 but it was not entered into the debt register until 13 December almost a month later. Hantzsch's case took even longer – over nine months – by which point the debt had been reduced from twenty to ten gulden. So few of these survive that it is not possible to gauge whether a delay was standard, and if so, the typical duration.[90]

Loan repayment schedules are frequently included in debt register entries. For example, Valten Hantzsch had fourteen weeks to repay his debt to Wolff Kuehn. At times, the first payment would be made on the date that the debt was entered into the debt register. The following payment would be scheduled for the next major religious holiday, provided there was at least a four to five week gap between the two. Thus when Cristoff Jentzsch's debt of twenty-one gulden and twelve groschen to Caspar Horn was registered on 29 November, the repayment plan called for payment of seven gulden at Christmas, seven gulden during the second week of Lent (which in 1554 would have been the week of 19 February), and the remaining seven gulden and twelve groschen at the traditional Easter market.[91] As was common in early modern Europe, these dates centered on significant religious festivals in the liturgical calendar. Christmas, Easter, Pentecost, St. Margaret's Day

[89] In early modern Germany, it was common to write to a judicial body, rather than to appear in person.
[90] It is not possible to ascertain how frequently loans were registered in person as against by letter. For 1553-1555, perhaps a dozen letters survive.
[91] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 308r.

(13 July), St. Michael's Day (29 September), and St. Martin's Day (11 November) were most frequently used. As well as major religious feast days, they were chosen to coincide with the dates of important economic events such as the Leipzig trade fair (*Markt*), indicating the importance of the commercial calendar and cash flow in planning repayments.

Another type of repayment plan set out a specific sum to be paid weekly, quarterly, or annually until the debt was repaid. For example, Jorge Stock owed Caspar Ottel two gulden and eighteen groschen, and the payment plan required him to pay Ottel six groschen per week until the debt was discharged.[92]

The sample years display a clear diachronic change in the structuring of payments. In the earlier years, most payments are scheduled around either major religious events or to be made at a set frequency. When Caspar Trauzelt borrowed two gulden and eighteen groschen from Fabian Fleischer in 1548, repayment was scheduled for the Saturday after Candlemas/Presentation of Jesus at the Temple (*Mariä Lichtmess*).[93] In a case from 1533, Mathias Lithman was given six weeks to repay Wentzel Kirscheim three gulden and twelve groschen.[94]

In the later sample years, there is a growing trend to schedule payment around trade fairs. Thus when Hans Rosennecker borrowed twenty-four gulden from 'die Barthel Vogtin', the payments were scheduled for every Easter and St. Michael's Leipzig trade fair until the sum borrowed was repaid.[95] The increasing centrality of the trade fairs shows their growing importance for both personal and business transactions.

Having a specified time frame to repay loans differentiates practice in Freiberg from that in England, France and Hannover. Muldrew states that most debt agreements in England did not specify how or when repayment should occur. The creditor had the upper hand in

[92] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 296v.
[93] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 13v.
[94] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 364v.
[95] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 233r.

defining a schedule, but there usually existed room for negotiation between borrower and lender as to precisely when payments should be made.[96] Neither was it standard practice in Nantes or Hannover to set out an exact repayment schedule for a loan.[97]

At times, the court acted as a mediator. Jorge Hoffman and Melchior Bachmann were at odds over the financial implications of the responsibility for a girl named Margaretha, possibly a relative of Melchior's, who had lived with Hoffman for four and a half years. The exact circumstances were not recorded, but it appears there was disagreement over how much Hoffman owed Bachmann.[98] In the end, through the negotiation of councillor Nicol Lanzberg and judge Clement Kuehn, they agreed to tally their expenses, and that Hoffman would pay the balance owing (which turned out to be fourteen gulden).[99] The court was not merely a record-keeper, it was an active participant in resolving this debt-based conflict.

5.5 Collateral

To help ensure repayment, collateral was often part of the loan agreement. It was not present in every case and many lenders made do without it. As Table 5.6 shows, 606 of the 1145 cases (52.9%) from the sample years include some form of collateral. The table also demonstrates a clear rise in the use of collateral from the earlier sample years where typically around forty to forty-five percent of the cases specified collateral, to the latter years where over sixty percent of cases did.

The decision to require collateral was that of the lender. In some cases, such as when Georg Fluher lent to Balthasar Schumann and his daughter 'die Paul Engelmannin', the

[96] Muldrew notes that this usually occurred about nine months after the loan had been advanced. Muldrew, *Economies of Obligation*, 174.
[97] See Hardwick, *Patriarchy*, 181. Sturm, *Privatkredit im Hannover*, 140.
[98] The case mentions inheritance money (*Erbgeld*) and it is possible that Hoffman was in charge of managing Margaretha's *Erbgeld* until she came of age or married, a situation that was not uncommon in Freiberg at the time. See StAFB, Stadtprotokoll (1561-1562), I Ba 4a, fol 32r.
[99] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 354v.

record clearly states that the lender desired collateral (*Versicherung begehrt*).[100] In most cases, this is not explicitly stated. But by examining the practices of serial lenders, trends emerge. Some, like Caspar Horn or Nickel Packisch, required it in almost every case. Others, like Sebald Schmutterherrr, rarely used it.[101] The lender's decision on whether to demand collateral was presumably influenced by his or her trust of the borrower.

Table 5.6 Number of cases with some form of collateral or pledge

Year	Total Number of Cases	Cases with Collateral	Percentage
1528	137	60	43.8
1533	175	76	43.4
1548	190	83	43.7
1553	229	104	45.4
1568	184	116	63.0
1573	230	167	72.6
Totals	**1145**	**606**	**52.9**

By far the most common type of collateral was real property. Time and again debtors would pledge their *Haus und Hof* (house and courtyard, or hearth and home) that a debt would be repaid. Property constituted the form of collateral in 251 (41.4%) of the 606 cases which included collateral.

Since the value of most houses far exceeded that of the loans, the debtor pledged a proportional share of the house's total value sufficient to cover the loan.[102] In June 1573, Hans Opitz borrowed twenty-two gulden from Hieronimo Krawider, and pledged his house in Freiberg's Dom-Virginis quarter which he had bought in 1549 for 200 gulden. Since the value of the house was greater than the loan, if the house were to be sold, Krawider was only entitled to the twenty-two gulden he had lent Opitz.[103]

[100] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 259r.
[101] In 1553, Horn extended ten loans, and Nickel Packisch four. Collateral was attached in all fourteen loans. Schmutterherrr lent four times in 1553; none of his loans included collateral.
[102] See chapter two for details of house prices. Houses within the town walls were generally worth a minimum of 100 to 200 gulden.
[103] For the loan, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 271v. For the house, see SHStA Dresden, 12613, Kaufbuch Nr. 2 von St Virginis in Freiberg (1538-1590), Nr. 58, fols 296v to 298r. The pledging of the house was noted in the housing regsister.

Partible inheritance was the standard in Saxony, and when the patriarch of a family died, the house was equally split between the surviving children (and possibly the widow). Either the heirs would sell the house, or one of the children would assume ownership, and over many years, pay his siblings their share.[104] Such a system of partible inheritance meant that it was normal for many different people to have a stake in a house – stakes which could be pledged as collateral.

In this manner, the practice of pledging a share of *Haus und Hof* extended beyond one's own house. If someone had a beneficial interest in another Freiberger's house, it could be pledged as well. For example, when Michael Matthias borrowed five gulden and fifteen groschen from Mathias Gneuß, he did not pledge his own house as collateral, but rather a stake he held in councillor Georg Koler's house.[105] Such agreements suggest Freibergers had rather sophisticated financial capabilities, including a keen appreciation of their assets and liabilities.

Another common way that property functioned as collateral was a stipulation that if a debtor sold his house, the money from the sale (*Angeld*) would go towards repaying the loan.[106] Thus when Marcus Seiler borrowed three gulden and seventeen groschen from Michel Behr, he agreed that if he were to sell his house, he would use a portion of that money to repay Behr.[107] Since the court recorded all purchases and sales of property, such a condition was easily monitored.

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[104] For example when Andreas Klemm died in 1572, his house was sold to Elias Schmid for 370 gulden. Klemm's heirs, namely his widow and three children split the 370 gulden. See SHStA Dresden, 12613, Kaufbuch Nr. 1 von St. Petri in Freiberg (1571-1639), Nr. 44, fol 224r.

[105] Mathias' stake in Koler's house was worth ninety-four gulden, far more than the amount he owed. I am unsure if Koler and Mathias were kin, or how Mathias gained his stake in Koler's house. For the loan, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 227r; for the stake in the house, see SHStA Dresden, 12613, Kaufbuch Nr. 2 von St Virginis in Freiberg (1538-1590), Nr. 58, fol 115r. For another example, see the case of Lorentz Glaser, SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 17r.

[106] This specific stipulation was used seventeen times in the sample years. These instances are included in the property column in all tables relating to collateral.

[107] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 129r.

During the half-century encompassed by the sample years, the court significantly augmented the cross-referencing amongst registers, and thus its access to usable information. In the early sample years (1528 and 1533), the judge or scribe was content to note that a house had been pledged as collateral in the debt registers. By the later years (1568 and 1573), when a house was pledged as collateral, it was standard practice to note in which of the housing registers, and on what page, the record of the house in question could be found. For example, when Michael Mathias pledged his share of Georg Koler's house in 1573, the judge noted in the loan entry that the record of Koler's house could be found on folio 115 in volume A of the Dom/Virginis housing register.[108] Simultaneously, the judge noted in the housing register that Mathias had pledged his share of the house to Gneuß and that the loan could be found on folio 227 of volume G of the debt registers.

The system of cross-referencing was used not only for houses, but other kinds of financial transactions as well. After 1553, butchers began to pledge their stalls in the meat market (*Fleischbank*) as collateral. The purchases and sales of these *Fleischbänke*, as well as gardens, were recorded in a separate register called the *Ackerbuch*. This too was cross-referenced with the debt and housing registers.[109] The thoroughness of Freiberg's scribes and judges is striking. By the mid- to late sixteenth century, they were able to effectively track and cross-reference a wide array of financial transactions. No doubt necessity motivated the scribes. Such vast records only served a purpose if the court could promptly locate existing entries.[110]

[108] Like the debt registers, the housing registers were also sequenced with letters. Volume A corresponds to SHStA Dresden, 12613, Kaufbuch Nr. 2 von St Virginis in Freiberg (1538-1590), Nr. 58.
[109] For an example, see SHStA Dresden, 12613, Ackerbuch (Kaufbuch) der Stadt Freiberg (1556-1607), Nr. 114, fol 198r; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 251v.
[110] Trade may also have played a role as early modern cities recognized that honest and effective administrative systems enhanced their reputation amongst the commercial classes and thereby attracted trade.

Besides property, the second most frequent form of collateral was a solemn promise to obediently live on one's own means (*auf seine eigene Kost gehorsam zu gehen*) and to not spend money on things other than sustenance and repayment. In some cases, this promise was combined with a provision that if the promise was broken, the debtor would be banished or held in jail.[111] But in the majority of cases where this form of collateral was used, it is unclear what would happen if the promise were broken.

The system of debtor's prison – where if a debtor failed to repay a loan, they were held in jail until the debt was repaid – was used only sporadically in Freiberg. In the sample years, it was used fifteen times, fourteen of which occurred in 1528 and 1533. After that, it was seldom used. Other infrequently used forms of collateral included pledging a share of one's inheritance (*Erbgeld*), and naming *Bürgen*.[112] As chapter three covered in greater depth, unless specifically designated as personally liable (*selbstschuldig/ selbstschuldnerisch*), *Bürgen* were not responsible for ensuring payments were made, or making the payments themselves if the borrower failed to pay.[113]

Table 5.7 Types of Collateral and Their Distribution

Year	Property	*Gehorsam Gehen*	*Bürgen*	*Fleisch-bank*	Jail	Other
1528	23	5	9	0	11	12
1533	26	27	9	0	3	11
1548	29	35	9	0	0	10
1553	58	26	3	7	0	10
1568	36	32	6	10	1	31
1573	79	45	4	7	0	32
Totals	251	170	40	24	15	106

The amount of the loan, not surprisingly, affected the frequency with which collateral was required. When the loan was worth less than twenty gulden, collateral was only present

[111] For banishment, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 15v; for jail, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 132v.
[112] Inheritance was pledged six times. In all tables pertaining to collateral, the inheritance cases are included in the "Other" column.
[113] In Hannover, *Bürgen* were used in financial cases when the borrower had nothing else to pledge as collateral. Sturm, *Privatkredit im Hannover*, 99.

in 354 (46.2%) of 766 cases. As the quantum rose, lenders demanded greater surety: on loans for between twenty to fifty-nine gulden, collateral was provided in approximately two-thirds of the cases. For loans of more than sixty gulden, collateral is specified in nearly eighty-five percent of the cases (see Table 5.8).

Table 5.8 Use of Collateral Based on Loan Size

Amount of Loan (in gulden)	Total Number of Loans	Loans with collateral	Percentage with collateral
0 to 4	301	138	45.8
5 to 9	235	104	44.3
10 to 19	230	112	48.7
20 to 29	83	51	61.4
30 to 39	71	48	67.6
40 to 59	77	52	67.5
60 to 79	24	19	79.2
80 to 99	14	10	71.4
100 Plus	55	50	90.9
Unspecified	55	22	40.0
Totals	**1145**	**606**	**52.9**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

The amount of the loan also impacted the type of collateral used. On loans worth less than ten gulden, the promise to behave obediently and not spend the money elsewhere was the most used form of collateral (see Table 5.9).[114] As the quantum rose, property became by far the foremost form of collateral. With the solemn promise, lenders had no tangible or attachable security. When the amount of a loan was small, this was not significant. As the amount at issue increased, so did the demand for attachable security such as property. Ownership of a house, after all, was how one showed oneself to be a committed, long-term member of the community, and thus a safe person to lend to.

[114] Hannover was slightly different as *Bürgen* there were used for small sums (less than five taler) and larger sums (more than 1000 Taler). In Freiberg, they are only used for small sums (see Table 5.9). On Hannover, see Sturm, *Privatkredit im Hannover*, 96-7.

Table 5.9 Type of Collateral based on Loan Size

Amount of Loan (in gulden)	Property	*Gehorsam Gehen*	*Bürgen*	*Fleisch-bank*	Jail	Other
0 to 4	16	66	11	4	10	31
5 to 9	24	34	13	5	3	25
10 to 19	54	26	6	4	0	22
20 to 29	26	12	1	3	0	9
30 to 39	21	15	3	2	1	6
40 to 59	44	1	1	3	0	3
60 to 79	11	2	1	1	1	3
80 to 99	6	3	1	0	0	0
100 Plus	41	3	0	1	0	5
Unspecified	8	8	3	1	0	2
Totals	251	170	40	24	15	106

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

Borrowing and lending thus appears to have been an everyday occurrence with routine wordings, established registrations procedures, and well-defined forms of security in sixteenth-century Freiberg. Even though the majority of loans were for small sums of money, there were many safeguards for the creditor: stipulated repayment plans, and various forms of collateral.

5.6 Repayment

The origination of the loan, however, represents only one side of this process. There exists a vital other side – that of repaying the loan – that needs to be examined in greater depth to see if these safeguards were adhered to and how they affected borrowers and lenders.

The court registers often recorded partial or full repayments. When repayment was reported to the court, it was normally done by the creditor. This was a safeguard against debtors fraudulently reporting repayment. It may suggest that lenders were interested in presenting themselves as doing business with integrity, since a public record that the loan principal had been reduced or repaid was primarily in the interest of the borrower.

Payments could occur privately or in court. When it occurred privately, it was incumbent upon lenders to come to court personally to register repayment, as Martin Teicher did on 12 March 1557 to acknowledge that Fabian Fritzsch had repaid him (nine years after the creation of the loan).[115] Prominent merchants, both those from Freiberg and those not, regularly sent a servant (*Diener*) to collect and/or register repayment.[116] For example, Caspar Horn frequently sent his servant Hans Beher on his behalf.[117] Debtors could also bring a letter to court with the creditor's seal and signature as Benedict Melhorn did.[118] Alternatively, payment could occur in court. Sometimes, the debtor would leave the money with the court and the lender would retrieve it at a later date; and sometimes both parties were present.[119]

The data on loan payments and discharges is not comparable to – nor nearly as complete – as that for loan registration. Imperial law required that a loan be registered, but it did not demand that payments and discharges be recorded, and it appears that Freibergers were well aware of the distinction, and were highly selective in seeing that payments were logged. In the early years of the debt registers, when a loan was repaid, the judge cancelled the initial entry by drawing an 'X' over it. At the time, individual payments were not tracked. In 1528 for example, of the thirty-eight cases which document discharge, only one has a record of individual payments. The other thirty-seven entries were merely crossed out, indicating the debt had been settled, but not when.

As the century progressed, it became more common for judges to note the date and amount of individual payments. For example, Cristoff Graul owed Jorge Russe twenty-five

[115] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 18r.
[116] If the lender was not from Freiberg, the debtor was sometimes forced to pay the cost of sending the money to the lender. Hans Gneuß, who borrowed two gulden and eighteen groschen from Blasius Eckert, had to pay for the cost of sending the money to Eckert in Chemnitz. See SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 361r.
[117] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fols 510v, 513r and 519v.
[118] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 276v.
[119] For example, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 237v and 496r. Similar methds of reporting repayment existed in Hannover. Sturm, *Privatkredit im Hannover*, 153.

gulden. On the day the loan was entered into the debt register, February 18, 1553, Graul paid Russe fifteen gulden and thirteen groschen. Three months later on April 22, Russe declared that he had received the remaining ten gulden and that the debt was thereby discharged.[120] By the middle years of the sample (1548 and 1553), alongside crossing out loans, the system of recording individual payments had become common practice. By the end of the sample, the practice of crossing out repaid loans had all but ceased. Notations of individual payments were now firmly the standard.

The gradual change from crossing out repaid loans to recording individual payments corresponds to a rise in the number of loans being recorded as repaid. As Table 5.10 shows, only 27.9 percent (87 of 312) of the loans from 1528 and 1533 are registered as repaid. By 1548 and 1553, this has risen to 41.5 percent (174 of 419), and by 1568 and 1573, to 45.4 percent (188 of 414). Even with the increasing specificity of the court's recording technique, fewer than half of the loans were being registered as repaid.

Table 5.10 Notations as to Loan Repayment

Year	Total No. Loans	Full Repayment Noted	Partial Repayment Noted	Loan Crossed Out	Total Noted as Repaid	Percentage Noted as Repaid
1528	137	0	1	37	38	27.7
1533	175	11	10	28	49	28.0
1548	190	40	11	21	72	37.9
1553	229	57	5	40	102	44.5
1568	184	75	13	2	90	48.9
1573	230	82	13	3	98	42.6
Totals	**1145**	**265**	**53**	**131**	**449**	**39.2**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

The data on loan repayment presents interpretative challenges to historians. Is one to assume that the majority of loans were not repaid? If that had been the case, the practice of lending money would not have continued, even given early modern notions of charity.[121] Or

[120] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 268r.
[121] On early modern notions of charity, see John Bossy, *Christianity in the West, 1400-1700* (Oxford: Oxford University Press, 1985), and his later *Peace in the Post-Reformation* (Cambridge: Cambridge University Press,

could it be that loans were repaid but not registered with the court as such? In which case, the question becomes what caused lenders to register repayment? The personal preferences of the lender himself or herself? The size of the loan? Collateral? Other factors?

Some serial lenders, such as Caspar Horn and Wolff Wagner, frequently registered repayments; from 1553 to 1555, they registered repayment in twenty-four of thirty-two cases.[122] But the majority of those who frequently lent showed no greater tendency to report repayment.

For serial debtors, however, clear patterns are apparent. For some, like Barthel Trenckner, or Jorge Wagner the cheese merchant, their debts were almost always registered as repaid. From 1553 to 1555, Trenckner is shown as having repaid seven of his eight loans; Wagner six of his seven.[123] But for others, such as Bastian Schubart or Donat Starck, their debts were almost never registered as repaid. Of their ten loans from 1553 to 1555, only one was registered as repaid.[124] There was little middle ground with serial debtors: they either made sure the loan was registered as repaid, or they did not. Rare is the person for whom some of their debts were registered as repaid, while other debts were not. This suggests that debtors could exert effective pressure on creditors to register repayment, but not all did.

There is a strong correlation between the principal amount and the frequency with which repayments were registered (see Table 5.11). For loans of less than ten gulden, only 30.5 percent (164 of 537) were registered as repaid. For loans of between ten and nineteen

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1998). Natalie Davis has examined the reciprocal nature of gift-giving in sixteenth-century France. Might debts have been repaid through gifts or other forms of undocumented or non-monetary exchange? Perhaps. See Natalie Zemon Davis, *The Gift in Sixteenth-Century France* (Oxford: Oxford University Press, 2000).

[122] For Horn, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 304v, 305r, 306r, 307v, 308r, 309r, 309v, 310v, 315r, 315v, 318r, 318v, 322v, 323v, 347r, 353v, 355r, 376r and 377v. For Wagner, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 264r, 265r, 277r, 298v, 299r, 311v, and 332v,

[123] For Trenckner, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 264v, 305r, 309v, 317r, 328v, 341v, 349v and 355v. For Wagner, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 277v, 305v, 323v, 328r, 335v and 343v,

[124] For Schubart, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 278r, 317r, 335v, 336r and 360r; for Starck, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 263r, 311r, 336v and 348v. Starck was 0 for 5.

gulden, this rises to 43.1 percent (135 of 313), and for loans worth more than twenty gulden, this rises to 56.4% (136 of 241). This pattern is not surprising. For loans of less than ten gulden, the stakes were relatively small and neither party had a strong incentive to make sure repayment was registered. As the amount rose, more was at stake, and both parties had more reason to ensure repayment was registered.

Another potential hypothesis is that borrowers and lenders needed the court's help to keep track of repayments. Craig Muldrew has argued that in early modern England much of society was innumerate.[125] For cases where the amounts at issue were less, such help was correspondingly less necessary. But Freiberg and Saxony were more advanced pedagogically and it seems unlikely that most Freibergers, particularly those borrowing large sums, would have needed the court's help for this reason.

Table 5.11 Loans Recorded as Repaid Based on Amount Lent

Amount of Loan (in gulden)	Total Loans	Loans Repaid	Percentage
0 to 4	302	85	28.1
5 to 9	235	79	33.6
10 to 19	230	102	44.3
20 to 29	83	33	39.8
30 to 39	71	39	54.9
40 to 59	76	35	46.1
60 to 79	24	13	54.2
80 to 99	14	11	78.6
100 Plus	55	37	67.3
Unspecified	55	15	27.3
Totals	**1145**	**449**	**39.2**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

Besides the principal amount, collateral had a perceptible impact on whether a loan was registered as repaid or not. Of the 606 cases with collateral, 281 (46.4%) were registered as repaid. Of the 539 without, only 168 (31.2%) were registered as repaid (see Table 5.12). If collateral and loan size are combined as analytical factors, definite patterns emerge. For

[125] Muldrew, "'Hard Food,'" 84.

loans without collateral and worth less than ten gulden, only 25.4 percent (75 of 295) are registered as repaid. For the same quantum, but with collateral, that percentage rises to 36.8 percent (89 of 242). The gap continues to grow as the quantum increases. Forty percent (60 of 150) of loans for between ten to twenty-nine gulden without collateral are registered as repaid as compared to forty-six percent for those with collateral. For loans of more than thirty gulden, those without collateral are registered as repaid 42.6 percent of the time (26 of 61); those with collateral are registered as repaid 60.9% (109 of 179) of the time.

The type of collateral also had a discernible effect on the registration of repayment. When it was something tangible like a butcher stall, a house, or a person (*Bürge*), loans are registered as repaid more than fifty percent of the time (see Table 5.13). When the collateral was something less tangible like the promise not to spend the money elsewhere, it proved less effective: only fifty-seven (33.5%) of the 170 cases are registered as repaid.

The high number of loans which show no record of repayment cannot be explained by assuming the court would only note payments in hard currency: payment in kind was sometimes recorded. Faced with a twenty-four gulden debt to 'die Peter Greußin', the widow Barbara Heldin proposed working for Greußin to pay off some of the debt, a proposal Greußin agreed to.[126] When Zacharas Weller bought a horse from Brosius Lembel for sixteen gulden and six groschen, Lembel agreed to accept two measures of beer (each valued at seven gulden), and the remaining two gulden and six groschen in coinage.[127] Lastly, in a contractual settlement for an assault case, the assailant, Andreas Lehnmann, gave a horse to his victim (Ilgen Burckhart) as compensation (in lieu of the eleven gulden and nine groschen, specified in the contractual settlement).[128] In all these examples, goods or services were

[126] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 309r.
[127] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 263r.
[128] SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1542-1556), Nr. 681, fol 389r.

provided instead of specie, and the court recognized the payment as valid.[129] If loans could be repaid through payments in kind, there is nothing to suggest there was anything to disincline lenders from reporting such payments.

Three factors – the size of the loan, the existence of collateral, and the type of collateral appear to have significantly affected whether a loan was registered as repaid or not. The most likely to be registered were loans with a tangible form of collateral and worth more than thirty gulden. Yet even these loans were registered as repaid only 62.0 percent (137 of 221) of the time. That still leaves nearly forty percent that were not registered as repaid.

The high number of loans not registered as repaid is truly puzzling. The rationale for registering a loan was simple enough: lenders and borrowers wanted a public record of the transaction. Thus loans were formally registered with the court, regardless of the quantum. Yet this logic runs into a roadblock: if it was important enough to register the creation of a loan, then surely it was just as important to register its repayment? If the loans were repaid, why did debtors not push for a record of it?

Table 5.12 Impact of Collateral on Repayment

	Cases with Collateral			**Cases without Collateral**		
Loan (in Gulden)	**Total Cases**	**Total Repaid**	**Repaid Percentage**	**Total Cases**	**Total Repaid**	**Repaid Percentage**
0 to 4	138	47	34.1	164	38	23.2
5 to 9	104	42	40.4	131	37	28.2
10 to 19	112	55	49.1	118	47	39.8
20 to 29	51	20	39.2	32	13	40.6
30 to 39	48	29	60.4	23	10	43.5
40 to 59	52	29	55.8	24	6	25.0
60 to 79	19	11	57.9	5	2	40.0
80 to 99	10	8	80.0	4	3	75.0
= / >100	50	32	64.0	5	5	100.0
Unspecified	22	8	36.4	33	7	21.2
Totals	**606**	**281**	**46.4**	**539**	**168**	**31.2**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

[129] See also SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384,, fol 509r, where the goods exchanged was a *Tuch*.

Table 5.13 Impact of Collateral Type on Repayment Recorded

Type of Collateral	Recorded Repaid	Not Recorded Repaid	Percentage Recorded Repaid
Bürgen	22	18	55.0
Gehorsam Gehen	57	113	33.5
Fleischbank	15	9	62.5
Property	136	116	54.0
Jail	3	12	20.0
Other	47	58	44.8
Total	**280**	**326**	**46.2**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

Punctuality of Repayment

While collateral and loan size increased the probability that a creditor would register repayment with the court, it did not increase the odds that the debt would be repaid on time. Of the 449 loans that were recorded as repaid, 201 (44.8%) were repaid late. Only fifty-nine (15.8%) were repaid by the date stated in the original registration. For the other 177 (39.4%), it is not possible to determine whether they were paid on-time or not since the judge simply drew an 'X' over the entry without recording a date or no payment plan was provided. Still, when data exists, repayment was three times more likely to occur late than on-time. As Table 5.14 shows, the presence of collateral does not appear to have influenced whether repayment was punctual or not. Three possible explanations stand out: one, creditors were not prompt in registering payments with the court; two, borrowers routinely did not repay their debts as scheduled; three, the parties may have agreed on a revised payment schedule that was not recorded in the debt register.

Consider the case of Brosius Salomon who owed Thomas Schubling four gulden, nine groschen and three pennies and was supposed to pay it back by Christmas 1554. No collateral was involved. The loan, however, was not registered as repaid by Christmas. Instead, Schubling's son, Peter, reported the debt paid on 18 January 1555.[130] Perhaps Salomon had repaid it on time and the Schublings were late registering it, or perhaps

[130] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 345v.

Salomon was (a rather trivial) three weeks late with repayment. As Table 5.15 shows, even if lenders are given a three month grace period to register repayment, and loans up to three months late are counted as being paid on-time, approximately half (135 of 273) of the loans were still repaid late, and quite often, very late.

Table 5.14 Punctuality of Repayment

Loans	Repaid on Time		Repaid Late		Crossed out / Unknown	
	Number	**Percent**	**Number**	**Percent**	**Number**	**Percent**
With Collateral	43	15.3	132	47.0	106	37.7
Without Collateral	28	16.7	69	41.1	71	42.3
Total	**71**	**15.8**	**201**	**44.8**	**177**	**39.4**

Data is drawn from the sample years: 1528, 1533, 1548, 1553, 1568, and 1573.

Table 5.15 Extent of Lateness (Numbers of Loans)

Loans	Repaid on Time	Repaid < 3 Months Late	Repaid 3 Mos to 1 Year late	Repaid > 1 year Late
With Collateral	43	40	42	51
Without Collateral	28	27	19	23
Total	**71**	**67**	**61**	**74**

Schubling was fortunate to receive such prompt repayment; Thomas Horn was not so lucky. In February 1568, he lent Gregor Kirchberger the paltry sum of eight gulden and twelve groschen without collateral. Nevertheless, it took until September 11, 1570 for the repayment to be registered – more than two years after it was due![131] But compared with Valten Ludwigk, two years was the blink of an eye. Ludwigk had bought a horse from Gregor Schmidt for three gulden and seventeen groschen in 1533 without any surety. On March 23, 1550, Ludwigk was still in the process of paying Schmidt back – fifteen years after the court (and presumably Schmidt) expected the loan to be paid.[132]

As the above statistics show, tardy debtors were not limited to those who had provided no collateral. Debtors with collateral could be just as delinquent, if not more so. Clement Bachman was supposed to repay his brother Caspar, and Pavel Ohm, twenty gulden

[131] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1560-1569), Nr. 384, fol 482r.
[132] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 378v.

at Easter 1533. As collateral, Clement pledged his *Haus und Hof*. Nearly five months after Easter, Clement repaid seventeen gulden and seven groschen. Two gulden and five groschen remained outstanding.[133] Oswalt Zencker's debt of five gulden and thirteen groschen, for which he had pledged his *Haus und Hof* as collateral to Caspar Horn, remained outstanding for a longer period. Zencker was supposed to repay half at Christmas 1553, and the other half at Easter 1554. But it took until 29 July 1556 for Zencker to repay the debt – over two years late. Horn was one of the more significant money lenders in Freiberg, lending twenty-two times from January 1553 to June 1555. Between Easter 1554 and 29 July 1556, he appeared several times before the court. If the debt had been repaid, Horn had several chances to report it. Despite Zencker's tardiness, Horn made no move to seize Zencker's property.[134]

Caspar Horn's leniency went further. On the same day, 28 November 1553, that he lent five gulden and thirteen groschen to Oswalt Zencker, Horn lent twenty-one gulden and twelve groschen to Cristoff Jentsch, and four gulden and fifteen groschen to Peter Beseler. Like Zencker, both Jentsch and Beseler pledged their *Häuser und Hofe* as collateral. As described earlier, Jentsch was to make three payments of seven gulden, approximately six weeks apart, culminating at Easter 1554. There is no evidence he made any of these payments since it was not until 12 October 1559 – nearly five years late – that the loan was recorded as repaid.[135] Beseler's loan took even longer to repay. Only on 15 August 1572 was the debt acknowledged as paid. Eighteen years late![136] And yet, Horn never demanded the *Häuser und Hofe* from any of the three debtors. He was content to wait for them to pay him back – which they all did. Similarly, the court made no move to intervene, also seemingly content to let the process play itself out. Why?

[133] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fol 351r.
[134] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 307v.
[135] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 308r.
[136] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 355r.

Non-Payment: What Happened?

Across the sample, there are 696 cases for which no record of repayment exists. In the vast majority of them, no further follow-up exists, either in the debt registers or any other court register. Compared to Hannover where creditors repeatedly complained to the court over unpaid debts, the lack of complaints in Freiberg about unpaid debts is thoroughly surprising.[137] The natural place where one would expect to find such cases would be in the city council minutes (*Ratsprotokolle*). I have examined the surviving council minutes from 1550 through 1570 (a few years are missing), and have only encountered one mention of a case from my sample of the debt registers.[138] There exists a small chance that the court maintained a separate register for unpaid debts. To date, I have found no evidence of such a register. I also doubt that such a register existed for this period. With the extensive system of cross-referencing, had such a register existed, I expect I would have come across multiple references to it. I have encountered none.

There are, however, a few cases that shed light on what happened when loans were not punctually repaid. By far the most prevalent was the creation of a new loan agreement with a new payback plan. On 26 August 1533, Balthasar Krebs borrowed fifty gulden and eighteen groschen from Gregor Schubart and Hans Richter. Krebs was to repay the entire sum by St. Martin's Day (November 11). He apparently did not. On 15 November, Krebs, Schubart, and Richter agreed to a new payment plan, which Krebs partially adhered to.[139] Bernhart Sprenger found himself in a similar position. He owed Simon Richter, the judge from the nearby village of Freibergsdorf, thirty-one gulden, thirteen groschen and six

[137] Sturm, *Privatkredit im Hannover*, 200-06.
[138] 'Die Thomas Hunchenin' owed Andreas Edelmann 240 gulden. The matter had been originally entered into the *Gelübdebuch* on 13 February 1553. A little more than year a late, on 7 March 1554, the unpaid debt comes up in the *Ratsprotokoll*. A new payment plan is agreed upon and Hunchenin is not admonished for her tardiness. See StAFB, Stadtbuch (1553-1556), I Ba 3a, fol 67r. It is likely there may be a few more cases from years outside my sample but it would be surprising if this changed the general impression that unpaid debts were not pursued further through the council.
[139] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1523-1535), Nr. 379, fols 370r and 376v.

pennies. In the original agreement on 29 October 1572, Sprenger agreed to pay Richter fifteen gulden at the beginning of Lent, and the remaining eighteen-plus gulden at Easter of 1573. On 1 June 1573, Sprenger and Richter reappeared before the court since Sprenger had neither made the payment at Lent nor at Easter. A new payment plan was agreed upon with Sprenger to make payments of ten gulden at St. Jacob's Day (July 25), St. Michael's Day (September 29) and St. Martin's Day.[140] If the payment plan proved effective, it left no trace: no further record of the case exists.

The Sprenger case serves as an example of what the court or a creditor could do if the initial payback plan proved ineffective: add additional collateral. In the original agreement between Sprenger and Richter, there was no collateral. In the second agreement from June 1573, Sprenger pledged his *Haus und Hof* as collateral, and agreed that if he sold his house, the money from the sale would go to Richter. After having missed payments for four oxen that he bought from Jacoff Walter on 23 February 1548, Hans Petzelt found himself in a similar position. On 18 May, Petzelt and Walter again appeared in court, and this time Petzelt named Urban Gitzelt as his *Bürge* that he would repay Walter. The addition of Gitzelt proved ineffective as no record exists of Petzelt repaying the debt.[141]

Some cases with new repayment plans could extend over several years and debt registers. Balthasar Schumann and his daughter, 'die Paul Engelmannin', first borrowed an unspecified sum from Georg Fluher on 9 May 1573. On 11 November 1573, the loan was entered into the debt register, this time with a quantum of thirty-three gulden. Ten months later, on 3 September 1574, the quantum had risen to thirty-six gulden and nine groschen. By 25 June 1576, the case was again re-entered into the debt register. By this time, the debt had

[140] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 220r and 263r.
[141] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 20v and 25v.

been paid down to five gulden and two groschen. Finally, on 21 April 1582, the loan was acknowledged as repaid.[142]

What is striking about these cases is that there was seemingly no penalty imposed on delinquent debtors. A new payment plan was agreed to, perhaps with added collateral, and this sufficed for the court and creditor. This subtle, or not so subtle, reminder that a new agreement provided, generally proved effective. Of the thirty-two cases from the sample with new loan agreements/payment plans, eighteen led to either full or partial repayment.[143] In Hannover, although the court frequently ruled in favour of the creditor, there was little it could do to compel a recalcitrant borrower to pay. It could banish or confine the debtor but neither aided a creditor's quest to be repaid. Moveable assets could be seized but the creditor often had no interest in them (or they were insufficient to cover the debt).[144]

For Freiberg, outside negotiating a new payment plan, it appears creditors did little to pursue delinquent debtors legally. If collateral had not been provided, a creditor's options were obviously limited. If collateral, especially property, was present, creditors had an asset to pursue. Property of course was not a moveable asset. Although a creditor may have had a significant stake in a house, until the house was sold, he had no way of realising his share of the house. As physical objects, houses were not something that could be partitioned. They were a singular entity.

The court's response was a resolution that if a borrower's house were sold, the money from the sale was to be used for repaying existing debts. This resolution could be strengthened with the stipulation that a given creditor was to be paid before all others – no small consideration since it could sometimes take ten to fifteen years to complete the sale of a

[142] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fols 259r, and 301r; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1575-1582), Nr. 387, fol 41v.
[143] Of the thirty-two cases with new loan agreements, twenty-three are from 1568 and 1573. When a new plan was created, on the old entry, the judge would note on what page the new entry could be found, and on the new entry, on what page the old entry could be found. It is possible there were more entries from the earlier years of the sample that I have missed because they were not cross-referenced.
[144] Sturm does not discuss immoveable assets like property. Sturm, *Privatkredit im Hannover*, 193-249.

house.[145] A secondary tactic was to threaten a debtor that he or she would have to hand over his or her house key to the court.[146] But these threats were largely symbolic.[147] While the court may have threatened eviction, actually doing it was rare.

When a creditor aimed to seize a delinquent debtor's house, there existed a standard procedure. The first step was to make the borrower get an assessment of the value of the house.[148] Once a value had been established, the house could be theoretically auctioned and sold. An example is illustrative. In a case from 1554, Wentzel Hasche owed Mathias Kober twenty-eight gulden and twelve groschen and was supposed to pay seven gulden and thirteen groschen every St. Margaret's Day (13 July). When August 1555 arrived and two St. Margaret's Days had passed without payment, Kober's patience wore thin. On 29 August, the court admonished Haschke to pay Kober or to get his house assessed (presumably so it could be sold).[149] But the trail ends there and neither appears in the historical record again.[150]

In the Hasche-Kober case, and the handful of other cases from the sample where debtors are ordered to get their house assessed, the cases never proceeded further than the assessment. In all likelihood, the threat to assess one's property served as enough of a spur to most borrowers either to repay or to reassure their creditors that they would pay. Per Martin Dinges, such a manoeuvre was probably a gambit by lenders, designed to increase pressure

[145] For examples, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 48r; and SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 248r.
[146] See SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1569-1575), Nr. 386, fol 299v.
[147] For more threats, see SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fols 270r and 271r.
[148] Freiberg maintained a *Schatzungsregister über Grundstücke* where financial assessments were placed on houses, gardens and *Fleischbänke*. Only one *Schatzungsregister*, covering the years 1578 to 1615 survives. It is unclear if this was the first in a serially-kept register. The lack of earlier cross-references indicate that it was likely the first. Its latter date of inception means that cases from the earlier years of the sample do not appear in it. Cases from the end of the sample and the post-sample years do appear (but it was rare for cases to reach this stage). For the register, see SHStA Dresden, 12613, Schatzungsregister über Grundstücke (1578-1615), Nr. 577.
[149] SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 321v.
[150] Haschke had appeared three months earlier to borrow nine gulden from Hans Kuehn, again pledging his *Haus und Hof*. This debt was also not repaid. SHStA Dresden, 13749, Gelübdebuch der Stadt Freiberg (1547-1561), Nr. 382, fol 380v.

on a tardy debtor. Considering the fractional values of most loans compared to houses, forcing a sale would have been an overreaction as well.

Stepping back, one is forced to consider the larger question of the role collateral played in these cases. If collateral was never turned into anything tangible, or at least not for several years, what was its role in these cases? Why did Freibergers continually chose to use a form of collateral that could not be realized for many years? The answer is that collateral was not primarily used to secure repayment; rather it was about establishing reliance, credit, and trust. Pledging property was a way to mark one's self as a long-term, committed member of the community, and thus a safe person to lend to, a distinction that was especially important in the nomadic mining world of the Erzgebirge. To return to the case of Caspar Horn and Oswalt Zencker, it may have taken Zencker five years to repay Horn, but Zencker's status as a property owner in Freiberg gave Horn the security and knowledge that he would be repaid.

5.7 Legal Culture of Borrowing and Lending

The Court

The Freiberg court's role in these transactions is fairly well-defined: it was first of all a record-keeper on behalf of the community. Concerns over usury no doubt spurred the court to fill this role, as did Freiberg's lack of notaries. One of the main changes of the sixteenth century was the increasing importance placed on written proofs and records. For both people and institutions, written documents gained centrality, a fact borne out by the frequency with which Freibergers registered their debts with the courts. As Freibergers readily 'consumed' this service (to use the language of Daniel Lord Smail), the court responded by creating new registers and an ever-improving system of cross-referencing to be able to track the different

transactions. For loans, this meant a change from just drawing an 'X' over repaid entries to tracking individual payments.

The tracking of payments had its limits. Besides the debt registers, there were also payments to track from the housing registers, contract registers, and wills and testament registers. At mid-century, there were no less than twenty-six court registers being actively compiled, each of which contained scheduled payments.[151] Despite payments being scheduled around major religious festivals and fairs, there was no central list of when payments were due, and without one, it would be impossible to keep track of all payments that were due at any given moment.[152] Instead, all the court had were name registers at the beginning of each debt register, but only the names of borrowers were recorded.

This practice of indexing the registers, but not compiling a central schedule of payments indicates that tracking payments was not something the court viewed as its responsibility.[153] By organizing the debt registers around individual borrowers, the court positioned itself as a mediator and record-keeper, not an enforcer of payment. If a creditor complained about a tardy debtor, the court would deal with the case and not ignore the creditor. But the court was clearly not proactive in pursuing debtors behind in their payments. It did not actively punish, reform or discipline. Only if a case was brought directly to its attention would it handle it. Beyond that, the court was content to plays its notarial role (one it did not financially profit from).

In this light, the continued creation and recording of payment plans seems peculiar. Why was the court going to the trouble of recording these plans when they were so seldom

[151] In 1550: twenty housing registers, one *Ackerbuch*, one debt register, and four *Erbsonderungs-*, *Vertrags- und Testamentsbücher* (the *Erbsonderungs-* and *Vertragsbücher* were initially two separate series, but merged together in 1542). Old registers that were no longer being actively compiled also potentially contained scheduled payments through 1550, such as debt registers B (1535-1541) and C (1540-1547).
[152] Financial exchanges extended beyond just aspects of civil law at this time. As chapter four showed, assault and murder were typically resolved with contractual settlements which also featured scheduled payments.
[153] There is a possibility that such a list may have existed but is now lost. Again with the thoroughness of the scribes, I would have expected to encounter references to it. To date, I have not.

adhered to? The natural expectation would be for them to fall by the wayside. And yet, they were as much a part of the culture in 1573 as they were in 1528. The likely answer is that they provided structure for borrowers and lenders. Although not precisely followed, they gave borrowers and lenders a general timeframe as to when payments should occur. This general timeframe gave borrowers and lenders room to manoeuvre and negotiate, lest payment occur late or early.[154]

The Debtor

Of the Freibergers involved in lending, debtors reveal the least to the legal anthropologist. Their assumed responsibility for the registration of loans reveals little of their role in this process. It is not difficult to imagine a lender making registration with the court a condition of a loan. Alternatively, perhaps the court offered borrowers security in the face of an unscrupulous lender. By registering the loan with the court, debtors were making sure that lenders could only charge a legal rate of interest. The sheer volume of loans, both for personal and business reasons, many for small sums, is also not surprising. Historians have long known that such exchanges permeated daily life in early modern Europe. What is noteworthy is that whereas in other polities, these transactions may have been loosely defined or registered with notaries, in Freiberg they took the shape of formal loans registered at court.

The most surprising aspect of this practice from the debtor's perspective is that so few of these loans were registered as repaid. If debtors wanted the security of a court-registered loan, why did they also not want an officially recorded end to their liability? Even though it was the creditor's responsibility to register repayment, debtors could exert effective pressure to make sure repayment was registered. Social differences may have prevented some borrowers from applying such pressures. Although most borrowers and lenders were citizens

[154] Manoeuverings that by all appearances remained extralegal.

with a firm financial standing, there were reasonably marked differences in wealth between most borrowers and lenders. Certain factors, such as the amount, and the presence and type of collateral could also lead to a higher rate of registered repayment.

Alternatively, the historian could assume that the majority of debts were not repaid. Perhaps because the borrowers did not have the money, or perhaps because they did not want to repay. Little, however, survives to illuminate the financial position of most borrowers. It is unlikely that Freibergers would have continued to lend if their chances of being repaid were low. Moreover, as Scott Taylor and Craig Muldrew have shown for early modern Spain and England respectively, repaying one's debts was directly connected, not just to one's creditworthiness, but to one's (all-important) honour.[155] Failure to repay a debt constituted a persistent impugnment of one's honour. Could honour be maintained in a world where less than half of the debts were repaid? Unlikely. Unfortunately with borrowers, we are left with more questions than answers.

What role did collateral play for debtors? It is clear that collateral was not primarily used for bartering and exchanges – that was its secondary function. Instead, its primary function was to establish trust and longevity within the community, both of which served to assure lenders that they would be repaid.

The Lender

With lenders, there exists a similar paradox as to that with debtors: why were so few loans registered as repaid? If the loans were privately repaid, why did lenders not register them as such with the court? Considering the frequency with which Freibergers went to court, a court appearance cannot have been that much of a hindrance. Yet, it apparently was enough of a hassle that most lenders did not register (assuming repayment occurred).

[155] See Scott Taylor, "Credit, Debt, and Honor in Castile, 1600-1650," *Journal of Early Modern History* 7 (May 2003), 8-27; and, Craig Muldrew, *Economies of Obligation*.

Alternatively, if the loans were not repaid, why did lenders not pursue delinquent debtors? The immovability of the most widely used kind of collateral (property) handcuffed a lender's options and forced them to wait until a house was sold. But even when there were other forms of collateral, or no collateral, lenders still did not take legally available measures against tardy debtors. That so few attempts were made to seize collateral or reprimand debtors could also indicate that most debts were repaid, and just not registered with the court.

Aside from the law, there was a range of manoeuvers that lenders had at their disposal. One was to simply remind a borrower of their debt. But Scott Taylor has found that in sixteenth-century Spain one of the most common causes of violent quarrels was verbal exchanges, often reminders, over debts. Such a remark could and often was interpreted as a direct attack on one's honour and credit worthiness.[156] Whether the same held true for Freiberg, *mutatis mutandis*, is difficult to ascertain. As chapter four showed, Freibergers had no trouble getting into fights. Unfortunately, the trigger for most fights was not recorded. An initial examination revealed little overlap between borrowers and lenders, and assailants and victims, but the sheer volume of both activities makes such a systematic comparison impractical.

Demanding repayment could also threaten to disrupt social relations, especially in a small community like Freiberg. As Craig Muldrew has argued for England, creditors understood if they insisted on being repaid, they might "gain a reputation for hard-dealing, and leniency would be denied [to] them if they were to find themselves in a similar position in the future."[157] So creditors chose the path of social harmony over prompt repayment. As we saw with Peter Beseler and Caspar Horn, this road might take eighteen years to travel, but in the end, Horn got his four gulden and fifteen groschen back. For Horn, seizing Beseler's

[156] See Taylor, "Credit."
[157] Muldrew, *Economies of Obligation*, 181.

house for such a small amount would hardly have been worth it, considering the social ills that such an act would bring with it.

Besides social relations, trust was certainly a key factor as creditors seemingly held fast to the belief that they would be repaid.[158] Early modern people had very different notions of time. Theirs was a much more contingent world, subject to the vagaries of weather, disease, and, in Freiberg, mining. This must have left its imprint on expectations of loan repayment, as it did on much else. In this light, a missed or late payment was a part of daily life, not an act of disobedience. Nor would it have been problematic if a creditor was not prompt in reporting reception of a payment to the court.

Given all the uncertainties regarding repayment, it is worth asking the question of why did people lend? Financially profiting from loans, at least legal, non-usurious loans, was difficult (and would not have been registered with the court). With a maximum interest rate of five percent, a ten gulden loan could only bring a legal profit of half a gulden (or ten groschen and six pennies), a trivial sum. Whether most loans even had interest is a separate matter.

Instead, I think the answer is that people lent to develop social networks and webs of mutual obligations. As with *Bürgschaft*, networks of borrowing and lending were a means to protect one's self against the contingencies of daily life. To guard against the risks of weather, disease, and mining, one borrowed or one lent.[159] If hard times hit, a list of debts and credits provided security, or at least a network of people whose help could be solicited.

[158] Beate Sturm has found for Hannover that creditors were likely to be patient if they believed in the debtor's ability to repay. She also found that borrowers actively sought to avoid appearing before a court, and instead tried to reach an out of court resolution with the lender. See " 'borg macht sorg' Schuldkonflikte im frühneuzeitlichen Hannover," in *Social Praxis des Kredits: 16. bis 20. Jahrhundert*, 61-2.

[159] An Ego document (*Selbstzeugnisse*) that explores the mental calculations of lenders would be of immense help. Regrettably, none exists for Freiberg. For a provocative analysis of how a fifteenth-century Florentine merchant made these calculations, see Gabor Toth, "Coping with Uncertainty in Late-Medieval Florence: Decisions, Risks and Friends in a Medieval Merchant's Diary," (paper presented at the Economic and Social History Graduate Workshop, University of Oxford, 24 October 2012).

Repayment in this light was not so important, for repayment signaled an end to the relationship. As long as the debt remained outstanding, the entanglement persisted. A brief examination of the wills and testaments of Freibergers bears this out.[160] As in Italy and many other European polities, most Freibergers had a list of outstanding debts *and* outstanding credits.[161] Rather than trying to cancel the debts out, Freibergers chose to retain the middle ground of having both outstanding debts and credits. Preserving the relationship is likely another reason why there were so few legal challenges to unpaid debts. A legal move against a debtor would have been an attack on this relationship. On the other hand, that some loans were repaid and some recalcitrant debtors legally pursued (with new payback plans and loan agreements) indicates that not all loans served the purpose of building networks.[162]

Because borrowing and lending entailed financial, social, and legal practices, it offers a broad spectrum of insight into life and legal culture in sixteenth-century Freiberg. Economically, it demonstrates that for a multitude of reasons, borrowing and lending was a common activity that most citizens frequently engaged in. Socially, it included the rich, the poor, women as well as and men. Legally, it demonstrates that while most citizens wanted a record of their loans, they were nowhere near as concerned with having a record of repayment. However, certain factors, such as the size of the debt, the presence of collateral or specific debtors could alter this and lead to a greater degree of reported repayment. Governmentally, as we have seen throughout, the court did not punish, reform or discipline, it recorded, mediated, and negotiated.

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[160] Since it was generally only those with significant assets whose wills and testaments were recorded, those found in the *Erbsonderungs-, Vertrags- und Testamentsbücher* are not representative of the population.
[161] See for example the inventories of Michel Maukisch and Andreas Edelmann. For Maukisch, SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1552-1565), Nr. 678, fol 348r. For Edelmann, SHStA Dresden, 13749, Erbsonderungs-, Vertrags- und Testamentsbuch (1570-1580), Nr. 685, fol 47r;
[162] What shape these networks took is unfortunately beyond the scope of this thesis. For now, it suffices to say that the networks were complex. Freibergers did not borrow from one person, and then later lend to the same person. Rather, they would borrow from one person, and lend to another.

6. Conclusion

In the last thirty years, our understandings of early modern legal institutions have markedly changed. No longer do scholars adhere to the model of courts as disciplinary authorities, using corporal punishment and banishment to reform an idolatrous citizenry. Instead, the consensus of the last twenty years has repeatedly demonstrated how civic authorities strove to build consensus and gain the support of the citizenry. The sociological model of social control was vital in the earlier years of this shifting scholarly perspective since it forced scholars to employ a wider optic, and take note of the social processes behind legal cases. But its continued usefulness for this kind of research is minimal. As the introduction demonstrated, social control and its conceptions of deviance are too rooted in the modern world to be effectively employed for studying the early modern world.

Instead, Lawrence Friedman's model of legal culture is far more suitable for legal research, and is more transportable across centuries. Friedman's model requires the ethnographer to examine both the users and the courts, and attempt to assess how the two interacted: when did people turn to the law, and when did they not? When did the court actively sanction, and when did it tacitly approve? Moving beyond social control and instead into the concept of legal culture changes many of our perspectives about social life and legal institutions in the early modern world.

First, historians have long held that the reception and implementation of Roman law was a step towards modernity and away from a dysfunctional, archaic, medieval past. Law evolved from the irrationality and ordeals of the Middle Ages to the rationality and judicial proofs of the modern world. Sixteenth-century Freiberg presents a different picture. Here, the 'pre-Roman law' of the Freiberg *Stadtrecht* was highly predictable and consistently administered. The legal culture was neither dysfunctional, nor irrational, nor harsh.

Freibergers knew what to expect from the court and proceeded accordingly. They had a legal system that soothed conflicts by slowing them down and spreading a resolution out over several days or weeks. The court catalogued and tracked numerous transactions amongst Freibergers. In this regard, the implementation of Roman-derived law disrupted a thriving ecology; whether this was 'progress' is an open question.

Second, the court was primarily a record-keeper. In a town without notaries, the court took over this function and notarised all sorts of documents: peace pacts, loans, wills, testaments, property, and house purchases. With such a vast inventory of records, the only way for the court to be an efficient record-keeper was to create registers with specific themes, to cross-reference registers, and to index the names in each register. In all these tasks, the court scribes proved dedicated and able, creating a system of reference and record that worked. This system of governance did not extend to regulating life or ensuring that commitments were fulfilled. That was the responsibility of Freibergers themselves. Only when specifically asked, did the court turn active and check if legal agreements were followed. Otherwise, after performing its responsibility to record, the court remained a passive participant.

For the users of the court, this record-keeping function offered security. Whether it was for the abrogation of discord, the cessation of violence, or the documentation of loans, Freibergers turned to the court to record their commitments. The publicity of the court ensured these processes were not only documented, but that the record was formal and public. These were not just legal records, they were social ones too.

Third, the court recognized the boundaries to its capacities. With a limited number of court personnel, many of whom were of low social status, the court was constrained in its efforts to ensure verdicts and agreements were carried out. But by using social bonds, and legally empowering them through *Bürgschaft*, the court extended its reach much further into

social life.[1] Beyond just the court and disputants, the inclusion of *Bürgen* meant that multiple people had a stake in upholding legal resolutions.

Fourth, the court rarely punished or disciplined its citizens. Rather its goal was to maintain, and, when necessary, restore the urban peace. As the previous chapters documented, all sorts of conflicts – financial, verbal and violent – played out before the court. In these cases, the court sought to mediate between, and, ideally, reconcile the disputants. The one exception was theft. Where violence was accepted as a part of daily life (so long as it did not develop into a feud), theft was the offence that could not be tolerated. In the few instances where the court employed punitive sanctions, it was against thieves. Of the 131 banishments chronicled in the *Urfehdebücher* from 1539 to 1578, seventy-three were for theft.[2]

Theft violated the sanctity of property, and in Freiberg nothing was more sacred (legally) than property. Property's importance was highlighted in the Freiberg *Stadtrecht* which granted property owners special legal standing. Those with property were allowed to vote, become citizens, offer pledges, and act as *Bürgen*; those without were not. This elevated standing served to tie people together. Financially and legally, Freibergers were bound to each other through the stakes they had in each other's houses. Socially and communally, in a world of peripatetic miners, property ownership was how one signalled him or herself as a long-term member of the community; the type of person others could trust, rely on, and safely lend to.

Fifth, the court was where social bonds were forged. As seen in the last three chapters, through borrowing and lending, reaching settlements, and acting as *Bürgen*,

[1] Whether this was a conscious acknowledgment by the court that social bonds were (or are) more likely than the law to guarantee compliance remains an open question.
[2] Despite being under the jurisdiction of the *Konsistorium*, cases of illicit sex where occasionally handled by the Freiberg city court. After theft, illicit sex was the offence most likely to result in banishment. From 1539 to 1578, twenty-six were banished. The court did not always punish illicit sex, from 1545 to 1584 there were ten contractual settlements for out of wedlock pregnancy.

Freibergers fostered their social ties with each other, creating webs of mutual obligations that could be used as safeguards against the contingency of life in the sixteenth century. Similar processes of forging bonds and building networks certainly existed away from the court. But the court's legal power and publicity offered a grander stage. With Freiberg's moderate size, the proceedings of the court on the main market square had an attentive, informed and intimate audience. As a result, pledges and bonds made on this stage had more at stake than those done privately. While the town watched, Freibergers bonded through the law.

List of Tables and Maps

2. Freiberg

3. *Bürgen*

4. Violence

5. Borrowing and Lending

Bibliography

Abbreviations:
MFA = *Mitteilungen des Freiberger Altertumsvereins*.

1. Manuscript and Archival Sources

Stadtarchiv Freiberg (StAFB)

Bestand: Stadtbücher

I Ba 2c	Merkregister (1549-1550)
I Ba 3a	Stadtbuch (1553-1556)
I Ba 3b	Stadtprotokoll (1555-1557)
I Ba 3c	Stadtbuch (1557-1558)
I Ba 4a	Stadtprotokoll (1561-1562)
I Ba 4b	Merkregister (1565-1568)
I Ba 4c	Merkregister (1568-1569)
I Bf 33c	Vertragsbuch (1541-1557)

Sächsisches Hauptstaatsarchiv Dresden (SHStA Dresden)

Bestand 12613: Gerichtsbuch Freiberg

Nr. 40	Kaufbuch Nr 1 von St. Petri in Freiberg (1524-1559)
Nr. 42	Kaufbuch Nr 3 von St. Petri in Freiberg (1538-1615)
Nr. 43	Kaufbuch Nr 4 von St. Petri in Freiberg (1538-1620)
Nr. 44	Kaufbuch Nr 5 von St. Petri in Freiberg (1571-1639)
Nr. 57	Kaufbuch Nr 1 von St Virginis in Freiberg (1523-1584)
Nr. 58	Kaufbuch Nr 2 von St Virginis in Freiberg (1538-1590)
Nr. 59	Kaufbuch Nr 3 von St Virginis in Freiberg (1538-1590)
Nr. 71	Kaufbuch Nr 1 von St. Nicolai in Freiberg (1524-1577)
Nr. 72	Kaufbuch Nr 2 von St. Nicolai in Freiberg (1523-1574)
Nr. 73	Kaufbuch Nr 3 von St. Nicolai in Freiberg (1539-1654)
Nr. 74	Kaufbuch Nr 4 von St. Nicolai in Freiberg (1538-1619)
Nr. 75	Kaufbuch Nr 5 von St. Nicolai in Freiberg (1569-1681)
Nr. 86	Kaufbuch Nr 1 von St Jacobi in Freiberg (1521-1617)
Nr. 87	Kaufbuch Nr 2 von St Jacobi in Freiberg (1541-1619)
Nr. 88	Kaufbuch Nr 3 von St Jacobi in Freiberg (1541-1621)
Nr. 94	Kaufbuch (Vorstadtbuch) Lit. A (1524-1617)
Nr. 95	Kaufbuch (Vorstadtbuch) Lit. B (1531-1625)
Nr. 96	Kaufbuch (Vorstadtbuch) Lit. C (1548-1618)
Nr. 97	Kaufbuch (Vorstadtbuch) Lit. A (1536-1616)
Nr. 98	Kaufbuch (Vorstadtbuch) Lit. B (1549-1587)
Nr. 100	Kaufbuch (Vorstadtbuch) Lit. D (1555-1615)
Nr. 114	Ackerbuch (Kaufbuch) der Stadt Freiberg (1556-1607)
Nr. 577	Schatzungsregister über Grundstücke (1578-1615)
Nr. 582	Gerichtsbuch der Stadt Freiberg (1501-1507)

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Nr. 585 Gerichtsbuch der Stadt Freiberg, genannt das dicke gelbe Gerichtsbuch (1507-1515)

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4. Unpublished Dissertations

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ABSTRACT 1:

This thesis reconstructs and interprets the evolution of legal culture in the Saxon city of Freiberg in the sixteenth century. It challenges the notion that early modern state institutions were punitive and disciplinary; and instead posits that in Saxony, they were flexible and sought to maintain social harmony. While previous scholarship has favoured a sociological approach, based on the concept of social control, this thesis employs a legal anthropological optic to study the interaction of state institutions and social life holistically. The focus is not just on how state institutions sought to regulate social life, but also on how ordinary people used institutions for their diverse purposes. The goal of this methodological approach, based on Lawrence Friedman's concept of legal culture, is to assess the relative position and interaction of the people, the judiciary, and the law in early modern Germany.

Probing the interactions of the court and the residents of Freiberg reveals that the court was primarily a record-keeper and a mediator. For the former, it logged and transcribed all manner of transactions: peace pacts, loans, and house purchases; and Freibergers readily turned to the court to get a formal record of an obligation. For the latter, the court was rarely a site of punishment, rather it was a place where conflicts were regulated, and bonds forged. At court, Freibergers fostered ties to one another. Neither of these roles, record-keeper or mediator, are ones traditionally ascribed to early modern courts. Only by considering by the culture of a court does either become apparent.

ABSTRACT 2:

This thesis reconstructs and interprets the evolution of legal culture in the Saxon city of Freiberg in the sixteenth century. It challenges the notion that early modern state institutions were punitive and disciplinary; and instead posits that in Saxony, they were flexible and sought to maintain social harmony. While previous scholarship has favoured a sociological approach, based on the concept of social control, this thesis employs a legal anthropological optic to study the interaction of state institutions and social life holistically. The focus is not just on how state institutions sought to regulate social life, but also on how ordinary people used institutions for their diverse purposes. The goal of this methodological approach, based on Lawrence Friedman's concept of legal culture, is to assess the relative position and interaction of the people, the judiciary, and the law in early modern Germany.

Scholarship on early modern Germany, especially on crime and the law, has not been evenly distributed; the south and west of Germany have long received disproportionate attention. In spite of their importance in the early modern period, the northern and eastern regions of the Holy Roman Empire have been relatively neglected. Territories like Saxony remain under-researched and thus under-represented in our synthetic historical narrative.

Besides a geographic imbalance, there are several reasons why more work on Saxony is needed. Chief amongst them is that there were significant religious and legal differences between Saxony and the southern and western reaches of the Empire. Religiously, the Reformation came later to Albertine Saxony. Not until 1539 did the Reformation find vitality in Albertine Saxony – well over a decade after it had taken hold in many other Germanic cities. Saxony was legally distinct, having rejected the Carolina of 1532, Charles V's overhaul of the imperial legal code. Once the political turmoil of 1517-1555 had settled, August, the elector of Saxony, began a series of judicial reforms but not until 1572 did Saxony institute a reformed legal code, the Saxon Constitution (*Kursächsische Konstitution*).

These religious and legal differences suggest that new findings can be gleaned from Saxony, findings that could readjust our understandings of early modern Germany.

In recent years, Saxony has been the subject of renewed historical attention. Historians have studied the history of its legal institutions, specific offences (suicide and witchcraft respectively), prominent jurists (Benedict Carpzov), and interplay of the law and society on an electoral level. Despite this growth of interest and potential for new results, studies on the law, legal processes, and jurisprudence in Saxon municipalities are still lacking.

As one of Saxony's principal cities and with an independent legal tradition, Freiberg is well-suited for a Saxon case study. Unlike other Saxony cities such as Leipzig, Dresden or Wittenberg, with one minor exception, Freiberg was distant from external sources of legal guidance and pressure. On account of its independent legal tradition, Freiberg is an interesting test case. Its municipal court was an institution with its own traditions, but one that also had to fit into a changing legal landscape, and the larger trajectory of Saxon law and institutions.

Many of its court registers (*Gerichtsbücher*) are still extant for the sixteenth century and form the bedrock of archival material for this study. These include registers of neighbourhood-based purchases (*Kaufbücher*), contracts (*Vertragsbücher*), debts (*Gelübdebücher*), and criminal punishments (*Urfehdebücher*). The council minutes (*Ratsprotokolle*) and a 1546 tax register (*Steuerliste*). Freiberg's moderate size (population c. 9000) makes it possible to track people and their legal lives across multiple court registers.

The registers richly document an extensive range of legal practices and disputes that form the thematic basis for the thesis: borrowing and lending, domestic estate purchases, verbal quarrels and insults, and crimes of theft, illicit sex, and violence. This spectrum intentionally encompasses both criminal and civil actions. While the former has been

extensively researched for early modern Europe, the latter has not. But most people encountered legal institutions through civil, not criminal actions. The focus on criminal law in the historiography has tended to distort our understandings of early modern legal practice.

The sheer volume of sources required to study legal culture mandate a strict geographical and temporal scope. The study commences in 1519, when the city court began to develop individual registers for different types of court business, in lieu of the one all-purpose court book used previously. The creation of these new registers indicates that Freiberg was undergoing a significant bureaucratic evolution, designed to better handle an increasing amount of court activity. The study concludes in 1573, the year the elector rejected Freiberg's petition to maintain its municipal law, and not adopt the Saxon Constitution. This canvas is narrow enough to permit a feasible investigation, but broad enough to paint a fuller picture of the legal culture of an early modern court. By tracing Freiberg's legal history between these two poles, the thesis examines what it was that Freiberg's municipal leaders were fighting to preserve in their attempts not to adopt the Saxon Constitution.

Chapter one establishes the historiographical and methodological parameters. It engages the relevant literature from the English and German traditions. Of particular importance are the *Norm-Praxis/Normdurchsetzung* paradigm, and the German *Kriminalitätsforschung*. Methodologically, both are indebted to the sociological concept of social control. The chapter critiques social control, and its focus on deviance as being thoroughly unsuitable for study the law in early modern Europe. Instead, it offers Lawrence Friedman's legal culture as a far more suitable approach for studying early modern legal systems.

Chapter two introduces the reader to the social, political, legal, and religious world of sixteenth-century Freiberg. It introduces the economic world of Freiberg: especially mining,

but also the guilds; the physical geography of the city: both the four quarters (Petri, Jacobi, Nicolai, Dom/Virginis) within the walls, and the three settlements outside the walls (*Vorstädte*); and the state institutions, both locally (the municipal government, the city court, the guilds, and the mining court), and externally (the district court, the *Konsistorien*, the law faculties, and the appeals' courts). In tracing Freiberg's history prior to 1573 and the implementation of the Saxon Constitution, it seeks to capture the context, the fabric, within which the cases discussed in the subsequent chapters take place.

Chapter three examines *Bürgen* (character witnesses/guarantors) and the variety of ways they were used to provide security. Given the limited police forces and short reach of early modern legal institutions, risk assuagement generally depended upon third-parties, like guarantors. *Bürgen* were used to ensure a person's attendance in court; to guarantee that a dispute would be processed in court, and not extra- or infra-judicially; to provide surety for peaceful behaviour between two disputants; to guarantee that assailants would compensate their victims, the surgeon and the court; to provide surety that a debt or fine would be paid; to secure someone's release from jail; and to promise that the terms of an *Urfehde* would be upheld. The chapter continues with an examination of the temporal exposure of being, and the legal requirements to be a *Bürge* (one had to own property in Freiberg).

Chapter four probes Freiberg's unique way of processing assault cases: that of the formal contractual settlement. In other contemporary polities, such contractual settlements remained infrajudicial, whereas in Freiberg, they were dealt with judicially. It begins with an examination of how long it took, temporally for the court, and emotionally for the participants, to process an assault case. It moves on to consider other legal resolutions (pledges, fines, banishment, and capital punishment) that the court could and did employ in assault and murder cases. The last two sections probe whether these verdicts were actually carried out, and how Freiberg compared to other early modern German cities.

Chapter five examines borrowing and lending (the most frequent form of interaction between citizens and the council) as a social and legal practice. In any given year, approximately half of Freiberg's citizens entered into a new loan agreement that was registered with the court. The chapter examines both the reasons (business and personal) for borrowing, and the social status (gender, wealth and residency) of debtors and creditors. It continues by profiling the extensive system of repayment plans, and collateral that were part of each loan agreement. The chapter concludes by investigating the curious lack of notation on the repayment of loans (less than forty per cent were recorded as repaid). It seeks to understand why and how so few loans could be registered as repaid.

Each of the three thematic chapters (*Bürgen*, violence, and borrowing and lending) conclude with an examination of the legal culture of each practice, considering them from the perspective of each party: the court; the *Bürge*; the pledged-for and the wronged for *Bürgen*; the assailant and the victim for violence, and the creditor and the debtor for borrowing and lending. Throughout the thesis, three questions guide the analysis: when and why did Freibergers turn to the court; how and with what type of legal devices did the council adjudicate cases, how effective were the council's processes and interventions; and what was the impact of the council's actions (and non-actions) on disputants and their habitus as they processed conflicts.

Probing the interactions of the court and the residents of Freiberg reveals that the court was primarily a record-keeper and a mediator. For the former, it logged and transcribed all manner of transactions: peace pacts, loans, and house purchases; for the latter, the court was rarely a site of punishment, rather it was a place where conflicts (financial, verbal, violent and others) were regulated. In these cases, the court sought to mediate between, and, ideally, reconcile the disputants. Neither of these roles, record-keeper or mediator, are ones

traditionally ascribed to early modern courts. Only by considering by the culture of a court does either become apparent.

From the perspective of the users of the court, two aspects of legal culture stand out. First, the court offered security. Whether, it was for the abrogation of quarrels/discord, cessation of violence, or documentation of loans, Freibergers turned to the court to record their commitments. Second, the court was where social bonds were forged. Through borrowing and lending, and acting as *Bürgen*, Freibergers fostered their social ties with each other, creating webs of mutual obligations. The court's legal power and publicity offered a grand stage for forging these bonds, and on this stage, socially and legally, Freibergers bonded through the law.