

'SHE WAS KILLED WRETCHEDLY AND WITHOUT A CAUSE':
SOCIAL STATUS AND THE LANGUAGE OF VIOLENCE
IN ZÜRCHER HOMICIDE TRIALS OF THE FIFTEENTH CENTURY

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ABSTRACT

In Zürcher homicide trials of the fifteenth century, injured parties sought revenge by portraying the slayings as dishonorable. Yet the language of violence was dependent on the respective status of slayer and victim. In cases that involved men of relatively equal status, cries for vengeance rang loud and clear. They were more muffled when the victim was a woman or a man of lower status than his perpetrator. Discussion of such a case suggests that, rather than directly blaming the slayer, friends of the victim appealed to the empathy of the council by focusing on the suffering body of the slain woman.

Key words: municipal law, penal act, homicide, Zürich, 15th century

"FU UCCISA BRUTALMENTE E SENZA MOTIVO": LO STATO SOCIALE
E IL LINGUAGGIO DELLA VIOLENZA NEI TRIBUNALI DI ZURIGO
DEL XV SECOLO

SINTESI

Nei processi di Zürcher del quindicesimo secolo per omicidio, le parti offese si vendicavano descrivendo le uccisioni come disonorevoli. Tuttavia il linguaggio della violenza dipendeva dalla condizione sociale dell'uccisore e della vittima. Nei casi che vedevano coinvolti uomini di uguale condizione sociale, le richieste di vendetta erano acclamate a gran voce, mentre erano più sommesse quando la vittima era una donna o un uomo di condizione sociale inferiore a quella del fautore del crimine. L'analisi di un caso simile sembra suggerire che, invece di colpevolizzare l'uccisore, i conoscenti della vittima fecero leva sull'empatia della giuria concentrandosi sul corpo sofferente della donna assassinata.

Parole chiave: statuti urbani, atti penali, omicidi, Zurigo, XV secolo

Nineteenth-century textbooks of legal history present a rather straightforward picture of late medieval law and society. The settlement of disputes was dominated by mechanisms of private violence and peacemaking, and this was followed by the emergence of centralized legal systems in Europe, which gradually criminalized interpersonal violence and forced contestants to solve their disputes through the courts. The scholarly work of recent decades shows that the story is far more complex. Rather than replacing private mechanisms of dispute resolution, emerging courts in medieval Europe coexisted with systems of vengeance and peacemaking, and not always in a way that favored the former. Litigants could use the courts as just another form of vengeance, adding the possibility of stigmatizing their enemies in a public forum to physical violence. In a recent study on the justice system in fourteenth century Marseille, Daniel Smail has argued that a prominent blood feud that tore the city apart in the 1350's was actually aided by the courts, because they gave contestants an opportunity for the "telling of a history" (Smail, 1997, 187). This public fashioning of tales of violence solidified party lines, as each faction created a group memory that justified their pursuit of vengeance and blackened their opponents.

The analysis of the language of violence used by defendants is thus a good indicator to understand the relationship between the culture of violence and late medieval justice. At times, this language can represent a compromise that symbolizes an exchange between state authority and defendants. In her study of sixteenth century remission letters, Natalie Zemon Davis analyzes the parameters of such an exchange. The French kings made concessions to the culture of violence by extending the possibility of a pardon to slayers. While the government thus indirectly sanctioned the use of violence in French disputing culture, defendants had to play by the rules of the state. The procedure defendants had to follow in order to obtain a remission letter underscored the authority of the king and his ultimate claim to a monopoly on the execution of violence; and in these letters, slayers could not tell their stories like a "hero in a folktale showing his strength," but had to distance themselves from their violence (Zemon Davis, 1987, 57).

Here, we also look at homicide and the legal language of violence it spawned. The protagonists are not the slayers, but injured families and witnesses. The setting is fifteenth-century Zürich, which was a free city of the German Empire. Political power there lay with the artisan and trade guilds and the *Konstaffel*, the guild of the urban patricians. Each guild annually elected some of its members into the city council.¹ This council presided over Zürich's most important court, the *Ratsgericht* [coun-

1 From a large council of about two hundred members arose a small council of some twenty-four. The large council was consulted in certain important affairs, for example, about war and peace. Actual power lay with the small council, that met almost daily to regulate economic, legal, and political affairs of the city. Henceforth, the term "city council" here refers to the small council. The exact composition of the city council has been adequately discussed by Ruoff, 1941, 30-42. During the fifteenth

cil court]. This court settled disputes ranging from quarrels over debts to verbal and physical injury. It was also the only court that adjudicated grave breaches of the peace, like homicides.²

In her study of late medieval Zürich, the historian Susanna Burghartz emphasized the important function of the *Ratsgericht* within the city's dispute culture (Burghartz, 1990). It was a much used and convenient dispute forum for quarreling citizens. There, they had the chance of receiving financial compensation because the disputant who had given the initial provocation in addition to the fine for breaking the city peace had to pay a fine to the other party. The judges also often encouraged out of court settlements; they championed consensus and the restoration of good will among citizens. This maxim did not apply to all Zürchers equally. Accusers and perpetrators who appeared before the court were seldom marginal citizens, but respectable, tax-paying citizens; guild members or their apprentices. Those too poor to pay the tax that granted citizenship or lacking respectable professions, day laborers or vagrants, rarely made use of the *Ratsgericht* to settle their disputes. The underprivileged helped instead to make up the bloodier chapters of the history of the *Ratsgericht*. Easily labeled as perpetrators of dishonorable violence, of murder, highway robbery, and theft, they are the most frequent protagonists of execution verdicts. Members of the nobility were also apparently subject to a different code, as they rarely appeared in front of the court.

The overwhelming majority of the protagonists of fifteenth-century homicide cases thus are members of the middle and upper-middle stratum of society. They were also mostly male – both as victims and perpetrators. Violence and its accusation before the court was the domain of honorable men of relatively equal status. Most cases fit this pattern. The code of male honor, as we will see, influenced the language of violence used by accusers and witnesses. Yet the generalizations we could make about these cases are not our main agenda. Rather, they serve as foil for the few odd

century, representatives of the trade guilds and members of the *Konstaffel* dominated the city council. But no urban aristocracy concentrated power consistently in the hands of particular families. Within the successful guilds, the fortunes of influential families fluctuated with trade or politics. It was not until the seventeenth century that elite families could maintain their power at length.

2 Zürich had a complex system of courts whose jurisdictions occasionally overlapped. The city council traditionally had considerable control over Zürich's other courts which were presided over by an imperial official and the former mistress of the city, the abbess of the Frauenmünster. But the city council appointed the judges who adjudicated in this court, and they thus exercised considerable influence on its legal practice. It is important to note that this complex arrangement of courts overlaid entrenched practices of private arbitration and settlement within the urban guilds. Many disputes that did not involve capital offenses were settled by the guildmasters and were never brought before a court. Several guild-statutes prescribed that disputing guild members should wait a week before bringing an accusation before the courts of the cities; this was to allow guild masters time to settle a dispute internally. For a discussion, see Ruoff, 1971, 26.

cases that do not fit the pattern. These atypical cases share in common that the protagonists are not men of relatively equal status, although they also differ from each other. For example, one concerns a middle class citizen killed by a nobleman, others husbands who press charges against the slayers of their wives and another an aunt who prosecutes the death of her niece who was killed by the husband. The language of violence in these cases is less assertive and condemnatory than in the majority of cases involving men of relatively equal status. The weaker social position of the victim compared to the perpetrator most likely caused the judges to view these slayings as less serious. An especially detailed case suggests that in order to nudge a reluctant council into action, friends and families pursued a rhetorical strategy that acknowledged the judges' prejudices and yet appealed to their empathy by focusing on the very weakness of the victim's body. In light of the larger picture of Zürich's fifteenth-century homicide cases, these untypical cases help to shed light on the relationships between the language of violence, social status, and judicial discretion in this city.

The search for vengeance: the rhetoric of accusers in front of the Council Court

Accusations in homicide cases in front of the Zürcher council court commonly followed a rather stereotypical pattern. The family of the victim tried to stigmatize the slayer and his act as much as possible in order to obtain a heavy punishment. In a case from 1391, Claus Eius accused Hans Habersat of killing his father. He told the council that Habersat had "slain and murdered his father dishonorably without a cause".³ Similarly, in 1470, the family of Velin Werdmueller accused Hans Bueler of killing Velin "wretchedly and murderously" ("Ellendklich und mörlich" StaZH, B VI, 227, fol. 129r). Accusers utilized a cultural distinction between dishonorable and honorable violence that also influenced the legal categorization of slayings. Violence was considered an acceptable and even expected tool to defend male honor. Killings that occurred during a heated dispute were classified by the court as honorable manslaughter. Slayings committed in secret or with a reprehensible motivation were considered murder. Honorable manslaughter was punished with a monetary fine and was not morally condemned by the judges. Yet honorable violence demanded honorable vengeance, and judges granted private parties the right to choose between blood vengeance and a negotiated financial settlement for the slayer. This was not an option in the case of murder: murderers were crushed with the wheel, a punishment that shamed their families as well. Between honorable manslaughter and murder, a third category existed. Slayings that took place in public, but without a justifiable cause were considered dishonorable, if not murder. An example is the slaying of Chuni by Johann Nesi from 1382. Witnesses asserted that there had been a disagreement be-

3 "Dz der sin Vater unredlich und ane schuld erslagen und ermuert hat" (StaZH, B VI, 194, fol. 272r).

tween Johann Nesi and Chuni about the quality of Nesi's knife. Since Nesi remained silent after the incident, everyone thought that he had forgotten it. After some time, however, Nesi stabbed Chuni to death without warning. This violence was considered dishonorable because it was not immediately preceded by a dispute. Because Nesi had never acknowledged a provocation, everyone thought that Nesi had brushed the disagreement with Chuni aside (StaZH, B VI, 191, fol. 252v). Until the late fifteenth century the council punished such slayers with the customary manslaughter fine, but to show their disapproval, the judges affixed an additional stipulation to the verdict; such as an additional sum, or the stipulation that the slayer was not allowed to pay his penalty off slowly, but had to do so within a week, or would have his right hand cut off. But by 1468, the court had developed a legal category for such slayings – dishonorable manslaughter. The punishment was execution with the sword.

Most accusers hoped to convince the court that the slaying of their relatives could be classified in such a category. Often, this meant twisting the facts: Claus Eius tried to convince the council that Hans Habersat had murdered his father. But he was killed during a heated exchange after he had insulted his slayer's honor (StaZH, B VI, 194, fol. 272r, 1391). Such facts did not deter accusers from blackening their opponents in front of the court. From the moment that their relative had been killed, the family of the victim engaged in a pursuit of vengeance. An accusation in front of the court could result in a heavy fine for the slayer, permission to pursue blood vengeance, and perhaps even the death penalty. An accusation was also a chance to slur the reputation of the slayer, by proclaiming in a public forum that he had killed dishonorably. Such stigmatization of the slayer in front of the court was probably merely a continuation of what went on behind the scenes. The evidence suggests that friends and families of the deceased commonly started a gossip campaign through which they spread rumors that the killing had been less than honorable.⁴ Since the official introduction of the category of dishonorable manslaughter in 1468, the language of the accusations became more vicious, as accusers could now hope that the court imposed the death penalty which they routinely asked for.

Not every single accusation followed this pattern of stigmatization. There are a few cases in which the accusers are a bit more reticent. In 1425, Johann Nell accused the slayer of his son, Hans von Huenenberg. Nell told the judges that Huenenberg had done him and his family a great wrong but he also said that he "left it all to their wisdom to judge this deed, as they knew better than he how the thing had happened."⁵ Why was Nell not more assertive? He was the city scribe and thus an important person in the city's administration. Huenenberg was a knight. Although Zürich was gov-

4 For example, in 1450, after Peter Snider had killed Hans Dorner's servant, Hans Dorner's wife quickly spread the rumor that Snider had attacked Hans Dorner dishonorably, see StaZH B VI 217, fol. 145r.

5 "Setzen auch dz gentlich hin zuo uewer wisheit, das ir uns darumb richtend nach dem und uech bas wisent ist, dann mir, wie sich die sach ergangen hat" (StaZH, B VI, 207, fol. 61v).

erned by a guild constitution since the patrician regime had ended through a revolt in the late 13th century, the nobility still had a lot of social and political power. Knight or not, Huenenberg's slaying of Hans Nell was clearly dishonorable. Hans Nell was walking and singing with two companions at night, when Huenenberg all of a sudden attacked Nell from behind, cut off his arm, and then ran away. Nell did not even know who had attacked him. He assumed that it had been Heinrich Bletscher, another knight and friend of Huenenberg who had run into Nell a little while before the attack and told him and his companions to stop singing. Yet, despite the secret attack, and the delay before the identity of the slayer was known, Huenenberg was not executed for murder but paid a monetary fine. If there was a significant difference in social status, judges paid less attention to the circumstances of a slaying and tended to be lenient towards those of higher status. The social status of the slayer may have influenced the language of Johann Nell's accusation. Probably, Nell would have liked to spice his accusation with condemnatory adjectives but did not dare to use stronger language against the noble slayer Huenenberg.

Nell's somewhat tentative accusation does not stand alone. The accusation of Hans Appenzeller against the city constable Heini Etter is fairly neutral as well. The victim was a woman and Appenzeller's wife. The constable killed her under extremely dubious circumstances, in defiance of his oath to help maintain the city peace. He broke into Etter's house while he was drunk and killed the defenseless woman. But Appenzeller's accusation nevertheless lacks judgemental adjectives. He merely told the court that "Heini Etter had stabbed and killed his wife Nesi in his own house and he asked that Heini Etter be punished for a manslaughter".⁶ In 1474, Ruedi Hirny lacked assertiveness when he accused the slayer of his wife. Uely Luety had entered Ruedi Hirny's house at night, killing Anna Hirny while she was lying in bed with her small child. But Ruedi Hirny did not exploit these facts to the fullest in order to stigmatize the slayer. His accusation included judgemental adjectives, such as that the slaying had been "undeserved and without a cause" and that the slayer had killed his wife "poorly and wretchedly" ("unverschult und unverdient" StaZH, B VI, 229 fol. 127r). Yet he also told the court that he and his relatives "did not know how such a case should be judged, how high or how severe a punishment they should ask for. They felt themselves to be simpleminded, but it seemed that such a slaying should be considered to be more grave than a manslaughter. When an innocent wife is killed, it appears to them that everyone should have the right to peace and quiet, therefore there was no merit in this affair. They gave it to my lords to judge how high a punishment they should ask for and how this should be judged according to the

6 "Wz der selb Heini Etter im Nesen sin eliche wip in sinem eigenen zins erstochen und ertoedet hat und bittet darumb dz man die sach ueber Heini Etter richt also umb einen todslag" (StaZH, B VI, 202, fol. 261r).

laws of the city of Zürich".⁷ Ruedi's statement implied that he considered the slaying dishonorable, but the self-confident tone and demand for the death penalty that is typical of other accusations is lacking.

As in the case of Johann Nell, the language of these two accusations has to do with the standards judges used in the adjudication of slayings. The council was in general willing to punish slayers of women less severely than slayers of men. Uely Luety, for example, who killed the sleeping Anna Hirny was awarded the customary manslaughter fine of ten Marks for his deed, in addition to the permission to seek blood vengeance. In light of this verdict, examine the circumstances of a slaying that was considered dishonorable by the council even if it was not murder. This was the slaying of Heini Loibler by Hans Landolt in 1402. It was preceded by a dispute between Loibler and another man named Spury. Loibler had borrowed a saddle from Spury without having asked him. When Spury accosted him with cursing and heavy reproaches, Loibler remained, according to the witnesses, peaceful and quiet and even tried to calm Spury by thanking him for the saddle. Spury was not appeased and attempted to hit Loibler. When Cuntz, a witness to the dispute, pushed Loibler away from Spury to protect him, Loibler fell to the ground. At this moment, Hans Landolt, apparently a friend of Spury who had also been present during this entire exchange, charged at Loibler and stabbed him to death. The witnesses expressed surprise that Landolt behaved in this way because he had not taken part in the previous dispute; there had been no quarrel between Landolt and Loibler (StaZh, B VI, 197, fol. 229v-231r). Manslaughter that was not preceded by an open quarrel was dishonorable. Landolt was punished with four times the manslaughter fine: 40 Marks. Even though the slaying was dishonorable, it was not murder. It took place in front of witnesses. The slaying of Anna Hirny, however, would be murder according to cultural standards: it took place at night and in secret. Yet the council did not increase the fine.

Differences in the treatment of men and women do not only surface in homicide cases. In her study of the council court records between the years 1376 and 1395, Susanna Burghartz found that men were often punished very leniently for violence against women. For example, a case from 1385, in which a woman accused a man for beating her up in her own house even though she had done nothing to provoke him, ended without a conviction (Burghartz, 1990, 144).⁸ One explanation might lie in the

7 Das sy nach gestalt der sache in inen selbs nit wol uszurechnen wissen moegint, wa fuer und wie hoch sy das klagen soellent, sigint auch dem zue schlecht und einfaltig, soelichs bedenke aber sy, in irem gemuette hoecher, dann ein schlecht mort das geachtet werden soell, dem so also umb unschuld sinen gemachel tuet vom leben zum tod bringen, an dem end, da doch meniglich billich frid und rüew haben soelt, und darumb sy soelich gros geschicht unloeblich begangen, miren herren heim gebent, die uszurechnet, wo fur das geklagt und gericht werden soell nach der statt Zürich recht, und das, auch denn, dem nach mit dem getaetter fuergenommen und verhandelt werden soell, nach gepuer und der bemelten statt Zürich recht" (StaZH, B VI, 229 fol. 127r).

8 Rape cases also rarely ended with a conviction. Burghartz cites a case in which a woman was raped in

fact that the judges did not consider it their responsibility to pursue violence against women to the fullest, because the bodies of the women were primarily the responsibility of their male relatives. Men were ceded a large amount of control over the bodies of their wives, sisters, and daughters. They had the legal right to use violence to punish them (Burghartz, 1990, 142). A striking example of this right is the legal regulation of adultery in Zürich: A husband could kill his wife and/or her lover with impunity if he found them in flagranti (see for example StaZH, B V, I 244, fol. 111r). This amount of control over female bodies probably accounts for the fact why there are so few cases of domestic violence that came in front of the council court. If they were brought in front of the court, the judges tended to be very lenient. Burghartz cites a case in which a woman died from the beating her husband gave her, but the husband was acquitted and the court stated explicitly that she had died from "natural causes" (Burghartz, 1990, 145).

It was a completely different matter, certainly, if women committed violence. While violence was an accepted response for men to defend their honor, it brought no honor to women. Burghartz repeats a case in which two women attacked a man and beat him with their fists. They were punished with a fine that was high compared to the fines assigned to men who used unarmed violence (Burghartz, 1990, 146). The case of Elfy Gugin illustrates that a woman who participated in a homicide had to pay a high price.⁹ Elfy had conspired with her lover in the slaying of her husband. Her crime was doubly dubious. Women's honor was primarily bound up with how well they were able to keep their sexual purity intact. An adulterous wife who killed her husband was unnatural, a monstrosity, and equally monstrous was the punishment dealt out to her. Elfy Gugin who had counseled her lover to kill her husband was buried alive in a dreadful way. A hole was dug in the ground and covered with foot long thorns. Elfy was placed on the thorns, another layer of thorns was put on her, and then she was crushed with stones, the thorns penetrating her body (StaZH, B VI, 198, fol. 40v). In a way, this punishment mirrored her crime as she had lost her honor by allowing her body to be illicitly penetrated.

But while violent women were punished harshly, men who violated women's bodies could expect relative leniency. Perhaps this was because the right of men to punish the female members of their families might also have included a duty and a prerogative to protect them from the violence of other men. Apparently, the court was reluctant to interfere with this duty. Judges did not claim the same prerogative to

her own kitchen by a man she had offered food and shelter. The perpetrator was acquitted. Burghartz found very few rape charges on the whole. The council was reluctant to convict in such cases, and victims were reluctant to press charges. The most likely outcome of such an accusation was the stained reputation of the victim and the acquittal of the perpetrator (Burghartz, 1990, 145).

9 This is also the only case of a woman participating in a homicide. There are also no records of active female killers for the fourteenth and fifteenth century.

judge the injured bodies of women as they did over men, and took little initiative to investigate such cases on their own. Men who brought charges against other men who had injured women of their families were in a way compromising their authority by admitting to their failure to protect these women thus explaining the deferential language of the accusations.¹⁰

A victim's position in society, whether due to class or gender, thus influenced accusers to make their charges in front of the court more faltering. Yet accusers knew: if it was true that judges did not punish harshly if the perpetrators were of high social status or the victims were women, they also knew that in Zürich's culture of violence there was little honor in killing an innocent and defenseless victim. Violence was shameful, if it was unequal, if it constituted an abuse of authority. Rudy Hirny told the court that he did not know how the slaying of his wife should be judged, but we also detect his efforts to represent the deed as shameful. The husband stressed that his innocent wife had been killed "at night and... in her bed" – a helpless victim, not at all an equal match for the perpetrator ("by nacht ... an irem bett." *StaZH B VI 229*, fol. 127r). As I mentioned above, Hirny subsequently weakened his condemnation of the slayer and emphasized his ignorance of legal matters and his inability to categorize this slaying, perhaps constrained by a need to defer to the standards of the council.

Witnesses sometimes expressed their indignation more strongly. One well-documented case from 1431 shows this in great detail. In this case, the victim was a woman, but the circumstances differed from the slayings of Nesi Appenzeller and Anna Hirny. Here, a husband killed his wife, and the records contain the testimony of several witnesses. With one exception, all of these witnesses were women. All of them were neighbors and friends of the victim: their testimony is partial. The council tended to be lenient in cases of domestic violence, but these women considered the slaying heinous. They conveyed their disgust with the slayer to the court, but for the most part refrained from directly blaming the slayer, as is the case in the accusations against men who killed women. Nevertheless, they found a strategy to cast blame in other ways. They tried to gain the sympathy of the court by focusing on the very weakness of the female body, dependent on male protection. Their testimony differs from the testimony found in cases in which the victim was a man. The actual violence is represented differently because the women's testimony expresses a stronger emotional concern for the victim and a different representation of the body.

10 It also might explain, why there are so few such cases. Only three Zürichers accused the slayers of their wives in front of the court in the fifteenth century. (We have a total of 151 homicide cases in this century.) Either no other wife was killed, or the records are incomplete, or – what seems to me another likely possibility – such cases were often settled without the court's interference at all.

Counting Wounds and the Body Suffering

To put the case of Anna Merkli into perspective, I will first analyze a couple of cases that involve violence of men against men. Witnesses usually report violence with a casual tone that seems to confirm conventional stereotypes about the "violent tenor of life" in the middle ages and the indifference to it (Huizinga, 1913, 1). For example, in 1385, a witness describes the fight that led to the slaying of H. Biberli by H. Taentzer. In the words of Herman, this fight became a quick exchange of insults and wounds. He reported "that H. Biberli threw lard in Taentzer's face, and also hit him with his fist. Taentzer drew his knife and stabbed Biberli in his stomach".¹¹ This terse report conveyed to the judges that the violence committed had been honorable. The slayer had reacted to a direct insult to his honor. Biberli threw lard in Taentzer's face, according to medieval culture, this place is the essence of one's personality. But the construction of identity and personhood was a public affair: honor was in the eye of the beholder and one's identity and social status depended on the amount of honor the community was willing to grant to an individual. A public insult, according to Hans De Waardt, threatened one's identity, which was dependent on the malleability of community opinion. It threw the contestants into a 'liminal state,' and immediate measures had to be taken to 'refirm' the violated boundaries of one's personhood (de Waardt, 1995). A man's honor was closely linked to his ability both to keep his body inviolate and to use violence to defend his reputation (Spierenburg, 1999, 5-6). According to this behavioral code, Taentzer had reacted appropriately, to avenge the insult on his honor, he had stabbed Biberli. Violence was a communication tool, a language understandable to all bystanders: Taentzer repelled the marks on his own body that stained his reputation when he marked his opponent.

Such fights were in the nature of a competitive exchange. The contestants tended to act as if honor was a scarce commodity, as if there was not enough honor to go around. Fights ended when one lost honor and the other gained it. It was therefore not enough to repay the opponent in kind, contestants sought to top the insults. It was not sufficient for Taentzer to hit Biberli back with his fist; he instead chose to stab him. In 1395, a witness reported a quick exchange between Peter Bader and Peter Rotwiler, competing over who can do more damage to the other. The witness told the court that "Rotwiler said to Peter that he should leave him in peace, or he would hit him in the neck".¹² Peter Bader topped this by retorting that "by God, he would hit him so hard then that he would never be able to beat up another man".¹³ Then, the

11 "Dz H. Biberli smaltz in sin antlit wurf und in oech mit dem fust in dz antlit sluog und dz do der Biberli den Taentzer stach in sin buch" (StaZH, B VI, 192, fol. 280v).

12 "Do sprech der Rotwiler, er müesse jach in nat dz er sin enhär, aid er sluog inn an sin hals" (StaZH, B VI, 196, fol. 4v).

13 "So helff im got, so tet er ein slachen, dz er niemer ueber wunde" (StaZH, B VI, 196, fol. 4v).

witness continued, Bader took out his knife and stabbed Rotwiler.

The witnesses recounted in detail the exchange of wounds and insults. This minute attention to the specifics of the fight conveyed to the judges that a homicide was preceded by a competition for honor, and they judged these slayings accordingly as honorable manslaughters. The terse statements of the witnesses are not a sign of neutrality or indifference, but a moral judgment – that this violence was justifiable and honorable. But while the statements of the witnesses circle around the bodies of the contestants, the suffering body is not present in these accounts. Cuts and gashes are conscientiously enumerated, but empathy with the victim, or grief at their suffering, is absent. But whether a contestant suffered or not, was not what was important. What was critical was if he had acted in a culturally accepted way that would have restored his honor.

In 1431, Hans Merkli had killed his wife Anna, and her aunt brought the case in front of the court. Her accusation is reticent like other accusations brought against men who killed women. This time the reticence is not due to a husband's failure to protect his wife from the violence of other men. Rather, the aunt's reticence defers to the council's prejudice in favor of a husband's right to punish his wife. Her accusation is matter of fact: she told the court that Anna's husband had "smashed her thigh with a mallet, from which wound she had subsequently died".¹⁴ The court should "evaluate this slaying according to their own judgment, and she thought that this was better done than avoided".¹⁵ Her words imply that she thought the slaying was unjust, but she, like others in cases where a woman was the victim, refrained from openly condemning the slayer and his deed.

The story appears horrific to the modern reader. Hans had suspected his wife Anna of cheating on him with one of the servants. He instructed her cousin Ueli Bloesi to watch the house on an evening when he was not home. Ueli reported back to Hans that he had seen Anna and the servant inside the house. When Ueli had knocked on the door, Anna had told the servant to leave through the backdoor. For Hans this was proof of Anna's guilt. Anna ran away to hide with her female neighbors, many of whom were involved in negotiating the terms under which Anna went back to her husband. Hans Merklin promised the women that he would not punish Anna "immoderately" ("unbescheidenlich" *StaZH*, B VI, 209, fol. 305r), a formulation that underscores the legal right of the husband to punish his wife. But the 'neighborhood watch' was not effective. Hans smashed Anna's leg with an axe, and she died in consequence of the injury. Although he tried to prevent visitors from coming to

14 "Mit einem slegel iren schenkel entzweye hab geslagen dz sy desselben streichs tod ist" (*StaZH*, B VI, 209, fol. 329r).

15 "Die sach richtend nach dem und sy dz findent, und sy besser dunke, getan dann vermitten" (*StaZH*, B VI, 209, fol. 329r).

see her, a few female neighbors managed to see her anyway. Hans also tried to avoid responsibility for her death by spreading the rumor that she refused to eat and was starving herself, and several times refused the request of her visitors to get a priest for her. About fifteen women testified in front of the court, telling the judges what Anna had told them before she died about the way in which Hans had assaulted her.

The statements of the female witnesses convey a moral judgment, just like those of the male witnesses cited above. But they do not tell, of course, a story about an exchange of wounds and insults, a competition for honor among equals. When Hans threatened Anna with his mallet, she was weaponless. The witnesses express their disapproval of this slaying by focusing on her suffering.

The witness Elfy Murerin tells the court about the manner in which Hans injured Anna. Her story emphasizes the helplessness of the victim's body that is tortured by a merciless executioner. Elfy reports that "once she [Anna] was with him again, he lived with her in a friendly manner, treated her kindly...once he had bought fish, and when he brought them to her, she took them and asked, whether she should prepare them, and he answered yes. But a little later, he called her to him, and told her to leave the fish untouched and come to him, and as she did so, he told her to come with him to the barn. There was an axe and a mallet next to the wall. She became frightened, and he told her, she should stretch out one of her legs for him, whichever she wanted. She then fell around his neck, and asked him in a friendly manner to leave her in peace, she reminded him of our Lord and the Virgin Mary, then she sat down, presenting him both her legs. He then cursed in an evil manner, and told her to stretch out one leg or he would smash two of them, she then stretched out one leg and he smashed it with the mallet".¹⁶ A chilling statement. Rather than merely stating that Anna had told her that her husband had smashed her legs, Elfy decided to tell the story from the beginning, in dramatic fashion, not rivaling the almost literary drama of the French remission letters of the sixteenth century, but nevertheless dramatic in comparison to the statements cited earlier. There is a certain ritualistic quality to the violence that is reminiscent of an execution. Executions, however, were staged as rituals that signified the power of lawful authority over the body of the criminal, such authority is literally inscribing, marking this body. As the council can claim authority

16 "Da sy wider zuo im kom, das er da gar fruntlich und wol mit ir lepte... kaufft visch, und da er die visch bracht, naem sy im die ab, fragt inn, ob sy die machen solt, da rett er ja. fursich ze stund, da ruofft er ira das sy die visch liesse stan, und zuo im kem, das teilt sy, da hies er sy an das tenn gan, da hatt er ein ax und ein slegel zuo einander gestelt, da erschrak sy, da sprach er zuo ir, sy mueste im ze ein bein dar haben, das sy im eins dar hette, welches sy woelte, da viele sy im an den hals, batt inn fruntlich, ermant in unseres herren und uns frowen, das er sy und inn soeliches ueberhuebe nach vil worten, er wolt es nit tuon, da sas sy nider, hatt im beide bein dar, da swour er uebel, und sprach zuo ir dz sy im ein bein dar hette, oder aber er woelte ira beide bein abschlachen, also hette sy im ein bein dar das sluog er ir mit dem slegel entzweye" (StaZH, B VI. 209, fol. 306r).

over the bodies of delinquents, so can a husband claim authority over the body of his wife. But Hans overstepped the limits of his authority, despite the promise given to the female neighbors, he punished her "immoderately" – he killed her. Her retelling of the story in detail, with his commands to her, to come with him upstairs, to present him with one leg, makes Hans' behavior a travesty of lawful spousal control over the body of a wife.

As Valentin Gröbner writes in a seminal article about the representations of violence in late medieval Nürnberg, there is actually a literary convention of telling a story of unjust violence as a mockery of an execution. The chronicler Deichsler describes how during a feud between the city of Nürnberg and the knight Cunz Schott, Schott had captured the Nuernberg merchant Wilhelm Derrer and cut off his hand. There are similarities to Elfy's account: Schott asked Derrer to put his right hand on a block of wood. Derrer asked for mercy, but Schott insisted. Derrer finally put out his left hand. Schott threatened to kill him if he did not put out his right hand, and Derrer finally did so. Gröbner cites other examples from chronicles which tell about violence in a similar way – emphasizing the 'executioner's demand' to surrender a specific body part, followed by the pleas for mercy, and the reluctance and fear of the victim (Gröbner, 1995, 183-184). While in these stories, the exchange between victim and perpetrator is almost a fight for control over specific bodyparts; Anna's offering of both her legs to Hans may be interpreted as a plea for compassion with her complete and utter helplessness. It served as a reminder that her whole body was at his mercy, and a request to treat it with care like a good husband should.

Whether Elfy knew of this literary convention, and she dramatized the story accordingly, or whether it really happened in this exact detail, is less important than the fact that Elfy chose to describe this instance of violence in a way that appealed to a cultural understanding that violence that constituted an abuse of authority was wrong. It is this kind of violence, as Valentin Gröbner writes, that 'hurts' (Gröbner, 1995, 185). Deichsler noted down without evident concern for the suffering of those concerned, that the council had ordered the cutting off of hands, ears, or feet, of delinquents, without going into detail, but his empathy with the suffering of Derrer comes through in the detailed telling of his injury.

We find a similar situation in the court case in Zürich. It is the wrong violence that hurts, the violence that constitutes an abuse of power. Witnesses can record without expressions of empathy the wounds given in an honorable fight, but the suffering body of the victim surfaces in the testimony of Anna Merklin's case. Apart from the attention to the gruesome details of her 'execution,' the witnesses talk about Anna's subsequent illness. They stress that Anna was "very sick" ("vast krank" *StAZH*, B VI, 209, fol. 305v). They also express their empathy with Anna. They repeat to the court their dialogues with Anna, that they had told her how sorry they were for her. Winterturerin said that she told Anna: "My God, I am truly sorry for

your grief".¹⁷ They repeat Anna's answers, which focus equally on her grief. "May God thank you this would never hurt me, if I had deserved it, but I have not deserved this and it has not been my fault".¹⁸ While the witnesses emphasize the injustice of her death by focusing on her suffering and grief, there is little direct accusation of Hans. Only one witness, *Lang Bonuserin* who had been the main instigator in Anna's return to Hans, accused him directly. She might be justifiably the most upset, because Hans had promised her explicitly that Anna's punishment would be moderate. She told the council that she had said to him "you damn evildoer, you have murdered your wife."¹⁹ But the other witnesses were much more reticent. *Alt Pfdlerin*, for example, told the council that "she saw Merklin and said to him that to him that she was sorry for his grief. He retorted why she was sorry, he was not sorry, if he had not yet done it, then he would still do it. She continued to talk to him in a friendly manner, but then he attacked her and wanted to beat her, he cursed her and insulted her".²⁰ *Alt Pfdlerin* is again emphasizing that Hans had acted in a travesty of his spousal authority. She expresses regret for his grief, that a husband should naturally feel at the impending death of his wife. But Hans just reacts unnaturally again by telling her that he regretted nothing.

These witnesses have a different technique to represent violence as unjustifiable in comparison to witnesses in cases of dishonorable manslaughter where the victim was a man. In the above mentioned case of a dishonorable manslaughter, the homicide of *Heini Loibler* by *Hans Landolt*, we find that witnesses expressed their disapproval. They informed the council that there had been no exchange of bad words between *Landolt* and *Loibler*, which conveys to the council that the violence had not been justified. However, expressions of empathy and a focus on the suffering body are absent. This is still an encounter between two equals. When there is a gaping inequality, where the perpetrator abuses his position of authority, the suffering body of the victim becomes a symbol for this abuse. This body accuses the perpetrator, because the accusation can not be directly voiced to him, on account of his authority.

This could be true not just for cases that involve women, but also male victims who were killed by their social superiors. We remember the case of *Hans Nell*, killed by the knight *Heinrich von Huenenberg*. *Nell's* father's accusation was tentative, but the *Zürchers* woken by his son's dying screams had been aghast. In front of the

17 "Min got mir ist din kumber truwlich leid" (StaZH, B VI, 209, fol. 307r).

18 "Ach nu dank dir gott, es taete mir niemer we, hette ich es beschult, so hab ich es nit verdienet noch beschult" (StaZH, B VI, 209, fol. 307r).

19 "O du verhit boeswicht wie hast du uns und dein weib gemuert" (StaZH, B VI, 209, fol. 305v).

20 "Das sy Merklin gesach und klagt den Merklin ir were sin kumber leid, da sprach er, warumb es ir leid were, es wer doch im nit leid, dann hett er es nit getan er woelte es noch tuon, also rett sy fuerer mit im fruntlich, da trang er gegen ir wolk sy slachen, fluchet ir und handelt sy mit worten ubel" (StaZH, B VI, 209, fol. 306r).

court, they focus on Nell's suffering. They repeatedly stress, how much he was bleeding and screaming in pain (StaZH, B VI, 207, fol. 60r-60v, 97r-98v). Perhaps this was a way to convey their sense that the social inequality between victim and slayer made this deed particularly heinous, and it lessened the likelihood of a fair punishment.

There is another case when the witnesses focus on the suffering of the victim and express their empathy with him. In 1493, Birgger was killed by Joerg Toeltschy in a dishonorable manner. Birgger was having words with Hans Meis, and Toeltschy all of a sudden intervened in the dispute, hitting Birgger on the head. The mayor of Zürich, Swend, was present at this scene. Birgger did not die right away, after he was attacked, he went up to the mayor to tell him: "Mayor, I want to tell you that I have been hit by Toeltschy in a dishonorable, infamous and murderous fashion".²¹ However, the mayor did not react. He did not give a command to apprehend the slayer, perhaps because the slayer was a friend of Hans Meis who had been mayor the previous year. The testimony suggests that the witnesses disapproved of Toeltschy's behavior and were distressed at the mayor's inaction. A witness said that "he was surprised that Toeltschy was allowed to just sit there."²² Another told the court that he "had never felt so badly for anybody as he did for Birgger".²³ The seriousness of the wound is also stressed: one witness told the court that he thought that Toeltschy would "have liked to cut off Birgger's head from the neck".²⁴ Again, the suffering body of the victim becomes an accusation, a sign for the wrong use of authority.

How effective was this rhetorical strategy? Judgment in Zürich was the result of a negotiation as the judges carefully considered the cultural division of violence into honorable and dishonorable deeds as well as the social position and gender of victim and slayer. If accusers deferred more strongly to this latter standard of adjudication, witnesses could use a language that emphasized the shamefulness of the slaying without openly labeling the slaying as dishonorable. Judges valued community opinion as well. The court sought to restore consensus and harmony among citizens. Punishment was often a compromise as judges tried to satisfy different standards of adjudication. In the last mentioned case of Birgger's death, the strategies of the witnesses may have been effective. Perhaps trying to make up for their mayor's inaction, the council condemned the slayer to the death penalty.

21 "Herr Burgermeister, ich clag euch, das der mich schändtlich, lasterlich und mordtlich gehowen hat" (StaZH, B VI, 237, fol. 299r).

22 "[ihn] neme wunder, das man den Toeltschy also da liesse sitzen (StaZH, B VI, 237, fol. 299r).

23 "Inn habe nie keiner so uebel als der Birgger erbarmet" (StaZH, B VI, 237, fol. 299r).

24 "Und heite im als inn dnechte gern den hals abgehown" (StaZH, BVI, 237, fol. 299v).

Heinrich Huenenberg, the slayer of Johann Nell, was exempted from the death penalty but punished with a double manslaughter fine (StaZH, B VI, fol. 61v). He was also banished from Zürich for three years. In this way, judges deferred to the evaluation of the witnesses; they made clear that this slaying had been somewhat less than honorable. Still, this sentence falls short of the actual deserved murder verdict. After all, Huenenberg had attacked Nell at night and from behind, without revealing his identity. The judges categorized Hans Merkli's slaying of his wife as a manslaughter, but the council affixed an additional stipulation. The slayer had to surrender his wife's dowry (StaZH, B VI, 209, fol. 329r). One of the slayers mentioned earlier, Heini Etter, the drunken city constable who had killed Nesi Appenzeller, had to pay five Mark in addition to the manslaughter fine. The verdict stated that the council demanded the fine because Etter had not heeded an earlier warning to leave the woman in peace (StaZH, B VI, 202, fol. 261r). In this case, the council punished Etter also for acting contrary to his official position. He was after all a city constable, whose duty was to protect, not to kill citizens. His sentence, as well as that of Hans Merklin, is milder than Huenenberg's sentence. Adjusting punishments was a flexible business. If the victim was a woman, this adjustment was more subtle. There was also no guarantee that judges always sought a compromise. We remember Anna Hirny, killed by Uely Luty while she was asleep in her bed. According to cultural standards, this deed was murder. Ruedy Hirny had to be content with a mere manslaughter sentence (StaZH, B VI, 229, fol. 127r). We cannot tell whether this was because community support was lacking or not sought out – there is no witness testimony. The husband who had failed to protect his wife from the violence of another man at least had the chance to reclaim authority and honor through blood vengeance. As in all cases of manslaughter, this was his right. The records do not tell us if he claimed it.

"BILA JE UMORJENA BRUTALNO IN BREZ MOTIVA": SOCIALNI STATUS
IN GOVORICA NASILJA V ZÜRISKIH SODNIH PROCESIH 15. STOLETJA

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POVZETEK

Züriški mestni zakoni so že vse od poznega 14. stoletja natančno razločevali med častnimi (javnimi in izzvanimi) in nečastnimi (tajnimi in/ali neizzvanimi) uboji. In med sodnimi razpravami na občinskem sodišču so sorodniki žrtev znali dodobra izkoristiti to razlikovanje. V večini primerov so poskušali stigmatizirati ubijalce predvsem tako, da so orisovali njihova dejanja kot nečastna, četudi je šlo za primer častnega uboja. Pričujoči prispevek obravnava nekaj tistih redkih primerov, ki se močno razlikujejo od drugih, a so si med seboj osupljivo podobni.

Sorodniki tako ubitih žensk kot moških s precej nižjim družbenim statusom kot obsojenec so bili premalo samozavestni in nepopustljivi med obtoževanjem morilcev. Največkrat so se tožniki namreč zavedali, da so sodniki v takšnih primerih bolj popustljivi kot pa med spopadi med moškimi, ki so pripadali približno istemu družbenemu razredu. Eden izmed izjemno podrobno opisanih primerov govori o retorični strategiji, po kateri so žrtvini prijatelji in sorodniki silili obotavljajoči sodni svet k nagli obtožbi. Namesto da bi morilca obdoločili neposredno, so poskušali na sodni svet vplivati tako, da so se osredotočali na samo krhkost žrtvinega telesa in na pomanjkanje nadzora, ki ga je žrtev imela nad njim. To je bilo precej nenavadno, saj so se priče običajno omejevale na preštevanje ran in žalitve. Pa vendar je v primerih z bistvenimi družbenimi nenenakostmi med ubijalcem in žrtvijo trpeče telo lahko postalo nekakšna obtožba, znamenje, ki razkriva zlorabo avtoritete. V svojih odločitvah so morali sodniki uravnoteževati kulturno obsodbo čezmernega in neupravičenega nasilja s svojo oceno družbenega položaja in spola žrtve in ubijalca.

Ključne besede: mestni zakoni, kazniva dejanja, uboji, Zurich, 15. stoletje

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