

Oaths and Socio-political Hierarchies in the Urban »Sworn Society«: South-west Germany in the Late Middle Ages

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Since the nineteenth century, historians have fundamentally considered the medieval town as a *conjuratio*, a sworn association of free and equal burghers. The oath does indeed appear to have been a crucial instrument capable of inspiring confidence in social relationships and of binding people to the city government. However, the analysis of oath practices actually highlights more than the cohesion of the political community: it reveals internal divisions and hierarchies. The first part of this article examines which oaths foreigners, burghers, clerics, noblemen, women or Jews had, or were allowed, to swear. The second part deals with the differences between the oath rituals in which these various socio-political groupings took part, in terms of gestures, wording or frequency. Finally, the article suggests the factors that made for the efficiency of the oath as a technique of government: its simplicity and adaptability to the progress of literacy.

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The Italian historian Paolo Prodi invented a powerful image when he presented the late medieval city as a »sworn society«, *società giurata*. Prodi considers the multiplicity of oaths sworn by the town dwellers – from the judicial oath or the new burgher’s individual oath to the spectacular swearing-in ceremony of the city council – as forming a continuum. Thanks to their being a ritual, all these oaths together create the image of a society built on contractual relations. This idea of a continuum between different oaths is essential to his thesis of the European medieval contract-based society. Of course, Prodi acknowledges the differences between an oath of homage, a judicial oath or an oath of office, but to him they all have in common the notion of a contract between the person or institution receiving the oath and the oath-taker. Thus, Prodi abandons the traditional distinction between promissory oath – committing to behave in a certain manner in the future – and assertory oath – basically swearing to tell the truth – as actually minor. He uses instead the more encompassing category of the »political oath.«¹

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1 Prodi, *Sacramento del potere*. Prodi’s book has been translated only into German: *Das Sakrament der Herrschaft*.

Furthermore, historians have fundamentally described the medieval town as a *conjuratio*, that is – following the Weberian archetype – as a sworn association of free and equal burghers.² From the early north-Italian communes or the urban upheavals against the town lord in order to obtain a communal status in late eleventh-century northern France and Germany to the late medieval civic oath (*Bürgereid*), one easily gets the impression of a society with flat hierarchies.³ In his book *Il sacramento del potere*, which was deeply influenced by German scholarship in medieval history and legal history, Prodi explicitly rejects the classical opposition between *Herrschaft* (lordship) and *Genossenschaft* (fellowship).⁴ The urban society appears as a *società giurata*, a sworn society where the town dweller is entwined in a »network of oaths« that he swears.⁵ Now Prodi was well aware that this image should not be idealized and he urges us to consider the balances of power at work in any given case.⁶ Yet as his book deals with political theory and not with urban or social history, he does not give any example of what such an urban »sworn society« might look like.

As a matter of fact, the literature on medieval oaths has not neglected hierarchies. The very active research on symbolic communication has been addressing questions of power in rituals.⁷ The studies in this field regard the city as the stage on which the authorities used rituals of power in order to demonstrate their dominion over the population. Furthermore, scholars like André Hohenstein have shown that, for lack of other means before the establishment of the »modern state«, oaths were used to impose power, but also more generally to impose norms and behaviors.⁸

Indeed, medieval urban society was characterized by power relations, strategies of distinction and hierarchies and is extremely unequal. This is particularly obvious in the practices of swearing-in. Far from being an association of equal members, the urban *conjuratio* of the Late Middle Ages was extremely hierarchical. Thus, the denizens of a town, depending on whether they were men or women, members of the social elite or simple craftsmen, burghers or »foreigners,« Christians or Jews, did not swear in the same circumstances, or with the same words or gestures, or as often as others. It is these differences that I want to focus on in the following pages, in order to try to see what they tell us about both the quality of the urban *conjuratio* and the significance of the oath in this sworn society.

2 Weber, *Stadt*. Max Weber was following Gierke on this point, see Gierke, *Rechtsgeschichte*, 249-284 (excerpts in English in *idem*, *Community in Historical Perspective*, 32-45).

3 On the myth of the early Italian communes as a new political vision, see Scott, *City-State*, 18-22; Isenmann, Norms and values, 193-196 (conjuratio) and 205-208 (equality of the citizens); Dilcher, *Bürgerrecht*

4 Gierke, *Rechtsgeschichte*. Excerpts in English in *idem*, *Community in Historical Perspective*.

5 Prodi, *Sacramento del potere*, 199.

6 Prodi, *Sacramento del potere*, 199: *Questo non vuol dire trasformare tutta la storia costituzionale di questo periodo in una melassa dolciastra indifferenziata: le situazioni e le posizioni di forza che nel giuramento politico si rispecchiano (oggetto è sempre il potere con il suo volto crudele) sono estremamente differenziate nelle varie realtà europee* (»This does not mean turning the entire constitutional history of this period into an undifferentiated sweet molasses: the situations and positions of power reflected in the political oath [the object is always power with its cruel face] are extremely differentiated in the various European realities«).

7 Among many other publications, see Van Leeuwen, *Symbolic Communication*; Stollberg-Rilinger, *Spektakel der Macht*. Stollberg-Rilinger's concepts are accessible in English in *eadem*, *Emperor's Old Clothes*.

8 Hohenstein, *Huldigung*; *idem*, *Seelenheil*, 14-32.

The region I shall examine is the Upper Rhine valley in a broad sense, on both sides of the river, from Constance to Strasbourg in the Late Middle Ages. The choice of a limited area and period should facilitate comparison with the Japanese cases presented in this issue. This area corresponds to the present-day Swiss Plateau, including cities such as Bern, Fribourg and Zurich, to the German Baden with Freiburg im Breisgau, and to the French Alsace with Strasbourg and Colmar (*Figure 1*). In the Late Middle Ages, this space belonged to the Holy Roman Empire; it was densely urbanized, due to the intense trade along the River Rhine, with many towns enjoying imperial immediacy (meaning, that they were immediately under the theoretical authority of the Emperor, with no other lord), being free cities (Basel and Strasbourg, »freed« from their prince-bishop) or imperial cities (Sélestat/Schlettstadt, Mulhouse/Mülhausen, Zurich, etc.), that is, those that were directly subordinate to the king or emperor.⁹ Others, which modern historians call territorial towns, belonged to local lords or princes, e.g., the Habsburgs (Freiburg im Breisgau, Laufenburg, etc.). Regardless of their political status, many towns in this space enjoyed broad political autonomy and had very close relationships with one another.¹⁰ Add a very strong written culture – it is no coincidence that both great councils of the first half of the fifteenth century took place in Constance (1414-1418) and Basel (1431-1449) – and one has a region characterized by a well-grounded »associative political culture« and a fertile field for the study of the oath.¹¹

9 On this distinction, see Isenmann, *Deutsche Stadt*, 281-285.

10 Scott, *City-State*, 148-192.

11 Hardy, *Associative Political Culture*.

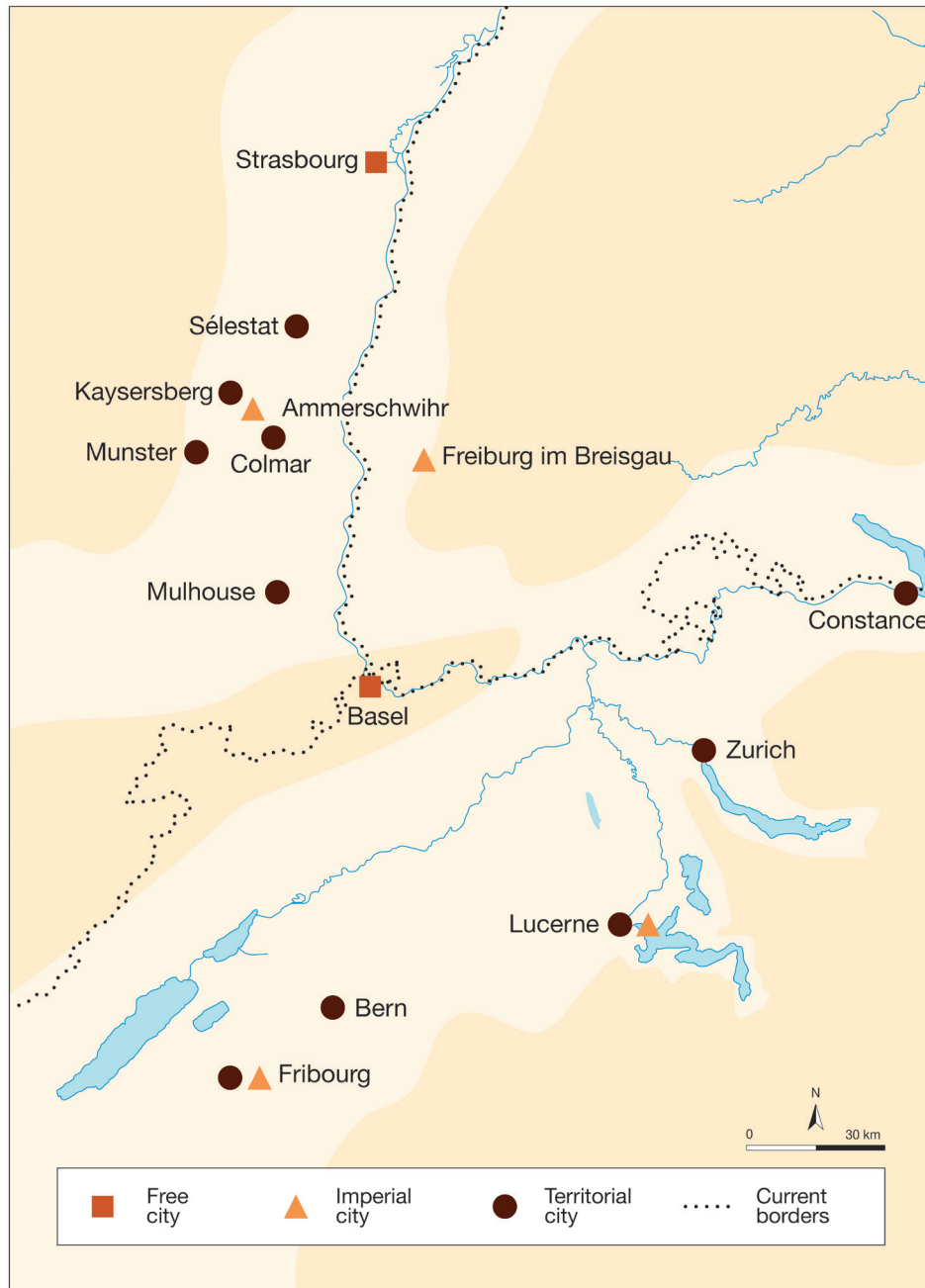


Figure 1: Map of the Upper Rhine region

This paper is set out in three parts. First, I shall examine which different groups swore what sort of oaths. Then I shall look at the differences between the gestures and the procedures of oath-taking according to these socio-political delineations, before, third and finally, I shall analyze the factors that made the oath so important in this hierarchical society.

1. Who Swears What?

Foreigners, Burghers, Clerics and Noblemen: Power and Honor

The studies on oaths in urban society usually focus on the burghers or the citizens, that is, on the one very important group building the *conjuratio*.¹² But this was by no means the only group that would take a civic oath. It is true that citizens played the main role in the annual civic swearing-in in south-German towns, the so-called *Schwörtage* (days of oath-taking),¹³ but the end of the Middle Ages was characterized by the process of territorialization, when power over certain groups of persons – serfs, foreigners, burghers, and so on – evolved and came to constitute a kind of domination over every person in a given territory, regardless of their status. Just as princes tried to submit their subjects to a more powerful grip, so did urban governments endeavor to bind everybody and therefore swear in everybody – clerics and noblemen as much as citizen craftsmen. Even servants and other non-citizen inhabitants (especially the *söldner*, *seldener*) belonging to low social groups took part in the *Schwörtag* in some towns, such as Sélestat.¹⁴

This means that the urban *conjuratio* is not very different from a group homage, as the spectacular staging of the annual or semi-annual civic swearing-in suggests, which was supposed to reenact the citizens' *conjuratio*: the mayor and the aldermen stood on a platform above the crowd pledging allegiance to them. Swearing this oath therefore indicated submitting to these men, which clerics were not supposed to do – it was forbidden by canon law – and which noblemen were not keen to do, because it offended against their aristocratic honor. For instance, the knight Hans von Hirtzbach refused to swear an oath of allegiance to the town of Mulhouse where he lived (as an inhabitant [*inwoner*], not as a citizen). Even the intervention of the Emperor's representative in Alsace (the *Unterlandvogt*, bailiff-lieutenant) to settle the conflict between Mulhouse and Hirtzbach could not persuade him to give in. The bailiff-lieutenant stated in a letter to Hirtzbach that the oath was »appropriate and not iniquitous,« but Hirtzbach preferred to leave the town rather than take it.¹⁵ Thirty years

12 Prak, *Citizens*, 30-33.

13 May, *Schwörtage*; see the English counterpart in Liddy, *Contesting*, 25-30.

14 *Schlettstadter Stadtrechte*, vol. 1, ed. Gény, 376 (in a letter written in 1458 the former deputy town clerk describes the *Schwörtag*, saying »every burgher, resident or inhabitant swears« (*ein yeglich burger, soldner oder inwoner swert*). A *soldner* or *seldner*, here approximately translated as »resident«, enjoyed the protection of the city but not full burgher rights.

15 Mulhouse, Archives Municipales, p.i. 1068: *doch zymlich und nit unbillich*, Johann Wildgraf zu Daun to Hans von Hirtzbach, 13.06.1465.

later, the nobleman Wilhelm von Liechtenfels also refused to swear an oath to his town of residence, this time Freiburg in Breisgau; the city chancellor Ulrich Zasius wrote indignantly that Liechtenfels wanted to go on living in the city, but without being bound in any way to the authorities.¹⁶ Some noblemen justified their reluctance to swear by referring to the homage they had already given to their lord, and when Freiburg decided to introduce a fiscal oath even for noblemen, the Duke of Austria – as a town lord – decided this was incompatible with the honor of the nobility.¹⁷ »It is because his word is sufficient that the nobleman does not have to take an oath.«¹⁸

On the contrary, craft guild members not only took their oaths at the Schwörtag, but also within their guilds. Then guilds had their own oaths, binding their members not only to their craft, but also to the town (since craft guilds took part in government in many Upper Rhine towns).¹⁹ In fact, the craft guilds were pillars of the *società giurata*: the trade community was also a *conjuratio*, and was inextricably linked to the civic community, to the extent that some historians consider guilds – not just craft guilds – to be at the origin of the civic community.²⁰ Moreover, in a 1436 text common to Basel, Colmar, Strasbourg and other towns, when a master hired a new journeyman from outside, he had to make him swear within eight days an oath of loyalty to the town.²¹

Not Able, Not Responsible: Children and Women

The power of the oath explains that not everybody was permitted to swear: women and children were usually exempted from swearing. The reluctance for children to swear oaths is easy to understand: their souls should not be endangered by commitments the youngsters could not fulfil.²² So children (under fourteen or eighteen years of age) were not made to swear on the *Schwörtag* or at trials; they were exempted from swearing, even when their entire family was subjected to it. For instance, the adult children and employees of the millers of Basel had to swear an oath by which they committed themselves to the urban community, but their children under the age of fourteen were exempt.²³

16 Ulrich Zasius, »Geschichtbuch«, ed. Schadek, 75-76: *Wie gar all edellút, die hie sitzen wellen, eim bürgermeister den zimlichen gwonlichen eid der edellúten gesworn haben, so hatt doch er eim burgermeister nit sweren wöllen und dennoch vermeindt in der stat ze sin; [Liechtenfels wished] in einr stat wonen unnd dennoch der oberkeit nichts verpünden sin* (»Whereas all noblemen who wish to stay here and swore the adequate and usual oath of the noblemen to the burgomaster, he refused to swear to the burgomaster, although he meant to reside in the town; [Liechtenfels wished] to live in the town without being in any way linked to the authorities.«).

17 Scott, *Freiburger Enquete*, XXVII.

18 Buchholzer-Remy and Lachaud, *Le serment dans les villes*, 23 n. 63.

19 See e.g. Strasbourg, Archives de la Ville et de l'Eurométropole de Strasbourg XI 71, fol. 22v (drapers' oath in the book of the craft guild).

20 On the correspondence and the relationship between guild and citizen community, see Oexle, *Gilde und Kommune*.

21 On this text, Debus-Kehr, *Travailler, prier, se révolter*, 319-327.

22 Leveleux-Teixeira, *Sacramenta puberum*, 98.

23 Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1, fol. 27r: *Müller eide, wib, kinde, knecht und gesinde, daz so vil alters hat, daz es in eid ze nemende ist* (»The oath of the millers, their wives, children, laborers and servants who are old enough to swear«).

Far more sensitive was the question of oath-taking by women, as adult women had somehow to be bound in social, economic and even political collective actions. Women did not as a rule swear promissory oaths or take part in the civic swearing-in. The only exception to that rule was Freiburg im Breisgau, where women attended the Schwörtag and were expected to promise (*geloben*), while men swore.²⁴ This distinction appears throughout the evidence and is substantial. Whereas *schwören* (swearing) meant putting your soul at stake (»conditional self-damnation«), *geloben* (promise) only endangered your honor. The latter – lighter – form of commitment apparently seemed more suitable to women, who were considered morally and intellectually weaker and therefore less trustworthy than men. This gender distinction applies to various oaths of office throughout the region. In the small Alsatian town of Ammerschwihl/ Ammerschweier, masters and servants had to swear to the saints, whereas their women had to »promise on their [Christian] faith«.²⁵ In the town of Kaysersberg, very close to Ammerschwihl, the city council servant had to swear fealty, but his wife only promised as much; the millers and their male servants swore to maintain proper behavior, whereas their wives, again, promised.²⁶

These were not only legal norms that were easy to adapt, but actual procedures. The proceedings of the Basel city council (so-called *Öffnungsbücher*) list all new citizens who paid for citizenship and swore the civic oath – the great majority being men. But then with Ennelin (=Anna) Nechin, a woman from the neighbouring Reinach, the scribe started to write down the usual formula »Item on Tuesday, the vigil of the apostle Matthew [September 20] anno domini 1440, Ennelin Nechin von Rinach bought the right to citizenship and swore as it is the custom«, but then corrected to »promised instead of an oath.«²⁷

Even assertory oaths by women were open to exemption. They were frequent in trials, as at the Basel *Schultheissengericht* (municipal low justice court), for example. But pregnancy or confinement after childbirth obviously changed the situation, as women were allowed to promise: a woman called Enelyn testified after [promising] »on her faith instead of swearing, because she is pregnant.«²⁸ The reason why she was exempted from taking a formal oath was that she would not only have put her own soul at stake, but also that of her unborn baby.

24 Freiburg i.B., Stadtarchiv, B 3 Ordnungen no. 3, fol. 1v: *Ein man swert aber ein frow glop* (»a man swears, but a woman promises«).

25 *Premier livre de statuts et de serments*, ed. Richard, fol. 35v: *das söllend meister und knecht zû den heiligen sweren und die frowen das by iren truwen geloben*.

26 Kaysersberg, Archives Municipales, BB 1 fol. 42 and 46v. In the millers' case the vocabulary shifts somewhat: *das sollen die meister und knecht alle jor globen und sweren und der muller frowen globen und versprechen* (»masters and servants must pledge and swear this each year and the millers' wives pledge and promise it«).

27 Basel, Staatsarchiv des Kantons Basel-Stadt, Öffnungsbücher 1, p. 82: *Item tercia vigilia Mathei apostoli emit anno etc. XLmo emit civilegium Ennelin Nechin von Rinach et juravit ut mo promisit loco iuramenti ut moris est*. On p. 86, the next woman is said to have »promised as usual« (*hat glopt als gewonlich ist*).

28 Basel, Staatsarchiv des Kantons Basel-Stadt Gerichtsarchiv, Schultheissengericht Grossbasel, Kundschaften D 18, fol. 120v (March 15, 1501): *bij truwen an eideß statt, als sij schwanger ist*; see Sieber-Lehmann, *Eidgenössisches Basel*, 11, for more examples.

Some evidence, however, does document female swearing, even promissory, as, for instance, when Strassburger women swore the goldsmiths' oath.²⁹ This may have particularly applied to independent women, who were not under a husband's or a father's rule, such as widows, who would commit themselves not as women, but as heads of a family or of a business.³⁰ Here again the importance of swearing within the crafts guilds comes to the fore. And exceptions do exist, where unmarried young women or even wives swore »like men,« especially when they held a public position like that of midwife.³¹

Jews and Oaths

Jews represent the other group for which the oath was a problem *per se*. Jewish communities, which were ancient and numerous in the Upper Rhine valley (until a series of expulsions took place, from the Black Plague to the end of the Middle Ages), took oaths, both assertory and promissory, within their own group. Swearing in relation to Christians, however, was something completely different, as the oath was a fundamental element of the civic community, to which Jews did not fully belong: they could not hold public office and did not participate in the *Schwörtag*. A variety of evidence shows that Jews could become citizens of their town, and also that they swore allegiance – as in Fribourg in Üchtland 1381 or Zurich 1383. But in the Upper Rhine region, they never appear in the *Bürgerbücher*, the registers of new burghers.³²

The spectacular oath formulae that are preserved in Christian town records – not only in the Upper Rhine valley – are almost always assertory oaths, comparable to those that were sworn at trials: Jews had to swear oaths in order for their Christian neighbors or partners to have confidence in a social or economic relationship with them, so in Constance in the fifteenth century: »The Jew's oath. You must tell the truth in this matter, as your honor and your oath urge you to and as God and the holy commandments, which God gave Moses on Mount Sinai, help you to do.«³³

To sum up this first part of the article, we can argue that there is a distinction between people who can swear, those who do not deign to swear and finally those who are either not entitled to swear at all or cannot swear together with different persons or groups. I would like now to discuss the ways in which the various groups swore their oaths and what this says about the significance of the oath in late medieval urban society.

29 Heusinger, *Zunft*, 80, for the example of the Strasbourger goldsmiths.

30 Reyerson, *Urban economies*, 301-302.

31 Freiburg i.B., Stadtarchiv, B 3 Ordnungen no. 4, fol. 26r-27v (list of sworn midwives, some of whom were married, such as »Sigmund Steinmetzen frowen«, 1514).

32 Gilomen, *Städtische Sondergruppen*, 139-140. For examples of Jewish burghers, see also *Listes ... de Colmar*, ed. Sittler, 17; Hörburger, *Judenvertreibungen*, 70.

33 *Vom Richtebrief zum Roten Buch*, ed. Feger, 2: *Der juden aide. Also du solt ain warhait in der sach sagen, als dich din ere und din aid wist, als dir got helf und dú hailig ê und dú gebot, dú got Moysen gab uff dem berg Sinay.*

2. Who Swears How?

Gestures, Objects and Words

Oaths are basically an association of words and gestures, involving various people, objects places and times.

As for the gestures, one should consider first of all the objects on which the male oath-taker placed his right hand: at first, in the Early Middle Ages, weapons, then, for some centuries, mostly relics, or, slightly later, the Gospel.³⁴ This can still be seen in the illustrations of oath-taking in the manuscripts of the *Sachsenspiegel* (Saxon Mirror), such as the one in Heidelberg, which dates from the fourteenth century, the text being a century older: the hands are always placed on reliquaries or point toward them.³⁵ However, in the fourteenth and fifteenth centuries, in the Upper Rhine region, the gesture found everywhere is the right hand raised towards heaven, with the thumb, index finger and most often also the middle finger in the air. In the fifteenth century, a text copied throughout present-day Switzerland explains that the three fingers raised represent the Father, Son and Holy Spirit, and the two folded back the soul and body of the oath-taker: the gesture thus recalls the oath's importance, since eternal life is at stake.³⁶

However, there are differences between categories: clerics swear not by raising their hands, but by placing one hand, or crossing both hands, on their chest.³⁷ This gesture has been interpreted as an »internalized form of the sacred,« which would no longer need the intermediary of a sacred object, weapon, relics or Gospel book.³⁸ The Golden Bull of 1356, which regulates the election of the King of the Romans by the prince-electors, specifies that the lay princes touch the Gospel, while the ecclesiastics put their hands on their chest.³⁹ A woodcut illustrating a Strasbourg edition of the text (1485) in German translation does indeed show these different gestures for ecclesiastics and laymen.⁴⁰

34 Kolmer, *Promissorische Eide*, 233-241.

35 Heidelberg, University Library, Cod. Pal. Germ. 164, fol. 29r, digitized at doi.org/10.11588/diglit.85#0072.

36 Richard, *Citoyen assermenté*, 103-104.

37 See, for example, the Bishop of Basel swearing to observe the liberty charter of the city (*Handfeste*), in *Monuments*, ed. Trouillat, vol. 3, no. 288: *mit uffgelegter hand uff siner brust* (»with his hand placed on his chest«), or the Abbot of Neuwiller in northern Alsace, *mit uffgeleiter hant uff unser hertze* (»with the hand placed on our heart«), Strasbourg, Archives de la Ville et de l'Eurométropole de Strasbourg, 1 MR 20, 20.

38 Jacob, *Images*, 82-83.

39 *Dokumente zur Geschichte des Deutschen Reiches*, ed. Fritz, 576: *ubi principes electores ecclesiastici coram ewangelio beati Iohannis »In principio erat verbum«, quod illic ante ipsos poni dedebit, manus suas pectori cum reverantia superponant, seculares vero principes electores dictum ewangelium corporaliter manibus suis tangant* (»let the ecclesiastical prince-electors place their hands with reverence on their chest, this before the Gospel of saint John, »In the beginning was the Word«, which must be put in front of them, but let the lay prince-electors physically touch the said Gospel with their hands«).

40 Die güldin bulle. vnd küniglich reformacion, Strasbourg, Johannes Prüss, 1485, fol. 5r, digitized at daten.digitale-sammlungen.de/bsb00029630/image_14.

Several sources suggest that women were also supposed to swear with their hand on their chest.⁴¹ However, practice looks different, as most judicial sources do not mention this gesture,⁴² and as all pictures from the Upper Rhine valley show women swearing by raising the right hand.⁴³

The Jewish oath represents a well-known case of a ritual adopting a different form. Exceptionally, a manuscript of the famous south German law-code *Schwabenspiegel* from the middle of the fifteenth century, coming from Haguenau in Alsace, shows a Jew swearing with his feet placed on a pigskin, an impure animal in Judaism (see Figure 2). Here, the discriminatory intention is obvious. However, it is highly questionable that the image reflects some reality for Jewish oath-taking, for the oath is intended to establish confidence in the given word, so it would have been absurd to place the swearer in a situation where his sincerity was impossible. Thus, the swearing texts for Jews that one finds in the Christian documentation from the Upper Rhine towns of Colmar, Sélestat and Basel never mention a pigskin. On the other hand, these sources insist that special, Jewish-oriented texts be used. The swearer lays his hand not on the Gospel but on the Torah, as in Fribourg (in Üchtland) in 1381 (*nach judenischen sitten und gewonheit und uff Moyses buch*).⁴⁴ This ensured the truth of his word. It is not clear whether there was physical contact between swearer and the sacred scroll – which would be unusual; the Christian iconography, such as the illumination from Haguenau, rather features a codex, probably because of the parallels to Christian rituals.⁴⁵

41 Olberg, Nasteid.

42 Kolmer, *Promissorische Eide*, 249, wonders if this particular form of oath was really practiced. I only found one single example in Basel, from the beginning of the fifteenth century, where a woman swears »on her chest« that she had been made pregnant by a man named Kölner, Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv A 3, fol. 15r (1401).

43 E.g., both Dames of Bubenbergr swearing at a trial in Berne (ca. 1485, Diebold Schilling, *Amtliche Berner Chronik*, vol. 3, 100, Berne, Burgerbibliothek Mss. H.h.I.3, digitized at www.e-codices.unifr.ch/en/bbb/Mss-hh-10003/100).

44 *Recueil diplomatique*, ed. Werro, vol. 4, 150-158, here 155. Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher A 1, p. 377; Colmar, Archives Municipales, BB 44, p. 494-496; *Schlettstadter Stadtrechte*, ed. Gény, vol. 2, 728.

45 On the Jewry oath, see Lehnertz, Erfurt Judeneid, 17; *idem*, The Jewry oath (Judeneid).



Figure 2: Jewish oath (*Diß seit uns von dem juden eyde wi sū sweren sūllent*), *Der künige buch – Schwabenspiegel*, c. 1430, Brussels, KBR, Ms. 14689-91, fol. 204r.

Noblemen did not use different gestures or words when they swore. Nor could they always simply give a promise instead of an oath, which they preferred (as we have seen earlier). They did try to express their distinction, though, by adopting a different setting or modifying the sequence of the ritual. The individual, civic oath of a nobleman in Sélestat had to be performed before not only the municipal secretary, but the entire city council; it is unclear whether this requirement was imposed by the noblemen or the city authorities.⁴⁶

46 On this topic, see Richard, *Adel und Bürgereid*.

During the annual civic swearing-in, when the town lord confirmed the town's liberties and the citizens took their oath of allegiance to him, the order of the various oaths was of utmost importance: the town lord or his representative tried not to take his oath first, *before* the citizens' oath of allegiance, but only *after* they had pledged fealty to him, in order not to appear subject to their good will.⁴⁷ In Kaysersberg, if the imperial bailiff in Alsace (*Reichslandvogt*) was of princely rank, he was exempted from the oath-taking and only promised »on his princely honor«.⁴⁸

Frequency of Oath-Taking as a Mark of Distinction

This last example shows that swearing or not swearing was a mark of distinction (as we also see in the twelfth-century Languedoc, discussed by H el ene D ebax in this volume). But the number of oaths a person had to swear also played a role. Erasmus of Rotterdam wrote in 1520 that »today, among Christians, the oath is so common that almost nothing is considered valid unless it has been sworn«.⁴⁹ In fact, oaths were considered so serious that the town authorities were reluctant to multiply them; members of the city council often were exempted from oath-taking because their oath when they became councilors was supposed to be sufficient to ensure proper behavior. In a trial in Basel at the beginning of the sixteenth century, six witnesses out of fourteen who were civil servants – four city councilors, the head city servant (*oberster Stadtknecht*), and the *Schultheiss* of Kleinbasel – gave their testimony on the basis of the oath of office they had already taken.⁵⁰

In Lucerne, in 1439, when someone was ready to testify under oath, he could be excused by finding »two honorable men, whose oath and honor [were] trustworthy« to vouch for him.⁵¹ As noted above, oath-taking by clerics and noblemen was problematic. But even within the group of citizens, the insistence with which oaths were demanded depended on the individual's personal status. Thus, it was not only members of the council or holders of important offices, but also their wives, who, in certain cases, did not have to swear before the court of the Basel judge (*Schultheiss*). And among the group of craftsmen, masters were required to swear less systematically than journeymen.⁵²

47 So in Freiburg im Breisgau in 1502, Freiburg i.B., Stadtarchiv, B 3 no. 3, fol. 2ar.

48 Kaysersberg, Archives Municipales, BB 1, fol. 10v: *Doch wurde ein f urste unser lantvogt, der swert uns nyt, denn er glopt uns solliches als vorgeschriben st at ze haltende by sinen f urstlichen ern.* (»Yet if a prince is to be our bailiff, he will not swear to us, for he promises us to hold what is written above on his princely honor«).

49 Erasmus of Rotterdam, *Responsio*, 88: (...) *hodie inter Christianos adeo receptum sit iusiurandum, vt nihil habeatur fere ratum, nisi intercesserit iusiurandum.*

50 Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv Kundschaften D 19, 1504-1505, fol. 64r.

51 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 2, 258, no. 291: (...) *mit zwein gel obsamem mannen, denen eides und eren ze getr uwen ist.*

52 Sieber-Lehmann, *Eidgen ossisches Basel*, 12.

To conclude, there was a notable contradiction between the theoretical equality between all members of the *conjuratio* and their unequal submission to the power of the city authorities: the status of a man, or his *fama*, could be assessed by the number of oaths he had to take. What better proof of the significance, or the seriousness of the oath in late medieval urban society?

3. The Power of the Oath in a Hierarchical Society

An Indispensable Tool for the Town Government

The insistence of the authorities on swearing inhabitants and officials in, and even that of the swearers to specify the conditions they thought fitting for them to take the oath, shows how much it continued to play a crucial role in civic government. Even though discourses regretting its omnipresence, or condemning the lack of consideration that contemporaries allegedly had for it, proliferated in the Late Middle Ages, it remained an effective means of guaranteeing social life.⁵³ The oath was nothing more than a language of a particular type, but one that allowed the greatest number of people to be included in the urban community.

Let me give three examples.

The first is the brothel keeper. Late medieval cities maintained municipal brothels, which were entrusted by the authorities to a man or a woman – in southwest Germany, mostly to a man – on condition that he/she would provide the male inhabitants with healthy prostitutes while avoiding the public disquiet that unregulated prostitution tended to cause. We have here the theory of the lesser of two evils (better hire prostitutes than endanger honorable women). These brothel keepers were considered disreputable, and their word at law worthless. For example, they could not become citizens and the law of Freiburg im Breisgau, codified in 1520, forbade them to testify in court.⁵⁴ However, in Constance, Lucerne, Colmar, Kaysersberg and Sélestat/Schlettstadt, these people who were normally not oath-worthy had to take an oath of office, by which they swore to contribute to the common good of the city, to promote its honor, and to help in case of fire.⁵⁵

Midwives provide a second example. Wherever midwives were officially recognized during the fifteenth century, they were sworn in. The oath formula is included in the collection of municipal oaths of office – theirs being the only female oath of office, and a rare case in which women had routinely to swear, and not only promise.⁵⁶ Their function as midwives, which could not be entrusted to men (who were kept away from childbirth) clearly carried more weight than their otherwise untrustworthy gender.

53 In Boccaccio's *Decameron* (first day, novel 1), Cepparello/Ciappelletto wins all his trials because he does not shy away from false swearing, Accessed on 17 October 2023: www.brown.edu/Departments/Italian_Studies/dweb/texts/DecShowText.php?lang=eng&myID=nov0101.

54 Schuster, *Das Frauenhaus*, 102-105.

55 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 3, 432-433; Colmar, Archives Municipales, BB 51/1, p. 152; Kaysersberg, Archives Municipales, BB 1, fol. 50r; *Schlettstadter Stadtrechte*, ed. Gény, vol. 2, 569-70.

56 E. g. Kaysersberg, Archives Municipales, BB 1 fol. 44v; *Das Rote Buch*, ed. Feger, 131-132 (addition from 1501); Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1, fol. 49v.

The last example is that of the perjurers. The books of proscriptions (*Achtbücher, Leistungsbücher*) are full of the names of men and women who had been banished from their city for various offenses or crimes. Before they were expelled, they were made to swear not to return to the city. Some of these people were banished for having violated an oath, so how could the authorities be sure that they would respect banishment and not return to the city? They clearly did not have many options and so they made them ... take an oath! It seems the oath was even used as a coercive measure for perjurers.

Thus, the oath was an institution that constructed the urban community, well beyond its regular citizenry. Arguably, the oath-swearing ritual was so widely accepted, and it was so flexible, that there was simply no better way to integrate someone into a group, and to bind him or her to that group. Thus, even a brothel keeper, whose word normally had no value, was made to swear, and even perjurers, who were infamous precisely because they had broken an oath.

Oath-Taking and Literacy

Oath-taking thus continued, at the end of the Middle Ages, to play an essential role in the organization of collective life. However, fifteenth-century oaths no longer resembled those of the early Middle Ages: their gestures and objects had changed (the *elevata manu* oath largely replacing the oath on relics or on the Gospels). Above all, the oath was increasingly integrated into the literacy-led government that characterized the cities.

Oaths were in fact now closely linked to the ordinance or regulation that they were meant to enforce. The pictorial representations of the great collective civic swearing-in show this clearly, as, for instance, in the illustrated chronicle of Diebold Schilling the Younger from Lucerne (1513), in which the burghers of Zurich take an oath before the charter with its seals (see Figure 3).⁵⁷

57 On the relationship between written document and ritual, see Rauschert, *Herrschaft und Schrift*; Rohrbach, *Aura*.



Figure 3: Zurich entering the Confederation with an oath taken before the delegates of the Waldstätten, Diebold Schilling the Young, 1513.

In the territory of the same city of Lucerne, in 1430, some burghers complained that they were sworn in by having the text read from a paper copy, and not from the original sealed charter on parchment,⁵⁸ for, in the fifteenth century, it was no longer enough to refer vaguely to an ordinance: the text to be sworn had to be read. If it was too long, as was the case with the Strasburg »oath charter« (*Schwörbrief*), which was sworn every year by all the burghers at the beginning of January in front of the cathedral, it was read to the members of each craft guild a few days beforehand. They all had to know what they were committing themselves to.⁵⁹ According to the first book of oaths of Sélestat (1498), the bakers of the city went each year before the council to attend the reading of their statute.⁶⁰ In the middle of the sixteenth century, when this development was well established, a Zurich butcher was convicted of perjury because he had gambled, which was forbidden by the trade's ordinance. However, he appealed on the grounds that he had not been read the ordinance he had sworn to abide by, and so was unaware of this prohibition, and his appeal was successful.⁶¹ The Bern chancery copied many oaths, such as those of the bailiffs of the city's rural territory, to distribute to the officers at the time of their swearing-in.⁶²

Finally, in the course of the fifteenth century, many urban chanceries in the south-west of the Empire made »oath books« (*Eidbücher*), i.e., registers in which all the oaths important for governance were copied: oaths of the elected officials such as the burgomaster and the city councilors, oaths of the officers – from the controller of the quality of meat, to the city clerk, to the brothel keeper – and oaths of the various trades and guilds.⁶³ These books are somewhat akin to the statute books known throughout Europe since the thirteenth century. The oldest of them were indeed collections of oath formulae.⁶⁴ Thus they give us a schema of the town administration from top to bottom. But the form that was chosen placed the oath at the core of the municipal government: every text begins with »You will swear to ...«

58 *Rechtsquellen des Kantons Luzern*, ed. Wanner, vol. 2, 179, no. 206.

59 See also the obligation to read before the council the oath formulae of each officer of the city: *Verfassungs-, Verwaltungs- und Wirtschaftsgeschichte*, ed. Eheberg, no. 104, 297.

60 Sélestat, Archives Municipales, BB 4, p. 169: *Der brotbecker ordnung so man inen alle jar vor rat vorlisett* (»The bakers' statute, that is read to them every year in front of the Town Council«).

61 *Quellen zur Zürcher Zunftgeschichte*, ed. Schnyder, vol. 1, 264, no. 360: *diewyl Anthoni Notzen syner meisteren brief unnd ordnung des spilens halb nit vorgeläsenn, darumb dann er darvon nützitt gewüßst (...)*. (»Anthoni Notz had not been read his masters' ordinance on gambling, so that he was unaware of it«)

62 Berne, Staatsarchiv, A I 802, p. 101 (1485, account book of the town chancellor): *Item eins vogts von Murten eyd in der stattbüch geschriben und des dem vogt ein abschrift geben v ß* (»Item I have written in the town records (stattbüch) the bailiff's oath of Murten and gave him a copy of it, 5 s.«)

63 Buchholzer-Remy and Richard, *Villes médiévales et serment*, 73-81.

64 Busch, *Einleitung*.

Conclusion

Misguided by late medieval or early modern authors such as Boccaccio or Erasmus of Rotterdam, who asserted that oaths were so widespread that no one could take them seriously any longer, or even that they were broken as often as they were sworn, in short, that oath-taking had become a meaningless routine, late twentieth-century medievalists have tended to consider that by the end of the Middle Ages, the oath was a declining, even fossilized, ritual.⁶⁵

Nothing could be more wrong: as in the late Medieval Japan of Horikawa Yasufumi, where no secularization or crisis of belief had occurred,⁶⁶ the oath was, as a technique for government, more necessary than ever. In fact, the late medieval city had not been able to invent a better tool to bind its inhabitants than by swearing them in. At the end of the Middle Ages, not only the burghers, but also the other inhabitants, foreigners or journeymen, were compelled to swear fealty to the city authorities. Even more strikingly, there was no suitable alternative solution for exercising control over those infamous people who, normally, should not have sworn because their word was worthless.

Oaths were taken so seriously that medieval town dwellers refused to take too many of them, or too frequently. The oath is an »organizational principle coupled with an identity marker«. ⁶⁷ In the Late Middle Ages, the civic community was also a religious community, and that feature is what made the bond between its members so strong. But one can examine urban society »through the lenses of the oath«, as it were, distinguishing layers of honorability that correspond to different forms of oath-taking and different frequencies of swearing. Paolo Prodi's »*società giurata*« was in fact extremely hierarchical. In the late Middle Ages at least, it no longer had much to do with the urban *conjuratio* that the historians of the nineteenth and the first half of the twentieth century idealized as an association of equal members.

On the other hand, oaths underwent a profound change in the way they were used in the city government, inasmuch as they became increasingly integrated into the realm of pragmatic literacy. This evolution strengthened social hierarchies in the city even more: it benefited those with literacy skills.

65 Guenée, *Non perjurabis*, 256: »Cette fréquence ne faisait que souligner leur impuissance (Their frequency only underlined their ineffectiveness)«. On the alleged decreasing amount of ritual in the early modern period, Fantoni, *Symbols and rituals*, 23; Holenstein, *Seelenheil*, 13, considers that the decline of the political oath began in the seventeenth-eighteenth centuries.

66 In this volume, doi.org/10.1553/medievalworlds_no19_2023s87.

67 Leveleux-Teixeira, *Sacramenta puberum*, 91.

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Abbreviations

MGH Monumenta Germaniae Historica

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- Berne, Staatsarchiv, A I 802
 Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv A 3
 Basel, Staatsarchiv des Kantons Basel-Stadt, Gerichtsarchiv Kundschaften D 19, 1504-1505
 Basel, Staatsarchiv des Kantons Basel-Stadt Gerichtsarchiv, Schultheissengericht Grossbasel, Kundschaften D 18
 Basel, Staatsarchiv des Kantons Basel-Stadt, Öffnungsbücher 1
 Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher A 1
 Basel, Staatsarchiv des Kantons Basel-Stadt, Ratsbücher K 1
 Colmar, Archives Municipales, BB 44
 Freiburg i.B., Stadtarchiv, B 3 Ordnungen no 3
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List of Figures

Figure 1: Map of the Upper Rhine region

Figure 2: Jewish oath (*Diß seit uns von dem juden eyde wi sū sweren sūllent*), *Der künige buch – Schwabenspiegel*, c. 1430, Brussels, KBR, Ms. 14689-91, fol. 204r.

Figure 3: Zurich entering the Confederation with an oath taken before the delegates of the *Waldstätten*, Diebold Schilling the Young, 1513 (www.e-codices.unifr.ch/en/kol/S0023-2//25)