

1 Physicians in beak masks are characteristic of medieval plague control even today. In fact, they were rarely used – except in satirical poems and drawings.



Habit des Medecins, et autres personnes
qui visitent les Pestiferes, Il est de
marroquin de leuant, le masque a les yeux
de cristal, et un long nez rempli de parfums

Who will defeat the Black Death?

The legal profession and the rise of public disease control in the early modern period

By David von Mayenburg

In the late Middle Ages and early modern period, jurists played a growing role in combatting the plague: While medical experts argued about whether bodily fluids were to blame for the spread of the plague or contact with the sick, legally educated officials organised an unprecedented policy of state intervention for their rulers. This strategy was successful, but at times brutal.

An outbreak of plague and its consequences – Altdorf 1606

In 1606, the small university town of Altdorf near Nuremberg (Fig. 1) was startled by disturbing news: The plague had broken out in the neighbourhood and it was feared that it would soon reach Altdorf as well. People were aware that a possible plague outbreak posed a deadly threat. After a respite of many centuries, the plague had reappeared in Europe in 1347, and since then it had ravaged almost all regions of the continent. So it is not surprising that the students of Altdorf hurriedly packed their things and left the city to wait in as isolated a place as possible for the outbreak to end. The students' worries were justified: Only a few days later, the plague claimed its first victims in Altdorf, among them the famous professor of medicine Nikolaus Taurellus.

The prominent death seemed to confirm the students' decision to flee the city. But the longer the lecture halls remained deserted, the more impatiently some professors pressed for a return to university life. The most prominent voice to emerge was a professor of law, the university's vice-chancellor Konrad Rittershausen (Fig. 2). In a hastily printed appeal, he sharply attacked the students who had fled: By fleeing, they had

become the easy prey of a rumour. Rumours, however, were much more infectious and harmful than the plague. Against the advice of his medical colleagues, Rittershausen called on his students to return immediately to the classroom.

The case of Altdorf exemplifies the often difficult relationship between medical and legal experts in questions of epidemic control, even today. It prompted the project that provides the

2 Stay away or attend in person? A question that already led to differences of opinion between students and professors in the Franconian university town of Altdorf back in 1606.

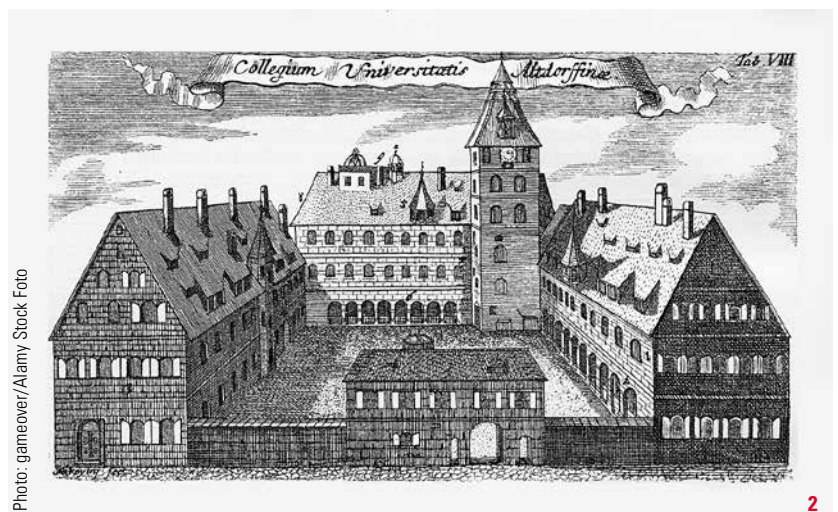


Photo: gameover/Alamy Stock Foto

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Photo: Fama De Pestilentia Altorfina, 1607/Universität Rostock



3a

Photo: Johann Jakob Heald/Wikimedia Commons



3b

3a+b Rumours are more infectious than the plague: It was with these words that Konrad Rittershausen, jurist and vice-chancellor of the University of Altdorf, urged students to return.

basis for the following interim results, exploring the question of how legal experts in the Middle Ages and the early modern period reacted to the plague, how they interacted with other experts, and what significance legal expertise had for the rise of the modern health state.

The Black Death – the hour of the medical profession

To understand the medieval medical strategies for combatting the plague, one must be aware that the complex ways in which the disease was transmitted from rats to fleas to humans were unknown until the turn of the 20th century. The external symptoms of the disease were the only empirical evidence, along with the fact that it could spread very quickly within human communities as well as from village to village, and town to town.

As early as 1348, the medical faculty of the University of Paris published a study on the plague, which was to become extremely influential as “The Report of the Paris Medical Faculty”. In the sense of the classical medicine of Galenos of Pergamon, the disease was seen as the result of decomposition processes of rotting matter. According to this conception, the substances released by these processes, so-called miasmas, led to disturbances in the balance of the bodily fluids. Appropriate precautions were derived from this: While the creation and spread of miasms was to be prevented by removing waste, keeping the air clean and fumigating houses with fragrant herbal vapours, the bodily fluids were to be strengthened by healthy behaviour in eating, drinking and sexuality.

This medical canon of plague control quickly spread throughout Europe in a plethora of plague tracts. Originally intended for communication within the medical profession, demand

also came from wider sections of the population. This was because the preventive and curative recommendations of the doctors were primarily directed at the individual, who was partly responsible for any disease through his or her behaviour. This literature initially consolidated the role and reputation of doctors as plague experts. Especially in times of plague threat, more and more cities afforded themselves a city physicist. The professionalisation of the health service was thus not only part of a secular modernisation of public administration in the course of the pre-modern processes of state formation, but increasingly also a reaction to the sporadic plague epidemics.

Legal plague expertise?

What role did jurists play in this context? Their early involvement in public and ecclesiastical administration certainly gave them a certain starting advantage. As learned councillors, judges or notaries, they gained access to the levers of power. But were they also qualified to deal with epidemic-specific issues?

Undoubtedly, the plague epidemics generated legal questions from the 14th century onwards: Should the unwieldy formal requirements for drawing up wills be suspended in times of epidemic? Were women allowed to administer the sacraments when there was a shortage of priests? Were medical staff allowed to leave the hospital and flee during an outbreak of the plague? Legal opinions and administrative records show that questions of this kind were relevant. The learned jurists, however, dealt with this kind of question only casually. It was not until 1523/24 that two legal treatises on plague appeared in quick succession, one by Gianfrancesco Ripa from Pavia and the other by the Bolognese jurist Girolamo Previdelli. If one looks through these very extensive writings, two aspects in particular stand out:

On the one hand, an attempt is made to comprehensively illuminate plague law. However, both writings concentrate on a few main points, in particular the effects of the plague on contract law, procedural law and above all testamentary law. The broad field of public hygiene is addressed selectively, but clearly takes a back seat to civil law aspects.

On the other hand, the texts as a whole appear rather conventional, even by the standards of the time. It is clear that lawyers always first define traditional law as the fixed point of their considerations. However, the opportunity to use the plague outbreaks as a starting point for a formative reform of the law, for its further development and adaptation to the needs of the time, is quite obviously missed. The authors almost fearfully insist on the rules of the tradi-

tional legal system, preferring to play down the plague rather than use it as a reason for opening up the law or even for social reforms. Previdelli, for example, raises the question of whether, in addition to the citizens of the city, the scholars of the local university could also be obliged to stand guard at the city gate to prevent infected persons from entering – a question of solidarity in times of need. The author, however, takes the view that university privileges are more important than needs during hardship. For one thing, the plague was ultimately not that bad, the necessary guards would certainly be found. On the other hand, the differences between the estates had to be preserved even in times of need: Guard duty was dirty work (*vile officium*) and beneath the dignity of a scholar.

Despite, or perhaps because of this basic conservative tone, these two plague treatises were a great success, at least within the legal profession. It seems as if everything was laid down in them that seemed worth knowing for the jurists of the following centuries in matters of plague.

The hour of the jurists: shifts since the end of the 16th century

It was not until the end of the 16th century that the history of legal plague expertise gained a new dynamic – one which, however, was less attributable to the growing importance of the law than to specific weaknesses of medical plague control. Over time, various circumstances had contributed to its delegitimisation. Doctors were suspected of greed, and satirical poems and drawings (which, incidentally, also depicted the beak masks of the plague doctors, which were rarely actually used, Fig. 3) increased; however, comparable criticism was also levelled at the lawyers. More serious were the failures in combatting the plague. The miasma theory was widespread, according to which diseases such as the plague were transmitted by an undefined type of matter that arose through rotting processes in air and water. It became clear, however, that the miasma theory, while coherent in itself, simply did not fit the empirically experienced consequences of the plague. Instead, it became increasingly clear that the plague was transmitted from person to person – which confirmed the minority medical opinion of contagionism. This scholarly dispute was elementary for the practice of combating the plague: While the miasmatisists advised cleaning the cities, cleansing plague-infested houses, banishing beggars and prostitutes, but also pigs and everything else “unclean” from the communities, and purifying the air by fumigation, the measures of the contagionists were primarily aimed at cutting off transmission routes, sep-

arating the sick from the healthy and isolating those suspected of having the plague. Corresponding measures already existed in the 15th century in some North Italian municipalities. In practice, it is true that from the very beginning, people never adhered exclusively to any of these dogmas and took measures against contagion very early on. (The term quarantine was allegedly coined in Ragusa as early as 1377.) However, many practitioners, especially jurists, had

IN A NUTSHELL

- The rivalry between the medical and legal profession regarding the correct approach in a pandemic is not new. A legal history project at Goethe University takes a closer look at the situation in the Middle Ages and early modern era.
- In contrast to modern medicine, physicians at that time did not know what caused the plague. The disease was viewed as the result of a disruption in bodily fluids due to decomposition processes in the environment. The efforts to combat this included the fumigation of homes and encouraging people to adopt healthy lifestyles.
- As early as the 14th century, however, jurists were involved in matters of the plague, which is documented by writings on contractual, court and testamentary law. Initially, however, they did not take advantage of the opportunity to use the pandemic to further develop the law.
- In the 16th century, the jurists' importance grew, due in particular to the failure of traditional medicine to cure the disease. On the basis of the theory of contagion, which was critically regarded in classical medicine, lawyers took the lead in an administration that did everything in its power to cut off transmission routes and isolate the sick.
- From this time forward, combatting the plague was increasingly a question of organisation. The role of jurists gained significance, which is expressed particularly clearly in the guide on combatting the plague by Girolamo Gastaldi from 1684. Gastaldi considered the medical profession incompetent and relied on a consistent, sometimes ruthless, policy of isolation and quarantine.

5 The plague in Rome was fought by setting up special hospitals, cordons and strict controls. According to Gastaldi's plans, even a half-finished prison (the Carceri Nuove) was to be used as a plague hospital. Its layout made it possible to separate the sick and the healthy.

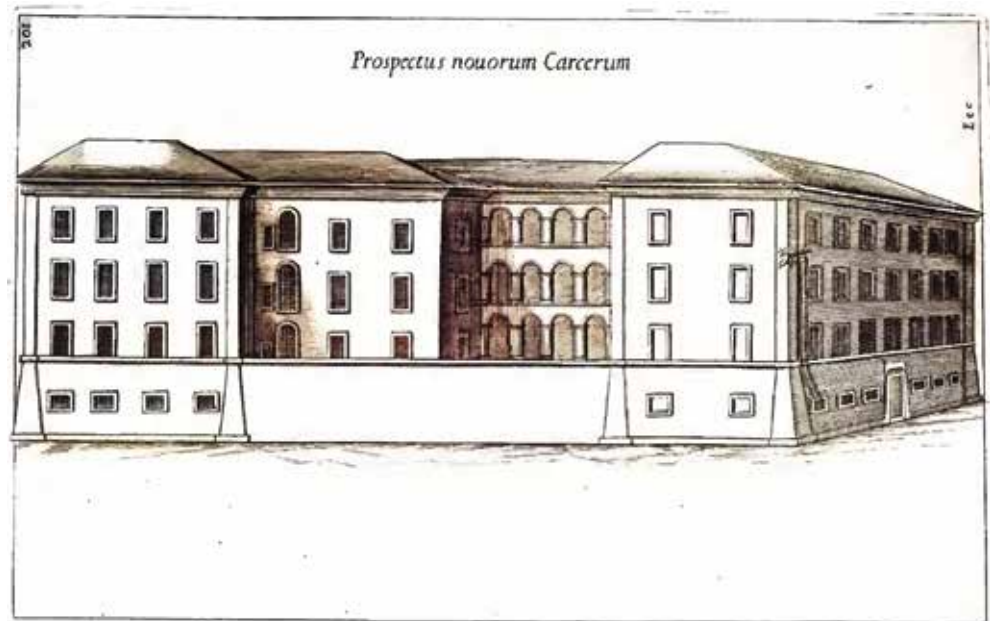


Illustration from: Gastaldi, 1684, p. 201

less trouble embracing contagionist concepts than their colleagues in medical faculties.

Thus, the Bremen city physician, who had a legal education as well as a medical one, developed a systematic plan for the prevention and management of plague crises. His plague treatise, which was published in 1582 in Latin and one year later in German, represents the start of a paradigm change, also in Germany. From then on, it was less about instructing the individual to live a healthy and sinless life than about planned sovereign organisation. The measures proposed by Ewich are not that different from the strategies currently chosen to combat the coronavirus:

The inhabitants are to be ordered to observe the following rules, namely to avoid all public gatherings, such as weddings, theatre performances, choirs, public baths, busy markets, elaborate funeral celebrations. Church gatherings, however, may take place if they are spread over different places and people do not dine and sit

closely together. Busy schools should be moved to suitable places with ventilation. Less busy schools and primary schools are to be closed until the disease stops raging. (Translated from the German version of this article.)

Ewich became a city physician because of his medical expertise, but his legal education enabled him to break through medical dogmas in favour of a planned organisation of the world. However, Ewich could do little with his classical jurisprudential knowledge here. Rather, behind his desire to control chaos through clever laws, one can discern a legal mind interested in legal policy and building on the human gift of order.

Jurists as plague experts – Girolamo Gastaldi's plague manual from 1684

How much ground jurists had gained over physicians becomes even clearer in another plague control manual (tractatus de avertenda et profliganda peste politico-legalis), a monumental tract of over 900 pages published in Latin in Bologna in 1684. Its author, Girolamo Gastaldi (Fig. 4), had studied law in Pisa. Elected cardinal in 1643, Pope Alexander VII gave him an important job in the Sanità, the Papal health authority. This body had been convened again in 1656, when the plague was rolling towards the Holy City from Naples. Gastaldi and his colleagues at the Sanità devised an ingenious system to contain the threat of infection. The land and sea borders of the Papal States were sealed off. Goods and people were turned away at the borders, supported by a system of passes organised by papal notaries. Sanità officials combed the streets and investigated rumours of plague infections. Doctors examined the sick and divided them into categories. Those infected with the plague were sent

4 For jurist Gastaldi, the medical profession was incompetent as far as the plague was concerned: To prevent contagion, he called for a change of approach in the fight against the plague. He enjoyed the trust of Pope Alexander VII, who wanted to protect the "Holy City".



Photo: BTEU/AUSMUM/Alamy Stock Foto

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to a hospital on an island in the Tiber, those suspected of being infected with the plague to another infirmary outside the city (Fig. 5). Those who were on the mend were taken to another hospital, where they remained interned until they recovered. The houses of plague patients were sealed and disinfected with smoke. All markets, schools and churches remained closed, all public gatherings were banned. As a deterrent, gallows were planted all over the city to hang quarantine breakers and other people who defied the strict laws.

Even if the effectiveness of these measures is still debated today, contemporaries at least perceived it that way, and Gastaldi's manual became a great success. It was repeatedly emphasised that the severe plague wave of 1656 and 1657 had caused significantly fewer deaths in the territory of the Papal States than in other areas of Italy.

Even the jurist Gastaldi, who by his own account had little medical knowledge, clearly preferred a contagionist line. He openly denied the medical profession any competence in the

matter of the plague. They had neither preventive nor curative successes to show. It was better to leave recovery to nature than to the art of healing. Gastaldi pleaded for a change of system: If flight and isolation of the individual were to be regarded as the most effective means, then an efficient epidemic policy had to aim at preventing infection. The plague was thus no longer a problem to be solved medically, but rather in terms of legal policy. Gastaldi presented his plan, which had proven itself in Rome, down to the smallest detail, including drawings for the architecture of the plague houses and lazarets. The numerous decrees and edicts of the Pope from the plague period serve as blueprints to spell out the sometimes drastic measures in legal terms. This master plan not only leaves theological and medical tradition behind, but canonical tradition as well. God no longer appears at the beginning of the reflections as the controller of all events. And one also looks in vain in Gastaldi's treatise for the common law with its countless citations and cross-references. It is a deeply political, in fact a science-political writing, in which the radiant figure of the Pope is no longer staged as God's representative and ruler over the globe, but as a clever sovereign whose measures prevailed in competition with those of other territories – perhaps with God's help, but beyond doubt through the application of reason.

The fact that this strategy always carried with it the dark side of modernity should not be concealed. This is evident not only in the brute force with which Gastaldi's measures were enforced, but also in the particularly high death toll in Rome's Jewish ghetto, which was cut off from the outside world and left to its own devices, without regard to the spread of the disease. In the Papal States, too, humanity and mercy quickly found their limits where they stood in the way of efficient state action. ●

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