

Susanne Pohl-Zucker, *Making Manslaughter, Process, Punishment and Restitution in Württemberg and Zurich, 1376-1700* Leiden: Brill 2017. *Medieval Law and Its Practice*. ISBN 978-90-04-21821-5

Vendetta, bloodfeud and the seeking of personal retribution appear to stand outside of the parameters of state sponsored law. They are acts of violence, pre-mediated, with fatal and often horrific results. By their nature they can easily escalate into bloody conflicts which move beyond the original protagonists and dominate kinship groups for generations. Families can remain stranded in violent conflict for such a period of time that the original slight or cause for disagreement becomes forgotten, mythologised or fabricated beyond what it once was or may have been. Feuds can ostracise localities, and in their bitterest and most deadly forms, can take on the form of small civil wars and private battles. They are destructive and self-perpetuating, and betray the very worst in rival men and women; jealousy, greed, betrayal. Yet they also are based upon honour, loyalty to one's family, and evoke, however artificial, a model of ancestral memory. Whilst they may begin with an affront or slur to one's person, or family, they explode in dramatic acts of bloody violence and professed retribution.

If law is meant to order and govern society; bloodfeud, vendetta and internecine or intergroup warfare must surely stand outside of it. And yet, throughout history, societies have engaged in these types of conflict, within existing legal frameworks. Provision has been made in lawcodes and legislation for acts of violence, in retribution for perceived injustice. This is not to say that all feuds are allowed within and enshrined within legislations. While earlier laws allowed and prescribed for a sense of private justice, there existed a strong centralizing effort from the Middle Ages onwards. A number of different kings, governments and authorities sought to create an early semblance of the rule of law, to bring violence under the control and authority of the state. Whilst the narrative in the western legal tradition is anything but as simple as this, the links between power, violence and law remain as relevant as they ever were. Pohl-Zucker's book is a welcome addition to this area of study. It is also a welcome addition to the practice of legal history in a more general sense. In contrast to a number of recent writings that have looked at violence and law, PZ does not get too lost in theory, anthropology or sociological frameworks. Instead, at the heart of this book, is an astonishing sense of effort, with close and detailed reading of a vast number of contemporary legal records. This is legal history at its best; rooted in the evidence, drawing upon recent

approaches and ideas but at all times returning to the sources, guided by informed historical questioning and reasoning. This will become set reading not just for studies of violence and homicide in the late Middle Ages, but for practitioners across different fields. It is difficult when reading this not to be impressed by the excellent source analysis and the careful questioning of the material. That is not to say that there are not issues here, but I believe this to be one of the most important studies of its kind published in the last few years.

PZ has set herself a difficult task. She looks to the duchy of Württemberg and the imperial city of Zurich, both of which contain different types of legal record and practice, across an impressive timespan (1376-1700). This is a large topic, with substantial bibliographies and significant pools of evidence. In bringing the two case-studies together PZ is able to identify and interrogate the shifts in legal understanding, settlement practices, and wider cultural shifts across both regions. There are immediate issues here. Although a substantial volume, the book would have benefitted from another two or three chapters, to balance the case-studies. As it stands, the reader gains rather more significant comprehension of Württemberg over Zurich, and this diminishes the overall strength of the argument being made. Although scholarship is explored reasonably well, each chapter would have been strengthened with a more thorough exploration of historiographical differences and approaches. This would have meant that the conclusion offered, which is persuasive and well-reasoned, could be mapped more clearly against the shifting plates of historical thought.

The book is divided between five chapters with a substantial introduction. Each chapter moves logically through the topics, and demonstrates a thorough and extensive engagement with contemporary sources, allowing for a confident conclusion to be reached: '[t]he centralization of judicial procedures during the course of the early modern period circumscribed rather than eradicated lenient judicial responses towards the use of violence in the defense of honour' (307). The argument is well defended through examples taken from the legal records, and is particularly visible in Württemberg; the evidence from Zurich gives a slightly less clear perspective.

The introduction is the weakest section of the book. In part this is because it is seeking to set up discussion of two different regions, from the fourteenth to the start of the eighteenth centuries. Opening with a homicide case from 1447 in Michelwinnaden, PZ launches straight into the *Totschlagssühne* (extrajudicial agreements), recognising the cultural expectations and social norms to do with *schlechter* and *ehrlicher todslag*, against the backdrop of the *ius commune*, governmental supervision and state control (1-2), before

discussing somewhat briefly the case study approach. The choice of the two sites make sense, although more needed to be made of just how different they were, and consequently what can be achieved by bringing the two together (3). The final section of the introduction, considering the introduction of the *ius commune* into medieval German jurisprudence (*Rezeption des römischen Rechts*), is important and provides a necessary backdrop against which to measure the later research chapters. Here PZ discusses the *Frührezeption* (early reception) and *Vollrezeption* (full reception), as well as the ideological basis and the creation of the *Reichskammergericht* (30-42). The development of *Aktenversendung*, the remarkable practice of local judges sending records to legal specialists requesting a *consilium*, is linked well with the emergence of the *ius commune*. The long section in-between, however, where PZ sets out the scholarship lacks focus and precision (4-29). In tackling the historiographical approaches of both *Kriminalitätsgeschichte* and *Rechtsgeschichte* alongside *l'infrajudicare* (echoing Loetz) and *Justiznutzung* (echoing Dinges) the introduction loses analytical focus, and attempts to cover far too many different ideas and approaches, not each of which follow naturally on from one another. Medieval efforts at improving civil behaviour and government are referred to as '*Gute policey*', and this becomes a crucial analytical device throughout the later chapters. However it needed to be explored with much greater precision here, as it appears somewhat out of place in the wider panorama of historiography collected around it (11-15). The exploration of late medieval legal culture and punishment is better, but only when the discussion focusses on specific items (instead of general observations e.g. gender and honour, 18-21). The crucial issue here is that the introduction is overlong, and consequently loses sight of the argument guiding the later chapters.

Chapter one focuses on Württemberg, looking at the strategies of compensation and conflict resolution (43-92). PZ focusses on homicide cases from the sixteenth century, where ducal involvement became the norm, and so too did recourse to the *ius commune*. Although this ran counter to the prevalent attitude that a negotiated agreement would be enough between a victim's family and the perpetrator to settle the matter, PZ demonstrates how important the desires of the injured parties were in shaping the ducal response, and that these were played out against a backdrop of *gute polciey* and Romanised legal practice. This chapter also considers how this practice changed over the course of the sixteenth century, where a trial became necessary (and without it the duke would not accept private agreements); this created in turn a dual process of private and criminal restitution, where 'formal and informal justice continued to intersect' (43). The argument made here is that we should not view this as a 'successive suppression of private modes of conflict resolution with

forms of public justice'. Instead, PZ speaks of 'shifts in emphasis', motivated in part by the recording process (44). Although the overview of Württemberg's political and legal frameworks is a little brief (45-49), the rest of the chapter is well-argued, fluently written, and demonstrates a close analysis of the historical sources. The dissection of the various legal bodies is particularly astute (such as the *Vogt*, *Oberräte* etc.), reinforcing the coexistence of extrajudicial and judicial justice, and the way in which ducal authority sought to balance justice and mercy. The notion of social peace, pragmatism and fear of lasting enmity can be discovered behind much of these records from the earlier period. From the seventeenth century a tangible shift can be witnessed focussing on retribution over restitution, guided in part by the increasing dominance of *ius commune* trained legal specialists from the University of Tübingen.

Chapter Two looks at how the shift in legal understanding regarding homicides altered legal discourse, while also responded to social pressures and civil behaviour (93-136). In making homicide a strictly criminal offence it would fall now under *peinliche* jurisdiction; a trial that would result in corporal punishment. PZ importantly recognises that *peinliche* penalties carried with them social stigma, not seen in *bürgerliche* punishments. One *peinliche* punishment was the *Stäupung* (Lat. *Fustigatio*), public whipping, while perhaps also wearing an iron necklace (*Halseisen*) in the stocks. This can be placed against the wider category of *Ehrenstrafen*, 'shaming punishments' (94). PZ identifies how strongly felt, and feared, shame and dishonour were by contemporaries, and how this led to the development of the *superfacto* procedure (a trial *über das Faktum*), in-between *peinlich* and *bürgerliche*. In reality of course this meant that 'long before the verdict was found, the case was prejudged' (104). Although *superfacto* could be used to make those who had fled return for trial, without stigma and shame, allowing for a compensatory rather than corporal punishment, it was also flexible enough that the *Oberräte* could shift and change those parameters, depending upon the facts of the case (136). It demonstrates the interconnectedness of the *ius commune* and the social and cultural norms.

Chapter three is closely linked with this, exploring the increasing dominance of legal experts in shaping the practice and understanding of law in Württemberg, and medical evidence (137-194). This allows PZ to demonstrate 'the important legitimating function of administrative regulations and expert discourses' and 'the strategic behaviour of legal actors within malleable judicial parameters' (139). The seeking of *consilia* exemplified the close connection of *Oberräte* and the law faculty of Tübingen, and their recommendations were largely accepted by the *Oberräte* and the duke. There are a small number of occasions where

the *Oberräte* were displeased with the *consilium* and could seek a second learned opinion (*Zweitgutachten*; 153-170). Here PZ demonstrates the flexibility of incorporating the *ius commune* into the social milieu of Württemberg, and the guiding principle of *gute policey*. The discussion of medical inquests and evidence provides an excellent ancillary discussion governing legal practice and issues therein. The procedure laid out in the *Carolinia* was extensive: requiring at least one surgeon (*Wundärzte*), the judge, two members of the court, and then later the local doctor as well (*physicus*). As PZ notes, 'Württemberg rules regarding medical inquests were binding; without a properly conducted inquest, legally valid proof of the wound's lethality did not exist' (171). It becomes clear from the evidence analysed that distinctions and disagreements could arise between legal and medical experts.

Chapters four and five turn to Zurich, and in contrast to the earlier chapters the discussion is a touch less forceful and focussed (195-259; 260-307). Chapter four looks at the amalgamation of extrajudicial and state justice; but importantly paints a rather different image to that seen in Württemberg. In Zurich, the weight of the *ius commune* is not felt; and its guiding principles engaged with only sporadically, and in a much more muted fashion. Instead, it appears that custom retained its prevalence into the seventeenth century. The argument made is a good one, but not developed and defended quite as successfully as those seen in the preceding chapters: 'the development of stricter categories and punishments in manslaughter cases occurred partly in reaction to, and was endorsed by, the legal strategies of witnesses and injured kin' (197). Although there are certain strong similarities to Württemberg, the legal system is different. In Zurich there exists a complex myriad of different courts, over which the *Ratsgericht* (council court) gradually grew in importance, combining the political leadership of the city council with the powers of the *Reichsvogt* (in particular the ability to summon the 'blood-court' in the public square). The *Ratsgericht* had the ability to investigate breaches of the peace (*Nachgansverfahren*), although this process shifted in favour of private accusation, a *Klage*. This was still maintained and investigated, but rather more quickly, by the *Ratsgericht*, which PZ interprets as 'the council [...] seeking to tie the execution of vengeance to an official trial' (214). This was seen in the language employed in verdicts and accusations, that echo those found in earlier medieval law codes (e.g. *übel und unrecht; by nacht und nebel; nit verdient noch beschult; unverschult; muotwillenlich*). There also was a route called the *hohe Klage* (high accusation) that families could pursue, effectively seeking the death penalty. SP interprets this as a method to both epitomise blood vengeance and draw out more severe repercussions, including financial settlements. This was all played out against shifts in the political, cultural and religious fabric

of the city. Chapter five looks to the defensive strategies employed in Zurich, where akin to and drawing upon the example offered by Natalie Zemon Davis' *Fiction in the Archives* the slayers sought to draw upon exculpatory language in their defence, adapting 'honour based rhetorical strategies to changes in the legal system' (261). Although the sources contain interpretive issues (outlined at 263-266) the in sophistication in the trial records certainly suggests the 'growing emphasis on form and display' (264). The rest of the chapter sets out a number of useful rhetorical strategies that could be employed to protect from the death penalty; but also offer a limited shield against other punitive measures and financial ruin. It is interesting to see how this could be framed against a cultural honour based sense of identity. A good example comes from 1400 in a fight between two tailors, where the language is volatile but couched in terms of peace as well as honour. One claimed the other was *nuet ein biderb man*, and had spoken to him *schalklich* despite his own peaceful stance: *ich beger dir nichtzit*. The other claimed the attach had been *an schuld* and both believe the other was speaking *frefenlich* (271). It is in cases like this that PZ's close acquaintance with the sources, and strong legal knowledge come to the fore, wresting out important legal shifts while also bringing in wider social changes. These two chapters are a touch more difficult to follow, in part because it lacks the tight internal structuring seen in the discussion of Württemberg. They do however continue the deep level of source analysis, and provide a window through which to see the shifting nature of legal understanding and practice. It is also in chapter 5 where PZ summarises the arguments made in the book. The writings she has looked at 'do not show a measurable decline in interpersonal violence', instead reflecting 'how legal actors at different levels negotiated cultural traditions and values surrounding the concept of honourable slaying with structural changes within the administration of criminal justice'. This is an important perspective, and one that forces us to reconsider the familiar narratives of legal history.

To close, this is an impressive volume. Scholarly in tone, careful in analysis, and led at each turn by industrious engagement with contemporary legal records, PZ has written a highly persuasive and fluent examination of Württemberg & Zurich (weighted somewhat in favour of the former), that asks news questions of the realities of law in the late Middle Ages and the early modern period. Most notably, PZ demonstrates how closely enshrined law was with social expectations and regional cultural realities.

Anthony Smart
York St John University