Crime, Community and the Negotiated Truth

Court Narratives of Capital Crime in the District Courts of Jämtland-Härjedalen 1649–1700

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Abstract

The purpose of this thesis is to study the court narratives of serious crimes in the district courts of Jämtland-Härjedalen in the latter half of 17th century. This is done by studying the negotiated aspects of criminal court proceedings; how did stories of crime, guilt and character come together in the records to form narratives that became accepted truths by the local community and the authorities? Investigations of serious crime have been sampled from the collected records of five district courts in the period 1649–1700. These records have been analysed by identifying the different actors and voices of the narratives, the social stratification of the participants, their speech acts and how they were depicted by the court and by other participants.

The analysis of the social stratification of accusers, defendants and witnesses shows evidence of a deeply hierarchical and patriarchal society: men and women of lower social status were not only grossly overrepresented as defendants in criminal investigations, they were also mostly excluded from participating as a witness. The inverse could be said about local elites and landed peasantry. Women were more often accused of crime, and while they were allowed to testify as witnesses, they were less so than men.

The negotiation of the truth took place in three parallel and intersecting spheres of discourse, differing in what kind of questions were asked and what problems were being discussed between different categories of participants. The nature of crime was negotiated when accusers, defendants and witnesses debated the presented narratives; the accepted narrative of the crime was found by the assessment of the honesty of the individual participants, by considering their reputation and standing in the local community. While the word of the law was unrelenting and impossible to legally negotiate at the district court level, a kind of negotiation was done by the local community and sometimes also the district court taking the side of the defendant, pleading and petitioning the Royal High Court to find mercy for the convicted criminal.

Keywords: 17th century, Capital punishment, Community, Court narratives, Crime, District court, Judicial discourse, Jämtland, Social control, Peasantry.
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Abbreviations

GbLL  Gävleborgs läns landskansli's arkiv
HLA  Landsarkivet i Härnösand
HTDP  Hammerdals tingslags domstolsprotokoll
OTDP  Offerdals tingslags domstolsprotokoll
RTDP  Revsunds tingslags domstolsprotokoll
KrLL  Sveriges rikes landslag
STDP  Svegs tingslags domstolsprotokoll
UTDP  Undersåkers tingslags domstolsprotokoll
1. Introduction

1.1 A narrative of crime in the district court of Hammerdal

Like any decent festivity of the 17th century worth its name, Chaplain Wellam Klangundius’ Easter Sunday celebration of 1690 ended with a broken bedroom window, an axe in the doorframe and a sword on the roof, or so the story goes. At the Hammerdal häradsting (hereon written as district court) of 1691, Corporal Elias Hellman told the assembly how he recalled the evening: that Klangundius came to blows with one of his own farm servants, a dragoon named Henrich Östman. Elias did not know what the argument was about but it had infuriated Henrich to such an extent that after he and Wellam härdragits (to pull each other’s hair) he chased the priest with his blade drawn, forcing the priest to seek refuge in the bedchambers. He tried to force the door open with an axe, and when this mode of entry failed he promptly walked outside and broke the windows of the bedchamber to climb in and finish the fight. At this point the priest’s own wife Maria ran outside, swept the sword from Henrich’s hands and threw it up on the roof of the house.

Though it is not explicitly mentioned in the initial accusation, it is clear that Henrich was in serious trouble. Laying hands on your master was a serious crime in the Swedish code of law, as was the act threatening a man of God, and the fact Wellam was both priest and master to Henrich made for a swift path straight to the execution block. One after another of the witnesses described their memories of the evening, all pointing to similar story. The origin of Henrich’s anger was a perceived allegation from Wellam about thievery according to a married woman named Råghiel. Another servant of the household named Karin Ersson claimed that the threats towards the priest was not two but three, the last time with a musket, in the middle of the night after the two men already reconciled. The usual court case could have ended here, with Henrich begging for mercy for his crimes. But when Klangundius was questioned about the events of the evening, he told the court that he and Henrich did have an argument about some missing grain on his farm, but since he was rather uncomfortable from drinking he retreated to his bedchambers to rest. He heard “some commotion from the living room, but that had nothing to do with him.” Henrich himself did not completely accept this as the true retelling of their interaction, and claimed that the

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1 Ting 23–24 mars 1691, HTDP, pp. 12f.
2 “The axe in the doorframe” was a recurring theme in the judicial discourse around “hemgångsbrott,” see Jansson 2006.
4 Ting 23–24 mars 1691, HTDP 1691–1700, pp. 12. “[…] och där medh gått i andra stugun till sängz, och hörde väl i hvardagz stugun något bullras, eftersom han mycket oroligh är uti dryckesmåhl, och intet mehra med honom hafft gora.”
priest had accused him for being a thief and then had pushed him off his balance before going to the bedroom. The business with the blade being thrown up on the roof was only a misunderstanding, as he did only intend to bring his sword with him back to the village. And may be that someone had hacked against the bedroom doorframe, but that had not been him.

The court proclaimed that they could not pass any judgment on the case at that time and postponed it to the next assembly because of the lack of clear evidence, a missing sayusman, and the need to contact the Venerando Consistorio as the case involved a clergyman. The case was never resumed. From these stories told at the court, the chaplain’s story became the accepted one, or at least it seems that his narrative was not successfully disputed. In his account of the incident no one had committed anything criminal. He refused to acknowledge whatever happened after he went into his bedroom as connected with him personally, thus avoiding contradicting the other members of his household, and implicitly calling them liars. Wellam Klangundius was a priest, presumably honourable, and thus honest. In the 17th century, an honest man’s word was the truth.\footnote{Sandmo 1999, pp. 136.}

The case demonstrates one of the core characteristics of a criminal case conducted in Sweden in the 17th century: the pursuit of an accepted narrative. In a system almost purely based on testimony, creating narratives of guilt or innocence were nigh impossible without the willing participation of community, witnesses and defendants. This thesis promotes the idea of the district court as a multi-layered space of negotiation between the participating actors. It will examine the mechanisms of this negotiation, by study how the contributing parties in criminal court cases interacted to produce different court narratives of crime and guilt, who could participate, and how this collaborative or acceptable truth was determined and used in the court by the different actors.

1.2 The early modern court and the judicial revolution

The historical development of the Swedish judicial court system fundamentally changed the role of district courts in rural society during the 17th century. Originally a forum for local communities to essentially self-govern during the early medieval period, it gradually fell under the control of the central authorities. State intervention in the 17th century transformed the district court from a social arena for peasant society into a theatre of authority, in part by professionalising the local offices of law and in subordinating the court to a new judicial hierarchy with the establishment of the Hovrätt (hereon written as Royal High Court or Royal Svea Court). The assembly of twelve locally elected tokmän (lay jurors) lost influence in favour of the appointed position of håradsbörding (district judge)
in deciding the outcome. The king’s highest representative in the district, the *fogde/befallningsman*, was the designated prosecutor and while he was not required to have a judicial degree he was supposed to have judicial experience. Some medieval judicial practices remained until the end of the 17th century. The *Länsman* was a servant to the *Befallningsman* but still recruited amongst the local peasantry. The defendant could still be asked to assemble *edgärdsman*, honourable members of society who willingly swore an oath that they believed the innocence of the accused during most of the 17th century.

Carl IX introduced in 1608 the appendix, a new set of criminal laws based on the book of Moses that added seventy capital crimes to the medieval *Christoffers landslag*. The district courts were bound by their obligation to the crown to judge according to the letter of the bloody code, and did not have the authority to mitigate sentences considering any circumstances. Death sentences were instead sent to a Royal High Court for review, whom also had authority to give *leuteration*, to reduce the capital penalty to a fine or a corporal punishment. The establishment of the Royal High Courts in 1614 has been described as the real start of the judicial revolution in Sweden and became a crucial factor in the reformation of the judicial system. It upheld the law as the King’s own court, but also served as an instrument of control over the lower courts.

At the level of the local community, royal decrees were read out at the district court meetings to the peasantry whom were frequently reminded of their obligations to the crown, their God and their community. Acts and rituals of deference were performed in front of the local representatives of the state, forming the frames of the relationship between state and subject and legitimised its structure. The performance of deference in front of power has also been called the *public transcript* by the historian James C. Scott, who further argues that “the greater disparity in power between dominant and the subordinate and the more arbitrarily it is exercised the more the public transcript of subordinates will take on a stereotyped, ritualistic cast.”

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7 Sundin 1992, pp. 69.
8 Sundin 1992, pp. 60.
9 Tamm, Johansen, Næss & Johansson 2000, pp. 31; Thunander 1993, pp. 8; “Country law of Christoffer”, introduced in 1448 and was a revision of the 1350 country law of Magnus Eriksson. See also Liliequist & Almbjär 2012, pp. 7.
12 Thunander 1993, pp. 9f.
13 Österberg 1991a, pp. 66f.
14 Scott 1991, pp. 3.
And the Befallningsman Daniel Bertillsson then carefully asked, if there was anyone in this assembly that have broken the decree of the days of prayer, blasphemed, or held the name of God in contempt, manslaughter, fighting, adultery, fornication or damaging fields and meadows etcetera etcetera[sic] which is against the will of God and the law. The peasantry answered with one voice, that they did not know of anyone who have sinned against his royal majesty’s decrees and listed crimes, but a few instances of adultery and fornication.15

The opening statement by the befallningsman to the assembly displays how the state and the local community stood in ceremonial communication, and how order and harmony was asked to be upheld by the self-policing of the peasantry. The assembled peasantry was asked to give the sinners and criminals among their own ranks to be examined by the representatives of the state, the church and his peers. Up until the 17th century, violent crimes were indeed frequently pursued by private individuals, mainly to get restitutive justice in accordance with community norms and customs.16

But the weakening of local communal institutions and the harsher criminal laws did not automatically translate into a harsher and repressive state apparatus. Though capital convictions were relatively common and the offences that could incur it many, the amount mitigated sentences by the royal high courts astonishingly high. One study has put the rate of capital punishments confirmed by the royal courts as low as ten percent in the period 1635–1651.17 It also seems that different capital crimes were upheld at different rates of convictions. Cases of single adultery were not confirmed a single time in the Göta royal court in the 17th century whereas criminals convicted for bestiality and infanticide were frequently executed.18

Swedish judicial practice operated simultaneously under two very different ideologies concerning crime and punishment, much like how English law worked according to Cynthia B. Herrup. She argues that two distinct levels of law existed, and whose existence could be attributed to the two main scriptural inheritances of early modern England.19 Her view, that “formal law, inflexible and awesome in its demand and punishments, reflected God of the Old Testament” is even more applicable to Sweden in the 17th century, with the book of Moses literally part of the law code. All while the actual enforcement of these laws followed the gentler approach of the New Testament, in England as well as in Sweden.

15 Ting 7 Maj 1661, UTDP 1649–1690, pp. 26. "Befallningsman Daniel Bertillsson grangifweligen efterfrågade, om någon finnes i för sambligen som hafwa öfwerträdt desse effterskreffne förbudh storböndagzbrott, Gudz nampns försmädelse och föracht, dräp, slagzmål, horrerij och lönskeläger, skada å åker och engh medh mehra som emot Gudh och lagen sträfvar. Swarade allmogen medh eno mund, att de icke wiste någon som emot \k. Mtz/ ofvanrörde opräcknade förbud synadt hafwa, allenast någre hordombs laster och lönskelägen kan samblingen skiedt wara."
16 Österberg & Sandmo 2000, pp. 16.
18 Thunander 1993, pp. 93ff.
1.3 The ideological justifications of the capital punishment

If the district court was a stage for the both state and community to performed rituals of authority and deference when negotiating their obligations to each other, what purpose did the capital punishment serve in this? Since the state claimed some of its legitimacy by the defending the old laws, peace and harmony, it punished breaches of that peace with harsh justice. Sweden’s code of law enforced capital punishment for many transgressions, but in contrast to the trajectory on the continent, the capital punishment did not become crueler in the 16th and 17th century. Instead of only being a violent demonstration of state power, where deterrence and deference were the primary purpose, Swedish authorities also legitimised the punishment by imbuing it with religious ideology.

The necessity to execute offenders had three justification: to avoid God’s retribution upon the community and the whole country for letting heinous crimes stand unpunished, simple deterrence and finally to save the criminal from eternal damnation. By having the body suffer the ultimate punishment the criminal atoned for his sins and was promised a place in heaven. It was a theocratic doctrine of punishment that equated crime with sin according to Swedish historian Jonas Liliequist. The public act of charging and condemning someone to death at the thing stead must then be understood as an intrinsically meaningful act, possibly charged with religious fervour and authority. The harsh punitive ideology was probably not entirely forced upon the people, as “in a society which is so completely imbued by religion like Sweden during the age of great power, upholding the parts of the law that was directly supported in religious beliefs must have been relatively easy.”

But if this doctrine was to be truly effective rested on the offender to play the part of repentant sinner, as one’s soul could not be saved without a voluntary confession, and as such executions without confessions were uncommon. Confessions under torture was frowned upon, and uncooperative defendants were instead reminded of the prospect of eternal damnation and to come upon a “true confession.” The courts tried to provoke confessions by having the accused sentenced, taken to the execution site, and with his neck on the block and the executioner’s sword over him asked to save his soul by confessing to the crime. If a confession was produced at this time, the execution was carried out, and if not the accused was taken back to the arrest.

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21 Liliequist 1988, pp. 146.
22 Spierenburg 1984, pp. 201; Liliequist 1988, pp. 146.
23 Karonen 1999, pp. 231.
24 Liliequist 1988, pp. 149.
26 Liliequist 1988, pp. 147.
27 Thunander 1993, pp. 136.
voluntarily confessed to unnoticed capital crimes, a testament to how effective it was in instilling religious and existential angst in people.

Another important work on the relationship between judicial system, practice and ideology from the perspective of the Anglo-Saxon experience of penal law is Douglas Hay’s seminal article *Property, Authority and the Criminal Law*. He notes that while 18\textsuperscript{th} century criminal law was indeed a bloody code with an increasing number of capital offences, the actual practice of law was rather different. Similar to Sweden, the number of pardons were plenty and became more common during the period. Hay describes how the judicial flexibility in theory and practice of the law enabled “the prosecutor to terrorize the petty thief and then command his gratitude, or at least the approval of his neighbourhood as a man of compassion.”\textsuperscript{29} The practice of the law in terms of majesty, justice and mercy ensured to create a spirit of consent, submission and deference. But law can never be purely a state tool for social control without losing its legitimacy.\textsuperscript{30} James C. Scott describes vividly the relationship between rulers and their claim to power:

> A divine king must act like a god, a warrior king like a brave general; an elected head of a republic must appear to respect the citizenry and their opinions; a judge must seem to venerate the law. Actions by elites that publicly contradict the basis of a claim to power are threatening.\textsuperscript{31}

E.P Thompson notes that the notion of law saturated the rhetoric if 18\textsuperscript{th} century England, that “rulers were, in serious senses, whether willingly or unwillingly, the prisoners of their own rhetoric; they played the games of power according to rules which suited them, but they could not break those rules or the whole game would be thrown away.”\textsuperscript{32} To preserve the belief in their as just and merciful in the right circumstances, the rulers and judges could not indiscriminately punish perceived enemies of their property or their class; it had to be weighed against the damage it would do to the reputation of the system. The result was that the application of English criminal justice often was a pragmatic mix of terror and mercy.\textsuperscript{33}

1.4 The court as a negotiated space

Even if the local community came under judicial, administrative and ideological pressure from the centralisation efforts of the 17\textsuperscript{th} century, it still retained a measure of self-determination and collective authority. The *häradssting* remained a public space for the local community to mediate

\textsuperscript{29} Hay 1975, pp. 48.  
\textsuperscript{30} Thompson 1975, pp. 205.  
\textsuperscript{31} Scott 1991, pp. 11.  
\textsuperscript{32} Thompson 1975, pp. 206.  
\textsuperscript{33} Hay 1975, pp. 40f.
conflict by themselves, solve economic matters, do business and take collective decisions in the governing of the local community even after its judicial autonomy diminished.\textsuperscript{34} It was also the main arena for interaction between the Swedish state and its rural subjects. Some historians, like Eva Österberg have emphasised this interaction as the key to understand how the centralisation efforts of the Swedish state was met with relatively little resistance.\textsuperscript{35} Royal obligations were still somewhat flexible, and the possibility to petition the authorities paired with the prevalence of locally appointed peasants in the local justice system fostered a culture of compromise and cooperation which made the burden of being governed somewhat more bearable for the ordinary peasant.\textsuperscript{36}

Since the composition of the court was primarily of members from the local community, they would also be the same men that would at times stand as defendants and litigants.\textsuperscript{37} Österberg argues that this intertwined relationship between the court and the community showed itself in how the district court acted in judging local conflicts.

The meting out of penalties was not only a judicial but also a social act. It was intended to give the afflicted person his satisfaction and to give the troublemaker a warning – but it did not generally seek to break the offender. Only if someone breached the most serious social taboos repeatedly injured other people's health and honour was the reaction hard and without mercy: the criminal was expelled or executed. By contrast, the intention with the punishment of petty crimes was to reintegrate the offender in the community.\textsuperscript{38}

If the court and the community actively pursued exclusion or reintegration as preferred outcomes in some cases, the recorded interaction between court officials and members of the community should have left traces of something that we can distinguish as a negotiation of narratives. Imagining the public interaction between rulers and subjects as a space for negotiation, Natalie Zemon Davis’ work on the narrative structure of royal pardons in early modern France comes to mind.\textsuperscript{39} These “letters of remission” were to some extent literary narratives, constructed and assembled by defendants, their lawyers and the royal notaries to make the content of the letters true or at least plausible, and worthy of forgiveness. The collaborative making of \textit{Pardon tales} might be applicable to the Swedish court material to some extent. A criminal investigation in a district court would follow a pattern known to all the participants: the verdict would always be the capital punishment and the purpose of the proceedings would then be to create a protocol for the judges

\textsuperscript{34} Österberg 1989, pp. 79f.
\textsuperscript{35} Österberg 1989, pp. 85.
\textsuperscript{36} Österberg & Sandmo 2000, pp. 15
\textsuperscript{37} Sundin 1992, pp. 63.
\textsuperscript{38} Österberg 1991c. pp. 20.
\textsuperscript{39} Davis 1987, pp. 2f.
of the royal court to assess.\textsuperscript{40} It seems reasonable to suggest that the trial would be prone to construct a favourable presentation of the defendant like a \textit{pardon tale} if the local court officials together with the local community had deemed a defendant worthy of forgiveness. The royal high court would not hold new proceedings when it assessed the case, only having the transcripts of the original investigation to judge upon. Consequently the actual court records could serve the same purpose as the letters of remission, but with the addition of the plaintiffs also participating and vying for the control of the narrative.

Jari Eilola conceptualises the Finnish 17\textsuperscript{th} century town court as a fundamentally negotiated space. He proposes that “the truth’ discovered by a court of first instance resulted from interplay between members of the court and the persons interrogated.”\textsuperscript{41} As previously mentioned, the testimony was essential to the judicial procedure to produce a coherent story. Based on the accusation and the known circumstances of the supposed crime, defendants and possible witnesses were called to testify, but:

\begin{quote}
In testifying, people also adopted certain tropes that would be more sympathetically received by the judicial process. These narratives had to start, progress and end in a way that convinced everyone. In that sense, the judicial procedure required not only descriptions of an objectively observed incident but accounts that were narrated in a particular way. The procedure did not reflect the truth in the sense of what really happened; rather it created a truth.\textsuperscript{42}
\end{quote}

The public nature of the testimony must be stressed, because in convincing “everyone” the person testifying had to accept that his narrative could be directly questioned by the other participants. Plaintiffs, defendants and witnesses could respond to each other’s stories, explaining behaviour and intent that was absent in other narratives, accepting or rejecting different details. In this respect, Eilola writes, “the truth’ was indeed negotiated.”\textsuperscript{43} The court’s decisions that resulted from these publicly performed narratives became essentially an accepted reality, constructed from the interaction between court and community.\textsuperscript{44} The frames of this interaction was also constructed by the interaction between state and community, as local custom was not ignored when applying state justice.\textsuperscript{45} The court and community alike would use the framework of custom and social norms to define some acts as justified and others as illegitimate to make the incident comprehensible, and to be able to pass judgement over the case.\textsuperscript{46} “The outcome did not necessarily reflect the truth in any objective sense. Neither did it reflect the truthfulness of what was considered as evidence. This

\begin{flushleft}
\textsuperscript{40} Sundin 1992, pp. 13.
\textsuperscript{41} Eilola 2012, pp. 119.
\textsuperscript{42} Eilola 2012, pp. 120.
\textsuperscript{43} Eilola 2012, pp. 123.
\textsuperscript{44} Eilola 2012, pp. 121.
\textsuperscript{45} Aalto, Johansson & Sandmo 2000, pp. 207.
\textsuperscript{46} Jansson 2006, pp. 434.
\end{flushleft}
truth was the result of negotiation. If court members and the public could accept the decision, it was formalised and inscribed as the truth.\footnote{Eilola 2012, pp. 121.}

**Figure 1: Negotiation of the crime narrative in the district courts**

This process, by assessing of testimonies, character, reputation, social and empirical truths which usually ended up with a reasonably coherent narrative that I call the *negotiated truth*, or more accurately the *negotiation of the truth*. In the court, different narratives would clash, new accusations would rise during the proceedings or a witness could be completely ignored by the court. The court could include or exclude different narratives to fit their final verdict. In the end, the goal was to create an *accepted narrative* that corresponded with the will of the court and the community. It was based on *social truth* and *empirical truth*.

Testimonies would certainly use *empirical truth* (physical evidence and eyewitness experiences) to fill their narratives with details, but would also be subjected to scrutiny with *social truths* in mind. If an eyewitness of a crime were for example known to have previous conflict with the accused, the truth of this witness could certainly be questioned. Likewise could the meaning of physical evidence change by the negotiation of the narrative. Eilola demonstrates this in his discussion of an infanticide case from 1670: a child’s skull is unearthed by a dog, which prompts an investigation of infanticide, but the court have no leads on whose child it would be. It eventually finds an unmarried...
vagrant whom fails to convince the court of her innocence, even though the origin of the investigation has been deemed part of a dead calf.48

Dividing the truth negotiated in the courts into empirical and social truth, what can be said about the latter? Social truth contained the collective understanding of people and their character; it was a composition of different cultural norms and where the individual could be placed on the hierarchy, based on their social prestige, their honour and rumours about them. Erling Sandmo maintains that honour was fundamental to the understanding of truth in peasant societies in the 17th century. Within Norwegian peasant culture, the relationship between truth and honesty was inverted compared to today. A man speaking the truth might not be an honest one, but an honest man always spoke the truth.49 If his assumption is true, most interactions within the district court had at least two truths. An empirical truth, the actual events that people involved had experienced, and a social truth, the narrative filtered through the local community’s assessing of an individual’s character, his honour, his standing within society. Sandmo writes that “honesty” was in other words a question about status and conduct. It then follows that ‘truth’ was an attribute foremost because of who’s speaking and not what he said.” This does not mean that status always trumped empirical truth, but it can explain better how actors interacted under this assumption.50 Individual reputation was more often scrutinised when the accusations were contested by the defendant or words stood against words. Claiming what someone said was wrong or false could be seen as questioning his honesty, and ultimately his personal honour and prestige.

Where Eilola only briefly discusses the construction and content of the performed narratives as the adoption of suitable tropes that would be well received by the audience, the study of judicial discourses adds a very valuable addition to the theoretical frameworks of this thesis. Several Swedish historians have adopted a similar understanding of interactions with the early modern court. Inger Lövkrona’s studies of 18th century infanticide framed the court records of such cases as products of genre with a certain, recurring script that was invoked in the “myriad of voices and dialogue” that was part of the court investigation.51 The crime of infanticide was further analysed by Eva Bergenlöv, who applies a discursive and rhetoric perspective on the changing public and judicial discussion of infanticide from the late 17th century to the end of the 18th.52 Her focus has instead been on what she calls the judicial discourse: how infanticide was discussed in a judicial context and how the court constructed a narrative of the events. In her perspective, there was a continuous

48 Eilola 2012, passim.
49 Sandmo 1999, pp. 136
50 See Shapin 1995, passim.
51 Lövkrona 1999, pp. 33ff.
52 Bergenlöv 2004, pp. 22ff.
process, dialectical relationship between discourse and social reality. Christopher Collstedt have applied a similar method in for example the monograph Duellant och rättvisan. He finds that the Bergenlöv’s conception of the judicial discourse is useful, and together with the German historian Martin Dinges well suited to explain both continuity and change in the judicial rhetoric. Collstedt further agrees with Sandmo that the concept of honour is fundamental to the understanding of truth in the early modern period, and that court officials strived to find the “right truth” in the investigations. To lie in front of the court was not just a criminal act, it was a rejection of the moral order that gave the world and humanity purpose and meaning. The inversely that meant “the divine order was the truth, and that virtuous and pious people were by definition also speaking the truth.”

The judicial institution is according to Martin Dinges a “discursive field characterised by different power relations.” He defines this field as the judicial discourse, which is made up of cultural norms, values and notions connected with the court as an institution. Always in a state of ambivalence, where different discourses competed with each other depending on who the participants where in the judicial setting. Although the individual actor within a judicial setting was limited in her options by the discourses they also presented means of strategic use. How people used the court and how they perceived it is called the judicial fantasy by Dinges, and according to him the motor of change in how the judicial discourse was defined and redefined. A similar take on how the continuity and change takes place in another discursive field is made by Jonas Liliequist, who suggests taking a rhetoric perspective on masculinity and honour. According to him, this perspective enables the historian to understand masculinities as “a repertoire of cultural stereotypes, notions and symbolic acts that can be used in different ways in different situations and for different purposes”, in speech acts employed by historical actors.

1.5 Operationalising the negotiated truth

This thesis will study the court proceedings of serious crime in the district courts of Jämtland–Härjedalen during the years of 1649–1700. The purpose is to contribute to the understanding of the local courts in Sweden as a meeting ground where state authorities and community members

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53 Bergenlöv 2004, pp. 22.
54 Collstedt 2007, pp. 38f.
55 Collstedt 2009, pp. 35f.
56 Collstedt 2009, pp. 36.
58 Liliequist 2009, pp. 121f.
59 Liliequist 2009, pp. 122.
negotiated the nature of crime based on honour, law and custom. The thesis will specifically focus on the negotiated aspects of the law, which was the interplay between the participants and the members in the district court rulings and the Svea Royal Court. It will also try to find evidence of communal action, and what rhetoric acts, notions and symbolism were employed in the judicial discourse of the capital punishment. The social stratification of the participants of criminal investigations will also be studied, to surmise in what social context the criminal investigations were conducted in; who accused, who was accused and who were allowed or excluded from participating in the proceedings as witnesses?

Jari Eiola points out how problematic crimes are a great use to the student of court records as they usually forced the court to investigate more thoroughly. They also spawned longer and more detailed court records. But “problematic crimes” is not very helpful demarcation of source material, neither is it easy to find or define. This is why the thesis is instead using investigations of serious crime, defined as cases where the verdict could end with the capital punishment. These investigations were quite often problematic for the court, and even if they were not the material from the 17th century is much greater in length than other types of crimes. This definition also serves to include investigations that were conducted within the same discursive framework, but resulted in a non-capital conviction or where the initial narrative of the crime changed into something that was not punishable.

This thesis has already theorised about the concepts of negotiated and accepted truth. How will these concepts be operationalised as useful tools for an analysis of the court records? How can for example the negotiated truth be concretised as a tangible expression in the records? One thing that would suggest a negotiated truth is that the rhetoric acts employed in the judicial discourse for a crime or a verdict varied, and that the verdict was otherwise influenced by the participation of actors from different fields in the social hierarchy. Other manifestations of this would be compromise or agreements between different actors or collective interests within the trial. This point can be further defined as a participation of individual or collective actors without official judicial authority that had or claimed to have a say in the criminal trial. If these occurrences can be found in the court records, it would suggests that there was at least the perception of a negotiated truth, a judicial fantasy so to speak, that how you participated in the trial had an impact, that there was room for agency and that the while the letter of the law was unnegotiable, the repercussions for breaking it were not set in stone.

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60 Eiola 2012, pp. 119.
Determining the judicial discourse is more straightforward. The court records of capital crime cases can even be seen as a concretisation of the judicial discourse. The participants of the court trial constructed their stories based on aspects of the truth that they knew or thought were either helpful or relevant to the specific trial. These stories were then written by the court scribe, who most likely himself sorted, recorded or omitted details based on what he understood as relevant to the recipients of the criminal court case. The claims made by defendants, accusers and witnesses reflected the moral and ethical rules and demands that the judicial discourse put on them and their stories. Judicial fantasies are the notions of the judicial system is as an institution with some possibilities to use pursue individual goals, and how people did use it. A judicial fantasy could be that people thought that they could cry in front of the court and therefore get access to a possible pardon, no matter if the judge or the law actually considered such things as relevant.

Finally, I have structured the thesis analysis around what I perceive as different interacting categories of the capital crime investigation. These are two collectives (or institutions) and three categories of individual participants: community, court, accusers, defendants and witnesses. I have done this to, better visualise the performance of justice in a public space, to emphasise the roles for each category to play in the theatre of justice, not in the sense of false justice but as performing the rituals of justice.

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62 Collstedt 2007, pp. 44.
2. Community and State

2.1 Authority and the local community

This chapter will focus on the relationship between state and community, discipline and the general judicial practice in the studied court districts before discussing the community as a single voice with agency in the crime investigations. I will start with the concept Community, as this chapter is about interaction between community and state, a simple question might arise is: what is a community in the context of the district court? My point of departure is David Sabean’s discussion about the village community, the Gemeinde. Sabean argues that the community is defined by its reciprocity with authority, the Herrschaft, and can as such not be analysed without taking this relationship in account. The Gemeinde becomes the unit which engages with the given Herrschaft. What then counts as a single community depend on what kind of discourse the authorities are engaged with.

In the context of the district court proceedings, the criminal investigations can be separated into three fields of interaction. On a fundamental level, it was the field where the individual defendant and his accusers operated in. At the same time, all peasants living in within the region that were attached to the district court became de facto a unit that engaged with the district court as a community negotiating with the authorities over the fate of the defendant. But the district courts also negotiated with the Svea royal court over the conditions of certain sentences, and could then represent Gemeinde versus Herrschaft. I will try to approach this by analysing the speech acts collectively attributed to the community in the records, often written down as “den samlade allmogen” and instances where significant numbers of individuals from the same village took part in single court cases.

2.2 Good neighbours and peaceful manners

The survey of collective acts at the ting seems to align with what earlier studies have assumed, that although communal influence saw a general decline in the 17th century with the centralisation efforts of the Swedish state, the Jämtland-Härjedalen region kept this tradition at least into the 18th century. Collective acts of community involvement were recorded in the criminal court cases.

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64 Sabean 1987, pp. 31.
65 Österberg 1989, pp. 75.
during the whole period, with no apparent decline in frequency. The opinion of “Den samlade Allmogen” (The assembled peasantry), “församblingen” (the assembly) or “grannar och rågrannar” (Neighbours and their neighbours) was recorded at 15 criminal cases. A further three investigations had between 10 and 22 witnesses participating in the proceedings, but as named individuals. This means that the assembled community participated in roughly one out of four of the capital crime cases. It also seems that when the assembly of peasants were recorded a collective, it was usually in the defence of the accused.\footnote{I claim this with some caveats. The with trial in Sveg is again an extreme an outlier, as one single communal speech act in 1673 does technically involve all the 17 cases of witchcraft that had been examined earlier that day, and if this act is retroactively applied the statistics change on two significant points: first, the community was then active in half of all the cases in the period, and secondly collective rejection of a community members becomes the most common act.} Within this group of speech acts, two different approaches can be surmised: guaranteeing the honest character of the defendant or pleading for leniency, often in light of the circumstances surrounding the case.

Table 1: Collective speech acts attributed to the community, in (n) and (%), 1649–1700.

<table>
<thead>
<tr>
<th>Total number of acts</th>
<th>Defending of the accused</th>
<th>Disowning the accused</th>
<th>Neutral speech acts</th>
<th>Participating in large numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 (25,4%)*</td>
<td>10 (55,6%)</td>
<td>2 (11,1%)</td>
<td>3 (16,7%)</td>
<td>3 (16,7%)</td>
</tr>
</tbody>
</table>

*As in 25.4\% of all serious crime investigations in the period 1649-1700.
Source: See appendix.

Peaceful manners and good relationships with kin and neighbours occurred more than once in these speech acts, and where present in court cases where the narrative supported the defendant more than the accuser. When Måns Gunnarsson, a seventeen-year-old farmhand from Bräcken stood in front of the court assembly of Offerdal in 1689, accusing his uncle’s wife Sigrid Jonsdotter for tarnishing the name of the King, everyone worked against his re-collection of the evening.\footnote{Ting 23–25 September 1689, OTDP 1649–1690, pp. 156f.} Måns told the court that his uncle Nilss Larsson had been delayed at the parish meeting house because he had to stay until the reading of the King’s ordinances was finished, and this excuse angered his wife to such an extent that she told him “I do not give a damn about the king and his ordinances.”\footnote{Ting 23–25 September 1689, OTDP 1649–1690, pp. 156. “Jag gifwer konungen och hans orders fanen.”} But when he claimed that the maid Kerstin Jonsdotter was present at the time, she told the court that she had went outside to gather more yarn right at the moment her mistress asked Nilss why he had lingered at the meeting house, and did not hear any seditious talk at all, only returning to hear Nilss say that “she (his wife) spoke like a fool.”

With no other witnesses to confirm his story, Måns’ patriotic intentions were then questioned by Sigrid, her husband, the court and the local community. The couple claimed that it was simply slanderous accusations because of “jealous and evil intent” stemming from an earlier inheritance...
conflict, a narrative that the lay assessors and the community seemed to accept judging by the fact that the claim is written down several times, paired with the original accusation. When testifying to the lay assessors, Sigrid was described by her neighbours and the rest of the village as someone whom they had never heard uttering a single angry word. They claimed that she lived a peaceful life with a harmonious relationship with her neighbours, apart from the conflict with the Larsson siblings over the inheritance. The court acquitted Sigrid Jonsdotter from all charges, citing the inheritance conflict and lack of proper witnesses an insufficient foundation for a högmåhls-sak (criminal case).

The speech acts of the community and the district court did create a narrative that reinforced the defendant’s claim of honesty, and suggests that the local authorities accepted the narrative put forth by the defendants on the grounds that the local community perceived them as honourable.

If honesty was, as Sandmo claims, a question about status and conduct, and that speaking “truth” was an attribute of the person speaking rather than what he said, it makes sense why Måns Gunnarsson’s very serious accusation was thrown out almost as quickly as it was uttered. When the villagers assured the court that Sigrid Jonsdotter was a kind person and peaceful neighbour, they did not simply defend her character, it was also an attack on Måns Gunnarsson’s credibility and his family’s honour. If she was a peaceful and good neighbour, it must follow that the Gunnarsson family was not, and that their conflict with Sigrid and her husband rested on shaky ground. The inheritance conflict would even by itself be a liability to anyone connected with it, as family feuds was heavily frowned upon by the local authorities, and would at times seen by the courts as a reason for harsher penalties. Their different positions on the social ladder was almost certain another reason for the dismissal of the case, and there are other signs that suggests that Måns Gunnarsson and his kin was not seen as honest or honourable people in local community, at least not compared to Sigrid Jonsdotter. On the same day as her own trial Sigrid accused Mån’s sister Gunilla Gunnarsdotter for false accusations of theft from the same inheritance, a case that had Gunilla convicted and fined 40 mark for speaking falsely.

Judging someone to be honest and dishonest had to be supported by the collective notion of the person, and when the collective stepped in, what they had to say seemed to matter to the court. When the soldier Swän Jonson Granbergh stood accused by a fellow soldier for the capital crime of hitting his mother Anna Swänsdotter, family and the local community acted in unison to defend

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70 Ting 23–25 September 1689, OTDP 1649–1690, pp. 157, ”Nämbden betyger sigh intet argt af hustru Segrid hördt, utan hon fördt ett stilla läfwerne och umgängie med grannar och rågrannar, föruthan den splijth som wardt och är, emellan syskonen om arfvet efter Joön Larsson[…]”
71 Sandmo 1999, pp. 102.
72 [Österberg 19??]
73 Ting 23–25 September 1689; Ting 28 februari–1 mars 1690, OTDP 1649–1690 pp. 158, 166.
him. His mother and sister disputed the claims that Swän had acted violently against both of them over a misplaced bag of tobacco, dragging his sister out of her bed and hitting his mother. Their neighbours assured the court of Swän’s virtues as a member of the community:

Close neighbours and their neighbours testifies, that Swän has always been known as a moral and reasonable farmhand, both at home and away.\textsuperscript{74}

Again, peaceful manners and good relationships with the neighbouring peasants was used as a way of presenting the defendant as honourable, an honest man speaking truth. Swän was successfully defended and freed of all charges, while the accuser’s main witness Mattz Leijman was chastised by the district court for being an untrustworthy witness and a lesser person because he was a condemned thief.\textsuperscript{75}

\textbf{2.3 Collective appeals for mercy}

In a few instances where the district court could not free the defendant from the capital punishment, the assembled peasantry spoke for them in another way, addressing the Svea Royal Court directly. In 1674, a widow Märit Olufsdotter from Fährberg stood in front of the judge and the twelve lay jurors of Revsund on accusations of infanticide.\textsuperscript{76} She admitted to having a relationship with a soldier named Anders Andersson, whom had made her pregnant, but she told the court that he also unwittingly caused her to miscarry six weeks into the pregnancy.\textsuperscript{77} She told the court that Anders had killed a snake with his scythe while working the fields, and with the snake on the point of the scythe he started to chase after one of Märit’s sons to scare him. This made her scream in terror, and she claimed that this made her lose the pregnancy. She later buried the remains within the church graveyard in secret.

The court repeatedly tried and failed to have her to come to a “true confession,” but this did not matter in the end as her case already met two of the definitions of infanticide: she held her pregnancy secret to her family, and she had given birth without any witnesses. The district court commented on the tragic and dark nature of the case, but still condemned the widow to death. The peasantry’s reaction to the outcome was recorded in the last paragraph as this:

\textsuperscript{74} Ting 23–24 November 1691, HTDP 1691–1700, pp. 21. “Grannar och någrannar betyga, at Swän altid hörđtz warit sedigh och wettig drängh både hemma och bärta.”
\textsuperscript{75} Ting 23–24 November 1691, HTDP 1691–1700, pp. 21. "Om sakens sammanhangh discurerades utshörligen med nembden, som stadnade enhälligen i deh tankar, att deh finna ingen saak med Swän, helst emedan som Mattz Leijman icke är troowärdigh och witnesbär, och desutan een lijdellig persohn.”
\textsuperscript{76} Ting 30 Januar 1674, RTDP, pp. 87.
\textsuperscript{77} The biological inconsistencies of her claims are not disputed in the records.
The appeal had three distinct components of meaning: the possibility of orphaning young children, her thoughtlessness in her actions, and her misfortune in life. The same kind of pleas can be found in several other of the court cases, where individuals begged for mercy. For example, the previously mentioned Mats Leijman the “untrustworthy” was found seven years later guilty of stealing a hide from the local vicar, and begged for leniency on the behalf of his small motherless children. The district court could not free him from the death penalty, but his appeal seemed to have swayed the court, as they addressed the Svea royal court directly in the last paragraph of the record, asking if it was possible for them find mercy for him.

A most peculiar case of vigilante justice where the community not only asked for leniency in a murder trial, but also took full responsibility took place in Sveg 1664. A soldier called Andhers Höök had deserted and was roaming the land, stealing from remote farmhouses. But Höök was not a simple wandering thief, and he caused great distress to the locals wherever he went because of his dark reputation. Rumoured to be an adept in the black arts and “hard against bullets,” the parish tasked a local soldier to arrest or kill the “poisonous and forsaken criminal” after the local constables had failed to do so themselves. They commissioned a bullet to be made from lead, silver and flint for the soldier to use against the delinquent, and after four days of pursuit the thief was cornered and shot to death in the forest at the foot of Husberget. First at the Landsting and then at the Sveg district court he told the judge and the lay jurors that he had been acting on the will of “the peasantry.” The befallningsman turned to the assembly,

[...]

[...] the assembly asked to consider her four small and fatherless children, and her thoughtlessness in falling for such a wrathful and fleeting person, appealing obedient and humbly on her behalf [...].

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78 Ting 30 January 1674, RTDP, pp. 87. “Men församlingingen i anseende för hennes 4 faderlösa små barn och stora enfallighetet faller för henne een Underdåhn. Ödmiuk förböön efter hon ähr af een sådan arglistigh och flycktig Persohn bedragin [...].”


80 Ting 1698, HTDP 1691–1700, pp. 151. “[...]om honom någon nåde wederfaras kan »

81 Landsting 18 July 1664, STDP, pp. 38

82 Ting 20 September 1664, STDP, pp. 39. «Upstegh fördhenskull befalningzman och allmogen tillspordhe om dhee medh honnom om dhetta dråpp i rådh warit hafwer, swaradhe dhee endhrekteligen medh en mun, ja och ytermehra sigh willa uppåtaga hela saken, samppt undhgiälla alt hwadh hålst nådhige höga ofwerheten behagor them påleggja for merbete Bertill Skuggz begångne dråpp frij kalladhe altså bête Bertil. Tillspordhe åhn ytterligare befalningzman allmogen om dhee då ville taga dräparen Bertill i försvar för cronones fängelsse, swaredes enheligen ia iempete begärzan han måtte medh fängelsse bliifwa förskont.»
That a local community was challenging the state monopoly on violence during the 17th century, where the general trend was more centralisation and less self-governing is interesting, but not too surprising since it was in the Härjedalen region. It was after all a periphery far removed from the centre of a state apparatus it had only been part of for two decades, and had tenuous links to at best. Indeed, when a legal commission was set up in Jämtland-Härjedalen 1670 the peasantry’s complains suggest that they felt forgotten and overlooked.\textsuperscript{83} But they certainly understood that essentially ordering an execution in 1664 was a serious overreach, and that the reaction from the authorities would be severe. And though the case is unique among the studied material, the approach in the speech act does imitate the others in one way: it focuses on the circumstances of the crime, and presents them as reasons for leniency. The speech act makes it quite clear that the assembly thought that Skugg was just in his actions: he was acting upon the will of the community, as a soldier aiding his neighbours in peril.

2.4 Disowning the defendant

But the communities of Jämtland-Härjedalen did not only take part in the district courts to defend their own. Up until now I have only discussed instances where these peasant communities seemed to band together, voicing a political will to shield their members from penal justice. This was not always the case. The village community was in many ways a close-knit unit where cooperation and a relatively flat social hierarchy, but this should not obscure the fact that it was still depending on hierarchy, honour and religious norms to govern itself. Whose interests the community voiced in the recorded speech acts must be analysed with this taken into consideration, as honourable, wealthy and landowning peasants had other demands than the farmhand or the soldier, and usually had the most influence on the community’s collective affairs.\textsuperscript{84} Eva Österberg has shown that in the 16th century, disturbing the peace or breaking social norms could be compensated and forgiven, but the community could and did disown their own members, exclude outsiders and begged the authorities to enact harsh justice upon them.\textsuperscript{85}

A great example of this was the trial and subsequent conviction of Gunnila Jonsdotter in Undersåker 1666.\textsuperscript{86} When the old vicar Adam Wellamsson suddenly fell ill and after fourteen weeks died a lame broken man, suspicion fell upon Gunnil Jonsdotter, a Sami woman whom Adam

\textsuperscript{83} Lennersand 1998, pp. 133.
\textsuperscript{84} Österberg 1983, pp. 15f.
\textsuperscript{85} Hodne 1973, pp. 174.
\textsuperscript{86} Rannsakning 6 november 1665, UTDP, pp 40ff, Rannsakning 18 oktober 1666, UTDP, 45f.
Wellamson had chastised for bearing children outside of a Christian marriage. The vicar’s family claimed that Gunnilla had cast *lappgand* (Sami curse) upon the vicar in anger, and that the illness had struck him on the way back from the Sami camp. Several of the witness accounts describe an uneasy relationship between the Jamtlandic and the Sami communities, as worries were aired about what they said in their “gnashing tongue”, or their Christian conviction. An inspector called Hans Andersson Blix relayed that one of the Sami had told him how Gunnilla had upon the news that the vicar was ill responded that “you lie down priest, have a good time, I am still all well even though I did not have any of your bread or the lord’s supper.” Gunnilla had to confess that she knew and practiced healing magic, but claimed that it was the extent of her knowledge, and that she did not know how to kill anyone with magic. The accusing relatives argued instead that the fact that she knew how to heal supposed that she also knew how to hurt. When asked how she could disprove this, she wearily replied “God knows.” On the last day of the trial, the local community voiced its opinion on the matter.

Furthermore, the peasantry here in Undersåker and Oviken and around the whole country testifies that this Gunnilla roams the houses, drinking herself full of liquor, and becomes impossible to get rid of, because when they try to throw her out of the door and off their land she threatens them and speak of all evil things, gashes, swears and curses on her language, so that people fear her, requesting to get her away from the mountains and the parish.

The local community practically disowned Gunnilla, making it clear that they wanted her excluded from the community and taken away. The important aspects in this speech act echoes the ones I have already presented: being a peaceful and good neighbour. The rumours of roaming drifters and dark magic deeply disturbed the peasantry, as the case have some similarities with killing of Andhers Höök in Sveg just two years earlier. Gunnilla was described as an ill-behaved, imposing guest, breaking the norms of hospitality and manners. Even her speech became vilified, and probably having the assembly questioning if any truth could come from such a horrible mouth, gnashing, cursing, and swearing.

And that narrative was accepted by the district court. She was sentenced to death even though she refused to confess. On the 22th of April 1667 she was lead out onto the execution ground and onto the stake. Once again, she was sternly asked to confess and save her soul from eternal

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87 Rannsakning 18 oktober 1666, UTDP, pp.45.
88 Rannsakning 6 november 1665, UTDP, pp. 41.
89 Rannsakning 18 oktober 1666, UTDP, pp. 45. “Dessuthan betyga allmogen her utj Vndersåker, som i Oviken, som ellsit ofwer heela landet, det denne Gunnila gåhr her utj gårderna, och dricker sig full af brännewijn, sedan blifwe dhe aldrig af med henne, uthan när dhe wille hafwa henne uth på dörren, och sedan uthur gårdn, så hotar hon dhem och undsäger dhem alt ondt, plottor, hannahs och swähr på sitt spräk, så at alt folk ähr henne rädder att her, för sine ögon, begärandes blifwa af med henne uthur fället och bort ifrån socknen.”
damnation, but she still refused. She was then let down, lashed by the executioner and banished to stay up in the mountains where her kinsmen lived.\textsuperscript{90}

The other clear rejection by the community came a few years later, in Sveg 1673. This district summer assembly became the first out of three-successive witch-trials in Sveg, and after five days and 16 examinations by the court two older women had confessed to witchcraft. The rest refused to give “true confessions”, and the atmosphere seemed to have grown tense. The district court had to postpone any further examination until the next assembly. The families of the abducted children, the twelve lay jurors and “all the people” did not find it acceptable.

The children’s parents, the twelve lay assessors and all the people appealed obedient and humbly, begging that the old, hardened people who have been violently abducting the small, innocent children to Blåkulla and could not be brought to confess must be separated from the community[...].\textsuperscript{91}

Like in Gunnila’s case, the authorities were asked to remove an unwanted element in the community. Fear and exclusion and dishonesty were used to publicly disown a large number of people, and although the speech act does not specify, reading through the rest of the witchcraft hints of something similar again. Most of the accused were pointed out from three specific families. Märit Erichsdotter, one out of three sisters accused for witchcraft was recorded in 1675 as “the one whom in March 1674 went to Jämtland to beg for her survival is now residing in Norway.”\textsuperscript{92} Märit Erichsdotter, Anders Höök and Gunnila Jonsdotter all lead a drifting existence, and the social stigma associated with vagrancy probably played one part in their misfortunes and why the communities they lived in were ready to have them banished or killed. Vagrants were frequently associated with having something to hide, and having no or few social with the local community made you more vulnerable in the court.\textsuperscript{93} Without Five women were eventually found guilty of witchcraft by the district court and sentenced to death against their persistent denials.

Two types of the claims that were made only appeared in the Sveg witch trials, and are linked to the more general notion of truth and honour. One was the children’s insistence that the accused women were given snakes by Satan to keep around their necks as necklaces, and that their magic made them unable to speak the truth and confess. The other, which is mentioned in the collective

\textsuperscript{90} Rannsakning 20 april 1667, UTDP, pp. 50.
\textsuperscript{91} Ting 16, 17, 18, 19 och 20 juni 1673, STD, pp. 73. ”Barnsens föräldrar sampt nämnden och gemene man supplicando underdånigst och ödmjukeligt bidja, at dhe gambla förhärdade personerne som dhe små oskyldige barnen wåldsambligen föra til Blåkulla och till ingen bekännelse kunna bringas, måtte till ett probf bliwa ifrån församlingen skåde, [...]”
\textsuperscript{92} Ting 22, 23, 24, 25 och 26 februari 1675, STPD, pp. 88. ”Clemet Swenssons hustru, h. Märit Erichsdotter, som uthj martij månad 1674 begaf sigh til Jempteland at tiggia sit oppehälle, hafwer sedermehra begifwit sigh til Norrige.”
\textsuperscript{93} Eilola 2012, pp. 122.
2.5 Neutral acts

Some neutral speech acts were recorded, but do not form as much of a basis for analysis. Two times the assembled peasantry confirmed a witness claim that the defendant had been at a specific place, and once asked if the community knew about the King’s decree concerning infanticide, which they replied that they had.

2.6 Individual participation as a collective act?

A criminal investigation in Jämtland-Härjedalen did on average include three participants in addition to the accuser and the defendant, but in a few cases the number was much higher. Twenty witnesses were eventually called to the court case the vicar of Hammerdal, Wellam Klangundius started in 1694. According to rumour the soldier Johan Wijpa had made the maid Maria Grehlsdåtter pregnant, and that she had committed infanticide and hid the child under the floor in one of her master’s sheds.94 The rumours were supposed to have started after Johan Wijpa had told that he could bring Maria’s head off at any time during a night of heavy drinking, and once tried to get into a room where Maria and her fiancé had locked themselves in, claiming that she had open the door, or else he would tell what was hidden under the floor of Abraham’s shed.

The subsequent calling of witnesses questioned their different master’s neighbours and fellow servants. Several of the defendants’ former masters objected to the vicar’s claim, that the “rumours were told in all the households” of the community. Oluf Nilsson said that he had never heard any ill rumours of his farmhand, and another farmer Abraham said that he had not heard of any rumours during the time when they both worked for him or that any immoral behaviour had taken place under his roof. The constable Päder Chræstieres had travelled to the village of Ström to interrogate local peasants, but no one claimed to have seen anything suspicious, and no evidence of foul play could be found in the sheds. With many contradictory narratives to consider, the accused unwilling to confess and no concrete evidence, the court had to free the accused from all charges. The court concluded that Johan Wijpa’s crime was that he talked like a fool when he was

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94 Extraordinarie ting 4, 6 och 7 augusti 1694, HDTP, pp. 72.
drunk. One witness, Elizabeth Pädersätter, was believed to be the origin of the rumour about “the secret buried in Abraham’s shed”, and this story was put to rest as her speech should not be considered at all as she had a loose tongue and used with gossip. It was also suggested that she and the accused Maria did have some sort of previous dispute had to be considered.95

If these kinds of cases represent some kind of community participation or more indicative of a new judicial praxis (as they all take place at the end of the 1690’s) is hard to determine by the low number of studied cases. But at least in this case some hints of a collective will can be noticed, not just in the sheer number of people but considering how several honourable men, masters of their own households, concluded that they had nothing ill to say about their former farmhand and that the witnesses that said otherwise would be chastised as untrustworthy. This is somewhat reminiscent of the assurances of being a good neighbour and how the unresolved conflict was frowned upon.

2.7 Concluding remarks: the manifestation of the community

The speech acts attributed to the peasantry have provided a small but interesting sample of examples. Collective performances took place regularly during the latter half of the 17th century, and had agency in reinforcing or questioning the verdicts of capital crime investigations on the district court level. The local community frequently used narratives based on the Christian notions of being a good neighbour with a gentle manner to either defend or disown the person accused. Some indications point to individual honour as being the key to understand why the claims made by people of similar social status were at defended and otherwise rejected by the community, as was the breaking of social norms and taboos.96 In the act of publicly reject the defendant, anxieties towards vagrancy and magic took precedence over regular judicial praxis. That the community only rejected these offenders openly does reinforce Eva Österberg’s view, that “only those who had transgressed given norms, and thus became a threat against the collective were stigmatised and rejected irrevocably.”97

It also gives some insights into the relationship between the community, the state and the capital punishment. Far from being a simple act of power to discipline the subjects of the crown, the speech acts of the community legitimised or de-legitimised the use of it. Good neighbours could defame the king with witnesses around without consequences, and some convicted criminals were

95 Extraordinarie ting 4, 6 och 7 augusti 1694, HTDP, pp. 77.
97 Österberg 1995, pp. 156.
worthy of mercy. But the district court could convict witches to death without confessions or witnesses when the local community declared their will to reject the accused.

It was nonetheless a patriarchal relationship; the community did not openly seek autonomy or self-determination in the judicial discourse, but it reminded the state and its representatives to uphold its obligations to keep the peace and order or its legitimacy would be in peril.\(^8\) The peasants of Sveg saw the extra-judicial killing of Andhers Höök as within their right as the state authorities failed to apprehend him and restore order in the parish. I think this notion of social obligations contributed to why the local community became agitated when the district court failed to successfully convict the defendants of the 1673 witch trials, and why they required the authorities to separate the presumed witches from their community.

\(^8\) Thompson 1974, pp. 399f, Österberg 1989, pp. 90.
3. Accusers, defendants and their stories

Last chapter has described how the presence of the local community was manifested in the 17th century district court, and how it participated in criminal trials as an actor performing speech acts to negotiate the narrative of the crime, the character of other participants and the outcome of the verdict. This chapter will study opening speech act of the investigation and the participants associated with it. The accusation of capital crime could be understood as a speech act designed to frame the narrative the crime. This raises some important questions to discuss, namely:

- Who were the accusers?
- What kind of crime narratives were constructed by the accusers?
- How did these narratives depict the defendant?
- How did the defendants respond to them?

3.1 Framing the narrative of a capital crime

As with most source material produced for bureaucratic use, there was a general structure in how the district court assembly records were constructed. A criminal investigation was likely to reflect the actual structure of the proceeding, at least with a logical order of accusation, defence, witnesses and verdicts written down in that order. The typical accusation of a serious crime contained the identity of the accuser, the classification of the crime and a proposed narrative of the events. It was rather straight forward, but the small variations within this template can reveal some characteristics of the rhetoric acts that was associated with the accusation. A preliminary observation is of the apparent change in practice. From the late 1670’s and onwards it became increasingly rare to identify the prosecutor if the case was not brought up by a civilian plaintiff. Omitting to name the länsman and befälhingsman as the prosecutor indicate that the court had become synonymous with state authority, and unnecessary to distinguish between local state officials and the state appointed judge.

The opening accusation was more than an abstract of the case, it was a space for speech acts with different rhetoric approaches. The judicial discourse defined the nature of the proceeding by framing the limits of the said discourse within the case. Aspects from the judicial field, perceptions of virtue and honour, religious doctrine and overarching societal context would be viable rhetoric approaches, in relation to the actual crime.99 Earlier historiography has found that this was the case.

in the narratives told by the defendants in cases of such different spheres as duelling and infanticide, where binary conceptions of Christian morality and virtue dominated the judicial narrative. But can this construction of moral and immoral behaviour also be detected in the speech acts of the accusers?

3.2 The accusers and their accusations

Table 2: Social category and gender of accusers in (n) and (%), 1649-1700.

<table>
<thead>
<tr>
<th>By social category</th>
<th>(n)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local officials or elites</td>
<td>28</td>
<td>62.2</td>
</tr>
<tr>
<td>Befallningsman</td>
<td>14</td>
<td>31.1</td>
</tr>
<tr>
<td>Clergy</td>
<td>6</td>
<td>13.3</td>
</tr>
<tr>
<td>Länsman</td>
<td>4</td>
<td>8.9</td>
</tr>
<tr>
<td>Officers</td>
<td>2</td>
<td>4.4</td>
</tr>
<tr>
<td>Sexman</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Son (and family) of a deceased priest</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Peasantry</td>
<td>4</td>
<td>8.9</td>
</tr>
<tr>
<td>Lower social categories</td>
<td>4</td>
<td>8.9</td>
</tr>
<tr>
<td>Soldiers</td>
<td>3</td>
<td>6.7</td>
</tr>
<tr>
<td>Dräng</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Unnamed</td>
<td>9</td>
<td>20.0</td>
</tr>
</tbody>
</table>

(Children) 28

Total 45 (73) 100.0

<table>
<thead>
<tr>
<th>By Gender</th>
<th>(n)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>35</td>
<td>79.5</td>
</tr>
<tr>
<td>Women</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Unnamed</td>
<td>9</td>
<td>20.5</td>
</tr>
</tbody>
</table>

Total 44 100.0

Source: See appendix.

State and church representatives seems to have taken most of the responsibility in taking suspicion of crime to the district courts in the Jämtland-Härjedalen region. Only ten out of 71 criminal investigations were instigated as an accusatorial trial. Children’s witch stories did instigate three

See for example Bergenlöv 2004; Collstedt 2008.

A note about the categorisation is that it purely based on the epithets given in the records, not on secondary economic data, and should thus be taken as a rough estimate of the social stratification of the participants. The “precarious social category” is especially problematic, as some really uncertain estimates had to be made. The category includes for example widows and widowers, and were not per se lower on the social scale, but the household was certainly in a more precarious situation.
consecutive witch trials in 1673–1675, and as such spawned a large amount of investigations led by the constable, but the extraordinary nature of how the witch trials were conducted and recorded might obscure the true instigators, and must be analysed with care. In the neighbouring Undersåker hundred and in other studies of the Swedish witch trials, the local clergy was instrumental in taking the stories to the court, and this could be the case of the Sveg trials too.\textsuperscript{102}

Table 3: Criminal investigations and convictions, 1649–1700.

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases (n)</th>
<th>Convictions (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Witchcraft</td>
<td>30</td>
<td>8</td>
</tr>
<tr>
<td>Homicide</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>Infanticide</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Adulterity (single and double)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Bestiality</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Theft</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Seditious talk</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Violence against clergy</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Violence against parent</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Suicide</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Murder by magic</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Incest</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Treachery</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Freeing a prisoner</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Blasphemy</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>71</strong></td>
<td><strong>35</strong></td>
</tr>
</tbody>
</table>

Source: See appendix

In the studied district courts of Jämtland-Härjedalen, witchcraft, homicide and infanticide was the most common type of accusation, and stood for roughly half of all the 71 investigations resulted with a conviction, 32 ended with the capital punishment. Nine people, roughly one third were condemned to death without them coming to a true confession was a probably quite high, as it was generally a requirement to have the criminal confess before going through with the execution.\textsuperscript{103}

3.3 Sin, punishment and repentance

Although the narratives of the crime in the opening speech acts were brief and open to the defendant to retell in their own way, there were certainly attempts to frame the defendant’s crime before his or her response. When the soldier Jöns Pehrsson stood accused for murdering Jon

\textsuperscript{102} Sörlin 1993, pp. 47f.
\textsuperscript{103} Liliequist 1988, pp. 147.
Hemmingson, a peasant from Ammer in 1651, the befallningsman asked Pehr for what reason he had unwisely committed such a great misdeed and sin.\textsuperscript{104} Other homicide accusations used similar condemning descriptions of the crime. Describing a violent act as *oråd* (inappropriate act), *synd* (sin) or *stora missgärning* (great misdeed) was then followed by the defendant with a display of virtuous remorse and a true confession. I think it is rather unlikely that these cases were not predetermined in some way. The investigations of homicides were rather unambiguous in some aspects. The crime was always committed in front of witnesses, or the killing blow was not immediately fatal, thus allowing the order of events to be relayed to family and friends of the victim. This would in practice constrain the narrative in several ways: The accusers could only ask the defendant to explain his actions, and the murderer could only confess and ask the court for mercy, and if the events allowed for it, frame the acts of the victim in a negative light.

These underlying circumstances shaped the discourse between the homicide accusation and the defendant’s answer. The narrative became one of unacceptable behaviour and sin, punished by being condemned to death and followed by a religious awakening, saving the soul of the delinquent from eternal damnation. It was certainly performed as a ritual, part of the theocratic doctrine of punishment, with crime and sin seen as one and the same.\textsuperscript{105}

### 3.4 Despicable acts and despicable people

Although the act of killing your fellow Christian was harshly condemned as a sin, the persona of the murderer was not up to be denounced. Attributing negative personal characteristics to the defendant occurred seldom and almost exclusively when women stood as defendants. *Kobna*, a derogatory term for woman and implying sexual impurity was applied to unmarried women whom had come under suspicion of adultery or infanticide. Gunilla Jonsdotter, the Sami woman who was convicted for killing the parish priest with magic was likewise named a *lappkobna*, but also *lappkärring*, implying that she already had a reputation of magic before her conviction and banishment.

But this was not only a matter of semantics. When the previously mentioned widow Märit Olufsdotter stood accused of infanticide, she was never described as a *kobna*, even though she had confessed to have been pregnant outside of marriage.\textsuperscript{106} Since her lover, the soldier Anders Andersson had abandoned her and his duties to the state by deserting to Norway, both court and

\textsuperscript{104} Ting 13 December 1651, RTPD, pp. 16.
\textsuperscript{105} Liliequist 1988, pp. 148f.
\textsuperscript{106} Ting 30 januari 1674, RTDP, pp. 87.
community saw her worthy of pity and mercy. The court did not use pejoratives to describe her, and the while the local community pleaded for her and her children’s behalf, they condemned Anders Andersson to be an anglistigh (cunning and nasty) and flycktiig (fleeing/fleeting) person. But the contempt for roaming and fleeting people manifested itself not only in the community speech acts but also in the district courts. In 1652, when the soldier Oluff Hällieson were examined for the death of a deserted soldier, the court described it as the murder of a roamer.107

Only once were the mind-set of a male defendant described as wicked. When the vicar Carl Alstadius prosecuted the fänrik (second lieutenant) Robert phillip won Wentzlou in 1681 for disrupting a wedding, he claimed that the officer had started to berate him with an increasingly creative variety of vulgarities. Alstadius quoted the fänrik as calling him a damned, senseless sacrament-priest, a hunswott, that he respected neither Dean nor vicar, and that he respected his services as much as the burning vagina of a mare, finishing off with hitting the priest over the head with a candelabra. Alstadius claimed that the said defendant had acted with ijfwer och ondsko (with passion and malice).108 According to Carl Alstadius accusation, Robert won Wentzlou was not only criminal in his acts, he was also a despicable person.

It seems reasonable to think that the difference between despicable people and despicable acts in the accusation signified some intent of the accusing side; that despicable acts could possibly be forgiven but despicable people could not. To be called a kobna could certainly be attributed to judicial praxis, but the difference between “unchaste woman” and “widow” in the context of an infanticide case certainly held more significance than being described as a murderer in a murder trial.

Still there were cases where only the act was depicted as despicable, but the intent of the accuser was still to apply the harshest possible punishment. When the dean Abraham Burman and the säxman (one of the six members of the parish assembly) Olof Grelsson accused three farm maids for blasphemy, their accusation contained several interesting rhetoric acts. Olof Grelsson detailed how he had repeatedly found the three young women talking among themselves with such foul and vile language that he could not bring himself to speak to them again, and had to be coerced by the court to reiterate the exact words.109 He told the court that he warned them but they refused to

107 Ting 14 December 1652, UTDP, pp. 16. ”[…] begåt ett dråp på en soldat Lars Swänsson\en widhfaring/ […]”
108 Ting 2–3 December 1681, RTDP, pp. 128. ”[…] inkom Fendrichen säijandes genast medh ijfwer och ondsko, hwarföre bleff du Sacramentske präst i andra Stufwan på migh onder och för min skulldh gick där ifrå Sedan Diefwulske Präst hunswott och att han bättre sin Gramaticam än Prästen lärdt. Item att dieckne poiker bättre kunna än han Predijka och att han predijkar inett Rått och hans lära, honom och Probsten achtar så myckett som een brinnandhe, Salva venia, Mähra fitta, Släendes pastoren i hufwudet medh een Tähnliusstaka så att håhl där af blef och blohd uthrahn Ropandes efter sin wärija, säijandes sig skola giöre Dråp[…]”
109 Ting 11–12, 14 Maj 1700, OTDP, pp. 190.
stop their vulgar and blasphemous speech. The farm maids responded to the accusations by confessing with crying tears and great remorse, begging for mercy and a chance to redeem themselves, but the dean Burman requested that “these farm maids must be harshly punished, since they have dared to take the great God’s name in vain, with such grave and serious speech.” The prosecution first displayed the women as almost unspeakably sinful, disrespecting the social hierarchy and then appealed to the second part of the theocratic doctrine of punishment, wanting to make an example of the women to deter other possible sinners. The district court could not free the defendants from the death penalty, but openly disagreed with the local clergy. Instead they accepted the performance of remorse and crying tears and asked the Svea Royal Court if they could find mercy and a mitigated sentence for them.

3.5 Empathy and antipathy in the accusation of murder

The rhetoric around homicides were more nuanced than just guilty sinners asking for forgiveness. On the 15th November 1666, the district court called for an extraordinarie ting. Captain Sabbel opened the assembly meeting with this story, recorded with a mix of past and present tense:

The same date gave the captain of the dragoons, the noble and honourable Petter Sabbel, [...] declared that on the 24th of October, a great, unfortunate accident and an unexpected murder have been committed by one of his subordinate dragoons. Johan Erichsson, born in Åbo. Thus he have been to his neighbour Erich Andersson from Lien and Åre parish in the court district of Undersåker, and asked to borrow him a pair of tailor's scissors. On the way back he meets the farmer's stepdaughter Ingeborg Olofzdotter, sixteen years old, who is standing outside, throwing snowballs with her brother, Jacob Olofsson, around eighteen years old. The snowball accidentally hit the dragoon, and he turned to throw the scissors after the girl, which ended up in her midriff, and she perished three hours later in the evening. When he runs towards her he notices the wound, he turns and flees with the intent of walking over the mountains to Norway, but he got lost and on the third day returned to the community.

When bringing the case to the court, the noble and honourable captain made it clear that the slaying of Ingeborg Olofzdotter was not a great misdeed nor a sin, but a most unfortunate accident. He did not describe the killing in any way sinful or as a misdeed. The defendant Johan Erichsson followed this narrative and confessed with crying tears, and told the court that he had acted in

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110 Ting 11–12, 14 Maj 1700, OTDP, pp. 190.
111 Ting 11–12, 14 Maj 1700, OTDP, pp. 190f. “Begärandes h:r probsten at desse pijgor måtte alfwarl. biffwa straffade, för det de sig underståt ibland så groff saak och tahl inbland och missbruka dhen stora Gudens nampn och Christo dyre förtienst”
112 Ting 11–12, 14 Maj 1700, OTDP, pp. 191. ”Dock detta med underdånödmiukaste wördnad dhen högl. Kongl. hofrätten underståt, och om icke desse delinqwenter effter som de wijste sig bootfärdige och sin synd med tårar begråta med nåder kunde biffwa ansedde till lindigare straff.”
113 Ting 15 November 1666, STDP, pp. 46.
thoughtlessness and without intent because he had tried to throw a rag at the girl to scare her, but forgetting that he held the scissors in the same hand.\textsuperscript{114}

The local \textit{befallningsman} did not seem to consider the captain's narrative as complete, and used the term \textit{grofwa gierning} (grave deed) when addressing the accused soldier, asking why he had killed his own neighbour's stepdaughter. And when the soldier reiterated Petter Sabbel's story, the \textit{befallningsman} then invited the peasants charged with supporting the said soldier with a question, asking “if he had been unruly before”? Now a complete counter-narrative to the crying, unfortunate and sincerely remorseful Johan Erichsson emerged. It was first established that the defendant was completely sober on the day of the murder, and then Carl Michelsson testified that the defendant had entered his household some time ago and “hacked his sword against tables and benches, saying that he would murder his peasant.” Anders Månsson I Österlien added that he had been unruly in his house too.\textsuperscript{115} Erich Andersson, the stepfather of the murdered Ingeborg, testified that the confessed murderer had been unruly with him three times during last Easter because he demanded his \textit{fourage}, threatening to kill him and his wife with a log of wood, that he would “smash them into pieces until he could see their heart’s blood” when the Erich did not comply quickly enough.\textsuperscript{116}

This case illustrates well how the narratives told within the judicial discourse drew on very different discourses of meaning. The narrative presented by Captain Sabbel and the defendant initially discarded the notions of crime and sin, then with “crying tears” evoked the more traditional concepts of a true confession and remorse. The \textit{befallningsman}, his neighbours and the relatives of the murdered girl did not directly question the course of events; this could possibly lead to an unwanted discussion about the honour and honesty of the captain. They did however construct Erich Johansson as wrathful, hateful, greedy and violent; a troublemaker who lacked self-control while he tyrannised “his peasants” and disturbed the peace of the local community. These characteristics were mostly drawing from the prevailing ideas of Christian virtues and morals, and was approached several times in the judicial discourse of the studied court cases. This corresponds with both Collsted’s and Bergenlövs’ conclusions, as the moral discourse surrounding the duel narratives discourse concerning infanticide similarly constructed defendants and victims based on

\textsuperscript{114} Extraordinarie Ting 15 November 1666, STDP, pp. 46f. The records do however not explain how he could have thrown the scissors by accident in such a way that they would embed themselves in her abdomen from a distance.

\textsuperscript{115} Extraordinarie Ting 15 November 1666, STDP, pp. 47. “[…]betygade ofwanbem:te Carl Michelsson, det denne Johan Erichson, hafwer för någon tid sedan kommit in hoos honom, och huggit både i bordh och bänckar, och sagte sig skulle mörda sina bönder.”

\textsuperscript{116} Extraordinarie Ting 15 November 1666, STDP, pp. 47. “[…]och efftersom bonden icke war så hastig atgifwa honom, då hafwer han både hotat honom och hustrun skulle slå sönder dhem, och see dheras hierte blod[…]”
similar binaries.\textsuperscript{117} Furthermore, the importance of peaceful manners and good relations with your neighbour is very similar to the discourse exercised by the local community as a whole.\textsuperscript{118}

The district court did not accept the initial claim of accidental slaying, and condemned Johan Erichsson to death for murdering Ingeborg with intent. When the verdict was read out to the assembly, a familiar performance took place:

> After the examination and given the verdict, the murderer falls to an obedient and humble prayer with God and the noble authorities, begging for mercy and mitigation of the punishment, as the plaintiffs, the stepfather Erich Andersson from Lien and the mother, Kerstin Carlssdotter now loudly pleads for him and his crime to be remitted and forgiven. Likewise does the honourable captain Petter Sabel, which otherwise [contrary?] to the peasantry humbly pleads for mercy, for the highly praised and commendable royal court kindly to consider, and to give him a merciful resolution [...]\textsuperscript{119}

At last the cycle of condemnation, punishment and repentance was completed, with Johan Erichsson displaying all the signs of true repentance. When the Svea Royal Court reviewed the case, they deemed the narrative as an acceptable pardon tale, and mitigated his punishment to a fine of hundred silver Daler instead.\textsuperscript{120}

Captain Petter Sabel’s second appearance in the district court of Undersåker was on the 20\textsuperscript{th} of May 1668, when he once again stood to declare a homicide case to the court. He told them that a “ynkeligit dråp” (a cowardly murder) had taken place ten days earlier in the early morning hours of Whit Monday, and that the murderer was to be examined about his guilt.\textsuperscript{121} Oluf Andersson, a soldier from Örebro had killed one of the captain’s manservants, the eighteen years old Sifvert Siwallsson. The testimony of the defendant and several witnesses claimed that Sifvert had been killed over a perceived slight of honour and accusation of theft, and that it was Sifvert that had instigated a duel, although Oluf had gladly accepted it. Captain Sabel’s participation in the case was not in any way comparable to the one in 1666. He publicly denounced the act as one of cowardice, and did not ask the court to show mercy. Oluf confessed to the murder, but he was recorded as showing no guilt or remorse, and neither did he ask for mercy or leniency. It seems that Oluf thought himself to be in his right to act the way he did. His actions hint of a parallel

\textsuperscript{117} Collstedt 2008, pp. 171; Bergenlöv 2004, pp. 419f.
\textsuperscript{118} See section 2.2.
\textsuperscript{119} Extraordinarie Ting 15 November 1666, STDP, pp. 47. ”Effter hållin ransakning och aflagden domb, faller dråparen till een underdåhn, ödmiuk böhn hoos Gudh och nådige höga öfwerheten, anhållandesom nåd, och lindring på straffet, såsom och denne dödes måhlsägander, stüffenr Erich Andersson i Lien och modren h. Kerstin Carlssdr nu högeligen bida för honom, och hanss brott efftergifwa och förlåta. I lika motto h:r capitein, väl. Petter Sabel, som eljest allmogen utj tingelaget, vnder dåhn ödmiukeligest anhålla om nåder, utj underdångiste förmendande, den högt beprjsslige och höglöf. Kongl. hofffräten nådgunstigst detta ansee, och han oppå een nådige resolution meddela tächtes […]”
\textsuperscript{120} Rannsakning 20 April 1667, UTDP, pp. 50.
\textsuperscript{121} Extraordinarie Ting 20 May 1668, UTDP, pp. 55.
system of honour and social prestige that existed, where violence was the accepted way of handling conflict and attacks upon your honour. The royal high court agreed with Captain Sabbel and the district court and confirmed the verdict, declaring that he should be decapitated as punishment and a warning for others.\textsuperscript{122}

\subsection*{3.6 Magic, honesty and truth}

The narratives told at the court were initially defined by the prosecution’s framing of the crime and the defendant, the defendant’s reaction to the accusations and how witnesses and the local community added, rejected or otherwise interacted with the moving parts of the story. For the court proceedings to produce acceptable narratives the cooperation between all participants were crucial. Defendants had to willingly confess and show remorse to legitimise the system in the eyes of the community, who played crucial role in determining which narratives were to be presented and which storyteller to be defend or reject. But what happened when the negotiations broke down between community and the defendants, when the true confession was not presented?

An interesting outlier example of this is how the ideas of honesty and speaking the truth was challenged during the witch trials of Sveg in the years 1673–1675, when 29 people stood accused of witchcraft.\textsuperscript{123} The Sveg witch trials where much like the rest of the Northern witch craze: the accusers were predominately children, the accused were mostly women (many of their own family), and the narratives of witchcraft involved abduction, riding on cattle to Blåkulla and carnivalesque depictions of Christian mass.

The first trial in 1673 produced 17 accusations and two confessions. The widow Gertrud Jonsdotter confessed with crying tears that she was witch, that she had taken all her children to Blåkulla and that she had been led astray in her youth by an old farm maid called Gunnilla Persdotter, just before she died.\textsuperscript{124} Another widow called Sigrid Erichsdotter did also confess, but not before she accused her accuser, her 10-year old granddaughter Sigrid Swensdotter for speaking untruth.\textsuperscript{125} It happened that these two women were the first two to be called up to be examined, and that they both confessed must have had an impact on the rest of the trial. The stories told by the children became truth with their confessions, but this presented a serious contradiction in the logic of truth and honesty, as the desperate denials of the other 15 defendants remained. It is no

\textsuperscript{122} Hovrättens resolution 18 Juli 1668, HLA/GbLL/DIIa/5, Fol. 405. “[…]för androm öfuersådigen till sky och wahrmagell, halshuggas.” \textsuperscript{123} Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 66–73. \textsuperscript{124} Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 66f. \textsuperscript{125} Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 67f.
exaggeration to call the witch craze a social crisis, where the notion of community, judicial practice and truth was shaken to its core. People whom in normal circumstances would have been sheltered from speculative accusations (people with good reputation, married women, men in general etcetera) were not believed when they swore by god that they were innocent.

One direct reaction to this contradiction between truth and honesty can be found in the later accusations by the children. The seven-year-old Nils Jonsson told the court that his godmother Märit Gummundzdottser and her son Jon Siulsson har brought him to Blåkulla numerous times, riding on a large cow to Norway, where Jon would keep abusing him and that Jon was the provost of Blåkulla. The court found it “peculiar” that Jon or Märit would not confess, but some of the other abducted children had an answer to why someone that was supposed to be speaking the truth was not. They testified that “Märit lies with the great cursed dog, and is now wearing a great snake around her neck, that is why she cannot confess to anything.” How or why the children would be able to dream up something like that is impossible to know, but I think the aspects of it does reflect some fundamental understanding of how someone’s honesty could be undermined by the accusation. The snake necklace became an invisible mark of the devil that made it possible to explain why honest people lied.

This narrative was applied several times in 1673, and the second time in Märit Olufzdotter first hearing. After Märit told the court that the children were speaking “untruth” they told the court that “a snake was around on Pehr Tolsson’s Märit, which strengthens her in her evil.” Märit was again asked confess, but she swore that she “would not confess as long as her blood ran warm in her veins.” The court disregarded her and demanded that she would leave the small innocent children alone, and warned her that if she would not confess, her soul and body would be condemned to hell. “Well, then Satan will have his hands full” she replied.

As the district court started to disregard the refusals to confess and question the truth of the defendants more and more, another explanation started to take hold. The defendants were described as förhärdade, being hardened sinners, and unable to tell the truth. They court concluded that nine of the defendants would be prosecuted again at the next laga ting, since “the children and their families loudly complained and moaned over [the nine defendants], as these would bring the

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126 Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 69. ”Märit ligger i Blåkulla hoos den stora banhunden, hafwer nu på sigh een stoor orm kringh om halsen, at hon icke kan bekänna.”
127 Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 70. ”Barnen berätta att een orm sitter kring om hallsen på Pehr Tolhs Märit, som styrcker henne i sin ondska.”
128 Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 70. ”Pehr Tolhs Märit warnedes wachta sigh, hon icke blefwo fördömt med kropp och sül til hlefwtis? Swarade, Joa, Sathan fåår fuller deth.”
129 Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 73.
children by force to Blåkulla, where they would be abused and get no rest during the night.”130 As I have previously described, the lay assessors of the district court and the local community joined the children and their families in their demands that the remaining defendants were to be separated from the rest of the community, effectively disowning the defendants. The imagery is powerful. The child accusers were also depicted as moaning, begging the adults to save them from their tormentors, whom often were family or neighbours. The emotional toll on the community must have been tremendous, as they felt that Satan and his servants walked among them. The Sveg district court continue to re-examine the defendants in 1674 and 1675, but even as new accusations were added in 1674, no further confessions were made. Typical of the mass processes of the 17th century, the district court disregarded the prevailing judicial praxis and sentenced five people to the stake without a legally justified confession, and were prepared to keep investigating the rest of the defendants.131

This is not an attempt to try to explain how and why a witch craze took hold in Northern Sweden in the 1670’s but I think there is something interesting in the interaction between the investigation as a space where the truth was negotiated, and how the interaction between the children’s testimonies and the confessions “created” an uncomfortable truth for the court and the community, without a clear resolution. It can be said that the investigation and the following confessions of Gertrud and Sigrid created a reality where witches were present, abducted children and brought them to Blåkulla.132 It also created an environment where people that would in other circumstances be honest and truth-telling could be undermined by the story elements that targeted the ability to speak the truth and to confess. These narrative attacks on the defendant’s ability to speak the truth was not found in other types of court cases, and neither does the district court’s condemnation of the defendants as “hardened and now unable to confess truly.”133 It might have been one reason that the local authorities and the community threw tradition and practice out of the window, and tried alternative ways to find an acceptable narrative of the events.

130 Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 73. ”[…] öfwer hwilke barnen, tillika med barnens föräldrar högelnigen sigh beklaga och jämbr, huru desse wåldsambligen föra barnen til Blåkulla, dher dhe dhem illa handtera och aldrig få någon rooo, om nätten.”
131 Sörlin 1993, pp. 47f; STDP, pp. 87f.
132 Eilola 2012, pp. 120.
133 Ting 22, 23, 24, 25 och 26 februari 1675, STDP, pp 87.
3.7 Concluding remarks: the roles and the rhetoric of crime accusations

The accusatorial part of the judicial system, where members of the community was the actor taking the case to court was exceedingly rare in the criminal trials. Some cases might have been brought to the court this way and concealed by the nature of how the proceedings where recorded, but the fact that a couple accusatorial cases still exists stands against such an explanation. It is more likely to draw the conclusions that established members of the local community were reluctant to take each other to court with the possibility of having your neighbour killed, even though religious ideology demanded it. The responsibility was thus put on the officials whose duties of their office was to police and discipline unacceptable behaviour. The domination of local elites and public officials as the driving force behind criminal trials should be understood in conjunction with whom they accused. This will be more thoroughly discussed later on, but the distribution amongst the three “roles” of the district court is telling: local elites and officials accused, the lowest on the social ladder were accused, and the landed peasantry testified as witnesses.

The different ways defendants were accused suggests that the intent of the accusation also varied to some extent. Men like captain Sabbel fulfilled his official duty to take men under his command to the civilian court to be prosecuted for murder, but his conduct shows how he could frame two acts of homicide by drawing two very different discursive sources. The circumstances differed of course, but it leaves us with another judicial fantasy present among the men participating as accusers. The rhetoric of the accusation had at times the purpose of showing the higher courts if the prosecution wanted leniency or harsh justice as the outcome of the trial, just like the community or the court could position themselves towards mercy or rejection of the defendant. It was the start point of a negotiation of the crime, setting up the frames of which the defendant had to respond to.
4. Defendants’ narratives: crime, guilt and repentance

The previous chapters have shown that the local community existed as an assessor of the defendant’s honesty, and that the rhetoric of the accusation framed the narrative of which the defendant had to respond to. While the accusations of capital crime were performances in of themselves, the most complete performative stories of guilt, innocence or remorse can be found in the testimonies of the defendants. It was truly with the defendants where the early modern court became a theatrical stage, where guilt or innocence were performed in public in front of neighbours, kin, servants and court officials.\(^\text{134}\)

This chapter will study the defendants and their performances in the criminal trial, first by identifying the social category of which the defendants usually were belonged to, then focus on the different narrative strategies that was used by defendants when responding to accusations.

4.1 The defendants and their crimes

<table>
<thead>
<tr>
<th>By social category</th>
<th>Accused (n)</th>
<th>Accused (%)</th>
<th>Convicted (n)</th>
<th>Convicted (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local officials and elites</td>
<td>3</td>
<td>3.9</td>
<td>3</td>
<td>7.5</td>
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<tr>
<td>Officers</td>
<td>2</td>
<td>2.6</td>
<td>2</td>
<td>5.0</td>
</tr>
<tr>
<td>Parish Scribe</td>
<td>1</td>
<td>1.3</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td>Peasantry</td>
<td>23</td>
<td>30.3</td>
<td>13</td>
<td>32.5</td>
</tr>
<tr>
<td>Precarious social categories</td>
<td>50</td>
<td>65.8</td>
<td>24</td>
<td>60.0</td>
</tr>
<tr>
<td>Farm servants</td>
<td>23</td>
<td>30.3</td>
<td>11</td>
<td>27.5</td>
</tr>
<tr>
<td>Widows and widowers</td>
<td>16</td>
<td>21.1</td>
<td>4</td>
<td>10.0</td>
</tr>
<tr>
<td>Soldiers</td>
<td>10</td>
<td>13.2</td>
<td>8</td>
<td>20.0</td>
</tr>
<tr>
<td>Lappkobna</td>
<td>1</td>
<td>1.3</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>76</td>
<td>100.0</td>
<td>40</td>
<td>100.0</td>
</tr>
</tbody>
</table>

By Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>(n)</th>
<th>(%)</th>
<th>(n)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>30</td>
<td>39.5</td>
<td>23</td>
<td>57.5</td>
</tr>
<tr>
<td>Women</td>
<td>46</td>
<td>60.5</td>
<td>17</td>
<td>42.5</td>
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<td><strong>Total</strong></td>
<td>76</td>
<td>100.0</td>
<td>40</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: see appendix.

Out of 76 accused defendants, a majority were women with 46 compared to the 30 men that stood accused of serious crimes. Two thirds of the defendants were of the landless social strata or in

\(^{134}\) van Gent 2009, pp. 17f.
otherwise precarious situations, while a minuscule number of men could be identified as elites in social or economic terms. This corresponds roughly with the stratification of defendants in previous research done on the district courts in other parts of Sweden.\textsuperscript{135} Correcting for actual convictions rather than accusations did not change the ratio between elites, landed peasants and the landless in any significant way. It did however show that while women were more likely to be accused of a capital crime, men were more likely to be sentenced to death. This discrepancy does of course stem from the fact that accusations of witchcraft primarily targeted women, and were less constrained by prior social or empirical evidence to be taken up by the court.

Table 5: Defendants and accusations of capital crime, 1649–1700.

<table>
<thead>
<tr>
<th>Category</th>
<th>Farm maid</th>
<th>Widow</th>
<th>Married woman</th>
<th>Soldier</th>
<th>Farmer</th>
<th>Farm servant</th>
<th>Parish Scribe</th>
<th>Widower</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Witchcraft</td>
<td>8</td>
<td>12</td>
<td>10</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>33</td>
</tr>
<tr>
<td>Homicide</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>6</td>
<td>3</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>12</td>
</tr>
<tr>
<td>Infanticide</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Adultery</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Blasphemy</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Theft</td>
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<td>-</td>
<td>1</td>
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<td>2</td>
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<td>-</td>
<td>3</td>
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<td>Bestiality</td>
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<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Tr. speech</td>
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<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Suicide</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Abuse of priest</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Abuse of parents</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Incest</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Treason</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Prisoner escape</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>15</td>
<td>14</td>
<td>12</td>
<td>9</td>
<td>7</td>
<td>1</td>
<td>1</td>
<td>76</td>
</tr>
</tbody>
</table>

Source: See appendix.

The largest single category of defendants where farm maids, followed by widows and married women. Soldiers stood for the largest category of accused men. There are no instances of recidivists in the capital crime investigations, although one witness later reappears as a defendant. Witchcraft was by a margin the most common accusation during the period, but all were cast during the short period between the years 1673–1675, and all but four in the district court of Sveg. Homicide stood then as the second most frequent offence. Common in the 1650’s and 1660’s but no homicide was recorded after 1669. There really was not a single crime that was commonly recurring or evenly

\textsuperscript{135} See Sundin 1992, pp. 97.
prosecuted during the whole period, as most of the recorded crimes were committed only once or twice.

4.2 The Limits to the story

Accused of a crime that could put you on the execution block, the options available to the defendant was reactive and defensive by design. As I have shown in the previous chapter, the accusation framed the defence as well as the nature of the crime. To confess was to put hope in the narrative of your character (and the victim), intent and the circumstances surrounding the crime, and that the district court and the local community would construct your story as a one worthy of pardoning. To deny any wrong-doing was itself a test of your standing within the local community: would witnesses respond to your claims, would the local community defend or reject you?

A small number of people chose neither. Instead of showing up at the district court they absconded, crossing the mountains over to Norway. Several of the homicide trials noted that the defendant had briefly tried to walk over to Norway, but was either unable to or changed their mind. Lars Påhlson was condemned to death in the district court of Undersäker in 1681 for double adultery, abandoning his true wife and two children for his wife’s sister, Agnis. Interestingly enough the district court did not strongly invoke the rhetoric of incest, as it often was in the praxis of the district courts. He confessed to the adulterous relationship, but claimed that he had no hand in her decision to flee to Norway to give birth to their bastard child, and thus avoiding both trial and punishment. Lars Påhlson did not claim to feel remorse or any pleas for mercy, even though adultery was a crime where “true confessions” were sometimes performed. To avoid the trial altogether was likely a decision based on the possibility of mercy from the court and the community. Adultery and incest was quite likely to upset kinship relations and the precious neighbourly peace, and this did probably limit Lars’ (and Angnis’) possible narratives.

One category of crime that has been considered by earlier historiography to have been harshly punished and limiting in the possible outcomes was the sin of bestiality. More people were condemned and executed for this crime than for witchcraft during the 17th century. It was one of the crimes that was deemed so sinful that it was imperative to convict and execute the offender

137 Extraordinarie ting 9 februari 1681, UTDP, pp. 99.
138 Thunander 1993, pp. 197.
139 Liliequist 1988, pp. 143f.
to save his or her soul, rather to convict and pardon.\textsuperscript{140} It is not surprising that none of the three cases of bestiality contained willing confessions.\textsuperscript{141} When \textit{Länsman} Lars Nilsson proclaimed that he had brought a case of high crime to the court in Offerdal 1656, the family of the young defendant Erich Larsson had already acted in order to shield him from prosecution by bringing him illegally over to Norway.\textsuperscript{142} The prosecution determined that the rumours of bestiality were true, after the originator of the rumour, a peasant named Halfwar Engie had been pressed by the court to confess. He had initially claimed that his drunken insinuation, that he had seen the boy do something wicked in the forest was misunderstood, but eventually confirmed that he had indeed seen the boy committing “the foul deed.” Halfwar was fined 40 m.kr. for concealing a high crime and Lars Erichsson, the father of the boy, was fined an equal amount for breaching the travel ban with his son. It seems likely that the slim chance of pardon from a bestiality accusation that had Lars Erichsson sneak his son out of the country.

The theocratic doctrine that assured God’s wrath on the community, the country and the soul of the sinner for unpunished crimes was not completely hegemonic in Jämtland-Härjedalen in the 17\textsuperscript{th} century, as the reluctance of the community and defendants to let justice be served in bestiality cases continued.\textsuperscript{143} When the parish scribe Anders Persson eventually confessed to bestiality in 1686, it became clear that he had already been caught red-handed by the vicar Wellam Klangundius on the eve of the crime.\textsuperscript{144} He had begged the vicar to forgive him for his sin and wicked behaviour, and Wellam had forgiven him, asking him to give absolution and take communion three times. They further agreed that Anders and his son would help the vicar with “some labour, when appropriately needed.”\textsuperscript{145} The whole incident was eventually unearthed by rumours, as both Anders, Wellam and present servants confided with others about their contract. The court concluded that Anders and the cow was to be executed, and Wellam’s deeds to be remitted to the ecclesiastical court of Härnösand for further investigation. Although the vicar claimed that his guilty conscience drove him to discuss the matter with other members of the local clergy on how to proceed, it is quite remarkable that a clergyman would initially conceal such a crime, but the alleged dialogue between the Anders and Wellam indicates some kind of familiar relationship, that could persuade Wellam not to accuse him in the district court.

But a familiar relationship was not always enough, and the circumstances did not always let the family intervene in any significant way. Chaplain Pehr Ranklöf’s 12-year-old daughter Märta had

\begin{thebibliography}{999}
\bibitem{140} Liliequist 1992, pp. 2.
\bibitem{141} Liliequist 1988, pp.
\bibitem{142} Ting 20 November 1656, OTDP, pp. 22.
\bibitem{143} Liliequist 1988, pp. 148f.
\bibitem{144} Ting 18–20 September 1686, HTDP, pp. 145.
\bibitem{145} Ting 18–20 September 1686, HTDP, pp. 145.
\end{thebibliography}
walked in on one of the young farm servants in the stable, whom now stood accused for bestiality. The young boy, Olof Persson, was not co-operating willingly, as the records noted that “the district court had great difficulty in acquiring any straight answers from him, but when he finally admitted that he had been with the mare and tried, but had not completed the deed.” The court then questioned how a young farmhand could understand if such evil deed had been completed or not, a question Olof refused to answer, but teary-eyed asked God to save him.

Since Märta was only 12 she was not qualified as a full witness and Olof refused to give an adequate confession, the prosecution was forced to rely on other witnesses. The chaplain declined to attend the proceedings because of illness, and had not delivered any testimony to be read out. However, a soldier and a tolvman (a member of the twelve-man assembly of locally appointed lay assessors) present at the day of the crime and were ready to testify.

Jöns Granat testified that the time he had been at master Pehr, that when he [Pehr] re-entered with Olof, both of them crying, master Pehr had asked him to listen to how bad Olof had misbehaved, and Olof that he had committed a great sin with his father’s mare, and could not deny anything [of what Märit had said].

It is remarkable how Jöns Granat’s testimony had Olof confessing in a rather judicial manner, and similar to other “true confessions.” The crying and the visible feelings of remorse were themselves clear indications of guilt, as was the sentence “och kunde inte säja sig frij”. It roughly translates to not being able to explain or to deny the accusation, and was a sentence uttered by other confessing defendants. Olof contested the testimony, claiming that he had not confessed anything else than what he had already done today, that he had not completed the deed. The other witness, tolvman Erich Persson confirmed Olof’s objection.

The last effort to save Olof from the capital punishment came from his father, Per Ollsson. He told the court that he was sorry for his son’s evil deed, but asked to not send the case to the high court. He could not answer the court’s question of how old his son was, deeming it to be somewhere around fifteen, and incidentally the age of majority. This claim was investigated further and Olof was deemed to be 16 years old.

With this matter settled the district court proceeded with the verdict. Olof Persson was convicted for his grave and criminal deeds, as the court asserted to the Svea Royal Court that his defence should be disregarded and of no help to his cause, “so he could suffer his rightly deserved punishment and for others to shun and be warned.” He was to be beheaded, his body burned.

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146 Ting 22–24 oktober 1696, OTDP, pp. 123.
147 Ting 22–24 oktober 1696, OTDP, pp. 123. “Hvar till han intet willa swara, utan med tårar bad gud bättra sig.”
149 Ting 22–24 oktober 1696, OTDP, pp. 124. “[...] det han sig sielf till vählörtient straff och androm till sky och warning [...]”
on the pyre and the mare to be clubbed to death. Since Olof refused to repent and save his soul, the district court justified the sentence by referring to the deterrent effect of the capital punishment, addressing the other youths of the community.150

These cases show how role of clergy and the secular district court were not at all in fixed positions. The clergy was not always insisting on harsh theocratic discipline, and the district court moved between showing leniency and severe implementation of religious criminal justice. In 1686, the vicar initially shielded a criminal neighbour from the district court, and in the above mentioned 1696 case the clergyman did the same as he declined to attend a trial where he was the prime witness. At that time the Offerdal district court insisted on the harshest punishment, but just four years later, in the blasphemy trial the roles were reversed, and the local clergy urged for the harshest punishment and the district court pleaded for leniency.

Why was Olof so harshly judged by the court? I think one reason is that the court concluded that he had truly confessed in front of witnesses, and to perform a true confession was more than just words, it was to show remorse and a will to be rightly punished, to be reconciled with God. Going back on that made you a dishonest individual. It resembled the discourse around the “hardened” defendants of the Sveg witch trials. Though this rhetoric does appear situational and distinct to the circumstances of that particular case, it should be noted the responses from both defendant and court have similarities to one of the cases discussed in Jonas Liliequist’s doctoral thesis Brott, synd och straff from 1992.151 This case took place in the province of Uppland in 1721, and once again great emphasis was put on the matter of “completing the deed” or not. The 19-year-old farmhand had confessed to the witnesses and begged them spare him from the court, but he was eventually tried and convicted. But in contrast to Olof Erichson, he confessed with crying tears. The court still proclaimed that he was to suffer rightly and deserved for his crime, and for all to watch and take heed.152 Even if the convicted tidelagare (a person whom committed bestiality) performed a true confession, the district court would still convict and condemn him in the same way as an unrepentant criminal. The limits to the story constrained the tidelagare to die for his crimes, no matter the performance he could muster.

150 Thunander 1993, pp. 75.
4.3 “Hardened people” and the unwillingness to confess

As I have shown in the previous chapter, the absence of a true confession deeply disturbed the peasantry and the court officials, and incited a more hostile discourse by these actors. At the same time the readiness to confess diminished rapidly. Between the years 1649–1669, 78.9 percent of the defendants eventually confessed. During the 1670’s the amount of cases increased dramatically because of the witch trials, but the amount of confessions dropped to only 9.4 percent. The amount of confessions increased slightly during the remaining years, but only to 20 percent, much lower than during the middle of the 17th century.\footnote{See appendix.}

Returning to the witch trials, where all the “uncompliant” defendants became labelled as hardened people after they refused to accept the accusations that in the eyes of the community and the district court were true beyond any doubt. Religious condemnation dominated the accusations, where the defendants were accused for being sacrilegious by consorting with the devil and his minions. It is not too surprising that the defence against such accusations were mostly laden with assertions of faith and a categorical denial of the claims. Accused of witchcraft and unwilling to confess, stoic virtue outside of the performance of repentance then took place.

At the end of the 1673 witch-trials the lay jurors were asked by the court on their position in the cases. The assembly of twelve men could not free the defendants with a good conscience, since they would not let justice be done by refusing to give true confessions. The remaining defendants, deemed by the court to be “hardened people”, answered collectively that “there is no one who wants to swear for our innocence, God and the honourable authorities may do what they whatever they please.”\footnote{Ting 16, 17, 18, 19 och 20 juni 1673, STDP, pp. 73.} The same kind of rhetoric can be found in a later speech acts, as in Sigrid Swänsdotter’s response in 1674 witch trials:

This Sigrid was relentlessly urged by the honourable clergy and the district court to come to a true confession, and let the small, innocent children free, but she would not let such advice reach her heart, but declared ‘God be praised, I am true in my faith, the court can do with me anything he wants, [iagh ahr een dödh Gudh skyldig].\footnote{Ting 22, 23, 24, 25 och 26 februari 1675, STDP, pp. 86. “Denne Sigrid alfwahrligen förmahntes så af wördige prästerskapet som tingsrätten komma til sannings bekännelssse, och låta de små oskyldige barnnen bliňwa frij, men sådan förmahnigh låter hon sigh eij til hiera gå, uthan föregifwer, Gudj wari loff, jagh haar een god troo, rätten kan göra af migh hwad han täckes, iagh ahr een dödh Gudh skyldig.”}

Once again, the defendant asserted her innocence and placed her fate in the hands of God and the court’s will, implying that she had resigned herself to be ready to die as an innocent, if that was God’s will. Deliberately or not, it invoked notions of martyrdom and became a critique of the court
and the capital punishment, as they apparently were capable of convict innocents. A similar but more modest resignation to God’s will was the sami Gunnila Jonsdotters reply to the accusations that she had with the devil’s tools, *kappgand* (a sami curse), killed a chaplain, and that she had taunted the dying priest, pointing out that in contrast to him she was of good health even though she had refused to eat his bread and drink his lord’s wine. The *Befallningsman* asked Gunnila “how she could free herself from this testimony?” She responded short that “well, God knows.”

4.4 The good and true confession

Accepting premise of guilt was the starting point of several different narratives told by the defendants. Since the willing confession was a fundamental part of the Swedish judicial system, the form of the confession was as important. A good confession legitimised the courts and justified the authority of the state as a keeper of the peace and a harbinger of justice. A good confession in the eyes of the authorities was also an opportunity for the defendant to appease the court, and display himself as worthy of mercy. I call this speech act the true confession. I am borrowing the term from the speech acts where the district court demanded that the defendant would stop denying the accusations and give the court a *sannings bekännelse*, a true confession.

The true confessions in the sources were shaped around the cycle of sin, punishment and repentance. The most common expressions of the true confession were expressions of remorse and despair, crying tears, and the appeal to God and authorities for mercy. It was a performance of completely subjecting yourself to the power of the state and your God while showing deference, humility and a virtuous awakening, a good Christian accepting his fate. Crying was an essential aspect of it and a potent rhetorical tool; its connotations to emotional sincerity goes back to antiquity, the wide use of tears in political and judicial rhetoric attests to it. Although the true confession was mostly performed by homicidal men whom had acquired a settlement with the victim’s family, it was not confined to this type of crime or gender. Blaspheming farm-maids, incestuous widowers and infanticidal mothers could all feel true remorse in their hearts, cry tears and beg for mercy.

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156 Rannsakning 6 november 1665, UTDP, pp 40–42.
158 Eilola 2012, pp. 120.
159 See for example Ting 29-30 januari 1674, RTDP, pp. 87. “Och ehuru väl hon är ofta och många gånger alfvärligen så af Prästerskapet som Tings Rätten för hållen och förmante til Sannings bekännelse[…]”
161 Liliequist 2012, pp. 181f.
4.4.1 The recurring story

After this said judgement, the murderer Siul falls [on his knees], letting out a heartfelt prayer to God, then humbly to the most noble authorities for mercy and mitigation of the punishment, since he has reconciled with the plaintiffs, whom have willingly forgiven him, and in front of the court testifies that they do not want him dead but sends everything to the Royal High Court for consideration and favourable resolution.\textsuperscript{162}

This quote is from the last paragraph in a murder trial and was recorded during the Sveg autumn assembly of 1650. Siul Björnson was a young farmhand who stabbed another man to death when a dispute over one riksdaler got out of hand. He had confessed, and told the court about the evening in vivid detail. He mentioned the reasons for the quarrel, how his victim, Halfwar had acted violently and irresponsible, cornering Siul which forced him to defend himself, killing the aggressor. The story of Halfwar’s conduct was confirmed by a witness, and the local community did not contest any of the claims in the narrative of the crime. The district court summarised that the murderer had given a confession, that he had committed a great and grave sin against God and his fellow Christian, but also that his heart was hard struck and overcome with remorse and despair.\textsuperscript{163}

The court could with the testimonies in mind not free him from the capital punishment, and convicted him for intentional homicide according to the Swedish penal code and Genesis 9, Exodus 21, Leviticus 14, to be executed.\textsuperscript{164} But Siul’s plea was successful, and his sentence was converted to a fine the following year by the Svea Royal Court.

The quote highlights the form of the quintessential good and true confession, because it was performed and re-created several times in the records, at different time periods and in district courts other than in Sveg. A year later the soldier Jöns Pehrsson stood accused in the district court of Revsund for giving Jon Hemmingsson a fatal wound in a fit of drunken rage after Jon had slighted him.\textsuperscript{165}

After this said judgement, the murderer Jöns Pehrsson falls [on his knees] to a humble prayer, first to God and then to the most noble authorities for mercy and mitigation of the punishment, since he and the deceased ‘during the time he [still] lived/ had reconciled […]’\textsuperscript{166}

\textsuperscript{162} Ting (våren?) 1650, STDP, pp. 15. ”Effter denne affsagde dom, faller dråparens Siuls först innerliga bön till Gudh, sedan ödmiukeligen till den höge öfwerheet om nådhe och lindringh på straffet hälst emedan han sigh medh målsäganderne förlijckt hafwer, att de honom godh willigen tillgifwit hafwer, och nu in för rätten det bekienner, att de intet sträfwa efter hans lijff för sine personer […]”

\textsuperscript{163} Ting (våren?) 1650, STDP, pp. 15. ”R. Effter dråparens egen bekienelle, att dy werr, i en stoor och groff syndh, så emot Gudh som sin egen iämpn christn bedrefwit hafwa, ehuru wäl han den sigh hårdt låter till hierta gå och der öfwer drager stoor ånger och ruelse […]”

\textsuperscript{164} Thunander 1993, pp. 8. Refering to the laws of the Old Testament became praxis with the ordinances of Carl IX in 1608, adding an appendix to the older code of Christoffers landslag.

\textsuperscript{165} Ting 13 december 1651, RTDP, pp. 16. “Effter denne affsagede doom faller Dråparen Jöns Pehrson till ödmuk bön, så hos gudh först som sådan hos then höge Öfwerhet om nådhe och lindring på straffet, hälst emädan han och sigh med den döde ’for during the time he [still] lived/ had reconciled […]”

\textsuperscript{166} Ting 13 december 1651, RTDP, pp. 16. ”Effter denne affsagde doom faller Dråparen Jöns Pehrson till ödmuk bön, så hos gudh först som sådan hos then höge Öfwerhet om nådhe och lindring på straffet, hälst emädan han och sigh med den döde ’for during the time he [still] lived/ had reconciled […]”

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The final speech acts of the court and the defendant were similar, almost word by word to the aforementioned Sveg district court. Finally, comparing the previously mentioned case of Johan Erichsson’s “unfortunate” killing of Ingeborg Olofzdotter in 1666 at the court of Undersåker reveals another speech act that reads amazingly close to Siul’s and Jöns’ reactions to their verdicts.

After the examination and given the verdict, the murderer falls to an obedient and humble prayer with God and the noble authorities, begging for mercy and mitigation of the punishment, as the plaintiffs, the stepfather Erich Andersson from Lien and the mother, Kerstin Carlsson, now loudly pleads for him and his crime to be remitted and forgiven.

They posed their bodies in a submissive pose, prayed to God and begged the court for mercy, and the relatives of their victims had forgiven them as a good Christian would. But why did three murderers from three different courts, with three quite different explanations for their actions act in an almost identical manner in front of the district court? And why did fragments of the performance end up in completely different cases? I think this is evidence of two things: a judicial fantasy and a judicial praxis. The performance was a literal manifestation of the religious idea of how a repentant sinner/criminal should act and behave, and shaped by the court officials to convey the supposed meaning to the next level of the judicial hierarchy, the Royal High Courts. It was transposed on to defendants that performed similar acts of deference and remorse; while their sins were great they were forgivable, and their character was not deemed so dishonourable or hardened that reintegration into society was impossible. This can be assumed by the silent consent of the local community and the willingness by parents, wives and children of the victim to make peace with the murderer.

The origin of this part of the true confession were likely from a literary source, and if not introduced by court officials the most likely source would be scripture.

EN Bönepsalm/ vthi hwilken David medh suckan och tårar bekänner sina många synder/ medh hwilka han Gudh så högeln förtörnat hafwer/ v. 2. Sedan flyr han til Gudz innerliga barmhertighet om miskund och nåde/ v. 3. Frögdar sig emot sina fiendar/ som sade honom vara öfwergifwen af Gudi/ v. 9. Och vtählwar sanskyldig bättring/ v. 11.171

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169 Collstedt 2009, pp. 36.
170 Herrup 1987, pp. 166.
171 Karl XII:s bibel, Psaltaren, psalm 6.
The summary of Psalm 6 in the 1703 edition of the Swedish bible show how similar the language of the true confession closely mimicked the liturgical language. As one of the penitential psalms it likely to be known by the peasantry, and would supply the reader or listener with powerful rhetoric for a religious performance of remorse. Another possibility can be found in Cristopher Collstedt study of military notions of violence in the 17th century, in the account of a military judge Croneborgs questioning of a defendant in 1659. In these records the defendant was asked by the court if he “in his heart regretted” his deed (which he did not).172

Judging by the slight variances and common themes in less formulaic confessions suggest that the Jamtlandic peasantry was well versed in the judicial culture and in what was required of them in certain legal situations, even if they were not asked the question. This is not surprising as the Scandinavian peasantry have been described as a culture with a deep-rooted legalistic tradition.173

4.4.2 Remorse, redemption and reintegration

Performing a true confession was not only a deferent ritual to open up the possibility to escape execution, it was one of the mechanisms in place in order for the defendants to reconcile and reintegrate with the local community in the event of a pardon.174 If the defendant was showing true remorse in his heart, repented in front of God and was redeemed, the congregation was supposed to follow suit.175 When Åke Olufsson was accused of having committed single adultery with the widow Lucia Olufsson in 1661, both defendants performed a true confession even though the crime stopped being a capital offence in 1653.176 He responded to the accusations “with crying tears and a remorseful mind, confessing that he had committed this grave misdeed, and she/ kohnan/ confessed her sin in the same manner.”177 The court also noted that they had confessed freely to the crime, and that the defendants had been overcome by emotions of great remorse and despair for their sins, very much like the speech acts previously discussed.178 Assuming the changes in judicial practice were known to the defendants, it must be assumed that the performance of a true confession could be performed outside of the judicial discourse surrounding

172 Collstedt 2009, pp. 38.
173 Österberg 1995, pp. 183;
175 Lindstedt Cronberg 1997, pp. 203.
176 Sundin 1992, pp. 129.
177 Ting 7 maj, 1661, UTDP, pp. 26. “[…] Svarade han medh gråtande tårar och ångerfult modh och bekenner sin grofve missgierningh att han dedt gjordt hafwer. I lijka mätto bekiennel 
the death penalty. It was still part of the defendant’s notion of the judicial phantasy for single adultery because of the inertia of discursive fields and its re-integrative function in the punishment of unsanctioned sexual relationships.179

4.5 Confessions, honour and violence

There are six examples of the defendant’s confession narratives where the acts can be directly related to honour violence. Soldiers and peasants alike vindicated their honour with direct and violent action, often during public circumstances. The aforementioned soldier Jöns Pehrsson’s actions in 1651 is a common tale, as there are numerous examples of the “drunk and disorderly soldier”, quick to draw his blade in perceived attacks on his honour from the 17th century court records.180 Jöns answer to the question “of what reason did the deceased give him to commit this great misdeed and sin?” paints an unfortunate scene.

He was sitting with the deceased drinking one evening at Oluf Oluffson in Ammer, where the murderer in his drunken state demanded from the farmer that he would finally [be allowed to] drink from the pitcher, at that the farmer answered no, he would not answer for more than half of it, and when the soldier kept insisting he added: we are not equally strong drinkers, since the soldier is like [a] dog, he does not care about what he drinks. At that the soldier jumped up and stabbed the sword through his chest from an angle, after that the farmer did not live longer than three days.181

“The murderer’s tale” explained to the court that his actions were unpremeditated and the deadly outcome unforeseen, as it was a response to his friend’s insult, cast at him in a public environment. Three witnesses confirmed that Jöns and Jon (the victim) had not argued or been in dispute over anything else that evening other than Jon’s insult at him.182 The insult itself was not uncommon, although likening someone with a dog was more associated with honour, as in “honourless dog.”183 This might also be how Jöns interpreted the insult, and not just a quip about his drinking habits. And from what is known about masculine honour in the 17th century, an attack on someone’s

181 Ting 13 december 1651, RTDP, pp. 16. “[…]Att han medh den döde satt och drack om en affton hos Oluff Oluffson i Ammer, där som dråparen uti sitt fylleri begärte aff bonden att han äntelitt thet skulle dricka ut hur kannan, då swarade bonden icke han sighe icke orka meera suara än till halffua kannan. När då soldaten lenge örkadhe der upå, suaradhe han yterligare: Wij äre icke bådhe lijka starka til at dricka ty soldaten är som hundh han geer inthe om huadh han dricker. Der medh språngh soldaten op och rände wärrian snet igenom bröstet på honom, der efter lefed icke bonden längre än som 3 dagar, […]”
182 Ting 13 december 1651, RTDP, pp. 16, ”[…] witnar thet och nu at den döde och Dråparen icke mehra hadhe att twistra eller träta om, allenast Ambonden skulle och hafta fel detta ord / hwadh de hadhe sigh emillan om drickande och detta/ skälsoordet berygger att de icke ett ringaste ordh förhafdes den affton men dess för uthan fått inthe.”
183 See for example Sandmo 1999, pp. 107.
honour was supposed to be retaliated against immediately to avoid dishonour.\textsuperscript{184} It should also be noted that Jöns Pehrsson’s story was not told to excuse his acts as legitimate, it was to explain his intent understandable to the court and the peasant assembly. This is common to almost all the cases of honour-related violence in the studied records.

There was a visible contradiction between the notions of justified violence concerning male honour and the judicial discourse around illegitimate violence. As I have previously shown, Jöns Pehrsson’s recorded confession and performance in front of the court was laden with Christian symbolism. Virtue and repentance was used because of his illegitimate use of violence, even though it is clear the audience was implicitly supposed to understand why he acted the way he did. Jöns Pehrsson’s testimony is not the only case showing this contradiction. Pedher Olufsson was not present at his initial prosecution at the Undersåker winter assembly of 1654, but a story collaborated by him, his victims and the victim’s family was instead presented by the parish priest. He told the court that the now deceased Erik Mårtensson had gotten into a fight during a wedding, and for undisclosed reasons spoke ill of Pedher in front of his son, Carl Peddersson whom in turn told his father about it. The priest continued that:

\textit{[…]} when Erik Mårtensson came home, Pedher Olufsson asked him why he spoke ill of him behind his back, since he otherwise should as a good neighbour speak well of him and his name, Erik replied that he stood for what he had said, Pedher Olsson[[! then grasped a birch harrow and hit him over the temple by his eye in such a way that he had to take to his bed, and lived only from Thursday to Monday evening. However there were no visible wound or a crushed skull but a small bruise under the eye.\textsuperscript{185}}

The themes of the crime narrative are similar to Jöns Pehrsson’s. The insult had been uttered in public, they were familiar, and the violence was an act of un-premeditated vindication of honour. What sets Pedher Olufsson’s case is apart is that it can surmised that the narrative of the crime had likely been extensively negotiated between the participants of the trial before it was presented to the court. This is of course true for all of the cases where the defendant and he plaintiffs had reconciled beforehand, but since the defendant was absent other members of the community took upon themselves to “confess” and ask for mercy on his behalf. Not only was it the parish priest who retold the event, ascribing Pedher no ill intent and lending the honour of his office to the truthfulness of the story, it also implied that his victim had broken social norms about being a good

\textsuperscript{184} Liliequist 1999, pp. 188f.
\textsuperscript{185} Ting 15 december 1654, UTDP, pp. 19, “[… ] och altså nähr han Erik Mårttensson hem kom, hafuer Pedher Olufsson honom tillfrågat, huarföre han honom i lagh baaktalar, der han elliest som en godh granne bordhe hans nampn i beste mätton befordo da hafuer Erik suarat sigh willia bestå huadh han talat hafuer, då hafuer beste Pedher Olsson optagit een biörckskatha och nhonom ofuer tinningen vth wedh öga slagit så att han der aff mäst sengjen tagha, och lefde allennast ifrå torsdags afftonen och intill måndags afftonen. \textquoteleft\textquoteleft Doch syntes på honom icke något skår heller hufuudet krossatt [?] uthan allennast lijet blått under ögat.\textquoteright\textquoteright"
neighbour, slandering the defendant behind his back. But the most impressive performance of the court case was made by the widow and son of the Erik Mårtensson, where they made it perfectly clear that the victim and his family had reconciled with the murderer's family, only wishing for peace and an end to the bloodshed within the community.

Erik Mårtensson’s wife and son Jacob Eriksson was asked if they would ask for Pedher Oluf’s life, she as well as the son said that they would not, and offered Pedher Oluf’s wife her hand, and asked the case to be given unto God’s and the authorities hands, since Erik Mårtensson himself from his deathbed had forgiven Pär while he was begging him for forgiveness, and humbly asking if there is possibility for him to be pardoned, she could never strive for his worst.186

Pedher Olufsson’s crimes where forgivable in the eyes of the community but his presence was still required to complete the cycle of sin, punishment repentance, although he was already forgiven for a crime that he was still not convicted for. Pedher finally appeared in front of an examination by the district court six months later, in the summer of 1655, and was presented with the previous testimonies of the trial. He was asked if he would dispute the narrative told by the witnesses, and answered that he could not add a single word to the testimonies, confessed his guilt “with crying tears and a remorseful mind,” and exclaimed with “despair in his heart that it was what had happened, God help him.”187 He was condemned to death but the appeal for mercy was accepted by the Svea Royal Court, and he was pardoned on 12th of November the same year.188

The most important aspects of the defendant’s crime narratives seem to have been character and intent. These men had acted with an illegitimate amount of violence, but it did not necessarily reflect negatively on their character; they and the victims had clearly acted within one of the articulation fields of the rural honour system, which was at least understood if not fully accepted by the peasantry.189 In these stories, violent masculine honour seems to have been the customary approach when dealing with indignities in everyday life, but completely subordinate to the religious discourse used in the presence of the court. As Anton Blok suggest, that violence is never committed in a complete social vacuum. It is instead the results of interwoven social aspects like cultural notions of honour and masculinity, and interpretation of language, body language, and

186 Ting 15 december 1654, UTDP, pp. 19, “Tillsportes bete Erik Mårtensons hustru och son Jacob Eriksson om de willie stå efter bete Pedher Olufz lîjf, då svaradhe hon så väll som sonen, sigh icke dech göra uthan rechte Pedher Olufz hustru handhen och heem stelste saaken vthi Gudz och öfferheketens hender, \ helst efter Erik Mårtensson stelff när han på senngien lågh och Pår dher honom om förlåtelse badh, efterlekt / der empte ödmiybelgen begierandess [fol. 65] att om möjeligit vore och han benädhes kunne strefuer icke hon efter hans wersste.”

187 Rannsakning 14 Augusti 1655, UTDP, pp. 20. “Bleff opläset, föreskreffne 1654 åhrs ransaakningh och tillsporde han bete Pehr Oluffson om \han hade något före bähra/ \att det icke/ så tillgångit war med dräpet som berättat och wittnat åhr, hwar till emot han icke det ringaste ordh hadhe eller kundhe \emot / såja kundhe det ringaste ordh uthan bekenner han för den skuldh altså \medh grätando tårar ett ångerfult modhi och bedråfvedt hierta, / wara tillgågse skiedt och händt som \det (Gudh bättre)/ införd fatt står uthi ransaakninghen.”

188 Ting 17 December 1655, UTDP, pp. 21.

189 Sandmo 1999, pp. 105f.
posture. Certain social interaction had violent acts as a legitimate response amongst some of the peasantry in Jämtland. Defending your honour with violence to protect your standing amongst your peers was a cultural act, communicating that you were an honest man. It can be understood as the same cultural framework in which the acts of hemgångsbrott were committed and interpreted by the local community.

4.5.1 Honour, virtue and popular duelling culture

Another typical articulation field for masculine honour was the duel. Earlier research has pointed out the tension between the Swedish nobility’s’ notions of masculinity, honour and social prestige and the state’s notion of the ideal citizen. The act of defending your honour was culturally tied into duelling culture and direct violent retaliation was key to defend your masculinity. Duelling between nobles became a concern for the authorities in the latter part of the 17th century, and surviving duellists were condemned to death in an effort to discourage the practice and to discipline the aristocracy.

The almost complete absence of nobility in Jämtland-Härjedalen did not hinder violent, duel-like interactions from taking place amongst the peasantry. The aforementioned Siul Björnsson did not only confess truly and with great remorse to have killed a fellow Christian. Siul’s narrative of his crime pictured the victim Halfwar Knutsson as a brash, violent man, and more importantly, he tried to instigate a duel over money.

When they had been seated for some time into the evening at Jöns Oluffson in Bye, drinking until they were fully drunk, peace did not last and their bickering grew until Halfwar finally sprung up from the table, ran out onto the yard and called Siul out to fight him, which he [Siul] denied him. [Halfwar] was so agitated that he re-entered the house for a second time, and started to berate him by calling him Skiälm, thief, and other similar things, and if he was to show himself better than that he had come out and fight him, then he threw off his shirt inside the house and started to growl and howl.

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192 Liliequist 2009, pp. 127f.
194 See Spierenburg 1998, pp. 103
195 Ting (höst?) 1650, STDP, pp. 15. ”När de nu en rumb tijdh in oppå afftonen suttit hafwa, hos Jöns Olufsson i Bye, och sigh druckit wäl fulle druckne, kunde sämian icke längre räckia till, uthan det bar till att ordkastas ju längre iu mehr, intill dessa Halfwar på det sidsta sprangh op ifrån bordet, uth på gärden och maante Siul uth att slås medh sigh, hwilket churu wäl han en längh stundh sigh förvägrade, föriffrades han lijkwäl om sijd, att Halfwar andra gången kom in i stugun, och begynste skällia honom för skiälm, tyff och annat sådant, och der han ellenst bättre wore, skulle komma uth och slås medh sigh, klädde aff sigh träjon i stugun och romoradhe iämmerligen.”
The host of the evening, Jöns Olufsson confirmed the murderer’s tale and continued the story up until the ending. He told the court that Halfwar had grabbed his throat with both hands in “full ijfwer och furie” when Jöns tried to separate the two combatants, but since he was slightly stronger than Halfwar he got the upper hand of him until his wife separated them.

Then Halfwar ran up to Siul and grabbed his hair, by then Siul grabbed a knife and gave him the killing wounds, the first one in the left shoulder, the other one in the midriff and the third in the chest, and by then they were separated by the host. And when the blood flowed at its greatest from the dead, Siul the slayer ran away as quickly as he could.\textsuperscript{196}

Siul’s and Jöns’ collaborate stories are a prime example of this ambivalence towards violence, where honour and virtuous Christian ideology seems to encompass different spheres of existence. Halfwar was depicted as consumed by his rage and so eager to vindicate his honour that he gets himself killed in the end. Siul on the other hand tries his best to avoid violence, and does not act to vindicate his honour, as his only violent act is purely out of self-preservation. It does indeed read as a moral story.\textsuperscript{197} The case show some interesting similarities in the records of “breaches of home peace” studied by Karin Hassan Jansson. Also here a tendency to depict the defendant as declining to fight and the aggressor as rash and uncontrollable was found.\textsuperscript{198} Maybe the true confession also directed which details were more readily told by defendants’ and witnesses? Since the peasantry was likely to be well-versed in what kind of details would produce a more well-meaning (or damaging) crime narrative for the defendant, the public transcript of the court records must have conformed to the dominant notions and ideals that the peasantry perceived to of the elites, at least to some extent.\textsuperscript{199} It would explain the dissonance between the acts within the retold crime narratives and the narrative performed at the district court.

But if this was the case it was still not a universal characteristic of behavior in criminal trials. A few defendants confessed plainly without being noted as performing the true confession, and one defendant argued that his violent acts were justified. Oluf Anderson, the soldier previously discussed was like Siul Björnsson challenged to a duel by his victim over slighted honour, but his conduct and the judicial discourse stands on stark contrast to Siul’s. Oluf was deemed as an aggressor and an irresponsible participant in the crime. If his participation in the records was an honest recreation of his demeanor in front of the court it does suppose that there was some

\textsuperscript{196} Ting (höst?) 1650, STDP, pp. 15. ”Sådan sprang Halfwar och fick Siul i håret, der medh fattade Siul till en knijff och gaff honom sine dödes såår, det förste i den wänstre axlen, det andra i wekelijfwet och det tredie i bröstet, hwareffter de då omsijder blefwe åthskilde aff huswärden. Och när blodet rann som aldra mäst, af den mördade, rymbde Siul, skademannen, medh det forteste han kunde af wägen.”

\textsuperscript{197} Aalto, Johansson & Sandmo 2000, pp. 216.

\textsuperscript{198} Jansson 2006, pp. 452.

\textsuperscript{199} Scott 1991, pp. 4.
freedom for an actor to create his narrative, and it suggests more strongly of a multitude of values that was outside of the ones presented in the judicial discourse.200

4.6 Confessions and the supernatural

The widower Olof Olofsson was accused in 1650 for having a sexual relationship with his second cousin Elisabeth Jonsson, a lunatic from Goaxsiöö.201 Olof confessed to the “grave misdeed and sin”, but claimed that he had been cursed by a (now deceased) Sami warlock when he evicted him from his land. He then told the court that he felt remorse in his heart begged for mercy to God and the noble authorities.202 Blodskam (incest, lit. blood shame) was one of the gravest sins but many of the relationships that the district courts counted as dubbel hordom and a capital crime was not even mentioned in the appendix of the law code, and when these cases reached a Royal High Court it was invariably mitigated to fines or thrown out.203 This was also the case here, as the court mitigated the penalty to a fine of 40 silver Daler for Olof. Elisabeth was to be publicly birched.204

Though short in length this case exemplifies another recurring narrative aspect of confessing crime in 17th century Jämtland, namely the supernatural roamers. I have already discussed in sections 4.5, 4.6 and 5.5 how rootless and wandering people was a recurring anxiety for the peasantry, often linked with rumours of magic which preceded extreme measures by the local community. These individuals became the prime suspects of magic or victims of extra-judicial killings, and it is not surprising that stories of the supernatural were also manifested in the stories told to explain guilt. Olof Olofsson was not the only defendant who blamed his misdeeds on mysterious wanderers cursing their fate. Karin Larsdotter whom under pressure confessed to being a witch at the Undersåker district court in the autumn 1673 told the court a similar tale. She confessed to have been “seduced and deceived ten years ago by a widfahringspiga (wandering farm-maid), which allowed Satan, whom she calls his master, to take control over her more and more,” a story she then repeated in a second examination in 1674 before her conviction, to suffer the capital punishment.205 Other confessions of witchcraft incorporated the narrative of being seduced in their youth by a relative. The two initial confessions in the Sveg witch trials both emphasised blood ties in the initiation to the evil ways.

201 Ting 26 November 1650, HTDP, pp. 12.
202 Ting 26 November 1650, HTDP, pp. 12. ”Kan eij neka till denna grofwa missgierningh och syndh. Ångrar aff hierrat och begärer nåder hos godh och höge öfwerheten.”
203 Thunander 1993, pp. 101.
204 Ting 28 November 1653, HTDP, pp. 18.
205 Ting 3 november 1673, ting 1674, UTDP, pp. 76, 79.
The widow Gertrud Jonsdotter about 50 years of age, after diligent work have confessed with crying tears to have deceived her little daughter to the evil ways, taken her to Blåkulla, claims that she was seduced in her youth by the old farm maid Gunnilla Persdotter in Ytterbergh and Högen, whom shortly afterwards died.\textsuperscript{206}

Gertrud Jonsdotter confessed to have deceived her own daughter, and like Karin Larsdotter by a farm maid. Sigrid Erichsdotter did on the other hand not only confessed to have deceived her own daughters, she also claimed that it was her own mother whom had in turned made her a witch when she was young.\textsuperscript{207} When Kerstin Nilsdotter confessed the following year in Sveg, family ties were now part of the discourse around witchcraft.

She apologised with crying tears, that in her youth was seduced and deceived by her neighbour Gertrud, a farm maid in Glöta village, whom passed away a few years ago, and whom was related to her, but she will not confess against or turn in any of her now living relatives.\textsuperscript{208}

It does seem like the witch trials in Sveg judged blood ties as incriminating, because of the confessions and as several of the accusations were cast against three families where all members were suspected of witchcraft.\textsuperscript{209}

4.7 Confessions, ignorance and foolishness

All crimes could not be discussed in the context of honour or supernatural intervention. Some defendants did instead claim f\textit{å}kunnighet, meaning ignorance of the gravity of the crime or simple foolishness. Performed with the true confession, it was a presented with a deeply submissive language, and focused even more on the remorse of the defendant. The submissive rhetoric together with the fact that f\textit{å}kunnighet was claimed when the discourse of the particular crime was especially condemning suggests that it could have been a last resort for the defendant when other roads were closed off. Lack of judgement and foolishness have previously been noted as being

\textsuperscript{206} Ting 16–20 Juni 1673, STDP, pp. 67. “Änkian h. Gertrud Jonsdotter om sina 50 åhr, omsider effer använd flijt och arbete, bekänner med gråtande tåhrar hafwer bedragit sin lilla dotter Sigrid på den onda wägen fördt henne till Blåkulla, föregifwandes uti sin ungdom wara låckader af den gambla pijgan, Gunnilla Persdotter i Ytterbergh och Högen, hwilken strax efter dödde.”

\textsuperscript{207} Ting 16–20 juni 1673, STDP, pp. 68, ”Effter långsampt och trägit arbete, så af wördige prästerskapet som rätten, hafwer gl. Sigrid Erichsdotter om sina 70 åhr, omsider kommit \textbackslash till/ denne bekännelse, at hennes modarer h. Ingrid Erichsdotter, som för 40 åhr sedan dödde, hafwer uti sin ungdom bedragit sigh och lärdt rida til Blåkulla och följdt henne medan modrox lefde altijd tijt.”

\textsuperscript{208} Ting 23-25 februari 1674, STDP, pp. 80. ”Med gråtande tårar sigh beklagade, vara i sin ungdom läckader och bedragin af sin granpiga dher i Glöta by, gl. Gertrud bed, som för några åhr sedan genom döden afgick hwilken och något war i slächt med henne. Men widare om sin slächt, som för tiden lefwa, eller någon annan, eij will bekänna och oppenbara.”

\textsuperscript{209} Tegler 1998, pp. 135ff. Tegler concludes for example that it was essentially only age and gender that contributed to the risk of being accused of witchcraft during the 1670’s.
grounds for mitigating the punishment in the discourse around infanticide, but this rhetoric was used by male and female defendants in several different types of crime investigations to explain their behaviour.210

Table 6: Claims of “fäkunnighet” in defendants’ speech acts, 1649–1700.

<table>
<thead>
<tr>
<th>Year</th>
<th>Crime</th>
<th>Defendant</th>
<th>Pleading</th>
<th>Verdict</th>
<th>Härad</th>
</tr>
</thead>
<tbody>
<tr>
<td>1650</td>
<td>Infanticide</td>
<td>Farm maid</td>
<td>Denial</td>
<td>Inconclusive</td>
<td>Undersåker</td>
</tr>
<tr>
<td>1650</td>
<td>“Förmädeligt språk”</td>
<td>Peasant</td>
<td>Confessing</td>
<td>Acquittal</td>
<td>Sveg</td>
</tr>
<tr>
<td>1661</td>
<td>Treason</td>
<td>Peasant</td>
<td>Confessing</td>
<td>Capital</td>
<td>Undersåker</td>
</tr>
<tr>
<td>1662</td>
<td>Infanticide</td>
<td>Soldier, farm maid</td>
<td>Confessing</td>
<td>Capital</td>
<td>Hammerdal</td>
</tr>
<tr>
<td>1666</td>
<td>Infanticide</td>
<td>Unmarried woman</td>
<td>Confessing</td>
<td>Capital</td>
<td>Undersåker</td>
</tr>
<tr>
<td>1681</td>
<td>Violence against</td>
<td>Second. lieutenant</td>
<td>Partly</td>
<td>Capital</td>
<td>Revsund</td>
</tr>
<tr>
<td>1696</td>
<td>Bestiality</td>
<td>Farm servant</td>
<td>Partly</td>
<td>Capital</td>
<td>Offerdal</td>
</tr>
<tr>
<td>1697</td>
<td>Double adultery</td>
<td>S. lieutenant, married woman</td>
<td>Confessing</td>
<td>Capital</td>
<td>Hammerdal</td>
</tr>
<tr>
<td>1700</td>
<td>Blasphemy</td>
<td>3 Farm maids</td>
<td>Confessing</td>
<td>Capital</td>
<td>Offerdal</td>
</tr>
</tbody>
</table>

Source: See appendix.

One of the defendants where the farmer Erick Tofwesson who performed this kind of speech act after he was caught red-handed for treason. He had been trying to convince a couple of soldiers to desert their posts and join another Swedish deserter in the pay of the Danish king, but the soldiers themselves conspired with their officers to arrest the man instead. The deserter nicknamed big Swen had sent the defendant a letter over the border, which asked him to talk with some of his old friends in the army, and to tell them that they should join him in Norway for the better salary. According to his captors, he had mentioned this letter to a couple of soldiers, and discussed with them how he could help them traverse the mountains over to Norway. They accepted his offer and settled on a date for departure, then alerted their commanding officers of the plot. It was decided that the officers would follow the soldiers from a distance, and walk in on them while they were discussing the details of the desertion. After three extensive testimonies against him, the district court turned towards the defendant.

210 Bergénlov 2004, pp. 332.
The aforementioned examination was read out and the defendant, farmer Erick Tofwesson was asked by the lower court if he had any reasons or arguments to present against the aforementioned cavalryman’s testimony? And there he stood sorrowful, sighed heavily, and confessed that he had (God forgive) a great and grave mistake committed, in that he had sinned against God and his most noble authorities; and that everything with its foolishness, harmlessness and ignorance had happened like that […]^{211}

It appears that the circumstances of the case left Erick Tofwesson without much performative space to move between. The local community did not participate in any way, as no witnesses other than soldiers testified or asked about the case. But Erick Tofwesson’s confession did incorporate components of the theocratic doctrine of punishment as he declared that he had committed great sin against God and his true superiors. It was a performance of virtuous remorse and a true confession similar to the previously discussed murderers and adulterers, and like them he insisted that his actions were not taken in wicked intent. He was in his own words foolish, harmless and ignorant of the ramifications. The Svea royal court accepted the narrative of foolishness, declared that he should be punished for his grovare förseende (grave mistake) for others to see and be warned, but mitigated his sentence to a fine and running the gauntlet nine times.^{212}

4.7.1 Foolish words, serious consequences

Foolishness was also used to excuse dangerous speech. The farm maid Kirstin Pehrsdotter confessed for example in 1650 that she had indeed confided with the two “old wives” Anna Erickzdotter and Märit Jönsdotter, that she had given birth to a bastard child and thrown it in into the fire, but in front of the court she claimed that it was not really true, that she would not lie upon herself and that she had said those words in “weakness and ignorance” without elaborating any further.^{213} Her master Christiern Larsson was one of her accusers and claimed that she had answered defensively and suspiciously when he had confronted her with the rumours of her having an illegal relationship with a Norwegian farmhand, but now she confessed that she had said things out of weakness in front of her master, claiming her intent was to get away from him as she was driven to eat bark and scraps to survive under his roof. Since the women and the rumoured father

^{211} Extraordinarie ting och rannsakning, 4 september 1661, UTDP, pp. 31. ”Uplästes ofwanskrifne ransaackning och än ytterligare tilspores af dhen nidrige rätten nog bete \bonde/ Erick Tofwesson, om han hade någre skäel och argument att förewända emot ofwantalde ryttares bekännelsse? Tå stodh han sorgbunden suckade och bekände (tywer Gudh bättere) en stoor [fol. 35v] och grof mjüssgerning begänget hafwa, i det han hafwer syndat emot Gudh och \sin/ Höga Öfwerheeten; och dhet alt genom sin enfaldighet, menlössheet, och fäwijsko skeedt vara […]”

^{212} Hovrättens resolution 6 december 1661, HLA/GbLL/DIIa/4, Fol. 106f.

^{213} Ting 27 september 1650, UTDP, pp. 13. ”Tösan kunde icke neka till detta sigh hafwa sagdt, uthan säger sigh hafwa sagdt aff sweague och få kunngheit.”
had not attended the district court hearing the case was adjourned to the next assembly. The conclusion to this case remains unknown as it was not resumed in 1651.

One peculiar case of “dangerous speech” was prosecuted in Sveg in the spring of 1650. The peasant Swän Pehrson of Lilleherdal was accused by the befallningsman Nilss Larson Wargh for bringing a “shameful mouth with wrong and harmful words” to a gathering at his son Halfwar Swänsön’s house. Since the “wrong and harmful words” were not recorded, it is impossible to surmise if it was a case of simple slander or something more serious, like blasphemy or treasonous speech. But Swän Pehrson’s reaction to the accusation suggests that it was more than a fine on the line for him.

Swän Pehrson conceded to have said those words and could only yield and flee to the prayer, confess and regret, that out of drunkenness and feeble-mindedness, and now begs the befallningsman for peace, taking back his words and promises to never undertake such foolishness again. Both the vicar and the peasantry asked for peace, that the befallningsman for this time this thoughtless crime and offence forgive.

Since it was not the custom to perform a true confession in cases of defamation, Swän Pehrsson must have felt obliged to do this on the grounds of the possible serious consequences of a conviction, or to show public remorse and so to be allowed to reintegrate with the community. This plea was also accepted, since the local community with the vicar at head of it showed that Swän’s crimes were indeed forgivable to them. But the fact that the befallningsman could declare the case dismissed since the peasantry had pleaded on his behalf, and without referring the Svea Royal Court suggest that it still might have been a lesser crime, or that judicial practice was consciously sidestepped in order to produce the preferred outcome.

The speech act of claiming foolishness became further concretised when the three farm maids Gertrud, Rågiärd and Brijta stood accused for sing a blasphemous and vulgar rhyme at the district court of Offerdal in the spring of 1700. They had initially claimed that they had only sung the vulgar parts and not the more blasphemous, but this defence soon crumbled under pressure from the court and the clergy. One after another they confessed to all the accusations. Gertrud Bengtzdåttér and Brijta Larsdotter regretted their conduct and begged for mercy, but Rågiärd

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215 Ting våren 1650, STDP, pp. 14, ”Swän Pehrson om han sin ordh tillstodh som han sagt och fält hafwer, kan ej undfälla, uthan flyr till bönen, bekänner och ångrar, ded wara af öhlsmål och hufwudl schwgehet, och nu beder befallningsmannen om wänskap, sin ordh rättar och igenkallar, utholwandes sigh aldrigh mehra sådant dårskap företaga. Kyrkioherden och allmogen bodo och begärte wänskap att befallningsmannen wilde honom denne gången sin obetänckte brott och förseelse tillgifwa.”
Jönsdåtter told the court that she did not know better. The district court then presented the accusations to the defendants after their confessions:

In considering what have been confessed, when these farm maids were seriously confronted with their great thoughtlessness, that with grave sin and mockery used ugly and indecent words, then dared to use and abuse the holy name of the great and almighty God and his gracious forgiveness, they all with tears regretted that they out of foolishness had done these things, begging for this one time for forgiveness, promising that they would never again stand in front of the court.²¹⁶

This use of foolishness is similar to Erick Tofwsson’s, as Gertrud, Rågiärd and Brijta tried to convince the court that their actions were thoughtless, but that they were harmless in their foolishness. It seems to have resonated well with the district court’s understanding of the crime. The court described the crime as stora obetänksamhet (a great thoughtlessness), and in stark contrast to the local clergy (who demanded harsh justice) conceded that although the lower court could not free them from the capital punishment, it pleaded on the behalf of them, inquiring if not the Royal High Court could find mercy for the delinquents in the light of their true and tearful remorse and willingness to repent.²¹⁷

4.8 Concluding remarks: the ways of asking for mercy

Some final conclusions can be drawn from the findings of this chapter. First, it seems that the accusation of capital crime in Jämtland was most likely pointed at someone from a social category linked with precarious living conditions. Landless servants and soldiers together with the elderly or unfortunate widows were accused and convicted for capital crime almost twice as often as the general peasantry. It should also be noted that peasants and those in precarious living conditions were not only likely to be accused, roughly half of the accusations ended up with a conviction. The few elites that were prosecuted were on the other hand all convicted to lose their lives. The sample size of 71 prosecutions is of course too small to say anything for certain, but it could suggest a couple of things. Like peasants were reluctant to accuse their own for serious crimes there might have been a reluctance from the local officials to accuse local elites. Or that local officials were more willingly to prosecute accusations against non-elites with less evidence. A final possibility is

²¹⁶ Ting 11–12 and 14 maj 1700, OTDP, pp. 190, ”I anledning af detta som således tilstått är, blef desse pijgor allfwarl. föreställt deras alt för stora obetänksamhet och härwijd föröfwade grofwa synd, att dhe uti deras giäckerij, och ibland så slemma och otacktige ordeformer, sig understådt inblanda och missbruka dhen stoora och allmächtige Gudens helige namn och dess nådige förlåtelsse. Der emot dhe alla med tårar beklagadhe, att dhe detta af oförstånd hafwa gjordt, bediandes dhenne gången om förskoning och utfrowade at de aldrig mehra skulle komma igen.”
²¹⁷ Ting 11–12 and 14 maj 1700, OTDP, pp. 191, ”Dock detta med underdånödmiukaste wördnad dhen högl. Kongl. hofrätten understält, och om icke desse delinquenter etter som de wijste sig booffärdige och sin synd med tårar begråta med nåder kunde blifäva ansedde till lindrigare straff.”
that the three prosecuted elites, two officers and a parish scribe, did not enjoy a good relationship with their peasant neighbours and local community. Thus they would muster a less enthusiastic defence of their honour, and testimonies confirming their narratives would be harder to acquire. It would certainly be rather ironic if the few elites prosecuted in Jämtland-Härjedalen suffered similar obstacles in creating a favourable narrative as those of much lower social status.

There were a couple of related performative and rhetorical acts that constituted something that can be called a *true confession*. Some confessions bore only fragments of this, others were identical to each other. When confronted with serious accusations, defendants responded in several different ways. A few defendants fled justice. But there was also a rudimentary understanding amongst the peasantry, a judicial fantasy of what constituted a true confession that some preconditions had to be fulfilled and what it would achieve. Defendants frequently used religiously loaded rhetoric to frame the confession as a matter of virtue, a Christian whom had sinned and now asking God for mercy, but also to claim to innocence. The symbolism of virtue could both work as a performance of deference and as a critique of the legitimacy of the judicial system. What the court scribe would interpret as the defendant making a true confession worthy of pardon is unknown, but he ascribed symbolism and meaning that the Svea royal court would understand. These narratives were also made with the local community in mind, and often played into the tradition that Seppo Aalto et al has described as local communities passing on “traumatic events – killings – and reshape them into morally ‘correct’ narratives.”

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5. Witnessing serious crime

It is hard to overemphasize the importance of the witness in the Swedish 17th century court trial. While physical evidence was occasionally part of the investigation of a serious crime, procedure was inquisitorial and accusatorial, basing the verdicts primarily on testimonies and examinations of the participants.219 The system operated entirely on the precondition that witnesses testified, to confirm either of the presented narratives by accusers and defendants, or to gauge the general honesty of the participants, other witnesses included.220 This chapter will deal with the different roles witnesses took in serious crime investigations and how they contributed to the negotiated narrative. I will start by surveying the social categories of the recorded witnesses, to answer the question of who could participate in the negotiation of the narrative. I will then describe the judicial practices that the witnesses could partake in, and how they told their stories.

5.1 The participating witnesses and their roles

Table 7: Social category and gender of witnesses in (n) and (%), 1649–1700.

<table>
<thead>
<tr>
<th>By social category</th>
<th>(n)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local officials and elites</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constables</td>
<td>10</td>
<td>6.4</td>
</tr>
<tr>
<td>Tolvmän</td>
<td>9</td>
<td>5.8</td>
</tr>
<tr>
<td>Clergy</td>
<td>9</td>
<td>5.8</td>
</tr>
<tr>
<td>Officers</td>
<td>3</td>
<td>1.9</td>
</tr>
<tr>
<td>Sexman</td>
<td>1</td>
<td>0.6</td>
</tr>
<tr>
<td>Peasantry</td>
<td>81</td>
<td>51.9</td>
</tr>
<tr>
<td>Precarious social categories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soldiers</td>
<td>14</td>
<td>9.0</td>
</tr>
<tr>
<td>Farm servants</td>
<td>9</td>
<td>5.8</td>
</tr>
<tr>
<td>Child</td>
<td>1</td>
<td>0.6</td>
</tr>
<tr>
<td>Kohna</td>
<td>1</td>
<td>0.6</td>
</tr>
<tr>
<td>Collective categories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The peasantry</td>
<td>13</td>
<td>8.3</td>
</tr>
<tr>
<td>“Relatives”</td>
<td>3</td>
<td>1.9</td>
</tr>
<tr>
<td>“present witnesses”</td>
<td>2</td>
<td>1.3</td>
</tr>
<tr>
<td>Total</td>
<td>156</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Gender</th>
<th>(n)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>97</td>
<td>62.2</td>
</tr>
<tr>
<td>Women</td>
<td>41</td>
<td>26.3</td>
</tr>
<tr>
<td>Collective</td>
<td>18</td>
<td>11.5</td>
</tr>
<tr>
<td>Total</td>
<td>156</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: See Appendix.

In the 71 cases of serious crime in the period between the years 1649–1700, 156 witnesses can be found the records.\textsuperscript{221} 18 of these participants were of collective categories, as the peasantry, present witnesses or relatives of the victim. That leaves 138 distinct and named individuals, and depicts unsurprisingly a patriarchal and hierarchical rural society. Men were more than twice as likely to be called as witnesses, and while local office-holders were well represented, the landless and otherwise low on the social ladder were much less common. As defendants they made out two thirds, and as witnesses only one third. Out of all the witnesses, 27 were family members or otherwise related to the defendant.

This stratification between gender and social strata can be interpreted in several ways, but I think it is an indicative of the formal and informal ways of exclusion based social prestige, of “undesirable” witnesses and what the court, defendants and plaintiffs understood as desirable witnesses or individuals with a strong local presence. It does not reflect in what social contexts serious crime were committed, as this is more readily done by the social composition of defendants, and since actual eyewitness reports of the committed crime were often not the purpose of the depositions. As in the rest of Sweden the formal exclusion of women from being a witness were ignored, as especially married women were allowed to participate in the proceedings.\textsuperscript{222}

### 5.2 Testimonies, rumours and reputation

Criminal cases excluding homicide were usually dependant on witnesses or hearsay to be brought to court. Local state officials and Clergy brought several accusations of capital crime based on roop och rykte, and forced the sources of these rumours to stand in court to be examined, so it could be determined if a crime had been committed. Bringing rumours of sexual crime to be thoroughly examined were motivated by the Hammerdal clergy in 1694 as this:

"Johan Wijpa is disreputable and rumoured to not only have had intercourse with Maria Grehlsdåtter, but claimed that he could bring her head off her neck, which two tolmän and one honest wife testifies to have heard not once but several times, […]. Knowing, that the whole parish have known of this shameful rumour, and in his eagerness for righteousness wants to warn against sin, and that those sins could be brought to light and be punished, […]."

\textsuperscript{223} Extraordinarie tin 4, 6 och 7 augusti 1694, HTDP, pp. 72. “Att Johan Wijpa är berychtadt och hafwer berychtadt Maria Grehlsdåtter, icke allenast med honom hafft lägersmåhl, utan och efter hans i gårdarne berättelssse, at där han wille, skulle hennes halss springha, hwilket twänne tolmän af een ährlig hustru, icke een gångh utan fleere hördt hafwa, med flera omständigheter som under ransakningen lära sigh yppa: Wettandes, at hela sochnen hafwer hafft
Wellam Klangundius, the vicar of the parish wanted the rumours of sin to be brought up and examined, and he probably had his suspicions that Johan’s implicit claims would have the case develop into a case of single adultery and infanticide as it subsequently did. But the unpredictable nature of a system that is completely based on storytelling drove the case away from the motive of the clergy, to force sins to be punished. The two defendants refused to confess to the accusations, and twenty members of the local community were called to testify about the rumours, an unusually high amount of individual witnesses for the period. It proves that the case was important to the local community, as neighbouring men and women from the surrounding villages participated during three days of examinations.

The prosecution tried to establish if Maria and Johan’s relationship had gone beyond an honest courtship while she was a maid in Abraham of Jonsgård’s household, and if it could be tied to a supposed secret pregnancy and infanticide which coincided with a period of sickness in the autumn. Family, neighbours and friends of Maria asserted was that the rumours had not been going around long and wide around the local villages, or that Maria was as disreputable as the accusation claimed. Abraham of Jonsgård told the court that while Maria worked as a servant in his household in 1691, Johan was also stationed there, but as far as he understood they were supposed to become married, and did not notice any indecent behaviour under his roof. His wife added that she did not found any signs of a birth or infanticide in Maria’s sickbed. Neither did Länsman Peder Christiersson who had travelled to the village and investigated the rumours “in honest men’s company” without finding any physical evidence. Like most capital crime cases, assigning guilt or innocence would have to be based on the negotiated narrative.

The other component of the accusation was Johan Wijpa’s incriminating speech. Maria Gestriinia, the wife of vicar Klangundius was pointed out to have said that she had heard the rumour that after Maria eventually rejected Johan’s proposal, and one evening when she refused to let Johan into her chamber (because her fiancé Oluf Hägg was there with her) Johan had shouted that “if you don’t let me in I will tell what you hid under the floor in Abraham’s shed.” Two witnesses confirmed that they had heard Johan say this, but others claimed that he only shouted “may the devil take you both.” Maria Gestriinia admitted that she had forwarded this rumour, hearing it from “the shepherd maids.” Siuhl Jonsson said that the Johan had come home to him drunk
one evening during the winter of 1693, and asked if “Oluf Hägg whom was supposed to be proposing to Maria” was there, adding that he could have Maria “lose her neck if he wanted to.”

And like this it went on. The vicar was granted an extra day to interrogate the witnesses, as he claimed that he could convince the already questioned witnesses to speak on the behalf of his case against the defendants. He concluded on the last day that had had been unsuccessful, as they could not recall what he wanted them to say, adding that he had reported the rumours purely out of his “fervour for true piety and his duty to the office of clergy and not as a plaintiff.”226

But in the end neither Johan nor Maria could be convicted for any wrongdoing, as the court settled on the verdict. The court traced the origin of the rumours as stemming from Elizabet Pädersdotter, and that it would disregard her testimony since she was “accustomed to gossip” and löösmunder.227 The court would not let her swear on her testimony, and decided that it would be better to free the defendants, following the first paragraph of Olaus Petri’s rules for judges.228 Neither was Johan Wijpa’s drunken accusations of Maria deemed worthy any consideration, as it was “loose speech” spawned by jealousy and drunken stupor.

Was this case another example of how the “fragility of the local community” required the act to be denied as the truth to preserve the unity of the community?229 At least it shows how a “dark and serious” rumour was dismantled and rejected by the participation of family, friends and neighbours as the sheer amount of contradicting narratives left the district court without a truly accepted narrative, which was imperative to give the sentence proper legitimacy among the peasantry.

The court’s direct rejection of Elizabet Pädersdotter’s testimony was not a common practice of the court. It seems that she had gotten a reputation of dishonesty, and it seems that it had a significant impact on the possibility of assigning guilt. The dishonesty that invalidated Mats Leijman’s testimony in the trial of Swen Jonson Granbergh’s rumoured abuse of his mother was clear cut; he was neither trustworthy nor competent to be a witness, as he was a thief and furthermore a wretched person.230 Here the court’s assertion most likely reflected the opinion of both the local state and the local community, as it corresponds well with Sandmo’s reflection on the thief’s standing in rural society, that he was “the archetypical betrayer, a human who completely

226 Extraordinarie tin 4, 6 och 7 augusti 1694, HTDP, pp. 77, “Resp. att hans meningh icke annorlunda war än dhet som war gjordt och angifvit, är skiedt af nijth til san gudz fruchtan efter ämbets plicht, och icke som någon actor.”

227 Extraordinarie tin 4, 6 och 7 augusti 1694, HTDP, pp. 77, “[...] och huad lagh om sådana rychten tallar, och hålla före icke att endera Elizabet Pädersdåtters tahl om Golu Olufsdåtters utsagu, at Maria skulle komma ihug det som under Abrams bodgålff wore lagdt, eftersom hon är löösmunder, och medh sqwaller bewahn, och icke af sådant sqwaller och ogrundat rychte kunna bringas till edgång, utan säkrare dem frijkalla etz.”

228 KrLL, Domare Regler, uthi rättegånger mycket nyttighe, pp. 280.


230 Ting 23–24 November 1691, HTDP, pp. 21. ”Om sakens sammanhang discurerades utthörligen med nembden, som stadnade enhälligen i dese tankar, att dese finna ingen saak med Swän, helst emedan som Mattz Leijman icke är troowärdigh och witnesbär, och desutan een ljdellig persohn.”
breaks with the fundamental norms of the old society.”

That Elizabeth and Mats were rejected as witnesses because of their reputation among the community as dishonourable also strongly suggests that the relationship between honour and truth was not only part of Norwegian rural culture but Jämtland-Härjedalen as well.

It is no wonder that “honourless” people like Matz Leijman rarely stood as witnesses. Even if the court did not forbid honourless witnesses to participate, the incentive to call one to confirm your own testimony must have been low, as they would not fulfil formal or informal criterions to be deemed a proper witness. But the rejection of a witness based on his or her “lack of honour” should not be immediately equated with being a convicted offender. Studies have noted that convictions of crime did not bar peasants from assuming positions in the twelve-man assembly.

Neither were women whom borne children outside of wedlock excluded from testifying on the grounds of competence, as long as they had properly atoned for their crime.

5.3 Witnesses and their narratives

The different speech acts of the witnesses in the 1694 case are illustrative for the whole studied period. For example, difficulty in finding other than forgetful witnesses was not unusual. It was certainly true that some witnesses genuinely could not recall the exact details, but that was hardly the case when Kerstin Jonsdotter was interrogated about her mother uttering the treasonous phrase “I do not give a damn about the king or his ordinances,” and her claiming that she had walked away at precisely at moment it was supposedly uttered, but confirming everything else of the accuser’s narrative. If it was possible, many people said that they were unable to recollect rather than outright confronting the claim.

The decision not to commit to a specific narrative could stem from many reasons impossible to discern, but attached with the negotiation of the crime narratives was nonetheless the relationship between truth, honesty and the repercussions on the local community. For example, to accuse anyone for being a thief or a whore outside of the court would be a case for a litigation trial where the truthfulness of the claim was tested. Few would look forward to publicly call someone of importance within the local community to be a liar. To “not remember” or “not have heard” was
instead a clever way of avoiding the social dangers of disputing someone’s claim but still being able to participate in the trial. Sandmo argues that in the 17th century rural culture, questioning the truthfulness of a claim would be understood as a direct attack on the person’s honesty, and by extension, his honour.237 These considerations seem to have been in play at the trial of the officer Robbert won Wentzlou in 1681. The crime was that he had behaved increasingly indecent and rude against the vicar Carl Alstadius during a wedding and ended up with a vulgar defamation and violently assaulting the priest in his quarters. The officer claimed that his actions were provoked by Alstadius’ repeatedly humiliated him during the evening, and that the priest had said that “if you are an honest man, fight me,” calling the witnesses already sworn in to testify to confirm these details. The witnesses were in a situation that an outright denial would humiliate either an officer or the local priest. They settled on having a slippery memory, and could not recall this at all. Kiehl Jonsson said that he only heard that the priest asked the second lieutenant what he disapproved of in his sermons, as did Oluf Ingebrächtson and Pedher Matzson.238 They conceded that some harsh words had been exchanged, confirming parts of the defendant’s claims but did not hear that he had goaded him into throwing a punch. Witnesses claims where frequently that they “did not hear” what had been claimed to have been said, and it is an important distinction. Maria’s relatives and previous masters did for example not claim that the priest’s claim of wandering rumours was false, they had just not heard them.

The interest in participating against the defendant in criminal court cases was indeed not that enthusiastic, except when the social norms of the community was clearly transgressed. The community as a collective was ruthless in its condemnation of Gunnil Jonsdotter, not necessarily for her suspected cursing of the late vicar, but for her breaches of hospitality. The witch trials of Sveg did only present separate witnesses for a few of the defendants, suggesting that only a few had a previous reputation of witchcraft. But the few stories that were given shows us a glimpse into another fundamental part of the early modern mentality, a system of symbols where nothing happens without a reason, and everything is given with meaning. Sandmo argues that this mental framework explains why people where extremely concerned about things like accidental maiming that could be misunderstood as punitive marks given to dishonest people.239 “In a culture where everything had a meaning, where everyone’s appearance, conduct and disfigurement explained where they were in the moral hierarchy, everything must be true.”240 And during the Sveg witch trials this mentality was useful in finding evidence of witchcraft where in lack of eyewitnesses or

238 Extra ordinarie ting 2–3 december 1681, RTDP pp. 130. ”Kiehl sadhe sig eij mehra höra Prästen säja ån Fråga Fendricken hwadh honom på sina Predijkningar Fehlar.”
239 Sandmo 1999, pp. 156f.
defendants willing to confess. Marks of the devil on the inner side of fingers were pointed out, neighbours recollected illnesses at suspicious times and other circumstantial events were given terrible meaning.

In 1675, after two years of tiring witch accusations, the old farm maid Gertrud Perssdotter was accused and convicted to death as a witch, against her own assurance of innocence. Gertrud was accused of riding on the profess Erick Hansson and his wife Margareta Larsdotter to Blåkulla during the night, and this was immediately linked to Margareta Larsdotter’s failing health, but this as not the only unfortunate coincidence. Erick Hansson told the court that only a day after the 1674 trials, where he had warned Gertrud from bringing his children to Blåkulla, his household had been attacked by evil forces.

[...] when his wife entered the barn to feed the kids some drink, when she reached for them the cat, which they have had for four years, attacked her arms and scratched her badly, then she discovered that the cat had bitten off the mouth on four kids and eaten off from their upper jaws up to the eyes, which had never happened before, and when Eric Hansson tried to shoot his cat the gun was unable to fire at the time, he was forced to use the axhead. This he added, was because of Gertrud but she persistently denies.

It is not hard to imagine that Erick and Margareta would have seen this unusual event as an ill omen under normal circumstances, but linked with the ongoing witch trials must have made them convinced of the presence of evil in the community. This system of ascribing meaning to random sequences of events can also be seen in the tentative investigation of Lars Siulsson’s death in 1654. Described as a simpleton, his death was suspected to have been the result of hitting his head on a chair after being shoved by a bridesmaid during a wedding party three days earlier. Some boys had goaded him to try to hug the bridesmaid from behind and kiss her, and the bridesmaid claimed that he had startled her, not meaning to hurt him. He was helped on his feet and cleaned up, and he apologised, promising never to try something like that again. From the records, it is evident that the shoving was probably incidental to his health, as he was described as happy and in a good mood while he resumed drinking and eating throughout the night, wandering with the other weddinggoers from house to house to continue the festivities. But he finally fell ill in the third household, when he started to complain over pains as his stomach started to swell, becoming bedridden and in great pains before finally succumbing on New Year’s Eve.

241 Ting 1675, STDP, pp. 85.
242 Ting 22–26 februari 1675, STDP, pp. 85. “[...] när hustrun gick i fähuset och skulle gifwa killingarna dricka, togh hon med handen eftter dhem i kätten, då spännte katten, som dhe hafwa hafft i 4 åhr, i hustruns arm och henne illa klöste, sedan befan hon at katten hafwer afbijtit mun på 4. st killingar och opätit heela öfwerkäfften in till ögon, det som aldrig tilförne hafwer häntd, då Eric Hansson ärnade skiuä samma sin katt ihiel, men bössan kunne omöijeligen för honom den gången, gåå lööss, uthan nödgades bruka yxhammare, detta tillägger han Gertrud, wara dher till orsaken, men hon inständigt nekar.”
243 Ting 1654, STDP, pp. 22f.
court case described the festivities in detail, but could not find anything else of significance other than the shove that could explain Lars’ hasty death. The court declared that it was a sad incident, but that it did not feel comfortable in calling a verdict, adjourning the case to the next assembly. It was never resumed.

5.4 Concluding remarks: participation, witnessing and exclusion

Criminal behaviour was in the 17th century still an umbrella term for a number of acts defined as breaches of norms on different social and discursive levels.244 That is why crimes that was at the same time seen as breaches of social norms by the community could be more effectively prosecuted and disciplined, and other acts that was only criminal in the eyes of the states were difficult to prosecute, as social crimes did not entice the peasantry to participate and lend legitimacy to the proceedings.245

Witnesses were also drawn from middle and upper parts of the local social hierarchy, ensuring that full members of the community had their peers with them at the proceedings. This means that defendants of lower social status were not only at the mercy of their social superiors in court, they were also to an extent excluded from participating in the district court, and thus also to some extent excluded from participating as a part of the community.

To participate in a criminal trial as a witness could be as demanding of your standing within the community as for the defendant and the accuser. Testimonies from participants whose character could be questioned were eventually discarded when their understanding of the truth hindered the negotiation of the truth to become accepted truth. The rejection of Mats Leijman’s, Elisabeth Pedersdotter’s and Johan Wijpa’s ability to speak truthfully does show the district court’s pragmatic flexibility in its interpretation of judicial praxis when dealing with cases where the judicial narrative became too muddled. With a narrative too noisy to create an acceptable criminal narrative, those of lower social standing were thrown out.

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244 Österberg 1994, pp. 17f.
245 Thompson 1975, pp. 204.
6. The district court and the negotiation of the narrative

The previous four chapters argued for that accusers, defendants, witnesses and the local community participated in negotiations of the narrative, how the story about the crime was framed and how acts and intent were positioned within judicial discourses depending on the different circumstances of the case. The final key to the negotiation of the crime was the district court, the actual premise of the proceedings. The narratives were presented before and negotiated with the court officials and the lay jurors to hopefully produce an acceptable truth; a just punishment or a good display of certain innocence.

This chapter will study the district court as an actor in the criminal court cases, its common judicial, and what kind of speech acts it relied upon in the negotiations of the narrative, especially with the local community and upwards in the judicial hierarchy.

6.1 The district court and its rulings

The district court’s role in the creation of the acceptable truth differs from the other participants as it was an institution with divided loyalties. The twelve-man assembly of lay jurors elected among the local landed peasantry lost much of its de jure power in the course over the 17th century, but was still a participant with a great deal of formal and informal influence within the judicial arena, closely aligned with the upper social stratum of the local community.246 Same goes for the länsmann who recruited from the same pool of landed peasants that were considered for lay juror duty. The appointed state officials like the district judge, the court scribe and the befallningsman must on the other hand be understood as the local manifestation of the state, whose mandate rested on the authority of the monarch.

Ultimately, the district court was an institution of the state authorities. Its master was his royal majesty, its ideology and demeanour was rooted in state law and a worldview based on elite interpretations of society. This is evident in the interaction between the court and the defendants who put all their faith in the true confession, where the discourse of guilt and repentance was structured around the state’s “civilizing efforts” regarding crime in general and honour violence in particular.247 Still, the contradictory mix of elected peasantry and state appointed officials produced justice that was far from being as harsh, punitive and authoritative as it was capable of. The district

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246 How the assembly of lay jurors were elected is not well known, but the point is that it was the local community’s task of producing them, not the state. See Sundin 1992, pp. 63f.
court could, and did, openly question their own verdicts as unfair or inconsiderate of the circumstances when they followed their assigned mandate, to judge only according to the word of the law.

<table>
<thead>
<tr>
<th>Period</th>
<th>cases (n)</th>
<th>Convictions (n)</th>
<th>Acquittals (n)</th>
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<td>5</td>
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</tr>
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</tr>
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<td>12</td>
<td>5</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
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<td><strong>71</strong></td>
<td><strong>32</strong></td>
<td><strong>8</strong></td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>

Source: see appendix

A statistical analysis of the material shows that the rate of criminal investigations were more or less stable during the last 50 years of the 17th century, excluding the spike of cases in the 1670’s, all due to the Sveg witch trials of 1673–1675. The court ended up producing a verdict in 56.3 percent of the cases, and almost as many were referred to be resumed at the next assembly never to reappear in the records, but it would be misleading to presume that the courts were ineffective in concluding the cases, as once again specific nature of the witch trials skews the data. Leaving them out would have the court produce definite verdicts in more than three out of four cases. This is still slightly lower than the amount of definite verdicts presented in Sundin 1992, where only one out of ten cases remained inconclusive during the period 1640–1648.\textsuperscript{248} Accepted narratives were the norm, or at least more common than not. Even the defendants must have felt ambivalence towards an inconclusive end to the prosecution, as the difference between that and an acquittal was significant with its cleansing effect on the defendant's honour, at least initially.

6.2 The district court, its narratives and its function

A central problem with the study of court narratives is the extent of the court officials’ power over the proceedings. One perspective is that of the court officials as the primary drivers of the narrative. Bengt Ankarloo proposes that the judge or the prosecutor was “at the same time author, dramaturge and director,” leading the interrogations, determining the order of the witnesses and

\textsuperscript{248} Sundin 1992, pp. 78.
asking the questions.\textsuperscript{249} Inger Lövkrona has noted that while the judge may have been the director of the trial, the \textit{tingskrivare} (court scribe) must certainly be understood as the author of the records, injecting his own experiences and notions into what and how the acts of the trial were to be recorded.\textsuperscript{250} These assumptions of how the court interacted with the case and the records suggests that the stories were almost completely controlled by the authorities, depicting a world based on the authorities’ image of how the interaction between state and community should look like.\textsuperscript{251} It is true that the interaction between the court and the defendant was often performative, symbolic and based on religious ideology, though some cases show that the control over the criminal investigation was not as complete as it has been suggested. That \textit{båradsfogde} Bertoldh Alander voluntarily choose to put the Offerdal district court on direct confrontation with the religious zeal of the reverend Abraham Buhrman in front of the parish in 1700 seems somewhat unlikely.\textsuperscript{252} Neither can the Sveg court assembly’s descent into a witch craze in 1673 be described as a well-executed demonstration of dignified state authority, with the accused defendants being able to invoke notions of Christian martyrdom to shame the court in the judicial discourse, others openly rejecting the authority of the court and the local community demanding that the authorities forego established judicial praxis.\textsuperscript{253}

The peculiarities of the witch trials’ effect on the court and the community extend beyond the actual cases. Few if any other criminal cases were investigated at all during the period from the beginning of the witch craze in 1673 until 1681. The flexibility of the judicial system might have had a hand in the temporary reduced willingness to execute disciplinary justice; the local authorities might have felt that the sentiment amongst the peasantry was wary of the judicial system in the wake of the previous breakdown of judicial norms and praxis.\textsuperscript{254}

The key as to why so many records seem relatively harmonious considering that life or death was at stake were the explicit and implicit negotiation of the proceedings. The district court had the power, but to effectively wield its authority it had to cooperate with the community to exercise it. Convicted defendants performed their role as repentant sinners to be given God’s and the community’s forgiveness, and hopefully also leniency from the royal court, and the community and witnesses participated in the narrative to promote the right decision from the courts. The courts decided on the order of the witnesses and what stories they were going to ask of them. There was a judicial fantasy that the right stories would help the right verdict, although the right verdict would

\textsuperscript{249} Ankarloo 1988, pp.85.
\textsuperscript{250} Lövkrona 1999, pp. 37
\textsuperscript{251} See Scott 1991.
\textsuperscript{252} Ting 11,12 och 14 maj 1700, OTDP, pp. 190f.
\textsuperscript{253} See sections 2.4 and 4.3.
\textsuperscript{254} Hay 1975, pp. 50f.
not necessarily be the lawful one. At its core, the criminal investigation was set up to sort the defendants in four categories: the forgivable and the unforgiveable criminal, the innocent and the inconclusive.\textsuperscript{255}

If the speech acts made by the courts are separated from the questioning made by the befallningsman or länsman, the primary field of interaction by the district court was in the final paragraphs of the records, in the discourse around the verdict. The most common recurring acts were the practice of its judicial functions:

- Declare that the court was “unable to free the criminal of the capital punishment.”
- Declare the case to be resumed at the next assembly.
- Declare the defendant to be innocent.
- Refer to the Svea royal court or other judicial institutions without sentencing.

But the courts did comment outside of these operational acts, pointing out mitigating circumstances that they could not themselves judge according to.

### 6.3 The district court and the pleas to the Svea Royal Court

A few cases did not only contain remorseful confessions from the defendants, the court acted openly on the behalf of the criminals they themselves had condemned to death. Together with the declaration of the verdict, the district court asked the Royal court if the capital punishment could be mitigated either by itself or made common cause with the community, the assembly or the parish. Hardships and personal tragedy seems to have played a part in these cases, as the image of orphaned children surfaced in the local community’s pleading with the district court and then in the district court’s pleadings with the Svea royal court. For example, the district court of Revsund acknowledged that sentencing the widow Märit Olufzdotter to death for infanticide was a sombre prospect before the local community pleaded on her behalf, pinning her misfortunes on the dishonourable man that got her pregnant and that mercy should be given her because of her four fatherless children.\textsuperscript{256} The church thief Matz Läijman mimicked this rhetoric in 1698 when he

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\textsuperscript{255} See Herrup 1987, pp. 197.

pleaded for mercy for the sake of his “small, motherless children,” and with the consent of the vicar, it was declared that the district court could not free the criminal of the capital punishment, asking the royal Svea court if it could find mercy for him. The Royal court accepted the court’s pleading, and Läijman was instead given a corporal punishment, to run five gauntlets and then “stå på plichtepallen tree Söndagar.”

The district court of Hammerdal showed hesitation in its verdict when the two adulterers’ fänrik Johan Steenisson Helleberg and Kierstin Andersdotter were condemned to death in 1697. The records of this trial stand out from the others as it contains the internal discussion amongst the court officials, and ends with the court asking the Royal Svea court to consider the mitigating circumstances they were unable to judge according to. It was in short a problem of definition: had the confessing delinquents committed single or double adultery? Kierstin Andersdotter’s husband was a despicable deserter whom had forsaken both family and country in 1687, and the court acknowledged that Kierstin already had case for divorce. The fact that she had not applied for it complicated things. If her husband were to return, he was a dödzens barn (lit. child of death, meaning basically dead man walking) and would promptly be convicted to death by the local court martial, and she would be for all intents and purposes a widow in the eyes of the court. But the court concluded that since she was still official married, and that her husband presumably still lived, and in the case of a return he would ask for leniency and possibly be given mercy by the royal Svea court, the two adulterers to death. The local community had already testified in the case, confirming that Kierstin’s husband had not been seen by them in Norway since he deserted, but that they had heard a rumour of him becoming a sailor, making him being alive or possibly returning much less likely. The court added that it was a most sombre case and that to spare them should be considered by the royal Svea court.

A third, explicit pleading for overturning their own verdict was made in Offerdal in 1700, when the court concluded the sentencing over three blaspheming farm maids:

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257 Ting 26 och 28 November 1698, HTDP, pp. 151, ”Men wid så beskaffadt saak och i förmågo af Kongl. straffordn. 3 § \anstod rätten ej annat än at/ dömma Matz Läijman till döden, dock domen med ransakningen under högl. Kongl. hofrättens högwijsa omdöme underdånödmiukel. heemstäld och lembnad, om honom någon nåde wederfas kan.”

258 Hovrättens resolution 7 mars 1699, HLA/GbLL/DIIa/10, Fol. 256f.

259 Ting 26 och 27 November 1697, HTDP, pp. 137, ”Så att häradz rätten i betraktande till desse befintelige skiahl och omständigheter billigt skulle falla på dee tankar att konan, Kierstin, borde som en löös persson ansees, och denne saken som ett enkelt hoor afdömmas.”

260 Ting 26 och 27 November 1697, HTDP, pp. 137 ”[…] det kan och præsumeras att mannen torde lefwa, vara fången eller elliest lagl. hindrad, och i betraktande dertill wid heem-komsten åthniuta Kongl. Maijts nåde, så att ehwar man sig wänder, har denne saken sine swärigheeter med sig, att uti en så mörk saak, domma 2:ne till döden, är swårt, att och skona dem, är icke mindre eftertänkeligt.”
This pleading was only conducted a few times in the studied court records, all at the very end of the 17th century. I do not think it represents the only cases during the 50-year period where the court felt sympathy for the defendants, as adulterers, blasphemers and recidivist church thieves seems like an unlikely group of people to get such exclusive treatment. What did happen is that the judicial discourse around the capital punishment gradually changed. Maybe the implicit support of a lessening of the sentence in cases where the defendant could perform a true confession naturally become more concrete over time. It can at least be seen as one of the goals of performing a true confession, to ask for forgiveness with crying tears and great remorse. Since the district court did at times narrate their opinion of defendants, witnesses or underlying circumstances it must be seen as a possibility in other court cases, something that all participants understood. It has the same implications as the local community standing in silent agreement or openly declaring its opinions on the matter, the district court could and did act as a participant, driving the narrative towards a certain point.

6.4 Concluding remarks: negotiation and authority

The general conduct of the court as a participant and how it acted outside of judicial praxis can be summarised as this: the district court assembly did assess the character of witnesses, and decided to reject the trustworthiness of a participant using a rhetoric based on notions of honour, no matter if the decision was because of judicial practice or individual reputation. The district court was not in complete charge of the narrative. It could not (or choose not to) exclude uncomfortable discussions at the hearings that questioned the outcome of the law, conflicting views other local institutions, or maintain that judicial praxis was to be followed.
The court would also openly question its own verdicts, aligning itself with the community and seek mitigation and mercy for defendants. Consisting both of elected peasants and appointed public servants charged with administering law, the court must have had a good understanding of how willing the local community was to reintegrate the criminals it pleaded with the royal high courts for.
7. Negotiating truth and the levels of negotiation

This thesis started out with the purpose to answer the question to how narratives of crime, guilt and innocence were produced in the district courts, and how the actors of the court interacted in order to create these acceptable or negotiated truth. To answer these questions, I will first propose a theoretical model based on the empirical findings to visualise the work of the criminal court investigation, and then place the judicial narratives within it.

7.1 The negotiations of crime, character and punishment

The 17th century was a period where fundamental changes took place in the Swedish court system. The judicial revolution swept many of the old medieval customary law traditions aside to create a centralised, modern and deeply hierarchical system of professional justice. The peasant assemblies (häradsting) of old became less independent and more controlled from above, transforming them into what has been described as theatres of power. But the last thirty years of historical studies of crime and justice have produced a more nuanced narrative of the relationship between the Swedish state and its subjects. Co-operation, a spirit of compromise and a culture of petitioning has shown us that there has always been room for negotiating the forms of bondage and servitude. The district court was more likely a social and discursive arena rather than a theatre of power. It is then not surprising that even at the sharpest edge of state power, some room for negotiations were still available.

The results of this thesis show that the contradictions of the relationship between authority and its subjects and the rule of law to be central. In E.P. Thompson’s words, “we reach, then not a simple conclusion but a complex and contradictory one.” Some of the evidence does supports a view of the relationship between authority and community as highly authoritarian, others a compromising, even collaborative one. But that might also be where the best answer lies, that it was a complex system with many peculiarities, inconsistencies and contradictions that made the rule of law not only that, but to an extent a rule of consensus between the rulers of the state, religion and the local community.

\[262\] Österberg & Sandmo 2000, pp. 11.
\[263\] Thompson 1975, pp. 206.
The investigation of a capital crime was not only a matter of following judicial praxis, it was also a multi-level negotiation between the court, the defendant, and the local community to be able to produce justifiable and acceptable verdicts. The will of the local community was still vital to the judicial process at the end of the 17th century, as the willing participation of the community as a collective or as individual neighbours could defend or undermine any narrative produced at the court. The levels of negotiations can be understood as three dialectical relationships: the negotiation of crime narrative where different narratives were presented and questioned, the negotiation of character where the honesty of the participants were assessed, and finally the negotiation of the punishment, where speech acts made by court and community served to indicate to the royal high how they wanted the higher court to rule.

The study has also found that while Jämtland-Härjedalen was a northern rural society with a comparatively flat social hierarchy, it was still very much a culture of inequalities. It manifested itself rather clearly in the categories of participants of serious crime investigations as a deeply patriarchal and hierarchical society. Men and women from lower social strata or precarious living conditions were not only twice as likely to be subject of the harshest state and community repression, they were also to a large extent excluded from participating in the court as witnesses. This is significant, as social relationships and personal ties to the community were key to be protected from harsh punishments and grave accusations. They were thus less likely to find the support of their peers, friends and neighbours in the negotiation of the crime if they were not part

<table>
<thead>
<tr>
<th>Negotiation of the Crime (the nature of the crime, intent, guilt, circumstance)</th>
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<td>Defendants, witnesses</td>
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<thead>
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<th>Negotiation of the character of the defendant, the victim and witnesses (virtue, honesty, worthiness)</th>
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<td>Local Community</td>
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<th>Negotiation of the punishment (mitigating circumstances, possibilities of pardon, reasons to forego praxis)</th>
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of the proceedings. And since the possibility to control the narrative must have diminished considerably, and this imbalance produced several trials where marginalised members of the community were helpless in front of the authorities. But while exclusion and repression of lower status members seems to have been the norm, several contractionary examples exist. Community and district court did also stand by convicted criminals of weak social status and pleaded to the high court on their behalf. Foregoing judicial praxis was thus negotiated from both positions. Defendants that had drawn the ire of the community could be asked to be executed against the established praxis, and verdicts according to state law to execute a poor criminal were argued to be excessive.

Almost every negotiation of the crime had an accuser, always a defendant, and frequently witnesses or other various participants that told stories, arguing, confirming and disputing claims openly or implicitly. Accusations could be steeped in damning rhetoric or padded with understanding and empathy towards the defendant. The accusation did serve as a starting point of the crime narrative, and while it restricted the claims of the defendant to respond, the judicial discourse allowed defendants to strategize their answers in specific ways.

Defendants pursued a variety of narratives to position themselves in relation to the accusation. Certain accusations could be completely denied if the community vouched for his or her good character, even when witnesses of the crime were present at the court. Other defendants “fell to the prayer” as the sources tell, confessed to their crimes in a manner laden with Christian symbolism, which posited them as truly remorseful sinners. The speech acts were constructed to see suggest that the crime was forgiven by God, hopefully the community, and maybe even the authorities. The true confession always contained crying tears and praying to God and the authorities for forgiveness, and some of the confessing defendant further claimed that their sins were committed out of fækunnighet, that they were foolish and not aware of the gravity of their actions.

These discursive practices seem to have been rather flexible, as men and women alike from the whole social hierarchy adopted these methods of presenting themselves, in the context of many kinds of criminal acts. Though men and women’s source of honour and thus honesty vastly differed, but virtue transcended gender and social order. The results of the thesis join the previous historiography that underlines the importance of symbolic penance and redemption as one of the reasons for the true confession of crime. The possibility of reintegration into the community weighted more than the ever-present option of deserting to Norway, although it did happen when the defendant thought that the possibility to be reintegrated or pardoned was slim or impossible. The sentencing of a capital crime was scripted to be a deeply religious experience for a purpose.
Presented with the choice of confessing, receiving God’s and the community’s forgiveness, and possibly also the court’s must have been tempting to the defendant, as avoiding justice or being convicted and executed without confessing was the unforgivable sinner’s lot, condemned to eternal suffering.

The criminal trial did not only contain plaintiffs, defendants and proper witnesses, because the verdict was not only of importance to the concerned parties. As a matter of fact, the criminal trial did involve all members of the community: it could manifest itself as a collective act or when the local clergy would enter the court to argue for a harsh punishment. Friends and family, neighbours and acquaintances would interact with the proceedings not as witnesses of the crime, but as vouching for their good conduct in other circumstances. Honourable peasants and clergy helped the befallningsman in his physical examination of dead victims, and honest women examined the living bodies of suspected child-murderers for signs of pregnancy. There was a great number of people without a public office or any jurisdiction in the court that was crucial to the court in the administering of justice. It had a similar quality to it like the English magistrate court in that “the sharing of legal obligations breathed life into the system because while the social and professional elites participated in the legal process, they did not control it” as Cynthia B. Herrup concludes in *The Common Peace*.

The criminal trial was indeed a common endeavour to produce peace and harmony; narratives that could be accepted by most of the participants emerged from the different pieces of social and empirical truths that was fitted together by the dialectics of the public court proceedings. When a story contradicted the other narratives and prohibited an acceptable truth to form, its creator could be discarded by questioning their individual honour like Mats Leijman’s, or their family’s honour, like Måns Gunnarsson’s. But a common peace and an acceptable truth was not always a possibility. The three years of inconclusive witch trials in Sveg is a great demonstration of this phenomenon. The circumstances created instead an uncomfortable truth, were the normal rules of social truth could not be applied.

The power of the district court rested not simply on the notion it held authority to punish the community it presided over but in how it could fuse the will of the community with that of the state. It held power in the sense of a being a “cultural machinery that encompassed relations, individuals, institutions, acts and knowledge.” The district courts acted as the representative of the king’s will at times, but most successfully with the approval of the community. The court would let the local community question the morality of the verdict without objections, at other times it

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265 Herrup 1987, pp. 200f.  
266 Collstedt 2007, pp 37.
aligned itself with the community in the pleas for mercy on behalf of the convicted criminal. At that point, the court records had transformed into something more than bureaucracy. It was now essentially a pardon tale, where all relevant parties had collaborated to create a narrative of the crime that they not only accepted as a truth, it was also a story of a crime that was had been deemed forgivable, and were in the eyes of the community and the local authorities worthy of mercy. It was not an official, formal supplication, but very similar in its intent of negotiating the forms and frames of servitude.

A final thought on the relationship between the court, the confession and the law. The emphasis of my study has been the judicial fantasy amongst the peasantry, how negotiating the consequences of the bloody code was a possibility with the community and the district court on your side. The understanding was that a confession would invariably lead to the capital punishment, but it mattered in what manner the defendant confessed and how he was sentenced. The fact that the district court would plead on a defendants behalf, or that the Royal High Courts mitigated most death sentences should of course not be interpreted as benevolence but as a manifestation of a coercive relationship; a judge mitigating the sentence of a criminal is only benevolent in the sense that he could as easily let him hang.\(^{267}\)

When the criminal, his family or his community begged, pleaded and cried with great deference to spare his or her life, they not only recognised the relationship of power, they reinforced and reproduced it. This was the primary function and ideology of the capital punishment in early modern Sweden. Not to end the lives of delinquents, because it demonstrably did not most of the time, but to remind individuals, families and communities how awesome the king was in his power over life and death, and that he was merciful and benevolent, for now. Attaining mercy from the authorities was to recognise their power; avoiding the sentence with the help of the community was to defy it.

### 7.2 Court narratives, confessions and the truth: where to next?

Considering the results of this thesis, what could be pursued for further studies? Naturally a more extensive study with the larger dimensions concerning time period, geography and number of cases comes to mind, and would make for a generally stronger analysis. Since the study ends at the turn of the century, it leaves us with several unanswered questions, especially concerning continuity and change. The 18th century saw a continuing judicial revolution and further centralisation of power.

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\(^{267}\) Hay 1975, pp. 62.
Changes in the social fabric and the norms that governed communal life ought to have had implications on the narratives of guilt, sin and remorse in the judicial discourse. A longer timeline would grant us a better understanding of how these circumstances actually changed the judicial fantasy.

The broader Scandinavian context in the 17th century would also be of great interest to investigate further. The main Scandinavian judicial systems were in many ways similar, sharing a cultural and social heritage of community *ting* assemblies, provincial and national legislation originating from Germanic customary law and heavily influenced by protestant legal thought. The question is if the social and judicial framework produced similar discourses of crime and guilt, and if the performances of Christian remorse were similar in the courts over the border.

This is might not have been the case. For example, the trial records of the mass murderer Jeppe Erichsen whom murdered a Sami family of three adults and six children in the winter of 1693 in Nord-Trøndelag (just over the border from Jämtland) were surprisingly dry considering the nature of the crime. These records presented a neutral, emotionless recollection of the events was recorded, without giving the murderer a voice to explain his intent, except for his crime being described as a gruesome murder in the verdict, where he to be beheaded and the head to be put on a spike for everyone to see.  

Finally, the concept of confessing truly and the notion of mercy in the court narratives might be the most interesting prospect that this study only have scratched the surface off. How did for example the royal high court work with the records of serious crime? What details and aspects of a crime were retained when the records progressed through the judicial system, from district court to be evaluated in the royal high court, and then reiterated in the writs that was sent back to the district court with the assessment of the verdicts? Defendants could plead for leniency in other forums than in the district court on their own initiative. Personal petitions to the king asking for mercy have been found, but yet to be thoroughly studied. Did the performance of the true confession change depending on who were listening?

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268 Folio 105, Inderøy fougderj 1694.
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